

BRIEF ANALYSIS ON NEW RENEWABLE PURCHASE OBLIGATION REGULATIONS IN THE STATE OF MAHARASHTRA



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BACKGROUND

The Electricity Act, 2003 (“Act”) was introduced to govern the laws relating to generation, distribution, trading and use of the electricity and generally for measures conducive to development of electricity.

Vide Sections 61, 66, 86(1)(e) and 181 of the Act, the Hon’ble State Commissions are empowered to make regulations with respect to various issues enumerated therein including that of Renewable Purchase Obligations, its Compliance and Implementation of Renewable Energy Certificate Framework.

Vide their Notification dated March 30, 2016 the Hon’ble Maharashtra Electricity Regulatory Commission (“MERC” or “Commission”) has introduced the new Renewable Purchase Obligation Regulations, 2016 (“RPO Regulations, 2016”) which contains certain sweeping changes. These regulations repeal the erstwhile MERC (Renewable Purchase Obligation, Its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2010 (“RPO Regulations, 2010”).

Keeping the Act, the rules made thereunder and the previous regulations in mind, the following analysis is made of the 2016 Regulations:

CLAUSE-WISE ANALYSIS OF THE REGULATION

1. Regulation 4: Eligible Renewable Energy Sources.

Regulation 4.2 (g)

“Hybrid RE based on RE technologies and sources approved MNRE and State Commission”

Hybrid Renewable Energy (“RE”) Projects, which harness two or more forms of RE sources simultaneously, have considerable potential. Regulation 2.1(m)(x) of the MERC (Terms and Conditions for Determination of RE Tariff) Regulations, 2015 explicitly recognizes such Hybrid RE Projects.

While the RPO Regulations, 2010 do not exclude all Hybrid RE Projects as they only cover technologies approved by the Ministry of New and Renewable Energy (“MNRE”), Government of India/ the Hon’ble State Commission but the RPO Regulations, 2016 now explicitly mention such Projects. However, for the purpose of energy accounting for RPO, electricity generation from the Solar and Non-Solar components of Hybrid RE Projects shall be metered separately or appropriate modalities for separate energy accounting shall be devised for the purpose of segregating Solar and



Non-Solar RPO. Certain Hybrid RE Projects recognised by MNRE include Small Wind Energy and Hybrid System (“**SWES**”) and also, there have been certain research and development proposals short-listed by MNRE for different Hybrid RE Projects including hybrid wind-solar photovoltaic energy systems, wind turbines with solar powered technology in telecom towers etc.

Regulation 4.2 (h)

“Any other source recognised or approved by MNRE and the State Commission”

Regulation 4.2(h) provides that any particular RE technology or RE source not specifically mentioned may qualify as an Eligible RE source if recognized or approved by both MNRE and the Hon’ble Commission.

Also, Regulation 4 included the following proviso:

“Provided also that eligible generation from Roof-top Solar PV systems within the ambit of the Maharashtra Electricity Regulatory Commission (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations, 2015 shall qualify for the purpose of RPO compliance...”

2. Regulation 5: Obligated Entities.

Considering the difficulties experienced in Maharashtra and in other States in monitoring compliance of RPO of a very large number of Obligated Entities, the operational difficulties of smaller Entities and the fact it may be more productive to focus on larger potential contributors to renewable procurement to meet the objective of stipulating a RPO, the Hon’ble Commission has considered it appropriate to increase the minimum limit for fastening such Obligation from 1 MW installed capacity or 1 MVA Contract Demand to 5 MW and 5 MVA, respectively, for the time being, though the option of a different stipulation at a later date would be retained by the Hon’ble Commission.

In case of Captive Users and Open Access Consumers who are Obligated Entities, the RPO target (Solar and Non-Solar) shall be applicable only on their consumption from fossil fuel-based sources, considering the objective of the Regulations. Accordingly, **Regulation 5(a)** reads as follows:

“Any person who owns a grid connected Captive Generating Plant based on conventional fossil fuel with installed capacity of 5MW and above, or such other capacity as may be stipulated by the State Commission from time to time, and consumes electricity generated from such Plant for his own use shall be subject to RPO to the extent of a percentage of his consumption met through such fossil fuel based captive source.”

Similarly, **Regulation 5(b)** specifies as follows:

“Any person having a Contract Demand of not less than 5 MVA and who consumes electricity procured from conventional fossil fuel based generation through Open Access shall be subject to RPO to the extent of a percentage of his consumption met through such fossil fuel based Open Access source.”



Emergency back-up (or Stand-by) Captive Generating Plants shall not be subject to the condition under Regulation 5(a). The proviso for emergency back-up Captive Generating Plants, specified in the 2010 Regulations, has been retained. Further, no detailing of capacity limit, etc. is required.

3. Regulation 6: Operating Period.

The operating period of the RPO framework shall commence from April 1, 2016 and shall be valid until March 31, 2020.

4. Regulation 7: RPO Targets.

RPO Targets

The targets under the RPO Regulations, 2016 have been specified taking into consideration the four-year period from FY 2016-17 to FY 2019-20, coinciding with the new Multi Year Tariff Control Period.

The Hon'ble Commission has also taken into consideration the Tariff Policy, 2016 (notified in January, 2016, after the draft Regulations were published), the comments received during the public consultation process as well as other aspects such as availability of RE resources in the State and impacts on retail tariffs. While the draft Regulations also envisaged an upward trajectory for the RPO targets, a steeper target has been now set, particularly for the Solar RPO.

Accordingly, the revised RPO Targets are as follows:

| Year | Quantum of purchase (in %) from RE sources (in terms of energy equivalent in kWh) | | |
|---------|---|----------------------|--------|
| | Solar | Non-Solar (other RE) | Total |
| | (a) | (b) | (c) |
| 2016-17 | 1.00% | 10.00% | 11.0% |
| 2017-18 | 2.00% | 10.50% | 12.50% |
| 2018-19 | 2.75% | 11.00% | 13.75% |
| 2019-20 | 3.50% | 11.50% | 15.00% |

Tolerance Band of +/- 5%

The Hon'ble Commission has taken into consideration suggestions to allow deviations from the RPO targets within a specified range to take into account variations likely to arise due to factors such as change in sales trajectory and consumption mix, impact of Open Access, evolving nature of market operations, etc. which may be beyond the control of an Obligated Entity. Such suggestions have also been made by some Distribution Licensees during the proceedings for verification of RPO



compliance. Accordingly a variation band of $\pm 5\%$ of the RPO targets, subject to certain conditions, has been introduced. The proviso dealing with the same reads as follows:

“Provided further that any variation in the fulfilment of the RPO targets by the Obligated Entity within a band of +/-5% of the applicable RPO target (in terms of Energy Units or MWh) for the respective years shall be allowed under exceptional circumstances subject to detail scrutiny”

Composite vs. Separate Solar and Non-Solar Targets

Several stake-holders, particularly Captive Generators and Open Access Users, have expressed difficulties in complying with separate RPO targets (Solar and Non-Solar). Monitoring, reporting and enforcement related actions are also cumbersome and pose practical difficulties. In the draft Regulations, the Hon'ble Commission had proposed composite RPO targets in case of Captive Users of Captive Generating Plants with installed capacity up to 5 MW and Open Access consumers with Contract Demand up to 5 MVA. The Hon'ble Commission has now increased these limits to 10 MW and 10 MVA, respectively, as follows:

“Provided further that a Distribution Licensees with peak demand of 5 MW and above but less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 5 MW and above but less than 10 MW and Open Access Consumers with Contract Demand of 5 MVA and above but less than 10 MVA, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually;”

As explained above with regard to captive generating plant base on fossil fuel and open access consumer consuming conventional power, the minimum limit for fastening a RPO has been increased to 5 MW/MVA instead of 1 MW/MVA as in the RPO Regulations, 2010 and this is also reflected in the modified provision quoted above.

Mini/Micro Hydro Target

In order to promote development of Mini/Micro Hydro resources in the State, a separate RPO sub-target of 0.2% within the overall Non-Solar RPO target for Distribution Licensees has been retained. However, some Licensees have expressed (including during the proceedings for RPO compliance verification) difficulties in meeting the Mini/Micro Hydro targets due to inadequate availability of such resources and the absence of any alternate mechanism such as RECs specific to Mini/Micro Hydro power.

In order to address this difficulty, the RPO Regulations, 2016 specify that, if a Distribution Licensee is unable to meet its Mini/Micro Hydro target inspite of efforts, the shortfall may be met by purchase of Non-Solar RECs. The proviso reads as follows:

“Provided that, in case a Distribution Licensee demonstrates that it is unable to meet the requisite target of 0.2% per year for procurement of power from Mini Hydro or Micro Hydro projects despite its best efforts, the Commission shall allow it to be met by way of purchase of Non-Solar RECs;”

Tariff Rate for Procurement against RPO

In addition to the provisions in **Regulation 7.2** of the RPO Regulations, 2010 and considering certain emerging models of RE procurement, a further proviso was added in the draft Regulations, which has been confirmed in the new RPO Regulations, 2016 as notified:



“Provided further that procurement by a Distribution Licensee of RE power generated within Maharashtra under a scheme of or approved by MNRE may be considered by the State Commission as eligible quantum for fulfilment of the RPO of such Distribution Licensee considering the nature of such scheme.”

5. Regulation 8 : Certificates under the Regulations of the Hon’ble Central Commission

Regulation 8.2 pertaining to the directions given by the Hon’ble State Commission may from time to time in regard to the procurement of the Certificates for fulfilment of the Renewable Purchase Obligation under the RPO Regulations, 2010 has been removed from RPO Regulations, 2016.

Regulation 8.3 of RPO Regulations, 2010 pertaining to The Certificates purchased by the Obligated Entities from the power exchange in terms of the regulation of the Hon’ble Central Commission which shall be deposited by the Obligated Entities with the Hon’ble State Commission in accordance with the detailed procedure issued by the Central Agency has been removed from the RPO Regulations, 2016.

6. Regulation 9: State Agency

It has been expressed that, in order to simplify the RPO compliance reporting process without undermining its purpose, quarterly rather than monthly reporting should suffice. Accordingly, the RPO Regulations, 2016 provide as follows:

“The summary statement of RE procurement and RPO compliance by each Obligated Entity shall be published by the State Agency on a cumulative basis every quarter on its website.”

7. Regulation 11: Captive Users and Open Access

Applicability of RPO Target to Fossil Fuel-based Co-generation - Clause 6.4(1) of the recent Tariff Policy, 2016 states as follows:

“...co-generation from sources other than renewable sources shall not be excluded from the applicability of RPOs.”

Hence, the exemption of Captive Users of fossil fuel-based Co-generation from RPO contained in the proviso to Regulation 11.3 of the RPO Regulations, 2010 has been removed in the RPO Regulations, 2016.

8. Regulation 12: RPO Regulatory Charges

RPO Regulatory Charges and Fund for shortfall in RPO Compliance

For greater operational ease and clarity, the provisions of the RPO Regulations, 2010 regarding RPO Regulatory Charges and Fund have been revised to some extent and elaborated. The Charges shall be determined by the Hon’ble Commission on a case to case basis taking into consideration the highest applicable Preferential Tariff or Forbearance Price determined by the Hon’ble Central Commission, or such other rate as may be stipulated by the Hon’ble Commission. Further, Obligated Entities other than Distribution Licensees will have to deposit the Charges into a Fund to be maintained and administered by the State Agency or as may be directed by the Hon’ble Commission. In case of Distribution Licensees, the Fund shall continue to be maintained and operated by them. The provisions of the RPO Regulations, 2016 reads as follows:



“If an Obligated Entity fails to comply with the RPO target specified in these Regulations in any year and fails to purchase the required quantum of RECs, the State Commission may direct it 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 RPO, RPO Regulatory Charges separately in respect of solar and non-solar RPO:

Provided that, in case of an Obligated Entity other than a Distribution Licensee, such Obligated Entity shall deposit the RPO Regulatory Charges in a Fund to be maintained and administered by the State Agency or as may be directed by State Commission.

Provided further that RPO Regulatory Charges shall be equivalent to the highest applicable preferential Tariff during the year for Solar or non-Solar RE generating sources, as the case may be, or Forbearance Price decided by the Central Commission, or any other rate as may be stipulated by the State Commission;

Provided further that the Fund so created shall be utilised as may be directed by the State Commission;

Provided also that the State Commission may not allow, upon considering the circumstances, all or part of the RPO Regulatory Charges and associated costs to be passed on to consumers.”

9. Regulation 14: Pricing Principles of RE Projects commissioned during the Operating Period

Some suggestions were received to freely allow switching from the REC mechanism to the Preferential Tariff mechanism and vice versa. However, the option to choose one or the other mechanisms is available at the beginning of the Project. Besides, the Obligated Entities have to plan for their RPO compliance based on the contracting arrangements entered into with RE Generators from time to time. Therefore, as in the RPO Regulations, 2010, and also keeping in view the thrust of its RE Tariff Regulations and past Orders, the Hon’ble Commission has not considered it appropriate to introduce such an option in the RPO Regulations, 2016 during the Tariff Period of a Project as per the approved contracting arrangements.

Regulation 15 (Renewable Energy pricing under REC mechanism) and Regulation 16 (Pricing for Existing RE projects during the new Operating Period) of the RPO Regulations, 2010 have been removed from the RPO Regulations, 2016.

10. Regulation 17: Practice Directions

Neither the RPO Regulations, 2010 nor the draft of the new Regulations provided for the issue of Practice Directions by the Hon’ble State Commission. The RPO Regulations, 2016 enable the issue of such Directions, along the lines of many of the other Regulations of the Hon’ble State Commission. The following regulation reads as follows:

“Subject to the provisions of the Act, the Commission may issue Orders and Practice Directions with regard to the implementation of these Regulations”

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NOTE - This Note in relation to the issues of MERC (Renewable Purchase Obligation, Its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016 dealt with above is only for private consumption and review purpose only. Our views expressed herein are based on the Regulations made available on the website of MERC and on the basis of our analysis vis-a-vis old regulations, and there is no assurance that a regulatory authority may not adopt a variant position. In any event, no person shall be entitled to rely upon the views expressed herein without our prior written consent.

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