

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 45 of 2010

In the matter of
Petition filed by Brihan-Mumbai Electric Supply & Transport Undertaking (BEST)
seeking relaxation of Regulation 7.2 of the MERC (Renewable Purchase Obligation, its
compliance and Implementation of REC framework) Regulations, 2010

Shri. V. P. Raja, Chairman
Shri. V.L. Sonavane, Member

ORDER

Dated: October 28, 2010

The Brihan-Mumbai Electric Supply & Transport Undertaking (BEST) submitted a Petition on affidavit before the Commission on September 1, 2010 under Regulation 18.1 of the MERC (Renewable Purchase Obligation, its compliance and Implementation of REC framework) Regulations, 2010 (“the Regulations”), seeking relaxation of Regulation 7.2 of the MERC (Renewable Purchase Obligation, its compliance and Implementation of REC framework) Regulations, 2010.

2. BEST, in its Petition, has prayed as under:

“ ...



- 2.1 *The Hon'ble Commission be pleased to relax Reg. 7.2 of the MERC (Renewable Purchase Obligation, its Compliance and Implementation of REC framework) Regulations, 2010 for BEST for F.Y 2010-11.*
 - 2.2 *Allow BEST to procure RE on short term basis till its Long Term Power Procurement Process for RE is finalized.*
 - 2.3 *For such further and other reliefs as the nature and circumstances of the case may require;*
 - 2.4 *Condone any inadvertent omissions / errors / shortcomings and permit BEST to add / change / modify / alter this filing and make further submissions as may be required at a future date.*
 - 2.5 *Pass such further and other orders, as the Hon'ble Commission may deem fit and proper keeping in view the facts and observations of the case.”*
3. Regulation 7.2 of the MERC (Renewable Purchase Obligation, its Compliance and implementation of REC framework) Regulations, 2010 is extracted below:
- “
- 7.2 Every 'Obligated Entity' may meet its RPO target by way of own generation or procurement of power from RE developer or by way of purchase from other licensee or by way of purchase of renewable energy certificate or by way of combination of any of the above options.*
- Provided further that procurement of RE power generated within the State by Distribution Licensee at rate other than rate approved by the State Commission directly from the generator or trader shall not be considered as eligible quantum for fulfillment of renewable purchase obligation of such distribution licensee.”*
4. BEST in its petition has submitted as follows:
- 4.1 BEST is aggrieved because the Regulation 7.2 is detrimental to BEST in fulfilling its RPS obligation for the F.Y 2010-11. BEST had already taken the initiative and contracted about 300 MU of RE from various RE sources based on the response received to the EOI advertised in the year F.Y 2009-10 and F.Y 2010-11. It is submitted that BEST had contributed to the framing of the regulation throughout its process by



way of giving suggestions to the Draft Discussion paper and the Draft Regulations. It is submitted by BEST that proviso to Regulation 7.2 was not included in the Draft Regulation issued by the Commission on March 3, 2010. However, the same has been included in the final regulation which is affecting BEST to a great extent as BEST had already entered into short term contracts with many RE developers for supplying RE in F.Y 2010-11 in fulfilling RPO target. BEST further submits that if the inclusion of this proviso to Regulation 7.2 was known to BEST at the time of preparation of the draft Regulations, BEST would have taken necessary corrective action in this regard. BEST has submitted that it is not the intention of BEST to challenge the Regulation *per se*. but, BEST has felt necessary to submit its grievances and practical difficulties to abide by the said Regulation and seeks relaxation from the above mentioned Regulation 7.2 in fulfilling their RPS obligation for the first year (i.e. F.Y 2010-11) of the five year control period.

It is submitted that the introduction of Regulation 7.2 in the Regulations without any prior intimation has given it a meaning significantly different from the draft regulations. Also, as per the new proviso, the procurement of RE power generated within the State by Distribution Licensee at the rate other than the rate approved by the Commission directly from generator or from trader shall not be considered as eligible quantum for fulfillment of renewable purchase obligation of such distribution licensee. However, it is submitted that the concept of "Eligible quantum for fulfillment of RPO" was neither deliberated, nor defined in the Discussion Paper as well as in the Draft RPO Regulations. This has caused difficulties for BEST, which was striving to meet its RPS obligation using various short term as well as long term routes. Further, it is submitted that from the plain reading of the Proviso to Regulation 7.2, it can be inferred that procurement of RE generated from outside the State can be at the rate other than the MERC approved rates. It can also be inferred that, no distribution licensee can procure RE power from a trader from within the State or from outside the State.

- 4.2 Further, BEST in its petition, has submitted the RPO/RPS Scenario and its efforts to fulfill the RPO which are as follows:



- 4.2.1 Till the year F.Y 2005-06, the Commission had adopted the RPO Operational Framework, and BEST was able to comply with the RPO as determined by the RPO Operational Framework, which was mainly a financial settlement instead of being an energy obligation settlement.
- 4.2.2 On August 16, 2006, the Commission had issued an Order in the matter of Long Term development of Renewable Sources and associated Regulatory Framework in Case No. 6 of 2006. Under this order, each obligated entity was required to fulfill its RE obligations, either by its own RE generation or through procurement from 'eligible RE sources' or licensees. An eligible source had to be located in the State of Maharashtra as per Section 2.6.11 of the RPS Order. Here, RPO settlement mechanism was discontinued.
- 4.2.3 Since then, BEST has been making sincere efforts to fulfill its RE obligation year after year. The RPO target for BEST has been about 250 to 300 MUs annually. For the first year of MYT period which was F.Y 2007-08, BEST had procured 3.67 MUs of RE power, at a cost of Rs. 1.67 Cr. at an average cost of Rs. 4.55/kWh as stated in the Commission's Order dated June 15, 2009 on BEST's APR for F.Y 2008-09 and determination of ARR & Tariff for F.Y 2009-10 in Case No. 118 of 2008. For provisional true up of F.Y 2008-09, the Commission has approved the RPS quantum of 59.29 MUs at the cost of Rs. 31.35 Cr. which works out to be Rs. 5.29/kWh. Similarly, for F.Y 2009-10, the Commission has considered RE power procurement cost of Rs. 113.52 Cr. for 298.75 MUs, which works out to be Rs. 3.80/kWh.
- 4.2.4 BEST continued its efforts to procure RE power. In response to the EoI dated September 3, 2007, BEST received a single offer from M/s. Spark Green Energy Ltd. for supply of RE power from its 25 MW plant each at Ahmednagar and Satara. As it was a considerable quantum of RE power and was offered against one of its EoI, BEST had filed a petition before the Commission on April 30, 2008 in Case No. 45 of 2008, praying for approving BEST's Expression of Interest method, as competitive bidding method for procurement of RE power .



The Commission thereafter, vide para 22 of its Order dated November 21, 2008 held as follows:

"As is evident, there are infirmities in the Petition submitted by BEST, which cannot be covered by citing paucity of time. In view of this, the Petition filed by BEST is not maintainable and therefore stands rejected. However, the Commission grants liberty to BEST to file an appropriate Petition to seek the Commission's prior approval on the deviations contained in the bidding documents in accordance with the procedure prescribed by the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees". Moreover, BEST can always procure renewable energy as per rates and other terms approved by the Commission in its respective Orders as detailed in the table below, which are applicable for all licensees in the State of Maharashtra, and meet its RPS obligation."

4.2.5 BEST appointed a consultant for preparation of competitive bidding document in March 20, 2009. BEST had filed a petition before the Commission on January 20, 2010 in the matter of approval of bid documents for long term power procurement from RE sources. The Commission by its Order dated March 30, 2010 in Case No. 101 of 2009, directed BEST to revise the documents by taking into account opinion by various interested parties and directed to submit the same for the approval. BEST has submitted these documents to the Commission on August 27, 2010 for its approval. In the meantime, BEST had been continuing to procure RE power from various sources on short term basis for F.Y 2009-10. Even though BEST could not obtain any RE power at the rates approved by the Commission, it did procure around 200 MUs at comparable rates and the same had been submitted to the Commission in the BEST's APR Petition for F.Y 2009-10 along with all the details. This is a significant increase in the RE procured, but at rates lower than the marginal cost of BEST.

4.2.6 In the Commission's Order for BEST in the matter of APR of F.Y 2007-08 and ARR & determination of Tariff for F.Y 2008-09 dated June 6, 2008 in Case No. 73 of 2007, it has been mentioned in para 4.6.2 as follows:



“For FY 2008-09, the Commission has considered the power purchase from Renewable Energy Sources as per RPS obligation, i.e., 5% of the total energy input. Based on the total energy input approved by the Commission in this Order for F.Y 2008-09, the RPS obligation of BEST for F.Y 2008-09 works out to 256.20 MUs and corresponding total cost of meeting the RPS obligation works out to Rs. 89.67 Crs. by assuming an average rate of Rs. 3.50/kWh.”

- 4.2.7 The Commission in its Order dated June 15, 2009 in the matter of petition of BEST for APR of F.Y 2008-09 and ARR & determination of Tariff for F.Y 2009-10 (Case No.118 of 2008) has approved RE quantum of 59.29 MUs at the cost of Rs. 31.35 Cr. at an average cost of Rs. 5.29/kWh during provisional truing up of F.Y 2008-09.
- 4.2.8 Further, in the petition of BEST in the matter of APR for F.Y 2009-10 & ARR and determination of tariff for F.Y 2010-11, BEST has projected RE procurement of 195 MUs at the cost of Rs. 88 Cr. at an average rate of Rs. 4.52/kWh, whereas in the BEST’s projection for F.Y 2010-11, BEST has considered RE procurement of 105 MUs at the cost of Rs. 45 Cr. at an average rate of Rs. 4.28/kWh.
- 4.2.9 The Commission, vide its Order dated June 15, 2009 in Case No. 118 of 2008 in the matter of APR of F.Y 2008-09 and determination of ARR & tariff for F.Y 2009-10, has considered the average rate of Rs. 3.80/kWh. While approving this, the Commission had stated that it would consider the actual power purchase cost considering the actual purchase and effective purchase rate in accordance with the tariff approved for such RE sources from where BEST would purchase RE while undertaking the truing up for F.Y 2009-10. It is submitted that based on this, BEST went ahead to procure RE for F.Y 2010-11 on short term basis through EOI route and had contracted 298 MUs, which has been submitted to the Commission in response to the data gaps and queries raised. The average rate based on contracted RE power for F.Y 2010-11 works out to Rs. 5.20/kWh. BEST has observed that the tariff rates for non-solar RE sources determined by the Commission vide its Order dated July 14, 2010 are in the range of Rs. 4.76 to Rs. 4.98 per kWh, which are



comparable with the BEST estimated average rate of Rs. 5.20/kWh for F.Y 2010-11.

- 4.2.10 As BEST had been continuing to make efforts to procure RE on short term basis, simultaneously, the Competitive Bidding Document to procure RE on long term basis was also being prepared as directed by the Commission. Starting from September 3, 2007 till May 12, 2010, BEST had issued Expression of Interest (EOI) on six occasions and contracted a cumulative RE of 711.63 MUs at an average rate of Rs. 5.55/kWh.
- 4.2.11 To meet the RPO target of 357 MUs for F.Y 2010-11, BEST had issued several LoI's for procurement of RE power to various agencies/traders for approx. 298 MUs for F.Y 2010-11 at the rate discovered in EOI, which are higher but comparable to the rates approved by the Commission in the past. During the two months of April and May, 2010, BEST has procured about 30 MUs of RE power. Pursuant to Reg. 7.2, BEST had requested various developers/traders, who were issued LoIs earlier, requesting whether they would sell RE to BEST at the approved tariffs fixed by the Commission. Most of them have either refused for this arrangement or had not responded to the letters of BEST. It is submitted that BEST had to issue the termination letter w.e.f. June 7, 2010 individually to all the persons to whom the LOI has been issued.
- 4.2.12 In order to meet the various targets in the first control period, i.e. 2007-08 to 2009-10, BEST had come out with an EOI on September 3, 2007 in which only two offers of M/s. Spark Green Energy Ltd. was received for their two plants each at Ahmednagar and Satara. BEST submitted that they have entered into Energy Purchase Agreement ("EPA") with M/s. Spark Green Energy Ltd. for both the projects. BEST expects that the energy shall start flowing from these plants by mid F.Y 2011-12.
5. A public notice dated September 23, 2010 was put up on the website of the Commission for hearing to be held in the matter on October 13, 2010 indicating the prayer made by BEST seeking relaxation of Regulation 7.2 of the MERC Renewable Purchase Obligation, its compliance and implementation of REC framework Regulations, 2010



for F.Y 2010-11. It was also indicated in the said public notice that the hearing in the above matter would be held in the presence of four authorized Consumer Representatives. The public notice also required BEST to serve a copy of its Petition, along with its accompaniments, (both in soft and hard versions) to all the four authorized Consumer Representatives, and Maharashtra Energy Development Agency (MEDA) (being the Nodal Agency for NRSE Projects in Maharashtra). MEDA was asked to file its reply on the above Petition on affidavit, if any, with a copy endorsed to BEST and the four Consumer Representatives.

6. Pursuant thereto, Reliance Infrastructure Ltd. (“RInfra”) submitted its reply in the matter on October 11, 2010. RInfra informed the Commission that by way of its letter dated June 17, 2010 addressed to the Commission, RInfra has raised the same concern, and had sought the suspension of the applicability of the Proviso to Regulation 7.2 of the Regulations for F.Y 2010-11. RInfra’s observations in respect of the issues raised by BEST in its petition are as follows:

6.1 It is submitted that the Proviso to Regulation 7.2 of the said Regulations stipulates that if renewable energy is purchased at any rate other than the preferential rate, same would not be accounted for RPO compliance. RInfra had requested the Commission that the same be relaxed for F.Y 2010-11 on following grounds:

- a) The contracts have been made before notification of the Regulations.
- b) There was no mention or discussion of such provision either in the draft regulation or the discussion paper.
- c) REC market is not yet operational.
- d) RInfra is already energy sufficient in terms of RPO target for F.Y 2010-11 through long term and short term renewable power arrangements through traders. However, the concern of RInfra being that, if the short term renewable power procurement is not recognized by the Regulations as eligible for RPO compliance, for the sake of meeting the RPO targets, RInfra would be required to go for REC, which is merely a paper certificate. The cost of purchase of REC would only add to the burden of



the consumers. The letter of RInfra being No. RPO/FY 2010-11 dated June 17, 2010 indicates this concern raised by RInfra.

- 6.2 It is further submitted that, in case of procurement from the trader, the trading Margin should be allowed separately on the ground that preferential tariff is computed/determined by the Commission at generation ex-bus, and therefore, the RE generators are not ready to pay for the trading margin and so, the trading margin to the trader has to be borne by the procuring licensee. RInfra therefore has submitted that the Regulation 7.2 may be modified to include trading margin over and above the preferential rate in case of RE procurement by licensees from traders.
7. MEDA being the State Agency designated for accreditation and recommending the Renewable Energy projects in the State of Maharashtra, has submitted their comments on affidavit on October 13, 2010 which are as follows:
- 7.1 MEDA has submitted that the Regulation 7.2 appearing in the final Regulations dated June 7, 2010 was not in the draft regulation issued by the Commission on March 3, 2010. It is submitted that due to this, the licensees are compelled to terminate their short term PPA with RE generators for procurement of RE for fulfilling the RPO obligation.
- 7.2 MEDA has further submitted that Regulation 7.2 will discourage distribution licensees, Open access and Captive consumers in procurement of Renewable energy. This may create the possibility of flow of RE power outside the State, even though the distribution licensees or obligated entities are ready to purchase RE power from RE generators at the rate other than the rate approved by the Commission, and thereby sale of RE power in the State of Maharashtra.
- 7.3 It is submitted that, as a state agency for RPO-REC, MEDA is bound to obey the orders of the Commission and also implement the same in the State of Maharashtra.
8. During the hearing held on October 13, 2010, Shri K.N. Rajagopal and Shri N.V. Bhandari appeared on behalf of BEST. Shri R.G. Sonawane appeared on behalf of MSEDCL, and Dr. J.V. Torane appeared on behalf of MEDA.



9. BEST in its presentation, explained in brief, the current facts and position of the BEST's short-term PPAs which are executed with the various RE generators and the difficulties faced due to the incorporation of the Regulation 7.2 in the Regulations.
10. Maharashtra State Electricity Distribution Co. Ltd. ("MSEDCL") requested the Commission to allow them to intervene in the hearing of the petition filed by the BEST as the matter is equally applicable, important and affecting RPO of MSEDCL. MSEDCL, in this regard, has addressed a letter dated October 12, 2010 to the Commission. The Commission admitted MSEDCL's request and directed them to submit their comments on affidavit. The Commission also directed BEST to submit the list of cancelled LOI's by the BEST.
11. The Commission vide Public Notice dated October 13, 2010 fixed a further hearing in the matter on October 20, 2010.
12. MSEDCL submitted its comments in the matter on October 19, 2010. The submissions put forward by MSEDCL are as follows:
 - 12.1 MSEDCL supports Regulation 7.2 and it feels that there is no need to relax the said Regulation 7.2 as requested by the Petitioner, BEST.
 - 12.2 It is submitted that the Commission after public hearing and considering the total obligatory functions of Distribution Licensees, has framed the Regulation 7.2. The Regulations framed are in consonance with the National Policy. There is no change in the circumstances which have already been considered by the Commission. In the circumstances, it is submitted that the prayers in the petition made by BEST if considered, the very basis of the obligation to purchase energy at the prescribed rate would be shaken. MSEDCL, therefore, will have to face unfair competition in complying with the target as mentioned in the Regulations. MSEDCL, therefore, supports the Regulations and opposes the change as sought for.
 - 12.3 Further, MSEDCL is of the opinion that whether the purchase of RE power is on Short term basis or Long term basis, it should take place at the rate specified by the Commission only.



- 12.4 However, in the event, the Commission modifies the Proviso to Regulation 7.2, then the mandatory target under Regulation 7 also will have to be deleted. MSEDCL and other licensees will have to be relieved of that obligation also.
- 12.5 Also, cartelization by generators and extra profiteering by them is possible in a shortage situation, if the regulated rates and period are not insisted upon.
- 12.6 Alternatively, considering the availability of RE power, the Commission may consider allocation of this RE power proportionately amongst all the Distribution Licensees and the Regulation can be implemented after sufficient RE is available.
13. In pursuance to the directives given by the Commission, BEST submitted the list of LOI terminated by the BEST w.e.f. June 7, 2010. It is mentioned that the RE power purchase rate through EoI route is other than the Commission's approved rate and the respective RE generators have not shown their willingness to sell RE power to the BEST at the Commission's approved rate and therefore, BEST has terminated the LOI issued to such RE generators having 274.71 MUs at cost of Rs. 144.60 Crore.
14. During the hearing held on October 20, 2010, in reply to MSEDCL's submission on affidavit, BEST has submitted that MSEDCL in its submission has stated that BEST has grabbed the suppliers of MSEDCL by terminating the contracts. In this regard, BEST has submitted that, as far as possible, BEST has ensured that nobody breaks the contract with MSEDCL and then comes to BEST. BEST is not at all encouraging anybody who wants to break a contract with MSEDCL. But possibly, there might be some instances, where unknowingly it might have happened, but even if it had happened, BEST submits that it will not encourage this practice. Further, BEST has pointed out that, for the month of July 2010, MSEDCL has procured 622 MUs of renewable power and BEST's procurement position was 6.9 MUs. Therefore, grabbing 6.9 MUs from MSEDCL cannot at all affect MSEDCL substantially.
15. BEST has further submitted that they are also encouraging renewable purchase from biomass and have EPA with Biomass generators because it can be scheduled and thereby the costly power can be brought down. At the last, the BEST pleaded that the



intervention application of MSEDCL should be rejected and the Commission may relax Regulation 7.2 for at least one more year.

16. Having heard the parties and after considering the materials placed on record the Commission's findings and decisions are as follows:-

(1) Whether the proviso to Regulation 7.2 was part of the draft regulations?

It is submitted by BEST that the proviso to Regulation 7.2 was not included in the Draft Regulation issued by the Commission on 03.03.2010. However, it is submitted that the same has been included in the final regulations which is affecting BEST to a great extent as BEST had already entered into short term contracts with many RE developers for supplying RE in F.Y 2010-11 in fulfilling RPO target.

The Commission is of the view that even if the proviso to regulation 7.2 did not appear in the draft of the regulations that were made available to the public pursuant to the public notice dated March 3, 2010, there would be no infirmity in the regulations and to add a proviso in order to ensure that RE power is procured at preferential rates is part of the statutory mandate in Section 86(1)(e) of the EA 2003. In regulation 2.1, it is provided as follows –

“(p) "Preferential Tariff" means the tariff fixed by the State Commission for sale of energy from a generating station based on renewable energy sources to a distribution licensee in accordance with Maharashtra Electricity Regulatory Commission (Terms and Conditions for determination of RE Tariff) Regulations, 2010;”

The Commission is also of the view that the proviso to Regulation 7.2 is consequential to the obligation of the distribution licensee to procure electricity generated from eligible renewable energy sources at the specified percentages at Preferential Tariff. Further, the Commission is of the view that in this regard, no substantially new aspect has been added in the proviso to Regulation 7.2. Be that as it may, none of the parties to this petition have sought to modify this proviso to Regulation 7.2 on the above ground but merely a relaxation has been sought therefrom for a limited period.



(2) Have BEST and RInfra already fulfilled their statutory obligation to procure electricity generated from eligible renewable energy sources at the specified percentages?

BEST has submitted that it is aggrieved due to the proviso to Regulation 7.2, which has been stated to be detrimental to BEST in fulfilling its RPS obligation for the F.Y 2010-11, since BEST had already taken the initiative and contracted about 300 MUs of RE from various RE sources based on the response received to the EoI advertised in the year F.Y 2009-10 and F.Y 2010-11. BEST has stated that the proviso to Regulation 7.2 is affecting BEST to a great extent as BEST had already entered into short term contracts with many RE developers for supplying RE in F.Y 2010-11 in fulfilling RPO target. It is submitted by BEST that it went ahead to procure RE for F.Y 2010-11 on short term basis through EOI route and had contracted 298 MUs, which has been submitted to the Commission in response to the data gaps and queries raised. As BEST had been continuing to make efforts to procure RE on short term basis, simultaneously, the Competitive Bidding Document to procure RE on long term basis was also being prepared as directed by the Commission. Starting from September 3, 2007 till May 12, 2010, BEST had issued Expression of Interest (EoI) on six occasions and contracted a cumulative RE of 711.63 MUs at an average rate of Rs. 5.55/kWh.

RInfra has submitted it is already energy sufficient in terms of RPO target for F.Y 2010-11 through long term and short term renewable power arrangements through traders. However, the concern of RInfra being that, if the short term renewable power procurement is not recognized by the Regulations as eligible for RPO compliance, for the sake of meeting the RPO targets, RInfra would be required to go for REC, which is merely a paper certificate. The cost of purchase of REC would only add to the burden of the consumers.

MEDA has submitted that the licensees are compelled to terminate their short term PPAs with RE generators for procurement of RE for fulfilling the RPO due to the proviso to Regulation 7.2.



The Commission is of the view that obviously the above submission has been made by BEST in the context of its following prayer;

“Allow BEST to procure RE on short term basis till its Long Term Power Procurement Process for RE is finalized.” Even RInfra has submitted that if the short term renewable power procurement is not recognized by the Regulations as eligible for RPO compliance, for the sake of meeting the RPO targets, RInfra would be required to go for REC. MEDA has submitted that the licensees are compelled to terminate their short term PPAs with RE generators for procurement of RE for fulfilling the RPO obligation due to the proviso to Regulation 7.2.

The issue before the Commission therefore is whether short term power procurement fulfills the obligation of the distribution licensee to procure electricity generated from eligible renewable energy sources at the specified percentages. Certain relevant provisions of the concerned regulations needs to be examined as follows -

(i) Second proviso to regulation 7.1 provides as follows -

“Provided further that the Distribution Licensee shall include the plan for procurement of power from RE sources under its long-term power procurement plan to comply with minimum RPO target as stipulated above.” {Emphasis added}

(ii) Regulation 10.1 provides as follows -

10.1 Each Distribution Licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for each year of the Operating Period under the Business Plan as well as under MYT Petition in accordance with Regulations notified by the State Commission and accordingly shall enter into long term arrangement to meet its RPO obligations. {Emphasis added}

The above quoted regulations would show that Distribution Licensees are mandated to enter into long term arrangement to meet their RPO. Therefore, the contention of BEST that it had already entered into short term contracts with many RE developers for supplying RE in FY 2010-11 in fulfilling RPO target is not sustainable. BEST and all distribution licensees ought to enter into long term arrangement - to meet their RPO.



(3) Is there a need to relax the proviso to Regulation 7.2?

BEST has submitted that the Commission may relax Regulation 7.2 for at least one year. The Commission is aware amongst distribution licensees in the State Tata Power Co. Ltd. (“TPC”) have their own sufficient in house RE generation. But, RInfra and BEST will have to buy RE power from renewable sources due to unavailability of their own in house RE generation. Most of renewable energy generators situated in Maharashtra State are in the MSEDCL area. There are some wind energy generators particularly Group –II projects, who in fact after the expiry of their PPA are not showing willingness to sell RE power to distribution licensees at the Commission’s approved rate as they might be getting more benefits through REC route or other market mechanism. At present, both kind of cases exist i.e. the cases where contract has ended and RE generators are free to choose their path either to participate in REC mechanism or to enter into PPA at the Commission’s approved rate and cases where the RE generators have exercised the options to sell outside of their PPAs. The Commission has notified the MERC (Renewable Purchase Obligation, its compliance and Implementation of REC framework) Regulations, 2010 which are applicable to obligated entities such as Distribution Licensees, Captive Users and Open Access Consumers in the State of Maharashtra. Each obligated entities, during the unavailability of renewable energy in the State, can purchase REC to fulfill their RPO obligation. CERC has also specified the minimum and maximum price band of REC in the form of floor price and forbearance price by an order dated June 01, 2010 in the matter of “Determination of Forbearance and Floor price for the REC framework.”

The Commission has to encourage renewable energy throughout India but any option which encourages renewable energy in Maharashtra will have to be given a high priority. If the proviso to Regulation 7.2 is left out, then it will have impact both in terms of REC purchase, cost involved to State Discoms. More REC purchase may help some of the States who have excess renewable generation. The only advantage of REC is that it encourages those States who are doing well in RE generation. As far as relaxation of the proviso to Regulation 7.2 is concerned, the Commission has to consider the practical aspect based on calculations w.r.t. purchase of REC and power



purchase rate of distribution licensee/obligated entities and its impact on the consumers. The second alternative is as long as Distribution Licensees procure renewable energy through competitive bidding and by giving the opportunity to all renewable generators to respond to bids, whatever the price that gets reflected or known through that market mechanism will be adopted by the Commission.

The Commission has taken into account the difficulties in implementing the proviso to Regulation 7.2 because it has also been submitted in the present proceedings that some distribution licensees are already energy sufficient in terms of RPO target for FY 2010-11 through long term and short term renewable power arrangements through traders. BEST has requested that the Commission may relax Regulation 7.2 for at least one year. So when contracts had already been signed for such procurement even prior to the date of notification of the concerned Regulations it would be justifiable to relax the proviso to Regulation 7.2. The powers to relax is provided in Regulation 18.1 as follows –

“18.1 The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax or may waive any of the provisions of these Regulations on its own motion or on an application made before it by an interested person.”

In exercise of the above powers the Commission hereby, by this order relaxes/waives the requirements laid down in the proviso to Regulation 7.2 for F.Y 2010-11 only. This order shall be applicable to all distribution licensees in the State of Maharashtra.

(4) Other matters

RInfra has submitted that Regulation 7.2 may be modified to include trading margin over and above the preferential rate in case of RE procurement by licensees from traders. The Commission is of the view that the request made is outside the scope of the present petition.

MSEDCL has submitted that in the event, the Commission modifies the proviso to Regulation 7.2, then the mandatory target under Regulation 7 also will have to be



deleted. MSEDCL and other licensees will have to be relieved of that obligation also. The Commission does not sustain this contention. The Commission is of the view that the percentages specified in Regulation 7.2 have no nexus with the proviso to Regulation 7.2. In any case, since there is no such amendment to the said proviso to Regulation 7.2 the present contention raised by MSEDCL is not relevant.

As regards the contention of MSEDCL that considering the availability of RE power, the Commission may consider allocation of this RE power proportionately amongst all the Distribution Licensees and the Regulations can be implemented after sufficient RE is available. The Commission is of the view that the submission made is quite outside the scope of the present petition.

With the above, Case No. 45 of 2010 stands disposed of.

Sd/-

(V. L. Sonavane)
Member

Sd/-

(V. P. Raja)
Chairman



(K.N. Khawarey)
Secretary, MERC