

Comments and Suggestions on draft BERC (Renewable Purchase Obligation, its Compliance and REC Framework Implementation) Regulations, 2025

Prayas (Energy Group), 10th April, 2025

Bihar Electricity Regulatory Commission issued draft Bihar Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliance and REC Framework Implementation) Regulations, 2025 on 22nd March, 2025 and asked for public comments / suggestions by 11th April, 2025.

Considering the national target of 500 GW non fossil fuel capacity by 2030 and that renewables (mainly wind and solar) will account for the bulk of that addition due to their low cost of generation, the proposed BERC RPO regulation is very timely and welcome. Bihar has and can continue to play a big role in contributing to this national goal through various initiatives, one of which is the regulation on renewable purchase obligation.

Our suggestions and comments on the proposed draft regulation are detailed below.

1. Specify Energy Storage targets

The proposed draft regulation has stated targets as per MoP notification dated 20th October 2023. We appreciate this effort. However, considering the importance of energy storage in better integration of RE to the national grid, providing more stability to grid and addressing impact of load variability in the state, we suggest that the **Commission should also specify Energy Storage Targets for the obligated entities** as stated in the MoP order on RPO and ESO Trajectory till 2029-30 dated on 22nd July 2022 read with corrigendum dated on 19th September 2022. The storage trajectory specified in the said notification is as follows:

F.Y.	Storage (on Energy basis)
2023-24	1.0%
2024-25	1.5%
2025-26	2.0%
2026-27	2.5%
2027-28	3.0%
2028-29	3.5%
2029-30	4.0%

Considering that two years have already passed since the notification, **we suggest that the modified ESO targets can be considered by the Commission**, which can be as follows:

F.Y.	Storage (on Energy basis)
2025-26	1.0%
2026-27	1.75%
2027-28	2.50%
2028-29	3.25%
2029-30	4.0%

ESO targets should be treated as fulfilled only when at least 85% of the total energy stored in the energy storage system, on the annual basis, is procured from renewable energy sources (solar, wind or mix of both).

2. Composite RPO better for RE planning

In clause 4.1 Para 11 and 12 of Regulation 4, Fungibility across various RPO categories is allowed, i.e., excess consumption in any one category can be considered in another category to fulfil RPO. We suggest that there can be a **composite RPO structure instead of having separate RPO categories** (Wind, HPO, DRE and other RPO). Hence, there can be only 2 categories of targets: RE and DRE (as DRE is not fungible), apart from ESO. This will help OEs in planning their renewable power purchase in a better way.

Further, in case the proposed categories are kept, it will be better to re-define the “Wind RPO” category, In this regard, we would like to highlight the proposed definition of “Wind RPO”, which is as follows: *“Wind renewable energy component shall be met only by energy produced from Wind Power Projects (WPPs) commissioned after 31st March 2024 and the wind energy consumed over and above 7% from WPPs commissioned till 31st March 2024;”*. This means that 93% of generation from the existing wind plants (commissioned till 31st March 2024) are being considered as “Wind RPO” and only remaining 7% is being considered for “Other RPO” category. Hence, we suggest that the definition of Wind RPO category be changed, and it shall be met from energy produced from any wind power projects, irrespective of its commissioning date. This will also require change in definition of “Other RPO” category. This will simplify the data reporting and compliance process.

3. Data submission and RPO compliance process

3.1. Data submission timelines

Clause 6.3 states that,

“The State Agency shall submit half yearly status with respect to compliance of RPO by the obligated entities to the Commission within 15th of the ensuing month after completion of 1st and 2nd half of Financial year in the format as annexed as Annexure-I to these Regulations and may suggest appropriate action to the Commission, if required for compliance of the renewable purchase obligation.”

Clause 8.2 states that,

“Every Captive and Open Access Consumer(s) / user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.”

Clause 4.3 states that,

“The Licensee or its successor entities shall submit half yearly progress report on the capacity addition, purchase of electricity from such projects and the energy generated from renewable sources in the State which is used by generator itself or sold to third party under Open Access to the Commission and also post them on their website.”

The above clauses suggest that State agency should submit half yearly RPO Compliance data of all OEs by 15th of the ensuing month after completion of 1st and 2nd half of the FY to the Commission. On the other hand, it is mentioned that Captive and OA consumers should submit yearly data related to RPO Compliance on or before 30th April to the State Agency. DISCOMs need to submit their RPO Compliance data on half yearly basis to the Commission directly. There is a mismatch between data submission timelines of OEs. If Captive and OA Consumers are submitting details of RPO Compliance on yearly basis on or before 30th April, the State Agency will not be able to submit half yearly status of all OEs in the state to the Commission. Further, DISCOMs are not directed to submit data to nodal agency. Also, there is no timeline mentioned for DISCOMs to submit their half yearly RPO Compliance data.

We suggest that, there should be **uniform timelines of data submission for all OEs**. The Commission/ nodal agency may develop a RPO web portal where all OE's can submit RPO compliance data. The State Agency can monitor this RPO portal and prepare a report of RPO Compliance status of all OEs and submit it to the Commission. This portal should be publicly accessible. In regard to timelines, **we suggest that OEs submit annual data to nodal agency by 15th May and post verification, the state nodal agency shall submit the annual data to the Commission by 15th June. The Commission may further consider including specific penalty provision for non-submission of data and non-adherence to such timelines by the entities for data reporting.**

3.2 Data reporting format

We appreciate data reporting format given in the Annexure-I of the proposed regulations. The Annexure-I can be provided as an excel file along with the regulation on the commission's website as it includes formulae based calculations and providing excel file will simplify data entry by OEs and reduce chances of error while entering the data.

3.3 RPO Compliance verification process

The RPO Compliance data verification is also an important aspect along with the data reporting. Compliance verification should ideally be a public proceeding and should be independent from true-up or tariff determination processes. **There should be a separate public proceeding for verification of RPO Compliance. Further, the Commission should incorporate clear and strict timelines of verification of RPO compliance on an annual basis.** Indicative timeline for such a process is suggested below. In this way, the verification process can be completed within 180 days. The Commission should publish verified RPO compliance data for each Obligated Entity in the public domain within 15 days of completion of the verification process.

Table: Indicative Timeline for RPO compliance verification process

Process step	Timeline
Data submission by Obligated Entity to state nodal agency (SNA)	Within 45 days of end of financial year
Data submission by SNA to Commission	Within 30 days of data received by SNA
Public notice by Commission for inviting comments on verification process	Within 30 days of data received by Commission from SNA

Finalization of verification process	Within 75 days of issuing public notice to initiate public proceeding
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4. Penalty provisions

4.1. Penalty fund

The proposed regulation suggest that the penalty will be imposed for non-compliance of RPO targets as per Section 142 of EA, 2003 and Clause 9 of the regulation states that, *“If an Obligated Entity does not fulfil the renewable purchase obligation as provided under these Regulations during any year and also does not purchase the required certificates, the Commission may direct the Obligated Entity to deposit into a separate fund, to be created and maintained by such Obligated Entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO or as decided by the Central Commission or the fund may be deposited in the “Bihar Renewable Energy Development fund”.*

In this regard, we suggest that the **fund for depositing the penalty amount should only be created and maintained by state agency and not by any Obligated Entity.** Further, **the Commission should determine the penalty amount based on the RPO shortfall and this function cannot be delegated to the Central Commission as they have no jurisdiction either under section 86(1)(e) of the EA, 2003 or any mention in the Energy Conservation Act under which the Oct 2023 notification for RCO was issued by MoP.**

4.2. Specifying minimum penalty quantum

It will be better if the **minimum penalty quantum is also specified in the regulation for providing a strong signal to OE for non-compliance.** In this regard, we suggest to keep a minimum penalty as either 5 times the weighted average REC price¹ for the FY (in consideration) or Rs. 0.50 per unit, whichever is higher.

4.3. Transparency in penalty process

Further, **there should be transparency about the penalty process:** its imposition, collection and utilization. While publishing a separate order for RPO proceedings, any amount of penalty imposed should be clearly mentioned in those orders. It is appreciable that the draft regulation mentions timeline for deposition of penalty in the fund, which according to last Proviso of clause 9.1, is within 15 days of the communication of such direction. The state agency should monitor whether the proposed timeline is adhered to by the entity. The data related to deposition of penalty (amount, date on which penalty was deposited, etc.) and remaining fund for each obligated entity should be published by the nodal agency on a regular basis and be made available in the public domain. The commission may also consider including a penal provision in case penalty quantum is not deposited in the stipulated timelines, as specified in the regulation.

4.4. Carry forward provisions

The draft regulation allows carry forward of shortfall in meeting RPO compliance. However, it should not be allowed on a routine basis. Furthermore, even if in rare cases carry forward is allowed, the reasons for carry forward of the shortfall should be clearly mentioned in the order issued by Commission.

¹ Presently, REC prices are in the range of 10-12 paise per unit. Hence, 5 times of REC price will lead to a penalty of 50-60 paise per unit.

5. Other comments

- a. We suggest that the Commission should elaborate the role of the Monitoring Committee to ensure compliance mentioned in Clause 10.2 of these Regulations.
- b. In the Clause 4.1 (d) the cut-off date should be 1st April, 2024, instead of 1st April, 2025.
- c. In 2nd Proviso of clause 4.1(c) term “designated consumer” is used. We suggest that it should be changed to “Obligated Entity”, as the draft regulation has referred to "Obligated Entity" term only.
