

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE Nos. 44 and 70 of 2016

MA Nos. 27, 29 and 32 of 2016 in Case No. 44 of 2016

MA Nos. 19, 30 and 31 of 2016 in Case No 70 of 2016

Coram

**Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

**In the matter of
Case No. 44 of 2016**

**Petition of Maharashtra State Electricity Distribution Co. Ltd. for removal of difficulties
in implementation of Order dated 04.08.2015 in Case No. 190 of 2014 regarding
compliance of its Renewable Purchase Obligation and related matters**

Maharashtra State Electricity Distribution Co. Ltd.Petitioner
Maharashtra Energy Development AgencyImpleaded Party

Appearance

For Petitioner :Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Impleaded Party :Shri. P.C. Diwakar, (Rep.)
For Consumer Representative :Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 27 of 2016 in Case No. 44 of 2016

Application of Green Energy Association for intervention in Case No 44 of 2016

Green Energy Association Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant : Shri. Hasmit Trivedi (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Consumer Representative : Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 29 of 2016 in Case No. 44 of 2016

**Intervention Application of Wind Independent Power Producers Association in Case No 44
of 2016**

Wind Independent Power Producers Association Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant : Shri. Parinay Deep Shah (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Consumer Representative : Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 32 of 2016 in Case No. 44 of 2016

**Application of Indian Wind Power Association (Northern Regional Council) for
intervention in Case No. 44 of 2016**

Indian Wind Power Association (Northern Regional Council) Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant : Shri. Hasmit Trivedi (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Consumer Representative : Dr. Ashok Pendse, TBIA

Case No. 70 of 2016

**Petition of Maharashtra State Electricity Distribution Co. Ltd. for extension of time for
meeting its cumulative Renewable Purchase Obligation shortfall of FY 2014-15 and related
matters**

Maharashtra State Electricity Distribution Company Ltd. Petitioner
Maharashtra Energy Development Agency Impleaded Party

Appearance

For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep)

For MEDA : Shri.P.C. Diwakar, (Rep)
For Consumer Representative : Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 19 of 2016 in Case No. 70 of 2016

Application of Green Energy Association for intervention in Case No 70 of 2016

Green Energy Association Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant : Shri. Hasmit Trivedi (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Consumer Representative: : Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 30 of 2016 in Case No. 70 of 2016

Application of Wind Independent Power Producers Association for intervention in Case No.70 of 2016

Wind Independent Power Producers Association Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant : Shri. Parinay Deep Shah (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep.)
For Consumer Representative: : Dr. Ashok Pendse, TBIA

Miscellaneous Application No. 31 of 2016 in Case No. 70 of 2016

Application of Indian Wind Power Association (Northern Regional Council) for intervention in Case No 70 of 2016

Indian Wind Power Association (Northern Regional Council) Applicant
Maharashtra State Electricity Distribution Company Ltd. Petitioner

Appearance

For Applicant: : Shri. Hasmit Trivedi (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
Shri. D.H. Kulkarni (Rep)
For Consumer Representative : Dr. Ashok Pendse, TBIA

ORDER

Dated: 24 October, 2017

In its separate Petitions in Case Nos. 44 of 2016 and 70 of 2016, Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has raised various issues regarding its Renewable Purchase Obligation (RPO) targets. Miscellaneous Applications (MAs) for intervention in both these Cases have also been filed by some parties. At the hearing held on 20 December, 2016, the Commission observed that, since similar issues have been raised in these Cases, they would be heard together along with the MAs, to which the parties agreed.

Case No. 44 of 2016

1. MSEDCL has filed a Petition on 1 March, 2016 for removal of difficulties in implementation of the Commission's Order dated 4 August, 2015 in Case No. 190 of 2014 regarding verification of compliance of its RPO targets for FY 2013-14, and related issues relating to its RPO.

2. MSEDCL's prayers are as follows:

a) *"To admit the Petition as per the provisions of the Regulation 18 and 20 of the MERC (Renewable Purchase Obligation, its Compliance and Implementation of REC Framework) Regulations, 2010.*

b) *To set aside the ruling in Order dated 4th August 2015 in Case no.190 of 2014 to the extent of disallowance of expenditure on purchase of RECs and / or actual power procurement to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16.*

c) *To consider the ground realities and historical capacity addition in Mini/Micro Hydro Sector in the State and cancel the separate categorization of Mini/Micro Hydro RPO target.*

d) *To allow MSEDCL to carry forward the shortfall not met by MSEDCL by the end of FY 2015-16 to the next Review Period....*

3. The Petition states as follows:

1) The MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2010 ('RPO Regulations') specify the RPO targets for Obligated Entities, including MSEDCL, for FY 2010-11 to FY 2015-16 as shown in the following Table:

Year	Minimum quantum of purchase (in %) from Renewable Energy sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (other RE)	Total
2010-11	0.25%	5.75%	6.0%
2011-12	0.25%	6.75%	7.0%
2012-13	0.25%	7.75%	8.0%
2013-14	0.50%	8.50%	9.0%
2014-15	0.50%	8.50%	9.0%
2015-16	0.50%	8.50%	9.0%

2) As per Regulation 10.4, a Distribution Licensee is obliged to submit, at the end of each financial year, a detailed statement of energy procurement from various Renewable Energy (RE) sources, duly certified by the auditors. The Commission initiated suo moto proceedings for verification of compliance of RPO targets by MSEDCL for FY 2013-14 in Case No. 190 of 2014.

3) Vide its Order dated 4 August 2015 in Case No. 190 of 2014, the Commission ruled that the expenditure on purchase of RE Certificate (RECs) and/or actual power procurement from the RPO Regulatory Charges Fund shall not be passed through to consumers to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16. However, this Order has some inherent issues and will be difficult to implement, and hence MSEDCL has approached the Commission for removal of difficulties in giving effect to the provisions of the RPO Regulations and the rulings of the Commission in its Order dated 4 August 2015 in Case No. 190 of 2014.

4) While specifying the RPO targets in the RPO Regulations, 2010, no special tools /data/measures were available to ascertain the actual availability / actual RE potential in the State. MSEDCL feels that, in absence of such tools, the RPO targets were fixed without ascertaining whether power from RE sources was available or not.

5) Para 6.4 (1) of the Tariff Policy (2006) mandates that the State Electricity Regulatory Commissions (SERCs) shall fix a minimum percentage for purchase of RE after taking into account the availability of such resources in the region and its impact on retail tariffs. However, it appears that the Commission fixed the RPO targets without a study for ascertaining potential from RE sources in the State.

6) The Appellate Tribunal for Electricity (ATE) in its Judgment dated 14 November 2013 in Appeal No.265 of 2012 (Brihanmumbai Electric Supply and Transport Undertaking (BEST) v/s MERC) ruled that the Commission ought to have ascertained the availability of power from such sources at the approved rate.

7) The Gross Energy Consumption (GEC) of the Distribution Licensees is increasing day by day in line with load growth and so are the RPO targets. However, the capacity addition in RE sector is not taking place correspondingly.

8) Hence, in FY 2013-14, shortfalls are observed in meeting the RPO target by all Distribution Licensees in the State, including MSEDCL in particular. The other Licensees, i.e. Tata Power Co. Ltd. - Distribution (TPC-D), Reliance Infrastructure Ltd. – Distribution (RInfra-D) and BEST, are fulfilling their RPO targets by purchasing Renewable Energy Certificates (RECs). The following table shows the RPO fulfillment of MSEDCL and the shortfalls:

(In MUs)

MSEDCL (GEC)	98549.36		
Solar RPO	Target (0.5%)	Met	Shortfall

	492.75	211.00	281.75
Non-Solar RPO	Target (8.48%)	Met	Shortfall
	8359.94	7580.18	779.76
Mini/Micro Hydro RPO	Target (0.02%)	Met	Shortfall
	16.75	0.67	16.08

9) It will be seen that, as against the specified 8.5% non-Solar RPO target, there is a total shortfall of around 780 MUs. Against the 0.5% Solar RPO target, there is a shortfall of around 282 MUs. Therefore, considering the GEC, the RPO target as specified by the Commission is quite high as compared to the actual RE capacity addition that could take place in the State. The compliance by the other Obligated Entities such as Captive Power Plant (CPP) Users and Open Access (OA) consumers is not taken into consideration here, which may further increase the shortfall.

10) It has become necessary to ascertain the actual RE potential in the State and the actual number of RE Generators who are ready to exercise the option of sale to Licensees. The RPO targets need to be reviewed accordingly. If there is no RE power available for purchase, the shortfall in meeting the RPO targets needs to be waived. There has been a large difference between the potential assessed and actual installed capacity. The Commission has been setting RPO targets considering the assessed potential and current installed capacity. The RPO targets needs to be consistent with the actual scientific assessment.

11) MSEDCL has always encouraged RE generation in the State and made efforts to ensure compliance of RPO targets in respect of Solar, Non-Solar and Mini/Micro Hydro Power cumulatively. It has executed long term Energy Purchase Agreements (EPAs) with all RE (Non-Solar) Generators approaching it at the preferential tariff in line with the terms and condition specified by the Commission from time to time.

12) MSEDCL has contracted sufficient RE power for meeting the year-wise RPO targets for FY 2014-15 and FY 2015-16, as below:

Source	Contracted Capacity as on 31.3.2015	Commissioned Capacity as on 31.3.2015	Expected Capacity addition in (FY 15-16)	CUF/ PLF	Expected generation in MUs in FY 15-16
Wind	3012	3012	250 + 347 (FY14-15) =597	20%	6328
Bagasse	1775	1642	125	60%	6106
Biomass	201	147	0	80%	1030

Small Hydro	69	65	4	30%	181
Mini/Micro Hydro	1.7	1.7	0	30%	5
Total	5059	4868	669		13650

13) The estimated GEC of MSEDCL for FY 15-16 will be around 1,20,000MUs. To fulfil the 8.5% Non-Solar RPO target, around 10,200 MUs of RE will be required. Considering the Capacity Utilisation Factor (CUF) specified by the Commission and Maharashtra Energy Development Agency (MEDA), around 13650 MUs of RE power is expected to be generated and procured by MSEDCL. Therefore, MSEDCL expects to meet its RPO target for FY 2014-15, FY 2015-16 and onwards.

14) MSEDCL has executed long term EPAs for a total capacity of 827 MW as on date to meet the its Solar RPO target from FY 2010-11 onwards under various schemes of Govt. of India (GoI) and from the Maharashtra State Power Generation Co. Ltd. (MSPGCL). The details are as under:

Sr. No	Project owner Name	Name of location	Capacity MW	Date of Commissioning	Date of MOU/PS A	Date of EPA	Name of Scheme
1	MSPGCL	Chandrapur	1	20.04.2010	30.08.2009	No individual EPA	GBI / MNRE
2	Clover Solar Pvt. Ltd	Supa, Baramati	2	10.10.2011	15.10.2010	No individual EPA	Migration / JNNSM
3	MSPGCL	Chandrapur	4	16.10.2011			
4	Videocon Industries	Warora, Chandrapur	5	14.10.2011			
5	Dr. Babasaheb Amedkar SSKL	Osmanabad	1	16.08.2011	20.10.2011	20.08.2010	RPSSGP / JNNSM
6	Sepset Construction Ltd	Katol	2	16.11.2011		20.08.2010	
7	Citra Real Estate Ltd	Katol	2	16.11.2011		20.08.2010	
8	MSPGCL	Sakri, Dhule	125	29.03.13	11.11.2010	05.01.2011	-

9	MSPGCL	Sakri, Dhule	15			15.03.2012	-
10	Sai Baba Green Energy Power Projects Pvt. Ltd	Osmanabad	5	11.02.2013	05.01.2012	No individual EPA	JNNSM Phase-I, Batch-II
11	Firestone Trading Company Pvt.Ltd	Ahmednagar	5	06.09.2012			
12	MSPGCL	Shirshufal, Baramati	36 14	19.12.2014 31.03.2015		31.08.2013	-
13	MSPGCL	Koudgaon, Osmanabad	50			28.03.2014	-
14	MSPGCL	Sakri, Dhule	10			29.03.2014	-
15	Sharda Constructions and corporations Ltd	Latur	10	28.05.2015	15.12.2014	EPA with SECI	JNNSM Phase-II (Batch-I)
16	Vishwaj Energy Pvt. Ltd	Solapur	10	28.04.2015			
17	Sunil Hitech Solar (Dhule) Pvt.Ltd	Solapur	5	29.06.2015			
18	IL&FS Devl. Co. Ltd	Madhya Pradesh	15				
19	Today green Energy Pvt. Ltd	Rajasthan	10	08.10.2015			
20	SECI	-----	500	JNNSM Phase-II (Batch-III) PSA execution in process			
		Total	(327 +500) = 827 MW				

15) MSEDCL has given consent for procurement of 500 MW Solar power under the Jawaharlal Nehru National Solar Mission (JNNSM) Phase-II (Batch-III) State-specific scheme implemented by the nodal agency Solar Energy Corporation of India (SECI). The SECI is carrying out the tendering process for selection of 500 MW Solar power Projects situated in Maharashtra under the scheme. Thus, it can be considered that MSEDCL has contracted for 827 MW (327 MW + 500 MW) Solar power.

16) In view of the proposed developments of Solar Energy Projects by MSPGCL, MSEDCL has decided to purchase the Solar power required for fulfilling the RPO target from MSPGCL at the preferential tariff determined by the Commission. MSEDCL is also purchasing Solar power from all those Solar Projects which have participated in various schemes of the JNNSM and the GoI. However, the MSPGCL Solar Projects are getting delayed and, therefore, adequate Solar power is not available.

17) Mini / Micro Hydro Projects are those having capacity below 1 MW. Currently, there are only 3 Projects commissioned under this category, namely, at Shahnoor (0.75 MW), Yeoteshwar (0.075 MW) and Tervanmedhe, MSPGCL (0.2 MW). The first two are Government Projects and are very old. The power is procured from them as per the Commission's Small Hydro Project (SHP) Tariff Order dated 09 November, 2005 and the RE Tariff Order dated 14 July, 2010.

18) The EPAs are being executed with all the RE Project holders. Accordingly, MSEDCL is willing to execute long term EPAs with the Mini/ Micro Project holders in order to fulfill its Mini/Micro RPO target as and when they approach it. However, no capacity addition has taken place during FY 2013-14 and FY 2014-15 (and till date) and perhaps the same scenario will continue in the near future. Hence, the ground realities may be considered and the separate categorization of Mini/Micro Hydro RPO target may be cancelled. From the above, it is evident that MSEDCL has tried to ensure compliance of RPO targets in respect of Solar, Non-Solar and Mini/Micro Hydro.

19) The Government of Maharashtra (GoM) has announced the new composite RE Policy 2015 on 20 July, 2015. It envisages 14400 MW of RE capacity addition in the State. Around 5000 MW capacity addition is expected in the Wind Energy sector in coming 5 years. Out of the above, 1500 MW of Wind Power Projects are considered for meeting the RPO target of Distribution Licensees. Further, 7500 MW of Solar Projects, 1000 MW Bagasse-based Co-generation Projects, 400 MW SHPs, 200 MW Industrial Waste Projects and 300 MW Biomass-based Projects are expected to be installed in the State in the coming 5 years. MSEDCL has taken a policy decision to adopt the GoM RE Policy, 2015 as it is, for implementation. Therefore, it would contract the RE generated from the new RE Projects in the State for fulfillment of its RPO target as per the requirement in the course of time. Considering the huge Policy target and the expected RE capacity addition, MSEDCL would be able to fulfill the RPO target easily. In view of the above, MSEDCL may be permitted to carry forward the shortfall to the next Review Period for cumulative compliance.

20) MSEDCL has recently participated in the UDAY (Ujwal Distribution Licensee Assurance Yojana) scheme announced by the Ministry of Power (MoP), Govt. of India (GoI). The provisions of UDAY are summarized as below:

- i) UDAY was approved by the Union Cabinet on 20 November, 2015. UDAY provides for the financial turnaround and revival of Distribution Licensees, and for a

sustainable permanent solution to the problem. UDAY is also reform measure towards affordable and accessible 24 x 7 Power for All.

ii) State Govts. shall take over 75% of the respective Distribution Licensees' debt as on 30 September, 2015 over two years - 50% in FY 2015-16 and 25% in FY 2016-17. Government of India will not include the debt taken over by the States in the calculation of their respective fiscal deficits in these two financial years.

iii) State Distribution Licensees will comply with the RPO outstanding since 1st April, 2012, within a period to be decided in consultation with the Ministry of Power (MoP).

21) By participating in UDAY, MSEDCL has agreed to abide by all the required conditions, which also includes RPO compliance since 1 April, 2012 within a period to be decided in consultation with the MoP. MoP will soon declare the time period for fulfillment of the pending RPO compliance. GoI has formulated the National Electricity Policy and Tariff Policy under the provisions of Electricity Act (EA), 2003. Both these policies provide for measures to encourage the development of RE sources.

22) The Commission has issued various Orders for tariff determination for RE sources along with terms and conditions for tariff determination and power purchase from RE Sources, including Wind Power Projects, Co-generation Power Projects based on Bagasse, Biomass-based Generation Projects, Municipal Solid Waste-based Projects and Small Hydro Power Projects (SHPs). Further, the Commission has made it mandatory to purchase a certain fixed portion from RE Source for the Licensees and others through the RPO Regulations. As a result of various steps to promote RE generation in the State, the installed capacity of wind energy projects was more than 4443 MW in FY 2014-15, starting from 32 MW in 1999. MSEDCL has proactively participated in the development process by providing necessary infrastructure and guarantee of purchase.

23) However, in its Order dated 4 August, 2015 in Case No. 190 of 2014, the Commission has advocated procurement of RECs and that appears to be the promotion RE Power on paper only. With procurement of RECs, neither will MSEDCL get actual RE nor will the State have any addition in RE capacity. Moreover, all the expenses of procurement of RECs will be passed on to the common consumers of MSEDCL by way of higher retail tariff. Therefore, the Commission may not insist on the procurement of RECs to meet the RPO shortfall and burden the common consumers of MSEDCL.

24) In its Multi-Year Tariff (MYT) Order in Case No. 121 of 2015, the Commission had approved sales of 92,216 MUs and power purchase of 1,11,609 MUs for MSEDCL for FY 2015-16. Considering this, MSEDCL will have to buy around 9,500-10,000 MUs (approx.) to meet the RPO Target of 9% in FY 2015-16. MSEDCL would be able to meet the cumulative RPO targets for FY 2015-16 only after buying RECs. However, RECs will not bring any RE power to the consumers of MSEDCL but will add to their retail tariffs with increased power purchase cost.

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4. M/s Green Energy Association (GEA), Sargam,143, Taqdir Terrace,Near Shirodkar High School,Dr. E. Borjes Road,Parel (East), Mumbai, has filed a Miscellaneous Application (MA) on 30 November, 2016 citing Section 86(1) (e) of the EA, 2003 and Regulation 63 of the MERC (Conduct of Business) Regulations, 2004.

5. GEA's prayers are as below:

- a. *"Dismiss the Petition for being devoid of merits;*
- b. *Allow the present Application and implead the Applicant as a party in the present Petition, if admitted;*
- c. *Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*
- d. *Pass such further order(s) as this Hon'ble Commission may deem appropriate in the facts and circumstances of the case."*

6. In its Application, GEA states that:

(1) GEA is an association of Solar power developers/ Generators specifically in the field of Solar Photo Voltaic (PV) system. The major activities of GEA are inter-alia to educate the people and create awareness on environment and sustainability issues. One of the focuses of GEA is on the REC mechanism. Its members represent about 90% of the total investors in the Solar REC mechanism.

(2) If any carry forward or relaxation of the compliance of the provisions of the RPO Regulations, 2010 is granted to MSEDCL, the main parties to suffer shall be the RE Generators, including the members of GEA, and it would be directly affected by the outcome of MSEDCL's Petition. It is a settled principle of law that a court can direct impleadment of a party in a proceeding if the party has an interest in the subject matter of the proceedings. Moreover, GEA has a strong case to succeed on merits. Hence, its request for impleadment should be accepted and it should be heard. Even in Case Nos. 180, 181, 182 and 183 of 2013 and Case No. 190 of 2014, the Commission had granted permission to GEA to be impleaded and also afforded it an opportunity to present its concerns during the hearings.

(3) GEA's members have invested large sums in harnessing Solar power in Maharashtra, and have relied on the incentives given under the current regulatory regime including but not limited to benefits that can be derived under the provisions of the RPO Regulations. The RPO Regulations provide that RPO has to be complied by the Obligated Entities, one of whom is MSEDCL, being the largest Distribution Utility of the State, and hence any non-compliance thereof by the Obligated Entity would directly impact GEA and its members. GEA's members are an aggrieved party on the whole in this matter.

(4) GEA objects to the present Petition by virtue of Order dated 14 September, 2016 in Case No. 16 of 2016 in *suo moto* proceedings regarding compliance of RPO targets by MSEDCL for FY 2014-15.

(5) The Commission, vide its Orders dated December 24, 2012 in Case No. 102 of 2012, March 12, 2014 in Case No. 180 of 2013 and August 4, 2015 in Case No. 190 of 2014, had repeatedly allowed MSEDCL to cumulatively fulfill its Solar RPO targets by FY 2015-16. However, MSEDCL has failed to comply and has now approached the Commission for removal of difficulties in implementation of the Order after the expiry of FY 2015-2016.

(6) In these Orders, the Commission has stated that MSEDCL has time and again failed to meet its Solar RPO targets. Also, MSEDCL has not been even close in achieving its Solar RPO targets from FY 2010-11 to FY 2014-15, and consequently the cumulative shortfall has been increasing. While declining to condone the shortfall of FY 2013-14, the Commission has stated that it cannot be claimed that sufficient Solar power was not available for purchase, and had found no justification for the shortfall of around 50% against the Solar RPO target for FY 2013-2014.

(7) At a time when now the RPO compliance of 2015-16 is required to be assessed, MSEDCL has belatedly approached the Commission seeking removal of difficulties in implementation of the earlier Order, and that too after expiry of the prescribed period and after the suo-motu proceedings were completed. GEA has also filed a Petition being Case No. 93 of 2016 seeking compliance of RPO for FY 2014-15.

(8) Vide its Order dated 4 August, 2015 in Case No. 190 of 2014, the Commission allowed MSEDCL to carry forward its Solar RPO. However, it failed to comply. Hence, the principle of *res judicata* applies to MSEDCL, and therefore the Petition is not maintainable. “*Res judicata*” means "a thing decided" in Latin. It is a common law doctrine meant to bar re-litigation of cases between the same parties in court. In Appeal No. 267 of 2013, the Appellate Tribunal for Electricity (ATE) upheld the decision of the Commission in Case No. 109 of 2012 holding that the Petition is not maintainable as it is hit by *res judicata*. In light of the ATE Judgment, MSEDCL should not be given another opportunity to meet its Solar RPO, for which ample opportunity was given previously by the Commission.

(9) This Petition of MSEDCL seeking removal of difficulties in implementation of the Order should be dismissed. The Commission has the power to relax and the power to remove difficulties under Regulations 18 and 20 of the RPO Regulations, respectively; however, these powers have to be exercised judiciously.

(10) MSEDCL is misrepresenting and suppressing material facts before the Commission. It is a known fact that MSEDCL has not executed long term Energy Purchase Agreements with Wind Energy Generators as well as Solar Generators. In

various proceedings before the Commission, MSEDCL has stated that it has decided not to buy power from Solar Generators. This stance of MSEDCL is highly condemnable and unjustified.

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7. Wind Independent Power Producers Association (WIPPA), 6th Floor, Tower 4A, M.G. Road, DLF Corporate Park, Gurgaon, has filed MA No. 29 of 2016 in Case No. 44 of 2016 on 29 November, 2016 citing Regulations 18 and 19 of the RPO Regulations, 2010 and Regulation 32 of MERC (Conduct of Business) Regulations, 2004 for impleadment in Case No.44 of 2016.
8. WIPPA's prayers are as below:

“The Objector/Applicant in view of the above circumstances submits that it is an apt case for suo-motu initiation of additional penalty proceedings against MSEDCL under the provisions of section 129, 142, 146 of the Electricity Act, 2003. The Objector/Applicant further pray that the Hon'ble Commission should further pass the following directions, considering the peculiar circumstances and the grave prejudice being caused to the members of the Objector/Applicant and wind energy Generators in the State of Maharashtra:

(i) Permit the Objector/Applicant herein to intervene in the Instant Petition being case no. 44 of 2016, participate and make appropriate submissions in the instant proceedings and take on record the instant intervention and objections-cum-reply filed on behalf of the Objector/Applicant, in the interests of justice; and

(ii) Dismiss the instant Petition being Case No. 44 of 2016, initiate suomotu penalty proceedings under Section 129, 142, 146 and such other provisions of the Electricity Act, 2003 and direct MSEDCL to strictly comply with the judgment and Order dated 04.08.2015 passed in Case No. 190 of 2014; and

(iii) MSEDCL be directed to execute long term EPA with all wind power Generators in the State of Maharashtra at the approved rate of tariff determined by the Hon'ble Commission, with effect from the respective dates of commissioning for fulfilment of RPO; and

(iv) MSEDCL be directed to purchase sufficient wind power to satisfy and meet its non-Solar RPO obligation statutorily mandated by the Hon'ble Commission under the MERC RPO Regulations (and amendments thereto) and orders passed from time to time, based solely on energy injected in million units without any threshold restriction of 1500MW or otherwise; and

(v) Direct that henceforth, the non-Solar (wind) RPO requirement shall be considered as satisfied only to the extent of payments duly made by MSEDCL to the wind energy Generators for wind energy fed in the grid for supply to MSEDCL; and

- (vi) *Disallow MSEDCL from carrying forward the unfulfilled and/or unmet RPO target to next years' control period; and*
- (vii) *Direct MSEDCL to release the outstanding payments to all wind energy Generators immediately and not delay any payments in future; and*
- (viii) *Direct MSEDCL to strictly adhere to and comply with the terms of the EPAs, in letter and spirit; and*
- (ix) *Direct MSEDCL to pay the costs of this litigation to the Applicant/Objector; and*
- (x) *Such other order or orders as this Hon'ble Commission may deem fit."*

9. WIPPA's Application states that:

(1) WIPPA's members are engaged in the generation, commissioning, operation, maintenance and service of Wind Energy Generators. WIPPA is a national association of more than 300 Independent Power Producers (IPPs) who have more than Rs.35,000 crore of wind assets installed across the country. Many constituent members of WIPPA have made significant investments in the development of wind energy, including asset additions towards setting up wind turbines in Maharashtra, and are, therefore, interested and affected parties to the present Petition of MSEDCL.

(2) MSEDCL's Petition has inherent and fundamental contradictions, besides being an abuse of the process of court and a ruse to re-agitate issues, revisit, review and/or somehow setaside the Order dated 4 August, 2015 in Case No. 190 of 2014, knowing that the Order has attained finality, is binding and requires compliance by MSEDCL. The Petition is non-maintainable and ought to be dismissed at the threshold, with costs. Penal action should be initiated against MSEDCL for non-compliance and material non-disclosures.

(3) MSEDCL's Petition has wrongly invoked the power to relax and removal of difficulties provided in Regulations 18 and 19 of the RPO Regulations 2010. There are no difficulties in implementing any of the directions passed by the Commission. These provisions have a limited objective and purpose, and are to be exercised with regard to a particular provision of the RPO Regulations and only in exceptional circumstances. Such power cannot be exercised for setting aside, modifying or reviewing a judicial order which has been validly passed and attained finality as is the case with the present Petition and is ex-facie unsustainable and impermissible in law. Under the guise of removing difficulties, the scheme and essential provisions of the RPO Regulations and/or the EA, 2003 cannot be changed.

(4) Vide its Judgment dated 20 April, 2015, in OP NO. 1 of 2013, while dealing with the issue of RPOs of Obligated Entities, the ATE has also held that such power to

remove difficulty and/or relaxation has to be exercised judiciously by State Commissions under exceptional circumstances as per law, and should not be used routinely to defeat the object and purpose of the RPO Regulations. The ATE has also held that, in case of default in fulfillment of RPO, the penal provision for in the Regulations should be exercised. It has stated that the State Commissions are bound by their own Regulations and must act strictly in terms of their Regulations.

(5) The Commission had applied (in its Order dated 4 August, 2015 in Case No 190 of 2014) the penal provision of Regulation 12 of the RPO Regulations as envisaged in the decision of the ATE in OP No.1 of 2013 and directed MSEDCL to meet its RPO shortfall for the above RE sources by the end of FY 2015-16 through power procurement and/or purchase of RECs. It further held that, to the extent MSEDCL failed to meet the RPO shortfall by the end of FY 2015-16, the expenditure shall not be passed on to the consumers.

(6) MSEDCL has failed to discharge its RPO with regard to non-Solar RPO target on account of acts of omissions and commissions which are solely attributable to it. There was no impediment, difficulty, mitigating circumstance or any circumstance beyond its control which precluded it from meeting its RPO. Vide Order dated 4 August, 2015, the Commission has already rejected the justification put forth by MSEDCL for not meeting the RPO target for Solar and non-Solar RE. It was directed to comply and achieve the target by the end of FY 2015-16. The contention of MSEDCL that it was unable to procure wind energy to meet its non-Solar RPO target as wind energy was not available and/or no Generator was willing to sell wind energy to it and/or capacity additions of wind power did not take place, are all ex-facie false and contrary to the actual position.

(7) In fact, there was and continues to be more than adequate wind power for meeting the non-Solar RPO target. Since 2014, there is a total of 449 MW of commissioned wind power capacity setup by members of the Applicant. In aggregate, there has been about 607MW of commissioned wind power Projects in the Maharashtra over the last two financial years FY 2014-15 and FY 15-16. This amounts to about 1063 MUs per annum (@2% CUF) of wind power, which is readily available for meeting the non-Solar RPO requirement. However, these Generators face difficulties in selling power to MSEDCL due to lack of long term EPAs. Despite several reminders, MSEDCL has not executed EPAs with them. MSEDCL has willfully delayed execution of these EPAs, causing severe financial prejudice to the these Generators.

(8) Having failed to meet its shortfall in non-Solar RPO for FY 2013-14 by the end of FY 2015-16, in case the power to relax or removal of difficulty is exercised, it will tantamount to playing mischief and setting at naught the penal action already set in motion on account of the admitted and unjustifiable default of MSEDCL.

(9) MSEDCL cannot under the garb of this Petition seeking exercise of power to remove difficulty and/or relaxation, be permitted to re-agitate the very same issues,

which have already been held against it, vide the Order dated 4 August, 2015. It would be wholly contrary to the principle laid down by the ATE in OP No. 1 of 2013 and duly implemented by the Commission in that Order. It is unsustainable and impermissible in law as it amounts to making a mockery of the proceedings which culminated with the aforesaid Order.

(10) MSEDCL in its Petition contended that no special tools/data/measures were available to ascertain the actual availability/actual RE potential in the State. On that basis, it has been wrongly stated that in absence of such tools, the RPO targets were fixed without ascertaining as to whether power from RE Sources is available or not. The contentions of MSEDCL are denied, being incorrect and contrary to the admitted position.

(11) As per the National Institute of Wind Energy (NIWE) report, Maharashtra has enormous potential of wind energy. NIWE has identified more than 45 GW of wind energy potential in the State. As against the available wind power potential of over 45 GW in Maharashtra, presently only 4.5 GW has been utilized.

(12) Even the National Action Plan on Climate Change (NAPCC) notified by the Government of India has set a RPO target of 15% across all States by 2020. More recently, even the Ministry of Power, Government of India in June 2015, increased the long term RE capacity target to a total of 175 GW by March 2022. This includes 100 GW of Solar capacity and 60 GW of Wind capacity.

(13) The Comptroller and Auditor General of India (CAG) in its Report no. 34 of 2015 on Renewable Energy in India expressed dismay on the status of RPO compliance in India. The Report notes that, as against the NAPCC target of 8 and 9% for FY 2012-13 and 2013-14, the national achievement was only 4.28 and 4.51%, respectively. The Report, also states that the installed capacity in the ten high potential States varied from zero to 68% of the potential, and that unless the State Governments of these States prioritise exploitation and development of their wind energy, the progress in the sector will remain insignificant.

(14) The Commission has increased the RPO Target for the four-year period from FY 2016-17 to FY 2019-20 under the new RPO Regulations, 2016. In the Statement of Reasons, the Commission has inter-alia observed that it has considered aspects such as availability of RE resources in the State while revising the RPO Targets. The RPO Target for non-Solar RPO in the State stands at 10-11.50% over the four year term. Therefore, MSEDCL's suggestion that the RPO Targets have been fixed without ascertaining whether power from RE sources is available or not is erroneous and may be rejected. MSEDCL cannot challenge the RPO Targets fixed by way of Regulations through these proceedings.

(15) The reliance placed by MSEDCL on the Judgment of the ATE dated 14 November, 2013 in Appeal No. 265 of 2012 is misconceived and erroneous. That decision does not apply in the facts of the present case and certainly cannot hold that the RPO Target fixed by the Commission under the RPO Regulations is incorrect. The decision of the ATE pertains to disallowance by the State Commission of actual expenditure incurred by BEST during true up proceedings.

(16) The issue was limited to seeking allowance of expenditure incurred by BEST for purchase of RE at a rate higher than the preferential tariff rate. The ATE has inter-alia held that the State Commission should have considered whether BEST was in a position to procure power from RE sources at the preferential (approved) rate as applicable in FY 2009. In that Case, as BEST was unable to procure power at the preferential rate from RE sources, which were insisting on selling power at a rate higher than the preferential rate, i.e., at market driven rates, BEST had sought true up of its expenditure at actuals, having procured RE at such higher rate. However, the Commission capped the true up for this expense at the preferential tariff rate without undertaking an assessment of whether BEST was in a position to procure power at the preferential rate from RE sources. In other words, it was held that the State Commission should have ascertained whether power from RE sources was available at the preferential tariff rate before proceeding to disallow power purchase cost at the higher rate. It was in these circumstances that the ATE had set aside the Order of the Commission by allowing BEST to recover the expenditure as per actuals. This Case does not support the contention raised by MSEDCL.

(17) The contention raised by MSEDCL in the Petition to the effect that, while the GEC of the Distribution Licensees is increasing in line with load growth and so also the RPO Targets, commensurate capacity addition in RE sector is not taking place, is erroneous and contrary to the record. 449 MW of wind power capacities built by the Applicant's members since 2014 was available for utilization by MSEDCL to meet its non-Solar RPO shortfall, which has not been utilized by MSEDCL. These Generators have been adversely affected due to lack of long term EPAs which are yet to be signed by MSEDCL despite several written reminders.

(18) Considering a conservative CUF of 20% also, at least 888 MUs would have been available till 31 March, 2016 for MSEDCL to utilize and meet its non-Solar obligation from 449 MW. Evidently, the shortfall pointed out by MSEDCL for FY 2013-14 as amounting to 780 MUs would have been easily met by this power. It is therefore incorrect to contend that the RPO Target of FY 2013-14 for non-Solar sources was not met or that shortfall was observed as capacity addition was not taking place.

(19) MSEDCL has wrongly sought to expand the issue by bringing in the issue of compliance by other Obligated Entities such as CPPs/ OA consumers or other Licensees.

The real issue is limited to non-compliance by MSEDCL of its RPO under the RPO Regulations, 2010.

(20) Many wind energy Generators have been waiting for MSEDCL to purchase the entire power from the date of commissioning and entering into valid long term EPAs at the rate determined by the Commission. However, MSEDCL has not executed EPAs with these Generators.

(21) MSEDCL in its Petition has brought out its intent to implement and adopt the GoM's new RE Policy, 2015 which inter alia specifies a cap of 1500 MW of wind power for meeting the RPO target of Distribution Licensees, including MSEDCL. However, in the Tariff Petition filed for FY 2016-17, MSEDCL has considered about 1750 MW (CUF@ 20%) of wind power as necessary for it to meet its non-Solar RPO target for FY 2015-16 and FY 2016-17.

(22) MSEDCL has wrongly sought to carry forward the shortfall in achieving RPO target, including non-Solar RE, to the next Control Period. The implications of non-compliance of Order dated 4 August, 2015 must apply in letter and spirit.

(23) In OP No. 1 of 2013, the ATE stated that carry forward should only be allowed in exceptional circumstances. Even in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 and IA-28 of 2014 decided on 16 April, 2015, the ATE listed the exceptions on the grounds of which the State Commissions can revise RPO targets and allow carry forward. If it is permitted to pass through or carry forward its unmet non-Solar RPO in the next Control Period, there is no guarantee of compliance by MSEDCL.

(24) MSEDCL in its Petition has wrongly stated that, by participating in the UDAY Scheme declared by the Government of India, it is entitled to comply with the RPO effective from 1 April, 2012 within a period to be decided in consultation with the Ministry of Power. Such an assertion is wholly unacceptable. MSEDCL cannot side step the statutory obligation imposed upon it nor can it be allowed to not adhere to or implement in letter and spirit the various directions and Orders issued by the Commission from time to time, under the pretext of participating in the UDAY Scheme of the Government of India.

(25) MSEDCL cannot proceed to implement a policy decision which is at variance with the statutory scheme and provisions of the RPO Regulations. It is also well settled that policy decisions of the State Government/Central Government are not binding on the Commission.

(26) MSEDCL in its Petition has wrongly contended that promotion of RECs is to the detriment of consumers. MSEDCL cannot seek to set at naught the regulatory provisions,

which have been stipulated in the RPO Regulations, by seeking to do away with the practice of procuring RECs to meet the RPO shortfall. The contention that such purchase of RECs is an undue burden on consumers is an entirely skewed assessment by MSEDCL and deserves no indulgence.

(27) The contention of MSEDCL of high rate of RE as against conventional energy is also unwarranted. RE is clean and green energy and has benefits for all stakeholders, including consumers. Moreover, the tariff determined is a fixed tariff applicable for the entire Project life of 25 years of the wind power Project. The tariff is determined after detailed scrutiny of market trends and in accordance with the RE Tariff Regulations notified by the Commission for RE Generators. It is determined after a detailed consultative process of considering objections/submission all stakeholders and after holding public hearings. The tariff takes into consideration benchmark parameters on cost-plus basis so as to protect and provide cash flow for sustenance of operations for the Project life of 25 years.

(28) While MSEDCL factors in the power purchase cost for procuring RE in its ARR and seeks its recovery from consumers and takes credit for the energy evacuated for RPO compliance, it neither makes payments to wind Generators nor executes long term EPAs. MSEDCL on the other hand continues to regularly pay to the other thermal Generators from whom it procures electricity but has failed to pay the outstanding amounts due to the wind energy Generators for over 13 months. This would further burden consumers of Maharashtra as MSEDCL would be required to pay delayed payment charges (DPC) on the same.

(29) In the circumstances, MSEDCL has not substantiated or provided any legal basis in support of the relief claimed by it. MSEDCL has willfully failed to comply with the directions passed and not adhered to and/or complied with the requirement to meet the RPO shortfall of non-Solar RE even though more than adequate wind power was available for utilization.

(30) Hence, *suo-motu* proceedings for additional penalty may be initiated against MSEDCL under the provisions of section 129, 142, 146 of the EA, 2003.

Miscellaneous Application No. 32 of 2016 in Case No. 44 of 2016

10. Indian Wind Power Association-Northern Region Council (IWPA), World Trade Centre, Babar Road, New Delhi, has filed MA No. 32 of 2016 in Case No. 44 of 2016 on 6 December, 2016 citing Regulations 18 and 20 of the RPO Regulations, 2010, for impleadment.
11. IWPA's prayers are as below:

- a. *“Allow the present Application and implead the Applicant as a party in the present Petition, if admitted;*
- b. *Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*
- c. *Pass such further order(s) as this Hon’ble Commission may deem appropriate in the facts and circumstances of the case.”*

12. IWPA has stated in its Application that:

(1) IWPA is a registered association of wind power producers in India, with more than 1300 members all over India, and with an aim of development of wind energy sector in India by engaging with all stakeholders, policy makers, State Governments and multi-lateral agencies.

(2) Many IWPA members have made significant investments in the development of wind energy, including asset additions towards setting up wind turbines, and are therefore interested and affected parties to the present Petition filed by MSEDCL. In the circumstances, IWPA being an interested and affected party, seeks to place on record the following objections to the Petition and to participate in the proceedings and make further submissions at the time of hearing.

(3) The Petition filed by MSEDCL is misconceived, besides being an abuse of the process of court and a ruse to re-agitate issues, revisit, review and/or somehow side-step the directions in the Order dated 4 August, 2015 in Case No. 190 of 2014 and more recently in the Order dated 14 September, 2016 in Case No. 16 of 2016, being aware that the directions contained therein are final, binding and require strict compliance by MSEDCL.

(4) MSEDCL is seeking removal of difficulties in meeting the RPO for FY 2013-14 and has also sought extension in Case No. 70 of 2016 for compliance of RPO for FY 2014-15. MSEDCL is time and again seeking similar reliefs in various cases and the Commission vide its Orders in Case No. 190 of 2014 and Case No. 16 of 2016 had instructed it to meet its RPO by the end of FY 2015-2016, which it has failed to do. MSEDCL cannot be permitted to repeatedly raise these issues and/or seek similar relief, which already stand rejected. Both Petitions are misconceived and an abuse of the process of the court. The Petition is not maintainable and hit by the doctrine of res-judicata.

(5) The Petition seems to have only been filed to get over the legal bar against challenging the final Order dated 4 August, 2015 and attain and/or secure legitimacy to the otherwise evident violation, default and misconduct on the part of MSEDCL in not adhering to and/or complying with the direction of meeting the shortfall towards its RPO as contained in the Order dated 4 August, 2015 for FY 2013-14 and more recently vide Order dated 14 September, 2016 for FY 2014-15.

(6) Strict penal action should be initiated against MSEDCL for non-compliance and material non-disclosures along with consequential directions.

(7) The Petition filed by MSEDCL has wrongly invoked the Power to Relax and Removal of Difficulties provided in Regulations 18 and 20 of the RPO Regulations, 2010 seeking reliefs in implementation of Order dated 4 August, 2015 in Case No. 190 of 2014 regarding verification of compliance of RPO targets by MSEDCL for FY 2013-14.

(8) MSEDCL's Petition seeking relief in implementation of that earlier Order should not be allowed as the Commission has time and again given enough opportunity to MSEDCL to meet its RPO targets. The relaxation is sought by MSEDCL under the pretext of difficulty in implementing the directions of the Commission with regard to meeting the RPO shortfall. However, there has been no substantiation or circumstance which have been placed for consideration which merits exercise of the exceptional power to relax and/or remove difficulties.

(9) The power to relax and/or removal of difficulty in terms of Regulations 18 and 20 of the RPO Regulations, 2010 have a clearly defined (limited) objective and purpose. Such power is to be exercised by the Commission either for giving effect to and/or considering the application of, a particular provision of the RPO Regulations, and that too only in exceptional circumstances. Such power cannot be exercised for setting aside, modifying or reviewing a judicial Order which has come to be validly passed and attained finality. The present Petition seeks to achieve this very result, which is *ex-facie* unsustainable and impermissible in law.

(10) In light of the ATE Order in Appeal No. 87 of 2012 which observed that the power under the provision for removal of difficulties is a limited power to remove the difficulties in implementation of the Regulations and not to insert anything which has not been provided under the Regulations. Even the power to remove difficulty in giving effect to any particular provision of a Regulation and/or the power to relax application of any particular provision of a Regulation made by the State Commission is no longer *res-integra*. The scope, purpose and object of exercise of such power have been authoritatively decided by the Supreme Court and the ATE.

(11) The power to remove difficulty can only be exercised, to the extent necessary, for giving effect to a particular provision of the RPO Regulations. It has been repeatedly held that such power to remove difficulty cannot be exercised when the difficulty arises due to the application of a Regulation in question. Furthermore, under the guise of removing difficulties, the scheme and essential provisions of the RPO Regulations and/or the EA, 2003 cannot be changed. The power to remove difficulty by a 'special' or 'general' Order cannot be equated with power to review or modify decisions, directions or Orders. However, this is exactly what is being sought by MSEDCL. It is a well settled principle of law that what cannot be done directly can also not be done indirectly.

(12) The ATE vide its Order dated 20 April, 2015, in OP NO. 1 of 2013, while specifically dealing with the issue of RPOs of Obligated Entities across the country, has inter-alia also held that such power to remove difficulty and/or relaxation has to be exercised judiciously by State Commissions under exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the RPO Regulations made by the Commissions.

(13) The ATE in the above decision has further held that, in case of default in fulfillment of RPO by Obligated Entities, the penal provision in the Regulations should be exercised unflinchingly. The ATE has held that the State Commissions are bound by their own Regulations and must act strictly in terms of them.

(14) In the light of the ATE Judgment in OP No. 1 of 2013, the Commission vide its Order dated 4 August, 2015 in Case No 190 of 2014 had rejected the justifications given by MSEDCL for shortfall in Solar RPO for FY 2013-14 and non-Solar RPO for FY 2013-14 (and previous years). Similarly, vide its Order dated 14 September, 2016 in Case No. 16 of 2016, the Commission has also rejected the justification given by MSEDCL for RPO shortfall for Solar and non-Solar (Wind) RPO for FY 2014-15. MSEDCL was directed to meet its RPO shortfall of FY 2013-14 through power procurement and/or purchase of RECs by the end of FY 2015-16 and that, to the extent that MSEDCL failed to meet the RPO shortfall by the end of FY 2015-16, the expenditure shall not be passed on the consumers.

(15) MSEDCL having failed to meet its shortfall in non-Solar RPO for FY 2013-14 by the end of FY 2015-16 as also for FY 2014-15 till October, 2016, in case the power to relax or removal of difficulty is exercised, it will tantamount to setting at naught the penal action already set in motion on account of the admitted and unjustifiable default of MSEDCL. MSEDCL cannot under the garb of such Petition(s) seeking exercise of power to remove difficulty and/or relaxation be permitted to re-agitate the very same issues which have already been held against it vide Order dated 4 August, 2015 and more recently vide Order dated 14 September, 2016. It would be contrary to the principle laid down by the ATE in OP No. 1 of 2013 and duly implemented by the Commission vide final Order dated 4 August, 2015.

(16) MSEDCL has admittedly failed to discharge its RPO with regard to non-Solar RPO target on account of acts of omissions and commissions for FY 2013-14 which are solely attributable to it. There was no impediment, difficulty, mitigating circumstance or any circumstance beyond its control, which precluded it from meeting its RPO Targets.

(17) Further, the Commission has, vide its Order dated 14 September, 2016 in Case No. 16 of 2016, already held that the performance of MSEDCL with regard to RPO compliance (for FY 2014-15) shall be reviewed in the compliance verification

proceedings for FY 2016-17 and also taken into account in the Mid-Term Review proceedings for the 3rd MYT Control Period. MSEDCL cannot for this reason also be allowed to agitate or seek extension of time for compliance of RPO shortfall for FY 2014-15 at this stage as it will go against the directions in the Order dated September 14, 2016.

(18) Vide Order dated 4 August, 2015, the Commission has already rejected the justifications/reasons put forth for not meeting the RPO target for Solar and non-SolarRE. It was directed to achieve the target by end of FY 2015-16.

(19) MSEDCL has admittedly failed to comply and/or adhere to the direction in the above Order. Instead of taking steps to implement the directions in that Order and more recently in the Order dated 14 September, 2016, MSEDCL has preferred to agitate the issues all over again by filing a frivolous Petition in Case No. 44 of 2016. The explanation and/or reasons provided in both the Petitions seeking invocation of power to relax and removal of difficulty are specious and baseless.

(20) There was and continues to be more than adequate wind power for meeting the non-Solar RPO target. Since 2014, there has been considerable commissioned wind power capacity which is readily available for meeting the non-Solar RPO requirement. However, these Generators are adversely affected MSEDCL due to lack of long term EPA. Despite several reminders, MSEDCL has not executed EPAs with these Generators willfully.

(21) MSEDCL has misrepresented and suppressed material facts. While it has not executed long term EPAs with wind Generators from the date of their commissioning at the approved tariff, yet on numerous occasions it has made false assertions about having executed EPAs with all Generators who have approached it.

(22) Over FY 2014-15 and FY 2015-16, about 607MW of wind power Projects were commissioned in the State of Maharashtra. Another 150-200MW of wind power Projects are ready for commissioning. Thus MSEDCL cannot claim RPO shortfall in non-Solar (wind) RE due to unavailability of capacity addition. There is sufficient wind power to substantially meet the non-Solar (wind) RPO target but which has remained unutilized and untied on account of MSEDCL not executing long term EPAs for no justifiable reason.

(23) MSEDCL has also repeatedly misrepresented in numerous proceedings that it has contracted sufficient RE for meeting its RPO Targets. The reality is that MSEDCL has not executed EPAs after April, 2014. MSEDCL neither wants to comply with RPO requirement/shortfall nor execute EPAs with commissioned Generators who are ready to sell the entire power to MSEDCL. Moreover, MSEDCL does not pay these Generators under the pretext of non-execution of EPAs, but passes on the power procurement cost in its ARR year after year.

(24) The RPO targets under the RPO Regulations are in consonance with and pursuant to the statutory mandate under Section 86(1)(e) of the EA, 2003 which mandates the State Commissions to specify the minimum percentage of RE purchase from the total consumption of electricity in the area of a Distribution Licensee so as to promote generation from RE sources.

(25) The Commission has recently in March, 2016 increased the RPO Target for the 4 year period from FY 2016-17 to FY 2019-20 under the new RPO Regulations, 2016. In the Statement of Reasons, the Commission has observed that it has considered aspects such as availability of RE resources in the State while revising the RPO Targets. The Target for non-Solar RPO in Maharashtra stands at 10-11.50% over the 4-year term. Therefore, to suggest that RPO Targets have been fixed without ascertaining whether power from RE sources energy is available or not is erroneous.

(26) Vide Order dated 14 September, 2016, the Commission has asked MEDA for a detailed study to re-assess the realistic CUF of non-Solar (wind) Projects. It is common knowledge that MEDA is working on the study with NIWE and the report is likely to take some more time as it is coordinating with concerned agencies for the data required by NIWE. Nevertheless, MSEDCL has on many occasions without any substantiation or documents in support continued to make false and baseless allegations and attributed inefficiencies to non-Solar (wind) Generators.

(27) The Commission has repeatedly held that, owing to the infirm nature of wind energy for reasons wholly beyond the control and/or attributable to wind Generators, even if power generated is below the expected generation, MSEDCL is under an obligation to meet its RPO requirement in terms of the procedure / mechanism detailed in the RPO Regulations. However, MSEDCL continues to be in default of the directions of the Commission.

(28) Despite the availability of non-Solar (wind) power, MSEDCL has till date not signed EPAs with Wind Generators. Therefore, the contention of MSEDCL that RPO targets for non-Solar were not met on account of non-availability of resources is incorrect.

(29) In the circumstances, MSEDCL should not be allowed to carry forward the shortfall in achieving RPO target, including non-Solar, any further. MSEDCL was allowed to carry forward its shortfall in meeting RPO targets for non-Solar RE during earlier years as well, but continues to be in non-compliance. It has not met and/or complied with its RPO target for non-Solar sources for FY 2013-14 (cumulatively) till October, 2016 despite being allowed time till March 31, 2015.

(30) If MSEDCL is permitted to pass through or carry forward its unmet non-Solar RPO to the next Control Period, there is no guarantee of compliance by MSEDCL. Suo-motu action was initiated in Case No. 190 of 2014 and Case No. 16 of 2016 by the Commission, wherein enough opportunity was granted to MSEDCL to meet its RPO Obligations. Therefore, it is reiterated that permitting MSEDCL to carry forward its RPO would set at naught the rationale and principle behind the Order. Without prejudice, if such carry forward is allowed, it should be made subject to executing long term EPAs with wind Generators at the approved tariff and as per their respective dates of commissioning/availability for fulfilling both unmet RPO and current RPO.

(31) Maharashtra being a wind rich state has enormous potential and existing wind capacity for utilization by MSEDCL. However, MSEDCL has sought to delay and not utilize wind power to meet its RPO shortfall. If it had diligently utilised this wind power, then it would have been able to achieve and meet its RPO targets, considerably.

(32) The Petition is liable to be dismissed with exemplary costs. Without prejudice to the foregoing, if the Petition is admitted, IWPA should be impleaded. No prejudice will be caused to MSEDCL if IWPA is impleaded, but grave harm and irreparable loss will be caused to IWPA if the present Application is not allowed.

Case No. 70 of 2016

13. MSEDCL has filed a Petition on 28 April, 2016, citing Regulation 18 and 20 of the RPO Regulations, 2010, for extension for time for meeting its cumulative RPO shortfall for FY 2014-15 and related issues with regard to its RPO.
14. MSEDCL's prayers are as below:
 - a. *"To admit the Petition as per the provisions of the Regulation 18 and 20 of the MERC (Renewable Purchase Obligation, its Compliance and Implementation of REC Framework) Regulations, 2010.*
 - b. *To relax the specified RPO Targets as prescribed after undertaking the exercise of ascertaining and confirming whether the fixation of the RPO targets is in accordance with the Regulation 6.4.1 of the erstwhile National Tariff Policy (as applicable) including various factors like RE potential of the State, expected capacity addition, actual capacity addition, contracted capacity addition, actual availability, price of REC, the element of realistic approach to evolving RPO Targets, RE wheeled through Open Access, the National scenario and or other relevant factors.*
 - c. *To review the ruling in Order dated 4th August 2015 in Case No. 190 of 2014 to the extent of disallowance of expenditure on purchase of RECs and/or actual power procurement to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16.*

- d. *To consider the ground realities and historical capacity addition in Mini/Micro Hydro Sector in the State and revised / cancel the separate categorization of Mini/Micro Hydro RPO target.*
- e. *To allow MSEDCL to carry forward the shortfall not met by MSEDCL by the end FY 2015-16 to the next Review Period.*
- f. *To allow MSEDCL a period of three (3) years to meet its cumulative shortfall in RPO....”*

15. The Commission notes that some of submissions made by MSEDCL in this Petition are identical or similar to some of those made in Case No. 44 of 2016 and which have been summarized at para. 3 earlier in this Order. Such identical or similar submissions are not being fully set out here, and references are provided to the summary of MSEDCL’s corresponding submissions in Case No. 40 of 2016. Subject to this, the Petition is summarized as follows:

- 1) The RPO Regulations, 2010 specify RPO targets for Obligated Entities, including MSEDCL, for FY 2010-11 to FY 2015-16 [as set out in the Table at para. 3 of this Order from MSEDCL’s Petition in Case No. 44 of 2016].
- 2) As per Regulation 10, a Distribution Licensee is obliged to submit, at the end of each financial year, a detailed statement of energy procurement from various RE sources, certified by the auditors. Since FY 2014-15 was over, the Commission decided to initiate suo-motu proceedings for verification of compliance of RPO targets by MSEDCL for FY 2014-15 (Case No. 16 of 2016). The Commission concluded the proceedings of Case No. 16 of 2016 by conducting a public hearing on 29 February, 2016. At that time, MSEDCL put forth the efforts taken for fulfillment of RPO compliance and also the difficulties faced. Therefore, MSEDCL is now approaching the Commission for removal of difficulties in giving effect to the provisions of the RPO Regulations.
- 3) From time to time, the Commission has issued various Orders for Tariff determination for RE sources along with terms and conditions for tariff determination and power purchase from RE Sources, including Wind Power Projects, Cogeneration Project based on Bagasse, etc. Further, the Commission has made it mandatory to purchase a certain fixed portion from RE Sources by the Licensees and others through RPO Regulations.
- 4) As a result of various steps to promote RE Generation in the State, the Installed Capacity of wind power has reached more than 4443 MW in FY 2014-15 starting from 32 MW in 1999. The total RE installed capacity of the State has reached 6743 MW. MSEDCL has pro-actively participated in the development process by providing necessary infrastructure and guarantee of purchase. This is in line with the letter and spirit of various policies for promoting RE even though it has put some burden on the consumers of Maharashtra. MSEDCL has executed long term EPAs with RE (non-Solar) Generators approaching it at the preferential tariff, in line with terms and condition specified by the Commission from time to time.

5) MSEDCL has contracted sufficient RE power for meeting the year-wise RPO targets for FY 2014-15 and FY 2015-16 [as detailed in the Table at para. 3(12) earlier in this Order in respect of Case No. 44 of 2016].

6) Apart from the direct purchase at promotional feed-in-tariff, around 564 MW of Wind Energy is supplied to the subsidizing consumers of MSEDCL. This OA is facilitated in a non-discriminatory manner and full infrastructure support is provided by MSEDCL. The estimated GEC of MSEDCL for FY 15-16 will be around 1,20,000 MUs. To fulfill the 8.5% non-Solar RPO target, around 10,200 MUs of RE will be required. Considering the CUF as specified by MERC/MEDA, around 13,650 MUs of RE is expected to be generated and procured by MSEDCL. Therefore, MSEDCL expects to meet RPO target for FY 14-15, FY 15-16 and onwards.

8) MSEDCL has executed long term EPAs for a total capacity of 327 MW as on date to meet the Solar RPO target from FY 2010-11 onwards under various schemes of GoI and MSPGCL. The details are as under:

Project Owner.	Location	Capacity in MW	Date of MOU/PSA	Date of EPA	Date of Commissioning
MSPGCL	Chandrapur	1		30.08.2009	20.04.2010
Dr. Babasaheb Ambedkar SSKL	Osmanabad	1	20.10.2011	20.08.2010	16.08.2011
Clover Solar Pvt.Ltd	Supa, Baramati	2	PSA dated 15.10.2010		10.10.2011
MSPGCL	Chandrapur	4			16.10.2011
Videocon Industries	Warora, Chandrapur	5			14.10.2011
Sepset Constructions Ltd	Katol	2	20.10.2011	20.08.2010	16.11.2011
Citra Real Estate Ltd	Katol	2	20.10.2011	20.08.2010	16.11.2011
MSPGCL	Sakri, Dhule	125		05.01.2011	29.03.2013/01.04.2013
MSPGCL	Sakri, Dhule	15		15.03.2012	
Sai Baba Green Energy Pvt.Ltd	Osmanabad	5	PSA dated 05.01.2012		13.02.2013

	Firestone Trading Pvt. Ltd	Ahmednagar	5			06.09.2012
	MSPGCL	Shirshufal, Tal. Baramati	36	NA	31.08.2013	20.12.2014
			14			----
	MSPGCL	Koudgaon, Osmanabad	50		28.03.2014	
	MSPGCL	Sakri, Dhule	10		29.03.2014	
	JNNSM Phase II Batch I Projects		50	PSA dated 15.12.2014		
		Total	327			

9) MSEDCL has given consent for procurement of 500 MW Solar power under JNNSM Phase-II (Batch-III) State-specific scheme implemented by the Nodal Agency SECI. SECI has carried out the tendering process for selection of 500 MW Solar power Projects situated in Maharashtra under the Scheme. A proposal for procurement of additional 500 MW Solar power from SECI has also been made to the Ministry of New and Renewable Energy (MNRE) recently by MSEDCL.

10) Thus, MSEDCL can be considered to have contracted 1327 MW (327+500+500) Solar Power, i.e. 827 MW firmed up and 500 MW committed for procurement from SECI. The gestation period of Solar Power Projects is less, i.e. about 6-8 months, and hence the Solar power will be available mostly in FY 2016-17 and onwards.

11) MSEDCL is procuring the Solar power required for fulfilling the RPO target from MSPGCL Projects as per the tariff determined by the Commission. However, the MSPGCL Solar Projects are likely to be delayed.

12) At the same time, MSEDCL is also purchasing Solar power from all those Solar Projects which have participated in various schemes of JNNSM. MSEDCL is contracting Solar power also with SECI for expediting procurement of Solar power for fulfillment of its Solar RPO.

13) MSEDCL has also set out the position with regard to Mini / Micro Hydro Projects [as at para. 3(17) of this Order with regard to Case No. 44 of 2016].

14) EPAs are being executed with all the RE Project holders approaching MSEDCL for sale of power. Accordingly, MSEDCL is willing to execute long term EPAs with all the Mini/ Micro Project holders in order to fulfill its Mini/Micro Hydro RPO target as and when they approach it. However, no substantial capacity addition (except for M/s. Krishna Valley of 1 MW selling to BEST) has taken place during FY 2013-14 to FY 2015-16, and the same scenario is likely to continue in the near future.

15) The GoM has announced the new Composite RE Policy 2015 vide GR dated 20 July, 2015 which envisages 14400 MW RE capacity addition in the State. 5000 MW capacity addition is expected in the Wind sector in the coming 5 years. Out of that, 1500

MW Wind Power Projects are considered for meeting the RPO target of Distribution Licensees. Further, 7500 MW of Solar Projects (2500 MW for RPO), 1000 MW Bagasse-based Co-generation Projects, 400 MW Small Hydro Projects, 200 MW Industrial Waste Projects and 300 MW Biomass-based Projects are expected to be installed in the State in the coming 5 years.

16) MSEDCL has taken a policy decision to adopt the GoM RE Policy 2015 as it is for implementation. Therefore, it would contract the RE generated from the new RE Projects in the State for fulfillment of its RPO target as per the requirements in due course of time. Considering the huge policy target and the expected RE capacity addition, MSEDCL would be able to fulfill the RPO targets, including the past shortfall, in the next 3 years.

17) MSEDCL has recently agreed to participate in the UDAY scheme announced by the MoP, GoI [the main features of which are set out at para. 3(20) of this Order].

18) By participating in UDAY, MSEDCL has agreed to abide by all the required conditions, which also includes RPO compliance since 1 April, 2012, within a period to be decided in consultation with the MoP. Since the MoP will declare the period for fulfillment of pending RPO compliance, MSEDCL may be given extension of time for RPO compliance by carrying forward the shortfall to the next Review Period.

19) The RPO Regulations, 2010 specify the RPO target from FY 2010-11 to FY 2015-16 to be fulfilled by the Obligated Entities such as Distribution Licensees, CPP holders and OA Consumers.

20) However, it appears that, while specifying the RPO targets, no special tools / data / measures were available to ascertain the actual availability or actual RE potential in the State. In the absence of such tools, the RPO Targets were fixed without ascertaining whether sufficient power from RE sources was available or not. This can be seen from the CUF potential expected in the EPA and the actual CUF achieved. This inefficiency is being passed on to the consumers of MSEDCL. Para 6.4 (1) of the Tariff Policy mandates that the SERCs shall fix a minimum percentage for purchase of RE after taking into account availability of such resources in the region and its impact on retail tariffs. However, in the absence of scientific tools with MEDA, the Commission has relied on the details as provided by MEDA for fixing RPO targets. In its Judgment dated 14 November, 2013 (Appeal No. 265 of 2012) in the matter of BEST, the ATE has ruled that the Commission ought to have ascertained the availability of RE power at the approved rate.

21) The GEC of the Distribution Licensees is increasing in line with load growth and so are the RPO targets. However, corresponding RE capacity addition is not taking place. Hence, in FY 2014-15, there was a shortfall by all Distribution Licensees in meeting the RPO target, including MSEDCL in particular. The other Distribution Licensees TPC-D, RInfra-D and BEST are fulfilling the gap by purchasing RECs.

MSEDCL RPO Fulfillment and RPO Shortfall in FY 2014-15:

(In MUs)

MSEDCL (GEC)	114678		
Solar RPO	Target (0.5%)	Met	Shortfall
	550	274	276
Non-Solar RPO	Target (8.48%)	Met	Shortfall
	9347	8701	647
Mini/Micro Hydro RPO	Target (0.02%)	Met	Shortfall
	18.70	0.86	17.84

MSEDCL's Cumulative Shortfall

FY	Shortfall		
	Non-Solar MUs	Solar MUs	Remarks
2013-14	1078	926	MERC Finalized
2014-15	647	276	Provisional
Total	1725	1202	

22) Thus, to meet the specified 8.5% non-Solar RPO target of FY 2014-15, there is a total shortfall of around 647 MUs, i.e. 0.63 %. As against the 0.5% Solar RPO Target, there is a shortfall of 276 MUs, i.e. 0.25%. The compliance by the other Obligated Entities such as CPPs / OA consumers is not taken into consideration here, which may further increase the shortfall for the State as a whole. A scientific study of potential available in the State is necessary for fixing the RPO targets.

23) In view of the above, it has become necessary to ascertain the actual RE potential in the State and the actual number of RE Generators who are ready to exercise the option of sale to Licensees. The RPO targets need to be reviewed accordingly. Alternatively, if there is no RE available for purchase, the shortfall in meeting the RPO targets needs to be waived, relaxed or allowed to be carried forward.

24) There has been a huge variation in the potential assessment and actual installed capacity. The Commission is required to set the RPO targets considering the assessed potential and current installed capacity. Therefore, the RPO targets need to be consistent with the actual capacity addition and scientific assessment of RE potential.

25) MSEDCL has contracted adequately with RE Generators to fulfill the RPO targets up to FY 2015-16. The non-Solar contracted capacity as on 31 March, 2015 is 5059 MW, out of which the commissioned capacity is 4868 MW. The expected generation from the commissioned capacity (non-Solar) as on FY 2014-15 was 12167 MUs. However, the units injected were only 8701 MUs as against the expected

generation of 12167 MUs. This establishes that either the CUF projections are to be rationalized or the RE Generator's efficiency has to be improved. The inefficiency of the Generator cannot be continued to pass on the consumers of the MSEDCL. If the RE Generators, for whatever reasons, including natural reasons beyond their control, are not able to generate enough MUs, MSEDCL cannot be penalized as these so called natural reasons or inefficiencies of the Generators are beyond the control of MSEDCL also. MSEDCL may not be expected to increase the contracted capacity beyond its requirement. If MSEDCL contracts more capacity and if the entire capacity works at the given CUF, MSEDCL will have to buy more RE power than required. Being costlier power, this will burden the consumers of MSEDCL.

26) The OA consumers sourcing RE have availed its benefits along with the cheaper power offered by wind power Projects, especially older Projects which have completed the EPA tenure, supplying wind power at promotional rate and thereby fully recovering the costs and Return on Equity (RoE) from the electricity consumers of Maharashtra. Further, the RE Generators can claim REC benefit on the quantum of RE supplied under OA, over and above the cost of power supplied. Considering such benefits, more and more RE Generators have opted for OA in recent years. The increase in the quantum of Wind OA (in MUs) is as under:

Source	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Wind	----- 373.260	(560 MW) 572.149	(563 MW) 793.510	(583 MW) 1055	(502 MW) 553*

**The Wind OA quantum got reduced in FY 2014-15 because many consumers could not avail OA due to non-compliance of mandatory requirement of installation of Special Energy Meter.*

The RE OA other than wind is also on the rise:

Source	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Biomass, Bagasse Co-gen, SHP, etc. OA (MUs)	36.5	36.5	47.17	92	92

27) Thus, this RE power wheeled under OA of around 645 MUs is not available to MSEDCL for purchase towards RPO compliance. The shortfall of MSEDCL in meeting the RPO target for FY 2014-15 is around 647 MUs. Thus, it can be seen that the RE OA has direct bearing on the RPO target compliance of MSEDCL. The OA is hurting the RPO Compliance and putting an additional burden on the other consumers of MSEDCL. In various proceedings, the Commission has taken a view to promote RE generation and has also encouraged RE OA by providing RE Generators / RE OA consumers various

concessions and benefits. Thus, the RPO target needs to be reviewed by considering the units sold in OA transactions.

28) In a RE shortage scenario prevailing in the State (in terms of RE available for RPO compliance), the RE OA and RPO compliance of Licensees seem to be moving in opposite directions. If RE OA is encouraged freely, the quantum of RE available for RPO compliance gets affected / reduced, and hence there is a shortfall in meeting the RPO target.

29) The Obligated Entities, including MSEDCL, are required to meet their RPO Targets by way of own generation, or procurement of power from RE Developers, or purchase from other Licensees, or by purchase of RECs, or by a combination of these options. The purchase of RECs is, therefore, considered towards compliance of RPO Targets. The RECs are, however, required to be purchased by a Distribution Licensee on sound economic principles. In view of the plea of MSEDCL to relax the RPO because of factors beyond its control, the availability or otherwise of RECs is not a relevant factor. In the strict sense are not an alternative to RE power. Non-procurement of RECs may not be treated as a pre-condition for exercise of the power to relax the RPO Targets. The power to relax the RPO Targets is an exercise of a regulatory power. Inadequate capacity addition in the State for whatever reason is a germane factor for exercise of such power to relax.

30) Therefore, the Commission may not insist on the procurement of RECs to meet the RPO shortfall and burden the common consumers of MSEDCL. This is particularly so as the RPO targets are required to be reviewed realistically and scientifically, as held by the ATE in its Order dated 14th November 2013 in Appeal No.265 of 2012. The RPO fulfillment of Distribution Licensees and RE shortage in Maharashtra in FY 2014-15 (in MUs) were as follows:

Sr. No.	Utility	GEC	Non-Solar RPO Target	Actual Procured RE	Shortfall
1	MSEDCL	114678	9347	8701	647
2	TPC	6215	528	268	260
3	R-Infra	8844	750	205	545
4	BEST	4919	418	242	176
	Total for State	134656	11043	9416	1628

31) Thus, as against the specified 8.5% non-Solar RPO target of the State as whole, there is a total shortfall of 1628 MUs of RE. (TPC-D, RInfra-D and BEST have met the shortfall in RPO by purchasing RECs). Therefore, the RPO target specified by the Commission is high as compared to the actual RE capacity addition that could take place in the State. Further, the RPO compliance by the other Obligated Entities such as CPPs/OA consumers is not taken into consideration here, which may further increase the

shortfall. In view of the above, it is necessary now to ascertain the actual RE potential in the State and the actual number of RE Generators who are ready to exercise the option of Sale to the Licensees). Accordingly, the RPO target needs to be reviewed. If there is no RE available for purchase by the Distribution Licensees, then the shortfall in meeting the RPO targets needs to be waived. The RPO Targets of other States is as follows:

Sr. No.	STATE	RE Type	RE Target For FY 2014-15	GEC	Target in MUs
1	Maharashtra	Non- Solar	8.50%	134656	11446
		Solar	0.50%		673
		Total	9.00%		12119
2	Andhra Pradesh	Non- Solar	4.75%	90000	4275
		Solar	0.25%		225
		Total	5.00%		4500
3	Gujarat	Non- Solar	6.75%	92700	6257
		Solar	1.25%		1159
		Total	8.00%		7416
4	Karnataka	Non- Solar	7.00%	54000	3780
		Solar	0.25%		135
		Total	7.25%		3915
5	Madhya Pradesh	Non- Solar	6.00%	56000	3360
		Solar	1.00%		560
		Total	7.00%		3920
6	Rajasthan	Non- Solar	7.50%	60500	4537
		Solar	1.50%		908
		Total	9.00%		5445
7	Tamil Nadu	Non- Solar	9.00%	85000	7650
		Solar	2.00%		1700
		Total	11.00%		9350

32) The RPO targets specified by this Commission for Maharashtra is one of the highest in the country. Tamil Nadu, which has the highest RE installed capacity, has the highest RPO target, but the GEC of Tamil Nadu is only 65 % of that of Maharashtra. Hence, the effective RE in MU terms is less than that of Maharashtra and even of MSEDCL alone. The other States with GEC close to Maharashtra, e.g. Andhra Pradesh and Gujarat have lower RPO targets. Thus, Maharashtra in general and MSEDCL in particular has been given a RPO which is the highest in the country in terms of MUs to be procured. RE Installed Capacity (MW) of Other States is as follows:

Sr. No.	State	Wind	Solar	Total
1	Maharashtra	4400	320	4720
2	Gujarat	3581	920	4501
3	Karnataka	2549	90	2639
4	Rajasthan	3053	850	3903

5	Tamil Nadu	7394	110	7504
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33) Thus, Tamil Nadu, having the highest installed capacity (7504 MW) and highest RPO target (11.00%), has to procure 9350 MUs of RE (Non-Solar 7650 + Solar 1700) in total. Although the financial impact is not directly relevant, the indirect burden on the common consumers can be seen by comparing the RPO targets of Tamil Nadu and Maharashtra. CUF of wind power Projects is around 30% and wind tariff is around Rs. 3.50 / unit. Thus, Tamil Nadu will have to spend Rs. 2677 crore for fulfillment of Non-Solar RPO target, whereas Maharashtra requires 11446 non-Solar MUs at the rate Rs. 5.70/ unit. (Wind Energy Tariff). Thus, Maharashtra will have to spend a minimum of Rs. 6524 crore for fulfillment of Non-Solar RPO target.

34) Thus, it can be seen that Maharashtra in general and MSEDCL in particular is facing a major financial hardship for meeting the RPO targets specified by this Commission. This has resulted in the passing on of the cost of RE power on consumers of MSEDCL by way of higher tariffs. No other State in India is required to procure so much RE and spend as much for such procurement. Maharashtra has to spend approximately 2.5 times as compared to Tamil Nadu in order to fulfil its non-Solar RPO Target.

35) MSEDCL has in fact procured 8701 MUs (more than Tamil Nadu which is a RE rich State) in FY 2014-15 to meet RPO target (less than Tamil Nadu) and has spent Rs. 4,800 crore (much more than Tamil Nadu) and is still in shortfall. MSEDCL is spending much more money than any other State (not only Tamil Nadu) for procurement of RE for meeting the RPO target specified by the Commission. This has also affected the tariffs of common consumers of MSEDCL.

36) The Commission has specified RPO targets to be met by Obligated Entities as a percentage of their respective GEC. The GEC is dependent upon the load growth of the State and is continuously on the rise. Accordingly, the requirement of RE for meeting the RPO increases automatically. The growth in GEC is a completely independent matter and cannot be co-related with the status of RE generation in the State. The potential of capacity addition, expected capacity addition and actual capacity addition are crucial factors for prescribing RPO Targets. The RE generation in the State depends upon the new RE Project capacity addition, which further determines the quantum of RE available for sale to Obligated Entities.

37) Therefore, the RPO targets may be linked to the RE capacity addition in the State and the quantum of actual RE available for purchase for Obligated Entities. However, there seems no direct relation between the RPO targets specified and the actual RE capacity addition. RE Generators are unable to generate energy at the stipulated CUF, and generally there is lower supply than expected, maybe due to natural or other reasons. Such short supply is beyond the control of both the Generator and the purchaser Licensee.

38) There is limited investment by the State or Central Governments in the RE sector. Further, beyond a point, Government cannot compel private investors to invest and develop a RE Project for meeting the RPO of Obligated Entities. The investment decision is the prerogative of the private entity / Project holder. This capacity addition is beyond the control of MSEDCL. Hence, there is every possibility that there will not be adequate capacity addition as expected in the Policy, for reasons beyond the reasonable control of the State Governments or the Obligated Entities.

39) In such circumstances, there will not be sufficient RE available for purchase for fulfillment of RPO targets of all Obligated Entities. Eventually, the Obligated Entity will fail to comply with the stipulated RPO targets and will be subjected to heavy penalties as per the regulatory provisions. This will further affect the already depleted financial health of the Distribution Licensees.

40) Thus, the Obligated Entities will have to face penal actions for the reasons beyond their control and without any wilful default of theirs. In this regard, the State Commissions have a mandate to promote RE, and punishing Distribution Licensees / Obligated Entities would neither serve this purpose nor would it bring new RE capacity addition or investment in the RE sector. MSEDCL has been proactively promoting RE in the State by providing necessary infrastructure and guaranteed purchase at the preferential tariff. However, now the time has come to revisit promotion of such unreliable power at the cost of the interests of the Licensee and common consumers of the State. Efficient use of available potential needs to be promoted, and not inefficiency. Providing the highest tariff to lowest efficiency leads to protection of vested interests (Zone-wise Wind tariffs).

41) Due to the high cost, the basket power purchase cost of MSEDCL has been increasing considerably. Due to such costly power purchase, the average power purchase cost (APPC) of MSEDCL increases and the common consumers are being burdened by the high tariffs of RE. In its Multi-Year Tariff (MYT) Order dated 26 June, 2015, the Commission has approved the following power purchase.

Particulars	Quantum (MUs)	Cost(Rs. Crs)	Rate (Rs. Unit)
Total Approved Power Purchase	111609	41,249	3.70
Renewable Energy	11,218	6,520	5.81
Power Purchase excluding Renewable Energy	100,391	34,729	3.46
Impact due to Renewable Energy			0.24

42) Thus, the RE power procurement is adding a burden of around 25 paise per unit on the consumers of MSEDCL. Affordability versus promotion need to be relooked at considering efficiency and diligent use of available technology.

43) In the past, MSEDCL had requested the Commission to allow it to procure wind power in FY 2013-14 by undertaking competitive bidding in a transparent manner in the public interest and entering into long term EPAs with the successful bidders, and to take into account such purchase against its RPO Target by suitable relaxation in Regulation No. 7.2 of the RPO Regulations, 2010. MSEDCL had filed a Petition for determination of tariff by bidding process for procurement of wind energy for FY 2013-14 within Maharashtra (Case No. 65 of 2013 and MA 13 of 2013).

44) The Petition had highlighted a number of issues pertaining to affordability of electricity for the consumers of MSEDCL, impact of purchase of RE on power purchase cost of MSEDCL, problems in scheduling, banking and contract demand reduction due to infirm nature of wind energy, impact of subsidies and incentives not being reflected in the wind tariff, high capital cost and high O&M cost, etc.

45) However, the Commission had opined that the competitive procurement of renewable power deserved greater scrutiny, and referred it to the Committee constituted as per the Daily Order dated 1 October, 2013. However, the Committee Report did not come and the matter was kept pending. This would have reduced the burden on the consumers, who would have got much needed relief in their tariff.

46) Introduction of competitive bidding would have offered advantages such as transparency, market price discovery and possibility of price reduction leading to uptake of higher RE capacity, large scale orders under competitive bidding leading to lower transaction and specific costs per mega watt, and increased competition in the vertically integrated RE sector. In an era when Solar tariff was as high as Rs. 13 to 15 per unit, the competitive bid mechanism has been very successful in reducing the cost of Solar power generation. In less than 2 years, the cost of Solar power generation has reduced by 40%-50% along with significant increase in installed capacity.

47) The Commission conducted proceedings for verification of compliance of RPO targets by MSEDCL for FY 2013-14 in Case No. 190 of 2014. Vide its Order dated 4 August, 2015, the Commission inter-alia ruled that the expenditure on purchase of RECs and/or actual power procurement from the Fund shall not be passed through to consumers to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16. The Order has some inherent issues and will be difficult to implement. Due to lack of sufficient RE capacity addition, MSEDCL may not be able to fulfill the RPO targets by FY 2015-16. Therefore, MSEDCL has approached the Commission for removal of difficulties in giving effect to the provisions of the RPO Regulations, 2010 and the rulings of the Commission in its Order dated 4 August, 2015 in Case No. 190 of 2014, and also to relax the RPO stipulations as contained in the Regulations in the light of the decision of the ATE.

Miscellaneous Application No. 19 of 2016 in Case No. 70 of 2016

16. Green Energy Association (GEA), Sargam,143, Taqdir Terrace, Near Shirodkar High School,Dr. E. Borjes Road, Parel (East), Mumbai has filed MA No. 19 of 2016 on30 September, 2016 for impleadment in Case No. 70 of 2016.

17. GEA's prayers are as below:

- a. *"Dismiss the Petition being not maintainable due to res-judicata;*
- b. *Allow the present Application and implead the Applicant as a party in the present Petition, if admitted;*
- c. *Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*
- d. *Pass such further order(s) as this Hon'ble Commission may deem appropriate in the facts and circumstances of the case."*

18. GEA has stated that:

(1) It is an Association of Solar power developers/ Generators specifically in the field of Solar Photo Voltaic (PV) systems. The major activities of GEA are to educate and create awareness among the public on environment and sustainability issues. One of the focuses of GEA is on the REC mechanism in India. Its members represent about 90% of the total investors in the Solar REC mechanism.

(2) If, pursuant to MSEDCL's Petition, any carry forward or relaxation of compliance of the provisions of the RPO Regulations, 2010 is granted, the main parties to suffer would be the RE Generators, including the members of GEA, which will be directly affected by the outcome of the Petition.

(3) It is a settled principle of law that a court can direct impleadment of a party if it has an interest in the subject matter of the proceedings. Moreover, GEA has a strong case to succeed on merits, and hence its request for impleadment should be accepted and it should be heard. Even in Case Nos. 180 to 183 of 2013 and Case No. 190 of 2014 the Commission had granted permission to GEA to be impleaded and also afforded it an opportunity to present its concerns.

(4) GEA's members have invested huge sums of money in harnessing Solar power in the State and have relied on the incentives given under the current regulatory regime, including but not limited to benefits that can be derived under the provisions of the RPO Regulations. The RPO Regulations provide that RPO has to be complied with by the Obligated Entities, one of whom is MESDCL, being the largest Distribution Utility of the State. Hence, non-compliance of RPO by an Obligated Entity would directly impact GEA and its members.

(5) GEA objects to the Petition by virtue of Order dated 14 September, 2016 in Case No. 16 of 2016 in the suo motu proceedings regarding compliance of RPO targets by MSEDCL for FY 2014-15.

(6) Vide its earlier Orders dated December 24, 2012 in Case No. 102 of 2012, March 12, 2014 in Case No. 180 of 2013 and February 29, 2016 in Case No. 190 of 2014, the Commission had repeatedly allowed MSEDCL to cumulatively fulfill its Solar RPO targets by FY 2015-16. However, MSEDCL has failed to do so and has now approached the Commission for extension of time for meeting its Solar RPO targets for FY 2014-15, after the expiry of even FY 2015-2016.

(7) In the Order for FY 2014-15, the Commission has stated that MSEDCL has time and again failed to meet its Solar RPO. Moreover, it has not been even close to achieving its Solar RPO targets from FY 2010-11 to FY 2014-15 and consequently the cumulative shortfall has been increasing. The Commission had earlier observed while declining to condone the shortfall of FY 2013-14, in FY 2014-15 that it cannot be claimed by MSEDCL that sufficient Solar power was not available for purchase and had found no justification for the shortfall of around 50% against the Solar RPO target for FY 2014-15.

(8) At a time when the RPO compliance of 2015-16 is now required to be assessed, MSEDCL has belatedly approached the Commission seeking extension, and that too after expiry of the prescribed period and after the suo-motu proceedings were completed. GEA has also filed a Petition being Case No. 93 of 2016 seeking compliance of RPO for FY 2014-15.

(9) MSEDCL's Petition seeking extension of time for compliance of RPO for FY 2014-15 should be dismissed. The Order dated 14 September, 2016 in Case no. 16 of 2016 has dealt with the issue in detail. The submissions of MSEDCL in those proceedings were based on the fact that the compliance was not done as per the earlier Order of the Commission, and hence the principle of re-judicata applies and, therefore, the Petition is not maintainable. "Res judicata" means "a thing decided" in Latin. It is a common law doctrine meant to bar re-litigation of cases between the same parties. In Appeal No. 267 of 2013, the ATE upheld the decision of the Commission in Case No. 109 of 2012 holding that the Petition is not maintainable as it is hit by res judicata.

(10) Without prejudice to the foregoing, if this Petition is admitted, then GEA should be impleaded. No prejudice will be caused to MSEDCL if GEA is impleaded, but grave harm and irreparable loss, which cannot be compensated, will be caused to it if its Application is not allowed. The balance of convenience is in favour of GEA.

Miscellaneous Application No. 30 of 2016 in Case No. 70 of 2016

19. Wind Independent Power Producers Association (WIPPA), 6th Floor, Tower 4A, M.G. Road, DLF Corporate Park, Gurgaon, Haryana, has filed a MA No. 30 of 2016, on 29 November, 2016, citing Regulations 18 and 19 of the RPO Regulations, 2010 and Regulation 32 of the MERC (Conduct of Business) Regulations, 2004, for impleadment in Case No. 70 of 2016.

20. WIPPA's prayers are as below:

- (i) *“Permit the Objector/ Applicant herein to intervene in the instant Petition being Case No. 70 of 2016, participate and make appropriate submissions in the instant proceedings and take on record the instant Intervention, Objections cum reply filed on behalf of the Objector/ Applicant, in the interests of justice.*
- (ii) *Dismiss the instant Petition being Case No. 70 of 2016, initiate suomotu penalty proceedings under Section 129, 142, 146 and such other provisions of the Electricity Act, 2003 and direct MSEDCL to strictly comply with the judgment and Order dated 04.08.2015 passed in Case No. 190 of 2014 and Order dated 14.09.2016 passed in Case No. 16 of 2016; and*
- (iii) *MSEDCL be directed to execute long term EPA with all wind power Generators in the State of Maharashtra at the approved rate of tariff determined by the Hon'ble Commission, with effect from the respective dates of commissioning for fulfilment of RPO; and*
- (iv) *MSEDCL be directed to purchase sufficient wind power to satisfy and meet its non-Solar RPO obligation statutorily mandated by the Hon'ble Commission under the MERC RPO Regulations (and amendments thereto) and orders passed from time to time, based solely on energy injected in million units without any threshold restriction of 1500MW or otherwise; and*
- (v) *Direct that henceforth, the non-Solar (wind) RPO requirement shall be considered as satisfied only to the extent of payments duly made by MSEDCL to the wind energy Generators for wind energy fed in the grid for supply to MSEDCL; and*
- (vi) *Disallow MSEDCL from carrying forward the unfulfilled and/or unmet RPO target to next years' control period; and*
- (vii) *Direct MSEDCL to release the outstanding payments to all wind energy Generators immediately and not delay any payments in future; and*
- (viii) *Direct MSEDCL to strictly adhere to and comply with the terms of the EPAs, in letter and spirit; and*
- (ix) *Direct MSEDCL to pay the costs of this litigation to the Applicant/Objector; and*
- (x) *Such other order or orders as this Hon'ble Commission may deem fit.”*

21. The Application of WIPPA states that:

(1) WIPPA is a registered Association of wind power producers in India with a chapter in Maharashtra. Many members of WIPPA have made significant investments in the development of wind energy, including asset additions towards setting up wind turbines in Maharashtra. They and are, therefore, interested and affected parties to the Petition filed by MSEDCL seeking extension of time for meeting its cumulative RPO shortfall for FY 2014-15 against its RPO Targets.

(2) MSEDCL through its Petition seeks to side-step the directions of the Commission in its Orders dated 4 August, 2015 in Case No. 190 of 2014 and dated 14 September, 2016 in Case No. 16 of 2016, knowing well that these directions are final, binding and require strict compliance by MSEDCL. MSEDCL has raised grounds, issues and reliefs which are similar to those raised in Case No. 44 of 2016. The contentions raised and relief sought have already been considered and categorically rejected by the Commission vide the earlier Orders above. MSEDCL cannot be permitted to repeatedly raise these issues and/or seek reliefs which already stand rejected. Both the Petitions (in Case Nos. 44 and 70 of 2016) are misconceived and an abuse of the process of the court. The Petitions are ex-facie not maintainable and hit by the principle of issue estoppel and/or res judicata.

(3) The Petition has wrongly invoked the Power to Relax and Removal of Difficulties provided in Regulations 18 and 19 of the RPO Regulations 2010, seeking a host of reliefs, including (a) relaxation and/or revision of RPO target; (b) review of the directions in the Order in Case No. 190 of 2014 on shortfall in RPO for FY 2013-14; (c) to allow MSEDCL to carry forward the RPO shortfall not met as at the end of FY 2015-16 to the next Control Period; and (d) to allow MSEDCL 3 years to meet its cumulative shortfall.

(4) The reliefs sought cannot be entertained, least of all, under Regulations 18 and 19 of the RPO Regulations, in the facts and circumstances of case. The reliefs sought include extension of time for meeting the RPO shortfall specific to FY 2014-15. In fact, the Commission has vide Order dated 14 September, 2016 in Case No. 16 of 2016 already directed MSEDCL to meet its stand-alone RPO shortfall, including non-Solar (wind energy), of FY 2014-15 by the end of FY 2016-17. There is, therefore, no occasion for MSEDCL to seek any further extension of time or any of the other reliefs prayed for in its present Petition and/or in Case No. 44 of 2016.

(5) In fact, even the power to remove difficulty in giving effect to any particular provision of a Regulation and/or the power to relax application of any particular provision of a Regulation is no longer *res integra*. The scope, purpose and object of exercise of such power has been authoritatively decided by the Supreme Court and ATE. It has been repeatedly held that such power to remove difficulty cannot be exercised when the difficulty arises due to the application of a Regulation in question. Furthermore, under the guise of removing difficulties, the scheme and essential provisions of the RPO Regulations and/or the EA, 2003 cannot be changed.

(6) Vide its Judgment dated 20 April, 2015, in OP NO. 1 of 2013, while specifically dealing with the issue of RPOs of Obligated Entities, the ATE has inter-alia also held that such power to remove difficulty and/or relaxation has to be exercised judiciously by State Commissions under exceptional circumstances, as per law, and that it should not be used routinely to defeat the object and purpose of the RPO Regulations. In line with the decision of the ATE Judgment in OP No. 1 of 2013, the Commission vide Order dated 4 August, 2015 in Case No 190 of 2014 had rejected the justifications given by MSEDCL for the shortfall in Solar RPO for FY 2013-14 and non-Solar RPO for FY 2013-14 (and previous years). Vide its Order dated 14 September, 2016 in Case No. 16 of 2016, the Commission has also rejected the justification given by MSEDCL for Solar and Non-Solar (Wind) RPO shortfall for FY 2014-15.

(7) The Commission had applied the penal provision of Regulation 12 of the RPO Regulations, 2010 as envisaged in the decision of the ATE in OP No.1 of 2013, and directed MSEDCL to meet its above RPO shortfall of FY 2013-14 and FY 2014-15 through power procurement and/or purchase of RECs by the end of FY 2015-16 and FY 2016-17, respectively. It was further held that, to the extent MSEDCL failed to meet this RPO shortfall by the end of FY 2015-16 and FY 2016-17, the expenditure shall not be passed on the consumers.

(8) This was because MSEDCL has admittedly failed to discharge its RPO with regard to non-Solar RPO target on account of acts of omissions and commissions for FY 2013-14 and FY 2014-15, which are solely attributable to it. There was no impediment, difficulty, mitigating circumstance or any circumstance beyond its control, which precluded it from meeting its RPO.

(9) Furthermore, the Commission has in its Order in Case No. 16 of 2016 held that the performance of MSEDCL with regard to RPO compliance (for FY 2014-15) shall be reviewed in the RPO compliance verification proceedings for FY 2016-17 and also taken into account in the Mid-Term Review proceedings for the 3rd MYT Control Period. MSEDCL cannot for this reason also be allowed to agitate or seek extension of time for compliance of the RPO shortfall for FY 2014-15 at this stage as it will go against the grain of the directions passed in that Order. In fact, the Commission also observed that MSEDCL had raised issues in Case No. 70 of 2016 which are similar to those raised and authoritatively decided in Case No. 16 of 2016.

(10) This is equally true for the RPO shortfall of FY 2013-14. The Commission vide Order dated 4 August, 2015 has already rejected the justifications/reasons put forth for not meeting the RPO target for Solar and non-Solar RE sources. It was directed to achieve the target by the end of FY 2015-16. MSEDCL has admittedly failed to comply and/or adhere to these directions. Instead of taking steps to implement these directions and those contained in the Order dated 14 September, 2016, MSEDCL has preferred to

agitate the issues all over again by filing two wholly frivolous Petitions in Case Nos. 44 and 70 of 2016.

(11) The contention of MSEDCL that it was unable to procure wind energy to meet its non-Solar RPO target as wind energy was not available and/or no Generator was willing to sell wind energy to it and/or capacity additions of wind power did not take place, are all false and wholly contrary to the actual position.

(12) There was and continues to be more than adequate wind power for meeting the non-Solar RPO target. Since 2014, there is a total of 449 MW of commissioned wind power capacity set-up by the members of the Applicant alone. In aggregate, there has been about 607MW of commissioned wind power Projects in Maharashtra over the last two financial years FY 2014-15 and FY 15-16. This amounts to about 1063 MUs per annum (@ 2% CUF) of wind power which is readily available for meeting the non-Solar RPO requirement. However, these Generators face acute difficulties in selling power to MSEDCL due to lack of long term EPAs despite several written reminders. MSEDCL has willfully delayed execution of these EPAs, causing severe financial prejudice to the Generators.

(13) MSEDCL has not executed long term EPAs with wind Generators from their commissioning at the approved tariff. Yet, on numerous occasions, including in the present Petition, it has made false assertions about having executed EPAs with all Generators who have approached it.

(14) Another 150-200MW of wind power Projects are ready for commissioning. There is therefore no occasion for MSEDCL to attribute RPO shortfall in non-Solar (wind) RE to unavailability of capacity addition. There is sufficient wind power to considerably meet the non-Solar (wind) RPO target but it has remained unutilized and untied on account of MSEDCL not executing long term EPAs at the approved rate, for no justifiable reason.

(15) MSEDCL has also misrepresented that it has contracted sufficient RE power for meeting its RPO Target. The reality is that MSEDCL has not executed EPAs after April, 2014. Moreover, MSEDCL does not pay these Generators under the pretext of non-execution of EPAs, but promptly seeks to pass on the power procurement cost in its ARR year after year. Its entire conduct is grossly malafide and amounts to thwarting promotion of RE sources.

(16) MSEDCL has contended that no special tools/data/measures were available to ascertain the actual availability/actual RE potential in the State and that, in absence of such tools, the RPO Targets were fixed without ascertaining as to whether power from RE is available or not.

(17) Maharashtra has enormous potential for wind energy. NIWE has identified more than 45 GW of wind energy potential in the State. As against the available wind power potential of over 45 GW in the Maharashtra, presently only 4.5 GW has been utilized.

(18) The target set by the Commission under the RPO Regulations are also in consonance with and pursuant to the statutory mandate under 86(1)(e) of the EA, 2003 which mandates the State Commissions to specify the minimum percentage of RE purchase from the total consumption of electricity in the area of a Distribution Licensee so as to promote generation from RE sources. Even the NAPCC notified by the Government of India has set a RPO target of 15% across all States by 2020. More recently, in June, 2015, the MoP increased the long term RE capacity target to 175 GW by March, 2022. This includes 100 GW of Solar capacity and 60 GW of Wind capacity.

(19) The CAG, in its Report no. 34 of 2015 on Renewable Energy in India, conveyed dismay on the status of RPO compliance in India. The Report notes that, as against the NAPCC target of 8 and 9 percent for FY 2012-13 and 2013-14, the national achievement was only 4.28 and 4.51 %, respectively. The Report also, states that the installed capacity in the ten high potential States varied from zero to 68 percent of the potential and that, unless the concerned State Governments prioritise exploitation and development of the wind energy, the progress will remain insignificant.

(20) The Commission has also recently in March, 2016 increased the RPO Target for the four-year period from FY 2016-17 to FY 2019-20 under the new RPO Regulations, 2016. In the Statement of Reasons, the Commission has observed that it has considered aspects such as availability of RE resources in the State while revising the RPO Targets. The RPO Target for Non-Solar RPO in Maharashtra stands at 10-11.50% over the four year term. Therefore, to suggest that RPO Targets have been fixed without ascertaining whether power from RE sources is available or not is erroneous. The RPO Targets fixed under the RPO Regulations, 2010 and more recently under the new RPO Regulations, 2016 have duly considered the availability of RE sources.

(21) In the circumstances, the allegation that the RPO Targets have been fixed without a study for ascertaining the potential from REsources in the State is denied. Further, MSEDCL cannot challenge the RPO Target fixed by way of Regulations through these proceedings. Furthermore, the reliance placed on the decision of the ATE dated 14 November, 2013 in Appeal No. 265 of 2012 is misconceived and erroneous. That decision does not apply in the facts of the instant case and cannot hold that the RPO Target fixed by the Commission under the RPO Regulations as incorrect. The ATE decision pertains to disallowance by the Commission of actual expenditure incurred by BEST during true up proceedings. The issue was limited to seeking allowance of expenditure incurred by BEST for purchase of RE at a rate higher than the preferential

tariff rate [and the circumstances of that case and the nature of the ATE decision has been set out at para. 9(16) earlier in this Order]. Hence, the ATE case does not support the contention raised by MSEDCL.

(22) The repeated assertion by MSEDCL that there is a large difference variation in the expected CUF potential of non-Solar (wind) sources as fixed in the EPAs (20%) and the actual CUF achieved by the Generators and that, therefore, the inefficiencies of such Generators are being passed on to consumers, is wholly incorrect, being contrary to the record. MSEDCL has itself admitted that the CUF of non-Solar (wind) Generators is greater than the fixed 20% CUF on various occasions, and more particularly before MEDA. This will be seen from the MSEDCL letter dated 12 August, 2016 to MEDA where it has itself admitted that actual CUF achieved is greater than 20%. A copy of the letter, obtained from the MEDA website, is placed on record to show the misrepresentation on the part of MSEDCL.

(23) Vide Order dated 14 September, 2016, the Commission asked MEDA for a detailed study to re-assess the realistic CUF of non-Solar (wind) Projects. MEDA is working on the study with NIWE and the report is likely to take some more time as it is coordinating with concerned agencies for the data required by NIWE. Nevertheless, without any substantiation or documents in support, MSEDCL continues to make false and baseless allegations and attributes inefficiencies to non-Solar (wind) Generators. Its presumptions are not borne out from the record. The argument that wind power Generators, owing to their inefficiencies or otherwise, impose undue burden on consumers is wrong. With its ailing distribution network and system losses, MSEDCL ought to instead improve its own efficiency and reduce financial imprudence by making timely payments to suppliers rather than making baseless allegations. Merely mentioning certain figures cannot be considered as discharge of the burden placed on it.

(24) WIPPA has given a detailed list of its member wind Generators in MW terms to establish the extent of commissioned MW capacity available in Maharashtra for FY 2014-15 and FY 2015-16. It establishes that 449 MW of wind power capacity built by its members since 2014 was available to MSEDCL to meet its non-Solar RPO shortfall, but has not been availed by MSEDCL. These Generators have been adversely affected due to lack of long term EPAs which are yet to be signed by MSEDCL despite several reminders. To suggest that the non-Solar RPO target was not met on account of non-availability of resources is contrary to the record.

(25) From the Table below, it will be seen that, even taking a conservative CUF of 20%, at least 888MUs would have been available till March, 2016 for MSEDCL to utilize and meet its non-Solar obligation from WIPPA members alone had MSEDCL acted in a timely manner and executed long term EPAs with these Generators in FY 2014-15 and FY 2015-16.

Available energy from 449 MW wind energy from WIPPA Members

(considering 20% CUF)

	FY 2014-15	FY 2015-16	Total
Wind Energy (MU)	247	640	888

(26) Evidently, the RPO shortfall would have considerably eased by procuring this power. It is therefore incorrect to contend that the Non-Solar RPO Target shortfall in FY 2014-15 was because capacity addition was not taking place. MSEDCL is fully aware of the process and framework to meet any RPO shortfall. However, it deliberately chooses not to comply with it but does not hesitate to pass on the costs of procurement in its ARR to consumers.

(27) MSEDCL has wrongly sought to expand the issue by bringing in extraneous consideration of compliance by other Obligated Entities such as CPPs/OA consumers or other Licensees. MSEDCL has placed a completely false picture with regard to the extent of wind Generators who have opted for OA, without any corroborative document to substantiate its facts and figures. It has conveniently forgotten that wind power Projects have a life of 25 years and significantly high O&M costs.

(28) MSEDCL has conveniently ignored the fact that wind Generators are forced to terminate EPAs and sell power to third parties through OA; the benefit and charges it secures through such OA; that it has outstanding dues of over 13 months for wind energy consumed by it but recovered from consumers.

(29) The real issue is limited to non-compliance by MSEDCL of its RPO under the RPO Regulations. Its claim that the power procured through OA be considered as part of its RPO and/or to correspondingly reduce its RPO is ex-facie wrong. The contention for a dispensation similar to that of the West Bengal or other State Commission is wholly out of place.

(30) MSEDCL has repeatedly contended that it has become necessary to ascertain the actual RE potential in the State and the actual number of RE Generators who are ready to exercise the option of sale to Licensees. In fact, that there are many wind energy Generators who have been waiting for MSEDCL to purchase their power by entering into valid long term EPAs. MSEDCL has falsely stated that it has executed long term EPAs with all non-Solar (wind) Generators who have approached it. MSEDCL has not executed any EPAs after April, 2014.

(31) The other contention of MSEDCL that RPO targets need to be reviewed based on availability of RE for purchase and/or, in case of shortfall, the RPO target needs to be waived, is wholly incorrect and contrary to the RPO Regulations. MSEDCL cannot seek waiver or review of the RPO Target by way of the present Petition or otherwise. The

claim of MSEDCL to include such capacities to reflect that it will comply with the RPO obligations for future period is improper. Neither has it signed EPAs with these Generators nor has it paid any money to them.

(32) MSEDCL has stated its intent to implement the GoM's new RE Policy 2015 which specifies a cap of 1500 MW on wind power Projects for meeting the RPO target of Distribution Licensees, including MSEDCL. However, at the same time, the ARR Petition filed by MSEDCL for FY 2016-17 establishes that it has considered about 1750 MW (CUF@ 20% p.a.) wind power as necessary to meet its non-Solar RPO target. MSEDCL has also stated it would contract the RE generated from new RE Projects to fulfill its RPO. Resultantly, MSEDCL will be required to purchase more than 1700 MW wind power and not 1500MW. The Table below shows the above calculation as per the ARR Petition filed by MSEDCL for FY 2016-17:

Non-Solar shortfall in FY 2015-16 and FY 2016-17

Financial Year	Non-Solar MU required [1]	Non-Solar MU available [2]	Shortfall non Solar MU	MW wind power required @ 20% CUF
FY 2015-16	11717	8701	3016	1721
FY 2016-17	11778	8701	3077	1756

Notes:

Source: [1] MSEDCL, Table 15 of MSEDCL ARR Petition for FY 2016-17, dated 14.06.2016;

Source: [2] MERC Order in Case no 16/2016, dated 14.09.2016

(33) In any event, MSEDCL cannot be allowed to revise the RPO Target contrary to the statutory provisions of the RPO Regulations or to shift from achieving the RPO Target based on injection in MUs as per the RPO Regulations to MW capacity additions. Moreover, the Commission has already held that RPO Targets for non-Solar sources (wind) cannot be determined based on capacity additions, and rejected this argument vide its recent RPO compliance verification Orders.

(34) MSEDCL was allowed to carry forward its shortfall in meeting its RPO target for non-Solar RE during earlier years as well, but continues to be in non-compliance. It has not met its RPO target for Non-Solar sources for FY 2013-14 (cumulatively) and FY 2014-15 on stand-alone basis.

(35) MSEDCL has wrongly stated that, by participating in the UDAY Scheme of GoI, MSEDCL is entitled to comply with the RPO targets from FY 2012-13 within a period to be decided in consultation with the MoP. MSEDCL cannot side-step the statutory obligation imposed upon it nor can it be allowed to not adhere to the various directions of the Commission under the pretext of the UDAY Scheme. MSEDCL cannot implement a policy decision which is at variance with the statutory scheme and

provisions of the RPO Regulations. It is also well settled that policy decisions of the State Government/Central Government are not binding on the Commission. In fact, these policy decisions have not even been issued under any provision of the EA, 2003.

(36) MSEDCL has wrongly contended that promotion of RECs is to the detriment of consumers. MSEDCL cannot seek to set at naught the regulatory provisions of the RPO Regulations by doing away with procuring RECs to meet the RPO shortfall. The contention that, since MSEDCL has sought RPO relaxation allegedly on account of factors beyond its control, the availability of RECs or otherwise is not a relevant factor, and/or that RECs are not an alternative to RE sources and/or that non-procurement of RECs may not be a pre-condition for exercise of power to relax the RPO Target is totally flawed.

(37) In fact, MSEDCL has not even procured physical wind power, even though it was readily available for sale at the approved rate of tariff upon execution of long term EPAs from the date of commissioning of Projects in FY 2014-15 and FY 2015-16. Maharashtra being a wind rich state has enormous potential and existing wind capacity for utilization by MSEDCL. If it had diligently utilized this wind power, then it would have been able to achieve its RPO considerably.

(38) Having failed to meet the RPO shortfall, MSEDCL is cannot pass on the expenditure to the consumers in implementation of the Commission's Orders. The contention of high RE tariff as against conventional energy is also unwarranted. RE is clean and green energy and has apparent benefits for all stakeholders, including consumers. Moreover, the tariff determined is a fixed tariff applicable for the entire Project life of 25 years of the wind power Project.[The framework, methodology and process for determination of the generic levelised tariff have been set out by WIPPA, along the lines summarized at para 9(27) earlier in this Order.]

(39) Setting up a wind power Project is capital-intensive. Even going by the conservative benchmark norms considered by the Commission in its latest Wind Tariff Order, Rs.6.74 crore/MW is the capital cost alone. In addition, Generators are required to service their debt obligations and incur expenditure towards operation and maintenance for the Project life of 25 years. The tariff so determined is the only return on investment for wind Generators. Therefore, to suggest that wind power is expensive and imposes undue burden on consumers is wholly misconceived. The benefits of renewable wind energy far outweigh the costs, as long term cost benefit analyses have proven.

(40) MSEDCL has been extremely inefficient with increasing T&D losses, poor distribution network, lack of reliable network, and performance. It has been unable to strengthen and/or upgrade its system to ensure quality, security, availability of power supply and reduce its system losses. As per newspaper reports, MSEDCL's collection

efficiency from agricultural consumers was 37.29% and 37.49% respectively in 2013-14 and 2014-15, respectively. This came down to 17.91% in 2015-16. MSEDCL issued bills of Rs.1,704crore to farmers, of which it could collect only Rs.305 crore. In the circumstances, it is grossly incorrect to term wind power as expensive while ignoring the urgent need for it to improve its own efficiency and not impose undue burden on consumers.

(41) It is also improper of MSEDCL to factor in the tariff otherwise payable to wind energy Generators for determining the retail supply tariff of consumers even though it neither makes due payments to wind Generators nor executes long term EPAs.

(42) MSEDCL has, without disclosing that it has taken the highest rate of wind tariff, sought to compare that per unit rate with the rate in Tamil Nadu. The comparison is wholly without warrant. However, MSEDCL ought to also factor in the extent of inefficiencies which are peculiar and distinct to it while making any comparative analysis. It has not executed EPAs for the last 2 years. MSEDCL is one of biggest defaulters in release of payments for wind energy, with outstanding dues of Rs.1264 Cr as on 31 August, 2016 for wind energy supplied by member Generators under earlier long term EPAs.

(43) The overdue amount considering all wind power Generators is now reportedly in excess of Rs. 2000 crore as of September, 2016 in violation of EPA provisions. The payment delay cannot be described as a situation beyond control of MSEDCL. MSEDCL continues to regularly pay thermal Generators.

(44) Consequently, the credit rating and returns envisaged by investors in wind energy have been affected. Some of these plants have become Non-Performing Assets (NPA). The delay in payment of nearly 13 months would further burden consumers as MSEDCL would be required to pay delayed payment charge on the same.

Miscellaneous Application No. 31 of 2016 in Case No. 70 of 2016

22. Indian Wind Power Association (Northern Region Council), World Trade Centre, Babar Road, New Delhi has filed MA No. 31 of 2016 on 6 December, 2016 citing Section 86(1) (e) of the EA, 2003 and Regulation 63 of the MERC (Conduct of Business) Regulations, 2004 for impleadment in Case No. 70 of 2016.

23. IWPA's prayers are as below:

a. *“Allow the present Application and implead the Applicant as a party in the present Petition, if admitted;*

b. *Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*

c. *Pass such further order(s) as this Hon'ble Commission may deem appropriate in the facts and circumstances of the case."*

24. IWPA's Application states that:

(1) IWPA is a registered Association of wind power producers who have made significant investments in the development of wind energy, including asset additions towards setting up wind turbines, and are, therefore, interested and affected parties to the Petition filed by MSEDCL.

(2) IWPA is objecting to the Petition by virtue of the Commission's Order dated 14 September, 2016 in Case No. 16 of 2016 regarding verification of compliance of RPO targets by MSEDCL for FY 2014-15.

(3) Vide its Orders dated December 24, 2012 in Case No. 102 of 2012, March 12, 2014 in Case No. 180 of 2013 and February 29, 2016 in Case No. 190 of 2014, the Commission had repeatedly allowed MSEDCL to cumulatively fulfil its RPO targets by FY 2015-16. However, MSEDCL did not do so and has now approached the Commission for extension of time for meeting its RPO targets for FY 2014-15, after the year is over.

(4) In its Order, the Commission has stated that MSEDCL has time and again failed to meet its RPO targets, and that it has not been even close to achieving its RPO targets from FY 2010-11 to FY 2014-15 and that, consequently, the cumulative shortfall has been increasing.

(5) At a time when the RPO compliance of FY 2015-16 is to be assessed, MSEDCL has belatedly approached the Commission seeking time extension, and that too after expiry of the stipulated period and after the suo-motu proceedings were completed.

(6) Therefore, the Petition should be dismissed. The Order dated 14 September, 2016 in Case No. 16 of 2016 has dealt with the issue in detail. The submissions of MSEDCL in those proceedings were based on the fact that the compliance was not done as per the earlier Order of the Commission and hence, the principle of res judicata applies and the Petition is not maintainable. In Appeal No. 267 of 2013, the ATE upheld the decision of the Commission in Case No. 109 of 2012.

(7) MSEDCL has sought reliefs which are also very similar to those raised in Case No. 44 of 2016. The reliefs sought have already been considered and rejected by the Commission vide Orders dated 4 August, 2015 and 14 September, 2016. MSEDCL cannot be permitted to repeatedly raise these issues and/or seek similar reliefs, which already stand rejected.

(8) MSEDCL's Petition seems to have been filed to somehow get over the legal bar against challenging the final Order dated 4 August, 2015 and secure legitimacy to its

evident violation, default and misconduct in not complying with the direction of meeting the RPO shortfall towards its RPO for FY 2013-14, and more recently vide Order dated 14 September, 2016 for FY 2014-15. The Petition is not maintainable and ought to be dismissed with costs.

(9) MSEDCL's Petition seeks extension of time for meeting the RPO shortfall specific to FY 2014-15. In fact, the Commission has vide its Order dated 14 September, 2016 in Case No. 16 of 2016 already directed MSEDCL to meet its stand-alone RPO shortfall for FY 2014-15 by the end of FY 2016-17. There is therefore no occasion for MSEDCL to seek any further extension of time or any of the other reliefs.

(10) Certain reliefs have been sought under the pretext of difficulty in implementing the directions with regard to meeting the RPO shortfall. However, there has been no circumstance which merits exercise of the exceptional power to relax and/or remove difficulties.

(11) The power of the Commission to relax or remove difficulty under the RPO Regulations has a clearly defined and limited objective and purpose. [IWPA's contentions on this aspect, and its reference to the ATE ruling on the implementation of the penal provisions of the Regulations in respect of RPO shortfalls, are similar to its submissions in MA No. 32 of 2016 in Case No. 44 of 2016 and may be referred to at paras. 12(9) to (13) earlier in this Order.]

(12) In line with the decision of the ATE in OP No. 1 of 2013, the Commission had rejected the justifications given by MSEDCL for RPO shortfalls in FY 2013-14 (and previous years) and FY 2014-15, and applied the penal regulatory provisions and given certain directions to MSEDCL [as set out earlier at para.12(14)].

(13) In the circumstances, even assuming that the power to relax can be exercised for setting aside, reviewing and/or modifying the Orders of the Commission, the question of actually exercising such power does not arise because MSEDCL has admittedly failed to discharge its non-Solar RPO target on account of its acts of omissions and commissions for FY 2013-14 and FY 2014-15. There was no impediment, difficulty, mitigating circumstance or any circumstance beyond its control, which precluded it from meeting its RPO.

(14) Further, the Commission has, vide its Order dated 14 September, 2016 in Case No. 16 of 2016, already held that the performance of MSEDCL with regard to RPO compliance (for FY 2014-15) shall be reviewed in the compliance verification proceedings for FY 2016-17 and also taken into account in the Mid-Term Review proceedings for the 3rd MYT Period. MSEDCL cannot for this reason also be allowed to seek further time for compliance of the RPO shortfall for FY 2014-15 at this stage as it will go against these directions.

(15) In Case No. 16 of 2016, the Commission had also noted that MSEDCL has raised issues in Case No. 70 of 2016 which are similar to those raised and decided in Case No. 16 of 2016. For this reason also, the present Petition cannot be considered.

(16) This is equally true for the RPO shortfall for FY 2013-14. The Commission vide Order dated 4 August, 2015 in Case No. 190 of 2014 has already rejected the justifications/reasons put forth for not meeting the RPO target for Solar and non-Solar RE sources. It was directed to achieve the target by the end of FY 2015-16, but has failed to do so. [IWPA's further contentions with regard re-agitation of issues by MSEDCL, the availability of adequate wind energy for sale at the approved tariff, non-signing of EPAs by MSEDCL, and the statement of MSEDCL that it has contracted sufficient capacity are similar to its submissions in MA No. 32 of 2016, which may be referred to at paras. 12 (19) to (23) earlier in this Order.]

(17) NIWE has identified more than 45 GW of wind energy potential in the State, of only 4.5 GW has been utilized. The NAPCC notified by GoI has set a RPO target of 15% across all States by 2020. In June, 2015, the MoP increased the long term RE capacity target to 175 GW by March, 2022 (100 GW of Solar and 60 GW of Wind capacity). [IWPA has made further averments with regard to the RPO targets set under the RPO Regulations being in pursuance of the statutory mandate of Section 86(1)(e) of the EA, 2003; the increased targets set for FY 2016-17 to FY 2019-20 under the new RPO Regulations, 2016, and the observation in the Statement of Reasons that as aspects such as availability of RE resources have been considered while doing so; the directions given to MEDA for a detailed study to re-assess the realistic CUF of non-Solar (wind) Projects, on which MEDA is working with NIWE; and the Commission having repeatedly held that, owing to the infirm nature of wind energy, even if power generated is below that expected, MSEDCL has to meet its RPO requirement as per the RPO Regulations. These averments are similar to its submissions in MA No. 32 of 2016, which may be referred to paras. 12(24) to (27) earlier in this Order.]

(18) There exists sufficient commissioned capacity in addition to capacities which are about to be commissioned which are available for MSEDCL to considerably meet its non-Solar RPO. However, these Generators have been adversely affected due to lack of long term EPAs despite several reminders to MSEDCL. Therefore, the contention of MSEDCL that non-Solar RPO was not met because of non-availability of resources is incorrect. MSEDCL has also falsely stated that it has executed long term EPAs with all non-Solar (wind) Generators who have approached it, which is not true. MSEDCL has not executed any EPAs after April, 2014.

(19) MSEDCL has sought to carry forward the non-Solar RPO shortfall to the next Control Period without justification or basis. The implications of non-compliance of Order dated 4 August, 2015 in Case No. 190 of 2014 must apply in letter and spirit. In OP No. 1 of 2013, the ATE has stated that carry forward should only be allowed in exceptional circumstances. MSEDCL was allowed to carry forward its shortfall during earlier years as well, but continues to be in non-compliance. It has not complied with its

non-Solar RPO target for FY 2013-14 (cumulatively) and FY 2014-15 on stand-alone basis. Penal action was initiated under Orders dated 4 August, 2015 and 14 September, 2016 in Case No. 190 of 2014 and Case No. 16 of 2016, respectively. Now permitting MSEDCL to carry forward its RPO shortfall would set at naught the rationale and principle behind these Orders. Without prejudice, if carry forward is to be granted, it should be subject to executing long term EPAs with wind Projects at the approved tariff as per their dates of commissioning/availability for fulfilling both unmet RPO and current period RPO.

(20) Having failed to meet the RPO shortfall, MSEDCL is anyhow not entitled to pass on the expenditure to consumers. The contention of high RE tariff as against conventional energy is also unwarranted. RE is clean and green energy and has benefits for all stakeholders, including consumers. Moreover, the tariff determined is a fixed tariff applicable for the entire Project life of 25 years of the wind power Project.

(21) It is also improper of MSEDCL to factor the tariff otherwise payable to wind energy Generators in its ARR Petitions and take credit for the energy evacuated for RPO compliance since it neither makes payments to Wind Generators or executes long term EPAs.

25. At the hearing held on 20 December, 2016, the Commission observed that, since some similar issues had been raised in Case Nos. 44 and 70 of 2016 and the various Miscellaneous Applications, they would be heard together, to which the parties agreed. The Commission heard these Cases and Applications accordingly.

(1) MSEDCL stated that it has raised similar issues in its Petitions in Case Nos. 44 and 70 of 2016. However, since the Petition in Case No. 70 of 2016 has comprehensive submissions/averments, and it may be considered as the base and Case No 44 of 2014 may be linked to it.

(2) MSEDCL submitted that it would be able to fulfill its non-Solar RPO targets, including any cumulative backlog, by 31 March, 2017. For its Solar RPO targets, it has entered into various tie-ups and will be able to fulfill them, post 2016-17, and to that extent it requires carry forward of the Solar RPO targets. MSEDCL relied on the ATE Judgments on the issue of the determination of RPO targets in the Regulations.

(i) The Commission asked MSDECL to clarify how its Petition is not in fact a Review Petition, and how the issues can at all be raised at this stage several years after notification of the RPO Regulations, 2010 and the Approach Paper. MSEDCL responded that it is not a Review Petition. Relying on the ATE Judgment in Appeal Nos. 265 of 2012 and 258 of 2013, MSEDCL stated that, even after the period of the Regulations, it can approach the Commission if actual RE capacity addition has not taken place to the extent of the targets specified in the Regulations. In that case, the

Commission can retrospectively verify the RPO compliance of the entity. MSEDCL emphasized prayer 'b', for relaxing the targets in the RPO Regulations, 2010.

- (ii) The Commission observed that relaxing the specified RPO targets and removing the separate Mini/Micro Hydro target (prayer 'd') specified in the RPO Regulations, 2010 would require impleadment of all the Distribution Licensees. In prayer 'c', MSEDCL is asking for a review of the RPO compliance verification Order (for FY 2013-14) dated 4 August, 2015 in Case No 190 of 2014. Moreover, the carry forward of RPO and other related issues have already been dealt with in the earlier compliance verification Orders (more recently for FY 2013-14 and for FY 2014-15), inspite of which MSEDCL has approached the Commission now essentially seeking review of the Order dated 4 August, 2015.
- (3) On the separate issue of competitive bidding for procurement of RE, the Commission observed that MSEDCL could approach the Commission with a separate proposal citing the developments so far on the matter of competitive bidding for RE sources.
- (4) MSEDCL stated that it has no objection to the interventions sought through MA Nos. 27, 29 and 32 of 2016 in Case No. 44 of 2016, and MA Nos. 19, 30 and 31 of 2016 in Case No 70 of 2016, and that the Commission may allow them.
- (5) Dr. Ashok Pendse of Thane-Belapur Industries Association (TBIA, an Authorised Consumer Representative) stated that MSEDCL has consistently fallen short of its RPO (both Solar and non-Solar) for the last four years, from FY 2012-13 to FY 2015-16. For each year, the total RPO shortfall has been to the extent of approximately 1000 MUs. Other Distribution Licensees are purchasing RECs to meet their RPO shortfall, as allowed under the RPO Regulations. MSEDCL could also have done so, but did not. While MSEDCL itself has a shortfall, it is denying OA permissions to some consumers on the grounds of non-fulfillment or non-submission of their RPO performance against their targets. Such double standards by MSEDCL are not acceptable.
- (6) The Commission allowed the Applications for intervention by the various RE Associations. It asked MSEDCL to serve its Petitions to them, and gave them a week to file their Replies within a week to which MSEDCL could rejoin within a week thereafter. The responses have been set out earlier in this Order. The Commission reserved these matters for orders.

Commission's Analysis and Ruling

- 26. At the outset, the Commission notes that most of the issues raised by MSEDCL and its prayers in Case No. 44 of 2016 and Case No. 70 of 2016 are similar if not identical, although the Petitions were filed within less than 2 months of each other. The**

Commission deprecates this irresponsible approach of MSEDCL which results in duplication of proceedings. Moreover, some of the prayers in both Cases amount to seeking review of the Commission's Order in Case No. 190 of 2014 (regarding the verification of RPO compliance for FY 2013-14), long after the period of 45 days specified in Regulation 85 of the Conduct of Business Regulations, 2004 and with no explanation for the delay.

27. *ISSUE 1 - Setting aside the ruling in Case No. 190 of 2014 regarding disallowance of expenditure on purchase of RECs and / or actual power procurement to the extent of the shortfall not met by the end of FY 2015-1.*

27.1 Issue 1 is common to both Petitions. In its Order in Case No. 190 of 2014 verifying the RPO compliance of MSEDCL for FY 2013-14, the Commission had invoked Regulation 12 (RPO Regulatory Charges) of the RPO Regulations, 2010 considering the shortfall of 281.75 MU against the Solar RPO target for FY 2013-14 and a cumulative shortfall of 1078.13 MU against the Non-Solar RPO target upto FY 2013-14, as follows:

“54. In the light of the facts set out at paras. 46 to 50 above and the provisions of the RPO-REC Regulations, 2010, the Commission finds no justification or mitigating circumstances (except in case of Mini/Micro Hydro power) for MSEDCL's shortfall, in spite of RECs being available, against its Solar RPO target for FY 2013-14, and cumulative Non-Solar RPO shortfall of FY 2013-14 and previous years. This is, therefore, a fit case for applying Regulation 12 of the RPO-REC Regulations, as envisaged by the ATE.”

The RPO Regulatory Charge Fund to be constituted under Regulation 12 was to be utilised by MSEDCL to purchase Solar and Non-Solar RECs to meet its shortfall against the RPO targets by the end of March, 2016, and the amounts deposited into the Fund were to be determined by MSEDCL accordingly over the remaining part of FY 2015-16.

27.2 The Commission had estimated the cost of compliance for MSEDCL if the shortfall were met by its way of purchase of RECs at the floor price as Rs 260.33 crore. However, while CERC had fixed the floor and forbearance prices of RECs, the actual rate at which they may be available at any given time was not known. Hence, the Commission did not specify the total amount to be deposited in the Fund in terms of a figure. The Commission expected MSEDCL to meet the shortfall by purchase of RECs and/or by purchase of RE power to meet the shortfall against the RPO targets by the end of March, 2016. At para. 57 of the Order, the Commission made it clear that, considering the circumstances set out in the Order which had led to invocation of Regulation 12, the expenditure on purchase of RECs and/or actual power procurement would not be passed on to consumers to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16.

27.3 In its subsequent verification of RPO compliance for FY 2014-15 in Case No. 16 of 2016 also, the Commission found MSEDCL to be short of its targets.

27.4 These facts were reflected in the Commission's last MYT Order dated 3 November, 2016 in Case No. 48 of 2016. Accordingly, with reference to its rulings in Case No. 190 of 2014, the Commission provisionally disallowed the RPO compliance cost of Rs. 260.33 as follows:

“6.5....Thus, it appears that MSEDCL has not taken any substantive or effective action towards fulfilment of the shortfall in RPO targets, as per the directions in Case 190 of 2014, by the end of March, 2016, in spite of availability of RECs (Solar and Non-Solar) in the market.

Accordingly, in the present Order, the Commission has dis-allowed the RPO compliance cost of Rs 260.33 Crore to the extent of the shortfall in RPO compliance by MSEDCL, as directed in Case 190 of 2014, on a provisional basis. This would be reviewed at the time of MTR for truing-up on the basis of the RPO compliance verification Order which would be passed by the Commission with regard to FY 2015-16.”

The MYT Order recorded MSEDCL's submission that it had filed a Petition in Case No. 44 of 2016 to carry forward the shortfall not met by FY 2015-16 to the next Review Period. The Commission notes that it has also conducted RPO compliance verification proceedings for FY 2015-16 in Case No. 169 of 2016 on which its Order will issue shortly and the factual position upto that year would be determined accordingly.

27.5 The Commission had dealt extensively and in detail with the circumstances of the shortfall in RPO compliance upto FY 2013-14 in Case No. 190 of 2014, and also considered the decision of the ATE in OP No. 1 of 2013 in that context. On that basis, it had imposed the disallowance liability now challenged by MSEDCL, and which led to the provisional disallowance of Rs. 260.33 crore from its Annual Revenue Requirement in the subsequent MYT Order. The Commission had applied the penal provisions of Regulation 12 of the RPO Regulations, 2010 after due consideration of the circumstances of the shortfall, as envisaged in the decision of the ATE in OP No.1 of 2013 which was cited in the Commission's Order in Case No. 190 of 2014. The Commission finds no justification in MSEDCL's present Petitions for a contrary decision.

27.6 Moreover, on Issue 1, MSEDCL is in effect belatedly seeking review of the Commission's Order in Case No. 190 of 2014. Regulation 85 of the Commission's Conduct of Business Regulations, 2004 provides for such review by a Petitioner

“upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons,...”

In neither Petition has MSEDCL shown how the criteria for a review with regard Issue 1 have been met.

27.7 In the alternative, MSEDCL has contended that the targets set in the RPO Regulations, 2010 are not in line with the actual potential of RE generation in the State in relation to MSEDCL's procurement. On this also, MSEDCL is only re-agitating a point it had already made in Case No. 190 of 2014 and in subsequent compliance verification proceedings. The Commission also notes that the RPO Regulations, 2010 were notified after due public consultation, for which a detailed 89-page Discussion Paper on all the relevant considerations was also provided. Moreover, this contention is self-contradictory considering the averments in its Petition in Case No. 44 of 2016, summarized at paras. 3 (12) and (13) earlier in this Order. The Commission finds no merit in these contentions of MSEDCL, except with regard to the Mini/Micro Hydro RPO targets. However, as discussed below with regard to Issue 2, appropriate dispensations for the Mini/Micro Hydro RPO have been provided to MSEDCL in Case No. 190 of 2014 itself as well as in subsequent Orders and the new RPO Regulations, 2016. In view of the foregoing, MSEDCL's related prayer in Case No. 70 of 2016 seeking relaxation of the targets in the RPO Regulations, 2010 after verifying the extent to which they are based on the actual RE situation also has no merit.

28. *ISSUE 2 - Cancellation of separate Mini/Micro Hydro RPO targets considering the capacity addition in the State*

28.1 Issue 2 is also common to both of MSEDCL's Petitions. At para. 44 of its Order in Case No. 190 of 2014, considering the difficulties presented by MSEDCL in achieving its Mini / Micro Hydro RPO targets so far, the Commission had allowed it to make up for the past shortfall, including the shortfall in FY 2013-14, on a cumulative basis by the end of FY 2015-16.

28.2 After the present Petitions were filed, the Commission provided a further dispensation in its Order dated 14 September, 2016 in Case No. 16 of 2016 (verification of RPO compliance for FY 2014-15) by allowing MSEDCL to buy non-Solar RECs against its Mini/Micro Hydro RPO shortfall:

"28. In Case No. 190 of 2014, the Commission had allowed MSEDCL to meet its cumulative Mini/Micro Hydro RPO shortfall upto FY 2013-14 by FY 2015-16. Neither this shortfall nor the stand-alone target were met in FY 2014-15 for the reasons cited in these proceedings. Considering the above discussion and its powers of relaxation and removal of difficulties under Regulations 18 and 20 of the RPO Regulations, 2010, the Commission now allows MSEDCL to purchase Non-Solar RECs in the current year (FY 2016-17) to meet any shortfall still remaining for the period upto FY 2014-15. The position in respect of FY 2015-16, which is now over, will be reviewed in the next verification proceedings."

28.3 The new RPO Regulations, 2016 (applicable from FY 2016-17) now allow all Distribution Licensees to meet shortfalls against their Mini/Micro Hydro RPO targets through Non-Solar RECs if the targets have not been met inspite of sufficient efforts.

This provision was introduced considering the inadequate availability of such resources at present and the absence of RECs specific to Mini/Micro Hydro power. These Regulations were also notified after due public consultation. Thus, MSEDCL's concerns have been appropriately addressed in the Orders cited above and in the new RPO Regulations, and the Commission is of the view that there is no merit in its contention to do away with the separate Mini/Micro Hydro target.

29. *ISSUE 3 - Carry forward of the shortfall not met by MSEDCL by the end of FY 2015-16 to the next Review Period.*

29.1 Issue 3 is common to both of MSEDCL's Petitions. In Case No. 70 of 2016, MSEDCL has been more specific, and sought an extension of 3 years to meet its cumulative RPO shortfall.

29.2 In its Judgment dated 20 April, 2015 in O.P. No. 1 of 2013 cited earlier in this Order, the ATE observed as follows:

“28. ... (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.”

29.3 In the past, the Commission had allowed MSEDCL to carry forward its Solar and Non-Solar RPO shortfalls. In Its Order in Case No. 190 of 2014 also, the Commission had allowed the Mini/Micro Hydro RPO shortfall to be carried forward, but not the other Non-Solar and Solar RPO shortfalls of FY 2013-14 considering the circumstances of non-compliance which have been discussed in that Order. Considering the nature and purpose of the RPO targets, the provisions of the RPO Regulations and the ATE Judgment quoted above, there can be no blanket dispensation to carry forward the RPO shortfalls for 3 years or till the end of the current Review Period. The extent to which such carry forward should be allowed, if at all, is to be determined in the annual compliance verification proceedings. As mentioned earlier, the proceedings in respect of FY 2015-16 in Case No. 169 of 2016 have been completed, and that Order would address whether any carry forward is justified. As regards MSEDCL's reference to the provisions of UDAY, under which the period for meeting RPO shortfalls since

FY 2012-13 would be decided in consultation with MoP, the Commission observes that such decision cannot override the Commission's Regulations or Orders in that regard.

29.4 In the context of its specious and simplistic contentions regarding the nature and status of RECs also, MSEDCL may refer to the ATE Judgment cited above. In several RPO compliance verification Orders, the Commission has observed that on many occasions MSEDCL could have purchased RECs to meet some or all of its shortfall at highly advantageous prices in the interest of its consumers but did not do so. While there is no compulsion to purchase RECs, it did not procure sufficient RE power either. The Commission notes that, at least in the case of Solar RPO, MSEDCL has started purchasing RECs in recent years.

30. In its present Petition in Case No. 70 of 2016, MSEDCL has also referred to its averments in Case No. 16 of 2016 regarding the efforts made for RPO compliance and the difficulties faced, and that hence it was now approaching the Commission for removal of difficulties in giving effect to the RPO Regulations, 2010. MSEDCL's present Petition was filed before the Order in Case No. 16 of 2016 was passed. In its Order dated 14 September, 2016 in that Case, the Commission has stated as follows:

“Solar RPO

20. In previous Orders, the Commission had allowed MSEDCL to carry forward its earlier shortfall of FY 2010-11 to FY 2012-13 and to make it up by the end of FY 2015-16. During these proceedings, MSEDCL has elaborated its plans and the steps it is taking to ramp up Solar power procurement to fulfil its RPO (summarized at paras. 9.5 and 9.8 above), and expects results in subsequent years. The Commission notes that this would be reviewed in the RPO compliance verification for those years. As far as the present proceedings are concerned, Table 5 above shows that, while there has been some improvement in both absolute and percentage terms against the stand-alone Solar RPO target of FY 2014-15, in no year from FY 2010-11 to FY 2014-15 has MSEDCL been even close to achieving its Solar RPO. Consequently, the cumulative shortfall has been increasing. As the Commission had earlier observed while declining to condone the shortfall of FY 2013-14, in FY 2014-15 also it cannot be claimed that sufficient Solar power was not available for purchase. Moreover, as in the past, MSEDCL also had the option of purchasing RECs at intervals of its choosing for advantageous rates, but chose not to do so either. In these circumstances, the Commission finds no justification for the shortfall of around 50% against the Solar RPO target for FY 2014-15.

Non-Solar RPO (excluding Mini/Micro Hydro)

21. MSEDCL has fallen short of its Non-Solar RPO targets in each year from FY 2012-13 (which was allowed to be carried forward to FY 2013-14) to FY 2014-15. Although its performance has gradually improved, the cumulative shortfall has increased to 1724.49 MUs by the end of FY 2014-15 (even after adjusting for the surpluses of FY 2010-11 and FY 2011-12).

22. MSEDCL has stated that it has contracted adequately with RE (mainly Wind) Generators to fulfil its Non-Solar RPO targets upto FY 2015-16 on

capacity basis; and that, considering normative CUF, the generation was expected to be sufficient to enable MSEDCL to do so. However, the actual energy injected has been less than expected considering the normative CUF. It has contended that, since the Wind Generators have not delivered as per the normative CUF, either the CUF projections should be revised, or the Generators must be penalised and improve their efficiency. Alternatively, the RPO target compliance may be assessed on the basis of RE capacity contracted.

23. MSEDCL had put forward the same reasoning in Case No. 190 of 2014 to explain the shortfall in FY 2013-14 also. In its Order dated 4 August, 2015, the Commission had stated that, although MSEDCL might have contracted adequately with RE (more specifically, Wind) Generators on a capacity basis considering generation at normative CUF, RE generation dependent on natural phenomena like wind is intermittent by nature and its predictability has limitations. The Commission had pointed out that, considering these limitations and other factors, the REC mechanism could have been resorted to if the RPO target was unlikely to be achieved because actual energy injection was less than anticipated. These observations apply equally to FY 2014-15, when MSEDCL did not supplement its Non-Solar procurement by adequate purchase of RECs although it could have done so at intervals of its own choosing when it might have benefited from advantageous rates. The availability of RECs to meet procurement shortfalls would also address MSEDCL's contention that RE Generators find it more beneficial to sell power to OA consumers.

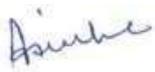
24. In the above circumstances, the Commission finds no justification for the shortfall against the Non-Solar (excluding Mini/Micro Hydro) RPO target for FY 2014-15."

Considering the earlier discussion in this Order and the circumstances and detailed analysis set out in its Order in Case No. 16 of 2016 also, the Commission finds no merit in MSEDCL's arguments for the removal of purported difficulties in the implementation of the RPO Regulations, 2016 or relaxation in its provisions (except with regard to the Mini/Micro Hydro target, which has been dealt with in other Orders as explained above).

The Petitions of MSEDCL in Case Nos. 44 and 70 of 2016 and the Miscellaneous Applications filed by GEA, WIPPA and IWPA in those Cases stand disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary

