

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82 (1) of the Electricity Act 2003
Central Act 36 of 2003)

PRESENT:-

Thiru.K.Venugopal Member

and

Thiru.S.Nagalsamy Member

M.P. No.31 of 2011

DCW Limited
358, Anna Salai
Thousand Lights, Chennai – 600 006.

.. Petitioner
(Thiru Rahul Balaji,
Advocate for Petitioner)

Vs

Nil

.... Respondent

Dates of hearing : 24-01-2012 & 16-04-2012

Date of order : 21-06-2012

The above M.P.No.31 of 2011 came up for final hearing on 16-04-2012 before the Commission. The Commission upon perusing the above petition and connected records and after hearing the Counsel for the Petitioner passes the following Order:-

ORDER

1. Prayer of the Petitioner in M.P.No.31of 2011:-

The prayer of the Petitioner in M.P.No.31 of 2011 is to declare that the Petitioner's 2 x 25 MW plant at Sahupuram, Tamil Nadu being a Cogeneration Plant under the provisions of the Electricity Act, 2003 it is not required to procure from Non-Conventional Energy sources in terms of the judgment of the Hon'ble APTEL in Appeal No. 57 of 2009, Century Rayon Vs. MERC and the Petitioner would be

entitled to account for consumption of power generated from its 2 x 25 MW Cogeneration Plant at Sahupuram, Tamil Nadu towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.

2. Facts of the Case :-

The Petitioner is filing this petition under section 86 (1) (e) of the Electricity Act, 2003 read with Regulation 16(1) of TNERC Conduct of Business Regulations, 2004 and TNERC (RPO), Regulations, 2010 for a declaration that in view of the fact that the Petitioner's 2x25 MW Steam Turbo Generation is a co-generation plant, it is not required to comply with Renewable Energy Purchase Obligation (REPO) under the TNERC (RPO) Regulations, 2010.

3. Contention of the Petitioner :-

3.1. By virtue of the binding judgment of the Hon'ble APTEL in the Century Rayon case, Captive Consumers having co-generating plants cannot be fastened with the obligation to procure electricity from renewable energy sources as that would defeat the object of section 86 (1) (e) and co-generating plants have to be treated on par with renewable energy generating plants. The Petitioner therefore submits that the power generated and captively used from the Petitioner's Co-generating Plant should be treated on par with procurement of power from renewable sources for the purpose of complying with RPO Obligations.

3.2. In so far as the State of Tamil Nadu is concerned, the amended definition of obligated entities includes Captive Consumers while providing for renewable power

wheeled and actually consumed from their own renewable energy sources allowed to be accounted for RPO purpose.

3.3. While referring to Clause 8 of TNERC (RPO) Regulations, 2010 which provides for the power to remove difficulties, the Petitioner prays for the issue of appropriate directions in view of the special facts and circumstances of the case.

4. Finding of the Commission:-

4.1. The prayer of the petitioner is to declare that the petitioner's 2 x 25 MW plant at Sahupuram, Tamil Nadu being a Cogeneration plant, under the provisions of the Electricity Act, 2003 does not require to procure power from non-conventional energy sources in terms of the judgment of the Hon'ble APTEL in Appeal No. 57 of 2009, Century Rayon Vs. MERC and the petitioner would be entitled to account for consumption of power generated from the above referred plant at Sahupuram, Tamil Nadu towards renewable purchase obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010. The petitioner has also sought to issue appropriate directions under the provision of power to remove difficulties contained in applicable Regulation.

4.2. Since this is a clarificatory petition no one has been impleaded as respondent.

4.3. The definition of obligated entity in the TNERC's Regulation dated 7-12-2010 was referred to. The definition of "obligated entity" as contained in the above referred Regulation is extracted below:-

*"2 (1) g "**Obligated entity**" means Distribution Licensee consumers owning grid connected Captive Generating Plants (CGPs) and open*

access consumers in the State of Tamil Nadu, who have to mandatorily comply with renewable purchase obligation under these Regulations subject to fulfillment of conditions outlined under Regulation 3.

4.4. “New and renewable source” has been defined in the Commission’s Regulation for Power Procurement from New and Renewable Source of Energy Regulation, 2008 dated 8-2-2008. Definition of “New and Renewable Sources” as contained in the referred Regulation is extracted below:-

*“**New and renewable sources**” means the non-conventional, renewable electricity generating sources such as mini / micro hydel, wind, solar, biomass, bagasse based cogeneration, urban/municipal waste, or other such sources as approved by the Government of India or Government of Tamil Nadu which are generally inexhaustible and can be replenished in a short period of time;*

4.5. Regulation 3 (1) of the same Regulation stipulates as follows:-

The minimum percentage of electrical energy which each distribution licensee shall purchase from new and renewable sources generators shall be as stipulated in the Commission’s order issued from time to time, subject to the availability of such power. The distribution licensee shall furnish the quantum of purchase of energy from new and renewable sources and cogeneration for the ensuing year in the Annual Revenue Requirement (ARR) filing.

4.6. Co-generation has been defined to mean a process, which simultaneously produce two or more forms of useful energy (including electricity). It is pertinent to note that the Regulation contemplates procurement of energy generated from co-generation as a part of promotion of new and renewable sources of energy. The same Regulation also stipulates a maximum use of 25% of conventional fuel on an annual basis in case of bagassee / biomass based generating plants.

4.7. The Learned Counsel for the petitioner argued that there is no difference between a co-generation plant run on conventional fuel as against a co-generation

plant run on renewable fuel and sought to rely on the judgement of the APTEL in the Century Rayon case in Appeal No. 57 of 2009 decided on 26-4-2010. The relevant portion of the Order in the above referred case is extracted below:-

“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 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 (Sic:Sources) 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 a 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.*

44. While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel. We order accordingly. No costs. (emphasis supplied)”.

4.8. The Commission observes that the Order of the APTEL as discussed above is subsequent to the issue of the Regulation by this Commission in 2008. From the above judgment it is observed that 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 suitable methods and suitable directions, in view of the fact that cogeneration plants, which 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 other renewable energy sources. Further, it is observed from the above judgment that 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. It is also observed from the above judgment that 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). Since the above judgment is generic in nature, the Commission clarifies that the 2 x 25 MW cogeneration plant of the petitioner at Sahupuram, Tamil Nadu, being a cogeneration plant, would be treated similar to a renewable energy generator. Consequently, the consumer who consumes the energy generated by this co-generation plant would be eligible for accounting the same for RPO subject to all other provisions of the RPO Regulations, 2010.

Ordered accordingly.

5. Appeal:-

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

Pronounced in the open court on the 21st day of June 2012.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission

