

Comments and Suggestions on draft Regulations of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2024

Prayas (Energy Group), 18th October, 2024

Gujarat Electricity Regulatory Commission issued draft Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2024 on 30th September, 2024 and asked for public comments / suggestions by 18th October, 2024.

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 GERC RPO regulation is very timely and welcome. The draft regulation proposes a RPO trajectory for 2024-30 in line with the MoP guideline in this regard. Gujarat 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 procurement of energy from RE sources by the obligated entities in the state.

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

1. Complexities arising from the harmonized reading of Electricity Act and Energy Conservation Act

The notification section and the definition of the Act refer to both the Acts, i.e. The Electricity Act and The Energy Conservation Act. We appreciate this effort to harmoniously give effect to these 2 Acts through this regulation. However, this can lead to various legal complexities, which need to be duly considered and resolved suitably. Some of the complexities are listed below:

- a) Under EA, RPO is applicable on obligated entities (DISCOMs, captive and OA consumers above a certain threshold), however, under EC Act, RPO is applicable only on designated consumers (DCs) who are DISCOMs and limited OA and Captive consumers. Hence, under EC Act, a large number of (esp. smaller) OA and captive consumers are not covered. Would the Nodal agency have to maintain two separate lists of obligated/designated consumers based on the applicability and what about entities which fall in both lists?
- b) Penalty imposition on OE as per EA 2003 is under Section 142, whereas penalty imposition on DCs as per EC Act 2001 is under Section 26(3). However, the proposed regulation has incorporated penalty provisions as per Section 26(3) of EC Act 2001 on all eligible entities. One needs to consider whether penalty under EC Act can be imposed on entities which are not covered under EC Act.
- c) Applicability of the Energy storage obligation (ESO) on DCs under EC Act is not very clear as the Oct 2023 notification does not mention explicitly about the ESO. However, applicability of ESO on obligated entities as per the MoP notification of July 2022 still stands and is applicable for all obligated entities.
- d) Proposed regulation defines both Acts in one definition. It is better to define 2 Acts separately rather than including both in one definition. Section 10(2) states that “(2) Where any Obligated Entity fails to furnish requisite information, as provided under Regulation 8, or fails to comply with the obligation to purchase the required percentage of energy from RE Sources as provided under these Regulations or fails to purchase the Renewable Energy Certificates, it shall be liable for penalty as may be imposed by the Commission **under Section 142 of the Act.**” (emphasis

added). Such wording may create confusion about which Act to refer. Hence, we suggest that the two Acts be defined separately and referred to in the regulation accordingly.

A brief comparison of two Acts can be found below:

Parameters	EA 2003	EC Act 2001 (added with MoP's Oct 2023 notification)
RPO applicable on	Obligated entities (DISCOMs, captive and OA consumers)	Designated consumers who are DISCOMs, OA and Captive consumers
Target specified by	SERCs	Central Govt. (MoP)
Penalty provision	Nominal penalty under Sec 142	Very high upper limit of penalty under Sec 26(3)
Regulation making power/ function	SERC	BEE

2. Composite RPO better for RE planning

In Regulation 4, RPO targets are aligned with Oct 2023 MoP notification. New DRE category is also introduced which will boost solar installations < 10 MW in size in the state. Fungibility across various RPO categories is allowed, i.e., excess consumption in any one category can be considered in another category to fulfil RPO except DRE. We suggest that there can be a composite RPO structure instead of having separate RPO categories and then allowing fungibility across categories. Hence, there can be only 2 categories of targets: RE and DRE, apart from ESO. This will help OE's in planning their renewable power purchase in a better way.

3. Composite RPO for Captive and OA consumers

The Regulation 4(1)(5) states that *"The designated consumers who are open access consumers or consumers with Captive Power Plants shall fulfill their obligation as per the specified total renewable energy target irrespective of the non-fossil fuel source."*

Also, the Regulation 4(3) states that *"Any person/consumer, who consumes power from any source (generation/purchase), interalia, including purchase through Open Access, but other than in his capacity as a consumer of Distribution Licensee or by consumption from a Captive Generating Plant, the RPPOs provided at the Table-1 and storage Obligation at Table-2 under this Regulation shall be applicable in respect of his consumption from such sources."*

Does this mean that for DCs, total RPO targets are to be met, while for other captive and OA consumers, targets for each RPO category are to be met separately?. We suggest captive and OA consumers, whether DCs or not, shall be allowed to meet total RPO targets, irrespective of the non-fossil fuel source. Furthermore, ESO shall be applicable on all eligible entities, including DISCOMs.

4. Obligation for Storage should be applicable on all DC/OEs

ESO for all the eligible entities is welcome step, as it will support better grid operation, and RE integration in the state grid. Inclusion of DCs (incl. DISCOMs and energy intensive industries) for

complying with ESO is a further very encouraging step. However, the ESO framework needs to be developed in detail. More clarity is needed in terms of the accounting of the input and output energy to fulfill storage obligation. Furthermore, it will be good to have a separate data reporting format for compliance data for ESO, which shall include input energy (MUs, source-wise), output energy (MUs) and the energy lost during the round-trip.

5. Provision related to Target revision should be used only in exceptional circumstances and should not be the norm

The regulation has entrusted Commission to revise targets given in Table 1 and Table 2 in situations like power supply constraints or other factors beyond the control of the Obligated Entity(ies) or for any cogent reasons. We agree on target revision in such situations; however, DC/OE should submit the reasons and evidence for such situations in writing before the commission during the public proceeding for target revision. The Commission should thoroughly investigate the reasons and then should consider revision of targets. Along with this, we suggest that such a petition by the OE shall be filed before the end of the financial year and frequent target revisions should be avoided.

6. Avoiding double counting of RPO compliance through Green Hydrogen and Green Ammonia

Last provision of clause 5(2)(v) states that *“Provided further that in accordance with Ministry of Power, Govt of India letter no. 23/02/2022-R&R, dated 17.02.2022, the renewable energy consumed for the production of Green Hydrogen / Green Ammonia shall be counted towards RPO compliance of consuming entity. **The renewable energy consumed beyond obligation of the producer shall count towards RPPO compliance of the DISCOM in whose area the project is located.**”*¹(emphasis added)

The RPO obligation is only on the consuming entity (of Green Hydrogen or Ammonia) and not on producer of Green hydrogen or ammonia. So, surplus energy should be in account of the consuming entity. Further, with a provision of issuance of RECs for over-compliance of RPO in place, any attempt to transfer the surplus RE energy to DISCOM for DISCOM’s RPO compliance will jeopardize any initiative by other OE to overachieve their RPO targets.

Any production of Green Hydrogen or Ammonia can be exported to other Indian state or other countries. In the first case, the consumer can avail its consumption for RPO compliance. In later case, the consumer might avail any other benefit (carbon emission or carbon credit). Hence, there is a need to avoid double-counting of renewable/ green attribute of energy consumed for production of Green Hydrogen or Ammonia.

7. Data submission related provisions

Regulation 7(4) and 8(3) mention that the state agency should report RPO compliance data to the Commission on quarterly as well as annual basis. The OEs should also furnish their data to the state agency on quarterly basis before the end of the 6th week of the succeeding quarter and annual consolidated report on or before 15th May of the succeeding year. Further, regulation 10(2) provides for imposing a penalty (under Section 142 of Electricity Act, 2003) in case of non-submission of requisite data by OE. While we appreciate these timelines for data reporting and penalty for non-submission of data, the Commission may consider including specific penalty provision for non-adherence to such timelines by the entities for data reporting. The Commission should also mandate the state agency to put this data in the public domain through their website.

¹ The complete MoP order can be accessed here:
https://powermin.gov.in/sites/default/files/Green_Hydrogen_Policy.pdf

8. Timeline for RPO compliance 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. 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

9. Penalty provisions

The penalty will be imposed for non-compliance of RPO targets as per Section 142 of EA, 2003 and sub-section (3) of Section 26 of The Energy Conservation Act, Clause 10 states that *“The penalty amount as the Commission may determine on the basis of the shortfall in units of RPPO, be deposited into a separate fund, to be created and maintained by such Obligated Entity or State Agency as the case may be.”* 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. 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. In the order, the Commission should mention the proposed timelines for payment of penalty while imposing any penalty on obligated entity. Also, SNA should monitor whether the proposed timelines are 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 should routinely not allow carry forward of the shortfall. Furthermore, even if in rare cases carry forward is allowed, the reasons for carry forward of the shortfall/ surplus should be clearly mentioned in the order issued by Commission. 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 price² for the FY (in consideration) or Rs. 0.50 per unit, whichever is higher.

² 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.

Other comments

1. Development of Web portal

We appreciate the initiative taken to develop a web portal in order to report data related to RPO compliance (Regulation 7(3)). This will definitely help in easy and better monitoring the RPO compliance of OEs by Commission. We suggest that the data reported on this portal should be publicly accessible. Also, this portal shall be developed by the nodal agency within 3-6 months of notification of the proposed regulation. These aspects should be included in the proposed regulation.

2. Differentiating RPO compliance before and after FY 24-25

The RPO compliance data for Gujarat DISCOMs is available only till FY20 in the public domain of the state. No further RPO compliance verification data is available after FY20. These proposed regulations (Regulation 15) repeal GERC 2005 and 2010 regulations. It would be better if these regulations give clarity on how the previous shortfall / surplus (till FY 24) will be treated. It will be better to consider compliance till FY 2024 and compliance since FY 25 separately and no carry forward for shortfall/ surplus till FY 24 to FY 25 or future years should be allowed.

3. Inclusion of solar and wind as RE source

Regulation 2(1)(j) defines green energy or renewable energy in the regulation. The definition does not explicitly mention solar and wind, which might create ambiguity. Similarly, solar is not mentioned in "Other renewable energy component" (Note 4 of Regulation 4(1)). It will be good if these sources are clearly mentioned in the relevant provisions.

4. Defining energy consumed and energy purchased

At times, the terms energy consumed and energy purchased are possibly used inter-changeably in the draft regulation. We suggest clearly defining one particular term in a proposed regulation and then using that term in the entire regulation. For example, under regulation 4(2)(i), while calculating consumption of OE, the term 'total energy purchased/ consumed' has been used, however, these two terms have different meanings. "Energy consumed" may not include any transmission losses and "energy purchased" will be including transmission losses as well.

Further, the clause 4(2)(iii) states "*the applicable Transmission and Distribution losses (T&D losses for short) for conveyance of power from the point of purchase/ generation to the point of consumption in relation to Clause (i) and (ii) shall be considered as part of consumption by the obligated entity while deciding the RPPD and its fulfillment;*". This clearly indicates that transmission losses shall also be considered during power purchase from any other power plant. Hence, it would be better if a single term is used across the regulation. We suggest to use "total energy purchased" instead of "total energy purchased/ consumed".

5. Generation data of DRE projects

Under DRE category, if generation data against distributed renewable energy installations is not available, the reported capacity shall be transformed into distributed renewable energy generations in terms of energy by a multiplier of 3.5 units per kilowatt per day (kWh/kW/day). While we agree on this arrangement in the initial year, there is a need to meter such capacity within 6-12 months so that exact generation data from such capacity is considered, instead of an approximate generation. It is important because of the possibility of a large number of such DRE projects and difficulty in 3rd party audit of all such projects by the nodal agency. Further, there is a possibility that such projects are not actually generating much or are old, hence any approximation might be misleading.

Further, the data formats shall also include separate entries for RE generation as per installed meters and RE generation estimated based on installed capacity (due to non-presence of meter at plant).

6. Consideration of REC in Data reporting formats

In Appendix-I, Table named as RPO reporting format for DISCOM (Details containing Renewable Energy Procurement for RPO Compliance) Sr. number 3 asks DISCOM to provide quantum of Solar and Non-Solar RECs in MUs. Currently, there is no such bifurcation of RECs by Solar and Non-Solar sources. There is only one category named REC. Hence, this table should be modified accordingly.
