

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: Petition under section 86(1)(e) of the Electricity Act, 2003 read with Regulations 15.4 and 18 of Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Source of Energy), (Revision-II) Regulations, 2021.

ORDER

**(Hearing through video conferencing)
(Date of Order: 07.02.2024)**

MP Industrial Development Corporation,
1st Floor, Atulya IT Park, Near Crystal IT Park,
Khandwa Road, Indore,
452007 (MP)

- **Petitioner**

Vs.

Managing Director,
MP Power Management Co. Ltd.,
Regional Office, Near Bhojpur Club, Arera Colony,
Bhopal, (MP), 462016

- **Respondents**

Shri Ashish Bernard, Advocate & Shri Kabir Paul, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of the Respondent.

The subject petition is filed by MP Industrial Development Corporation, Indore under Section 86(1)(e) of the Electricity Act, 2003 read with Regulations 15.4 and 18 of Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Source of Energy), (Revision-II) Regulations, 2021.

2. By affidavit dt. 17.09.2023, the petitioner broadly submitted the following:

- i. *That, the petitioner MPIDC, erstwhile MP Audyogik Kendra Vikas Nigam (Indore) Ltd., (hereinafter referred as the Petitioner or the Distribution Licensee), is a Company incorporated under the Companies Act, 1956 (Now Companies Act, 2013) having its registered office at 1st Floor, Atulya IT Park, Near Crystal IT Park, Khandwa Road, Indore, before the Hon'ble Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as MPERC or the Commission). The Petitioner-MPIDC has been entrusted with the responsibility of industrial promotion though development of industrial growth centers in selected Parks of its jurisdiction in the state of Madhya Pradesh. Industrial land in Madhya Pradesh is allotted through the*

regional offices of MPIDC. There are total 5 Regional Offices (ROs) – Bhopal, Gwalior, Indore, Jabalpur and Rewa.

- ii. *That, the Petitioner is a SEZ developer and is responsible for providing various services to the business units which setup their factories in the SEZ premises. The Petitioner is a deemed distribution licensee under the Fifth Provision to Section 14 of the Electricity Act, 2003 as well as Section 11 of the Indore Special Economic Zone (Special Provision) Act, 2003. The area of supply of the Petitioner is SEZ Indore (Pithampur) within the State of Madhya Pradesh (MP). As a deemed licensee, Petitioner-MPIDC also supplies power to the occupants of the SEZ. For this purpose, the petitioner had procured power from MPPMCL through short-term contracts between FY 2010-11 till 31 March 2015. Thereafter, under the directives issued by the Government of Madhya, the petitioner entered into Bulk Supply Agreement on 29.03.2016 with MPPMCL for long term supply of electricity to SEZ MPIDC on pro rata-basis with effect from 01.04.2015.*
- iii. *That, under Section 86(1)(e) of the Electricity Act, 2003 and the National Tariff Policy 2006, Renewable Purchase Obligation (RPO) mechanism is mandated on the obligated entities which are required to purchase certain percentage of electricity from renewable energy sources, as a percentage of the total consumption of electricity. RPOs are categorized as Solar and Non-Solar RPOs. The RPO targets specified for solar and non-solar power are to be adhered and met uniformly by the Obligated Entities of all the States and Union Territories. Being a deemed licensee as stated above, the petitioner was also under the obligation to meet its statutory RPO obligation.*
- iv. *That, subsequently, the Madhya Pradesh Electricity Regulatory Commission (Co-Generation and Generation of Electricity from Renewable Sources of Energy (Revision-II) Regulations, 2021 came into operation under which Regulation 3 specifically laid down the quantum of purchase of electricity from generation/ co-generation from Renewable Sources of Energy, reproduced as under:*

Financial Year	Generation/ Cogeneration from Renewable		
	Solar	Non-Solar	Total (%)
2021 -22	8.00%	9.00	17.00%
2022-23	9.00%	9.50	18.50%
2023-24	10.00%	10.00	20.00%
2024-25	11.00%	10.50	21.50%
2025-26	12.00%	11.00	23.00%
2026-27	13.00%	11.50	24.50%

- v. *That, Regulation 3.4 stipulates the conditions for failure of an obligated entity to fulfill the minimum purchase obligations which provides that if an obligated entity is not able to fulfil the minimum purchase requirements as per Regulations 3.1 and 3.3, such obligated entity shall be required to purchase Renewable Energy Certificates issued by the Central Agency as specified in Part-B of the Regulations. Regulation 15.4 further provides that in case of genuine difficulty in complying with the RPO on account of non-availability of renewable power or certificates, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year and the Commission will take the appropriate view in the matter on case-to-case basis. In furtherance of the aforementioned provision, the petitioner has approached the Hon'ble Commission by way of the present petition.*
- vi. *That, the petitioner had approached the Hon'ble Commission vide Petition No. 03/2022 for "Multi Year Tariff for FY 2022-23 to FY 2026-27" and MPERC Order No. 03/2022 for "ARR for Control Period for FY 2022-23 to FY 2026-27 and Retail Supply Tariff Order for FY 2022-23" wherein this Hon'ble Commission had issued a new directive towards non-compliance of Renewable Purchase Obligation. As per the above directives of the Hon'ble Commission, the Petitioner-MPIDC had not met its Renewable Purchase Obligation (RPC) for FY 2019-20 and FY 2020-21. In view of this, the Hon'ble Commission directed the Petitioner to submit the details of the compliance made by the Petitioner towards RPO trajectory specified by the Commission in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations and amendments thereof from FY 2010-11 to FY 2021-22 within three months from the date of issuance of the order.*
- vii. *That, the petitioner thereafter submitted its explanations to the Hon'ble Commission with respect to the reasons for non-fulfillment of the RPO obligations and the steps taken by the petitioner in regard to the same. However, the Hon'ble Commission maintained its view as earlier taken and once again under the ARR for FY 2023-24 and Retail Supply Tariff Order for FY 2023-24 passed the directives as per which the Petitioner was directed to submit the details of the compliance made towards the RPO trajectory specified by the Commission in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations and amendments thereof from FY 2010-11 to FY 2021-22 within three months from the date of issuance of the order.*
- viii. *That, subsequently the petitioner vide its letter dated 14.03.2023 apprised the Hon'ble Commission regarding fulfillment of petitioner's RPO requirement. The petitioner submitted that it has been procuring power from MPPMCL through long-term contract since 01.04.2015. Prior to 01.04.2015, the Petitioner was procuring power from MPPMCL through short-term contracts and had an RPO arrangement with MPPMCL, as mentioned in the MPPMCL's letter dated 24.06.2014 written to the petitioner. As per the above stated letter, MPPMCL was supplying blended power to the petitioner-MPIDC and the obligation towards RPO compliance was also undertaken by MPPMCL, accordingly, the petitioner had not purchased any*

renewable power separately.

- ix. *That, the petitioner further stated that presently it is procuring power from MPPMCL under long-term agreement since 01.04.2015. Accordingly, petitioner's RPO from FY 2015-16 to FY 2021-22 stands at 313.67 MUs (211.1 MUs Non-Solar and 102.57 MUs Solar) and to fulfil this RPO requirement, petitioner apprised the Hon'ble Commission that it was planning to fulfil the same through consumption of self generated renewable power for which the petitioner has initiated necessary processes like ground survey etc. for development of renewable power plant within its licensee area.*
- x. *That, the petitioner vide its letter dated 14.06.2023 requested the Hon'ble Commission for approval to purchase Renewable Energy Certificates for compliance of RPC) prior to FR 2022-23 and addressed the issue regarding fulfillment of RPO target in the following parts:*
- a. *Part 1 – Fulfillment of RPO Compliance for the period FY 2010-11 to FY 2014-15.*
- b. *Part 2 – Fulfillment of RPO Compliance target from FY 2022-23.*
- c. *Part 3 – Fulfillment of RPO Compliance for the period FY 2015-16 to FY 2021-22.*
- xi. *That, it was stated therein that regarding fulfillment of RPO Compliance for the period FY 2010-11 to FY 2014-15, the petitioner had procured power from MPPMCL through short term contracts till 31.03.2015 and within the said contract the obligation towards RPO compliance was also undertaken by MPPMCL as mentioned in their letter dated 24.06.2014. It was also apprised to the Hon'ble Commission that the petitioner has successfully fulfilled/ complied the RPO for FY 2022-23 by way of procurement of RECs.*
- xii. *That, with respect to fulfillment of RPO Compliance for the period FY 2015-16 to FY 2021-22 the petitioner stated that it is procuring thermal power from MPPMCL under long-term agreement since 01.04.2015 and the petitioner is liable to procure renewable power separately to fulfill its RPC) obligation. Since MPPMCL is fulfilling MPIDC's entire demand and as per directive no. (viii) of the order dated 30.03.2016 of Government of Madhya Pradesh and Clause No. 7 of the BPSA (between MPPMCL and MPIDC), the petitioner requested MPPMCL to quote for renewable power (Solar and Non-Solar) through its letters dated 09.02.2018 and 22.07.2022, however, the petitioner has not received any quotations or reply from MPPMCL so far. The petitioner in the aforesaid letter calculated that 3,13,670 nos. of REC are working out to comply with the backlog of the RPO from FY 2015-16 to FY 2021-22.*
- xiii. *That, by way of the aforesaid letter, the petitioner also apprised the Hon'ble*

Commission of genuine difficulty and peculiar situation and requested a one-time opportunity to comply with the backlog RPO by purchase of RECs. The reasons and difficulties being faced by the petitioner has below:

- (a) As per Government of Madhya Pradesh order dated 30.03.2016 directive no. (vii) MPIDC has signed Long-Term Bulk Power Supply Agreement with MPPMCL for 40 MW on 29.03.2016 for 25 years to meet its total power requirement from MPPMCL. As per directive no. (viii) of GoMP and Clause No. 7 of the BPSA (between MPPMCL and MPIDC), MPIDC has requested MPPMCL to supply green power to fulfill its RPO obligation, however, response from MPPMCL is still awaited.*
 - (b) Due to non-acceptance of Petition of MPIDC (till FY 2016-17) by the Hon'ble Commission, MPIDC was suffering huge loss of -Rs. 25 crores per year. However, after complying all the directives of the Hon'ble Commission, MPIDC filed True-Up Petition for FY 2010-11 to FY 2015-16 on 20.01.2018 for a revenue gap of Rs. 85.93 crores and the Hon'ble Commission passed its order on 13.01.2020 with Net Revenue Gap of Rs. 21.72 Crore.*
 - (c) Trading of REC was kept on hold by Hon'ble APTEL till the final outcome of Appeal No. 113/117/118/123/137/138 of 2020. The final order of the aforesaid appeal was issued by Hon'ble APTEL on 09.11.2021.*
 - (d) Trading of green energy (GDAM) on the platform of Power Exchange commenced from August 2020 after approval of CERC. However, the rates of green energy in Power Exchange are on higher side as compared to the rates approved by Hon'ble MPERC in MPIDC's ARR & Tariff orders.*
- xiv. That, the petitioner assured that it is committed to comply the carry forwarded RPO since FY 2015-16 to FY 2021-22. It was requested by the petitioner that approval to purchase RECs and procure the backlogs/ carry forward RPO from open market within six months be granted so that the petitioner can fulfil the accrued pendency at the earliest. It was also humbly requested that considering the huge amount involved to comply the backlog, Hon'ble Commission be pleased to spread the cost in phased manner in five to seven years on SEZ Consumers.*

ISSUES FOR CONSIDERATION:

- xv. The petitioner respectfully submits issues for consideration of this Hon'ble Commission as under:-*
- (i) Whether the present case falls under the category of genuine difficulty under Regulation 15.4 of the MPERC Co-generation and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021?*
 - (ii) Whether approval to purchase RECs and procure backlogs/ carry forward*

RPO from open market for FY 2015-16 to FY 2021-22 be granted to MPIDC?

- (iii) Whether, the cost to be borne by MPIDC be permitted to spread the cost in phased manner of five to seven years on SEZ Consumers?

SUBMISSIONS OF MPIDC ON THE ISSUES SUBMITTED FOR CONSIDERATION BEFORE THIS HON'BLE COMMISSION:

- xvi. *It is respectfully submitted that the Hon'ble Commission on various occasions have considered the request of Discoms under Regulation 15.4 of the MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021 which provides that "in case of genuine difficulty in complying with the RPO on account of non-availability of Renewable power or certificates the obligated entity can approach the Commission to carry forward the compliance requirement to the next year".*
- xvii. *It is respectfully submitted that the petitioner had procured power from MPPMCL through short term contracts till 31.03.2015 and within the said contract the obligation towards RPO compliance was also undertaken by MPPMCL as mentioned in their letter dated 24.06.2014. The Hon'ble Commission has also been by MPIDC that it has successfully fulfilled/ complied the RPO for FY 2022-23 by way of procurement of RECs. However, with regard to the fulfillment of RPO Compliance for the period FY 2015-16 to FY 2021-22, since MPPMCL is fulfilling MPIDC's entire demand, as per directive no. (viii) of the order dated 30.03.2016 of Government of Madhya Pradesh and Clause No 7 of the BPSA (between MPPMCL and MPIDC), the petitioner requested MPPMCL to quote for renewable power (Solar and Non Solar) through its letters dated 09.02.2018 and 22.07.2022, however, the petitioner has not received any quotations or reply from MPPMCL so far. The petitioner has calculated that 3,13,670 nos. of REC are working out to comply with the backlog of the RPO from FY 2015-16 to FY 2021-22. In case MPPMCL is unable to provide a viable quotation, MPIDC may go for open market for RE Power or procure RECs of equal valuation from Power Exchanges.*
- xviii. *It is respectfully submitted that under similar circumstances, the Rajasthan Electricity Regulatory Commission (RERC) in **Petition No. RERC/1939/21 Rajasthan Urja Vikas Nigam Limited** allowed carryover of the shortfall of the Renewable Purchase Obligation in the next financial year. Similarly, the Punjab State Electricity Regulatory Commission in **Petition No. 30/2022 Punjab State Power Corporation Ltd. v. Punjab Energy Development Agency** allowed the carryover of the RPO shortfall to the next year considering the petitioner's endeavor of incremental achievement of RPO compliance.*

3. With the aforesaid submissions the petitioner prayed the following:

- i. *To carry forward the backlogs/ carry forward RPO obligation of MPIDC for FY 2015-16 to FY 2021-22 in current financial year (FY 2023-24); and*

- ii. To approve the purchase of RECs and procurement of backlogs carry forward RPO from open market for FY 2015-16 to FY 2021-22; and*
 - iii. To permit the conversion of cost to be borne by MPIDC and to spread the cost in phased manner of five to seven years on SEZ Consumers;*
 - iv. Any other relief, as deemed proper, may be granted in favour of the Petitioner.*
4. At the motion hearing held on 31st October' 2023, the Petitioner reiterated their prayer. Petition was admitted and the petitioner was directed to serve copy of petition to the Respondent within 7 days. Respondent was directed to file their response in 15 days thereafter. Petitioner might submit rejoinder within 7 days from the receipt of response from respondent. The case was fixed for hearing on 5th December' 2023.
5. At the hearing held on 5th December' 2023, Respondent sought 3 weeks' time for reply as they could receive copy of petition very recently. Petitioner also sought adjournment of hearing as the Advocate appointed to represent them could not appear on account of some personal reasons. Commission granted 3 weeks' time to respondent to file reply. One weeks' time was also granted to petitioner for rejoinder, if any, after receipt of reply from respondent. The case was fixed for hearing on 9th January' 2024.
6. By Affidavit dt. 27.12.2023, Respondent (MPPMCL, Jabalpur) submitted the following in their reply:
 - i. That, by way of instant petition, the Petitioner has, inter-alia, prayed for following reliefs:*
 - (i) To carry forward the backlogs/ carry forward RPO obligation of MPIDC for FY 2015-16 to FY 2021-22 in current financial year (FY 2023-24); and*
 - (ii) To approve the purchase of RECs and procurement of backlogs/ carry forward RPO from open market for FY 2015-16 to FY 2021-22; and*
 - (iii) To permit the conversion of cost to be borne by MPIDC and to spread the cost in phased manner of five to seven years on SEZ Consumers.*
 - ii. That, the Petitioner has made averments relating to the answering Respondent in paras 8 and 11 of the petition. The same are denied and it is submitted that the Respondent had issued LoI No. 410 dt. 28.06.2014 to the petitioner for sale of RTC power upto 32 MW. A perusal of said LoI dt. 28.06.2014 would makes it abundantly clear that there was no mention to supply of RE power to the Petitioner for fulfillment of its RPO. Hence, the Petitioner cannot rest upon the shoulders of the Respondent for the RPO not complied with by the Petitioner. The reasons for not meeting the RPO are attributed solely to the Petitioner and the Respondent cannot be held to be*

responsible for the same in any manner.

7. At the hearing held on 16th January' 2024 Petitioner and Respondent were heard. Petitioner sought time of 3 days for written submission in addition to his main submission in the petitioner. Time was granted. The case was reserved for Orders.
8. Petitioner vide his email dated 18.01.2024 made following written submissions in the matter: -
 - i. *That, the petitioner Madhya Pradesh Industrial Development Corporation (MPIDC), erstwhile Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd, (hereinafter referred as the Petitioner or the Distribution Licensee), is a Company incorporated under the Companies Act, 1956 (Now Companies Act, 2013) having its registered office at 1st Floor, Atulya IT Park, Near Crystal IT Park, Khandwa Road, Indore, before the Hon'ble Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as MPERC or the Commission). The Petitioner-MPIDC has been entrusted with the responsibility of industrial promotion though development of industrial growth centers in selected Parks of its jurisdiction in the state of Madhya Pradesh. Industrial land in Madhya Pradesh is allotted through the regional offices of MPIDC. There are total 5 Regional Offices (ROs) - Bhopal, Gwalior, Indore, Jabalpur and Rewa.*
 - ii. *That, the Petitioner is a SEZ developer and is responsible for providing various services to the business units which setup their factories in the SEZ premises. The Petitioner is a deemed distribution licensee under the Fifth Provision to Section 14 of the Electricity Act, 2003 as well as Section 11 of the Indore Special Economic Zone (Special Provision) Act, 2003. The area of supply of the Petitioner is SEZ Indore (Pithampur) within the State of Madhya Pradesh (MP). As a deemed licensee, Petitioner-MPIDC also supplies power to the occupants of the SEZ. For this purpose, the petitioner had procured power from MPPMCL through short-term contracts between FY 2010-11 till 31 March 2015. Thereafter, under the directives issued by the Government of Madhya, the petitioner entered into Bulk Supply Agreement on 29.03.2016 with MPPMCL for long term supply of electricity to SEZ MPIDC on pro rata-basis with effect from 01.04.2015.*
 - iii. *That the Petitioner had approached this Hon'ble Commission with the prayers as mentioned in the Petition.*
 - iv. *That it is submitted that there is no bar in granting the reliefs as the current RPO Regulations 2021, in Regulation 15.4 permit the Obligated Entity to carry forward the compliance requirement and the Hon'ble Commission shall consider the same on case to case basis.*

- v. *It is submitted that this power has been implicit in the Hon'ble Commission under section 86(1)(e) and the Hon'ble Commission has by way of the RPO Regulations, 2021 made the same explicit. It thereby means that there is no bar in granting the reliefs even for the period of 2015-16 onwards as the RPO Regulations, 2010 did create any bar in carry forward of compliance requirements.*
- vi. *It is further submitted that earlier the Petitioner could not comply with the RPO Obligations due to financial difficulties and also on account of the fact that the quantum of renewable power to be purchased was very little and there was no RE Generator willing to give such less quantum directly and the only option was to purchase expensive RE power from the Power Exchanges which due to the poor financial condition of the Petitioner was no able to fulfill.*
- vii. *However now the Petitioner has always been willing to comply with the RPO Obligations and is seeking 6 months time to comply with the arrears in the RPO Compliance and requests this Hon'ble Commission for the same.*
- viii. *It is respectfully submitted that under similar circumstances, the Rajasthan Electricity Regulatory Commission (RERC) in Petition No. RERC/1939/21 Rajasthan Urja Vikas Nigam Limited allowed carryover of the shortfall of the Renewable Purchase Obligation in the next financial year. Similarly, the Punjab State Electricity Regulatory Commission in Petition No. 30/2022 Punjab State Power Corporation Ltd. v. Punjab Energy Development Agency allowed the carryover of the RPO shortfall to the next year considering the petitioner's endeavor of incremental achievement of RPO compliance.*
- ix. *It is therefore prayed that the Petition be allowed, and the Petitioner be given 6 months' time to comply with the arrears RPO Obligations*

Commission's observations and order:

9. The Commission has observed the following from the petition and the submissions of the petitioner and Respondent in this matter:
- i. That Petitioner MPIDC is a deemed distribution licensee under the Fifth Provision to Section 14 of the Electricity Act, 2003 as well as Section 11 of the Indore Special Economic Zone (Special Provision) Act, 2003. The area of supply of the Petitioner is SEZ Indore (Pithampur) in MP. As a deemed licensee, Petitioner-MPIDC is obligated to supply power in its area of license.

- ii. Petitioner has stated that they had procured power from MPPMCL through short-term contracts between FY 2010-11 till 31 March 2015. Thereafter, under the directives issued by the Government of Madhya, petitioner entered into Bulk Power Supply Agreement (BPSA) on 29.03.2016 with MPPMCL for long term supply of electricity to SEZ MPIDC on pro rata-basis with effect from 01.04.2015.
- iii. That the Commission has specified renewable purchase obligation in terms of section 86(1) (e) of the Electricity Act, 2003 to be complied with by all the obligated entities in its regulations from time to time. The first regulation, namely MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2008 was notified on 07.11.2008 and applicable till 18.11.2010. Subsequently, 1st revision in regulation namely MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (hereinafter referred as 2010 regulation) was notified on 19.11.2010 applicable till 11.11.2021 and 2nd revision namely MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2021 (hereinafter referred as 2021 regulation) was notified on 12.11.2021 and the same alongwith its amendments are the current regulations applicable from 12.11.2021 till date. The specified RPO from renewable energy sources from FY 2010-11 onwards till FY 2021-22 was as under: -

Sr. No.	Financial Year	RPO (% of total procurement)		
		Solar	Non-Solar	Total
	2010-11	0.00	0.80	0.80
	2011-12	0.40	2.10	2.50
	2012-13	0.60	3.40	4.00
	2013-14	0.80	4.70	5.50
	2014-15	1.00	6.00	7.00
	2015-16	1.00	6.00	7.00
	2016-17	1.25	6.50	7.75
	2017-18	1.50	7.00	8.50
	2018-19	1.75	7.50	9.25
	2019-20	4.00	8.00	12.00
	2020-21	6.00	8.50	14.50
	2021-22	8.00	9.00	17.00

- iv. The petitioner stated that they have complied with the RPO for FY 2022-23 by way of procurement of RECs. For the period from FY 2010-11 to 2014-15, RPO obligation was undertaken by MPPMCL as mentioned in their letter dated 24.06.2014.

- v. Petitioner stated that as per order dated 30.03.2016 of Government of MP and clause 7 of BPSA, petitioner requested MPPMCL vide letter dated 09.02.18 and 22.07.22 to quote for renewable power (solar & non solar) but no response had been received from MPPMCL.
- vi. Petitioner further stated that due to non-acceptance of true up petition of MPIDC for the period FY 2010-11 to FY 2015-16, they were suffering loss of about Rs 25 Crores per year. However, after complying with all the directives of Commission, MPIDC filed true up petition for the period 2010-11 to 2015-16 on 20.01.18 for a revenue gap of Rs 85.93 Crores, on which Commission passed order on 13.01.2020 allowing revenue gap of only Rs 21.72 Crores. Further, trading of REC was kept on hold by Hon'ble APTEL till the final outcome of appeal no. 113/117/118/123/137/138 of 2020 i.e. till 09.11.2021. Moreover, although trading of green energy through GDAM was commenced from August 2020, however the rates of green energy were on higher side as compared to the rates approved by Commission in ARR & Tariff orders of MPIDC, as such RE power through GDAM was not procured.
- vii. Petitioner has prayed to consider the difficulties expressed in above para (vi) as genuine difficulties under regulation 15.4 of 2021 regulation and to allow them to purchase RECs for the period 2015-16 to 2021-22 in current financial year i.e. by the end of 31.03.2024. Petitioner further prayed to allow them to recover the cost on purchase of RECs from SEZ consumers in phased manner of 5 to 7 years. Petitioner in its submission made on 18.01.2024 has however revised the original prayer to purchase RECs during current financial year 2023-24 and now prayed to allow them to procure RECs for backlog from FY 2015-16 till FY 2021-22 in next 6 months period which will extend in next financial year i.e. FY 2024-25.
- viii. Commission noted that the petitioner did not comply with the RPO targets in the past years on his own accord but approached this Commission for fulfillment of backlog of RPO compliance for the period from 2015-16 to 2021-22 only after passing of directions by Commission to comply with the RPO targets in retail supply tariff order dated 02.05.2022 for FY 2022-23 in Petition no. 03/2022. Petitioner claimed that for the period from 2010-11 to 2014-15, MPPMCL was meeting their RPO obligation as per letter dated 24.06.2014, however, MPPMCL in its reply has denied the claim made in this regard by petitioner and submitted that LOI was issued on 28.06.14 to petitioner in which there was no mention of supply of RE power. This specific issue was enquired by the Commission during the

hearing held on 16.01.2024. In response thereof, counsel for petitioner informed that the petitioner is willing to fulfill past renewable purchase obligations and it has approached the Commission for the same. As such, it was not inclined to get into litigation with respondent MPPMCL on this issue. The Commission is therefore of the view that the petitioner has not complied with RPO targets from 2010-11 itself till 2021-22.

- ix. Commission further noted that petitioner has claimed to purchase requisite RECs for financial year 2022-23 but RECs have not been submitted to Commission despite clear provisions in regulation 13.3 of 2021 regulations to deposit the purchased RECs to Commission and nodal agency within 15 days of such purchase. Moreover, since the energy procurement by petitioner during FY 2022-23 is yet to be finalised in the truing up petition filed by petitioner recently, the fulfillment of RPO during financial year 2022-23 cannot be ascertained at this stage.
- x. Commission also noted that there were no provisions in the 2010 regulations to allow carry forward of RPO to subsequent years in case of non-compliance or short compliance of RPO for a financial year. Provisions to allow carry forward the shortfall in RPO compliance only to next year has been made in regulation 15.4 of 2021 regulations as under: -

*“In case of genuine difficulty in complying with the RPO on account of non-availability of Renewable power or certificates, the obligated entity can approach the Commission to **carry forward the compliance requirement to the next year** and the Commission will take the appropriate view in the matter on case-to-case basis.”*

The 2021 regulation has come into effect only from 12.11.2021, thus for most of the period under consideration in this petition, there were no provisions of carry forward of RPO backlog even to next year.

- xi. In view of above regulatory provisions, Commission is of the view that the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2010 do not have provisions to allow carry forward shortfall of previous years RPO to next years as prayed by the petitioner. The 2021 regulation has come into effect only from 12.11.2021 and cannot be applied retrospectively for the period from 2010-11 onwards. Moreover, 2021 regulation allows carry forward the shortfall in RPO compliance to the next year only. Commission thus noted that petitioner is in clear default of procurement of RE power as per targeted RPO since the very beginning of its operation as deemed

licensee and did not approach the Commission for the entire period expressing difficulties, if any, for procurement of RE Power/ RECs. In fact, action to procure RECs was initiated by petitioner only after passing direction in this regard by Commission in its order dated 02.05.2022 passed in petition no. 03/2022.

- xii. Commission has also noted that the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations, 2010 and MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations, 2021 have following provisions to deal with defaults in compliance of RPO obligations: -

“15. Effect of Default

15.1 In the event the Obligated Entities do not fulfil the mandate of the obligation to purchase energy from Renewable Energy Sources as provided in these Regulations during any Financial Year and also do not purchase the certificates from the Power Exchange, the Commission may:

- (i) direct the Obligated Entity to deposit into a separate Fund, to be maintained by such Obligated Entity, such amount as the Commission may determine as required for purchase of Certificates to the extent of the estimated obligation on the basis of the shortfall in units of RPO and the Forbearance Price of the Certificates, which shall be utilized as may be directed by the Commission, partly for purchase of the certificates and partly for development of Transmission infrastructure for evacuation of power from Generating Stations based on Renewable Energy Sources:*

Provided that the Obligated Entities shall not be authorized to use the fund created in pursuance of Clause (i) above, without prior approval of the Commission;

- (ii) to the extent of the shortfall in the fulfilment of the obligations, the Commission may empower an Officer of the State Agency to procure from the Power Exchange the required number of Certificates out of the amount in the Fund.*

15.2 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.

15.3 Further, where any person though required to comply with these Regulations fails to purchase the required percentage of power from Renewable Energy Sources or the Renewable Energy Certificates, he shall also be liable for penalty as may be decided by the Commission under Section 142 of the Act.

Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021 have an additional provision as under: -

15.4 In case of genuine difficulty in complying with the RPO on account of non-availability of Renewable power or certificates, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year and the Commission will take the appropriate view in the matter on case-to-case basis.

Order

10. In light of the above factual position, Commission has dealt the prayers made by the petitioner as under: -

Prayer (i): - To allow carry forward the backlogs/ carry forward RPO obligation of MPIDC for FY 2015-16 to FY 2021-22 in current financial year (FY 2023-24);

Observations and order of Commission: - As already elaborated in preceding paras, petitioner is in clear default of RPO compliance from 2010-11 onwards till 2021-22. The RPO compliance during FY 2022-23 can only be ascertained after the procurement of energy during FY 2022-23 is decided by the Commission in truing up petition recently filed by the petitioner. The co-generation regulations of the Commission issued from time to time during the aforesaid period do not have provisions to carry forward the shortfall of RPO to next year. The provision regarding carrying forward RPO to next year was introduced only in Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations, 2021 which were notified on 12.11.2021. Commission therefore holds that the petitioner is not entitled to carry forward the RPO compliance requirement for the period from 2010-11 to 12.11.2021 under the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations 2010. Thereafter, again the eligibility of carrying forward the RPO compliance

requirement to next year is limited to one year alone and not any further. The prayer to allow carry forward of the backlog of RPO to the current year is hereby rejected.

Prayer (ii) To approve the purchase of RECs and procurement of backlogs/ carry forward RPO from open market for FY 2015-16 to FY 2021-22 within next 6 months period.

Observations and order of Commission: - Commission noted that since there were no provisions to carry forward the RPO backlog to next year during past period, RPO had to be complied within the concerned years itself. Since the petitioner failed to comply with the RPO targets during the period FY 2010-11 to 2021-22, petitioner is squarely in default of the regulations and provisions under regulation 15 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations 2010 & 2021. Commission directs the Secretary of the Commission to initiate proceedings against the petitioner under section 142 of the Act read with the provisions of regulation 15 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations 2010 & 2021. The RPO compliance during FY 2022-23 shall be examined separately by the Commission after finalization of truing up petition for FY 2022-23 of the petitioner.

However, considering the willingness of the petitioner to procure RECs for the entire backlog in next 6 months, Commission in exercise of its powers vested under regulation 18 & 19 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations 2021, hereby allows the petitioner to purchase required RECs (for the period from 2010-11 to 2021-22) from the market as per the provisions of applicable regulations and prevailing directions of the Central Electricity Regulatory Commission relating to procurement of RECs, within next 6 months from the date of this order and submit the RECs so procured to Nodal Agency and Commission within 15 days of such procurement as per the provisions of regulation 13.3 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy), Regulations 2021.

Prayer (iii) To permit the conversion of cost to be borne by MPIDC and to spread the cost in phased manner of five to seven years on SEZ Consumers.

Observations and order of Commission: - Commission noted that as permitted by Commission, petitioner shall be incurring cost on RECs during next 6 months i.e.

RECs may be purchased in FY 2023-24 and 2024-25. Accordingly, cost of purchase of RECs would be dealt with while in truing up for FY 2023-24 and 2024-25 subject to the applicable rules and regulations and prudence check by the Commission. Commission directs the petitioner to make appropriate prayer in the Truing up Petitions accordingly.

Petition stands disposed of with the above directions.

(Prashant Chaturvedi)

Member

(Gopal Srivastava)

Member(Law)

(S.P.S. Parihar)

Chairman