

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 203 of 2020

Case of JSW Steel Ltd. seeking clarification on the Order dated 5 October 2020 passed in case No. 130 of 2020 regarding the inapplicability of the bifurcated Solar and Non-solar targets within the composite target of 9%, for CPPs commissioned before 1 April 2016.

JSW Steel Ltd. Petitioner No. 1
Captive Power Producers Association Respondent No. 1
Maharashtra Energy Development Agency Respondent No. 2

Coram

**I.M. Bohari, Member
Mukesh Khullar, Member**

Appearance

For the Petitioner	: Sh. Aman Anand (Adv.)
For the Respondent No. 1	: Smt. Deepa Chawan (Adv.)
Respondent No. 2	: Dr. J V Torne (Rep.)

ORDER

Date: 6 February, 2021

1. JSW Steel Ltd. (JSWSL) has filed this Petition on 16 October 2020 seeking clarification of the Commission's Order dated 5 October 2020 in Case No. 130 of 2020, filed by Captive Power Producers Association (CPPA).

2. JSWSL's main prayers are as follows:

- a) *Clarify that CPPs commissioned before 01.04.2016 are mandated to comply with a composite RPO target of 9% and not in a bifurcated manner of 0.5% Solar or 8.5 % of Non-Solar, with respect to energy procured from its CGP, under the MERC RPO-REC Regulations, 2016 & 2019*

3. JSWSL in its Case has stated as follows:

3.1. It is a member of CPPA and the Commission's Order dated 5 October 2020 passed in Case No. 130 of 2020 directly affects it as it is an obligated entity under the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulations, 2016 (RPO-REC Regulations 2016), being a captive user of captive generating plants commissioned before 1 April 2016.

3.2. CPPA had filed the Petition under Case No. 130 of 2020 seeking relaxation or waiver/removal of difficulty/issuance of orders and practice direction / amendment (as alternative relief) under the MERC RPO-REC Regulations 2016, in view of circular dated 1 February 2019 and 1 October 2019 issued by Government of India (GoI) through Ministry of Power (MoP) regarding capping of Renewable Purchase Obligation (RPO) for Captive Power Plants (CPP).

3.3. CPPA had sought following relief in their petition:

- a) *The Commission be pleased to relax or waive the provisions of the MERC RPO Regulations, 2016 to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- b) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to issue orders and practice directions to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- c) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to remove difficulty by general of specific orders, to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's*

Clarification orders.

d) In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to consider the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, and amend/or relax the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulation 2016 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders."

- 3.4. As per Paragraph 12 of the Order dated 5 October 2020, the Commission was pleased to rule that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the operating period of RPO-REC Regulations, 2016.
- 3.5. As per the Paragraph 13 of the said Order, the Commission has prescribed Solar and Non-solar targets as 0.5% & 8.5% respectively for the CPPs commissioned before 1 April 2016. This dispensation, particularly in view of the ruling in Paragraph 12 of the said Order and the first proviso to Regulation 7.5 of the RPO-REC Regulations, 2019, which mandates meeting of composite RPO targets of 9%, for captive generating plants commissioned before 1 April 2016, is creating confusion.
- 3.6. JSWSL's understanding is that as its Captive Generating Plant (CGP) was commissioned before 1 April 2016, in accordance with the ruling in Paragraph 12 of the Order dated 5 October 2020, JSWSL is mandated to meet the composite target (of solar and non-solar) of 9%, with respect to energy procured from its CGP, during the operating period of RPO-REC Regulations, 2016. Thereafter, the first proviso to Regulation 7.5 of the RPO-REC Regulations, 2019 governs the case and accordingly, it is mandated to meet the composite target (of solar and non-solar) of 9%, with respect to the energy procured from its CGP, upto FY 2024-25.
- 3.7. For captive users such as JSWSL, whose CPPs were commissioned before 1 April 2016, the regulatory mandate is for achieving composite RPO target of 9% without any bifurcation in terms of solar and non-solar sources.
- 3.8. The difficulty stems from the position that the Commission, in Paragraph 13, has prescribed solar and non-solar targets for captive power plants commissioned before 1 April 2016 as 0.5% & 8.5% respectively. The prescription of targets bifurcated between solar and non-solar sources, for CPPs commissioned before 1 April 2016, appears to be in conflict with the ruling in Paragraph 12 of the Order dated 5 October 2020 as also the first proviso to Regulation 7.5 of RPO-REC Regulations, 2019.

3.9. Again, in Paragraph 13 of the Order dated 5 October 2020, after prescribing the bifurcation for solar and non-solar targets for CPPs commissioned before 1 April 2016, the Commission has subjected this bifurcated obligation to “provisions for cross-over of one source to another, as provided in RPO-REC Regulations, 2016 and 2019”. JSWSL understands that the cross-over provisions refer to the composite RPO targets of 9%, as have been prescribed in the RPO-REC Regulations, 2016 & 2019 for CPPs commissioned before 1 April 2016.

3.10. A clarification regarding the inapplicability of the bifurcated Solar and Non-solar targets within the composite target of 9%, for CPPs commissioned before 1 April 2016 is necessary for the sake of regulatory certainty and planning by captive generators.

4. Maharashtra Energy Development Agency (MEDA) in its reply dated 9 January 2021 made the following submissions:

4.1. The Order and bifurcation provided by the Commission in Case No. 130 of 2020 is correct and proper and needs no interference.

4.2. There is ample quantity of Solar and Non-solar RE power to procure and bulk of Solar, Non-Solar RECs available on National REC Registry.

5. At the e-hearing through video conferencing held on 13 January 2021, the representative of JSWSL reiterated its submission in the Petition. The Advocate of CPPA supported the concern of JSWSL. The representative of MEDA submitted that the segregated procurement of Solar and Non-solar sources under RPO mechanism was as per the policy direction of the Central Govt.

6. CPPA made the following submissions dated 15 January 2021:

6.1. MEDA at the time of hearing on 13 January 2021 without giving any specific reference has orally submitted that separate / segregated RE Procurement from Solar and Non-solar sources was directed by the policy issued by the Central Government. CPPA submits that they are not aware of any such policy issued by Central Government, assuming that there is any such Policy issued by Central Government our submissions are as under:

a. The MERC RPO-REC Regulations 2016 and 2019 provides the Provisions of composite compliance of RPO targets.

b. A clear pointer to the supremacy of the Regulations framed by the Commission is the decision of the Hon'ble APTEL dated 24 March 2015 in Appeal No. 103 of 2012, *Maruti Suzuki India Limited v. Haryana Electricity Regulatory Commission, 2015 SCC OnLine APTEL 127*, wherein it was held as under:

“43. P.T.C. India Ltd. leads us to conclude that Regulations framed under Sections 178 and 181 of the said Act have a primacy. Being subordinate legislation they rank above orders issued by the Regulatory Commissions in discharge of their functions under Section 61 read with Sections 62, 79 and 86. They will have to be followed unless struck down by a Court in judicial review proceedings. Regulations made under Sections 178 and 181 have to be consistent with the said Act. Tariff Policy and National Electricity Policy are mentioned in Sections 61, 79 & 86 merely as guiding factors. They do not control or limit the jurisdiction of the Appropriate Commission.”

- c. The NTP framed under Section 3 of the said Act by the Central Government is a policy document to meet the challenges of providing access to electricity in the Country and to ensure consistency in approach. The said Policy deals with Tariff related issues.

The term “**Tariff**” is not defined under the provisions of the EA. The Hon’ble Supreme Court in *BSES Ltd Vs. Tata Power Co. Ltd. & Ors. 2004 (1) SCC 195* held as under :

“16. The word “tariff” has not been defined in the Act. “Tariff” is a cartel of commerce and normally it is a book of rates. It will mean a schedule of standard prices or charges provided to the category or categories of customers specified in the tariff.....

Therefore, the subject matter of the policy is tariff related.

Clause 2.3 of the 2016 NTP reads as under :

“2.3 Regulatory Commissions shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and transmission licensees.”

Therefore, in accordance with the decision of the Hon’ble APTEL in Maruti (*supra*) the NTP does not override the Regulations framed by the SERCs.

- d. When the NTP was formulated the prices of solar energy were very dear. This was an important element for consideration of the Central Government in evolving separate stipulations for solar and non-solar procurement of RE by the obligated entities. However, presently the prices of different RE Sources are comparable and competitive. Under such circumstances, nothing in the Act precludes any SERCs including the Commission to depart from and deviate on the issue of separate stipulations to arrive at composite stipulations by way of Regulations.

Commission’s Analysis and Rulings

7. Present Petition has been filed by JSWSL seeking clarification of the Commission’s Order dated 5 October 2020 in Case No. 130 of 2020 which was filed by CPPA seeking relaxation

in RPO-REC Regulations, 2016 for Captive Power Plants in terms of GoI's communication dated 1 February and 1 October 2019.

8. JSWSL submitted that it is a captive user of CGP and Commission's Order dated 5 October 2020 in Case No. 130 of 2020 directly impacts it. JSWSL contended that the Para 13 of the Order dated 5 October 2020 is in contradiction with the Para 12 of the Order and Regulation 7.5 of the RPO-REC Regulations 2019 and accordingly has sought clarification on the same.
9. In this regard, the Commission notes that CPPA had filed Petition in Case No. 130 of 2020, seeking relaxation in RPO-REC Regulations, 2016 by referring to GoI's communication dated 1 February and 1 October 2019 wherein it is mentioned that RPO targets for CPP commissioned before 1 April 2016 shall be pegged to the RPO level of FY 2015-16. Such request was made because RPO target for FY 2015-16 was 9% (which as per GoI's communication is to be pegged for life of CPP), whereas RPO targets specified in RPO-REC Regulations 2016 for FY 2016-17 to FY 2019-20, which otherwise has to be complied with were 11% to 15%. On this issue, the Commission in its Order 5 October 2020 has ruled as follows:

"11. With the existing RPO targets notified for CPPs under RPO-REC Regulations 2016, the CPPs must comply with the composite RPO targets of 11% to 15% from FY 2016-17 to FY 2019-20. Whereas, as per the RPO-REC Regulations 2019, for the CPPs commissioned before 1 April 2016, their composite RPO target is 9% from FY 2020-21 to FY 2024-25. This creates a situation wherein RPO targets for past period (RPO-REC Regulations 2016) is more than present or future RPO targets (RPO-REC Regulations 2019). Such situation is not as per normal circumstances wherein RPO targets gradually increases over the period. In present circumstances, RPO targets have been reduced for CPPs from FY 2020-21 onwards. Therefore, in the opinion of the Commission, this is a fit case for its intervention. Regulation 19 of RPO-REC Regulations 2016 vests the Commission the 'Power to Remove Difficulties' under certain circumstances. Regulation 19 is extracted below:

.....

12. Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided 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. For the Projects 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, for the Operating Period of RPO-REC Regulations 2016 onwards.

13. Further, the Commission notes that MEDA has requested to provide the bifurcation of the composite target of 9%, in terms of Solar and Non-Solar sources. In this regard, the Commission notes that in accordance with the MoP's letter dated 1 October 2019, the Solar and Non-Solar targets are subjected to the RPO targets notified by the Commission for FY 2015-16. Accordingly, for the projects commissioned before 1 April, 2016, the Solar and Non-Solar targets shall be 0.5% and 8.5% respectively, subjected to the provisions for cross-over of one source to another, as provided in the RPO-REC Regulations 2016 and 2019."

Thus, after recognising the fact that the Commission in its RPO-REC Regulations 2019 has specified composite target of 9% for CPPs which are commissioned before 1 April 2016, to avoid inconsistency wherein higher RPO targets of 11 to 15% become applicable for previous years (FY 2016-17 to FY 2019-20) than lower targets of 9% for FY 2020-21 onwards, the Commission has used enabling powers of removing difficulty vested with it under the Regulations and ruled that composite target of 9% shall be applicable for the period of RPO-REC Regulations 2016. Thus, RPO target for CPPs commissioned before 1 April 2016 becomes 9% composite through out the period of RPO-REC Regulations 2016 and 2019.

However, in reply to clarification sought by MEDA, in para 13 of above quoted Order, the Commission stated that for projects commissioned before 1 April 2016, the solar and non-solar targets shall be 0.5% and 8.5%, respectively. JSWL and CPPA in present Petition has contended that this technology specific RPO target as against composite target of 9% stipulated in para 12 is creating confusion and hence has requested for clarification.

10. During the hearing, MEDA submitted that technology specific RPO targets approved by the Commission in Order dated 5 October 2020 are correct and is in accordance with the policy. However, MEDA did not submit any policy document supporting its submission. In absence of any document submitted by MEDA, the Commission notes that the policy which MEDA is referring to is the Tariff Policy 2016 which stipulates that separate targets be specified for Solar-RPO. Relevant part of Tariff Policy 2016 is reproduced below:

"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 cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

(i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.”

In compliance with such policy mandates, this Commission has been specifying solar and non-solar RPO targets to be met by obligated entities. However, considering difficulties which may be faced by smaller obligated entities, the Commission through RPO-REC Regulations has allowed certain class of obligated entities to meet RPO targets on composite basis rather than separate for solar and non-solar. Relevant provision of MERC RPO-REC Regulations 2019 is reproduced below:

“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:”

The Commission has justified such provision of composite RPO targets for smaller obligated entities in its Statement of Reasons for RPO-REC Regulations 2019 as follows:

“7.3 Analysis and Commission’s Decision

The Commission opines that Obligated Entities other than Distribution Licensees have smaller consumption and hence have very limited flexibility in adjusting its consumption for procurement of Solar and Non-Solar RE for meeting these technology specific RPOs. With the parity of rates achieved between solar and wind energy, such Obligated Entities shall thrive to procure actual RE rather than RECs. Hence, the Commission modifies the draft Regulation to allow Obligated Entities other than Distribution Licensees to meet their RPO target on composite basis instead of Solar and Non-Solar separately” [emphasis added]

Similar provision of allowing composite RPO targets for obligated entities with lower load do exist in RPO-REC Regulations 2016. Thus, even after complying with policy mandate of separate RPO targets for solar and non-solar RPO, this Commission for addressing difficulties

being faced by smaller obligated entities has allowed them to meet composite RPO targets. Regulations being subordinate legislation which have provided composite RPO target for certain category of obligated entities, MEDA cannot contend that such entities have to comply with solar and non-solar RPO targets separately.

11. Further as highlighted in para 9 above, the Commission has equated RPO targets of RPO-REC Regulations 2016 with that of RPO-REC Regulations 2019 for the CPP commissioned before 1 April 2016. RPO-REC Regulations 2019 has clear provision relating to CPP commissioned before 1 April 2016 as follows:

“7.5

*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%” [emphasis added]*

Therefore, same principle of composite RPO target of 9% needs to be made applicable to RPO REC Regulations 2016.

12. In view of above, the Commission notes that technology specific targets provided for CPPs commissioned before 1 April 2016 in Para 13 of the Order dated 5 October 2020 in Case No. 130 of 2020 is an inadvertent error. Therefore, the Commission clarifies that CPPs commissioned before 1 April 2016 shall be subjected only to the composite RPO target as provided in the Para 12 of the Commission’s Order dated 5 October 2020 in Case No. 130 of 2020.

13. Hence, the following Order:

ORDER

- 1. Case No. 203 of 2020 is allowed.**
- 2. Captive Power Plants commissioned before 1 April 2016 shall comply with applicable RPO targets on composite basis.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

(Abhijit Deshpande)
Secretary

