

Overview of Prevention of Money Laundering (Maintenance of Records) Third Amendment Rules, 2023 1

Renewable Purchase Obligations for FY 2024-25: A Dichotomy 3

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Overview of Prevention of money Laundering (Maintenance of Records) Third Amendment Rules, 2023

The Central Government pursuant to powers given under section 73 of the Prevention of Money Laundering Act, 2002 (“**PMLA, 2002**”) has amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (“**Rules, 2005**”) and notified Prevention of Money Laundering (Maintenance of Records) Third Amendment Rules, 2023 (“**Rules, 2023**”) vide notification dated October 17, 2023. The key amendments are as follows:

Group Definition and its Inclusion

Each reporting entity that is part of a group must establish group-wide programs to combat money laundering and terrorist financing. These programs should include policies for sharing information necessary for client due diligence and managing money laundering and terrorist financing risks. These programs must also ensure adequate safeguards for the confidentiality and proper use of exchanged information, including measures to prevent tipping-off. Groups are required to implement these group-wide policies to fulfill their obligations under Chapter IV of the **PMLA, 2002**.

Substitution of rule 8 (2) of the Rules, 2005

Rule 8(2) of the Rules, 2005, initially required the Principal Officer of a reporting entity to provide information to the director within seven working days of determining that a transaction is suspicious which could be done in writing, by fax, or by electronic mail, and applied to transactions specified in Rule 3. The amended rules under Rules, 2023 no longer specify a seven-day deadline. Instead, it is now a mandate that the Principal Officer must promptly furnish the information in writing, by fax, or by electronic mail to the director as soon as they determine that the transaction is suspicious.



Reporting entity must ensure that the furnishing of information to directors is kept confidential

A new sub-rule (6) has been introduced in Rule 8, requiring all reporting entities, along with their directors, officers, and employees, to maintain the confidentiality of record keeping and information submission to the director. This ensures that the confidentiality of these processes is maintained, thereby enhancing data security.

Enhancement in scope of Client Identification and Verification Requirements for Reporting Entities

Under the amended Rule 9 (1) of Rules, 2023, every reporting entity must fulfill certain obligations when establishing an account-based relationship or conducting occasional transactions of Rs 50,000/- (Rupees Fifty Thousand Only) or more. These obligations include identifying clients, verifying their identity using reliable and independent sources, and obtaining information about the purpose and intended nature of the business relationship. Additionally, reporting entities must determine if a client is acting on behalf of a beneficial owner, identify the beneficial owner, and verify their identity using reliable sources. Furthermore, reporting entities must make reasonable efforts to understand the nature of the customer's business, as well as its ownership and control.

Reporting entities must immediately obtain 'client due diligence' records from third parties. The amended Rule 9 require reporting entities to immediately obtain client due diligence records or information from a third party or from the Central KYC Records Registry.

Renewable Purchase Obligations for FY 2024-25: A Dichotomy

Renewable Purchase Obligations (“RPO”) mandates serve as a crucial mechanism for governments to promote sustainable energy practices and mitigate the impacts of climate change. By requiring utilities and consumers to procure a certain percentage of their energy from renewable sources, RPOs aim to accelerate the transition to cleaner energy sources, reduce greenhouse gas emissions, and enhance energy security. However, the divergence in regulatory frameworks at the state and national levels often complicates compliance efforts and highlights the challenges of harmonizing diverse interests and objectives within the energy sector.

Power to mandate RPO targets

Sub Clause (1) of Clause 6.4 of Tariff Policy dated January 28, 2016 (“**Tariff Policy, 2016**”) issued by Ministry of Power, Government of India (“**MoP**”) mandates MoP to prescribe long term RPO trajectory to be made applicable by respective State Electricity Regulatory Commissions (“**SERCs**”). The relevant extract of Tariff Policy, 2016 is reproduced below for ready reference:

“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee or purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of



renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.”

MoP vide notification dated July 22, 2022 (“Notification dated July 22, 2022”) and a corrigendum dated September 19, 2022 published RPO trajectory till FY 2029-30, which is as follows:

Year	Wind RPO	HPO	Other RPO	Total RPO
2022-23	0.81%	0.35%	23.44%	24.61%
2023-24	1.60%	0.66%	24.81%	27.08%
2024-25	2.46%	1.08%	26.37%	29.91%
2025-26	3.36%	1.48%	28.17%	33.01%
2026-27	4.29%	1.80%	29.86%	35.95%
2027-28	5.23%	2.15%	31.43%	38.81%
2028-29	6.16%	2.51%	32.69%	41.36%
2029-30	6.94%	2.82%	33.57%	43.33%

It is imperative to note that Notification dated July 22, 2022 was in form of guidelines from MoP and for SERCs to decide RPO targets. Paragraph 20 therein explicitly states that the SERCs can notify RPO trajectory for their respective States, over and above the trajectory provided therein, which is reproduced below for ready reference:

“20. Further, the State Commission may consider notifying RPO trajectory including HPO and Energy Storage Obligation trajectory for their respective States, over and above the RPO, HPO and Energy Storage Obligation trajectory provided in para 5....”



Further, Section 14(n) read with 14(x) of the Energy Conservation Act, 2001 (“Act”) also empowers Central Government to specify minimum share of consumption of non-fossil sources i.e., renewable energy out of total energy consumption by designated consumers, which are reproduced below for ready reference:

“Section 14 - Power of Central Government to enforce efficient use of energy and its conservation

The Central Government may, by notification, in consultation with the Bureau,--

...

(n) Direct every designated consumer to comply with energy consumption norms and standards;

...

(x) specify minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock, provided different share of consumption may be specified for different types of non-fossil sources for different designated consumers.”

In pursuance to Sections 14 (n) and 14 (x) of the Act, MoP has issued a Notification dated October 20, 2023 (“**Notification dated October 20, 2023**”) wherein, *inter alia*, a minimum share of consumption of non-fossil sources i.e., renewable energy out of total energy consumption by designated consumers who are captive users has been prescribed. The Notification dated October 20, 2023 has adopted RPO trajectory from FY 2024-25 onwards and up to FY 2029-30 provided in Notification dated July 22, 2022, however, have modified share of consumption of different type of renewable energy within the total RPO target for respective year. The RPO trajectory provided in Notification dated October 20, 2023 is reproduced below for ready reference:



Any person who fails to comply with and meet RPO trajectory prescribed by Notification dated October 20, 2023, shall be penalized as per Section 26(3) of the Act, which is reproduced below for ready reference:

“(3) If any person fails to comply with the directions issued under clauses (n) and (x) of section 14, he shall be liable to a penalty which shall not exceed ten lakh rupees for each such failure:

Provided that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms.”

As the SERCs are the ultimate authority to set the RPO targets within their respective states, the mandate of MoP vide Notification dated October 20, 2023 could create a dichotomy when the targets for any given year are prescribed differently by SERCs.

Sr. No.	Year	Wind renewable energy	Hydro renewable energy	Distributed renewable energy*	Other renewable energy	Total renewable energy
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	2024-25	0.67%	0.38%	1.50%	27.35%	29.91%
2.	2025-26	1.45%	1.22%	2.10%	28.24%	33.01%
3.	2026-27	1.97%	1.34%	2.70%	29.94%	35.95%
4.	2027-28	2.45%	1.42%	3.30%	31.64%	38.81%
5.	2028-29	2.95%	1.42%	3.90%	33.10%	41.36%
6.	2029-30	3.48%	1.33%	4.50%	34.02%	43.33%

Dichotomy: Case Study of Gujarat

Regulation 4 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (“GERC RPO Regulations”) amended from time to time by Gujarat Electricity State Commission (“GERC”) provides for RPO targets and trajectory to be followed by obligated entities. GERC vide GERC (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2022 prescribed RPO trajectory till FY 2024-25, which is reproduced below for ready reference:

“Table – II: Minimum percentage for Renewable Power Purchase Obligation

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)				Total (%)
	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

In the circumstance aforesaid, for an obligated entity under both Notification dated October 20, 2023 and GERC RPO Regulations, it will have to comply with both with respect to its RPO obligations. The RPO targets for FY 2024-25 provided in GERC RPO Regulations is lesser than the one provided in Notification dated October 20, 2023 for the same year. As the Notification dated October 20, 2023 shall come into force from April 1, 2024, the obligated entities in Gujarat will have to comply with higher targets of Notification dated October 20, 2023 even if they might have arranged their operations and procurement of renewable energy as per the targets mandated by GERC RPO Regulations.



Conclusion

The RPO targets for FY 2024-25 reflect the challenges posed by divergent regulatory approaches of MoP and SERCs. The disparity between national and state-level regulations might complicate compliance efforts. The MoP's Notification dated October 20, 2023, along with the authority given to SERCs, presents a dichotomy in setting RPO targets, as exemplified by the case study of Gujarat. Although the dichotomy is currently for FY 2024-25 only, if the SERCs don't realign the RPO targets for FY 2024-25 or for subsequent financial years in accordance with the MoP's Notification dated October 20, 2024, there could be significant challenges and potential litigations for the obligated entities. This could be hindrance in a smooth transition towards renewable energy adoption in India.

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Warm Regards,

Dipali Sarvaiya Sheth

Founder



D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com