

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 83 of 2007**

In the matter of  
**Petition filed by M/s. Captive Power Producers Association (CPPA) seeking  
clarification arising out of the Commission's RPS Order dated August 16, 2006 in  
Case No. 6 of 2006.**

**Shri A. Velayutham, Member  
Shri S. B. Kulkarni, Member**

**ORDER**

**Dated: November 17, 2008**

M/s. Captive Power Producers Association (CPPA) submitted a Petition under affidavit before the Commission on January 21, 2008 seeking clarification arising out of the Commission's Order dated August 16, 2006 in the matter of Long-term Development of Renewable Energy Sources and associated Regulatory Framework (RPS Order) (Case No. 6 of 2006). It has been submitted inter-alia that the members of CPPA are aggravated due to the notice received from the Maharashtra Energy Development Agency (MEDA) dated September 14, 2007, seeking implementation of the Commission's aforesaid Order to Captive Power Plants (CPPs) connected with the grid for different purposes, whereas other CPPs not connected with grid are exempted even if they have been set up in the area of supply of the distribution licensee.

2. CPPA, in its Petition, prayed as under:

1. *“With this Affidavit, CPPA wants to bring to the notice of Commission that grid connected CPs / OA may be exempted from mandate of RPS.*

*Or*

2. *Clarification is necessary whether all grid connected / not connected CPs are covered under RPS policy*

*Or*

3. *Whether all grid connected CPs including **Open Access user** for wheeling the power for CP / OA use at different destination through Distribution licensee's grid may be exempted from mandate of RPS.*

4. *Clarification regarding applicability of **OA charges for wind power transaction for Self use / TP sale Gr. II projects** w.r.t. present wind power tariff order dated 24.11.2003 (i.e. 2% WI + 5% Tr. loss) and not any other Open access charges as*



*per MSEDCL's MYT to workout sale price of wind energy third party sale for RPS purpose."*

3. CPPA, in its Petition, submitted as under:
- a) Members of CPPA have set up captive power plants for self consumption at different locations in the State of Maharashtra. Fuel used in these plants comprises of heavy furnace oil, naphtha, LSHS and in some cases LDO/HSD. These plants are single location plants and are connected with the grid for different purposes.
  - b) The Commission's RPS Order dated August 16, 2006 has made it mandatory for licensees and Captive Power/Open Access (CP/OA) users to purchase the prescribed percentage of Renewable Energy (RE) of their annual consumption under Open Access regime.
  - c) Members of CPPA have received a letter dated September 14, 2007 from MEDA informing that the Commission's RPS Order is applicable to Open access (OA) users and Captive consumers. Further, MEDA has clarified that only grid synchronised captive consumers would be covered under the provisions of RPS Order, whereas independent CPPs not connected with the grid are exempted from the RPS Order.
  - d) Members of CPPA are aggrieved due to the Commission's RPS Order and notice received from MEDA stating that mandatory purchase of RE power is applicable 'in the area of supply' of distribution licensees.
  - e) Boundary of respective licensee's area of supply is up to licensee's point of supply, i.e., distribution licensee's export-import metering point. Captive consumption of electrical energy by CPP is outside the licensee's own independent meter. However, in many cases, CPPs are connected with the grid through licensee's metering point for the convenience of both, the distribution licensee and CPP. As such, the CPP's energy consumption is outside the area of grid.
  - f) CPPs installed inside the premises of self-use plants are connected to the licensee's grid, only for the purpose of energy banking but not wheeling to different destinations through the grid (i.e., no PPA/EWA with licensee). Further, CPPs provide standby to licensee's power supply and may be temporarily connected to the grid for load shifting purpose without interruption during grid outage. CPPs are generating power during load shedding or shortage of grid power.
  - g) CPPs are working independently without connection with grid inside the factory premises where licensee's grid power is insufficient (inside the political map of licensee's area of supply).
  - h) CPPs are connected with the grid and are working in parallel with grid power to share industrial energy consumption, i.e., not for wheeling CPP's energy through the distribution licensee's system, but drawing the power when requirement exceeds CPP capacity. CPPs are also exporting surplus energy to grid.
  - i) Due to shortage of grid power, CPPs are generating energy, though it is costlier. Under these circumstances, supply of RE power to the grid is essential for grid



stability. As such, to encourage RE generation, it is more appropriate to inject additional RE power to the licensee's grid. Hence, the Commission's mandate of RPS obligation is more appropriate for the distribution licensee, instead of individual grid connected/unconnected CPPs. If the RPS mandate is made applicable to grid connected CPPs/OA users, grid stability would be weakened at the cost of promoting grid connected RE because they would have to draw more grid power by reducing their captive generation, to adjust/offset RE purchase.

4. CPPA, in its Petition, sought the Commission's clarification in respect of the following points to ensure proper implementation of RPS Order:

- Issue No. 1: As per the Commission's RPS Order dated August 16, 2006, whether RPS obligation is applicable to OA and CP users connected to Intra-State Transmission System (InSTS) grid at EHV level, whose net drawal of energy from distribution licensee's grid is zero, like CPPs not connected with the grid?
- Issue No. 2: During FY 2007-08, estimated energy consumption of licensees and CP/OA users in the State is around 100000 MU and estimated availability of RE (wind energy) would be 2000 MU, i.e., 2% against RPS obligation of 4%, which shows that there is an acute shortage of RE and achievement of RPS obligation during FY 2007-08 seems impossible (availability of RE other than wind energy is negligible).
- Issue No. 3: Energy transaction modality under MERC (Transmission Open Access) Regulations, 2005 and MERC (Distribution Open Access) Regulations, 2005 for both, conventional and RE, is yet to be decided/clarified either by licensees or MEDA w.r.t. respective RE Orders and MYT Orders of the licensees. In the absence of clarity on this modality, RE sellers and CP/OA purchasers are unable to decide the purchase rate for RE power.
- Issue No. 4: Due to load shedding carried out by MSEDCL, major generation of electricity from standby gensets is exempted from RPS, however, CP/OA users have been brought under RPS obligation. This discrimination is unjust to CP/OA user.
- Issue No. 5: With reference to MEDA's letter dated September 14, 2007, it is ambiguous whether RPS is applicable to OA/Captive consumer, including grid synchronized captive consumers.
- Issue No. 6: Due to additional open access charges, per unit cost of OA/CP users for RPS purpose would be greater than RE purchase cost to distribution licensee, though RE sale rate might be same. The same would result in additional burden on small OA/CP operating on fossil liquid fuel as compared to the consumers of the distribution licensee.
- Issue No. 7: In the process of RE power transaction, licensee's role at both metering ends (injection and drawal) is important. Energy consumption by CPP is not recorded in licensee's energy meter, and hence, it is incorrect to avail adjustment/setoff of RE quantum on CPPs energy meter, which is not under licensee's control.



- Issue No. 8: Due to RE shortage, MSEDCL is insisting that sale of grid connected RE to any third party other than licensee requires a licence and none of the RE generators have licence for sale of power. MSEDCL is thereby compelling RE owner to sell their power to MSEDCL at very low rate.
- Issue No. 9: In the regulatory process of RPO/RPS implementation, no CPPA was invited for discussion/participation in the regulatory process.

5. The Commission, vide its Notice dated February 22, 2008, scheduled the hearing in the matter on April 15, 2008, and directed CPPA to serve a copy of its Petition along with its accompaniments to MEDA, MSEDCL and the four authorised Consumer Representatives.

6. Subsequently, MSEDCL vide its affidavit dated March 17, 2008, responded to various issues raised by CPPA in its Petition and specifically commented on the Issue No. 3 raised by CPPA in its Petition and submitted that in view of the Commission's Order dated November 20, 2007 in the matter of Petition filed by MSEDCL seeking directives in respect of issues connected with procurement of wind energy from Group-II Category wind energy projects post the expiry of eight years from the date of commissioning of the said projects (Case No. 33 of 2007), MSEDCL vide its office letter dated December 7, 2007 has directed its field offices to issue credit notes as per the offer given by MSEDCL to wind developers who wish to sell energy to open access consumers apart from MSEDCL or any distribution licensee, post the termination of stipulated eight-year period under Group-II Category. MSEDCL further submitted that the Commission's Order dated November 20, 2007 also stipulates the transmission charges, transmission loss, wheeling charges and wheeling loss applicable for sale of energy to open access consumer apart from MSEDCL or any other distribution licensee.

7. MSEDCL, under its affidavit, prayed that, "*The Hon'ble Commission may clarify the issues raised in the matter pertaining to applicability Renewable Purchase Association (RPS) Order dated 16.8.2006 to OA and CP users and pass the order which it may deem fit.*"

8. At the hearing held in the matter on April 15, 2008, Shri S.P. Shinde, representative for CPPA submitted that the Commission's RPS Order dated August 16, 2006, is not applicable for captive users but applicable for captive consumers. Referring to the RPS Order, Shri S.P. Shinde submitted that Paragraph No. 2.6.9 of the RPS Order clarifies that RPS obligation shall be applicable on the gross energy units handled by the distribution licensees for supplying power to the retail consumers, excluding any inter-se sale of electricity amongst the licensees. Further, Paragraph No. 2.6.11 clarifies that RPS obligations are on the distribution licensee, and it implies that the same is not an obligation on captive users.

9. Examining the definition of the term "consumer" under Section 2(15) of the Electricity Act, 2003 (EA 2003), Shri S.P. Shinde submitted that the constituents of CPPA are captive users and not captive consumers. A captive consumer is a consumer, who receives captive energy through the grid. It was submitted that all standby users are



basically consumers of the distribution licensee and do not receive captive energy from the grid. Thus, they should be placed under the RPS regime. It was submitted that the RPS Order is very clear on its applicability for open access users and captive consumers. Captive consumers cannot consume electricity without open access. It was further submitted that however, the RPS Order has not expressly clarified as to whether captive users are liable to comply with RPS.

10. On an enquiry made by the Commission, Shri S.P. Shinde submitted that every captive user constituent of CPPA is connected with the grid as they were initially consumers of the distribution licensee. These captive users have standby DG sets, which are run independently or through synchronization. Energy meters that are used for measuring the energy consumed are not the ones provided by the licensee but are separate meters, which are maintained, controlled and operated by the captive users. These meters are not connected with the grid. Thus, CPP users are consumers of captive energy without being consumers of the distribution licensee. It was reiterated that only synchronized captive consumers come under the purview of the RPS Order and standby generators are excluded.

11. Shri Wangikar, SE, and Shri S.G. Bharati, EE, represented MSEDCL. Smt. Deepa Chawan, Advocate, also represented MSEDCL. MSEDCL submitted that Section 86(1)(e) of EA 2003 mandates the promotion of both co-generation and generation through RE sources. It was submitted that MSEDCL should not be directed to comply with RPS based on co-generation consumption. Further, keeping in view the power position in Maharashtra, captive users should be required to purchase RPS. Shri S.P. Shinde submitted that since co-generation captive users are consuming electricity from co-generation plant, the same renders them already at par with RPS, and therefore, the RPS Order should not be made applicable on captive users.

12. The Commission enquired of CPPA as to under what provision in the RPS Order, captive users whose meters are not synchronized with the grid may be exempted from complying with RPS obligation. CPPA referred to an e-mail dated June 3, 2007 received from Shri Niraj Kumar, Consultant of MEDA and clarified that the RPS Order is applicable to only grid synchronized captive consumers. A representative from M/s Jindal Polyfilms Ltd. (JPL), Nasik, also referred to the said e-mail dated June 3, 2007 and submitted that when a captive user is synchronized as captive consumer and is not exporting power but using the transmission lines of MSEDCL, such captive users would fall under the RPS Order.

13. Subsequently, CPPA vide its letter dated April 17, 2008, pointed out that MEDA is not in a position to clear the issue of “eligible person” for RPS, though their Consultant has already clarified that the captive consumer would be categorized under Eligible Person only when its captive plant/station is grid synchronized and submitted e-mail correspondence held between (a) JPL, a member of CPPA, (b) GM, MEDA and (c) Shri Niraj Kumar, Consultant to MEDA, in support of CPPA’s argument. Further, CPPA submitted as under:



- a) With reference to Paragraph Nos. 2.6.8; 2.6.9 and 2.6.11 of the RPS Order dated August 16, 2006, the Eligible Person is only licensee, OA consumer and Captive consumer (grid synchronized captive consumer as informed by MEDA vide their letter dated September 14, 2007) and not all captive users.
- b) OA user/captive consumer of licensee who receives energy from any conventional generating source through licensee's grid would come under RPS obligation.
- c) CPPA's members are captive users and not 'Open Access users' or 'Captive consumer'.
- d) Section 2(15) of EA 2003 has specified the definition of consumer as, "*any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force...*"
- e) Definitions of HT/LT consumer as referred under MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 are:  
 "2 (k) "**HT Consumer**" means a consumer who obtains supply at HT;  
 2 (o) "**LT Consumer**" means a consumer who obtains supply at LT;"
- f) Definition of 'Captive User' as specified under Clause 2(b) of IE Rules 2005, amendment dated October 26, 2006, is "*'Captive user' shall mean the end user of electricity generated in a captive generating plant and the term captive use shall be construed accordingly.*"

14. CPPA further submitted that in the meeting held in the matter on March 25, 2008, the Director General, MEDA advised CPPA to obtain necessary clarification from the Commission regarding "eligible person" for RPS obligation and sought confirmation from the Commission that only OA users and Captive consumers drawing captive energy through licensee's grid are eligible person for RPS and not other captive users, whether synchronized or non-synchronized with the grid.

15. MEDA, vide its letter dated May 6, 2008, referred to the e-mail forwarded to JPL by their Consultant Shri Niraj Kumar, and clarified as under:

- a) JPL, in its e-mail dated June 3, 2007, sought clarification about the eligible person without giving full details, and enquired whether they would come under the category of "eligible person".
- b) In response to JPL's e-mail, the consultant Niraj Kumar vide its e-mail dated June 3, 2007 has replied that, "*It is reiterated that a captive consumer (meaning as per the Electricity Rules, 2005) shall come under the group of Eligible Persons only when its captive plant/station is Grid Synchronized i.e., the electricity for captive use is transmitted through the transmission/distribution licensee system,*". Shri Niraj Kumar further added that JPL may check their captive plant and drawal arrangements.
- c) The Consultant's e-mail is self explanatory and it had not confirmed that JPL did not fall into the category of eligible persons. It was the statement applicable to any captive user who falls in category of "eligible persons".



16. Having heard the Parties and after considering the material placed on record, the Commission hereby rules as under:

17. The Petitioner has sought to ask whether renewable purchase obligation as outlined under its RPS Order (Case No. 6 of 2006) dated August 16, 2006 is applicable for entities meeting their energy requirement by way of captive generation or not? If yes, is there any specific dispensation for grid connected captive sources vis-à-vis captive sources not connected to the grid? The Commission needs to point out that in terms of the mandate under Section 86(1)(e) of the Electricity Act 2003, the RPS Order (Case No. 6 of 2006) has been formulated by the Commission. The Commission has specifically dealt with the issues as raised herein under its RPS Order (Case No. 6 of 2006) at Clause 2.8 while ruling in the matter of 'Entities to be covered under RPS' (Ref. Cl. 2.8.7 to 2.8.12) and under Clause 3.1.2, while elaborating on the mechanism for operationalising renewable purchase obligations for 'Eligible Persons' including captive users and open access users. The relevant extracts of the Commission's RPS Order are reproduced below:

*"2.8.9 .....As Section 86(1)(e) of EA 2003 provides that such percentage should be applicable on the 'consumption' within area of distribution licensee, the intention is clearly to apply such percentage on entire consumption in the area of distribution licensee irrespective of who is supplying such energy.*

*2.8.10 Besides, if RPS is levied only on distribution licensees by exempting open access users from applicability of RPS then it will not be fair to those consumers of the distribution licensees who have not availed open access, as the cost of renewable energy procurement would be borne by only those consumers who do not have choice of supply. The Commission is of the view that while it is clear that renewable energy generation within the State needs to be promoted, it is equally important that the costs and benefits of such harnessing are equitably distributed amongst all consumers.*

*2.8.11 Therefore, it would only be appropriate that OA and Captive consumers are also subjected to RPS regime. The Commission hereby rules that the minimum percentage as proposed under clause 2.6.8 shall be applicable to all existing and future distribution Licensees in Maharashtra as well as to open access users and captive consumers. However, it is recognised that an elaborate energy accounting, reconciliation and billing mechanism will have to be put in place to implement such RPS to OA/Captive consumers. The 'RPS Operating Mechanism' as discussed under subsequent paragraph intends to address this implementation concern." (emphasis added)*

18. Further under the said Order, the Commission has also elaborated on the quantum of 'consumption' on which such percentage obligation for renewable energy procurement shall be applicable in respect of each 'Eligible Person', as reproduced below:



*“3.1.2 For the purpose of this RPS framework, for every Distribution Licensee, total consumption in its area of supply would mean energy purchased by the distribution licensee from all sources for the purpose of supply within its area of supply including quantum of energy supplied to open access and captive consumers by the licensee. Similarly, for every OA and Captive consumer, above RPS percentage specification shall be applicable on that part of the consumption which has been generated through its own captive plant or contracted with another supplier. This percentage will not be applicable to the quantum of power supplied by the distribution licensee.” (emphasis added).*

19. Thus, the Commission has not exempted any ‘Person’ from applicability of renewable purchase obligation, on the ground that such person is meeting its consumption (or energy requirement) by way of captive generating source whether grid connected captive source or not-grid connected captive source. The Commission has also not made any distinction in terms of the capacity of the captive installation.

20. In view of the above, the Commission does not agree with the submission made by Shri S.P. Shinde, representative for CPPA that the RPS Order dated August 16, 2006, is not applicable for captive users but applicable for captive consumers. The Commission also does not agree with the contention that Paragraph No. 2.6.11 of the said Order clarifies that RPS obligations are on the distribution licensee, or that it implies that the same is not an obligation on captive users. The Commission rejects the claim that the RPS Order has not expressly clarified as to whether captive users are liable to comply with RPS obligations or that only synchronized captive consumers come under the purview of the RPS Order and standby generators are excluded. The Commission is of the finding that the present petition although has been filed to seek clarifications, in effect, raises several contentions that appear to be to seek a review in disguise without making any grounds for review. The Petition cannot be allowed because it does not fit within the tests of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, and therefore is not maintainable. No error in the RPS Order has been pointed out, nor any matter or evidence been shown to exist which could not have been submitted or shown to the Commission at the time of passage of the RPS Order. In fact, no such contentions have been taken at all. In effect, the Petitioner seeks that the Commission should modify its RPS Order but under the pretence of seeking clarifications. This is not permissible under law. Also, the Commission due to the above reasons cannot take cognizance of the e-mail dated June 3, 2007 received from Shri Niraj Kumar, Consultant of MEDA as referred to by CPPA which clarified that the RPS Order is applicable to only grid synchronized captive consumers.

21. As regards applicability of open access charges for wind energy wheeling is concerned, the Commission has already addressed this issue under para 26 to para 33 of its Order dated November 20, 2007 in the matter of Case No. 33 of 2007; which holds in the present matter as well.



Accordingly, CPPA's Petition in Case No. 83 of 2007 stands disposed of.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member



(Prafulla S. Varhade)  
Secretary, MERC