BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA.

In the matter of:-

M/s Ujaas Energy Limited.
211/1, Opp. Sector-C, Metalman Industrial Area,
Sanwer Road, Indore, Madhya Pradesh-452015.

…….Petitioner

Versus

1. The H.P. State Electricity Board Ltd. through its Executive Director (Pers.),
Vidyut Bhawan, Shimla-171004.

2. The Directorate of Energy,
Phase-3, Sector-5 Shanti Bhawan
New Shimla-171009.

………Respondents

Petition No. 129/2013

(Decided on 10th November, 2014).

CORAM
SUBHASH C.NEGI,
CHAIRMAN

Present:-

for the petitioner	Sh. Ashu Gupta, Vice President
for the Respondent No.1	Sh. Ramesh Chauhan, Authorised Representative.
for the Respondent No.2	Sh. Shanti Swaroop Bhatti, Legal Consultant

ORDER

(Last heard on 30.06.2014 and orders reserved)

This petition, bearing No.129/2013, has been filed by M/s Ujaas Energy Limited,(formerly M and B Switchgears Limited) a Company incorporated under the Companies Act, 1956, having its Regd. Office at 211/1, Opposite Sector – C, Metalman Industrial Area Sanwer Road, Indore, Madhya Pradesh, through Sh. Ashu Gupta S/o Sh. Kunj Bihari Lal Gupta, Resident at A 17, Dream City Talawali Chanda, Indore-452001, its Vice-President and Authorised Signatory (hereinafter referred as the

"Petitioner Company"), for compliance of the Renewable Power Purchase Obligation (in brevity RPPO) by the obligated entities in the State and, if there is any short fall in the fulfillment of RPPO, to direct the obligated entities to procure the REC from the Power Exchanges, by empowering an officer of the State Agency for the same.

2. The brief facts of the case are that the petitioner Company is engaged in generation of electricity through non-conventional source of energy (solar power) under REC mechanism and it claims to have implemented India's first solar power plant under REC mechanism as per the requirement of CERC-REC regulations and is generating power since April, 2012. It also submits that while operating and maintaining its existing unit it is constructing many more new solar power plants for self and other's use under this mechanism.

3. The Himachal Pradesh State Electricity Regulatory Commission (hereinafter referred as "the Commission") has issued the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations,2010 (hereinafter referred as "the RPPO Regulations") 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 providing that 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 (hereinafter referred as "the 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.

4. On 10th 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 and the State Agency has to undertake functions under RPPO Regulations. The RPPO regulations provide that the Captive and Open Access Consumer(s)/user(s) shall purchase renewable energy as stated in the Table below regulation 4. If the Captive User(s) and Open Access Consumer(s) 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 regulations (ibid), the shortfall of the targeted quantum would attract payment of compensation as per regulation 9 of the regulations (ibid).

5. The Commission took Suo-Motu note of the matter regarding compliance of RPPO for the FY 11, FY 12 and FY 13 and observed that the distribution licensee has fully met and infact exceeded the specified target in respect of Non-Solar RPPO for the last three years, but has not met the Solar RPPO for the FY 2012 and FY 2013. The Commission, therefore, vide its order dated 29th July, 2013 passed in Suo-Motu Case No. 93(A)/2013, ordered that short fall of Solar RPPO for FY 2011-12 and FY 2012-13 shall now be met during the FY 2015-16 and FY 2016-17, respectively in addition to the Solar RPPO of those years. The Commission issued the detailed advisories to the HPSEBL to enable it to meet its minimum solar RPP Obligation for the future.

6. The Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as "the HPSEBL" or " the Distribution Licensee") entered into an agreement on 19.12.2012 with the National Thermal Power Corporation Ltd (NTPC) for their upcoming Singrauli Solar Power Project (15 MW) for its entire capacity to fulfill its minimum percentage of Solar RRPO. The proposed 15 MW solar power plant at 19% PLF will generate around 24 MU in one year from the date of its commissioning. The expected date of commissioning of this project was December, 2013. The NTPC Ltd., vide their letter dated 08.07.2013 communicated to the HPSEBL intimated that the Singrauli PV Project was expected to be commissioned by March, 2014 and accordingly, HPSEB Ltd., hoped to meet the Solar RPPO from this plant. However in March, 2014, the NTPC Ltd., vide their letter dated 21.03.2014 expressed their inability to commission the plant in time and mentioned that they will be able to commission the plant by June, 2014. The solar power plant at Singrauli is still under execution.

7. In the 37th meeting of the Forum of Regulators (FOR) held at New Delhi on 21st August, 2013, the Forum of Regulators agreed on the need of stricter action against non-compliance of RPPO targets and recommended that the provisions in the existing regulations of imposing non-compliance charge etc. should be invoked by the Regulators.

8. The petitioner Company asserts that with the present sources of Solar Power the compliance of the Solar RPPO of the distribution licensee for the FY 2013-14 will be nil and this will further increase the deficit of the Solar RPPO of the distribution

licensee over and above deficit of 2011-12 and 2012-13. The Solar RECs are available in power exchanges from May, 2012 and further as on 15th March, 2014, there are in total 327 MW of Solar Power Plant under REC mechanism which generates around 527 MUs of Solar Power per annum. In other words both the Solar RECs, as well as the Solar power is available to meet the deficit of the Solar RPPO of the distribution licensee.

9. In view of the facts, as set out in the preceding paras of this Order, the petitioner Company prays that:-

(i) for the FY 2013-14 the distribution licensee be asked to provide along with sufficient proof thereof, the estimate quantum of purchase from renewable sources for the ensuing year;

(ii) for the FY 2013-14, if the distribution licensee is unable to make arrangements to fulfill the obligation by their own sources and PPAs, the distribution companies be asked to procure the required RECs for the compliance of the same in the same financial year;

(iii) at the end of the FY 2013-14, if the distribution licensee further fails to comply with their Solar RPPO in the event of sufficient Solar RECs available in the exchange, action be taken against the distribution licensee as per the provisions in the regulations and the Electricity Act, 2003;

(iv) repeated failure of the distribution licensee and non-compliance of the regulations and Order be considered as willful contravention of the directions of the Commission and an event of obstructing to discharge of functions of promoting renewable sources of energy assigned to this Commission by the Electricity Act, 2003;

(v) to pass any other Order as the Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.

10. In response to the petition, the respondent HPSBL submits that the mode of purchasing solar energy certificates for mitigating the solar RPPO was kept as a second option. However, the preference was given for procurement of Solar power in actual for meeting the obligations for procurement of Solar Power and the factual position is as under:-

(a) the HPSEBL executed an agreement on dated 21.11.2011 with NTPC for their upcoming ANTA Solar Power Project towards first step of Solar Power procurement;

(b) due to unavoidable circumstances shown by NTPC for supplying of Solar Power from ANTA Solar Power Project, the HPSEBL on the request of NTPC signed another agreement dated 19.12.2012, with amendment to the existing agreement, that henceforth they shall be able to supply the same quantum of power from Singrauli Solar PV Power Project (15 MW), which was expected to be commissioned by the December, 2013. The said project was enough to fulfill minimum Solar RPPO till the year 2016-17.

(c) in addition to above, HPSEBL vide letter dated 01.11.2013 requisitioned 20 MW Solar Power under Batch-I phase-II of JNNSM. The response from Ministry of New and Renewable Energy, GoI, in the matter was still awaited. However, HPSEBL vide letter dated 12.03.2014 had again requested MNRE, GoI, to convey the latest status of Solar Power allocation from JNNSM;

(d) after announcing the further date of COD as March, 2014, and with the recent communication dated 21.03.2014 from the NTPC conveying date of COD as June 2014, the HPSEBL tried to purchase Solar Power through tendering process. The HPSEBL has floated a tender for purchase of 21.71 MUs of power on 20th of March, 2014 for the purchase of Solar power between 24th March, 2014 to 31st March, 2014. But inspite of further extension, none of the Power Producers participated in the tender.

11. The HPSEBL, further urges that:-

(i) the efforts made by the HPSEBL towards achieving the Solar RPPO by procurement from NTPC stations may be considered generously and meeting RPPO in event of non supply by NTPC is beyond the control of HPSEBL;

(ii) the action of the HPSEBL regarding requisitioning 20 MW Solar Power under Batch-I phase-II of JNNSM may also be considered as bonefide efforts made by the HPSEBL;

(iii) further initiatives taken by the HPSEBL for purchasing of Solar Power from open market through tendering process, even though it did not succeed may also be considered as a step toward efforts;

(iv) efforts of the HPSEBL towards procurement of energy above the target in respect of non-solar renewable power purchase obligations may be considered as a compensation towards non achievement of targets in respect of Solar RPPO.

12. During the hearing of this matter, Sh. Ashu Gupta, representing the petitioner, submitted that the respondent is making the misleading statement and has failed to exercise the prudence to take appropriate steps/measures to plan solar energy procurement under the agreement made with NTPC, Sangrauli P.V. Power Project (15MW). No efforts have also been made to procure Solar REC from the power exchange, especially when the Solar REC's were available in the market. Hence, it is liable to pay compensation for non-fulfillment of the RPP Obligations. He further contends that once contravention has taken place, this Commission has no jurisdiction to waive the penalties liable to be imposed under the Law.

13. In order to appreciate the submissions of the petitioner Company, it will be useful to set out the provisions of regulations 4, 5, 7, 9 and Annexure-I of the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 (RPPO Regulations), to the extent as these are relevant to adjudicate this petition. These provisions read as under:-

<u>Regulation 4</u>

Quantum of Renewable Power Purchase Obligation (RPPO)*.- "(1) As specified in the Table below,-*

(a) the distribution licensee shall purchase electricity (in kWh) from renewable sources, at a minimum percentage of the total consumption including transmission and distribution losses, within area of the distribution licensee, during a year; and

(b) the Captive and Open Access User(s) /Consumer(s), shall purchase electricity (in kWh) from renewable sources, at a minimum percentage of his total consumption during a year:-

Table-<u>Minimum percentage for Renewable Power Purchase Obligation</u>

Year	***Minimum Quantum of Purchase (in %*) from renewable sources (in terms of energy in kWh) of total consumption.***	
	Total RPPO %age.	***Minimum Solar RPPO %age of the total purchase***
2011-12	*10.01*	*0.01*
2012-13	*10.25*	*0.25*
2013-14	*10.25*	*0.25*
2014-15	*10.25*	*0.25*
2015-16	*11.25*	*0.25*
2016-17	*12.25*	*0.25*
2017-18	*13.50*	*0.50*
2018-19	*14.75*	*0.75*
2019-20	*16.00*	*1.00*
2020-21	*17.50*	*2.00*
2021-22	*19.00*	*3.00*

* *The estimated Minimum Quantum of Purchase (in MU(s) from renewable sources is given in Annexure-I to these regulations:*

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

Provided further that such obligation to purchase renewable energy shall not include the power 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, but shall be inclusive of -

(i) purchases from generating stations based on renewable energy sources,

(ii) purchases from any other distribution licensee, which would arise from renewable sources,

(iii) the energy generated from its own renewable sources, if any, by the obligated entity;

Provided further that the power purchases under the power purchase agreements for the purchase of 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 exceeds the percentage as specified hereinbefore".

(2) *Keeping in view supply constraints or other factors beyond the control of the licensee, the Commission may, suo-motu or at the request of a licensee, revise the percentage targets specified under sub-regulation (1) of this regulation.*

(3) *The RPPO specified for the Financial Year 2012-13 shall be continued beyond 2012-13 till any revision is affected by the Commission in this regard.*

Regulations 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) *xx* *xx* *xx* *xx*

(3) *The Certificates purchased by the obligated entities from the power exchange in terms of the regulation 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.*

Regulation 7

Distribution Licensee.- *(1) Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable sources for the ensuing year in tariff/annual performance review petition in* *accordance with regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with sub- regulation (1) of regulation 4 of these regulations. If the distribution licensee is unable to fulfill the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess renewable power purchase would not be adjusted in the ensuing year.*

(2) Despite availability of energy from renewable sources under the Power Purchase Agreements or the power exchange mechanism or from its own renewable sources, 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 these regulations.

Regulation 9

Consequences of default.- *(1) Where the obligated entity does not fulfill the renewable purchase obligation as provided in these regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPPO and the forbearance price decided by the Central Commission:*

Provided that the fund so created shall be utilised, as may be directed by the Commission partly for purchase of the certificates and partly for development of transmission/ sub transmission infrastructure for evacuation of power from generating stations based on renewable energy sources:

Provided further that the obligated entities shall not be authorized to use the fund created in pursuance of regulation without prior approval of the Commission:

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided further that the distribution licensee shall be in breach of its licence conditions if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

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

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:

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

Annexure-I

Estimated RPPO (in MUs) from renewable sources				
Financial year	*Years*	*Total Energy Requirement in MUs including T&D Losses*	*Minimum Solar Power purchase Obligation in MUs*	*Total Renewable Power purchase Obligation in MUs*
FY 12	*2011-12*	*8244.00*	*0.82*	*825.22*
FY 13	*2012-13*	*8748.00*	*21.87*	*896.67*
FY 14	*2013-14*	*9168.00*	*22.92*	*939.72*
FY 15	*2014-15*	*9159.20*	*22.89*	*938.81*
FY 16	*2015-16*	*9719.37*	*24.30*	*1093.42*
FY 17	*2016-17*	*10312.40*	*25.78*	*1263.26*
FY 18	*2017-18*	*10926.18*	*54.63*	*1475.03*
FY 19	*2018-19*	*11575.04*	*86.81*	*1707.31*
FY 20	*2019-20*	*12260.97*	*122.60*	*1961.75*
FY 21	*2020-21*	*12986.08*	*259.72*	*2272.56*
FY 22	*2021-22*	*13752.57*	*412.57*	*2612.98*

14. Further, Clause (2) of Regulation 9 of the REC Regulation of CERC provides for the guiding principles for determining the forbearance and floor price for solar and non-solar Certificates. The relevant provisions are extracted as under:

"9. Pricing of Certificate:

(1) The price of Certificate shall be as discovered in the Power Exchange:

Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.

(2) The Commission while determining the floor price and forbearance price shall be guided inter alia by the following principles:

(a) Variation cost of generation of different renewable energy technologies falling under solar and non-solar category, across States in the country;

(b) Variation in the Pooled Cost of Purchase across States in the country;

(c) Expected electricity generation from renewable energy sources including:-

i. expected renewable energy capacity under preferential tariff

ii. expected renewable energy capacity under mechanism of certificates;

(d) Renewable Purchase obligation targets set by State Commissions"

15. From the statutory provisions set out in the preceding paras it can be observed that:-

(a) Regulations 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 including transmission and distribution losses within the area of the distribution licensee and the captive and Open Access users shall purchase electricity in (kwh) from renewable sources at a minimum percentage of the total consumption during a year. The estimated minimum quantum of purchase in Mu(s) from the Renewable sources is given in Annexure-I to the RPPO Regulations. The Solar Power Purchase obligation is to be fulfilled from the generation based on Solar Sources only.

(b) Regulations 4.2 of the RPPO Regulations provide that keeping in view supply continuity or other facts beyond the control of the licensee, the State Commission may Suo-Motu or at the request of the licensee revise the percentage targets specified under sub-regulation 4(1).

(c) Regulations 5 provide that the certificates issued under the Central Regulations 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 purchase certificates, the obligation to purchase from generation based solar as renewable energy 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.

(d) Regulation 7 provides for inclusion of estimates of the Renewable Energy Purchase in the tariff/annual performance review. The distribution licensees have to indicate along with proof, the estimated quantum of purchase from renewable energy sources for the ensuing year in Tariff/APR petition. The Tariff/Annual Performance Review Petition is mandatorily subjected to public notice and public hearing under Section 64 of the Electricity Act. Thus, in the RPPO Regulations there is an inbuilt mechanism for planning and review of RPPO being subjected to public hearing. The distribution licensees have to indicate the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff petition and the review of RPPO in the APR which is also a part of the petition. The stakeholders can file suggestions and objections regarding the proposal of the licensee for the ensuing year and in APR. This mechanism would ensure that the State Commission after considering the suggestions and objections of stakeholders could give directions to the distribution licensees for corrective action, if any, at the beginning of the ensuing year.

Thus the State Commission is to consider the proposal of the licensee for compliance of the RPP Obligation for the ensuing year in the tariff petition and review of RPPO in Annual Performance Review (APR)proceedings to enable the public to offer their suggestions and objections. After completion of the financial year, the State Commission has to review the actual performance of the RPPO and pass necessary direction as per regulations either suo-motu or on a petition filed by a party.

(e) Regulation 9 of the RPPO Regulations provides for consequences of default. According to Regulation 9, if the distribution licensee and other obligated entities do not fulfill the specified RPP obligation during a year and do not purchase the Renewable Energy Certificates, the State Commission may direct the licensee/obligated entity to deposit in a separate account such amount as determined by the State Commission on the basis of the shortfall in RPPO energy and forbearance price decided by the Central Commission which shall be utilized by the State Commission for purchase of REC and for development of transmission infrastructure for evacuation of power from renewable sources of energy. The Central Commission in exercise of powers vested in it under regulation 9 of the Central Electricity Regulatory Commission (Terms & Conditions for recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010 (REC Regulations), vide its Order dated 23.08.2011 has fixed the floor and forbearance price for dealing in the Certificates under REC Regulations, for the period for 18th April, 2012 upto 31st March, 2017 as under:-

	Non solar REC (`Rs./MWh)	**Solar REC (Rs./MWh)**
Forbearance Price	3300	13400
Floor Price	1500	9300

However, in case of any genuine difficulty in meeting RPPO due to non-availability of power from renewable sources or the REC, the State Commission may carry forward the shortfall to the next year.

16. It would be useful to quote para 55 of the **judgement dated 25th April, 2014 rendered in Appeal No. 24 of 2013 and IA No. 39 of 2013- Indian Wind Energy Association V/s Gujarat Electricity Regulatory Commission & others 2014 ELR (APTEL) 0897:-**

"55. FYs 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and

carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13, the objective of meeting the RPP obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPPO during FY 2011-12. We would, however, give guidelines to the State Commission for future as under:

(A) The State Commission may decide the RPPO targets at least one year before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers.

(B) The proposal for renewable energy procurement should be submitted by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year. Suggestions and objections of public have to be invited for the above petition. The State Commission may give necessary directions with regard to RPPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPPO target, it should plan purchase of REC. Advance planning of REC purchase will give ample opportunity to the distribution licensees to purchase REC when the market conditions are more favourable to them.

(C) After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public should be invited in the review proceedings.

(D) *The State Commission should give directions regarding relaxation in RPO and consequential order for default of the distribution licensees as per the RPPO Regulations. Accordingly, directed for future".*

17. While framing RPPO Regulations the Commission has already specified the minimum percentage for Renewable Power Purchase Obligation and estimated RPPO (in MUs) from Renewable sources (including Solar Energy) for period of 10 years (i.e. FY 2012 to FY 2022). Per regulation 4 of the RPPO Regulations, the HPSEBL i.e. the distribution licensee is to comply with Non-solar and RPPO as per the Table given as under:-

Financial Year	**Minimum Quantum of Purchase (in %*) from renewable sources(in terms of energy in kWh) of total consumption.**		
	Total RPPO %age	**Minimum Non-Solar RPPO %age of the total purchase**	**Minimum Solar RPPO %age of the total purchase**
2010-11	10.00	10	0.00
2011-12	10.01	10	0.01
2012-13	10.25	10	0.25
2013-14	10.25	10	0.25
2014-15	10.25	10	0.25
2015-16	11.25	11	0.25
2016-17	12.25	12	0.25
2017-18	13.5	13	0.5
2018-19	14.75	14	0.75
2019-20	16	15	1
2020-21	17.5	15.5	2
2021-22	19	16	3

18. The information regarding compliance of RPPO submitted by the distribution licensee/shortfall from Non Solar and Solar RPPO worked out for the FY 2013-14 are as follows:-

Financial Year	**Consum-ption i/c T&D losses in MUs**	**Minimum RPPO requirement in %**		**Minimum RPPO requirement in MUs**		**RPPO requirement by Distribution licensee**		**Excess/Short fall from the requirement**	
		Non-solar (%)	**Solar (%)**	**Non-solar (MUs)**	**Solar (MUs)**	**Non-solar (MUs)**	**Solar (MUs)**	**Non-solar (MUs)**	**Solar (MUs)**
1	2	3	4	5	6	7	8	9	10
2013-14	7554.60	10.00	0.25	755.46	18.537	1268.8	0.00	513.347	18.537

19. The Commission while deciding the Suo-Moto Case No. 93(A)/2013, in its order dated 29.07.2013 had observed that HPSEBL had fully met and in fact exceeded the specified target in respect of Non-Solar RPPO for the last three years but was unable to meet the Solar RPPOs for the FY12 and FY13. There was a shortfall of

0.74MU and 18.4MU in the solar RPPO during FY12 and FY13. The Commission in the order decided that the shortfall of Solar RPPOs for FY12 and FY13 shall be met during the FY16 and FY17 respectively, in addition to the Solar RPPOs of those years.

20. The HPSEBL in its submissions has stated that it has abundant non-solar power to fulfill its non-solar RPP obligation for the Third Control Period and regarding Solar RPPO, HPSEBL shall fulfill part of its obligation from NTPS's Singrauli Solar plant. Rest of the solar obligation shall be purchased from additional solar energy available in the market.

21. The Commission in the Multi Year Tariff Order dated 12.06.2014 for the HPSEBL for the period FY 2014-15 to FY 2018-19 has observed that.

" 9.8.6 Accordingly in the MYT Order the Commission has approved the purchase of solar power by HPSEBL during the Third Control Period to meet its solar RPPOs. The year wise quantum of solar power purchase approved during the control period is as under:

Source	***FY 15***		***FY 16***		***FY 17***		***FY 18***		***FY 19***	
	MU	***Rs. CR***	***MU***	***Rs. CR***	***MU***	***Rs. CR***	***MU***	***Rs. CR***	***MU***	***Rs. CR***
Singrauli Solar	*18.72*	*44.79 **	*24.97*	*59.66 **	*24.97*	*59.66 **	*24.97*	*59.66 **	*24.97*	*59.66 **
Additional solar power purchase	*4.83*	*5.54*	*-*	*-*	*1.06*	*1.21*	*29.77*	*34.15*	*61.42*	*70.45*
RPPO for previous years (FY12&13)	-	-	0.53	0.49#	18.4	17.11 #	-	-	-	-

*Cost from Singrauli solar also includes cost of bundled thermal power

#Cost *approved based on the floor price of Solar REC*

9.8.7 In the current MYT order, HPSEBL has been provided with separate ARR for purchase of solar power or the RECs to meet the solar RPPO in addition to purchase from Singrauli Solar plant. In order to comply to these RPP Obligations, HPSEBL shall have to plan power procurement in advance. HPSEBL can buy solar power from IPPs, Solar Power Corporation of India or from other sources. However while purchasing such power HPSEBL should observe prudency in respect to the price of the solar power at the distribution periphery.

9.8.8 In accordance with Regulation 4 of the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 (read with amendments), the minimum percentage of RPP Obligation is also applicable to captive generation/ open access consumers including DG sets above 1MW installed capacity. Since HPSEBL has surplus renewable power available in excess of the specified target of non-solar obligation, the captive/ open access consumers have an option to meet their respective RPP Obligations by purchasing renewable power from HPSEBL instead of purchasing certificates alone under REC framework. In order to make the transaction operations simple and transparent, the Commission is of the view that such open access consumers can pay the differential price of renewable power against the quantum of energy required to meet its RPPO i.e. the price of procurement of renewable energy at the margin after meeting the licensee's RPPO adjusted with losses and the average power purchase cost of the licensee. Accordingly Commission fixes this price along with losses at actual voltage level as under for the year 2014-15:

Cost of renewable *power per unit as per PPA*

Including 6 paise per unit as administrative charges= 295 + 6 = 301 paise
Average power purchase cost = 226 paise

Differential price = (301 - 226) = 75 paise per unit."

22. In the light of the above legal and factual matrix of the case, following two questions would emerge for considerations in this matter are:-

1. Whether once a violation or contravention or default or non-compliance of RPPO by the obligated entity is established, the payment of compensation becomes necessary as its natural consequence?

2. Whether there is default or non-compliance of the Renewable Power Purchase Obligation by the obligated entity, if so, how much amount should be ordered to be paid as compensation under regulation 9 of the RPPO Regulations?

Question No. 1

23. Let as deal with the first question now. According to Shri Ashu Gupta, representing the petitioner Company, once a violation or a default or non compliance of the provisions of the regulations is established, the payment of the compensation as a natural consequence would follow.

24. The consequences of default on the part of the obligated entity to fulfill its RPPO are dealt with in regulation 9 of the RPPO Regulations. In the present case it is alleged that despite availability of energy from renewable energy sources, if the distribution licensee fails to purchase energy from renewable energy sources, then it shall be liable to pay compensation as per regulation 9 of the RPPO Regulations. Thus, in terms of Regulation 9, the State Commission may direct the distribution licensees/other obligated entities to deposit into a separate fund the amount, as may be determined by the State Commission on the basis of the shortfall in RPPO energy and forbearance price decided by the Central Commission, which shall be utilized by the State Commission, partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy. However, in case of any genuine difficulty in meeting RPPO due to non-availability of power from renewable sources or the REC, the State Commission may carry forward the shortfall to the next year.

25. In this Context, it would be worthwhile to refer to the relevant observation made in the judgment rendered by the **Hon'ble Supreme Court in 1969 Vol.2 SCC 627 Hindustan Steel Ltd. Vs. State of Orissa,** which is as under:-

> *"Whether penalty should be imposed for the failure to perform the statutory obligation, is a matter of discretion of the authority to be exercised judicially and on consideration of the relevant circumstances."*

26. Thus the Commission is of the view that once a default in terms of the RPPO Regulations is established, the payment of compensation under regulation 9 (ibid) would follow, but the Commission can award the compensation only after taking into consideration all the relevant circumstances explained by the person concerned before deciding the necessity to make direction under regulation 9 (ibid). This question is answered accordingly.

Question No. 2

27. Let us now come to the next question. Whether there is default or non-compliance of the Renewable Power Purchase Obligation by the obligated entity, if so, how much amount should be ordered to be paid as compensation under regulation 9 of the RPPO Regulations? The factual position should also be considered by the Commission, while deciding about the quantum of compensation and where it is found

that such a default has been committed bonefide and is due to the circumstances beyond the control of the person concerned, the Commission may accept the said explanation and discharge a person without directing the payments of compensation and permit the carry forward the compensation requirement.

28. The obligated entity i.e. HPSEBL submits that the mode of purchasing Solar energy certificates for mitigating the Solar RPPO was kept as a second thought and it gave preference for procurement of Solar Power in actual for meeting the obligation for procurement of Solar Power. The HPSEBL executed an agreement on 21.11.2011 with NTPC for their upcoming ANTA Solar Power Project towards the first step of Solar Power Procurement. Subsequently the HPSEBL signed another agreement dated 19.12.2012 to the extent that henceforth they would be able to supply some quantum of power from Singrauli Solar Power Project (15MW), which was expected to be commissioned by the December, 2013, as the said project was enough to fulfill minimum Solar RPPO till the year 2016-17. It also had tried to requisition 20 MW Solar Power under Batch-I, Phase II of JNNM. The efforts made by the HPSEBL, in achieving the Solar RPPO, could not materialize inspite of signing of the Agreements, owing to the deviation of the proposed project from CoD Schedule i.e. the circumstance beyond the control of the HPSEBL. The HPSEBL also resorted to purchase Solar Power through tendering process, but there was nil response from the bidders. Further fact cannot be ignored that the HPSEBL has fully met and in fact exceeded the specified target in respect of Non-Solar RPPO for the last four years, but has failed to meet the Solar RPPO. The HPSEBL has made genuine efforts, but has failed to fulfil the specified targets due to the circumstances beyond its control.

29. In the present case there is shortfall of Solar RPPO of 18.537 MU in the FY 2013-14 and the obligated entity has also failed to purchase the Solar RECs available in the power exchanges, the obligated entity is liable to pay compensation in terms of regulation 9 of the RPPO Regulations, whereunder the State Commission may direct the obligated entity to deposit into a separate fund such amount as may be determined by the State Commission on the basis of the shortfall in RPPO energy and forbearance price decided by the Central Commission, which is to be utilized by the State Commission partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy.

30. The Central Commission, in exercise of powers vested in it under regulation 9 of the REC Regulations has fixed Rs. 9300/ MWh as floor price and Rs.13400/ MWh as the forbearance price for dealing in the certificates under REC Regulations. The Commission, after having considered the circumstance explained in para 28 of this Order, and that as per contentions of the petitioner that sufficient RECs were available in March, 2014, works out the compensation of Rs.17.23Crores, under regulation 9 of RPPO Regulations for shortfall of 18.537 MUs in the financial year 2013-14, on the basis of the shortfall in RPPO energy and floor price fixed by the Central Commission, because had the HPSEBL purchased RECs in end of March, 2014, it would have been available at floor price.

31. The shortfall of 0.74 MU and 18.4 MU in the Solar RPPO during FY 2012 and FY 2014 has already been ordered to be met during the FY 16 and FY 17. In the MYT Order the Commission has already approved the purchase of Solar power by the HPSEBL during the Third Control Period (i.e. FY 14 to FY 2019) to meet its solar RPPOs.

32. Keeping in view the import of the **judgement of Hon'ble APTEL dated 25.4.2014 rendered in Appeal No. 24 of 2013-Indian Wind Energy Association V/s Gujarat Electricity Regulatory Commission & others (Supra)**, the obligated entity cannot be directed to purchase electricity from renewable energy sources, to meet the shortfall of 2013-14 nor there can be direction for purchase of REC in 2014-15 against shortfall of 2013-14. Also since RECs were available, targets cannot be carried forward to future year(s).

33. In the light of above discussion, the Commission is of the view that the HPSEBL should deposit the compensation amount of Rs.17.23 Crores in a separate fund to be created by the HPSEBL in its accounts as RPPO Compensation Fund for non-compliance of RPPO in 2013-14. Renewable sources of energy are highly dispersed in the State and creation of sub-transmission system infrastructure is of paramount importance for promotion of renewables. Currently the HPSEBL is facing liquidity problems and creation of such infrastructure does not find desired impetus. Therefore, the Commission directs that this amount shall be utilised as HPSEBL's share in project financing (10% share) to create sub-transmission infrastructure (11 kV and 33kV) during the next two years, the HPSEBL will deposit Rs.5.00 Crores this year which will be provided by the Commission in the true up order for FY 2013-14 and

balance amount will be provisioned in the ARR of the FY 2015-16. This fund will be treated as grant/consumer contribution and, therefore, will not be admissible for depreciation and any other interest/return.

34. This petition is disposed of in the terms of this Order.

35. Before parting with this Order, the Commission would like to record that despite of the best efforts, the Commission could not make and pronounce this Order immediately after the date on which the matter was last heard and orders were reserved because issue of RPPO compliance as such for year 2013-14 was also considered as integral to disposal of this petition and this entailed information generation, collection, collation and analysis from sources of the HPSEBL and State Designated Agency(SDA).

(Subhash C.Negi)
Chairman