

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: **Shri S. P. Nanda, Chairperson**
 Shri S. P. Swain, Member
 Shri A. K. Das, Member

Case No. 59 of 2014

OREDA - Vrs. – GRIDCO & Others	Petitioner Respondents
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In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 30.09.2010 of the OERC passed in Suo Motu proceeding Case No. 59 of 2010 regarding OERC (Renewable Purchase Obligation and its compliance) Regulations, 2010 by the obligated entities and Co-generating captive power plants in Odisha.

For Petitioner: Shri A. K. Choudhury, Dy. Director, OREDA

For Respondent: Shri Bibhu Charan Swain, the authorized representative of M/s. Tata Sponge Iron Ltd., M/s. Adhunik Metaliks, and M/s. Visa Steel Ltd., Shri A. K. Parida, Chief Resident Manager, Shri S. K. Choudhury, ADV (Power), Shri R. P. Mahapatra, the authorized representative of M/s. NBVL, Shri R. K. Sharma on behalf of M/s. JSL, Jajpur, Shri M. V. Rao, on behalf of M/s. FACOR, Randia, Shri Harish Mohanty, on behalf of M/s. Deepak Steel and Power Ltd., Shri N. Das, Advocate on behalf of M/s. Ballarpur Industries Ltd., Shri R.K. Mohanty, DGM, M/s. PPL, Paradeep, Shri D.K. Mangaraj, DGM, M/s. RSP, SAIL, Rourkela, Shri A. S. Thakur, DGM (E&I), M/s. Viraj Steel Ltd., S. K. Chand, AGM (CA), M/s. SSL, Shri P. K. Mohanty, President, M/s. CCPPO, Shri M. K. Rajguru, Advocate, M/s. NALCO, Shri S. Kumar, Manager, Liaison, Shri M. K. Mishra, Advocate, M/s. Bhushan Power & Steel Ltd., Shri Umakanta Sahoo, GM (GO), SLDC, Shri Debapratim Bhadra, M/s. ACC Cement Ltd., Baragarh, Shri P. K. Tripathy, Sr. GM, M/s. Action Ispat & Power (P) Ltd., Shri Dharmendra Kumar Ghosh, AVP (EoI), M/s. MSP Metaliks Ltd., Shri A. K. Kar, Liaison Officer, M/s. Pattnaik Steel and Alloys Ltd., Ms. Niharika Pattnaik, ALO, DoE, GoO, Shri L.R. Dash, GM, GRIDCO Ltd., Shri M. K. Singh, Sr. GM (AT&C), CESU, Shri J. Mishra, DGM, Legal, M/s. IMFA, Shri P. S. Samantara, Asst. Manager, IMFA, Shri Matrugupta Mishra, Advocate on behalf of M/s. JSPL.

Nobody is present on behalf of the Chief Engineer (Project)-cum-Chief Electrical Inspector (Generation), M/s. Green Energy Development Corporation of Odisha Ltd., NESCO Utility, WESCO Utility, SOUTHCO Utility, M/s. Aarti Steel Ltd., M/s. Aryan Ispat & Power Pvt. Ltd., M/s. Bhaskar Steel & Ferro Alloy Ltd., M/s.

Bhushan Steel & Strips Ltd., M/s Bindal Sponge Ltd., M/s Birla Tyres, M/s. Yazadani Steel & Power Ltd., M/s. Eastern Steel & Power Ltd., M/s. IFFCO, Paradeep, M/s. J. K. Paper, M/s. IDCOL, Kalinga Iron Works Ltd., M/s. Maheswari Ispat Ltd., M/s. Maithan Ispat Ltd., M/s. Narbheram Power & Steel Pvt. Ltd., M/s. Nilanchal Ispat Nigam Ltd., M/s. Orissa Sponge Iron Ltd., M/s. Orissa Iron & Steel Ltd., M/s. Rana Sponge Ltd., M/s. Rathi Steel & Power Ltd., M/s. Scan Steel Ltd., M/s. Shri Mahavir Ferro Alloys Pvt. Ltd., M/s. Shyam Metaliks & Energy Ltd., M/s. SMC Power Generation Pvt. Ltd., M/s. Shree Ganesh Metaliks Ltd.

Order

Date of hearing: 05.05.2015

Date of order: 07.08.2015

The petitioner M/s. OREDA, Bhubaneswar has filed this petition under Section 142 of the Electricity Act, 2003 for non-compliance of the order dated 30.09.2010 of the Commission passed in Suo Motu proceeding in Case No.59 of 2010 regarding OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 framed under Sections 61, 66, 86(1)(e) and 181 of the said Act by the Obligated Entities and Co-generating Captive Power Plants of Odisha.

2. The case was taken up for hearing on question of admission as well as on merit on 05.05.2015. After hearing the parties, the Commission has concluded the hearing with the direction to all the parties to submit their written note of submission, if any, within seven (7) days. During pendency of the matter before the OERC, some of the parties have submitted applications seeking more time for filing their written submission and also one M/s. Green Energy Association, Mumbai, a registered association of Solar Power Developers & owners under REC Mechanism in India has also filed an application seeking intervention in the above proceeding. As the said application of M/s. Green Energy Association has been filed on the date of hearing of the above case, the application for intervener is not considered. Their concerns through submissions noted in the application is taken into consideration by the Commission along with all the written submissions filed by the parties in the above matter for passing the final order.
3. M/s. OREDA, the petitioner, submitted that procedural actions as required under OERC (RCPO) Regulations, 2010 has already been taken. After obtaining a list of Obligated Entities from GRIDCO, OPTCL & EIC (Electricity), it has taken all steps to verify the RPO compliance by the obligated entities. The status report submitted is as follows:

Financial Year	Total No of Obligated entities for the year	Status of Compliance		
		No of fully compliant entities	No of partly compliant entities	No of non-compliant entities
2011-12	50	NIL	14	36
2012-13	50	NIL	17	33
2013-14	50	NIL	15	35

It is submitted by OREDA that the obligated entities have not made necessary efforts to fulfil the RPO obligations in spite of availability of adequate RECs in the market. OREDA apprehends that the stay order by the Hon'ble High Court in writ petition bearing W.P.(C) No. 5243 of 2012 filed by M/s. Hindalco Industries Ltd. has offered an opportunity to the obligated entities to think in similar lines and dodge the regulatory provisions. The decisions of the Hon'ble ATE passed in Appeal Nos. 54 & 59 of 2012 has also contributed to the inactions of the obligated entities to fulfil RPO obligations stating that the same is generally applicable to them, as per the said orders.

OREDA pleaded for action against the defaulting entities as per the OERC (RCPO) Regulations, 2010 under Section 142 of the Electricity Act, 2003. Further, it requested the Commission to appoint Compliance Auditors at the earliest as per Regulation 8 of the OERC (RCPO & its compliance) Regulations, 2010.

On promotional front, OREDA submitted that they have taken adequate actions through mass-communication, meetings and direct correspondences for wide circulation of contents, in addition to submitting the quarterly and annual reports to the Commission.

4. GRIDCO Ltd. submitted that they have taken adequate steps to promote renewable energy generation in the State and tied up with promoters for 43 MW Solar generations inside the State and 40 MW from SECI. They are hopeful of meeting of RPO commitments during 2015-16 and sought for carrying forward the shortfall in obligations in the past to the coming years to fulfil the said backlog obligations.
5. M/s. GEDCOL, SLDC, CESU, SOUTHCO Utility, WESCO Utility and NESCO Utility have submitted that the Commission's direction in this regard shall be acceptable to them.
6. M/s. Arati Steel Ltd., M/s. Bhusan Power & Steel Ltd., M/s. IFFCO, M/s. JK Paper, M/s. Jindal Steel & Power, M/s. Pattnaik Steels & Alloys, M/s. Vedanta Ltd., M/s. Sesa Sterlite Ltd., M/s. Viraj Steel & Energy, M/s. MSP Metaliks, M/s. Dipak Steel, M/s. Shyam Metaliks, M/s. Nerbheram Power & Steel, M/s. Maithan Ispat and M/s. OCL Iron & Steel submitted that the judgement of Hon'ble ATE passed in this regard

in Appeal No.57/2009 and others are applicable to them, the said Judgement being generic in nature and they should not be covered under RCPO Regulations.

7. M/s. ACC Cement submitted that they have complied with the provisions of the said Regulations of OERC upto the FY 2014-15. M/s. Adhunik Metaliks Ltd., M/s. Tata Sponge Iron Ltd. and M/s. Visa Steel and M/s. Bhusan Power & Steel submitted that the Judgements of the Hon'ble ATE in this regard and the stay granted by the Hon'ble High Court of Orissa in W.P.(C) No.5243 of 2012 are also applicable to them and accordingly they are not covered by the said Regulations of the OERC.
8. M/s. Bilt, Sewa Paper, Ballarpur submitted that their unit has just recently been revived after the order of the BIFR and sought for some more time for compliance of the said Regulations. M/s. FACOR and M/s. Jindal Stainless Ltd. submitted that they have complied with the obligations since 2010.
9. M/s. IMFA, on the other hand, challenged the application of the Regulations on the generators stating that as per the Electricity Act, 2003 the generation is a de-licensed activity and should not be regulated by the Commission. M/s. IDCOL Kalinga Iron Works Ltd. sought for exemption of its Unit from the obligation as they are a Co-generation plant. Appearing on behalf M/s. Nava Bharat Ventures Ltd. and M/s. OCL Cement Ltd. Shri R. P. Mahapatra, their authorized representative, submitted that an appropriate notice for non-compliance of RPO obligation should have preceded also pointed out that filing a petition by OREDA under Section 142 of the Electricity Act, 2003. He also pointed out that net generation excluding auxiliary consumption needs to count towards obligations and sought for one time settlement of the obligations due to reasons not attributed to the entities for their fault (non-availability of solar RECs in the market or adequate power in the market) and also proposed for appointment of Compliance Auditors and creation of funds as mandated in the Regulation. He informed the Commission regarding compliance of obligations by M/s. NBVL upto 2014-15 save some shortfall in solar. M/s. Paradeep Phosphates Ltd. informed that their plant is a Co-generation plant based on non-fossil sources utilizing the heat generated from exothermic reaction of the sulphuric Acid plant and sought for exemption from the obligations. M/s. RSP prayed for carrying forward/waival of its obligation and requested the Commission to treat them in the light of the Judgments of the Hon'ble ATE. M/s. SMC Power also sought the similar reliefs.
10. M/s. Green Energy Association submitted that imposition of RPO should not be relaxed in any manner for any of the obligated entities. It has submitted that the provision in the Regulation like power to relax and power to remove difficulties

should be exercised judiciously only on exceptional circumstances as per the law and should not be used routinely which would otherwise defeat the object and purpose of the Regulation. Non-availability of REC should be a pre-condition to carry forward the RPO under Regulation 9 of the OERC (Renewable Purchase Obligation and its compliance) Regulations, 2010. They further submitted that Article 51A(g) of the Constitution of India cast a fundamental duty on the citizen to protect and improve the natural environment. Considering the imminent threat of global warming and mandate of Articles 21 and 51A(g) of the Constitution of India the Government of India has enacted Electricity Act, 2003 and has also framed the National Electricity Policy, 2005 and the Tariff Policy of 2006 in the larger public interest. They requested the Commission not to consider fossil fuel based Co-generation plant under the category of renewable energy. They urged the Commission to consider non-fossil fuel based topping up cycle Co-gen plants under renewable energy category. Only non-fossil fuel based Co-generation plant using topping up cycle mode of Co-generation may be considered under renewable energy.

11. M/s. Scan Steel, M/s. Shree Mahaveer, M/s. Sri Ganesh, M/s. Bindal Sponge, M/s. Birla Tyres, M/s. Jindal Strips, M/s. Neelanchal Ispat, M/s. Bhaskar Steel and Ferro Alloys Ltd., M/s. Rana Sponge Ltd., M/s. Rathi Steel and Power, M/s. Yazdani Steel and Power and M/s. Maheswari Ispat Ltd. have neither given any counter nor were present during the hearing.
12. Heard parties at length. All the written submissions were taken on record.
13. It is observed that only few entities like M/s. ACC Cement and M/s. FACOR admitted to have complied with the obligations and have submitted reports to appropriate authorities. M/s. NBVL has stated to have complied partially. These statements have not been rebutted by M/s. OREDA. Other obligated entities in the State defined by RCPO Regulations, 2010 are not complying taking the plea of stay granted by the Hon'ble High Court of Orissa in W.P.(C) No.5243 of 2012 (in case of M/s. Hindalco Industries Ltd. Vrs. OERC and others), W.P.(C) No.5515 of 2013 (M/s. Vedanta Aluminium Ltd. & others Vrs. OERC & others) etc. and the Judgements of the Hon'ble ATE in Appeal Nos.57 of 2009, 54 of 2012.
14. In order to be relieved from the RPO obligations some of the obligated entities filed writ petitions before the Hon'ble High Court of Orissa vide W.P.(C) No.5243 of 2012 (M/s. Hindalco Industries Ltd. Vrs. OERC & Ors.), W.P.(C) No.5515 of 2013 (M/s. Vedanta Aluminium Ltd. Vrs. OERC & Ors.) and W.P.(C) No.3824 of 2015 (M/s. IMFA Vrs. OERC & Ors.) on the ground that Section 61, Section 86 (1)(e) and

Section 181 and other enabling provisions of the Electricity Act, 2003 read with various constitutional provisions do not empower the State Electricity Regulatory Commission to make purchase of renewable energy obligatory on the part of Captive Generators. The jurisdiction of the Commission is limited to the DISCOMs only. The Petitioners in the above writ petitions have submitted before the Hon'ble Court that area of supply does not cover the captive generators, captive co-generators and open access consumers. The Interim stay has been granted by the Hon'ble High Court of Orissa in all the above cases.

15. The issues related to non-compliance of RPO which arises here are as follows:
- (i) Framing of the Regulations is beyond the jurisdiction of the Commission
 - (ii) It interferes with the installation and operation of the captive generating plants and therefore restrictive and in violation of the Electricity Act, 2003.
 - (iii) The Commission does not have jurisdiction beyond distribution licensees
 - (iv) Captive generators or captive Co-generators are not covered under the Regulations as per decision of the Hon'ble ATE in case of M/s.Century Rayon and others.

We answer the above issues as follows:

16. The controversy with regard to all the four issues mentioned above have been set at rest by the order of the Apex Court in C.A. No. 4417/2015 (M/s. Hindustan Zinc Limited Vrs. RERC). The Hon'ble Apex Court has upheld the jurisdiction of the Commission to frame Regulation with regard to Renewable Purchase Obligation of Captive Generating Plants and others and has also given definite finding that the industries having CGP and Open Access consumers are to be treated as obligated entities. The decision of the Hon'ble ATE in Century Rayon case does not survive in view of the order of Hon'ble Apex Court which supersedes all other decisions on this matter.
17. Thus all the four issues mentioned in Para-15 and agitated by various parties as mentioned earlier have been decided against the parties claiming exemption from Renewable Purchase Obligation on different grounds. Regarding stay granted by Hon'ble High Court of Orissa in cases of M/s.Hindalco Industries Limited, M/s.Vedanta Alluminium Limited and M/s.IMFA Limited, necessary steps have already been taken by this Commission to vacate the stay. In any case these orders are applicable to those cases only and not generic in nature.

18. The Hon'ble Supreme Court of India in Civil Appeal No.4417 of 2015 arising out of S.L.P.(C) No.34063 of 2012 (M/s. Hindustan Zinc Ltd. Vrs. RERC) has concluded that framing of Regulation to fulfil the mandate given under Section 86 (1) (e) of the Act, 2003 is valid and legal keeping in view the National Electricity Policy, 2005 and the Tariff Policy, 2006 which are framed by the Union of India. Therefore, the jurisdiction of framing regulation for Renewable Purchase Obligation by the State Commission is well settled and accepted by the Hon'ble Apex Court.
19. Now, the matter is therefore beyond doubt that the reliance placed by the various respondents on the Judgments of the Hon'ble ATE in different appeals to relieve them from RPO Obligations is misplaced and has no relevance in view of orders of the Judgment dated 13th May, 2015 of the Hon'ble Supreme Court of India passed in Civil Appeal No.4417 of 2015.
20. In view of the above we are not inclined to accept the contention raised by various obligated entities regarding non fulfilment of RPO. All the arguments advanced by these parties are untenable in view of the decision of the Supreme Court.
21. The Commission however takes note of legal uncertainties prevailing on those issues prior to the decision of Hon'ble Apex Court. Hon'ble ATE has passed various orders on RPO Regulation of this Commission and others which are substantially different. The stay granted by Hon'ble High Court of Orissa in case of M/s. Hindalco Industries Limited, M/s. Vedanta Aluminium Limited and M/s. IMFA Limited also contributed to the general non-compliance as many obligated entities are under the bonafide belief that the stay order is generic and applicable to them. Various orders of the Hon'ble ATE and restraining orders of Hon'ble High Court of Orissa in some cases created a confusion regarding fulfilment of co-generation obligation by co-generation from conventional sources.
22. Taking all the factors into accounts the Commission gives the following directions:-
 - a. The reasons advanced by parties for non-fulfilment of RPO obligation are unjustified and Commission is not inclined to grant any exception on this matter.
 - b. The obligated entities are allowed to carry over their renewable and co-generation purchase obligation upto 31.03.2015 till 31.08.2016. If they do not purchase the obligated quantity of power they can purchase REC at least 5% per month of the obligation upto 31.03.2015 from August, 2015 onwards and

must comply the arrear obligation in full by 31.08.2016. No further extension of time shall be granted to carry forward the renewable purchase obligation in any circumstance.

- c. All the obligated entities shall submit compliance report quarterly to OREDA within the above time frame. OREDA shall also submit the quarterly compliance report to the Commission after due scrutiny.
 - d. All obligated entities mentioned in the RCPO Regulations, 2010 shall comply with the said Regulations henceforth.
23. This order supersedes all other previous orders issued by the Commission in this regard.
24. Accordingly, the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson