

Before the Himachal Pradesh Electricity Regulatory Commission, Shimla

Petition No. 29 of 2021
Heard on 11.11.2021
(Decided on 02.12.2021)

**CORAM: Hon'ble Sh. Devendra Kumar Sharma, Chairman
Hon'ble Sh. Bhanu Pratap Singh, Member
Hon'ble Sh. Yashwant Singh Chogal, Member(Law)**

In the matter of:-

Authentication of Renewable Energy Purchase (Non-Solar & Solar) for FY 2020-21 under the provisions of Regulation 4(1) of the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010.

AND

The Himachal Pradesh State Electricity Board Limited
Vidyut Bhawan, Shimla-171004 (HP).

..... **Petitioner**

Versus

1. The Addl. Chief Secretary (Power/NES)
GoHP, Shimla-02
2. The Director,
Directorate of Energy,
Shanti Bhawan, Phase-III, New Shimla-09 (HP).
3. The Chief Executive Officer,
HIMURJA, SDA Complex, Kasumpti, Shimla-09
4. Consumer Representative

.....**Respondents**

Counsels/Representatives:-

For Petitioner: Sh. Kamlesh Saklani
(Authorized Representative),

For Respondents: Sh. Shanti Swaroop (Legal Consultant)
Ms. Kamlesh Shandil (Advocate)

ORDER

This Petition has been filed by the Himachal Pradesh State Electricity Board Limited, a distribution licensee (hereinafter referred as “the HPSEBL”), an Obligated Entity under the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 (hereinafter referred as “the RPPO Regulations”) seeking authentication of Renewal Energy Purchase (Non-Solar and Solar) for FY 2020-21.

2. According to the Petitioner, Regulation 4(1) of the HPERC Renewable power Purchase Obligation and its compliance) Regulations, 2010 provides as under:-

“The distribution licensee/obligated entity shall during each financial year, purchase such quantum of electricity (in kWh) from renewable energy sources as is not less than the quantum of electricity (in kWh), worked out as per the Table below:-

| Year | Minimum Quantum of Purchase in percentage (%) from renewable sources (in terms of energy in kWh) of total consumption. | | |
|---------|--|--------|---------|
| | Non-Solar | Solar | Total |
| 2019-20 | 10.25% | 7.25% | 17.50 % |
| 2020-21 | 10.25% | 8.75% | 19.00% |
| 2021-22 | 10.50% | 10.50% | 21.00% |

(a) The RPPO will be on total consumption of electricity by an obligated entity, excluding consumption met from hydro-electric sources of power.

(b) In case the achievement of Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPPO for that particular year.

(c) Further, in case on achievement of Non-Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Solar energy purchased beyond specified Solar RPPO for that particular year.

Accordingly, the HPSEBL has purchased power from renewable sources (non-solar & solar) in order to meet its obligation of 10.25% from non-solar and 8.75% from solar power for the financial year FY 2020-21.

3. The details of net shortfall/surplus of the HPSEBL in respect of Non-solar RE obligations during FY 2020-21 are as below:

RE (Non-Solar) Purchase for FY 2020-21

| Sr. No. | Description | Quantum (MUs) |
|---------|---|---------------|
| 1 | Financial Year 2020-21 | |
| 2 | a) HPSEBL consumption within the State (including Hydro) | 9965.14 |
| | b) % age of hydel share in total requirement as per 4 th MYT for Control Period (FY 20 to FY 24) | 86.45% |
| | c) Requirement met from hydro sources as worked out on % age mentioned in item (b) of Sr. No. 2 | 8614.84 |
| | d) Actual Requirement met from hydro sources during FY 20-21 | 8105.00 |
| | e) Requirement met from hydro sources for working out RPPO (Minimum of (c) &(d) above) | 8105.00 |
| | f) Total consumption of HPSEBL excluding consumption met from hydro sources (a-e) | 1860.14 |
| 3 | Non-Solar Renewable Power Purchase Obligations | 10.25% |
| 4 | Non-Solar Renewable Power Purchase Obligations (in MUs) | 190.66 |
| 5 | Detail of Purchase of non-solar RE Power by HPSEBL including own generation | |
| | a. HPSEBL's own generation from 25 MW & below projects (excluding free power) | 367.82 |

| | | |
|---|---|------------------|
| | b. Power Purchased (Net saleable energy) from IPP owned SHPs of 25 MW & below capacity (excluding projects under REC) | 1369.71 |
| | c. Free power entitlement of GoHP in HPSEBL's SHPs of 25 MW & below capacity | 32.65 |
| | d. Free power entitlement of GoHP in IPP owned SHPs of upto 25 MW capacity purchased by HPSEBL | 120.19 |
| | Total Non-Solar RE purchased | 1890.37 |
| 6 | Non-solar RE sold outside its area of supply as renewable energy | 1158.60 |
| 7 | Total Non –solar RE purchased for supply and utilized to meet own RPPO (5-6) | 731.77 |
| 8 | Net shortfall (-) /surplus (+) in meeting Non Solar RE Obligation for FY 2020-21 (7-4) | (+)541.10 |

As per the Petitioner, the surplus Non-solar RE for FY 2020-21 i.e. 541.10 MUs may be considered for the issuance of Non-solar RE Certificates for FY 2020-21 and have recommended their case for such issuance on the format devised by the Central Agency.

4. According to the Petitioner, their net shortfall/surplus in respect of Solar RE obligations during FY 2020-21 are as below:

RE (Solar) Purchase for FY 2020-21

| Sr. No. | Description | Quantum (MUs) |
|----------------|---|----------------------|
| 1 | Financial Year 2020-21 | |
| 2 | a) HPSEBL consumption within the State (including Hydro) | 9965.14 |
| | b) % age of hydel share in total requirement as per 4 th MYT for Control Period (FY 20 to FY 24) | 86.45% |
| | c) Requirement met from hydro sources as worked out on % age mentioned in item (b) of Sr. No. 2 | 8614.84 |
| | d) Actual Requirement met from hydro sources during FY 20-21 | 8105.00 |
| | e) Requirement met from hydro sources for working out RPPO (Minimum if (c) &(d) above) | 8105.00 |
| | f) Total consumption of HPSEBL excluding consumption met from hydro sources (a-e) | 1860.14 |
| 3 | Solar Renewable Power Purchase Obligations | 8.75% |
| 4 | Solar Renewable Power Purchase Obligations (in MUs) | 162.76 |
| 5 | Detail of Purchase of Solar Power by HPSEBL | |
| | a. Purchased from SECI Solar Power Project (M/s ACME Rajdhani Power Pvt. Ltd.) | 41.31 |
| | b. Purchased from NTPC (Singrauli Solar Power Project) | 21.06 |
| | c. IPP Owned Solar Plants in HP through Long Term PPAs | 29.74 |
| | d. HPPCL owned Berra Dol Solar PV Project through Long Term PPA | 8.39 |
| | e. Solar Rooftop in the State | 20.03 |
| | f. BBMB Rooftop (HPSEBL share) | 0.01 |
| | Total Solar RE purchased | 120.54 |
| 6 | Solar RE sold outside its area of supply as RE Power | 0.00 |

| | | |
|---|---|-----------------|
| 7 | Total Solar RE purchased for supply and utilized to meet own RPPO (5-6) | 120.54 |
| 8 | Net shortfall (-)/surplus (+) in meeting Solar RE Power Purchase Obligation for FY 2020-21 (7-4) | (-)42.22 |

5. It is averred that the HPSEBL has a deficit of 42.22 MUs in meeting its solar RPPO during FY 2020-21. According to the petitioner, the main reasons for non-compliance of the RPO are detailed below:

- (i) The HPSEBL had issued consent letter to 16 No. Entrepreneurs (IPPs) for development of Solar Projects (above 500 KW capacity) aggregating to 34.4 MW. However, only 10 No. IPPs entered into PPA with HPSEBL for 25.90MW capacity. Out of these PPAs, only 5 Nos. solar projects with aggregated capacity of 17.00 MW have been commissioned till date. 4 Nos. IPPs with aggregated capacity of 7.90 MW did not commission their projects in time and therefore HIMURJA has cancelled their registration.
- (ii) HPSEBL had signed 42 Nos. of Power Purchase Agreements with IPPs to whom Solar projects were allotted by HIMURJA under the ‘Scheme for Harnessing 20 MW Solar Power through Projects Ranging from 250 KWp to 500 KWp for the aggregate capacity of 18.40 MW. All these projects were scheduled to be commissioned during FY 2019-20. However, only 18 Nos. of projects having aggregate capacity of 8.50 MW have been commissioned till date from above scheme. Out of these 42 Nos. IPPs, the HIMURJA has cancelled registration of 3 Nos. projects with aggregate capacity of 1.5 MW.
- (iii) HPSEBL had envisaged a shortfall of 28 MW to meet its RPPO upto FY 2021-22 and had requested HIMURJA to formulate a scheme for harnessing 28 MW solar power. Accordingly, HIMURJA, during FY 2019-20, had invited applications under above scheme and issued provisional registration to 62 Nos. projects for aggregate capacity of 28.25 MW. Against this 28 MW scheme, 43 Nos. IPPs with aggregated capacity of 19.30 MW had filed joint petitions for signing of PPAs with HPSEBL. However, out of these 43 Nos. IPPs, only 34 Nos. IPPs with aggregate capacity of 15.05 MW have executed PPAs with HPSEBL. Further, 9 Nos. projects having total capacity of 4.00 MW have been commissioned so far under this scheme. The signing of these PPAs has been delayed due to travelling restrictions imposed by the GOI/ GoHP

amidst Covid-19 Pandemic and commissioning of these projects is also delayed from their SCOD i.e. upto July 2021 on this account.

- (iv) Most of the delayed projects having PPA with HPSEBL are facing many difficulties in installation of above project due to the restrictions imposed by the GOI/GoHP amidst Covid-19 Pandemic. Some of the IPPs of these projects are now approaching HPSEBL for extension in SCOD on account of Force Majeure due to lockdown/ restriction imposed in Covid-19 situation by referring to MNRE order dated 12.05.2021 wherein maximum extension of six months has been allowed to implementing agencies.
6. In view of foregoing, it is prayed that the Petitioner may be allowed to carry forward the deficit power purchase from Solar power projects for FY 2020-21 i.e. 42.22 MUs in the ensuing years and that to recommend the case for issuance of Non-Solar RECs for 541.10 MUs of Non-Solar surplus energy, procured beyond the RPO for FY 2020-21, on the format devised by the Central Agency
7. The Commission, taking note of the fact that the State Agency i.e. the Directorate of Energy, Govt. of Himachal Pradesh, HIMURJA and the representative of Consumers were necessary parties for adjudicating the controversy in the Petition, ordered to implead the Directorate of Energy, Govt. of Himachal Pradesh, Himachal Pradesh Energy Development Agency (HIMURJA) and the representative of Consumers as necessary parties being Respondents No. 1 to 3 and directed them to file their objections/ suggestions or viewpoints in the Petition.
8. In reply, the Respondent No. 3 HIMURJA has submitted as under:-
- (i) That during the year 2018-19, the HIMURJA had invited online proposals from potential beneficiaries for harnessing 20 MW Solar Power through ground mounted Solar Power Projects of capacity ranging from 250 kW to 500 kW. Accordingly, Solar Power Projects were allotted to 41 Nos. Himachal Developers for total capacity of 19.90 MW. It is admitted that the projects were to be commissioned during the year 2019-20. It is further admitted that till date only 18 projects of total capacity 8.50 MW have been commissioned. It is also admitted that 17 projects of an aggregate capacity 8.40 MW have been cancelled by the Replying Respondent due to non-

seriousness on the part of the allottee developers to execute the projects. It is further submitted that 6 projects of total capacity 3 MW are under installation. Therefore, there is a shortfall of 8.50 MW which need to be allotted for achieving the Renewable Power Purchase Obligations.

(ii) That the HPSEBL had requested the HIMURJA (Replying Respondent) to formulate a policy for harnessing 28 MW and the policy formulated and approved by the Govt. of HP during 2018-19 was continued. Accordingly proposals were invited from the residents of Himachal on First Come First Serve basis to allot this much capacity. The 28 MW capacity was allotted to 62 Nos. applicants on First Come First Basis. It is further submitted that the allotted developers were required to execute Power Purchase Agreements with HPSEBL (i.e. Petitioner) within three months from the date of allotment. However, the Commission had allowed extension in the period upto 20.07.2020 in view of the restrictions imposed by COVID-19. As such these projects were to be commissioned by 31.07.2021. It is further submitted that out of 62 allotted projects 15 projects of aggregate capacity of 6.7 MW have been cancelled due to non-seriousness of the developers to execute the projects. Under this scheme 3 projects of 1 MW capacity have been commissioned. It is further submitted that out of the MOU signed by different Solar Power Developers during Investor Meet, Provisional registration letter have been issued in respect of three projects of an aggregate capacity 5.676 MW. These projects are to be completed within two years.

(iii) That the Solar Power Developers are facing difficulties in execution of these projects due to restrictions imposed by COVID-19 and difficulties faced in arrangement of loan from banks asking for 100% collateral security for sanctioning of loan. It is further admitted that the developers have been approaching HIMURJA for extension in time period for completion of the project on account of force majeure due to lockdown/restrictions imposed due to COVID-19 situation by referring to MNRE, GoI order dated 12.05.2021 wherein maximum extension of six month has been allowed.

9. The Respondents No. 1, 2 and 4 (Government of Himachal Pradesh, Directorate of Energy and Representative of Consumers) have not submitted their reply on the issue.

10. We have heard the Counsel/representatives for the Parties and have perused the entire record carefully.
11. One of the functions of the State Electricity Regulatory Commission is to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures. Section 86(1)(e) of the Electricity Act, 2003 is reproduced as under:-

“promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for the purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee”.

12. The Commission has framed the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010, specifying the minimum percentage of the 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 provided 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 (“the CERC REC Regulations”) shall be the valid instruments for the discharge of the mandatory obligation set out in these regulations for the obligated entities to purchase electricity from renewable energy sources during each financial year as specified by the Commission.
13. The Commission on 19th June, 2010 has designated the “Directorate of Energy”, which is an authority created under the administrative control of the Government of Himachal Pradesh, as the State Agency for the purposes of the RPPO Regulations and the State Agency has to undertake functions under RPPO Regulations. The Regulation 4 of the RPPO Regulations provides that the Captive and Open Access Consumer(s)/User(s) and the Petitioner shall purchase renewable energy as stated in the table provided thereunder. If the

Captive User(s) and Open Access Consumer(s) are unable to fulfil the criteria or if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable sources, it shall be liable to pay compensation as per Regulation 9 of the RPPO Regulations (ibid), the shortfall of the targeted quantum would attract payment of compensation as per Regulation 9 of the RPPO Regulations (ibid).

14. In order to appreciate the submissions of the HPSEBL, it will be useful to reproduce the provisions of Regulations 4 and 5 of the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 as under:

“4. Quantum of Renewable Power Purchase Obligation (RPPO):-

- (1) The distribution licensee shall, during each financial year, purchase such quantum of electricity (in kWh) from renewable sources as is not less than the quantum of electricity (in kWh), worked out as per the Table below:-

Table- Minimum percentage for Renewable Power Purchase Obligation

| Year | Minimum Quantum of Purchase in percentage (%) from renewable sources (in terms of energy in kWh) of total consumption. | | |
|---------|--|--------|--------|
| | Non-Solar | Solar | Total |
| 2019-20 | 10.25% | 7.25% | 17.50% |
| 2020-21 | 10.25% | 8.75% | 19.00% |
| 2021-22 | 10.50% | 10.50% | 21.00% |

(a) The RPPO will be on total consumption of electricity by an obligated entity, excluding consumption met from hydro-electric sources of power.

(b) In case the achievement of Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPPO for that particular year.

(c) Further, in case on achievement of Non-Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Solar energy purchased beyond specified Solar RPPO for that particular year.

Provided that for computing the Renewable Power Purchase Obligation (RPPO) of the distribution licensee for a year under this sub-regulation, the following conditions shall also apply, namely:-

- (i) the total consumption of the distribution licensee for a year shall include the quantum of electricity purchased, alongwith electricity generated, by it from various sources, including the power purchased under REC mechanism for meeting its requirement for consumption of electricity, and shall also include the transmission and distribution losses, within the

area of distribution licensee, for meeting such consumption in the State during that year but shall not include the electricity purchased for the trading purposes;

- (ii) save as provided in the succeeding item (iii) under this sub-regulation, the quantum of electricity to be considered as utilized by the distribution licensee from hydro-electric sources for meeting its consumption during a year shall be computed at such percentage of the total consumption in that year as is equal to the percentage derived from the quantum of electricity purchased, including generated, from hydro-electric sources, as envisaged in the tariff order for that year, for meeting the estimated requirement for consumption in the State vis-a-vis the total estimated requirement for that year for consumption in the State; and
 - (iii) the consumption of electricity to be considered as met from hydro-electric sources shall not exceed the electricity purchased (in kWh), including electricity generated, by the distribution licensee from hydro-electric sources in that year, after excluding the dedicated sale of power to any person, other than its consumers, by the distribution licensee specifically earmarked out of any such purchase from hydro-electric sources.”
- (2) Any person/consumer, who consumes power from any source (generation/purchase) interalia including purchase through Open Access, but other than in his capacity as a consumer of distribution licensee or by drawl from a captive generating plant, the RPPOs at the rate(s) mentioned in table in the sub-regulation (1) of this regulation shall be applicable in respect of his consumption from such sources:

Provided that for computing the Renewable Power Purchase Obligation (RPPO) of such obligated entities for a year under this sub-regulation, the following conditions shall also apply, namely:—

(i) the total consumption of any such obligated entity shall include the quantum of electricity purchased, including electricity generated, by it from various sources, including the power purchased under REC mechanism for meeting its requirement for consumption of electricity, and shall also include the transmission and distribution losses incurred within the State for meeting such consumption in the following manner, namely:—

(a) in case the electricity is purchased by such obligated entity from sources outside the State, the electricity purchased at the State periphery shall be considered as the consumption of the obligated entity from such sources;

(b) in case the electricity is purchased, or generated, from generating sources located within the State, the electricity (in kWh) injected for such obligated entity at the generating bus bar shall be considered as its consumption;

(ii) the energy consumed by obligated entity, other than the distribution licensee, shall be considered to have been consumed from the sources other than the hydro-electric sources, unless such obligated entity establishes to the satisfaction of the State Agency that such consumption was made from hydro-electric sources.

(2A) For any person consuming power by drawl from a captive generating plant, the RPPOs shall be applicable at the rate(s) specified in the Schedule to these Regulations in relation to his consumption from such captive generating plant:

Provided that the provisions of this sub-regulations (2A) shall be applicable only in relation to the consumption from captive generating plants to which these Regulations apply in terms of clause (c) and clause (d) of regulation 3 of these Regulations.

(3) The obligated entities may meet their Renewable Power Purchase Obligation (RPPO) as per sub-regulations (1) and (2) of this regulation from any renewable sources, including-

- (i) purchases from generating stations, based on renewable energy sources;
- (ii) purchases from any other distribution licensee, which would arise from renewable energy sources; and
- (iii) the energy generated from its own renewable sources, if any, by the obligated entity:

Provided that the electricity purchased at pooled cost, as specified in the Central Electricity Regulatory Commission (Terms and Conditions of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, shall not be taken into account for offsetting such obligations:

Provided further that the Solar power purchase obligation shall be fulfilled from the generation based on Solar sources only:

Provided further that the quantum of electricity generated by the consumer through roof-top Solar PV system under net metering arrangement in any year, shall qualify towards compliance for Solar RPPO of the Distribution Licensee or the consumer, as the case may be, for that year in accordance with the provisions contained in Himachal Pradesh Electricity Regulatory Commission (Rooftop Solar PV Grid Interactive Systems based on Net Metering) Regulations, 2015:

Provided further that the power purchases under the power purchase agreements from renewable energy sources, already entered into by the distribution licensees, shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinbefore.

- (5) The Commission may, keeping in view the power supply constraints or other factors beyond the control of the distribution licensee or for any other reasons, suo-moto or at the request of an obligated entity, also revise the percentage targets for a year(s) for which Renewable Power Purchase Obligations have been fixed as per sub-regulations (1) and (2) of this regulation.

5. 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 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.

(2) Subject to such direction as the Commission may give, from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, notified by the Central Commission in regard to the procurement of the certificates for fulfillment of the Renewable Power Purchase Obligation under these regulations.

(3) The Certificates purchased by the obligated entities from the power exchange in terms of the regulations of the Central Commission mentioned in sub-regulation (1) shall be deposited by the obligated entities with the Commission in accordance with the detailed procedure issued by the Central Agency.”

15. The Central Electricity Regulatory Commission has also framed the CERC REC Regulations, 2010. It would be appropriate to reproduce Sub-regulation (1A) of Regulation 5 of these Regulations, as under:-

“(1A) A distribution licensee shall be eligible to apply for registration with the Central Agency for issuance of and dealing in Certificates if it fulfills the following conditions:-

- (a) It has procured renewable energy, in the previous financial year, at a tariff determined under Section 62 or adopted under Section 63 of the

Act, in excess of the renewable purchase obligation as may be specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher:

Provided that the renewable purchase obligation as may be specified for a year, by the Appropriate Commission should not be lower than that for the previous financial year:

Provided further that any shortfall in procurement against the non-solar or solar power procurement obligation set by the Appropriate Commission in the previous three years, including the shortfall waived or carried forward by the said Commission, shall be adjusted first and only the remaining additional procurement beyond the threshold renewable purchase obligation-being that specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher-shall be considered for issuance of RECs to the distribution licensees.

(b) It has obtained a certification from the Appropriate Commission, towards procurement of renewable energy as provided in sub-clause (a) of this regulation.”

16. The conditions of format 3.1.1 devised under ‘Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity’ by the Central Agency under CERC REC Regulations, 2010 are reproduced as below:-

“It is hereby certified that-

1. Distribution Company has procured renewable energy, in the previous financial year, at a tariff determined under Section 62 or adopted under Section 63 of the Act, in excess of the renewable purchase obligation as may be specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher.
2. The renewable purchase obligation as specified for a year, by the State Electricity Regulatory Commission is not lower than that for the previous financial year.
3. Any shortfall in procurement against the non-solar or solar power procurement obligation set by the Appropriate Commission in the previous three years, including the shortfall waived or carried forward by the said Commission, has been adjusted first and only the remaining additional procurement beyond the threshold renewable purchase obligation-being that specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher-has been considered for issuance of RECs to the distribution licensees.”

17. For the self retention of RECs, the Central Electricity Regulatory Commission (CERC) has approved the following procedure under the CERC REC Regulations, 2010:-

- (i) The eligible entity interested in retaining their Renewable Energy Certificates may apply to the host State Agency, where the eligible entity is located.
- (ii) The eligible entities may apply online from 1st to 5th of every month and mention the quantity of RECs for which they want to retain and the name of their plant and the State for which the eligible entity wants to retain RECs. Subsequently, the eligible entity is required to submit the hard copy of the application signed and stamped to the host State Agency in such a way so that it shall reach the office of State host agency latest by 12th of every month.
- (iii) The host State Agency shall check the proposed volume for each eligible entity against the quantity of valid RECs for that entity for both 'Solar' and 'Non-Solar' Certificates by 18th of the every month.
- (iv) In case the retained volume placed exceeds the quantity of valid RECs held by the eligible entity as per the records of the REC Registry, then, the State Agency shall limit the RECs that can be retained by the eligible entity to the number of valid RECs as per the records of REC Registry.
- (v) The State Agency shall send the final list of certificates to be retained for eligible entities to the Central Agency for extinguishing of the RECs. The certificates will be extinguished by the Central Agency in the 'First-in-First-out' order by 22nd of the every month.
- (vi) The State Agency shall issue the purchase certificate to the eligible entities.

18. From the statutory provisions set out in the preceding paras, it is clear that:-

- (a) The distribution licensee is eligible for RECs, if it fulfills the conditions given in sub-regulation (1A) of Regulation 5 of the CERC REC Regulations, 2010.
- (b) Regulation 4(1) of the RPPO regulations provides that the distribution licensee shall purchase the quantum of the electricity (in kWh) from renewable sources, at a minimum percentage (as specified in the Table) of the total consumption excluding the consumption met from Hydro-Electric sources of power. The Solar Power Purchase Obligation is to be fulfilled from the generation based on Solar Sources only.

- (c) Regulation 5 of the RPO Regulations, 2010 provides that the certificates issued under the Central Regulations (i.e. CERC REC Regulations, 2010) shall be valid instrument for the discharge of the mandatory obligations, set out in the RPPO Regulations for the obligated entities, to purchase electricity from renewable energy sources. In the event of the obligated entity fulfilling the renewable purchase obligation by procuring certificates, the obligation to purchase electricity from solar based generation can be fulfilled by purchasing the Solar certificates (Solar RECs) 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.
- (d) Regulation 5 (IA) of the CERC REC Regulations, 2010 lays down the conditions for registration with the Central Agency for issuance of certificates and the provisions for obtaining certification from the Commission by the obligated entities, which have procured renewable energy in excess of the RPPO target fixed by the Commission. While recommending the case for issuance of RECs to the distribution licensee, the State Commission needs to ensure that the conditions/guidelines laid down are duly complied with.
- (e) The Central Commission has already approved the procedure for self retention of RECs which means that if any obligated entity has inventory of RECs, the same may be utilised to fulfill their RPO compliance, by following the aforesaid procedure. However, such retention could not materialize in case of HPSEBL for want of amendment in the CERC REC Regulations, 2010 and procedure framed thereunder.
19. Significantly, the Commission, while framing the RPPO Regulations, has already specified the minimum percentage for Renewable Power Purchase Obligation from Renewable Sources (including Solar Energy) for a period of 3 years (i.e. FY 2019-20 to FY 2021-22). As per Regulation 4 of the RPPO Regulations, the HPSEBL i.e. the distribution licensee has to comply with Solar and Non-solar and RPPO as per the Table given as under:-

| Year | Minimum Quantum of Purchase in percentage (%) from renewable sources (in terms of energy in kWh) of total consumption. | | |
|---------|--|-------|--------|
| | Non-Solar | Solar | Total |
| 2019-20 | 10.25% | 7.25% | 17.50% |
| 2020-21 | 10.25% | 8.75% | 19.00% |

| | | | |
|---|--------|--------|--------|
| 2021-22 | 10.50% | 10.50% | 21.00% |
| <p>(a) The RPPO will be on total consumption of electricity by an obligated entity, excluding consumption met from hydro-electric sources of power.</p> <p>(b) In case the achievement of Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPPO for that particular year.</p> <p>(c) Further, in case on achievement of Non-Solar RPPO compliance to the extent of 85% and above, the remaining shortfall if any, can be met by excess Solar energy purchased beyond specified Solar RPPO for that particular year.</p> | | | |

20. The Hon'ble Appellate Tribunal for Electricity (APTEL) in its Order dated 24th July, 2020 in DFR No. 247 of 2020 (Appeal No. 113 of 2020) had stayed/postponed the trading of Renewable Energy Certificates (RECs) with effect from July, 2020. The stay so granted remained in force during the financial year 2020-21 and upto 09.11.2021.

21. Here, it is also relevant to refer to the first proviso to Sub-regulation (2) of Regulation 9 of RPPO Compliance Regulations, 2010 which provides as under:

“Provided that in case of genuine difficulty in complying with the renewable power purchase obligation because of non-availability of certificates, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:”.

22. The Commission's in its Order dated 19.08.2021 in Petition No. 04/2021 has held in para 8.1.3 and 8.1.4 as under:-

“8.1.3taking a reasonable view and by exercising provisions of Regulation 13 of the RPPO Regulations, the Commission decides to consider the status of deficits, Solar as well as Non-solar RPOs, upto financial year 2018-19 without considering any adjustment against the inventory of RECs available with the HPSEBL and to fix a deadline by which the entire deficit upto financial year 2018-19 must be offset through any of the available means. The net deficit, when computed on above lines, upto 31.3.2019 in respect of Non-solar RPOs and Solar RPOs works out to 83.52 MUs (-164.59-131.73+230.23-17.43) and 120.53 MUs (-11.68-108.85) respectively.

8.1.4 The Commission directs the HPSEBL to offset these deficits, latest by 31st March, 2022, through any of the available means i.e.

- (i) by adjustment against surpluses, if any, for the financial years 2019-20 and 2020-21;
- (ii) by procurement of RECs;
- (iii) by procurement of additional power during the remaining part of the current financial year dedicated for adjustment of this deficit;
- (iv) by adjustment against the REC inventory, if feasible; and/or
- (v) by any other available mean.

In case HPSEBL fails to offset any part of the deficit, as quantified above by 31.03.2022, it shall not only be liable to be penalized under Regulation 9 (2) of the RPO Regulations but may also have to face action under section 142 of the Act.”

23. Further, the Commission’s in its Order dated 14.09.2021 in Petition No. 03/2021 has held in para 7.1.5 and 7.1.6 as under:-

“7.1.5 As far as Solar RPO compliance of FY 2019-20 is concerned, the Commission decides to offset the cumulative deficit of Solar RPOs of 120.53 MUs with surplus Solar RE of FY 2019-20 i.e. 16.56 MUs. With this adjustment, the HPSEBL has net deficit of Solar RPO 103.97 MUs as on 31.03.2020 as tabulated below:-

| Year | Surplus/shortfall (in MUs) of Solar RPO | Status after adjustment of Shortfall /surpluses as per Commission’s Order dated 19.08.2021 |
|-------------|--|--|
| 2017-18 | -11.68 | The deficit of 11.68 MUs now adjusted with surplus of FY 2019-20 which results in compliance of Solar RPO for FY 2017-18. |
| 2018-19 | -108.85 | The deficit of 108.85 MUs now adjusted with 4.88MUs balance surplus of FY 2019-20 which now results in deficit of 103.97 MUs Solar RPO for FY 2018-19. |
| 2019-20 | +16.56 | Compliant. |

7.1.6 The Commission directs the HPSEBL to offset this deficit i.e. 103.97 MUs of Solar RE, latest by 31st March, 2022, through any of the available means i.e.

- (i) by adjustment against surpluses, if any, for the financial year 2020-21;
- (ii) by procurement of Solar RECs;
- (iii) by procurement of additional power during the remaining part of the current financial year dedicated for adjustment of this deficit;
- (iv) by adjustment against the REC inventory, if feasible; and/or
- (v) by any other viable mean.

In case HPSEBL fails to offset the deficit, as quantified above by 31.03.2022, it shall not only be liable to be penalized under Regulation 9 (2) of the RPP0 Regulations but may also have to face action under section 142 of the Act.”

24. The Hon’ble Appellate Tribunal for Electricity (APTEL) in its Order dated 09.11.2021 in appeal No. 113 of 2020 titled as (Indian Wind Power Association Vs. Central Electricity Regulatory Commission) and batch appeals, has set-aside the order dated 17.06.2020 of Central Electricity Regulatory Commission relating to determination of forbearance and floor price for REC framework and has held in para 119 in the following manner:

“119..... RECs which were still valid for trading at the power exchange under REC Regulations as on the date (17.06.2020) the impugned order was passed, and have remained unsold till date, shall continue to be valid and be good for sale or purchase for the then remainder period of their validity, computed with reference to the date of the impugned order, and that the purchase thereof, during the period of such extended validity, by the Obligated entities shall be treated as good compliance with RPO targets. The Central Commission shall issue formal orders to this effect and give the same due publicity for information of all stakeholders within two weeks hereof.”

25. Pursuant to the aforesaid decision of the Hon’ble APTEL in appeal No. 113 of 2020, the Central Electricity Regulatory Commission in its Order dated 18.11.2021 in Petition No. 05/SM/2020 has held as under:

“The RECs which were still valid for trading at the power exchange under REC Regulations as on 17.06.2020, and have remained unsold till date, shall continue to be valid and be good for sale or purchase for the then remainder period of their validity, computed with reference to 17.06.2020, and that the purchase thereof, during the period of such extended validity, by the Obligated entities shall be treated as good compliance with RPO targets.”

26. It is evidently clear from the pleadings and position explained above that there is shortfall/deficit in achieving the Solar Power Purchase Obligation whereas during the Financial year 2021-22, the HPSEBL after meeting its obligations,

has a net Surplus of 541.10 MU of Non-solar RE Power. This position is further explained below.

Solar RPO Compliance:-

27. During the financial year 2020-21, the HPSEBL has a net deficit of 42.22 MUs of Solar RE Power. Further, the HPSEBL has net deficit of Solar RPO upto FY 2019-20 as 103.97 MUs.
28. Considering the principle followed by the Commission in its previous Orders (Order dated 19.08.2021 in Petition No. 04/2021 and Order dated 14.09.2021 in Petition No. 03/2021), the submissions made by the Parties (Petitioner and Respondent No. 3) and judgment of Hon'ble APTEL dated 24.07.2020 in Appeal No. 113/2020 relating to suspension of REC trading, the Commission finds merit in the the prayer made by Petitioner. Accordingly, the Petitioner i.e. HPSEBL is allowed to carry forward the solar RPO deficit of financial year 2020-21 i.e. 42.22 MUs to be fulfilled in the following manner as cumulative solar RPO deficit i.e. 146.19 MUs (-103.97 MUs-42.22 MUs) as on 31.03.2021 by 31st March, 2022, through any of the available means i.e.
- (i) by adjustment against surpluses, if any, for the financial year 2021-22;
 - (ii) by procurement of Solar RECs;
 - (iii) by procurement of additional power during the remaining part of the current financial year dedicated for adjustment of this deficit;
 - (iv) by adjustment against the REC inventory, if feasible; and/or
 - (v) by any other viable mean.

Non-Solar RPO Compliance.-

29. In so for a non-solar RPO compliance is concerned, it is clear that during the financial year 2020-21, the HPSEBL, after meeting its obligations, has a net surplus of 541.10 MUs of Non-solar RE Power.
30. As ordered by the Commission vide order date 14.09.2021 in Petition No. 03/2021, the HPSEBL is compliant with its Non-Solar RPO for previous three financial years i.e. FY 2017-18, FY 2018-19 and FY 2019-20. It is also evident that the HPSEBL fulfils the criteria, as elaborated in para 15 and 16, for issuance of Non-solar Renewable Energy Certificates (RECs) of excess

Non-solar energy procured by the HPSEBL i.e. 541.10 MUs for FY 2020-21, beyond their Non-solar RPO compliance for FY 2020-21.

31. Thus, on the application of the HPSEBL, the Commission will initiate the process of issuance of certificate as per the format 3.1.1 devised in the 'Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity' by the Central Agency under CERC REC Regulations, 2010, for recommending the case for issuance of Non-solar RECs to the distribution licensee for surplus Non-solar energy of 541.10 MUs for FY 2020-21.
32. In case the Petitioner i.e. HPSEBL fails to offset the deficit, as quantified above by 31.03.2022, it shall not only be liable to be penalized under Regulation 9 (2) of the RPPO Regulations but may also have to face action under section 142 of the Electricity Act, 2003.

CONCLUSION

33. In view of the above, the Petition succeeds and allowed. The Petitioner/HPSEBL is directed to take necessary action for disposal of Renewable Energy Certificate inventory available with it judiciously and also plan its renewable energy procurement in such a way that there may not be any deficit in renewable purchase obligation of particular financial year.

The file after needful be consigned to records.

| | | |
|---|---|--|
| Sd/- (Yashwant Singh Chogal) Member(Law) | Sd/- (Bhanu Pratap Singh) Member | Sd/- (Devendra Kumar Sharma) Chairman |
|---|---|--|