



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.No.20 of 2020

Dated 14.03.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Navabharat Ventures Limited,
Navabharat Chambers, Raj Bhavan Road,
Hyderabad – 500 082.

... Petitioner

AND

1. Transmission Corporation of Telangana Limited,
State Load Despatch Centre, Vidyuth Soudha,
Hyderabad.
2. Northern Power Distribution Company of Telangana Limited,
Corporate Office, # 2-5-31/2, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.

... Respondents

The petition came up for hearing on 18.09.2020. Sri Challa Gunaranjan, Advocate for petitioner and Sri Ganapathi, Director (IPC & RAC) TSNPDCL and Sri Chandrashekhar, SE (EBC) TSSLDC for respondents have appeared through video conference, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner has filed the petition under section 86(1)(e) of the Electricity Act, 2003 (Act, 2003) read with clause 11 of the Telangana State Electricity Regulatory Commission Renewal Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewal Energy Certificates) Regulations, 2018

(Regulation No 2 of 2018), seeking declaration of its steam generation as renewable source of energy and the pleadings of the petition are as below.

- a. It is stated that the petitioner is a company incorporated under the provisions of the Companies Act, 1956 in the year 1972 with the primary object of manufacture of ferro alloys. The petitioner established a ferro alloy unit at Palavanha with a 16.5 MVA submerged electric arc furnace. Later three more furnaces were installed in a phased manner. The total installed capacity of the furnaces is 74.5 MVA and the annual production capacity is around 1,25,000 metric tons. The CMD of the petitioner's plant is 2 MVA. It is stated that the petitioner is recovering the waste heat available in the furnace flue gases and generating thermal energy equivalent to 5 MW.
- b. It is stated that the furnace employs three electrodes of self-baking type, which conduct high electrical currents through the charge that is raw materials comprising ores, reductants and fluxes and produce a submerged arc with immense heat caused by the resistance offered by the charge to passage of current. This results in metallurgical reactions leading to formation of molten ferro alloys. During this process, the hot flue gas emanating from the furnace is about 1,70,000 Nm³/hr at a temperature of about 380°C.
- c. It is stated that the petitioner also operates 3 thermal power generating units of a total capacity of 114 MW with 2 waste recovery plants, which generate thermal energy upto 5 MW for captive use from flue gases of submerged electric arc furnaces at its factory premises. It is stated that the thermal power units employ turbines, which extract thermal energy from pressurized steam. The steam coming out of turbine is condensed to water and pumped back to the boiler through a regenerative heating system. Regenerative heating system is designed to heat the feed water (turbine condensate) with the help of steam extracted from the intermediate stage groups of turbine.
- d. It is stated that about 9 MkCal/hr, which is available in the flue gas emanating from the furnace is being utilized through two heat exchangers as a part of waste heat recovery system (WHRS) in the feed water regenerating system of the turbine, thereby reducing the

steam extracted from turbine intermediate stages and the additional steam available is used for power generation. Both the waste heat recovery produces upto 5 MW. The maximum operating temperature of submerged electric arc furnace is 1.600°C and exit flue gas temperature is 380°C and 300°C for furnace 4 and 3 respectively. The waste heat available in the flue gas is used for heating the power plant's feed water and main condensate in WHRS and thereby cooling the flue gas to 138°C.

- e. It is stated that this is a unique project since no ferro alloy industry in India is utilizing the waste heat from flue gas of open type submerged electric arc furnace and it is conserving natural resources such as coal in a thermal power plant and also reduces thermal pollution.

I. Brief description and operation of the ferro alloy furnaces:

- i. It is stated that the furnace employs three electrodes of self-baking type, which conduct high electrical currents through the charge that is raw materials comprising ores, reductants and fluxes and produce a submerged arc with immense heat caused by the resistance offered by the charge to passage of current. This results in metallurgical reactions leading to formation of molten ferro alloys.
- ii. It is stated that during the process, the hot gas emanating from the furnace is about 1,70,000 Nm³/hr at a temperature of about 380°C. Initially these hot gases were cooled down to less than 230°C with the help of a radiant gas cooler and sent to the filter bag house (gas cleaning plant) wherein the fume was collected and only dust free gas is let out into atmosphere.

II. Operation of thermal power plant:

- i. It is stated that the thermal power plant employs a steam turbine which extracts thermal energy from pressurized steam and uses to do mechanical work to drive an electric generator which converts mechanical energy into electric power. The steam coming out of turbine is condensed to water and pumped back to the boiler

through a regenerative heating system. Regenerative heating system is designed to heat the feed water (turbine condensate) with the help of steam extracted from the intermediate stage groups of turbine.

- ii. For recovering the waste heat available in the furnace flue gases two heat exchangers were installed in a phased manner as a part of WHRS.
- f. It is stated that the Commission issued a draft regulation for the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/ Renewable Energy Certificate) Regulation. Clause 3 of the said draft regulations provide for the RPPO and clause 3.1 requires every obligated entity in the state of Telangana to purchase of quantum of 6% to 8% of its total purchase of electricity during the FY 2018-19 to 2021-22 from renewable energy sources. The purchase of renewable energy certificates is also treated as fulfilment of the prescribed RPPO.
- g. It is stated that on issuance of the draft notification, the petitioner filed objections before the Commission stating that it was operating 3 thermal power generating units of a total capacity of 114 MW with 2 waste recovery plants which were generating thermal energy upto 5 MW for captive use from flue gases of submerged electric arc furnaces at its factory premises for by utilizing the waste heat with a view to conserve natural resources and reduce air pollution. It had also stated that the entire requirement of the electricity for its ferro alloys plant is being met from its own captive generating units and the excess energy generated beyond the requirement of the company is being sold to licensees and others under open access.
- h. It is stated that this Commission had not considered the petitioner's request during the stage of issuance of the regulations, which were subsequently notified on 30.04.2018 as Regulation No. 2 of 2018.
- i. It is stated that clause 11 of the regulations enables the Commission to entertain an application from inter alia an entity mandated under section 86 (1) (e) of the Act, 2003 to fulfil the RPPO to pass appropriate orders to remove any difficulty in exercising the provision of

this regulation. As such, the present application is being preferred by the petitioner seeking an exemption from the regulation.

- j. It is stated that the petitioner operates a captive power plant which uses cogeneration and has no further obligation towards renewable purchase obligation under section 86(1)(e) of the Act, 2003. It is stated that the petitioner company has installed WHRS wherein the waste heat available in the furnace flue gases thereby generating up to 5 MW power, which heat otherwise would be let into air as discharge. It is stated that the petitioner is entitled for being exempted from the RPPO obligation.
- k. It is stated that the renewable power purchase obligation that is Regulation No. 2 of 2018 is framed by this Commission in exercise of the powers conferred under section 86 (1) (e) of the Act, 2003 and the said provision reads as follows.

“promote cogeneration 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 licence;”

Further section 2 (12) of the Act, 2003 defines cogeneration as follows:

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

- l. It is stated that a reading of section 86 (1) (e) of the Act, 2003, it is clear that there are two categories or generators of electricity that is co-generators and generators of electricity through renewable sources of energy. The intention of the legislature in including the words cogeneration and generation of electricity from renewable sources in sec 86 (1) (e) of the Act, 2003 was to ensure that both the generators that is co-generators and generators of electricity from renewable sources of energy are entitled for the benefit of the provisions of sec 86 (1) (e) of the Act, 2003. It is stated that as stated supra, it is generating up to 5 MW of power from the heat available in the furnace exit flue gas

and the same is to be considered as cogeneration and thus it is entitled for the exemption provided under clause 11 of the Regulation No. 2 of 2018.

m. It is stated that the similar contention with regard to the interpretation of the provisions of sec 86 (1) (e) of the Act, 2003 came up for consideration before the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No. 57 of 2009 dated 26.04.2010 and the Hon'ble ATE has held that the benefit of the provisions of sec 86 (1) (e) is also applicable to the cogeneration units and the said judgment squarely applies to the facts of the case.

n. It is stated that apart from the above case, similar contention was also decided by the Hon'ble ATE in Appeal No. 54 of 2012 dated 30.01.2013 and the 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 the facts of the petitioner's case and it is 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 co-generation as

renewable energy without reference to the fuel used for such co-generation. 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 No. 1 of 2012 governing the RPPO defined 'Renewable energy sources' in clause 2 (m) as meaning renewable sources such as co-generation (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 No. 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 No. 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.

12. The Hon'ble Supreme Court in Civil Appeal No. 4417 of 2015 and batch decided in the judgment dated 13.05.2015 that renewable energy obligation imposed upon captive power plants and open access consumers by the Rajasthan Electricity Regulatory Commission's Regulations cannot be stated to be restrictive or violative of the fundamental rights. However, the question in the present case is not the legality or constitutionality of the imposition of renewable power purchase obligation upon captive power plants and open access consumers or any other obligated entities including those involved in co-generation. The issue involved herein is whether co-generation irrespective of the nature of the fuel used for the same is liable to be protected with reference to Section 86(1)(e) of the Electricity Act, 2003 and whether such a co-generation will not make the generating unit as obligated entity within the scope of Regulation 1 of 2012. Similarly, the order of Karnataka Electricity Regulatory Commission dated 04.08.2015 is with reference to a Regulation which is applicable to captive co-generation plants using fuel other than a renewable source for power generation and that Commission, following the view of the Appellate Tribunal for Electricity in Appeal No. 57 of 2009 and subsequent orders, decided not to impose renewable purchase obligation on any person consuming electricity generated from co-generation power plants using fuel other than renewable source. From a reading of the order it is as though the decision created an exemption for such persons as the relevant Regulations are applicable to them and it was that exemption that was withdrawn by the order dated 04.08.2015 with reference to the orders of the Hon'ble Supreme Court of India in Civil Appeal No. 4417 of 2015 and batch. As stated above, the decision of the Hon'ble Supreme Court of India was with reference to the validity of the Rajasthan Electricity Regulatory Commission's Regulation imposing a renewable energy obligation on captive power plants

and open access consumers but not about the persons like the present petitioner.

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 Commission 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 No. 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 No. 1 of 2012 continued to remain the same and to be of the same effect.”
- o. It is stated that the Hon’ble ATE in its judgment dated 16.04.2019 in Appeal No. 146 of 2017, while dealing with an entity similarly situated to the petitioner, relied on its judgments in Appeal Nos. 323 and 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 obligation, there is no obligation to purchase RE Certificates or consume renewable energy, separately in order to meet their RPP obligation.
- p. It is stated that the 1st respondent has issued letter No. CE / SLDC / REC / F. RPPO / D. No. 746 / 20 dated 16.03.2020, received by the petitioner on 14.05.2020, requesting to confirm the computation of RPO compliance as arrived by them to meet the obligations set out under Regulation No. 2 of 2018. The petitioner has replied by letter

dated 18.05.2020 informing that the electricity generated by it and used for captive purpose supplemented through the process of cogeneration using the waste heat from flue gas is to be exempted from RPO and for the said purposes the petitioner is constrained to file the present petition.

2. Therefore, the petitioner has sought the following prayer in the petition as under.

“The Commission may be pleased to exempt the petitioner in view of the consumption of power generated from its cogeneration units through waste heat received from flue gases from the renewable power purchase obligation under TSERC Regulation No.2 of 2018.”

3. The respondent No.1 has filed counter affidavit to the petition and the contents of it are as below.

- a. It is stated that the petitioner is incorporated under the provisions of the companies Act, 1956 in the year 1972, with the primary object of manufacture of ferro alloys and established a ferro alloy unit at Palavancha with a 16.5 MVA submerged electric arc furnace, later three more furnaces installed with a total capacity of furnaces as 74.5 MVA. It is stated that the petitioner is recovering the waste heat available in the furnace flue gases and generating thermal energy equivalent to 5 MW.
- b. It is stated that the petitioner also operates 3 thermal power generating units of a total capacity of 114 MW with 2 waste recovery plants which generate thermal energy up to 5 MW for captive use from flue gases of submerged electric arc furnaces at its factory premises.
- c. It is stated that the petitioner with H.T.S.C.No.KMM-026, is located at Paloncha, Khammam prayed before the Commission to exempt from renewable power purchase obligation (RPPO) in view of the consumption of power generated from its cogeneration units through waste heat received from flue gases.
- d. It is stated that state load dispatch centre of the state of Telangana that is TSSLDC (TSTransco), a statutory body constituted under sec 31 of

Act, 2003, is defined as 'state agency' to examine compliance of RPPO by the obligated entities, as per clause 6 of Regulation No. 2 of 2018.

- e. It is stated that as per clauses 5.2.4, 3.1 & 2.10 of Regulation No. 2 of 2018, every captive consumer (who owns a captive generating plant based on conventional fossil fuel with installed capacity of 1 MW and above) and every open access consumer (having contract demand of 1 MW and above) shall purchase from renewable energy sources a minimum quantity (in kWh) of electricity expressed as a percentage of its total consumption of energy, during FY 2018-19 to FY 2021-22 as specified in this table below:

Year / RPPO	2018-19	2019-20	2020-21	2021-22
Solar	5.33	5.77	6.21	7.10
Non-solar	0.67	0.73	0.79	0.90
Total	6.00	6.50	7.00	8.00

They may also fulfil their RPPO through purchase of RECs (Renewable Energy Certificates).

- f. It is stated that as per clause 2.14 of Regulation No. 2 of 2018.
 "Renewable Energy Sources (or RES)" means renewable sources such as Co-generation from renewable sources small-hydel, municipal waste, industrial waste, biomass, wind, solar including its integration with combined cycle, bio-fuel cogeneration, Geo-thermal, Tidal and such other sources as recognized or approved by MNRE".
- g. It is stated that as per the said Regulation No.2 of 2018 and relevant provisions of National Tariff Policy, 2016 (NTP) as notified by the Government of India (GoI), exercising powers under section 3 of the Act, 2003.
 "(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be

taken into account while determining tariff by SERCs. Long term growth trajectory of renewable power purchase obligations (RPPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPPOs."

- h. It is stated that as per clause 8.1 of Regulation No. 2 of 2018, If the captive user or open access consumer does not fulfil the RPPO as per the above table during any year, the Commission may direct them to deposit into a separate fund, to be created and maintained by the state agency that is TSSLDC such amount on the basis of the shortfall in units of the RPPO and the forbearance price decided by the central Commission,

Provided that the fund so created shall be utilised in the manner as may be specified by the Commission either through general or special order.

- i. It is stated that as per clause 8.2 of Regulation No.2 of 2018, if the captive user or open access consumer fails to comply with the obligation prescribed in above table, it shall, in addition to the above, be liable for penalty as may be decided by the Commission under section 142 of the Act, 2003.
- j. It is stated that in the manufacturing process of ferro-alloys, raw materials that is ores, reductants and fluxes used cannot be termed as renewable sources, which are used in the furnace/kiln from which waste heat (gases) are released and used by the cogeneration plant for generation of power which is utilized by the petitioner.
- k. It is stated that in the operation of thermal power plant, fossil fuel is used at a high temperature to get the steam which is used to do mechanical work to drive an electric generator which converts mechanical energy to electric power and hence the waste heat available in the furnace that is flue gases coming out from the furnace of ferro alloy unit cannot be considered as renewable source.

- l. It is stated that as per the orders of Hon'ble ATE and APERC O. P. No. 7 of 2016, promotion of cogeneration in the industry is irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone and will be equally applicable to all cogeneration based captive consumers who may be using any fuel, but as per Regulation No. 2 of 2018, clause 2.14 "Renewable Energy Sources (or RES) means renewable sources such as Co-generation from renewable sources, small-hydel, municipal waste, industrial waste, biomass, wind, solar including its integration with combined cycle, bio-fuel cogeneration, geo-thermal, tidal and such other sources as recognized or approved by MNRE"
- and hence the petitioner cannot be exempted from RPPO obligation.
- m. It is stated that the order of Hon'ble ATE in Appeal No. 57 of 2009, dated 26.4.2010 in the matter of M/s Century Rayon Vs. Maharashtra Electricity Regulatory Commission and order of APERC O. P. No. 7 of 2016, dated 06.08.2016, between M/s Rain CII Carbon (Vizag) Limited and APSLDC states that cogeneration being promotable irrespective of the nature of the fuel used, the petitioner has to be exempted from the RPP obligation and so the matter of exemption from RPP obligation for the cogeneration plants irrespective of the nature of the fuel they use was included in their respective regulations, but we follow and abide by Commission regulations wherein its nowhere mentioned that cogeneration plants can be exempted from RPPO irrespective of the nature of the fuel instead its clearly mentioned therein. (already extracted above)
- n. It is stated that for all the aforesaid reasons the respondent here by states that, 5 MW waste heat recovery plant of the petitioner cannot be considered as renewable energy power plant, as it is generating power from waste heat which is not treated as renewable sources of energy as per MNRE and as per Regulation No.2 of 2018 and hence the petitioner is not entitled for exemption from RPPO as per the said Regulation.

- o. It is stated that the respondent decision in refusing to consider waste heat recovery as RE source and refusing the request for exemption of RPPO for the power drawn from waste heat recovery power plant is legal and in accordance with law. The petitioner is liable to fulfil RPPO as per Regulation No.2 of 2018.
 - p. It is stated that all the allegations made by the petitioner that are not specifically dealt with herein are denied and the petitioner is put to strict proof of the same.
 - q. It is prayed the Commission to dismiss the petition.
4. The petitioner has filed rejoinder as below.
- a. It is stated that the petitioner has gone through contents of the counter affidavit filed by the respondents and all averments and allegations made therein are denied except those that are specifically admitted hereunder and the respondents are put to strict proof of the same.
 - b. It is stated that In terms of the applicable framework qua RPO Hon'ble ATE 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 cogeneration plant is not included for calculation of RPO obligations and the energy consumed from such cogeneration plant is to be used to set off its RPO targets.
 - c. It is stated that the extant of Regulation No.2 of 2018 is silent about treatment of energy consumed from the co-generation plants for both exemption and setting off the RPP obligations of an obligated entity. The relevant extracts of the same are reproduced below:

"2.10 "Obligated Entity" is an entity that is mandated to fulfil renewable purchase obligation under this Regulation subject to fulfilment of condition outlines clause 3 hereof and for the purposes of this Regulation shall be the following:

 - (1) Distribution Licensee
 - (2) Captive User - Any consumer who owns a grid connected Captive Generating Plant based on

conventional fossil fuel with installed capacity of 1 MW and above, or such other capacity as may be stipulated by the Commission from time to time, and consumes electricity generated from such plant for his own use.

(iii) Open Access Consumer in the state:

Any person having a contracted demand of 1 MW and above and consumes electricity procured from conventional fossil fuel based generation through open access. (already extracted above in so far as clause 2.14 is concerned)

2.15 'RPPO' means Renewable Power Purchase Obligation prescribed under Clause (3) of this Regulation.

3.1 Every obligated entity shall purchase from renewable energy sources a minimum quantity (in kWh) of electricity expressed as a percentage of its total consumption of energy during FY 2018-19 to FY 2021-22 as specified in this table below.

Year / RPPO	2018-19	2019-20	2020-21	2021-22
Solar	5.33	5.77	6.21	7.10
Non-solar	0.67	0.73	0.79	0.90
Total	6.00	6.50	7.00	8.00

Provided further that the obligation will be on total consumption of electricity by an obligated entity excluding consumption met from hydro sources of power other small-hydel sources of power.

5.2.4 Captive user and open access consumer shall purchase power from renewable energy sources in accordance with clause 3. They may also fulfil their RPPO through purchase of RECs. If the captive user or open access consumer is unable to fulfil the minimum purchase criteria, then it shall deposit into a separate fund the amount as per clause 8 of this Regulation.”

- d. It is stated that the 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 Act, 2003 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 case 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 Q/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:-

... ..
(e) 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:

- e. It is stated that 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 stated 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 (l) (e), in the context of RPO, has been interpreted by the Hon'ble ATE, 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 cogeneration 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 Ultra Tech 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)
- f. It is stated that these position are borne out from the following Judgments:
- (i) Judgment dated 26.04.2010 in Appeal No. 57 of 2009 in the case of Century Rayon Vs. Maharashtra ERC & Ors. (paras 10-14, 16, 20-23, 24-29, 34-37, 39, 44-461. 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).

- (ii) Judgment dated 30.01.2013 in Appeal No. 54 of 2012 in the case of Emami Paper Mills Ltd. Vs. OERC & Ors. (paras 5, 23, 24, 28-39)
 - (iii) Judgment dated 02.01.2019 in Appeal No. 278 of 2015 and batch titled JSW Steel Ltd. Vs. Tamil Nadu ERC. (paras 3, 34, 39, 40, 43, 53, 54)
 - (iv) Judgment dated 09.04.2019 in Appeal No. 322 of 2016 and batch titled Ultra Tech Cements Limited Vs. 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 ATE. judgment dated 09.04.2019 in Appeal No. 322 of 2016 & Batch has attained finality).
- g. It is stated that in terms of the aforesaid principles laid down by the Hon'ble ATE, 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 cogeneration plant (irrespective of fuel) cannot be considered for the purpose of computing RPO targets, power so consumed from a cogeneration plant ought to be used towards compliance of RPO targets. In other words, power consumed from a cogeneration 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. These principles provide the touchstone on which the present Petition is to be decided.

- h. It is stated that in the RPO Regulations 2012 passed by the then APERC, there was no clarity qua treatment of consumption from cogeneration plant for the purpose of RPO compliance. Accordingly, a petition (bearing O. P. No. 7 of 2016) was filed by Rain CII Carbon (Vizag) Limited (Rain Carbon), seeking exemption for power consumed by it from a WHRS based cogeneration plant towards compliance of RPO. It was Rain Carbon's contention that the power produced by its WHRS as akin to renewable power and no RPO can be fastened upon consumption of electricity from its captive co-generation.
- i. It is stated that 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 O. P. No. 7 of holding that the petitioner therein is exempted from complying with RPO since cogeneration (irrespective of the nature of fuel used) is to be promoted. In this regard, if required, the RPO Regulation, 2012 is to be relaxed (pages 55-64, relevant paras 1, 2, 6, 8 and 10 @ pages 55, 56, 59-64). The relevant extracts of the same are reproduced below:

"A petition under Section 86(1)(e) of the Electricity Act, 2003 to exempt the power generated by the petitioner from cogeneration process through waste heat received from flue gases from Renewable Power Purchase Obligation under Regulation No.1 of 2012 and any other appropriate orders as may be deemed fit.

... ..

1. The petitioner's case is that it is a company engaged in the manufacturing of Calcined Petroleum Coke (CPC) by converting Green Petroleum Coke (GPC) using calcinations process. The petitioner also established a cogenerating power plant at its unit at Vishakhapatnam with an installed capacity of 49.5 MW. The power produced is totally based on the waste heat recovered from the flue gases generated during the calcinations process of Green Petroleum Coke. Explaining the process of production of electricity, the petitioner

explained that there is no combustion of fuel and the energy so produced is clean energy or renewable energy.

... ..

6. The point for consideration is whether the petitioner is entitled to be exempted from the Renewable Power Purchase Obligation under Regulation I of 2012 of this Commission.

... ..

- (1) 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 cogeneration 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 (1/⁰ the Electricity Act, 2003 i.e., Section 86(1)(e) and Section 2(12) which continued to be the same

even after the Resolution elated 28.01.2016. Regulation No.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 No.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 cogeneration 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 cogeneration from sources other than renewable energy sources from the applicability of RPPC(s) is incorporated in Regulation No.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.

... ..

10. 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 No.1 of 2012. The principles are squarely applicable to the facts of the present case, notwithstanding the declaration of tile policy by t/le 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 I of 2012 continued to remain the same and to be of the same effect. The petition has to therefore succeed.”

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. 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 fulfilment 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. No. 7 of 2016 and the said has attained finality. Therefore, the cogeneration plants are to be exempted from complying with RPO.

- j. It is stated without prejudice to the above that, the process used in the petitioner's WHRS for generation of electricity is completely non-fossil fuel based and is environmentally friendly and unlike traditional cogeneration there is no burning of additional supplemental fuel for generation of electricity. In this regard the following is noteworthy:
- (a) The flue gas / waste gas released after the manufacturing process of ferro alloys (which was earlier emitted into atmosphere) is now being used for the purpose of generation of electricity. In other words, the waste gases are not emitted into environment, thereby reducing green house effect.
 - (b) There is no additional burning of fossil fuel for generating electricity. WHRS technology merely' utilizes the waste heat for generation of electricity.
- k. It is stated that the environmental friendly nature of the petitioner's WHRS is also evident from the fact that the Ministry of Environment and Forest, GoI, has vide its office memorandum dated 23.01.2019, exempted such power plants from seeking Environmental Clearance under the Environmental Impact Assessment Notification, 2006.
- l. It is stated that in reply para No. 7 (b) to 7(e), the para No. 5 to 9 of the above pleadings clearly describe the position of various SERC's and the Hon'ble ATE regarding the fastening of RPP obligations, the petitioner is neither obligated under the provisions of the NTP, 2016 or in violation of the provisions of the Regulation 2 of 2018 and the Act, 2003.
- m. It is stated that in reply to para No. 7 (f) and (g) of the counter, a WHRS based cogeneration plant is entitled to the same benefit as a renewable

source of energy based plant, including setting off consumption of electricity from a cogeneration plant against compliance of RPO of such 'obligated entity'. Absence of any such dispensation would not only be contrary to the legislative scheme of section 86 (1) (e) of Act, 2003 but the same may also be contrary to Article 14 of Constitution of India. As regards, the respondent's contention that the renewable energy is the energy produced from natural energy sources, it is stated that, sources of energy like municipal waste and biomass have been recognized as 'renewable sources of energy'. Thus the respondent's contention that 'the physical and chemical form of the energy sources does not get altered by tapping such energy' is erroneous. Clearly, the intention and focus is qua benefits to the environment through reduction of emissions, and not the source of energy.

- n. It is stated that in reply to para No. 7 (h) and (j) of the counter, the para Nos. 8 and 9 referring to judgments in O. P. No. 7 of 2016 and Appeal No. 57 of 2009 clearly shows that holding that the petitioner therein is exempted from complying with RPO since cogeneration (irrespective of the nature of fuel used) is to be promoted. In this regard, if required, the RPPO Regulation, 2018 is to be relaxed and the same has to be considered in line with energy generation through Renewable sources or Energy. In fact recently in the order passed by APERC in O. P. No. 11 of 2020 in the matter of M/s Ultra Tech Cement Ltd., Vs. APSLDC in para Nos. 14 to 16, the APERC has passed a detailed order adverting to similar contentions made by the respondents in the present petition.
- o. In view of the above, it is prayed the Commission to allow the petition as prayed for.

5. The Commission has heard the parties to the present petition extensively and also considered the material available to it including the order passed by it earlier insofar as compliance of RPPO Regulation, 2018. The submissions on various dates are noticed below, which are extracted for ready reference.

Record proceedings dated 26.08.2020:

“... .. The counsel for the petitioner stated that the petitioner is seeking to treat the waste heat generated by it under the manufacturing process be

considered as renewable source of energy. Such type of energy is considered as renewable source as has been held by the Hon'ble ATE. The representative of the respondents sought time for filing counter affidavit and requested time upto three weeks. The request of the respondents is acceded to and the counter affidavit is required to be filed on or before 09.09.2020. The respondents shall ensure that the counter affidavit to be filed by them shall properly be served on the counsel for the petitioner on or by the time granted by the Commission. ”

Record proceedings dated 18.09.2020:

“... .. The present request of the petitioner is to treat its waste heat management process as renewable source. The petitioner is a ferro alloy unit. Initially, the then APERC had notified the renewable power purchase obligation regulation in the year 2012 and defined the obligated entities, which would cover the petitioner also. The petitioner is entitled to seek exemption under the removal difficulties provision. This Commission had adopted the said regulation upon its constitution, however, the said regulation stood expired after 2017. Hence, this Commission undertook to frame fresh regulation and notified the same in Regulation No.2 of 2018. The Commission provided for the minimum percentage of renewable energy to be procured by the licensees. In doing so, while defining the obligated entities, did not make a distinction about obligated entities and source of generation in respect of cogeneration.

The counsel for the petitioner sought to rely on the decisions of the Hon'ble Appellate Tribunal for Electricity in the matters of Century Rayon Limited and others with regard to the definition of cogeneration. He also highlighted the directions of the Hon'ble ATE that all the Commissions are required to follow the directions of the Hon'ble ATE. It has also been stated that though the policy made specific definition about cogeneration, yet, the Hon'ble ATE sought to interpret the same in the context of section 86(1) (e) of the Act, 2003. The petitioner sought to rely on a decision of the present APERC, which had followed the decisions of the Hon'ble ATE and classified certain consumers as renewable energy source generation entities. It has been held that since the provision is emphatic and clear, policy issued by the government has to be

read in conjunction with the provision and therefore, the petitioner is entitled to the relief.

The counsel for the respondents stated that the regulation issued by the Commission is specific and clear without reference to cogeneration. The regulation does not also identify the process, which would constitute a cogeneration plant and therefore, the Commission is bound to follow the definition provided in this statute insofar as cogeneration is concerned. The judgments relied upon by the petitioner were prior to the National Tariff Policy, 2016. The National Tariff Policy, 2016 emphasized that all the entities have to comply with the RPPO and to that extent the Commission had made the regulation, which the petitioner is bound to follow. The petitioner's process cannot be termed as renewable energy source. The Commission may not undertake to give a finding on the process to treat it as renewable source. Decisions of the Hon'ble ATE and decision of the present APERC are not binding to this Commission as they stand on a different footing and contrary to the Act, 2003 as well as the policy notified under the provisions.

The Commission sought to know the process of heat generation and consequential energy production to satisfy itself about the petitioner falling into the definition of cogeneration. The counsel for the petitioner stated the same by drawing attention to the chart placed in the petition regarding the generation of power. He also sought to emphasize the conclusions arrived at by the Hon'ble ATE in the recent judgment arising from Rajasthan.

The Commission observed that it will undertake public consultation with regard to the enforcement of the regulation on RPPO and while doing so, will consider all these aspects including classification of petitioner like consumers as renewable sources of energy. The counsel for the petitioner stated that the initiation proceedings with reference to SLDC enquiring about compliance or otherwise of the RPPO regulation may not be appropriate to tag this petition. This petition may be considered independently and whatever decision is taken in the public consultation will apply therein only. ”

Record of proceedings dated 25.08.2021:

“... .. The counsel for petitioner stated that the issue in the petition has been partly answered while considering the compliance of RPPO regulation for FY 2018-19. He explained the relevant paragraphs in the order passed by the

Commission in that regard in O.P.No.31 of 2020. The advocate representing the counsel for respondent No.1 stated that the counsel is unable to attend the hearing as he is pre-occupied before the Hon'ble High Court and the matter may be adjourned to any other date. The counsel for petitioner agreed to the submission and stated that insofar as this case is concerned, the pleadings are complete. He also stated that the submissions in this matter would cover the other two matters in the list for the day. ”

Record of proceedings dated 23.09.2021:

“... .. The advocate representing the counsel for petitioner stated that the counsel is unable to attend the hearing due to preoccupation in the Hon'ble High Court and therefore, the case may be adjourned to a shorter date. The advocate representing the counsel for respondent No.1 stated that the matter has been substantially heard and reserved earlier. The Commission had also considered the issue in another proceedings in O.P.No.31 of 2020 on the issue of compliance of renewable power purchase obligation and allowed the petitioner to comply with the regulation treating the petitioner as an obligated entity. He also referred to the relevant provisions of the said order. At this stage, the Commission pointed out that the matter is being adjourned at the request of counsel for petitioner and he may submit all the arguments on the said date. ”

Record of proceedings dated 27.09.2021:

“... .. The counsel for petitioner stated that the issue had already been considered in the order passed by the Commission in O.P.No.31 of 2020 relating to compliance of RPPO for the year 2018-19. The petitioner had already filed the relevant judgments/order rendered by the Hon'ble ATE and APERC. The counsel for petitioner extensively readout the findings in the said judgments and orders to support its case that it is a renewable source of energy. He explained the mandate of section 86(1)(e) of the Act, 2003 and also interpreted the provisions of the National Tariff Policy relating to RPPO. It is his case that the NTP cannot go beyond the statute which recognized cogeneration as renewable source of energy under section 86(1)(e) of the Act, 2003.

The counsel for petitioner stated that the Commission made it amply clear while examining the compliance of RPPO for the year 2018-19 that the

process involved by the petitioner would constitute a renewable source of energy and as such, it may be treated as renewable source and considered for compliance of RPPO. The Commission as well as the judgment relied upon by the petitioner make it emphatically clear that waste heat recovery would constitute a renewable source and the quantum of energy drawn thereof can be set off against RPPO.

The counsel for respondent No.1 stated that the submissions made in the counter affidavit may be considered. It is stated that the licensee had addressed a letter to the Commission on 08.09.2021 about 21 obligated entities complying with RPO and only 5 entities including the petitioner have confirmed that they have complied with the RPO for FYs 2018-19 and 2019-20. The Commission may consider the specific case of the licensee that metering is required to be done to identify the quantum of RPO complied with from the renewable sources, if it is technically feasible.

The counsel for petitioner stated that though, metering of energy generated from renewable energy generating plant is not feasible, the Commission may examine the technicality of the same. Having heard the submissions of the parties, the matter is reserved for orders.”

6. The Commission had earlier considered the aspect of compliance of RPPO in terms of Regulation No. 2 of 2018 by the obligated entities. The said proceedings came to be initiated pursuant to a report filed by SLDC setting forth non-compliance of the RPPO by certain entities. While dealing with the matter, the Commission had occasion to consider the issue of treating WHRS as a renewable source. In doing so, the Commission had observed in the said order as below:

O.P.No.31 of 2020

“The submission of obligated entities which meet their complete/partial electricity consumption through their captive co-generation or WHR submitted their representation as under: (i) M/s Nava Bharat Ventures Limited- This obligated entity is a manufacturer of Ferro Alloy. It operates three (3) captive thermal power generating units with aggregate capacity of 114 MW and two (2) WHR plants from flue gases of submerged electric arc furnaces which generate energy upto 5 MW for captive use at its factory premises. It submitted that the entire requirement of the electricity for its Ferro Alloys plant

is being met from own captive generating units and excess generated electricity is being sold to DISCOMs and others under Open Access. It also submitted that it has filed O. P. No. 20 of 2020 before the Commission for exemption from RPPO under Regulation 2 of 2018 in view of consumption of power generated from its co-generation units through waste heat received from flue gases. Relying upon the Judgment of the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 57 of 2009 dated 26.04.2010 (Century Rayon case) and requested the Commission for exemption from RPPO compliance.

... ..

Commission's View

33. The Commission has noted the submission of the obligated entities and stakeholders for exemption from RPPO compliance and considering the energy consumed from its co-generation/WHR plant for setting off RPPO requirement.

34. The Commission is of the view that as per the Regulation No. 2 of 2018, any captive consumer consuming electricity from co-generation from conventional sources is considered as an obligated entity. Hence the Commission does not find any merit in the contention for exemption from being an obligated entity.

35. The Hon'ble APTEL in its Judgment in the Appeal No. 278 and 293 of 2015 and Appeal No. 23, 24 and 62 of 2016 dated 02.01.2019, has ruled as below:

“52. The Rajasthan Electricity Regulatory Commission has also considered the judgment of this Tribunal, as stated supra, in cases of Emami Paper Mills Ltd; Vedanta Aluminum Ltd; Hindalco Industries Ltd. and India Glycols Ltd; and held that: “In view of the settled legal position, Commission is of the considered view that no RPO liability shall be fastened on such generators who generate electricity through Waste Heat Recovery for their own purpose and consume it, subject to the condition that generation from Waste Heat Recovery generation plant is in 14 of 40 excess of the total RPO required to be complied by the CPP. If generation is lesser than the

requirement to the extent of shortfall general rule applies. So far as distinction tried to be made by RREC between solar and non-solar for the purpose of compliance, in the Commission's view does not merit acceptance. Once Captive Power Plant generating electricity through Waste Heat Recovery, cannot be fastened with RPO liability under Section 86(1)(e), there is no question of imposition of solar RPO also as the same falls in the category of Renewable Energy.”

53. It is rightly pointed out by the counsel for the Appellant that, the judgment of the Hon'ble Apex Court actually covered co-generators as well has got some substance and it is highly unlikely that the Rajasthan Electricity Regulatory Commission, whose Regulations were under challenge before the Hon'ble Apex Court, would itself grant relief to the co-generators before it relying on the judgment of this Tribunal in Century Rayon case. Therefore, we hold that a cogeneration facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.”
36. Based on the above, the Commission is of the view that any consumer consuming electricity from captive co-generation plant or captive co-generation plant using WHR unit beyond its RPPO target for any specific year as per the Regulation No. 2 of 2018, shall not be required to purchase additional renewable energy / RECs for that year. In case any consumer consuming electricity from captive co-generation plant or captive co-generation plant using WHR lesser than its RPPO target, the remaining consumption till the RPPO target shall be met through purchase of renewable energy/RECs to meet the RPPO target.
37. In view of the above, the Commission directs TSSLDC to re-compute the RPPO compliance for FY 2018-19 for all obligated entities which

consume electricity through captive co-generation plant or captive co-generation plant using WHR and submit the relevant details of such computation 15 of 40 along with the report on the status of compliance of RPPO for FY 2019- 20. The Commission will review the compliance of RPPO by these obligated entities for FY 2018-19 at the time of determination of compliance of RPPO for FY 2019-20.”

The observations made above were in the context of ascertaining the RPPO compliance by the obligated entities and to settle the aspect of compliance and nothing more. It itself cannot constitute a declaration or exemption as sought by the petitioner in this petition. Either way, the above finding cannot be treated as granting relief to the petitioner as sought by it in this petition, as the proceedings referred to above, had a limited scope in the context of compliance RPPO by obligated entities upon a report made over to the Commission by the SLDC. This submission that there is already a finding on the prayer of the petitioner, is inappropriate and incorrect.

7. The counsel for petitioner strenuously contended and vehemently relied on the orders passed by the Hon'ble ATE in Appeal Nos.57 of 2009, 54 of 2012, 322 along with 333 of 2016 and 146 of 2017. The Hon'ble ATE rendered findings with regard to treating cogeneration plants as renewable source and to be considered as being part of compliance of RPPO. The relevant extracts are already placed by the parties in their respective pleadings, as such, they are not reproduced here. With due respect, none of the orders of the Hon'ble ATE were in the context of a regulation, which provided for generic definition of obligated entities as such the same are not relevant and appropriate. Thus, they do not constitute a binding precedent insofar as facts and circumstances of this case.

8. The counsel for petitioner placed reliance on the judgments of the Hon'ble ATE referred above, but as also stated that appeals have been filed in certain of the orders before the Hon'ble Supreme Court, which are pending consideration. In that view of the matter, the findings reached by the Hon'ble ATE cannot be treated as final word on the aspect of treating the petitioner's WHRS as a renewable source under cogeneration. In only one matter an appeal filed before the Hon'ble Supreme Court by the Karnataka Commission had been dismissed on the ground of delay, but

not on merits. It cannot be said that the finding is conclusive, as in certain other appeals in Civil Appeal No.6797 of 2013 filed by the Gujarat Commission, is pending consideration before the Hon'ble Supreme Court. Accordingly, the Commission finds that in the absence of clear finding by the appellate courts, the prayer sought by the petitioner cannot be acceded to.

9. The Commission notices that an appeal had been filed before the Hon'ble Supreme Court in the matter of M/s Emami Paper Mills Limited in Civil Appeal No(s). 5466 / 2013 and it also refers to Civil Appeal Nos.5467 / 2013 and 6797 / 2013. Thus, it is clear that the finding rendered by the Hon'ble ATE is subject matter of appeals pending before the Hon'ble Supreme Court. As such, in the absence of final verdict, this Commission cannot rely on the judgments as referred by the petitioner. Therefore, the petitioner is not entitled to any relief at this point of time.

10. The counsel for petitioner relied on several orders passed by the APERC in several cases filed before it from time to time on the aspect that is involved in the present petition. Suffice it to state, the findings were rendered based on the judgment of the Hon'ble ATE, which by themselves have not attained finality, as such, cannot be relied upon. Further, the reference made to the orders of the APERC cannot constitute a binding precedent for this Commission to rely upon. Neither they are applicable in the context of the regulation made by the Commission nor based on a conclusive reasoning as affirmed by the Hon'ble Supreme Court. At the most, they are of only persuasive value to this Commission. It is also noticed that the pleadings are made as if the petition is before the APERC and that its findings earlier in several proceedings need to be followed. Alas, the petitioner has failed to distinguish between the Commissions' as to which Commission it is making submissions thereof. For all the reasons mentioned above, this contention of the petitioner does not succeed.

11. The Hon'ble Supreme Court had occasion to consider the issue of compliance of RPPO and the treatment of obligated entities including captive power units. The relevant observations are extracted below.

“ The impugned Regulations fall within the four corners of the Act of 2003 as well as Electricity Policy, 2005. The object of imposing RE Obligation is protection of environment and preventing pollution by

utilising Renewable Energy Sources as much as possible in larger public interest.

41. Our attention was drawn to the annual report of 2003 of Central Electricity Authority of India (CEA). As per the report, the installed capacity is 107973 MW in the country, the breakup of which is as under:-

Hydro Power Generation	Thermal Power Generation	Nuclear Power Generation	Wind Power Generation
26910 MW (24.9%)	76607MW (71%)	2720 MW (2.5%)	1736 MW (1.6%)

Out of thermal power generation, coal comprises 63801 MW, (gas-11633 MW) and (diesel-1173 MW) representing 59.1%, 10.8% and 1.1.% of the total installed capacity respectively. The Coal dominates the Thermal Power Generation which results in Green House Gases resulting in global warming. The said facts were brought to our notice that the same would certainly justify the case of the RERC in framing the impugned Regulation to achieve the object of the Act and the Constitution by imposing RE obligation on the captive gencos.

... ..

50. Article 51A(g) of the Constitution of India cast a fundamental duty on the citizen to protect and improve the natural environment. Considering the global warming, mandate of Articles 21 and 51A(g) of the Constitution, provisions for the Act of 2003, the National Electricity Policy of 2005 and the Tariff Policy of 2006 is in the larger public interest, Regulations have been framed by RERC imposing obligation upon captive power plants and open access consumers to purchase electricity from renewable sources.”

12. The Hon'ble High Court of Andhra Pradesh as it then was while disposing of a writ petition filed by M/s Agri Gold Projects Limited vs. APERC (erstwhile) had observed as below:

“After hearing the learned counsel for the parties and after perusing the material papers placed before this Court and in particular, the orders passed

by the APERC, this Court is of the view that the Power Purchase Agreement between the petitioner and the respondent is governed by the factors, which are in the realm of two separate agencies. So far as the mode of generation of power is concerned, it is totally within the scope of NEDCAP. The nature of fuel and the capacity of generation in the particular area through that process are to be determined by the NEDCAP. While dealing with the applications or while passing the order in O.P.262 of 2003 or in the review petition, the APERC has taken up on itself, to assess certain factors, which are totally in the realm of the NEDCAP. For example, the age of the plantation, the nature of the fuel, its utility for additional captivity etc., are the matters exclusively within the scope of the NEDCAP, whereas, they were extensively dealt with by the APERC for rejecting the application of the petitioner. It is not as if the NEDCAP had rejected the case of the petitioner and the same is taken into account by the APERC. This Court is of the view that the matter needs to be considered afresh by the APERC confining itself to the requirement of the respondent to purchase additional power and fixation of the terms of the contract in the event of enhancement of the generating capacity. As regards the other aspects namely, the category of Biomass, the utility of the plantation grown by the petitioner etc., are concerned, the APERC shall have to take the opinion expressed by the NEDCAP.”

As seen from the observations in the above judgment of the Hon'ble High Court of Andhra Pradesh as it then was, it is clear that the status of renewable source or not has to be decided by the renewable energy development authority and in the case of Telangana State, it is the Telangana State Renewable Energy Development Corporation (TSREDCO). No material that the petitioner's unit is a renewable source has been placed before the Commission so as to treat it for the purpose of RPPO. In view of the burden cast on the TSREDCO or like agency, this Commission is constrained not to venture into the field of declaring the petitioner's unit to be a renewable source and thereby treat it for ascertaining RPPO compliance. In these circumstances, this Commission is of the view that declaring or otherwise of the petitioner's WHRS unit to be a renewable source.

13. The counsel for petitioner relied on the communication made by the Ministry of Environment and Forest, Government of India. In its Office Memorandum dated 23.01.2019, the Ministry had exempted certain power plants from environmental clearance. In this regard, the appropriate content of the said memorandum is extracted below:

- “3. *The spirit of exempting requirement of environmental clearance for the Thermal Power Plant using waste heat boilers without any auxiliary fuel vide S. O. 1599 (E) dated 25th June, 2014 is to promote energy conservation, reduce greenhouse emissions and in larger interest of the environment including climate change.*
4. *In view of the above, it is hereby clarified that setting up new or expansion of captive power plants employing WHRB without using any auxiliary fuel, in the existing Cement Plants, Integrated Steel Plants, Metallurgical Industries (Ferrous and Nonferrous) and other industries having potential for heat recovery, does not attract the provisions of EIA Notification 2006, read with subsequent amendments therein.”*

It is clear from the above that the said communication was issued in the context of environmental issues and not with reference to generation and consumption of the electricity from such source. It is also noticed that it is an office order and had no reference to any statutory provisions under which it was sought to be issued. Thus, this communication cannot be the basis for this Commission to declare or treat the petitioner's WHRS as a renewable source. The contention of the petitioner, therefore, stands to be negated.

14. Coming to the aspect of satisfying that it is a renewable source the pleadings nowhere contemplated that the Ministry of New and Renewable Energy has ever identified the WHRS to be a renewable source. Inasmuch as the regulation framed by the Commission has defined renewable energy sources to be a few of them along with such other sources as approved by MNRE. As such, this Commission cannot in the absence of any material in support of the claim of the petitioner, would venture to declare a particular source to be renewable source. Thus, the petitioner has not made out any case for treating its WHRS plant as a renewable source for being considered under RPPO.

15. The respondents have rightly pointed out that the petitioner is dependent on fossil fuels for generation of electricity through the means of heat recovery produced thereof. Keeping in mind the need that fossil fuels cannot be the basis for generation the petitioner's plant, cannot be termed as renewable source.

16. Adverting, to the discussion and the opinion expressed above coupled with the observations of the Hon'ble Supreme Court, this petition fails and is accordingly dismissed. In the circumstances of the case, the parties shall bear their own costs.

17. Before parting with this case, the Commission would like to make it clear that the observations made by it in O.P.No.31 of 2020 would stand to be limited period, for which it is made and further it would not be carried for the period subsequent to this order. The SLDC and the licensee shall ensure compliance of the RPPO in terms of the observations made hereinabove for future period.

This order is corrected and signed on this the 14th day of March, 2022.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

