

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

O.P. No. 1 of 2013 & IA No. 291 & IA No. 420 of 2013,
O.P. No. 2 of 2013 & O.P. No. 4 of 2013

Dated: 20th April, 2015

Present:

HON'BLE MRS. JUSTICE RANJANA P. DESAI, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER
HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

O.P. No. 1 of 2013

In the Matter of:

- 1. Indian Wind Energy Association**
PHD House, 3rd Floor
Opposite Asian Games Village
August Kranti Marg
New Delhi - 110016

- 2. Indian Wind Turbine Manufacturers Association**
Suite No. A2, OPG Towers, 74 (Old No. 133)
Santhome High Road
Chennai - 600 004

..... Petitioners

Versus

- 1. Andhra Pradesh Electricity Regulatory Commission**
4th & 5th Floors, 11-4-660, Singareni Bhavan
Red Hills, Hyderabad - 500004

- 2. Arunachal Pradesh Electricity Regulatory Commission**
A.P. Electrical Circle-I
Office Complex
A-Sector, Opposite Industrial Area
Naharlagun,

Arunachal Pradesh - 791 110

3. **Assam Electricity Regulatory Commission**

ASEB Campus, Dwarandhar
G.S. Road, Sixth Mile
Guwahati - 781 022

4. **Bihar Electricity Regulatory Commission**

Ground Floor, Vidyut Bhawan-II
BSEB Campus,
Jawahar Lal Nehru Marg (Bailey Road)
Patna - 800021

5. **Chhatisgarh State Electricity Regulatory Commission**

Irrigation Colony, Shanti Nagar
Raipur - 492 001 (Chhatisgarh)

6. **Delhi Electricity Regulatory Commission**

Viniyamak Bhawan, C-Block
Shivalik, Malviya Nagar
New Delhi - 110 017

7. **Gujarat Electricity Regulatory Commission**

1st Floor, Neptune Tower
Opposite Nehru Bridge,
Ashram Road, Ahmedabad - 380 006

8. **Haryana Electricity Regulatory Commission**

Bays 33-36, Sector 4,
Panchkula-134112. Haryana

9. **Himachal Pradesh Regulatory Commission**

Keonthal Commercial Complex
Khalini Shimla - 171 002

10. **Joint Electricity Regulatory Commission**

(Goa & Union Territories)
'Vanijya Nikunj', 2nd Floor
Udyog Vihar, Phase V
Gurgaon - 122 016 (Haryana)

- 11. Joint Electricity Regulatory Commission**
(Manipur & Mizoram)
D-31, M.G. Road
Upper Khatla
Aizawl, Mizoram - 796 001
- 12. Jharkhand Electricity Regulatory Commission**
2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar
Main Road - 834 001
- 13. Karnataka Electricity Regulatory Commission**
6th and 7th Floor, Mahalaxmi Chambers
No. 9/2, M. G. Road
Bangalore - 560 001
- 14. Kerala State Electricity Regulatory Commission**
K.P.F.C. Bhavanam, C.V. Raman Pillai Road
Vellayambalam
Thiruvananthapuram - 695 010
- 15. Madhya Pradesh Electricity Regulatory Commission**
5th Floor, Metro Plaza
Arera Colony, Bittan Market
Bhopal - 462 016
- 16. Maharashtra Electricity Regulatory Commission**
World Trade Centre,
Center No. 1, 13th Floor
Cuffe Parade, Colaba
Mumbai - 400005
- 17. Meghalaya Electricity Regulatory Commission**
1st Floor (Front Block Left Wing)
New Administrative Building
Lower Lachumiere, Shillong - 793 001
East Khasi Hills District, Meghalaya
- 18. Nagaland Electricity Regulatory Commission**
Old MLA Hostel Complex
Nagaland, Kohima - 797 001

- 19. Orissa Electricity Regulatory Commission**
Bidyut Niyamak Bhavan
Unit-VIII, Bhubaneswar - 751 012
- 20. Punjab State Electricity Regulatory Commission**
SCO : 220-221, Sector 34-A
Chandigarh, Punjab - 160 022
- 21. Rajasthan Electricity Regulatory Commission**
Vidhyut Viniyamak Bhawan
Sahakar Marg, Near State Motor Garage
Jaipur - 302 001
- 22. Tamil Nadu Electricity Regulatory Commission**
No. 19A, Rukmini Lakshmi Pathy Salai
Egmore, Chennai - 600008
- 23. Tripura Electricity Regulatory Commission**
Vidyut Bhavan, Bhutoria
Banamalipur, Agartala
Tripura (W.) - 799001
- 24. Uttar Pradesh Electricity Regulatory Commission**
II Floor, Kisan Mandi Bhawan
Gomti Nagar, Vibhuti Khand
Lucknow - 226 001
- 25. Uttarakhand Electricity Regulatory Commission**
First Floor, Institution of Engineers (I) Building
Near ISBT, Clementown
Dehradun, Uttarakhand - 248 002
- 26. West Bengal Electricity Regulatory Commission**
Poura Bhavan (3rd Floor)
Block-FD, 415-A, Bidhannagar
Kolkata - 700 106
- 27. Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110 001

28. Forum of Regulators,

Secretariat

C/o Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building

36, Janpath, New Delhi - 110 001

29. Ministry of New and Renewable Energy

Block-14, CGO Complex,

Lodhi Road, New Delhi-110 003, India.

...Respondent(s)

Counsel for the Petitioner(s) :

Mr. Sanjay Sen

Ms. Shikha Ohri

Mr. Hemant Singh

Mr. Anurag Sharma

Mr. Mahesh Vipradas

Counsel for the Respondent(s):

Ms. Suparna Srivastava

Mr. S. R. Pandey

Mr. Buddy A. Ranganadhan

Ms. Riacha Bhardawaja

Mr. Saurabh Mishra

Mr. Anand K. Ganesan

Mr. Pardeep Misra

Mr. Daleep Kumar Dhyani

Mr. Manoj Kr. Sharma

Mr. C. K. Rai

Mr. Rutwik Panda

Ms. Anshu Malik

Mr. Anish Garg

Mr. A. K. Thakur

Mr. Heshu Kaniya

Mr. Satyajit Sarna

Mr. K. V. Balakrishnan

Mr. K. V. Mohan

Mr. Saran

Ms. Swapna Seshadri

Mr. Pratik Dhar

Mr. Shashank Pandit

Mr. P. P. Sharma

Mr. Nitikesh Kumar

Ms. Richa Singh
Ms. Priya Ranjan
Mr. Ramesh Babu
Mr. Ravin Dubey
Ms. Shivani Rana
Mr. Shashank Pandit
Mr. Satyajit Sarna for MNRE
Ms. Renu Gupta and
Ms. S. Gupta for Intervener

O.P. No. 2 of 2013

In the Matter of:

1. **Wind Independent Power Producers Association**
6th Floor, Block 4-A
DLF Corporation Park, DLF City-III
Mehrauli Road, Gurgaon - 122 002 (Haryana)
2. **Vaayu India Power Corporation Private Limited**
Enercon Tower, A-9, Veera Industrial Estate
Veera Desai Road, Andheri (West), Mumbai - 400 053
3. **Mytrah Energy (India) Limited**
8001, 8thFloor, Q-City
Nanakramguda, Gachibowli, Hyderabad - 500032
Andhra Pradesh

..... **Petitioners**

Versus

1. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110 001
2. **Andhra Pradesh Electricity Regulatory Commission**
D.No.11-4-660, 4th & 5th Floors, Singareni Bhavan
Red Hills, Khairatabad, Hyderabad - 500004

- 3. Assam Electricity Regulatory Commission**
Assam Electricity Board Complex, 6 Mile Dwarandar
G.S. Road, Guwahati - 781 022
- 4. Delhi Electricity Regulatory Commission**
Viniyamak Bhawan, C-Block
Shivalik, Near Malviya Nagar
New Delhi - 110 017
- 5. Gujarat Electricity Regulatory Commission**
1st Floor, Neptune Tower
Opposite Nehru Bridge,
Ashram Road, Ahmedabad - 380 009
- 6. Haryana Electricity Regulatory Commission**
Bays No. 33-36, Sector 4,
Panchkula-134112. Haryana
- 7. Himachal Pradesh Regulatory Commission**
Keonthal Commercial Complex
Khalini, Shimla - 171 002
- 8. Jharkhand Electricity Regulatory Commission**
2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar
Main Road, Ranchi - 834 001
- 9. Karnataka Electricity Regulatory Commission**
No. 9/2, Mahalaxmi Chambers , 6th and 7th Floor,
M. G. Road
Bangalore - 560 001
- 10. Kerala State Electricity Regulatory Commission**
K.P.F.C. Bhavanam,
C.V. Raman Pillai Road
Vellayambalam
Thiruvananthapuram - 695 010
- 11. Madhya Pradesh Electricity Regulatory Commission**
Metro Plaza, 3rd & 4th Floor, E-5, Arera Colony,
Bittan Market, Bhopal - 462 016

- 12. Maharashtra Electricity Regulatory Commission**
World Trade Centre,
Center No. 1, 13th Floor
Cuffe Parade, Mumbai - 400005
- 13. Orissa Electricity Regulatory Commission**
Bidyut Niyamak Bhavan
Unit-VIII, Bhubaneswar - 751 012
- 14. Punjab State Electricity Regulatory Commission**
SCO : 220-221, Sector 34-A
Chandigarh, Punjab - 160 022
- 15. Rajasthan Electricity Regulatory Commission**
Shed No. 5, Vidhyut Bhawan, Jyoti Nagar
Jaipur - 302 005
- 16. Tamil Nadu Electricity Regulatory Commission**
19A, Rukmani Lakshmipathy Salai (Marshalls Road)
Egmore, Chennai - 600008
- 17. Uttar Pradesh Electricity Regulatory Commission**
Kisan Mandi Bhawan, 2nd Floor,
Gomti Nagar
Lucknow - 226 001
- 18. Uttarakhand Electricity Regulatory Commission**
First Floor, Institution of Engineers (I) Building
Near ISBT, Clementown
Dehradun, Uttarakhand - 248 002
- 19. West Bengal Electricity Regulatory Commission**
FD, 415-A, Paura Bhavan (3rd Floor)
Sector-III, Bidhannagar
Kolkata - 700 091
- 20. Chhatisgarh State Electricity Regulatory Commission**
Old Chhatisgarh College Compount, Civil Lines
G.E. Road
Raipur - 492 001 (Chhatisgarh)

- 21. Tripura Electricity Regulatory Commission**
Vidyut Bhavan, Bhutoria
Choumuhani, Agartala - 799001
- 22. Joint Electricity Regulatory Commission for GOA & UTs**
2nd Floor , HSIIDC Office Complex
Vanijya Nikunj Complex, Udyog Vihar, Phase V
Gurgaon - 122 016 (Haryana)
- 23. Bihar State Electricity Regulatory Commission**
Ground Floor, Vidyut Bhawan-II
BSEB Complex, Bailey Road,
Patna - 800021
- 24. Meghalaya Electricity Regulatory Commission**
Lower Lachumiere, New Administrative Building, 1st Floor
East Khasi Hills District,
Shillong - 793 001 (Meghalaya)
- 25. Joint Electricity Regulatory Commission for Manipur & Mizoram**
D-31, Mahatma Gandhi Road, Upper Khatla
Aizawl, Mizoram - 796 001
- 26. Nagaland Electricity Regulatory Commission**
Old MLA Hostel Complex
Kohima - 797 001 (Nagaland)
- 27. Arunachal Pradesh Electricity Regulatory Commission**
A.P. Electrical Circle-I Office Complex
A-Sector, Opposite Industrial Area
Naharlagun - 791 110 (Arunachal Pradesh)

...Respondent(s)

Counsel for the Petitioner(s) : Mr. Vishal Gupta
Mr. Avinash Menon
Mr. Kumar Mihir
Mr. Ruth Elvin

Counsel for the Respondent(s): Ms. Suparna Srivastava
Mr. S. R. Pandey
Mr. Buddy A. Ranganadhan
Ms. Riacha Bhardawaja
Mr. Saurabh Mishra
Mr. Anand K. Ganesan
Mr. Pardeep Misra
Mr. Daleep Kumar Dhyani
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Mr. Rutwik Panda
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Mr. A. K. Thakur
Mr. Heshu Kaniya
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Mr. K. V. Balakrishnan
Mr. K. V. Mohan
Mr. Saran
Ms. Swapna Seshadri
Mr. Pratik Dhar
Mr. Shashank Pandit
Mr. P. P. Sharma
Mr. Nitikesh Kumar
Ms. Richa Singh
Ms. Priya Ranjan
Mr. Ramesh Babu
Mr. Ravin Dubey
Ms. Shivani Rana
Mr. Shashank Pandit

O.P. No. 4 of 2013

In the Matter of:

- Himalaya Power Produces Association**
Himurja, SDA Complex
Block No. 8, Kasumpti
Shimla- 171 009 (H.P.)

..... **Petitioner**

Versus

- 1. Andhra Pradesh Electricity Regulatory Commission**
4th & 5th Floors,
11-4-660, Singareni Bhavan
Red Hills, Hyderabad - 500004
- 2. Arunachal Pradesh Electricity Regulatory Commission**
A.P. Electrical Circle-I, Office Complex
A-Sector, Opposite Industrial Area
Naharlagun,
Arunachal Pradesh - 791 110
- 3. Assam Electricity Regulatory Commission**
ASEB Campus, Dwarandhar
G.S. Road, Sixth Mile
Guwahati - 781 022
- 4. Bihar Electricity Regulatory Commission**
Ground Floor, Vidyut Bhawan-II
BSEB Campus,
Jawahar Lal Nehru Marg
Bailey Road
Patna - 800021
- 5. Chhatisgarh State Electricity Regulatory Commission**
Irrigation Colony,
Shanti Nagar
Raipur - 492 001 (Chhatisgarh)
- 6. Delhi Electricity Regulatory Commission**
Viniyamak Bhawan, C-Block
Shivalik, Malviya Nagar
New Delhi - 110 017
- 7. Gujarat Electricity Regulatory Commission**
1st Floor, Neptune Tower
Opposite Nehru Bridge,
Ashram Road, Ahmedabad - 380 006

- 8. Haryana Electricity Regulatory Commission**
Bays 33-36, Sector 4,
Panchkula-134112. Haryana
- 9. Himachal Pradesh Regulatory Commission**
Keonthal Commercial Complex
Khalini Shimla - 171 002
- 10. Joint Electricity Regulatory Commission**
(Goa & Union Territories)
'Vanijya Nikunj', 2nd Floor
Udyog Vihar, Phase V
Gurgaon - 122 016 (Haryana)
- 11. Joint Electricity Regulatory Commission**
(Manipur & Mizoram)
D-31, M.G. Road
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Aizawl, Mizoram - 796 001
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K.P.F.C. Bhavanam,
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Thiruvananthapuram - 695 010
- 15. Madhya Pradesh Electricity Regulatory Commission**
5th Floor, Metro Plaza
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Bittan Market
Bhopal - 462 016

- 16. Maharashtra Electricity Regulatory Commission**
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Center No. 1, 13th Floor
Cuffe Parade, Colaba
Mumbai - 400005
- 17. Meghalaya Electricity Regulatory Commission**
1st Floor (Front Block Left Wing)
New Administrative Building
Lower Lachumiere, Shillong - 793 001
East Khasi Hills District, Meghalaya
- 18. Nagaland Electricity Regulatory Commission**
Old MLA Hostel Complex
Nagaland, Kohima - 797 001
- 19. Orissa Electricity Regulatory Commission**
Bidyut Niyamak Bhavan
Unit-VIII, Bhubaneswar - 751 012
- 20. Punjab State Electricity Regulatory Commission**
SCO : 220-221,
Sector 34-A
Chandigarh, Punjab - 160 022
- 21. Rajasthan Electricity Regulatory Commission**
Vidhyut Viniyamak Bhawan
Sahakar Marg,
Near State Motor Garage
Jaipur - 302 001
- 22. Tamil Nadu Electricity Regulatory Commission**
No. 19A, Rukmini Lakshmi pathy Salai
Egmore, Chennai - 600008
- 23. Tripura Electricity Regulatory Commission**
Vidyut Bhavan, Bhutoria
Banamalipur,
Agartala, Tripura (W.) - 799001

- 24. Uttar Pradesh Electricity Regulatory Commission**
II Floor, Kisan Mandi Bhawan
Gomti Nagar,
Vibhuti Khand
Lucknow - 226 001
- 25. Uttarakhand Electricity Regulatory Commission**
First Floor, Institution of Engineers (I) Building
Near ISBT, Clementown
Dehradun, Uttarakhand - 248 002
- 26. West Bengal Electricity Regulatory Commission**
Poura Bhavan (3rd Floor)
Block-FD, 415-A, Bidhannagar
Kolkata - 700 106
- 27. Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110 001
- 28. Forum of Regulators,**
Secretariat, C/o Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110 001

...Respondent(s)

Counsel for the Petitioner(s) : Mr. Sanjay Sen, Ar. Adv.
Ms. Shikha Ohri
Mr. Hemant Singh
Mr. Anurag Sharma
Mr. Mahesh Vipradas

Counsel for the Respondent(s): Ms. Suparna Srivastava
Mr. S. R. Pandey
Mr. Buddy A. Ranganadhan
Ms. Richa Bhardawaja
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Mr. Saran
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Mr. Pratik Dhar
Mr. Shashank Pandit
Mr. P. P. Sharma
Mr. Nitikesh Kumar
Ms. Richa Singh
Ms. Priya Ranjan
Mr. Ramesh Babu
Mr. Ravin Dubey
Ms. Shivani Rana
Mr. Shashank Pandit

J U D G M E N T

PER HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

These petitions have been filed by the Associations of Wind Energy Generators, Developers and Manufacturers of Wind Turbine and Association of developers of small hydro power projects seeking certain directions from the Tribunal under Section 121 of the Electricity Act, 2003 regarding compliance of Renewable Purchase Obligations ("RPO") by the distribution licensees and other obligated entities as specified by the State

Electricity Regulatory Commissions and Joint Electricity Regulatory Commissions.

2. It is provided under Section 121 that before issuing any direction to the State Commission, they have to be heard. Therefore, notice was issued to all the Central/State and Joint Commissions and they were requested to file their replies and make submissions. Accordingly, various State Commissions/Joint Commission participated in the proceedings through their Counsel. Union of India through Ministry of New and Renewable Energy ("MNRE") was also impleaded as a Respondent on the basis of an Application filed by MNRE.

3. The petitioners have made the following submissions:-

(a) The petitioners have been compelled to prefer the present petition under Section 121 of the Electricity Act, 2003 against the failure of various utilities and captive consumers to fulfill the RPOs as per the Regulations of the State Commission. The State Commissions have notified the renewable purchase obligations fixing minimum RPO of distribution licensees and other entities. The State Commissions have failed to implement such Regulations in discharging their obligations under Section 86(1)(e) and 61(h) of the Electricity Act, 2003, therefore, failing to discharge their obligations in true letter and spirit. The State Commissions instead of ensuring the fulfillment of RPO are allowing time and again deferment of compliance of the RPO, contrary to the terms of the Regulations. In few cases, the utilities have been allowed to carryover the obligations. In some cases, exemptions are also

granted when the obligated entities have not fulfilled the specified RPO. Carry forward of RPO allowed for a year is waived in the subsequent order.

- (b) The Central Commission has notified Renewable Energy Certificate (REC) Regulations, 2010 for promotion of renewable energy generation. The obligated entities who are unable to procure renewable energy can utilise REC to meet their RPO obligation. However, it is seen that despite the availability of RECs, distribution licensees are not procuring RECs and the State Commissions in such cases have been allowing carry forward of the RPO. This has adversely affected the renewable energy generators who have opted for REC.
 - (c) National Action Plan of climate change has set target of 5% Renewable Energy Purchase for 2009-10 which will increase by 1% per annum for next 10 years. The Action Plan further recommended strong regulatory measures to fulfill the renewable energy target.
 - (d) The Tribunal in its judgment dated 25.04.2013 in Appeal No. 24 of 2013 has in principle issued certain directions to the Gujarat State Commission. The petitioners have prayed that similar directions may be issued to all the State Commissions for compliance.
4. Ministry of New and Renewable Energy ("MNRE"), Government of India in their submissions stated that development of renewable energy largely hinges on the regulatory framework that has been

created under the Electricity Act, 2003 and emanating policies. It is further stated that the MNRE had undertaken an in-house study to examine RPO compliance level. The analysis revealed that on all India basis, the distribution companies have made a provision only upto 75% of RPO requirement for the year 2012-13. For the year 2013-14, the provision was made for meeting upto 51% of the RPO requirement. As per the available information, only a few State Commissions have invoked penal provisions available in RPO Regulations that provide for directing the obligated entities to deposit in a separate fund an amount that is determined on the basis of shortfall in RPOs and the forbearance price of REC decided by the Central Commission, to be utilised for purchase of REC and development of transmission system for evacuation of power from the renewable energy projects. Most State Commissions are not seeking RPO compliance report as provided under RPO Regulations and have not announced long term progressively increasing RPO trajectories. It is evident that the obligated entities are ignoring the requirement of RPO compliance since there is no indication of enforcement of penal provisions. This is resulting in slow growth of renewable energy generation. MNRE has supported the prayer of the petitioners and requested this Tribunal to direct the State Commissions to ensure compliance of RPO through timely monitoring and invoking of penal provisions for non-compliance and also direct them not to permit carry forward and waiver of RPO in the event of availability of RECs in the market.

5. Some of the State Commissions felt that invoking of Section 121 by the Tribunal in this particular case is not necessary as the Commissions had not failed to perform their statutory functions under the provisions of the Electricity Act and on this count the petitions are not maintainable. Some Commissions also raised objections about the maintainability of the Petition as the petitioners are not the affected parties.
6. The State Commissions also made specific submissions relating to compliance of the Renewable Purchase Obligations in their respective States. The submissions made by various States are discussed in the following paragraphs:-
- (a) Arunachal Pradesh : RPO Regulations, 2012 have been notified. The distribution licensee has met the non-solar RPO for FY 2012-13. However, there is deficit in solar power procurement for 2012-13 and the licensee has requested to carry forward the same to FY 2013-14. The licensee has assured that it will procure solar power on account of FY 2012-13 and 2013-14 or will purchase equivalent solar RECs.
- (b) Assam:: The State Commission started with fixed RPO of 1.4% for FY 2010-11 and progressively increasing it to 7% in FY 2014-15. The Distribution Licensee has not fulfilled its RPOs during FY 2010-11 to 2012-13 and has also not purchase REC. The RPO compliance has been only 5 to 10% of the target. The Distribution Licensee has sought the approval of the Commission to purchase REC for fulfillment of the shortfall of RPO within the respective year as the amount

involved is quite substantial and may be difficult to recover from the consumers. The Commission has intimated that the Distribution Licensee has to fulfill its RPO in terms of the RE Regulations. No information has been received from the designated nodal agency of the State for development of renewable energy sources regarding RPO compliance from consumers having their fossil fuel based captive power plants.

- (c) Bihar : RPO Regulations 2010 have been notified. No State nodal agency for monitoring the compliance of the Regulations has been notified. For the FY 2010-11 and 2011-12 non solar RPOs have been fulfilled by the distribution licensee. Solar RPOs could not be met due to non-availability of solar power in the State.
- (d) Chhattisgarh : The State Commission has notified the RPO and REC Framework Implementation Regulations, 2011. The State Commission had initiated the *suo-moto* proceeding to monitor the RPO compliance by distribution licensees for FY 2010-11 and order has been passed. In 2010-11 only State owned Distribution Company has procured renewable energy. Other two distribution companies did not procure any renewable energy. None of the companies fulfilled the RPO. The RPO for other obligated entities are applicable from FY 2012-13 and the Commission shall carry out the monitoring activity after completion of the year.
- (e) Delhi : The State Commission has already notified the RPO Regulations, 2012 and is monitoring compliance by the distribution licensees. The licensees have submitted their

programme for FY 2012-13. However, NDMC has not submitted any proposal towards fulfilling their RPO obligations for FY 2012-13.

- (f) Goa and Union Territories : The Joint Commission has already framed Renewable Energy Regulations, 2010. The State Commission has specified solar and non-solar RPOs. The Regulations have provisions for directing the obligated entities to deposit into a separate fund, such amount as may be determined by the Commission on the basis of shortfall in RPO and forbearance price. The State Commission can also impose penalty under Section 142 for non-compliance. The State Commission by order dated 5.5.2014, in case of Dadra and Nagar Haveli, has provisionally directed deposit of Rs. 110 crores with designated State agency for non-compliance of the Regulations. The Commission has also allowed Rs. 74.98 crores to fulfill the backlog of RPOs till FY 2013-14 to the Distribution Licensee. The review for the period 2010-11 to 2014-15 (upto June 2014) indicates that Goa, Andaman and Nicobar and Chandigarh have fulfilled RPO. Dadra & Nagar Haveli could not meet the target and therefore penalty was imposed. Daman & Diu, Lakshadweep and Puducherry have initiated tendering process for long term procurement of renewable energy. The Commission is seeking compliance by all licensees/obligated entities and is now scheduled for hearing on 12.11.2014.
- (g) Gujarat : RPO Regulations, 2010 have been notified. The Regulations provide for carry forward to mitigate the genuine

hardship that obligated entities may face on account of non-availability of power from renewable energy sources. The obligated entities are also liable to pay compensation, if they do not purchase renewable energy or RECs despite availability of renewable energy/REC. The Regulations provided that the obligated entities are also liable to pay compensation if despite availability of renewable energy sources the distribution licensee fails to fulfill the minimum purchase from renewable energy sources and also does not purchase REC. In such cases the Commission may direct the obligated entities to deposit for the shortfall in a separate fund to be created and maintained by the obligated entities at forbearance price decided by the Central Commission. The State Commission has been monitoring the compliance of RPO obligations. The RPOs are revised only if there is a supply constraint. The State Commission has powers under the Regulations to revise the RPO targets and the State Commission has been exercising the power to ensure that the RPO imposed under the Regulations does not operate unjustly or unfairly on the obligated entities.

- (h) Haryana : The State Commission has notified Regulation 2010. The Commission has observed that distribution licensee have failed to achieve the RPO targets set by the Commission for FY 2010-11, 2011-12 & 2012-13. Treatment to the shortfall in meeting RPO for FY 2010-13 shall be in accordance with the Regulations and the amount to be set aside for this purpose shall be decided separately.

- (i) Jharkhand : The State Commission has notified the RPO Regulations, 2010. During the FY 2011-12. Jharkhand State Electricity Board did not procure any Renewable Energy or RECs. Therefore, the State Commission has carried forward the RPOs and also directed them to procure RPOs through REC mechanism. For other Distribution Licensees also the shortfall in RPO for 2010-11 has been carried forward to FY 2012-13. These licensees have procured REC during FY 2012-13.
- (j) Himachal Pradesh : The State Commission has notified the RPO Regulations, 2010. The State Commission has given status of RPO compliance for the Electricity Board and has indicated that they have fully met and in fact over achieved the non-solar RPOs for FY 2010-11, 2011-12 and 2012-13. However, the solar RPOs could not be achieved. The utility is taking action for procuring the solar RPO.
- (k) Karnataka : The State Commission has notified RPO Regulations and is closely monitoring the compliance. The State Commission has permitted carry forward in some cases after considering the facts and circumstances placed before it and merit of each case. The contentions of the petitioner that despite availability of the REC, allowing the obligated entities to carry forward the RPO is contrary to the provision of law and is not correct. It is within the power of the Commission to grant extension as it is permissible under the Regulations.
- (l) Madhya Pradesh : The State Commission has notified Regulations in the year 2010 specifying the minimum

quantum of electricity to be procured by the obligated entities from solar and non-solar sources. In the year 2010-11 all the distribution licensees in Madhya Pradesh have reported to have complied with the RPO. In 2011-12 though the distribution companies could not fulfill the minimum purchase obligation, the open access consumers have reported compliance by purchasing RECs from energy exchange. Some captive generators have challenged the Regulation in the High Court. The High Court vide order dated 11.04.2012 has directed that no coercive action be taken against the petitioners. The State Commission has not relaxed/lowered the RPO target at all. As regards 2012-13, the State Commission has already initiated monitoring of compliance from obligated entities. The practice of carry forward/relinquishment of RPO followed in other states is not relevant to Madhya Pradesh as the Commission has not passed any order regarding carry forward / relaxation of RPO target.

- (m) Maharashtra : The State Commission has introduced RPOs in the year 2004. Subsequently, the Commission notified RPO Regulations, 2010 for solar and non-solar renewable energy sources. The State Commission has passed an order on 30.04.2013 in *suo moto* proceedings for verification and compliance of RPOs by the captive users and open access consumers for 2010-11 and 2011-12 and has directed all the obligated entities to meet their solar and non-solar RPOs

cumulatively before 31.03.2014. The distribution licensees in the FY 2010-11 and 2011-12 have met the non-solar RPOs.

- (n) Meghalaya : RPO Regulations, 2010 have been notified. In Tariff Order 2012-13, the Commission has not provided for REC purchase because the nodal agency was not functional. However, in the ARR of 2013-14, the distribution licensee has projected RE purchases and the Commission has considered the same in accordance with the Regulations.
- (o) Orissa : The State Commission has notified the RPO Regulations, 2010, specifying RPOs for solar, non-solar and cogeneration.
- (p) Punjab : RPO Regulations, 2011 have been notified. The State Commission has allowed carry forward for the shortfall for 2011-12 to 2012-13 in accordance with the provisions of the Regulations. In April 2013, the distribution licensee has informed the Commission that it has procured RECs and the entire shortfall of 2011-12 has been fulfilled by purchase of RECs. The State Commission has also allowed carry forward of solar RPOs to open access customers for the year 2011-12 due to non-availability of solar RECs.
- (q) Rajasthan : The State Commission had initially notified Renewable Energy Purchase obligation for distribution licensees in 2004 for the period 2006-07 to 2011-12. In 2011, the Commission reviewed the status for compliance of RPO and prescribed new RPO target for 2011-12 to 2013-14 for distribution licensees. The State Commission has also extended the applicability of RPO for captive consumers of

CPP with installed capacity of 1MW and above and open access consumers. During the FY 2011-12 and 2012-13, the distribution licensees exceeded the RPO targets. Other obligated entities have filed Writ Petitions in the High Court and obtained interim stay order for Regulations in respect of these entities. However vide judgement dated 31.08.2010, the Writ Petitions of such consumers have been dismissed by the High Court. Consequent upon this judgement, the State Nodal Agency has initiated action for ensuring compliance of Renewable Energy Regulations. The State Commission has directed the State Nodal Agency to issue notices indicating definite time frame for ensuring compliance by them and submit status report to the Commission. The State Commission is keeping continuous watch in the subject matter and will initiate appropriate action against the defaulting agencies within the framework of the Regulations.

- (r) Tamil Nadu : RPO Regulations have been notified in 2010. The distribution licensees have achieved/are expected to achieve the RPO target for FY 2011-12 & 2012-13. The RPO to the extent it relates to open access consumers and captive users has been stayed by the High Court of Madras in a writ petition filed by the obligated entities.
- (s) Tripura : The State Commission has notified the Renewable Energy Procurement Regulations, 2010 and RPO obligations and its compliance Regulations, 2009. The State utility itself is generating Renewable Energy from its Hydel Power plant and the same is in the excess of the targets set for non-solar RPO.

Solar RPO target could not be met by the distribution licensees due to non-availability of solar based power in the State of Tripura and distribution company is making efforts to meet the Solar RPO through REC. The State Commission has been ensuring the compliance of RPO.

- (t) Uttarakhand : The State Commission on 01.04.2012 has framed its RPO Regulations, if such Regulations mandates to Commission to act in a particular way, such regulations have to be followed. If Regulations contained provision for exercise of the discretion, such discretion could not, in law, be directed to be exercised in a particular manner. No information has been furnished regarding State nodal agency and status of monitoring of the RPO compliance of the obligated entities.
- (u) Central Commission : The Central Commission has notified the REC Regulations, 2010 to address the mismatch between availability of RE sources and the requirement in the various States. The REC Regulations seek to create national level market for RE generators to recover their cost. However, since last six months, REC trading sessions has brought the non-solar REC market on the verge of vanishing soon. The REC market is currently having a large amount of unsold non-solar certificates on the two exchanges and RECs are being traded at floor prices only. The demand for REC is largely driven by very few private distribution licensees and few CPPs/open access customers. It is noticed that generally the State distribution companies are not coming forward to buy RECs to fulfill their RPOs. This has resulted in large uncleared

volume of RECs in the market. The Central Commission in view of the prevailing situation has also extended the validity period of RECs in order to give opportunity and time to all generators to trade RECs in power exchanges. However, the Central Commission does not have the jurisdiction to enforce the RPO on the obligated entities in the States. The responsibility of setting RPO target and implementation thereof rests with the State Commissions. Therefore, the State Commissions would have to strictly monitor RPO compliance by the obligated entities and enforce compliance as per their Regulations in order to make the REC programme successful.

7. We find that some of the State Commissions viz. Andhra Pradesh, Kerala, Nagaland, Uttar Pradesh and Sikkim did not respond to the notice and did not file any submissions.
8. We have carefully considered the submissions made by the petitioners and the State Commissions through their respective Counsel.
9. Before we take up the main issue, let us consider the issue of maintainability raised by some of the State Commissions as according to them, the petitioners are not the affected parties. This issue has been considered by this Tribunal in judgment dated 25.04.2014 in Appeal No. 24 of 2013, wherein this Tribunal on the basis of an earlier judgment in Appeal No. 148 of 2010 has come to the conclusion that the Appeal filed by registered associations of the generators/developers was maintainable. The findings of this Tribunal in Appeal no. 24 of 2013 are reproduced below:

“15. This issue has already been dealt with by this Tribunal in the judgment dated 5.4.2011 in Appeal no. 148 of 2010 in the matter of South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors. as under:

“24. The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the co-generation units attached to those factories is itself not maintainable in view of the fact that the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued. As we find from Annexure B, C and D of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this appeal. The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, not are the members obscure and uncertain. The objection is thus repelled.”

16. The findings of the Tribunal in the above judgment will apply to the present case also. The Appellant is a registered organization. The Appellant has also filed the supporting documents regarding its registration, list of members, including those operations in Gujarat who are aggrieved by the impugned order. Accordingly, we hold that the Appeal filed by the Appellant Association, as an aggrieved person is maintainable”.

10. Accordingly, we hold that the Petitions filed by the Appellant Associations, as an aggrieved person, are maintainable.

11. Some of the State Commissions have stated that since they are ensuring compliance of RPO Regulations in their respective States, no directions under Section 121 would be necessary.
12. Shri Anand K. Ganesan, Learned Counsel for Karnataka Commission has argued that the present petitions for directions under Section 121 are beyond the scope of Section 121 and, therefore, not maintainable. Section 121 of the Electricity Act, 2003 provides for the power to the Tribunal to issue orders, instructions or directions for the performance of statutory functions of the Appropriate Commission. The power under Section 121 has been held to be only administrative and not judicial in nature. He referred to PTC India Ltd. V. Central Electricity Regulatory Commission, (2010) 4 SCC 603. Article 227 of the Constitution of India provides for the power to the High Court of superintendence. The said power has been held to be both administrative as well as judicial in nature. However, even under Article 237 the power does not include the power to direct a subordinate court to pass an order in a particular manner. Nor does the court act as an Appellant court. (Jasbir Singh Vs. State of Punjab, (2006)8 SC 294. The power under Article 227 is only to see procedure followed and not the correctness of the decision itself. (Mohd. Yonus V Mohd Mustaqim (1983) 4 SCC 566). In the present case Section 121 does not provide for judicial superintendence, but only administrative superintendence. The Hon'ble Supreme Court in PTC case has for interpreting the scope of Section 121 relied on the decision of Raman and Raman Ltd. Vs. State of Madras, AIR 1959 SC 694. In Raman and Raman Ltd. It was held that Section 43-A of the Moter Vehicles Act, 1939 (pari

materia to Section 121) only provides for issuing orders or directions of administrative character and not judicial character.

13. Shri Anand K. Ganesan has further submitted that the Regulations provide certain discretionary powers to the State Commission with regard to revision or carry forward of RPO and not to impose any penalty for non-compliance of the RPO and such discretionary power on the legislative and judicial side cannot be curtailed by directions issued under Section 121 which are for administrative direction.
14. This Tribunal in its order dated 11.11.2011 in OP no. 1 of 2011 while discussing the scope, object and purpose of Section 121 held as under:

“45. Let us now deal with the next Question i.e. “Whether this Tribunal has got jurisdiction to issue directions to the State Commissions under Section 121 of the Act for suo-moto determination of tariff”?

46. According to Tamil Nadu State Commission, the jurisdiction of this Tribunal under Section 121 of the Act is limited to the issuance of directions to the Appropriate Commissions for performance of its statutory functions under the provisions of Electricity Act alone and it cannot issue directions to the State Commission for suo-moto determination of tariff under the tariff policy as the same would be beyond jurisdiction.

47. This is a preposterous proposition. As referred to in the earlier paragraphs, we have held that the suo-moto jurisdiction is vested in the hands of the State Commissions by way of Regulations. According to Hon’ble Supreme Court, these Regulations are statutory and binding delegated legislations which have to be mandatorily followed by the Commissions. In case of failure on the part of the Commissions to follow their own Regulations for performing their statutory duties, this

Tribunal has certainly got the powers under section 121 of the Electricity Act to issue such directions to the State Commissions to perform those statutory functions in accordance with the Regulations. The relevant portions of the Supreme Court judgement in PTC India Ltd v CERC and Ors reported as (2010) 4 SCC 603/ELR (SC) 269 are as follows:

- “52. Before concluding on this topic, we still need to examine the scope of Section 121 of the 2003 Act. In this case, appellant(s) have relied on Section 121 to locate the power of judicial review in the Tribunal. For that purpose, we must notice the salient features of Section 121. Under Section 121, there must be a failure by a Commission to perform its statutory function in which event the Tribunal is given authority to issue orders, instructions or directions to the Commission to perform its statutory functions. Under Section 121 the Commission has to be heard before such orders, instructions or directions can be issued.*
- 53. The main issue which we have to decide is the nature of the power under Section 121. In the case of M/s Raman and Raman Ltd. v. State of Madras and Ors. reported in AIR 1959 SC 694, Section 43A of Motor Vehicles Act, 1939, ("1939 Act"), as amended by Madras Act 20 of 1948, came for consideration before the Supreme Court. Section 43A conferred power on the State Government to issue "orders" and "directions", as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or a Regional Transport Authority. The meaning of the words "orders" and "directions" came for interpretation before the Supreme Court in the said case. It was held, on examination of the Scheme of the Act, that Section 43A was placed by the legislature before the sections conferring quasi-judicial powers on Tribunals which clearly indicated that the authority conferred under Section 43A was confined to administrative functions of the Government and the Tribunals rather than to their judicial functions. It was further held that the legislature*

had used two words in the section: (i) orders; and (ii) directions. This Court further noticed that under the 1939 Act there was a separate Chapter which dealt with making of "rules" which indicated that the words "orders" and "directions" in Section 43A were meant to clothe the Government with the authority to issue directions of administrative character. It was held that the source of power did not affect the character of acts done in exercise of that power. Whether it is a law or an administrative direction depends upon the character or nature of the orders or directions authorized to be issued in exercise of the power conferred. It was, therefore, held that the words "orders" and "directions" were not laws. They were binding only on the Authorities under the Act. Such orders and directions were not required to be published. They were not kept for scrutiny by legislature. It was further held that such orders and directions did not override the discretionary powers conferred on an authority under Section 60 of the 1939 Act. It was observed that non compliance of such orders, instructions and directions may result in taking disciplinary action but they cannot affect a finding given by the quasi-judicial authority nor can they impinge upon the rules enacted by the rule-making authority. It was held that such orders and directions would cover only an administrative field of the officers concerned and therefore such orders and directions do not regulate the rights of the parties. Such orders and directions cannot add to the considerations/topics prescribed under Section 47 of the 1939 Act on the basis of which an adjudicating authority is empowered to issue or refuse permits, as the case may be.

54. *Applying the tests laid down in the above judgment to the present case, we are of the view that, the words "orders", "instructions" or "directions" in Section 121 do not confer power of judicial review in the Tribunal. It is not possible to lay down any exhaustive list of cases in which there is failure in performance of statutory functions by Appropriate Commission. However, by way*

of illustrations, we may state that, under Section 79(1)(h) CERC is required to specify Grid Code having regard to Grid Standards. Section 79 comes in Part X. Section 79 deals with functions of CERC. The word "grid" is defined in Section 2(32) to mean high voltage backbone system of interconnected transmission lines, sub-station and generating plants. Basically, a grid is a network. Section 2(33) defines "grid code" to mean a code specified by CERC under Section 79(1)(h). Section 2(34) defines "grid standards" to mean standards specified under Section 73(d) by the Authority. Grid Code is a set of rules which governs the maintenance of the network. This maintenance is vital. In summer months grids tend to trip.

In the absence of the making of the Grid Code in accordance with the Grid Standards, it is open to the Tribunal to direct CERC to perform its statutory functions of specifying the Grid Code having regard to the Grid Standards prescribed by the Authority under Section 73. One can multiply these illustrations which exercise we do not wish to undertake. Suffice it to state that, in the light of our analysis of the 2003 Act, hereinabove, the words orders, instructions or directions in Section 121 of the 2003 Act cannot confer power of judicial review under Section 121 to the Tribunal, which, therefore, cannot go into the validity of the impugned Regulations 2006, as rightly held in the impugned judgment”.

48. The above decision would make it clear that even though this Tribunal has no powers to go into the validity of the Regulations framed by the Commissions the powers are vested with this Tribunal to interpret those Regulations. If the Tribunal finds that those Regulations have not been followed by the State Commissions, then this Tribunal certainly has got the powers, to direct the Commissions to perform its statutory functions as per the Regulations. As a matter of fact, this Tribunal is duty-bound to give directions to the Commissions

to strictly follow the Regulations to achieve the objective of the Act. The Tribunal can not simply keep quiet as a idle spectator. If the Tribunal has not given such directions through timely intervention, it would be a dereliction of duty on the part of this Tribunal.”

.....

53. *Now let us quote Section 121 of the Electricity Act. The same is reproduced below:*

“Section 121 of the Electricity Act. The Appellate Tribunal may, after hearing the Appropriate Commission, or other interested party, if any, from time to time, issue such orders, instructions, or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.”

54. *This section confers powers to Appellate Tribunal to issue such directions to any Appropriate Commission whenever it finds that the Commission has not performed its statutory functions. This power has been conferred on this Tribunal to ensure that the statutory functions of the Commission as prescribed under the Act and the Regulations are performed by the Commissions.”*

15. This Tribunal in order dated 14.11.2013 in OP No.1 and 2 of 2012 held as under:

- “a) The powers under Section 121 are in addition to and not residuary powers excluding appellate power under Section 111(1) and revisional power under Section 111(6).*
- b) Section 121 vests a supervisory statutory powers with this Tribunal to issue appropriate orders, instructions or directions as it may deem fit to an appropriate Commission after hearing such Commission to ensure due performance of statutory functions by the said appropriate Commission.*
- c) The power may be exercised to remedy any failure by the Commission to perform its statutory functions as deemed fit by the Appellate Tribunal. Once, this Tribunal finds that there*

is a cause for it to issue appropriate directions to the Commission, the nature of directions or orders are qualified only by the objective of securing performance of statutory functions by the Commission.

- d) *The term “performance” has been defined in Legal dictionary to cover diverse facets of performance including:-*
- i) *Complete or partial performance as also non performance.*
 - ii) *Proper or defective performance/mis-performance.*
- e) *Section 121, in context of the natural meaning of “performance” subsumes within itself all aspects of performance including partial, complete and non-performance. Had the Parliament intended to limit the ambit of Section 121 of the Act and the powers of this Tribunal, it would not have used the term “performance” not limited it by a specific suffix or prefix. In the absence of such a limitation, the power has to be read in its complete amplitude to attain the statutory objects of the Act.”*

16. In view of above if the State Commissions fail to perform their statutory functions under the Act or Regulations are not being followed by the State Commissions then the Tribunal can invoke jurisdiction under Section 121 of the Act to issue directions to the State Commission.
17. We are conscious of the findings of the Hon'ble Supreme Court in PTC case that Regulations are binding piece of subordinate legislation and if there is a Regulation then order has to be passed in consonance with such Regulation. We do not want to give any direction to defeat the renewable energy regulation notified by the State Commission or to restrict the exercise of powers of the State Commission provided in the Regulations. However, if we find that the Regulations are not being followed by the State Commission

then it would be our responsibility to direct the Appropriate Commission to adhere to the Regulations while passing order regarding RPO obligations.

18. While we accept that a number of State Commissions have been monitoring the compliance of the RPO Regulations by the obligated entities as per their Regulations, in some States it is not being done regularly. We find that some State Commissions do not have compliance status even for FY 2012-13. Some State Commissions have not responded to the notice and have not filed any response. It is also borne out by submissions made by Ministry of New and Renewable Energy and the Central Commission that many obligated entities have not been fulfilling their RPOs and are also not resorting to purchase of REC which has been provided for in the Regulations as a valid instrument for fulfilling the RPO. Some of the State Commissions have been allowing carry forward of the RPO even though RECs are available, in violation of their own Regulations. Some of the State Commissions have not been regularly and timely monitoring the compliance of the RPO Regulations and not giving appropriate directions to the obligated entities as are provided for in the RPO Regulations. MNRE has stated that obligated entities are ignoring the requirement of RPO compliance since there is no indication of enforcement of penal provision which is resulting in slow growth of renewable energy generation. Therefore, we feel that it would be necessary for us to give some directions to the State/Joint Commissions under Section 121 of the Electricity Act, 2003.

19. One of the main features of the Electricity Act is promotion of renewable energy sources. Section 61(4) and Section 86(1)(e) of the Act enjoin the Central Commission and State Commissions to promote co-generation and generation of electricity from renewable sources of energy. Section 86(4) provides that the State Commissions in discharge of their functions shall be guided by the National Electricity Policy and Tariff Policy. The National Electricity Policy provides for promotion of non-conventional energy sources. The Tariff Policy also provides for specification of a percentage of total energy consumption in the area of distribution licensee from purchase of energy from renewable energy sources. The Union Government has also announced the National Action Plan for Climate Change which envisages several measures to address global warming. One of the important measures identified involves increase in the share of renewable energy in total energy consumption in the country. The increase in utilisation of renewable sources of energy is important for energy security of the country and meeting the challenge of climate changes. The development of renewable energy sources is greatly dependent on the regulatory framework under the Electricity Act 2003.
20. The Tariff Policy was amended on 20.01.2011 as under:
- “17. The Tariff Policy was amended on 20.01.2011 as under :*
- “6.4. Non-conventional and Renewable sources of energy generation including Co-generation:-*
- (1) Pursuant to provision of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution*

licensee for purchase of energy from such sources, taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.

- (i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification in the official gazette which will go up to 0.25% by the end of 2012-13 and further up to 3% by 2022.*
- (ii) It is desirable that the purchase of energy from non-conventional sources of energy takes place more or less in the same proportion in different states. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as renewable energy certificates (REC) would need to be evolved. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensees at the rates for conventional power and can recover the balance cost by selling such certificates to other distribution companies and obligated entities enabling latter to meet their renewable power purchase obligation. In view of the comparatively higher cost of the electricity from solar energy currently, the REC mechanism should also have a solar specific REC.*
- (iii) It will take some time before non-conventional technologies can complete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.”*

21. Thus, the Tariff Policy has been amended to provide for minimum purchase of Solar energy and evolving of mechanism such as REC to achieve the objective that the purchase of energy from non-conventional sources of energy takes place more or less in the

same proportion in all States i.e. resource rich States and those States which do not have adequate potential for development of renewable energy sources. Accordingly, the State Commissions in their Regulations have reorganised REC as a valid instrument for compliance of renewable purchase obligation.

22. Learned Counsel for Karnataka Commission has argued that RECs are not mandatory instruments and are only enabling in nature. According to him, the term 'renewable energy sources' for which the obligation is imposed is only physical energy source and not RECs. While the utility has the option of purchasing RECs, the obligation to purchase REC is only when there is a default on the part of the utility despite the availability of renewable energy sources.
23. The Tribunal has dealt with the above issue in judgment dated 16.04.2013 in Appeal no. 258 of 2013 and 21 of 2014. The relevant extracts are reproduced below:

"18. The following position emerges from the amended Tariff Policy:

- (a) The State Commission shall fix the RPO taking into account the availability of such sources in the region and its impact on retail supply tariffs.*
- (b) Within the above RPO, the State Commission should also reserve a minimum percentage of purchase from the solar energy which will go up to 0.25% by the end of 2012-13 and further upto 3% by 2022.*
- (c) It is desirable to have purchase of energy for renewable sources more or less in same proportion in different States. As the renewable sources are not evenly distributed and available only in certain parts of the country, an appropriate mechanism such as REC is required to be evolved. Through such mechanism, the renewable energy generators can sell electricity to the*

local distribution licensee at the rates of conventional energy and recover the balance cost by selling the REC to other distribution licensees/obligated entities to meet their RPO.

19. *The Tariff Policy provides for evolving of mechanism such as Renewable Energy Certificate to achieve the objective of development of renewable energy sources in a resource rich State more than that required for meeting the RPO of the State. The Renewable Energy Generators can sell electricity to local distribution licensees at conventional energy rate and recover the balance cost by selling REC to other distribution licensees and obligated entities to meet their RPO. Therefore, under REC mechanism, the local distribution licensee can physically consume power from all such renewable energy sources over and above its own RPO at a tariff applicable for conventional power.”*

.....

- “29. *Learned Counsel for GUVNL and the distribution licensees has argued that Section 86 (1) (e) of the Electricity Act, 2003 imposes obligation to procure renewable energy in physical form only and not REC and REC is not renewable energy but only a mitigating mechanism available to the obligated entities as per their own choice. We do not agree that REC is only a mitigating mechanism and is not to be considered as renewable source of energy for fulfilling the RPO obligation specified under Section 86 (1)(e) of the Act. The RE Regulations, 2010 recognize REC as valid instrument to meet the RPO obligation specified under Section 86(1)(e) of the Electricity Act, 2003. As set out in the statement of objects and reasons, purchase of REC is to be deemed as purchase of renewable energy for RPO compliance and accordingly the State Commissions have been mandated to recognize REC as a valid instrument for RPO compliance. The Tariff Policy also envisages introduction of REC for meeting the RPO. We agree with Learned Counsel for the State Commission that by introducing the deeming provision as reiterated in the Gujarat Commission’s RE Regulations, a legal fiction has been*

created by virtue of which purchase of REC is to be construed as fulfillment of RPO by purchase of renewable energy.

30. *In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors. (2003) 2 SCC 111, it was observed that the purpose and object of creating a legal fiction in the statute is well known. It was held that when a legal fiction is created, it must be given full effect. In Ashoka Leland Ltd. Vs. State of Tamil Nadu and another, (2004) 3 SCC 1, the Hon'ble Supreme Court also came to conclusion that whenever a legal fiction is created by a statute, the same should be given full effect."*

.....

- “32. *REC is issued only to RE generators for generation of renewable energy and is an alternative mode provided to the RE generators for recovery of their costs. One REC is issued for 1 MWh of energy from renewable energy sources injected into the grid or consumed by a captive consumer. REC can be purchased by the obligated entities to meet their RPO under Section 86(1)(e) of the Electricity Act and purchase of REC would be deemed as purchase of renewable energy for RPO compliance. REC is an alternative to physical procurement of renewable energy. The distribution licensees as well as other persons consuming electricity generated from conventional Captive Generating Plant or procuring electricity from conventional generating stations through open access and third party sale are obligated entities who have to meet their RPO. These obligated entities have option to meet their RPO mandated under Section 86 (1) (e) of the Act and the Regulations either by directly procuring energy from renewable sources of energy in physical form or purchasing REC, as deemed procurement of renewable energy. Both have to be considered for fulfilling the RPO specified under Section 86(1)(e). An obligated entity has option to fulfill its RPO either by fully procuring renewable energy in physical form or fully by purchasing REC or partly in physical form and partly REC. However, the option has to be exercised based on sound economic principles. In case of distribution licensees, the State Commission while approving compliance*

of RPO has to consider that the distribution licensee has exercised its option prudently.”

.....

“33.....REC though evolved basically to exploit the renewable energy sources in States having abundant potential of renewable energy for the benefit of States which do not have adequate potential of renewable energy sources, is also useful for meeting the RPO of obligated entities of resource rich States. REC mechanism has opened up the market for the renewable energy generators outside the State in which they are located helping in unconstrained growth of the renewable energy sector and needs to be promoted by the State Commissions.

34. *One of the main features of the Electricity Act, 2003 is that electricity generation is delicensed and captive generation is freely permitted. Hydro Power, however, needs approval of the State Government and clearance from the Central Electricity Authority relating to issues of dam safety and optimum utilisation of water resources. Hon’ble Supreme Court in Tata Power Company Ltd. Vs. Reliance Energy Ltd. & Ors: (2009) 16 SCC 659, held as under:*

“83 The primary object, therefore, was to free the generating companies from the shackles of licensing regime. The 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensees so as to achieve customer satisfaction and equitable distribution of electricity. The generation company, thus, exercises freedom in respect of choice of site and investment of the generation unit; choice of counter-party buyer; freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer.”

35. *Freedom of supply of power as per its choice throughout the length and breadth of the country is being freely exercised by the conventional energy sources due to more favourable tariffs, economy of scales and lower transmission cost per*

unit due to high plant load factor. This led to development of huge capacity of conventional generating plants in private sector in the country. Such unhindered growth opportunity was not available to renewable sources of energy due to higher tariff and high cost of transmission due to poor plant load factor and limited scope of supplying power to distribution licensees and other persons within the State. Growth of expensive RE technologies was also restrained by the RPO fixed by the State Commission of the State where RE projects were set up. The introduction of REC mechanism has opened up the market for RE generators. This has provided a mechanism where the physical form of energy is sold to the distribution licensee and consumers within the State, the green attributes of such energy is sold in the pan India market through the power exchange. REC is a mechanism for facilitating accelerated development of renewable energy potential of the resource rich States thus serving the object of the Electricity Act, 2003 for promotion of renewable sources of energy and attracting investment in private sector for setting up renewable energy based power projects, particularly in rural areas. By treating REC as a valid instrument for discharge of mandatory RPO, as set out in the Regulations, the State Commission has only followed the mandate of the Electricity Act, 2003 under Section 86(1)e) for promotion of renewable sources of the energy in the State.”

24. The State Commissions' Regulations recognize REC as a valid instrument for fulfilling RPO. The objective of REC mechanism is also for promoting development of renewable sources of energy by provided pan India market for the renewable energy generators which will help in accelerated development of renewable energy sources in the country. The development of renewable energy is of great importance to the country for energy security, achieving low carbon growth and for safeguarding the health of the people. If we hesitate to pay proper price for the growth of renewable energy, the

future generation may have to pay a heavier price due to environmental degradation. It should, therefore, the endeavour of the State Commission that REC mechanism is encouraged and it is not allowed to be extinguished.

25. The Central Commission has stated that the renewable energy generators are facing difficulties as their RECs are not being purchased particularly by the State Utilities. We discussed this issue during the proceedings in this Tribunal. One of the concern raised by the State Commissions is that the REC Regulations has provided windfall gain to renewable energy generators due to which they are not willing to supply energy to distribution licensees at preferential tariff. The REC Regulations of Central Commission permit a RE generator selling power to any person through open access at market determined rate and is still entitled to REC. Similarly, captive generators are also entitled to REC. In this way, the renewable energy generators selling energy to consumers at normal tariff get additional premium in terms of REC and are making undue profits as compared to selling electricity to the Distribution Licensee at preferential tariff. Thus, the renewable energy generators are not willing to sell electricity to the Distribution Licensees at preferential tariff causing shortfall in fulfillment of RPO of the distribution licensees.
26. On the other hand the Applicants argue that they are not making any windfall profit under REC mechanism. There is market risk in REC mechanism which is undertaken by them. They are also facing difficulties as large number of RECs have remain unsold and for past many months non-Solar RECs are being traded at the floor

price. Even at the floor price there are only a few takers and the ratio of buy bid to sell bid volume of non-Solar REC has remained very low. We also find from the report on Short Term Market in India for FY 2012-13 issued by the Central Commission (available in public domain) that the buy bid to sale bid volume of REC was about 0.27, indicating large volume of uncleared REC during FY 2012-13. The Report also indicates that for major period during FY 2012-13 the REC price remained at the floor price of Rs. 1500 per REC (Rs. 1.50 per kWh).

27. This Tribunal cannot go into the question of validity of the Central Commission Regulations. We understand that the Central Commission is considering amendment in REC Regulations. We would advise the Central Commission to consider the submissions of the State Commissions to ensure that a balance is maintained between interests of the utilities and the renewable energy generators while considering amendment to the REC Regulations.
28. In view of above discussions, we deem it appropriate to give directions to the State/Joint Commissions with regard to implementation of Renewable Energy Regulations in their respective States. The Tribunal after considering the contentions of the petitioners and the State/Joint Commissions, Central Commission and MNRE gives the following directions to the State/Joint Commissions under Section 121 of the Act:-
- (i) The State Commission shall decide the RPO targets before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter

into PPAs with the renewable energy project developers. The Preferential Tariff for procurement of renewable energy by the Distribution Licensee for a financial year should also be in place before the commencement of the financial year and no vacuum should be left between the end of control period for the previous tariff and the beginning of control period of the new tariff.

- (ii) The State Commissions shall obtain proposal with supporting documents for renewable energy procurement by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year as per the RPO Regulations. Suggestion and objections of public shall be invited on the above petition. The State Commission may give necessary directions with regard to RPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it may plan to purchase RECs to meet its RPO target as per the provisions of the Regulations. Advance planning of REC purchase will give opportunity to the distribution licensees/other obligated entities to purchase REC when the market conditions are more favourable to them.
- (iii) The monitoring of compliance of the RPO should be carried out periodically as provided for in the Regulations. After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations.

Suggestions and objections of the public shall be invited in the review proceedings and decisions taken after considering the suggestions/objections, as per law.

- (iv) The State Commission shall give directions regarding, carry forward/review in RPO and consequential order for default of the distribution licensees/other obligated entities as per the RPO Regulations. If the Regulations recognise REC mechanism as a valid instrument to fulfill the RPO, the carry forward/review should be allowed strictly as per the provisions of the Regulations keeping in view of availability of REC. In this regard the findings of this Tribunal in Appeal no. 258 of 2013 and 21 of 2014 may be referred to which have been given with regard to RE Regulations of Gujarat Commission but the principles would apply in rem. In case of default in fulfilling of RPO by obligated entity, the penal provision as provided for in the Regulations should be exercised.
- (v) The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.
- (vi) The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations.
29. With the above directions, the above petitions are disposed of. The Registry is directed to send a copy of this Order to all the Central and State/Joint Commissions, Secretary, Ministry of Power, Government of India and Secretary, Ministry of New and

Renewable Energy, Government of India. However, the above directions will not be applicable to the issues where stay has been granted by the High Court or Hon'ble Supreme Court in the proceedings pending before such courts.

30. Pronounced in the open court on this **20th day of April, 2015.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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