

Sub : In the matter of petition for adjudication of dispute for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2014-15 and non-compliance of orders dated 10.09.2013 in P.No. 38/2013 and dated 20.10.2014 in P.No. 14/2014

ORDER

**(Date of hearing: 24th November, 2015)
(Date of order: 9th December, 2015)**

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

- Petitioner

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

- Respondent No.1

M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,
GPH Compound, Polo Ground,Indore- 452 003

- Respondent No.2

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.,
Shakti Bhawan, Rampur, Jabalpur- 482 008

- Respondent No.3

M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.,
Nishtha Parisar, Govindpura, Bhopal- 462 023

- Respondent No.4

M.P. A.K. V. N. (Indore) Ltd.,
AB Road, Indore

- Respondent No.5

Shri Manish Singh, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advisor(Law) and Shri N.K.Sharma, DGM (Com) appeared on behalf of the respondent no.1.

None appeared on behalf of the respondent nos. 2, 3, 4 and 5.

2. The petitioner, M/s Green Energy Association has filed this petition seeking adjudication of dispute for non-compliance of solar RPO by obligated entities for FY 2011-12 to FY 2014-15 and non-compliance of orders dated 10.09.2013 in P.No. 38/2013 and dated 20.10.2014 in P.No. 14/2014. The case was listed for motion hearing on 21.07.2015.

3. During the motion hearing on 21.07.2015, the petitioner restated the contents of the petition. The petition was admitted and the next date of hearing was fixed for 25.08.2015 which was adjourned to 29.09.2015 and then to 13.10.2015. The respondent no. 1 filed a written submission on 12.10.2015.

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4. During the hearing on 13.10.2015, the petitioner sought time to file the reply on the response of the respondent no.1. The Commission allowed the petitioner time up to 26.10.2015 and the next date of hearing was fixed for 30.10.2015.

5. During the hearing on 30.10.2015, the petitioner submitted a rejoinder and sought time for arguments by its Sr. Counsel. The Commission allows the same and the next date of hearing was fixed for 24.11.2015.

6. During the hearing on 24.11.2015, the petitioner stated that the Commission has already notified Regulations for fixation and compliance of Renewable Purchase Obligations (RPO). The respondents are duty bound to comply with the mandatory and statutory obligations by either purchasing the physical energy or purchasing RECs, if available. Presently, the RECs are available in sufficient quantity and the solar energy is not available in required quantum. The obligated entities have not complied with the RPO for the previous financial years and, therefore, the RPO for the FY 2015-16 should be cumulative. The respondent no.1 in its written submissions stated that:

- (i) The relief that may be granted in present petition is covered in the Suo-Motu Petition No. 43/2015 and, therefore, the present petition is barred by the principles of **res-judicata**.
- (ii) The petitioner's association has never offered to sell its power to the answering respondent and the answering respondent has never refused to procure power from the petitioner's association. The petitioner has no **locus-standi** to institute present petition.
- (iii) The purchase of RECs is not to the commercial advantage to the answering respondent.
- (iv) The answering respondent is making all diligent and sincere efforts for fulfillment of Solar RPO target.

7. The petitioner in its Rejoinder to the aforesaid response stated that:

- (i) The principles of res-judicata have no applicability in the present matter because in the present case, the Suo-Motu petition is not between the petitioner and the respondents herein but between the Commission and the respondent no.1.
- (ii) Regarding locus of the petitioner, it is an association of solar energy generators and is authorized to represent their interests before the appropriate forum. Further, the reliefs claimed by the petitioner are with regard to the compliance of statutory obligations for which no locus is required as the respondents are duty bound to comply with their statutory requirements of Renewable Purchase Obligations.
- (iii) One of the members of the association, M/s Ujaas Energy Ltd. vide its letter dated 24.11.2014 has offered to supply the power to the respondent no. 1 for a longer period at

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the prevailing solar tariff determined by the Commission. Various other members have also participated in the competitive bidding.

(iv) The respondent no.1 cannot decide whether purchasing of REC is commercially viable or not. Also, financial hardship can never be an excuse to non-compliance of mandatory statutory requirement which in this case is the Renewable Purchase Obligations.

8. Having heard the petitioner and the respondents and on considering their written submissions, the Commission has noted that the respondents are required to comply with the provisions of the Renewable Purchase Obligations as per MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended from time to time. By order dated 20.10.2014 in petition no. 14/2014, the Commission had already imposed a token penalty of Rs. 25,000 on the respondent no. 1 for non-compliance of Solar Renewable Purchase Obligations during the period from FY 2011-12 to FY 2013-14. The Commission also noted that respondents could not fulfill the Solar Renewable Purchase Obligations during the FY 2014-15 also. The Commission is monitoring the progress through the Suo-Motu petition no. 43/2015 regularly. The Commission also gone through the progress achieved by the respondents during the FY 2015-16 based on which, the Commission feels that the respondents may purchase more than the Solar Renewable Purchase Obligations fixed for the FY 2015-16. This may mitigate the default on the part of the respondents in fulfilling the statutory Solar Renewable Purchase Obligations in previous financial years. Under the above circumstances, the Commission is of the view that it would not be appropriate to impose any penalty at present on the respondents. The Commission, therefore, directs the respondents to make all out efforts to enhance the purchase of electricity from solar power projects expeditiously. The Commission is not in agreement with the views of the petitioner that the Solar Renewable Purchase Obligations during the FY 2015-16 should be cumulative as this will generate bad practices to accumulate the shortfall and to carry forward the targets.

9. With the above directions, the petition no. 34 of 2015 is disposed of.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman