

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

**PRESENT:-**

Thiru S. Akshayakumar ..... Chairman

and

Thiru.G.Rajagopal ..... Member

**I.A.No.1 of 2014 in R.P.No.1 of 2014**  
**and**  
**R.P.No.1 of 2014 in M.P.No.25 of 2012**

JSW Steel Limited  
Salem Works, P.O.Potteneri  
Mecheri T.K.  
Salem District – 636 453.

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

Vs.

Nil ..... Respondent

**Dates of hearing : 22-12-2014 and 20-04-2015**

**Date of order : 16-09-2015**

The I.A.No.1 of 2014 in R.P.No.1 of 2014 and R.P.No.1 of 2014 in M.P.No.25 of 2012 filed by M/s.JSW Steel Limited came up for final hearing on 20-04-2015. The Commission upon perusing the above petition and the connected records and after hearing submissions of the Petitioner passes the following order:-

## ORDER

### **1 Prayer of the Petitioner:-**

The Prayer of the Petitioner in R.P.No.1 of 2014 is to review the Commission's order dated 15-09-2014 passed in M.P.No.25 of 2012 and allow the petition in M.P.No.25 of 2012 as prayed for and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

The prayer in I.A.No.1 of 2014 in the above R.P. is to grant an interim order of stay of operation of this Commission's order dated 15-09-2014 passed in M.P.No.25 of 2012 pending disposal of the above review petition.

### **2. Facts of the Case:-**

The Review Petitioner herein had earlier filed M.P.No.25 of 2012 with the prayer to declare that the Petitioner's captive power plant comprised of three steam powered turbo generators with a combined installed capacity of 67.5 MW as being cogeneration plants under the provisions of the Electricity Act, 2003 and consequently declare that the said captive cogeneration plant is not required 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 its 67.5 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.

The said M.P. was dismissed by the Commission on 15-09-2014 relying on the orders of APTEL dated 02-12-2013 in A.No.53 of 2012. The Petitioner holding that the said APTEL order has no application to the Petitioner's case has now filed

the present R.P. seeking a review of the order of the Commission dated 15-09-2014.

### **3. Contentions of the Petitioner:-**

3.1. The order dated 15-09-2014 passed in M.P.No.25 of 2012 suffers from certain errors apparent on the face of the record requiring a review of the same. The Commission has dismissed the Miscellaneous Petition after relying upon the judgment of the Appellate Tribunal for Electricity in Appeal No.53 of 2012 in the case of M/s.Lloyds Metal & Energy Limited, Mumbai, Vs. Maharashtra Electricity Regulatory Commission.

3.2. The aforesaid judgment, in fact, supports the position of the Petitioner herein and the Commission appears to have incorrectly relied upon it as if it has overruled the judgment in Century Rayons whereas the judgment in Lloyds Metal overruled Century Rayon only on one aspect while it has not overruled the judgment with respect to the issue of Grid Connected Captive Power Plant. The said judgment of the APTEL in M/s.Lloyds Metal & Energy Limited, Mumbai Vs. Maharashtra Electricity Regulatory Commission concerns itself to the limited question framed by the Hon'ble Tribunal as set out in para 5 of the aforesaid judgment, reading as under:-

*“Whether the Distribution Licensees could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under section 86(1) (e ) of the Act, 2003.”*

The judgment in Lloyds Metal case, therefore, has no application to the facts of the present case as it concerns itself with the obligation of a Distribution Licensee,

whereas the Petitioner is concerned with the case of applicability of RPO to a cogen captive power plant.

3.3. As a matter of fact in the judgment rendered in Appeal No.125 of 2012 dated 10<sup>th</sup> April 2013 in Hindalco Industries Ltd., Vs. UPERC, the APTEL has reiterated the grant of exemption from complying with RPO with respect to grid connected captive cogen plants as set out below:-

*“ 15. Let us now deal with the impugned order dated 04-11-2011 of the State Commission.*

*16. The State Commission has taken note of the conclusions arrived at by the Tribunal in the Century Rayon case regarding fastening of RPO obligation on captive consumers having co-generation plant using any fuel. Despite noting the findings of the Tribunal, the State Commission has decided not to exempt the Appellant from RPO obligations referring to the decision taken by the Forum of Regulators. The relevant extracts of the impugned order are reproduced below;*

*“8. In the light of the Electricity Act, 2003, National Electricity Policy and Hon’ble APTEL’s Appeal No.125 of 2012 conclusions, the Commission reckons that co-generation based on fossil fuel should also be promoted but the generation based on renewable energy sources has its definite category under Regulation 2 (p) of the UPERC (Promotion of Green Energy through Renewable Purchase Obligations) Regulation, 2010 and therefore, cannot include co-generation from fossil fuel under its definition. In this regard, the Forum of Regulators (FOR) in 23<sup>rd</sup> Meeting on 29<sup>th</sup> and 30<sup>th</sup> April, 2011 has also agreed that “the RPO should be made applicable to co-generation based captive consumers as well, in line with the spirit of section 86 (1) (e ) of the Electricity Act, 2003. It was also felt that the scope of section 86 (1) (e ) is to promote Renewable and that only the non-fossil fuel based cogeneration plants should be covered under the said provision for the purpose of RPO. It was agreed that MNRE and MOP should be apprised of this development and professional support, if any, required by GERC in contesting the case before the High Court may be extended by FOR Secretariat.*

*“9. Therefore, the Commission opines that in present situation, the co-generation by grid connected fossil fuel based co-generating plants cannot be considered for fulfillment of Renewable Purchase Obligation under the Regulations. The matter shall be taken up by the Commission suo-motu as and when required”.*

*17. As mentioned above, the findings of the Tribunal in Century Rayon case have attained finality and are binding on the State Commission. The principle*

*of judicial discipline requires that the orders of the higher Appellate authorities are followed unreservedly by the subordinate authorities. If a subordinate authority refuses to carry out directions given to it by the Superior Tribunal in exercise of appellate powers, the result will be chaos in the administration of justice and in fact be destructive of one of the basic principles of the administration of justice.*

*18. It is unfortunate that the State Commission have decided to follow the observation made by the Forum of Regulators which does not have any force of law by ignoring the binding directions of the Tribunal.*

*19. We would, therefore, direct the State Commission not to enforce Renewable Purchase Obligation on the captive consumers who meet the specified percentage of energy from the captive co-generation plant using any fuel and exempt them from RPO obligation in consonance with the finding of the Tribunal in Century Rayon case in relaxation of its Regulations. Accordingly directed.*

*20. In view of above the impugned order is set aside. The State Commission is directed to pass consequential orders as per the directions of the Tribunal at the earliest. No order as to costs."*

3.4. The Commission after hearing the Petitioner was pleased to pass an order dated 15-09-2014 in M.P.No.25 of 2012, dismissing the Miscellaneous Petition for the reasons stated in the order. Aggrieved by the said order, the Petitioner herein, is approaching the Commission seeking for a review of its order dated 15-09-2014.

3.5. The judgment in the case of M/s.Lloyds Metal & Energy Limited, Mumbai Vs. Maharashtra Electricity Regulatory Commission in Appeal No.53 of 2012 was principally concerned with the question as to 'whether a distribution licensee could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel and was therefore not concerned with the issue arising in the present petition which sought for exemption from procuring non-conventional power by the Petitioner in view of its having set up a co-generation power plant. The relevant paragraphs of the said judgment in the case of M/s.Lloyds Metal & Energy Limited, Mumbai are as below:-

*“Let us now examine the findings of the Tribunal in Century Rayon case .....*

*10. In the above case, the issue under dispute was that whether a person consuming electricity from its captive fossil fuel based co-generation plant could be compelled to purchase electricity from renewable source of energy against the Renewable Purchase Obligation specified by the Commission for the obligated entities under section 86 (1) (e ) of the Act. However, the Tribunal decided that not only a person consuming electricity from its captive fossil fuel based co-generation plant could not be compelled to purchase electricity from renewable energy sources but both the categories i.e. co-generators irrespective of fuel used and generators of electricity through renewable sources of energy must be promoted by the State Commission by directing the Distribution Licensees to purchase electricity from both these categories.*

*x x x x*

*29. The amended clause 6.4 of the Tariff Policy clearly indicates that under section 86 (1) (e ) of the Electricity Act, the Appropriate Commission has to fix the minimum percentage of total consumption of Electricity in the area of Distribution Licensee for purchase of energy from non-conventional and renewable sources of energy including co-generation also from non-conventional and renewable sources”*

*32. Plain reading of the section 86 (1) (e ) read with 2 (12) of the 2003 Act would reveal that the State Commission is required to promote the co-generation and generation of electricity from renewable sources of energy. Section 86 (1) (e ) further mandates the Commission to specify certain quantity of electricity, in percentage, to be procured from renewable sources of energy. Co-generation, as per definition given in section 2 (12) of the Act, is only a process of generation of electricity and another form of energy and cannot be termed as source of electricity.*

*x x x x*

*33. This important aspect has not been considered in the Century Rayon judgment, where in this Tribunal had held that the State Commission has to promote both co-generation as well as generation of electricity from renewable sources of energy. Accordingly, we feel that the State Commission could promote the fossil fuel based co-generation by any other measures such as facilities sale of electricity from such sources, grid connectivity etc. but the State Commission could not compel the Distribution Licensee to procure electricity from fossil fuel based co-generation against the purchase obligation to be specified under section 86 (1) (e ) of the Electricity Act, 2003.*

*x x x x*

*“35. Accordingly, the State Commission has framed Regulations viz. Renewable Purchase Obligation Regulations Renewable Energy Tariff Regulations. According to these Regulations the fossil fuel based co-generation plant is not a qualified renewable energy source for procurement of power under the purchase obligation of the distribution licensees.*

36. *The Renewable Energy Sources are defined as Renewable sources such as mini, micro and small hydro, wind, solar, biomass including bagasse, bio fuel co-generation, urban or municipal waste and such sources as recognized or approved by the Ministry of New and Renewable Energy. The fossil fuel based co-generation is not covered in the eligible sources. Accordingly, Tariff Regulations have not been specified for fossil fuel based co-generation plant”.*

“37. .... However, the captive users consuming power from grid connected fossil fuel based co-generation plants have been exempted from applicability of Renewable Purchase Obligation target.

x x x x

“39. *Summary of our findings:*

*Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19-12-2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under section 86(1) (e ) of the Electricity Act, 2003. Such purchase obligation 86 (1) (e ) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.”*

3.6. It would thus be clear from the above judgment that captive users consuming power from grid connected with fossil fuel co-generation plant having been exempted from applicability of Renewable Purchase Obligation as has been adopted by the State of Tamil Nadu as well as in the order of the Commission, the same position ought to be continued inasmuch as the judgment in the case of M/s.Lloyds Metal & Energy Ltd., Mumbai is not applicable to the Petitioner herein.

3.7. Inasmuch as the Commission has come to the conclusion that the judgment in the case of M/s.Lloyds Metal & Energy Ltd., Mumbai has overruled the earlier judgment in the case of M/s.Century Rayons Ltd., on all accounts, the present order

of this Commission dated 15-09-2014 is an error apparent on the fact of the record, warranting review.

3.8. The APTEL in Appeal No.57 of 2009 in the matter of M/s.Century Rayon Vs. MERC & Anr. dealt with the specific issue whether a co-generation unit could be compelled to purchase electricity from the Renewable Sources of Energy. The Tribunal clearly laid down that Appeal No.125 of 2012, the electricity produced by co-generation plant could be treated at par with electricity generated from Renewable Sources of Energy and that the co-generator, the Appellant therein was under no obligation to purchase electricity from renewable sources of energy as it would defeat the object of section 86 (1) (e ) of the Electricity Act, 2003. All the State Commissions are bound to follow the law laid down by the Tribunal in Century Rayon case. The Commission missed to take note of the fact that the above judgment of the Tribunal which was a judgment in rem and as such had become final and binding.

3.9. The judgment of APTEL in Appeal of 125 of 2012 dated 10<sup>th</sup> April. 2013 in Hindalco Industries Ltd. Vs. UPERC squarely applies to the facts of the case and is to be followed in view of the binding judgment of the Tribunal.

3.10. The expression used in section 86 (1) (e ) is to promote both co-generation and generation of electricity from renewable source of energy. The clear meaning of these words are different and both are required to be promoted. Fastening of liability on one in preference to the other is totally contrary to legislative intent. The co-generation by different sources of fuel has not been distinguished by the Parliament either in section 2 (12) or section 86 (1) (e ) of the Act. In the light of the above, and from a bare reading of section 86 (1) (e ) of the Act, it is clear that it



mandates the State Commission to promote both the categories (1) co-generation plant (2) generation of electricity through renewable source of energy. The perusal of this section in conjunction with section 2 (12) of the Electricity Act, clearly indicate that the intention of the legislature is to promote co-generation in the industry without reference to the fuel used for such co-generation. In other words, the intention of the legislature is to clearly promote co-generation in the industry generally and not co-generation from renewable energy sources alone. In view of the above conclusions, the order of the Commission suffers from infirmity.

3.11. Applying the ratio in Century Rayon's case, it is clear that the electricity produced by co-generation plant could be treated at par with electricity generated from Renewable Sources of Energy and that the co-generator, the review petitioner herein is under no obligation to purchase electricity from renewable sources of energy. The Commission has apparently incorrectly observed that the Petitioner herein is seeking to compel other distributing companies to buy energy from the Petitioner herein whereas in reality, the Petitioner is seeking to exempt itself from RPO obligations. Having regard to the above, the findings rendered by the Commission on this aspect of the matter made in the order under review requires a reconsideration.

3.12. Prima facie case and balance of convenience lies in favour of the Petitioner for grant of the interim reliefs as sought for, inasmuch as the consequences of the dismissal will impose an obligation with respect to RPO upon the Petitioner.

#### **4. Findings of the Commission:-**

4.1 The prayer of the Petitioner in M.P.No.25 of 2012 was to declare that the Petitioner's captive power plant comprised of three steam powered turbo generators

with a combined installed capacity of 67.5 MW as being cogeneration plants under the provisions of the Electricity Act, 2003 and consequently declare that the said captive cogeneration plant is not required 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 its 67.5 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.

4.2. Subsequent to the judgment in the case of Century Rayon, the APTEL issued two more orders related to the prayers similar in M.P.No.25 of 2012. In the APTEL's order issued on 10-04-2013 on Appeal No.125 of 2012 in the matter of M/s.Hindalco Industries limited Vs UPERC, the APTEL reiterated its findings in Century Rayon case that the energy generated from all co-generation power plants who may be using any fuel are eligible for accounting for RPO. The APTEL has also observed that the said order attained finality and are binding on the State Commission. Accordingly, the APTEL directed the UPERC not to enforce RPO on the captive consumers who have met the specified percentage of energy from the captive co-generation plant using any fuel and to exempt them from RPO obligation in consonance with the finding of the tribunal in Century Rayon case. Unlike the UPERC, the Tamil Nadu Electricity Regulatory Commission (TNERC) has strictly followed the APTEL's judgment in Century Rayon case and allowed the energy generated from fossil-fuel co-generation plant for the purpose of accounting for RPO in its order dated 28-09-2012 on M.P.No.19 of 2011 in the matter of M/s Hi-tech Carbon Vs Nil. Though the Commission's Renewable Energy Purchase Obligation Regulation 2010 did not permit the energy generated from fossil fuel based co-

generation plants for the purpose of accounting for RPO, the Commission permitted such energy for RPO purpose as directed by the APTEL in Appeal Nos.57 of 2009. Therefore, the Commission strictly followed the orders of APTEL in compliance of this principle of judicial discipline.

4.3. However, the APTEL in its Order dated 2-12-2013 in Appeal No.53 of 2012 Lloyds Metal and Energy Ltd Vs MERC and others has reviewed and revised their opinion on the question of the fuel/source used for generating power in a generating plant for fastening RPO as per Section 86(1)(e) of the Act. In the said order, the APTEL made certain categorical observations on the renewable purchase obligation (RPO) under Section 86 (1) (e) holding that such obligation can be fastened only from electricity generated from renewable sources of energy and it cannot be fastened on the energy generated from Fossil Fuel Based Co-generation. The related parts of the order are reproduced below:

*“11. In order to find out the intention of the legislature while enacting the Electricity Act, 2003 in regard to promotion of co-generation and generation from renewable sources of energy for construction of Section regarding Purchase Obligation under Section 86(1)(e), let us examine the Report of the Standing Committee on energy on the Electricity Bill presented to Lok Sabha on 19.12.2002. The relevant extracts of the Report indicating the salient features of the Bill are as under:-*

*“I. **Generation** (i) Generation would be free from licensing. Generation would need to conform to technical standards for grid connectivity and co-ordinate with the transmission utility for evacuation of power.*

*x x x x*

*(v) Generation from non-conventional and renewable sources is to be promoted and Regulatory Commissions may from time to time prescribe a minimum percentage of power to be purchased from such sources.”*

*The Report of the Standing Committee on energy clearly indicates that the intention of the legislature while enacting the Electricity Act, 2003 was that the generation from non-conventional and renewable sources is to be promoted and the Commissions may from time to time prescribe a minimum percentage of power to be purchased from such (non-conventional and renewable) sources.*

*12. Now let us examine the National Electricity Policy (‘NEP’). The relevant extracts are as under:*

**“5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES**

*5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy.*

*x x x x*

*“13. Clause 5.12.1 of the NEP emphasis that there is urgent need to promote generation based on non-conventional sources of energy as such sources are environment friendly. Besides making efforts to reduce the cost of energy for such sources, adequate promotional measures have to be taken for development of technologies and sustained growth of these sources.*

*x x x x*

*“15. .... Admittedly, the electricity generation from co-generation from fossil fuel is not a generation from non-conventional sources of energy or renewable sources of energy”*

*x x x x*

*“17. Thus, the National Electricity Policy stipulates specifying of a percentage of total consumption in the area of the Distribution Licensee by the State Commission only from non-conventional or renewable sources of energy.....*

*x x x x*

*“18. . . . . Even if it is assumed that co-generation stated in Clause 5.12.3 also includes fossil fuel based co-generation, this Clause only provides that the State Commission may promote arrangements for purchase of surplus power from such plants in the overall interest of energy efficiency and grid stability.*

*x x x x*

*“20. In the Century Rayon judgment, all the sub-Clauses of Clause 5.12 of NEP have not been referred to Century Rayon judgment only refers to Sub-Clause 5.12.3 and not Sub-Clauses 5.12.1 & 5.12.2. Complete reading of all sub-Clause of Clause 5.12 of NEP only gives the correct perspective of the National Electricity Policy as described in the earlier paragraphs of the present judgment.”*

*x x x x*

*“25. The Tariff Policy also stipulates fixation of purchase obligation and preferential tariff only from non-conventional or renewable sources of energy and not fossil fuel based co-generation.” .....*

*“29. The amended Clause 6.4 of the Tariff Policy clearly indicates that under Section 86(1)(e) of the Electricity Act, the Appropriate Commission has to fix the minimum percentage of total consumption of Electricity in the area of Distribution Licensee for purchase of energy from non-conventional and renewable sources of energy including co-generation also from non-conventional and renewable sources.*

*x x x x*

*“32. Plain reading of the Section 86(1) (e) read with 2(12) of the 2003 act would reveal that the State Commission is required to promote the co-generation and generation of electricity from renewable sources of energy. Section 86(1) (e) further mandates the Commission to specify certain quantity of electricity, in percentage, to be procured from renewable sources of energy. Co-generation, as per definition given in Section 2(12) of the act, is only a process of generation of electricity and another form of energy and cannot be termed as source of electricity.*

33. *This important aspect has not been considered in the Century Rayon judgment, where in this Tribunal had held that the State Commission has to promote both co-generation as well as generation of electricity from renewable sources of energy. Accordingly, we feel that the State Commission could promote the fossil fuel based co-generation by any other measures such as facilitate sale of electricity from such sources, grid connectivity, etc., but the State Commission could not compel the Distribution Licensee to procure electricity from fossil fuel based co-generation against the purchase obligation to be specified under Section 86(1)(e) of the Electricity Act, 2003.*”

“36. The Renewable Energy Sources are defined as Renewable sources such as mini, micro and small hydro, wind, solar, biomass including bagasse, bio fuel co-generation, urban or municipal waste and such sources as recognized or approved by the Ministry of Appeal No.53 of 2012 New and Renewable Energy. The fossil fuel based cogeneration is not covered in the eligible sources. Accordingly, Tariff Regulations have not been specified for fossil fuel based cogeneration plant.”

Observing inter-alia as stated above, the APTEL ruled as below since the issue in the said case was limited to Distribution Licensee.

**“39. Summary of our findings:**

*Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.*

4.4. It was argued that the APTEL’s order dated 02-12-2013 is applicable only for distribution licensee and not to grid connected captive generators. Though the APTEL has dealt with the question of fastening the obligation of purchase of renewable energy on the Distribution Licensees under Section 86(1) (e) of the Act 2003, in the process of answering the question as seen from the parts of the order

extracted above, the APTEL has clearly defined and distinguished the promotion of cogeneration and generation from renewable sources of energy for the purpose of section 86(1) (e) of the Act. In the aforesaid order dated 02.12.2013 the APTEL has categorically ruled that the electricity generation from co-generation from fossil fuel is not a generation from non-conventional sources of energy or renewable sources of energy. The emphasis of the APTEL's order is clearly on the nature of the fuel/source used to generate power and accordingly they are distinguished. This fact has been made amply clear in Para 32 of the said order of the APTEL extracted in para 4.3 above.

In Para 32 of the order, the APTEL has clearly segregated the electricity generated from renewable sources of energy for the purpose of RPO and also declared that Co-generation is only a process of generation of electricity and another form of energy and cannot be termed as source of electricity. The APTEL thus concluded that fossil fuel based cogeneration plants cannot be classified as a renewable energy source of electricity. The APTEL's order has also answered the question on the measures to be taken by the Commission for the promotion of fossil fuel based cogeneration in Para 39 of the said order as below.

*“However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.”*

4.5. With these background and facts let us now analyse this specific case of the petitioner.

The co-generation of energy from the petitioner's plant is based on waste heat recovery while the primary fuel being coal converted as coke. The Commission in its

conclusion in TANFAC case vide Order dated 12-01-2009 on M.P.No.7 of 2008 had declared the following:

*“The process involved in this plant is generation of electricity using waste heat recovered during preparation of sulphuric acid. The contention of the petitioner that no fossil fuel is used in the process is not disputed by the respondent. The Commission treats the petitioner plant as NCES based co-generation. The Commission fixes a tariff rate of Rs.3.15 per unit for the petitioner’s plant, treating this on par with the NCES based generation.”*

In the above order the words **“treating this on par with the NCES based generation”** is very significant. The Commission only treated the plant of the Petitioner therein on par with a “Non-Conventional Energy Sources” (NCES) plant for the purpose of tariff determination and accordingly fixed the tariff rate of Rs.3.15 per unit. Even in the said order, the Commission has not classified the Petitioner’s co-generating plant based on Waste Heat Recovery as “Renewable Energy Sources” plant.

4.6. As per the APTEL’s latest order on the subject matter as has been narrated above, the energy generated from renewable sources only qualifies for RPO entitlement. Petitioner’s plant is a waste heat based cogeneration plant using fossil fuel. The use of waste heat for power generation was treated on par with non-conventional energy source in the Commission’s Order dated 12-01-2009, but not as a renewable energy source. Let us now analyze whether the energy generated by the petitioner is eligible for RPO purpose as per the Commission’s Regulations and in consonance with APTEL’s Order. Regulation 3 of the Commission’s (Renewable Energy Purchase Obligation) Regulation 2010 specifies the following criteria for accounting a particular energy for the purpose of RPO.

*“3. Renewable Purchase Obligation:-*

*x x x*

*Provided further that such obligations to purchase renewable energy shall be inclusive of the purchases, if any, **from renewable energy sources** already being made by concerned obligated entity:*

*Provided also that the renewable power purchased from the following sources and means mentioned against each obligated entity **shall be accounted for RPO purpose:-***

***(a) Distribution Licensees –***

- (i) Power purchased from Renewable Energy Sources under preferential tariff as fixed by the Commission and consumed in their area of supply;*
- (ii) Power generated from their own **renewable energy sources** and consumed in their area of supply;*
- (iii) Power purchased from NTPC Vidyut Vyapar Nigam Ltd. (NVVN) as solar part of bundled power at the rate specified in the Central Electricity Regulatory Commission’s regulations / orders.*

***(b) Captive consumers –***

*Power wheeled and actually consumed from their own **renewable energy sources** without availing RECs or any preferential measures in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty / tax.*

***(c) Open access consumer –***

*Power wheeled and actually consumed from any **renewable energy sources** without availing RECs or any preferential measures in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty / tax.*

In all the above cases, for the purpose of accounting for RPO, the source of energy has been specified as “Renewable Energy Sources”. Whether the petitioner qualifies to be of renewable sources has to be tested as per, Regulation 2(1) of Renewable Energy Purchase Obligation Regulation 2010 and Regulation 2(1)(g) of New and Renewable Energy Regulation 2008 are reproduced below:

Regulation 2(1) (l) of Renewable Energy Purchase Obligation Regulation 2010:-



*“(l) ‘Renewable Sources’ means sources of energy as defined in the Regulation 2(1) (g) of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 issued by the Commission;”*

#### Regulation 2(1)(g) of New and Renewable Energy Regulation 2008

*“(g) ‘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;*

*Words or expressions occurring in these Regulations and not defined herein but defined in other Regulations published by the Commission or in the Act shall bear the same meanings respectively assigned to them in the Act / Regulation.”*

As per the above definitions and as per the orders of APTEL in Appeal No.53 of 2012 dated 02-12-2013 extracted supra, for counting for the purpose of RPO, the source of power generation shall be non-conventional and renewable source. This is clearly missing in the source used in the petitioner’s generating plant.

4.7. There was a mention during the argument that in the case of MERC, captive user(s) consuming power from grid connected fossil fuel based co-generation plants are exempted from applicability of RPO target. In the case of MERC, Regulation 11.3 of their Regulation on (Renewable Purchase obligation, its Compliance and implementation of REC framework) Regulations, 2010 specifically provides for such exemption. However, in the case of TNERC, for accounting for RPO, the energy source shall be “Renewable Source” as per the RPO Regulation as discussed earlier in this order. As far as the Commission’s RPO Regulations are concerned, the Distribution Licensee, captive consumers and Open Access consumers are all

obligated entities and are treated equally without discrimination in the matter of complying with the RPO requirements. What is applicable to Distribution Licensee is equally applicable to other obligated entities also.

We are constrained to note that the APTEL in its recent order dated 20-04-2015 made in O.P.No.1 of 2013 and I.A. No.291 and I.A. No.420 of 2013, O.P.No.2 of 2013 and O.P.No.3 of 2013 filed by Indian Wind Energy Association etc. wherein the Tamil Nadu Electricity Regulatory Commission was also a party respondent , has observed and categorically ruled as follows:-

*“17. We are conscious of the findings of the Hon’ble Supreme Court in PTC case that Regulations are binding piece of subordinate legislation and if there is a Regulation then order has to be passed in consonance with such Regulation. We do not want to give any direction to defeat the renewable energy regulation notified by the State Commission or to restrict the exercise of powers of the State Commission provided in the Regulations. However, if we find that the Regulations are not being followed by the State Commission then it would be our responsibility to direct the Appropriate Commission to adhere to the Regulations while passing order regarding RPO obligations”.*

x x x x

*“28. In view of above discussions, we deem it appropriate to give directions to the State / Joint Commission with regard to implementation of Renewable Energy Regulations in their respective States. The Tribunal after considering the contentions of the Petitioners and the States / Joint Commissions, Central Commission and MNRE gives the following directions to the States / Joint Commissions under section 121 of the Act.*

x x x x

- “(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 judicially under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations”.*

APTEL’s above directions thus mandate the Commission not to deviate from its own Regulations.

Further as discussed supra, the APTEL's order in Appeal No: 53 of 2012 specifies that **the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.** The said order does not provide for accounting of the energy generated from cogeneration plants for the purpose of RPO.

4.8. Since the petitioner's co-generation plant is not satisfying the eligibility criteria for the purpose of accounting the energy generated therefrom for RPO as per the APTEL's order on Appeal No: 53 of 2012 dated 02-12-2013 and the Commission's Renewable Energy Purchase Obligation Regulations, 2010, we declare that the power generated from the petitioner's co-generation Power Plant is not entitled to account for RPO. In view of the above findings the orders dated 15-09-2014 made in M.P.No.25 of 2012 does not warrant a review and R.P.No.1 of 2014 in R.P.No.25 of 2012 fails. Accordingly the R.P.No.1 of 2014 along with I.A.No.1 of 2014 in the said R.P are dismissed.

#### **5. Appeal:-**

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Akshayakumar)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission