

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2007 of 2021.

In the Matter of:

Petition under Regulations 4, 5 and 9.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and the GERC (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 and the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018.

Petitioner : Reliance Industries Limited
Represented by : Ld. Sr. Adv. Mr. Sourabh Soparkar and Adv. Mr. Nisarg Desai
alongwith Mr. Anant Kapse and Mr. Bhadresh Chauhan

V/s.

Objector : Indian Wind Power Association (IWPA)
Represented by : Nobody was present.

CORAM:

**Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 06/05/2025.

DAILY ORDER

1. The above matter was kept for hearing on 24.07.2024.
2. Ld. Sr. Adv. Mr. Saurabh Soparkar, appearing on behalf of the Petitioner, submitted that the present Petition is filed for seeking appropriate directions under Regulations 4, 5, and Proviso 5 and 6 of the Regulation 9.1 along with Regulation 12 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 to carry forward the compliance requirement of RPO for the FY 2020-21 to FY 2021-22, on account of the non-availability of REC in the market due to stay on trading on REC. He referred the following prayers as stated in the present Petition:
 - (a) That the Commission may relax or waive the provisions of the GERC RPO Regulations, 2010 to give effect to and implement the Ministry of Power Government of India's letter dated 01.02.2019 and 01.10.2019 so as to

ensure capping of the RPO for captive power plants as per the MoP's clarification Orders.

- (b) The Commission may revise RPO targets for the FY 2020-21.
- (c) In view of the non-availability of REC in the market due to stay on trading of REC, the Commission may roll over balance RPO of FY 2020-21 to the year 2021-22 or the FY in which the present Petition is disposed off, whichever is later.

2.1. He further submitted that the Commission had passed Daily Order dated 10.10.2022, wherein directions were given to the Petitioner Reliance Industries Limited for inviting comments/suggestions/objections from the stakeholders in the present Petition by issuing public notices in newspapers and uploading the present Petition alongwith all documents on its website and accordingly, in compliance thereof, the Petitioner has published the same in one English Newspaper i.e., 'Indian Express' and one Gujarati Newspaper, viz. Sandesh newspaper on 26.11.2022 and also uploaded the same on its website for 30 days for inviting the comments/suggestions/objections from the stakeholders in the present Petition. Moreover, the Petitioner has also filed compliance affidavit dated 03.12.2022 in this regard before the Commission on 06.12.2022. It is further submitted that in response to the aforesaid public notice, the Petitioner Reliance Industries Limited has only received comments/suggestions/objections from Indian Wind Power Association (IWPA).

2.2. He submitted that the CERC has notified the CERC (Terms and Conditions for Recognition and Issuance of REC for Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 providing floor price and forbearance price separately for solar and non-solar REC. Thereafter, the Commission has notified GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 on 17.04.2010 and made amendment thereto specified the minimum quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016-17 and, also notified the Notification No. 2 of 2015 wherein the RPO was made applicable to captive and open access users with effect from 01.07.2015.

2.3. He submitted that Regulation 4 of GERC RPO Regulations, 2010 provides that each distribution licensee shall purchase electricity (in kWh) from renewable energy

sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kwh) from renewable energy sources, at a defined minimum percentage of its total consumption during a year. It further provides that if the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfilment of the RPO in accordance with column 2 of the GERC RPO Regulations.

- 2.4. He submitted that the Regulation 5 of GERC RPO Regulations, 2010 provides that the obligated entity can discharge the mandatory obligations by purchasing the certificates issued under the CERC (REC) Regulations 2010. Referring the proviso 5 of Regulation 9.1 which states that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year. Therefore, the Commission has power to revise and roll over the balance RPO of FY 2020-21 to FY 2021-22.
- 2.5. He submitted that being aggrieved by the said Regulations, the Petitioner has challenged the same by filing SCA No. 791 of 2011 before the Hon'ble Gujarat High Court, on the ground that inclusion of all captive users of electricity including those producing electricity through cogeneration within the "Obligated Entity" has led to absurd result, i.e., far from putting the co-generators on par with renewable source of energy, the GERC RPO Regulations actually put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to purchase power generated from renewable sources at a higher cost and without there being any requirement for such power. The Hon'ble Gujarat High Court, vide its common judgment and order dated 12.03.2015 has rejected the Petition filed by the Petitioner and other parties.
- 2.6. He submitted that being aggrieved by the aforesaid common judgment/ Order dated 12.03.2015 of the Ld. Single Judge, the Petitioner filed LPA and CA No. 4804 of 2015 before the Hon'ble Gujarat High Court seeking stay of the impugned

Judgment dated 12.03.2015 but the Hon'ble Gujarat High Court vide its Order dated 05.05.2015 held that instead of granting stay of the impugned Judgment, it shall be in the interest of justice to observe that the said Regulations though come in to force, they shall be subject to the final decision given in the Appeals. At present, these appeals are pending before the Hon'ble Gujarat High Court.

- 2.7. Thereafter, the Commission has issued the Notification No. 2 of 2015 and made applicable the RPO to captive and open access users effective from 01.07.2015. It is submitted that on 22.07.2016 the Ministry of Power, Govt. of India has issued the Guidelines for the Long Term RPO growth trajectory of Renewable Purchase Obligations (RPOs) for Non-Solar and Solar uniformly for all States and Union territories initially for the period of three years from FY 2016-17 to FY 2018-19. It is submitted that since the matter related to RPO on co-generation captive plants is sub-judice before the Hon'ble Gujarat High Court, the Petitioner is meeting its RPO on coal based power plants at its Hazira and Dahej facility and also for open access transactions at other units by procuring RECs from the market. Since the trading of REC is on hold from July 2020, the Petitioner has not been able to procure REC to fulfil its RPO for FY 2020-21. It is also submitted that sufficient number of REC were not available for trading due to nation-wide lockdown imposed in March 2020 on account of COVID-19 global pandemic, the Petitioner was not able to participate in REC trading.
- 2.8. It is submitted that in continuation to its earlier Order dated 22.07.2016, the Ministry of Power, Government of India vide its Order dated 14.06.2018 has issued the Long Term RPO growth trajectory of Renewable Purchase Obligations (RPOs) for Non-Solar and Solar uniformly for all the States and Union territories initially for the period of three years from FY 2019-20 to FY 2021-22.
- 2.9. He submitted that the Ministry of Power, Govt. of India has vide its letter dated 01.02.2019 issued clarification on Orders related to Renewable Purchase Obligation on the Captive Power Plants that the RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned and there should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.

- 2.10. Thereafter, Ministry of Power, Govt. of India has vide its letter dated 01.10.2019 issued further clarification related to Renewable Purchase Obligation that for CPPs commissioned before 01.04.2016, RPO should be at the level as mandated by the Appropriate Commission for the year 2015-16 and for CPPs commissioned from 01.04.2016 onwards, the RPO level as mandated by the Appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable. In case of any augmentation in the capacity, the RPO for augmented capacity shall be RPO applicable for the year in which the CPP has been augmented and in case, for meeting the RPO, CPP has surplus powers than its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.
- 2.11. He also submitted that the Commission also issued GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 and specified minimum quantum of purchase from RE sources upto FY 2021-22. It is further submitted that Regulation 12 of GERC RPO Regulations, 2010 provides that the Commission shall suo motu or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.
- 2.12. He referred Section 3 of the Electricity Act, 2003 which deals with the National Electricity Policy and Plan. Section 3 (3) of the Act provides that the Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise, the National Electricity Policy and tariff policy referred to in sub-section (1). He also referred Section 86 (1) (e) of the Electricity Act which states that the State Commission 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 licensee.
- 2.13. It is also submitted that other SERCs like Maharashtra, Orissa, Chhattisgarh, Rajasthan, Uttar Pradesh, Haryana and Assam have notified their respective Regulations in line with these MoP's Order and Clarification by way of suitable

amendments so as to cover the period prior to their current Regulations and implemented the capping provisions as per the Order of Ministry of Power , Govt. of India.

- 2.14. It is further submitted that the Petitioner filed Petitions No. 1781/2019, 1792/2019 & 1892/2020 seeking appropriate directions for roll over of RPO compliance for the FY 2017-18, FY 2018-19 and FY 2019-20 respectively which are pending before the Commission. It is submitted that there are not sufficient quantity of Solar and Non-Solar REC available in the market. As per Clause 5.1 of the GERC RPO Regulations, 2010 in the event of the obligated entity fulfilling the Renewable Purchase Obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table 1. However, vice-versa is not permitted.
- 2.15. It is submitted that since matter related to RPO on co-generation captive plants is sub-judice and pending before the Hon'ble High Court of Gujarat, the Petitioner is unable to purchase Solar and Non Solar REC for its RPO on coal based power plants at its Hazira and Dahej facility for compliance of RPO of FY 2020-21. Due to non-availability of sufficient Solar and Non Solar REC, the Petitioner is not able to get requisite number of RECs.
- 2.16. It is further submitted that due to onset of COVID - 19 effect which resulted in Nation wide lockdown, it was unable to participate in the power market in the month of March 2020 for procuring REC by the Petitioner. It is further submitted that the Hon'ble APTEL vide Order dated 24.07.2020 has stayed against the sale of REC certificate up to 2 years until it vacated. Further, owing to shortage of REC in the market there was shortfall in procurement of REC by the Petitioner, though the Petitioner participated in the bid for RPO for Financial Year 2020-21.
- 2.17. In response to objection of the Objector Indian Wind Power Association (IWPA), it is submitted that IWPA has taken two different stands, i.e., on one hand they have

requested the Commission to follow RPO trajectory as issued by the MoP vide its letter dated 22.07.2022, while on the other hand IWPA do not agree to the Clarification dated 01.10.2019 in respect of RPO trajectory issued by the Ministry of Power for RPO compliance for the CPPs. It is submitted that IWPA has relied upon the view taken by KERC in relation to RPO compliance, however, the KERC has *ispro-facto* modified its Regulation in line with the Order issued by the Ministry of Power, Govt. of India.

- 2.18. Based on the above, it is submitted that the Petitioner was unable to either procure renewable power or purchase the REC due to supply constraints and other factors like COVID -19 pandemic which are beyond the control of Petitioner and therefore, filing the present Petition before the Commission seeking to roll over to carry forward the RPO compliance requirement of the FY 2020-21 to the next year i.e. FY 2021-22 or the FY in which the Petition is disposed off, whichever is later.
3. In response to the Commission's query in respect of providing the data of RPO compliance for year 2020-2021 by the Petitioner for its Hazira & Dahej Manufacturing Division, the counsel appearing for the Petitioner has agreed to make its submissions for which two weeks' time has been sought for.
4. We note that the Petitioner is seeking permission of the Commission to revise the RPO Percentage for compliance of FY 2020-21 and also roll over or carry forward the same to FY 2021-21 due to the non-availability of REC in the market on account of stay on trading on REC by the Hon'ble APTEL, in terms of the provisions of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 as amended from time to time. The Petitioner has further sought relief to relax or waive the provisions of GERC RPO Regulations, 2010 to give effect to and implement the MoP, Govt. of India's letter dated 01.02.2019 and 01.10.2019 so as to ensure capping of RPO percentage for captive power plants as per the Orders of Ministry of Power, Government of India for the Petitioner's CPP units compliances. We note that the Petitioner also sought clarification under Section 86(1) (e) of the Electricity Act, 2003 and GERC (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 and its subsequent amendments for deciding the capping of the Renewable Purchase Obligation (RPO) for CPP units of the Petitioner at Hazira and Dahej.

- 4.1. We note that pursuant to directives of the Commission in Daily Order dated 10.10.2022, the Petitioner has published the public notices and uploaded the present Petition alongwith all documents on its website for inviting comments/objections/suggestions from the stakeholders in the present Petition and the Petitioner has received the comments/suggestions only from the IWPA in the matter. We also note that the Petitioner has filed compliance affidavit dated 03.12.2022 before the Commission on 06.12.2022 in the present matter. We further note that the staff of the Commission also uploaded the present Petition along with the relevant documents on website (www.gercin.org) of the Commission for inviting comments/suggestions from the stakeholders but the Office of the Commission has also received the comments/suggestions from IWPA in the present matter.
- 4.2. When the matter was called out, nobody was present on behalf of the Objector IWPA nor any written communication about their inability to remain present has been made despite notice.
- 4.3. We note that as the counsel of the Petitioner has sought two weeks' time to file their submissions in respect of the data of RPO compliance for year 2020-2021 by the Petitioner for its Hazira & Dahej Manufacturing Division, we direct the Petitioner to file the same, within two weeks, from the date of hearing, with a copy to the Objector. The Objector has right to file its submissions, if any, with a copy to the Petitioner, within two weeks' time.
5. Next date of hearing will be intimated separately.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 06/05/2025.