

Sub: In the matter of petition for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2013-14

ORDER

(Date of hearing: 14th October,2014)

(Date of order: 20th October,2014)

M/s Green Energy Association, - Petitioner
Sargam,143,Taqdir Terrace,
Near Shirodkar High School,
Dr. E. Borjes Road, Parel(E),
Mumbai- 400 012

M.P. Power Management Co. Ltd., - Respondent
Shakti Bhawan, Rampur,
Jabalpur- 482 008

Ms. Mandakini Ghosh, Advocate appeared on behalf of the petitioner.
Shri Manoj Dubey, Advisor (Law) and Shri N.K.Sharma, DGM(Com) appeared on behalf of the respondent.

2. The petitioner, M/s Green Energy Association had filed this petition in the matter of non-compliance of solar RPO by obligated entities for the period from FY 2011-12 to FY 2013-14.

3. The petitioner has stated that:-

- (a) M/s Green Energy Association is an association of companies engaged in the business of Renewable Energy (RE) generation. The petitioner represents the majority of the members who represent about 90% of the investors in the solar REC mechanism.
- (b) The Commission had notified the MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010 as amended from time to time. Regulation 4 of the aforesaid Regulations specifies the quantum of Renewable Purchase Obligations (RPO) for the period from FY 2010-11 to FY 2014-15 for solar and non-solar, for the obligated entities including the distribution licensees.
- (c) Regulation 4.3 of the aforesaid Regulations states that:
“4.3 If an Obligated Entity is not able to fulfill the minimum purchase requirements as per Regulation 4.1 above, such Obligated Entity shall be required to purchase Energy Certificates issued by the Central Agency as specified in PART-B of these Regulations.”

Sub: In the matter of petition for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2013-14

(d) Regulations 15.1 and 15.3 of the aforesaid Regulations state as under:-

“15.1 In the event the Obligated Entities do not fulfill 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, for purchase of Certificates.....on the basis of the shortfall in units of RPO and the Forbearance Price of the Certificates.....Renewable Energy Sources:
- (ii) to thein the Fund.

15.3 Further, where any person.....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.”

(e) The Commission passed an order dated 10.09.2013 in Petition No. 38/2013 and directed the SEZ to ensure RPO compliance. By the order dated 20.11.2013 in Petition No. 35 of 2013, the Commission directed the utilities that continuous failure on their part to fulfil the RPO cannot be allowed to go unpunished. In the order dated 22.08.2012 in Petition No. 26/2012, the Commission disposed of the same holding that the petitioner (M. P. Power Management Co. Ltd.) had not made any effort to procure solar power.

(f) In the judgment dated 25.04.2013 in Appeal No. 24 of 2013, Hon'ble APTEL has clearly placed the purchase of renewable energy through PPA and through REC at par. The judgments passed by Hon'ble APTEL on the aforesaid issues in cases of other states are relevant in this regard.

(g) The solar RECs have been available in the market since May 2012. The respondents have not made any attempt for the procurement of the solar RECs for the compliance of deficit solar RPO. Hence, this petition.

4. The respondent submitted a written submission stating that:-

(a) The petitioner never made any request to the respondent to provide details of the compliance of cumulative solar RPO as of 31.03.2014 before filing this petition. Therefore, the instant relief of the petitioner is premature.

(b) Purchasing power at APPC rate because of statutory responsibility and purchasing of REC for the same power for fulfillment of RPO as an obligated entity may not be the purpose of REC mechanism.

(c) In compliance of the RPO Regulations, 13 solar projects for total capacity of 20 MW were registered and MOUs were signed. Under JNNNSM scheme

Sub: In the matter of petition for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2013-14

and competitive bidding 175 MW capacity were executed. Competitive bidding under phase-II was also initiated.

- (d) In view of the RPO requirement for coming years, additional capacity of 435.25 MW has been tied up.
- (e) Cash losses of the distribution sector continue to be high. Saddling the loss making respondents with the further burden of APPC+REC, which is far above the bidding rates, would sink the respondents further in the red.
- (f) In view of the above facts, it is evident that the respondent is making all diligent efforts for procurement of solar power for fulfillment of RPO through various schemes and competitive bidding process etc. Therefore, the instant petition may be dismissed.

5. The petitioner filed a rejoinder to the aforesaid reply as under:-

- (a) The respondents are not meeting the RPO targets fixed by the Commission. Accordingly, the Commission may invoke the provisions of Regulation 15 of the MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and impose penalty on the respondent.
- (b) It is denied that by purchasing renewable energy at APPC and purchasing RECs against the same power is double cost for the respondents. RECs could be purchased by the obligated entities to meet their RPO under Section 86(1)(e) of the Electricity Act, 2003. The Purchase of REC would be deemed as purchase of renewable energy for RPO compliance.
- (c) The respondents have failed to meet their RPO targets from the year 2011 onwards by large margins. The Commission may direct the respondents to meet the shortfall in RPO targets with immediate effect.
- (d) The financial difficulty of the respondents is not a valid excuse for violating the Regulations framed by the Commission.
- (e) Under the above circumstances, the reply of the respondent is not maintainable.

6. The respondent again filed an additional submission stating that:-

- (a) The respondents were not provided any earmarked amount for meeting out the RPO for solar power. Even then, the respondents procured solar power. Additional expenses incurred in such procurement in the past were not allowed as pass through in the respective true-ups to the respondents.
- (b) The Commission has provided for an amount of Rs. 939.92 Crore specifically towards purchase of electricity from renewable sources in the retail tariff order for the current financial year 2014-15. The respondents are duty bound to utilize the said amount for the intended purpose to purchase renewable energy.

Sub: In the matter of petition for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2013-14

(c) The intention of the petitioner in seeking penalization of the respondents is not bona fide. The respondents have already expressed the circumstances in which the solar RPO could not be achieved by them.

7. The case was heard on 14.10.2014. During the hearing, the Commission enquired from the respondent why the provisions of the Regulations regarding fulfilment of RPO through purchase of RECs have not been complied with. Respondent replied that the RECs could not be purchased in past years due to the deteriorating financial condition of the distribution licensees. However, best efforts are being made as per the specific provisions in the retail tariff order for the FY 2014-15 to procure energy from renewable sources to meet the RPO.

8. The Commission has heard both parties and carefully considered the submissions made. The Commission has noted that the present petition for non-compliance of solar RPO by obligated entities in past years was made only on 03.07.2014. The Commission is unable to fathom the reasons for the inability of the petitioner to approach the Commission earlier for the same purpose. Had the Commission been approached at the relevant time and the issues now raised been agitated then, suitable action in the relevant financial year would have been logical and easier. What the petitioner now seeks is the purchase of RECs to make up for the shortfall of three different financial years at the current prices for RECs. Apart from financial stress which shall be caused to the respondent, it does not appear to be logical at this stage.

9. The aforesaid does not, in any manner, mitigate the serious default on the part of respondent in fulfilling statutory renewable purchase obligations. It is clear that the respondent has been thoroughly remiss in this regard. This default cannot go unpunished. The Commission, therefore, imposes a token penalty of Rs. 25,000.00 on the respondent towards non-compliance of the solar RPO target as per the provisions of MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, which is to be deposited with the Commission within 30 days of the issue of this order. It may be emphasized that the penalty is a token and does not redeem the failure of the respondent in the matter. The Commission would like to warn the respondent that future non-compliance in this regard would be dealt with severely.

10. For the current financial year, the Commission's retail supply tariff order dated 24.05.2014 adumbrates the manner of purchase of renewable energy and makes

Sub: In the matter of petition for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2013-14

specific allocation for the purpose. It goes without saying that failure of the respondent in the present financial year would automatically lead to reduction in the annual revenue requirement of the distribution companies in equal measure. Penalties, if any, would be over and above any reduction in the annual revenue requirement.

11. With these directions and observations, this petition stands disposed of.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Rakesh Sahni)
Chairman

