

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

M.P.No. 24 of 2012

Tamil Nadu Newsprint & Papers Limited
67, Mount Road
Guindy
Chennai – 600 032.

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

Vs

Nil

.... Respondent

**Dates of hearing : 31-07-2012, 30-01-2013, 21-04-2014
and 20-04-2015**

Date of order : 13-11-2015

1. Prayer of the Petitioner in M.P.No.24 of 2012:

The prayer of the Petitioner in M.P.No.24 of 2012 is to declare that the Petitioner's captive power plant comprised of steam powered turbo generators TG 1, TG2, TG3 and TG4 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 61.12 MW cogeneration plant comprised of TG1, TG2, TG3

and TG4 situate at Kagithapuram, Tamil Nadu towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.

2. Facts of the case:-

The Petitioner was promoted by Government of Tamil Nadu and was incorporated in April 1979 as a Public Limited Company under the provisions of the Companies Act, 1956 for manufacture of Newsprint and printing and writing paper using bagasse. The Petitioner has five Turbo Generators for generating electricity by using six boilers and a recovery boiler for that purpose. The Turbo Generators were using fossil fuel. One of the Turbo Generators has been converted by the Petitioner as Renewable Energy Generator sourced by the Recovery Boiler wherein black liquor is used as fuel. The Petitioner filed the present petition seeking cogenerator status for the purpose of RPO Regulation.

3. Contentions of the Petitioner:-

3.1. The Tamil Nadu Newsprint and Papers Limited, the Petitioner herein has its factory at Kagithapuram in Karur district of Tamil Nadu. The Petitioner is a paper manufacturing company using bagasse as the raw material. Bagasse is a refuse material from sugar cane after extraction of sugar cane juice for sugar making. The Petitioner provides direct employment for around 1800 persons with an equal number of persons in indirect employment.

3.2. The Petitioner's production process is among the most environment friendly paper manufacturing process in the world. The company makes paper using as little wood as possible to save forest and primarily uses sugarcane waste, namely

Bagasse, a renewable raw material which consumes less chemical for pulping and bleaching, resulting in minimal impact on the environment. By using bagasse as raw material, in the place of wood, the Petitioner is saving around 14 lakh trees per annum and has earned many accolades from world over for its innovative technology.

3.3. The Petitioner is a continuous process industry having a large integrated pulp and paper mill. The Petitioner's manufacturing plant consists of various component units such as Pulp Mill, Soda Recovery Plant and Paper Machines. The component units require heat energy which is provided by low pressure to medium pressure steam. The Petitioner has six boilers and a recovery boiler which are fired using various fuel sources including fossil fuels such as coal, oil and non-conventional fuel sources such as agro based products and pith. The recovery boiler is fired using black liquor. Black liquor is a waste product that is produced during the manufacture of pulp from bagasse. The special feature of the boilers is that various fuels such as coal, pith, coke, lignite and oil can be fired therein in any combination.

3.4. The Petitioner has installed 5 turbo generators of varying capacities which are powered using the steam produced in the manufacturing process. The boilers are operated at optimum capacity which produces steam at a very high pressure of 104/64/44 kg/cm³ and at 525/483/440 °C. However, the steam required for the manufacturing process is of lesser grade of pressure viz., medium and low pressure steam. Therefore, the Petitioner uses the high pressure steam to power turbines and in the process the steam drops in pressure level and the resultant low pressure steam is used for the manufacturing process. The Petitioner's manufacturing process

is one which is fit for certification as “cogeneration plant” as electricity and heat energy is produced simultaneously.

3.5. The heat energy generated by the medium pressure steam and low pressure steam is sufficient for the manufacturing activities of the Petitioner. However, running the five turbo generators so as to generate medium and low pressure steam alone would amount to inefficient usage of the raw material and also amount to operating the turbo generators at level much below their installed capacity. Therefore, the Petitioner has developed a system whereby the turbo generators are operated at the installed capacity and the high pressure steam is used for powering turbines and used to produce electrical energy, whereas the medium pressure and low pressure steam is simultaneously used to provide the necessary heat energy for the manufacturing activities of the Petitioner in its pulp and power production plant. By adopting the above technology, the Petitioner has enabled a system whereby the turbo generators are operated to produce two forms of energy, including electrical energy, simultaneously.

3.6. Section 2 (12) of the Electricity Act, 2003 define “co-generation” as a process which simultaneously produces two or more forms of useful energy (including electricity). The process adopted by the Petitioner would qualify as co-generation as it produces steam energy which is required in the paper manufacturing process and electricity, simultaneously.

3.7. The Electricity Act, 2003, (“the Act”) casts a duty on the State to promote generation of electricity from cogeneration and renewable sources. Section 86 (1) (e) of the Act casts a specific obligation on the State Electricity Regulatory

Commissions (SERCs) set up under the Act to promote generation of electricity from cogeneration and renewable sources of energy. Additionally, to ensure the usage of electricity generated from cogeneration and renewable energy sources and to increase the share of cogeneration and renewable energy, the SERCs are also required to set out regulations that make it necessary for distribution companies to purchase certain percentage of their total power requirement from such sources. The target is termed as Renewable Purchase Obligation (RPO).

3.8. The Commission has accordingly formulated the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligations) Regulations, 2010 vide its notification in TNERC/RPO/19/1, dated 07-12-2010. These regulations govern the framework under which specified obligated entities purchase renewable energy as per quantum specified by the TNERC. These regulations also provide the framework under which units that produce electricity using renewable sources of energy can receive accreditation.

3.9. The Petitioner has converted one of the existing Turbo Generators i.e. TG No.5, into a Renewable Energy based Power Plant, as the steam used for powering TG 5 is sourced from the Recovery Boiler No.3 which uses black liquor which is an industrial waste containing biomass as fuel. The power generated using the steam generated from recovery boiler has been recognized as a renewable source of energy. The benefit of Renewable Energy Certificates for the self-consumption of power generated from T G 5 is being availed by the Petitioner from 16-01-2012. The Petitioner has got registered the recovery boiler and TG 5 as Renewable Energy Power Plant with the National Load Despatch Centre, New Delhi.

3.10. The Hon'ble APTEL in Century Rayon Vs. MERC (Appeal No.57 of 2009) considered the question as to whether a cogeneration plant would be required to comply with RPO obligations. In para 45 of its order dated 26-04-2010, the Hon'ble APTEL made its summary of conclusion as reproduced below:-

45. The summary of 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 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”.

The Hon'ble APTEL in para 46 of said order has stated as follows:-

“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.”

3.11. By virtue of the binding judgment of the Hon’ble APTEL in the Century Rayon case, captive consumers having cogenerating 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) of the Act and cogenerating plants have to be treated on par with renewable energy generating plants. The power generated and captively used from the Petitioner’s plant should be treated on par with procurement of power from renewable sources for the purposes of complying with RPO obligations.

3.12. In so far as 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. “Renewable sources” has been defined under these regulations with reference to clause 2 (g) of the Tamil Nadu Electricity Regulatory Commission Power Procurement from New and Renewable Sources of Energy Regulations, 2008, wherein it is defined as:-

“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 (or Commission) which are generally inexhaustible and can be replenished in a short period of time”.

3.13. The Hon'ble APTEL while interpreting RPO obligated entites has specifically held that cogeneration and non-conventional energy sources have to be treated on par since they are both contained in S.86 (1) (e). In view of the TNERC (RPO) Regulations not being sufficiently clear and having appropriately taken into account the judgment of the Hon'ble APTEL, a definite ruling in this regard would clarify the issue.

3.14. Regulation 8 of the TNERC (RPO) Regulations provides as follows:-

“8. Power to remove difficulties.- (1) The Commission shall suo-motu or on an application from any person generating electricity from renewable sources or an entity mandated under clause (e) of sub-section (1) of section 86 of the Act to fulfill the renewable purchase obligation may review, add, amend or alter these regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these regulations”.

4. Findings of the Commission:-

4.1. The prayer of the Petitioner is to declare that the Petitioner's captive power plant comprised of steam powered turbo generators TG1, TG2, TG3 and TG4 as being cogeneration plants under the provisions of the Electricity Act, 2003 and consequently declare that the said captive generator 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 61.12 MW cogeneration plant comprised of TG1, TG2, TG3 and TG4 situated at Kagithapuram, Tamil Nadu towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.

4.2. The petitioner has submitted that all the said turbo generators are Fossil Fuel Based Co-generation generators. The Commission in its Order dated 15-09-2014 M.P.No.25 of 2012, *JSW Steel Limited Vs Nil*, after detailed analysis, has declared that the purchase obligation under Section 86(1) (e) of the Electricity Act 2003 can be fastened only from electricity generated from renewable sources of energy. The operating portion of the Order is reproduced below:

“5.3. However, in its Order dated 02-12-2013 on Appeal No.53 of 2012 the APTEL has reversed its earlier order issued on Appeal No.57 of 2009. The related part of the order is reproduced below:

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.

5.4. In the above Order, the APTEL has clearly declared that the purchase obligations under Section 86 (1) (e) of the Electricity Act 2003 can be fastened only from electricity generated from Renewable Sources of Energy. This clarification is also in line with the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulation 2010. Therefore, the Commission orders that the electricity generated from the petitioner’s 67.50 MW captive power plant which is using fossil fuel is not eligible for accounting for RPO under the Tamil Nadu Electricity Regulatory Commission (Renewable Purchase Obligation) Regulation 2010”.

4.3. In order dated 16-09-2015 made in R.P.No.1 of 2014 preferred by the Petitioner in M.P.No.25 of 2012, the Commission after detailed further analysis of issue in the light of various legal provisions and orders of APTEL dismissed the R.P. holding inter-alia as follows:-

“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:-

*“1. **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. (NVTN) 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.

4.9. The Commission issued the said Order based on the APTEL’s Order dated 02-12-2013 on Appeal No.53 of 2012 and in consonance with the Tamil Nadu Electricity Regulatory Commission (Renewable Purchase Obligation) Regulation 2010. In this case, the petitioner himself has declared that the generators in question are Fossil Fuel Based Co-generators. Therefore the Commission orders

that the electricity generated from the petitioner's generators TG1, TG2, TG3, TG4, totaling 61.12 MW is not eligible for accounting for Renewable Purchase Obligation (RPO) under the Tamil Nadu Electricity Regulatory Commission (Renewable Purchase Obligation) Regulation 2010.

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