

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 38 of 2013
Date of hearing: 30.07.2013
Date of Order: 07.08.2013**

In the matter of: Petition for extension of compliance period of Renewable Purchase Obligation under Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 by way of purchase of Renewable Energy Certificate for the year 2011-12 and 2012-13 in the year 2013-14 by the petitioner-National Fertilizers Limited, Bathinda Unit.

And

In the matter of: National Fertilizers Limited (a Govt. of India Undertaking) Bathinda Unit, Sibian Road, Bathinda (Punjab)-151003 through Shri R.K.Mittal, Chief Manager(Elect.)

Present: Smt.Romila Dubey, Chairperson
Shri Virinder Singh, Member
Shri Gurinder Jit Singh, Member

For petitioner: Shri R.K.Mittal, Chief Manager (Elect.)

For PSPCL: Shri Sanjeev Gupta, SE/TR-2
Shri A.K.Vij, Addl.SE/IPC

For PEDDA: Shri M.P.Singh, Joint Director
Shri Rajesh Kohli, System Engineer

ORDER

National Fertilizers Limited has filed this petition for extension of compliance period of Renewable Purchase Obligation (RPO) under Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 (RPO Regulations, 2011) by way of purchase of Renewable

Energy Certificates (RECs) for the years 2011-12 and 2012-13 in the year 2013-14. The petitioner has submitted that it has its own captive power plant to meet with requirement of uninterrupted power supply to its Urea Fertilizer manufacturing Plant at Bathinda and that the matter with regard to inclusion of captive power consumers / producers and open access customers for the purpose of compliance of RPO was clarified by this Commission vide its letter No.11450/52 dated 22.03.2012 to Ambuja Cements Limited with a copy to Engineer-in-Chief/PP&R, PSPCL. Accordingly Chief Engineer(Commercial) of Punjab State Power Corporation Limited (PSPCL) issued Commercial Circular No.13 of 2012 vide memo No.449/453 dated 11.05.2012 to field officers of PSPCL to inform all the captive power consumers / producers by issuing requisite notices to ensure compliance of RPO for the years 2011-12 and 2012-13. The petitioner has submitted that it received no notice or information from PSPCL authorities and for want of notice it could not comply with RPO by way of purchase of RECs for FY 2011-12 and FY 2012-13. The petitioner has further submitted that it has already initiated process of finalizing an agency for purchase of RECs but being a Government organization, the same may take some time. The petitioner has brought out the detail of its Solar and Non-Solar RPO for the years 2011-12 and 2012-13 and has prayed to the Commission to grant extension of compliance period to fulfill Renewable Purchase Obligation under the Regulations by way of purchase of Renewable Energy Certificates for the years 2011-12 and 2012-13 in the year 2013-14, if available for the respective year. In case of non-availability of RECs for any year, exemption from RPO has been sought by the petitioner.

2. The petition was admitted and Punjab State Power Corporation Limited (PSPCL) and Punjab Energy Development Agency (PEDA) were made respondents vide Order dated 02.07.2013. The respondents were directed to file reply by 23.07.2013 with copy to the petitioner and each other. PSPCL filed reply vide memo No.5953/55 dated 18.07.2013 and PEDA filed its reply vide No.2616-18 dated 24.07.2013.

3. PSPCL in its reply dated 18.07.2013 submitted that as per RPO Regulations, 2011 notified by PSERC on 03.06.2011, every obligated entity is required to comply with Renewal Purchase Obligation (Solar & Non-Solar) as prescribed in the said Regulations. PSPCL has submitted that under 1st proviso of Regulation 6(2) of the RPO Regulations, 2011, in case of genuine difficulty because of non-availability of RECs or otherwise, the obligated entity (petitioner) can approach the Commission for carrying forward of RPO compliance to the next year and that the 2nd proviso enables

the Commission to provide relief in such circumstances. PSPCL has further submitted that the Commission vide Order dated 28.03.2013 has allowed the obligated entities other than PSPCL to carry forward the shortfall in RPO (Solar) for FY 2012-13 to the next year i.e. FY 2013-14, in addition to the RPO (Solar) for the next year. PSPCL has further submitted that it is the prerogative of the Commission to allow carrying forward of RPO compliance to next year as per the Regulations.

4. PEDAs in its reply dated 24.07.2013 submitted that RPO for captive power consumers/producers was specified by the Commission in RPO Regulations, 2011. It has been submitted that these Regulations were available on the website of the Commission as well as PEDAs. PSPCL issued requisite commercial circular no.13/2012 dated 11.05.2012 to its field officers for bringing the instructions, to ensure RPO compliance, to the notice of the captive power producers / consumers. PEDAs further submitted that the Commission, on request from Ambuja Cements Ltd. with regard to RPO compliance, informed vide its letter dated 22.03.2012 that the term 'Obligated Entity' in the RPO Regulations, 2011 includes captive power consumers/producers and open access customers.

Further, PEDAs while bringing out the Regulation 6 (2) 'Effect of default' of the RPO Regulations, 2011, submitted that the Commission has already allowed the obligated entities other than PSPCL to carry forward the RPO (Solar) for FY 2011-12 to next year i.e. FY 2012-13 and for FY 2012-13 to next year i.e. FY 2013-14 vide its Orders dated 22.03.2012 and 28.03.2013 respectively, in addition to RPO (Solar) for the particular next year.

PEDAs has submitted that Non-Solar RECs are trading at the minimum floor price of ₹1500 per REC for the last many months and around twenty five lac Non-Solar RECs are available for sale against the buy bids for seventy five thousand to one lac such certificates. PEDAs has further submitted that, similarly, 4453 Solar RECs were available for sale as on 20.07.2013 and in the last session of June, 2013, Solar RECs were traded on the floor price of ₹ 9300 per REC.

PEDAs has further submitted that there is excess supply/availability of RECs in the power exchanges vis-a-vis demand and the obligated entity/petitioner can be directed to purchase RECs on the next bidding date provided the Commission allows carrying forward of the Non-Solar RPO to FY 2013-14. In the prayer, PEDAs has requested that keeping in view the above submissions, the Commission may take appropriate decision.

During hearing, PEDAs submitted that RECs are available currently in the market at the floor price and the obligated entities may purchase the same by

31.12.2013 to comply with the RPO. The petitioner agreed to this proposition during the year.

5. The Commission notes that under the RPO Regulations, 2011, the obligated entities i.e. the Distribution Licensee(s), Open Access customers and Captive Power consumers /producers are required to comply with the RPO specified in the said Regulations. The Commission has specified the RPO (Solar & Non-Solar) for the years 2011-12 to 2014-15 in the ibid Regulations. The Commission also notes that if the obligated entity does not fulfil the renewable purchase obligation as provided in RPO Regulations, 2011, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of renewable purchase obligation and the forbearance price of RECs decided by the Central Commission. The Commission further notes that if an obligated entity fails to comply with the prescribed RPO, either through purchase of renewable energy or RECs, it is liable for penalty under Section 142 of the Electricity Act, 2003 under Regulation 6 (2). However, in terms of the first proviso, in case of genuine difficulty because of non-availability of RECs or otherwise, the obligated entity can approach the Commission for carrying forward of RPO compliance to the next year and the second proviso enables the Commission to provide relief in such circumstances. Regulation 6, 'Effect of default', reads as hereunder:

- (1) *"If the obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of renewable purchase obligation and the forbearance price decided by the Central Commission;*

Provided that the fund so created shall be utilized, as may be directed by the Commission, for purchase of the certificates;

Provided further that the Commission may empower an officer of the State Agency to procure from the power exchange the required number of certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund;

Provided also that the distribution licensee shall be in breach of its licence conditions if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

- (2) *Where any obligated entity fails to comply with the obligation to purchase the required percentage of electricity from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act;*

Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non-availability of certificates or otherwise, the obligated entity can approach the Commission for carrying forward of compliance requirement to the next year;

Provided that on being so approached, the Commission may review the fulfillment of the renewable purchase obligation by the obligated entity, keeping in view its performance and allow the shortfall to be carried forward to the next year in addition to the renewable purchase obligation for that year. At the end of 3 years period, the Commission may, if deemed appropriate, review the fulfillment of renewable purchase obligation by the obligated entity and pass suitable order(s);

Provided that where the Commission has consented to the carry forward of compliance requirement, the provision of clause (1) of the Regulation or the provision of section 142 of the Act shall not be invoked.”

6. The Commission has examined the request of the petitioner for allowing it to carry forward the compliance of Solar and Non-Solar RPO for the years 2011-12 and 2012-13 to the next year 2013-14. The petitioner has submitted that the petitioner did not have information/notice with regard to RPO and its compliance. The petitioner has submitted that after coming to know of this mandatory requirement, it has already initiated the process of finalising an agency for purchase of RECs and being a Government organisation, it is likely to take some time. The petitioner has opted to comply with its RPO by purchasing RECs although the option to purchase electricity from renewable sources of energy is also available for the purpose.

7. In this regard, the Commission notes that the Central Electricity Regulatory Commission vide its Order dated 11.02.2013 in petition no. 266/SM/2012, has extended the validity of RECs for one more year and the RECs issued on and after 01.11.2011 shall remain valid for a period of 730 days from the date of issuance, primarily to prevent the RECs from lapsing in view of sluggish market demand. The net effect of the CERC direction is that the RECs would now be available for trading for a longer period. It has been stated that CERC in its Order dated 19.12.2012 took cognizance of the lapsing of RECs arising out of the non-redemption within the permissible timeline, apparently due to reluctance/apathy of the distribution licensees to purchase the RECs to meet their RPO.

8. The Commission further notes that in the past, on representations made by the Open Access customers, it has in its Orders dated 22.03.2012 and 28.03.2013 allowed the obligated entities other than PSPCL to carry forward the shortfall in the compliance of Solar RPO for the year FY 2011-12 to next year i.e. FY 2012-13 and for the year FY 2012-13 to next year i.e. FY 2013-14 respectively, in addition to the Solar RPO for the particular next year. The Commission also notes that vide its Order dated 04.05.2012 in petition no. 7 of 2012 filed by PSPCL, it allowed PSPCL to carry forward the shortfall in compliance of the RPO for FY 2011-12 to the next year i.e. FY 2012-13, in addition to the RPO specified for that year. Recently, the Commission has vide its Orders dated 25.07.2013 and 30.07.2013 in petitions no. 33 of 2013 and 34 of 2013 respectively, allowed the therein petitioners to carry forward the RPO for for FY2012-13 to FY 2013-14 (also for FY2011-12 to FY 2013-14 in case of one petition) to be complied with by 31.12.2013 positively.

9. Accordingly, in exercise of the powers vested with the Commission under Regulation 6(2), keeping in view the submissions made by the petitioner that it did not have any information/notice of the RPO compliance and upholding the principle of equity and considering that the validity of RECs has been extended by CERC to 730 days, the Commission allows the petitioner to carry forward the Non-Solar RPO compliance for FY 2011-12 and FY 2012-13 to the next year i.e. 2013-14 (current year), in addition to the RPO for the current year. On similar grounds, the Commission also allows the carrying forward of the Solar RPO compliance by the petitioner for FY 2011-12 to FY 2013-14, in addition to the Solar RPO for FY 2013-14, the extension for Solar RPO compliance for FY 2012-13 to FY 2013-14 having already been allowed in the Order dated 28.03.2013.

The petitioner is directed to comply with the Non-Solar and Solar RPO for FY 2011-12 and FY 2012-13 by 31.12.2013 positively either through purchase of electricity generated from renewable energy power projects or RECs failing which further action as per Regulations may be initiated.

10. As regards the submission by the petitioner for exemption in RPO compliance in case RECs are not available for any particular year, the Commission finds no merit in the same as once the RPO for a particular year has been allowed to be carried forward, the same is to be complied with, by purchase of electricity from the renewable sources of energy and/or RECs available, in the year to which the RPO compliance has been allowed to be carried forward.

11. The petitioner is further directed to submit the RPO compliance report (Solar and Non-Solar) for FY 2011-12, FY 2012-13 and FY 2013-14 at the end of each quarter to PSPCL and PEDDA in the first week of the month following each quarter in FY 2013-14.

12. The Commission reiterates the directions issued in its Order dated 25.07.2013 in petition no. 33 of 2013 to the Distribution Licensee PSPCL, entrusted with ensuring the RPO compliance by the obligated entities being its consumers and PEDDA, the State Agency, mandated to monitor the specified RPO compliance by the obligated entities in the State, to strictly implement the provisions of the RPO Regulations and get the RPO compliance by the obligated entities fully effected.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh

Dated: 07.08.2013