

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Smt. Neerja Mathur, Member
Petition No. 175/2015
Date of Order: 26.07.2016

In the matter of

Non compliance of Solar RPO specified under Regulation 1 Quantum of Renewable Purchase Obligation (RPO) of the Joint Electricity Regulatory Commission for the State of Goa & Union Territories (Procurement of Renewable Energy) Regulations, 2010 by Obligated Entities for FY 2010-11 and FY 2014-15 and in the matter of an application under Sections 142 and 146 of the Electricity Act 2003, and Regulation 4 of the JERC (Procurement of Renewable Energy) Regulations, 2010 and subsequent amendment called JERC for Goa and Union Territories (Procurement of Renewable Energy) (First Amendment) Regulations, 2014.

And

Non Compliance of Order dated 05.05.2014 in Suo-moto Petition no. 61/2012 by Utility of Dadra & Nagar Haveli.

And in the matter of

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

And in the matter of

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|--|-----------------------------|
| 1. Secretary (Power), State of Goa | Respondent (1) |
| 2. Secretary (Power), UT of Andaman & Nicobar | Respondent (2) |
| 3. Secretary (Power), UT of Chandigarh | Respondent (3) |
| 4. Secretary (Power), UT of Dadra & Nagar Haveli | Respondent (4) |
| 5. Secretary (Power), UT of Daman & Diu | Respondent (5) |
| 6. Secretary (Power), UT of Lakshadweep | Respondent (6) |
| 7. Secretary (power), UT of Puducherry | Respondent (7) |

(Designated State Nodal Agencies)

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| 8. Puducherry: Managing Director, REAP, Renewable Energy Agency, Bunglow No. 2, A.F.T Premises, Cuddalore Main Road, Mudaliarpur, Pin 605004, Puducherry – 605011 | Respondent (8) |
| 9. Goa: Member Secretary, Goa Energy, Energy Development Agency DST&E Building, 1st Floor, Saligo Plateau Opp. Seminary, Saligao, Bardez Goa – 403511 | Respondent (9) |
| 10. Andaman & Nicobar Islands: Executive Engineer (NRSE), Electricity Department, Office of the Executive Engineer, NRSE Division, Prothrapur, Port Blair – 744 105 | Respondent (10) |
| 11. Chandigarh: Director (Science & Technology), Chandigarh Administration Additional Town Hall Building, 2 nd Floor, Sector – 17 C, Chandigarh | Respondent (11) |

12. Dadra & Nagar Haveli: Development & Planning Officer, Administration of Dadra & Nagar Haveli, SilvassaRespondent (12)
13. Lakshadweep: Executive Engineer, Electricity Department Lakshadweep, Administration Kavaratti – 682555Respondent (13)
14. Daman & Diu: Principal Scientific Officer, Department of Science and Technology, Daman.Respondent (14)

Present

For the Petitioner

Shri Parinay D. Shah, Advocate, Green Energy Association
Ms. Mandakini Ghosh, Advocate, Green Energy Association

For the Respondent

Shri Anand K. Ganeshan, Advocate, Electricity Department, Dadra & Nagar Haveli
Shri R.B. Choubel, Asstt. Engineer, Electricity Department, Dadra & Nagar Haveli

ORDER

Shri Parinay Shah, Ld. Counsel for the Petitioner advanced his arguments at length. The Learned Counsel mainly contended that the Electricity Department, Dadra & Nagar Haveli (Respondent No. 4) has not complied with the Commission's Order dated 05.05.2014 and 12.11.2014 respectively. The Commission in its Tariff Order dated 05.05.2014 had observed that the Respondent No. 4 did not comply with the Order dated 27.12.2013 and had failed to meet its RPO as per JERC (Procurement of Renewable Energy) Regulations, 2010 for the backlog for the FY 2010-11 to FY 2013-14. The Commission had directed the Respondent to deposit Rs 110 crore (provisional amount) with the designated State Agency i.e. Development and Planning Authority, Dadra and Nagar Haveli by 30th September, 2014. The Commission had also mentioned that it would consider the remaining amount to be deposited with the State Agency, if any, at the true-up stage.

The Learned Counsel further submitted that the Commission again directed the Respondent to submit a detailed report of actions taken to meet the RPO backlog for the FY 2010-11 to FY 2013-14 and the proposed plan for meeting the RPO target for the current FY 2014-15 as per Tariff Order of FY 2014-15 by 21st July, 2014. If the licensee failed to meet the RPO backlog for the FY 2010-11 to FY 2013-14, the licensee would have to deposit the amount as per the said Tariff Order.

The Learned Counsel further submitted that the Commission again in its Order dated 12.11.2014 observed that the Respondent had submitted incomplete report to meet the RPO as per the JERC (Procurement of Renewable Energy) Regulations, 2010 in respect of the back log and the current FY 2014-15. The Commission also found that the Respondent had failed to meet the RPOs as per JERC (Procurement of Renewable Energy) Regulations, 2010 in respect of backlog and current FY 2014-15. Therefore, the Commission directed the Respondent to submit an action plan by February 09, 2015 and to meet RPO as per Tariff Order for FY 2014-15 and JERC (Procurement of Renewable Energy) Regulations, 2010 in respect of backlog and current FY 2014-15. In default, the Commission shall be constrained to proceed under Regulation 4 of the JERC (Procurement of Renewable Energy) Regulations, 2010 against the Respondent.

The Learned Counsel further submitted that it is a matter of record that the Respondent never made any efforts to satisfy its RPOs. Since May, 2012 Solar Energy Renewable Certificates were available in the market comparatively at a higher price but the Respondent did not purchase them.

The Learned Counsel further submitted that Renewable Energy Certificates were available in the market at the floor price of Rs 12000/- in the year 2012 and at the floor price of Rs 3500/- in the year 2014.

The Learned Counsel pleaded for an appropriate action under Section 142 and Section 146 of the Electricity Act, 2003 for non compliance of the Commission's Order dated 05.05.2014 and 12.11.2014.

Shri Anand K. Ganeshan, Learned Counsel for DNHPDCL (Respondent No. 4) submitted that they have fulfilled the RPOs for the FY 2014-15 and FY 2015-16 to the extent of 90% and 84% in the Non-Solar category and 97% and 96% in the Solar category respectively. The RPO is mostly met through purchase of Non-solar power and RECs. The Respondent has also installed various Rooftop and Ground Mounted Solar Plants and also intends to procure power under case – I bidding.

The Ld. Counsel further submitted that the total amount spent for solar category including purchase of RECs as on May, 25, 2016 is Rs 48.60 crore and the total amount spent for non-solar category including purchase of RECs is Rs 101.93 crore.

The Ld. Counsel further submitted that the Respondent never sought to avoid RPO compliance but has sought to procure power from renewable sources as much as possible in compliance to the directions of the Commission in its Tariff Order dated April 1, 2015 as against only procurement of RECs. The Respondent has infact purchased substantial RECs to the tune of Rs 80.0 crore though the first preference was procurement of renewable energy.

The Learned Counsel further submitted that it was the endeavour of the Respondent to incur capital expenditure for establishing Renewable Projects which would give sustained Renewable Power rather than only RECs which are the revenue expenditure and do not provide benefit of physical power to the consumers.

The Learned Counsel further submitted that the present proceedings have been initiated under Section 142 and Section 146 of the Electricity Act, 2003 which are penal proceedings being quasi criminal in nature. It is essential to establish mens rea and misconduct with the intention to violate before penal action is taken. Even though the proof of intention to violate need not be to the extent of criminal jurisprudence, but needs to be proved. It showed lack of bonafide on the part of the person. This has been established by the Hon'ble Appellate Tribunal for Electricity in the case of B.M. Verma Vs. Uttrakhand Electricity Regulatory Commission in Appeal No. 115 of 2007 dated 13.09.2007 at Para 10.

The Learned Counsel further submitted that for fulfillment of RPOs as notified in the Tariff Policy, 2016, the Respondent is proposing purchase of power through competitive bidding route. The Respondent has already conveyed its intent for procurement of 100 MW power through competitive bidding to Ministry of New & Renewable Energy, New Delhi.

The Learned Counsel further submitted that the Respondent had always acted in a bonafide manner and certainly not in a malafide manner as is sought to be alleged.

The Commission has considered contentions urged on behalf of both the parties. The Commission has also examined the record placed before it along with relevant provisions of the Electricity Act, 2003, Rules and Regulations made thereunder and the JERC (procurement of Renewable Energy) Regulations, 2010.

Section 61 (h) and Section 86 (1) (e) of the Electricity Act, 2003 empowers the Appropriate Commission/State Commission to promote co-generation and generation of electricity from sources of energy.

Section 61 (h) provides that:-

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following namely:-

Quote

“(h) the promotion of co-generation and generation of electricity from renewable sources of energy;.....”

Section 86 (1) (e) provides that:-

The State Commission shall discharge the following functions namely:-

Quote

“(e) promote co-generation 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 licensee.”

The Commission observed that in the recent past the Government of India (GOI) has given massive thrust for development of renewable energy. To that extent, the GOI notified the revised Tariff Policy on 28th January, 2016. Para 2.2 of the Tariff Policy provides that the Central and State Commissions shall be guided by the Tariff policy in discharging their functions including framing the Regulations. Para 6.4 of the Tariff Policy provides that pursuant to 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.

The Commission noted that the Respondent has fulfilled the RPOs for the FY 2014-15 and FY 2015-16 to the extent of 90% and 84% in the non solar category and 97 and 96% in the solar category respectively. The Respondent has so far spent Rs 48.60 crore for solar category including purchase of RECs and the total amount spent for non solar category including purchase of RECs is Rs 101.093 crore. The Respondent has also conveyed its intent for procurement of 100 MW power through competitive bidding to Ministry of New & Renewable Energy, New Delhi.

The Commission feels that the above efforts of the Respondent to fulfill its current RPO indicate that the Respondent has taken cognizance of the Commission's directions in right earnest. The Commission directs the Respondent to comply with its current RPO by 31st March, 2017 and clear backlog for the FY 2010-11 to FY 2013-14 in three equal installments within a period of three years. The Commission also directs the Respondent to submit quarterly progress report regarding RPO compliance to the Commission.

With the above directions this Petition is disposed of.

Ordered accordingly.

Sd/-
(NEERJA MATHUR)
MEMBER

Sd/-
(S.K.CHATURVEDI)
CHAIRPERSON

CERTIFIED COPY

Sd/-
(KEERTI TEWARI)
SECRETARY