

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION -
PANCHKULA**

Case No. HERC/PRO - 37 of 2016

Date of Hearing : 08.05.2019
Date of Order : 08.05.2019

In the Matter of

Application under section 86(1) (b) of the Electricity Act, 2003 for the approval of the Commission for procuring the short term Non-solar RE power under RPO for FY 2016-17 from Himachal Pradesh State Electricity Board (HPSEB) through M/s Mittal Power Processor Pvt. Ltd. (MPPL) (an Inter-State trading licensee) - Appeal No. 24 of 2018 in the matter of Haryana Power Purchase Centre Vs. Haryana Electricity Regulatory Commission.

Petitioner

Haryana Power Purchase Centre, Panchkula

Present On behalf of the Petitioner

1. Mr. Anand K. Ganesan, Advocate
2. Mr. Rajiv Mishra, Xen, HPPC
3. Mr. Rohit Kumar, AE, HPPC

Quorum

Shri Jagjeet Singh, Chairman
Shri Pravindra Singh Chauhan, Member

ORDER

Brief Background of the Case

1. The Commission had disposed of Petition no. HERC/PRO-37 of 2016 vide order dated 18.10.2017, wherein it was held that the entire cost incurred on procurement of short-term Non-solar Renewable Energy under Renewable Purchase Obligation (RPO) for FY 2016-17 from the Himachal Pradesh State Electricity Board (HPSEB) through a trader M/s. Mittal Processor Pvt. Ltd. (MPPL), cannot be a pass through in the ARR and Tariff, in view of the fact that due diligence was not done by HPPC while preferring RE Power over REC.
2. HPPC had preferred an appeal against the Order dated 18.10.2017 before the Hon'ble Appellate Tribunal for Electricity (appeal No. 24 of 2018). The said appeal was disposed of by the Hon'ble Tribunal vide Order dated 08.03.2019 wherein the matter has

been remanded back to the Commission to reconsider the matter afresh and pass appropriate orders, without being influenced by the previous decision taken. The relevant part of the Order dated 08.03.2019 passed in Appeal No. 24 of 2018 read as follows:-

“8. In the light of the statement made in the memo dated 26.2.2019 and submissions made by the learned counsel appearing for the Appellant and the Respondent State Commission, as stated supra, the instant appeal filed by the Appellant stands disposed of with the direction to the State Commission to reconsider the matter afresh and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the interested party without being influenced by any observations made in the Order dated 18.10.2017 passed in Case no. HERC/PRO-37 of 2016 on the file of the Haryana Electricity Regulatory Commission, Panchkula in accordance with law and dispose of the matter as expeditiously as possible at any rate within a period of six months from the date of receipt of copy of this order. All the contentions of the parties are left open. Order accordingly.”

3. In pursuance to the aforesaid Order dated 08.03.2019, the present proceedings have been initiated, to reconsider the matter afresh. The Petitioner (HPPC), vide memo no. Ch-313/CE/HPPC/SE/C&R-I/RE-Power dated 22.04.2019, has submitted as under:-

i) The Petitioner has been undertaking the power procurement for fulfilling the non-solar RPO set by the Hon'ble Commission in terms of Section 86(1)(e) of the Electricity Act, 2003 and the RPO Regulations framed thereunder to fulfil the obligations with regard to RPO.

ii) The Commission vide its order dated 20.11.2013, had allowed carried forward of RPO deficit for the years 2011-12, 2012-13 and 2013-14 to the year 2014-15, with a direction to the Petitioner to fulfil the RPO obligation in future and held as under:-

“In view of the fact that the Discoms /HPPC in their petition has pointed out some genuine difficulty in meeting the RPO as specified by the Commission i.e. non – materialization of a lot of renewable energy power projects for which LOI was issued to the Developers by HAREDA and other difficulties cited in the petition as well as the willingness shown by the Discoms to purchase solar power offered under Batch – I, Phase – 2 of JNNSM scheme, the Commission answers the issue framed at 'B' in affirmative and orders as under:

The Discoms / HPPC are allowed to carry forward the shortfall, on actual basis, the RPO compliance for FY 2011-12, FY 2012-13 and FY 2013-14 to the next financial year i.e. FY 2014-15. However, it is clarified that the RPO carried over to FY 2014-15 shall be in addition to the RPO for FY 2014-15.”

- iii) That in the above order dated 20/11/2013, the Commission specifically directed the Petitioner to procure renewable energy rather than procuring RECs. The relevant extract of the same is given as under:

“The Commission is of the view that it is always preferable to purchase renewable energy because of fact that such generation projects as per the statutes has to be encouraged, rather than to purchase REC wherein the amount paid for purchase of the same goes to the generator without even getting the benefit of power availability. Further because of its distributed nature, RE generation is considered advantageous in terms of reduced cost of transmission network and reduced transmission losses. This advantage becomes considerably enhanced when such RE is generated and consumed locally. Therefore the Discoms in Haryana should prefer to purchase RE generated in Haryana. This is also the spirit behind regulation 64(3) support of which has been sought by the Petitioner.

In view of the above discussions the Commission answers the issue framed at ‘C’ in negative. However, it is clarified that the tariff determined by the Commission is the ceiling tariff. In case the Discoms / HPPC is able to procure renewable energy (solar and non – solar) at a rate lower than that determined by the Commission by way of reverse bidding or otherwise, they may do so. However, the Discoms / HPPC, may not evade their responsibilities of achieving the RPO specified in the RE Regulations, 2010 for the respective years on the plea that they are in the process of inviting bids or merely making a statement that renewable energy is available at a tariff lower than that determined by the Commission.

- iv) That endeavour of the Petitioner has only been to comply with the above direction of the Commission and procure renewable energy rather than procure RECs.

- v) That the Petitioner had taken substantial steps to procure renewable power, the Petitioner could not fulfil the RPO obligation to the full extent for the period prior to 2105-16. In view of the above and taking into account the availability of RPO obligation, the Commission by its order dated 18.06.2015 once again carried forward the cumulative shortfall to the year 2015-16. In the said order, the Commission also held that the Petitioner ought to make all efforts to procure renewable energy in physical form. This includes procurement of hydro power from Himachal Pradesh. The relevant extract of the same is given as under:

“HPPC has earlier floated NIT for purchase of 100 MW of non-Solar power which, as stated, did not mature presumably due to some stringent terms and conditions in the bid documents. HPPC has stated that it would again float NIT to purchase 200 MW of non-solar power with relaxed terms and conditions in the bid documents. HPPC has also procured some hydro power (renewable) on short term basis from Himachal

Pradesh (HP). Commission feels that HPPC, in the first instance, should immediately float the tender enquiry for purchase of required capacity (MW) of non-solar power with relaxed terms and conditions and secondly should tie-up as much small hydro power from HP as possible, preferably on long term basis. Thirdly, as already suggested by the Commission during the hearing on 04.05.2015, HPPC should explore the possibility of purchasing wind power from Maharashtra/Orissa.....

.....
The Commission, therefore, after due consideration of the submissions made in the petition, additional submissions made by the petitioner during the hearing and keeping in view the position as brought out above, Orders as under:-

.....
2. The Commission has examined NIT for purchase of 100 MW non-solar power which, as stated by the petitioner, did not mature due to poor response from the bidders despite extending the bid opening date thrice. The Commission would like the HPPC to recast the NIT with relaxed terms and conditions as stated by them and float the tender enquiry for purchase of requisite capacity of RE power immediately.

3. HPPC, shall also make efforts to purchase additional small hydro power from various available sources (including Himachal Pradesh). Besides HPPC shall also make efforts to purchase wind power from various available sources through bilateral transactions or through power exchange.”

- vi) That the Commission fixed the RPO targets for non-solar power at 2.75% of total power purchase by the distribution licensees, for the year 2016-17. This worked out to 1288 MWs of non-solar renewable power out of the total estimated power purchase of 46827 MU for FY 2016-17. The said 1288 MUs combined the backlog of 1110 MUs for previous years, resulting in the total non-solar renewable purchase obligation of 2398 MUs for FY 2016-17.
- vii) That in order to fulfil the said RPO target and in terms of the directions of the Commission in the order dated 20/11/2013 and 18/06/2015, the issue was put up before the 38th Steering Committee Power Procurement (SCPP) meeting and the Committee approved the hydro power purchase from the Government of Himachal Pradesh. The procurement was to be through a trader, M/s Mittal Power Processor Ltd. (MPPL) by authorizing it to participate in the tender floated by Himachal Pradesh State Electricity Board Ltd. (HPSEBL) for purchase on non-solar power on short term during the period from April 2016 to March 2017.

- viii) That the procurement was made through a bidding process initiated by the HPSEBL for supply of renewable electricity. The trader is only on a back to back basis for a small trading margin. It is relevant to mention that the Petitioner has also procured electricity from the hydro sources in the State of Himachal Pradesh in the past from time to time to meet its RPO. The Commission had also in the Order dated 18/06/2015 specifically directed the Petitioner to procure hydro power from Himachal Pradesh.
- ix) Upon being successful to tip up the procurement of power from the Government of Himachal Pradesh, a Letter of Intent (Lol) dated 18/03/2016 was issued in favour of the trader and a back to back Lol dated 22/03/2016 was issued to the trader for purchase of renewable non-solar power on short term basis from HPSEBL.
- x) The power purchase by the Petitioner was at the fixed tariff of Rs. 4.70/- per unit at the Delivery Point, which is the state periphery of Himachal Pradesh. Even with the addition of the inter-state transmission charges, the cost worked out to Rs. 5.55/- per unit at landed tariff in the State of Haryana.
- xi) That even the floor price of Renewable Energy Certificate (REC) was Rs. 1.50/unit for the year 2016-17 and even assuming the procurement of the RECs at the floor price, the effective cost of instant renewable power was Rs. 4.05/unit.
- xii) The Petitioner is procuring power from other existing RE sources also as in the Tariff Order dated 01/08/2016 pertaining to MYT Control period from FY 2015-16 to FY 2016-17, the Commission recorded the shortfall in achieving RPO targets in the State of Haryana and made observations about fulfilment of the same.
- xiii) In view of the above background and the directions of the Hon'ble Tribunal in the remand Order dated 08.03.2019, this Commission may kindly consider the power purchase in question.
- xiv) The basic principle of tariff determination and regulatory jurisdiction is that all power purchase costs need to be allowed, unless it is conclusively established that it is imprudent and contrary to the merit order principles. This was also recognised in the National Tariff Policy, 2005 as under:

"8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

(1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M

and investment for system upgradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.”

- xv) The Hon'ble Tribunal has also consistently held that power purchase costs need to be allowed on actual basis and not be disallowed. This is also for convention power.
- xvi) The basic objective of the Electricity Act to promote renewable sources of energy and fulfill the RPO targets determined under Section 86(1)(e). The Petitioner seeks to procure the non-solar RE power to fulfill the RPO targets fixed by the Hon'ble Commission and for promotion of the renewable energy sources in terms of the Electricity Act.
- xvii) The Commission has made an observation in the Order dated 18.10.2017 that for purchasing RE power within the RPO including backlog, if any, no specific approval of the Commission is required for the power purchase. The said observation supports the case of Petitioner in so far as the prior approval of Commission is not required for buying RE power to meet RPO. In fact, the Petitioner is acting bona fide and seeking the approval of the Commission for buying the same.
- xviii) The Commission had further previously held in the Tariff Order dated 01/08/2016 that even if electricity is not available at a lower cost, it ought to be purchased at the tariff determined by the Commission. The procurement by the Petitioner in the present case is less than the renewable electricity tariff determined by the Commission.
- xix) The basic regulatory mandate under the Electricity Act is to promote renewable sources of electricity. The RECs are only mitigating factors to be procured when renewable electricity is otherwise not available. Section 86 (1) (e) of the Electricity Act, 2003 does not provide for procurement of certificates, but deal with renewable energy. The provision is for promotion of renewable energy, which has also been consistently upheld by the Hon'ble Tribunal.
- xx) That when electricity from renewable sources is available, it should be the objective to procure such power rather than purchase of only RECs. Buying physical power instead of RECs is in the interest of the consumers at large.
- xxi) That by purchasing RECs, only physical certificates are available to the Petitioner without the benefit of the electricity available to the consumers in the State. By procuring renewable energy, the consumers in the State of Haryana have benefited

from the procurement of electricity to meet the demand of the consumers in the State of Haryana.

- xxii) The Petitioner has taken substantial efforts in tying up renewable power to meet the demand in the State of Haryana. The mechanism for RECs is only when renewable power is not available or cannot be purchased. Therefore, this Commission may kindly allow the procurement of renewable power rather than purchasing of RECs.
- xxiii) That it is imperative for the distribution licensees to procure electricity in its physical form so that the consumers at large stand benefitted and is not aiming at formally fulfilling the RPO obligation by purchasing Renewable Energy Certificates (RECs). Purchase of RECs only results in revenue expenditure without there being the benefit of the electricity or capacity building in the State of Haryana. In the circumstances, it is in the interest of the State that renewable energy is procured instead of RECs.
- xxiv) As regards the requirement of the Petitioner to buy the said power, it is pertinent to mention that State of Haryana is not energy surplus the whole year around. It is only in a few months of the year that Haryana stays in surplus in electricity capacity. In peak seasons, the State of Haryana is deficit in power and the deficit is in fact increasing year after year.
- xxv) The peak (MW) deficit has in fact varied from about 123 MW in June to 548 MW in October in FY 2016-17, 702 MW in June to 1081 MW in October in FY 2017-18 and was in fact expected to vary from about 1088 MW in June to 1587 MW in October in FY 2018-19 and it is on increasing trend with peak deficit expected to vary from 3336 MW to 3708 MW during the months June to October in the FY 2022-23.
- xxvi) As stated above, there is a substantial deficit of power, particularly for the summer months. For the year 2016-17 (which is the year in issue) the month wise deficit as against the month wise procurement from HPSEBL As is evident from the said data, during the months from June,2016 to October,2016 when about 70% of the procurement was made from HPSEBL, there was power deficit even after such procurement from HPSEB. The month wise deficit from June,2016 to October,2016 and the quantum of procurement from HPSEBL is as under:

Month	Power Demand (in MW)	Power Availability (in MW)	Power procured from HPSEBL (in MW)
June, 2016	8958	8835	325.017
July, 2016	9257	8804	335.818
August, 2016	9222	8804	334.538
September, 2016	9001	8340	249.979
October, 2016	8278	7730	103.064

- xxvii) The Petitioner has in fact for this purpose also tied up long term PPAs, which are also approved by the Commission. The surplus as was observed earlier is not factually correct and surplus if any is for few months in a year, primarily the winter months and not for the year as a whole. The yearly assessment of surplus or deficit would never reveal the true picture.
- xxviii) That per unit cost of REC (Rs 1.50 /kWh), deducted from the per unit RE Power purchase cost of Rs 4.70/ kWh, would have resulted in availability of cheaper energy source at Rs 3.20/ kWh against the costliest power source (Aravali Power @ Rs 4.05/kWh) in Merit Order Dispatch. However, it may be noted that average variable cost of 1% of most expensive power, which is Rs 2.40/kwh determined by HERC as per ARR Order for FY 2016-17 was only an estimate. In case no HERC/PRO 37 of 2016, the approved average variable cost itself was Rs 2.68/kwh as allowed in ARR Order for FY 2016-17.
- xxix) That the procurement made by the Petitioner was correct, in the interest of the consumers, in compliance with the directions of the Commission to procure renewable power and also to prefer renewable power to RECs and ought not to be disallowed.
- xxx) That the Petitioner has sought to procure the power in question at a very reasonable tariff of Rs. 4.70 per kWh in the interest of the consumers. It is also pertinent to mention that the renewable power has not substituted power from other sources at all.
- xxxi) That the facts on record clearly establish that while purchasing RE Power from HPSEB, proper due diligence was carried to assess the reasonability of such power purchase. The RE Power purchased by the Petitioner from the above source turns out to be the most economical alternative to meet the energy demand in peak season as well as meeting the shortfall of RPO compliance. Further, as the power purchase cost of RE Power from HPSEB has already been paid by the Petitioner, therefore, disallowing a certain portion of power purchase cost on account of price reasonability, in true-up of ARR for FY 2016-17, will result in financial duress to the Discoms in terms of increase in interest cost on account of raising additional working capital for the disallowed portion of power purchase cost.
- xxxii) The following prayer has been made:-
The Commission may approve the procurement of non-solar RE power from HPSEBL through the trader to fulfil the non-solar RPO targets fixed by this Commission for FY 2016-17 to the extent possible.

Proceedings in the Case

4. The case was heard on 08.05.2019, wherein the Petitioner i.e. HPPC reiterated the contents of its Petition, which for the sake of brevity has not been reproduced herein.

Commission's Analysis & Order

5. The Commission has examined the application filed by the HPPC on the directions given by Hon'ble Appellate Tribunal for Electricity (APTEL) in its order dated 08.03.2019, while disposing of the Appeal No. 24 of 2018.

6. The Commission has considered the present matter de-novo i.e. without being influenced by its observations in the Order dated 18.10.2017. The factual matrix of the case is as under:-

- i) The Commission received a complaint dated 18th July 2016 from Sh. Lakhan Singh from Hisar, Haryana regarding discrepancies in power purchase from M/s. Mittal Processors Pvt. Ltd. Similar objection has also been raised by some interveners during the course of hearings in the Commission. Therefore, the Commission, sought comments from Haryana DISCOMs represented by UHBVNL on the same, vide memo no. 6656/HERC/Tariff dated 26.08.2016, followed by reminder letter no. 6972/73/HERC/Tariff dated 21.09.2016.
- ii) In response, HPPC (representing Haryana DISCOMs) submitted vide memo no. Ch-2/CE/HPPC/16.07 dated 03.10.2016 that, "for the last two years, HPPC has not procured any power on short term basis to meet the demand of the State."
- iii) The aforesaid reply of HPPC was not found satisfactory and the commission observed that HPPC had purchased short term power from HPSEB/Mittal Small Hydro. Therefore, further details were sought from HPPC vide memo no. 7414/HERC/Tariff dated 21.10.2016.
- iv) HPPC filed a petition vide memo no. 209/CE/HPPC-I/RE-Power dated 26.10.2016, seeking approval for procuring short term Non-Solar RE Power under RPO for the FY 2016-17 from Himachal Pradesh State Electricity Board (HPSEB) through M/s. Mittal Power Processor Pvt. Ltd. (MPPL), admitted in the HERC vide HERC/PRO-37 of 2016.
- v) The Commission sought additional information vide Memo. No. 8046-47/HERC/Tariff dated 24.11.2016 followed by reminder Memo No. 8399-8400/HERC/Tariff dated 21.12.2016.
- vi) HPPC replied to the additional information sought by the Commission, vide memo no. Ch-27/CE/HPPC/SEC&R-I/Loose dated 10.01.2017. The additional information sought by the Commission and HPPC's reply thereto is as under:-

l) Details of power procured through banking arrangement with various traders/short term power from various traders:-

a) Details of power procured through each trader (Month-wise quantity, Rate, Trading Margin Paid source of power for FY 2013-14, 2014-15, 2015-16 & 2016-17 till date.

HPPC's Reply:-

That the information of power procured from HPSEBL through MPPL has been abstracted in the format as desired by HERC and tabulated as under:-

Month	FY 2014-15		FY 2015-16		FY 2016-17	
	Qty Supplied (LU)	Rate/unit including MPPL's trading margin of Rs. 0.04/kWh	Qty Supplied (LU)	Rate/unit including MPPL's trading margin of Rs. 0.04/kWh	Qty Supplied (LU)	Rate/unit including MPPL's trading margin of Rs. 0.04/kWh
April	0.000	0	0.000	0	299.832	4.70
May	0.000	0	0.000	0	749.940	4.70
June	0.000	0	623.129	4.70	2340.127	4.70
July	0.000	0	1117.174	4.70	2417.892	4.70
Aug	95.712	4.16	1116.300	4.70	2408.674	4.70
Sep	344.498	4.16	720.418	4.70	1799.851	4.70
Oct	0.000	0	372.180	4.70		
Nov.	0.000	0	780.967	4.70		
Dec	381.379	4.70	1117.524	4.70		
Jan	534.602	4.70	974.100	4.70		
Feb	503.635	4.70	320.012	4.70		
Mar	557.635	4.70	185.724	4.70		

Note: No power procured on short term basis from HPSEBL through MPPL for the FY 2013-14

b) Whether power is procured on short term basis or long term basis?

HPPC's Reply:-

That the power was procured on short term basis.

c) Whether approval of the Commission is required or not?

HPPC's Reply:-

That the above mentioned non-solar RE power for the FY 2014-15, FY15-16 & FY2016-17 have been procured on short term basis. There is no provision under which approval is required for purchase of short term power as per RE Regulation-2010. Also, there are various directives from the commission to fulfil the RPO targets. As, such the cases for procurement of short term power for FY 2014-15, FY-15-16 were not sent to HERC for approval. However, for procurement of non-solar RE power on short term basis for FY 2016-17, petition has been filed in HERC on 26.10.2016 for approval.

d) Whether the power so procured qualified for RPO?

HPPC's Reply:-

Power procured from HPSEBL through MPPL qualifies for the RPO requirement.

- II) Himachal Pradesh State Electricity Board has issued LOI to M/s MPPL on 18.03.2016 stating "Rate at delivery point including Trading Margin of MPPL @ 2 Paise/kWh = Rs. 4.66 per kWh". However, M/s MPPL in its letter dated 21.03.2016 addressed to HPPC has mentioned that "HPSEBL has issued Lol for sale for renewable power during the period from April 2016 to March 2017 as per details given below..... Rate at delivery point including Trading Margin (Paise/kWh) = Rs. 4.70 per kWh". Please submit the reasons for increase in such trading margin from 2 Paise in the original Lol of HPSEBL to 6 Paise in the Lol letter from M/s MPPL.

HPPC's Reply:-

CERC regulation dated 12.01.2010 regarding the new trading margin is reproduced as under:-

"Trading margin shall not exceed 4 paise per unit if the sell price of electricity is less than or equal to Rs. 3/unit. The ceiling of trading margin shall be 7 paise/unit in case the sell price of electricity exceeds Rs. 3/unit."

M/s MPPL is charging the trading margin @ 2 Paise/kWh from HPSEBL & @ 4 Paise/kWh from HPPC:-

- i. The MPPL deposited earnest money of Rs. 2 crores in the form of demand draft/bank guarantee to HPSEBL as Security Deposit (EMD) on behalf of HPPC.
- ii. The MPPL deposited CPG within 10 days of issuance of LOI for an amount of Rs. 3 lacs/MW quantum of bid and the CPG was to be released after completion of contract period on behalf of HPPC.

M/s MPPL is bearing the cost of earnest money & CPG etc. as such the trading margin of 4 Paise/kWh from HPPC seems to be justified and is less than the ceiling limit of 7 paise per unit.

- III) Clause no. 21.2 of HERC (conditions of License for Distribution and Retail Supply Business) Regulations, 2004 specifies as under:-

"The Licensee shall not purchase electrical capacity and/or energy without approval of the Commission under the terms of condition 21.1 except in case of short term purchases for less than 6 months at a rate not more than the bulk supply rate approved by the Commission."

In view of the above, HPPC may submit whether any such purchase was made prior to April, 2016 and if so, whether any approval of the Commission was obtained?

HPPC's Reply:-

The instant power is RE power from small hydro which is governed by RE Regulation 2010. As per RE Regulation-2010 there is no provision under which approval is required for purchase of short term power. Also, there are various directives from the commission to fulfil the RPO targets. It has been submitted that RE power was also procured prior to April 2016 for which details have already been submitted to the Commission vide this office memo no. Ch-04/CE/HPPC/SE/C&R-I/loose dated 30.11.2016. Further, no approval was obtained from Commission as there is no such provision of seeking approval for purchase of short term power as per HERC RE Regulation-2010. In the FY 2014-15 purchases were made for 6 months and in FY 2015-16 for 10 months. The Commission's order dated 18.06.2015 cited by the Petitioner in support of its submission is reproduced as under:-

“HPPC, shall also make efforts to purchase additional small hydro power from various available sources (including Himachal Pradesh). Besides, HPPC shall also make efforts to purchase wind power from various available sources through bilateral transactions or through power exchange”.

- IV) Please explain the reason for late filing the application for approval of the Commission for procurement of short term power i.e. Lol dated 22.03.2016 is applied for approval in October, 2016.

HPPC's Reply:-

For procurement of short term power in FY-2014-15 & 2015-16 (in FY 2014-15 purchase was made for 6 months and in FY 2015-16 for 10 months) from HPSEBL through MPPL, the case was not forwarded to Commission for approval because there is no provision under which approval is required for purchase of short term power as per RE Regulation-2010.

That the matter was referred to HERC vide this office Memo no. Ch-19/CE/HPPC/ SEC&R-I/WE dated 06.09.2016 requesting the Commission to define the period of procurement of short term power in the 5th amendment to be issued by Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010.

After the hearing dated 08.09.2016, HPPC filed the petition in the HERC for approving the procurement of Non-solar RE Power from HPSEBL through MPPL to fulfill the non solar RPO targets fixed by commission for FY 2016-17.

V) Government of India (GoI), Ministry of Power had issued guidelines dated 30.03.2016 for short term procurement of power by Distribution Licensees through tariff based competitive bidding. The commission had forwarded the same to HPPC and the Discoms vide Memo No. 4741-43/HERC/Tariff dated 18.05.2016. Please explain the reasons for procurement of power from a trader rather than procuring the same through competitive bidding as per GoI guidelines.

HPPC's Reply:-

That the HPSEBL had floated tender no. IS 02/2016 for sale of RE power on short term basis for the FY 2016-17. On the basis of said tender M/s MPPL offered for sale of RE power from HPSEBL to HPPC.

That the HPPC authorized MPPL to participate in the tender/NIT of HPSEBL for purchase of RE (Non-Solar) power on short term during the period from April 2016 to March 2017. HPPC authorized MPPL to participate in HPSEBL tender vide Ch-168/CE/HPPC/SE/C&R-II/RE-power dated 01.03.2016. The power was allotted to HPPC in the tender by HPSEBL. Accordingly, HPPC issued LOI to MPPL for purchase of RE-Power vide office memo no. Ch-174/CE/ HPPC/SE/ C&R-II/RE-power dated 22.03.2016 for purchase of renewable non-solar power on short term basis from HPSEBL. Simultaneously HPPC had intimated the same to HERC vide this office memo no. Ch-175/CE/HPPC/SE/C&R-II/RE-power dated 22.03.2016 that in order to fulfill the RPO targets fixed by HERC for Renewable (Non-Solar) Power.

This process for procurement of non solar RE power on short term basis for the FY 2016-17 was already finalized whereas GoI, Ministry of Power had issued guidelines on 30.03.2016 for short term procurement of power by Distribution Licensees through tariff based competitive bidding and the Commission had forwarded the same to HPPC and DISCOMs vide memo no. 4741-43/HERC/Tariff dated 18.05.2016.

VI) Reasons for participating in the tender floated by HPSEBL through M/s Mittal Processor Pvt. Ltd. instead of applying directly. Further, the basis of selection of M/s Mittal Processor Pvt. Ltd. as trader may also be furnished.

HPPC's Reply:-

As per NIT/Tender document No. IS-02/2016 , HPSEBL issued the NIT for sale of renewable power on short term basis & invited tenders from inter-state trading licensees and utilities on firm basis for the period commencing from 1st April 2016 to 31st March 2017.

That the HPPC did not directly participate in the tender due to the following reasons:-

- i. The HPPC had to deposit earnest money of Rs. 2 crores in the form of demand draft/bank guarantee to HPSEBL as Security Deposit (EMD).
- ii. The HPPC had to deposit CPG, within 10 days of issuance of LOI for an amount of Rs. 3 lacs/MW quantum of bid, and the CPG was to be released after completion of contract period.

Moreover, M/s MPPL in its capacity as trader was having the experience of trading and provides other relevant information regarding supply of short term power.

VII) Provide a copy of the proposal submitted to the 38th SCPP meeting for procurement of power under this proposal.

HPPC's Reply:-

Agenda for purchase of hydro power renewable energy from HPSEBL was put up in the SCPP meeting held on 02.06.2016 and the decision of SCPP is reproduced as under:-

"The committee was apprised of the power purchased from Himachal Pradesh Govt. tender through M/s Mittal Power Processor Ltd. trader to meet the Non-Solar RPO Targets. The committee approved the same."

Copy of the proposal & approval accorded by the SCPP was enclosed.

VIII) Whether the purchase of power was made to meet the gap in the demand and supply or just to fulfil RPO? Further, the details of sale of surplus power (quantum and amount) through exchange/UI during the period from April-16 to till date may also be provided.

HPPC'S Reply:-

The short term power from HPSEBL through MPPL was purchased in-view to achieve the RPO targets. The detail of sale of power through exchange is enclosed at Annexure-G. The same is reproduced as under:-

SNo.	Project	April to Oct 2016		
		Unit (LUs)	Amount	Rate per unit
1	TATA	79.9982	17805660	2.23
2	IEX	6873.40468	1366867746	1.99
3	PGCIL UI	3596.48843	315332407	0.88
4	HVPNL UI	343.02819	51804313	1.51

IX) Whether any comparison was made with respect to the procurement of RE power vis-à-vis purchase of REC? Please provide such comparison power

would have resulted in either backing down/surrender of Long Term Power or sale of power through exchange.

HPPC'S Reply:-

Justification to purchase Non-solar RE Power Purchase of Non-solar RE Power is beneficial as compared to RECs as can be seen from the table below:-

Purchase of REC		Purchase of Non-solar RE power	
Total no. of units supplied	100	Total no. of units supplied	100
No. of Units at Average Power Purchase Cost (APPC)	100	No. of Units at APPC Price	98
REC's Price for FY 2016-17 in Rs./kwh	1.50	APPC Price for FY 2016-17 in Rs./kwh	3.77
Let's say 2 units of Non-solar RE power unit has to be purchased as REC to fulfill RPO	2	Let's say 2 units out of 100 units served through non solar	2
Cost of REC in FY 2016-17.	1.50	Cost of Non-solar RE power from HPSEBL through MPPL unit/kWh	4.70
APPC rate after adding REC cost in Rs./kwh	$(100 \times 3.77 + 2 \times 1.50) / 100 = 3.80$	New APPC rate is Rs./kwh	$(98 \times 3.77 + 2 \times 4.70) / 100 = 3.79$

**Rs 3.77/- is the average power purchase cost (APPC) Rs/kWh for FY 2016-17 allowed by the Commission in the order dated 01st August 2016. Also it has been discussed in detail (35th SSCP meeting) and ACS (Power) desired that instead of purchasing REC, HPPC should explore means to purchase renewable power at reasonable rate.*

7. The Commission observes the following clauses of the Regulations issued by the Commission, governing the DISCOMs:-

a) Clause no. 21.2 of HERC (conditions of License for Distribution and Retail Supply Business) Regulations, 2004 specifies as under:-

“The Licensee shall not purchase electrical capacity and/or energy without approval of the Commission under the terms of condition 21.1 except in case of short term purchases for less than 6 months at a rate not more than the bulk supply rate approved by the Commission.”

b) Clause 60 of HERC(Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 specifies the procedure to be followed by the Licensee for procurement of short term power, as under:-

“60.1 The distribution licensee shall submit a rolling quarterly forecast of the quantum of short-term power to be purchased for the year for the Commission’s approval. The forecast shall be based on monthly sales forecast, the power available from approved long-term sources of power, merit order dispatch of available sources, banking with other distribution utilities, load curtailment, time of its requirement, availability of short-term power and the expected price. The distribution licensee shall provide the basis for forecast of short-term power procurement price including the criteria for evaluation of alternative options;

60.2 The Commission shall indicate the ceiling of short-term power purchase price and volume for the ensuing quarter based on the availability of power, past requirement, approved quantum of short-term power in ARR, approval granted for past quarter and past market performance. The Commission may ask for

additional information and data as it may deem necessary for reviewing the forecast for the ensuing quarter and the distribution licensee shall furnish such information within 2 weeks from being asked to do so;

60.3 If there is a short term requirement of power by the distribution licensee over and above the quantum as approved by the Commission and such requirement is on account of any factor beyond the control of the distribution licensee (shortage/non-availability of fuel, snow capping of hydro resources inhibiting power generation in sources stipulated in the plan, unplanned/forced outages of power generating units or acts of God), then the cost shall be directly passed on to the consumers through FSA mechanism.

Provided that the cost of the additional power shall be allowed at the ceiling price for short term power determined by the Commission in accordance with regulation 60.2.

*Provided further that in such a case, the distribution licensee shall inform the Commission about the purchase of power over and above approved quantum with all of the supporting documents. **Unless the Commission is satisfied that the additional power is within the ceiling price of short term power determined by the Commission, it may disallow the quantum and cost of this short term power procurement in the True-Up order.** (emphasis supplied).*

60.4 The variation in actual quantum and price of short-term power vis-a-vis the quantum and price of short-term power approved by the Commission shall be subjected to prudence check by the Commission and shall be adjusted on yearly basis along with the annual performance review based on the price and quantum cap determined by the Commission for each quarter as mentioned in the above regulation. “

8. Undoubtedly, aforesaid stipulations were made keeping in mind purchase of conventional power. However, the ratio of aforesaid provisions is not changed for the source of Power be it RE Power or conventional power. Neither, can anything take away the statutory obligations of the Commission, specified under section 86(1)(b) of the Electricity Act, 2003 i.e. *“regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be purchased from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State”*.

9. There is no denial of the fact that statutory obligation has been cast on the Commission by Section 86(1)(e) of the Electricity Act, 2003 (Act), to promote cogeneration and generation of electricity from renewable sources of energy. However, the responsibility has also been cast upon the Commission by Section 86(1)(b) of the Act to regulate electricity purchase and procurement process of distribution licensee including the price at which electricity shall be procured from the generating companies or licensees. The Commission has notified Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation

and Renewable Energy Certificate) Regulations, 2010 on 03.02.2011. The regulations clause no. 65 of the ibid Regulations specifies as under:-

“65. Certificates under the Regulations of the Central Commission. –

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Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only, and the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates.

The mandate of the above clause directs DISCOMs to purchase REC instead of purchasing RE power, in case the later is not found financially prudent or is not available. Promoting REC is sufficient compliance of Section 86(1) (e) of the Electricity Act, 2003, as it promotes generation of RE power generation of home state or some other state.

10. In the deficit power scenario, DISCOMs used to buy power on short term basis, in order to bridge the gap between demand-supply and the Commission approved the same in ARR Order. However, in surplus power scenario, the DISCOMs are bound to take cautious decision, even to buy power in order to comply with the RPO obligations specified in HERC RE Regulations. The ibid Regulations, gives an option to the obligated entities to fulfil RPO obligations, either through the purchase of RE Power or REC.

11. The careful examination of the application dated 22.04.2019, reply dated 10.01.2017 filed by HPPC and HERC RE Regulations occupying the field, the Commission observes as under:-

- a) In the reply dated 10.01.2017, HPPC has submitted that this process for procurement of non solar RE power on short term basis for the FY 2016-17 was already finalized when Government of India (GoI), Ministry of Power had issued guidelines dated 30.03.2016 for short term procurement of power by Distribution Licensees through tariff based competitive bidding. However, it is observed that the commission had forwarded the same to HPPC and the Discoms vide Memo No. 4741-43/HERC/Tariff dated 18.05.2016, whereas the approval to purchase the procured power was taken in the meeting of SCPP held on 02.06.2016. Thus, the plea of the HPPC does not find merit.
- b) The Commission has sought information from HPPC that “whether the purchase of power was made to meet the gap in the demand and supply or just to fulfill RPO? Further, the details of sale of surplus power (quantum and amount) through exchange/UI during the period from April-16 to till date may also be provided.” To this, HPPC replied that the said purchase was made just to fulfill RPO targets meaning thereby that there was no gap in demand and supply and there was no

question of intended purchase meeting the shortage. HPPC, further provided the details of sale of surplus power through power exchange/UI, during April to Oct'2016, as under:-

Sr. No	Project	Units (LUS)	Amount	Rate per unit (Rs.)
1.	TATA	79.9982	17805660	2.23
2.	IEX	6873.40468	1366867746	1.99
3.	PGCIL UI	3596.48843	315332407	0.88
4.	HVPNL UI	343.02819	51804313	1.51
	TOTAL	10892.9195	1751810126	1.61

It is evident from the above, that the power purchased by HPPC @ Rs. 4.70/unit (landed cost including inter-state transmission charges has been worked out by HPPC at Rs. 5.55/unit), was sold by them through exchange @ Rs. 0.88/unit to Rs. 2.23/-unit. Thus, the most viable option in these circumstances was to purchase REC, rather than purchasing short term non solar RE power.

- c) In the present petition under consideration, the Commission observes that HPPC/DISCOMs have placed reliance on Commission's Order dated 20.11.2013 for purchasing RE Power rather than REC. The Commission has carefully perused the operative part of the said order. The Commission observes that the crux of the said order is to promote RE generation in Haryana so that the same can be promoted and consumed locally thereby rein in the losses and cost thereto in the intra-state transmission/distribution system as well as add to the State Economics. Hence, the procurement of RE power from an inter-state generator through a trader does not fit into the scheme of things envisaged in the Commission's Order dated 20.11.2013.
- d) Similarly, the Commission has perused the following directions given in its Order dated 18.06.2015 :-

"HPPC, shall also make efforts to purchase additional small hydro power from various available sources (including Himachal Pradesh). Besides HPPC shall also make efforts to purchase wind power from various available sources through bilateral transactions or through power exchange".

In this Order also, the Commission has not given any directions to HPPC to buy RE power at any cost. Rather, HPPC has been directed to make efforts and explore the possibility which includes exercising financial prudence.

- e) The DISCOMs failed to establish correct trade off between the REC and the power proposed in the instant petition. The obvious trade – off for arriving at a reasoned decision is to compare least cost option between purchasing REC at the floor price of Rs.1.50/Unit and purchasing short – term non solar RE Power @ Rs. 5.55/Unit plus

the associated cost of backing down / under – drawing power from the Grid. The Commission observes that average variable power purchase cost for the FY 2017-18 determined by the Commission in its ARR Order dated 11.07.2017 (HERC/PRO-39 of 2016 & HERC/PRO-40 of 2016) is Rs. 2.42/ per kwh. The average variable cost i.e. Rs. 2.42/unit is cost of power substituted by the purchase of renewable power in surplus power scenario, evidenced by sale of power by DISCOMs through exchange. Thus, the least cost option of fulfilling RPO obligation can be obviously ascertained by comparing the cost of REC i.e. 3.92/unit (Rs. 2.42/unit plus Rs. 1.5/unit) and power purchase cost of the proposed source i.e. Rs. 5.55/unit Accordingly, the Commission is not convinced of the reasonableness of the action taken by HPPC in purchasing the impugned power.

- f) The plea taken by the Petitioner that the proposed power was procured to bridge the demand-supply gap, fails miserably in view of the fact that during the period from April to Sept., 2016, HPPC had procured 10012 LUs, whereas it had sold 10892 LUs through exchange during the period from April to Oct., 2016. HPPC in its letter dated 10.01.2017, in reply to the question raised by the Commission that whether the ibid power was purchased to comply with RPO obligation or to bridge demand-supply gap, accepted that the short term power from HPSEBL through MPPL was purchased in-view to achieve the RPO targets.
- g) The reference of National Tariff Policy, 2005 given by the Petitioner also provides that *“All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates”*. Since, it has been already established above that the power has been purchased at unreasonable rate, the cost of the same in excess of the cost of REC, should not form part of power purchase cost of DISCOMs.

12. In view of the aforesaid discussion, the Commission concludes that the present petition fails the prudence test of power purchase cost optimisation and rational decision making of reducing the cost of power that can be reasonably passed on to the electricity consumers of Haryana.

13. The Petition is accordingly disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08th May, 2019.

Date: 08.05.2019
Place: Panchkula

(Pravindra Singh Chauhan)
Member

(Jagjeet Singh)
Chairman