

HARYANA ELECTRICITY REGULATORY COMMISSION

Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 (3rd Amendment) Regulations, 2014.

Brief Background:

1. The Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 hereinafter referred to as HERC RE Regulations 2010, was notified by the Commission in the Haryana Government Gazette (extraordinary) dated 03.02.2011. These Regulations were partly amended vide notification dated 5.09.2011 (1st Amendment) and notification dated 25.11.2011 (2nd Amendment).

The Commission vide the 1st Amendment dated 5th September, 2011 inserted the following regulations in the RE Regulations, 2010.

“2. The following sub regulation (3) shall be inserted in continuation of regulation 64:

(3) In case the renewable energy generating company offers to sell energy generated by it from its renewable energy generating station located in Haryana to the distribution licensee at the rates determined by the Commission, the distribution licensee shall not refuse to purchase power from such generating company, without prior approval of the Commission”

“3. The following regulation shall be inserted below regulation 72:

73. Grid connectivity and wheeling charges.- (1) The State Transmission Utility or the transmission licensee other than STU or the distribution licensee, as the case may be, shall bear the cost of EHV / HV transmission line up to a

distance of 10 KM from the interconnection point. In case the distance between the interconnection point and the point of grid connectivity is more than 10 KMs the cost of transmission line for the distance beyond the 10 KMs shall be shared equally between the renewable energy developer and the licensee”.

“(2) Unless otherwise exempted by the Commission the wheeling charges or transmission charges, as the case may be, shall be levied at the rates determined by the Commission from time to time”.

Further, by 2nd Amendment to RE Regulations, 2010, notified on 25th November, 2011, the following provisions were made.

“2. The existing sub regulation (20) of regulation 2 is replaced with the following regulation.

“2(20) Obligated entity means an entity in the State of Haryana which is mandated to fulfill renewable purchase obligation under these regulations and include the following:

- (i) The distribution licensee,
- (ii) Open access consumers (other than short term open access consumer) and
- (iii) Conventional captive power plant of 5 MW and above capacity”.

“3. The existing sub regulation (1) of regulation 64 is replaced with the following regulation:

“64(1) every obligated entity in Haryana shall purchase from renewable energy sources under the Renewable Purchase Obligation (RPO) not less than 1.5% of its energy consumption during each of the FYs 2010-11 and 2011-12, 2% for the FY 2012-13 and 3% for the FY 2013-14”.

“4. The existing sub regulation (2) of regulation 64 is replaced with the following regulation:

“64(2) Solar power purchase obligation of every obligated entity shall be 0.05% and 0.10% of its energy consumption for the financial year 2012-13 and 2013-14 respectively”.

It is evident from the above, that the RPO (solar and non – solar) prescribed by the Commission vide the RE Regulations, 2010 and its subsequent amendments is only till FY 2013-14. This fact was also brought to the notice of the Commission by the Haryana Power Purchase Centre (HPPC) who procures power on behalf of the two distribution licensees i.e. Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL).

Section 86(1)(e) of the Electricity Act, 2003, provides as under:

“ promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also to specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;”

Further, the National Tariff Policy notified by the Central Government, in pursuance of section 3 (1) of the Electricity Act, 2003, provides as under:

“6.4 Non-conventional sources of energy generation including Co-generation:

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage 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”

Additionally, the Union Cabinet had approved the proposal of the Ministry of Power to amend Para 6.4(1) of the Tariff Policy in accordance with the National Solar Mission strategy (Implementation of the National Solar Mission). The amendment requires the State Electricity Regulators to fix a percentage of energy purchase from solar power under the RPOs. The solar power purchase obligation for States may start with 0.25% in Phase I (by 2013) and go up to 3% by 2022 This will be complemented by solar specific Renewable Energy Certificate (REC) mechanism to allow solar power generation companies to sell certificates to the utilities to meet their solar power purchase obligations.

In addition to the above, MNRE vide their Memo No. 29/5(5)/2011 – 12 JNNSM (ST) (Part) dated 10.09.2013 had observed as under:

“The Commission has set a solar RPO of only 0.10% for the State of Haryana for FY 2013-14 whereas as per the provisions under the Electricity Act, 2003 and the amended Tariff Policy, 2006, the same should have been set at least to 0.50% in order to go further up to 3% by 2022. The State so far has tied up a total solar capacity of only around 9 MW. However, when solar RPO requirement is set at 0.50% for FY 2013-14 the State of Haryana has to have a solar installed capacity of around 134 MW for 2013-14 based on the State’s power demand for 2013-14 (Reference: Growth percentage as per 18th EPS of CEA). When solar RPO requirement goes further up to 3% by 2022 the State of Haryana has to have a solar installed capacity of around 1524 MW for 2021-22 based on the State’s power demand for the period 2021-22 (reference: Growth percentage as per 18th EPS of CEA)”.

“We would therefore urge upon the Commission to revisit their Regulations in respect of the solar RPO from the period 2013-14 to 2021-22 and suitably

revise the same upwards as mentioned in the paragraph above, and also take such appropriate steps to ensure that the obligated entity comply with the stipulated target set in the Regulations notified by Commission for the solar RPO”.

2. Thus the above statute and policy guidelines cast a statutory obligation on the State Electricity Regulatory Commission to fix a minimum percentage for purchase of energy from renewable sources taking into account availability of such resources in the region and its impact on retail tariff.

In order to discharge its statutory obligation, the Commission proposed the following amendments to the RE Regulations, 2010 and its subsequent amendments for consultation with the stakeholders and obligated entities including the distribution licensees i.e. Uttar Haryana Bijli Vitran Nigam Ltd.(UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) and HAREDA. The proposed 3rd Amendment on which objections / suggestions of the stakeholders were invited is reproduced below:

“3. The existing sub regulation (1) of Regulation 64 is proposed to be replaced with the following regulation:-

64(1) Every obligated entity in Haryana shall purchase from renewable energy sources under the Renewable Purchase Obligation (RPO) not less than the quantum of renewable energy as indicated in the table below:-

Financial Year	Total RPO (as a percentage of total consumption)
2013-14	3.00
2014-15	3.25
20 15-16	3.50
2016-17	3.75

20 17-18	4.50
20 18-19	5.00
2019-20	5.50
2020-21	6.00

“4. The existing sub regulation (2) of regulation 64 is proposed to be replaced with the following regulation:-

64(2) Solar power purchase obligation of every obligated entity shall be not less than the quantum of solar renewable energy as indicated in the table below:-

Financial Year	Solar RPO (as a percentage of total consumption)
2013-14	0.10
2014-15	0.25
20 15-16	0.38
2016-17	0.57
20 17-18	0.86
20 18-19	1.30
20 19-20	1.96
2020-21	3.00

The existing sub – regulation 15(2) is proposed to be replaced with the following regulation:

” The normative Return on Equity shall be 16%.”

The Following proviso is proposed to be added to the Regulation 15 of the RE Regulations, 2010.

“Provided that the Return on Equity (ROE) shall be inclusive of Income Tax / MAT. Further, in case it is found that the percentage of equity in any RE Project is consistently below 30% in two consecutive quarters of any financial year, the ROE shall be reduced on a pro rata basis”.

Illustration: In case actual equity is say 20% instead of 30% of the Commission's approved project cost , then ROE shall be calculated as $(16/30) \times 20 = 10.67\%$.

3. Based on the feedback / inputs available with the Commission from various stakeholders concerning RE Regulations and the RPO trajectory, the Commission felt that in the present scenario certain provisions of the RE Regulations needed amendment. Accordingly the Commission prepared draft amendments to HERC RE Regulations and hosted the same on the website of the Commission for inviting comments / objections from various stakeholders through public notice. Additionally the Commission vide memo no. 4313 – 34/HERC/Tariff dated 21.01.2014 forwarded the draft regulations to about 22 stakeholders including relevant industry associations seeking their comments / objections, if any.
4. In response to the public notice and Commission's letter dated 21.01.2014 the following stakeholders filed their comments/suggestions/objections.
 - i) Moser Baer Engineering & Construction Limited, New Delhi.
 - ii) Haryana Power Purchase Centre, Sector – 6, Panchkula.
 - iii) Renewable Energy Department Haryana & HAREDA, Panchkula.
 - iv) Star Wire (India) Vidyut Pvt. Ltd., New Delhi.
 - v) National Solar Energy Federation of India, New Delhi / Ahmedabad.
 - vi) Kamsolar Energy Consultants, Gurgaon, Haryana.
 - vii) Puri Oil Mills, Janak Puri, New Delhi.
 - viii) Haryana Vidyut Prasaran Nigam Limited (HVPNL), Panchkula.
 - ix) National Institute of Solar Energy, Guragaon, Haryana.

5. A summary of the comments / suggestions and objections raised by the aforementioned interveners in writing as well as by few of them in the hearing held on 12.03.2014 are as under:

5.1 Shri Pankaj Prakash, Associate Vice President, on behalf of Moser Baer Engineering and Constructions Limited, vide letter MBECL/HERC/RA/1 dated 17.02.2014 submitted as under:

On the issue of the proposed minimum percentage including solar specific percentage, he submitted that the National Action Plan on Climate Change (NAPCC) has set the target of 5% renewable energy purchase for FY 2009-10 which will increase by 1% for next 10 years. Which means by 2020 the percentage of renewable energy will be 15% in total energy mix in India. The RPO proposed by the Commission is not in accordance with the NAPCC targets as it reaches only 5.5% by 2019-20. Additionally, it was submitted that as per Tariff Policy (Amendment) dated 20.01.2011 the Solar RPO should be minimum 0.25% and should be progressively increased to 3% by 2021-22 whereas this Commission, for FY 2012-13 has proposed 0.10% and 0.25% for FY 2013-14. It was further submitted that strong regulatory measures are required to fulfill RPO targets and the same may be increased in a gradual manner.

In view of the above, the intervener proposed that this Commission may adopt the gradual increase in Solar RPO as specified by Hon'ble BERC i.e. 0.25% for FY 2012-13 with 0.25% increase each year upto 2019-20 and 0.50% increase each year thereafter.

On the issue of Return on Equity (ROE) the intervener submitted that RE Generators are taxed at the Minimum Alternate Tax rate (MAT) which is presently 20.008% for the first ten years and at full corporate tax rate for the subsequent fifteen years. As per the Commission's draft, the RE Generators would get only about 12.8% post tax return for the first ten years and 10.8%

subsequently. Such low ROE will discourage RE Generators as against the mandate of the Electricity Act, 2003 and the National tariff policy to encourage them including fixation of preferential tariff. It was further submitted that the level of ROE envisaged by this Commission is not in line with other SERCs / CERC. In view of the above submissions the intervener prayed that ROE of 16% (post tax) may be considered or pre – tax of 20% per annum for the first ten years and 24% per annum from 11th year onwards as per CERC Regulations, may be considered. While opposing the draft amendment to Regulation 15(2) i.e. making provision for pro rata reduction in ROE percentage in case the equity in RE projects is less than 30% in two consecutive quarters of a financial year, the intervener cited various judgments of the Hon'ble APTEL wherein it was held that there cannot be any provision for 'truing up' of generic tariff and any losses or efficiency gains vis – a – vis the norms is borne by the RE Generator. Hence the intervener submitted that the proposed amendment on this issue may be dispensed with.

5.2 The Haryana Power Purchase Centre (HPPC) which purchases power on behalf of the Distribution licensees in Haryana i.e. UHBVNL & DHBVNL, vide Memo No. Ch-65/HPPC/SE/C&R-I/T-26 dated 17.02.2014 submitted following comments / objections:

HPPC submitted that while fixing RPO target the Commission should take into consideration clause 6.4 of the National Tariff Policy which provides that the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on the retail tariffs. The RPO targets proposed by the HPPC are reproduced below:

Financial Year	Total RPO (as a percentage of Total Consumption)	Solar RPO (as a percentage of total Consumption)
2013-14	3.0	0.10
2014-15	3.0	0.10
2015-16	3.25	0.25
2016-17	3.50	0.50
2017-18	3.75	1.0
2018-19	4.0	1.5
2019-20	4.25	2.0
2020-21	4.5	2.5
2021-22	4.75	3.0

It was further submitted by HPPC that Haryana is surplus in power at least till FY 2017-18, hence purchasing additional power even from renewable sources would add to the financial distress of the Distribution Licensees.

On the issue of non – achievement of RPO targets including purchasing RECs, HPPC submitted that they are in the process of floating long term tenders for 50 MW solar power and 100 MW non solar power. Additionally it was submitted that every effort is being made to float the tenders in the month of February.

In addition to the above HPPC raised the issues of lack of financial assistance from Haryana Govt. and HAREDA – yet to explore the renewable energy potential in Haryana. Additionally it was submitted by HPPC that the relevant provision of this Commission’s order dated 20.11.2013 may be incorporated in the proposed amendment. The relevant part of the HERC order as cited by HPPC is reproduced below:

“it is clarified that the tariff determined by the Commission is the ceiling tariff. In case the Discom / HPPC is able to procure renewable energy (solar, non – solar) at a rate lower than that determined by the Commission by way of reverse bidding or otherwise, they may do so”.

5.3 The Director, Renewable Energy Department, Haryana & HAREDA vide Memo No. DRE/HAREDA/2014/2767 dated 21.02.2014 made the following submissions:

It was submitted by HAREDA that the proposed RPO trajectory is reasonable and achievable. However, given the track record of the Discoms / HPPC in achieving the RPO targets a suitable implementation mechanism may be worked out for its enforcement. It was further submitted that the Utilities should agree to purchase power from all the renewable power projects sanctioned by the State Government at the Commission determined ceiling tariff and only HAREDA should invite the tender to purchase through the reverse bidding process.

Additionally, HAREDA also made submissions on the issue of solar RPO trajectory as well as the dispensation on ROE envisaged by this Commission. The former, it was submitted, is not in line with the amended clause 6.4 of the National Tariff Policy and the latter tantamount to discouraging IPPs.

In light of the above submissions / arguments HAREDA prayed that they have no objection to the RPO targets as proposed by the Commission, however, amending sub – regulation 15(2) may be reconsidered.

5.4 Shri Varun Todi, Director, Star Wire (India) Vidyut Pvt. Ltd. vide letter under reference SWIVPL/10C/2013-14/432 dated 12.02.2014 submitted as under:

It was submitted by the intervener that wheeling charges for biomass power plant may be waived of. Alternatively, it was submitted that the Commission

may cap the wheeling charges. Alternatively wheeling charges may be added while calculating generic tariff which is not being done so far.

5.5 Shri R.K. Sharma, Secretary, National Solar Energy Federation of India, vide letter under reference NESFI / 05 dated 17.02.2014 made the following observations:

a) The proposed amendment does not envisage situation of non – compliance or provide measures to ensure compliance.

b) As neither RE power projects are neither being set up in Haryana (solar only about 7.8 MW) nor the obligated entities are meeting their obligations by purchasing RECs. Thus on the one hand the RECs are lying unsold on the other hand the obligated entities are citing non – availability of RE power. Hence the Commission should provide for clear penalties may be monetary or others but strong enough to make non – compliance prohibitive.

c) It was further submitted by the intervener that RPO obligation should not be carried forward from one year to next year. Postponement should attract a separate and additional penalty.

5.6 Kamsolar Energy Consultants vide their email dated 17.02.2014 submitted as under:

Non - compliance of RPO by the obligated entities should lead to monetary penalty and imprisonment and this Commission should also consider making suitable amendment to the effect that RPO obligation should not be carried forward from one year to next year.

5.7 Shri Rajesh Kr. Keshry, Company Secretary, Puri Oil Mills Ltd. vide his letter dated 12.02.2014 submitted that the RPO percentage may be fixed at par with states like Uttarkhand, Himachal Pradesh, Uttar Pradesh, Madhya Pradesh, Chhattisgarh, Andhra Pradesh, Assam etc. It was further submitted

that the Commission must take action under section 142 of the Electricity Act, 2003 against obligated entities who have defaulted to meet their RPO. The intervener cited the example of UERC and UPERC wherein penalties have been imposed for non – compliance. On the issue of ROE it was submitted that the same should be in line with CERC Regulations. Additionally, it was suggested that there should be a regulation that in case the IPPs do not get the required ROE (16% post tax) as per the tariff fixed by this Commission, then the IPP should be duly compensated after establishing its case on the basis of audited accounts or any other norms fixed by the Commission.

5.8 HVPNL, the transmission licensee / STU in Haryana vide Memo No. Ch.10/SE/RAU/F-80/Vol – II dated 11.02.2014 submitted following comments / objections:

HVPNL submitted that free grid connectivity should be limited to small capacity plant up to 5 MW to the distribution system only and not to the transmission system. Additionally, it was submitted by HVPNL that it should be made clear in the Regulation (while defining obligated entity) that short term open access consumers who have availed open access power only for three months during a year and embedded consumer who are availing open access round the year are not exempted.

5.9 The Ld. Counsel Shri R.K. Jain appearing on behalf of Puri Oil Mills and Star Wire in the hearing held on 12.03.2014 made the following submissions.

Need for initiating review/revision of Norms of Tariff Determination:

In view of the provision under Regulation 4 of the HERC (Terms and conditions for determination of tariff for renewable energy sources, renewable purchase obligations and renewable energy certificates) Regulations, 2010, there is need for initiating revision of the Regulations 6 months prior to the end of the first Control Period. The Control Period or Review Period has been defined under Sub-regulation (9) of Regulation 2. Therefore there is urgent

need for initiating the revision of norms for determination of tariff for the next control period commencing 01.04.2014.

Need for upward revision of RPO for Solar and Non-Solar Sources:

In view of the proposed quantum of Renewable Purchase Obligations (RPO) under Reg. 64(1) and 64(2) attention of the Commission was drawn to HERC order dated 20.11.2013 wherein Hon'ble Commission had drawn comparison of RPO norms adopted by various States and observation made therein that the RPO prescribed by Haryana Commission were much less when compared to the RPO in other States. Even the total RPO proposed by 2020-21 were lower than those existing today in many States. Therefore, there was need for upward revision of the non-Solar RPO figures with annual increase of minimum 1% in first 3 years and further increase of 1.5% for next 3 years and 2% increase thereafter so as to make the final RPO figure by 2020-21 as 12.5% in place of 6% proposed in the Draft Amendment.

Similarly, the Solar Power RPO figures proposed for the future years were as under,

2014-15	0.35
2015-16	0.50
2016-17	1.00
2017-18	1.50
2018-19	2.00
2019-20	2.50
2020-21	3.00

The State Power Utilities have not so far achieved any progress as compared to other States and there seems no concern even to fulfill their obligation.

Need to adopt punitive measures for getting the RPO fulfilled:

It was stressed that punitive action should be initiated against the top functionaries of the State Power Utilities as provided under S.142 of the Electricity Act 2003. Examples were also quoted of the State of Utrkhand where UERC imposed penalty of Rs.20,000 on the Managing Director of UPCL for non-

compliance of the RPO. Similar decision was taken by MSERC for initiating punitive action for non-compliance of RPO by Power Utilities in Maharashtra.

Looking at the lukewarm approach of the Haryana Power Utilities there was urgent need to put pressure on the top functionaries of Discoms and initiate appropriate penal action.

Amendment in the ROE norms proposed in the Draft Amendment:

The Draft Amendment proposes a post tax Return on Equity of 16%, which is far lower than prescribed by Hon'ble CERC. In fact, CERC in its orders dated 25.10.2012 followed by latest order dated 07.01.2014 has adopted Pre-Tax ROE of 20% for the first 10 years and 24% from 11th year onwards.

By the proposed norm, the net resultant ROE would reduce to 10.6% after taking into account the impact of Income Tax and MAT. Therefore, the proposed ROE would act as serious disincentive for the RE Project Developers and hinder the future efforts in this direction.

Need to include Transmission & Wheeling charges towards permissible expenses on the project while determining the tariff:

In the existing norms, the IPPs are required to bear the transmission & wheeling charges @2%, which goes out of the ROE of the Developers, thereby reducing the net ROE available to the project developer. The Commission may kindly either exempt the RE Projects from the payment of transmission charges (as done in the case of Solar Power Projects) or allow these as a pass through in the tariff determination. It was further submitted that the amount of investment made by the Transmission/Distribution Licensee towards erection of the interlinking line is much lower than the amount being recovered as transmission charges. Therefore, as an alternative, a provision could be made that as soon as the cost of laying transmission/distribution link line is recovered, the transmission charges may be discontinued for the future period.

6.0 Commission's Analysis & Order:

Based on the comments/suggestions/ objections of various stakeholders and inputs received from stakeholders during the hearing held on 12.03.2014, the Commission has finalized the 3rd amendments to HERC RE Regulations, 2010 with the objective of striking a balance between the interests of various stakeholders primarily the renewable energy power project developers and the power utilities who at times are having conflicting interest as sellers and buyers of renewable energy including REC. Thus the Commission has attempted to address the following issues through these amendments:

6.1 RPO Trajectory:

On the issue of RPO trajectory proposed by the Commission, the position of most of the objectors / interveners was that it should be aligned with the National Tariff Policy / Solar Mission, CERC and other SERCs. While HPPC / Discoms relied on the provisions of the National Tariff Policy wherein it is provided that RPO trajectory should take into account availability of such resources in the region and its impact on the retail tariffs and hence the same should be lowered.

The Commission has considered the above conflicting position and is of the view that the term 'shall be guided' used in Section 61 and 86 of the Act cannot be termed as mandatory and any direction hampering the statutory functions of the Commission cannot be considered as binding upon the Commission. This has also been upheld by the Hon'ble APTEL in its judgment dated 4th October, 2012 in appeal no. 200 of 2011. As far as HPPC / Discoms contention regarding "availability" is concerned, the Commission observes that even the National Tariff Policy relied upon by the HPPC refers to 'availability in the region' and is not state specific. Further, in case renewable energy is not available in the State to meet the RPO, the HPPC / Discoms has the option to take recourse to sourcing such power from other State(s) or bridge the gap

through REC market mechanism. Hence the Commission is not inclined to accept the 'availability' arguments of HPPC / Discoms.

In addition to the above the Commission observes that in its order dated 20.11.2013 in Case No. RA-4 and RA-8 of 2012, RA-11 of 2013 and PRO 30 of 2013 the Commission had passed the following order:

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

Despite the above specific direction, the Commission from the quarterly report submitted by the Nodal agency HAREDA as well submissions of the stakeholders, notes that what to talk of clearing the backlog since FY 2011-12, the HPPC / Discoms are falling short of RPO target determined for FY 2014-15 as well. It is therefore apparent that the HPPC / Discoms have not taken any step to even make a beginning by procuring some REC from the exchange and have stuck to the rhetoric that they are in the process of floating long term tenders for 50 MW solar power and 100 MW non solar power and every effort is being made to float the tenders in the month of February.

The Commission has taken a very serious note of the non – compliance of RPO targets and directs HPPC / Discoms to submit the latest status of removing the backlog as well as meeting RPO targets for the current financial year. The details must be provided to the Commission within two weeks from the date of this order. The Commission, after reviewing the same, may take appropriate action including under section 142 of the Electricity Act, 2003 for continuous non compliance of the Commission’s order / direction by the officer concerned of HPPC / Discoms.

Having observed as above, the Commission, in order to discharge the obligation cast on it by section 86(e) of the Electricity Act, 2003 shall

incorporate the RPO trajectory in the 3rd Amendment to the RE Regulations as modified after taking into consideration the comments / objections of the stakeholder,

6.2 Return on Equity & Proportionate Reduction thereto:

The Commission, in its draft amendment on the issue of ROE, had proposed to cap ROE (inclusive of tax / MAT) at 16% and subject the same to proportionate reduction in case the equity for two successive quarters fall below the normative level of 30%. Most of the interveners / Objector including HAREDA had opposed it on the plea that this would effectively reduce the ROE (net of tax) to below 12% and hence discourage in RE Projects in Haryana. The HPPC / Discoms submitted no comments in support or in opposition to the proposed amendment on this issue.

The Commission, after due deliberations on the above issue, is of the view that most of the SERCs and CERC, in their Regulations, have allowed Pre-Tax ROE of 20% for the first 10 years and 24% from 11th year onwards. Thus capping ROE (inclusive of taxes) may put Haryana at a disadvantageous position vis – a-vis other States as far as setting up RE Projects in Haryana is concerned. The Commission is of the view that it is always preferable to purchase renewable energy generated in Haryana because of the fact that such generation projects as per the statutes has to be encouraged, rather than to purchase REC wherein the amount paid for purchase of the same goes to the generator without even getting the benefit of power availability. Further because of its distributed nature, RE generation is considered advantageous in terms of reduced cost of transmission network and reduced transmission losses. This advantage becomes considerably enhanced when such RE is generated and consumed locally.

In view of the above discussions, the Commission pegs ROE at 16% in addition to tax / MAT for the purpose of calculating tariff. Further, as working out generic tariff wherein any efficiency gains or losses are to be

retained by the project developer and they are not subjected to 'true up', the pro – rating ROE with the actual equity (in case the same is lower than the norm) deployed shall not be applicable as proposed in the draft amendment. However, this dispensation shall not be applicable where the Commission determines case specific tariff for any eligible RE Project.

6.3 Need to adopt punitive measures for getting the RPO fulfilled:

The Ld. Counsel Shri R.K. Jain made an additional point regarding the need to adopt punitive measures which was also reiterated by other intervener / objectors. Regarding this the Commission is of the view that any punitive measures having financial implications imposed on the Nigam may be counterproductive for the simple reason that Nigam being a Public Utility may pass the same to the electricity consumers in one form or the other or such dispensation will add to the financial losses of the Nigam, which will be ultimately borne by the State Government through subvention, infusion of fresh equity capital etc. thus the ultimate burden will again get passed on to the electricity consumers of Haryana.

In view of the above discussions, the Commission feels that sufficient provisions exists in the Electricity Act, 2003 including section 142, thus there may not be any need to include this in the Regulations. However, the Commission is of the firm view that punitive action, if required, may be taken against non – compliance of the orders / directions of this Commission by the officer concerned of the Nigam. As far as non – compliance of RPO trajectory is concerned, the Commission, as a special case has allowed HPPC / Discoms to carry forward the backlog in FY 2014-15. The Commission shall review the progress and, if required, take appropriate action for non – compliance. It is, however, made clear, that no further carry forward of the RPO from one financial year to the other shall be allowed.

Additionally, the Commission does not agree with the submission of HPPC / Discoms on the issue of non – compliance of RPO including purchase of RECs on the plea that Haryana is power surplus, no financial support is provided by Haryana Govt., HAREDA has not explored / identified RE

Projects or purchase of renewable energy would put additional financial burden. The Commission, at the outset, observes that RPO obligation is cast upon HPPC / Discoms hence they are responsible to explore / tie – up such power or purchase REC and hence they cannot shift the responsibility to any other agency / department. Further as per the Financial Re – Structuring Plan (FRP) the State Government has agreed to take over substantial short – term liability of the Discoms, hence it is not factually correct statement that no financial support is being extended by the State Government. Additionally, the surplus power scenario admittedly is envisaged only for a few years, hence the argument of power surplus scenario also does not hold good. More importantly, any additional financial liability that may arise from purchase of RE Power is a pass through in the ARR / Tariff / FSA of the Discoms. Hence it has no impact on the financial health of the Discoms and purchase of such power is environmentally benign and also in line with the National Agenda.

6.4 Wheeling Charges:

The issue of wheeling charges was not part of the proposed 3rd amendment, however, the Commission felt it appropriate to address this issue as the same was raised by some of the intervener / objector and has an impact on all RE Project Developers. The existing dispensation is as under:

“73. Grid connectivity and wheeling charges.- (1) The State Transmission Utility or the transmission licensee other than STU or the distribution licensee, as the case may be, shall bear the cost of EHV / HV transmission line up to a distance of 10 KM from the interconnection point. In case the distance between the interconnection point and point of grid connectivity is more than 10 KMs then cost of the transmission line for the distance beyond the 10 KMs shall be shared equally between the renewable energy developer and the licensee.

(2) Unless otherwise exempted by the Commission the wheeling charges shall be levied @ 2% of energy fed to the grid by the renewable energy

developer in case the power is purchased by the distribution licensee. In all other cases wheeling charges or transmission charges, as the case may be, shall be levied at the rates determined by the Commission from time to time”.

On the above issue HVPNL (the transmission licensee & STU in Haryana) submitted that the Commission may mention the order (tariff order etc.) in which the wheeling charges are determined. While the Star Wire submitted that they are paying 2% of the energy injected into the Grid as wheeling charges and this cost has not been accounted for while determining generic tariff. Thus the same in line with the Solar Power projects may be waived of for biomass power plant as well. Alternatively, the Commission may cap the wheeling charges or wheeling charges may be added while calculating generic tariff which is not being done so far.

The Commission has considered the above comments / suggestions and observes that it is the responsibility of the power utilities i.e. HVPNL / Discoms to construct and bear the cost of transmission line up to a distance of 10 KM from the interconnection point. In turn the Discoms are entitled to deduct 2% of energy fed into the grid by the renewable energy developer as wheeling charges. Such a dispensation appears to create an iniquitous situation i.e. the cost of 2% energy fed in the grid by the RE Project developer recovered over the entire useful life of the project far outweighs the cost incurred by HVPNL / Discoms including by way of depreciation allowed in the ARR. **Thus in order to balance the interest of the RE Project Developer and the Power Utilities and the fact that the renewable energy is generated and consumed locally thereby helping the Grid in minimizing transmission / distribution losses, the Commission orders that the RE Project Developers shall have the option to pay off, in full or twelve equal monthly installments, the actual cost of construction of transmission line (as on date of commissioning) up to a distance of 10 KM from the interconnection point to HVPNL / Discoms, as the case may be, no interest shall be chargeable in case the re - payment is staggered over a**

period of twelve months as till the time entire payment is done HVPNL / Discoms shall continue to deduct 2% of the energy fed into the grid by the RE Generators. Once the entire amount has been paid off, wheeling charges @ 2% shall be discontinued. This shall be applicable to the RE Projects already commissioned as well as the future RE projects with which the HPPC / Discoms may sign PPA. However, those who do not opt for this option shall continue to pay 2% of energy fed by them into the grid as wheeling charge. This shall be incorporated in the RE Regulation as addition to regulation 72 of the principle Regulation.

The Commission has considered the additional submissions of HVPNL and observes that transmission/ and or wheeling charges @ 2% of the energy fed is applicable for the RE Projects selling power to HPPC / Discoms as per tariff determined by the Commission and under a valid PPA approved by the Commission. In all other cases i.e. third party sale, the beneficiary (to whom power is sold) is liable to pay the transmission / wheeling charges as per the ARR / Tariff Order (including MYT order) approved / to be approved by the Commission for transmission & SLDC business of HVPNL (transmission charges) and / or Distribution & Retail Supply Business of UHBVNL / DHBVNL (wheeling charges) for the relevant year.

HVPNL has further commented that free connectivity may be limited to small capacity plant up to 5 MW. The Commission observes that in ultimate analysis nothing is free, the RE project developers whether below or above 5 MW pays @ 2% of the energy fed by them into the Grid, in absolute terms the quantum of energy and the corresponding cost valued at the applicable per kWh tariff increases with the capacity of the project. In all other cases the expenditure (both Capex to the extent of interest cost and Opex) is recovered by the transmission / Distribution companies through the ARR / Tariff approved by this Commission and charged from the electricity consumers of Haryana.

HVPNL had further commented that RPO may be enforced uniformly across all consumer categories and not only on the Discoms. The Commission, on this issue, would like to point out that RPO is in percentage terms (of total consumption) and the definition of obligated entities, as per the RE Regulations in vogue is as under:

2 (20) 'Obligated entity' means an entity in the State of Haryana which is mandated to fulfill renewable purchase obligation under these regulations and include the following:

- (i) the distribution licensee,
- (ii) open access consumers (other than short term open access consumers) and
- (iii) Conventional captive power plant of 5 MW and above capacity.

It is evident from the above that obligated entities include not just the Discoms but others as well. The Nodal agency i.e. HAREDA monitors the compliance of the RPO by the obligated entities, hence, any non – compliance of the RPO by an obligated entity shall be dealt in the same manner as in the case of HPPC / Discoms.

The Commission has taken note of the submission of Shri R.K. Jain the Ld. Counsel appearing on behalf of Star Wire and Puri Oil Mills regarding revision of norms for determination of tariff. The Commission shall take up the issue separately and till then the norms as per the RE Regulations in vogue shall continue to be applicable subject to any deviation / relaxation in accordance with regulation 68 and 69 of the RE Regulations, 2010 as may be considered appropriate by the Commission while determining tariff for the RE Projects to be commissioned in FY 2014-15.

In view of the above the Commission orders the 3rd Amendment to the Haryana Electricity Regulatory Commission (Terms and Conditions for

determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 as per Annexure – A.

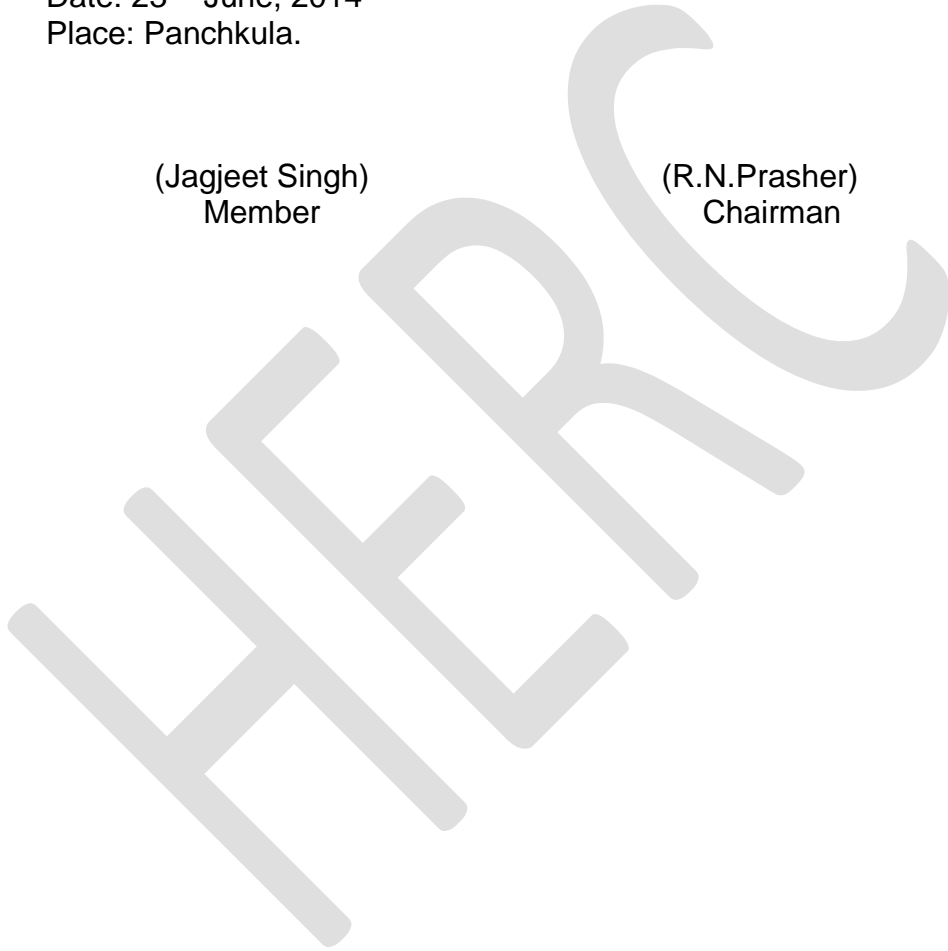
This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on June 23, 2014.

Date: 23rd June, 2014

Place: Panchkula.

(Jagjeet Singh)
Member

(R.N.Prasher)
Chairman



HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS NO. 33-36, SECTOR – 4, PANCHKULA – 134113, HARYANA

Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 (3rd Amendment) Regulations, 2014.

Notification

The July, 2014

Regulation No. HERC/ 23 / 2010 / 3rd Amendment / 2014: - The Haryana Electricity Regulatory Commission, in exercise of the powers conferred on it by section 181 of the Electricity Act 2003 (Act 36 of 2003) and all other powers enabling it in this behalf and after previous publication, makes the following regulations to amend the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 including 1st Amendment dated 5.09.2011 and 2nd Amendment dated 25.11.2011 (hereinafter referred to as ‘the Principal Regulations’).

1. **Short title, commencement, and interpretation.** – (1) These Regulations may be called the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulation, 2010 (3rd Amendment) Regulations, 2014.

(2) These regulations shall come into force with effect from the date of their publication in the Haryana Government Gazette.

(3) These regulations shall extend to all the renewable energy project developers and obligated entities in the State of Haryana.

2. Amendment of sub regulation (1) & (2) of regulation 64 of the Principal Regulations: - The existing sub regulation (1) of Regulation 64 is replaced with the following regulation:

“64(1) Every obligated entity in Haryana shall purchase from renewable energy sources under the Renewable Purchase Obligation (RPO) not less than the quantum of renewable energy as indicated in the table below:-

Financial Year	Total RPO (As a Percentage of Total Consumption)
2013-14	3.00
2014-15	3.25
20 15-16	3.50
2016-17	3.75
20 17-18	4.00
20 18-19	4.50
2019-20	4.75
2020-21	5.00
2021-22	5.50

The existing sub regulation (2) of regulation 64 is replaced with the following regulation:-

“64(2) Solar power purchase obligation of every obligated entity shall be not less than the quantum of solar renewable energy as indicated in the table below:-

Financial Year	Solar RPO (as a percentage of total consumption)
2013-14	0.10
2014-15	0.25
20 15-16	0.75
2016-17	1.00
20 17-18	1.25
20 18-19	1.50
20 19-20	2.00
2020-21	2.50
2021-22	3.00

Provided that the obligated entities shall not be allowed to carry forward RPO obligations from one financial year to the next or subsequent financial year(s)".

3.0 Amendment of Regulation 15 (2) (a) (b) of the Principal Regulations

(2) The normative Return on Equity shall be:

- (a) 16% per annum on normative equity capital.
- (b) Applicable MAT / Corporate Tax shall be separately allowed in the tariff.

4.0. The following proviso shall be inserted below Regulation 72 (2):

Provided that the RE Project Developers shall have the option to pay of the actual cost of construction of transmission line (as on date of commissioning) up to a distance of 10 KM from the interconnection point to HVPNL / Discoms, as the case may be, in full or twelve equal monthly installments without any

interest cost if the re – payment is made in a staggered manner over a period of 12 months and in the intervening period HVPNL/Discoms shall continue to deduct 2% of the energy fed into the grid by the RE Generator. Once the entire amount has been paid off, levy of wheeling charges @ 2% shall be discontinued. This shall be applicable to the RE Projects already commissioned as well as the future projects. However, those who do not opt for this option shall continue to pay 2% of energy fed by them into the grid as wheeling charge.

By Order of the Commission

Sd/-

Director / Tariff
Haryana Electricity Regulatory Commission