

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

Petition No. 60 of 2015
Date of Order: 22.05.2017

Present: Shri D.S. Bains, Chairman
Shri S.S. Sarna, Member

In the matter of: Petition under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 3, 4 & 6 of the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 seeking directions for compliance of the Renewable Purchase Obligation imposed upon the obligated entities in the State of Punjab.

And

In the matter of: Indian Wind Power Association through its Vice-President, 513-514, 5th floor, World Trade Centre, Barakhamba Lane, New Delhi-110001

.....Petitioner

Versus

1. Punjab State Power Corporation Limited through its Chairman-cum Managing Director, PSEB, Head Office, The Mall, Patiala
2. Punjab Energy Development Agency, Plot No. 1 & 2, Sector 33 D, Chandigarh

.....Respondents

ORDER

Indian Wind Power Association (IWPA) filed this petition under section 86(1)(e) of the Electricity Act, 2003 (Act) read with Regulation 3, 4 & 6 of the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance)

Regulations, 2011 (as amended) seeking directions for compliance of the Renewable Purchase Obligation (RPO) imposed upon the obligated entities in the State of Punjab.

The petition was fixed for admission on 28.10.2015. The petitioner vide email dated 26.10.2015 requested for postponing the same to 03.11.2015, which was acceded to by the Commission. The same was further postponed to 05.11.2015.

The petition was taken up for admission on 05.11.2015. Considering that the Review Meeting for RPO compliance was to be held by the Commission with PSPCL and PEDDA on 09.12.2015, the admission of the petition was adjourned by the Commission to 22.12.2015 with an observation that "*Minutes of Meeting of the Review Meeting shall be supplied to the petitioner soon after, for reconsidering the issues raised by it in the petition and to decide whether any issues still remains for the consideration of the Commission*".

The petition was taken up for admission on 22.12.2015. The petitioner submitted that the Minutes of the Review Meeting held on 09.12.2015 supplied to it were perused and it was found that certain issues raised in the petition were not fully addressed and need to be taken up by the Commission for issuing appropriate directions to the respondents as prayed in the petition. The petition was admitted. Vide Order dated 23.12.2015, the Commission directed PSPCL and PEDDA to file reply by 12.01.2016 with a copy to the petitioner. The next date of hearing was fixed as 19.01.2016.

PSPCL vide letter dated 18.01.2016 requested for grant of three weeks time for submission of its reply. PEDDA also prayed for granting time to file its reply. In the hearing on 19.01.2016, PSPCL

and PEDDA were granted final opportunity to file reply by 11.02.2016 with a copy to the petitioner. Next date of hearing was fixed as 16.02.2016.

PEDDA filed its reply on 11.02.2016. PSPCL did not file its reply despite being given final opportunity for the same. A cost of ₹ 5000/- was imposed upon PSPCL for donation to the Blind School, Chandigarh. The petitioner submitted that PSPCL sought and received a sum of ₹ 98 crore for purchase of RECs for FY 2014-15 in the Tariff Order for FY 2014-15 which was granted by the Commission. However, PSPCL did not purchase any REC for its RPO compliance. Similarly, PSPCL sought a sum of ₹ 98 crore in the ARR for FY 2015-16 and were allowed ₹ 84 crore. As such, a burden of ₹ 182 crore has already been passed on to consumers of the State of Punjab but information regarding purchase of RECs has not been submitted so far. The Commission viewed this lapse on the part of PSPCL with regret. The Commission vide Order dated 17.02.2016 directed PSPCL to file the reply by 23.03.2016 with a copy to the petitioner who would file a rejoinder by 01.03.2016. The next date of hearing was fixed as 08.03.2016.

PSPCL filed reply dated 19.02.2016 with copy to the petitioner and PEDDA. The petitioner filed rejoinder dated 27.02.2016 to the reply of PSPCL. The parties were heard on 08.03.2016. PSPCL submitted that it was considering to purchase RECs to meet shortfall in its RPO for FY 2015-16, before 31.03.2016. PSPCL also sought time to file sur-rejoinder to the rejoinder of the petitioner. It further transpired that no details were submitted for RPO compliance by Captive users of electricity generated in captive generating plants in the State who are also

liable to comply with the RPO, either by PSPCL or PEDDA. PSPCL was directed vide Order dated 14.03.2016 to file the sur-rejoinder as well as the data regarding RPO compliance in respect of the Captive users and Open Access consumers, who were also obligated entity for RPO compliance, by 05.04.2016 and a copy of the same was to be supplied to the petitioner and PEDDA. The next date for hearing was fixed as 12.04.2016.

PSPCL filed sur-rejoinder dated 31.03.2016. During hearing on 12.04.2016, the petitioner took the Commission through the data submitted by PSPCL vide its sur-rejoinder dated 31.03.2016 and various Orders of the Commission allowing carry forward of the RPO by PSPCL from year to year. It was brought out that PSPCL was not complying with the directions of the Commission. The funds allocated/allowed by the Commission to purchase RECs to make-up for shortfall in RPO for the previous years in the Tariff Orders for the respective financial years, were realized by PSPCL from consumers through tariff but diverted for other uses, whereas cumulative shortfall of 1712.86 MU of non-solar RPO existed at the end of FY 2015-16 as per PSPCL's own submission. The petitioner submitted that data about Captive users was supplied in Punjabi and translated copy in English language was not annexed. The Commission directed PSPCL to do the needful within a week.

PSPCL submitted that it has already complied with the non-solar RPO for the previous years by purchasing RECs etc. The petitioner pointed out that if that be so, the submissions made by PSPCL in the sur-rejoinder need to be relooked into by PSPCL. The Commission directed PSPCL to submit the correct data/information on year-wise basis regarding RPO compliance.

PSPCL was also directed to submit details of RPO compliance status in respect of Open Access consumers and Captive users of electricity by 03.05.2016 with a copy to the petitioner. The next date of hearing was fixed as 10.05.2016.

PSPCL filed its submissions dated 06.05.2016 with a copy to the petitioner. The petition was taken up for hearing on 10.05.2016. The petitioner submitted that Shri Vishal Gupta, Advocate who was to argue the case had to rush back to Delhi due to some urgency and sought two weeks time for filing rejoinder to the submissions dated 06.05.2016 filed by PSPCL. The petitioner was directed to file rejoinder by 24.05.2016 with a copy to PSPCL. The next date for hearing the arguments on behalf of the parties was fixed as 14.07.2016, which was later postponed to 11.08.2016.

The petitioner submitted the rejoinder dated 09.07.2016 which was received on 28.07.2016. During hearing on 11.08.2016, the petitioner submitted that his counsel was unable to appear before the Commission on account of illness of his mother and requested for adjournment. PSPCL also sought time to file the reply to the rejoinder filed by the petitioner on 28.07.2016. PSPCL was directed to file the reply by 15.09.2016. The matter was adjourned to 29.09.2016 for arguments, which was further postponed to 20.10.2016.

PSPCL vide letter dated 09.09.2016 filed reply to the rejoinder of the petitioner. During hearing on 20.10.2016, the petitioner advanced the arguments at length. The Commission directed PSPCL to submit the list of Captive users (load-wise) by 24.10.2016 which PSPCL submitted vide email dated 22.10.2016.

Vide Order dated 25.10.2016, PSPCL was further directed to serve notice to Captive users by 28.10.2016, providing them 2 weeks time for filing their respective replies regarding RPO compliance latest by 11.11.2016, and submit the same to the Commission by 15.11.2016. The next date for hearing the arguments on behalf of PSPCL and PEDDA was fixed as 17.11.2016, which was later postponed to 08.12.2016.

On 08.12.2016, PSPCL informed that notices were issued to 80 Captive users having installed capacity of 5 MVA/MW and above. The Commission observed that notices were required to be issued to all Captive users. The Commission vide Order dated 14.12.2016 directed PSPCL to issue notices to Captive users by 23.01.2017 for submitting their RPO compliance information by 07.02.2017. PSPCL was further directed to amend the Performa to incorporate a column therein for indicating the source of the power generation and to issue a public notice regarding the same. The Commission directed that the Chief Electrical Inspector, being a necessary party, be arrayed as respondent and notice issued in this regard. The next date of hearing was fixed as 14.02.2017, which was further postponed to 21.03.2017.

During hearing on 21.03.2017, the matter was heard at length. PSPCL was directed to file details of its RPO compliance as well as by the Open Access consumers by 05.04.2017. The Order was reserved.

Vide letter dated 10.04.2017, PSPCL informed that RPO for FY 2014-15 has been fully complied. It further submitted that there was a provision of ₹ 84 crore for purchase of RECs in Tariff Order for FY 2015-16. However, PSPCL could not utilize the amount due

to financial constraints and the same was reviewed in the Tariff Order for FY 2016-17. PSPCL further informed that no objection certificate for availing open access is granted only to those consumers who fully comply with the RPO for the previous years.

2. The petitioner (IWPA) submitted as hereunder:
 - i) IWPA is an independent organization providing a neutral platform for its members to discuss and examine issues relating to wind energy sector in India with primary goal to bring together all the stakeholders including the Govt. on a common platform to discuss generic issues and resolve problems that may hinder the progress and development of wind energy projects. IWPA was set up in 1996 as a non-profit organization and its members now have a combined generating capacity of more than 11595 MW.
 - ii) Punjab State Power Corporation Limited (PSPCL) is the distribution licensee in terms of section 2(17) of the Act falling under the definition of the obligated entities in the State of Punjab. Punjab Energy Development Agency (PEDA) is the nodal agency for development of renewable energy in the State of Punjab.
 - iii) The Act envisages promotion of generation of electricity from non-conventional sources. Section 3 of the Act provides that Central Government shall, from time to time, prepare the National Electricity Policy and Tariff Policy, in consultation with the State Governments and Central Electricity Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear

substances or materials, hydro and renewable sources of energy. Section 4 of the Act, further provides that Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems, including those based on renewable sources of energy and non-conventional sources of energy for rural areas.

- iv) Section 61 (h) and section 86 (1) (e) of the Act enjoin Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) respectively to 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 license.
- v) Section 86 (4) of the Act provides that State Commission in discharge of its functions shall be guided by National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3 of the Act. Further, the National Electricity Policy as well as the Tariff Policy framed under section 3 of the Act provides for procurement of renewable power at preferential tariff.
- vi) In Compliance of the aforesaid mandate for promotion of renewable energy under section 86(1)(e) read with section 181 of the Act, SERCs have been fixing separate RPO in the respective states. However, some of the States in India have high potential for generation of renewable energy while other

States have lower potential for the same and therefore, lesser renewable energy was available there. In view of the same, the RPO fixed by SERCs were not complied with by the obligated entities. In order to overcome these difficulties, CERC has framed Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 (CERC REC Regulations) in exercise of its powers conferred under sub-section (1) of section 178 and section 66 read with clause (y) of sub-section (2) of section 178 of the Act for the development of market in power from non-conventional energy sources by issuance of transferable and saleable credit certificates.

vii) CERC REC Regulations provide that CERC shall designate an agency as Central Agency to undertake various functions such as registration of eligible entities, issuance of certificates, maintaining and settling accounts in respect of certificates, repository of transactions in certificates and such other functions incidental to the implementation of REC mechanism as may be assigned by CERC from time to time. CERC vide its order dated 29.01.2010 has designated the National Load Dispatch Centre (NLDC) as Central Agency.

viii) Regulation 4 of CERC REC Regulations further laid down that there shall be two categories of certificates, viz., solar certificates issued to eligible entities for generation of electricity based on solar as renewable energy source, and non-solar certificates issued to eligible entities for generation

of electricity based on renewable energy sources other than solar. It further provides that the solar certificates shall be sold to the obligated entities to enable them to meet their RPO for solar, and non-solar certificates shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources other than solar.

ix) Regulation 5 of the CERC REC Regulations provides for eligibility of generating companies to apply for registration for issuance of and dealing in certificates.

x) Regulation 7 of CERC REC Regulations provide that the eligible entities shall apply to Central Agency for certificates within three months after corresponding generation from eligible renewable energy projects and the applications for issuance of certificates may be made on fortnightly basis, that is, on the first day of the month or on the fifteenth day of the month. Further, certificates are to be issued by Central Agency within fifteen days from the date of application by the eligible entity and certificates are to be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the grid and duly accounted in the energy accounting system as per Indian Electricity Grid Code or State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch

procedures. Each certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source.

- xi) Regulation 8 of CERC REC Regulations provide that unless permitted by the Commission, certificates shall be dealt only through the Power Exchange and not in any other manner. Certificate issued to eligible entity by Central Agency may be placed for dealing in any of the Power Exchanges as the certificate holder may consider appropriate and such certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange provided that the Power Exchange shall obtain prior approval of the Commission on the rules and byelaws including the mechanism for discovery of price of certificate in the Power Exchange.
- xii) CERC REC Regulations also inter-alia provide that the price of certificate shall be as discovered in the Power Exchange, provided that the Commission may, in consultation with Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar certificates. Further, the Renewable Energy Certificate (REC) once issued shall remain valid for three hundred and sixty five days from the date of issuance of such certificate.
- xiii) CERC REC Regulations were amended by CERC vide Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First

Amendment) Regulations, 2010 dated 29.09.2010 (1st Amendment CERC REC Regulations) which inter-alia added the following proviso after sub-clause (c) of clause (1) of Regulation 5 of the CERC REC Regulations:

“Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement.

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

Provided also that the abovementioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of

concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government.

The disputes, if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.”

1st Amendment CERC REC Regulations specified that each REC issued shall represent one Megawatt hour of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive power producer) into the grid.

xiv) Pursuant to CERC REC Regulations, the Commission in exercise of powers conferred under section 61, 62(1), 66, 86(1)(e) and 181 of the Act and all other powers enabling it in this behalf, has framed Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 dated 03.06.2011 (RPO Regulations, 2011) for promotion of renewable energy in the State of Punjab, inter-alia providing for Renewable Purchase Obligation on the obligated entities and specified the RPO under Regulation 3. Further, Regulation 4 of the RPO Regulations, 2011 recognize RECs as valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources. Regulation 5 of the RPO Regulations, 2011 delineates the role of State Agency.

Further, Regulation 6 of the RPO Regulations, 2011 provides for penalty in case of default of the obligated entities.

xv) RPO Regulations, 2011 were amended by the Commission vide Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) (Amendment 1) Regulations, 2015 dated 06.05.2015 (1st Amendment RPO Regulations, 2015) whereby the RPO from FY 2015-16 to FY 2019-20 was specified and a proviso was added at the end of Regulation 3 (1) that the distribution licensee(s), in its/their respective area(s), shall ensure compliance of renewable purchase obligation by the Open Access Customer(s) and Captive user(s) of the electricity generated in a Captive Generating Plant, to be monitored by the State Agency, which shall forthwith inform the distribution licensee(s) of the non-compliance of renewable purchase obligation by such entities.

xvi) Even after RPO Regulations were notified by the Commission, a large number of the obligated entities in the State of Punjab have not been complying with their RPOs, neither by purchasing renewable energy nor by purchasing RECs. The details of the minimum quantum of power required to be purchased by PSPCL as per the Tariff Orders for FY 2013-14, FY 2014-15 and FY 2015-16 vis-à-vis renewable energy shortfall are as under:

a) FY 2013-14:

The RPO specified was 0.13% solar and 3.37% non-solar. Considering the energy requirement approved by the Commission as 42,726 MU, PSPCL was required to purchase 55.54 MU solar power and 1439.87 MU non-solar

power against which 18.95 MU solar power and 1389.20 MU non-solar power was purchased/generated including RECs. Accordingly, there was shortfall in RPO compliance to the tune of 36.59 MU in solar power and 50.67 MU in non-solar power, which was allowed to be carried forward to FY 2014-15 by the Commission. The Commission also provisionally approved the amount of ₹ 127 crore to meet with the shortfall in RPO compliance through purchase of power from renewable energy sources outside the State of Punjab and new projects coming up in the State of Punjab or RECs in case of non-availability of such power.

b) FY 2014-15:

The RPO specified was 0.19% solar and 3.81% non-solar. Considering the energy requirement approved by the Commission as 46,531 MU, PSPCL was required to purchase 88.41 MU solar power and 1772.83 MU non-solar power against which 120.41 MU solar power and 1649.33 MU non-solar power was purchased/generated including RECs. Accordingly, there was shortfall in RPO compliance to the tune of 123.50 MU in non-solar power and surplus of 32 MU in solar power. The estimated shortfall for FY 2014-15 was after making up for the shortfall of FY 2013-14. The Commission provisionally approved the amount of ₹ 84 crore to meet with the shortfall in RPO compliance through purchase of RE/RECs.

c) FY 2015-16:

The RPO specified was 1% solar and 3.9% non-solar. Considering the energy requirement approved by the Commission as 49,424 MU, PSPCL was required to purchase 494.24 MU solar power and 1927.54 MU non-solar power against which 1360.35 MU (solar + non-solar) RE power was purchased/generated. Accordingly, there was shortfall in RPO compliance to the tune of 1061.43 MU (solar + non-solar) RE power. PSPCL submitted that it will purchase short term power from renewable energy sources

as available and RECs during FY 2015-16 for fulfilling the RPO.

There is non-compliance of RPO by PSPCL although the Commission has approved renewable energy and REC purchases in the ARR of PSPCL. Further, no other information is available in public domain which establishes that RPO targets for FY 2011-12, FY 2012-13 and FY 2013-14 have been achieved by PSPCL.

xvii) Hon'ble Supreme Court of India vide its judgment dated 13.05.2015 in the case of Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulatory Commission (RERC) has held that RPO imposed upon Open Access consumers and Captive consumers apart from Distribution Licensees in the State of Rajasthan was valid and legal and upheld RERC judgment dated 31.08.2012. Hon'ble Supreme Court in the said judgment has noted that the obligated entities were not purchasing RECs despite there being a statutory obligation imposed upon them and such failure was causing grave loss and prejudice to the Wind Energy Generators in the State of Rajasthan. Hon'ble Supreme Court in the said judgment had recognized the need for promoting wind energy and therefore, allowed the impleadment application of a sister association of the petitioner herein namely, Wind Independent Power Producers Association (WIPPA).

xviii) In view of the poor implementation of the RPO and failure of the obligated entities to purchase RECs throughout the Country, WIPPA and Indian Wind Energy Association (IWEA), sister associations of IWPA filed Original Petitions

being OP Nos. 1 & 2 of 2013 under section 121 of the Act, before Hon'ble APTEL seeking compliance of RPO by the distribution licensees and other obligated entities as specified by SERCs and Joint Electricity Regulatory Commissions, which were disposed of by Hon'ble APTEL vide Order dated 20.04.2015. Hon'ble APTEL in its Order dated 20.04.2015 held as under:

“

28. In view of above discussions, we deem it appropriate to give directions to the State/Joint Commissions with regard to implementation of Renewable Energy Regulations in their respective States. The Tribunal after considering the contentions of the petitioners and the State/Joint Commissions, Central Commission and MNRE gives the following directions to the State/Joint Commissions under Section 121 of the Act:-

- (i) The State Commission shall decide the RPO targets before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers. The Preferential Tariff for procurement of renewable energy by the Distribution Licensee for a financial year should also be in place before the commencement of the financial year and no vacuum should be left between the end of control period for the previous tariff and the beginning of control period of the new tariff.*
- (ii) The State Commissions shall obtain proposal with supporting documents for renewable energy procurement by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year as per the RPO Regulations. Suggestion and objections of public shall*

be invited on the above petition. The State Commission may give necessary directions with regard to RPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it may plan to purchase RECs to meet its RPO target as per the provisions of the Regulations. Advance planning of REC purchase will give opportunity to the distribution licensees/other obligated entities to purchase REC when the market conditions are more favourable to them.

(iii) The monitoring of compliance of the RPO should be carried out periodically as provided for in the Regulations. After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public shall be invited in the review proceedings and decisions taken after considering the suggestions/objections, as per law.

(iv) The State Commission shall give directions regarding, carry forward/review in RPO and consequential order for default of the distribution licensees/other obligated entities as per the RPO Regulations. If the Regulations recognise REC mechanism as a valid instrument to fulfill the RPO, the carry forward/review should be allowed strictly as per the provisions of the Regulations keeping in view of availability of REC. In this regard the findings of this Tribunal in Appeal no. 258 of 2013 and 21 of 2014 may be referred to which have been given with regard to RE Regulations of Gujarat Commission but the principles would apply in rem. In case of default in fulfilling of RPO by obligated entity, the penal provision as provided for in the Regulations should be exercised.

(v) The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.

(vi) The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations.”

xix) In view of the above, IWPA submitted a letter dated 25.05.2015 to the Commission citing the aforesaid judgments passed by the Hon'ble Supreme Court of India and Hon'ble APTEL, seeking as under:

“In view of the APTEL order and the Supreme Court Judgment as mentioned above, it is submitted that this Hon'ble Commission may kindly initiate proceedings to ensure proper and effective compliance of the RPO targets by all obligated entities in the State. It is also submitted that initiation of proceedings is necessary in line with the directions of the Hon'ble Supreme Court of India and Hon'ble Appellate Tribunal for Electricity. Accordingly, we request this Hon'ble Commission to initiate appropriate proceedings so as to ensure effective and proper compliance of the RPO Regulations. Further, in case of default by any of the obligated entities, it is submitted that this Hon'ble Commission may also issue appropriate directions to such obligated entities as per the provisions of the RPO Regulations, notified by it.”

Despite our aforesaid letter dated 25.05.2015 requesting the Commission, seeking compliance of RPO, the obligated entities even as on date are not complying with the RPO fixed by the Commission.

xx)IWPA filed this petition before the Commission seeking directions upon all the obligated entities to furnish details of compliance of RPO by them since the notification of RPO Regulations, 2011 and in case, any obligated entity has failed to comply with the same, the Commission may take action against such deviant entity in terms of the Regulations applicable.

xxi)IWPA prayed to the Commission to:

- a) direct PSPCL and PEDDA herein and other obligated entities in the State of Punjab to furnish details of compliance of the RPO by them since the notification of RPO Regulations, 2011 (as amended till date);
- b) take strict actions in terms of the applicable Regulations against those obligated entities who have failed to comply with their RPO since the notification of 2011 Regulations;
- c) issue appropriate directions to ensure strict compliance of the RPO by the obligated entities as per the RPO Regulations, 2011 (as amended till date);
- d) pass any other or further order(s) as the Commission may deem fit and proper in facts and circumstances of the present case.

3. PEDDA filed reply dated 11.02.2016 to the petition and submitted as under:

- i) PEDDA is a registered society under the Societies Act of 1860 and is a State Nodal Agency formed for promotion and development of renewable energy projects and energy conservation programme in the State of Punjab. The Commission has designated PEDDA as the State Agency for the purposes of the REC Regulations and hence monitors the fulfillment of RPOs of the obligated entities in the State of

Punjab. PEDDA being Nodal Agency for New and Renewable Sources of Energy (NRSE) projects, promotes RE power and is of the view that the RPO compliance (solar/non-solar) obligated upon the entities should certainly be met with either by purchasing RE power or RECs.

- ii) PSPCL is one of the obligated entities and is liable to fulfill the RPO by purchase of RE power/RECs. Being the sole distribution licensee in the State, PSPCL maintains data of all its consumers including but not limited to the obligated entities purchasing power from PSPCL or/and drawing the power under open access while using the grid of PSPCL.
- iii) PSPCL communicates the data maintained by it qua the open access power purchases only and does not provide data so far as fulfillment of its own RPOs and the data qua the Captive Power Producers (CPPs) are concerned, though both PSPCL & CPPs also happen to be the obligated entities under the RPO Regulations.
- iv) On the basis of the data provided by PSPCL on annual basis, PEDDA calculates the RPOs of the obligated entities relating to open access and informs PSPCL about the factual position as to the RPO fulfillment by such entities while specifically demonstrating the shortfall, if any. PEDDA also requests PSPCL to take appropriate action against the defaulters as PEDDA is not in direct business terms with the obligated entities and has been vested with monitoring role only.

- v) PSPCL submits its report to the Commission every year with respect to RPO compliance and in case of shortfall it seeks approval from the Commission for extension of compliance period of its RPO by way of filing a petition. PSPCL, while adopting this practice, sought extension of compliance period for meeting with the shortfall in RPO compliance in FY 2011-12, FY 2012-13 and FY 2013-14.
- vi) PEDDA has always been duly fulfilling its duty by informing PSPCL about the shortfall in RPO of the obligated entities with a request to take an appropriate action against the defaulters. It is obligated upon PSPCL to take appropriate action either in terms of seeking compliance or penalizing the defaulters.
- vii) PEDDA has always been duly fulfilling its duty from time to time by informing PSPCL about the shortfall in RPO compliance by the obligated entities including CPPs, with a request to take appropriate action against the defaulters, as per the directions passed by the Commission. It is obligated upon PSPCL to take appropriate action either in terms of seeking compliance or in terms of penalizing the defaulters.
- viii) The Commission vide RPO Regulations, 2011 has categorically provided the effect of default, which is reproduced as under:

“6. Effect of default

(1) If the obligated entity does not fulfill 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 fulfillment of the obligations, out of the amount in the fund;

Provided also that the distribution licensee shall be in breach of its license 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.”

The Commission has already defined a concrete methodology by way of the said notification on the issue, while providing the detailed procedure in case of default by the obligated entities, which needs to be abided by all the concerned entities.

- ix) The RPO obligation must be fulfilled by the obligated entities, which shall be good for the State at large and more particularly shall be in the interest of protecting environment.
 - x) PEDDA during various review meetings requested the Commission to direct PSPCL not to grant no objection certificate for open access to the defaulting entities until the RPO compliance is met with.
 - xi) It is prayed that the Commission may take appropriate decision as deem fit in the facts & circumstances in the instant case.
4. PSPCL filed its reply dated 19.02.2016 and submitted as under:
- i) There is a growing public concern about the CO₂ emissions caused by generation of power from the conventional sources and its adverse impact on the environment. At the same time, public is also concerned about cost of energy from renewable sources to replace part of energy from conventional sources as the impact of the high cost of

renewable energy has to be borne by them in the form of retail supply tariff. The preamble of the Act states that one of the objectives of the Act is promotion of environmentally benign policies. The Act also mandates the State Commission to promote renewable sources of energy. Keeping in view the environmental concerns of the public, it would be prudent to seek suggestions and objections of the public in the proceedings where the State Commission reviews the RPO of the distribution licensee and passes orders on relaxation or carry forward of RPO and default of distribution licensee in meeting the specified RPO targets.

- ii) The Act has been enacted by Parliament with a view to encourage participation of private players involved in generation of electricity and with that objective, generation of electricity was de-licensed and captive generation was promoted. The National Electricity Policy, 2005 as well as the Tariff Policy, 2006 were framed to promote production of energy and utilization thereof to the maximum extent in respect of the captive generation plant and not compulsorily force them to lower down their generation of energy by making them purchase renewable energy. In the recent past, the RPO has been the major driving force in India to promote the renewable energy sector.
- iii) For promotion of renewable energy under section 86(1)(e) read with section 181 of the Act, the State Commissions have been fixing separate RPO in the respective states. PSPCL always endeavours to comply with the RPO target fixed by the Commission. In case of shortfall in making RPO

compliance, the same is carried forward to the next year after obtaining due permission and submitting the difficulties and reasons before the Commission for doing so.

- iv) The Commission notified RPO Regulations, 2011, where in Regulation 2(1)(I), the renewable energy source has been defined as small hydro, wind, solar including its integration with combined cycle, biomass, bio-fuel, cogeneration, urban or municipal waste and such other sources as recognized or approved by Ministry of New and Renewable Energy (MNRE).
- v) Regulation 3 has obligated the entities to purchase electricity from renewable energy sources including solar, not less than a percentage specified by the Commission from time to time, of its consumption of electricity (Energy input in the system of obligated entity at its boundary) under the RPO.
- vi) The petition deserves dismissal on account of the petitioner association having no locus to file the same. The petition has been filed by the association which is not a person or a company engaged in the wind power generation. The petitioner is not an aggrieved person within the meaning of section 111 of the Act. The petition is not maintainable and is abuse of process of Court vide which an attempt has been made by the wind power developers to seek order when shortfall in the purchase of wind power by PSPCL was entirely on the account of wind power developers not willing to sell power to PSPCL at the preferential tariff determined by the State Commission under section 86(1)(e) of the Act. Neither any part of the Punjab State is suitable for wind

generation nor has any developer developed the same. Thus, there is lack of bonafide on the part of IWPA to seek relief against PSPCL for non-purchase of renewable energy when the circumstances leading to the shortfall have been created by the wind power developers themselves.

vii) The shortfall in RPO compliance can be met with firstly by open market purchase of RE power i.e. through the process of open tendering and secondly, by purchasing RECs. PSPCL invited tenders for purchase of 1712 MU of non-solar renewable energy from all the generation companies but none including wind energy generators offered their bid. In case, procurement of 1712 MU of non-solar energy from the open market does not mature, the PSPCL will consider to purchase RECs of equivalent generation. Due to the non-availability of non-solar renewable power, non-abiding or non-compliance of regulations pertaining to RPO does not arise and the present petition needs to be dismissed *in-limine*. The Commission is meticulously monitoring the compliance of RPO in its regular quarterly meetings. PSPCL attended all the quarterly meetings regarding RPO Compliance regularly alongwith officers of PEDDA, Chief Electrical Inspector, Punjab and other concerned departments and apprised the position in respect of RPO compliance to the Commission.

viii) The purpose of fixing RPO is that renewable sources of energy should be promoted. If in a State, there is more scope for one type of renewable power and the developers are willing to enter into the PPAs, PSPCL should be free to

tie-up for the same. The Commission has power to relax the RPO, if the circumstances so warrant. The plenary action of the Commission to adjust the percentage of RPO is not open to challenge by the wind power developers, particularly when they had chosen to adopt other alternatives for sale of power generated by them.

- ix) The Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 as amended from time to time, provides that SERCs shall designate an agency which shall submit quarterly status to the State Commission in respect of RPO of the obligated entities and may suggest appropriate action for compliance of the same. The Commission notified PEDDA as the State Agency for the said purpose. It is also the prerogative of the State Commission as per Regulation 3 (2) of the RPO Regulation, 2011 that it can suo-motu or at the request of licensee revise the percentage of targets keeping in view supply constraints or other factors beyond the control of licensee.
- x) There is a provision in RPO Regulations, 2011 that in case of any genuine difficulty by the distribution licensee in fulfilment of RPO, it can approach the commission to carry forward the compliance requirement to the next year. Due to no generation of wind power in State of Punjab, the wind power is not being purchased. In view of more solar power coming in the State, if PSPCL procured excess solar renewable energy from solar projects during any financial year, the

Commission may consider and allow the adjustment of excess solar power against the RPO requirement for non-solar power during that year. The root cause is the non-availability of non-solar renewable energy source i.e. the wind energy generation due to strategic location of State of Punjab. The purchase of RECs under pressure from IWPA is just like syphoning of state finances to another state.

xi) Due to the strategic location of the State of Punjab, generation of wind energy is not feasible. PSPCL purchased non-solar RECs of equivalent energy of 285.35 MU & 483.33 MU from the Power Exchanges during FY 2012-13 & FY 2013-14 respectively. Further, an open tender was floated by PSPCL in October, 2012 for purchase of RE Power but the same was not successful. PSPCL signed long term PPAs for 1.65 MW capacity with 8 co-generation projects and 7 PPAs for 6.1 MW with developers of small hydro projects in FY 2012-13. As per the NRSE Policy, 2012, of the Govt. of Punjab, PEDDA is the designated Nodal Agency for implementation of the RE Projects. PSPCL signs the PPAs with the respective developers after the Implementation Agreements are signed by PEDDA. PSPCL is purchasing all the NRSE Power offered to it by the RE projects developed through PEDDA. PSPCL has been seeking permission from the Commission since 2013 till-date for carrying forward shortfall in RPO compliance for FY 2012-13, FY 2013-14 and FY 2014-15 by filing petitions i.e. petition no.36 of 2013, 34 of 2014 and 38 of 2015 respectively under section 94(1)(f) of the Act & Regulation 6(2) of the RPO Regulations 2011. In

the recent past, the tenders were floated and bids were invited from generation companies to comply with the RPO specified by the Commission. The tender for purchase of 1712 MU of RE power was invited but none of the companies except one has shown interest. By filing the petition, the member companies of IWPA cannot compel PSPCL to purchase wind energy so as to secure financial advantage.

xii)The Regulation 3(2) of the RPO Regulations, 2011 provides that the State Commission either on its own motion or on recommendation of State agency or on receipt of an application from the obligated entity, revise the percentage targets specified for any year as deemed appropriate. PSPCL is purchasing the renewable energy and the shortfall in RPO compliance is carried forward to the next year with the approval of the Commission. It is false that there is no implementation of RPO and there is failure of obligated entities to purchase RECs. Rather it is the inefficiency and profit making strategy of IWPA to not to supply the electricity to PSPCL on the preferential tariff determined by the Commission.

xiii)In view of the above submissions, the petition deserves dismissal as RPO compliance is being monitored by the Commission and PSPCL fully complied with all the obligation as per law.

5. The petitioner filed rejoinder dated 27.02.2016 to PSPCL's reply dated 19.02.2016 and submitted as hereunder:

- i) The contentions raised by PSPCL with respect to the maintainability of the petition are specious, untenable and contrary to the provisions of the Act and are liable to be rejected. PSPCL has raised baseless contentions to wriggle out of its statutory responsibility to comply with the RPO imposed upon it in terms of section 86 (1)(e) of the Act and the Regulations framed thereunder.
- ii) It is wrong that the petition is liable to be dismissed as IWPA has no locus to file the same. The issue of locus of representative associations to file petitions before the regulatory bodies has been settled by Hon'ble APTEL in its judgment dated 20.04.2015 in OP No. 1, 2 & 4 of 2013. As per the said judgment, a registered representative association can be an aggrieved person as provided for in section 111 of the Act and accordingly, the petitions filed by such representative associations are maintainable.
- iii) It is wrong that the petition is an abuse of the process of court. It is also wrong that the shortfall is caused due to unwillingness of the wind developers to sell wind power to PSPCL at promotional rates. In order to promote renewable energy, the Act, the National Electricity Policy and the Tariff Policy as well as REC Regulations framed by CERC and PSERC Regulations put the onus on the obligated entities to fulfill their renewable purchase obligation. RECs have been recognized as a valid instrument for the same. Further, the developers of renewable energy have been given an option to sell their renewable energy at a preferential tariff or at the average pooled power purchase cost and obtain renewable

energy certificates to be traded in the power exchange(s). Accordingly, it is an option given to the developers of renewable energy for selling their renewable energy to the obligated entities at a preferential tariff and they cannot be held at fault for not approaching the obligated entities for selling their renewable power to the obligated entities to fulfill their RPO. The obligated entities are required to comply with their RPO either by purchasing renewable energy at a preferential tariff or RECs from the power exchange.

- iv) The obligated entities including PSPCL failed to purchase physical energy to comply with their RPO. Further, as RECs have been recognized as valid instruments for fulfilling the RPO, the Commission has repeatedly been approving specific amount for purchasing the same in its Tariff Orders. However, PSPCL failed to even purchase RECs to comply with its RPO.
- v) It is prayed that the Commission may ensure that the obligated entities have tried to purchase renewable energy at a preferential tariff or have purchased the RECs instead of holding the generators responsible for the non-fulfillment of the RPO by the obligated entities. Further, in case the contention of PSPCL is accepted and the RPO is revised due to lower capacity additions or on the premise that purchase of RECs will put additional burden on the consumers, the entire REC mechanism would be rendered meaningless.
- vi) PSPCL in its reply has admitted that the shortfall in RPO can be fulfilled either by open market purchase of renewable

energy through a process of open tendering or by purchasing RECs. In case the response was poor in the tender process, PSPCL was obligated to go through the REC route for fulfilling its RPO especially when admittedly it has purchased REC (equivalent energy) of 285.35 MU and 483.33 MU of non-solar RECs in FY 2012-13 & FY 2013-14 respectively. Thus, there is no reason for PSPCL not to purchase more RECs available in order to comply with the shortfall in RPO and instead seek carry forward/revision or waiver of such shortfall before the Commission.

vii) RPO has been imposed upon the obligated entities as per the mandate of the Act, National Electricity Policy and Tariff Policy as well as the REC Regulations framed by the CERC and the Commission's Regulations. Further, Hon'ble APTEL in its judgment dated 20.04.2015 in OP No. 1, 2 & 4 of 2013 has issued directions for all the Regulatory Commissions for ensuring compliance of RPO by the obligated entities inter-alia holding that:

“(v) The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.

“(vi) The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations.”

As no exceptional circumstance is present in the instant case, there is no reason for the Commission to give any latitude to PSPCL as contended or otherwise.

viii) The reply filed by PSPCL is misconceived, devoid of merits and is liable to be rejected. The Commission is requested to allow the petition and ensure strict compliance of RPO by the obligated entities including PSPCL.

6. PSPCL filed sur-rejoinder dated 31.03.2016 and submitted as hereunder:

- i) The rejoinder filed by IWPA is not having any legal base. It is only a repetition of the petition.
- ii) IWPA did not file the parawise reply in the rejoinder as it does not have anything concrete to say against the issues and objections raised by PSPCL with regard to the maintainability and the pleadings of the petitioner's Association.
- iii) The RPO targets are to be fixed by the SERC's taking into account the availability of renewable resources in the State as projected by the State Agency. The Commission has followed the same lines in the RPO Regulations while fixing the RPO target for the obligated entities. The Commission has fixed the percentage of RPO keeping in view the RE capacity addition projected by PEDDA and its Regulation 3(1) of Notification No.PSERC/Secy./Reg./55 dated 03.06.2011.
- iv) The shortfall in RPO can be fulfilled by purchase of renewable energy from open market and/or by purchasing RECs. PSPCL has made all out efforts to procure 1712 MU of non-solar energy from open market from the renewable energy generation companies but none has shown any interest or willingness for the same. The wind generators

outside the Punjab State were also eligible to participate in the bidding but none of these has offered the bid. The procurement of 1712 MU of non-solar energy from the open market did not mature. PSPCL is considering purchase of RECs of equivalent generation. The Commission is meticulously monitoring the compliance of RPO in its regular quarterly meeting. PSPCL has attended all the quarterly meetings regarding RPO compliance regularly along with officers of PEDDA, Chief Electrical Inspector, Punjab and apprised the Commission the position with respect to RPO compliance. Keeping in view the actual renewable energy capacity addition, PSPCL would be annually short of about 1000 MU to 1200 MU of renewable energy, which is only because of the fact that RPO targets have been fixed by the Commission based upon the exaggerated projections made by PEDDA. In order to meet with this short fall, PSPCL may have to purchase RECs costing ₹ 150 crore to ₹ 200 crore annually without any return on this amount. This would only lead to additional burden on the consumers of the State. This amount spent on RECs will not provide any electricity to the consumers. The first priority of PSPCL for RPO compliance is purchase of renewable energy which can be actually used by the consumers.

- v) PSPCL purchased non-solar RECs equivalent to renewable energy of 285.35 MU & 483.33 MU during FY 2012-13 & FY 2013-14 respectively. Further, an open tender was floated by PSPCL in October, 2012 for purchase of renewable energy but without success. In addition, PSPCL signed long term

PPAs for 1.65 MW capacity with 8 co-generation projects and 7 PPAs for 6.1 MW with developers of small hydro projects in FY 2012-13. As per NRSE Policy, 2012, PEDDA is the designated Nodal Agency for implementation of the renewable energy projects. PSPCL signs the PPAs after the implementation agreements are signed by PEDDA with the respective developers. PSPCL is purchasing all the NRSE Powers offered to it by the renewable energy projects developed through PEDDA. PSPCL sought permission from the Commission for carrying forward targets of RPO for FY 2012-2013, FY 2013-2014 and FY 2014-2015 by filing petitions bearing no.36 of 2013, 34 of 2014 and 38 of 2015 respectively under section 94(1)(f) of the Act & Regulation 6(2) of the RPO Regulations, 2011.

- vi) The non-solar RPO for FY 2015-16 needs to be reviewed and re-fixed on the basis of actual renewable energy capacity addition and realistic energy output of the renewable energy projects. The projects may also be made accountable/responsible to generate power at optimum level as per their commitments i.e. PLF. On the basis of the information furnished by PEDDA for the projections of the projects to be added in future and projects in the pipe line, the RPO target had been fixed by the Commission. The actual renewable energy capacity addition has varied from the original estimate and has therefore increased the difference in RPO compliance which has led to the non-fulfilment of RPO for the present financial year. PSPCL is complying with all the Regulations notified by the

Commission. The cumulative shortfall/surplus from FY 2011-12 to FY 2015-16 in RPO compliance has been to the tune of 7.79 MU (solar; 0.0188%) in FY 2011-12, 114.80 MU (non-solar; 0.264%) & 25.78 MU (solar; 0.0601%) in FY 2012-13, 50.66 MU (non-solar; 0.114%) & 36.58 MU (solar; 0.0853%) in FY 2013-14, 772.565 MU (non-solar; 1.665%) & 1.665 MU (solar; 0.0103%) in FY 2014-15 and 1712.86 MU (non-solar; 3.507%) & 107.72 MU (solar; 0.2180%) in FY 2015-16.

vii) During FY 2015-16, 772.84 MU non-solar power and 265.16 MU solar power was purchased upto December, 2015. Net availability of power to PSPCL till December, 2015 was 39391.02 MU which included hydro power of 11914 MU. Accordingly, the net availability of power to PSPCL excluding hydro power till December, 2015 was 27477 MU. Non-solar and solar RPO compliance upto December, 2015 was 1.96% and 0.96% considering the net availability of power as 39391.02 MU and 27477 MU (excluding hydro for solar RPO) respectively. Solar RPO compliance has been worked out by excluding hydro power as per Amendment in Tariff Policy.

viii) PSPCL has been working very diligently over the years in order to achieve the RPO targets but the same could not be achieved due to various reasons already submitted before the Commission in various review meetings. The RPO targets set by the Commission based upon the projections given by PEDDA should be reviewed as the same are found to be exaggerated.

- ix) It is prayed to dismiss the petition as the issue of RPO compliance is in the knowledge of PSPCL and the same has been brought to the knowledge of the Commission time and again in various review meetings. Keeping into consideration the financial position of the State of Punjab and PSPCL, the Commission may consider the submissions of PSPCL and dismiss the petition in the nature of justice.
- x) During the hearing on 08.03.2016, it was brought to the notice of the Commission that Captive users of electricity generated in Captive Generating Plants in the State of Punjab are also liable to comply with the RPO. The same issue was also brought up in the review meeting held on 09.12.2015 in the Commission. The Commission had directed the representatives of the CEI, Punjab to forward the data of CPPs (Captive Power Producers) to PSPCL at the earliest. The requisite data was submitted on 20.03.2015 by the office of CEI.
- xi) The reasons for shortfall in RPO compliance are as under:
- a) During quarterly review meeting held on 09.12.2015 in the Commission, it was informed by PEDDA that the following projects could not be completed for various reasons due to which the actual renewable energy capacity addition was lower than what was projected earlier:
- i) Projects (non-solar) with capacity of 43.05 MW [6 MW (Biomass), 17.7MW (Co-generation), 19.35 MW (Small Hydro), 1 MW (Biogas+waste)] would be commissioned by 31.03.2016 against the target of 145.05 MW [72 MW (Biomass), 17.4MW (Co-generation), 53.17MW (Small Hydro), 2 MW (Biogas+waste)] in FY 2015-16.

- ii) 58 MW of biomass based power projects have been cancelled.
- iii) 34.35 MW of small hydro power projects have further spilled over to FY 2016-17.
- b) Solar projects with capacity of 322 MW would be commissioned by 31.03.2016 against the target of 411 MW.
- c) Delay in commissioning of the new NRSE projects by the developers resulting in slippage of capacity addition.
- d) The projects, which were due for commissioning in FY 2009 to FY 2015, are yet to be commissioned.
- e) The projects are not generating renewable energy as per their capacity due to various reasons.
- f) Cancellation of the NRSE projects by PEDDA, which were to contribute towards RPO compliance.
- g) Only 180 MW renewable energy projects [176 MW solar (ending 02/2016) and 4 MW co-gen] were actually commissioned during FY 2015-16.

Due to reasons as explained above and financial constraints in PSPCL, it is not possible to purchase RECs at this juncture. PSPCL prayed under clause 3(2) and 6(2) of RPO Regulations, 2011 which provide as under:

“3. Renewable Purchase Obligation

(2) The Commission may, either on its own motion or on recommendation of the State Agency or on receipt of an application from the obligated entity, revise the percentage targets specified herein above, for any year, as deemed appropriate.

6. Effect of default

(2) -----

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).

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Regulation 3(1) of the RPO Regulations, 2011 amended vide Notification No. PSERC/Secy./Reg./100 dated 06.05.2015 provides that the distribution licensee(s), in its/their respective area(s), shall ensure compliance of renewable purchase obligation by the Open Access customer(s) and Captive user(s) of the electricity generated in a captive generating plant, to be monitored by the State Agency, which shall forthwith inform the distribution licensee(s) of the non-compliance of renewable purchase obligation by such entities.

xii) In view of the above, it is prayed that:

- a) RPO targets may be considered to be reviewed based on the actual RE capacity addition which will enable the PSPCL to fulfil the RPO target.
- b) The Captive Power Plant generators and Open Access consumers should be made themselves responsible for their RPO compliance and PEDDA being the Nodal agency be directed to monitor the same.

7. PSPCL filed its final submissions on 06.05.2016 and while reiterating its earlier prayer as made in the sur-rejoinder dated 31.03.2016, submitted as under:

- i) The Commission in the first Amendment dated 06.05.2015 to its RPO Regulations, 2011 included PSPCL, Open Access consumers and Captive users as obligated entity to comply with the RPO. The RPO targets fixed by the Commission for FY 2011-12 to FY 2014-15 are 2.4 [0.03(solar) + 2.37 (non-solar)], 2.9 [0.07(solar) + 2.83 (non-solar)], 3.5 [0.13(solar) + 3.37 (non-solar)] and 4.0 [0.19(solar) + 3.81 (non-solar)] respectively. PSPCL is submitting quarterly reports about the RPO compliance to the Commission on regular basis. The Commission has been regularly monitoring the progress. PSPCL over the duration of past few years has been continuously working in direction of making Punjab a power surplus State. The main target of PSPCL is to achieve usable energy from all sources possible to fulfill the energy needs of the State. All renewable energy which was registered by PEDDA is being procured to fulfill the energy requirements and to comply with the RPO. PSPCL is purchasing all the renewable energy offered to it in the State. PSPCL is procuring 65 MW solar power from NRVNL and SECI from outside Punjab through long-term power purchase agreements. In order to fulfill its obligation, PSPCL made all efforts to procure renewable energy from outside the Punjab to comply with the RPO target. Open tenders were floated in FY 2014-15 and FY 2015-16 but no renewable energy could be purchased through tendering process due to low

response. All RPO compliance has been made by PSPCL upto FY 2014-15. Further, PSPCL has purchased 772.83 MU (non-solar) and 316.65 MU (solar) of renewable energy upto 31.12.2015.

- ii) As per the Tariff Order for FY 2015-16, the projected available energy for FY 2015-16 was considered as 51057 MU. Based on the same, the tentative shortfall would be 1784.17 MU for non-solar power and 184.59 MU for solar power for FY 2015-16 against the projected target of 1991.22 MU of non-solar power and 510.57 MU of solar power. Due to some unavoidable circumstances, PSPCL could not purchase RECs during FY 2015-16.
- iii) The Open Access consumers and Captive users may be directed to comply with the RPO target in view of the first amendment in the RPO Regulations, 2011, which makes them an obligated entity. PEDDA may be directed to explore more non-solar renewable energy projects in view of the cancellation of such projects. The targets may be fixed on the actual/realistic basis as per the power generation available in the State rather than the projections. PEDDA may also be directed for timely completion of the projects in the pipeline which would result in increase in output and would provide actual power to the consumers for use instead of buying RECs and putting burden on the consumers. The RPO targets till now have been calculated keeping in view the various projects expected to come up as projected by PEDDA, but most of these projects slipped their commissioning schedule or have not started yet. This has

created a huge gap between the actual renewable energy generation and the RPO target fixed by the Commission. Due to this, the RPO compliance becomes difficult.

- iv) PSPCL prayed under Regulation 3 (2) and 6 (2) of the RPO Regulations, 2011 that the RPO targets may be reviewed in view of the cancellation of various projects which were projected by PEDA during fixing of the RPO target. It has been provided in under Regulation 3(1) of the RPO Regulations, 2011 that State Agency shall monitor and prepare the data for RPO compliance by the Open Access customer(s) and Captive user(s) of the electricity generated in a captive generating plant and inform the distribution licensee(s) of the non-compliance of renewable purchase obligation by such entities. The distribution licensee(s) in its/their respective area(s) shall ensure compliance of renewable purchase obligation by such entities. Therefore, PEDA being the nodal agency can maintain the data of the obligated entities and provide the same to the Commission which in turn may use the same data to review the RPO targets in the future. It is correct that the provisions of ₹ 127 crore, ₹ 98 crore & ₹ 84 crore were made in the Tariff Orders for FY 2013-14, FY 2014-15 & FY 2015-16 respectively. During FY 2013-14, non-solar RECs equivalent to 483.33 MU of renewable energy amounting to about ₹ 72.5 crore were purchased. The shortfall of FY 2014-15 was allowed to be carried forwarded upto 31.12.2015 by the Commission.
- v) After adjusting the previous year's shortfall, the balance Non-solar and solar power purchased upto the month of February

in FY 2015-16 works out to 207.05 MU and 319.98 MU respectively.

vi) For FY 2015-16, the final figure for energy available to PSPCL for distribution and renewable energy upto March, 2016 is not yet available. It would be finalized by the end of the current month and the final report shall be submitted thereafter. The tentative shortfall would be 1700 MU for FY 2015-16 against the projected target of 1991 MU for non-solar power.

vii) In spite of provision of ₹ 127 crore, ₹ 98 crore and ₹ 84 crore made in the Tariff Orders for FY 2013-14, 2014-15 & 2015-16 respectively for purchase of RE power/RECs for fulfillment of the RPO, PSPCL had to defer the purchase of RECs due to unavoidable circumstances. In this regard, clear position would come out at the time of truing-up exercise for these years.

Along with above submissions, PSPCL also submitted some details regarding Open Access consumers indicating RECs and power purchased during FY 2013-14 & FY 2015-16 as obtained from PEDDA and related data of such consumers for FY 2015-16.

8. The petitioner filed rejoinder dated 09.07.2016 on 28.07.2016 to the submissions filed by PSPCL and submitted as hereunder:

i) PSPCL in its reply has submitted that after adjusting the shortfall till FY 2014-15, the balance renewable energy available for FY 2015-16 till February is 207.05 MU against tentative targets of 1991.22 MU for non-solar and 325.98 MU

against tentative targets of 510.57 MU for solar. It is clear from PSPCL's submissions that there is a tentative shortfall of 1784.17 MU for non-solar power and 184 MU for solar power for FY 2015-16.

- ii) For the first time PSPCL has sought to calculate the RPO compliance by adjusting the entire shortfall upto FY 2014-15 by the purchases made by it upto 31.12.2015. It is submitted that this is not permissible for the following reasons:
 - a) In the orders passed by the Commission in petitions filed by PSPCL for carry forward of RPO, it was directed to fulfill its obligations by 31st December of the next financial year. Thus, the shortfall of FY 2013-14 was to be fulfilled by 31.12.2014 and shortfall of FY 2014-15 was to be fulfilled by 31.12.2015.
 - b) The orders of the Commission allowing carry forward clearly provided that the shortfall of the previous year is in addition to the RPO specified for the next financial year. This means that the shortfall of the previous year as well as the RPO of that financial year was to be fulfilled during that financial year only.
 - c) PSPCL was required to do proper planning regarding its purchases for fulfilling its RPO in which it has failed.
 - d) The non-compliance becomes deliberate as despite being given special provisions in ARR to purchase RECs, PSPCL deliberately did not purchase the same.
 - e) That a perusal of the reply as well as the minutes of the meeting by the Commission regarding RPO compliance, the shortfall has been shown and acknowledged as of various years without adjusting them with the purchases made during FY 2015-16.
 - f) It is now as an after thought and in order to show that it is not in non-compliance, the adjustments of entire shortfall

upto FY 2014-15 are being adjusted against the purchases made upto 31.12.2015 in FY 2015-16.

- iii) PSPCL submitted that the final figures for energy available for distribution and renewable energy upto March, 2016 are not yet available. PSPCL also submitted that the above figures shall be finalized by the end of current month viz. May, 2016 and after that the final report shall be submitted. However, no such final report has been submitted till date. It is nearly impossible for PSPCL to comply with the non-solar shortfall in a month viz. March, 2016 without purchasing non-solar RECs as the renewable energy available till February, 2016 is just 10% of the tentative target for non-solar RPO.
- iv) PSPCL in its submissions stated that it had to defer the purchase of RECs due to unavoidable circumstances inspite of provision of ₹ 127, ₹ 98 and ₹ 84 crore made in the Tariff Orders for FY 2013-14, FY 2014-15 and FY 2015-16 respectively. PSPCL has not provided any information and clarity on unavoidable circumstances. PSPCL has recovered the said money from its consumers and instead of utilizing the same for the purpose it was provided for by the Commission, it has been utilized for some other purpose. PSPCL has not explained in its reply the reasons for not utilizing the said money for RPO compliance despite it being charged from the consumers. PSPCL is deliberately trying to mislead the Commission and complicate the issue. Retaining consumers' money or utilizing it for some other purpose than for what it was provided for by the Commission is not only a deliberate violation of the Commission's orders but is also a

breach of trust which the consumers of the State have reposed in PSPCL, for which appropriate proceedings need to be initiated against PSPCL.

- v) PSPCL has prayed for review of RPO target based on actual renewable energy capacity addition. PSPCL's request for review of RPO target is devoid of any merits and liable to be rejected. RPO has been imposed upon the obligated entities as per the mandate of the Act, the National Electricity Policy and the Tariff Policy as well as the REC Regulations, 2010 framed by the CERC and the Commission's RPO Regulations, 2011. The said revision of RPO targets is neither warranted nor can be done in the petition as it is a legislative exercise under delegated legislative function of the Commission.
- vi) Regulations 4(1) of Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 provides that the certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources. However, it is a duty casted on the obligated entities to fulfill their RPO either by purchasing renewable energy at a preferential tariff or RECs from the power exchange(s).

vii) Hon'ble APTEL in judgment dated 20.04.2015 in OP No. 1,2 & 4 of 2013 has held that if the Regulations recognized REC mechanism as a valid instrument to fulfill the RPO, the carry forward/review should be allowed strictly as per the provisions of the Regulations keeping in view the availability of RECs. Hon'ble APTEL also held that the provision like power to relax should be exercised under exceptional circumstances and not on recurrent basis.

viii) Hon'ble APTEL in its another judgment dated 16.04.2015 in Appeal No. 258 of 2013 held that non-availability of RECs is a pre-condition for carry forward. The relevant extract of above said APTEL judgment is reproduced hereunder:

"71. Summary of our findings:

(vi) Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9."

Hon'ble APTEL in the above judgment also held that only under extraordinary circumstances, the carry forward of shortfall in RPO is to be allowed and this should not be made a regular practice.

ix) If the State Commission allows review/carry forward despite availability of large number of RECs, it would negate the

above said Hon'ble APTEL judgment and would destroy the market of RECs that are traded in the power exchange(s).

- x) PSPCL was obligated to go through the REC route for fulfilling its RPO especially when admittedly it has purchased non-solar RECs of 285.35 MU and 483.33 MU in FY 2012-13 & FY 2013-14 respectively. Thus, there is no reason for PSPCL not to purchase more RECs available in order to meet the shortfall in RPO.
- xi) The Commission in its Order dated 28.05.2015 in petition no. 38 of 2015 observed that PSPCL should comply with the RPO targets for any specific year in that year itself.
- xii) RPO needs to be complied with on year-on-year basis as RECs are available in abundance in the market and are being traded at the floor price since September, 2012. Practice of RPO fulfillment over next financial years needs to be discontinued. A facilitating mechanism of one time must not be made a regular practice that hinders the objective of RPO Regulations.
- xiii) No exceptional circumstance is present in the instant case and there is no reason for the Commission to allow carry forward or exemptions or review in case of any shortfall in RPO compliance as it hinders the growth of the renewable energy sector and the sentiments of the investors investing in the sector while defeating the purpose of REC regulations formulated by the CERC.
- xiv) The data in "statement of RPO compliance by OA consumers for FY 2013-14, FY 2014-15 & FY 2015-16"

submitted by PSPCL shows that there is non-compliance of RPO by large numbers of Open Access consumers for FY 2014-15. Moreover, for FY 2015-16 only RECs purchase detail and RECs available after considering shortfall of previous year is provided whereas no RPO compliance data is submitted for FY 2015-16.

xv) PSPCL has submitted the CPP users list as directed by the Commission but no RPO compliance data of CPP users has been submitted by PSPCL. At this junction, PSPCL's prayer that Open Access consumers and Captive users may be made responsible themselves to comply with the RPO is unacceptable as proviso added at the end of Regulation 3(1) in PSERC (Renewable Purchase Obligation and its compliance) (Amendment-1) Regulations, 2015 are binding on distribution licensees. The above mentioned proviso put responsibility on distribution licensee to ensure the compliance of RPO by the Open Access customer(s) and Captive user(s) of the electricity generated in a captive generating plant.

xvi) PSPCL has failed to provide any genuine reasons towards the non-compliance of the RPO and is maliciously seeking revisions of its RPO. The Commission is requested to:

- a) direct PSPCL to submit the RPO compliance report alongwith Captive users for FY 2015-16.
- b) take strict actions in terms of the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 and amendments thereof and the Electricity Act, 2003 against those

obligated entities who have failed to comply with their RPO since the notification of 2011 Regulations.

- c) issue directions to ensure strict compliance of the RPO in future by all the obligated entities as per the RPO Regulations, 2011 and its subsequent amendments thereof.
- d) direct State Nodal Agency to strictly follow the provisions of the PSERC RPO Regulations, 2011 and amendments thereof, by quarterly publishing the details of RPO compliance of all the obligated entities in the State on Regular basis, and also to furnish details of non-complying obligated entities, at the end of each financial year, before the Commission for initiating appropriate action against such defaulting obligated entities.
- e) pass any other or further orders as the Commission may deem fit and proper in facts and circumstances of the present case.

9. PSPCL in its reply dated 09.09.2016 to the rejoinder of IWPA dated 09.07.2016 submitted, in brief, as hereunder:

- i) RPO compliance is the primary target of PSPCL and all efforts are made to do the same and get the requisite renewable energy for the consumers in the State of Punjab.
- ii) RPO compliance by way of purchasing RECs is an option available to PSPCL and the same has been done in the past. It has been a contention of the petitioner that PSPCL has not clarified the figures for the previous years and the present financial year. The data for previous financial years has already been submitted. Now, the data for FY 2015-16 has been finalized. Upto FY 2014-15, PSPCL has complied with the RPO. For FY 2015-16, the net short fall works out to be 1498.60 MU for non-solar power & 79.08 MU for solar power

respectively. The petition has already been filed before the Commission praying to allow carry forward of the same. The efforts have also been made to purchase the renewable energy through short term tender process. The case is under process to call the tenders in this regard.

iii) PSPCL is very serious regarding the RPO compliance and all out efforts are made for the same. It is also a contention of the petitioner that carry forward of RPO should be allowed by the Commission only in case the Commission finds merit and genuine reason for the same. In the past, carry forward of shortfall in RPO compliance was allowed by the Commission as it found merit in the submissions of PSPCL. The submission of IWPA that the same should not be allowed for FY 2015-16 is devoid of any logic as it is in the purview and power of the Commission to see and weigh the contentions of PSPCL for carry forward and the petitioner cannot dictate or direct the Commission as to how to use its statutory power for allowing carry forward. The petition to allow carry forward of shortfall in RPO compliance is a separate petition and has no connection with this petition.

iv) The shortfall in RPO compliance of FY 2014-15 allowed by the Commission to be carried forward upto 31.12.2015 was complied with before 31.12.2015 thereby limiting the issue of RPO compliance in this petition to financial year of 2015-16. PSPCL has signed the PPAs for the purchase of power from the projects for which IAs have been signed by PEDDA. All the renewable energy which has been registered by PEDDA is being procured to make RPO compliance. This includes

power available from outside the State as well. PSPCL is purchasing all the renewable energy offered to it in the State.

- v) ₹ 84 crore was provided in the Tariff Order for FY 2015-16, and the same has been reviewed in the Tariff Order for FY 2016-17. In the Tariff Order for FY 2016-17, an amount of ₹ 242.8 crore has been approved and the same shall be utilized by PSPCL to fulfill the RPO.
- vi) Tariff Policy, 2006 provides that 'the appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs.'

Hence, RPO of distribution companies/ direct buyers of electricity were to be fixed by SERCs across the States. To achieve this, PEDDA has been designated as Nodal Agency in Punjab to identify the projects and finalize the RPO targets in consultation with the Commission. The base of these targets was availability of renewable energy in the State of Punjab. The projections have been made by PEDDA based upon which RPO has been fixed by the Commission. PSPCL has signed PPAs with all these firms which have signed IAs with PEDDA. If the projects do not come up as per scheduled commissioning, then PSPCL cannot achieve the RPO. Due to this, a gap in the actual energy available and the projections made by PEDDA on basis of which RPO are specified by the Commission is created. The burden for the shortfall has to be carried by PSPCL.

- vii) All efforts are being made to purchase the renewable energy to fulfil the shortfall in RPO compliance. In the previous

petitions for carry forward, the Commission approved to carry forward the shortfall in RPO compliance of respective years and the same is as per powers given to the State Commission under the Electricity Act, 2003.

viii) No data is submitted by the Captive users to PSPCL. As such no record is available with PSPCL. Neither Captive users are submitting any energy data to PSPCL nor is PSPCL maintaining any energy data of Captive users. The list of Captive users as received from the Chief Electrical Inspector has already been submitted.

ix) The Open Access consumers and Captive users may be made responsible themselves to comply with the RPO target in view of the 1st amendment in the RPO Regulation 2011 i.e. Notification No. PSERC/Secy/Reg./100 dated 06.05.2015 which makes them an obligated entity. The data should be provided by the Open Access consumers and Captive users to PEDDA, since it is the Nodal Agency which will help in monitoring the compliance and fixing the RPO in future. The Commission is requested that:

- a) RPO Target may be considered to be reviewed based on the actual RE capacity addition which will enable the PSPCL to fulfill the RPO target.
- b) The Captive Power Plant generators and Open Access consumers may be made themselves responsible for their RPO compliance and PEDDA being the nodal agency be directed to monitor the same.

10. PSPCL vide email dated 22.10.2016 submitted the list of Captive users. Further, vide letter dated 17.11.2016, PSPCL

submitted that as per the directions of the Commission the notices were issued to 80 Captive users having installed capacity 5 MW/MVA and above. PSPCL also submitted the replies received from Captive users against the said notice.

11. PSPCL filed reply dated 10.04.2017 to the queries raised by the petitioner during hearing on 21.03.2017 and submitted that ₹ 84 crore was provided in the Tariff Order for FY 2015-16. PSPCL further submitted that due to financial constraints, it could not purchase RECs against the above amount, which was reviewed in the Tariff Order for FY 2016-17. As regards, Open Access consumers, PSPCL submitted that no objection certificate is given to those consumers only which have complied with RPO target for previous years. PSPCL also submitted the list of such Open Access consumers.

Commission's Observations, Findings and Decision

12. The Commission has carefully gone through the petition, replies of the respondents Punjab Energy Development Agency (PEDA) and Punjab State Power Corporation Limited (PSPCL), rejoinders thereto by the petitioner, sur-rejoinder and other submissions made by the parties. The observations, findings and decision of the Commission are as hereunder:

The petitioner prayed for action by the Commission as hereunder:

- a) direct PSPCL, PEDA and other obligated entities in the State of Punjab to furnish details of compliance of the RPO since the notification of RPO Regulations, 2011 (as amended till date);
- b) take action in terms of the applicable Regulations against those obligated entities who have failed to comply with the

RPO since the notification of RPO Regulations 2011 and issue appropriate directions to ensure compliance of the RPO by the obligated entities.

I. The petition is based on the premise that the obligated entities have not been complying with the renewable purchase obligation specified in the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 (as amended upto date) (RPO Regulations, 2011) neither by purchasing energy from renewable sources (RE power) nor Renewable Energy Certificates (RECs). The petitioner tabulated the shortfall/surplus in RPO compliance of PSPCL for FY 2013-14 to FY 2015-16 and submitted that the Commission provisionally approved ₹ 127 crore and ₹ 84 crore for RPO compliance in the Tariff Orders for PSPCL for FY 2013-14 and FY 2015-16 respectively but the same was not complied with. Also, RPO compliance information is not available in public domain. The petitioner submitted that Hon'ble Supreme Court of India vide its judgment dated 13.05.2015 in the case of Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulatory Commission held that RPO imposed upon Open Access customers (OA customers) and Captive users of electricity generated in a Captive Generating Plant (Captive users) apart from Distribution Licensees in the State of Rajasthan was valid and legal. In view of the poor implementation of the RPO, the petitioner and its sister association filed original petitions being OP No.1 & 2 of 2013 before Hon'ble Appellate Tribunal for Electricity (APTEL) seeking compliance of RPO by obligated entities. Hon'ble APTEL vide its Order dated 20.04.2015 passed directions to the State/Joint Electricity

Regulatory Commissions with regard to implementation of Renewable Energy Regulations in their respective States holding that the State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations. Hon'ble APTEL directed that monitoring of compliance of RPO should be carried out periodically as provided in the Regulations and after the completion of the financial year, the State Commission may review the performance of the distribution licensee in respect of RPO and give directions as per Regulations after inviting and considering suggestions and objections of the public in the review proceedings. The carry forward/review should be allowed strictly as per provisions of the Regulations keeping in view the availability of RECs. In case of default in fulfilling RPO by obligated entity, the penal provision as provided for in the Regulations should be exercised.

II. PEDA in its reply dated 11.02.2016 submitted that PSPCL communicates the data of RPO compliance in respect of OA customers only and does not communicate the same in respect of its own compliance or compliance by Captive users. PEDA calculates the RPO of the OA customers and intimates the shortfall in respect of the same to PSPCL. Since PEDA is vested with the monitoring role only, it requests PSPCL to take appropriate action against the defaulters, being its consumers. PEDA further submitted that PSPCL submits the RPO compliance to the Commission in the ARR and in case of shortfall it seeks approval of the Commission for extension in time for complying with the RPO. PEDA submitted that RPO Regulations, 2011 under 'Effect of default' provide for the detailed procedure in case of default by the obligated entity in fulfillment of

RPO. PEDDA submitted that RPO obligation must be fulfilled by the obligated entities and requested that PSPCL should not grant open access to the defaulting consumers.

III. PSPCL in its reply dated 19.02.2016 submitted that it always endeavours to comply with the RPO specified by the Commission and in case of shortfall, seeks approval of the Commission for carry forward to the next year after citing reasons for the same. PSPCL submitted that the present petition needs to be dismissed and is not maintainable. The petitioner has no locus to file the same as an Association which is not a person or company engaged in wind power generation. The shortfall in purchase of wind power is entirely due to wind power generators who are not willing to sell wind power to PSPCL on the tariff determined by the Commission. PSPCL can meet the shortfall in RPO compliance by purchase of RE power or REC. PSPCL issued tenders in open market to purchase 1712 MU non-solar RE power from the RE generating companies but none offered to sell the same to PSPCL. In the alternative, in case the purchase of RE power does not mature, PSPCL will consider to purchase RECs of equivalent generation. As such, the petition needs to be dismissed in-limino.

PSPCL submitted that the Commission meticulously monitors the RPO compliance at quarterly intervals regularly. Also, the Commission has powers to relax the RPO if the circumstances so warrant. The carry forward of RPO to next year through adjustment is not open to challenge by the petitioner, particularly when the wind power developers had chosen other alternatives for sale of power generated by them.

PSPCL submitted that it is unable to procure wind power as wind generating companies are not available in the State. Since solar power is available and thus if purchased, in excess, should be allowed to be adjusted against non-solar RPO. PSPCL purchased RECs equivalent to non-solar RE power of 285.35 MU and 483.33 MU during FY 2012-13 and FY 2013-14 respectively. PSPCL's tender to procure RE power during October 2012 was unsuccessful. In FY 2012-13, PSPCL signed PPAs with co-generation projects (1.65 MW) and small hydro projects (6.1 MW). PSPCL is purchasing all RE power offered to it by the renewable energy projects developed through PEDDA which is the nodal agency for implementing RE projects in the State. After the Implementation Agreements (IAs) are signed by the RE generators with PEDDA, PSPCL signs the Power Purchase Agreements (PPAs) with the developers. PSPCL submitted that PEDDA is the designated agency for submitting the quarterly report in respect of RPO compliance and is required to suggest appropriate action to the Commission for non-compliance.

PSPCL submitted that it sought approval of PSERC for carry forward of the RPO for FY 2012-13, FY 2013-14 and FY 2014-15 under the provisions of the Act and clause 6(2) of the RPO Regulations. As brought out above, PSPCL's tender for procuring 1712 MU non-solar RE power did not mature as none of the RE generators offered to sell RE power to PSPCL. Under the RPO Regulations, PSERC is empowered to revise the RPO specified by it. PSPCL seeks to carry forward only the shortfall in RPO compliance and the petitioner can not contend that the RPO is not being complied. Rather the petitioner in its own commercial

wisdom did not supply RE power to PSPCL. PSPCL is fully complying with the RPO obligation as per law.

IV. The petitioner in its rejoinder dated 27.02.2016 to the reply filed by PSPCL submitted that the issue of locus of Association to file petition before the regulatory bodies has been decided by the Hon'ble APTEL in its judgment dated 20.04.2015 in OP No.1, 2 and 4 of 2013. Hon'ble APTEL held that the issue raised by some of the State Commissions that the petitions filed by registered associations, not being affected parties, are not maintainable has already been decided in judgment dated 25.04.2014 in Appeal No.24 of 2013 wherein Hon'ble APTEL on the basis of an earlier judgment in Appeal No.148 of 2010 came to the conclusion that the appeal filed by Registered Associations of the generators/developers was maintainable. The petitioner further submitted that the shortfall in RPO compliance is not caused due to unwillingness of the wind power developers to sell wind power to PSPCL at promotional rates. RPO can be fulfilled by purchasing RECs as well. The generators have been given the option to sell their RE power at preferential tariff or at the average pooled power purchase cost (APPC) and obtain RECs to be traded at the power exchanges. Despite RPO being statutory obligation, the obligated entities including PSPCL have repeatedly failed to purchase physical energy to comply with RPO. RECs have been recognized as valid instrument for RPO compliance in the Regulations but PSPCL failed to procure the same despite specific amount provided for the same in the Tariff Orders. The RPO should not be revised as contended by PSPCL due to lower capacity additions or additional burden on the consumers due to purchase of RECs. In

case of poor response to the tenders for purchase of RE power, PSPCL should have procured RECs as done earlier in FY 2013 and FY 2014.

V. PSPCL in the sur-rejoinder dated 31.03.2016, while reiterating its earlier submissions, submitted that RPO is to be fixed by the SERCs taking into account the availability of renewable sources in the State as projected by the State nodal agency and the same were fixed by the Commission accordingly. The actual capacity addition is much less than that projected by PEDDA. Due to shortage of RE power in the State, PSPCL may have to purchase RECs worth ₹ 150 crore to ₹ 200 crore annually without any return on this amount thus putting additional burden on the consumers and without providing any additional power. As such, the first priority of PSPCL is to purchase RE power. The RPO for FY 2015-16 needs to be reviewed and refixed on the basis of actual RE capacity addition and the realistic energy output of the RE projects. Also, RE projects need to be accountable to generate optimum power as per committed PLF.

PSPCL submitted that in the review meeting on 09.12.2015 taken by the Commission, PEDDA informed that the projects (non-solar) of 43.05 MW capacity would be commissioned by 31.03.2016 as against target of 145.05 MW. Further, 58 MW biomass projects were cancelled and 34.35 MW capacity small hydro projects would spillover to FY 2016-17. PEDDA further informed that solar projects with capacity 122 MW would be commissioned by 31.03.2016 as against 411 MW capacity projected by it. Also, RE projects conceived in earlier years were still not commissioned and RE power was not being generated by

the projects as per capacity. The RE capacity addition upto February 2016 during FY 2015-16 is 180 MW [176 MW (solar) + 4 MW (non-solar)] as against projected 556 MW [411 MW (solar) and 145 MW (non-solar)]. Due to financial constraints, it is not possible to purchase RECs at this point of time by PSPCL.

PSPCL further submitted that as regards the OA customers and Captive users, they should be made responsible for their RPO compliance and PEDDA be directed to monitor the same.

VI. PSPCL in its final submissions dated 06.05.2016 reiterated its earlier submissions. PSPCL further submitted that any and all RE power registered with PEDDA and offered to it, is being procured to fulfill the energy requirements and compliance of RPO as also RE power available from other agencies outside the State. PSPCL is procuring 65 MW solar power from NTPC Vidyut Vyapar Nigam Ltd. (NVVNL) and Solar Energy Corporation of India (SECI) outside Punjab through long term PPAs.

As regards RPO compliance by OA customers, notices for the shortfall are being issued to the defaulting consumers. PSPCL is not granting open access to any firm/consumer who has not complied with the RPO obligation upto FY 2015-16. PSPCL submitted that requisite record in respect of Captive users is not available with PSPCL. Such consumers are neither submitting any energy data to PSPCL nor is PSPCL maintaining the same. PSPCL further submitted that the list of Captive users as received from Chief Electrical Inspector (CEI) attached with the sur-rejoinder is resubmitted duly translated in English as desired. The OA customers and Captive users should be responsible themselves for fulfilling their RPO and the data for the same should be submitted

by them to the State Agency PEDDA which is responsible for monitoring the RPO compliance under Regulation 3(1) of the RPO Regulations, 2011. PEDDA should inform PSPCL of the non-compliance by such entities for ensuring the RPO compliance.

PSPCL requested that PEDDA be directed to explore more non-solar RE projects in view of cancellation of such projects earlier. Also, PEDDA be directed for timely completion of RE projects in the pipeline. Citing Regulations 3(2) and 6(2) of RPO Regulations, 2011, PSPCL requested that RPO be reviewed and re-fixed on realistic basis considering the cancellation of various RE projects by PEDDA and the availability of RE power in the State rather than based on projections. Admitting the provision of ₹ 127 crore, ₹ 98 crore and ₹ 84 crore in the Tariff Orders for FY 2013-14, FY 2014-15 and FY 2015-16 respectively for RPO compliance, PSPCL submitted that the purchase of RECs was deferred due to unavoidable circumstances and clear position would emerge during truing up exercise. Summarizing, PSPCL submitted that full RPO compliance was made from FY 2011-12 upto FY 2014-15. As regards FY 2015-16, PSPCL intimated the tentative shortfall of 1700 MU (non-solar) in RPO compliance.

VII. The petitioner in its rejoinder dated 09.07.2016, to the submissions filed by PSPCL, submitted that PSPCL has submitted a shortfall in RPO compliance of 1784.17 MU (non-solar) and 184 MU (solar) for FY 2015-16. The shortfall in RPO for FY 2013-14 was to be fulfilled by 31.12.2014 and for FY 2014-15 by 31.12.2015 by PSPCL in addition to the RPO of the next financial year. PSPCL did not provide details in respect of unavoidable circumstances leading to deferment of purchase of RECs despite

provision of ₹ 127 crore, ₹ 98 crore and ₹ 84 crore in the Tariff Orders for FY 2013-14, 2014-15 and 2015-16 respectively. The request of PSPCL for review of RPO target is devoid of merit, not warranted and can not be done in the present petition. Hon'ble APTEL judgment dated 20.04.2015 in OP Nos.1, 2 and 4 of 2013 has stated that if REC mechanism is a valid instrument to fulfill the RPO, the carry forward/review should be strictly allowed as per the provisions in the Regulations keeping in view the availability of RECs. Hon'ble APTEL in another judgment dated 16.04.2015 in Appeal No. 258 of 2013 held that non-availability of RECs is a pre-condition for carry forward of shortfall in RPO and carry forward is to be allowed only under extraordinary circumstances. The Commission also in its Order dated 28.05.2015 in petition no.38 of 2015 observed that PSPCL should comply with the RPO for the particular year in that year itself.

As per the data submitted by PSPCL, many OA customers have not complied with the RPO for FY 2014-15 and RPO compliance by such customers has not been submitted for FY 2015-16 as also that by Captive users. The prayer of PSPCL that OA customers and Captive users should be made responsible for their RPO compliance should not be allowed since as per the proviso under Regulation 3(1) of RPO Regulations, 2011, it is to be ensured by the distribution licensee.

VIII. PSPCL in its reply dated 09.09.2016 to the rejoinder of IWPA reiterated its earlier submissions. PSPCL submitted its status of RPO compliance from FY 2011-12 to FY 2014-15 and asserted that it has complied with RPO compliance till FY 2014-15. For FY 2015-16, the net shortfall comes to 1498.60 MU (non-solar) and

79.08 MU (solar) and PSPCL has filed petition in the Commission for carry forward of the same. Efforts are under way to purchase RE power through short term tender process. The Commission allowed the carry forward of RPO in the past strictly on merits. Petitioner's plea that carry forward of the shortfall in RPO compliance of FY 2015-16 should not be allowed is devoid of any logic as it is in the purview/power of the Commission to allow the same and the petitioner can not persuade/suggest to the Commission as to how to use its statutory powers. The petition for allowing carry forward of shortfall of RPO compliance for FY 2015-16 is a separate petition and has no connection with the present petition. The RPO shortfall for FY 2014-15 was complied with before 31.12.2015. PSPCL seriously endeavours to fulfill the RPO which is specified by the Commission based on the capacity additions projected by PEDDA. However, in case of slippage in commissioning of such projects, shortfall in RPO compliance is created. PSPCL is purchasing all RE power offered to it for RPO compliance besides purchasing RECs as done in the past.

Captive users do not submit any data to PSPCL regarding its consumption of electricity by them and as such no record is available with PSPCL. The data received by CEI has already been submitted in the petition. It was prayed that OA customers and Captive users should be made responsible for their RPO compliance. Data from OA customers and Captive users should be provided to PEDDA being the nodal agency and responsible for monitoring the RPO compliance.

IX. The Commission notes that the petition was filed by IWPA against PSPCL and PEDDA. The Commission in its Order dated

14.12.2016 noted that Chief Electrical Inspector, Punjab, being a necessary party, be arrayed as a respondent. Accordingly, notice was issued to CEI vide Registrar memo no. 6504 dated 23.12.2016. The representative(s) of CEI attended the hearing on 21.03.2017. Based on the submissions made by the parties, the Commission, with regard to the RPO compliance by the obligated entities comprising the distribution licensee (PSPCL), OA customers and Captive users, decides as hereunder:

RPO Compliance by PSPCL

X. Based on the averments made by the parties above, the Commission notes that one of the petitioner's (IWPA) concern in the petition primarily relates to PSPCL seeking carry forward of the shortfall in RPO compliance for the past years to the respective succeeding years and not complying the RPO within the particular year through purchase of RE power/RECs despite funds provisionally approved by the Commission for the purpose in the Tariff Orders of PSPCL for FY 2013-14, 2014-15 and 2015-16. PSPCL, in response, submitted that it makes all efforts to comply with the year-wise RPO specified by the Commission. It purchases the entire RE power offered to it. PSPCL also purchased non-solar RECs equivalent to 285.35 MU during FY 2012-13 and 483.33 MU during FY 2013-14. PSPCL submitted that carry forward of shortfall of RPO compliance for a particular year to the succeeding year has been allowed by the Commission as per the provisions in the RPO Regulations, 2011 (as amended upto date). PSPCL further submitted that the carry forward of shortfall in RPO compliance for FY 2012-13, FY 2013-14 and

FY 2014-15 to the respective succeeding years was sought vide petitions no. 36 of 2013, 34 of 2014 and 38 of 2015. The said petitions were allowed by the Commission on merits under the relevant provisions of the RPO Regulations, 2011 allowing the carry forward of shortfall in RPO compliance for the particular year to the succeeding year and making it incumbent upon PSPCL to comply with the shortfall in RPO by a specific date in the succeeding year. The specific dates upto which carry forward was allowed were duly adhered to by PSPCL. PSPCL submitted that the petitioner should not have any objection to the carry forward of shortfall of RPO compliance to the next year allowed by the Commission under the provisions of the RPO Regulations, 2011. The Commission notes that the said petitions were allowed by it vide Orders dated 12.08.2013, 05.09.2014 and 28.07.2015 respectively. Subsequently, the requisite compliance was made by PSPCL. As such, the Commission unambiguously holds that there is no pending RPO compliance by PSPCL in respect of RPO specified by it upto FY 2014-15.

PSPCL further submitted that it has filed a petition before the Commission for carry forward of RPO compliance for FY 2015-16 to FY 2016-17. The Commission notes that the shortfall in RPO compliance for FY 2015-16 was allowed by it to be carried forward to FY 2016-17 in Order dated 21.03.2017 in petition no. 61 of 2016 filed by PSPCL.

As regards utilization of funds provisionally approved by the Commission for RPO compliance in various Tariff Orders of PSPCL for purchase of RE power/RECs for compliance of

shortfall in RPO, the Commission notes that PSPCL purchased non-solar RECs equivalent to 285.35 MU during FY 2012-13 and 483.33 MU during FY 2013-14 as submitted by PSPCL. As per submissions made to the Commission by PSPCL in various matters, PSPCL purchased non-solar RE power from outside the State in the past atleast twice for RPO compliance and regularly purchases bundled solar power from NVVNL every month since January 2014. The funds provisionally approved for a particular year are reviewed in the next year and further trued up in the following year. As such, there is no case for pleading utilization of funds by PSPCL in so much as provisionally approved funds in various Tariff Orders are concerned.

The RPO having been complied with by PSPCL upto FY 2014-15 and the shortfall for FY 2015-16 carried forward to FY 2016-17 in line with the RPO Regulations, 2011 (as amended upto date), the issue needs no further directions by the Commission.

As regards PSPCL's submissions that besides other reasons, the RPO could not be complied with fully due to cancellation of projects by PEDDA, slippage in the commissioning schedule of various projects allotted by PEDDA as also the projects not generating upto the optimum PLF/capacity, the Commission directs that both PSPCL and PEDDA shall take suitable remedial measures in this regard for future projects as well as and to the extent feasible, for the existing projects.

RPO compliance by OA customers

XI. IWPA submitted that RPO compliance is required on the part of OA customers and Captive users, besides the distribution licensee. In support, it submitted that Hon'ble Supreme Court of India in its judgment dated 13.05.2015 in the case of Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulatory Commission held that RPO imposed on OA customers and Captive users apart from distribution licensee in the State of Rajasthan was valid and legal. The Commission notes that as per the definition in the RPO Regulations, 2011 (as amended upto date), the term 'obligated entity' means the distribution licensee(s), OA customer(s) and Captive user(s). PSPCL and PEDDA submitted that necessary compliance is being made by the OA customers. PEDDA further submitted that PSPCL communicates the data of open access availed and RPO compliance made by the OA customers to PEDDA. PEDDA in turn calculates the shortfall of RPO compliance, if any, by the OA customers and intimates the same to PSPCL. Thereafter, PSPCL takes necessary/appropriate action for compliance of the same by the OA customers. PSPCL submitted that notices for the shortfall in RPO are issued to the defaulting OA customers. PSPCL is not granting open access to any firm/consumer who has not complied with the RPO obligation upto FY 2015-16 in line with the Open Access Regulations notified by the Commission. The Commission notes that the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) (7th Amendment) Regulations, 2016 provide that in

case the OA customer fails to comply with the RPO for a particular period/year, PSPCL shall withhold the permission to such OA customer to avail open access during the next period/year till the shortfall in RPO compliance is made. Further, the RPO Regulations, 2011 provide that PSPCL (Distribution Licensee) shall ensure compliance of RPO by the OA customers and Captive users to be monitored by PEDDA (State Agency), which shall forthwith inform the distribution licensee of the non-compliance of RPO by such entities.

In the hearing on 21.03.2017, PSPCL was directed to file details of RPO compliance by OA customers. The Commission finds that the information submitted by PSPCL vide letter dated 10.04.2017 is a list of 146 OA consumers who have been allowed to avail open access having complied with the RPO. This information does not serve the full purpose. Accordingly, the Commission directs PSPCL to file, in close coordination with PEDDA, consolidated year-wise statement of RPO compliance by the OA customers, within 3 weeks from the date of issue of this Order. The defaulting OA customers shall be identified by PEDDA and PSPCL shall initiate suitable action for pending RPO compliance by OA customers for the past period, assuming that a “no objection certificate” for availing open access has been granted only to those OA customers who have fully complied with the RPO for the previous years as intimated by PSPCL vide letter dated 10.04.2017. PEDDA is directed to adhere to the provisions in the RPO Regulations, 2011 in respect of filing the RPO

compliance statement of OA customers to the Commission in a suitable format.

RPO compliance by Captive users

XII. From the submissions made by various parties including the representatives of Chief Electrical Inspector, Punjab, who was also arrayed as a respondent, the Commission notes that RPO compliance as well as its monitoring by Captive users is not upto the mark. The primary reason that emerged from the discussion was lack of data of Captive users available with PSPCL. Also, the energy consumed by the Captive users is not measured since meters have not been installed for the purpose. It is understood that Captive users are exempt from payment of electricity duty and hence meters were not required to be installed for recording the consumption of power by Captive users.

The list of Captive users submitted by PSPCL as provided by CEI reveals that there are approximately 2368 Captive users in Punjab ranging from 12 KVA to 53.3 MVA. PSPCL issued notices to 80 Captive users with installed generating capacity of 5 MVA/MW and above, seeking information in respect of RPO compliance by them. The Commission observe that notices were required to be issued to all Captive users in the State. The Commission approved the draft of the notice to be issued to the Captive users and a public notice for publication in the newspapers by PSPCL, for collecting the information regarding RPO compliance by Captive users. The same was issued in the Tribune, Jagbani and Ajit newspapers by PSPCL on 01.03.2017.

In the last hearing on 21.03.2017, there was consensus amongst the parties that, initially to start with, it may not be practically feasible to get RPO complied with by all Captive users especially with capacity below 1 MVA/MW. Also, now that Punjab is surplus in power, smaller capacity captive generating plants are likely to be used sparingly. It was brought out that some State Electricity Regulatory Commissions have specified RPO compliance by Captive users having installed capacity 5 MVA/MW and above. Maharashtra and Gujarat Commissions have specified RPO compliance by Captive users having installed capacity of conventional captive generating plants as 5 MW and above. Similarly, the Haryana Commission has specified the conventional captive generating plant capacity for the purpose of RPO compliance by Captive users as 5 MW and above. It is noted that Himachal Pradesh Electricity Regulatory Commission has specified different capacities for the conventional power captive generating plants for RPO compliance depending upon the purpose of use i.e. standby or regular supply. In case of standby conventional captive generating plants, RPO is required to be complied with by Captive users having installed capacity of conventional captive generating plants exceeding 5 MVA whereas in case the power is to be used on regular basis from such plants, the RPO is required to be complied with by Captive users drawing power from conventional captive generating plants exceeding 1 MVA.

Accordingly, the Commission directs that initially, efforts may be geared up towards RPO compliance by Captive users having installed capacity of conventional captive generating plants as '5 MVA and above' in case the plant has been sanctioned as a 'standby' supply. In case the power from the conventional captive generating plants is to be used as 'regular' supply '1 MVA and above' RPO compliance would be needed. The Commission feels that close coordination is required between PSPCL, PEDDA and CEI for RPO compliance by Captive users. Accordingly, the Commission directs that a coordination committee of Chief Engineer/PP&R, PSPCL, Executive Director, PEDDA and Chief Electrical Inspector, Punjab or their representatives not below the rank of Superintending Engineer/Joint Director/Deputy General Manager shall be constituted to sort out various issues arising from time to time in respect of RPO compliance by Captive users. The committee will formulate a procedure to assess/measure the consumption of electricity consumed by the existing Captive users from their captive generating plants, may be as 'self declaration' by the Captive users or otherwise by installing meters. The committee will also look into the aspect of installing meters on all new captive generating plants for measuring the consumption of electricity by the Captive users for RPO compliance. The Commission shall be apprised of the formation of such a committee within one month of the issue of this Order, for which PEDDA shall take the lead.

In the meanwhile, PEDDA is directed to issue a manual on the lines of 'RPO Manual for Discom/ CPP/OA Consumer Obligated Entities' published by Maharashtra Energy Development Agency (MEDA) for the purpose of information and guidance of obligated entities in respect of RPO compliance.

The petition is disposed of in terms of above.

Sd/-

(S.S. Sarna)
Member

Sd/-

(D.S. Bains)
Chairman

Chandigarh

Dated: 22.05.2017