

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA**

**In the Matter of:-**

**Proposed Mechanism for Monitoring and carry-forward in Relation to Renewable Power Purchase Obligation (RPPO) Compliance under HPERC (Renewable Power Purchase Obligations and its Compliance) Regulations, 2010.**

**CORAM:  
S.K.B.S. Negi  
Chairman**

**ORDER**

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) has made the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligations and its Compliance) Regulations, 2010, published in the Rajpatra, Himachal Pradesh, dated 29<sup>th</sup> May, 2010 (hereinafter referred “the RPPO Regulations, 2010”);

2. The RPO Regulations, 2010 specified the minimum percentage of total consumption, for Renewable Power Purchase Obligation (RPPO) for Non-Solar and Solar energy for the distribution licensee, as well as the Captive and Open Access Users/Consumers and providing that the certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010 (hereinafter referred as “the CERC Regulations, 2010”) shall be the valid instruments for the discharge of the mandatory obligation set out in the RPPO Regulations, 2010 for the Obligated Entities to purchase electricity from Renewable Energy Sources.
3. The minimum quantum of purchase of energy, from renewable sources, by the distribution licensee and captive and Open Access User(s)/Consumer(s) has been specified under Regulation 4 of the RPPO Regulations, 2010, as amended vide the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligations and its Compliance) (First Amendment) Regulations, 2011, and by virtue of notification No. HPERC (TA) 438 dated 30<sup>th</sup> September, 2010, the 1<sup>st</sup> November, 2010 has been fixed the date on which the quantum of RPPO inclusive of transmission/distribution losses became applicable to captive and Open Access User(s)/Consumer(s).

4. On 19<sup>th</sup> June, 2010, the Commission designated the “Directorate of Energy”, which is an authority created under the administrative control of the Government of Himachal Pradesh to promote power generation, as the State Agency, for the purposes of the RPPO Regulations, 2010, to undertake functions under the said Regulations. If the obligated entities are unable to fulfill the criteria or if the distribution licensee fails to fulfill the minimum quantum of purchase from renewable sources, it shall be liable to pay compensation as per Regulation 9 of the RPPO Regulations, 2010.
5. In relation to the compliance of the RPPO by the Obligated Entities (other than the distribution licensee), though the State Nodal Agency has been making its efforts to implement the RPPOs, yet it faced various handicaps due to lack of awareness about the RPPO Regulations, 2010 amongst Obligated Entities; non-availability of the data needed for identification of all obligated entities other than distribution licensee; and problems in verification of related data. From the FY 2013-14 onward, these obligated entities have started complying the RPPOs by purchasing the Renewable Energy Certificates (RECs) and some of them have purchased the RECs on account of outstanding previous backlog of FY 2010-11 to FY 2013-14 in FY 2015-16. The status posted by the State Nodal Agency reveals that the status of 11 consumers about their coverage in the scope of obligated entity is yet to be ascertained; 33 consumers have not responded to the communications of the State Nodal Agency and 68 obligated entities are stated to have not fully complied with the RPPOs. With this backdrop, the Directorate of Energy, which is the State Agency, has suggested for one time carry forward of the shortfall in RPPOs in respect of obligated entities other than distribution licensee in the State of Himachal Pradesh.
6. The Commission vide its Order dated 25<sup>th</sup> July, 2016, passed in petition No. 124/2015, titled Indian Wind Power Association V/s Himachal Pradesh State Electricity Board Ltd. and the Directorate of Energy, dealing with the issue of compliance of the RPPO Regulations, has observed in paras 37 and 39 of the said Order as follows:-

*“37. The Commission finds merit in the proposal given by the Nodal Agency for one time carry forward of the shortfall in RPPOs upto certain time limits despite the fact that the conditions specified in the RPPO Regulations for the purpose are not fully met and Hon’ble APTEL has also given certain advisories on the subject. The Commission feels that since, in the past, the obligated entities were being persuaded to meet the total cumulative shortfall, it may not be fair to deny them the facility of carry forward in relation to the shortfalls of the past periods. As a matter of fact, some obligated entities have also purchased extra RECs to cover up the shortfalls for the past periods. However this has to be a one-time relief and should not be allowed to be carried forward indefinitely. Even otherwise the net effect may be negligible only as the obligated entities shall still have to meet their shortfall by purchasing renewable power in one or other modes and there should be no waiver on the account. On the other hand, this shall facilitate compilation of updated consolidated status about shortfall in compliance of RPPOs and may also simplify the monitoring*

*process. So far as the time limit upto which the carry forward is to be allowed, Commission finds it appropriate to allow carry forward upto 31.03.2017 for all the defaulting entities instead of stipulating separate time limits for different groups of obligated entities as suggested by the Nodal Agency. The Commission also finds it appropriate to prescribe a mechanism for automatic compensation in case of default beyond 31.03.2017 i.e. w.e.f 01.04.2017.*

*39. Before parting with this case, the Commission would also like to make observations, in relation to the RPPO compliance by the obligated entities, that it may be appropriate to lay down a mechanism for automatic compensation, on yearly basis, in case of default by any obligated entity in meeting the RPPOs. However such automatic compensation can be introduced prospectively and the shortfall/ surpluses of the previous years shall be allowed to be carried forward only upto 31.03.2017. In other words, if any obligated entity fails to comply with the RPPOs by 31.03.2017, they will have to bear certain compensation for carry forward of the default to 2017-18 and so on. Similarly, surplus purchase, if any, shall be carried forward at the most upto 31.03.2017, but there shall be no carry forward of surpluses to FY 2017-18 or beyond that. The Commission shall bring proposal containing such mechanism and shall invite the comments of the public in general and the parties to this petition in particular by following due process of law and shall then finalize the same after due consideration of the comments so received.”*

7. Pursuant to the aforesaid findings and observations, the Commission evolved a proposed mechanism with regards for monitoring and carry-forward in relation to Renewable Power Purchase (RPPO) Compliance under HPERC (Renewable Power Purchase Obligations and its Compliance) Regulations, 2010 and invited the comments/suggestions/objections of the stakeholders and the public in general on the said proposal by 24<sup>th</sup> October, 2016 and notified the date for hearing on 9<sup>th</sup> December, 2016. The following stakeholders have submitted their objections/suggestions on the aforesaid draft mechanism:-

1. BBN Industries Association.
2. M/s Inox Air Products Ltd.
3. M/s Birla Textile Mills.
4. M/s Winsome Textile Industries Ltd.
5. India Wind Power Association.
6. HIMURJA.

The public hearing on the said matter was conducted on 09.12.2016 at 1:00 PM. The following objectors along with representatives of other organizations attended the hearing:-

- (i) Sh. R.K. Jain, Legal Practitioner on behalf of M/s Birla Textile Mills and M/s Inox Air Products Ltd.
- (ii) Sh. Manish Verma, representative of IWPA.
- (iii) Sh. Rajinder Chauhan, Dy. D.A., DoE.
- (iv) Sh. Majoj Kumar, Sr. Executive Engineer, DoE.
- (v) Sh. Vishal, Assistant Engineer, DoE.
- (vi) Sh. Suneel Grover, C. E. (System Operation), HPSEBL.

- (vii) Sh. K.L. Gupta, Dy. C.E., HPSEBL.
- (viii) Sh. Joginder Singh, S.E. (I/S), HPSEBL.
- (ix) Sh. Prateek Agarwal, Mittal Processors Pvt. Ltd.
- (x) Sh. Alok Sharma, Ambuja Cement Ltd.

Only two participants have made their submissions in the hearing. Sh. R.K. Jain, the representative of M/s Birla Textile Mills and M/s Inox Air Products Limited, commented on the Draft Mechanism related to RPPO Carry forward. As per his statement, the industries in the State are facing hardships due to sluggish demand in the market. He stated that imposition of RPPO to the standby DG Sets as well as to the OA consumers may be a counter-productive for the growth of industry in the State. When industry is not in a position to comply the RPPO in particular financial year, its further carry forward to next year with certain percentage of overloading may not be a viable option.

Shri Manish Verma, the representative of Indian Wind Power Association (IWPA) has stressed in its written as well as oral submissions that the consequences of default in the RPPO have already been specified in the HPERC Regulations and the acceptance of the proposed mechanism may amount to dilution of the substantive provisions of the regulations. He further stressed that since “substantive provisions cannot be diluted under the delegated power that is to make rules or pass orders”, the proposed mechanism suffers from the legal infirmities.

8. In view of the above, after taking into consideration the submissions made by the stakeholders and detailed scrutiny, the Commission decides to drop the proposal containing mechanism to carry forward the Renewable Power Purchase Obligation (RPPO).

It is so ordered.

Place: Shimla.

Date: 9<sup>th</sup> January, 2017

-Sd/-  
**(S.K.B.S. Negi)**  
**Chairman**