

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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**Present:       Shri U. N. Behera, Chairperson  
                  Shri A. K. Das, Member  
                  Shri S. K. Parhi, Member**

**Case No. 89/2017**

Confederation of Captive Power Plants, Orissa	.....	Petitioner
Vrs.		
M/s. OREDA & another	.....	Respondents

**In the matter of:**   **An application under Sections 61, 66, 86 (1) (e) & 181 of the Electricity Act, 2003 read with OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 for carry forward of the compliance requirement to the next financial year.**

**For Petitioner:**     Ashok Kumar Parida, Consultant and Shri H R Das, Secretary, M/s. CCPPO.

**For Respondent:**   Shri Ashok Kumar Choudhury, Dy. Director (Projects),  
Sujata Das, Programme Assistant are present on behalf of M/s. OREDA.  
Nobody is present on behalf of EIC (Elect.)-cum-PCEI.

**ORDER**

**Date of hearing: 23.10.2018**

**Date of order:09.04.2019**

The petitioner Confederation of Captive Power Plants, Orissa (CCPPO) has filed this petition for carrying forward of their Renewable Purchase Obligation (RPO) compliance requirement to the next financial year.

2. The representative of the petitioner has submitted that in order to promote generation from renewable sources in the State as mandated in the Section 86 (1) (e) of the Electricity Act, 2003, the Commission had framed the OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010. As per these Regulations, each Obligated Entity shall meet its RPO target from its own Renewable Energy sources and/or through procurement of power from other developers of Renewal Energy sources or by purchase from other licensee or by way of purchase of Renewable Energy Certificate (REC). Following the said Regulation, M/s. OREDA the nodal agency designated by OERC had brought to the notice of the Commission that none of the obligated entities have fully complied RPO as provided in the Regulation. Only a few obligated entities have partially complied their RPO. Considering the

submissions of M/s. OREDA, the Commission vide its order dated 07.08.2015 passed in Case No. 59/2014 had allowed the obligated entities to carry over their Renewable and Co-generation Purchase Obligation upto 31.03.2015 till 31.08.2016. Thereafter, the Commission had notified a new Regulation called OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 for succeeding period starting from FY 2015-16.

3. The representative of CCPPO further submitted that their industries were under melt down condition due to various factors like closure/auction of iron ore mines, non-availability/high costs of input raw materials including coal and low product cost realisation. Besides, there is a severe pricing pressure on sale of their final product for which the industries owning CGP are hard-pressed to mobilize additional fund for establishment of their own renewable projects for meeting RPO targets. In addition, there is hardly any development in the state as regards to renewable energy. Further, in spite of the notification of Odisha Renewable Energy Policy, 2016 by the State Government, there has been no remarkable development in the renewable energy sector either by the Government or private developers. All the available quantum of renewable energy in the State is being procured by GRIDCO to meet the RPO of the DISCOMs. Therefore, the industries in the State had to resort to purchase of REC to meet their renewable purchase requirement. In the past years trading of REC was erratic in nature and sometimes such trading was stopped by various Forums. The Petitioner stated that in view of the above adverse/unviable industrial scenario, the industries having CGPs were not able to comply the RPO fixed by the Commission. He submitted that in the event of non-availability of sufficient energy from renewable sources in the State, the Commission may revise the RPO percentage suitably for the years 2015-16 to 2019-20 as stipulated in Clause 4.2 of OERC RPO Regulations, 2015, which provides that depending upon the progress of development of renewable energy sources in the State, the Commission may revise the RPO percentage suitably by an order.
4. The petitioner further submitted that the draft amendment to the Tariff Policy, 2016 was floated by the Ministry of Power, GoI on 30<sup>th</sup> May, 2018. The relevant portion of the proposed amendments of the said Policy at Para-6.4 (i) stipulates that in case the obligated entity is an industry with captive generation, the consumption from captive generation from waste heat gases as a by product of the industrial process shall also be treated towards renewable consumption. There are 19 nos. of CGPs in the State who are utilising waste heat gases for power generation. Some of the industries having such co-

generation plants have moved Hon'ble High Court of Orissa regarding applicability of RPO Regulations on them and the Hon'ble Court has granted stay to these units. Since the matter is still sub-judice, they have not complied with the RPO.

5. Regarding the issue of applicability of RPO on auxiliary consumption, the petitioner has submitted that the Commission had excluded auxiliary consumption of any generating station including CPP from the ambit of RPO. The Commission at Para-20 of their suo-motu proceeding (Case No. 111/2011, order dated 13.02.2012) on fulfilling the RPO under OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010, have clarified that, *"The RCPO obligation is applicable to the Industrial Units consuming power from fossil fuel based captive plants. Accordingly, RCPO obligation is not applicable to auxiliary consumption of any generating station including CPP"*. The representative of petitioner stated that as per the RPO Regulations, the industries consuming power from their CGPs are obligated entity, not the CGPs. The CGPs are like any other generating stations. Had the position being contrarian, then all the power generating companies would have come under the ambit of RPO Regulations albeit to the limited extent of auxiliary consumption. The Petitioner submitted that the term total consumption would imply the power consumed by the industries from their CGPs and the power obtained through open access (if any). Any power procured from the DISCOMs will not attract RPO since the obligation on such power is already being met by GRIDCO.
6. In view of the above, the petitioner prayed that by exercising the power under Regulations, 12.7 of RPO Regulations, 2015 the Commission may allow time to the CGPs to fulfil the RPO upto 2018-19 under the Regulation in force by the end of FY 2019-20 in "one time settlement scheme" and the RPO compliance calculations be finalised by OREDA with individual industries after deducting auxiliary consumption of their CGPs from the ambit of RPO. The Petitioner, further prayed to allow time till first quarter of the next financial year to meet the deficit or allow carry forward of any excess REC purchased since the calculation of RPO targets for a Financial Year can only be ascertained after completion of the FY i.e. 31<sup>st</sup> March and prior to that it is difficult to match between target and action to fulfil RPO.
7. The respondent-OREDA submitted that as the State Agency, they periodically compile the status of RPO compliance by the identified obligated entities in the State and submit the report to the Commission as well as publish the same in its website. No obligated entity has fully complied the RPO Regulations of the Commission. In view of the non-

adherence and non-compliance to the RCPO Regulations, 2010 by a large number of obligated entity OREDA had filed a petition before this Commission. The Commission at Para-22 of its order dated 07.08.2015 passed in Case No. 59/2014 had directed as follows:

*“22. Taking all the factors into account the Commission gives the following directions:-*

- a. The reasons advanced by parties for non-fulfilment of RPO obligation are unjustified and Commission is not inclined to grant any exception on this matter.*
- b. The obligated entities are allowed to carry over their renewable and co-generation purchase obligation upto 31.03.2015 till 31.08.2016. If they do not purchase the obligated quantity of power they can purchase REC at least 5% per month of the obligation upto 31.03.2015 from August, 2015 onwards and must comply the arrear obligation in full by 31.08.2016. No further extension of time shall be granted to carry forward the renewable purchase obligation in any circumstance.*
- c. All the obligated entities shall submit compliance report quarterly to OREDA within the above time frame. OREDA shall also submit the quarterly compliance report to the Commission after due scrutiny.*
- d. All obligated entities mentioned in the RCPO Regulations, 2010 shall comply with the said Regulations henceforth.”*

8. OREDA submitted that while the above directions were being carried out in the meantime, Commission notified OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 which was given effect from 10.09.2015 and the earlier OERC RCPO Regulations, 2010 was repealed. OREDA further submitted that to ascertain actual quantum of obligation of the entities, they are entirely dependent on the information provided by EIC (Elect.)-cum-PCEI, Odisha on consumption of conventional power by the industries from their CGPs. Since, the information received from EIC (Elect.)-cum-PCEI had no mention of auxiliary consumption, OREDA had to comply the quantum of obligation based on the total consumptions. The sole propose of requesting for “one time settlement scheme” by the petitioner is to arrive at actual quantum of obligation based on actual consumption i.e. total consumption minus auxiliary consumption. However, Clause 4.2 and 8.2 of OERC (RPO) Regulations, 2015 specifies that quantum of obligation of any obligated entity is to be complied taking into the consideration its total consumption of energy from conventional captive generating unit. There is no mention of deduction of auxiliary consumption. Similarly there is no provision in the Regulations for one time settlement of RPO compliance. Regarding the prayer of the petitioner to carry forward excess RECs purchased by the obligated entities and adjust the same against their obligations of subsequent years, OREDA submitted that though there is no provision in the

Regulations on this matter, OREDA as the state agency will abide by the decision of the Commission.

9. OREDA further submitted that at present 35 members of CCPPO are obligated entities, out of which the cases of 5 members are sub-judice before the Hon'ble High Court. Out of the total members, only 14 members have fulfilled their RPO partially and 21 members including the above 5 members have never reported any attempt to fulfil RPO. From the year 2015-16 their effort for fulfilment of RPO is very poor. The plea of the petitioner that due to pending cases at the Hon'ble High Court, some of their members have not complied the RPO is not maintainable within the provisions of the Regulations. However, some of the other obligated entities like HINDALCO, IMFA & NALCO whose cases are also sub-judice are complying with the RPO Regulations.
10. OREDA further submitted that the averments made by the petitioner that the industries are left with no alternatives other than buying certificates to fulfil their obligations is grossly incorrect in view of the fact that Clause 4.1 of the Regulations categorically specifies four different ways to fulfil one's obligation viz. (a) Procurement of power from own renewable sources. (b) Procurement of power from other developers of renewable energy. (c) Procurement of renewable power from other licensees. (d) Purchase of Renewable Energy Certificates. Further, the averments made by the petitioner with regards to amendments of draft tariff policy are out of context of the extant petition.
11. In view of the above, OREDA prayed the Commission to take judicious action against the defaulters of RPO as per the Regulations since the members of the petitioner association purposefully did not take any effective steps to fulfil their RPO.
12. The respondent EIC (Elect.)-cum-PCEI, Odisha, vide its letter dated 13.11.2018 has submitted that earlier on 10.08.2018 they had filed a list of 51 nos. of industries having CGPs along with their consumption through affidavit. However, in consideration to further query of OREDA they have submitted a revised list of 70 nos. of industries having CGPs along with their consumption data from self generation for the period from FY 2015-16 to 2017-18 without the data on auxiliary consumption since they have no records of auxiliary consumption of the CGPs with them. However, keeping in view the requirement of the said information, all the CGPs have been advised to make separate metering arrangements to record the auxiliary consumption and submit its return after completion of the installation of the metering equipments.

13. The parties were heard and their written notes of submission taken on the record.

The Commission observed that consumption of energy from renewable sources is of great significance for protection of the environment. Both Central and State governments have framed various policies and rules and the Regulatory Commissions have made various regulations and issued orders keeping the above broad objective in view. In this process all the obligated entities should make their effort to meet the RPO fixed by the Regulatory Commissions. We observe with concern that most of the obligated entities in our State are not making proper effort to fulfil the RPO citing various reasons. However, the Commission vide its order dated 07.08.2015 passed in Case No. 59/2014 had allowed the obligated entities of our State to carry over their Renewable and Co-generation Purchase Obligation upto 31.03.2015 till 31.08.2016 and directed that no further extension of time shall be granted to carry forward the RPO in any circumstances. The objective of the rules and regulations framed by various authorities are not merely to impose penalty on the obligated entities, but to make them perform their obligation for the betterment of the society. Penalty can be imposed as a last resort for wilful default in discharging obligation under Regulation.

However, in the instant case considering the submission of the petitioner, the Commission for the last time allows the obligated entities in our State to carry over their RPO upto 31.03.2018 till 31.03.2019 and to comply the RPO for the financial year 2018-19 by 30.06.2019. No further extension shall be entertained. Thereafter, the obligated entities shall comply their RPO as per the Regulations made by the Commission by the first quarter of each succeeding financial year and excess REC purchased by the obligated entities shall be carried forward to the next financial year.

14. Regarding the issue of renewable purchase obligation on auxiliary consumption in conventional thermal power plant we note our earlier observation at Para 20 in Case No. 111/2011 dated 13.02.2012 mentioned by the Petitioner as follows:

*“The RCPO obligation is applicable to the Industrial Units consuming power from fossil fuel based captive plants. Accordingly, RCPO obligation is not applicable to auxiliary consumption of any generating station including CPP”.*

Further, Para-3.1 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 stipulates as given below:

*“These Regulations shall apply to all “Obligated entities” in the State of Odisha. The Obligated Entities include,-*

- (a) *Distribution Licensee (or any other entity procuring power on their behalf), and*
  - (b) *Any person consuming electricity (a) generated from conventional Captive Generating Plant having capacity 1 MW and above for his own use and or (b) procured from conventional generation through open access and third party sale.”*
15. From the above it can be inferred that obligated entity is the one consuming electricity from conventional CGP having capacity 1 MW and above for its own use. As the auxiliary consumption is the consumption in the generating station for the purpose of generation of electricity, it need not be considered as own use at present.
  16. We have also taken note of draft amendments in the provisions relating to qualification of Captive Generating Plant in Electricity Rules 2005 on 22.05.2018 wherein it has been mentioned that aggregate electricity generated shall be derived as the total electricity generated in the power plant minus auxiliary consumption. Therefore, in the present situation the RPO compliance shall be based on consumption in the industry and not on auxiliary consumption of the CGPs.
  17. We take into consideration the statement of M/s. OREDA that they are dependent on data furnished by EIC (Elect.)-cum-PCEI for determination of the quantum of renewable purchase obligation for industries having CGPs. They submit that the data they obtain from EIC (Elect.)-cum-PCEI lacks information on auxiliary consumption. On the other hand EIC (Elect.)-cum-PCEI has stated that they have only information on the gross generation from CGPs and consumption in industries including DISCOM supply if any. Due to absence of meter to measure auxiliary consumption they cannot furnish the information on consumption in industry from its own CGP to M/s. OREDA. They have advised the industries to fix auxiliary consumption meter in their CGP at the earliest so that the said information can be provided to M/s. OREDA. In view of the above submission of M/s. OREDA and EIC (Elect.)-cum-PCEI we direct that normative auxiliary consumption as per OERC Generation Regulation, 2014 shall be deducted to find out the consumption in industry from its own generation till auxiliary consumption meter is fixed.
  18. In summarising the above the Commission gives the following directions:
    - (a) The quantum of RPO compliance for the CGPs shall be aggregate or gross generation from the CGP less auxiliary consumption and export through open access together. Power availed through open access by the industry shall be accounted towards consumption for determination of renewable purchase obligation. Normative auxiliary consumption shall be as per the OERC

generation tariff Regulations, 2014 of the Commission for similar kind of generating stations. This shall be determined by M/s. OREDA and intimated to obligated entities. Obligated entities shall also comply the RPO provisions by self assessment and reconcile the same with M/s. OREDA within the allowed time period.

- (b) EIC (Elect.)-cum-PCEI, Odisha shall furnish all information on generation of CGPs and on auxiliary consumption, if available, to M/s. OREDA.
- (c) M/s. OREDA shall compute the cumulative RPO obligation upto 31.03.2018 and its compliance on the basis of information available and intimate this to the concerned industries excepting those industries having CGPs who have already approached Hon'ble High Court in this regard. These cumulative obligations upto 31.03.2018 shall be complied by 31.03.2019.
- (d) RPO obligations for the year 2018-19 i.e. upto 31.03.2019 shall be complied by 30.06.2019.
- (e) In case of default in compliance within the stated period M/s. OREDA shall determine the penal amount in the manner stated in OERC (Procurement of Energy from Renewable Sources & its Compliance) Regulations 2015 and intimate the defaulter for deposit of the amount specifying the time period therein.
- (f) From year 2019-20 onwards the obligated entities shall comply their RPO for the financial year and report compliance to OREDA by the 30<sup>th</sup> June of the next financial year.

19. With these directions the case is disposed of.

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(A. K. Das)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**