

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. 67 of 2021

Case of Captive Power Producers Association Seeking permission to exercise the option or otherwise for the Financial Year 2020-2021 as per the order dated 6 October 2020 passed by the Commission in Case No. 111 of 2020

Captive Power Producers Association Petitioner

Maharashtra Energy Development Authority Respondent

Coram

Sanjay Kumar, Chairperson

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance

For the Petitioner : Smt. Deepa Chavan (Adv.)

For the Respondent : Shri. Manoj Pise (Rep.)

ORDER

Date: 6 August, 2021

1. Captive Power Producers Association (**CPPA**) has filed this Petition on 20 May 2021 seeking permission to exercise the options for the FY 2020-21 as per the Commission's Order dated 6 October 2020 passed by the Commission in Case No. 111 of 2020.

2. **CPPA's main prayers are as follows:**

(a) Commission to allow the members of the Applicant Association to exercise the option to meet the RPO as per the order dated 6th October 2020 in Case No. 111 of 2020 by an extended date as deemed fit by this Hon'ble Commission considering the prevailing situation of the continuing pandemic and lockdown or in any case by 31st March, 2022;

3. CPPA in its Case has stated as follows:

- 3.1. CPPA had filed the Petition in Case No. 68 of 2019 before the Commission, seeking rollover of the Renewable Purchase Obligation (RPO). The Commission in its Order dated 22 May 2019 gave the dispensation given below with the following directions:

“12. Alternatively as highlighted in para 10 above, the commission will be initiating the RPO compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained and the Petitioner shall deposit any 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 such time the Writ Petition is decided by the High Court. The Commission opines that the alternative option will address the concerns of the Petitioner about the possible hardship in case it succeeds in the High Court.

13. The Commission directs MEDA to submit the relevant past data for the FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the year 2014-15 to 2016-2017.

ORDER

- 1. The Case no. 68 of 2019 is partly allowed.*
 - 2. Fossil fuel based cogeneration plants are 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. In the alternative, the petitioner can avail option as per para 12 above after the Commission completes the verification process for the years 2014-15 to 2016-17.”*
- 3.2. In March 2020 due to Covid-19 pandemic, national lockdown was imposed in the Country. Due to the said lockdown many of the CPPA members’ plant which are in Maharashtra were forced to shut their plant/factory.
- 3.3. Subsequently, CPPA filed a Petition under Case No. 111 of 2020 seeking appropriate directions/ reliefs towards exercising the option granted to CPPA by the Commission by its Order dated 22 May 2019 in Case No. 68 of 2019. The Commission by its Order dated 6 October 2020 allowed CPPA users to fulfil their cumulative RPO targets by March 2021.

- 3.4. The members of CPPA started approaching the Maharashtra Energy Development Authority (MEDA) for compliance of the Order dated 6 October 2020. Following members of CPPA complied with the Order:
- a. Reliance Industries Ltd.
 - b. Deepak Fertilizers & PC Ltd
 - c. Bilt Graphics paper Products ltd
 - d. Tata Steel
- 3.5. MEDA by its e-mail dated 18 February 2021 addressed to CPPA informed that their members have to deposit the amount as per the Commission's Order in Case No. 111 of 2020, amount at rate of average of REC forbearance and floor price as Rs 1/kWh and Rs. 0/kWh. (i.e. Rs. 0.5/kWh).
- 3.6. The current unprecedented situation of pandemic due to spread of Corona virus and lock down of entire country, has resulted into major disruptions in all the business activities in which the members of the CPPA are engaged in. Due to the prolonged lockdown in State of Maharashtra, this has also affected all businesses presently and it will take a while before the industries can return to normalcy.
- 3.7. During the lockdown period, CPPA's members are facing challenges in meeting even some of the fixed expenses,, such as salaries to employees, payment to small contractors, lease rentals, office overheads, fixed cost of electricity, taxes and duties etc. However, due to closure of all industrial activities and all markets world over, there is no source of income for industries. Under such circumstances, the Industries will keep facing cash liquidity problem for time to come, even after the situation becomes normal. Accordingly, CPPA submits that there has been a change of scenario, post passing of the order dated 6 October 2020 in Case No. 111 of 2020. Therefore, equitable consideration ought to be applied to enable CPPA to exercise the option in terms of the Order dated 6 October 2020 in Case No. 111 of 2019.
- 3.8. CPPA submits that the Commission in its Order dated 6 October 2020 has acknowledged the hardship faced by the industries due to lockdown and economic slowdown.
- 3.9. CPPA states that their Writ Petition (being Writ Petition No. 269 of 2019) is pending before Hon'ble High Court of Bombay. Hence, in view of the Writ Petition No. 269 of 2019 being presently sub-judice and even the roster of hearing in the High Court being adversely affected by the pandemic and consequent lockdown, the Commission be pleased to consider the case of the Members of the CPPA in light of the prevailing circumstances.

4. **MEDA made the following submissions dated 5 July 2021:**

4.1. As per directives of the Commission in Case No. 111 of 2020, MEDA made correspondence with 41 CPPs. Out of these 41 CPPs (involved in High Court writ Petition No. 269 of 2019) only five CPPs have deposited RPO shortfall amount before 31 March 2021 & two after that. List of CPPs who have deposited RPO shortfall amount is as follows:

S.No.	Entity Name
1	M/s. RELIANCE INDUSTRIES LIMITED B4 MIDC Industrial Area, Patalganga, Rasayani-410207, Dist- Raigad
2	M/s. RELIANCE INDUSTRIES LIMITED Negothane, Dist. Raigad-402125
3	M/s. TATA STEEL BSL LIMITED Isamba phata Khopoli Pen road post:Sajgaon, Tal:Khalapur, Dist:Raigad-410203
4	M/s. BILT GRAPHIC PAPER PRODUCTS LIMITED Unit:Bhigwan, Village Bhadalwadi,Paudhwadi,Post Bhigwan (NH9), Tal.Indapur, Dist.Pune-413105.
5	M/s. DEEPAK FERTILIZERS & CHEMICALS CORPO. LTD Plot K-1, M.I.D.C Industrial Area, P.O.Taloja , Dist: Raigad-410 208
6	M/s. LAXMI ORGANIC INDUSTRIES LTD Unit: A-22, MIDC, MAHAD, DIST. RAIGAD-402309
7	M/s Oil And Natural Gas Corporation Ltd. Mumbai Region,Uran plant, Uran Navi Mumbai - 400702

4.2. MEDA had asked CPPA to provide list with complete contact details of CPPs who are Petitioners before the High Court. However, CPPA provided a copy of Petition where only names of CPPs were mentioned but without contact details.

4.3. MEDA independently contacted those CPPs through contact details available on their website. But six of them have informed that they are not Obligated Entities. MEDA requests the Commission to direct the CPPA to provide list of CPPs with updated valid contact details who are Petitioners in High Court in Writ Petition No. 269 of 2019. After receipt of the list from CPPA, MEDA can verify their status of these Obligated Entity.

4.4. Regarding prayers of the CPPA in present petition, MEDA requests the Commission to issue appropriate directions.

4.5. Further, MEDA is facing difficulties in implementing Orders of the Commission regarding depositing the RPO shortfall amount. MEDA requests for guidance from the Commission on following points:

Sr No.	Commission's Directives	Difficulties
a	Order in Case No 111 of 2020: Fossil fuel-based cogeneration captive power plants are allowed to fulfill their cumulative Renewable Purchase Obligation targets by 31 March 2021.	Clarity on whether delayed payment charges / Penalty charges in case of RPO shortfall amount to be levied and what rate it has to be levied.
b	Para. 12 of Case No 130 of 2020: Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided that in case of any augmentation of the Captive Generating Plant , the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. For the Projects commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned, for the Operating Period of RPO-REC Regulations 2016 onwards.	Clarity on whether this clause will be applicable to group captive companies also. Three group captive companies have approached MEDA on this count. At present they are considered in open access category.
c	Same as above clause	Clarity on whether clause " <i>RPO target applicable for CPPs commissioned before 1 April 2016 shall be 9%</i> " is applicable for the CPPs which are sourcing power through open access from their captive plant within or outside state. At present they are considered in open access category.
d	RPO Compliance issue of CPP obligated entities	Directions to CPPs who are refusing to submit RPO compliance report either through RPO web portal or through hardcopy, citing reason that the case is pending in Hon high court.

5. At the e-hearing through video conferencing held on 6 July 2021, the Advocate of CPPA reiterated its submissions. The representative of MEDA impressed upon the issue of non-availability of the contact details of the CPPA Members who are representing the Writ

Petition before the Bombay High Court. Further, the Advocate of CPPA submitted that as MEDA is not pressing upon the other issues as highlighted in their reply, it is not rejoining upon them.

Commission's Analysis and Rulings

6. CPPA had earlier filed a Petition under Case No. 68 of 2019 seeking rollover of its RPO for FY 2016-17, FY 2017-18 and FY 2018-19 to FY 2019-20. The Commission in its Order dated 22 May 2019 allowed CPP Users to meet their RPO targets cumulatively by March 2020. Further, in that Order, considering pending Writ Petition before the Bombay High Court, the Commission also provided option of depositing amount equivalent to the REC floor price for RPO shortfall with MEDA.
7. Subsequently, CPPA filed a Petition on 16 July 2020 in Case No. 111 of 2020 seeking further time upto March 2021 for cumulative meeting the RPO targets by March 2021. Further, considering the revision in the REC prices by the Central Electricity Regulatory Commission (CERC), the Commission in the same Order has clarified on the amount which shall be deposited with the MEDA:

“9. In this regard, the Commission is not inclined to go into counter claims of parties about seeking clarifications. The Commission notes that till March 2020 i.e. due date for complying with cumulative RPO targets, none of the CPP users approached the Commission seeking clarification with respect to the Order dated 22 May 2019 in Case No. 68 of 2019. However, at the request of MEDA, the Commission vide its letter dated 14 April 2020 has provided following clarification with respect of option provided in Order dated 22 May 2019:

“1.1 Fossil fuel based CPP who wants to exercise option provided by the Commission in its order dated 22 May 2019 for complying with RPO are required to deposit amount equivalent to REC floor price with MEDA computed based on following

- a. RPO shortfall in FY 2013-14 as verified by the Commission vide order dated 4 May 2018.*
- b. RPO shortfall for the period FY 2014-15 to FY 2017-18 based on verification Report prepared by MEDA and submitted to the Commission.*
- c. For all subsequent years, based on self-assessment of concerned obligated entity.*

After completion of RPO compliance verification by the Commission, difference if any in RPO shortfall unit can be adjusted with the deposited amount”

Above clarification is self-explanatory and needs no further clarification except issue of REC floor price. The Commission notes that Central Electricity Regulatory Commission (CERC) vide its Order dated 17 June 2020 has revised REC forbearance and floor price as Rs 1/kWh and Rs. 0/kWh. This Order of the CERC is presently stayed by the Hon’ble Appellate Tribunal for Electricity (APTEL). However, this CERC Order creates anomalous situation of nil floor price of RECs and hence in terms of this Commission’s Order dated 22 May 2019, CPP Users would not be required to deposit any amount with MEDA towards RPO shortfall. In order to avoid such anomaly the Commission clarifies that in case REC floor prices is stipulated as zero, then whilst exercising option given in Order dated 22 May 2019, CPP Users have to deposit the amount at rate of average of floor and forbearance price of RECs.”

8. In the instant Petition, CPPA has submitted that some of the CPPA members have complied with Commission’s Order dated 6 October 2020 in Case No. 111 of 2019, by depositing the stipulated amount with the MEDA. The Commission notes that MEDA in its submission dated 5 July 2021 has concurred with the same.
9. Further CPPA has submitted that the ongoing pandemic situation has resulted in disruptions in the business activities of its members and has impacted their income stream. Citing the financial difficulties, CPPA has requested further time upto March 2022 for cumulatively meeting their RPO targets.
10. The Commission in its Order dated 6 October 2020 in Case No. 111 of 2020 has acknowledged the hardship faced by the industries due to the prevalent pandemic situation and allowed the CPP users to fulfil their cumulative RPO targets by March 2021. The Commission opines that as the economic activities are returning on track, there may be some deferral period for the industries to attain normalcy. Accordingly, the Commission in aligned towards the prayers of the CPPA to extend the option to meet the RPO by 31 March 2022. Further, the Commission underscores that the Period under consideration for which the extension is sought is from FY 2014 onwards. The Commission is of the view that such extension cannot be perpetual in nature and also it unfairly discriminates CPP users who are complying with RPO targets. Therefore, the Commission is providing one last extension to CPPA to comply with the Commission’s direction in meeting their RPO targets or utilizing the alternate option as provided by the Commission in the previous Orders.

11. With regards to the submission made by MEDA, the Commission notes that it has sought below listed additional clarification/direction in the instant matter:
 - A. Delayed payment charges/Penalty charges for RPO shortfall amount to be levied and at what rate.
 - B. Clarification on the applicability of Ministry of Power's (MoP) Order related to RPO
 - C. Direction to CPPs to submit their RPO compliance report

Although during the hearing, MEDA has not pressed for such clarification and hence CPPA has desisted itself from making any submission on that, the Commission is of the opinion that clarification sought by MEDA is generic in nature and would only help in effective implementation of RPO Regulations. Hence, the Commission decides to provide clarification on these aspect in following paragraphs. If any person is aggrieved by such clarification, then they are free to seek review of the same.

12. **A. Delayed payment charges/Penalty charges for RPO shortfall amount to be levied and at what rate.**

- 12.1. MEDA has sought clarification on whether any delayed payment charges or penalty charges in case of RPO shortfall amount and the rate at which such penalty has to be levied.
- 12.2. The Commission notes that in earlier part of this Order, the Commission has allowed CPP user to fulfil their cumulative RPO by March 2022. Hence, issue of delayed payment charges/ penalty for delayed payment would not arise. Further, under RPO Regulations, the Commission has to undertake verification of RPO compliances of obligated entities including CPP users and Open Access users beside Distribution Licensee and take action for non-compliance of RPO targets as provisions of respective Regulations. During that proceeding, MEDA shall intimate delay in fulfilment of RPO by obligated entity. The Commission will decide on that issue during that proceeding after considering justification submitted by concerned entity.

13. **B. Clarification on the applicability of Ministry of Power's (MoP) Order related to RPO**

- 13.1. The Commission in its Order dated 5 October 2020 in Case No. 130 of 2020 has ruled that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9%, Provided that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. Further, the Commission ruled that for the CPP commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned, for the Operating Period of the applicable RPO-REC Regulations. The Commission underscores that such

ruling was provided considering the MoP's clarification Order dated 1 February 2019 and 1 October 2019.

- 13.2. MEDA has sought clarification on the applicability of such RPO targets for different types of CPPs like Group Captive and Captive projects sourcing power through Open Access from projects located within the State or outside the State.
- 13.3. In this regard, the Commission notes that MoP's notification has recognised only captive power plant with clear intention that RPO should be capped to certain level till additional capacity is being commissioned and then such additional capacity would have different ceiling of RPO. This is with the intention that consumer who have setup CPP has fixed liability of RPO which is fixed on date of commissioning of such CPP capacity. Therefore, whether such CPP is located within premises of consumer or outside and power being sourced through Open Access does not matter. Hence, both the types of such CPP i.e. located within premises or those located outside the premises and using Open Access for wheeling such power to consumer location are covered by this dispensation.
- 13.4. However, in case of group captive arrangement, where generating plant is commissioned as IPP and subsequently converted to CPP and/or users of such CPP and their share in such CPP argument is changing in each year, this set needs to be treated differently than normal CPP. In such group captive arrangement, as obligation of consumer is limited only to a year or more with flexibility to change share in group captive arrangement, consumers would be better placed to manage their demand by incorporating changing RPO targets for each year. Hence, relaxation granted to normal CPP users need not be extended to group captive arrangement. User of group captive arrangement needs to be treated as Open Access consumers and their RPO targets shall be worked out accordingly.

14. **C. Direction to CPPs to submit their RPO compliance report**

- 14.1. MEDA has submitted that various CPPs have not submitted their RPO compliance report, either through RPO web portal or through hardcopy. Therefore, it has sought Commission's intervention. Further, it has sought contact details of the CPPs which are the Petitioners before the Bombay High Court.
- 14.2. To keep the records straight, the Commission directs all the CPPs of the State to submit their compliance report at the earliest within a maximum period of 2 months. Further, the Commission directs CPPA to provide the information sought by MEDA at the earliest within a maximum of 15 days.

15. Hence, the following Order.

ORDER

1. Case No. 67 of 2021 is allowed.
2. Captive power plants are allowed to fulfill their cumulative Renewable Purchase Obligation targets by 31 March 2022.
3. CPPA to inform the contact details as requested by MEDA within a period of 15 days and further the CPP's of the State to submit their compliance Report to MEDA within a period of 2 months.

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

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

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

