

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 12 of 2021
Date of Order: 04.06.2021

Petition by PepsiCo India Holdings Private Limited under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 6(2) and Regulation 7 of the PSERC (Renewable Purchase Obligation and its Compliance) Regulations, 2011, seeking carry forward of shortfall of Renewable Purchase Obligation (RPO) for FY 2015-16 and FY 2016-17 to FY 2020-21 or any other earliest possible opportunity.

AND

In the matter of: M/s PepsiCo India Holdings Private Limited, Distt. Sangrur, Punjab.
...Petitioner

Vs

1. Punjab State Power Corporation Ltd.,
The Mall, Patiala
2. Punjab Energy Development Agency, Solar
Passive Complex, Plot No. 01 & 02, Sector 33D,
Chandigarh.

..Respondents

Present: Mr. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Mr. Paramjeet Singh, Member

ORDER:

M/s PepsiCo India Holdings Private Limited (PepsiCo) has filed the present petition for carry forward of its Renewable Purchase Obligation (RPO) shortfall for FY 2015-16 and FY2016-17 to FY 2020-21 or any

other earliest possible opportunity.

1.1 PepsiCo has submitted that it is a Large Industrial Power Supply consumer of PSPCL having Account No. S94NP0100016 with sanctioned load of 5000 kW/2450 KVA in village Channo in Sangrur and availed the open access power from the power exchange at 11 kV for certain months in FY 2015-16 and FY 2016-17. PepsiCo was required to fulfill the RPO in terms of the PSERC RPO & its compliance Regulations as an 'obligated entity' for this period. However, due to inadvertence there has been a short fall in compliance of the RPO by PepsiCo to the extent of 18 non-solar & 5 solar RECs in FY 2015-16 and 34 non-solar RECs in FY 2016-17.

1.2 That PepsiCo has received a notice dated 21.07.2020 from PSPCL to remedy its RPO shortfall of FY 2015-16 and FY 2016-17 by 31.07.2020, by purchasing requisite Solar and Non- Solar RECs.

1.3 That it has been the endeavor of PepsiCo, as a law-abiding corporate entity, to comply with all the applicable laws, including obligations under the PSERC RPO & its compliance Regulations as an 'obligated entity' for the period during which it was an open access consumer. PepsiCo even procured surplus solar RECs in FY 2016-17 and the shortfall in the RPO for FY 2015-16 and FY 2016-17 was unintentional.

1.4 PSPCL vide notice dated 21.07.2020 directed PepsiCo to purchase the requisite RECs by a 31.07.2020. It is submitted that RECs purchased in a particular year by an 'obligated entity' to fulfill its RPO compliance requirement accounts for renewable energy procured in the said financial year only. As such, purchasing RECs in FY 2020-21 cannot retrospectively offset the RPO deficit of FY 2015-16 and FY 2016-17 unless the RPO compliance requirement for FY 2015-16 and

FY 2016-17 is allowed to be carried forward to the present financial year by the Commission in terms of Regulation 6(2) of the PSERC RPO & Compliance Regulations. Further, PepsiCo is no longer an open access consumer. As such, PepsiCo is no longer an 'Obligated Entity' in terms of the RPO Obligations, 2011 for FY 2020-21. If PepsiCo purchases RECs without the permission of the Commission to carry forward its past RPO compliance requirements, PepsiCo will only be treated as a 'voluntary buyer' and will continue to be considered as RPO non-compliant for FY 2015-16 and FY 2016-17 in the eyes of law. Moreover, the Hon'ble APTEL vide its interim orders dated 24.07.2020 and 25.09.2020 in Appeal No. 117 of 2020 has stayed the trading of RECs and the stay order still operates. Hence, it was not possible for PepsiCo to purchase RECs by 31.07.2020 as directed vide PSPCL's notice dated 21.07.2020.

1.5 That as per 2nd Proviso to Regulation 6(2) of the PSERC RPO & Compliance Regulations, the Commission is empowered to carry forward the deficit achievement to the subsequent years. Further, in terms of Regulation 7, the Commission has the inherent powers to pass such orders in the interest of justice as deemed appropriate.

1.6 That the Commission, from time to time, has been allowing extension/carry forward for fulfillment of shortfall of RPO to PSPCL and other obligated entities including open access consumers. In case of Punjab Alkalies and Chemicals Ltd (PACL) vs. PSPCL in Petition No. 33 of 2019, the petitioner was allowed to carry forward the RPO shortfall of the previous financial years to the present financial year.

1.7 The petitioner has prayed to carry forward the shortfall in RPO compliance by PepsiCo for FY 2015-16 and FY 2016-17 (to the extent of 18 non-solar and 5 solar RECs in FY 2015-16 and 34 non-solar RECs in

FY 2016-17) to FY 2020-21 or any other earliest possible opportunity. After hearing the petitioner, the petition was admitted on 23.02.2021.

2. PEDA submitted its reply vide memo 1450-52 dated 02.03.2021, stating that the petitioner is seeking carry forward of RPO of previous years which falls under the domain of the Commission. PSPCL submitted its reply vide memo no. 5556 TR-5/1012 dated 17.03.2021, submitting that the matter falls in the purview of the Commission and the Commission may decide the matter as deemed fit. A meeting of Co-ordination Committee constituted by the Commission was held on 01.10.2019 and during the meeting it was decided that all open access consumers may be asked to comply with the RPO by 31.10.2019. Accordingly PSPCL issued notices to all open access customers including PepsiCo who have not complied with its RPO. PepsiCo, being an obligated entity as per section 86(1)(e) of the Electricity Act is bound to fulfill the RPO and has to purchase the requisite RECs.

3. PepsiCo filed rejoinder dated 01.04.2021, reiterating the submissions made in the petition and further submitted that as prayed in the petition the FY 2020-21 has already lapsed and the Commission may allow carry forward of RPO shortfall to FY 2021-22 or any other earliest possible opportunity. Further, since the stay on REC trading by Hon'ble APTEL is still in operation, reasonable time period be granted for purchase of the requisite RECs after the stay is vacated by Hon'ble APTEL. PSPCL has issued a notice dated 09.03.2021 with a direction to comply with the RPO for FY 2015-16 and FY 2016-17 by 31.03.2021, which is not possible due to stay on REC trading.

4. The matter was heard on 19.05.2021. The learned counsel for the petitioner reiterated its submissions made in the petition and the rejoinder.

5. Findings and Decision of the Commission

The Commission has carefully gone through the submissions made in the petition, replies of PSPCL & PEDDA, rejoinder by the petitioner and arguments made during the hearings. The findings and decision of the Commission are as here under:

- a) In order to examine the issue of carry forward of its RPO shortfall of FY 2015-16 and FY 2016-17 to the current year as prayed in the petition, the Commission refers to the relevant provisions of PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2011, as amended up to date:

“2(1)(i) ‘obligated entity’ means the ‘distribution licensee(s)’, ‘captive user(s)’ of the electricity generated in a Captive Generating Plant and ‘Open access customer(s)’ which are mandated under clause (e) of sub-section (1) of Section 86 of the Act to fulfil the renewable purchase obligation;

3. Renewable Purchase Obligation

- (1) *Every obligated entity shall purchase electricity from renewable energy sources including solar, not less than a percentage specified by the Commission from time to time, of its consumption of electricity (energy input in the system of obligated entity at its boundary) under the Renewable Purchase Obligation (RPO);*

.....

Provided also that the distribution licensee(s), in its/their respective area(s), shall ensure compliance of renewable purchase obligation by the Open access customer(s) and captive user(s) of the electricity generated in a Captive Generating Plant, to be monitored by the State Agency, which shall forthwith inform the distribution licensee(s) of the

non compliance of renewable purchase obligation by such entities.

.....

4. Certificates under the Regulations of the Central Commission

- (1) *Subject to the terms and conditions contained in these Regulations, the certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources;*

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only, and the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates.

.....

5. State Agency

.....

- (3) *The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in a suitable format and may suggest appropriate action to the Commission if required for compliance of the renewable purchase obligation.*

6. Effect of default

.....
(2) *Where any obligated entity fails to comply with the obligation to purchase the required percentage of electricity from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act;*

Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non-availability of certificates or otherwise, the obligated entity can approach the Commission for carrying forward of compliance requirement to the next year;

Provided that on being so approached, the Commission may review the fulfillment of the renewable purchase obligation by the obligated entity, keeping in view its performance and allow the shortfall to be carried forward to the next year in addition to the renewable purchase obligation for that year. At the end of 3 years period, the Commission may, if deemed appropriate, review the fulfillment of renewable purchase obligation by the obligated entity and pass suitable order(s);

Provided that where the Commission has consented to the carry forward of compliance requirement, the provision of clause (1) of the Regulation or the provision of section 142 of the Act shall not be invoked.

7. Inherent powers of the Commission

Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of process envisaged in these Regulations.

10. Power to Relax

The Commission may by general or special order, for reasons to be recorded in writing and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these Regulations of its own or on an application made before it by an interested person.”

From the above, it is evident that all the obligated entities, including the petitioner PepsiCo as the Open Access consumer, are required to fulfill the RPO specified by the Commission. These obligations can also be met by procurement of the Renewable Energy Certificates (RECs) issued under the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, as amended from time to time. And, the PEDAs as the State Agency and PSPCL as the distribution licensee are mandated to monitor and ensure compliance of RPO by such entities. Further, in case of genuine difficulty in complying with the RPO because of non-availability of certificates or otherwise, the obligated entity can approach the Commission for carry forward of compliance requirement to the next year.

- b) The Commission observes that the Regulation 6 (2) of PSERC (RPO and its compliance) Regulations, 2011 referred by the petitioner PepsiCo provides for carrying forward of compliance requirement to the next year, whereas the shortfall under consideration pertains to FY 2015-16 and FY 2016-17. However, PEDAs the State Agency entrusted with the responsibility to monitor compliance of RPO by the obligated entities, without expressing any reservation has submitted that in the instant case the petitioner is seeking carry forward of RPO of previous years, granting which, falls under the domain of the Commission. Also, PSPCL the

distribution licensee mandated to ensure compliance of RPO in its area, has issued notices to the petitioner to remedy its RPO shortfall of FY 2015-16 and FY 2016-17 in FY 2020-21, by purchasing requisite Solar and Non- Solar RECs.

- c) The Commission notes that, though the petitioner is no longer an open access consumer, it is willing to comply with the stated RPO shortfall by purchasing RECs, to the extent as indicated in PSPCL's notice. The procurement of RECs, however small, is a step contributing toward the promotion of generation of electricity from renewable sources of energy as mandated under Section 86(1)(e) of the Act.
- d) The Commission also notes that the trading of RECs has been stayed since 29.7.2020 vide Hon'ble APTEL's Order dated 24.07.2020 in Appeal No. 117 of 2020 and the stay order is still effective.

Thus, the Commission, exercising the powers under Regulation 10 of the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its Compliance) Regulations, 2011, as amended upto date, decides to allow the petitioner to comply with its RPO shortfall of the FY 2015-16 and FY 2016-17 by procuring the requisite RECs, at the earliest opportunity but not later than two month from the date of resumption of trading of RECs on the exchange and provide documentary proof of the same to PEDDA and PSPCL.

Further, Regulation 6 (2) Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its Compliance) Regulations, 2011 also provides that, *"where any obligated entity fails to comply with the obligation to purchase the required percentage of*

electricity from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act;” Accordingly, the Commission decides to impose a penalty of Rs. 25,000 on PepsiCo for non-compliance of RPO for FY 2015-16 and FY 2016-17 during the respective years. The same shall be deposited in the Commission within one week from the issue of this Order.

The petition is disposed of in terms of the above.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Anjuli Chandra)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 04.06.2021