

Date: 18.12.2020

To

The Commission Secretary [FAC]  
Telangana State Electricity Regulatory Commission  
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Dear Sir,

Sub:SUO-MOTO DETERMINATION OF COMPLIANCE OF RENEWABLE POWER PURCHASE OBLIGATION OF OBLIGATED ENTITIES FOR FY 2018-19 , inviting Suggestions/ objections/ comments in the subject matter are invited from all stakeholders and public at large,-**Submission of Objections**—Reg..

**It is respectfully submitted that** running a captive power plant which is supplemented by energy from WHRS being co-generation should have no further obligation towards renewable power purchase obligation u/s 86(1) (e) of the Electricity Act, 2003.

**It is respectfully submitted for** your kind reference that the matter was decided as such by the Hon'ble Appellate Tribunal for Electricity in Appeal No.57 of 2009 dated 26.04.2010 (Century Rayon Case) and the extract of the Order is reproduced below.

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**“ 45. Summary of our conclusions is given below :-**

- I) The plain reading of Section 86(1)(e) does not show that the expression 'co- generation' means cogeneration from renewable sources alone. The meaning of the term 'co- generation' has to be understood as defined in definition Section 2 (12) of the Act.
- (II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by

directing the distribution licensees to purchase electricity from both of these categories.

- (III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).
- (IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative interest.
- (V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.
- (VI) The intention of the legislature is to clearly promote cogeneration in this industry generally **irrespective of the nature of the fuel used** for such cogeneration and not cogeneration or generation from renewable energy sources alone.

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1. It is submitted that the renewable power purchase obligation i.e., Regulation 2 of 2018 is framed by this Hon'ble Commission in exercise of the powers conferred under S.86(1)(e) of the Act and the said provision reads as follows:

**"Promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and**

*also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution licence.”*

Further, S.2(12) of the Act defines co-generation as follows:

*“Cogeneration” means a process which simultaneously produces two or more forms of useful energy (including electricity)”*

A reading of section 86(1)(e) of the Act it is clear that **there are two categories or generators of electricity i.e., co-generators and generators of electricity through renewable sources of energy**. The intention of the Legislature in including the words co-generation and generation of electricity from renewable sources in section 86(1)(e) of the Act was to ensure that both the generators i.e., co-generator and generators of electricity from renewable sources of energy are entitled for the benefit of the provisions of section 86(1)(e) of the Act.

It is submitted that the similar contention with regard to the interpretation of the provisions of Section 86(1) (e) of the Act came up for consideration before the Hon’ble Appellate Tribunal for Electricity (“APTEL”) in Appeal No.57/2009 dated 26.04.2010 and the Appellate Tribunal has held that the benefit of the provisions of section 86(1) (e) is also applicable to the co-generation units and the said judgment squarely applies to the facts of other similar cases.

2. It is submitted that apart from the above case, similar contention was also decided by the Hon’ble APTEL in Appeal No.54/2012 dated

30.01.2013 and the Hon'ble APERC also similarly granted exemption to Rashtriya Ispat Nigam Limited and Rain Cements Limited. The ratio laid down in the above judgments is equally applicable to all cases and are entitled for exemption from the purview of renewable power purchase obligation. While considering the said issue APERC held as follows;

*"11. In Century Rayon Vs. Maharashtra Electricity Regulatory Commission and others, Appeal No.57 of 2009, the Appellate Tribunal for Electricity by the judgment dated 26-04-2010 clearly held that the definition of co-generation in Section 2 (12) of the Electricity Act, 2003 did not restrict the said process to mean production of energy from any form of fuel and it may be fossil fuel or may be non-fossil fuel. Section 86 (1) (e) was interpreted to include co-generation irrespective of fuel used and generation from Renewable Sources of Energy. The expression 'co-generation' in Section 86 (1) (e) of the Electricity Act, 2003 does not mean anything different from what is defined in Section 2 (12) of the Electricity Act, 2003 or co-generation from renewable sources only. The Appellate Tribunal for Electricity referred to the National Electricity Policy, National Tariff Policy and National Electricity Plan then in vogue and also Regulations of some State Commissions which categorized cogeneration as renewable energy without reference to the fuel used for such cogeneration. The conclusions of the Appellate Tribunal for Electricity therefore were with reference to two specific provisions of the Electricity Act, 2003 i.e., Section 86 (1) (e) and Section 2 (12) which continued to be the same even after the Resolution dated 28-01-2016. Regulation 1 of 2012 governing the RPPO defined 'Renewable energy sources' in clause 2 (m) as meaning renewable sources such as cogeneration (from renewable sources of energy like bagasse) etc., and also such other sources as recognized or approved by the Ministry of New and Renewable Energy. Such sources therefore do not cover co-generation from sources other than renewable energy sources and as already stated Regulation 1 of 2012 has not been amended making the applicability of RPPOs*

*govern co-generation from sources other than renewable energy sources also. In view of the interpretation by the Appellate Tribunal for Electricity that Section 86 (1) (e) read with Section 2 (12) of the Electricity Act, 2003 mandates the State Commission to promote both the categories: one is co-generation as defined in Section 2 (12) irrespective of the fuel used and another is generation of electricity from the renewable sources of energy, a co-generator irrespective of fuel used by it is entitled to be promoted under Section 86 (1) (e) and the fastening of the obligation on the co-generator to procure electricity from renewable energy sources would defeat the object of Section 86 (1) (e). Therefore, unless the direction in the Resolution dated 28-01-2016 not to exclude co-generation from sources other than renewable energy sources from the applicability of RPPOs is incorporated in Regulation 1 of 2012 or made part of the mandate of Section 86 (1) (e) read with Section 2 (12) of the Electricity Act, 2003, the interpretation of the Appellate Tribunal for Electricity in Appeal No.57 of 2009 cannot be considered to have been nullified.*

*13. In the order dated 23-05-2015 in O.P.No. 21 of 2014 (I.A.No. 7 of 2014) and the order dated 06-08-2016 in O.P.No. 7 of 2016, the Hon'ble APERC was dealing with Visakhapatnam Steel Plant and Rain CII Carbon (Vizag) Limited respectively, which claimed to be not obligated entities, as the captive power plant is a co-generation unit as per Section 2 (12) of the Electricity Act, 2003. Taking note of the consistent view of the Appellate Tribunal for Electricity and following the same as a matter of judicial discipline and propriety, this Commission concluded that co-generation being promotable irrespective of the nature of the fuel used, the petitioner therein has to be exempted from the RPPO obligation, if necessary, even in relaxation of Regulation 1 of 2012. The principles are squarely applicable to all other cases, notwithstanding the declaration of the policy by the Resolution of the Ministry of Power, Government of India dated 28-01-2016 or other factors relied on by the respondents as the statutory provisions, as interpreted by the Appellate Tribunal for Electricity and Regulation 1 of 2012 continued to remain the same and to be of the same effect."*

3. It is submitted that the Hon'ble APTEL in its judgement dated 16.04.2019 in Appeal No.146/2017, while dealing with an entity , relied on its judgments in Appeal Nos.322 & 333 of 2016 dated 09.04.2019, Appeal No.278 of 2015 and batch dated 02.01.2019, held that as long as captive consumers consume energy from co-generating units beyond the RPO obligations, there is no obligation to purchase RE Certificates or consume renewable energy, separately in order to meet their RPP obligations.

In terms of the applicable framework qua Renewable Purchase Obligations ("RPO") Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal") has held that:-

**(a) A co-generation plant (irrespective of fuel used) is to be treated at par with renewable energy based power plant.**

**(b) Consequently, consumption of electricity from a co-generation plant is not included for calculation of RPO obligations and the energy consumed from such co-generation plant is to be used to set off its RPO targets.**

4. The Electricity Act, 2003 is a comprehensive legislation which, inter-alia, consolidates the laws relating to generation, transmission, distribution and trading of electricity in India. One of the objectives of the Electricity Act is to 'promote efficient and environmentally benign policies'. Keeping this objective in mind, Parliament incorporated several provisions to promote efficient use and generation of 'green energy', which are being reproduced herein below for ease of reference:-

**"2. Definitions .....**

(12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);

...

**61. Tariff Regulations:** The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:

...

**(h) the promotion of co-generation and generation of electricity from renewable sources of energy;**

.....

**86 Functions of the Commission:** (1) The State Commission shall discharge the following functions, namely: -

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

5. In exercise of powers conferred under Section 86(1)(e) read with Section 181, various State Electricity Regulatory Commissions ("**SERCs**") have notified RPO regulations specifying mandatory purchase of electricity by the 'obligated entities' from renewable energy sources. It is respectfully submitted that Section 86(1)(e) mandates that, SERCs are required to promote both 'co-generation' as well as 'generation of electricity from renewable sources of energy'. The mandate of Section 86(1)(e), in the context of RPO, has been interpreted by the Hon'ble Tribunal, inter-alia, that:-

- (a) **SERCs are mandated to promote both co-generation (irrespective of the fuel used) and generation of electricity**

**from renewable sources in a non-discriminatory manner.**

In other words, a co-generation plant is to be promoted on a similar footing as other renewable energy plants [**Paras 14, 20, 22, 28, 34, 35, 39 and 45 of Century Rayon Judgment and Para 23 of Emami Paper Mills Judgment**]

- (b) **Fastening of RPO on consumption from co-generation plants is contrary to the legislative scheme** [Para 16, 23 and 45 of Century Rayon Judgment (Supra)].
- (c) **Co-generation plants have to be treated at par with renewable energy based power plants** [Para 16 and 45 of Century Rayon Judgment (Supra)].
- (d) If a consumer consumes electricity from its captive co-generation plant in excess of its total RPO, then such consumer will be exempted from obtaining electricity from renewable sources of energy [**Para 32 of Emami Paper Mills Ltd. Judgment, Para 53 of JSW Steel Ltd. Judgment and Paras 25-26 of UltraTech Judgment**].
- (e) The obligated entity is not separately required to comply with solar and non-solar obligations under the extant regulations [**Para 19 of Rajasthan Renewable Energy Corporation Limited Judgment**].

6. These position are borne out from the following Judgments:-

- (a) Judgment dated 26.04.2010 in Appeal No. 57 of 2009 in the case of *Century Rayon v. Maharashtra ERC & Ors.* [**Paras 10-14, 16, 20-23, 24-29, 34-37, 39, 44-46**]. For completion of record, it is stated that Ld. GERC filed Civil Appeal No. 6797 of 2013 challenging the said Judgment. However, no stay has been granted on the same.



- (b) Judgment dated 30.01.2013 in Appeal No. 54 of 2012 in the case of *Emami Paper Mills Ltd. v. OERC & Ors.* [**Paras 5, 23, 24, 28-39**]
- (c) Judgment dated 02.01.2019 in Appeal No. 278 of 2015 and batch titled *JSW Steel Ltd. v. Tamil Nadu ERC* [**Paras 3, 34, 39-40, 43, 53, 54**]
- (d) Judgment dated 09.04.2019 in Appeal No. 322 of 2016 and batch titled *UltraTech Cements Limited v. Karnataka ERC* [**Paras 16, 25, 26**]. Ld. KERC had filed a Civil Appeal (C.A. (D) No. 35931/2019) challenging the said Judgment. On 07.02.2020, the Hon'ble Supreme Court had passed an Order, dismissing the Civil Appeal on the ground of delay. As such, the Hon'ble Tribunal's Judgment dated 09.04.2019 in Appeal No. 322 of 2016 & Batch has attained finality.
7. In terms of the aforesaid principles laid down by the Hon'ble APTEL, it is evident that, the mandate of Section 86(1)(e) is that, as regards RPO, SERCs should provide same treatment/ benefits for consumption of electricity from a co-generation plant vis-à-vis from renewable energy plant. This also means that, **while the power consumed from a co-generation plant (irrespective of fuel) cannot be considered for the purpose of computing RPO targets, power so consumed from a co-generation plant ought to be used towards compliance of RPO targets.** In other words, power consumed from a co-generation plant is to be used for both exemption and setting off against compliance of RPO of such 'obligated entity', being the same benefit availed by consumption of power from renewable energy sources. Further, the obligated entity is not required to separately comply with the solar and non-solar obligations under the extant RPO regulations.
8. On 06.08.2016, the APERC, after relying upon the Judgment passed by the Hon'ble Tribunal in Century Rayon's case (supra), passed its Judgment in OP No. 7 of 2016, holding that the petitioner therein is exempted from complying with RPO since co-generation

(irrespective of the nature of fuel used) is to be promoted. In this regard, if required, the RPO Regulation, 2012 is to be relaxed **[Annexure P-\_\_ @ Pgs. 55-64, relevant Paras 1, 2, 6, 8 and 10 @ Pgs. 55, 56, 59-64]**. *The point for consideration is whether the co-generation plant is entitled to be exempted from the Renewable Power Purchase Obligation.*

....

*In O.P.No.21 of 2015 and I.A.No.7 of 2014, this Commission by an order dated 23-05-2015 was dealing with the Visakhapatnam Steel Plant which claimed to be not an obligated entity as the captive power plant is a co-generation unit as per Section 2 (12) of the Electricity Act, 2003. **Taking note of the consistent view of the Appellate Tribunal for Electricity and following the same as a matter of judicial discipline and propriety, this Commission concluded that co-generation being promotable irrespective of the nature of the fuel used, the petitioner therein has to be exempted from the RPPO obligation, if necessary, even in relaxation of Regulation 1 of 2012.** The principles are squarely applicable to the facts of the present case, notwithstanding the declaration of the policy by the Resolution of the Ministry of Power, Government of India dated 28-01-2016 or other factors relied on by the respondents as the statutory provisions, as interpreted by the Appellate Tribunal for Electricity and Regulation 1 of 2012 continued to remain the same and to be of the same effect. The petition has to therefore succeed."*

9. Thereafter, the APERC issued the draft APERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2017 for the years 2017-18 to 2021-22, for public comments.
10. On 31.03.2017, the APERC passed an Order in Commission Proceedings No. 8 of 2017 providing its view on various comments/ objections/ submissions made by the parties on the draft APERC

Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2017. It is noteworthy that, an issue was raised whether consumption of electricity from waste heat recovery co-generation plant is to be treated towards fulfillment of RPO requirement. The APERC stated that the issue of exemption of co-generation plants from complying with RPO requirement is considered by it in O.P. 7 of 2016 and the said has attained finality. Therefore, the co-generation plants are to be exempted from complying with RPO.

It is prayed to declare that **“a captive power plant which is supplemented by energy from WHRS being co-generation should have no further obligation towards renewable power purchase obligation u/s 86(1) (e) of the Electricity Act, 2003.”**

It is requested to give opportunity to address the issue at the time of public hearing by sharing the link to my email id [srinivaasphs9@gmail.com](mailto:srinivaasphs9@gmail.com)

With most respectfully submitted by,

Yours Sincerely,

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