

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO.220-21, SECTOR-34 A, CHANDIGARH**

Petition No. 18 of 2015
Date of Order: 15.05.2015

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

In the matter of: Petition under Regulation 6(2) and Regulation 7 of PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2011 for permission to carry forward the renewable purchase obligation of the petitioner for the year 2014-15 to 2015-16.

AND

In the matter of: Punjab Alkalies and Chemicals Ltd., SCO 125-127, Sector 17-B, Chandigarh through its General Manager (Materials and HR), Shri. M.P.S Rana
-----Petitioner

Versus

1. Punjab State Power Corporation Limited through its Secretary, The Mall, Patiala (Punjab)
2. Punjab Energy Development Agency, through its Director, Plot No.1, Sector 33 A, Chandigarh

-----Respondents

Order

1. Punjab Alkalies and Chemical Limited (PACL) filed this petition to allow carry forward of shortfall in Renewable Purchase Obligation (RPO) compliance, Solar and Non-Solar, for FY 2014-15 to FY 2015-16 under first proviso of Regulation 6(2) of the Punjab State Electricity Regulatory Commission (Renewable

Purchase Obligation and its compliance) Regulations, 2011 (RPO Regulations, 2011).

2. PACL submitted that it is a public limited company incorporated under Companies Act, 1956 and LS consumer of Punjab State Power Corporation Limited (PSPCL) connected at 66 kV level. PACL was promoted by Punjab State Industrial Development Corporation Ltd. (PSIDC) which is a wholly owned company of Govt. of Punjab. PSIDC holds 44% equity share in PACL.

3. PACL submitted that it was operating in profit in the beginning when the power availability with PSPCL was mainly from cheap hydro sources and the rate of power was lower. Later on, the cost of power started increasing as the coal based power share started increasing during the years 2004 to 2006. The rate of power for power intensive units like PACL in Punjab was ₹ 3.43 per kWh which was the lowest in the country. At present the power tariff works out to ₹ 7.37 per kVAh which is virtually the highest in country.

4. PACL further submitted that PSPCL allowed open access to industries in the year 2010-11 and PACL started availing the same buying power from power exchange. However, after 2-3 years, due to increase in open access charges and imposition of cross subsidy surcharge, the availability of cheaper power under open access has reduced considerably. Further, due to abnormal increase in wheeling charges, the average saving per unit has reduced drastically.

PACL submitted that due to continued increase in PSPCL tariff and reducing availability of open access power, it could not compete with chlor alkali manufacturers of other States and has become a loss making company. PACL submitted that the losses suffered in 2009-10, 2010-11, 2013-14 and 2014-15 (9 months ending 31.12.2014) are ₹ 22.41 crore, ₹ 24.28 crore, ₹ 9.57 crore and ₹ 8.25 crore respectively and accordingly its cash flow has been severely affected. PACL is curtailing various expenditures to keep the factory operational. Due to this, PACL was unable to purchase the RECs for FY 2014-15.

5. PACL furnished the details in respect of power received by it through open access, its RPO obligation and compliance through purchase of renewable energy certificates (RECs) for the years 2011-12, 2012-13, 2013-14 and 2014-15 as brought out in Annexure-I of this Order.

In the prayer, PACL has requested the Commission to allow carry forward of RPO for FY 2014-15 to FY 2015-16.

6. The Commission vide Order dated 01.04.2015, admitted the petition and directed PEDA and PSPCL to file reply by 22.04.2015 with a copy to the petitioner.

7. PSPCL vide Chief Engineer/ARR&TR letter dated 27.04.2015 filed reply to the petition and submitted that every obligated entity is required to comply with the RPO (Solar and Non-Solar) specified by the Commission in its notification dated 03.06.2011 (RPO Regulations, 2011). PSPCL further submitted that under Regulation 6(2) of the said regulations, in terms of 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 the RPO compliance to the next year and second proviso enables the Commission to provide relief in such circumstances. PSPCL also submitted that in the past the Commission allowed obligated entities other than PSPCL to carry forward the shortfall in their RPO (Solar) for the year 2012-13 to the next year i.e. 2013-14 in addition to the RPO (Solar) for next year. PSPCL submitted that it is prerogative of the Commission to decide such cases as per RPO Regulations, 2011 to allow obligated entities to carry forward the RPO compliance to next year.

8. PEDA filed its reply vide letter dated 22.04.2015. PEDA submitted that incurring losses by PACL apparently cannot be solely attributed to increase in tariff. Further, PACL has not submitted any documents in support of its averments made in the petition including losses incurred by it, quantum of open access power and RECs purchased by it etc. Plain assertions without any cogent reasoning cannot be relied upon and are subject to verification and PACL should furnish proof in order to prove the same. PEDA submitted that the quantum of open access power purchased by the petitioner is subject to confirmation by PSPCL as also the status of purchase of RECs mentioned by the petitioner. PEDA further asserted that it is mandatory for the obligated entity to purchase RECs in all eventualities to fulfil its RPO otherwise it is in default of RPO compliance. PEDA has submitted that Commission may take appropriate decision as deemed fit with regard to prayer of the petitioner for allowing it to carry forward its

RPO compliance for FY 2014-15 to FY 2015-16 in addition to RPO for FY 2015-16.

9. Vide Order dated 30.04.2015 of the Commission, the petitioner was directed to file rejoinder to the replies filed by PEDDA and PSPCL by 08.05.2015 with a copy to PSPCL and PEDDA. Next date of hearing was fixed for 12.05.2015.

10. PACL filed rejoinders to the replies of PSPCL and PEDDA on 08.05.2015. In response to PSPCL reply, PACL submitted that PSPCL and some other obligated entities have also been allowed to carry forward its RPO due to genuine difficulties in the past and reiterated its prayer.

In response to PEDDA's reply, PACL stated that it submitted an affidavit for correctness of the statements made in the petition. Being a PSIDC owned company, it cannot afford to make wrong submissions. PACL stated that cost of power constitutes about 60% of the final cost of its products and therefore high tariff in Punjab is impacting the profitability and its ability to compete. PACL furnished annual reports for the last six years. PACL submitted that it has been regularly submitting details of purchase of RECs to PSPCL as per open access regulations and as state agency, PEDDA must be receiving the details from PSPCL which can be easily verified. PACL submitted that there is provision in the RPO Regulations, 2011 to allow carry forward of RPO.

11. After hearing the parties on 12.05.2015, the hearing of the petition was closed and Order reserved vide Commission's Order dated 13.05.2015.

12. The Commission notes that PACL has prayed for carrying forward its RPO compliance for FY 2014-15 to FY 2015-16 on account of it having suffered continued cash losses in FY 2013-14 and FY 2014-15. On the other hand, RPO compliance is a mandate under the Electricity Act, 2003 to be complied with by the obligated entities. The Commission notes that PACL complied with the Solar RPO for the years 2011-12 to 2013-14 (equivalent to 253 RECs) in FY2014-15 through purchase of 283 solar RECs, thereby partly complying with the Solar RPO for FY 2014-15 (equivalent to 152 RECs) to the tune of 30 RECs leaving a shortfall equivalent to 122 RECs in Solar RPO compliance upto FY 2014-15.

As regards Non-Solar RPO compliance, PACL purchased Non-Solar RECs numbering 2222, 3528, 3635, 80 as against RPO compliance equivalent to 2907, 3283, 3506, 3042 Non-Solar RECs in the respective years FY 2011-12, 2012-13, 2013-14, 2014-15. The Commission notes that there has been a shortfall in RPO compliance by PACL equivalent to purchase of 685 Non-Solar RECs in FY 2011-12, surplus of 245 & 129 Non-Solar RECs in FY 2012-13 & 2013-14 and shortfall of RPO compliance equivalent to 2962 Non-Solar RECs for FY 2014-15, calculating to shortfall equivalent to purchase of 3273 Non-Solar RECs in RPO compliance upto FY 2014-15.

13. The Commission notes that under the RPO Regulations, 2011, the obligated entities are required to comply with the RPO specified in the said Regulations. The Commission had specified the RPO (Solar & Non-Solar) for the years 2011-12 to 2014-15 in the ibid Regulations, which have now been amended to include RPO for FY 2015-16 to FY 2019-20 vide notification dated

06.05.2015. Regulation 6, of the said Regulations '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 fulfilment 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 fulfilment 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.”

14. The Commission notes that RPO can be met either through purchase of electricity from renewable energy sources or purchase of respective RECs from the Power Exchanges. The Commission has examined the request of PACL for allowing it carry forward the shortfall in Solar and Non-Solar RPO compliance in FY 2014-15 to the next year i.e. FY 2015-16. The Commission further notes that PACL has not pleaded non availability of electricity from renewable energy sources/RECs. The reason put forth by PACL for non compliance is continued cash losses in FY 2013-14 and 2014-15. Though understandable, the Commission finds it insufficient reason viz-a-viz the mandate in the Electricity Act, 2003 for compliance of RPO by the obligated entities, to allow PACL to carry forward its RPO compliance to the next year, especially when shortage of availability of RECs/electricity from renewable energy sources has not been pleaded. PACL's past performance with regard to Solar RPO compliance for FY 2011-12 to FY 2013-14 is not satisfactory as the same has been made in FY 2014-15. Even PEDDA has failed to monitor the same in these years. As regards Non-Solar RPO, though PACL's performance is satisfactory for FY 2011-12 to FY 2013-14, there is a shortfall in

compliance equivalent to purchase of 2962 Non-Solar RECs in FY 2014-15. The net shortfall in RPO compliance by PACL in REC equivalent works out to purchase of 122 RECs (Solar) and 3273 RECs (Non-Solar) upto FY 2014-15, considering the quantum of open access power consumed by it as stated in the petition, which has not been contested by PSPCL.

15. In view of Commission's observations in para 14 above and submissions of PEDDA and PSPCL in the petition, the Commission is not inclined to allow PACL to carry forward the shortfall in RPO compliance upto FY 2014-15 to the next financial year. However, considering the submission made by PACL with regard to continued cash losses in FY 2013-14 and FY 2014-15, the Commission directs PACL to comply with the shortfall in RPO compliance, both Solar and Non-Solar, by 31.07.2015 forthwith as the situation is expected to be better in the financial year starting from 01.04.2015 as stated by PACL. PEDDA shall monitor the said compliance to be made by PACL after obtaining certified data with regard to quantum of open access power availed by PACL during FY 2011-12 to FY 2014-15 from PSPCL and the proof of RECs purchased from PACL. The RPO compliance of the shortfall upto FY 2014-15 by 31.07.2015 shall be in addition to the RPO compliance for FY 2015-16 to be made by PACL.

The petition is disposed of.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh
Dated:15.05.2015

Annexure-I

Compliance of Renewable Purchase Obligation (RPO) by PACL

Year	Quantum of open access power kWh	Renewable Purchase Obligation						RPO Compliance through Purchase of RECs	
		Solar			Non-Solar			Solar	Non-Solar
		%	kWh	RECs	%	kWh	RECs		
2011-12	122644352	0.03	36793	37	2.37	2906671	2907	Nil	2222
2012-13	115996055	0.07	81197	81	2.83	3282688	3283	Nil	3528
2013-14	104048976	0.13	135264	135	3.37	3506450	3506	Nil	3635
2014-15	79848571	0.19	151712	152	3.81	3042230	3042	283	80
Total				405			12738	283	9465