

No.: N/47/15

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 19th January, 2017

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

OP No.27 / 2015

BETWEEN:

Green Energy Association
Sargam, No.143,
Taqdir Terrace,
Near Shirodkar High School,
Dr. E. Borjes Road,
Parel (E),
Mumbai – 400 012.

..

PETITIONER

[Represented by Smt. Mandakini Ghosh, Advocate]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.
- 3) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 101.
- 4) Mangalore Electricity Supply Company Limited,
MESCOM Bhavana,
Kavoor Cross Road,
Bejai,
Mangaluru – 575 004.

- 5) Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grammeena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019.
- 6) Hukkeri Rural Electric Co-operative Society,
Belgaum.
- 7) The State Load Despatch Centre,
28, Race Course Cross Road,
Bengaluru – 560 009.

.. **RESPONDENTS**

[Respondents - 1, 2, 3, 4, 5 & 7 represented by ALMT Legal, Advocates,
Respondent – 6 represented by Navayana Law Offices, Advocates]

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ORDERS

- 1) The Petitioner, in the above Petition, has prayed for the following reliefs:

- “(1) The DISCOMs should be asked to provide the details of the compliance of Solar RPO from FY 2011 -2014;
- (2) The State agency SLDC should be asked to verify and provide the details of the compliance of Solar RPO from FY 2011 – 2014 of the Obligated Distribution Licensees;
- (3) Since there has been repeated violation and non-compliance of the Regulation and Orders of the Commission by the Obligated Entities, the Honourable Commission is requested to invoke the provisions in the Regulation to deal with severity the event of default by the Obligated Entity;
- (4) Accordingly, the State agency shall be asked to procure the required number of Certificates to the extent of the shortfall in the fulfilment of the obligations out of the amount in the fund;
- (5) The Obligated Entities have again defaulted in the compliance of the Solar RPO and shall be penalized under Section 142 and 146 of the Electricity Act and the provisions under the Regulations;

- (6) *To pass any other Order as the Hon'ble Commission may deem it fit and appropriate under the circumstances of the case and in the interest of justice;*
- (7) *To condone any error / omission and to give opportunity to rectify the same;*
- (8) *To permit Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time."*
- 2) The material facts, urged by the Petitioner, may be stated as follows :
- (a) The Petitioner is a registered Association of Companies, which are engaged in the generation of Solar Power. The Petitioner is interested in following up of the compliance of the Solar Renewable Power Obligation (RPO) by the Obligated Entities throughout the country, either by purchase of Solar Power or the Solar Renewable Energy Certificate (REC).
- (b) The Petitioner has stated that, this Commission has fixed the Solar RPO at 0.25% against every Distribution Licensee, expressed as a percentage of its total procurement during a financial year, with effect from 1.4.2012 as per the Karnataka Electricity Regulatory Commission (Procurement of Power from Renewable Sources) Regulations, 2011 [hereinafter referred to as the 'KERC (RE) Regulations, 2011']. Further, as per Regulation 5 of the said Regulations, the Distribution Licensees may purchase the REC to meet, either partly or entirely, the Solar RPO specified by the State

Commission. Further, as per Regulation 8 of the said Regulations, the non-compliance of the Solar RPO by any Distribution Licensee would result in taking action against that defaulting Distribution Licensee.

- (c) It is stated that, the Distribution Licensees in the State of Karnataka have not complied with the Solar RPO, as specified in the KERC (RE) Regulations, 2011. In paragraph-14 of the Petition, a tentative compliance status of the Solar RPO by the Distribution Licensees in Karnataka is furnished, which is extracted below :

	2011-12	2012-13	2013-14	2014-15	2015-16
Total Power Availability (MU) (as per CEA Igr reports)	54023.00	57044	58052	59593	59593
Solar RPO	0.25%	0.25%	0.25%	0.25%	0.25%
Total Solar RPO (MU)	135.06	142.61	145.13	148.98	148.98
Approx. Solar Power Available (MU) based on installed capacity	12.60	16.10	31.50	80.50	117.6
Default / Surplus (MU)	122.46	126.51	113.63	68.48	31.38
Cumulative Deficit	122.46	248.97	362.60	431.08	462.46

- (d) The Petitioner has also relied upon the directions given by the Hon'ble Appellate Tribunal for Electricity (ATE) in OP No.1/2013 in the case of *India Wind Energy Association and another -Vs- Andhra Pradesh Electricity Regulatory Commission and others*, and other connected matters, decided on 20/4/2015 and has requested to initiate penal action against the Distribution Licensees who have defaulted in complying with the Solar RPO as specified in the KERC RE Regulations, 2011. The Petitioner has also further relied upon the directions given by the Hon'ble ATE in its Judgment dated 16.4.2015 in Appeal

No.258/2013 and Appeal No.21/2014 specifying the guidelines to allow carry forward of the compliance of RPO to the next year.

- (e) For the above reasons, the Petitioner has prayed for grant of the reliefs mentioned above.
- 3) The Respondents have appeared through their counsel. Excepting Respondent-3 (GESCOM) and Respondent-6 (Hukkeri), all other Respondents have filed separate Statement of Objections. The learned counsel for Respondent-3 (GESCOM) submitted that, the objections of the other Respondents would hold good even for Respondent-3. Further, the learned counsel for Respondent-6 (Hukkeri) submitted that, Respondent-6 is purchasing power from Respondent-2 (HESCOM) and Respondent-2 (HESCOM) is usually complying with the RPO even on behalf of Respondent-6 (Hukkeri) and therefore, it adopts the Statement of Objections filed by Respondent-6 (HESCOM).
- 4) The gist of the objections raised by the Respondents may be stated as follows :-
- (a) That the Petitioner has no *locus standii* to file the present Petition inasmuch as, the compliance of the Solar RPO and its norms are between this Commission and the Respondents.

- (b) That Respondent-7 - State Load Despatch Centre (SLDC) has been furnishing particulars regarding the RPO compliance of different Distribution Licensees to this Commission, on a quarterly basis.
- (c) That the Petitioner has pleaded, at paragraph-4 of the Petition, incorrect and wrong compliance status of the Solar RPO by the Distribution Licensees in Karnataka. The actual figures showing the compliance of the Solar RPO by the Distribution Licensees in Karnataka are as follows :

	2011-12	2012-13	2013-14	2014-15	2015-16 (upto September 2015)
Total Power Availability (MU)	53690	57155	57886	60589	29133
Solar RPO	0.25%	0.25%	0.25%	0.25%	0.25%
Total Solar RPO (MU)	134.22	142.8	144.715	151.473	72.10
Approx. Solar Power Available (MU) based on installed capacity	7.95	16.47	100.347	231.0156	119.7984
Default / Surplus (MU)	124.33	125.81	44.36	59.54	47.68
Cumulative Deficit	124.33	250.14	294.5	234.96	187.28

- (d) That the Solar power generation during the years 2011-12, 2012-13 and 2013-14 was meagre and thereafter the Solar power generation picked up due to the establishment various Solar Power Projects. The Solar RECs were also not available during the initial years and as such, the Certificates were not sufficient in number during March, 2013 and March, 2014 to meet the requirements of the Distribution Licensees of Karnataka itself. This Commission had allowed the Electricity Supply Companies (ESCOMs) to carry forward the Solar RPO from 2011-12 to 2012-13, to the extent of non-compliance during the year 2011-12.

- (e) That taking into consideration all the relevant facts, the Power Company of Karnataka Limited (PCKL), which acts as a Nodal Agency for the activities of all the Distribution Licensees of Karnataka, had requested this Commission, vide letter dated 24.9.2013, to waive off the shortfall in meeting the Solar / non-Solar RPO during the years 2011-12 and 2012-13, as a special case. Similarly, the Energy Department, Government of Karnataka, had also recommended to this Commission to consider the request of the Distribution Licensees to waive off the shortfall in the compliance of the Solar RPO for the period from 2011-12 to 2013-14. The Respondents had also requested this Commission to waive off the shortfall in the compliance of the Solar RPO for the years 2011-12, 2012-13 and 2013-14 or to order carry forward of the shortfall in the compliance of the Solar RPO to 2014-15.
- (f) Respondent-1 (BESCOM) has contended that, from 2013-14 and thereafter, the Solar power procurement has increased and this Respondent has achieved the procurement in excess of the Solar RPO. Respondent-4 (MESCOM) has also contended that, its procurement of the Solar power has exceeded its Solar RPO.
- (g) That the Respondents have valid reasons for partial compliance of the Solar RPO, therefore no action could be taken against them under Sections 142 and 146 of the Electricity Act, 2003 (hereinafter referred to as the 'Act').

- (h) For the above reasons, the Respondents have prayed for dismissal of the present Petition.
- 5) We have heard the learned counsel for the parties. The learned counsel for the Petitioner brought to our notice the Judgments and Orders of the Hon'ble ATE on this subject and contended that, for non-compliance of the Solar RPO by the Distribution Licensees, this Commission has to impose a penalty and direct the Distribution Licensees to purchase the Solar RECs. The learned counsel for the Respondents submitted that, on the facts and in the circumstances of the case, the Respondents – Distribution Licensees cannot be penalized and pointed out that, for valid and sufficient grounds, this Commission has, in its 318th meeting held on 3.7.2015, accepted the compliance of the Solar RPO to the extent achieved by the Distribution Licensees as on 31.3.2014 and decided to close the matter of the Solar RPO compliance by the Distribution Licensees till that date. Therefore, the learned counsel for the Respondents submitted that, none of the prayers made by the Petitioner against the Distribution Licensees would survive.
- 6) After considering the submissions made by the learned counsel for the parties and perusing the material placed on record, our findings on the reliefs sought for by the Petitioner are as follows :

7) Relief No.: 1 : *The DISCOMs should be asked to provide the details of the compliance of Solar RPO from FY 2011 -2014.*

Relief No.: 2 : *The State agency SLDC should be asked to verify and provide the details of the compliance of Solar RPO from FY 2011 – 2014 of the Obligated Distribution Licensees.*

(a) The Distribution Licensees and the SLDC are providing the required information as may be necessary to ascertain the compliance of the RPOs by the Distribution Licensees and other obligated entities. This Commission, as and when required, has called for further information and documents that are necessary to monitor compliance of the KERC (RE) Regulations, 2011. Accordingly, the Distribution Licensees and other obligated entities, as well as the SLDC have furnished the required information.

(b) The Petitioner has prayed for securing the details of the compliance of the Solar RPO from FY 2011 to FY 2014. The KERC (RE) Regulations, 2011 has come into force with effect from 1.4.2011 under which, for the first time, the Solar RPO was imposed. Therefore, there was no question of the obligated entities complying with the Solar RPO for FY 2011. Therefore, this Petition should be read as restricted to from FY 2012 to FY 2014. For the above reasons, Reliefs (1) and (2) above do not survive.

- 8) Relief No.: 3 : *Since there has been repeated violation and non-compliance of the Regulation and Orders of the Commission by the Obligated Entities, the Honourable Commission is requested to invoke the provisions in the Regulation to deal with severity the event of default by the Obligated Entity.*

Relief No.: 4 : *Accordingly, the State agency shall be asked to procure the required number of Certificates to the extent of the shortfall in the fulfilment of the obligations out of the amount in the fund.*

Relief No.: 5 : *The Obligated Entities have again defaulted in the compliance of the Solar RPO and shall be penalized under Section 142 and 146 of the Electricity Act and the provisions under the Regulations.*

- (a) The Petitioner has sent the Petition to this Commission by Post, which was received in this Office on 25.8.2015. Certain Office objections were raised and the Petitioner was intimated to comply with the same. After complying with the Office objections, the Petition was registered on 18.9.2015 as OP No.27/2015.
- (b) At the time of admission of the Petition, it was brought to the notice of the learned counsel for the Petitioner that, the issue of compliance of the Solar RPO by the ESCOMs for the period from FY 2012 to FY 2014 was taken up by this Commission at its 318th meeting held on 3.7.2015 and this Commission decided in the said meeting to accept the compliance of the Solar RPO to the extent achieved by the ESCOMs as on 31.3.2014 and decided to close the matter of Solar RPO compliance by the ESCOMs till that date. A copy of the proceedings of the said meeting was provided to the learned counsel for the

Petitioner. The learned counsel for the Petitioner submitted that, the obligated entities should have met with the Solar RPO by purchasing the equivalent RECs for the shortfall in purchase of the Solar energy and submitted that, as per the MNRE data, there were sufficient RECs as on the relevant dates. Further, she submitted that, the proceedings of the said meeting dated 3.7.2015 of this Commission waiving off the unmet Solar RPO are not as per the Regulations and inspite of such decision, the ESCOMs are liable to be proceeded against as per law. Further, she submitted that, during the subsequent hearings of this case, she would convince this Commission that the decision taken in the said meeting of this Commission does not come in the way of prosecuting this Petition. During the subsequent hearings of the final arguments, the learned counsel for the Petitioner has not submitted anything further on this aspect, though she has submitted that she would produce authorities to prove that the decision taken by this Commission in the said meeting of this Commission has no legal effect.

- (c) The relevant portion of the proceedings of the 318th meeting of this Commission held on 3.7.2015 reads thus :

“Subject No.05. Compliance of Solar and Non-Solar RPO by ESCOMs for the period FY 2012 to 2015.

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As far as the solar RPO is concerned the Commission noted that none of the ESCOMs is able to meet its solar RPO as on 31.03.2013, and for FY 14 except the MESCOM. The Commission noted that the cumulative

shortfall considering the State as a whole in meeting the solar RPO target for all the ESCOMs put together as on 31.03.2014 is 273.63 MU and the total shortfall for the State on as 31.03.2015 would be 193.39 MU. The Commission noted that there was a shortage of 1034 MW of solar capacity in FY 13 and about 1200 MW shortage in FY 14 in meeting the envisaged solar RPO on PAN India basis. Further, sufficient RECs were also not available to meet the solar RPO in FY 12 and FY 13. As on March, 2013, there were about 633 solar RECs available in the market, which was far below the requirement of the ESCOMs for meeting the solar RPO in FY 13 including the carry forward of 114.28 MU of FY 12. The Commission also noted that, as on March, 2014 3.5 lakh worth RECs were available. Considering the shortfall of 36.81 MU for FY 14 (excluding MESCO which has surplus) and also the carry forward of previous years, the total RECs required would be about 2.75 lakhs which means that 75% of the RECs available in the market on PAN India basis had to be purchased by the ESCOMs of Karnataka. Thus, the non-compliance by the ESCOMs in meeting the solar RPO was due to non-availability of sufficient Solar energy or solar RECs. Further, as per Clause 6.4 of the National Tariff Policy the Appropriate Commission shall fix a minimum percentage for purchase of energy from sources taking into account availability of such resources in the region and its impact on retail tariffs.

In view of the above, the Commission decided to accept the compliance of solar RPO to the extent achieved by the ESCOMs as on 31.03.2014 and decided to close the matter of solar RPO compliance by ESCOMs till that date...."

- (d) For monitoring the compliance of the RPO by the ESCOMs and other obligated entities, this Commission was pursuing the matter continuously and Notices were being issued to all the ESCOMs and other obligated entities to submit the Status Reports and the reasons for the non-compliance of the Solar RPO. The Distribution Licensees

submitted the reasons for the non-compliance and the difficulties faced by them and requested to exempt them from complying with the shortfall in meeting with the Solar RPO. This Commission has taken into consideration all the relevant facts and decided as above regarding the shortfall in complying with the Solar RPO by the ESCOMs in Karnataka. The Commission has also taken note of the non-availability of sufficient number of Solar RECs in the market during the relevant periods, apart from the other relevant facts, before taking the decision to waive off the unmet Solar RPO by the Distribution Licensees.

- (e) The contention of the learned counsel for the Petitioner that, the decision arrived at by this Commission in its 318th meeting held on 3.7.2015 waiving off the unmet Solar RPO is not as per the KERC (RE) Regulations, 2011, therefore the ESCOMs should have met with the Solar RPO by purchasing the equivalent RECs, is untenable.
- (f) An Order passed by the Commission within its jurisdiction is valid and binding, unless it is set aside by due process of law. It is not the case of the Petitioner that, this Commission has no inherent jurisdiction to take the decision as arrived at in the said meeting dated 3.7.2015. Therefore, we are of the considered view that, unless this Commission's decision dated 3.7.2015 is set aside in any proceedings, the same is valid and binding. It is not established by the Petitioner that, the decision was void, therefore, the Petitioner was entitled to agitate the

same question before this Commission without seeking the relief to review the decision taken by the Commission.

- (g) The directions issued by the Hon'ble ATE in OP No.1/2013 and connected cases are prospective in nature. Those directions are being followed by this Commission. The compliance of the Solar RPO came into force from FY 2012. The closing balance of the RECs for March, 2012 was 'Zero', for March, 2013 was 633 and for March, 2014 was 3,46,872. The installed capacity of the Solar Power Plants was insignificant during the initial years, however there has been a considerable increase in the Solar power generation from year-to-year, thereafter. The Distribution Licensees have entered into Power Purchase Agreements (PPAs) for purchase of Solar power, though its cost is high. As on date, the ESCOMs have entered into Solar PPAs to the extent of more than 3,000 MW. Out of this capacity, already more than 320 MWs of Solar Power Plants have been commissioned. This Commission has taken the decision in its 318th meeting held on 3.7.2015 to waive off the unmet Solar RPO by the Distribution Licensees in the State, after taking into consideration all the relevant facts and the applicable provisions of law. In the given circumstances, the Distribution Licensees could not have been ordered to pay a huge amount under Regulation 8 of the KERC (RE) Regulations, 2011. Therefore, even on merit, the decision taken by this Commission in its meeting on 3.7.2015 still holds good and there are no good reasons to

revise it. Therefore, the Reliefs (3) and (4) sought for by the Petitioner are not maintainable.

(h) As per the KERC (RE) Regulations, 2011, as it existed prior to its Third Amendment published in the Karnataka Gazette dated 19.11.2015, there was no scope for contending that, an obligated entity not complying with the RPO should have been proceeded with under Section 142 of the Act. Therefore, taking any action under Section 142 of the Act for non-compliance of the Solar RPO till FY 2014, does not arise. Section 146 of the Act provides for punishment for non-compliance of the orders or directions given under the Act. Only a competent Criminal Court can take action under Section 146 of the Act, but not this Commission. Under the Act, this Commission is not conferred with powers to punish any person with imprisonment or with fine. Therefore, the Relief (5) sought for by the Petitioner cannot be granted by this commission.

(j) The contention of the Respondents that, the Petitioner has no *locus standii* to file the present Petition appears to be not well-founded. In our considered opinion, the Petitioner can maintain the present Petition as an aggrieved person under law.

- 9) Relief (6) : *To pass any other Order as the Hon'ble Commission may deem it fit and appropriate under the circumstances of the case and in the interest of justice.*

Relief (7) : *To condone any error / omission and to give opportunity to rectify the same.*

Relief (8) : *To permit Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.*

These reliefs are only consequential reliefs, which would depend on the outcome of the other reliefs sought for by the Petitioner. As the other reliefs sought for by the Petitioner are held to be not maintainable, we hold that Reliefs (6) to (8) above do not survive for consideration.

- 10) For the foregoing reasons, we pass the following :

ORDER

The above Petition stands dismissed.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER