

# MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

## BHOPAL

**Sub: In the matter under Section 86(1)(e), (4) and 181 of the Electricity Act 2003 read with Clause 16.1 and 16.2 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and Article 6.4 of the Tariff Policy 2016, seeking implementation of Notification dated 01.02.2019 issued by Ministry of Power.**

**Petition No. 25/2019**

### **ORDER**

(Date of Order: 5<sup>th</sup> April' 2021)

**M/s. Hindalco Industries Ltd.,  
Ahure Centre, 1st Floor, B Wing  
Mahakali Caves Road, Andheri (East),  
Mumbai – 400 093**

- **Petitioner**

Vs.

**(1) Madhya Pradesh Urja Vikas Nigam Ltd.  
Urja Bhawan, Link Road No. 2,  
Shivaji Nagar, Bhopal – 462016**

**(2) New and Renewable Energy Department,  
Government of Madhya Pradesh,  
Through its Principal Secretary,  
Vallabh Bhawan, Bhopal (M.P.) - 462004**

- **Respondents**

Shri Mridul Chakravarty, Advocate, Shri Ali Waris, Advocate, Shri Ankit Jain, Advocate Shri Hemant Singh, Advocate, Shri Ambuj Dixit, Advocate, Ms. Shruti Awasthi, Advocate, appeared on behalf of the petitioner.

Shri Surendra Bajpai, Nodal Officer appeared on behalf of Respondent No. 1, MPUVNL.

Shri Pulkit Khosla appeared on behalf of Respondent No. 2, MPNRED.

The petitioner, M/s. Hindalco Industries Ltd., filed the subject petition under Section 86(1)(e), (4) and 181 of the Electricity Act 2003 read with Clause 16.1 and 16.2 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and Article 6.4 of the Tariff Policy 2016, seeking implementation of Notification dated 01.02.2019 issued by the Ministry of Power, Government of India.

**2.** The subject petition is filed on account order dated 01.02.2019 issued by the Ministry of Power, Government of India with respect to fulfillment of Renewable Purchase Obligations (RPOs) by industries/ consumer on availing power from captive generating plants.

**3.** The Petitioner M/s. Hindalco Industries Limited, is a large Aluminum industry having setup Captive Generating Plant (CGP) in the State with an installed capacity of about 900 MW (6x150MW) for generation of electricity.

The six units of 150 MW were recommissioned and synchronized with the Grid, at different points of time from March, 2013 to September, 2016, as given below:

S.NO.	Unit	Date of commissioning & synchronization
1.	Unit-1	09.03.2013
2.	Unit-2	21.05.2013
3.	Unit-3	07.12.2013
4.	Unit-4	16.07.2014
5.	Unit-5	27.05.2015
6.	Unit-6	18.09.2016

4. The subject petition was filed on 19.06.2019 however, the petitioner filed amended petition on 06<sup>th</sup> December' 2019 in light of subsequent order dated 01.10.2019 issued by the Ministry of Power. The original petition was admitted on 30<sup>th</sup> July' 2019 and the petitioner was directed to file amended memos of parties to add the New and Renewable Energy Department, Government of Madhya Pradesh as one of the Respondents in this matter.

5. At the hearing held on 3<sup>rd</sup> September' 2019, the petitioner confirmed filing of amended memo of parties adding New and Renewable Energy Department, Government of Madhya Pradesh as one of the Respondents in the subject matter. The Respondents were directed to file their replies to the petition by 10<sup>th</sup> October' 2019.

6. At the hearing held on 5<sup>th</sup> November' 2019, the Commission had observed the following:

(i) By affidavit dated 30<sup>th</sup> October' 2019, the Respondent No. 1 (M.P. Urja Vikas Nigam Ltd.) broadly submitted the following reply to the original petition:

- “(a) We request Hon’ble Commission to continue with the present RPO methodology which requires all the obligated entities to comply with the prevailing RPO trajectory with an allowance that Captive Consumers can procure energy from any of the Renewable Energy sources to meet total RPO as defined for each financial year.*
- (b) In line with our response on Prayer 1 above, re-assessment of RPO norms for the Captive Consumers may not be required. However, we request Hon’ble Commission to designate Managing Director as an authority, on behalf of Madhya Pradesh Urja Vikas Nigam Limited, Bhopal responsible for collecting RPO compliance data from every obligated entity of the State including Distribution Licensees.*
- (c) For tracking of RPO compliance, obligated entities must submit half-yearly data of RPO compliance within forty-five (45) days from the end of each half-year and, MPUVNL shall be required to submit consolidated data of a financial year to Hon’ble Commission on or before 30<sup>th</sup> June of subsequent financial year. Therefore, we request Hon’ble Commission to include tracking methodology in the prevailing Cogeneration and Generation of Electricity from Renewable Energy Sources of Energy (Revision-1) Regulation, 2010 (“Cogen Regulation”) to monitor the RPO compliance level yearly and, obligated entities should be penalized for non-compliance, if any.”*

- (ii) The petitioner had sought two weeks' time to file an amended petition in light of the order dated 01/10/2019 issued by Government of India, Ministry of Power.

7. Considering the request, the petitioner was allowed to file amended petition by 20<sup>th</sup> November' 2019. The petitioner was directed to serve a copy of amended petition to the Respondents simultaneously. The Respondents were asked to file their replies to the amended petition within 15 days thereafter.

8. On 06<sup>th</sup> December' 2019, the petitioner filed the amended petition with the request to condone the delay of 16 days in filing the amended petition. The petitioner broadly submitted the following in amended petition:

- “(i) The Petitioner, viz. M/s. Hindalco Industries Limited, is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Ahura Centre, 1<sup>st</sup> Floor, B Wing, Mahakali Caves Road, Andheri (East) Mumbai- 400093, and having its factory/ Unit-Mahan Aluminium Bargawan, District: Singrauli, PIN: 486886 is an Aluminium Smelter, having Captive Power Plant with 900 MW capacity (6x150MW) of which one unit is standby. The six units of 150MW were commissioned and synchronized with the Grid, at different points of time, from March, 2013 to September, 2016, as given below:*

<i>s.no.</i>	<i>Unit particulars</i>	<i>Date of commissioning &amp; synchronization</i>
<i>1.</i>	<i>unit-1</i>	<i>09.03.2013</i>
<i>2.</i>	<i>unit-2</i>	<i>21.05.2013</i>
<i>3.</i>	<i>unit-3</i>	<i>7.12.2013</i>
<i>4.</i>	<i>unit-4</i>	<i>16.07.2014</i>
<i>5.</i>	<i>unit-5</i>	<i>27.05.2015</i>
<i>6.</i>	<i>unit-6</i>	<i>18.09.2016</i>

- (ii) The Petitioner is a large industry having setup Captive Generating Plant (CGP) within the State, with an installed capacity of about 900 MW for generation of electricity. The said CGP has been set up with an objective of supplying continuous, consistent, quality of power to the Aluminum Smelter Plant. Hence, the sustainability of the parent industry, as well as their captive power plants, are of material importance for the State.*
- (iii) The present petition is necessitated on account of the issuance of notifications by the Ministry of Power, Govt. of India, dated 01.02.2019 and 01.10.2019 with respect to fulfillment of renewable purchase obligations (RPOs) by industries/consumers, who avail power from captive generating plants under captive mode. It is stated that vide the above notifications, the Ministry of Power has admitted that RPO norms have to be modified in the event the same cannot be fulfilled on account of technical and/or commercial impossibility.*
- (iv) That on 19.11.2010, this Hon'ble Commission notified the RPO Regulations for procurement of renewable energy by the DISCOMs and other obligated*

entities. Vide a gazette Notification dated 01.09.2017, this Hon'ble Commission amended Regulation 4.1 of the RPO Regulation. In the said Regulations, the RPO norms specified in Regulation 4.1 were prescribed for the FYs 2010-11 to 2021-22. It is pertinent to mention that in the RPO Regulations, the RPO for the FY 2010-11 was totaling to 0.80% and 7.00% for FY 2015-16. However, under the amendment of the regulations, the RPO for the FY 2019-20 was made 12%, which further increased to 17% for FY 2021-22.

That, in view of the manner in which the RPO on the captive users were escalating as stated above, commercial sustainability of such captive users such as the Petitioner, has become increasingly difficult. It is to be kept in mind that the existing industry and their captive generating plants are not designed in a way to sustain an ever-increasing proportion of renewable power or by REC certificates, which entail a huge cost. Thus, by way of the aforementioned burden of RPO, the entire objective of the Electricity Act, 2003 i.e., encouraging and allowing captive generating plants to foray into the power markets stands watered down and diluted.

- (v) In terms of the foregoing circumstances, it is to be noted that the Petitioner has fulfilled its renewable purchase obligations (qua solar and non-solar), under the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 till March, 2019. However, the Petitioner has been unable to comply with its remaining RPO obligation from March 2019 till date, under the existing Regulations, due to various reasons mentioned under the present petition, including REC liquidity issue.
- (vi) It is stated that industries, especially those engaged in manufacturing, including the Petitioner, which is an Aluminum producer, are power intensive. This means that cost of Power/electricity is one of the major input costs, and this directly affects the competitiveness of the end products produced by such industries. A high cost of power makes the goods unviable in the open market.
- (vii) It is stated that when the Electricity Act, 2003 was enacted, captive consumption and open access were two of the major reforms to have been introduced. Both the said reforms aimed at making industries power independent, in terms of the fact that said reforms liberated the industries from the obligation to compulsorily buy power from their area distribution licensees. The same exposed the industries to high cost of power, on account of the inbuilt cross subsidies in the power tariffs, and also on account of the frequent load shedding(s) and power cuts.
- (viii) The above made the manufactured goods overpriced and the Indian industries were becoming incompetent to compete with onslaught of cheap global imports. Further, the said industries could not export their goods freely on account of being overpriced. This became one of the primary reasons for hampering economic growth, as well as employment generation.

- (ix) Hence, in order to address the above problems, and to usher in the era of globalization, the legislature enacted the Electricity Act, 2003, for liberalizing and freeing the industry from the shackles of distribution licensees. Open access and captive generation were promoted, as is evident from the fact that, as per section 42(2), captive users were exempted from levy of cross subsidy surcharge and additional surcharge. Further, the generation of electricity, was also de-licensed, so as to attract more and more private investment in generating business. However, at the same time, the above legislation also sought to promote renewable energy generation, as provided under section 86(1)(e).
- (x) In order to enforce Section 86(1)(e), this Hon'ble Commission promulgated regulations for mandatory purchase of renewable energy by the consumers of electricity, including industries. The said regulations are termed as MPERC (Cogeneration and generation of electricity from Renewable Sources of Energy)(Revision 1) Regulation, 2010 ("RPO Regulations"). The said regulations provided for a spiked increase in the share of renewable power by the industries, over a period of time. As such, the said mandatory imposition and the yearly increase in the quantum of renewable energy consumption, started to take a toll on the industries with respect to overall energy costs, as renewable energy was expensive as compared to captive power. While it is necessary to promote renewable energy, however, at the same time, the Act also envisaged promotion of captive consumption by virtue of the above mentioned exemptions from levy of cross subsidy surcharge and additional surcharge.
- (xi) Accordingly, in order to strike a balance, as goods in the international market became cheaper, especially goods coming from China, the Ministry of Power issued the aforementioned notifications dated 01.02.2019 and 01.10.2019, whereby the renewable purchase obligations have been sought to be substantially reduced upon captive users. As per a combined reading of the aforesaid notifications, the Petitioner seeks that the existing RPO norms should be modified in terms of the following:
- (a) The Renewable Purchase Obligation (RPO) norms for captive user(s), where in the captive generating plant(s) is commissioned after the enactment of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy)(Revision 1) Regulation, 2010, has to be pegged at the level of RPO norms prevalent in the year in which the captive generating plant(s) was commissioned with respect to the entire life of such captive generating plant(s).

In view of the above, the Petitioner is seeking implementation of the first notification (01.02.2019), which means that this Hon'ble Commission may deviate from the notification dated 01.10.2019 based on the reasons enumerated in the present petition.

- (xii) It needs to be appreciated that, as a sector regulator, this Hon'ble Commission has absolute power to decide independently as to how the intent behind the aforementioned notifications is to be implemented. In this



context, reference be made to Sections 66 and 86(1)(e) of the Electricity Act, 2003. Hence, while this Hon'ble Commission ought to take into account the fact that the RPO regime needs to be relaxed in terms of the above notifications, however, this Hon'ble Commission, for the purpose of economic development of the State, and development of the captive power market, ought to deviate and provide for more relaxed RPO norms in terms of the notification dated 01.02.2019.

- (xiii) Since, the entire RPO regime formulated by this Hon'ble Commission was entirely based upon the notifications/ policies issued by the Central Government, it is imperative that this Hon'ble Commission ought to implement the intent of the aforementioned notifications dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power. In this context, reference be made to Clause 6.4(1) of the Tariff Policy, 2016 issued by the Central Government under Section 3 of the Electricity Act, 2003, which mandates that the long-term trajectory of RPO norms have to be specified by the State Commissions by taking guidance from the Ministry of Power. For the said purpose, this Hon'ble Commission ought to amend the 2016 RPO Regulations in order to give effect to the intent of the aforementioned notifications, which is to lessen/ reduce the burden of the existing RPO norms on industries, especially aluminum.
- (xiv) It is submitted that the notification dated 01.10.2019, is a deviation from the earlier notification dated 01.02.2019. However, what needs to be considered is the "intent" of MOP, which is recognition of the fact that RPO norms can be relaxed when there is physical, technical and/or commercial impossibility. This intent has to be kept in mind, when this Hon'ble Commission adjudicates the present petition for the purpose of implementation of the notification dated 01.02.2019.
- (xv) That this Hon'ble Commission has ample powers available under Section 66 of the Electricity Act, 2003, for development of power market. Further, in the event this Hon'ble Commission deviates from the aforementioned notification dated 01.10.2019, and instead implements 01.02.2019, then it would not only encourage a conducive market towards encouragement of captive generation of power, but would also lead to more robust industrial (and aluminum) growth on account of conducive electricity regulatory scenario.
- (xvi) It is further submitted that when an investor invests for setting up of an industrial unit, the said investor has to factor in all the possible costs which could be involved in the manufacture of the goods. One of the critical costs is related to the cost of electricity. The present RPO regime provides for a year-on-year increase in the RPO norms, and the investor is not aware as to how much cost is to be factored in for the purpose of complying RPO norms for future. Since, the cost associated with fulfilment of RPO norms, as per the present regime, is substantial, the same makes the industrial output as in-competitive. Therefore, in order to provide a certainty as to the costs associated with fulfilment of RPO norms, the Central Government (through MoP and MNRE) issued the aforementioned notifications. The implementation of the intent of the aforesaid notifications, as

*sought in the present petition, will provide transparency and certainty to an investor, both, before a decision to invest is taken, and for those investors who have already invested and their output/goods are becoming in-competitive on account of the huge costs associated with the present RPO regime.*

*It is stated that robust industrial growth can only be achieved in the event there is regulatory certainty with respect to the material input costs, and with electricity being one of the major input costs (especially in aluminium industry), the RPO regime prevalent in the State ought to be modified/reformed in terms of the intent of the aforesaid notifications.*

- (xvii) That, this Hon'ble Commission is required to consider that captive generation needs to be promoted. For this, a perusal of the Preamble and Statement of Object and Reasons of the Electricity Act, 2003, are most vital, which clearly provide that captive generation needs to be promoted. Further, under Sections 38 and 42, captive generation is promoted by providing exemptions from cross-subsidy surcharge and additional surcharge. As such, mandate of the Act is to also promote captive generation, apart from renewable generation.*
- (xviii) Thus, in the circumstances, this Hon'ble Commission needs to pass appropriate directions for amendment of the RPO Regulations, with the effect that the CPPs, which have been commissioned after the enactment of aforesaid Regulations, will have to comply with the RPO norms at the levels as mandated by the Hon'ble Commission for the year in which the CPP was commissioned, which will be applicable for the entire life of such CPP, i.e., in line with the notification dated 01.02.2019.*
- (xix) That the aforesaid can be achieved by "prospectively" providing in the amended regulations that any RPO already fulfilled by the CPPs, which is in excess when compared with the year-wise RPO norms to be provided in the amended regulations, shall be set-off/adjusted against the future RPO fulfilment obligations. In this regard, it is submitted that there needs to be a specific provision or providing set-off/adjustment, which would be for future. Hence, the said petition.*

**9. With the above submissions, the petitioner prayed the following:**

*"Initiate steps/ proceedings for amendment of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision 1) Regulation, 2010, in order to implement the notification dated 01.02.2019, being Notification no. 30/04/2018-R&R, issued by the Ministry of Power, Government of India, in terms of the following:*

- (a) Introduce provisions for fixing of Renewable Purchase Obligation (RPO) norms for captive user(s), pegged at the level of Renewable Purchase Obligation norms prevalent in the year in which the captive generating Units were commissioned, with respect to the entire life of such captive generating plant(s);*
- (b) Introduce provisions providing for adjustment/ set off qua any RPO already fulfilled by the CPPs, which is in excess when compared with the year wise RPO*

*norms to be provided in the amended regulations in line with the notification dated 01.02.2019, against any future RPO fulfilment obligations as per the amended/ modified regulations/ norms;*

- (c) *Introduce provisions permitting captive user to file revised compliance of the RPO norms fixed by the State Commission within one year from the date of the order or such extended time as may be granted by the Commission from time to time;*
- (d) *Introduce a stipulation that there cannot be any increase in RPO for captive users without any additional fossil fuel power generating capacity being added"*

**10.** Vide daily order dated 23<sup>rd</sup> January' 2020, the amended petition was admitted and the petitioner was directed to serve copies of the amended petition on all the Respondents in the matter. The Respondents were directed to file their replies to the amended petition by the 10<sup>th</sup> February' 2020. They were also directed to serve a copy of their replies to the petitioner simultaneously.

**11.** At the hearing held on 25<sup>th</sup> February' 2020, the Commission observed the following:

- (i) Vide letter dated 28<sup>th</sup> January' 2020, the petitioner confirmed the service of amended petition on all the respondents in the matter.
- (ii) Vide letter dated 07<sup>th</sup> February' 2020, the Respondent No. 1 (MPUVNL) filed reply to the amended petition.
- (iii) Ld. Counsel who appeared for the petitioner stated that he did not receive the copy of reply filed by the Respondent No.1 (MPUVNL)

**12.** The Respondent No. 1 was directed to ensure service a copy of its reply to the petitioner within a week and the petitioner was directed to file its rejoinder within 10 days thereafter. The Respondent No. 2 was directed to file reply to the amended petition by the 20.03.2020.

**13.** At the hearing held on 29.09.2020, it was observed that the petitioner by affidavit dated 25<sup>th</sup> August' 2020, filed rejoinder on the reply filed by the Respondent No. 1. The Respondent No. 2 was given last opportunity to file its response on the subject petition within two weeks.

**14.** On 23<sup>rd</sup> November' 2020, the Respondent No. 2 (MPNRED) filed its response on the amended petition. On 15.01.2021, the petitioner filed its rejoinder on the aforesaid response filed by the Respondent No. 2. Ld. Counsel for the petitioner and the representative of the Respondents concluded their arguments during the hearing held on 19.01.2021. The case was reserved for orders on filing of written submissions by the parties within seven days.

**15.** The Respondent No. 2. M.P. New and Renewable Energy Department filed the same reply as submitted by the Respondent No. 1. The Respondent No. 1 and 2 in their replies submitted as under:

***"Prayer 1, 4, 5:***

- (i) *86(1)(e) of the Electricity Act, 2003 states that SERC must "promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity*



to any person, and also specify, for purchase of electricity from such sources, **a percentage of the total consumption of electricity in the area of a distribution license**”

- (ii) Later in 2008, National Action Plan for Climate Change (NAPCC) announced by the Hon’ble Prime Minister of India envisages several measures to address global warming. One of the important measures identified involves increasing the share of renewable energy in total electricity consumption in the country. NAPCC has set the target of 5% renewable energy purchase for FY 2009-10 against current level of around 3.5%. Further, NAPCC envisages that such target will increase by 1% for next 10 years to 15% of the energy mix of India by 2020.
- (iii) Further in 2010, the Ministry of New and Renewable Energy (MNRE) has set a National Target of 20,000 MW of solar power by 2022 with no specific targets for other Renewable Energy sources including Wind. However, obligated entities were required to procure Renewable Energy under separate Solar and Non-Solar RPO heads for which targets are defined by respective State Electricity Regulatory Commissions (SERCs). Later in 2015, GoI has set a revised target of 1,75,000 MW, from four major RE sources to be achieved by year 2022. Distribution of target among RE sources is provided below:

Source of Energy	Target Capacity (MW)
Solar	1,00,000
Wind	60,000
Biomass	10,000
Hydro	5,000

- (iv) It is further important to note that Tariff Policy, 2016 has mandated State Electricity Regulatory Commission to reserve a minimum percentage for purchase of solar energy which shall be such that it reaches 8% of total consumption of energy by March 2022 or as notified by the Central Government.
- (v) In line with provisions of Tariff Policy, 2016 and its amendments thereof, Ministry of Power (MOP) has notified the long-term growth trajectory of RPOs for non-solar and solar power. Initial target was defined from FY 2017 to FY 2019 through letter dated 22<sup>nd</sup> July 2016 and later targets were notified for FY 2020 to FY 2022 through letter dated 14<sup>th</sup> June 2018. Central Government has notified solar and non-solar RPO trajectory for reaching 10.50% each for all the obligated entities as mentioned in table below:

MOP’s Solar and Non-Solar Trajectory till 2022:

Long Term RPO Trajectory	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Non-Solar	8.75%	9.50%	10.25%	10.25%	10.25%	10.50%
Solar	2.75%	4.75%	6.75%	7.25%	8.75%	10.50%
Total	11.50%	14.25%	17.00%	17.05%	19.00%	21.00%

- (vi) As we have noted that provisions of Act or Policy since 2003 does not emphasize on different RPO for different obligated entities defined by Hon’ble Commission however, provisions are more focused on type of RE whether it is Solar or Non-

*Solar. Henceforth, SERCs must set the RPO targets in line with Central Government notifications for all the obligated entities notwithstanding with the type of entity.*

*Further, it is important to mention that if the request of petitioner is considered, overall target of Central Government may not be achievable due to lower RPO targets for one of three major obligated entity i.e. Captive Consumers. As on 31<sup>st</sup> March 2018, installed capacity of captive power projects is 54,932 MW which is more than 15% of Country's installed capacity as on 31<sup>st</sup> July 2019. Such unfulfilled targets of captive power project will be added to existing targets of Distribution Licensee (biggest obligated entity) and burden of such additional RPO shall be borne by consumers of the state.*

- (vii) In last few years, contrary to petitioner view, international and national organizations have shown larger commitments towards reduction in carbon footprint than the Distribution Licensees without obligations. One of the steps towards reduction of carbon footprint of the organization is shifting of power usage from Conventional power projects to Renewable Energy power projects. Large corporate houses and industries is on the course of becoming 100% dependent on Renewable Energy, and many have already achieved the feat. As a brief fact that, in last 9 years of country's solar journey, cost of solar energy is reduced from Rs. 17/unit to below Rs. 3/unit.*
- (viii) With such reduction in cost of Renewable Energy especially in solar and wind, Distribution Licensees, Captive Consumers and Open Access consumers are preferring procurement of Renewable Energy especially solar energy as compared to conventional power which is getting costlier year on year due to raise in fuel cost, introduction of Fuel Gas Desulfurization (FGDs) for SO<sub>x</sub> reduction and Selective Catalyst Reduction (SCRs) for NO<sub>x</sub> reduction and increase in other charges like railway freight charges, coal cess, etc.*
- (ix) In such circumstances when Country is moving forward to reduce carbon footprint by increasing consumption from Renewable Energy power projects, every obligated entity must contribute equally in proportion to their consumption towards the same to achieve the targets set by MNRE and Hon'ble Commissions. It is to be noted that, in current scenario, more than 30% of MNRE target for the state of Madhya Pradesh must be achieved by obligated entities other than Distribution Licensees of the state i.e. Third Party power consumers and captive consumers. Hence, constant endurance to meet the RPO target by obligated entities must be in line with the changing policy and regulatory environment.*
- (x) Furthermore, as mentioned in petition, petitioner major concern is cost competitiveness among peers in other states due to high cost of power procurement in the state of Madhya Pradesh. It is to be mentioned that, SERCs are adopting similar phenomena of having same RPO for all obligated entities notwithstanding with the type of Industry or type of consumer. We would like to inform Hon'ble Commission that majority of the Industrial states including Gujarat and Karnataka have not adopted the MOP's order dated 01.02.2019 (GERC and KERC's RPO related Regulation/ Order and its latest amendment is*

*attached as Annexure 1 & 2 respectively). Further, as mentioned in above paras, cost of non-conventional sources has been reduced is competitive to conventional sources and even lower in majority of the states. Further, ISTS charges and losses is waived off by the Central Electricity Regulatory Commission (GERC) till 2022 for all the obligated entities, up to their RPO requirement.*

- (xi) Hence, we request Hon'ble Commission to continue with the present RPO methodology which requires all the obligated entities to comply with the prevailing RPO trajectory with an allowance that Captive Consumers can procure energy from any of the Renewable Energy Source to meet total RPO as defined for each financial year.*
- (xii) Prayer 2: Introduce provisions providing for re-assessment of RPO norms for the captive user, for previous years, based upon such norms at the time of commissioning of the captive generating units; and*
- (xiii) Prayer 3: Introduce provisions permitting captive user to file revised compliance of the RPO norms fixed by the State Commission within one year from the date of the order or such extended times as may be granted by the Commission from time to time.*

**Response on Prayer 2 & 3:**

- (xiv) Inline with our response on Prayer 1 above, re-assessment of RPO norms for the Captive Consumers may not be required. However, we request Hon'ble Commission to designate Managing Director as an authority, on behalf of Madhya Pradesh Urja Vikas Nigam Limited, Bhopal responsible for collecting RPO compliance data from every obligated entity of the State including Distribution Licensees.*
- (xv) For tracking of RPO compliance, obligated entities must submit half-yearly data of RPO compliance within forty-five (45) days from the end of each half-year and MPUVNL shall be required to submit consolidated data of a financial year to Hon'ble Commission on or before 30<sup>th</sup> June of subsequent financial year. Therefore, we request Hon'ble Commission to include tracking methodology in the prevailing Cogeneration and Generation of Electricity from Renewable Energy Sources of Energy (Revision-I) Regulation, 2010 (Cogen Regulation) to monitor the RPO compliance level yearly and, obligated entities should be penalized for non-compliance, if any."*

**16.** The petitioner by affidavit dated 25.08.2020, filed its rejoinder to the reply filed by Respondent No. 1 (MPUVNL) as under:

- "(1) At the outset, it is submitted that the following submissions/ objections to the Respondent No.1's reply are in addition to the submissions and objections raised by the Petitioner in the instant petition.*

**Re: *Contention of the Respondent No. 1 that policy and Regulatory framework of the Central Government, not aimed towards exemption to certain obligated entities but rather aimed towards the type of RE***

- (2) *It is submitted that the Respondent No. 1 has cited the policy and regulatory framework of the government, which has been formulated from time to time. It has specifically relied upon the following provisions:*
- (a) *Section 86(1)(e) of the Electricity Act, 2003;*
  - (b) *NAPCC, 2008;*
  - (c) *National Target set by MNRE in 2010 and 2015;*
  - (d) *Tariff Policy, 2016;*
- (3) *In this regard, it is to be noted that while the Respondent No. 1 has conveniently relied upon section 86(1)(e) of the Electricity Act, 2003 (hereinafter the "Act"), it has failed to consider sections 9, 42, 38 and 39 of the Act, which specifically provide for promotion of captive generation of electricity. A conjoint reading of the aforesaid provisions, critically provide a harmonious interplay between promotion of renewable sources of energy, at one hand and ensuring the furtherance of the intent of the legislature to promote and provide cost effective power in the form of captive generation of electricity, on the other hand.*
- (4) *This is more so evident from section 66 of the Act, which provides for promotion of competition for development of the power market. It is pertinent to note that by way of imposing mandatory purchase commitments, which are not aligned with the practical availability of physical RE power or RECs in the market/exchange, has led to difficulties for the obligated entities, let alone, the Petitioner, in conforming to the RPO norms under the MPERC RPO Regulations.*
- (5) *Further, the Tariff Policy, 2016, which has been relied upon by the Petitioner, also specifically provides for harnessing of captive generation, as the same is an important means to making competitive power available in the market. Furthermore, the said policy also envisages that the Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.*
- (6) *It is pertinent to mention herein that due to uneven distribution of renewable energy across the country and because of unavailability of sufficient physical RE power, the RECs mechanism was introduced for the purpose of diminishing the disparity between the supply and demand of RE power in the market. This is more so apparent from the NAPCC, 2008, relied upon by the Respondent No. 1, in its objections.*
- (7) *It is further submitted that the Respondent No. 1 has itself, relied upon data/report of MNRE for substantiating that the national target for RPO is not being met with by the States. However, it has deliberately omitted bringing to notice, the office memorandum of the MNRE dated 26.04.2019, which raised concerns on such mandatory imposition of RPO on certain obligated entities, which are technically and commercially restrained from conforming to the RPO norms.*

- (8) *Therefore, the contentions of the Respondent No. 1 are baseless, devoid of any merits, thus denied in toto, since the same are merely based on repetitive surmises, sans any cogent material data and without appraisal of the policies of the Central Government, regulatory and legislative framework underlying the introduction of renewable sources of energy in the power market.*

**Re: *Contention of the Respondent No. 1 qua larger commitments by international and national organizations towards reduction in carbon footprints***

- (9) *That, qua the contention of Respondent No. 1 regarding the international and national organizations being committed towards reduction in carbon footprints, it is submitted that such imposition of RPO norms under the respective RPO Regulations, should be done in a manner so as to create a balance between both renewable sources of energy and captive generation and not otherwise. This is more so reflected from the policy and regulatory regime, wherein, the RPO was diffused in the power sector, by creating an enabling environment for consumption of renewable sources of energy.*
- (10) *That, the Central Government has acknowledged the critical aspect of existence of disparity between the renewable sources of energy available and the RPO trajectory envisaged by the respective states. In this regard it is relevant to note that as on 31.03.2019, the REC inventory available was as low as 2,207,983 units (i.e. 2,207,983 MWh). Thus, it is clearly evident that the REC inventory is just 3.22% of the national RPO compliance shortfall and hence, the availability of RECs in the market and the REC mechanism in its current form, is unable to cater towards fulfilment of RPO compliance by the Obligated Entities.*
- (11) *Additionally, it has also considered the technical and commercial infeasibility of certain industries in resorting to such intermittent physical RE power for their manufacturing process. Hence, the government, including MNRE, MoP had issued notifications to the effect of releasing such entities from the additional burden of progressively increasing RPO norms. Therefore, the intent behind issuance of MoP notifications dated 01.02.2019 and 01.10.2019, is nothing but implementing and emphasizing on the existing legislative framework.*

**Re: *Contention of the Respondent No. 1 that RE power is cheaper and hundred percent dependable as a source of energy***

- (12) *That, qua the contention of Respondent No. 1 regarding RE power being cheaper and hundred percent dependable as a source of energy, it is submitted that the same is a bald averment, made without bringing to light, any material cogent data/ evidence to this effect on record of this Hon'ble Commission and as such deserves to be rejected.*
- (13) *In furtherance to the above, it is stated that it is a factually admitted position that the social cost of RE power is, any day, costlier than conventional sources of energy and, such power is not readily available to harness, thus making*



*itabsolutely infeasible for power intensive industries like that of the Petitioner, which is an aluminium smelter and requires continuous supply of power to run and operate such smelter.*

*A copy of the Economic Survey 2016-17 issued by the Ministry of Finance, Government of India in August 2017 is annexed hereto and marked as **Annexure -1**.*

- (14) Furthermore, renewable power consumption is not at all feasible for aluminium manufacturing industries as, aluminium manufacturing is a continuous process based highly power industry. It is reiterated that one tone aluminium production requires ~14500 kWh power which accounts for approximately ~40% of the total cost of production. Hence, as per the Office Memorandum dated 26.04.2019 issued by the MNRE squarely applies to the Petitioner as well as other aluminium manufacturers and hence, the Petitioner needs to be exempted from its RPO obligations.*
- (15) As such,solar/wind power is intermittent in nature, as it depends mostly upon climatic conditions and hence, generation fluctuation and voltage spikes are a common advent. Whereas, aluminium Smelting is done mostly through Hall-Heroult Process, which cannot survive if the Potline of the smelter is not getting constant and uninterrupted DC current, which is not possible using a solar/windpower. It is pertinent to mention that worldwide there is no precedence where an aluminium smelter runs only on solar/wind power, as the same is intermittent in nature.*
- (16) That, it is impossible for a Captive Power Plant to import Renewable power for the reason that interregional transmission grid frequently faces the problem of transmission congestion coupled with intermittent nature of generation of renewable power makes such power highly unreliable for running aluminium smelters.*
- (17) It is submitted that the manufactures in question cannot even establish power plants producing Renewable energy as the same will require them to make another huge investment over and above the investment already made by them. It is pertinent to mention that in India, aluminium manufacturers have invested more than Rs. 50,000 crores and have set up CPPs of capacity approximately 9300 MW and that too at a time when RPO obligations-were not at all in picture, and if over and above the said huge investment made by the CPPs, they are asked to keep giving more and more towards RPO compliance, they would go bankrupt and aluminium production in the country would have to face the fall.*
- (18) It is further submitted that it is necessary to ensure the survival of the aluminium industry, as this ever-growing liability of REC compliance is eating away all the profits of this industry and if the same are not done away with, particularly in view of the above notification(s) dated 01.02.2019, and Office Memorandum dated 26.04.2019, then the aluminium industry would not be in*

*a position to survive, which will not only affect the overall revenue of the State, but also would result in a huge number of people becoming unemployed.*

(19) *It is submitted that power is a critical input for aluminium industry accounting for 40-45% of their cost of production. Coal subsidies in China, natural gas subsidies in Russia and subsidized power in Middle East and various aluminium producing countries gives an edge to them over Indian players. This cost of power is over and above the taxes and duties paid on generation of power and royalties, Coal Cess, etc. paid on the procurement of the coal, etc. It is contended that in India, Aluminium manufacturers are already paying the taxes, cess, royalty, PAT Scheme of BEE, etc.*

(20) *It is submitted that for production of aluminium; however, the manufacturers cannot increase the cost of their end product as prices of aluminium are regulated by International Aluminium market and the London Metal Exchange. Hence, even the slightest increase in the price of aluminium will affect the buyer base of the manufacturers. In addition(s) to these already existing costs, if the manufacturer is made to pay for ever increasing cost, and percentage of RECs, the manufacturers have no chance of surviving the prevailing competition. For that the rising RPO trajectory as stipulated in RPO Regulations, would increase the cost of power in aluminium manufacturing making it non-competitive. It is for this reason that the Central Government has decided to intervene by way of issuance of the aforementioned notifications dated 01.02.2019, 26.04.2019 and 01.10.2019.*

**Re: *Contention of the Respondent No. 1 that certain State Commissions like Karnataka Electricity Regulatory Commission and Gujarat Electricity Regulatory Commission, have not amended their RPO Regulations, in line with the MoP notifications***

(21) *That, qua the contention of Respondent No. 1 that certain commissions like KERC and GERC have not amended the RPO Regulations in line with the aforementioned MoP notifications, it is submitted, that the aforesaid contention of the Respondent No. 1 is completely misplaced as the said RPO Regulations of KERC and GERC were notified much prior to the issuance of the said MoP notifications dated 01.02.2019 and 01.10.2019. It is pertinent to mention that apart from such isolated cases, commissions of numerous other States have already amended their respective RPO Regulations, in line with and to the extent of effectively implementing the said MoP notifications. The state commissions along with the details of such amendments have been extracted hereinbelow for ready reference:*

a) *Uttar Pradesh Electricity Regulatory Commission (UPERC) amended its RPO Regulations on 16.08.2019, by way of effectively implementing MoP notification dated 01.02.2019, thereby capping/ pegging the RPO for every CPP at the RPO level applicable, for the financial year in which such CPP was commissioned. This is evident from Regulation 4.5 of UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2019, which is extracted hereinbelow:*

"4.5 ...

The RPO of Captive Power Plants (CPP) may be fixed at the RPO level applicable in the year in which CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligation in the year in which new capacity is commissioned.

Provided if the CPP is commissioned prior to the issuance of Uttar Pradesh Electricity Regulatory Commission (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010, RPO for CPP will be kept equivalent to that notified for FY 2010-11."

(underline supplied)

- b) On 27.12.2019, the Maharashtra Electricity Regulatory Commission (MERC) amended its respective RPO Regulations, i.e., MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019, and Regulation 7.5 is relevant to the context of the present case, which provides as follows:

"7.5 Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually;

Provided that in case of Captive User of a Captive Generating Plant commissioned before 1 April 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%;

Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;

Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned;

Provided also that each Distribution Licensee shall include its plan for procurement of power from RE sources in its long-term power procurement plan such as would meet the RPO target specified above."

(underline supplied)

- c) The Odisha Electricity Regulatory Commission (OERC), vide its notification dated 31.12.2019, amended its respective RPO Regulations, being OERC (Procurement of energy from Renewable Sources and its compliance) Regulations, 2015, wherein the RPO has been pegged as per MoP notification

dated 01.10.2019, and Regulation 12.6 is relevant in this regard, as provided hereunder:

*"3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulation 12.6 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 hereby decides as follows:*

*(i) The CGPs which are Commissioned before 01.04.2016, the RPO for them shall be pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:*

<i>Solar Source (%)</i>	<i>Non Solar Source (%)</i>	<i>Total (%)</i>
<i>0.50</i>	<i>2.50</i>	<i>3.00</i>

*(ii) For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level of the year of commissioning as mandated by the OERC under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015.*

*(iii) In case of any augmentation in the capacity of the CGP, the RPO for augmented capacity shall be pegged at a level prescribed by OERC for the year in which such augmented capacity is commissioned.*

*(iv) While meeting the RPO, if CGP has surplus power than its consumption requirement, then such a CGP may sell its surplus power to the DISCOMs/GRIDCO under the prevailing arrangements or to any other consumer."*

*(underline supplied)*

- (22) From the above, it is clear that the amendments brought in by the respective Electricity Regulatory Commissions for the States of Uttar Pradesh, Maharashtra and Odisha in their RPO Regulations, is strictly in line with the policy and regulatory framework of the Central Government including the aforesaid two notifications issued by the Ministry of Power. Most critically, the Ministry of Power has admitted that RPO norms have to be modified in the event the same cannot be fulfilled on account of technical and / or commercial impossibility and this aspect cannot be lost sight of by this Hon'ble Commission while adjudicating the present case.

**Re: MNRE Office Memorandum dated 26.04.2019**

- (23) The Respondent No. 1, in its reply while endeavoring to brow-beat, deliberately evaded from shedding light on the Office Memorandum being 16/1/2018-EFM, dated 26.04.2019 issued by the MNRE, wherein it recognized that SERCs in determining applicability of RPOs for CPPs, has to examine whether achieving RPO trajectory will put the industry deploying CPPs, specifically aluminium industry, in a financially disadvantageous position and increasing renewable power consumption is not technically feasible for operations of the industry

*deploying CPPs. This aspect is critical, for adjudicating the present petition, as apart from the Ministry of Power, even MNRE recognized the difficulty being faced by the industries while complying with RPO.*

### **Para-wiseReply**

- (24) *At the outset, and before adverting to the para-wise reply, the Petitioner specifically and fervently denies all averments made in the Reply, filed on behalf of Respondent No. 1, to the extent they are contrary or inconsistent with the contents of the captioned amended petition filed on behalf of the Petitioner and/or to the present Rejoinder. Further, nothing contained in the Reply, filed by the Respondent No. 1 should be deemed to have been admitted, save as expressly stated herein. The Respondent No. 1 has deliberately filed an evasive reply and, in the process, has evaded from giving a para-wise response to the captioned petition.*

*The Petitioner states that it is not submitting the entire gamut of facts leading to filing of the captioned petition and craves leave of this Hon'ble Commission to treat the contents of the said petition as part and parcel of the present Rejoinder in order to maintain succinctness of the pleadings, brevity in submissions and avoid duplications. In fact, in their Reply, the Respondent No. 1 has avoided to answer the legal submissions of the Petitioner.*

- (25) *That, the contents of Para Nos. 1-6 of the Reply of the Respondent No. 1 are denied and disputed by the Petitioner. The submissions of the Petitioner as enumerated under Para Nos. 5-11 of the foregoing Preliminary Objections in the present Rejoinder are vociferously and vehemently reiterated. It is also submitted that the Electricity Act, 2003 and the various policies taken out by the Central Government envisage promotion of renewable energy but, not at the cost of captive industry. In fact, the very concept of captives has been envisioned to be promoted under the Act as well as the said policy initiatives. Further, it is an admitted position that the available RE generation is inadequate for RPO compliance on an all-India basis (the Petitioner craves leave of this Hon'ble Commission, to produce the relevant data in regard to the above, at the time of hearing). Therefore, due to periodical depletion of RECs and the same becoming grossly inadequate to fulfil the current RPO as per the CSERC RPO Regulations, CPP based industries, with limited scope of integrated RE generation find it impossible to comply with the same.*
- (26) *That, the contents of Para Nos. 7-9 of the Reply of the Respondent No. 1 are denied and disputed by the Petitioner, being extraneous to the contents of the captioned petition, and bereft of any material cogent data/ evidence. The submissions of the Petitioner as enumerated under Para Nos. 12-23 of the foregoing Preliminary Objections in the present Rejoinder are vociferously and vehemently reiterated.*
- (27) *That, the contents of Para Nos. 10-11 of the Reply of the Respondent No. 1 are denied and disputed by the Petitioner. The submissions of the Petitioner as enumerated under Para Nos. 24-25 of the foregoing Preliminary Objections in the present Rejoinder are vociferously and vehemently reiterated.*



*The contention of the Respondent No. 1 that ISTS charges and losses are waived off by the Central Electricity Regulatory Commission (CERC) till 2022 for all the obligated entities up to their RPO Requirement is denied and disputed, for being incorrect and misleading. It is specifically submitted that the aforesaid waiver is applicable exclusively to projects awarded through competitive bidding and where generation capacity is declared undercommercial operation between the period 13.2.2018 till 31.3.2022.*

*A copy of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) (Sixth Amendment), Regulations, 2019 is annexed hereto and marked as **Annexure -2**.*

- (28) *That, the contents of Para Nos.12-13 of the Reply of the Respondent No. 1 are denied and disputed by the Petitioner for being misplaced and baseless. In this regard, it is specifically submitted that the contention of the Respondent No. 1 for inclusion of a tracking methodology wherein obligated entities in the State of Madhya Pradesh would be required to submit half-yearly data of RPO compliance within 45 days from the end of each half-year is sans any cogent reason or purpose. At the risk of repetition, it is submitted that firstly there already exists a dearth of available and untied physical RE power and secondly there has been a rapid and escalated depletion of the RECs over the past few years, and there being no even uniformity to the availability of RECsthroughout the period of a financial year, thus, to burden the obligated entity in the State, with submission of RPO compliance data on a half-yearly basis would create further constraints, on account of technical and/ or commercial impossibility, etc. That, without prejudice, it is stated that an obligated entity under the existing framework, is given a reasonable period of a financial year to put its best efforts towards its RPO compliance and the Respondent No. 1, while baldly suggesting the aforementioned mechanism, has failed to give any cogent reason for this Hon'ble Commission to even entertain such a suggestion. As such, even under law, the Respondent No. 1 cannot at all seek directions (in the form of the aforementioned mechanism) from this Hon'ble Commission, in proceedings initiated by the Petitioner. That, each and every prayer, as prayed for by the Petitioner in the captioned petition, including Prayer (iii) therein, are vociferously and vehemently reiterated, and in view of the foregoing submissions, this Hon'ble Commission ought to grant the same.*
- (29) *In view of the submissions made in the present Rejoinder, the various contentions raised by the Respondent No. 1 in its Reply being devoid of merits, deserves to be rejected by this Hon'ble Commission. The prayers in the captioned petition are vociferously and vehemently reiterated."*

**17.** The petitioner by affidavit dated 25.08.2020 submitted the following in its rejoinder to the reply filed by Respondent No. 2 (MPNRED):

- "(1) At the outset, save and except what are matters of record, the Petitioner denies and disputes all the averments, contentions and allegations raised by the Respondent No. 2/ New and Renewable Energy Dept., Government of Madhya*

*Pradesh, in its reply in the manner alleged or at all, and no part of the said reply shall be deemed as an admission by the Petitioner unless the same is specifically admitted in the present rejoinder or otherwise.*

*As such, the Respondent No. 2/ New and Renewable Energy Dept., Government of Madhya Pradesh has endeavoured to create confusion before this Hon'ble Commission by filing a response, which is predominantly not concerned with the present case at all. The said Respondent has also alleged all sorts of bald trivia, without basing its contentions with material cogent data. The Petitioner reserves its right to raise further objections to the said reply, at the time of hearing, if required.*

- (2) *In this regard, it is specifically reiterated that the present case has been primarily filed by the Petitioner for capping/ pegging the RPO norms for the captive user(s) in terms of the MoP notification dated 01.02.2019. In effect, the Petitioner, amongst other prayers, has prayed for modification of the existing RPO norms in the State of Madhya Pradesh to the extent that RPO norms for captive user(s), wherein the captive generating plant(s) is commissioner "after" the enactment of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision 1) Regulation, 2010 ought to be capped/ pegged at the level of RPO norms prevalent in the year in which the Captive Generating Plant(s) was commissioned, with respect to the entire life of such captive generating plant(s).*

*However, the Respondent No. 2 New and Renewable Energy Dept., Government of Madhya Pradesh has filed a reply to the captioned Petition, which is cryptic and evasive in nature and does not deal with the subject matter of the lis before this Hon'ble Commission at all. Further, the Respondent No. 2/ New and Renewable Energy Dept., Government of Madhya Pradesh does not seem inclined to address the contentions put forth by the Petitioner in the captioned petition, i.e., Case No. 25 of 2019.*

- (3) *In furtherance, it is necessitated in the context of the Reply filed by the Respondent No. 2 to bring on record of this Hon'ble Commission that the Petitioner has preferred another petition, being Case No. 01 of 2020 before it, wherein, the Petitioner has sought prayers for allowing it to fulfil the mandated renewable power obligations qua Solar RPO for the FY 2019-20, by purchasing Non-solar RECs, as there is an absolute dearth of physical Solar energy in the market, and even Solar Renewable Energy Certificates (RECs) are not adequately available in energy exchanges. As such, the Petitioner made the following prayers in Case No. 01 of 2020:*

- "(a) Relax the fulfilment of Solar Renewable Purchase Obligation(s) for FY 2019-20 provided under Regulation 4.1 of the MPERC RPO Regulations; or*
- (b) Permit the Petitioner to purchase additional non-Solar RECs, for the purpose of fulfilment of Solar RPO for the FY 2019-20, by exercising power under Regulation 17 of the MPERC RPO Regulations"*

- (4) *From a perusal of the present Reply filed by the Respondent No. 2, it is evidently clear that the said Respondent has sought to muddle the proceedings of Case No. 01 of 2020 with Case No. 25 of 2019 (the present proceedings). In fact, the said Respondent has predominantly filed its response in lieu of Case No. 01 of 2020, and not the present case. This would be further demonstrable from the submissions hereinbelow.*

*As such, the Petitioner respectfully submits that the proceedings in Case No. 01 of 2020 would be adjudicated by this Hon'ble Commission on its merits and the same need not be considered for adjudication of the captioned Petition. This position has been acknowledged by this Hon'ble Commission, wherein, vide order dated 16.12.2020, it has specifically directed that the aforesaid case be listed for arguments on 09.02.2021, i.e., after the arguments in the captioned Petitioner are heard. Hence, the endeavour of the Respondent No. 2, to conjoin both the cases by virtue their Reply ought to be rejected by this Hon'ble Commission.*

*A copy of the order dated 16.12.2020, passed by this Hon'ble Court, in Case No. 01 of 2020 is annexed hereto and marked as **Annexure – 1**.*

- (5) *That before adverting to the para-wise Rejoinder, the Petitioner craves leave of this Hon'ble Commission to put forth the following preliminary submissions:*

**PRELIMINARY SUBMISSIONS:**

*At the outset, it is submitted that the following submissions to the Respondent No. 2's reply are in addition to the submissions and contentions raised by the Petitioner in the accompanying petition.*

**Re: Amendment of RPO Regulations by various State Electricity Regulatory Commissions in the Country, in line with and to the extent of effectively implementing the aforesaid MoP notifications:**

- (6) *That, the Electricity Regulatory Commissions of numerous other States in the Country have already amended their respective RPO Regulations, in line with and to the extent of effectively implementing the said MoP notifications or they are in the process of doing so. Such State Commissions, alongwith the details of such amendments have been extracted hereinbelow for ready reference:*

- d) *Uttar Pradesh Electricity Regulatory Commission (UPERC) amended its RPO Regulations on 16.08.2019, by way of effectively implementing MoP notification dated 01.02.2019, thereby capping/ pegging the RPO for every CPP at the RPO level applicable, for the financial year in which such CPP was commissioned. This is evident from Regulation 4.5 of UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2019, which is extracted hereinbelow:*

*"4.5 ...*

*The RPO of Captive Power Plants (CPP) may be fixed at the RPO level applicable in the year in which CPP was commissioned. As and when*

*the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligation in the year in which new capacity is commissioned.*

*Provided if the CPP is commissioned prior to the issuance of Uttar Pradesh Electricity Regulatory Commission (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010, RPO for CPP will be kept equivalent to that notified for FY 2010-11."*

*(underline supplied)*

- e) On 27.12.2019, the Maharashtra Electricity Regulatory Commission (MERC) amended its respective RPO Regulations, i.e., MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019, and Regulation 7.5 is relevant to the context of the present case, which provides as follows:

*"7.5 Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually;*

*Provided that in case of Captive User of a Captive Generating Plant commissioned before 1 April 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%;*

*Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;*

*Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned;*

*Provided also that each Distribution Licensee shall include its plan for procurement of power from RE sources in its long-term power procurement plan such as would meet the RPO target specified above."*

*(underline supplied)*

- f) The Odisha Electricity Regulatory Commission(OERC), vide its notification dated 31.12.2019, amended its respective RPO Regulations, being OERC (Procurement of energy from Renewable Sources and its compliance) Regulations, 2015, wherein the RPO has been pegged as per MoP notification dated 01.10.2019, and Regulation 12.6 is relevant in this regard, as provided hereunder:

“3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulation 12.6 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 hereby decides as follows:

(i) The CGPs which are Commissioned before 01.04.2016, the RPO for them shall be pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:

Solar Source (%)	Non Solar Source (%)	Total (%)
0.50	2.50	3.00

(ii) For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level of the year of commissioning as mandated by the OERC under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015.

(iii) In case of any augmentation in the capacity of the CGP, the RPO for augmented capacity shall be pegged at a level prescribed by OERC for the year in which such augmented capacity is commissioned.

(iv) While meeting the RPO, if CGP has surplus power than its consumption requirement, then such a CGP may sell its surplus power to the DISCOMs/GRIDCO under the prevailing arrangements or to any other consumer.”

*(underline supplied)*

(7) From the above, it is clear that the amendments brought in by the respective Electricity Regulatory Commissions for the States of Uttar Pradesh, Maharashtra and Odisha in their RPO Regulations, is strictly in line with the policy and regulatory framework of the Central Government, including the aforesaid two notifications issued by the Ministry of Power. Most critically, the Ministry of Power has admitted that RPO norms have to be modified in the event the same cannot be fulfilled on account of technical and/ or commercial impossibility and this aspect cannot be lost sight of by this Hon’ble Commission while adjudicating the present case. Thus, it is the need of the hour that this Hon’ble Commission permits amendment of the RPO norms prevalent in the State, in order to bring them in line with the policy and regulatory framework of the Central Government, including the aforesaid notifications issued by the Ministry of Power. This would also give a much-needed impetus to the captive industry in the State, including the Petitioner.

**Re: The compliance of the Petitioner qua its renewal purchase obligations over various Financial Years & the contention of the Respondent No. 2 that Solar and Non-Solar RECs were available in the beginning of the Financial Year 2019-20, as per Renewable Certificate Registry of India:**



- (8) *At the outset, it is respectfully submitted that the Petitioner is an RPO compliant Company, and has complied with the obligations as mandated under the RPO Regulations in the State of Madhya Pradesh, for the FYs 2017-18 and 2018-19, and its Non-Solar RPO for the FY 2019-20. This is evident and detailed in the table provided below:*

<b>Financial Year</b>	<b>Consumption (MWh)</b>			<b>RPO (MWh)</b>		<b>RECs bought</b>		<b>Remarks</b>
	<i>CGP</i>	<i>Open Access</i>	<i>Total</i>	<i>Solar</i>	<i>Non-Solar</i>	<i>Solar</i>	<i>Non - Solar</i>	
2017-18	5108468	0	5108468	76627	357593	76627 #	357593	
2018-19	5110926	0	5110926	89440	383319	89328 + Self Retained 112	383319	
2019-20	5173654		5173654	54155	31525 6	5915	187388	

- (9) *Further, for the context, it is also submitted that the Petitioner, during the aforesaid Financial Years, FYs 2017-18, 2018-19 and 2019-20 had an interim order operating in its favour qua compliance with Regulation 4.3 of the RPO Regulations, passed by the Hon'ble High Court of Madhya Pradesh in W.P. (C) 4558/2014. The said Writ Petition was disposed of by the Hon'ble High Court vide order dated 06.02.2020. Further, the Hon'ble Supreme Court, vide order dated 08.05.2017, passed in Civil Appeal No. 6083 of 2017, suspended the RECs trading session, which was again permitted by the Apex Court, vide an order dated 14.07.2017, with a direction that REC trading can be resumed at floor price.*

*A copy of the order dated 06.02.2020 passed by the Hon'ble High Court of Madhya Pradesh in W.P. (C) 4558/2014 is annexed herewith and marked as **ANNEXURE -2**.*

*A copy of the orders dated 08.05.2017 and 14.07.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 6083 of 2017 is annexed herewith and marked as **ANNEXURE -3(Colly.)**.*

- (10) *In aide to the foregoing, it is submitted that even during this period, when the Petitioner had an interim order in its favour qua its obligations under the RPO Regulations of the State, the Petitioner purchased and complied with its entire RPO obligation, for the period from inception till FY 2018 and also part of FY 2019.*
- (11) *It is submitted that the aforesaid RPO compliance of the Petitioner is also evident from the following acknowledgment letters provided by the Petitioner to the Respondent:*
- (a) *Acknowledgment letter dated 14.07.2018, depicting the RPO compliance of the Petitioner for the FY 2017-18, is annexed herewith and marked as **Annexure - 4 (colly)**;*

- (b) *Acknowledgment letter dated 14.05.2019, depicting the RPO compliance of the Petitioner for the FY 2018-19; is annexed herewith and marked as **Annexure – 5 (colly)**; and*
- (c) *Acknowledgment letter dated 18.05.2020, depicting the RPO compliance of the Petitioner for the FY 2019-20; is annexed herewith and marked as **Annexure – 5 (colly)**.*

(12) *That, the availability/ non-availability of the Solar/ Non-Solar RECs for FY 2019-20 is also depicted by way of the table being 'table A' as given below, for the convenience of this Hon'ble Commission:*

(13) *That, the Respondent No. 2 has relied upon the contents of Case No. 01 of 2020 with regard to availability of RECs in FY 2019-20. In this regard, the Petitioner craves to rely upon the data provided in the aforesaid 'table A', which details the period-wise Buy Bids, Sell Bids, Cleared Volume, amongst others.*

*As such, from a perusal of 'table A', it is evidently clear that the market trend establishes the total Buy Bid, specifically for Solar RECs have been a staggering 96.1 Lakh bids, while the Sell Bids for the same have been a meagrely 26.8 Lakh bids and the Market Cleared Volume has been 22.7 Lakh. Thus, it can be safely inferred that the demand for Solar RECs have been 3.6 times the Supply during the said period leading to a scarcity in availability of the RECs and the same becoming commercially unviable on account of being exorbitantly expensive.*

(14) *That, even the Central Government has acknowledged the critical aspect of existence of disparity between the renewable sources of energy available and the RPO trajectory envisaged by the various States in the Country. In this regard, it is relevant to note that as on 31.03.2019, the REC inventory available was as low as 2,207,983 units (i.e., 2,207,983 MWh). Thus, it is clearly evident that the REC inventory is significantly in short supply and is unable to cater towards fulfilment of RPO compliance by obligated entities.*

(15) *As such, it is clear that the overall RECs have not been adequate in the country, to quench the need of the obligated entities, including the captive industry(ies) in the State and the contention of the Respondent No. 2 lacks the rightful appraisal of the data available on the website of the REC registry of India.*

***RE: Contention of Respondent No. 2 qua source-wise procurement details of the Petitioner for FY 2019-20 towards fulfilment of its RPO:***

(16) *It is submitted that the Petitioner has already provided the details of its procurement, in the foregoing paras, towards fulfilment of its renewable purchase obligations for the FY 2019-20.*

(17) *In furtherance, it is equally important to submit herein that the Petitioner has no other option but to avail RECs from the market in order to satisfy its renewable purchase obligations, as, availing physical renewable power like solar/wind power is intermittent in nature, as it depends mostly upon*

*climatic conditions and hence, generation fluctuation and voltage spikes are a common advent. Whereas, aluminium Smelting is done mostly through Hall-Heroult Process, which cannot survive if the Potline of the smelter is not getting constant and uninterrupted power supply, which is not possible using a solar/wind power. It is pertinent to mention that worldwide there is no precedence where an aluminium smelter runs only on solar/wind power, as the same is intermittent in nature.*

(18) *It is further submitted that a large parcel of land is required for on-site solar projects. It is estimated that around 5 acres of land is required for producing 1 MW of power. Such land availability is not feasible for a power-intensive industry like that of the Petitioner. Also, the manufactures in question cannot even fathom establishing such power plants, producing Renewable energy, as the same will require them to make another huge investment over and above the investment already made by them. This is in addition to the ever-increasing burden of RPO in the State.*

(19) *Therefore, there is no other alternative available to the Petitioner to fulfil its solar RPO norms under the MPERC RPO Regulation but to purchase RECs from the exchange. It may not be out of place to mention herein that since power is a major cost element in the Aluminium Industry, procuring RECs including Solar RECs at exorbitant costs has the potential to gravely effect the economic and financial viability of the Aluminium Industry in the State, and that of the Petitioner.*

**RE: Contention of the Respondent No. 2 that RECs purchased in any particular FY towards RPO, cannot be considered towards fulfilment of RPO for future years:**

(20) *With regard to the misplaced contention of the Respondent No. 2 that RECs purchased in any particular FY towards RPO, cannot be considered towards fulfilment of RPO for future years, it is specifically submitted by the Petitioner, by placing profitable reliance on the order dated 11.09.2020, passed by the Hon'ble Odisha Electricity Regulatory Commission, in Case No. 03 of 2020, titled as M/s Hindalco Industries Vs. M/s OREDA, allowing carry forward of excess RECs so computed from FY 2019-20 onwards. The relevant extract of the said order is extracted hereinbelow:*

*"7. Considering the reply of OREDA, we direct EIC (Electricity), Government of Odisha to provide source-wise and year-wise consumption data since FY 2015-16 to OREDA in respect of both plants of the Petitioner. SLDC is also directed to furnish Open Access consumption data of both the plants of the Petitioner to OREDA. After obtaining the information, OREDA shall compute afresh the excess REC available with the Petitioner. The Petitioner is allowed to carry forward the excess REC so computed from FY 2019-20 onwards as per Regulation 12.6 of the OERC Regulation. In case the consumption data of past years is not available with the EIC (Electricity) and SLDC or cannot be found due to technical difficulties, then the declaration of the*

*Petitioner with regard to consumption shall be adopted as being done by OREDA in some cases."*

*A copy of the aforesaid order dated 11.09.2020, passed by the Hon'ble Odisha Electricity Regulatory Commission, in Case No. 03 of 2020 is annexed hereto and marked as **Annexure – 6**.*

- (21) *It may not be out of place to mention herein that present Rejoinder is being filed by the Petitioner in terms of the order dated 05.12.2020 passed by this Hon'ble Commission in the captioned petition. Further, the Hon'ble Supreme Court, in view of the prevailing COVID-19 pandemic in the Country, passed an order dated 23.03.2020 in Suo-motu Writ Petition (C) No. 03 of 2020 wherein it has extended the period of limitation in all proceedings before all for a, with effect from 15.03.2020 until further orders. The said order has recently been affirmed and held to be in-force till date by the Apex Court, vide another order dated 17.12.2020 in Civil Appeal 4085 of 2020. In view of the said orders, the Petitioner respectfully submits that any delay in filing the present rejoinder would stand extended.*

*A copy of the order dated 23.03.2020 passed by the Hon'ble Supreme Court in Suo-motu Writ Petition (C) No. 03 of 2020 and a copy of the order dated 17.12.2020 passed by the Apex Court in in Civil Appeal 4085 of 2020 are annexed hereto and marked as **Annexure – 7 (Colly.)**.*

**Para-wise Rejoinder:**

*At the outset, and before adverting to the para-wise reply, the Petitioner specifically and fervently denies all averments made in the Reply, filed on behalf of Respondent, to the extent they are contrary or inconsistent with the contents of the captioned amended petition filed on behalf of the Petitioner and/or to the present Rejoinder. Further, nothing contained in the Reply, filed by the Respondent should be deemed to have been admitted, save as expressly stated herein. The Respondent has deliberately an evasive reply and, in the process, has evaded from giving a para-wise response to the captioned petition.*

- (22) *That, the contents of Paras 1– 4 of the of Reply of the Respondent No. 2 are denied and disputed by the Petitioner. They are also denied to the extent that they are contrary to admitted records before this Hon'ble Commission and do not conform to the lis raised in Case No. 25 of 2019 by the Petitioner. In this regard, the Petitioner also craves leave of this Hon'ble Commission to reiterate the contents of the foregoing preliminary submissions. It is further submitted that the Petitioner, which is a RPO compliant Company, has already complied with the mandate of the RPO Regulations in the State of Madhya Pradesh, for the Financial Years 2017-18 and 2018-19, and its Non-Solar RPO for the FY 2019-20. That, qua fulfilment of its Solar RPO for the FY 2019-20, the Petitioner has already initiated the proceedings of Case No. 01 of 2020, pending adjudication before this Hon'ble Court. The facts of the same are not repeated herein, for the sake of succinctness and maintaining brevity of*

*pleadings. As such, the corresponding contents of the captioned Petition are reiterated and the contentions of the Respondent No. 2 are denied.*

- (23) *That, so far, the contents of Paras 5 – 6 of the Reply of the Respondent No. 2 are concerned, it is submitted that the said Respondent has admittedly conceded to the prayer of the Petitioner in Case No. 01 of 2020. Further, the Petitioner has already relied upon and annexed an order dated 11.09.2020, passed by the Hon'ble Odisha Electricity Regulatory Commission, in Case No. 03 of 2020, titled as M/s Hindalco Industries Vs. M/s OREDA, wherein the said Commission has allowed carry-forward of excess RECs. As such, the corresponding contents of the captioned Petition are reiterated and the contentions of the Respondent No. 2 are denied, to the extent indicated above.*
- (24) *In view of the submissions made in the present Rejoinder, the various contentions raised by the Respondent No. 2 in its Reply being devoid of merits, deserves to be rejected by this Hon'ble Commission. The prayers in the captioned petition are vociferously and vehemently reiterated.*

**18.** The Respondent No. 2 by affidavit dated 02.12.2020 filed joint rejoinder on behalf of Respondents 1 and 2 submitting the following:

- (i) *Firstly, it is pertinent to highlight to the Hon'ble Commission that 22,07,983 RECs (3,35,157 Solar RECs and 18,72,826 Non-Solar RECs) were available in the beginning of the FY 2019-20. Further, total 1,27,39,554 fresh RECs (21,31,292 Solar RECs and 1,06,08,262 Non-Solar RECs) were issued in FY 2019-20 as per the Renewable Energy Certificate Registry of India. Total 89,27,850 RECs (23,14,774 Solar REC and 66,13,076 Non-Solar REC) were redeemed through Power Exchanges by Obligated Entities. The same information is summarized in below mentioned table for Hon'ble Commission:*

<i>FY 2019-20</i>	<i>Solar REC</i>	<i>Non-Solar REC</i>	<i>Total</i>
<i>Available at the beginning of the year</i>	<i>3,35,157</i>	<i>18,72,826</i>	<i>22,07,983</i>
<i>Issued during the year</i>	<i>21,31,292</i>	<i>1,06,08,262</i>	<i>1,27,39,554</i>
<i>Redeemed through exchanges</i>	<i>23,14,774</i>	<i>66,13,076</i>	<i>89,27,850</i>

- (ii) *However, the petitioner has not submitted the procurement details for the FY 2019-20 from sources other than the distribution licensee as on date. It is requested to the Hon'ble Commission to seek the details related to procurement from sources different than the distribution licensee for FY 2019-20.*
- (iii) *However, as per the data submitted by petitioner in Petition No. 01 of 2020, they have consumed 5,110.9 MUs in the FY 2018-19 from sources other than the distribution licensee. Just in case to demonstrate the need Vs. availability of RECs in the market, we consider that the petitioner has procured 5,111 MUs from sources other than the distribution licensee in FY 2019-20. Now, as per clause 4.1 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010, RPO norms must be complied on the total annual procurement of*



*Electrical Energy during any particular financial year. So, in this case the petitioner needs to fulfil RPO on 5,111 MUs.*

- (iv) Now, cumulative RPO for FY 2019-20 is 12% which is to be fulfilled by Obligated Entities as per clause 4.1 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010. Hence, petitioner need to procure 613.30 MUs from renewable sources of energy or it can also purchase 6,13,300 electronic RECs (1 REC = 1MWh) from the power exchanges of India, which were easily available. Hence the issue raised by the petitioner that adequate RECs are not available in the market is not reliable as it can be seen from above table that available RECs were way more than the requirement of the petitioner.*
- (v) Moreover, for comprehensive development of Renewable Energy in the state, we request the Hon'ble Commission to allow the captive consumers to fulfil Solar RPO by procuring Non-Solar RECs if Solar RECs are not available in market or not adequate or vice-versa to meet total RPO as defined by Hon'ble Commission for each financial year.*
- (vi) It is necessary to bring to the notice of the Hon'ble Commission that the REC purchased or renewable energy procured in any particular FY towards the obligation cannot be considered towards the fulfillment of Renewable Purchase Obligations of the future years. Also, as referred by the Petitioner that the Electricity Regulatory Commission (ERC) of Uttar Pradesh, Maharashtra and Orissa has adopted the order of MOP, but it is important to that no ERC has allowed to set off or adjust the previously fulfilled RPO with the future RPO requirement."*

**19.** The petitioner broadly submitted the following in its written submission filed on 25.01.2021:

- "(1) The present petition is necessitated on account of the issuance of notifications by the MoP dated 01.02.2019 and 01.10.2019 with respect to fulfilment of RPOs by the industries / consumers, who avail power from the captive generating plants under the captive mode. It is stated that vide the aforementioned notifications, the MoP has admitted that RPO norms have to be modified in the event the same cannot be fulfilled on account of technical and/or commercial impossibility.*
- (2) Further, it is submitted that the aforesaid petition has been filed by the Petitioner, i.e., M/s Hindalco Industries Limited, inter-alia, seeking relief for capping/ pegging of RPO norms qua the captive power plant(s) of the Petitioner, as per the aforementioned notifications issued by the MoP dated 01.02.2019 and 01.10.2019, specifically the notification dated 01.10.2019.*
- (3) More so, vide order dated 19.01.2021, this Hon'ble Commission while reserving order in the present case, directed the parties to file their respective written submissions within a period of 3 days. The present submissions are being filed by the Petitioner in compliance of the said direction of this Hon'ble Commission and the same may be read in addition to the contents of the captioned Petition and the rejoinder(s) filed by the Petitioner.*

**I. Legislative Amendments & Policies leading towards Captive Generation:**

- (4) *It is respectfully submitted that, various legislative amendments and policies have led towards the captive generation for the purpose of ensuring adequate power supply and avoiding power deficit situation in the Country, especially MSMEs.*
- (5) *Based on the policy initiatives, the Central Government/ MoP from time-to-time proceeded to fix the trajectory for RPO obligations, which has been the guiding light and generally followed by the State Commissions/ SERCs across the country. In this context, reference is also made to the orders passed by the Central Government dated 22.07.2016 and 14.06.2018 under the Tariff Policy wherein long-term growth trajectory of Renewable Purchase Obligations is prescribed by MoP in consultation with the MNRE for three years from 2016-17 to 2018-19 and 2019-20 to 2021-22 [Annexed with the present submissions as **ANNEXURE- A(Colly.)**].*
- (6) *Besides, it is trite to state that, policy is a matter of guideline. In this respect, reference may be made to the judgment of Narendra Kumar Maheshwari v. Union of India, reported in 1990 Supp SCC 440.*

*A copy of the said judgment, reported in 1990 Supp SCC 440 is annexed herewith and marked as **ANNEXURE –B**.*

- (7) *In addition, reliance is placed on the judgment of the Hon'ble Supreme Court of India, in the case of Cellular Operators Assn. of India v. Union of India, reported in (2003) 3 SCC 186 wherein it has been held that sector regulators have wide powers/ jurisdiction in discharging their functions and/or duties. In this regard, paragraph no. 33 of the aforesaid judgment is being reproduced hereinbelow for the sake of convenience:*

*“33.The regulatory bodies exercise wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsically, they act like an internal audit. They may fix the price, they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees.”*

*[UnderlinesSupplied]*

*A copy of the aforesaid judgment, reported in (2003) 3 SCC 186 is annexed herewith and marked as **ANNEXURE –C**.*

- (8) *Further, reliance is also placed on the judgment of the Hon'ble High Court of Bombay in Multi Commodity Exchange of India v. Central Electricity Regulatory Commission, reported in (2011) SCC OnLine Bom 152, wherein it has been held that a regulator or the statutory authority, in view of the ground reality (technical or commercial impossibilities) can revise/ relax a statutory obligation. In this regard, para 26(d) is extracted hereinbelow for ease of reference:*

"26.

.....

(d) It is clarified that the Union of India and/or the concerned commission and/or the regulatory authorities are free to revise and/or to reframe the rules and the regulations and/or to amend the concerned statutes to permit the futures/forward and derivatives contract in electricity, if so advised."

(Underlines Supplied)

A copy of the aforesaid judgment, reported in (2011) SCC OnLine Bom 152 is annexed herewith and marked as **ANNEXURE -D**.

- (9) That, in view of the combined reading of the judgments being referred to hereinabove, it is unequivocally clear that this Hon'ble Commission has wide powers to not only consider the notifications dated 01.02.2019 and 01.10.2019 issued by the MoP, but also to deviate from the same and provide for more relaxed norms, i.e., specific implementation of the MoP notification dated 01.02.2019, so that the RPO is fulfilled in a more effective manner.

## II. **RPO Obligations: Year-on-Year Increase:**

- (10) That, on 19.11.2010, this Hon'ble Commission notified the RPO Regulations for procurement of renewable energy by the DISCOMs and/or other obligated entities. Vide a gazette notification dated 01.09.2017, this Hon'ble Commission amended Regulation 4.1 of the RPO Regulation. In the aforesaid Regulations, the RPO norms specified in Regulation 4.1 were prescribed for the FYs 2010-11 to 2021-22.

At this juncture, it is pertinent to note that in the RPO Regulations, the RPO for the FY 2010-11 was totaling to 0.80% and 7.00% for FY 2015-16. However, under the amendment of the Regulations, the RPO for the FY 2019-20 was made 12%, which further increased to 17% for FY 2021-22. Hence, in view of the manner in which the RPOs on the captive users were increasing on a year-on-year basis as stated above, commercial sustainability of such captive users such as the Petitioner herein, has become increasingly difficult.

- (11) Besides, it is respectfully submitted that States like Punjab, Uttar Pradesh, etc., where prescribed percentages are lower vis-à-vis States like Madhya Pradesh, where RPO trajectory is higher, have better compliance levels (**Annexure P-6, Page 311 of the Petition, Vol-II**). In fact, higher targets need not necessarily guarantee higher compliance rates. On the other hand, such high incidence of ever-increasing RPO levels in the State would inevitably result in the Petitioner losing its ability to stay competitive in the market at the outset.

- (12) In furtherance to the above, it is relevant to note that, in terms of the foregoing circumstances, the Petitioner has fulfilled its RPO obligations (qua solar and non-solar), under the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010

till March, 2019. However, the Petitioner has been unable to comply with its remaining RPO obligations from March 2019 onwards till date, under the extant Regulations, due to various reasons mentioned under the present petition, including the RECs liquidity issue.

- (13) *It is submitted that the industries, especially those engaged in manufacturing (including the Petitioner herein) which is an Aluminum producer, are power intensive. This means that the cost of power/ electricity is one of the major input costs, and the same directly affects the competitiveness of the finished products produced by such industries. In this context, it would not be out of place to mention that, a high cost of power makes the goods unviable in the open market.*
- (14) *That further, it is submitted that the Aluminium Association of India, vide letter dated 27.05.2019 (**Annexure P-12, Page 399 of the Petition, Vol-II**) specifically requested the MoP to consider technical non-feasibility of renewable power for the Aluminium industry and the fact that achieving RPO trajectory would put the industry in a financially disadvantageous position.*
- (15) *That, the Aluminium industries (including the Petitioner herein) have relied heavily on the RECs to meet RPO targets due to operational challenges in using RE power. In this regard, it is submitted that reliance on such RECs to meet such RPO targets in aluminum operation can materialize till the extent they are available in the market. As such, the Petitioner is an RPO compliant Company and has complied with the obligations as mandated under the RPO Regulations in the State of Madhya Pradesh for the FYs 2017-18 and 2018-19, and its non-solar RPO for the FY 2019-20 [**Annexure-4 (Colly.), Annexure-5 (Colly.) & Annexure-6 (Colly.)@Pages 36 - 45 of the Rejoinder to the Reply of R-2**].*
- (16) *At this juncture, it is also pertinent to note that, the social cost of RE power is also costlier than the conventional sources of energy -the same is not readily available to harness, and also is technically infeasible as it is intermittent in nature and the operations of the Petitioner's smelter plant requires reliable and quality power supply round the clock, i.e., 24x7. This is another factor which has severely burdened the obligated entities (including the Petitioner herein) and added to its financial costs, rendering its operations difficult in the prevailing circumstances (**Annexure-1 @Page 19 of the Rejoinder to the Reply of R-1**).*

### **III. Trading of RECs- Injuncted by APTEL:**

- (17) *In furtherance to the above, it is submitted that the trading of RECs at the exchange has also been injuncted by the Hon'ble APTEL in Appeal No. 113 of 2020 and there is no trading as of today, in relation to RECs. In this regard, the relevant orders being order dated 24.07.2020 and order dated 25.09.2020 are brought to the notice and record of this Hon'ble Commission.*

*Copies of the aforesaid orders dated 24.07.2020 and 25.09.2020 passed by the Hon'ble APTEL in Appeal No. 113 of 2020 are annexed herewith and marked as ANNEXURE- E(Colly.).*

**IV. The Need for Amending Regulations qua RPOs:**

- (18) *It is respectfully submitted that vide the aforesaid petition, the Petitioner has already elaborated the powers of this Hon'ble Commission under the framework of the Central Electricity Act, 2003, specifically under Sections 86(1)(e), 86(4) and 181, which empowers it to amend the prevalent RPO Regulations in the State of Madhya Pradesh in view of the long-term growth trajectory for RPO norms, which has been envisaged by the MoP, vide its notifications dated 01-Feb-2019 and 01-Oct-2019.*
- (19) *In order to promote renewable energy generation, this Hon'ble Commission enforced Section 86(1)(e) and promulgated Regulations for mandatory purchase of renewable energy by the consumers of electricity, including industries. The Regulations are termed as MPERC (Cogeneration and generation of electricity from Renewable Sources of Energy) (Revision 1) Regulation, 2010. It is pertinent to mention that, the aforesaid Regulations provided for a spiked increase in the share of renewable power by the industries, over a period of time. As such, the aforesaid mandatory imposition and the yearly increase in the quantum of renewable energy consumption, started to take a toll on the industries with respect to the overall energy costs, as renewable energy was expensive as compared to captive power. While it is necessary to promote renewable energy, however, it is submitted that the same cannot be imposed at the cost of the Petitioner and/or Aluminium industry.*
- (20) *Undeniably, the entire RPO regime formulated by this Hon'ble Commission was entirely based upon the notifications/ policies issued by the Central Government. In this regard, it is imperative that this Hon'ble Commission implements the intent of the aforementioned MoP notifications dated 01.02.2019 & 01.10.2019. In this context, reference is also made to Clause 6.4(1) of the Tariff Policy, 2016 issued by the Central Government under Section 3 of the Electricity Act, 2003, which mandates that the long-term trajectory of RPO norms have to be specified by the State Commissions by taking guidance from the MoP. For the said purpose, this Hon'ble Commission ought to amend the RPO Regulations in order to give effect to the intent of the aforementioned notifications, which is to lessen/ reduce the burden of the existing RPO norms on industries, especially the Aluminum sector.*
- (21) *Moreover, it is submitted that the MoP notification dated 01.10.2019, is a deviation from the earlier notification dated 01.02.2019. However, what needs to be considered is the intent of the aforesaid MoP notification(s), which is arecognition of the fact that RPO norms can be relaxed when there is physical, technical and/or commercial impossibility. This intent must be kept in mind, when this Hon'ble Commission adjudicates the present petition for the purpose of implementation of the MoP notification dated 01.02.2019. In doing so, it*



would not only encourage a conducive market towards encouragement of captive generation of power, but would also lead to more robust industrial (and aluminum) growth on account of conducive electricity regulatory scenario.

- (22) It is therefore, just and proper that, this Hon'ble Commission passes appropriate directions in order to amend the RPO Regulations, with the effect that the captive power plants, which have commissioned after the enactment of the aforesaid Regulations will have to comply with the RPO norms at the levels as mandated by the Hon'ble Commission for the year in which the captive power plant was commissioned, which will be applicable for the entire life of such captive power plant, i.e., in line with the MoP notification dated 01.02.2019.
- (23) That the aforesaid can be achieved by prospectively providing in the amended Regulations that any RPO already fulfilled by the captive power plants - which is in excess when compared with the year wise RPO norms to be provided in the amended Regulations - shall be set-off/ adjusted against the future RPO fulfilment obligations. In this regard, it is specifically submitted that there needs to be a specific provision for providing set-off/ adjustment, that would be for future.

**V. Amendment of RPO Regulations by various SERCs in the Country, in-line with and to the extent of effectively implementing the aforesaid MoP Notifications:**

- (24) It is submitted that, the Electricity Regulatory Commissions of numerous other States in the Country have already amended their respective RPO Regulations, in line with and to the extent of effectively implementing the said MoP notifications or they are in the process of doing so. Such State Commissions, along with the details of such amendments have been extracted hereinbelow for ease of reference:
- a) The Ld. Uttar Pradesh Electricity Regulatory Commission ("UPERC") amended its RPO Regulations on 16-Aug-2019, by way of effectively implementing the MoP notification dated 01-Feb-2019, thereby capping/ pegging the RPO for every CPP at the RPO level applicable, for the FY in which such CPP was commissioned. This is evident from Regulation 4.5 of UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2019, which is extracted below:

"4.5 ...

The RPO of Captive Power Plants (CPP) may be fixed at the RPO level applicable in the year in which CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligation in the year in which new capacity is commissioned.

Provided if the CPP is commissioned prior to the issuance of Uttar Pradesh Electricity Regulatory Commission (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010, RPO for CPP will be kept equivalent to that notified for FY 2010-11."

(Underlines Supplied)

- b) That, on 27.12.2019, the Ld. Maharashtra Electricity Regulatory Commission (Ld. "MERC") amended its respective RPO Regulations, i.e., MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019, and Regulation 7.5 is relevant to the context of the present case, which provides as follows:

*"7.5 Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually;*

*Provided that in case of Captive User of a Captive Generating Plant commissioned before 1 April 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%;*

*Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;*

*Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned;*

*Provided also that each Distribution Licensee shall include its plan for procurement of power from RE sources in its long-term power procurement plan such as would meet the RPO target specified above."*

(Underlines Supplied)

- c) The Ld. Odisha Electricity Regulatory Commission (Ld. "OERC"), vide its notification dated 31-Dec-2019, amended its respective RPO Regulations, being OERC (Procurement of energy from Renewable Sources and its compliance) Regulations, 2015, wherein the RPO has been pegged as per MoP notification dated 01-Oct-2019, and Regulation 12.6 is relevant in this regard, as provided hereunder:

*"3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulation 12.6 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 hereby decides as follows:*

(i) The CGPs which are Commissioned before 01.04.2016, the RPO for them shall be pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:

<b>Solar Source (%)</b>	<b>Non-Solar Source (%)</b>	<b>Total (%)</b>
0.50	2.50	3.00

(ii) For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level of the year of commissioning as mandated by the OERC under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015.

(iii) In case of any augmentation in the capacity of the CGP, the RPO for augmented capacity shall be pegged at a level prescribed by OERC for the year in which such augmented capacity is commissioned.

(iv) While meeting the RPO, if CGP has surplus power than its consumption requirement, then such a CGP may sell its surplus power to the DISCOMs/GRIDCO under the prevailing arrangements or to any other consumer."

*(UnderlinesSupplied)*

(25) From the above, it is unequivocally clear that the amendments brought in by the respective "Electricity Regulatory Commissions" for the States of Uttar Pradesh, Maharashtra and Odisha in their RPO Regulations, are strictly in line with the policy and regulatory framework of the Central Government, including the aforesaid two notifications issued by the MoP. Notably, the MoP has admitted that RPO norms have to be modified, in the event, the same cannot be fulfilled on account of technical and/or commercial impossibility and this aspect cannot be lost sight of by this Hon'ble Commission while adjudicating the present case. Hence, it is the need of the hour that this Hon'ble Commission permits amendment of the RPO norms prevalent in the State, in order to bring them in line with the policy and regulatory framework of the Central Govt., including the aforesaid notifications issued by the MoP. This would also give a much-needed impetus to the captive industry in the State, including the Petitioner herein.

(26) In view of the foregoing submissions, it is humbly prayed, at the cost of repetition, that, pursuant to a combined reading of the aforesaid MoP notifications, the existing RPO norms (specifically Regulation 4.1 therein) must be amended in terms of the following:

- the RPO norms for captive user(s), wherein the captive generating plant(s) is commissioned after the enactment of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision 1) Regulation, 2010, has to be pegged at the level of RPO norms prevalent in the year in which the captive generating

*plant(s) was commissioned, with respect to the entire life of such captive generating plant(s).*

- (27) *Hence, the Petitioner is seeking implementation of the MoP notification dated 01.02.2019, which means that this Hon'ble Commission may deviate from the MoP notification dated 01.02.2019 based on the reasons already enumerated in the present petition.*
- (28) *That, in terms of the contents of the captioned Petition, the rejoinder(s) filed therein by the Petitioner and the present Written Submissions, the prayers prayed for ought to be allowed by this Hon'ble Commission."*

### **Commission's Observations and Findings:**

**20.** The original petition was filed under Section 86(1)(e), 86(4) and 181 of the Electricity Act 2003 read with Clause 16.1 and 16.2 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and Article 6.4 of the Tariff Policy 2016, seeking implementation of the order dated 01.02.2019 issued by the Ministry of Power, Government of India. The petitioner filed an amended petition on 06<sup>th</sup> December'2019 in light of subsequent order dated 01.10.2019 issued by the Ministry of Power, Government of India. In its prayer, the petitioner has sought amendment to MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision 1) Regulation, 2010, to implement the notification dated 01.02.2019 with regard to RPO compliance. The petitioner is seeking deviation from the clarification issued by the Ministry of Power vide subsequent order dated 01.02.2019

**21.** The extract of petitioner's submission is as under:

- (i) Ministry of Power issued two notifications dated 01.02.2019 and 01.10.2019, whereby the renewable purchase obligations have been sought to be substantially reduced upon captive users. The petitioner is seeking implementation of the first notification dated 01.02.2019, stating that this Commission while exercising wide powers may deviate from the notification dated 01.10.2019 based on certain reasons enumerated in the petition.
- (ii) The Central Government/ MoP from time-to-time proceeded to fix the trajectory for RPO obligations, which has been followed by the State Commissions/ SERCs across the country. The petitioner has referred the orders passed by the Central Government on 22.07.2016 and 14.06.2018 under the Tariff Policy wherein long-term growth trajectory of Renewable Purchase Obligations has been prescribed by the Ministry of Power in consultation with MNRE for FY 2016-17 to 2018-19 and 2019-20 to 2021-22.
- (iii) The entire RPO regime has been entirely based upon the notifications/ policies issued by the Central Government and therefore, it is imperative that this Commission has to implement the intent of the aforementioned notifications dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power. The petitioner has also

referred Clause 6.4(1) of the Tariff Policy, 2016 issued by the Central Government under Section 3 of the Electricity Act, 2003.

- (iv) The petitioner also stated that deviation from implementation of the former notification dated 01.02.2019 instead of latter clarification of MoP dated 01.10.2019, would encourage a conducive market for captive generation of power and it would also lead to more robust industrial (and aluminum) growth on account of conducive electricity regulatory scenario.

**22.** On the other side, the extract of Respondents' submissions is as under:

- (i) The provisions of Act or Policy since 2003 do not provide for different RPOs for different obligated entities however, the provisions are more focused on type of RE whether it is Solar or Non-Solar. Therefore, the State Commission must set the RPO targets in line with Central Government notifications for all the obligated entities irrespective of the type of entity. The Respondents stated that if the request of petitioner is considered, overall target of Central Government may not be achievable due to lower RPO targets for one of three major obligated entity i.e. Captive Consumers. As on 31<sup>st</sup> March 2018, installed capacity of captive power projects is 54,932 MW which is more than 15% of Country's installed capacity as on 31<sup>st</sup> July 2019. Such unfulfilled targets of captive power project will be added to existing targets of Distribution Licensee (biggest obligated entity) and burden of such additional RPO shall be borne by consumers of the state.
- (ii) When the Country is moving forward to reduce carbon footprint by increasing consumption from Renewable Energy power projects, every obligated entity must contribute equally in proportion to their consumption towards the same to achieve the targets set by MNRE and the Commissions. In the current scenario, more than 30% of MNRE target for the state of Madhya Pradesh must be achieved by obligated entities other than Distribution Licensees of the state i.e. Third Party power consumers and captive consumers. Hence, constant endurance to meet the RPO target by obligated entities must be in line with the changing policy and regulatory environment.
- (iii) The Respondents have requested the Commission to continue with the present RPO methodology which requires all the obligated entities to comply with the prevailing RPO trajectory with an allowance that Captive Consumers can procure energy from any of the Renewable Energy Source to meet total RPO specified for each financial year.
- (iv) The Respondents have requested to designate Managing Director as an authority, on behalf of Madhya Pradesh Urja Vikas Nigam Limited, Bhopal as responsible for collecting RPO compliance data from every obligated entity of the State.

**Legal Provisions invoked by the petitioner:**

**23.** Regulations 16.1 and 16.2 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 provide as under:



***“Power to Amend***

*16.1. The Commission may at any time, add, vary, alter, modify or amend any provisions of these Regulations.*

*16.2. In the event of any dispute, the matter shall be referred to the Commission whose decision in this regard shall be final.”*

**24. Provision under clause 6.4 (1) of Tariff Policy issued on 28<sup>th</sup> January’2016:*****“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:***

*1) Pursuant to provisions of Section 86(1) (e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth Trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*

*Provided that co-generation from sources other than renewable sources shall not be excluded from the applicability of RPOs.....”*

**25. Clarifications issued by the Ministry of Power with regard to “RPO of “Captive Power Plants”**

(i) The following was mentioned in first clarification vide MoP’s letter dated 01.02.2019:

***“It is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the Company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.”***

(ii) Subsequently, the Ministry of Power has further clarified the following in the second clarification vide Letter dated 01<sup>st</sup> October’2019:

***1) “A clarification was issued by the MoP vide letter dated 01<sup>st</sup> February’ 2019 regarding capping of RPO for captive Power Plants (CPP).***

***2) Based on the concern raised by various stakeholders and after due consultation with MNRE, CEA and CERC, it is further clarified that***

***i. For CPPs commissioned before 01.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 01.04.2016 onwards, the RPO level as mandated by the***

- appropriate Commission or MoP, whichever is higher, for the year of commissioning of the CPP shall be applicable.*
- ii. In case any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.*
  - iii. In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchange."*

**26.** The Commission has gone through the submission made by the parties and also taken cognizance of the clarifications dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power, Government of India. Considering the provisions under Section 86(1)(e) of the Electricity Act, 2003 and Clause 6.4(1) of the Tariff Policy, 2016, the Commission invoking its power to remove difficulties in implementation of above-mentioned clarifications under Regulation 17 of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) hereby decides the following in this petition:

"For Captive Users procuring power from Captive Generating Plants commissioned prior to 01.04.2016, RPO shall be at the level as specified by the Commission for FY 2015-16.

For Captive Users procuring power from Captive Generating Plants commissioned from 01.04.2016 onwards, the RPO level as specified by the Commission for the relevant year or as specified by the Ministry of Power for the relevant year, whichever is higher, for the year of commissioning of the Captive Generating Plants shall be applicable.

Provided that in case of any augmentation in the capacity, the RPO for augmented capacity shall be at the RPO level as specified by the Commission or as specified by the Ministry of Power whichever is higher for the year in which the Captive Generating Plant has been augmented."

With the above observations and findings, the subject petition is disposed of.

Sd/-  
(Shashi Bhushan Pathak)  
Member

Sd/-  
(Mukul Dhariwal)  
Member

Sd/-  
(S.P.S. Parihar)  
Chairman