

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION SHIMLA**

In the matter of:-

The Indian Wind Power Association,
513-514, 5th Floor, World Trade Centre,
Barakhamba Lane, New Delhi-110001

....Petitioner

Versus

1. The HP State Electricity Board Ltd. thro' its,
Chief Engineer (SO&P),
Vidyut Bhawan, Shimla-171004.

2. The Director
Directorate of Energy, GoHP
Shanti Bhawan, Phase-3,
Sector-6, New Shimla-171009

....Respondents

Petition No. 124 of 2015

(Decided on **25th July, 2016**)

CORAM

S.K.B.S. Negi
CHAIRMAN

Counsels: -

for petitioner:

Sh. Vishal Gupta, Advocate
a/w Sh. Manish Verma, Snr. Manager

for respondent No1:

Sh. Ramesh Chauhan,
Authorised Representative

for respondent No.2:

Sh. Shanti Swaroop, Legal Consultant
a/w Er. Manoj Chaudhary, Snr Xen.

ORDER

(Last heard on 28th May, 2016 and Orders reserved)

This petition has been moved by the Indian Wind Power Association(IWPA) (hereinafter referred as “the petitioner”) non-profit organisation, registered under section 10 of the Tamil Niadu Societies Registration, Act, 1975, having 1320 members, having generating capacity of more than 11,595 MW, spread all over India, having its primary goal to bring together all the stakeholders on common platform to discuss generic issues and resolve problems that may hinder the progress and development of wind energy projects and to devise ways to achieve the same. The petitioner is seeking directions upon

all the obligated entities to furnish details of compliance of the Renewable Purchase Obligation (RPO) by them since the notification of the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 and it has been prayed that in case any obligated entity has failed to comply with the same strict action be initiated against such deviant entity in terms of the Regulations.

2. During the pendency of the petition, the petitioner keeping in view the negligible use of generation sets, installed for captive use/standby purposes, restricted his arguments to the extent of Open Access Obligated Entities and prayed for the directions to the State Nodal Agency for ensuring RPPO Compliance.

3. In the support of his petition, the petitioner has cited the verdict of the Hon'ble APTEL given on 20th April, 2015 in O.P.Nos.1,2 and 4 of 2013 i.e. the **Indian Wind Energy Association & another V/s APERC & others**, wherein the Hon'ble APTEL deemed it appropriate to give directions, under section 121 of the Electricity Act, 2003, to the State/Joint Commissions with regard to implementation of Renewable Energy Regulations in their respective States, as under:-

“In view of above discussions, we deem it appropriate to give directions to the State/Joint Commissions with regard to implementation of Renewable Energy Regulations in their respective States. The Tribunal after considering the contentions of the petitioners and the State/Joint Commissions, Central Commission and MNRE gives the following directions to the State/Joint Commissions under Section 121 of the Act:-

- (i) The State Commission shall decide the RPO targets 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. The Preferential Tariff for procurement of renewable energy by the Distribution Licensee for a financial year should also be in place before the commencement of the financial year and no vacuum should be left between the end of control period for the previous tariff and the beginning of control period of the new tariff.*
- (ii) The State Commissions shall obtain proposal with supporting documents for renewable energy procurement by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year as per the RPO Regulations. Suggestion and objections of public shall be invited on the above petition. The State Commission may give necessary directions with regard to RPO 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 RPO target, it may plan to purchase RECs to meet its RPO target as per the provisions of the Regulations. Advance planning of REC purchase will give opportunity to the distribution licensees/other obligated entities to purchase REC when the market conditions are more favourable to them.

- (iii) The monitoring of compliance of the RPO should be carried out periodically as provided for in the Regulations. 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 shall be invited in the review proceedings and decisions taken after considering the suggestions/objections, as per law.*
- (iv) The State Commission shall give directions regarding carry forward/review in RPO and consequential order for default of the distribution licensees/other obligated entities as per the RPO Regulations. If the Regulations recognise REC mechanism as a valid instrument to fulfill the RPO, the carry forward/review should be allowed strictly as per the provisions of the Regulations keeping in view of availability of REC. In this regard the findings of this Tribunal in Appeal no. 258 of 2013 and 21 of 2014 may be referred to which have been given with regard to RE Regulations of Gujarat Commission but the principles would apply in rem. In case of default in fulfilling of RPO by obligated entity, the penal provision as provided for in the Regulations should be exercised.*
- (v) The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.*
- (vi) The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations”.*

4. The Himachal Pradesh State Electricity Regulatory Commission (hereinafter referred as “the Commission”) has issued on 26.5.2010 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 (CERC 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.

5. The Regulation 4 of the said regulations provided as under:-

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

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

(b) The Captive an Open Access User(s)/Consumer(s), shall purchase electricity (in kWh) from renewable sources, at a defined minimum percentage of his total consumption.

Explanation.- For the purpose of this regulation “the defined minimum percentage” shall be as given in the Table below:-

Table- Defined minimum percentages

Year	Minimum Quantum of purchase (in %) from renewable sources (in terms of energy in kWh) of total consumption		
	Total	Non-Solar	Solar
(1)	(2)	(3)	(4)
2010-11	10.0%	10%	0%
2011-12	11.1%	11%	0.1%
2012-13	12.1%	12%	0.1%

6. The Commission vide subsequent notification dated the 03/10/2011 amended the RPO Regulations, which inter alia provided as under:-

Year	Minimum Quantum of Purchase (in %*) from renewable sources (in terms of energy in kWh) of total consumption	
	Total RPPO % age	Minimum Solar RPPO % of the total purchase
2011-2012	10.01	0.01
2012-2013	10.25	0.25
2013-2014	10.25	0.25
2014-2015	10.25	0.25
2015-2016	11.25	0.25
2016-2017	12.25	0.25
2017-2018	13.50	0.50
2018-2019	14.75	0.75
2019-2020	16.00	1.00
2020-2021	17.50	2.00
2021-2022	19.00	3.00

7. 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 Nodal Agency has to undertake functions under RPPO Regulations. Further the Commission vide notification dated 30th September, 2010, has appointed the 1st day of November, 2010, as the date on which the quantum of RPPO, inclusive of transmission and distribution losses, mentioned in sub-regulation (1) regulation 4 of RPPO Regulations, shall become applicable to the Captive & Open Access Users/Consumers. 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).

8. The Commission in the year 2013 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, i.e. the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Respondent Board”) had fully met and in fact exceeded the specified target in respect of Non-Solar RPPO for the last three years, but had 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 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.

9. The Commission, while appreciating the measures taken by the Respondent Board in over-achieving the RPO targets with regard to non-solar renewable energy sources, considering the difficulties faced by the Respondent Board in the procurement of solar energy despite steps having been taken, carried forward the deficit solar purchases for the year 2011-12 and 2012-13 to the years 2015-16 and 2016-17 respectively.

10. In the meanwhile M/s Ujaas Energy Limited filed petition, bearing Petition No. 129 of 2013, before the Commission, by invoking the jurisdiction of the State Commission under Section 86(1)(e) and Section 142 of the Electricity Act, wherein RPPO compliance

was sought. The said petition was disposed of vide Commission's Order dated 10th November, 2014, and paras 29,30 & 33 of which read as under:-

“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.

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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”.

11. The Order dated 10.11.2014, passed by the Commission on the said petition filed by M/s Ujaas Energy Ltd. was however challenged by M/s Green Energy Ltd. before the

Hon'ble APTEL. The Hon'ble APTEL in its Order dated 27.11.2015, has not disturbed that Order and has found the Commission Order dated 10.11.2014 to be in order. The penultimate paragraph of the said order, reads as under:-

“In the facts and circumstances of the present matter, we are not disturbing the Impugned Order but it shall not be treated as a precedent in future because the State Commission shall have to consider the purpose and intention of the proviso to Regulation 9 in letter and spirit and shall decide appropriate percentage of the default amount or the compensation amount whatever name is given to that, which should be utilized for the purchase of renewable energy certificates in case of short fall of Renewable Power Purchase Obligation (RPPO) by the distribution licensee from the renewable energy developers. Thus the apprehension of the appellant Association in future on this aspect stands allayed”.

12. The Hon'ble APTEL has imparted certain directions to the State Commission vide its decision dated 20.04.2015 rendered in O.P. Nos. 1,2 & 4 of 2013 – **the Indian Wind Energy Association & another V/s APERC & others (Supra)**, under Section 121 of the Electricity Act, 2003, which mainly relate to timely fixation of the RPPO and the preferential rates, periodic review of the compliance of RPPOs, by the obligated entities and exercise of the power to relax the provisions in a judicious manner only. It is obligatory duty of the State Commissions to implement the same. These directions are, by and large, being followed:

- (i) The RPPO targets for the period upto 2021-22 have already been fixed under the regulations and the Commission has, however, retained its power to revise the same, suo-motu or at the request of the Licensee.
- (ii) The preferential Tariff for power procurement of renewable energy by the Distribution Licensee for the current control period (upto 31.03.2017) in respect of SHPs and Solar PV projects upto 5 MW in respect of FY 16 are already in place.
- (iii) The HPERC has been reviewing the compliance of RPPOs by the Distribution Licensee, and has been stressing upon the State Nodal Agency to effectively monitor the RPPO compliance by the obligated entities.

13. Keeping in view the fact that the Respondent Board has over achieved the RPP Obligation for Non solar comprising of Hydro, Bio Gas and Wind Power components and for Solar RPO the matter has already been decided by the Commission for the year 2011-12 and 2012-13 and the Hon'ble APTEL vide its Order dated 10.12.2015, passed in Appeal No. 54 of 2015 filed by M/s Green Energy Ltd., has found the Commission's Order to be in

order and has not disturbed the same, the Respondent Board prays that the present petition filed by M/s Wind Power Association is not maintainable against the Respondent Board hence required to be dismissed.

14. During the hearing Sh. Vishal Gupta, the learned Advocate for the petitioner Association, states that though the Respondent Board is exceeding in achieving the RPPO targets, yet the other obligated entities, consuming electricity from their captive generation plants having capacity of 1 MW and above, and/or by procurement from conventional generation through open access, the provisions are not being complied with. This category of obligated entities, the consumption of which is merely 2 %, comprises of Industrialists and under the MYT Order dated 10th April, 2015 they have been accorded special dispensations. The non-compliance by such obligated entities certainly impacts the consumers in general and the interest of Indian Wind Power Association and its members. He further adds that the Hon'ble APTEL in its Order 20-04-2015 rendered in O.P. Nos. 1, 2 & 4 of 2013- **Indian Wind Energy Association V/S APERC & others (Supra)** has also directed the SERCs to monitor the RPPO compliance periodically as provided in the Regulations and the State Commissions must act strictly in accordance with its regulations. Thus the present petition is maintainable and the petitioner Association has also moved similar petitions before the other State Commissions in the country.

15. In response to the petition Sh. Manoj Kumar, Snr. XEN, representing the Directorate of Energy, i.e. the Respondent No.2, submits that the RPPO Regulations are being complied with, but due to the non-availability of relevant data of such obligated entities, consuming electricity from captive generation plants of 1 MW and above, the full status of compliance cannot be confirmed. The efforts are being made to collect the said data through the Discom i.e., HPSEBL and the Electrical Inspectorate of the GoHP.

16. Sh. Munish Verma, with references to the above submissions made by the Respondent No. 2, urges that there are number of inconsistencies in the status reported by the Respondent No.2 and as such the prayer of the Respondent No.2 to dismiss this petition should not be acceded to. The data furnished by the said Respondent No. 2 discloses that the numbers of the Obligated Entities have not purchased the RECs and as such they cannot be deemed to have met their RPP Obligations, as envisaged under the RPPO Regulations, so in case of short-fall of RPPO they are liable to purchase RE Certificates. There, is apparent need for issuance of appropriate directions to the Obligated Entities for compliance of the RPPO Regulations.

17. Per contra Sh. Manoj Kumar, Senior Xen, appearing on behalf of Respondent No.2, submits that despite various problems/difficulties being a new initiative, lack of awareness about RPPO Regulations amongst the Obligated Entities, identification of all the eligible Standby Captive Users, delay in verification of energy generation data and limited one day on line trading session (in a month) for purchase of RECs in various power exchanges of the country, the Respondent No.2, which is the Nodal Agency, is making best efforts for ensuring compliance of the RPPO in the State. The Open Access Users have started the compliance. More than 67% of the applicable Non-Solar and 80% of the Solar RPPO targets (upto the end of 2nd quarter) have already been achieved. So far as the Open Access Users are concerned there is no much difficulty in ensuring the compliance of the RPPO Regulations as there are only nine (9) Open Access Users, In this process the DISCOM i.e. HPSEBL have also been associated for the propose of verification and maintenance of log books consisting of standby/captive generators record.

18. Sh. Munish Verma, representing the petitioner Association, is convinced that in a State like Himachal Pradesh, where availability of the electric supply is 24x7, the use of generation sets are negligible and the generation by the standby/captive users is not much, and their identification is a herculean task. Sh. Verma therefore, restricts his arguments to the Open Access Users and prays for directions to the Nodal Agency for ensuring RPPO compliance by them, and prays that the status report may be directed to be filed before the Commission.

19. Sh. Manoj Kumar further submits that it is wrong to allege that obligated entities are not complying with the RPPO fixed by this Commission. As a matter of fact, this Commission has designated the Respondent No.2 as the State Nodal Agency for the purpose of RPPO regulations hence it is an authority created under the administrative control of Govt. of H.P. to promote power generation, as the State Nodal Agency. The State Nodal Agency has already identified all the 9 nos. of Open Access users (A list of 118 nos. of Standby Users has also been supplied by the Commission to the State Nodal Agency). The State Nodal Agency is continuously working on all the obligated entities to comply with the statutory RPPO Regulations. The action for the compliance of RPPO and effective implementation of the same has already been started for the categories of obligated entities as per details given below:-

- (a) The Open Access Users have started the compliance. The factual status in the matter is that more than 67% of the applicable Non Solar and 80% Solar RPPO targets (upto the end of 2nd Quarter) have already been achieved.

(b) Whereas , in case of standby users:-

- 10 nos. of consumers have fully complied the Renewable Power Purchase Obligations (RPPO).
- 16 nos. of consumers have partially complied the RPPO Regulations till date, however, they are close to full compliance.
- Further, 30 nos. of consumers are in contact with the State Nodal Agency for discharge of their obligations.

The State Nodal Agency is making best efforts to implement the statutory RPPO on the left out standby/captive users also.

20. The Respondent No. 2 also submits that the RPPO compliance is a new initiative of the Central Regulatory Commission, MoP, GoI. While implementing the RPPOs by the obligated entities the State Nodal Agency has faced number of challenges, some of them are as under:-

- Lack of awareness about the RPPO Regulations among the obligated entities and field staff, being spread out in different industrial clusters and tough terrains of the State.
- Identification of all the eligible Standby/Captive Users as no specific data is available with exact detail of eligible users in any Govt. Department.
- Delay in verification of standby energy generation data.
- Dependency of data/information on multiple departments.
- Limited one day online trading session (in a month) for purchase of RECs in various power exchanges of the country.

21. Despite all the problems, as stated above, the State Nodal Agency is making best efforts for compliance of statutory Renewable Power Purchase Obligations (RPPO) in Himachal Pradesh.

22. The State DISCOM i.e. HPSEBL has also been roped in for the purpose of verification and maintenance of log books consisting of standby/captive generators record. The concerned Assistant/Sr. Executive Engineers of the Operation Wing of the HPSEBL are authorised officers, to verify the data. The idea of the implementation of mandatory RPPO regulations in the field units is making headways in the last few months.

23. According to the Respondent No.2 action to impose the penalty on defaulter captive/standby generators is premature at this stage, however it is the prerogative of Commission. The list of captive/standby generators widely spread all over the State has still not been finalized/freeze as on 30.10.2015. As all the obligated entities have not respond to the Commission's appeals/notices for making voluntary disclosures. When all

the left out entities are be identified and included in the list, only then penalty mechanism can be evoked effectively.

24. Sh. Manish Verma, representing the petitioner Association, submits that though the status of RPPO Compliance by the Open Access (OA) Users in the State and the progress gained in identification of standby and Captive Users submitted by the Respondent No. 2 i.e. the State Nodal Agency, in pursuance of this Commission's Interim Order dated 27.02.2016, reveals that most of the RPPOs are reported to have been complied with, yet instances of non-compliance still exist. He highlights that the non-compliance of RPPO is likely to be the loss to the nation at large and urges that the Commission should direct the State Nodal Agency to ensure full compliance of RPPO. According to him the RPO compliance is being asked for other SERCs in the country i.e. especially the Punjab Electricity Regulatory Commission and Rajasthan Electricity Regulatory Commission etc.

25. Per Contra Sh. Manoj Kumar, representing DoE, i.e. Respondent No. 2, intimates that the RPO compliance is being monitored quarterly and the compliance data relating to the obligated entities stand posted on the website of the DoE.

26. The Commission taking note of the above submissions, asked the Respondents i.e. HPSEBL and the State Nodal Agency to submit the consolidated yearwise data of RPPO compliance, by obligated entities (including O.A users, standby and captive users, consuming electricity from their captive generation plants having capacity of 1.00 MW and above).

27. The Respondent Board submits the yearwise achievements for Solar and Non-solar of RPOs against the target set up by the Commission as under:-

Solar RPPO's

Sr. No.	Description	Quantum (in MUS)	Quantum (in MUS)	Quantum (in MUS)	Quantum (in MUS)
1	Financial year	2014-15	2013-14	2012-13	2011-12
2	Energy Sales	7826.90	7535.83	7223.5	6918.08
3	T & D Loss	12.21%	12.36%	13.62%	13.36%
4	Total energy procured for supply with state	8915.48	8598.99	8362.6	7984.62
5	Renewable Purchase Obligation (%) - Solar	0.25%	0.25%	0.25%	0.01%
6	Renewable Purchase Obligation (MU)	22.29	21.50	20.91	0.80
7	Total Solar Purchased on tariff u/s 62 & 64	2.70	0.00	0.00	0.00
8	Total surplus (+) Deficit (-)	-19.59	-21.50	-20.91	-0.80

RPPO's non-Solar

Sr. No.	Description	Quantum (in MUS)	Quantum (in MUS)	Quantum (in MUS)	Quantum (in MUS)	Quantum (in MUS)
1	Financial year	2014-15	2013-14	2012-13	2010-11	2010-11
2	Energy Sales	7826.90	7535.83294	7223.51	6642.13	6642.13
3	T & D Loss	12.21%	12.36%	13.62%	11.95%	11.95%
4	Total Energy procured for supply with in State	8915.48	8598.99	8362.61	7543.30	7543.30
5	Renewable Purchase Obligation (%)	10.00%	10.00%	10.00%	10.00%	10.00%
6	Renewable Purchase Obligation (%)	891.55	859.90	836.26	754.33	754.33
7	Total RE purchased on tariff u/s 62 & 64					
a)	HPSEBL's own generation from 25 MW & below projects	378.76	328.75	329.31	291.63	291.63
b)	Power Purchase from IPP (25 MW & below)	1074.40	1008.89	905.73	608.87	608.87
c)	Free power of GoHP from IPP less than 25 MW	59.43	37.66	33.59	19.92	19.92
d)	Free power of GoHP from own generation	32.57	25.70	24.32	21.46	21.46
	Total R.E. purchased	1545.16	1400.99	1292.95	941.88	941.88
8	R.E. sold outside its area of supply	472.261	0	257.31	0	0
9	Total R.E. purchased for supply	1072.90	1400.99	1035.64	941.88	941.88
10	Total surplus RE eligible for REC	181.35	541.09	199.38	187.55	187.55

28. The Respondent Board further submits that it has overachieved the targets fixed by the Commission for the Non-Solar RPPO and the shortfall in the targets of Solar RPPO has been adjusted as under:-

- (i) the Commission vide its Order dated 29.07.2013 has ordered that this shortfall of RPPOs for 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,
- (ii) the Commission has already worked out compensation of Rs. 17.23 Crore under Regulation 9 of the RPPO Regulations to be deposited by the Respondent Board for non-compliance of Solar RPPOs during 2013-14.

(iii) the status of Solar RPPO in FY 2014-15 in respect of HPSEBL is as under:

Year	Demand (MUs)	Solar RPPO		Achieved (MUs)	Shorfall (MUs)
		% age	MUs		
2014-15	8915.48	0.25	22.29	2.70	19.59

29. During the year 2014-15, HPSEBL was unable to fulfil its minimum solar RPPO due to the following constraints that:-

- (i) the Respondent Board had initially signed Power Purchase Agreement on 21.11.2011 with NTPC for their Anta Solar Thermal Power Project (15MW) to fulfill its Solar RPPO. However, due to certain road blocks faced by NTPC for the commissioning of Anta Solar Plant as claimed by NTPC vide their letter dated 01.11.2012 HPSEBL signed Supplementary Agreement with NTPC on 19.12.2012 for purchase of power from Singrauli Solar PV Project (15 MW). The expected commissioning of the project was informed as December, 2013. Due to non commissioning of the project as per above schedule, the matter was taken up with NTPC. NTPC vide letter dated 08.07.2013 informed that the above mentioned project was likely to be awarded in July, 2013 and was expected to be commissioned by March, 2014. For achieving solar RPPO targets, the HPSEBL had again taken up the matter with NTPC vide letter dated 10.03.2014. In compliance to above, NTPC vide their letter dated 21.03.2014 informed that Singrauli Solar PV Project (15 MW) had been awarded during August, 2013 to M/s BHEL with commissioning schedule stated to be to 8 months. However, due to delayed supplies and slow progress, the anticipated commissioning schedule was revised to June, 2014,
- (ii) further due to delayed commissioning of the project, the Respondent Board again took the matter repeatedly with NTPC vide letters dated 21.06.2014 and 15.07.2014, wherein, the seriousness of delay in commissioning of the project was conveyed and it was apprised that HPERC had viewed it seriously and finally vide letter dated 28.10.2014 NTPC was threatened that any further delay in the commissioning of the project will force HPSEBL to move out of the PPA in response to which NTPC vide their letter dated 17.11.2014 and 27.11.2014 informed that project was commissioned on 31.12.2014 and respondent Board started availing the entire quantum of solar power from this project,
- (iii) in addition to above, HPSEBL vide letter dated 01.11.2013, 12.03.2014 and 10.07.2014 also requisitioned 20 MW solar power under Batch I, Phase II of the JNNSM scheme of the Government of India. The HPSEBL was allocated 20 MW

power under Batch I, Phase II of the JNNSM scheme of MNRE, GoI w.e.f. 04.06.2015,

- (iv) due to delay in commissioning of Singrauli Solar PV Project (15 MW) and allocation of Solar Power by MNRE, GoI, the Respondent Board also explored purchase of Solar Power from open market by floating tenders. However, no bidder offered solar power inspite of repeatedly extending the date of receipt of tender,
- (v) it is also relevant to mention that in the year 2015-16, the Respondent Board is expected to over-achieve the solar RPPO specified by the State Commission including the carrying forward for the year 2011-12 and continue the same for the next year 2016-17. The shortfall in the procurement of the solar power during the year 2014-15 was only due to the excessive delay in commissioning of Singrauli Solar PV Project (15 MW) which was beyond the control of the Respondent Board and partially due to delay in allocation of power by MNRE, under Batch I, Phase II of the JNNSM, GoI,
- (vi) further it is submitted that the Respondent Board had filed the above submissions to the Hon'ble APTEL in Appeal No. 54 of 2015 that in the FY 2015-16, it was expected to overachieve the RPPO Targets given by the State Commission including the carry forward shortfall for the previous financial years (Refer Para 6 (k) of the judgment.
- (vii) further in order to meet yearwise targets of solar RPO's the Respondent Board has also entered into contract for purchase of Solar Power from SECI 20 MW.

The Table below provides the snapshot of the RPPO targets as well as the Solar Power availability for FY 16 and FY 17:

Particulars	FY 16	FY 17
Total Power consumption in the state (MU)	9364.01	9872.14
Solar Purchase Obligation (%)	0.25%	0.25%
Solar RPPO Obligation (MUs)	23.4	24.7
SECI	29.0	33.3
Singrauli Solar	27.02	25.0
Surplus available after meeting RPPO obligations of Respective years (MUs)	32.8	33.6

From the above Table it is clear that the HPSEBL would be able to meet its solar RPPO from the solar power projected to be available for FY 16 and FY 17. It is pertinent to mention that even after meeting its estimated RPPO for FY 16 & FY 17; the HPSEBL

would be left with sufficient solar power to meet the unmet obligations for the previous years.

Thereafter the shortfall of 19.32 MU of FY 15 is to be met in following ways-

- (a) 13.6 MU in FY-16
- (b) 5.99 MU in FY-17

30. The Respondent Board also submits that in the modification of REC Procedure in Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation (Third Amendment) Regulation, 2014, the following is specified in Format 1.4 (Recommendation by State Electricity Regulatory Commission for issuance of REC):-

“Any shortfall in procurement against the Non- Solar or Solar Power Procurement obligation set up the Appropriate Commission in 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 threshold purchase organization being that specified by the appropriate Commission or in the National Action Plan or Climate Change, or in the Tariff Policy, whichever is higher shall be considered for issuance of REC to the distribution Licensee”.

31. In view of the directions of the CERC as aforesaid, the HPSEBL shall file the RPP obligation compliance report for FY 2014-15 along with report for FY 2015-16 & FY 2016-17 duly accounted i.e. surplus and deficit for these years in accordance with the procedure specified by the CERC.

32. The State Nodal Agency has posted the compliance status on its website and has also submitted the yearwise data of RPPO Compliance by the obligated entities (other than the DISCOM), to the Commission.

33. After considering the contents of the petition, and the submissions made by the respondents, the following issues arise for consideration:-

- (a) Whether the petition is maintainable?
- (b) Whether RPPO are being complied with by the DISCOM and other Obligation Entities, if not, what necessary directions should be made?

34. **Issue No. 1:** This issue pertains to the maintainability of the petition.

The Indian Wind Power Association has moved this petition for effective enforcement of the Renewable Power Purchase Obligation (RPPO) by the obligated entities as per the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010. The petitioner has relied upon the verdicts of the Hon’ble APTEL

rendered on 20.04.2015 while disposing of petitions bearing Appeal Nos. 1 & 2 of 2013, under Section 121 of the Electricity Act, 2003; and on 25.04.2014 rendered in Appeal No. 24 of 2013, as well as the Hon'ble Supreme Court Judgment dated 13.05.2015 rendered in **Hindustan Zinc Ltd. v/s the Rajathan Electricity Regulatory Commission (2015 (6) SCALE 706)** cited in para 27 of the petition in support of the maintainability of the claim, wherein some Member Appellant groups/Associations were engaged in the specific operation in the concerned State. In the cited case the Hon'ble APTEL, while deciding the maintainability in favour of the Appellant, also advanced the reason that the Appellant has also filed the supporting document regarding its registration, list of Members, including their operations in Gujarat, who were aggrieved by the impugned Order. In the present case even though the petitioner is an Association registered under the Tamil Nadu Societies Registration Act, 1975, the details of operation(s) carried out by the members of the petitioner Association in Himachal Pradesh and the manner in which they are aggrieved due to non-compliance, if any, of the RPPO by the obligated entities in Himachal Pradesh, have not been spelt out. However, the fact remains that the petition is for a common cause and not for any specific relief to any individual(s). Moreover, the State Commission cannot be silent spectator to the violations of the provisions of the Act, and regulations framed thereunder.

The Hon'ble Tribunal in **RE Tariff Revision (Suo-moto action on letter received from Ministry Power O.P. 1 of 2011, 2011 ELR 1742 (p56)** has observed that the hands of the State Commission cannot be assumed to be tied up to prevent them from enforcing the statutory mechanism. There are decided cases by the Hon'ble Supreme Court as well as the Hon'ble Tribunal in which it has been held that State Commissions have complete powers to impose conditions, to frame regulations and to issue directions as also to enforce them. It may, therefore, be appropriate, in the interest of justice, to consider the petition, when the State Commissions are otherwise duty bound to effectively enforce the RPPO.

35. In light of the above, this issue is decided in favour of the petitioner.

Issue No. 2

36. The next issue is relating to the RPPO compliance by the DISCOM and the obligated entities. In this regard it is appropriate to state that the Commission monitors the compliance of RPPOs by the Distribution Licensee directly at its level without much involvement of the Nodal Agency. In relation to the compliance of RPPOs by the obligated entities, other than the Distribution

Licensee, as per the status reported by the Nodal Agency for the period upto 31.03.2017, the position briefly emerges as under:

- (a) The status of RPPO compliance by obligated entities other than DISCOM is as under:-

Table

A. Status Report of RPPO compliance by the Consumers availing Open Access in the State

Sr. No.	Description	No.	Approx. Shortfall (MWh)		Range in which shortfall on non-solar falls (MWh)
			Solar	Non-Solar	Non-Solar
1	Obligated entities already identified.	12	-	-	-
2.	Compliance status.				
	(a) Fully compliant	4	-	-	-
	(b) Almost compliant ($\geq 90\%$ Compliant)	4	24	1064	45 to 778
	(c) Non-compliant ($< 90\%$ Compliant)	4	11	4513	163 to 3969
	Sub-total	12	35	5577	-

Table

B. Status Report of RPPO compliance by other obligated entities (i.e. other than Open Access Consumers having captive plants/standby plants and the DISCOM.

Sr. No.	Description	No.	Approx. Shortfall (MWH)		Range in which shortfall on non-solar falls (MWH)
			Solar	Non-Solar	Non-Solar
1	(i) Obligated entities already identified.	105	-	-	-
	(i) Under verification	11	-	-	-
	Total	116	-	-	-
2.	Obligated entities for which reconciled compliance status is not available.				
	(a) Non responsive	33	Data Not available		
	(b) Responsive	19	151	7711	2 to 2553
	Sub-total	52	151	7711	
3.	No. of obligated entities for which reconciled compliance status is available.				
	(a) Fully compliant	12	-	-	-
	(b) Almost compliant ($> 90\%$ Compliant)	18	1	135	1-62
	(c) Non-compliant ($< 90\%$ Compliant)	23	55	623	2-182
	Sub-total	53	56	758	

Note: The information in these Tables has been compiled for indicative purposes only. Moreover, the status is based on the net cumulative RPPOs and compliance upto 31.03.2016. The status based on yearly data may be different.

(b) From the status depicted in the foregoing Tables the following main points emerge:-

- (i) the status of 11 consumers about their coverage in the scope of obligated entity is yet to be ascertained, keeping in view the position that whereas the relevant RPPO Regulations specified cut off limit on MW basis, the name plate ratings of the generating sets installed by them are in MVA. Accordingly, in marginal cases, depending upon the power factor, these consumers may either fall within, or may be out of, the ambit of the obligated entity;
- (ii) 33 Consumers have, inspite of repeated reminders, not responded to the communications from the Nodal Agency, and in absence of adequate response, the Nodal Agency has not been able to compile/reconcile their status of RPPOs compliance;
- (iii) The 68 (i.e. 4+4+19+18+23) obligated entities are stated to have not fully complied with RPPOs, even though the degree of compliance varies significantly.
- (iv) The Nodal Agency has stated that from FY 2013-14 onwards Open Access/Captive/Standby entities have started complying the RPPOs obligations by purchasing the Renewable Energy (or REC's) and most of the obligated entities have purchased the outstanding (previous backlog) REC's of FY 2010-11 to 2013-14 in the FY 2015-16. With a view to allow the roll over purchase of REC's to eligible entities of Open Access/ Captive and Standby Generation, it has been proposed by the State Nodal Agency to allow the roll over purchase of REC's to the eligible entities of Open Access/Captive and Standby Generation, who have tried to implement the compliance of RPPOs. It has also been proposed that the various obligated entities, may be given more time to comply with RPPOs. Time extension of three months has been proposed for the Open Access Consumers and three to six months has been proposed for Captive/Standby consumers depending on their degree of compliance.
- (v) The Commission has also tabulated the MWh range in which the shortfalls fall and observes that the said range varies considerably for the non-compliant categories of obligated entities. The Commission expects the

Nodal Agency to carry out analysis on this basis also and pursue the matter vigorously in case of the entities having higher shortfalls. It may generally be in order if, to start with, the entities having cumulative shortfall of more than 100 MWh or so are dealt on priority and monitored very closely. It is also interesting to note that the 19 obligated entities for which complete data is not available contribute maximum quantum of shortfall even on the basis of the data for the limited period for which status is available. This may be so because they have never purchased any renewable energy through RECs or any other mode. Identification and close monitoring of such obligated entities may also make the monitoring process more effective and result oriented.

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.

38. The Commission, after taking note of the submissions made by the parties and the progress achieved by the Nodal Agency in identifying and monitoring the RPPOs compliance status, observes that, apart from the need for meticulous follow up action by the Nodal Agency, some of the procedural aspects also need to be rationalized so as to

facilitate smooth implementation of the regulations in relation to the compliance of the RPPOs. In view of above, the Commission decides as under:

- (i) In respect of 11 consumers in whose case the status of being an obligated entity or otherwise, is yet to be ascertained, the Nodal Agency shall submit the copies of name plate ratings of the generating sets installed by them, alongwith its specific suggestions, in consonance with the regulations in force, so that the Commission may pass appropriate order in relation to their coverage in the scope of obligated entity for the relevant period(s). The Nodal Agency shall submit these details to the Commission within 60 days from the date of this order.
- (ii) In respect of 33 obligated entities, who are not responding to the communications from the Nodal Agency, the Nodal Agency shall serve notices to such obligated entities, clearly indicating its intention to suggest to the Commission specific action to be taken against them,. The Nodal Agency shall also ensure service of all such notices upon the concerned obligated entities. Thereafter the Nodal Agency shall, within 120 days from date of this Order, apprise the Commission the RPPO status of compliance by each of such obligated entities, clearly stating the extent of co-operation extended by them in compliance of RPPOs.
- (iii) The Nodal Agency shall prioritize the obligated entities in order of the magnitude of the shortfall for the purpose of close monitoring of the compliance so as to improve the compliance status in respect of such prioritized non-compliant entities. This however does not mean that the compliance in respect of other obligated entities is not to be ensured.
- (iv) The Nodal Agency shall meticulously follow the matter with concerned obligated entities (other than HPSEBL) for strict compliance of the RPPOs with an underlying objective of ensuring that all the obligated entities fully comply with their RPPOs for the previous years, as well as for the current financial year, by 31.03.2017 in consonance with the RPPO Regulations. However, in case of obligated entities priotized as under preceding item (iii) the time extensions and relief for carry forward upto 31.03.2017 shall be allowed only after obtaining specific undertakings from such entities to comply with RPPOs fully by 31.03.2017. Such undertakings will be obtained by the State Agency. Moreover, in case of any intentional non-compliance on the part of any obligated entity, it shall bring the matter

before the Commission alongwith specific suggestion in relation to the action to be initiated against such defaulting obligated entities.

- (v) The Nodal Agency shall post the updated compliance status on the website and shall also send reports to the Commission on quarterly basis.
- (vi) So far as the RPPO compliance by the DISCOM is concerned, the matter shall be appropriately dealt with separately by the Commission.

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, he 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.

40. The Second issue is disposed of accordingly

41. 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 the disposal of this petition entailed information/data generation, collection, consideration and analysis from sources of the State Designated Agency, which consumed some time.

The petition is disposed of in the terms of this Order.

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