

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 33 of 2021

Case of M/s. Bilt Graphic Paper Products Limited seeking declaration that it has fulfilled its Renewable Purchase Obligation for the period FY 2016-17 to FY 2019-20

M/s. Bilt Graphic Paper Products Limited

..... Petitioner

Maharashtra Energy Development Agency

..... Impleaded Respondent

Coram

Shri Sanjay Kumar, Chairperson
Shri I.M. Bohari, Member
Shri Mukesh Khullar, Member

Appearance

For the

Petitioner

: Smt. Deepa Chawan (Adv.)

Respondent

: Sh. Manoj Pise (Rep.)

ORDER

Date: 25 June, 2021

1. M/s. Bilt Graphic Paper Products Ltd (**BGPPL**), has filed the present Petition on 23 March 2021 under Regulation 92 of the MERC (Conduct of Business) Regulations, 2004, and Regulation 16 & 18 of the MERC (RPO Implementation of Renewable Energy Certificate Framework) Regulations, 2016 (**RPO-REC Regulations 2016**), seeking declaration that it has fulfilled its Renewable Power Obligation (**RPO**) for the period from FY 2016-17 to FY 2019-20.

2. BGPPL's main prayers are as follows:

- a) *The Commission may be pleased to declare after considering the details of consumption of electricity by the Applicant as a captive user and the power generated by the Applicant as a person who owns a grid connected captive generation plant at Ballarpur, that the Applicant has fulfilled its RPO for the period FY 2016-2017 to FY 2019-2020 under the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliances and Implementation of Renewable Energy Certificate Framework) Regulations, 2016;*
- b) *The Commission may be pleased to declare and confirm that the Applicant has successfully met the composite RPO target for the years FY 2016-2017 to FY 2019-2020 under the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliances and Implementation of Renewable Energy Certificate Framework) Regulations, 2016 in view of its aggregate RE generation at Ballarpur*
- c) *Pending the hearing and final disposal of this Application and pending the hearing of the verification process wherein liberty has been granted to the Applicant to approach the Commission with its submissions as a captive consumer with two captive plants, who desires to consider its fulfilment of RPO, on the basis of the RE generated from its Ballarpur plant, sufficient time be granted to the Applicant to comply with the RPO obligations in terms of the order dated 02.04.2018 in Case No. 75 of 2017 read with order dated 22.05.2019 in Case No. 68 of 2019, Order dated 05.10.2020 in Case No. 130 of 2020, order dated 06.10.2020 in Case No. 111 of 2020 and order dated 06.02.2021 in Case No. 203 of 2020;*

3. BGPPL in its Case has stated as follows:

- 3.1. BGPPL owns grid connected Captive Power Plants (CPP) which include co-generation CPP, at its manufacturing facilities located at Ballarpur (District Chandrapur) and Bhigwan (District Pune) in Maharashtra.
- 3.2. Ballarpur unit at District Chandrapur was commissioned on 15 August 2009. It is a composite cogeneration plant, which operates on fossil fuel as well as Biomass, having total installed capacity of 67.5 MW.
- 3.3. Regarding BGPPL's Bhigwan unit at District Pune, Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) on 2 July 2012 issued a Certificate, certifying that BGPPL's 60 MW (2 x 30 MW) coal based captive generation power plant located at Pune

is synchronized with grid. This unit has cogeneration Captive Power Plant exclusively based on fossil fuel with installed capacity of 60 MW (2 x 30 MW) and at present only one 30 MW power plant is in operation.

- 3.4. On 13 May 2016, BGPPL received Accreditation from Maharashtra Energy Development Agency (MEDA) for its RE Generating Station at Ballarpur w.e.f. 13 May 2016 to 12 May 2021.
- 3.5. On 2 April 2018, the Commission passed Order in Case No. 75 of 2017, wherein BGPPL was permitted to withdraw Case No. 75 of 2017 with liberty to approach the Commission during the hearing of the verification process for RPO compliance for FY 2016-17.
- 3.6. On 22 May 2019, the Commission in Case No. 68 of 2019 held that fossil fuel based captive power plants were allowed to fulfill their cumulative RPO targets by March 2020 after the Commission completes the verification process for the years 2014-15 to 2016-17.
- 3.7. The Commission also gave an alternative option to deposit amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till the Writ Petition filed by Captive Power Plants Association is decided by the High Court.
- 3.8. On 6 October 2020, the Commission in Case No. 111 of 2020 has allowed the Captive Power Plants Association (CPPA) application for additional time to exercise the option granted to CPPA by its Order dated 22 May 2019 in Case No. 68 of 2019. As per this Order, fossil fuel based CPPs were allowed to fulfill their cumulative RPO targets by 31 March 2021.
- 3.9. Regulation 5 of the MERC RPO-REC Regulations, 2016 provides that any person who owns a grid-connected Captive Generating Plant based on conventional fossil fuel with installed capacity of 5 MW and above, and consumes electricity generated from plant for his own use shall be subjected to RPO to the extent of a percentage of his consumption met through such fossil fuel based captive source.
- 3.10. RPO Targets as per RPO-REC Regulations, 2016, are as follows:

YEAR	Quantum of Purchase (in %) from Renewable Energy sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (Other RE)	Total
	(a)	(b)	(c)
2016 - 17	1.00%	10.00%	11.00%
2017 - 18	2.00%	10.50%	12.50%

YEAR	Quantum of Purchase (in %) from Renewable Energy sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (Other RE)	Total
	(a)	(b)	(c)
2018 - 19	2.75%	11.00%	13.75%
2019 - 20	3.50%	11.50%	15.00%

3.11. The Commission vide its Order dated 5 October 2020 in Case No. 130 of 2020 has ruled that the composite RPO targets for the Captive Power Plants commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations. Further the Commission vide its subsequent Order dated 6 February 2021 in Case No. 203 of 2020 has categorically clarified that Captive Power Plants commissioned before 1 April 2016 shall comply with applicable RPO targets on composite basis.

3.12. Accordingly, the RPO targets for its 2 units are as given below:

Fiscal Year	Ballarpur		Total	Total RPO required as per Commission's Order in Case No. 203 of 2020	
	Power Generation (Mus)		Power Generation (Mus)	Non Solar RPO (Mus)	Solar RPO (Mus)
	Fossil	Biomass		Total 9% (of Fossil fuel generation)	
2016 - 17	119.75	110.23	229.98	10.78	
2017 - 18	171.68	200.87	372.55	15.45	
2018 - 19	150.55	231.89	382.44	13.55	
2019 - 20	142.96	226.53	369.49	12.87	

Fiscal Year	Bhigwan		Total RPO required as per Commission's Order in Case No. 203 of 2020	
	Power Generation (Mus)		Non Solar RPO (Mus)	Solar RPO (Mus)
	Fossil		Total 9%	
2016 - 17	100.16		9.02	
2017 - 18	139.78		12.58	
2018 - 19	208.63		18.78	
2019 - 20	214.61		19.32	

3.13. Its Biomass generation during the period FY 2016-17 to FY 2019-20 is far in excess of the RPO requirement during the corresponding years. The Commission is requested to consider that it has accordingly complied with the RPO requirement of its grid connected co-generation Captive Power Plant at Ballarpur for the period FY 2016-17 to FY 2019-20. The

Commission may further be pleased to declare that BGPPL in respect of its grid connected co-generation Captive Power Plant at Ballarpur is now not required to execute either of the Options as prescribed by the Commission in its Order dated 22 May 2019 in Case No. 68 of 2019 read with other Orders.

- 3.14. Further, both the grid connected co-generation Captive Power Plants are owned by a single “Legal Entity”, i.e. BGPPL which is duly registered with the Registrar of Companies having Corporate Identity Number – U21000MH2007PLC172382_2007 – 2008 and has only one Permanent Account Number (PAN) AADCB2230M, which is applicable for all the financial transactions either of Ballarpur Plant or Bhigwan Plant. It has only one common GST Registration having number 27AADCB2230M1ZT and in the Annexure A to the GST Registration Certificate, it has been mentioned that Bhigwan Plant is an additional place of business.
- 3.15. BGPPL has further submitted that Biomass Generation at Ballarpur Plant is more than sufficient to meet the RPO requirement of Ballarpur Plant. BGPPL being a single entity, which owns & operates both the plants (Ballarpur & Bhigwan), submits that the Commission may kindly allow the RPO requirement of Bhigwan Plant to be considered against the balance quantum of Biomass Generation at Ballarpur Plant (as combined RPO).
- 3.16. The generation capacity of Ballarpur Plant is a generation from eligible RE Source. BGPPL, as a Captive User is an Obligated Entity under Regulation 5.1 and meets its RPO target by way of its own generation. The surplus electricity generated by the Ballarpur unit partakes of the elements of RE and in fact qualifies for availing REC. This shows that the excess energy generated at Ballarpur is RE Energy and continues to maintain and inhabit its green elements.
- 3.17. BGPPL submits that the rationale and intention of Section 86 (1) (e) of the Act read with the RPO Regulations, 2016 is to ensure penetration of RE energy in the State and RPO has been stipulated in furtherance of the said salutary objective. In such circumstances, it has approached the Commission for orders and directions seeking a declaration of its compliance with its RPO obligations under the RPO Regulations, 2016, by considering the RE generation at Ballarpur as being sufficient compliance of the RPO of BGPPL as a Captive User in the State.
- 3.18. BGPPL had previously approach the Commission in the month of April 2017 and had filed a Petition before the Commission in Case No. 75 of 2017, wherein it had inter -alia requested to modify / amend / alter the RPO Regulations, 2016 and other relief as stated therein. On 2 April 2018, the Commission was pleased to permit the Petitioner to withdraw the Petition with liberty to approach the Commission for appropriate relief at later stage subsequent to

completion of RPO compliance verification process and also permit to make necessary submissions without prejudice to the submissions made in Case No. 75 of 2017.

- 3.19. During the proceedings of the above mentioned Petition, BGPPL had indicated certain apprehension before the Commission that some penal action would be initiated against it for non-compliance of RPO for FY 2016-17, however the Commission clarified that no penal action would be initiated unless the compliance verification process is completed and that BGPPL can make its submissions during the Public Hearing.
- 3.20. BGPPL submits that the RPO compliance verification proceedings for Captive generation Plants/Captive Power Plants (CGP/ CPP) and Open Access (OA) consumers for FY 2016-17 and subsequent years are yet to be initiated and therefore BGPPL so far could not get any opportunity to make submissions before the Commission to consider RPO requirement of BGPPL's grid connected co-generation Captive Power Plants at Ballarpur, District Chandrapur and at Bhigwan, District Pune and to consider the RPO requirement as a Captive Consumer against the Biomass generation at Ballarpur Plant.
- 3.21. The Commission by its Order dated 22 May 2019 in Case No. 68 of 2019 has allowed the CPP Users to fulfill their cumulative RPO targets by March 2021. BGPPL submits that it may not be now possible to complete the RPO compliance verification proceedings for CGP and OA consumers for FY 2016-17 and subsequent years before March 2021. In such circumstances, the BGPPL submits that it may not be able to exercise the option given by the Commission vide Order dated 2 April 2018 in Case No. 75 of 2017 to appear before the Commission during RPO Compliance Proceedings. The final time line as has been approved by the Commission vide its Order dated 22 May 2019 in Case No. 68 of 2019 would expire on 31 March 2021.

4. MEDA in its reply dated 8 May 2021 has stated as under:

- 4.1. RE generation from BGPPL's Ballarpur unit is sufficient for RPO fulfilment for both Ballarpur and Bhigawan Unit. But there is no wheeling of energy between both units.
- 4.2. Central Electricity Regulatory Commission (CERC) has devised a mechanism for allowing RPO fulfillment through self-retention of RECs for locations spread across various states from same obligated entity.
- 4.3. Further, Regulation 7.6 of MERC RPO-REC Regulations 2019 stipulated as below:

“An Obligated Entity may meet its RPO target by way of its own generation or procurement of power from another RE Project or by purchase from a Licensee or by purchase of RECs or by a combination of these options:”

- 4.4. Similar provision of option to meet RPO from various sources including “by way of its own generation” existed in previous RPO regulations. Now, since both the locations are owned and operated by the same legal entity, it can be inferred that the generation at either plant is own generation of the entity.
- 4.5. By referring the concept of self retention of REC, the Commission may consider the RPO fulfillment at multiple locations of same legal entity through their RE generation plant at one or more locations in the State without wheeling of the RE power.
- 4.6. If the Commission allows above consideration, appropriate provisions for monitoring & recording of generated RE power and certification of the same through local Distribution Licensee, etc. or protocols also may need consideration.
5. At the e-hearing through video conferencing held on 14 May 2021, the representative of both the parties reiterated their submissions as made in the Petition/Reply.
6. **BGPPL made the following additional submission dated 22 May 2021:**
 - 6.1. Regulation 7.2 permits BGPPL to meet its RPO target through modalities/options or by combination of options as mentioned in Regulation 7.2. One of the options mentioned in Regulation 7.2 permits BGPPL as an obligated entity to meet its RPO target by way of its own generation. It is pertinent to note that the term ‘own generation’ is not defined under the Regulation. The term ‘own’ is defined in Oxford Dictionary as: ‘Own – Belonging to or done by the person specified’.
 - 6.2. The Commission has the powers to frame Regulations which is a form of delegated/sub-ordinate legislation, conferred on it under Section 181 of the Act. While making these regulations, the Commission as a part of procedural requirement undertakes what is known as ‘previous publication’ in jurisprudence, for framing regulations. This includes antecedent publicity requirement and complete consideration of suggestions and obligations to the Draft Regulations.
 - 6.3. Relying upon Harla Vs. State of Rajasthan, AIR 1951 SC 467, BGPPL submits that Explanatory Memorandum issued along with the Draft regulations does not have force of Law. It merely shows the intent, object and rationale in the mind of the regulator.

- 6.4. The Statement of Reasons (SOR) issued along with the RPO Regulations 2016 is not an aid to construct/interpret the Regulations when the latter i.e. Regulations convey a clear and definite meaning. The SOR and the context thereof cannot influence the meaning otherwise ascribable to the Regulations. There is no compelling reason to refer to or rely upon the SOR, as there is an ample clarity to the framed Statutory Regulations.
- 6.5. In the SOR to the REC-RPO regulations 2019, the Commission has dealt with a request of the Captive power Producers Association (CPPA) that RPO should be at legal entity level as a group of different consumers as a whole and RPO of subsidiary and group companies should be allowed to be set off against each other. In its analysis and decision, the Commission has referred to disallowing group companies to meet their RPO targets on combined basis. The reasons given by the Commission is that the monitoring agencies would have to verify ownership of each of the subsidiary and keep track of change of ownership.
- 6.6. BGPPL does not fall within the ambit and scope of the term 'Group Company'. It is a single independent corporate entity having its own generation through 2 Captive Power Plants at Ballarpur and Bhigwan.

Commission's Analysis and Rulings

7. BGPPL owns and operates two Captive Power Plants at Ballarpur, District Chandrapur and Bhigwan, District Pune. Its Ballarpur Unit has a composite cogeneration plant, which operates on fossil fuel as well as Biomass, having total installed capacity of 67.5 MW. Bhigwan Unit has cogeneration Captive Power Plant exclusively based on fossil fuel with installed capacity of 60 MW (2 x 30 MW) and at present only one 30 MW power plant is in operation.
8. BGPPL has filed the present Petition seeking offsetting of the RPO for its Bhigwan Unit with the excess generation of electricity from Biomass source (which is eligible RE source) at the Ballarpur Unit for the period from FY 2016-17 to FY 2019-20. BGPPL has submitted the details of its RPO requirements for both its Units for the Period from FY 2016-17 to FY 2019-20. Further, it is contended that both of these Co-generation plants are owned by a single 'Legal Entity' and hence can be considered as 'own generation' under RPO Regulations.
9. MEDA in its submission has supported the prayers of BGPPL. It has further highlighted that the CERC has devised a mechanism for allowing RPO fulfilment through self-retention of RECs. Further, it has submitted that as per the Regulation 7.6 of the RPO-REC Regulations 2019, an Obligated Entity may meet its RPO target by way of its own generation. Since both the units are owned by same legal entity, it can be inferred that the generation at either plant is 'own generation' of the entity.

10. The Commission notes that BGPPL has requested for off-setting of its excess RE generation from Ballarpur Unit with Bhigwan unit for the period from FY 2016-17 to FY 2019-20. The period under consideration is governed by the RPO-REC Regulations 2016. Regulation 7.2 of the said Regulations stipulates following options for meeting RPO by an obligated entity:

“7.2 An Obligated Entity may meet its RPO target by way of its own generation or procurement of power from another RE Project or by purchase from a Licensee or by purchase of RECs or by a combination of these options:” [emphasis added]

Thus, obligated entity can meet its RPO by its own generation or procuring RE power from other project/licensee or purchase of RECs or combination of these options. BGPPL is relying upon option of ‘own generation’ provided in above Regulation. BGPPL has also stated that ‘own generation’ has not been defined under the Regulations and hence referred to Oxford Dictionary. However, in the opinion of the Commission, in order to understand correct context of above options provided for meeting RPO, it is important to refer Regulation 7.1 of RPO-REC Regulations 2016 which stipulates such RPO on obligated entity:

“7.1 Every Obligated Entity shall procure electricity generated from eligible RE sources to the extent of the percentages, out of its total procurement of electricity from all sources in a year, set out in the following Table....”

As per above provision of the Regulation, Obligated Entity is mandated to procure certain percentage of its total electricity procurement through RE sources i.e. if total procurement is 100 units and RPO is 9% then such Obligated Entity shall procure 9 units from RE sources and balance 91 units from non-RE sources. Thus, intent of imposing RPO is to ensure certain percentage of total power procurement from RE sources. This can be undertaken by setting up own RE generating plant or procuring it from another person. But essential condition is that such power should replace certain percentage of total power procurement of obligated entity. In present case, BGPPL admittedly has not sourced any RE power generated by its Ballarpur Unit for Bhigwan Unit. Therefore, Bhigwan unit continued to procure its total power requirement from non-RE sources without sourcing it from its own generation and hence such un-sourced own generation cannot be treated towards fulfilment of RPO.

11. The Commission also notes that similar request was received at the time of framing RPO-REC Regulations 2019. Various stakeholders including Captive Power Producers Association (CPPA) requested to offset the RPO obligations of subsidiary and group companies against each other. The Commission has addressed the same in the Statement of Reasons (SOR) for RPO-REC Regulations 2019. Relevant part of the same is reproduced below:

“4.2 Comments received

.....
CPPA has further suggested that RPO Obligation should be at legal entity level as a group of different consumers (in a state) as a whole and not at the project/site or unit level and RPO obligation of subsidiary and group companies should be allowed to be set off against each other.

4.3 Analysis and Commission's Decision

.....
Regarding the request for allowing group companies to meet their RPO target on combined basis, the Commission is of the view that such arrangement would require monitoring agencies to verify ownership of each of such subsidiary and keep track of any change on ownership. **As RPO is linked to consumption of Obligated Entity and each OA consumer is separate Obligated Entity, in the opinion of the Commission RPO needs to be monitored for each of such Obligated Entity separately.** However, for providing ease of complying with RPO, as explained in subsequent section, the Commission is allowing Obligated Entity other than Distribution Licensee to meet their RPO on composite basis instead of separate RPO for Solar and Non Solar.”

[Emphasis Added]

The Commission notes BGPPL's contention that above observations were related to group companies and hence not applicable to it. However, the Commission is of the opinion that although above observations were made on account of proposal related to group companies, its observation that 'RPO is linked to each obligated entity and needs to be monitored entity wise' is the key point and the same is also applicable in present matter. As far as BGPPL's objection that SoR need not be referred when Regulation has laid down clear provisions, in earlier paragraphs, based on express provisions of Regulations only, the Commission has found as to how BGPPL's request is not tenable.

12. Further, the Commission notes that MEDA has submitted that a mechanism needs to be devised for allowing RPO fulfilment through self-retention of RECs. However, as stated by MEDA, such mechanism does exist under CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations. Relevant part is reproduced below:

“8.(3) An eligible renewable energy generator including an eligible captive generating plant shall be permitted to retain the certificates for offsetting its renewable purchase obligation as a consumer subject to certification and verification by the concerned State Agency:”

MERC does not have separate mechanism for RECs and it has recognized and adopted CERC Regulations for REC mechanism. The relevant excerpts from the MERC RPO-REC Regulations 2016 have been reproduced below:

“2 Definitions

2.1 In these Regulations, unless the context otherwise requires:

- (e) *"Certificate" means the Renewable Energy Certificate (or "REC") issued by the Central Agency in accordance with the procedures prescribed and under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, as amended from time to time ("the Central Commission's REC Regulations");"*

“8 Certificates under the Regulations of the Central Commission

Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Commission's REC Regulations shall be valid instruments for the discharge of the Obligations set out in these Regulations for the Obligated Entities to purchase electricity from RE sources:"

Thus, option of self retention of RECs is already enabled. However, to get benefit of such option, generator needs to be registered under REC mechanism and get REC issued. In the present Petition, BGPPL has submitted that it received Accreditation from MEDA on 13 May 2016 for its RE Generating station at Ballarpur unit. However, there is no submission on whether the unit has been registered with the Central Agency (National Load Despatch Centre) or has been trading RECs or retaining it. Without such details, the Commission would not like to dwell further on this matter.

13. The Commission highlights the fact that RPO is to be verified against each obligated entity. Each obligated entity has option to fulfill its RPO either by sourcing RE power (own generation at plant location/different location or purchase from other sources) or by purchase of RECs. However, while sourcing RE power from any location outside the consumer premises, it has to be sourced in accordance with applicable Regulations such as wheeling of power under Open Access Regulations and scheduling of power as per applicable scheduling code framed under State Grid Code. This is critical because for safe operation of electricity system, balancing generation and demand of electricity is a must. In the present case, from the documents submitted in the Petition it is observed that all energy generated by Co-generation unit at Ballarpur is self-consumed at that unit only and has not been scheduled for its Bhigwan unit. Under such circumstances, the Commission is not inclined to accept the request of

BGPPL to offset the RPO for its Bhigwan Unit from the Biomass energy generated at Ballarpur Unit which was never scheduled as per applicable rules and regulations for Bhigwan Unit.

14. The Commission notes that BGPPL has submitted that the RPO verification process for CGP/CPP and OA consumers for FY 2016-17 and subsequent years has not been initiated by the Commission. In this regard, it is clarified that the Commission is already working on initiating such RPO verification process. Data relating to RPO compliance by CPP users and OA consumers for the period of FY 2014-15 to 2017-18 has been received from MEDA. Data for FY 2018-19 and FY 2019-20 is expected to be received soon. Post such submission, the Commission will initiate proceedings for verification of RPO compliances by these Obligated entities for the period of FY 2014-15 to FY 2019-20. During that process, the Commission will rule on RPO compliance status of BGPPL's units at Ballarpur and Bhigwan.
15. Hence, the following Order:

ORDER

- 1. Case No. 33 of 2021 is dismissed.**

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M. Bohari)
Member**

**Sd/-
(Shri Sanjay Kumar)
Chairperson**

