

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

PETITION No. of 2021

Reliance Industries Limited
Having its Office at
"Vraj"
Off. Sindhu Bhavan Road,
Opp. Kadamb Villa Bungalow,
Behind Orion Ceremonial Lawns,
Bodakdev,
Ahmedabad - 380054

Pl. accept the fees of Rs. 5,000/- subject to verification of GUERC (Fees, Fines & Penalties) Regulations, 2005.
06/09/2021
AD (Legal)
..... Petitioner

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Per ML No. 488/G-9.4/ of Rs. 5000/- Received by Di

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Forwarded to - 3729
Date: 6 SEP 2021

AD (Legal) / Process
06/09/2021

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. OF 2021

IN THE MATTER OF:

Regulations 4, 5 and 9.1 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010

And

Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014.

And

Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018

AND

IN THE MATTER OF:

Reliance Industries Limited
Having its Office at
"Vraj"
Off. Sindhu Bhavan Road,
Opp. Kadamb Villa Bungalow,
Besides Orion Ceremonial Lawns,
Bodakdev,
Ahmedabad - 380054

... Petitioner

MOST RESPECTFULLY SHEWETH THAT:

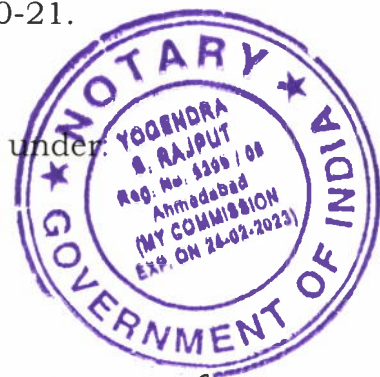
PREAMBLE:-

1. The Petitioner is filing the present Petition seeking appropriate directions under Regulations 4, 5 as well as Proviso 5 and 6 of

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Regulation 9.1 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010 and also under Regulation 84 of GERC (Conduct of Business Regulations) in respect of difficulty in complying with the renewable purchase obligation for its plants located at various places in Gujarat, due to supply constraints and other factors beyond the control of Petitioner and to carry forward the compliance requirement of FY 2020-21.

The brief facts leading to filing of the present Petition are as under:



BRIEF FACTS:-

2. The Petitioner is in the business, inter alia, of producing Petroleum and Petrochemicals and have Captive Power Plants at all major sites of their industries in the State fulfilling the energy requirements of their industries through captively produced power. In these power plants, which are liquid fluid or gas based, heat is cogenerated as a by-products or industrial waste and is harnessed for further power, steam generation and other industrial use. The Petitioner has installed heat recovery system generators which recover heat from the exhaust of gas turbine and same heat is used for industrial purpose and running steam turbines which are in turn used for further power generations. Further, the Petitioner, has also installed Coal Based Captive Power Plants of 360 MW at Hazira and 270 MW at Dahej along with CFBC Boilers to meet its power and steam requirement.
3. Gujarat Energy Development Agency hereinafter referred to as "GEDA" has been working in the field of renewable energy development and energy conservation. GEDA is state agency designated by GERC for the purpose of RPO regulations 2010.

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4. The Petitioner states that on 14.01.2010, Central Electricity Regulatory Commission ("**CERC**") notified Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010 (hereinafter "**CERC (REC) Regulations, 2010**"). The CERC, in consultation with Central Agencies and Forum of Regulators from time to time, provide for floor price and forbearance price separately for solar and non-solar renewable energy certificate. Annexed hereto and marked as **Annexure "A"** is a copy of the CERC (REC) Regulations, 2010.
5. On 17.04.2010, the Hon'ble Commission issued Notification No. 3 of 2010 containing the Regulations called as "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010" hereinafter referred to as "**GERC Regulations**". Annexed hereto and marked as **Annexure "B"** is a copy of the said GERC Regulations.
6. On 01.07.2015, the Hon'ble Commission issued Notification No 2 of 2015 wherein the RPO was made applicable on captive users with effect from 01.07.2015. Annexed here and marked as **Annexure "C"** is a copy of the aforesaid Notification dated 01.07.2015 of this Hon'ble Commission.
7. The Petitioner states that the Regulation 5 inter alia provides that the obligated entity can discharge the mandatory obligations (to purchase electricity from renewable energy sources) by purchasing the Certificates issued under the CERC (REC) Regulation 2010. Regulation 5 of the impugned Regulations is quoted hereinbelow for ready reference:

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“5. Certificates under the Regulations of the Central Commission

5.1. Subject to the terms and conditions contained in these Regulations,

The Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for discharge of the mandatory obligations set out in these Regulations for the obligated entity to purchase electricity from renewable energy sources.

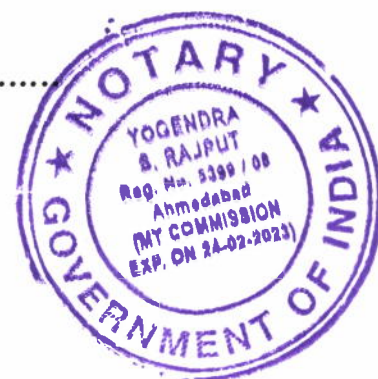
Provided that in the event of the obligated entity fulfilling the renewable purchase obligations by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table – 1.

5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfilment of the Renewal Purchase Obligation under these Regulations.

9. Consequences of default

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The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase.”

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.”

(relevant extract)

8. The Petitioner states that being aggrieved with the said Regulations, the Petitioner challenged the same by filing Special Civil Application No. 791 of 2011 before the Hon'ble Gujarat High Court. The Petitioner filed the SCA *inter alia* on the basis that inclusion of all captive users of electricity including those producing electricity through cogeneration within the “obligated entity” has led to absurd result, viz. that, far from putting the co-generators on par with renewable source of energy, the impugned Regulations actually put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to purchase power generated from renewable sources at a higher costs and without there being any requirement for such power. The Hon'ble Gujarat High Court by its common judgment and order dated 12.03.2015, rejected the SCA filed by the Petitioner and other parties. Annexed hereto and marked as **Annexure “D”** is copy of Order dated 12.03.2015 passed by Hon'ble Gujarat High Court.

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9. On 04.03.2014, this Hon'ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014, by the said Regulations GERC specified the minimum quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016 - 17. The Petitioner carves leave to refer to and rely upon the said Regulations at the time of hearing.
10. The Petitioner states that being aggrieved by the common judgment/ Order dated 12.03.2015, the Petitioner filed Letters Patent Appeal No.832 of 2015 before the Hon'ble Gujarat High Court. In the said LPA, Petitioner had also filed a Civil Application No. 4804 of 2015 seeking stay of the impugned Judgment and Order dated 12.03.2015. On 05.05.2015, the Hon'ble Gujarat High Court disposed of the said Application by passing following order:

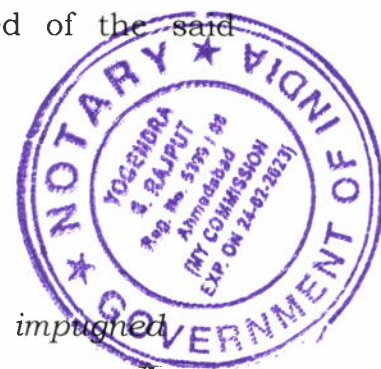
"1.

8. Therefore, instead of granting stay of the impugned Judgment and Order it shall be in the interest of justice to observe that the said Regulations shall though come in to force they shall be **subject to the final decision given in the Appeals**. Applications are disposed of accordingly. Rule is discharged accordingly."

(relevant extracts)

Annexed hereto and marked as **Annexure"E"** is copy of Order dated 05.05.2015 passed by the Hon'ble Gujarat High Court.

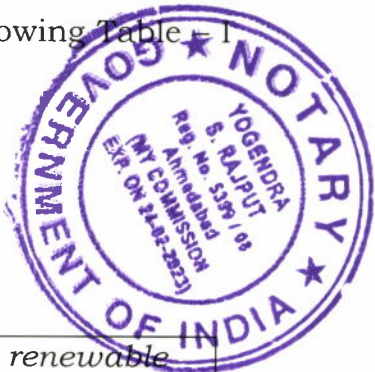
11. On 22.07.2016, the Ministry of Power, in exercise of the powers conferred under Para 6.4 (1) of the Tariff Policy notified the Long Term growth trajectory of Renewable Purchase Obligations (RPOs) for Non Solar as well as Solar uniformly for all States/ Union Territories initially for three years from 2016-17 to 2018 -19. Annexed hereto and marked



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as **Annexure “F”** is copy of Order dated 22.07.2016 issued by Government of India through Ministry of Power.

12. On 24.04.2018, this Hon’ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 (hereinafter referred to as “**GERC Second Amendment Regulations**”). By the said Amendment, the Hon’ble Commission substituted the following Table - I and II:-



“TABLE - I

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasee, Hydro and MSW) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2010 – 11	4.5	0.25	0.25	5.0
2011 – 12	5.0	0.5	0.5	6.0
2012 – 13	5.5	1.0	0.5	7.0
2013 – 14	5.5	1.0	0.5	7.0
2014 - 15	6.25	1.25	0.5	8.0
2015 – 16	7.0	1.5	0.5	9.0
2016 – 17	7.75	1.75	0.5	10.0

TABLE - II

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasee, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)

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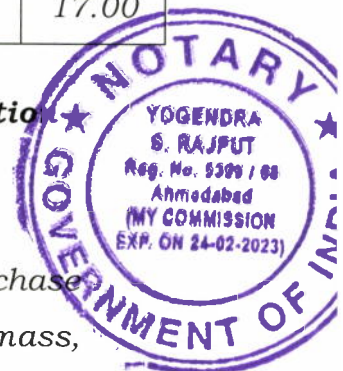
2017 – 18	7.75	1.75	0.5	10.00
2018 – 19	7.95	4.25	0.5	12.70
2019 – 20	8.05	5.5	0.75	14.30
2020 – 21	8.15	6.75	0.75	15.65
2021 – 22	8.25	8.0	0.75	17.00

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) Su4) Substitution of para 2 of Principal Regulation

4.1:

If the abovementioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5.”



Annexed hereto and marked as **Annexure “G”** is a copy of GERC Second Amendment Regulations.

13. On 14.06.2018, the Government of India through Ministry of Power, in continuation of earlier order dated 22.07.2016, notified the long term growth trajectory of Renewable Purchase Obligation for Solar as well as Non- Solar uniformly for all States/ Union territories for further three years period from 2019-20 to 2021-22. Annexed hereto and marked as **Annexure “H”** is a copy of the order dated 14.06.2018 issued by Ministry of Power, Government of India.
14. On 01.02.2019, the Ministry of Power (MoP) has issued a clarification on applicability of RPO on Captive Power Plants, which reads as follows:-

“1.

2. *The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the*

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RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added."

Annexed hereto and marked as **Annexure "I"** is copy of the aforesaid clarification dated 01.02.2019 issued by the Ministry of Power.

15. On 01.10.2019, the Government of India through Ministry of Power issued further clarifications relating to renewable purchase obligations.

The letter records as under:

"3. Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC, it is further clarified that:

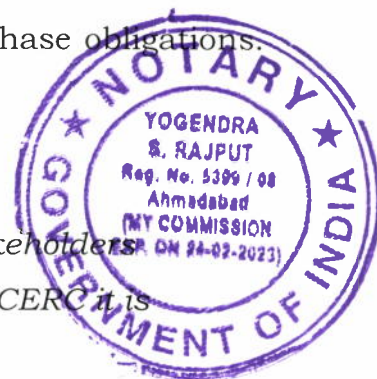
(i) for CPPs commissioned before 1st April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1st April, 2016 onwards, the RPO level as mandated by the appropriate commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

(ii) In case, of any augmentation in the capacity the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.

(iii) In case, for meeting the RPO obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.

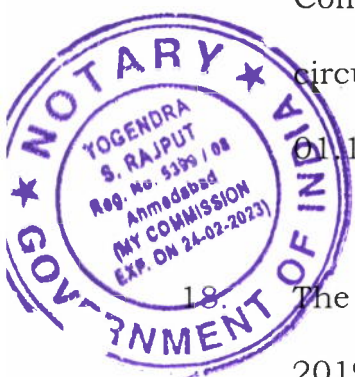
Annexed hereto and marked as **Annexure "J"** is copy of the aforesaid Order dated 01.10.2019.

As per



16. The Petitioner submits that somewhere in 2020, the Hon'ble CERC in proceedings no. 05/SM/2020 (Determination of Forbearance and Floor Price for REC Framework), by its Order dated 17.06.2020, re-determined the REC prices for solar and non solar. The said order was challenged by various parties before Hon'ble APTEL. The Hon'ble APTEL, vide its order dated 24.07.2020 was pleased to stay the trading of REC and the said order was continued from time to time. The Petitioner states that for FY 2020-21 trading of REC took place only for the month of April 2020 to June 2020. The Petitioner states that on account of the stay order on trading of REC passed by the Hon'ble APTEL, the Petitioner has been precluded to purchase / participate in REC trading. Annexed hereto and marked as **Annexure "K"** is a copy of the aforesaid order dated 24.07.2020 passed by the Hon'ble APTEL.

17. The Petitioner states that, many State Electricity Regulatory Commissions ("SERC") have incorporated and had given effect to the circulars issued by Government of India, Ministry of Power dated 01.10.2019.



18. The Petitioner states that based on the clarification dated 1st October 2019 issued by the Ministry of Power, the Petitioner, by its letter dated 18.01.2020 addressed to this Hon'ble Commission, apprised the Commission regarding the difficulties faced by Captive Power Producers in complying the RPO Regulations. By the said letter, the Petitioner also annexed their representation dated 18th January, 2020 made to Gujarat Energy Development Agency ("GEDA"). Annexed hereto and marked as **Annexure "L"** is a copy of the aforesaid letter dated 18.01.2020 along with annexure.

19. The Petitioner states that on 17.07.2020, the Hon'ble Commission issued Draft of Gujarat Electricity Regulatory Commission (Procurement

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of Energy From Renewable Sources) (Third Amendment) Regulations, 2020. By the said draft Amendment it proposes to give effect to MoP's order on capping. The relevant amendment is as under :-

“ Amendment in Regulation 4.1 of the Principal Regulations to be read with First and Second Amendments:

Para 1 and 2 of Principal Regulation 4.¹ read with First and Second Amendments shall be substituted as under:

Para: 1

Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year.

Provided that in case of Captive User of a Captive Generating Plant commissioned before 1st April, 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be as decided by the Commission for the Year 2015-16;

Provided further that in case of Captive Generating Plant commissioned on or after 1st April, 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;

Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned;”

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(relevant extract)

Annexed hereto and marked as **Annexure – “M”** is a copy of the aforesaid Draft of Third Amendment Regulations, 2020.

20. On 06.08.2020, the Petitioner submitted its suggestions/ objections to the Draft of Third Amendment Regulations 2020 before this Hon'ble Commission. Annexed hereto and marked as **Annexure- “N”** is copy of aforesaid submission dated 06.08.2020.

21. The Petitioner states that, due to the criticality of the operations of these plants, supply of reliable and continuous power and steam is very essential and hence the requirement of power and steam is met by captive generation. Due to the same, there is limited possibility to consume the Renewable Energy which is infirm in nature. Accordingly, the Petitioner's plants mainly meet the renewable purchase obligation by procuring Renewable Energy Certificates (RECs) from the power exchanges. The Petitioner states that they have filed Petitions for 2017-18 (Petition no: 1781 of 2019), 2018-19 (Petition no: 1792 of 2019) and 2019-20 (Petition No. 1892 of 2020) before this Hon'ble Commission seeking appropriate directions for roll-over of RPO compliance for the FY 2017- 2018 and FY 2018- 2019 and FY 2019-2020. The same are pending for hearing.

22. The Petitioner states that in the abovementioned circumstances during the FY 2020-21:-

- i) The Petitioner was unable to either procure renewable power or purchase the REC due to supply constraints and order passed by Hon'ble APTEL staying trading of REC which are beyond the control of Petitioner

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- ii) The Ministry of Power has notified the applicability of capping on 01.02.2019. Accordingly, the Petitioner has difficulty in arriving at the quantum of RPO as the Petitioner prays that the said capping be given effect to considering particularly the trials and tribulations of the present times, due to the pandemic.

SUBMISSIONS OF THE PETITIONER:-

On Hon’ble APTEL’s order granting stay on trading of REC.

23. The Petitioner submits that the Hon’ble APTEL, by its order dated 24.07.2020, has granted stay on trading of REC and the said order is still in force. Due to the operation of the stay order, for the present FY trading of REC took place only in the month of April 2020 to June 2020. The said factors are beyond the control of Petitioner.

On Non-availability of REC in the market

24. The Petitioner submits that the generation of REC by Renewable Energy producers is on decline. For the aforesaid reasons and low generation of REC, there is scarcity of REC in the market. Following table of analysis of REC Market will *inter alia* demonstrate that (i) the generation of REC is on decline and (ii) there are not enough Solar REC available in the market for obligated entities for discharge of obligations under the impugned Regulations.

REC Market Analysis

a. Non-Solar RECs

Sr. No.	Description	2015-16	2016-17	2017 - 18	2018-19	2019-20
1.	Opening balance REC	10,577,625	13,281,006	12,926,303	1,494,184	1,872,826

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2.	Addition in REC	7,358,397	6,010,472	4,992,891	6,219,258	10,608,262
3.	REC Sold	4,306,952	5,930,725	15,975,749	5,414,293	6,613,076
4.	REC Retained by Generator	348,064	434,450	449,261	426,323	279,797
5.	Closing balance REC (available)	13,281,006	12,926,303	1,494,184	1,872,826	5,588,215

b. Solar RECs

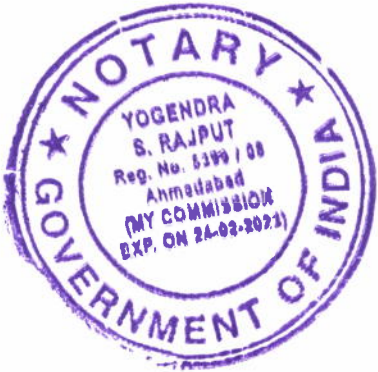
Sr. No.	Description	2015-16	2016-17	2017- 18	2018-19	2019-20
1.	Opening balance REC	1,599,598	3,310,962	4,908,376	5,998,101	335,157
2.	Addition in REC	2,375,443	2,185,291	1,333,925	1,558,083	2,131,292
3.	REC Sold	648,201	557,014	208,402	7,194,502	2,314,774
4.	REC Retained by Generator	15,878	30,863	35,798	26,525	6,931
5.	Closing balance REC	3,310,962	4,908,376	5,998,101	335,157	144,744

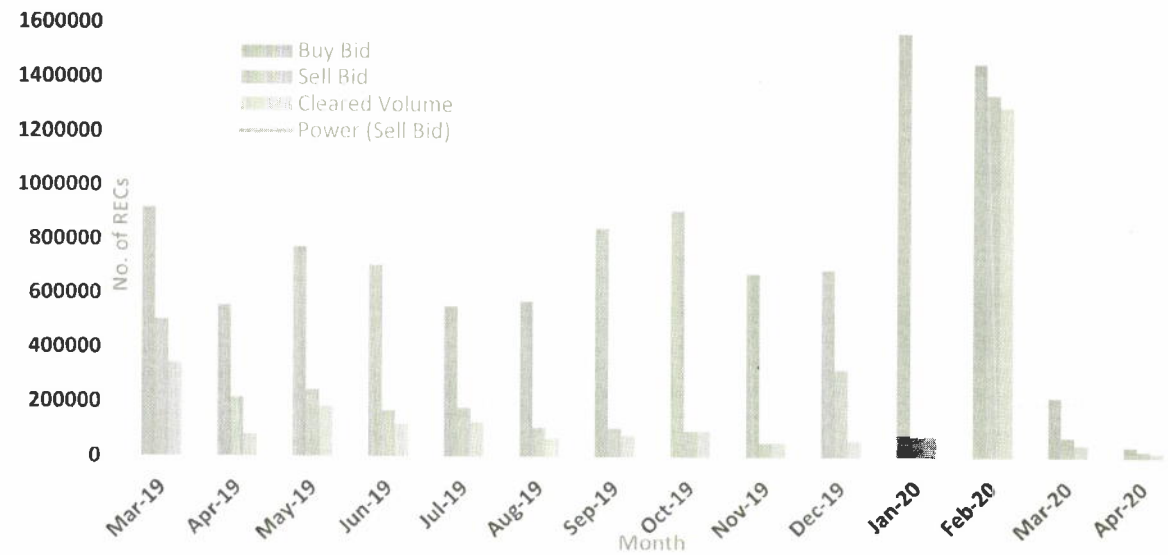
Note: REC trading is stayed since June 2020, hence data of FY 20-21 is not included.

c. Buy and Sell volumes during March 2019 to April 2020:

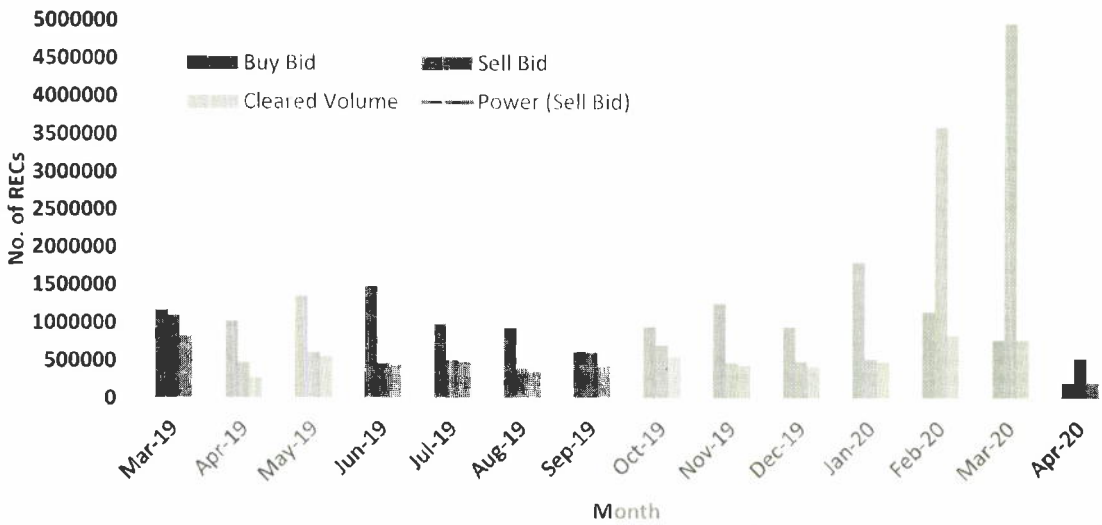
Solar RECs

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Non-Solar RECs

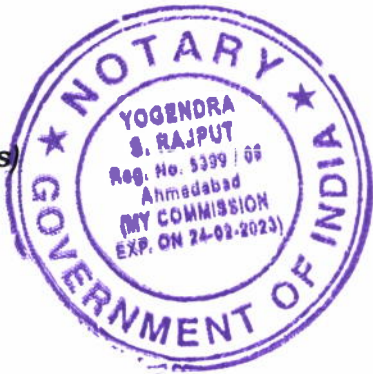


The Petitioner respectfully submits that above analysis clearly suggests that there is shortage of RECs which are being traded in the market. The higher quantum of buy bids in comparison to Sell bids indicates that even if all Sell bids are cleared, there will be shortage of RECs and many of the obligated entities will not be able to fulfil their RPO.

25. The Petitioner respectfully submits that the impugned regulations, *inter alia*, provide that the captive power producers can fulfil renewable purchase obligations through REC. Regulation 8 is reproduced hereinbelow for ready reference.

8. Captive and Open Access User(s)/ Consumer(s)

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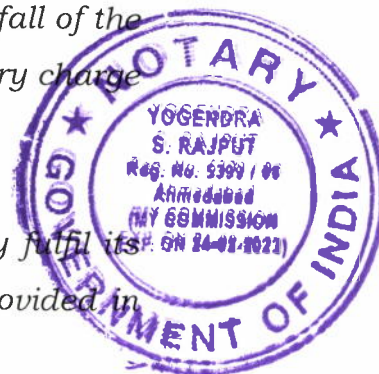


8.1. The quantum of RPO mentioned in clauses 4.1 shall be applicable to captive and open access user(s)/ consumer(s) from the date as would be notified in the Official Gazette.

8.2.....

8.3. Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of this Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per clause 9.

8.4. Captive/ Open Access consumer(s)/ User(s) may fulfil its RPO through the renewable energy certificate as provided in clause 5 above.



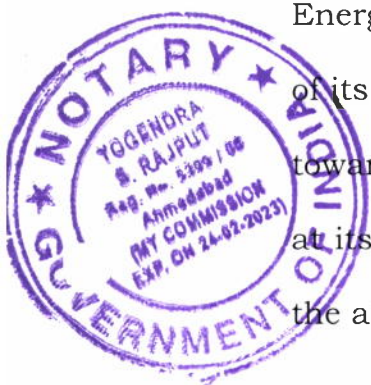
(relevant extract)

26. The Petitioner submits that since matter related to RPO on Cogeneration captive plants is sub-judice and pending before the Hon'ble Gujarat High Court, the Petitioner is meeting its RPO on coal based power plants at its Hazira and Dahej facility and also for open access transactions at other Units by procuring RECs from the market. Since the trading of REC is on hold since July 2020, the Petitioner has not been able to procure REC to fulfil its RPO for FY 2020-21.
27. The Petitioner submits that Hon'ble Gujarat Energy Regulatory Commission (GERC), vide Procurement of Energy from Renewable sources Regulation - 2010 defined 'Renewable Energy Sources'. Biomass is one of the Renewable Energy Source defined by the Hon'ble Commission in the said regulation. The Ministry of New and Renewable Energy ("MNRE"), vide Notification dated 26.09.2019 clarified that power generated from co-firing of Biomass in the thermal power plants as renewable energy and is eligible for meeting non-solar renewable

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purchase obligation. Annexed hereto and marked as **Annexure "O"** is a copy of the aforesaid Notification dated 26.09.2019.

28. The MNRE further requested the Hon'ble Central Electricity Regulatory Commission (CERC) to formulate and notify the procedures from methodology for quantifying the energy produced from Biomass in Biomass co-fired thermal power plants. Accordingly, the Hon'ble CERC, vide its Order dated 18.02.2020, proposed methodology for estimation of electricity generated from Biomass in Biomass co-fired thermal power plants. Annexed hereto and marked as **Annexure "P"** is a copy of the aforesaid Order dated 18.02.2020 of the Hon'ble CERC.
29. The Petitioner has coal based captive power plant at Dahej and Hazira manufacturing plants and has decided to use co-firing of Biomass towards compliance of renewable power purchase obligation. The Petitioner started co-firing of Biomass since February 2021 and also simultaneously submitted a letter dated 02.02.2021, to the Gujarat Energy Development Agency (GEDA), the Nodal Agency seeking approval of its proposal to consider the energy generated from cofiring of Biomass towards non solar RPO compliance, so as to enable the use of biomass at its CPPs. Annexed hereto and marked as **Annexure "Q"** is a copy of the aforesaid letter dated 02.02.2021.



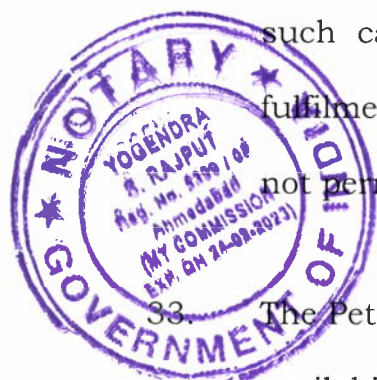
30. The Petitioner also submitted a letter dated 09.03.2021 to this Hon'ble Commission to consider power generated from co-firing of Biomass towards its non-solar RPO obligation. Annexed hereto and marked as **Annexure "R"** is a copy of the aforesaid letter dated 09.03.2021.

31. The Petitioner have submitted month wise details of the Biomass co-fired and power generated from co-firing of Biomass as per the methodology proposed by Hon'ble CERC in absence of any methodology notified by Hon'ble GERC duly certified by Chartered Accountant. This

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Hon'ble Commission, vide letter dated 12.08.2021 directed the Petitioner to file a petition to the said effect before the Commission. Accordingly, the Petitioner is filing a separate petition for consideration of Biomass co-fired and power generated therefrom towards non-solar RPO.

32. The Petitioner submits that there are no sufficient quantities of Solar as well as Non-Solar REC available in the market. As per clause 5.1 of the Regulations in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table 1. However vice versa is not permitted.



33. The Petitioner respectfully submits to this Hon'ble Commission that non availability of Solar and Non-Solar REC is evident from the facts stated in para 24 above and hence request Hon'ble Commission, ongoing forward, to allow Petitioner to procure Solar REC in lieu of Non Solar REC and vice versa. The Commission has allowed procurement of power from either sources in case non-availability of power from other sources in Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 as stated below:

"4) Substitution of para 2 of Principal Regulation 4.1:

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular

As per

year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5."

(relevant extract)

However, similar amendment is not made in proviso of Regulation 5.1, whereby it is only permitted to procure Non-Solar REC.

34. The Petitioner respectfully submits that this Hon'ble Commission, in its order dated 08.01.2019 in Petition No. 1437 of 2014 – *Torrent Power Ltd vs Gujarat Urja Vikas Nigam Ltd* on revision in RPO target in paragraph no. 10.12 has held as under:-

"10.12. The revision in RPO targets ought to be made by the Commission in the following manner:-

(a) In case of revision in the RPO targets on account of lower RE Capacity addition, the Commission ought to reduce overall RPO targets for all the licensees in proportion to reduction of RE capacity addition in the State of Gujarat in FY 2013-14 as compared to FY 2012-13.

(b) In case of revision in the RPO targets on account of individual 'relevant factors' with respect to licensees, such revision ought to be made considering the impact of non-revision in RPO targets on a licensee individually."

(relevant extract)

On circulars issued by the Ministry of Power on capping of RPO

Odisha Electricity Regulatory Commission (OERC)

35. The Petitioner submits that based on the clarification dated 01.10.2019 of the Ministry of Power, the Odisha Electricity Regulatory Commission (hereinafter referred to as "OERC") OERC was pleased to issue



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Notification dated 31.12.2019 regarding capping of RPO. The OERC, in exercise of its power to remove difficulties was pleased to issue following direction:-

“3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulations 12.6 of OERC ((procurement of energy from renewable sources and its compliance) Regulations, 2015 hereby decides as follows:-

The CGPs which are commissioned before 01.04.2016, the RPO for them which are pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:

<u>Solar source</u>	<u>Non Solar Sources</u>	<u>Total %</u>
0.50	2.50	3.00

For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level at the year of commissioning as mandated by the OERC under OERC (procurement of energy from renewable sources and its compliance) Regulation, 2015.”

(relevant extract)

Annexed hereto and marked as **Annexure “S”** is a copy of the Notification dated 31.12.2019.

Rajasthan Electricity Regulatory Commission (RERC)

36. The Petitioner submits that Rajasthan Electricity Regulatory Commission (hereinafter referred to as “RERC”), in order to bring the Regulations in line with MOP clarifications, considered it appropriate to modify the Regulations by way of making suitable amendments. The RERC, on 04.02.2020, was pleased to amend the Regulation 4 of the Rajasthan Electricity Regulatory Commission (Renewable Energy

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Obligation) (Sixth Amendment) Regulation 2020 in view of the clarificatory order dated 01.10.2019 of the Ministry of Power. Annexed hereto and marked as **Annexure "T"** is a copy of the aforesaid Notification dated 04.02.2020 issued by RERC.

37. The Petitioner submits that as mentioned above, other State Regulatory Commissions like Maharashtra Electricity Regulatory Commission have implemented the Ministry of Power's clarification with retrospective effect so as to cover the period prior to the MoP clarifications.

38. The Petitioner submits that Ministry of Power has issued the above clarification after considering views of all stakeholders, including MNRE, the nodal ministry for the promotion of Renewable Energy in the country. The clarification is based on operational difficulties faced by the CPPs in meeting the RPO.

39. The RPO Regulations 2010 confer power under Regulation 5 and Regulation 84 of GERC (Conduct of Business Regulations) on this Hon'ble Commission to remove difficulty. Similarly, the Regulations also confer power to issue orders and practice direction. The Petitioner respectfully submits that the present case falls for exercise of the powers by this Hon'ble Commission.

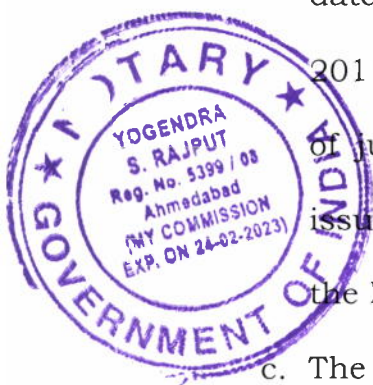
40. The Petitioner respectfully submits that sometime in 2017 the four distribution companies of Gujarat Urja Vikas Nikam Ltd had filed Petition (being Petition No. 1688 of 2017) seeking revision in RPO targets for FY 2016-17, the said Petition was filed on the basis that they were not able to comply RPO compliance for factors beyond their control and other reasons. One of the reasons for non-compliance was mentioned as lower capacity addition at National and State level from 2012-13, 2013-14, 2014-15 and 2015 -16 leading to lower wind

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generation/ wind RPO compliance during FY 2016-17. This Hon'ble Commission, by its Order dated 6th May, 2020, was pleased to revise the Renewable Purchase Obligation for wind and other category for FY 2016-17. Annexed hereto annexed and marked as **Annexure "U"** is copy of the aforesaid Order dated 06.05.2020 passed by this Hon'ble Commission.

41. **SUBSEQUENT DECISIONS OF THE EXPERT TRIBUNAL (APTEL) ON THE MERITS OF THE ISSUE PENDING BEFORE THE HON'BLE HIGH COURT:**

- a. The Petitioner states that the Electricity Act 2003 is a special enactment and a complete code by itself. The Act contemplates a mode of redress with the orders of the Electricity Regulatory Commissions being amenable to a Statutory Appeal to the Hon'ble Appellate Tribunal for Electricity (APTEL).
- b. The APTEL is an Expert Tribunal comprising of a technical member along with a judicial member. Post the common judgement and order dated 12.03.2015 in SCA No. 791 of 2011 as well as the interim order dated 05.05.2015 in the LPA No. 847 of 2015 wherein SCA No. 936 of 2011 was preferred, there have been subsequent developments by way of judgements passed by the Expert Tribunal on the merits of the issue. These judgements would indeed have a persuasive value before the Hon'ble Gujarat High Court in the pending LPA No. 847 of 2015.
- c. The Petitioner extracts some relevant portion of the judgement, which vindicates the Petitioner's stand on merits with regard to the interpretation of Section 86 (1) (e) qua the Petitioner being an obligated entity.
- d. The Hon'ble APTEL in its judgement dated 02.01.2019 in ***JSW Steel Limited Vs. Tamil Nadu Electricity Regulatory Commission, 2019 SCC OnLine APTEL 19***, has held as under :



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*“43. It is manifest on the face of the judgment, as stated supra, **the 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 Electricity Act, 2003** and cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. It is pertinent to note that the aforesaid judgment has been consistently followed by this Tribunal in several cases e.g. Emami Paper Mills Ltd. v. Odisha Electricity Regulatory Commission in Appeal No. 54 of 2012 dated 30.01.2013 reported in 2013 SCC OnLine APTEL 23.....”*

(relevant extract, emphasis added)

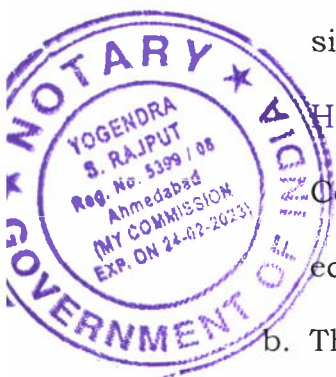
The Petitioner craves leave to refer to rely upon the judgments of Hon’ble APTEL in JSW Steel Limited Vs. Tamil Nadu Electricity Regulatory Commission, 2019 SCC OnLine APTEL 19.

42. **PENDENCY OF SIMILAR MATTER BEFORE HON’BLE HIGH COURT, BOMBAY AND CONSIDERATION OF THE PENDENCY BY THE HON’BLE MERC.**

a. The Petitioner submits that the issue of the Hon’ble High Court being seized of the challenge relating to the Petitioner being subjected to RPO as an “obligated entity”, being sub-judice (LPA No. 847 of 2015), in similar circumstances, in Maharashtra has been considered by the Hon’ble MERC, while dealing with a Writ Petition in the Hon’ble High Court, Bombay. This consideration balances diverse interests and is equitable.

b. The Hon’ble MERC, in ***Captive Power Producers Association (CPPA) Vs. Maharashtra Energy Development Authority (MEDA), Case No. 68 of 2019 Order dated 22.05.2019***, has held as under :

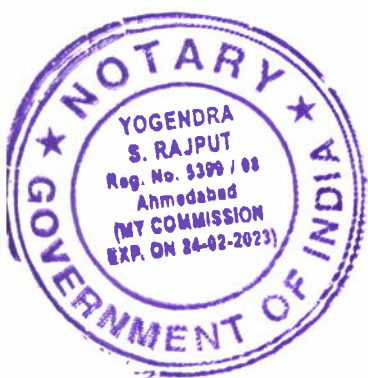
9. The Commission notes that in its Order dated 28 March, 2018, it has elaborated detailed background and rationale



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for imposing RPO on fossil fuel based cogeneration plants. Subsequent to this Order, CPPA has filed Writ Petition No. 269 of 2019 before the High Court challenging MERC RPO Regulations, 2016 which has imposed RPO on fossil fuel based cogeneration plants. **Admittedly, there is no Stay Order in this matter from the High Court. Under such circumstances, RPO Regulations, 2016 need to be complied with. However, CPPA contended that if it succeeds in its Writ Petition, then expenses incurred on complying with RPO would cause financial loss to it and hence it requested for rollover of RPO target till Writ Petition is finally decided by the High Court.** In the opinion of the Commission one cannot take stand that it would not comply with the Law in force till its Petition challenging such Law is decided by the Court especially when no interim relief has been granted on the writ petition.

10. The Commission in its Order dated 28 March, 2018 has already allowed CPPA to comply with its RPO for FY 2016-17 and FY 2017-18 in FY 2018-19. The Commission in its recent Orders on verification of RPO targets by various Obligated Entities has deferred the shortfall of RPO targets of FY 2017-18 to March 2020. Further, the Commission has held that it will initiate the next proceeding of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA.



11. In the light of the above-mentioned facts including the provisions of the Regulations and that since no stay is granted by the High Court, the Commission is of the opinion that the Petitioner is bound to follow the prevailing Regulations. Since the Commission has allowed other obligated entities to meet its obligation by March 2020, the Commission is allowing similar concession to the fossil fuel based cogeneration plants to fulfill its cumulative RPO targets by March 2020.

12. Alternately, as highlighted in para 10 above, the Commission will be initiating the RPO Compliance verification process for FY 2014-15 to FY 2016-17 for CPP

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users and OA Consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained, and **the petitioner shall deposit the amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the writ petition is decided by the High Court. The Commission opines that this alternative option will address the concerns of the petitioner about the possible hardship in case it succeeds in the High Court.**

13. The Commission directs MEDA to submit the relevant past data for FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the years 2014-2015 to 2016-2017.

(relevant extract, emphasis added)

Annexed hereto and marked as **Annexure "V"** is the copy of the aforesaid Order dated 22.05.2019 passed by the Hon'ble MERC in Case No. 68 of 2019.

- c. The Hon'ble MERC, in ***Captive Power Producers Association (CPPA) Vs. Maharashtra Energy Development Authority (MEDA), Case No. 130 of 2020 Order dated 05.10.2020***, has held as under :



10. The Commission underscores that in its earlier Orders dated 27 March 2019 and 22 May 2019 in Case No. 36 of 2019 and 71 of 2019, respectively, it has asked to initiate the proceedings of RPO compliance by CPPs from FY 2014-15 to FY 2016-17 and to address the MoP's clarifications in those proceedings. However, due to various reasons such proceedings have not been initiated. **It is also a fact that RPO-REC Regulations 2016 have been challenged before the Hon'ble Bombay High Court by CPPA and the matter is still pending adjudication.**

Answer

.....

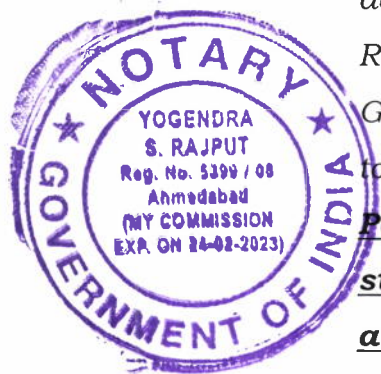
12. Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. For the Projects commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned, for the Operating Period of RPO-REC Regulations 2016 onwards.

(relevant extract, emphasis added)

Annexed hereto and marked as **Annexure "W"** is a copy of the Order dated 05.10.2020 passed by the Hon'ble MERC in Case No. 130 of 2020.

- d. The Hon'ble MERC in **Captive Power Producers Association Vs. Maharashtra Energy Development Authority, Case No. 111 of 2020** Order dated 06.10.2020, has held as under :

10. Having clarified about option given in its Order dated 22 May 2019, the Commission notes that CPPA has requested additional time upto March 2021 for meeting cumulative RPO target and also requested for option of giving Bank Guarantee, instead of depositing the RPO shortfall amount to MEDA. **The Commission notes the fact that Writ Petition challenging RPO applicability to CPP Users is still sub judice before the High Court. The Commission also acknowledges the contemporary hardship faced by the industries due to lockdown and economic slowdown due to management of COVID-19 pandemic. Further, CPPA has shown willingness to exercise option provided by the Commission in Order dated 22 May 2019 for complying with RPO targets.** Considering these facts, the Commission allows CPP Users to fulfil their



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cumulative RPO targets by March 2021. The Commission doesn't think it is appropriate to substitute the deposit of equivalent amount of REC with bank guarantee. It is primarily the responsibility of every obligated entity to comply with the statutorily mandated RPO. **Commission has already given a concession to CPPA in terms of option to deposit the equivalent amount pending resolution of their grievance before Hon'ble High Court.** The Commission doesn't intend to dilute the obligation any further by adopting a tedious process asking MEDA to track validity of bank guarantees of every CPPA member and liaise with banks to encash the same.

11. For the sake of completeness, the Commission would like to mention that in its Order dated 5 October 2020 in Case No. 130 of 2020 (Petition filed by CPPA), using its powers to remove difficulties and to give effect to Ministry of Power's clarifications dated 1 February 2019 and 1 October 2019, the Commission has revised CPP User's RPO targets for FY 2016-17 to FY 2019-20. The same shall be considered while arriving at cumulative RPO targets to be met by CPP Users.

(relevant extract, emphasis added)

Annexed hereto and marked as **Annexure "X"** is the copy of the Order dated 06.10.2020 passed by the Hon'ble MERC in Case No. 111 of 2020

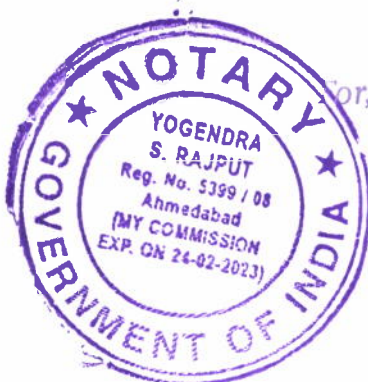
43. In the abovementioned circumstances, the Petitioner is humbly requesting Hon'ble Commission to allow Petitioner to roll over balance RPO of the year 2020-21 within one year from the date of this Hon'ble Commission's order on the subject matter and also be pleased to pass appropriate directions on the pending application towards RPO compliance being 2017-18 (Petition no: 1781 of 2019), 2018-19 (Petition no: 1792 of 2019) and 2019-20 (Petition No. 1892 of 2020)

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44. In the aforementioned facts and circumstances, the Petitioner most humbly respectfully prays that:

- (a) This Hon'ble Commission be pleased to relax or waive the provisions of the GERC RPO Regulations, 2010 to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders;
- (b) This Hon'ble Commission be pleased to revise the RPO targets for the FY 2020-2021;
- (c) In view of non-availability of REC in the market due to stay on trading of REC, this Hon'ble Commission be pleased to roll over balance RPO of FY 2020-21 to the year 2021-22 or the FY in which this petition is disposed off, whichever is later.
- (d) any other order this Hon'ble Commission may deem fit in the matter.

Date: 01.09.2021



For, Reliance Industries Ltd.

Aswini B. Shah
Authorised Signatory

DEPONENT

DECLARATION

The subject matter of the Petition has not been raised by the Petitioner before any other competent forum, and that no other competent forum is currently seized of the matter or has passed any orders in relation thereto.

Place: Ahmedabad
Date: 4.09.2021

Nanavati Desai

For Nanavati Associates
Advocates for Petitioner

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,
GANDHINAGAR**

PETITION NO. OF 2021

IN THE MATTER OF:

Regulations 4, 5 and 9.1 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010

And

Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014.



And

Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018

AND

IN THE MATTER OF:

Reliance Industries Limited
Having its Office at
Ketan Contruction Limited
Sindhu Bhawan Marg,
Near Orion Ceremonial Lawns,
Bodakdev,
Ahmedabad - 380054

... Petitioner

AFFIDAVIT VERIFYING THE PETITION

1. I, Ashish Shah, S/o Balchandra Shah, Adult, residing at Ahmedabad, do solemnly affirm and say as follows:
2. I am a Sr. General Manager of Reliance Industries Ltd., the Petitioner company herein and I have read the petition pertaining to the above case

and I am competent and duly authorized by the Petitioner company to make this Affidavit.

Solemnly affirmed at Ahmedabad on __th day of September, 2021, that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

For, Reliance Industries Ltd.

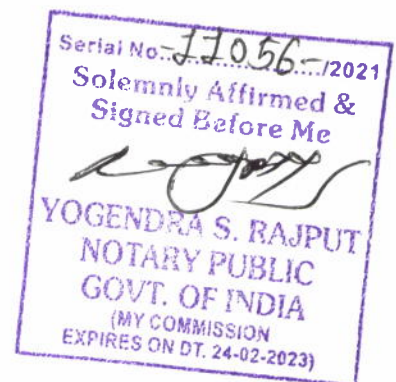
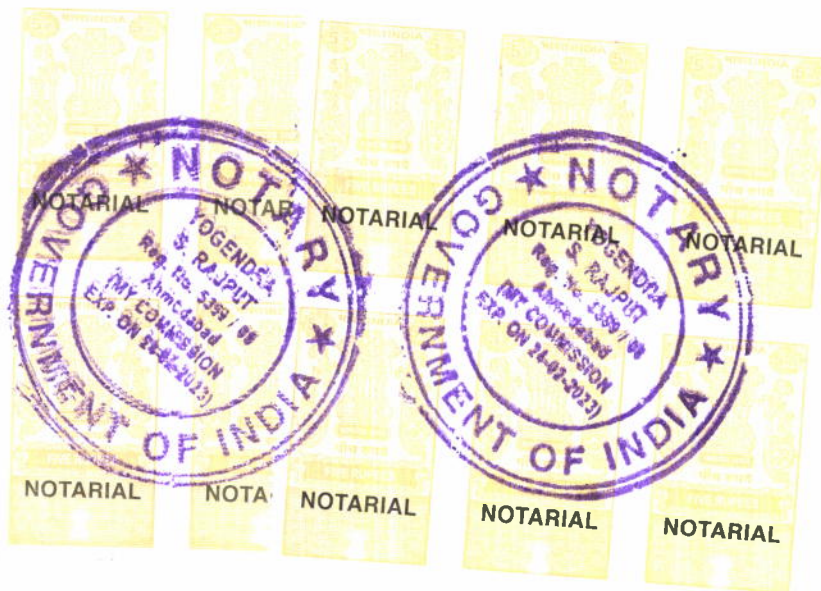
Ashish B Shah

Authorised Signatory

Place: Ahmedabad

Date: 4.09.2021

DEPONENT



4 SEP 2021



**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY COMMISSION,
GANDHINAGAR**

PETITION NO. _____ OF 2021

Reliance Industries Ltd

.... Petitioner(s) / Appellant(s) /
Applicant(s)

Versus

.... Respondent(s)/Opponent(s)

VAKALATNAMA

I/WE, Reliance Industries Ltd
do hereby Nominate, authorize and appoint

**NANAVATI ASSOCIATES
ADVOCATES**



**Satyam Corporate, Square, Block-B, Behind Rajpath Club, Nr. Friends Avenue,
Off. S.G. Highway, Bodakdev, Ahmedabad- 380 059**

Represented by Dharmishtha K. Nanavati, Keyur D. Gandhi, Pranit K. Nanavati, Kunal K. Nanavati, Nirav Joshi, Nisarg M. Desai, Raheel S. Patel, Kunal J. Vyas, Laukik Pant, Divyesh D. Bais, Pooja Rohan Shah, Shriyang Masruwala, Gaurav Dave and Jaimin Mistry hereinafter called the Advocates, to be my/our Advocates in the above noted matter and authorize them: -

To act, appear and plead in the above noted matter in this Court or any other Court where the same may be tried or heard or in the appellate courts.

To sign, file and present pleadings, applications, appeals, cross objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case at all stages.

To file and take back documents.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise in or touching upon any matter relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefore and to do all things and acts which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint, instruct any other legal practitioner, authorizing him to exercise the power and authorities hereby conferred upon the advocate/s;

AND I/WE agree to ratify all acts done by the aforesaid advocate/s in pursuance of this authority.

Date this 4th day of September, 2021

Nisarg Desai

Accepted

Phone : (079) 40038081-05

FAX 079-40038086

Lawyers Chamber No.230

Phone : 27663980

e-mail : efiling@nanavatiassociates.com

For, Reliance Industries Ltd.

Client(s) Signature

: Ashish B Shah
Authorised Signatory

Name

: _____

Designation

: _____

Company Seal

: _____

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग III- खण्ड 4

PART III-Section 4

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

No. 26

NEW DELHI, MONDAY, JANUARY 18, 2010

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

No. L-1/12/2010-CERC

Dated: 14th January, 2010

NOTIFICATION

In exercise of powers conferred under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section (2) of Section 178 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations for the development of market in power from Non Conventional Energy Sources by issuance of transferable and saleable credit certificates:

1. Short title and commencement and extent of application

1. These Regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
2. These Regulations shall come into force from the date of their notification in the Official Gazette.
3. These Regulations shall apply throughout India except the State of Jammu and Kashmir.

2. Definitions and Interpretation:

(1) In these Regulations, unless the context otherwise requires,

- a) **'Act'** means the 'Electricity Act, 2003 (36 of 2003);
- b) **'Central Agency'** means the agency as may be designated by the Commission under clause (1) of Regulation 3;
- c) **'Certificate'** means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in these regulations;
- d) **'Commission'** means the Central Electricity Regulatory Commission referred to in subsection (1) of Section 76 of the Act;
- e) **'eligible entity'** means the entity eligible to receive the certificates under these regulations;
- f) **'floor price'** means the minimum price as determined by the Commission in accordance with these regulations at and above which the certificate can be dealt in the power exchange;
- g) **'forbearance price'** means the ceiling price as determined by the Commission in accordance with these regulations within which only the certificates can be dealt in the power exchange;
- h) **'MNRE'** means the Ministry of New and Renewable Energy;
- i) **'obligated entity'** means the entity mandated under clause (e) of sub-section (1) of Section 86 of the Act to fulfil the renewable purchase obligation;
- j) **'Power Exchange'** means that power exchange which operates with the approval of the Commission;
- k) **[]¹**
- l) **'renewable energy sources'** means renewable sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste and such other sources as recognized or approved by MNRE;
- m) **'renewable purchase obligation'** means the requirement specified by the State Commissions under clause (e) of sub-section (1) of Section 86 of the Act, for the obligated entity to purchase electricity from renewable energy sources;
- n) **'State Agency'** means the agency in the concerned state as may be designated by the State Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake such functions as may be specified under clause (e) of sub-section (1) of Section 86 of the Act;
- o) **'State Commission'** means the State Commission referred to in sub-section (64) of Section 2 of the Act and includes a Joint Commission referred to in sub-section (1) of Section 83 of the Act;
- p) **'Year'** means a financial year.

(2) Words and expressions used in these Regulations and not defined herein but defined in the Act or any other regulations issued by the Commission, shall have the same meaning assigned to them respectively in the Act, or such other regulations issued by the Commission.

¹ Deleted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

3. Central Agency and its functions:

- (1) The Commission shall designate an agency as the Central Agency after satisfying itself that the said agency has the required capability of performing its functions as provided under these regulations.
- (2) The functions of the Central Agency will be to undertake:
 - (i) registration of eligible entities,
 - (ii) issuance of certificates,
 - (iii) maintaining and settling accounts in respect of certificates,
 - (iv) repository of transactions in certificates, and
 - (v) such other functions incidental to the implementation of renewable energy certificate mechanism as may be assigned by the Commission from time to time.
- (3) Subject to provisions of these regulations, the Central Agency, with approval of the Commission and after inviting comments from the State Agency shall issue a detailed procedure for registration of eligible entities, verification of generation of electricity and its injection into the grid by the eligible entity, issuance of certificates and other relevant and residual matters:

Provided that the detailed procedure shall be prepared by the Central Agency and submitted to the Commission for approval within sixty days from the date of notification of these regulations:

Provided further that while preparing the detailed procedure the Central Agency shall give three weeks time to the State Agency and other stakeholders for comments:

Provided also that the Commission may at any time either on its own motion or on an application or representation made by any interested party direct the Central Agency to modify, add or delete any of the provisions of the detailed procedure as deemed appropriate and upon such directions by the Commission the detailed procedure shall be implemented with such modifications.

- (4) The Commission may issue directions to the Central Agency in regard to the discharge of its functions and the Central Agency shall always act in accordance with the directions issued by the Commission.

4. Categories of Certificates:

- (1) There shall be two categories of certificates, viz., solar certificates issued to eligible entities for generation of electricity based on solar as renewable energy source, and non-solar certificates issued to eligible entities for generation of electricity based on renewable energy sources other than solar:
- (2) The solar certificate shall be sold to the obligated entities to enable them to meet their renewable purchase obligation for solar, and non-solar certificate shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources other than solar.

5. Eligibility and Registration for Certificates:

- (1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:

- a. it has obtained accreditation from the State Agency;
- [(b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under Section 63 of the Act by the Appropriate Commission:

Provided that in case of renewable energy sources based co-generation plants, the connected load capacity as assessed or sanctioned by the concerned distribution licensee, shall be considered as the capacity for captive consumption for the purpose of issue of certificates, irrespective of the capacity of such plants covered under the power purchase agreement.]²

- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, [at the pooled cost of power purchase of such distribution licensee as determined by the appropriate commission]³ (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation. - for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

[Provided that such a generating company having entered into a power purchase agreement for sale of electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under Section 62 or adopted under section 63 of the Act by the Appropriate Commission shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement:

[]⁴

[Provided further that a renewable energy generator selling electricity component to third party through open access shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such generator does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefit:

Provided also that if such a renewable energy generator forgoes on its own, the benefits of concessional/promotional transmission or wheeling charges or banking facility benefit, it shall become eligible for participating in the REC scheme only after the date of forgoing such benefits:

Provided also that the above mentioned condition for renewable energy generator selling electricity component to third party through open access for participating in the REC scheme shall not apply if the benefits given to such renewable energy generator in the form of concessional transmission or wheeling charges and/or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

² Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

³ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

⁴ Initially added vide First Amendment Regulations, 2010 w.e.f. 1.10.2010 and later substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013 and later deleted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

Provided also that if any dispute arises as to whether a renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation: For the purpose of this Regulation, the expression “banking facility benefit” shall mean only such banking facility whereby any renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”⁵

- [(d) It does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the renewable purchase obligation by such entity.]⁶
- [(1A) A distribution licensee shall be eligible to apply for registration with the Central Agency for issuance of and dealing in Certificates if it fulfils the following conditions:
 - (a) It has procured renewable energy, in the previous financial year, at a tariff determined under Section 62 or adopted under Section 63 of the Act, in excess of the renewable purchase obligation as may be specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher:

Provided that the renewable purchase obligation as may be specified for a year, by the Appropriate Commission should not be lower than that for the previous financial year.

Provided further that any shortfall in procurement against the non-solar or solar power procurement obligation set by the Appropriate Commission in the previous three years, including the shortfall waived or carried forward by the said Commission, shall be adjusted first and only the remaining additional procurement beyond the threshold renewable purchase obligation - being that specified by the Appropriate Commission or in the National Action Plan Climate Change or in the Tariff Policy, whichever is higher - shall be considered for issuance of RECs to the distribution licensees.

- b) It has obtained a certification from the Appropriate Commission, towards procurement of renewable energy as provided in sub - clause (a) of this regulation.]⁷
- [(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant:

a) has been commissioned prior to 29th September 2010 or after 31st March 2016; or

b) is not registered with Central Agency under REC scheme on or before 30th June 2016.

Provided that a CGP based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, and fulfilling both the following conditions:

a) having date of commissioning between 29th September 2010 and 31st March 2016; and

b) registered with Central Agency under REC scheme on or before 30th June 2016

⁵ Added vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

⁶ Added vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

⁷ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such plant does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit:

Provided further that if such plant meeting the eligibility criteria for REC, forgoes on its own, the benefits of concessional transmission or wheeling charges and/or banking facility benefit, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits:

Provided also that the above mentioned condition for participating in the REC scheme shall not apply if the benefits given to such plant in the form of concessional transmission or wheeling charges and or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

Provided also that if any dispute arises as to whether a CGP or any other renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation:- For the purpose of this regulation, the expression „banking facility benefit“ shall mean only such banking facility whereby the CGP or any other renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.]⁸

- (2) The generating company [or the distribution licensee, as the case may be]⁹ after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure:
- (3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration.

Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.

- (4) A person aggrieved by the order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within fifteen days from the date of such order, and the Commission may pass order, as deemed appropriate on such appeal.

6. Revocation of Registration

- (1) If the Central Agency, after making an enquiry or based on the report of the Compliance Auditors, is satisfied that public interests so require, it may revoke registration of the eligible entity in any of the following cases, namely:-
 - (a) where the eligible entity, in the opinion of the Central Agency, makes wilful and prolonged default in doing anything required of him by or under these regulations;
 - (b) where the eligible entity breaks any of the terms and conditions of its accreditation or registration, the breach of which is expressly declared by such accreditation or registration to render it liable to revocation;
 - (c) where the eligible entity fails within the period required in this behalf by the Central Agency - (i) to show, to the satisfaction of the Central Agency, that it is in a position fully and efficiently to discharge the duties and obligations imposed on it by its accreditation or registration; or (ii) to make the deposit or furnish the security, or pay the fees or other charges required by its accreditation or registration.

⁸ Inserted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

⁹ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

- (2) The Central Agency before revoking the registration under Clause (1) of this regulation shall give to the eligible entity reasonable opportunity for being heard.
- (3) Notwithstanding the provisions of sub-regulations (2) and (3) above, the Commission may from time to time direct the Central Agency to initiate enquiry and/or revocation process if the Commission deems it fit where any or all of the conditions as at clauses (a) to (c) of sub-regulation (1) exist.
- (4) A person aggrieved by the order of the Central Agency under proviso to clause (1) of this regulation may appeal before the Commission within fifteen days of such order being communicated, and the Commission may pass order, as deemed appropriate on such appeal.

7. Denomination and issuance of Certificates

- (1) [The eligible entity [other than distribution licensee]¹⁰ shall apply to the Central Agency for certificates within six months from the corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the month.]¹¹

- [(1A) The eligible distribution licensees shall apply to the Central Agency for Certificates within three months from the date of obtaining the certification, as provided in clause (1 A) of the Regulation 5, from the concerned Appropriate Commission.]¹²
- (2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible entity:
- (3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.
- (4) The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid [or deemed to be injected in case of self consumption by eligible [captive generating plant]¹³]¹⁴ and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures.
- (5) The process of certifying the energy injection shall be as stipulated in the detailed procedures to be issued by the Central agency.
- [(6) Each Certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source e and injected or deemed to be injected (in case of self consumption by eligible [captive generating plant]¹⁵ into the grid.)¹⁶
- [(7) The Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC

¹⁰ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹¹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹² Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹³ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹⁴ Added vide First Amendment Regulations, 2010 w.e.f. 1.10.2010

¹⁵ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹⁶ Substituted vide First Amendment Regulations, 2010 w.e.f. 1.10.2010

framework prior to 1st January 2015, for one Megawatt hour of electricity generated and injected into the grid or deemed to be injected (in case of self-consumption by eligible CGP) into the grid as per the following formula:

Vintage Multiplier = Floor Price of Base Year / Current Year Floor Price

Where,

- i. "Base year" means the year 2012-13 being the year in which the floor price was determined for solar REC for a period of five years"
- (8) The vintage multiplier as specified in clause (7) of this Regulation shall be provided to the solar generating companies registered under REC framework prior 1st January 2015 and shall be applicable [for the existing and future solar RECs]¹⁷ for the period from 1st January 2015 up to 31st March 2017, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated.]¹⁸

8. Dealing in the certificates

- (1) [Unless otherwise specifically permitted by the Commission by order, the certificate shall be dealt only through the power exchange and not in any other manner except as provided in clause (3) of this regulation.]¹⁹
- (2) The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange:

Provided that the Power Exchanges shall obtain prior approval of the Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange.
- [(3) An eligible renewable energy generator including an eligible captive generating plant shall be permitted to retain the certificates for offsetting its renewable purchase obligation as a consumer subject to certification and verification by the concerned State Agency:]²⁰

9. Pricing of Certificate

- (1) The price of Certificate shall be as discovered in the Power Exchange:

Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.
- (2) The Commission while determining the floor price and forbearance price, shall be guided inter alia by the following principles:
 - (a) Variation in cost of generation of different renewable energy technologies falling under solar and non-solar category, across States in the country;
 - (b) Variation in the Pooled Cost of Purchase across States in the country;
 - (c) Expected electricity generation from renewable energy sources including:-
 - (i) expected renewable energy capacity under [tariff, for sale of electricity to an obligated entity for the purpose of meeting its renewable purchase obligations,

¹⁷ Inserted vide Corrigendum dated 27.01.2015

¹⁸ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹⁹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

²⁰ Added vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013 later substituted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

determined under Section 62 or adopted under Section 63 of the Act by the Appropriate Commission.]²¹

(ii) expected renewable energy capacity under mechanism of certificates;

(d) Renewable purchase obligation targets set by various State Commissions.

10. Validity and extinction of Certificates

- (1) [[After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations from the date of commercial operation or from the date of registration of such plant by the Central Agency whichever is later:

[Provided further that the Certificate issued under these regulations shall remain valid for one thousand and ninety five days from the date of issuance:

Provided that the RECs which expired in the financial year 2014-15 and the RECs issued till the date of effect of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third Amendment) Regulations, 2014 shall remain valid for one thousand and ninety five days from the date of issuance or up to 31st March 2017, whichever is later.

Provided also that the Certificate issued to an eligible entity for the electricity generated at a time when such entity fulfilled the eligibility criteria for accreditation, shall remain valid for the said period of one thousand and ninety five days, even if accreditation of such entity is revoked at a later date:]²²

Provided that where an eligible entity has obtained accreditation and registration on the basis of false information or by suppressing material information and the accreditation of such entity is revoked at a later date, the Certificates already issued to such entity but not redeemed shall stand revoked from the date of issue of such Certificates and in respect of Certificates already redeemed, such entity shall deposit the amount realized from sale of such Certificates along with the interest with the Central Agency at the rate of two (2) percent in excess of the applicable State Bank of India Base rate per annum.]]²³

- (2) Subject to the time limit as provided in clause (1) of this Regulation, a Certificate shall be deemed to have been extinguished after it has been exchanged by way of sale and purchase in the Power Exchange.

11. Fees and charges:

- (1) The Commission may from time to time, based on the proposal in this regard from the Central Agency, determine, by order, the fees and charges payable by the eligible entities for participation in the scheme for registration, eligibility of certificates, issuance of certificates and other matters connected therewith.
- (2) The fees and charges payable under these regulations may include one-time registration fee and charges, annual fee and charges, the transaction fee and charges for issue of certificate and charges for dealing in the certificate in accordance with these regulations, as the Commission may consider appropriate.
- (3) The fees and charges paid by the eligible entities shall be collected by the Central Agency and utilised for the purpose of meeting the cost and expense towards the remuneration payable to the compliance auditors, the officers, employees, consultants and representatives engaged to perform the functions under these regulations.

²¹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

²² Substituted vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

²³ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

12. Funding for capacity building of State Agency:

- (1) The Commission may, by order, provide for a certain percentage of the proceeds from the sale of Certificates for the purpose of training and capacity building of the State Agencies and other facilitative mechanisms for the implementation and monitoring of the detailed procedures issued by the Central Agency.
- (2) The proceeds as provided under clause (1) of this regulation shall be collected by the power exchange and transferred to the Commission or such agency as may be directed by the Commission.

13. Appointment of compliance auditors:

- (1) The Commission may, in consultation with the Central Agency, appoint from time to time compliance auditors to inquire into and report on the compliance of these Regulations by the person applying for registration, or on the compliance by the renewable energy generators in regard to the eligibility of the Certificates and all matters connected thereto.
- (2) The compliance auditor shall have the qualifications and experience as contained in the Schedule to these Regulations:

Provided that the Commission may by order amend the Schedule from time to time.

- (3) The Commission may from time to time fix the remuneration and charges payable to such auditors and all such amount payable shall be met out of the funds which the Central Agency may collect from the eligible entities.

14. Power to give directions:

The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.

15. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

Sd/-
(Alok Kumar)
Secretary

Schedule**Qualification of Auditors**

The auditor could be an individual person or a firm having persons with qualification and experience in the following areas:

- a. Finance or accounts or commerce, and

RE Certificate Regulations, 2010

- b. having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity, experience that demonstrates an adequate understanding of the electricity sector, institutions involved including Regulatory Commission, utilities, government institutions, State agencies and their roles and responsibilities.

Note:

The Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 were notified in Part III, Section 4, No. 26 of the Gazette of India (Extraordinary) dated 18.1.2010 and amended vide:-

- (a) First Amendment Regulations, 2010 published in Part III, Section 4, No. 249 of the Gazette of India (Extraordinary) dated 01.10.2010.
- (b) Second Amendment Regulations, 2013 published in Part III, Section 4, No. 192 of the Gazette of India (Extraordinary) dated 11.7.2013.
- (c) Third Amendment Regulations, 2014 published in Part III, Section 4, No. 380 of the Gazette of India (Extraordinary) dated 31.12.2014.
- (d) Corrigendum dated 27.01.2015.
- (e) Fourth Amendment Regulations, 2016 published in Part III, Section 4, No. 112 of the Gazette of India (Extraordinary) dated 30.03.2016.

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)

Procurement of Energy from Renewable Sources

Notification No. 3 of 2010

In exercise of the powers conferred under sections 61, 66, 86 (1)(e) and 181 of the Electricity Act 2003 (36 of 2003) and all powers enabling it in that behalf, Gujarat Electricity Regulatory Commission hereby makes the following Regulations for promoting the sale of power from renewable energy sources to any person and for procurement of energy from renewable sources by distribution licensee within the State of Gujarat.

1. Short Title, Extent and Commencement

- i. These Regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010.
- ii. These Regulations extend to the whole of the State of Gujarat.
- iii. These Regulations, excluding clause 8 shall come into force on the date of their publication in the Gazette.
- iv. Clause 8 of these Regulations shall come into force from a date to be notified by the Commission separately.

2. Definitions and Interpretation

2.1 In these Regulations, unless the context otherwise requires –

- (a) 'Act' means the Electricity Act, 2003 (Act 36 of 2003);
- (b) 'Area of Supply' means the area within which a distribution licensee is authorized to supply electricity;
- (c) 'Central Agency' means the agency operating the National Load Dispatch Centre or such other agency as the Central Commission may designate from time to time.

- (d) 'Central Commission' means the Central Electricity Regulatory Commission referred to in subsection (1) of section 76 of the Act;
- (e) 'Certificate' means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010;
- (f) 'Commission' means Gujarat Electricity Regulatory Commission;
- (g) 'Distribution Licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (h) 'Floor price' means the minimum price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 at and above which the certificate can be dealt in the power exchange;
- (i) 'Forbearance price' means the ceiling price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 within which only the certificates can be dealt in the power exchange;
- (j) 'MNRE' means the Ministry of New and Renewable Energy;
- (k) 'Obligated entity' means the entity mandated under clause (e) of subsection (1) of section 86 of the Act to fulfil the renewable purchase obligation and identified under clause 3 of these Regulations;
- (l) 'Person' shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (m) 'Power Exchange' means any exchange operating as the power exchange for electricity in terms of the orders issued by the Central Commission;
- (n) 'Preferential tariff' means the tariff fixed by the Commission for sale of energy from a generating station based on renewable energy sources to a distribution licensee;
- (o) 'Quantum of purchase' means percentage share of total purchase of electricity from renewable energy sources as specified in these Regulations. The quantum would be the sum of all direct purchases from generating stations based on renewable energy sources and purchase from any other licensee, which would arise from renewable energy sources;
- (p) 'Renewable energy sources' in this context means nonconventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass and bagasse based cogeneration, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period of time) as approved by the Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;
- (q) 'State' means the state of Gujarat;
- (r) 'State agency' means the agency in the State of Gujarat to be designated by the Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations;
- (s) 'Supply', in relation to electricity, means the sale of electricity to a licensee or consumer;
- (t) 'Year' means a financial year.

Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings assigned to them in the Act. Expressions used herein but not specifically defined in these Regulations or in the Act but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them by such law. Expressions used herein but not specifically defined in the Regulations or in the Acts or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry.

2.2 Interpretation

For the interpretation of these Regulations, unless the context otherwise requires:

- a. words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;
- b. the terms "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" regardless of whether such terms are followed by such phrases or words of like import;
- c. references herein to the "Regulations" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force;
- d. the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations;
- e. references to the statutes, Regulations or guidelines shall be construed as including all statutory provisions consolidating, amending or replacing such statutes, Regulations or guidelines, as the case may be, referred to.

3. Applicability of Renewable Purchase Obligation

These Regulations shall apply to:

- (1) Distribution licensee
- (2) Any other person consuming electricity (i) generated from conventional Captive Generating Plant having capacity of 5 MW and above for his own use and / or (ii) procured from conventional generation through open access and third party sale.

4. Quantum of Renewable Purchase Obligation (RPO)

- 4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
(1)	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.5%	0.5%
2012-13	7%	5.5%	1.0%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

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

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

- 4.2 The Commission may, *suo-motu* or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee.
- 4.3 For the FY 2009-10, the RPO specified for the years 2008-09, vide Commission's Notification No.15 of 2005 shall be applicable.
- 4.4 The RPO specified for the Financial Year 2012-13 shall be continued beyond 2012-13 till any revision is effected by the Commission in this regard.

5. Certificates under the Regulations of the Central Commission

- 5.1 Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfillment of the RPO in accordance with Table 1.

- 5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these Regulations.
- 5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase.

6. State Agency

- a) The Commission shall designate an agency as the State Agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations.
- b) The State Agency shall function in accordance with the directions issued by the Commission and shall act in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
- c) The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission, if required, for compliance of the renewable purchase obligation.
- d) The Commission may from time to time fix the remuneration and charges payable to the State Agency for discharge of its functions under these Regulations.

7. Distribution Licensee

- 7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in

accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

- 7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.

8. Captive and Open Access User(s)/ Consumer(s)

- 8.1 The quantum of RPO mentioned in clause 4.1 shall be applicable to captive and open access user(s)/ consumer(s) from the date as would be notified in the Official Gazette.
- 8.2 Every Captive and Open access consumer(s)/ user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.
- 8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of these Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per clause 9.
- 8.4 Captive/ Open Access consumer(s)/ User(s) may fulfil its RPO through the renewable energy certificate as provided in clause 5 above.

9. Consequences of default

- 9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.

10. Grid Connectivity

- 10.1 Any person generating electricity from renewable energy sources, irrespective of installed capacity, shall have open access to any Licensee's transmission system and/or distribution system or grid as the case may be. On an application from such person, the transmission licensee or distribution licensee shall provide appropriate interconnection facilities, as far as feasible, before Commercial Operation Date of the renewable energy project. Such interconnection shall follow the grid connectivity Standards as specified in the Indian Standard Grid Code, State Grid Code and/or the manner prescribed by the Central Electricity Authority.

The STU/SLDC/Licensee shall make best efforts to strengthen the system to provide timely open access to transmit power from renewable energy sources.

11. Cross-Subsidy

Third Party Sale from renewable energy sources shall be exempted from the cross-subsidy surcharge determined by the Commission from time to time. However, no banking facility shall be provided for supply (third party sale) from renewable energy sources through open access. Further, ABT compatible interface metering system capable of energy accounting for each block of 15 minutes shall be provided at both supply as well and drawal point.

For third party sale, energy generation from renewable energy sources in each 15 minute time block shall be set off against the captive/ open access user(s) consumption in the same 15 minute time block.

12. Power to remove difficulties

12.1 The Commission shall *suo motu* or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.

13. Repeal

13.1 The previous Regulation No.15 of 2005 dt. 29th October, 2005 is hereby repealed.

Place : Ahmedabad
Date : 17 April, 2010.

Sd/-
SANJAY NANDAN AGRAWAL
SECRETARY
Gujarat Electricity Regulatory Commission.

ગુજરાત વિદ્યુત નિયંત્રક આયોગ

નવીનકરણપાત્ર સાધનોમાંથી વીજળીની પ્રાપ્તિ ૨૦૧૦ના જાહેરનામા નં. ૩/૨૦૧૦

૨૦૦૩ ના વીજળી અધિનિયમ ૨૦૦૩નો અધિનિયમ ૩૬) ની કલમ ૬૧, ૬૬, ૮૬, (૧) (ઈ) અને ૧૮૧ અન્વયે મળેલી સત્તાઓ અને તે અંગે તેને શક્તિમાન બતાવતી તમામ સત્તાઓની રૂઝે ગુજરાત વિદ્યુત નિયંત્રક આયોગ, નવીનકરણપાત્ર વીજળી સાધનોમાંથી પ્રાપ્ત વીજળીનું કોઈપણ વ્યક્તિ વેચાણ કરવા પ્રોત્સાહન આપવા અને ગુજરાત રાજ્યની અંદર વિતરણ પરવાનેદાર દ્વારા નવીનકરણપાત્ર સાધનોમાંથી વીજળી પ્રાપ્ત કરવા અંગેના નીચેના વિનિયમો અહીં કરે છે.

૧. ટૂંકું શીર્ષક, વ્યાપ અને પ્રારંભ :

(૧) આ વિનિયમો ગુજરાત વિદ્યુત નિયંત્રક આયોગ (નવીનકરણપાત્ર) સાધનોમાંથી વીજળી પ્રાપ્તિ), વિનિયમો ૨૦૧૦ કહેવાશે.

(૨) આ વિનિયમો સમગ્ર ગુજરાત રાજ્ય સુધી વ્યાપ્ત છે.

(૩) આ વિનિયમો ખંડ ૩ ને બાદ કરતાં રાજ્યપત્રમાં તેથી પ્રસિધ્ધ થાય તે તારીખથી અમલમાં આવશે.

(૪) આ વિનિયમોનો ખંડ-૮ આયોગ અલગ રીતે જાહેર કરે તે તારીખથી અમલમાં આવશે.

૨. વ્યાખ્યા અને અર્થઘટન :

૨.૧ આ વિનિયમોમાં સંદર્ભથી અન્યથા જરૂરી હોય તે સિવાય : -

(ક) "અધિનિયમ" એટલે ૨૦૦૩ નો વીજળી અધિનિયમ (૨૦૦૩ નો ૩૬ મો અધિનિયમ)

(ખ) "પુરવઠા વિસ્તાર" એટલે વિતરણ પરવાનેદાર જ્યાં વીજળી પૂરી પાડવા અધિકૃત હોય તે વિસ્તાર

(ગ) "કેન્દ્રીય સંસ્થા" એટલે રાષ્ટ્રીય વીજભાર રવાનગી કેન્દ્રનું સંચાલન કરતી સંસ્થા અથવા કેન્દ્રીય આયોગ વખતોવખત નિર્દિષ્ટ કરે તેવી અન્ય સંસ્થા.

ANNEXURE : C
48

Extra No. 344

વાર્ષિક લવાજમનો દર રૂ. ૩૫૦૦/-



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.



GUJARAT ELECTRICITY REGULATORY COMMISSION

Gandhinagar.

NOTIFICATION No. 2 of 2015

In exercise of the powers conferred under sections 61, 86(1)(e) and 181 of the Electricity Act, 2003 read with sub-regulation (iv) of Regulation 1 and Regulation 8 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) (Principal Regulations) and Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 (Notification No. 2 of 2014), and all other powers enabling it in this behalf, the Gujarat Electricity Regulatory Commission hereby notifies the 1st day of July, 2015, as the date on which the sub-regulation (iv) of Regulations 1 and Regulation 8 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) and amendments made in it shall come into force and the Renewable Purchase Obligation shall become applicable to Captive and Open Access User(s)/Consumer(s).

Place : Gandhinagar.

Date : 1/07/2015.

S. T. ANADA

I/C Secretary

Gujarat Electricity Regulatory Commission

IV-C-Ex. 344-1

344-1

Government Central Press, Gandhinagar.

ANNEXURE :-

D

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C/SCA/171/2011

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 171 of 2011

With

CIVIL APPLICATION NO. 11627 of 2011

In

SPECIAL CIVIL APPLICATION NO. 564 of 2011

With

CIVIL APPLICATION NO. 10435 of 2012

In

SPECIAL CIVIL APPLICATION NO. 558 of 2011

With

SPECIAL CIVIL APPLICATION NO. 7084 of 2011

With

CIVIL APPLICATION NO. 10439 of 2012

In

SPECIAL CIVIL APPLICATION NO. 936 of 2011

With

SPECIAL CIVIL APPLICATION NO. 936 of 2011

With

CIVIL APPLICATION NO. 10440 of 2012

In

SPECIAL CIVIL APPLICATION NO. 791 of 2011

With

CIVIL APPLICATION NO. 10436 of 2012

In

SPECIAL CIVIL APPLICATION NO. 597 of 2011

With

SPECIAL CIVIL APPLICATION NO. 597 of 2011

With

CIVIL APPLICATION NO. 10434 of 2012

In

SPECIAL CIVIL APPLICATION NO. 8027 of 2011

With

SPECIAL CIVIL APPLICATION NO. 564 of 2011

With

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CIVIL APPLICATION NO. 10441 of 2012
In
SPECIAL CIVIL APPLICATION NO. 7084 of 2011
With
CIVIL APPLICATION NO. 10437 of 2012
In
SPECIAL CIVIL APPLICATION NO. 564 of 2011
With
CIVIL APPLICATION NO. 9013 of 2011
In
SPECIAL CIVIL APPLICATION NO. 171 of 2011
With
SPECIAL CIVIL APPLICATION NO. 8027 of 2011
With
SPECIAL CIVIL APPLICATION NO. 558 of 2011
With
SPECIAL CIVIL APPLICATION NO. 791 of 2011
With
SPECIAL CIVIL APPLICATION NO. 10471 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE ANANT S. DAVE

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

=====

HINDALCO INDUSTRIES LIMITED (UNIT : BIRLA COPPER)....Petitioner(s)

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C/SCA/171/2011

CAV JUDGMENT

Versus

GUJARAT ELECTRICITY REGULATORY COMMISSION....Respondent(s)

=====

Appearance:

MR MIHIR THAKORE Senior Advocate with MR PERCY KAVINA Senior Advocate with MR SANDEEP SINGHI with MR SHAMIK BHATT for Singh & Company for the Petitioner(s) No. 1 [SCA Nos.171/2011, 597/2011, 564/2011 and 558/2011]

MR MIHIR H. JOSHI Senior Advocate with MR GAURAV S MATHUR for the Petitioner(s) No.1 [SCA Nos.7984/2011 & 10471/2013]

MR SN SOPARKAR Senior Advocate with MR RS SANJANWALA Senior Advocate with MR MAHESH SAHASRANAMAN [SCA No.791/2011]

MR KAMAL TRIVEDI Senior Advocate with MR BD KARIA, ADVOCATE for the Respondent-GERC in all SCAs and CAs

MR PM THAKKAR Senior Advocate with MR HEMAL K MAKWANA Advocate for the Applicant-Indian Wind Energy Association

=====

CORAM: **HONOURABLE MR.JUSTICE ANANT S. DAVE**

Date : 12/03/2015

COMMON CAV JUDGMENT

1 In all these nine petitions, the petitioners challenge the order dated 17.4.2010 and the regulations issued vide notification dated 17.4.2010, namely, the Gujarat Electricity Regulatory Commission (Procurement of Power from Renewable Sources] Regulations, 2010 (hereinafter referred to as 'the Regulations'] passed by the respondent, Gujarat Electricity Regulatory Commission, as being without

jurisdiction, discriminatory, ultra-vires the Electricity Act, 2003, amounting to unreasonable restriction and violative of Articles 14 and 19(1)(g) of the Constitution of India. By the impugned order, the Gujarat Electricity Regulatory Commission, in exercise of power under Section 86(1)(e) of the Electricity Act, 2003 [for short, 'the Act'], has mandated all the petitioners, who are having 'captive power plant' [CPP] or 'captive generating plant' [CGP], to purchase electricity (in kWh) from renewable energy sources at a defined minimum percentage of their total consumption during a year, by treating them as 'Obligated Entities' and bringing them within the purview of 'Renewable Purchase Obligation'.

2 The common issue raised in all these petitions is based on interpretation of Section 86(1)(e) with other provisions of Electricity Act, 2003, Rules and Regulations, etc.

3 Details of the activities of the petitioners are as under:

Hindalco Industries Limited, petitioner of Special Civil Application No.171 of 2011, has set up a mega Greenfield copper smelting and refining. It produces copper cathodes and continuous cast copper rods. It has total capacity of the smelter upto 5 lakh tons per year at single location at Dahej.

Grasim Industries Limited, petitioner of

Special Civil Application No.558 of 2011, is engaged in manufacture of cellulosic fibers. It has captive power plant unit i.e. Birla Cellulosic, at Kosamba, Dist: Bharuch.

Aditya Birla Nuvo Limited, petitioner of Special Civil Application No.564 of 2011, is engaged in manufacture of viscose filament yarn, caustic soda. It has captive power plant at Veraval.

Ultratech Cement Limited, petitioner of Special Civil Application No.597 of 2011, is engaged in manufacture of cement at Kovaya, Dist: Amreli and is having a number of units of CPP of different capacity under operation.

Reliance Industries Limited, petitioner of Special Civil Application No.791 of 2011, is engaged in oil refinery business at Jamnagar.

Arvind Limited, petitioner of Special Civil Application No.936 of 2011, is engaged in the business of textiles and clothing having multi product textile facility at Naroda road, Ahmedabad.

DCM Shriram Consolidated Limited, petitioner of Special Civil Application No.7084 of 2011, has a division at Bharuch in the name of Shriram Alkali & Chemicals. It is engaged in the business of manufacturing chlor-alkali products viz. caustic soda, chlorine, hydrogen and hydrochloric acid at its unit

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at Bharuch.

United Phosphorus Limited, petitioner of Special Civil Application No.8027 of 2011, is in the business of producing chloro alkalies and agro chemicals, at Jhagadia, Dist: Bharuch.

Nirma Limited, petitioner of Special Civil Application No.10471 of 2013, is engaged in the business of manufacturing soaps and detergent, soda ash, caustic soda, salt and pharmaceuticals. It has 6 units/divisions in Gujarat.

4 Admittedly, the petitioners are running various manufacturing plants in the State of Gujarat and they have, as a vital step towards making the plants self-sufficient in their energy requirements and for uninterrupted supply of power, installed 'captive power plant' [CPP] or 'captive generating plant' [CGP] at their respective units. It is the case of the petitioners that the CPPs came up during the time when the State of Gujarat was facing severe electricity shortage and unreliable electricity supply to the industries, which hampered industrial growth and production in the State. As a result, to overcome the shortage and unreliable power supply crisis, the State decided to promote CPPs/CGPs and, especially, encouraged co-generation to meet with power and steam requirements of the respective industries. The industry at large more particularly, the continuous process industries were also constrained to set up

their own CPPs within the framework of the then prevailing Electricity Supply Act, 1948. Thus, the CPPs were set up by the industrial consumers with a huge investment.

5 The respondent framed Regulations vide notification dated 29.10.2005. The 2005 Regulations, in substance, provided for each Distribution Licensee to purchase a defined minimum quantum of its total consumption of electricity during a year from renewable sources. After considering the objections raised and hearing the interested parties, the respondent by order dated 8.5.2009 came up with the draft of fresh Power Procurement from Renewable Sources Regulation, vide Notification No.1 of 2009. According to the 2009 Regulations, the minimum power purchase requirement from renewable sources was made applicable to the CPPs. The petitioners filed writ petitions challenging the order dated 8.5.2009 passed by the respondents. This Court [Coram: K.S. Jhaveri, J.], by order dated 9.11.2009, disposed of all the writ petitions as having become infructuous, since the impugned order dated 8.5.2009 passed by the respondent will not survive in the eyes of law on withdrawal of concerned Review Petition No.933 of 2008.

6 It is the case of the petitioners that, subsequently, the respondent prepared a new draft of Regulations on Power Procurement from Renewable Sources {dated 8.1.2010} which in substance were a replica of the earlier 2009 Regulations. A public

hearing was conducted on 4.3.2010 and the petitioners raised objections. The respondent, after giving due consideration to the objections raised by various CPPs, passed the Regulations on 17.4.2010. The subject Regulations, qua the CPPs, have not been implemented by notification as on date, as is stated under clause 1(iv) of the Regulations which provides that Clause 8 of the Regulations, dealing with the RPO imposition upon the CPPs and open access users, shall come into force from a date to be notified by the respondent separately. However, clause 2(k) of the Regulations classifies the CPPs as 'Obligatory Entity' and clause 3(b) states that RPO would be applicable to a CPP having capacity of 5 MW and above, having been notified with effect from 17.4.2010. It is submitted that the issue of CPPs being at par with the renewable energy producers came up before the Appellate Tribunal for Electricity in the matter of Century Rayon vs. Maharashtra Electricity Regulatory Commission and others, and the Appellate Tribunal, by order dated 26.4.2010, held that CPPs are at par with renewable energy producers and thus RPO cannot be imposed upon them.

7 The respondent passed order No.7 of 2010 and Notification No.4 of 2010 on 16.4.2010, designating the Gujarat Energy Development Agency (GEDA) as the State Agency for the purpose of the Procurement of power of Energy from Renewable Sources Regulations, (Notification No.3 of 2010) in addition to pre-assigned functions of accrediting and recommending the

renewable energy projects for registration in the State. In the order dated 17.4.2010, the respondent held as under:

[i] The Commission is empowered to frame the Regulations for procurement of power from renewable energy sources as a promotional measure. The Commission has jurisdiction to frame the Regulations.

[ii] The Draft Regulations do not violate any provisions of the Constitution;

[iii] The Commission decides to retain the provisions regarding RECs as included in the Draft Regulations;

[iv] The proposed regulations, in no way, interfere with the operation of generating plants since RPO is not related to generation from such plants but to consumers availing generation from such CPPs.

[v] Section 49 gives open access consumers the freedom to purchase electricity from 'any person'. Imposing an RPO does operate as a restriction on this freedom, since the specified percentage of the total consumption has to be from renewable energy sources (or to be compensated by purchasing RECs). However, it is a reasonable and permissible restriction.

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[vi] RPO shall be applied to consumption from CPPs with generating capacity of 5 MW or more.

[vii] For fulfilling the RPO, only the electricity generated or co-generated from renewable energy sources, can be considered eligible.

[viii] The Regulations are framed in pursuance of the powers vested in the Commission under section 181 of the Act. As such, power to seek compliance of the Regulations also vests with the Commission.

8. Learned Senior Advocates, Mr. Mihir Thakor, Mr. Percy Kavina, Mr. S.N.Soparkar, Mr. R.S.Sanjanwala and Mr. Mihir Joshi, appearing for the petitioner – companies strenuously urged that GERC erred in law as well as on facts in fastening obligation upon the petitioners by bringing them under purview of 'obligated entities' inasmuch as while discharging functions under the Act, 2003, Regulatory Commission is to be guided by National Electricity Policy is National Electricity Plan and Tariff Policy published under Section 3 of the Act, 2003. That CGPs / GPPs are not obligated entities in view of their distinct status under Section 9 of the Part-III under the heading Generation of Electricity of Act, 2003, since CGPs are not under regulatory regional for availing licences etc. Learned counsels for the petitioners

raised the following contentions:

[a] The respondent has no jurisdiction to pass the order impugned. The respondent has failed to appreciate the overall scheme of the Act and the scope of its limited regulatory powers qua CPPs. The Act recognizes the special provision of CPPs, which is reflected in Section 9 of the Act which starts with a non-obstante clause entitling a person to '... construct, maintain or operate a captive generating plant and dedicated transmission lines'. Section 9(2) of the Act provides that, 'every person who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use.' Proviso to Section 9(1) clearly indicates the limited extent of regulation which the Act contemplates over CPPs by providing that, "..... the supply of electricity from captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.". Hence, the CPPs are outside the regulatory control of the respondent, except as it contemplated under the proviso to Section 9(1) of the Act and, consequently, Section 86(1)(e) cannot be pressed into service so as to extend the RPO to the CPPs.

[b] The order impugned is outside the ambit and scope of Sections 86(1)(e), 61(h) and 181 of the Act, in as much as, these sections do not empower the respondent to create compulsory obligation upon a person requiring such person to purchase a certain quantity or percentage of electricity from such source as the respondent may require. No unbridled or unfettered discretion is conferred on the respondent under the Act to exercise powers in breach of the fundamental rights to frame such regulation specifying a quantum or percentage of power to be purchased from the renewable energy sources. The CPPs are outside the regulatory control of the respondent.

[c] The respondent has misconstrued the provisions of Section 86(1)(e) of the Act and wrongly held that both 'co-generation' and 'generation' relate to 'electricity from renewable sources of energy'. That, interpretation of the term 'co-generation' is contrary to the ratio laid down by the APTEL vide its order dated 26.4.2010 in the matter of Century Rayon vs. Maharashtra Electricity Regulatory Commission and others, wherein it is observed that co-generation of CPPs is at par with renewable energy producers and thus the RPPO cannot be imposed upon them. The principle of judicial discipline requires that the judgments of the higher appellate authorities should be followed scrupulously and unreservedly by its

subordinate authorities. Failure thereof would amount to destructive of one of the basic principles of the administration of justice.

8.1 Section 86(1)(e) clearly mandates that both co-generation and generation of electricity from renewable sources of energy, are to be promoted. This section cannot be interpreted so as to mean that co-generation has also to be from renewable sources of energy since that would violate the language of the provision. Further more, consumption of electricity by a captive consumer from its captive power plant is not 'consumption of electricity in the area of distribution licensees' as contemplated in Section 86(1)(e). The test is not whether a captive consumer is within the geographical area of a distribution licensee but whether the captive consumer is supplied electricity by a licensee.

[d] The impugned Regulations are ultra vires the Act. That, the respondent has misconstrued the purport of the phrase contained in Section 86(1)(e) of the Act 'a percentage of the total consumption of electricity in the area of a distribution licensee'. It is submitted that, on true interpretation of Section 86(1)(e), it could only mean the electricity consumed in the area of supply of the distribution licensee as is distributed by the distribution licensee and cannot include CPPs simply because they are physically located within the area of a

distribution licensee, notwithstanding the fact that the CPPs are otherwise outside the regulatory sphere of the respondent. Section 86(1)(e) has to be read subject to the non-obstante provision contained in Section 9 of the Act. A CPP in terms of Section 2(8) of the Act means, 'a power plant set up by any person to generate electricity primarily for his own use...'. An artificial distinction is pressed into service so as to avoid the mandate of Section 9 of the Act. Section 9 explicitly contemplates the right of the CPPs to (a) construct, (b) maintain or operate a captive generating plant, whereas, Section 86(1)(b) merely entitles the State Commission to regulate electricity purchase and procurement process of the distribution licensee. Hence, the respondent has no power to impose restriction which interferes with the right of the CPPs to freely construct, maintain or operate a captive generating plant in terms of the provisos to Section 9(1).

(e) Section 61 of the Act refers to fixation of tariff by the appropriate Commission which also contemplates that in doing so, the Commission shall be guided by 'the promotion of co-generation and the generation of electricity from renewable sources of energy' and, thus, there is no tariff fixation exercise by an appropriate commission involved in the use of electricity by

a captive consumer from its captive power plant.

(f) Under the scheme of the Act, both renewable source of energy and co-generation power plant are equally entitled to be promoted by the State Commission through suitable methods and suitable directions, in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to the public at large, are entitled to be treated at par with the other renewable energy sources. But, the captive users of electricity in co-generation mode have been discriminated in a hostile manner in as much as it denies the right of equality.

(g) As defined in the Electricity Rules, 2005, a captive consumer is really not a consumer but defined as a 'captive user' in Rule 3(2) (explanation)(1)(b).

(h) Mere use of fossil fuel would not make co-generation plant as a conventional plant.

(i) The respondent has failed to appreciate the waste heat recovery is classified as co-generation and the extent of waste heat recovery ought to have been given as a credit while imposing the RPO.

[j] The respondent has erred in observing, on the reading of definition of the word 'specified'

as contained in Section 2(62) of the Act that the same implies that whenever the word 'specified' is used in the Act, the appropriate Commission is mandated to frame the relevant Regulations relating to the particular section(s) of the Act.

(k) That the impugned order is beyond the purview of Section 181 of the Act to frame the Regulation for procurement of power from renewable energy sources as a promotional measure. That the respondent has no power or jurisdiction to mandate compulsory purchase of electricity from a particular source.

(l) That the impugned resolution is arbitrary and violative of Articles 19(1)(g) and 301 of the Constitution of India. The action of the respondent in imposing upon the CPPs, the mandatory requirement to purchase renewable energy directly and proximately interferes with the exercise of freedom of trade guaranteed by Articles 19(1)(g) and 301 of the Constitution of India. The offending provisions contained in the Regulations constitute an unreasonable restriction on the petitioners' fundamental rights guaranteed under Articles 19(1)(g) of the Constitution of India and infringe the constitutional right of the petitioners of free trade and commerce under Article 301 of the Constitution of India.

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8.2 In addition to the submissions made herein above by the learned counsel for the petitioners, the following submissions are also taken note of and they are as under:

8.3 It is submitted that Section 86(1)(e) clearly mandates that both co-generation and generation of electricity from renewable sources of energy are to be promoted. That, this section cannot be interpreted so as to mean that co-generation has also to be from renewable sources of energy since that would violate the language of the provision. Furthermore, consumption of electricity by a captive consumer from its captive power plant is not 'consumption of electricity in the area of distribution licensees' as contemplated in Section 86(1)(e). That, the test is not whether the captive consumer is within the geographical area of a distribution licensee but whether the captive consumer is supplied with electricity by a licensee. To illustrate, a captive consumer, on an island mode who does not take any power from the distribution licensee but entirely relies upon its captive power plant, though being within the geographical area of a distribution licensee, would not fall within the contemplation of Section 86(1)[e] and no obligation for compulsory purchase can be inflicted on such a captive consumer. On the other hand, if a captive consumer relies upon the distribution licensee for 10% of its requirements or at times when its captive power plant is non operational or under maintenance, it

cannot be said that such captive consumer will be fastened with the RPO for its entire power requirement, since that would be violative of Article 19(1)(g) of the Constitution of India. Not only that, to the extent that the captive consumer obtains power from a distribution licensee, a captive consumer is suffering the RPO, to the extent that a distribution licensee suffers the same. Reference may be made in this connection to the definitions contained in Sections 2(15) – consumer, 2(17) distribution licensee, 2(3) area of supply, 2(26) electricity trader, 2(8) captive generating plant, 2(70) supply and 2(71). Consumption, therefore, has to be read in the context of actual consumption through the distribution licensees.

8.4 Section 61 which refers to fixation of tariff by the appropriate commission, also contemplates that in so doing, the Commission shall be guided by 'the promotion of co-generation and the generation of electricity from renewable sources of energy'. Clearly, that is no tariff fixation exercise by an appropriate commission involved in the use of electricity by a captive consumer from its captive power plant.

8.5 The extent of RPO indicated in the subject Regulations is too high and no realistic study of the extent of electricity available from renewable energy sources was available or carried out, before framing the subject Regulations. The respondent has

purportedly relied upon some assessment of availability of electricity from various renewable energy sources in the State with the help of GEDA, but no such study or material has been made available to the CPPs like the petitioner, nor is any such study detailed in the order impugned. There is nothing on record to demonstrate that the total electricity requirement of the Captive Power Consumer, should the subject Regulations be implemented, will be definitely met by producers of renewable energy.

8.6 The respondent has failed to appreciate that in view of the mismatch between the availability of renewable energy on the one hand and the demand which would be generated upon the implementation of RPO, makes the RPO unworkable, impractical and against the interest of Industry at large. The failure of the respondent to undertake a study of RE and the potential demand to be generated before framing the RPO is an abuse of purported jurisdiction of the respondent.

8.7 The respondent, while acknowledging the uncertainty in the availability of renewable energy, appears to suggest that REC is the remedy for such uncertainty and the resultant mismatch between the availability of renewable energy and the requirement of obligated entities to meet the RPO. On the one hand, Captive Consumers would be constrained to reduce the capacity of their CPPs as a consequence of meeting the RPO and then, once the capacity of its CPP is thus

reduced, if electricity from renewable energy sources is not forthcoming and there is a demand-supply gap, the REC is hardly a solution for the industry.

8.8 The respondent has failed to appreciate that the captive consumption saves upto 20% of the transmission and distribution losses otherwise incurred, if this power was to be wheeled from the distant power plants of the Generators through the Distribution Licensees. Furthermore, it also saves concomitant fuel sources and emissions thereof.

8.9 The respondent has failed to appreciate that the Electricity Act 2003 recognizes the need to create competition. Section 61 of the Electricity Act lists out the guiding factors to determine the tariff and sub-section [c] of Section 61 reads as under:

"[c] the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments."

The respondent has ignored the mandate of the guiding investments. The subject Regulations, which provide for special benefits and special status for producers of renewable energy, in the process creating unequal playing fields between such producers and CPPs are unfair, arbitrary and inconsistent with the object and purport of Section 61[c] of the Electricity Act 2003.

8.10 The respondent has failed to appreciate that the concept of Renewable Energy Certificates is at its nascent stage. The subject Regulations contemplate the concept of Renewable Energy Certificates as provided in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issues of Renewable energy Certificate for Renewable Energy) Regulations, 2010. Rule 5.1 of the subject Regulations states that the REC issued shall be valid instruments for the discharge of the mandatory obligations set out in the subject Regulations for the obligated entity to purchase electricity from renewable energy sources. That, the mechanism of REC and Power Exchange has not been fully established as on date. In fact, the entire concept and mechanism of RECs and Power Exchange is in its infancy. Even in most of the developed countries, such concepts are at formative stages and is even otherwise, only applicable to distribution licensees and not to CPPs. Thus, levying an obligation on the CPPs without acquisition of large and accurate generates data, development of suitable enforcement mechanism would lead to erratic and adverse results on the industry at large. It was imperative before any such compulsory obligations are created and the mechanism of RECs and Power Exchange are enforced, that the basic groundwork in this respect, the modalities for such certificates and their trading, should have been first worked out and only then, any such regulations be considered. Enforcing regulations without as much as the clarity of concepts in question

and without the mechanism in place, will surely create a chaos and inconceivable difficulty for the CPPs.

8.11 Under the scheme of the Act, both renewable source of energy and co-generation power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to public at large, are to be entitled to be treated at par with the other renewable energy sources. The intention of the Legislature is to clearly promote co-generation in this industry generally irrespective of the nature of the fuel used for such co-generation and not co-generation or generation from renewable energy sources alone.

8.12 The impugned regulations are in violation of Article 14 of the Constitution of India. That the regulations are one sided in favour of the producers of power from renewable sources and discriminatory qua the captive and open access users.

[i] The respondent has erred in not following the mandate of the Act but rather taking the National Electricity Policy and the Tariff Policy as guiding principles, in implementing the Act.

9. While adopting the submissions made by the learned Senior Counsels appearing for the co-petitioners, Mr. S.N. Soparkar, learned Senior Counsel

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appearing for the petitioner in Special Civil Application No.791 of 2011, has contended that the Act requires the SERC to promote both renewable source of energy and co-generation by providing suitable measures, namely, (i) for connectivity with the grid and sale of electricity by such source; (ii) for compulsory purchase of electricity from such source of a specific percentage. The impugned Regulation, which proposes that each distribution licensee and captive and open access user/consumer shall purchase electricity from renewable source at a specified minimum percentage of his/her total consumption within the area of distribution licensee during a year, would run counter to law so enacted by the Act of 2003 by leaving out promotion of co-generation [except for co-generation from bio-fuel] as envisaged by the Act and giving discriminatory treatment to co-generation sources other than bio-fuel including bagasse based resources. Inclusion of CPP within obligated entity under the Regulation is beyond the purview of the Act and the Rules made thereunder in as much as including of CPP would result into significant disadvantage by putting an additional burden on co-generation power plant to purchase power generated from renewable source at a higher cost and without any requirement and, therefore, it would be violative of Articles 14, 19(1)(g) and 301 of the Constitution of India.

9.1 Under the scheme of the Act, both renewable source of energy and co-generation power plant are equally entitled to be promoted by State Commission

through the suitable methods and suitable directions in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to public at large, are to be entitled to be treated at par with the other renewable energy sources. The intention of the legislature is to clearly promote co-generation in the industry generally irrespective of the nature of the fuel used for such co-generation and not co-generation or generation from renewable energy sources alone.

9.2 In the peculiar facts of installation of CPP by the petitioner, it is submitted that the petitioner installed Heat Recovery System Generators [HRSG] which recover heat from exhaust of gas turbines and the same heat is used for industrial purpose and running steam turbines which are, in turn, used for further power generation. Learned Senior Counsel has placed reliance on Section 86(1) of the Act about functions of the State Commission and definition of 'co-generation' under Section 2(12) and submitted that, indisputably, co-generation based on fossil fuel has tremendous scope and significant contribution to the benefit for environment by way of curtailing emissions harmful to the atmosphere. The learned Senior Counsel has also relied upon efficiency factory of power plant based on thermal and combined cycle power plants having co-generation. According to the learned Senior Counsel, since generation includes co-generation, use of the word 'co-generation' separately in Section 86(1)(e) of the Act would be redundant if interpretation is

afforded as canvassed by the learned counsel for the respondent-commission. Reliance is placed on the National Electricity Policy clauses 5.2.26, 5.12.3 and Tariff Policy of 2006 clauses 6.3 and 6.4 in addition to his submission about distinct status of captive power plant.

9.3 Thus, according to the learned Senior Counsel, a plain reading of Section 86(1)(e) of the Act would provide for discharge of following functions: (i) promote co-generation; (ii) promote generation of electricity from renewable source of energy; (iii) provide suitable measures for connectivity with the grid; (iv) for sale of electricity to any person and (v) specify percentage of total consumption of electricity in the area of distribution licensee for purchase of electricity produced by co-generator and generation through renewable source of energy. Inter-alia, reliance is placed on the decision dated 2.12.2013 of the Appellate Tribunal for Electricity in Appeal No.53 of 2012 that purchase obligation under Section 86(1)(e) of the Act can be fastened only from electricity generated from renewable source of energy and a distribution company cannot be fastened with obligation to purchase a percentage of consumption from fossil fuel based co-generation. Even reference is made to various regulations framed by the West Bengal Regulatory Commission for co-generation and generation of electricity from renewable source of energy, Regulations 2008, Rajasthan Electricity

Regulatory Commission and Maharashtra Regulatory Commission exempting grid connected captive generated plants provided that such CPP consume power from fossil fuel based co-generation plants.

10 In support of the above contentions, learned counsels for the petitioners rely upon the judgment of the Appellate Tribunal of Electricity [APTEL], to which reference is made later on.

11 Affidavit-in-reply is filed on behalf of the respondent opposing the petition. In order to sustain the legality of the impugned order and the Regulations, the respondent has highlighted the following aspects:-

11. A reference is made to National Action Plan on Climate Change [for short 'NAPC'] and Eight National Missions formulated thereby representing multi-pronged, long-term and integrated strategies for achieving key goals in the context of climate change. The NAPC also, inter-alia, suggested 'Renewable Energy Technologies Programme' [for short, 'RET']. While referring to RETs for power generation, it is stated in NAPC with reference to grid connected system that the Electricity Act, 2003 and the Tariff Policy, 2006 provide for both the Central Electricity Regulatory Commission (CERA) and State Electricity Regulatory Commissions (SERC) to prescribe a certain percentage of total power to be purchased from renewable based sources. That, under Section 86 of the Act, functions

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of the Commission are prescribed whereby the Commission is required to specify a certain percentage of the 'total consumption' of electricity in the 'area of a distribution licensee' to be purchased from electricity generated from renewable sources. This is known as Renewable Purchase Obligation (RPO). Under Section 3 of the Act, the Central Government has formulated National Electricity Policy and the Tariff Policy. Both these policies recognise that since it will take some time for non-conventional electricity generators to compete effectively with conventional generators, the appropriate Commission may determine differential/preferential tariffs to promote these technologies. That, renewable sources of energy vary widely from one State/Region to another and as such it would be easy to meet RPO at 5% in some States whereas in other States it would be difficult and, therefore, the concept of a tradable Renewable Energy Certificate (REC) is introduced. Renewable energy generators would be issued RECs to the extent of power sold by them over and above the RPO. These RECs will be tradable, i.e. the same can be sold to purchasers in States where it is difficult to meet the RPO. The REC value is determined by a free market price discovery process through a 'power exchange.' In this manner, it can be ensured that renewable energy generators recover their costs and the RPO is in effect achieved in all States. CERC has framed regulations in exercise of power conferred under Section 178 of the Act for the development of market in power from non-conventional energy sources by issuance of

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transferable and saleable credit certificates. These regulations were notified on 14.1.2010 and are called as 'Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010'. In the context of the above, it is submitted that the RPO is percentage of 'consumption' of electricity. The category of the consumer is not material in as much as the policy objective is to ensure that 5% of the total electricity consumed be generated from renewable sources. In order to achieve this policy objective, it is necessary to impose RPO uniformly so as to ensure in totality 5% of the total electricity consumed be generated from renewable sources and, therefore, it is necessary that RPO is to be imposed under Section 86(1)(e) of the Act on distribution licensees, open access consumers as well as captive generation consumers as a regulatory measure.

11.2 Following preliminary objections are raised by the respondent with regard to maintainability of the petitions under Articles 226 and 227 of the Constitution of India.

11.3 That the Commission considered the submissions/ comments/ objections received from four objectors even after the stipulated time of filing the objection. Thereafter, hearing took place before the Commission on 4.3.2010 and, after following due procedure, the Regulation was published on 26.5.2010.

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The Regulations shall come into force from a date to be notified by the Commission separately, since the mechanism of REC was not in force on the date of notification of the Regulations. Thus, the said Regulations are yet to be made applicable to the petitioners having captive generating plant referred to in clause 8 of the said Regulations.

11.4 The petitioners have alternative efficacious remedy before the Appellate Tribunal to challenge the order impugned.

11.5 There is delay in filing the petitions challenging the impugned order.

11.6 The petitions are also not maintainable as REC Mechanism has been launched as per the report of Press Information Bureau dated 18.11.2010. It is stated in the Report that under this mechanism the RE Generator can sell the electricity component locally at the price of conventional electricity and trade the environmental attribute in the form of REC separately. Further, SERCs of other States have also framed similar Regulations.

11.7 The present petitions are filed only with a view to restrict the process the implementation of statutory provisions and National Action Plan of the Government of India for Climate Change.

12 Shri Kamal Trivedi, learned Senior Counsel

appearing with Mr. Bhargav Karia for GERC made following submission on behalf of the respondents:

[I] According to learned Senior Counsel rationale for providing Renewable Purchase Obligation has its genesis in the Standing Committee on Energy (2002) Thirteen Lok Sabha in its 31st Report in the Electricity Bill, 2001 in para nos. (I)(v) of 1.16, para 3,18, 3.20 and 3.21 emphasized the need to promote non-conventional and renewable source based generation along with National Electricity Plan and Policy. GERC has published the Regulations under section 86(1)(e) read with section 181 of the Act.

[II] It is submitted that whether the word 'and' appearing in between co-generation and generation in Section 86(1)(e) of the Electricity Act, 2003 is disjunctive or conjunctive is required to be interpreted in its true perspective.

[i] The word 'and' between the words 'co-generation' and 'generation' is conjunctive and not disjunctive. Co-generation and generation are process or method of production of electricity in which the sources are utilized to get the final result.

[ii] The aforesaid submission is further fortified by the use of the word 'sources' as appearing in Section 86(1)(e) as qualifying both generation and co-generation of electricity. The emphasis in Section 86(1)(e) is on the 'sources' of the energy and not on the 'technology' of production. The intention behind Section 86(1)(e) is to promote non-conventional and renewable sources of energy and not to promote fossil fuels.

[iii] In the above interpretation the words 'for purchase of electricity from such sources' have purposive interpretation to all words of the sentence because it gives meaning that the co-generation and generation from renewable sources are required to be promoted. The 'co-generation' and 'generation' of electricity as stated in the said section are both processes meant to utilize the input fuel which should be based on renewable energy sources. This would give a proper legal meaning to the section.

(iv) In support of the submission that the word 'and' between co-generation and generation is to be read as conjunctive and not disjunctive, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Tek Chand Bhatia, reported in (1980) 1 SCC

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158 (paras 5 and 10).

[III] Applicability of Renewable Power Purchase Obligation to captive power plant owners who consume electricity from conventional or fossil fuel based generation.

In Section 86(1)(e) of the Act, it is stated that the Commission is required to specify, purchase of electricity from such sources a percentage of the total consumption of electricity in the area of distribution licensee. Here, the emphasis is on the words 'total consumption' and 'in the area of distribution licensee' for interpretation. On a combined reading of Section 2(3) and Section 86(1)(e) of the Act, it is clear that the area of distribution licensee referred to in the said section would mean the distribution license supply area in which the consumer receives power supply either from distribution licensee or from a third party through open access or from his power plant (Captive Generating Plant). Hence, while determining the total consumption of the electricity in the area of the distribution licensee consumption from all the above categories of persons is required to be considered. Thus, the said section recognizes that 'Renewable Purchase Obligation' is applicable to the total consumption. It is submitted that all the captive generating plants

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are situated in the license area of supply of any distribution licensee. Hence, it is incorrect to say that the electricity generated from CGP consumed by its owner is not part of the total consumption. The person who consumes the electricity generated from fossil fuel based (conventional source of energy) Captive Generating Plant is also required to include in its total consumption of electricity generated from renewable sources as specified by the Commission. If such person is not consuming the electricity from renewable sources based generation, he is required to purchase renewable energy and consume the same. Thus, the person who consumes electricity shall have to purchase renewable energy if he is not fulfilling the Renewable Purchase Obligation notified by the State Electricity Regulatory Commission for fulfillment of RPO. A Division Bench of the Rajasthan High Court has, in its judgment dated 31.8.2012 in D.B. Civil Writ Petition No.2772/2012 and others, on pages 58, 59, and 60, also held that the renewable purchase obligation is applicable to captive consumers who consume electricity from conventional source based generation.

[IV] Tariff determination has no relevance to the applicability of renewable purchase obligation.

Part VII of the Electricity Act, 2003, which consists of Sections 61 to 65, deals with Tariff Regulations, determination of tariff, public notice for tariff and subsidy, if any, desired to be given by the Government. The various sections of the above Act describe the functioning of the Commission to carry out tariff determination. Section 86 falls under Part X of the Electricity Act, 2003 which pertains to State Regulatory Commissions. Sections 86(1)(a) to 86(1)(k) specify different and distinct functions from each other and are required to be complied with by the Commission in its entirety.

[V] On the issue as to whether the Renewable Purchase Obligation applies to purchase of energy or consumption of energy.

Sections 86(1)(e) specifically provides that the renewable purchase obligation is applicable to consumption of electricity. The electricity generated by the Captive Generating Plants is ultimately consumed by the owner of such plant and thus falls within the ambit of consumption, self or from the grid. The person who consumes the electricity generated from fossil fuel based (conventional source of energy) Captive Generating Plant is also required to include in its total consumption of electricity generated from renewable sources as specified by the Commission. If such person consumes the

electricity generated from renewable sources of energy from its own captive generating plant, it is not required to purchase renewable energy. However, if such person is not consuming the electricity from renewable sources based generation, he is required to purchase renewable energy and consume the same. Thus, the person who consumes electricity shall have to purchase renewable energy if he is not fulfilling the Renewable Purchase Obligation notified by the State Electricity Regulatory Commission for fulfillment of RPO.

[VI] While opposing contention that co-generation is at par with the renewable electricity generation, it is submitted that as per definition under section 2(12) of 'co-generation', the words 'process', 'produces' and 'two or more forms of useful energy' are very important to decide what is co-generation and whether the same is equated with the renewable source of energy or not. The word 'process' which is included in the aforesaid definition refers to be methodology/production of electricity by utilizing the input energy from any source and the same is converted to other forms of energy by utilization of various plant and machinery. Co-generation and National generation are the processes in which the source i.e. input or source could be conventional viz. coal, oil, gas or non-conventional viz. wind, solar, bagasse,

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the input is processed and output in the form of electricity is obtained. Thus, co-generation is a method which gives two or more output (produced) of useful energy. The process for co-generation can utilize any of the sources viz. conventional energy source (fossil fuel), i.e. coal, oil and gas, or non-conventional energy source (renewable energy source) i.e. wind, solar, mini and micro hydro power plant, biomass, bagasse, and municipal solid waste. When the input energy source is coal, oil or gas, the electricity generated from it is called the electricity generated from conventional sources. Similarly, the electricity generated from non-conventional energy sources is called electricity generated from non-conventional sources. The process which is carried out to convert input energy source which is in fuel form to electricity and some other form of energy simultaneously is called co-generation. The energy source which is input to co-generation is important to decide whether the same is qualifying for promotion under Section 86(1)(e) of the Act. As mentioned earlier, the term 'co-generation' is defined in section 2(12) as 'a process which simultaneously produces two or more forms of useful energy (including electricity)'. The definition of co-generation is silent about the source, i.e input relevant for receiving the two outputs which is the end result. However, as per section 2 of the Electricity Act, 2003 which contains all

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definitions, the definitions given are qualified by the express 'in this Act, unless the context otherwise required'. In other words, the definition given in section 2 of the Act is to be interpreted in the context of the relevant provision of the section where the term is used. Hence, even though section 2(12) does not indicate the source, in the context of Section 86(1)(e) of the Act, the term 'co-generation' shall have the meaning of the process which simultaneously produces two or more form of useful energy (including electricity) only from renewable sources. Thus, the source which is renewable stated in Section 86(1)(e) of the Act is important and linked with both co-generation and generation from renewable sources only, and being important from environmental point of view.

[VII] Inter alia, learned Senior counsel referred to provisions of National Electricity Policy and Tariff Policy notified under Section 3 of the Electricity Act, 2003 also emphasize promotion of energy from renewable/non-conventional based generation.

Clause 5.12.1 and 5.12.2 of the Tariff Policy provide for promotion of non-conventional sources of energy based generation. Clause 5.12.1 and particularly clause 5.12.2 categorically bring out that the intent of Section 86(1)(e) of the Act contemplates promotion of both generation

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and co-generation only from non-conventional and renewable sources of energy. Clause 5.12.3 when read in conjunction with the two earlier clauses makes it clear that the co-generation being discussed in the subject of promotion is for co-generation in the Sugar Industry (bagasse) which would indicate that even the co-generation mentioned in Section 86(1)(e) of the Act is meant to be from renewable source. Clause 6.4(1) of the Tariff Policy also envisages promotion of non-conventional sources of energy generation including co-generation.

12.1 A reference is made to Availability of the renewable energy sources in the State by the learned Counsel that Renewable Purchase Obligation has to be decided with consideration of the renewable sources available in the State. According to the Annual Report FY 2012-2013 of the Ministry of New and Renewable Energy, the potential of the wind power in the State of Gujarat is 10609 MW, out of which only 3093 MW of wind generators have been installed so far. The potential of Biomass available in the State of Gujarat is 1221 MW and installed capacity is 31.2 MW as per the details available from the Gujarat Energy Development Agency. The potential of Bagasse available in the State of Gujarat is 350 MW. TERI estimated, the potential of Solar Power Generation in Gujarat is more than 10,000 MW, against which the capacity of Solar Power Projects so far commissioned is only 872.5 MW. Thus, sufficient potential of renewable energy

generation is available in the State to meet the Renewable Purchase Obligation by the obligated party. Moreover, the GERC has recognized renewable energy certificate as a valid instrument for fulfillment of Renewable Purchase Obligation by the obligated entities. The National Action Plan on Climate Change of the Government of India also stipulated that the State Electricity Regulatory Commission shall fix minimum renewable purchase standards at 5% for the year 2010-2011, to be increased by 1% each year for 10 years.

12.2 As regards the order of the Appellate Tribunal in the case of Century Rayon, dated 26.4.2010, it is submitted that the said order is not applicable to a CPP who is not co-generating plant. Moreover, the order of the Appellate Tribunal dated 26.4.2010 was pronounced after the impugned order dated 17.4.2010.

12.3 The following judgments are relied upon on behalf of the respondent:

[i] Tata Power Company Limited vs. Reliance Energy Limited and others, reported in (2009) 16 Supreme Court Cases 659

[ii] Ambuja Cements Limited vs. Rajasthan Electricity Regulatory Commission, by judgment and order dated 31.8.2012, a Division Bench consisting of Hon'ble the Chief Justice Mr. Arun

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Mishra [as His Lordship then was] and Hon'ble Mr Justice Narendra Kumar Jain of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur.

13 In rejoinder, it is submitted on behalf of the petitioners, while denying the averments made in the affidavit-in-reply, that, irrespective of any such alleged Action Plan, policies or formulations, the impugned Regulations need to be consistent with the Constitution, the Act and the Rules. A plain reading of Section 9 of the Act excludes CPPs from the Regulatory Control of the respondent except to the extent of the proviso thereto, and they are not covered under Section 86 of the Act. Paragraph 6.4 of the National Tariff policy contemplates procurement of power from the renewable energy sources by Distribution Companies. The said policy does not contemplate procurement of power by captive power plants. That, CPPs are not Distribution Companies as defined under the Act and paragraph 6.4 squarely excludes applicability of the provisions of national Tariff Policy to the CPPs. Similarly, Paragraph 3 of para 5.12 of the National Electricity Policy contemplates promotion of arrangements between the co-generator and the concerned distribution licensee for purchase of surplus power from plants having co-generation process and para 5.12 does not contemplate purchase of power from the Renewable Energy Sources by the CPPs. It is reiterated that RECs is impractical and unworkable. That, RECs cannot be a substitute for the power requirement of the CPPs.

13.1 It is submitted that under clause 2(2), co-generation is included in the definition of Renewable Energy in Notification dated 23.03.2007 issued by Rajasthan Electricity Regulatory Commission and further clause 3(p) about purchase / sale of renewable energy also included co-generation distinguishing and segregating purchase / sale of 'electricity component' RE sources including co-generation. Therefore, law laid down in the case of Ambuja Cement [supra] will not be applicable.

14 In order to adjudicate the issues involved in these petitions, it is necessary to advert to the Statement of Objects and Reasons of the Electricity Act, 2003 and other relevant provisions, which read as under:

"Statement of Objects and Reasons

The Electricity Supply Industry in India is presently governed by three enactments, namely, the Indian Electricity Act, 1901, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commissions Act, 1998.

- 1.1 xxx
- 1.2 xxx
- 1.3 xxx
- 2. xxx

3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1901, the Electricity (Supply) Act, 1948, and the Electricity Regulatory Commissions Act, 1998, in a new self-contained comprehensive legislation arose. Accordingly, it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the States and all other stake holders and experts.

4. The main features of the Bill are as follows:-

[i] Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.

[ii] There would be a Transmission Utility at the Central as well as State level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load dispatch function could be kept with the Transmission Utility or separated. In the case of separation the load despatch function would have to remain with a State Government organisation/company.

[iii] There is provision for private transmission licensees.

[iv] There would be open access in transmission from the outset with provision for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.

[v] Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licensees.

[vi] The State Electricity Regulatory

Commissions may permit open access in distribution in phases with surcharge for -

[a] current level of cross subsidy to be gradually phased out along with cross subsidies; and

[b] obligation to supply.

[vii] For rural and remote areas stand alone systems for generation and distribution would be permitted.

[viii] For rural areas decentralised management of distribution through Panchayats, Users Associations, Cooperatives or Franchisees would be permitted.

[ix] Trading as a distinct activity is being recognized with the safeguard of the Regulatory Commissions being authorized to fix ceilings on trading margins, if necessary.

[x] Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.

[xi] There is provision for a transfer scheme by which company/companies can be created by the State Government from the State Electricity Boards. The State Governments have the option of continuing

with the State Electricity boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. The service conditions of the employees would as a result of restructuring not be inferior.

(xii) An Appellate Tribunal has been created for disposal of appeals against the decision of the CERC and State Electricity Regulatory Commissions so that there is speedy disposal of such matters. The State Electricity Regulatory Commission is a mandatory requirement.

[xiii] Provisions relating to theft of electricity have a revenue focus.

5 xx xx

6. xx xx

Preamble

"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected there

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with or incidental thereto.

2. **Definitions:-** In this Act, unless the context otherwise requires-

[3] 'area of supply' means the area within which a distribution licensee is authorised by his licence to supply electricity.

[4] 'Appropriate Commission' means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be.

[8] 'Captive generating plant' means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;

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

[13] 'company' means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes any body corporate under a Central, State or Provincial Act.

[14] 'consumer' means any persons who is

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supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other persons, as the case may be;

[17] 'distribution licensee' means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

[23] "electricity" means electrical energy-

[a] generated, transmitted, supplied or traded for any purpose; or

[b] used for any purpose except the transmission of a message;

[29] "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

[32] "grid" means the high volt age backbone system of inter-connected transmission lines, sub-station and generating plants;

[46] "notification" means notification

published in the Official Gazette and the expression "notify" shall be construed accordingly;

[47] "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

[49] "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

[52] "prescribed" means prescribed by rules made by the Appropriate Government under this Act;

[57] "regulations" means regulations made under this Act;

[62] "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;

[63] "stand alone system" means the electricity system set-up to generate power and distribute electricity in a specified area without connection to the grid;

[64] "State Commission" means the State Electricity Regulatory Commission constituted under

sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;

[70] "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

Part II Section 3 of Act, 2003

National Electricity Policy and Plan

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4. The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.

Part III Generation of Electricity

7. Generating company and requirement for setting up of generating station.

8. Hydro-electric generation.

9. Captive Generation.

[1] Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission

lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

[2] Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

11. Directions to generating companies:-

[1] The Appropriate Government may specify that a generating company shall, in extraordinary

circumstances, operate and maintain any generating station in accordance with the directions of that Government.

Part VII Tariff

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

[a] the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

[b] the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

[c] the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

[d] safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

[e] the principles rewarding efficiency in performance;

[f] multi year tariff principles;

[g] that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;

[h] the promotion of co-generation and generation of electricity from renewable sources of energy;

[i] the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

62. Determination of tariff;- (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for -

[a] supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the

minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

[b] transmission of electricity ;

[c] wheeling of electricity;

[d] retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

86. Functions of State Commission;- [1] The State Commission shall discharge the following functions, namely:

[a] determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

[b] regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through 46 agreements for purchase of power for distribution and supply within the State;

[c] facilitate intra-state transmission and wheeling of electricity;

[d] issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

[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 licence;

[f] adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

[g] levy fee for the purposes of this Act;

[h] specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

[i] specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

[j] fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

[k] discharge such other functions as may be assigned to it under this Act.

[2] The State Commission shall advise the State Government on all or any of the following matters, namely :-

[i] promotion of competition, efficiency and economy in activities of the electricity industry;

[ii] promotion of investment in electricity industry;

[iii] reorganization and restructuring of electricity industry in the State;

[iv] matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

[3] The State Commission shall ensure transparency while exercising its powers and discharging its functions.

[4] In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3."

181. Powers of State Commissions to make regulations--

[1] the State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

[2] In particularly and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely.....:-

National Action Plan on Climate Change

4.2.2 Grid Connection Systems

The Electricity Act and the National Tariff Policy,

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2006 provide for both the Central Electricity Regulatory Commission (CERC) and the State Electricity Regulatory Commissions (SERC) to prescribe a certain percentage of total power purchased by the grid from renewable based sources. It also prescribes that a preferential tariff may be followed for renewable based power.

The following enhancements in the regulatory/tariff regime may be considered to help mainstream renewables based sources in the national power system:

[i] A dynamic minimum renewable purchase standard (DMRPS) may be set, with escalation each year till a pre-defined level is reached, at which time the requirements may be revisited. It is suggested that starting 2009-10, the national renewables standard excluding hydropower with storage capacity in excess of daily peaking capacity, or based on agriculture based renewables sources that are used for human food may be set at 5% of total grids purchase, to increase by 1% each year for 10 years. SERCs may set higher percentages than this minimum at each point in time.

[ii] Central and state governments may set up a verification mechanism to ensure that renewables based power is actually procured as per the applicable standard (DMRPS or SERC specified). Appropriate authorities may also issue certificates that procure renewables based power in excess of the national standard. Such certificates may be

tradeable, to enable utilities falling short to meet their renewable standard obligations. In the event of some utilities still falling short, penalties as may be allowed under the Electricity Act 2003 and rules thereunder may be considered.

[iii] Procurement of renewables based power by the SEBs/other power utilities should, in so far as the applicable renewable standard (DMRPS or SERC specified) is concerned, be based on competitive bidding, without regard to scheduling, or the tariffs of conventional power (however determined). Further, renewables based power may, over and above, the applicable renewables standard, be enabled to compete with conventional generation on equal basis (whether bid tariffs or cost-plus tariffs), without regard to scheduling (i.e. renewables based power supply above the renewables standard should be considered as displacing the marginal conventional peaking capacity). All else being equal, in such cases, the renewables based power should be preferred to the competing conventional power.

Non-conventional Energy Sources

5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and biomass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation

through suitable promotional measures.

Captive Generation.

5.2.24. The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per

section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non-conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant."

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. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-

conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with non-conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.

5.12.3 Industries in which both process heat and electricity are needed are well suited for cogeneration of electricity. A significant potential for cogeneration exists in the country, particularly in the sugar industry. SERCs may promote arrangements between the co-generator and the concerned distribution licensee for purchase of surplus power from such plants. Cogeneration system also needs to be encouraged in the overall interest of energy efficiency and also grid stability.

Tariff Policy

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6.3 Harnessing captive generation.

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the

grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access.

6.4 Non-conventional sources of energy generation including Co-generation:

[1] Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.

It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.

[2] Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.

[3] The Central Commission should lay down

guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.

15 At the outset, scope and analysis of the Electricity Act, 2003 was considered by the Apex Court in the case of Tata Power Company Limited vs. Reliance Energy Limited and others, reported in (2009) 16 Supreme Court Cases 659. The Apex Court held that the Act, as a result of poor performance of State Electricity Boards, was enacted with a view to encourage participation of private sector and lays down policies for generation, transmission and distribution of electricity. The Central Government intended to have an independent body for determination of tariff in a professional manner and for this reason the Act provided for establishment of Electricity Regulatory Commission. The Apex Court has also outlined the salient features of the Act viz. (i) delicensing of power generation, (ii) general permission for captive generation, (iii) only concurrence is required in case of hydro-electric generation, (iv) open access in transmission, (v) separation of power generation from transmission and distribution, and (vi) trading in electricity subject to obtaining of licence, and, thus, the Act provides for measures which are conducive to development of electricity industry, generation of power and promotion of competition. The Apex Court envisaged a kind of problem for generating companies from

licensing regime and, this being the primary object of the Act, while interpreting any of the provisions of the Act, the avowed objects are to be kept in mind. While holding that the activities of the generating companies are beyond the purview of the licensing provisions, the Apex court followed the principle of purposive construction.

16 In a batch of Civil Writ Petition No. 2772 of 2012 and others, in the case of Ambuja Cements Limited vs. Rajasthan Electricity Regulatory Commission, by judgment and order dated 31.8.2012, a Division Bench consisting of Hon'ble the Chief Justice Mr. Arun Mishra [as His Lordship then was] and Hon'ble Mr Justice Narendra Kumar Jain of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, upon a challenge to the Regulations framed, namely, Regulations 4 and 5 pertaining to renewable energy obligation and payment of surcharge for shortfall obligation by notification dated 23.3.2007 issued by the Rajasthan Electricity Regulatory Commission in exercise of power under Section 86(1)(e) read with Section 181 of the Electricity Act, 2003, imposing obligation on the captive power plants and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of short-fall in meeting out the RE obligation, be declared ultra vires Sections 7, 9, 86(1)(a) and (e) and 181 of the Act of 2003, Articles 14, 19(1)(g) of the Constitution of India, National Electricity Policy, 2005 and Tariff Policy 2006, inter-alia, contending that the

Regulatory Commission had no authority to issue notification to non-licensee like the petitioners in these petitions, namely, CPP or CGP and, upon consideration of similar contentions raised hereinabove in all these petitions and considering various provisions of the Electricity Act, 2003, Rules and Regulations framed thereunder, held as under:

"In the light of the aforesaid provisions, it is apparent that thrust of the Act of 2003, provisions contained in the National Electricity Policy, 2005 and the Tariff Policy, 2006 is to ensure that there is no licensing of captive power generation of energy and generating company may establish, operate and maintain generating station without obtaining a license under the Act of 2003; at the same time, there is need to promote co-generation and generation of electricity from non-conventional sources; it is provided in Para 6.4 of Tariff Policy, Para 5.12.2 of the National Electricity Policy and Section 86(1)(e) of the Act of 2003 that the Regulatory Commission shall fix minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs; non-conventional technologies cannot compete with conventional sources in terms of cost of electricity, as such, Regulatory Commission has power to determine the preferential tariffs.

The submission raised by the petitioners is that under section 7 of the Act of 2003, the generating company can establish, operate and

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maintain generating station including captive power plant without obtaining a license; section 9 contains non-obstante clause; licensing is contemplated only to transmit electricity, distribute electricity or undertake trading in electricity as provided under section 12 and license can be granted under section 14 for the aforesaid purposes and thus, licensees stand on different footing and the industries like petitioners having independent captive power plants cannot be treated alike licensees as they are not required to obtain license for setting up captive power plants and they have to be given free play and cannot be obligated to purchase energy from renewable sources; for regulation of supply, distribution, consumption or use of electricity, directions are contemplated to the licensee alone under section 23 of the Act of 2003 and no directions could have been given by the Regulatory Commission to the petitioners having captive power plants to purchase energy from renewable source as they are not licensees; they could not be treated alike licensees and thus, imposition of RE obligation through impugned Regulations cannot be sustained.

In our opinion, obligations upon licensee are different and merely by the fact that no license is required to be obtained by the petitioners for establishing, operating and maintaining captive power plant by virtue of Sections 7 and 9 of the Act of 2003, it cannot be inferred that the petitioners involved in the manufacture of various industrial

activities such as cement, textile, chemical, clinker, guwar gum powder, rayons, white cement, copper, tyre, tube, flaps, fertilizers, agri.-inputs, non-ferrous metals, lead, zinc etc., cannot be fastened with the obligation to purchase energy from renewable sources as provided in the Regulations of 2007 and 2010. The provisions made with respect to obligations and liabilities for licensee cannot come in the way to carry out the objectives of the Act of 2003, National Electricity Policy and Tariff Policy. Under section 86(1)(e) the Regulatory Commission has to discharge the function for promoting co-generation and generation of energy from renewable sources. Section 53(e) provides that the Authority may, in consultation with the State Government, specify suitable measures for keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity. Section 60, which deals with market domination, empowers the Regulatory Commission to issue directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry. Thus, generating company is not totally free from the control of the Regulatory Commission, as submitted by the petitioners.

When we come to the provisions contained in Section 86(1) (e) and 181 of the Act of 2003 under which the impugned Regulations have been

framed, the Regulatory Commission has to discharge functions for promoting cogeneration and generation of electricity from renewable sources of energy and for this purpose, the Regulatory Commission has power to provide 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. Thus, it is apparent that under Section 86(1)(e) of the Act of 2003, the Regulatory Commission has power to direct the petitioners running captive power plants to purchase energy from renewable sources considering the percentage of the total consumption of electricity in the area of distribution licensee. The word 'total consumption' has been used by the legislature in Section 86(1)(e) and total consumption in an area of a distribution licensee can be by three ways either supply through distribution licensee or supply from captive power plants by using lines and transmission lines of distribution licensee or from any other source by using transmission lines of distribution licensee. The area would always be of distribution licensee, as the transmission lines and the system is of distribution licensee, the total consumption is very significant. The total consumption has to be seen by consumers of distribution licensee, captive power plants and on supply through distribution licensee. It cannot be inferred by mention of area of distribution licensee that only consumers of the distribution licensee are included. The total consumption has the reference to the various modes of

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consumption which are possible in the area of distribution licensee. In case the submission of the petitioners is accepted, in that event, the consumers of the distribution licensee would only be saddled with the liability of renewable energy obligation, that would be discriminatory when consumption is through captive power plant or open access. The total consumption in the area of distribution licensee would be total consumption in all modes otherwise anomalous results would occur.

The objective behind imposition of RE obligation upon captive power plants and open access consumers is to promote generation of electricity from renewable sources; it would have long lasting impact in protecting environment; as per CEAs annual report of 2003, the installed capacity is 107973 MW in the country; the break up is hydro power generation- 26910 MW (24.9%), thermal power generation 76607 MW (71%) nuclear power generation 2720 MW (2.5%) and wind power generation 1736 MW (1.6%), out of thermal power generation coal comprises 63801 MW, gas- 11633 MW and diesel 1173 MW representing 59.1% and 10.8% and 1.1% of the total installed capacity respectively; thus, the coal is dominating the scenario and will continue to do so in future also,; the thermal generation causes generation of green house gases (GHG) namely, carbon dioxide CO₂, sulphur dioxide, nitrogen oxide and solid particulate matter which beyond a specific limit are hazardous for health; global warming is affected by increased emission of green house gases resulting into fundamental changes in approach

towards development of energy sector in all the countries; objective behind imposition of RE obligation is in the greater public interest which would have long impact on protection of environment; there is need of the hour to protect environment; it is in ecology to boost interest of the production by utilizing renewable sources of energy; Regulatory Commission has solemn obligation to protect and improve the present and future environment generation; Article 51-A(g) of the Constitution casts duty on the citizen to protect and improve the natural environment; considering the global warming, mandate of Article 21 and 51-A(g) of the Constitution, provisions of the Act of 2003, National Electricity Policy and Tariff Policy, the action has been taken by the Regulatory Commission imposing obligation upon captive power plant and open access consumers also to purchase electricity from renewable sources and the same is in public interest as energy generated from renewable sources is pollution free. There are no purchasers of the energy generated by renewable sources; they cannot compete in the market as such production is costly; the Regulatory Commission has been conferred with the power to impose obligation on captive power plants and open access consumers also to purchase energy from renewable sources in order to protect ecology from environmental degradation; merely because petitioners are having independent captive power plants and they are not licensees, still they can be asked to promote and purchase energy from renewable sources and we find that the RE obligation imposed upon captive power plants and open access

consumers through impugned Regulations cannot in any manner be said to be restrictive of any of the rights conferred on the petitioners under Article 19(1)(g) of the Constitution nor the obligation can be said to be violative of Article 14 of the Constitution.

In *Krishnan Kakkanth V/s Government of Kerala and ors.* (AIR 1997 SC 128), the Apex Court held that fundamental rights guaranteed under Article 19 are not absolute but the same are subject to reasonable restrictions to be imposed against enjoyment of such rights. The reasonableness of restriction is to be determined in an objective manner and from the stand point of the interests of general public and not from the stand point of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders. In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict. Under clause (1)(g) of Article 19, every citizen has a freedom and rights to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds

mentioned in clause (6) of Article 19. But the Constitution does not recognize franchise or rights to business which are dependent on grants by the State or business affected by public interest. In the present case, RE obligation on the captive power plant and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of short fall in meeting out the RE obligation, has been imposed under the impugned Regulations and such RE obligation cannot in any manner be regarded as restrictive infringing rights of the petitioners under Article 19(1)(g) of the Constitution.

Para 6.4 of the Tariff Policy also authorizes the Regulatory Commission to fix minimum percentage for purchase of energy from renewable sources taking into account the availability of such resources in the region; Tariff Policy also provides that non-conventional sources of energy generation including cogeneration cannot compete at present with conventional sources in terms of cost of electricity, therefore, preferential tariff can be determined by the Regulatory Commission. The provisions are not confined to the distribution companies only. Para 5.12.1 of the National Electricity Policy also provides that 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. In our opinion, the RE obligation, which has been put on the petitioners running captive power plants, under the Regulations of 2007 and 2010 is in furtherance of the

aforesaid objective; it is a promotional measure taken for growth of renewable energy by directing purchase of particular percentage of energy from renewable sources; at the same time, it is open to the industries like the petitioners to generate electricity through captive power plants to the maximum and no restriction has been put up on quantity of generation of electricity by the industries, only obligation is that they have to purchase certain percentage of energy from renewable sources considering total consumption.

Para 5.12.2 of the National Electricity Policy provides that under the Act of 2003, the Regulatory Commission would promote co-generation and generation of electricity from non-conventional sources by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Thus, it is open to the Regulatory Commission to prescribe the percentage of the total consumption of electricity in the area of a distribution licensee and percentage of total consumption can be specified in the area of distribution licensee as per the National Electricity Policy, precisely it has been done under the impugned Regulations as the consumption from captive power plant is also consumption which has to be included in the total consumption in the area of distribution licensee.

As per Para 5.2.24 of the National

Electricity Policy relating to captive generation, the liberal provision in the Act of 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry. Cost effectiveness is also one of the objectives of setting up of captive power plant under Para 5.2.24 and to utilize electricity generated by large number of captive and standby generating stations in India, they have surplus capacity that could be supplied to the grid continuously or during certain time periods. Thus, by imposing RE obligation upon captive power plants and open access consumers, it cannot be said that any of the objectives of the National Electricity Policy or Tariff Policy or Act of 2003 have been defeated; there is no embargo put under the impugned Regulations on their functioning; at the same time, promotion of energy from renewable sources has to be made so as to protect environment and global warming.

Section 86(1)(b) of the Act of 2003 has been relied upon by the petitioners which provides that the Regulatory Commission in discharge of the functions may regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. In our opinion, as apparent from the very language of Section 86(1)(b), it deals with the

purchase and procurement process of distribution licensees and also deals with the prices at which electricity shall be procured from the generating companies and in case generating companies are having surplus, it is open for them to supply to the grid. The provisions of Section 86(1)(e) of the Act of 2003 provides independent functions and the provisions contained in Section 86(1)(b) cannot control and confine the operation of Section 86(1)(e) with respect to distribution licensee only; Section 86(1)(b) deals with power to regulate electricity purchase and procurement process of distribution licensees and the price at which electricity shall be procured from the generating companies or licensees, whereas Section 86(1)(e) deals with promotion of co-generation and generation of electricity from "renewable source" of energy by providing suitable measures which are specified in the said provisions and thus, section 86(1)(b) cannot control and confine operation of Section 86(1)(e) to distribution licensee alone, as suggested by the petitioners. We have no hesitation in rejecting the said submission of petitioners. On plain reading of the aforesaid provision, submission is not borne out.

Section 86(4) provides that in discharge of its functions, the Regulatory Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3. We find no repugnancy in the impugned Regulations framed by the Regulatory Commission imposing RE obligation upon captive power plant and open access consumers to purchase energy from

renewable sources nor they can be regarded violative of National Electricity Policy, 2005 and Tariff Policy, 2006 published under section 3 of the Act of 2003 by the Central Government, rather impugned Regulations aim to fulfill the objectives of the said policies.

It was also submitted on behalf of the petitioners that Section 181(1) of the Act of 2003 gives only general power to the Regulatory Commission to frame Regulations consistent with the Act and the rules generally to carry out the provisions of the said Act and none of the matters contained in clauses (a) to (zp) of Section 181(2) provide for framing of the impugned Regulations in respect of captive power plant and open access consumers and thus, they submitted that framing of the impugned Regulations is beyond the rule making authority conferred upon the Regulatory Commission under section 181 of the Act of 2003. The submission is based upon misconstruction of provisions of Section 86(1)(e); as we have already rejected the submission that Section 86(1)(b) has to control the operation of Section 86(1)(e), the submission is baseless. Section 181(1) provides that the State Commission may by notification, make regulations consistent with the Act and the rules generally to carry out the provisions of the said Act and as per the interpretation of Section 86(1)(e) along with National Electricity Policy and Tariff Policy for promotion of renewable energy, we find that the power to frame impugned Regulations under sections 86(1)(e) and 181 of the Act of 2003 imposing RE obligation

upon captive power plant and open access consumers to purchase energy from renewable sources, has been rightly exercised by the Regulatory Commission and the impugned Regulations cannot in any manner be said to be beyond provisions contained in the Act of 2003 or National Electricity Policy or Tariff Policy; Section 86(1)(e) authorizes the Regulatory Commission to impose RE obligation upon the industries having independent captive power plants and open access consumers and thus, it cannot be said that the impugned Regulations imposing RE obligation on captive power plant and open access consumers are contrary to the object and purpose of the Act of 2003 or National Electricity Policy or Tariff Policy. The RE obligation put on the captive power plants and open access consumers to purchase minimum energy from renewable source and to pay surcharge in case of shortfall in meeting out the obligation through impugned Regulations are clearly sustainable in law.

In PTC India Ltd. V/s Central Electricity Regulatory Commission ((2010) 4 SCC 603), the Apex Court has considered the scope and analysis of the Act of 2003 and held that the Act of 2003 contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make rules. Secondly, under Section 177, the Central Authority is also empowered to make regulations consistent with the Act and the rules to carry out the provisions of the Act. Thirdly, under

Section, 178 the Central Commission can make regulations consistent with the Act and the rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. A holistic reading of the Act of 2003 leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act. The Apex Court rejected the contention that under the Act of 2003, the power to make regulations under section 178 has to be correlated to the functions ascribed to each authority under the Act of 2003 and that CERC can enact regulations only on topics enumerated in section 178(2). The Apex Court has further held that apart from section 178(1) which deals with "generality" even under section 178(2) (ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of the Act of 2003. Trading is an activity recognized under the Act of 2003. The Apex Court has laid down thus:-

"28. The 2003 Act contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make rules. Secondly, under Section 177, the Central Authority is also empowered to make regulations consistent with the Act and the rules to carry out the provisions of the Act. Thirdly, under

Section 178, the Central Commission can make regulations consistent with the Act and the rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. The rules and regulations have to be placed before Parliament and the State Legislatures, as the case may be, under Section 179 and 182. The Parliament has the power to modify the rules/ regulations. This power is not conferred upon the State Legislatures. A holistic reading of the 2003 Act leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.

65. The above two citations have been given by us only to demonstrate that under the 2003 Act, applying the test of "general application", a Regulation stands on a higher pedestal vis-à-vis an Order (decision) of CERC in the sense that an Order has to be in conformity with the regulations. However, that would not mean that a regulation is a pre-condition to the order (decision). therefore, we are not in agreement with the contention of the appellant(s) that under the 2003 Act, power to make regulations under Section 178 has to be correlated to the functions ascribed to each authority under the 2003 Act and that CERC can enact regulations only on topics enumerated in Section 178(2). In our view, apart from Section 178(1) which deals

with "generality" even under Section 178(2)(ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of 2003 Act. Trading is an activity recognized under the said 2003 Act."

In the present case, the impugned Regulations framed by the Regulatory Commission imposing RE obligation on the captive power plant and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of shortfall in meeting out the RE obligation, are consistent with the Act of 2003, National Electricity Policy and Tariff Policy and they are made for carrying out the provisions of the Act of 2003, National Electricity Policy and Tariff Policy."

[Emphasis supplied in each of the paragraphs]

17 Thus, a Division Bench of High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, held that changes in Regulations 4 and 5 impugned in those petitions were, in any manner, neither violative of any of the provisions of the Electricity Act, 2003, Rules and Regulations made thereunder nor ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India. The very findings based on the interpretation of the Electricity Act, 2003, Rules and Regulations made thereunder and the reasons assigned for arriving

at the finding about obligation upon the CPPs to purchase electricity from such sources, namely, by co-generation and generation of electricity from renewable sources of energy keeping in mind a percentage of total consumption of electricity in the area of distribution licensee which also included captive power plants situated in the area of distribution licensee and total consumption of electricity in such a case will not exclude consumption of electricity by the CPPs, and that, while interpreting Section 86(1)(e) of the Act, keeping in mind other functions enumerated in Section 86(4) of the Act and while discharging such functions, the State Electricity Commission shall be guided by the National Electricity Policy, 2005 and Tariff Policy 2006 framed under Section 3 and so provided under Section 86(4) of the Act, read with Sections 61 and 62 under the head 'Tariff of Part VII of the Act, 2003, are required to be adopted in the facts of these cases also as I am in respectful agreement with the same.

18 Thus, what emerges from the above judgment in the case of Ambuja Cements Limited (supra) is as under:

[i] That, obligations upon licensee are different and merely by the fact that no license is required to be obtained by the petitioners for establishing, operating and maintaining captive power plant by virtue of Sections 7 and 9 of the

Act of 2003, it cannot be inferred that such CPPs are out of regulatory regime of SERC and that the CPPs cannot be fastened with the obligation to purchase energy from renewable sources under the impugned Regulations.

[ii] That CPP is obligated entity and the provisions made with respect to obligations and liabilities for licensee cannot come in the way to carry out the objectives of the Act of 2003, National Electricity Policy and Tariff Policy.

[iii] From a conjoint reading of Sections 86(1)(e), 53(e) and 60 with regard to discharge of functions by the Regulatory Commission for promoting co-generation and generation of electricity from renewable sources of energy and in consultation with the State Government to specify suitable measures for keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity and also about market domination, etc. it empowers the Regulatory Commission to issue directions not only to the licensee but also to the generating company in certain eventualities.

[iv] The Regulations are framed in exercise of powers under Section 181 read with Section 86(1)(e) of the Act of 2003 and it is for promoting co-generation and generation of electricity from

renewable sources of energy only.

[v] That, Section 86(1)(e) of the Act of 2003 empowers the Regulatory Commission to direct captive power plant operators to purchase energy from renewable sources and the basic requirement is of applying criteria of considering percentage of total consumption of electricity in the area of distribution licensee. That, total consumption in an area of distribution licensee can be by three ways, namely, either supply through distribution licensee or supply from captive power plants by using lines and transmission lines of distribution licensee or from any other source by using transmission lines of distribution licensee. The fact remains that the area would always be of distribution licensee as the transmission lines and the system is of distribution licensee and, therefore, the phrase 'total consumption' is seen by consumers of distribution licensee, captive power plants and on supply through distribution licensee. Thus, the total consumption in the area of distribution licensee would be total consumption in all modes, otherwise serious consequences would follow.

[vi] The objective behind imposition of RE obligation upon captive power plants and open access consumers is to promote generation of electricity from renewable sources, so that it

would have long lasting impact in protecting environment and comparative data about consumption of fossil fuel like coal etc, power through thermal generation, which causes green house gases and carbon dioxide and other toxic gases resulting into hazardous effect on the health and global warming, etc. are seen in the context of duty cast under Article 51A(g) of the Constitution of India on the citizen to protect and improve the national environment for meaningful existence under Article 21 of the Constitution of India. With such avowed object if the Regulations are framed, it cannot be said that the Regulations are restrictive infringing any of the rights conferred upon the petitioners under Article 19(1)(g) of the Constitution of India nor the obligation can be said to be violative of Article 14 of the Constitution of India.

[vii] That, para 6.4 of the Tariff Policy also authorizes the Regulatory Commission to fix minimum percentage for purchase of energy from renewable sources and these provisions are not confined to distribution companies only. At the same time, para 5.12.1 of the National Electricity Policy also provides for non-conventional sources of energy as environment friendly and, therefore, RE obligations by the Regulations are just and proper. Even paras 5.12.2 and 5.2.24 of the National Electricity

Policy provide suitable measures for connectivity with grid and sale of electricity to any person and setting up of captive power plants are not only with a view to secure reliable, quality and cost effective power but also to facilitate creation of employment opportunities and to utilize electricity generated by large number of captive and standby generating stations in India, surplus capacity being supplied to the grid continuously or during certain time intervals.

[viii] Section 86(1)(e) provides independent functions. Section 86(1)(b) cannot control and confine the operation of Section 86(1)(e) with respect to distribution licensee alone, as contended by the learned counsel for the petitioners. Even Section 86(4) mandates Regulatory Commission to be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.

[ix] That, on an elaborate discussion with regard to interpretation of Section 86(1) of the Act, the contention of the petitioners that it is only about conferring general power to the Regulatory Commission to frame regulations in consonance with the Act and the Rules with a view to carry out the provisions of the said Act and none of the matters contained in clauses (a) to (zp) of Section 181(2) provides for framing of

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the impugned Regulations in respect of captive power plants, etc. and, therefore, it is beyond the rule making authority conferred upon the Regulatory Commission, is based upon misconception of interpretation of the provisions of Section 86(1)(e) of the Act in view of rejection of the submission that Section 86(1)(b) does not control operation of Section 86(1)(e).

[x] That, in PTC India Ltd (supra), the Apex Court has considered the scope and analysis of the Act of 2003 holding that the Act of 2003 contemplates three kinds of delegated legislation, firstly, under Section 176 Central Government correspondingly under Section 180 State Governments; secondly, under Section 177 the Central Authority; and, thirdly, under Section 178 the Central Commission, who can make regulations consistent with the Act and the Rules to carry out the provisions of the Act. That, likewise, SERC have corresponding power under Section 181 and, applying the test of 'general application', a Regulation stands on a higher pedestal vis-à-vis an order (decision) of CERC and such order shall be in conformity with the Regulations.

FURTHER FINDINGS

19 It is worth-noting that, under Part III, under the heading 'Generation of Electricity', Section 7 provides for generating company and

requirement for setting up of generating station; Section 8 is about hydro-electric generation; and Section 9 defines 'captive generation'. If definition of 'captive generation' under Section 9 is read in juxtaposition to definition of 'captive generating plant' under Section 2(8), a person can construct, maintain or operate captive generating plant and dedicated transmission line, and proviso to sub-section (1) of section 9 provides that supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company. The newly inserted proviso by the Act 26 of 2007 with effect from 15.6.2007 provides that no licence shall be required under the Act of 2003 for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of the Act, Rules and Regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of Section 42. Thus, while dispensing with the requirement of obtaining licence by CGP/CPP for supply of electricity generated from CGP, no exemption is given to CGP/CPP to be regulated by the provisions of the Act, 2003, rules and regulations made thereunder other than the above and, therefore, CGP/CPP is not absolved from obligation to be discharged under the impugned regulations. In addition to the above, as per sub-section (2) of section 9, a person constructing, maintaining, operating CGP/CPP shall have also right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use and such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility as the case may be and, thus, CGP/CPP has to follow directions, orders, regulations, rules framed under provisions of the Act of 2003 for carrying out the purposes of the Act.

20 Inter-alia, if definition of 'captive generating plant' under Section 2(8) is seen, it means a power plant set up by any person to generate electricity primarily for his use and includes a

power plant set up by any co-operative society or association of person for generating electricity primarily for use of members of such cooperative society or association. Therefore, it is not that power plant set up by any person to generate electricity is exclusively for his own use. In a given case, electricity generated by CPP can be used for a purpose other than captive use in case of excess production of electricity. Thus, harmonious reading of Sections 86(1)(e), 2(12), 2(8) and 9 of the Act, with the decision of the Apex Court in Tata Power Company Limited (supra), and the decision of a Division Bench of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, in the case of Ambuja Cements Limited (supra), would mean that CPP is exempted from licence regime, but not from any other regulatory measures envisaged by the Electricity Act 2003, Rules and Regulations framed thereunder to carry out the provisions of the Act, 2003.

20.1 There is no discriminatory treatment to CPP nor promotion of co-generation and generation from renewable sources of energy can be equated or put on par with CPP and the classification is reasonable to that extent, namely, promoting co-generation and generation from renewable sources of energy for which RE obligation is cast upon the CPP, and is based on intelligible differentia and have rational with the objects sought to be achieved, namely, to protect environment and to reduce global warming, etc. coupled with survival and growth of units producing

electricity from renewable sources of energy.

Therefore, CPP may be a distinct entity enjoying certain benefits and privileges inter-alia non-subjecting it to licensing control of the authority or commissions, but, under an obligation to follow various directions issued by the Electricity Regulatory Commission in consonance with the Act of 2003, Rules and Regulations framed thereunder.

21 That a careful perusal of National Electricity Policy and Plan, Tariff Policy and National action Plan on Climate Change and provisions of Act, 2003, Rules and Regulations there under empowers the State Electricity Regularity Commission [SERC] to prescribe a certain percentage of total power purchased by the Grid from renewable based source and also preferential Tariff that may be followed for renewal based power. As held earlier, and followed in the case of Ambuja Cement [supra] SERC is a creature of statute under Part X under Section 82 of the act, 2003 and empowered to frame regulations under Section 181 which may be consistent with the Act and to carry out provisions of the Act.

21.1 If Section 86(1)(e) is analyzed in the context of overall Scheme of the Act, 2003, Rules, Regulations in juxtaposition to National Electricity Plan and Policy, Tariff Policy, it is about functions to be discharged by SERC.

Section 86(1)(e) is;

-to protect

-co-generation and generation of electricity from renewable source of energy

-by providing **suitable measures** [such measures have to be consistent and with a view to carry out provisions of the Act]

-for, viz. connectivity with the grid

-sale of electricity to any person

-also to specify

-for **purchase** of electricity from '**such sources**' meaning thereby renewable sources of energy on which co-generation and generation of energy is based

-for fixing percentage of total consumption of electricity in the area of distribution licensee is to be ascertained and calculated towards renewable purchase obligations. While undertaking exercise of calculating the total percentage of consumption in the area of distributive licensee, if consumption of electricity by CGP / CPP is excluded then it would not reflect correct data for SERC to take measures under Section 86(1)(e). Only because data pertaining to consumption of CGP is included in total consumption CGP does not become consumer so defined under the Act, 2003.

22 That contention of Mr. S.N.Soparkar that co-generation plant of petitioners of Special Civil Application No.791 of 2011 that it is based on fossil fuel and is non-conventional in view of decision in

the case of Lloyds Metal & Energy Ltd. [supra] of APTEL, though appears to be attractive on first blush but non-conventional energy cannot be equated always with renewable source of energy. That co-generation is a process simultaneously producing two or more forms of useful energy though never defines type of input or source of fuel to be used, but co-generation provided under Section 86(1)(e) of the Act, 2003 is not co-generation stand alone, but it is co-generation and generation of electricity from renewable sources of energy. Thus, a source or input of energy may be non-conventional in the sense that CGP or co-generation following innovative or advanced technology, which may be eco-friendly and reducing carbon credit, but only on that ground is not not the same renewable source of energy like hydro, wind, solar, biomass, bagasse, etc. That non-conventional energy always and for all purposes cannot be equated with non-renewable sources of energy.

22.1 That the judgment dated 26.04.2010 of the APEL in Appeal No.57 of 2009 in the matter of Century Rayon Ltd. vs. Maharashtra Electricity Regulatory Commissioner & Ors. fell into consideration in Appeal No.53 of 2012 and by order dated 29.12.2011 interim relief to enable sale of electricity from co-generation plant based on industrial waste heat generated by the sponge iron plant with the use of fossil fuel [coal] and directions to be issued to the distribution licensee came to be rejected, but the issue that whether the distribution licensee would be

fastened with the obligation to purchase a percentage of its source from co-generation irrespective of fuel use being important issue came to be re-examined by the Full Bench and accordingly, upon an exercise undertaken about finality of the judgment dated 26.04.2010 in Appeal No.57 of 2009, it appears that the Full Bench of Appellate Tribunal for Electricity [Appellate Jurisdiction] in the case of Lloyds Metal & Energy Ltd. vs. Maharashtra State Electricity Distribution Company Limited in Appeal No.53 of 2012 considered the order dated 29.12.2011 rendered by the Division Bench of APTEL in Appeal No.57 of 2009 in the matter of Century Rayon Ltd. vs. Maharashtra Electricity Regulatory Commission and others and framed the following question:

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

The Full Bench of APTEL vide order dated 02.12.2013 passed in Appeal No.53 of 2012, held in para 39, as under:

"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 pursue 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 renewal 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."

Thus, judgment dated 26.04.2010 in Century Rayon [supra] [Appeal No.57 of 209]; judgment dated 17.04.2013 in IA 262 of 2012 in RP (DFR) No.1311 of 2012 in Appeal NO.57 of 2009 filed by Gujarat Electricity Regulatory Commission; judgment dated 30.01.2013 in Appeal No.54 of 2012 filed by M/s. Emami Paper Mills; judgment dated 31.01.2013 in Appeal no.59 of 2012 filed by M/s. Vedanta Aluminium Ltd. [VA]; and judgment dated 10.04.2013 in Appeal NO.125 of 2012 filed by M/s. Hindalco Industries Limited, all delivered by the APTEL have no significance and force of law in view of judgment dated 02.12.2013 rendered by the Full Bench of the APTEL in Appeal No. 53 of

2012.

That submissions about non-applicability of law laid down in Ambuja Cement [supra] rendered by a Division Bench of Rajasthan High Court, is also devoid of merit inasmuch as substantially the issue before Division Bench of Rajasthan High Court was about inclusion of CGP / CPP as obligated entity to purchase electricity from generating unit based on non-renewal source of energy.

23 At the cost of repetition, in exercise of powers under Section 3 for framing regulations for procurement and protection of energy from renewable sources, it is clear that an elaborate exercise is undertaken by the GERC defining the area of supply, distribution licensee, obligated entity and renewable sources of energy along with other definitions. It has also considered the quantum of RPO by defining purchase of electricity in kWh from renewable energy sources at a specified minimum percentage of their total consumption during a year and limiting such obligation upon the CPPs having installed capacity of 5 MW and above. Thus, all the objections are also considered by assigning reasons. The Commission has also considered various provisions of the Act and the functions to be discharged being a regulatory body only with a view to carry out the provisions of the Act of 2003 and the Rules made thereunder.

24 The GERC did keep in mind all the

representations submitted by the objectors before determining renewable purchase obligation [RPO] and, while doing so, the GERC also provided production capacity of electricity of CPPs and only those CPPs, who produce more than 5 MV of electricity, are brought within the purview of the RPO and, therefore, it would not hit or create imbalance in the functioning of the CPPs. The Commission also applied all the criteria including technical parameters and functioning capacity of CPP vis-à-vis interest of power generating plant in renewable source of energy and their survival in consonance with National Electricity Plan and Tariff Policy. That, Section 86(1)(e) of the Act is not only for promoting co-generation stand alone system, but, it is for promotion of co-generation and generation from renewable source of energy. In this context, if the definition contained in Section 2(12) of the Act is seen, it is clear that 'co-generation' means a process which simultaneously produces two or more forms of useful energy (including electricity). In the above process, excess energy is harnessed by a particular process and electricity is generated.

25 Since the procedure is duly followed by the Commission while framing the Regulations, namely, renewable purchase obligation or renewable energy certificate, it cannot be said that such an exercise by the Commission is, in any manner, unjust, unreasonable, arbitrary, discriminatory or contrary to

the provisions of the Electricity Act, 2003 or violative of Articles 14, 19 and 300A of the Constitution of India. As regards challenge to the authority and jurisdiction of the GERC to frame such regulations impugned in these petitions, I have already taken a view that the law laid down by a Division Bench of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, in the case of Ambuja Cements Limited (supra), in the context of the identical contentions raised by the parties therein, is applicable in the facts of the present cases also.

26 In the result, all these writ petitions stand dismissed with no order as to costs. Notice issued in each of the petition stand discharged.

27 Civil Applications filed by Indian Wind Energy Association for impleading as party raising contentions justifying impugned regulations, it is not in dispute that the challenge in all these writ petitions is to legality and validity of regulations and powers and jurisdiction of respondent GERC and further adjudicating such issues effectively, I am of the view that applicant(s) are neither proper nor necessary party and accordingly not to be impleaded as party respondents and Civil Applications filed by Indian Wind Energy Association are hereby rejected. Similarly, Civil Applications filed by respondent Commissioner to join Union of India and other Central authorities are also de-void of merit and are hereby rejected.

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C/SCA/171/2011

CAV JUDGMENT

(ANANT S.DAVE, J.)

At this state, learned counsels for the petitioners requested to stay the implementation, execution and operation of the impugned Regulations for a reasonable period.

Considering the overall facts and circumstances of the case, I am inclined to grant status quo as on today qua the impugned Regulations in each of the writ petitions till 23.04.2015.

(ANANT S.DAVE, J.)

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THE HIGH COURT
OF GUJARAT

ANNEXURE : E

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C/LPA/847/2015

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 847 of 2015
In SPECIAL CIVIL APPLICATION NO. 936 of 2011

With

LETTERS PATENT APPEAL NO. 598 of 2015

In

SPECIAL CIVIL APPLICATION NO. 171 of 2011

TO

LETTERS PATENT APPEAL NO. 601 of 2015

In

SPECIAL CIVIL APPLICATION NO. 597 of 2011

With

LETTERS PATENT APPEAL NO. 828 of 2015

In

SPECIAL CIVIL APPLICATION NO. 10471 of 2013

TO

LETTERS PATENT APPEAL NO. 829 of 2015

In

SPECIAL CIVIL APPLICATION NO. 7084 of 2011

With

LETTERS PATENT APPEAL NO. 832 of 2015

In

SPECIAL CIVIL APPLICATION NO. 791 of 2011

With

CIVIL APPLICATION NO. 4995 of 2015

In

LETTERS PATENT APPEAL NO. 847 of 2015

With

CIVIL APPLICATION NO. 4315 of 2015

In

LETTERS PATENT APPEAL NO. 598 of 2015

With

CIVIL APPLICATION NO. 4334 of 2015

In

LETTERS PATENT APPEAL NO. 599 of 2015

With

CIVIL APPLICATION NO. 4336 of 2015

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In
LETTERS PATENT APPEAL NO. 600 of 2015
With
CIVIL APPLICATION NO. 4338 of 2015
In
LETTERS PATENT APPEAL NO. 601 of 2015
With
CIVIL APPLICATION NO. 4779 of 2015
In
LETTERS PATENT APPEAL NO. 829 of 2015
With
CIVIL APPLICATION NO. 4778 of 2015
In
LETTERS PATENT APPEAL NO. 828 of 2015
With
CIVIL APPLICATION NO. 4804 of 2015
In
LETTERS PATENT APPEAL NO. 832 of 2015

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ARVIND LIMITED(FORMERLY KNOWN THE ARVIND MILL S
LIMITED....Appellant(s)
Versus
GUJARAT ELECTRICITY REGULATION COMMISSION....Respondent(s)

=====

Appearance in LPA Nos. 847, 598 to 601 of 2015 with C.A. Nos. 4995, 4315, 4334, 4336, 4338 of 2015:
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR SANDEEP SINGHI,
ADVOCATE FOR SINGHI & CO, ADVOCATE for the Appellant(s) No. 1
MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1
Appearance in LPA Nos. 828 & 829 of 2015 with C.A. Nos. 4779 & 4778 of 2015:
MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR GAURAV MATHUR,
ADVOCATE for the Appellant(s) No. 1
MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1
Appearance in LPA No. 832 of 2015 with C.A. No. 4804 of 2015:
MR RASESH SANJANWALA, SENIOR ADVOCATE WITH MR DILIP

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C/LPA/847/2015

ORDER

KANOJIYA, ADVOCATE for the Appellant(s) No. 1
MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1
=====

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 05/05/2015

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

ORDER IN LETTERS PATENT APPEALS

At the request of learned counsels appearing for the parties, matters are peremptorily fixed for hearing on 11.08.2015. To be listed immediately after admission matters.

ORDER IN CIVIL APPLICATIONS

1. We have heard learned counsel appearing for the parties at length.
2. These applications have been filed praying for stay of the impugned CAV judgement and order dated 12.03.2015 passed by the learned Single Judge in Special Civil Application No. 936 of 2011 and other cognate matters pending the appeals.
3. Mr. Soparkar, learned Senior Counsel appearing for the has drawn the attention of this Court to the provisions of The Electricity Act, 2003 (hereinafter referred to as 'the Act')

more particularly Sections 2(8), 2(12) , 2(15) and the definition of non-conventional source. He has also drawn the attention of this Court to Sections 9, 68 and 86 of the Act and submitted that the impugned judgement and order passed by the learned Single Judge may be stayed by this Court as the same proceeds on erroneous reading and interpretation of the provisions of the Act, Regulations framed thereunder, National Electricity Policy as well as the Tariff Policy and the various orders passed by the Appellate Court. Sections 2(8), 2(12) , 2(15) are reproduced hereunder:

"2(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

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

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be"

3.1 Mr. Soparkar submitted that the fundamental issue concerning the applicability of the GERC (Procurement of Energy from Renewable Sources) Regulation 2010 (hereinafter referred to as 'the Regulation') raised by the applicants has not been considered and dealt with by the

learned Single Judge. He submitted that on a fair reading of Regulation 2.1(k) which defines obligated entity read with Regulation No. 3, it is clear that the regulations would apply to persons consuming electricity generated from 'conventional captive generation plant' having capacity of 5MW and above. He submitted that the use of word 'conventional' would exclude the applicants from the purview of the Regulation as the applicants have set up a co-generating captive power plant which is a non conventional power plant.

3.2 Mr. Soparkar submitted that the provisions of Section 86(1)(e) clearly sets out the apparent legislative intent to promote co-generation along with the promotion of generation of electricity from renewable sources of energy. The meaning of the term co-generation has to be understood as defined in Section 2(12) of the Act. He submitted that the respondent Commission clearly erred in interpreting section 86 by reading the word 'co-generation' along with generation of electricity from renewable sources of energy and suggesting that what is being promoted is co-generation from renewable sources of energy.

3.3 Mr. Soparkar further submitted that the learned Single Judge also failed to appreciate the National Electricity Policy in paragraphs 5.2.26 and 5.12.3 which encourages co-generation. He submitted that similarly the tariff policy dated 06.01.2006 in clauses 6.3 and 6.4 also encourages co-generation. He submitted that in addition to the National policy as well as Tariff policy the applicants had produced several documents including the objections filed before the Commission which clearly recognized co-generation as a

technology to be promoted.

3.4 Mr. Soparkar further submitted that while other Regulatory Commissions have issued regulations fastening Renewable Purchase Obligation (RPO) on captive consumers, the said regulations do not cover co-generating units. He submitted that section 86(1)(e) covers distribution licensees and the total consumption by the consumers who are sold power by the distribution licensees in their area of supply.

3.5 Mr. Soparkar submitted that the learned Single Judge has erred in relying upon the decision of the Appellate Tribunal in **Appeal No. 57 of 2009 dated 26.04.2010 in the case of Century Rayon vs. Maharashtra Electricity Regulatory Commission, Maharashtra Energy Development Agency and Maharashtra State Electricity Distribution Co. Ltd.** He submitted that the Tribunal in the said matter was considering the question whether a distribution licensee should be obligated to purchase the percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Act. He submitted that the said question is distinct from the question arising in the present matters as to whether co-generating CPPs which ought to be promoted should be obligated to compulsorily purchase power from renewable sources of energy. In this regard he has relied upon paragraphs 16, 25, 26, 27 and 45 which are reproduced hereunder:

"16. In the above context, the contention that the sale of electricity to any person is to be read in the context of the sale by the co-generator or the generator of electricity from the renewable source of energy does not merit consideration. The

Appellant is a co-generator. It produces energy more efficiently as compared to conventional power plants which is to be treated at par with the electricity from the renewable source of generation. When such being the case, the SSR Page 11 of 37 Judgment in Appeal No. 57 of 2009 fastening of obligation on the co-generator to procure electricity from renewable energy producer would defeat the object of section 86(1) (e). These two categories of generators namely: (i) Co-generators and (ii) generators of electricity through renewable sources of energy are required to sell the electricity to any person as may be directed by the State Commission. Any obligation for purchase of electricity from these two sources can be imposed only on the distribution licensee and not on the captive consumers who are generating electricity through co-generation irrespective of the fuel used.

25. It cannot be disputed that the energy efficiency of the co-generation plant is almost double than the normal power plants because normal power plants release residual energy SSR Page 17 of 37 Judgment in Appeal No. 57 of 2009 in the atmosphere, whereas the co-generation plant utilizes the energy to the maximum possible. It is established, as mentioned earlier, that the energy efficiency of the normal power plant is about 50 to 60% whereas the energy efficiency of the co-generation plant is about 80-85%.

26. Internationally, the Governments have been promoting co-generation of energy so that the precious fuel is not wasted and the environment is protected. Even the municipalities/local authorities have been encouraging the simultaneous use of the residual wastes. It is for this reason that the Electricity Act 2003 has cast obligation on the State Commissions to promote co-generation as well as the generation of electricity through renewable energy sources.

27. This aspect can be viewed from yet another angle also. As mentioned earlier, we are called upon to decide the question as to whether co-generation projects based on fossil fuel are not

entitled to be treated at par with the eligible SSR Page 18 of 37 Judgment in Appeal No. 57 of 2009 renewable energy sources for renewable projects obligation. To answer this question we have to see the scheme of the Electricity Act as well as the National Electricity Policy and National Tariff Policy. Under the Act there are three categories of sources of energy each being accorded with a different treatment namely -

(i) Conventional Power Plants such as Thermal, Hydro and Nuclear Power Plants.

(ii) Renewal source of energy.

(iii) Non-conventional plants including co-generation plants.

45. Summary of our conclusions is given below:-

(I) The plain reading of Section 86(1)(e) does not show that the expression 'co-generation' means SSR Page 33 of 37 Judgment in Appeal No. 57 of 2009 cogeneration from renewable sources alone. The meaning of the term 'co-generation' has to be understood as defined in definition Section 2 (12) of the Act.

(II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the distribution licensees to purchase electricity from both of these categories.

(III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on SSR Page 34 of 37 Judgment in Appeal No. 57 of 2009 one in preference to the other is totally contrary to the legislative interest.

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(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. "

4. Mr. Mihir Joshi, learned Senior Counsel supporting the arguments advanced by Mr. Soparkar submitted that the applicants are operation the CPP in co-generation mode wherein steam is produced which runs turbines (to generate electricity) and is also used in the production process. He submitted that in case RPO is imposed and power is to be purchased then CPP generation will have to be backed down and this will directly affect the availability of steam leading to reduction in production and for fulfilling requirement of steam, additional fossil fuel will have to be burnt.

4.1 Mr. Joshi further submitted that under the RPO regulations, GERC is to fix a quantum (as a percentage of total consumption of electricity consumed in the area of a distribution licensee). He submitted that this quantum is fixed. The distribution licensees are already procuring such power and selling it to consumers including applicants who have contract demand. He submitted that it is not a case where renewable energy is not being procured at all but the only question is whether private parties can be made liable to

procure this power.

4.2 Mr. Joshi further submitted that CPPs are set up pursuant to impetus being offered by the Government on incurring huge cost including recurring cost. He submitted that the applicants today have sufficient power and the regulations result in the applicants having to enter into contracts with private generators of renewable power. He submitted that since GERC is not authorised to fix tariff in light of proviso to Section 86(1)(e) for bilateral transactions, there is no certainty as to at what cost the generators will sell power.

4.3 Mr. Joshi submitted that GERC vide its judgement dated 16.01.2015 in Petition No. 1437 of 2014 has recorded that some renewable generators are offering to sell at a price higher than the preferential tariff even to the distribution licensees. He has drawn the attention of this Court to paragraph 20.6 of the said judgement in this regard. He submitted that this will cause grave prejudice since the applicants will be in non-compliance of unwillingness of renewable energy generators to agree on a price.

4.4 Mr. Joshi contended that GERC in its judgement dated 16.02.2015 in Petition No. 1437 and 1442 of 2014 found that sufficient renewable power is not available and has curtailed the obligation of the distribution licensees in the State of Gujarat. He submitted that in case renewable power is not available, the applicants will fail in fulfilling their obligation since procurement of power is the only obligation. He submitted that the regulations however recognise that

Renewable Energy Certificates (RECs) are valid instruments for discharging RPO and it is unfair to ask the applicants to purchase RECs when renewable power is actually not available. He submitted that RECs are a double benefit to the generator who gets cost of power as well as REC and the applicants will have to generate power to the tune of their RPO and incur cost and will have to make a second payment for the RECs for the same quantum of power which is grossly unfair more so when GERC in paragraph 20.15 of judgement dated 16.01.2015 in Petition No. 1437 of 2014 has found that REC is an additional burden and only aids the commercial interest of renewable generators.

5. Mr. Kamal Trivedi, learned Senior Advocate appearing with Mr. B.D. Karia, learned advocate for Bhargav Karia & Associates submitted that Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation, 2010 ('the Regulations' for short) framed in the exercise of the powers conferred under Section 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 ('the Act' for short) are statutory in nature and as per the judgment of the Apex Court in the case of **Bhavesh D. Parish & Ors. Vs. Union of India reported in (2000) 5 SCC 471**, there is always a presumption in favour of validity of any legislation, unless the same is set aside after final hearing and therefore, no interim relief can be granted for staying the legislation. In view of this, the appellants do not deserve any interim relief, more particularly in light of following observations of the Apex court in the aforesaid judgment.

"30Merely because a statute comes up for examination and some arguable point is raised,

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which persuades the courts to consider controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reforms, at the interim stage, cannot be understood.... "

5.1 Sections 61 and 66 of the Act are also reproduced hereunder:

Section 61. (Tariff regulations):

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

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) the principles rewarding efficiency in performance;
- (f) multi year tariff principles; 1[(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory

Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

Section 66. (Development of market):

The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard.

5.2 Mr. Trivedi submitted that in fact, validity of the Regulations has been examined in great detail by the learned single Judge in the judgment under challenge wherein, it has been found that the respondent commission has duly considered all the objections and applied all the criteria in consonance with the National Action Plan and Tariff Policy and has ultimately found nothing objectionable in the Regulations. In this view of the matter, unless the appeals are finally heard and judgment of the learned single Judge under challenge is set aside, no question arises of granting any interim relief in the matter.

5.3 Mr. Trivedi submitted that apart from what is mentioned above, objections of the appellants in the matter of less availability of renewable sources of energy, higher prices being fixed by the persons selling such renewable sources of energy etc., Regulation 4.2 of the Regulations clearly enables the obligated entity to approach the commission, keeping in view the supply constraints or other factors beyond the control, with a request to revise the percentage targets per

year. Similarly, Regulation 9.1 enables the obligated entity to approach the commission to carry forward the compliance requirement to the next year, in case of non-availability of power from renewable energy sources. At the same time, Regulation 5 enables obligated entity to purchase renewable energy certificates against the discharge of mandatory obligations. In view of this, there is a sufficient elbow room for the obligated party to take care of any of its genuine difficulties in discharge of its Renewable Purchase Obligation ('RPO' for short), and hence, no interim relief against the execution, implementation and operation of the regulation can be granted.

5.4 Mr. Trivedi contended that a combined reading of section 2(3) read with section 2(12) read with section 61 and section 86(1)(e) of the Act makes it very clear that the word 'and' between the words 'Co-generation' and 'generation' in section 86(1)(e), is conjunctive, and not disjunctive and hence both co-generation and generation, from the renewal sources of energy requires promotion. If the said co-generation and generation of electrical energy is from non-conventional i.e. renewable sources of energy i.e. wind, solar, hydro, bio-mass, no RPO is to be discharged, however, if in co-generation or generation of electrical energy or generation from captive power plants, conventional sources are utilized i.e. Coal, Oil, Gas, fossil fuel, then in that case, RPO is required to be discharged.

5.5 Mr. Trivedi submitted that in view of the above, merely because some of the appellants are engaged in co-generation of electrical energy from conventional sources, even though

they generate renewal energy as by-product, they cannot be exempted from discharge of the RPO. Similarly, captive power plant not connected with the grid and independent by itself is also covered under the Regulation when the generator consumes electricity produced by such captive power plants, inasmuch as RPO under the Regulation is on consumption of electricity.

5.6 Mr. Trivedi submitted that apart from what is mentioned above, merely, because in some of the States, co-generation is exempt from RPO, the same cannot ipso facto invalidate similar provisions contained in the Regulations in question. Hon'ble Rajasthan High Court has dealt with this aspect in extenso and the learned single Judge has also taken note of the same. This apart learned single Judge has dealt with all the aspects of the matter in paras 20, 22.1 and 23 of the judgment under challenge.

5.7 Mr. Trivedi submitted that in view of National Action Plan as well as National Electricity Policy more particularly clause 5.12 co-generation and generation of electricity from non-conventional sources are required to be promoted by the Commissions by providing suitable measures, etc. and that 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. Thus, it is the demand of the nation that conventional sources are preserved from being wasted and non-conventional sources of energy are used even for taking care of global warming. Thus, it would be in the interest of the Society at large that the appellants are directed to comply with the

regulations that may be brought in force instead of granting interim relief against operation of the same.

6. At the outset it shall be relevant to peruse section 86(1) (e) and the same is reproduced under:

"Section 86. (Functions of State 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;
..."

7. As as a result of hearing and perusal of records we are of the view that the statutory regulations are framed by statutory authority after inviting objections from concerned industry and therefore the same has statutory force. The GERC seems to have considered the objections raised by all the objectors while framing the regulations with regard to applicability of the RPO to CPP consumers. No doubt the same has not yet been given effect from 2011 but now it has been upheld by the learned Single Judge.

7.1 Moreover, in view of the observations made by the Apex Court in the case of **Bhavesh D. Parish (supra)**, it will not be appropriate to stay the impugned order by the learned Single Judge. The Apex Court has categorically held that merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to

consider controversy, the legislative will should not normally be put under suspension pending such consideration. It has also observed that there is always a presumption in favour of constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reforms, at the interim stage, cannot be understood.

7.2 However, keeping in mind the interest of both the sides in these applications, it is directed that the implementation of the Regulations shall be subject to the result of the appeals. We are of the opinion that they do not fall within the definition of conventional energy as contemplated under the provisions. Prima facie what we envisage is saving natural resources and not from by product or any other product which is derived from processes coming under co-generation and that the emphasis in section 86(1)(e) is to promote non conventional and renewable sources of energy and not to promote use of fossil fuels. The observations made by this Court in these applications are prima facie and the same shall be considered in detail while hearing the appeals on merits as at this stage any observations made on the merit of the matters will prejudice the case of both the sides.

8. Therefore, instead of granting stay of the impugned judgement and order it shall be in the interest of justice to observe that the said regulations shall though come into force they shall be subject to the final decision given in the appeals. Applications are disposed of accordingly. Rule is discharged accordingly.

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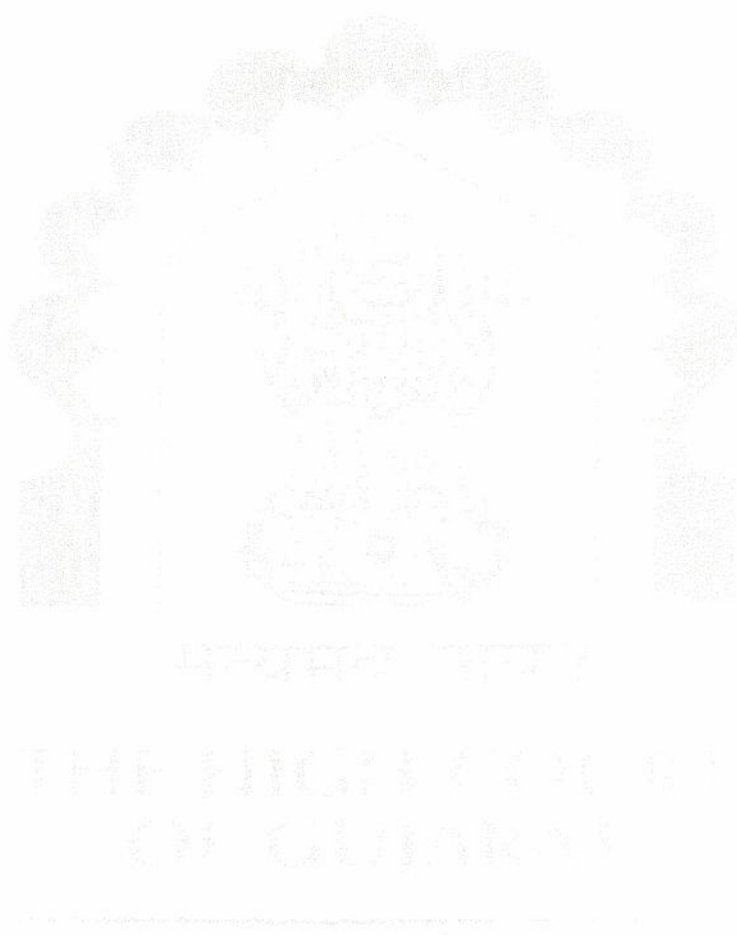
C/LPA/847/2015

ORDER

(K.S.JHAVERI, J.)

(A.G.URAIZEE,J)

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ANNEXURE :- F

165

No.23/3/2016-R&R
Government of India
Ministry of Power

Saram Shakti Bhawan, New Delhi,
Dated, the 22nd July, 2016

ORDER

Subject: Guidelines for long term RPO growth trajectory of Renewable Purchase Obligations (RPOs) for non-solar as well for solar - reg.

- 1.0 In exercise of the powers conferred under section 3(3) of Electricity Act, 2003, the Central Government notified the revised Tariff Policy which was published vide Gazette of India, Extraordinary, Part-I, Section-1 dated 28.1.2016.
- 2.0 Para 6.4 (1) of the policy provides that 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 Purchase Obligations (RPOs) 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 RPOs.
- 3.0 Further, Para 6.4 (1)(i) also provides that within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.
- 4.0 Now, in view of the above provisions and in order to achieve the target of 1,75,000 MW of renewable capacity by March, 2022, the Ministry of Power in consultation with

Ministry of New and Renewable Energy, notifies the Long term growth trajectory of Renewable Purchase Obligations (RPOs) for Non-solar as well solar, uniformly for all States/Union Territories, initially for three years from 2016-17 to 2018-19 as under-

Long term trajectory	2016-17	2017-18	2018-19
Non-Solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

The obligations will be on total consumption of electricity by an obligated entity, excluding consumption met from hydro sources of power.

- 5.0 Further, in exercise of power conferred under the Electricity Act, 2003, SERCs may consider to notify RPO for their respective States in the line with aforesaid uniform RPO trajectory.
- 6.0 These Guidelines are issued with the approval of Minister of State (I/C) for Power, Coal, New and Renewable Energy and Mines.


 (Jyoti Arora)
 Joint Secretary to the Govt. of India
 Tele No. 2371 0389

To,

1. Principal Secretary/Secretary (Power/Energy), State Governments/UTs
2. Secretary, State Electricity Regulatory Commissions/Joint Electricity Regulatory Commissions

Copy to:

1. Secretary, MNRE, CGO Complex, New Delhi
2. Chairperson, CEA, Sewa Bhawan, RK Puram, New Delhi
3. Secretary, CERC/FOR, Chanderlok Building, Janpath, New Delhi

Copy also for information to:

1. All Joint Secretaries, Ministry of Power
2. PS to MOS(I/C) for Power, Coal, NRE & Mines
3. PPS to Secy.(P), PPS to AS(BPP), PPS to AS(SP), PPS to JS(RR)

ANNEXURE : 6
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Extra No. 347

વાર્ષિક લવાજમનો દર રૂ. ૪૦૦૦/-



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The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LIX]

MONDAY, APRIL 23, 2018/VAISAKHA 3, 1940

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)

GUJARAT ELECTRICITY REGULATORY COMMISSION (PROCUREMENT OF ENERGY FROM RENEWABLE SOURCES) (SECOND AMENDMENT) REGULATIONS, 2018

Notification: No. 01 of 2018

In exercise of Powers conferred under Section 61, 86 and 181 of the Electricity Act, 2003 (Act No. 36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following regulations, to amend Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter referred to as "The Principal Regulations") namely:

1) Short Title Extent and Commencement:

(i) These regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018.

(ii) These Regulations shall extend to the whole of the State of Gujarat.

2) These regulations shall come into force with effect from the date of their publication in the Official Gazette.

3) Substitution of Table 1 of Regulation 4.1:

Table 1 provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 is substituted by following Table – I and II:

TABLE - I

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasse, Hydro and MSW) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2010-11	4.5	0.25	0.25	5.0
2011-12	5.0	0.5	0.5	6.0
2012-13	5.5	1.0	0.5	7.0
2013-14	5.5	1.0	0.5	7.0
2014-15	6.25	1.25	0.5	8.0
2015-16	7.0	1.5	0.5	9.0
2016-17	7.75	1.75	0.5	10.0

TABLE - II

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasse, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.5	10.00
2018-19	7.95	4.25	0.5	12.70
2019-20	8.05	5.5	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.0	0.75	17.00

4) Substitution of para 2 of Principal Regulation 4.1:

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5.

5) Addition in Regulation 4.1 of the Principal Regulation:

A new third para is added after second para of Regulation 4.1 of the Principal Regulations as under:

Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy Projects in the State of Gujarat, in the ratio of their procurement of power from all sources including their own, at the tariff discovered through a Competitive Bidding Process as envisaged in the Gujarat Waste to Energy Policy, 2016 subject to ceiling of generic tariff as determined by the Commission.

ROOPWANT SINGH, IAS

Secretary

Gujarat Electricity Regulatory Commission
Gandhinagar, Gujarat

Place: Gandhinagar.

Date: 21/04/2018.

ANNEXURE : H

169

No.23/03/2016-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, New Delhi,
Dated, the 14th June, 2018

ORDER

Subject: Long term growth trajectory of Renewable Purchase Obligations (RPOs) for Solar and Non-solar for a period of three years i.e. 2019-20 to 2021-22 - regarding.

In exercise of the powers conferred under Para 6.4(1) of the Tariff Policy notified on 28.1.2016 and in order to achieve the target of 1,75,000 MW of renewable capacity by March, 2022, the Ministry of Power after consultation with Ministry of New and Renewable Energy vide Order dated 22nd July, 2016 had notified the Long term growth trajectory of Renewable Purchase Obligations (RPOs) for Non-solar as well solar, uniformly for all States/Union Territories, initially for three years from 2016-17 to 2018-19 as under:-

Long term RPO trajectory	2016-17	2017-18	2018-19
Non-Solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

The obligations were on total consumption of electricity by an obligated entity, excluding consumption met from hydro sources of power.

2.0 In continuation to the earlier Order dated 22nd July, 2016, the Ministry of Power in consultation with Ministry of New & Renewable Energy notifies the Long term growth trajectory of Renewable Purchase Obligations (RPOs) for Solar as well Non-solar, uniformly for all States/Union Territories, for further three years period from 2019-20 to 2021-22 as under-

Long term RPO trajectory	2019-20	2020-21	2021-22
Non-Solar	10.25%	10.25%	10.50%
Solar	7.25%	8.75%	10.50%
Total	17.50%	19.00%	21.00%

The Renewable Purchase Obligations shall be on total consumption of electricity by an obligated entity, excluding consumption met from hydro sources of power.

.....2/-



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- 2 -

Provided that on achievement of Solar RPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPO for that particular year.

Provided further that on achievement of Non-Solar RPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Solar energy purchased beyond specified Solar RPO for that particular year.

3.0 Further, in exercise of power conferred under the Electricity Act, 2003, SERCs may consider to notify RPO for their respective States in the line with aforesaid uniform RPO trajectory.

4.0 This issues with the approval of Minister of State (I/C) for Power and NRE.


(Ghanshyam Prasad)
Chief Engineer (R&R)
Tele No. 23710389

To,

1. Principal Secretary/Secretary (Power Energy), State Governments/UTs
2. Secretary, State Electricity Regulatory Commissions/Joint Electricity Regulatory Commissions

Copy to:

1. Secretary, MNRE, CGO Complex, New Delhi
2. Chairperson, CEA, Sewa Bhawan, RK Puram, New Delhi
3. Secretary, CERC/FOR, Chanderlok Building, Janpath, New Delhi

Copy also for information to:

1. All Joint Secretaries/ EA, Ministry of Power
2. PS to MOS(I/C) for Power, Coal, NRE & Mines
3. PPS to Secretary (Power), PPA to AS(RR), PS to CE(R&R), PS to Director (R&R)

ANNEXURE :-

I

171

No. 30/04/2018-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st February, 2019

To

1. Chairperson, CEA, Sewa Bhawan, R.K. Puram, New Delhi.
2. Secretary (Energy/Power), All State Govts/UTs.
3. Secretary, CERC/FOR, Chanderlok Building, Janpath, New Delhi.
4. Secretary, All SERCs
5. CMD, All CPSUs under the administrative control of Ministry of Power.
5. President, FICCI, Tansen Marg, New Delhi.
6. President, ASSOCHAM, New Delhi
7. Indian Captive Power Producers Association
8. DG, APP, New Delhi.

Subject: Clarification on Orders related to Renewable Purchase Obligation .

Sir,

I am directed to refer to the Ministry of Power's Order of even number dated 22nd July, 2016 and 14th June, 2018 regarding long term growth trajectory of Renewable Purchase Obligation (RPO) for Solar and Non-solar for the period 2016-19 and 2019-22 respectively.

2. The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.

3. This issues with the approval of Hon'ble MoS(I/C) for Power and NRE.

Yours faithfully,



(D. Chattopadhyay)
Under Secretary to the Govt. of India
Tel: 2373 0265

Copy to: Shri P.C. Maithani, Adviser, MNRE, New Delhi.

ANNEXURE :-

J

172

No. 30/04/2018-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st October, 2019

To

1. Chairperson, CEA, Sewa Bhawan, R.K. Puram, New Delhi.
2. Secretary (Energy/Power), All State Govts/UTs.
3. Secretary, CERC/FOR, Chanderlok Building, Janpath, New Delhi.
4. Secretary, All SERCs
5. CMD, All CPSUs under the administrative control of Ministry of Power.
6. President, FICCI, Tansen Marg, New Delhi.
7. President, ASSOCHAM, New Delhi
8. Indian Captive Power Producers Association
9. DG, APP, New Delhi.

Subject: Clarification on Orders related to Renewable Purchase Obligation.

Sir,

I am directed to refer to the Ministry of Power's Order of even number dated 22nd July, 2016 and 14th June, 2018 regarding long term growth trajectory of Renewable Purchase Obligation (RPO) for Solar and Non-solar for the period 2016-19 and 2019-22 respectively.

2. A clarification was issued by Ministry of Power vide letter dated 1st February, 2019 regarding capping of RPO for Captive Power Plants (CPP) (copy enclosed).
3. Based on the concern raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:
 - i) For CPPs commissioned before 1.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as mandated by the appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.
 - ii) In case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.
 - iii) In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchange.
4. This issues with the approval of Hon'ble MoS(I/C) for Power and NRE.

Yours faithfully,

Encl: As above


(D. Chattopadhyay)
Under Secretary to the Govt. of India
Tel: 2373 0265

Copy to: Shri P.C. Maithani, Adviser, MNRE, New Delhi.

173

No. 30/04/2018-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st February, 2019

To

1. Chairperson, CEA, Sewa Bhawan, R.K. Puram, New Delhi.
2. Secretary (Energy/Power), All State Govts/UTs.
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5. President, FICCI, Tansen Marg, New Delhi.
6. President, ASSOCHAM, New Delhi
7. Indian Captive Power Producers Association
8. DG, APP, New Delhi.

Subject: Clarification on Orders related to Renewable Purchase Obligation .

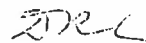
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I am directed to refer to the Ministry of Power's Order of even number dated 22nd July, 2016 and 14th June, 2018 regarding long term growth trajectory of Renewable Purchase Obligation (RPO) for Solar and Non-solar for the period 2016-19 and 2019-22 respectively.

2. The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.

3. This issues with the approval of Hon'ble MoS(I/C) for Power and NRE.

Yours faithfully,



(D. Chattopadhyay)
Under Secretary to the Govt. of India
Tel: 2373 0265

Copy to: Shri P.C. Maitthani, Adviser, MNRE, New Delhi.

ANNEXURE :-

K

174

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 113 OF 2020 &
IA NO. 817 OF 202, IA NO. 816 OF 2020 &
IA NOS. 848, 857 & 858 OF 2020**

Dated: 24th July, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

Indian Wind Power Association

Versus

Central Electricity Regulatory Commission

.... Appellant(s)

.... Respondent(s)

Counsel on record for the Appellant(s) :

Mr. Vishal Gupta
Mr. Avinash Menon
Mr. Sumeet Sharma
Mr. Divyanshu Gupta
Mr. Paras Choudhary

Counsel on record for the Respondent(s):

Mr. K. R. Sasiprabhu **for Caveator**

Mr. Buddy A. Ranganadhan
Mr. Hemant Singh
Mr. Lakshyujit Singh Bagdwal
Mr. Anirban Mondak **for Impleader**

ORDER

Proceedings in this matter today are conducted through video conferencing.

Heard Mr. Sajan Poovayya, learned senior counsel arguing for Appellant in presence of Mr. Ramji Srinivasan, learned senior counsel

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arguing for the Caveator-Captive Power Producers Association, Mr. Gopal Jain, learned senior counsel arguing for the Impleader-Vedanta & BALCO, and Mr. Dhruv Mehta, learned senior counsel appearing for the Impleader-Indian Captive Power Producers Association in the presence of Mr. Saurabh Mishra, learned counsel arguing for CERC..

Admit. Issue notice to the Respondents returnable on 27.07.2020.

Mr. Saurabh Mishra, learned counsel takes notice on behalf of the Respondent-CERC.

Registry is directed to put up all impleading applications filed in these appeals by next date of hearing.

The Appellant shall serve all the papers to the impleading applicants also.

Meanwhile, the trading of RECs scheduled on 29.7.2020 shall be postponed by four weeks.

It is made clear that if validity for any REC is going to be expired within four weeks, as stated above, the same shall be extended by the concerned authority.

List the matter on 27.07.2020 (*through video conferencing*).

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(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

tpd

ANNEXURE ::

177



18th January 2020

The Honorable Chairman.
GERC,
Gift City - 1
GANDHINAGAR

Sub : RPO Regulations regarding applicability for Co-generation CPPs.
Ref : (1) Honorable GERC RPO Regulations
(2) Ministry of Power clarification order dated 1st October 2019.

Respected Sir,

As you are kindly aware, the RPO in respect of Obligated Entities are implemented in the State as per the provisions of RPO Regulations issued by The Hon. Commission.

While the CPPs in general are made Obligated Entities as per the Hon. Commission's RPO Regulations, there are difficulties faced by CPPs in the compliance mainly due to following points.

1. The clarifications issued by the Hon. Minister of Power in respect of RPO obligations for CPPs in general and
2. Divergent legal positions specifically in respect of Co-generation CPPs which have relief from the Honorable APTEL Order stating that Co-generation irrespective of fuel should not be fastened with the RPO obligations. Hon. GERC's appeal challenging the Hon. APTEL Order is still not decided by the Hon. Apex Court. On other hand, the RPO regulations are subject to outcome of the final judgment in the LPA pending before the Hon. Gujarat High Court.

In view of the above complex situation, we have submitted a representation to GEDA to suitably take up the matter with the Hon. Commission for appropriate consideration. We submit herewith a copy of the representation submitted to GEDA for your kind consideration and perusal please.

Thanking you, with kind regards,

Yours faithfully,
For Reliance Industries Limited

A handwritten signature in black ink, appearing to be 'D B Shah', written over a horizontal line.

D B Shah
Sr Vice President

Encl : Representation submitted to Director, GEDA.

"VRAJ", Near Suvridha Shopping Center, Paldi, Ahmedabad - 380 007. Phone : +91-79-66779100, Fax : +91-79-40094910

Registered Office : 3rd Floor, Maker Chambers - IV, 222 Nariman Point, Mumbai - 400 021. India
CIN: L17110MH1973PLC019786 • Website: www.ril.com

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18th January, 2020

The Director,
Gujarat Energy Development Agency,
4th Floor, Block No 11 & 12,
Udyog Bhavan, Gandhinagar,
Gujarat.

Sub: RPO Compliance for CPPs of RIL units in Gujarat.

Dear Sir,

This is with reference to above mentioned subject and your communications for submission of requisite details of compliance of RPO for FY 2019-20. We, Reliance Industries Ltd (RIL), have Captive Power Plants (CPP) at manufacturing plants at various locations within Gujarat, as per below mentioned details.

Sr No	Manufacturing Plant	CPP Location	Type of CPP
1	Jamnagar Manufacturing Division	Jamnagar	Gas based Co-generation
2	Vadodara Manufacturing Division	Vadodara	Gas based Co-generation
3	Dahej Manufacturing Division	Dahej	Coal based plant & Gas based co-generation
4	Hazira Manufacturing Division	Hazira	Coal based plant & Gas based co-generation
5	Naroda Manufacturing Division	Naroda	Gas based Co-generation

We would like to submit that though the RPO regulations have made CPPs as obligated entities, the applicability of the same to the Co-generation plants is not finally settled. The matter is before Hon Guj HC in LPA and therefore is subject to the final judgment of High Court in the matter.

Not only this, the Co-generation plants at present, have a relief from Hon. APTEL order as late as 2019 that co-generation plants should not be fastened with RPO obligation citing that Hon. APEX court order is applicable for CPPs which are not Co-generation. Hon. GERC's appeal before Hon APEX court against the above Hon. APTEL order is not disposed of. Thus, there are legal positions for two categories of CPPs: Cogeneration and

"VRAJ", Near Suvidha Shopping Center, Paldi, Ahmedabad - 380 007. Phone : +91-79-66779100, Fax : +91-79-40094910 Page 1 of 5

Registered Office : 3rd Floor, Maker Chambers - IV, 222 Nariman Point, Mumbai - 400 021. India
CIN: L17110MH1973PLC019786 • Website: www.ril.com

Non-cogeneration. You will appreciate that RPO Regulations in respect of CPP with Cogeneration if implemented, the actions will be irreversible if the Hon. APTEL order which is challenged before Hon APEX court by Hon GERC is held or the Hon Guj HC in the LPA holds the contention of petitioners.

We submit following in respect of our submission / contention above for your kind consideration and perusal:

1. The order dated 5.5.15 of Hon'ble High Court of Gujarat in LPAs filed against order dated 12.03.15, in SCA No.171 of 2011 states that :

Therefore, instead of granting stay of the impugned judgement and order it shall be in the interest of justice to observe that the said regulations shall though come into force they shall be subject to the final decision given in the appeals.

The Hon'ble High Court also observed that

However, keeping in mind the interest of both the sides in these applications, it is directed that the implementation of the Regulations shall be subject to the result of the appeals.

2. Hon'ble Gujarat Electricity Regulatory Commission (GERC), in its order dated 24th October, 2018, in petition no 1724/1800 in the matter of applicability of RPO on Cogeneration plant, mentioned that:

After the aforesaid decision of Hon'ble High Court of Gujarat, the Commission notified the Regulations vide Notification No. 02 of 2015 dated 01.07.2015, notifying the 1st July, 2013 as the date on which Regulation 1(iv) and 8 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendment thereto shall come into force and the Renewable Purchase Obligation shall become applicable to Captive and Open Access User(s)/Consumer(s). The said Regulation is reproduced below:

"

In exercise of the powers conferred under sections 61, 86(1)(e) and 181 of the Electricity Act, 2003 read with sub-regulation (iv) of Regulation 1 and Regulation 8 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) (Principal Regulations) and Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 (Notification No. 2 of 2014), and all other powers enabling it in this behalf, the Gujarat Electricity Regulatory Commission hereby notifies the 1st day of July, 2015, as the date on which the sub-regulation (iv) of Regulations 1 and Regulation 8 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) and amendments

made in it shall come into force and the Renewable Purchase Obligation shall become applicable to Captive and Open Access User(s)/Consumer(s).

.....”

We note that the aforesaid Regulations are subject to final decision of Hon'ble High Court of Gujarat. Therefore, the subject matter of the present Petition is sub judice before the Hon'ble High Court of Gujarat. Hence, we decide that till the said matters are decided by the Hon'ble High Court in the proceedings of LPA No. 598 of 2015 and allied matters, it is not appropriate on the part of the Commission to decide the same.

3. Based on the above, though the RPO Regulation is in force and applicable to Captive Power Plant, the applicability of the same to co-generation captive power plant will be subject to final judgement of Hon'ble High court of Gujarat. Accordingly, we submit that, for our Co-generation Captive Power Plant, we will take necessary action based on final judgement of Hon'ble High court of Gujarat and subsequent order of Hon'ble GERC if any. We feel Hon GERC may also like to wait till its appeal against said Hon APTEL order is disposed of.
4. For our coal based CPPs at Dahej and Hazira, we are fulfilling RPO obligations through purchase of Renewable Energy Certificates (REC) through power exchanges and submitting the details from time to time. We are providing REC details to GEDA as per the RPO Regulations for the REC bought.
5. During some Financial years, due to various reasons including bar on trading of RECs by Hon'ble Supreme Court and non-availability of REC we have requested Hon'ble GERC to permit roll over of the obligation to next financial years and accordingly have filed petitions no. 1781 of 2019 and 1792 of 2019
6. You may be aware that CPPs face lot of challenges in consuming Renewable Power such as:
 - Co-generation plants are set up based on requirement of Steam/other form of energy to be generated along with power generation. Hence, they are unable to consume renewable power,
 - Infirm nature of renewable power creates issues of reliability and operational stability of continuous process plants,
 - Reduced load on existing CPPs will result into loss of efficiency and higher fixed cost;
 - CPPs will not be able to export power to their own plant located at different place due to import of renewable power, resulting into idle capacity hence higher fixed cost and also higher power cost of plant located at other place,
 - Non-availability of renewable power under short term and scarcity of RECs in the market,

- Inefficient operations and idle capacity will lead to higher energy cost, and with increase in compliance cost, the Industries having CPPs for own energy requirement are becoming non-competitive in the market.

Highlighting these difficulties, suitable representations have been made by various and different associations/bodies with the concern ministries and authorities.

7. Accordingly, Ministry of Power ("MoP") has issued a clarification dated 1st February 2019 to cap the Renewable Purchase Obligation ("RPO") applicable to Captive Power Plant ("CPP"). This was further clarified by MoP on 1st October 2019. Following is the text of the said clarification:

"

3 Based on the concern raised by various stakeholders and after due consultation with MNRE, CEA and CERC, it is further clarified that:

- i) For CPPs commissioned before 1.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as mandated by the appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.*
- ii) In case of any augmentation in the capacity, the RPO for augmented capacity shall be as per the RPO applicable for the year in which CPP has been augmented.*

.....

4. This issues with the approval of Hon'ble MoS (I/C) for Power and RE."

Both the clarification issued by MoP are attached herewith.

8. Based on this clarification of Ministry of Power, following states have implemented / are implementing the same in their respective RPO Regulations:

Sr No	Name of State	Status of implementation of MoP's clarification of capping on RPO on CPPs
1	Maharashtra	Implemented
2	Orissa	Implemented
3	Uttar Pradesh	Implemented
4	Haryana	Implemented
5	Rajasthan	Draft Notification Issued
6	Assam	Draft Notification issued

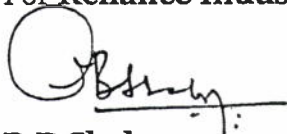
9. We submit that the said MoP's clarification needs to be implemented in Gujarat at the earliest to mitigate genuine difficulties faced by CPPs both in terms of compliance as well as procurement of RECs.

Based on the clarification by MoP as well as provisions of the EA 2003 to implement provisions of the Tariff Policy of Central Government and considering the importance of this clarification for users of CPPs, we hereby request you to please take up this matter with GERC to make suitable amendment in the existing RPO Regulations.

10. As far as Co-generation plants are concerned, we request you to kindly keep the RPO applicability to Cogen CPPs in abeyance and the Hon GERC may be approached with a prayer to keep the same in abeyance and should take a suitable decision/ order once the finality of law is reached in the matter of cases pending at Hon Guj HC / Hon APEX.

Thanking you,

Yours faithfully,
For **Reliance Industries Ltd.**



D B Shah
Sr Vice President.

Cfwcs:

Hon. Chairman, GEDA for favour of information and appropriate action please

183

No. 30/U4/2018-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st October, 2019

To

1. Chairperson, CEA, Sewa Bhawan, R.K. Puram, New Delhi.
2. Secretary (Energy/Power), All State Govts/UTs.
3. Secretary, CERC/FOR, Chanderlok Building, Janpath, New Delhi.
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6. President, FICCI, Tansen Marg, New Delhi.
7. President, ASSOCHAM, New Delhi
8. Indian Captive Power Producers Association
9. DG, APP, New Delhi.

Subject: Clarification on Orders related to Renewable Purchase Obligation.

Sir,

I am directed to refer to the Ministry of Power's Order of even number dated 22nd July, 2016 and 14th June, 2018 regarding long term growth trajectory of Renewable Purchase Obligation (RPO) for Solar and Non-solar for the period 2016-19 and 2019-22 respectively.

2. A clarification was issued by Ministry of Power vide letter dated 1st February, 2019 regarding capping of RPO for Captive Power Plants (CPP) (copy enclosed).
3. Based on the concern raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:
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 - iii) In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchange.
4. This issues with the approval of Hon'ble MoS(I/C) for Power and NRE.

Yours faithfully,

Encl: As above


(D. Chattopadhyay)
Under Secretary to the Govt. of India
Tel: 2373 0265

Copy to: Shri P.C. Maithani, Adviser, MNRE, New Delhi.

184

No. 30/04/2018-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st February, 2019

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1. Chairperson, CEA, Sewa Bhawan, R.K. Puram, New Delhi.
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Subject: Clarification on Orders related to Renewable Purchase Obligation .

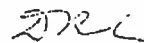
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Yours faithfully,



(D. Chattopadhyay)
Under Secretary to the Govt. of India
Tel: 2373 0265

Copy to: Shri P.C. Maithani, Adviser, MNRE, New Delhi.

ANNEXURE : M

185

**GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHIAGAR**

**Draft Gujarat Electricity Regulatory Commission (Procurement of
Energy from Renewable Sources) (Third Amendment) Regulations,
2020**

Draft Notification No.....of 2020

In exercise of the powers conferred under sections 61, 66, 86 and 181 of the Electricity Act 2003 (Act No.36 of 2003) and all powers enabling it in that behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following Regulations, to amend Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter referred to as "The Principal Regulations") namely:

1. Short Title, Extent and Commencement

- i. These regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2020.
- ii. These Regulations extend to the whole of the State of Gujarat.

2. These regulations shall come into force with effect from the date of their publication in the Official Gazette.

3. Amendment in Regulation 2.1(aa) of the Principal Regulations to be read with First Amendment:

Regulation 2.1(aa) of the Principal Regulations to be read with First Amendment shall be deleted.

4. Amendment in Regulation 2.1(p) of the Principal Regulations:

Regulation 2.1(p) of the Principal Regulations shall be substituted as under:

"(p) 'Renewable energy sources' in this context means non- conventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass, Biogas and bagasse based co-generation, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period of time)

as approved by the Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;”

5. Amendment in Regulation 4.1 of the Principal Regulations to be read with First and Second Amendments:

Para 1 and 2 of Principal Regulation 4.1 read with First and Second Amendments shall be substituted as under:

Para: 1

Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year.

Provided that in case of Captive User of a Captive Generating Plant commissioned before 1st April, 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be *as decided by the Commission for the Year 2015-16;*

Provided further that in case of Captive Generating Plant commissioned on or after 1st April, 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;

Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned;

Para: 2

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Biogas, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5.

6. Amendment in Proviso of the Regulation 5.1 of the Principal Regulations to be read with First and Second Amendments:

Proviso of the Regulation 5.1 of the Principal Regulations to be read with First and Second Amendments shall be substituted as under:

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with the Regulation 4.

7. Amendment in Regulation 5.4 of the Principal Regulations to be read with First Amendment:

Regulation 5.4 of the Principal Regulations to be read with First Amendment shall be deleted.

8. Amendment in Regulation 5.5 of the Principal Regulations read with First Amendment:

Regulation 5.5 of the Principal Regulations read with First Amendment shall be renumbered as Regulation 5.4 and substituted as under:

5.4 In case of renewable energy generator set up under the REC scheme notified by the Central Electricity Regulatory Commission supplying power for captive use or sale to third party, the distribution licensee shall compensate to such RE generator at the rate as determined by the Commission from time to time for the surplus energy available after giving set off for the consumption by such captive consumer or the third party.

9. Amendment in Regulation 8.3 of the Principal Regulations read with First and Second Amendments:

Regulation 8.3 of the Principal Regulations read with First and Second Amendments shall be substituted as under:

8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in the Regulation 4 as above. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per Regulation 9.

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10.Amendment in Regulation 11 of the Principal Regulations :

Regulation 11 of the Principal Regulations shall be deleted.

Sd/-
[Roopwant Singh, IAS]
Secretary
Gujarat Electricity Regulatory Commission
Gandhinagar, Gujarat

Date: 17.07.2020
Place: Gandhinagar.

ANNEXURE :

N

189



Reliance
Industries Limited

05-07-2020

The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE, Road 5-C, Zone 5,
GIFT City, Gandhinagar - 382 255.

Subject :Draft Regulations of Gujarat Electricity Regulatory Commission
(Procurement of Energy from Renewable Sources) (Third Amendment)
Regulation, 2020 - Regarding suggestions.

Ref : Hon GERC's public notice Dated 17-07-2020.

Dear Sir,

This is in connection with Public Notice issued by Hon GERC on above mentioned subject.

We are attaching herewith our suggestions in Annexure-1 in respect of Draft Regulations in 5 sets as desired, duly endorsed with affidavit.

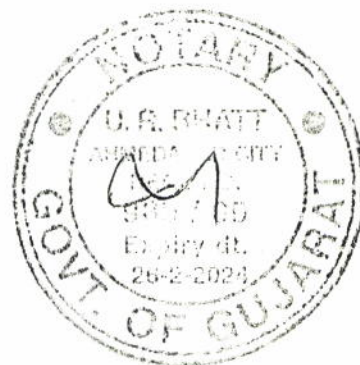
We request you to kindly consider the above suggestions for further disposition as the same are aimed at making the implementation simple, smooth and extend the effect as stipulated in MoP GoI letter on the subject.

Thanking you,
Yours faithfully

For Reliance Industries Limited

Ashwin B Shelu

(Authorized Signatory)

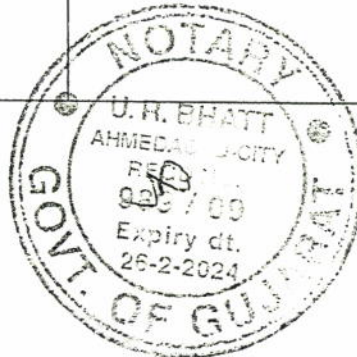


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ANNEXURE -1

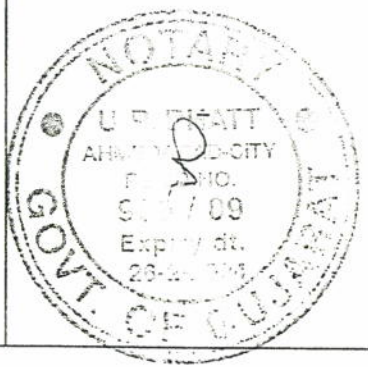
Regulation No	GERC Draft(Procurement of Energy from Renewable Energy Sources((Third Amendment) Regulation 2020	Proposed Changes	Comments/Suggestions
Regulation 2	These regulations shall come into force with effect of the date of their publication in the official Gazette	-	1. This line may please be removed (as the effect to be given w.e.f. 1-4-2016 onwards for all the years starting from 1-4-2016.) 2. The RPO compliances are based on financial year as prescribed by the Hon. Commission in its RPO Regulations and therefore the its implementation instead from the date of publication, it should be from the financial year.
Regulation 4.1 Para 1, first proviso	"Provided that in case of Captive User of a Captive Generating Plant commissioned before 1st April, 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be as decided by the Commission for the Year 2015-16."	-	1. This proviso is part of RPO table provided in Regulation 4.1. Table I and II in the said Regulation provides RPO target from FY 2010-11 till FY 2021-22. Since it is now proposed to cap the RPO for Captive Generating Plant at Year 2015-16, it is understood that the capping will be applicable from FY 2015-16 as the Table I and Table II are part of the above-mentioned revised proviso. Request Hon'ble Commission to confirm the same. 2. The RPO obligation was made applicable to CPP's in the State w.e.f. 1st July 2015. Therefore the MoP, GoI directives for capping RPO may also be made applicable from Year 2015-16. However MoP, GoI directives came in Feb-19 and therefore also the compliance in respect of capping may not please be made applicable from the date of publication of the regulation and may please be made applicable w.e.f. Year 2018-19. 3. The captive and open access users shall be allowed to meet their RPO target on Composite basis ie they should be able to meet the total RPO percentage by procuring any of the renewable energy or any type of Renewable Energy Certificates for the reasons as mentioned below: a. The quantum of RPO is generally small for such users. b. Captive users are unable to consume all types of RE power due to locational constraints. However, it may be possible for them to set up particular source of energy within their premises for example, biomass-based power plant, Solar plant etc. or tie up any particular RE source only as sourcing of power from all the categories may not be possible or feasible. c. MERC has made such provision in the RPO Regulation which allows captive and open access user to meet their composite RPO.



For, Reliance Industries Ltd.

Ashish B Shah

Authorised Signatory

Regulation 4.1 Para 1, Second proviso	Provided further that in case of Captive Generating Plant commissioned on or after 1st April, 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned.	The second provision of para 1 of Regulation 4.1 to be reworded as: Provided further that in case of Captive Generating Plant commissioned on or after 1st April, 2016, the composite RPO target shall be equal to the target applicable for the year, as decided by the Commission, in which project is commissioned.	The above is suggested in order to have clarity on applicable RPO targets and in order to avoid any misunderstanding and litigation on the matter.
Regulation 4.1 Para 1, Third proviso	Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned.	Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year, as decided by the Commission, in which such augmented capacity has been commissioned.	The above is suggested in order to have clarity on applicable RPO targets and in order to avoid any misunderstanding and litigation on the matter
2.4. Proviso of Regulation 5.1	Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with the Regulation 4.		The provision allows Obligated Entities to purchase non-solar RECs instead of Solar RECs if Solar RECs are not available. However the criteria to conclude that Solar REC's are not available in market may please be clarified by Hon Commission. For example, bids of Obligated Entity for Solar RECs may not get cleared due to insufficient sell bids, etc, In such circumstances, Obligated Entity has to approach Hon'ble Commission for approval to buy Non Solar REC in place of SOLAR REC each time. Request Hon'ble Commission to issue appropriate clarification so that the Obligate Entities are able to procure non-solar RECs instead of Solar RECs and meet their RPO during particular year without referring such difficulties to Hon'ble Commission every time.

For, Reliance Industries Ltd.

Ashish B. Shah

Authorised Signatory

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Sr. No. 897 /2020

U.R. BHATT

U. R. BHATT

NOTARY

GOVT. OF GUJARAT

6-8-2020

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,
GANDHINAGAR

Draft Notification NO. OF 2020

IN THE MATTER OF:

Draft Regulations of Gujarat Electricity
Regulatory Commission (Procurement of
Energy from Renewable Sources) (Third
Amendment) Regulations, 2020

IN THE MATTER OF:

Reliance Industries Limited
Having its Office Address at:
"Vraj", Nr. Chandanbala Tower,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad - 380 007



... Party filing suggestions/objections

AFFIDAVIT VERIFYING THE SUGGESTIONS/OBJECTIONS

I, Ashish Shah, S/o Balchandra Shah, Adult, residing at Ahmedabad, do
solemnly affirm and say as follows:

I am Sr. General Manager of Reliance Industries Ltd., the Party filing
suggestions/objections herein and I have read our suggestions for the
proposed Draft Regulations of Gujarat Electricity Regulatory Commission

For, Reliance Industries Ltd.
Ashish B Shah
Authorised Signatory

(Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2020 and the Public Notice inviting objections/suggestions against the above Regulations and I am competent and duly authorized by the company to make this Affidavit in support of our suggestions.

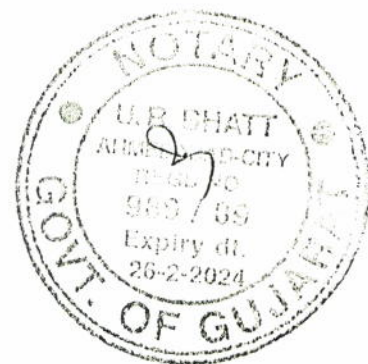
Solemnly affirmed at Ahmedabad on __th day of August 2020, that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Place: Ahmedabad

Date: 08.08.2020

Ashish B Shale

DEPONENT



SOLEMNLY AFFIRMED
BEFORE ME

U. R. Bhatt

U. R. BHATT
NOTARY
GOVT. OF GUJARAT
6-8-2020

ANNEXURE :: ○

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19/2/2019-BPD
Ministry of New & Renewable Energy

Block No. 14, CGO Complex,
Lodi Road, New Delhi- 110003
Dated: 26 September 2019

NOTIFICATION

Subject: Clarification regarding power generated from co-firing of biomass in thermal power plants as renewable energy

In continuation to "Policy for Biomass utilisation for Power Generation through co-firing in Pulverised Coal fired Boilers" notified by the Ministry of Power on 17 November 2017 (www.cea.nic.in/reports/others/thermal/tetd/policy_biomass_utilization.pdf), and an advisory for utilizing biomass in coal based thermal power plants by the Central Electricity Authority (CEA) on 24 November 2017 (www.cea.nic.in/reports/others/thermal/tetd/Biomass%20Utilization%20Advisory.pdf), it is clarified that power generated from co-firing of biomass in the thermal power plants is renewable energy and is eligible for meeting non-solar Renewable Purchase Obligation (RPO).

2. The Central Electricity Regulatory Commission (CERC) has been requested to formulate and notify a procedure/methodology for quantifying the energy produced from biomass in biomass co-fired thermal power plants in a reliable and accurate manner. It has further been suggested that the procedure/methodology so determined may have built-in transparency and accountability, including putting an obligation on thermal power generators to publish the quantum of biomass used and energy generated from biomass co-firing in the public domain. Further, procedure/methodology notified by CERC would form the basis for respective State Electricity Regulatory Commissions (SERCs) and other relevant agencies for computing the energy produced from biomass in biomass co-fired thermal power plants, and also for determination of tariff, wherever applicable.

Dipesh Pherwani
(Dipesh Pherwani)
Scientist-B

To

1. Secretary, Ministry of Power.
2. Chairperson, CERC / all SERCs
3. Chairperson, Central Electricity Authority

Copy to Director (NIC), MNRE for uploading the notification on the Ministry's website

ANNEXURE : P

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**CENTRAL ELECTRICITY REGULATORY COMMISSION
(NEW DELHI)**

Suo Motu Petition No. 12/SM/2019

Coram:
Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member

Date of Hearing : 17.12.2019
Date of Order : 18.02.2020

ORDER

In the matter of

Proposed Methodology for Estimation of Electricity Generated from Biomass in Biomass Co-fired Thermal Power Plants.

The Central Electricity Regulatory Commission (hereinafter referred to as 'the Commission') has recognized the use of biomass in biomass co-fired coal based thermal power plants under sub-clause (k) of clause (2) of the Regulation 19 and clause (4) of Regulation 43 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as the 2019 Tariff Regulations). These Regulations notified on 7th March, 2019, introduced the regulatory framework for allowing use of biomass in coal based thermal power plants.

2. The Commission initiated the process of specifying methodology for estimation of electricity generated from biomass in biomass co-fired coal based thermal power plants and accordingly, proposed a draft methodology in this regard. While proposing this methodology, the Commission had considered the following references.



- a) Reference of Ministry of Power, Government of India, No. 11/86/2017-
Th11 dated 17th Nov'2017 with regard to the "Policy for Biomass Utilization
for Power Generation through Co-firing in Pulverized Coal Fired Boilers".
- b) Advisory dated 24.11.2017 of Central Electricity Authority (CEA) to
thermal power plants for utilizing biomass in coal based thermal power
plants.
- c) Clarification of Ministry of New and Renewable Energy ("the MNRE"),
Government of India issued vide reference dated 26.9.2019 stating that
the power generated from co-firing of biomass in coal based thermal
power plants is renewable energy and is eligible for meeting non-solar
Renewable Purchase Obligation (RPO).

3. Salient aspects of the proposed methodology were as under.

- a) Proposed methodology can be applied to biomass co-fired coal based
thermal plants whose tariff is determined by "Appropriate Commission"
under Section 62 as well as thermal plants whose tariff is adopted by the
"Appropriate Commission" under section 63 of the Electricity Act, 2003;
- b) Energy generated from biomass can be worked out based on the actual
consumption of biomass and coal rather than on normative operational
parameters of Station Heat Rate and Auxiliary Power Consumption;
- c) Principle of proportion can be the basis to work out the energy generated
from biomass. The energy output is estimated in proportion to the heat
input from biomass out of total heat input from biomass and coal;



- d) Heat input can be worked out based on consumption and quality (GCV) of the coal and biomass;
- e) Consumption of coal and biomass can be worked out based on opening balance, receipt and closing balance of coal and biomass.

4. The proposed methodology was put in public domain and comments/suggestions of various stakeholders were invited vide order dated 26.11.2019 in this Suo Motu petition. Subsequently, public hearing on the draft methodology was held on 17.12.2019 for soliciting views of stakeholders.

Submission of the Stakeholders during Public Hearing

5. The Captive Power Producers Association has requested that the proposed methodology should also be made applicable to captive power plants. They have further submitted that for co-generation power plant, there is a need for a methodology factoring in use of steam for purposes other than generation of electricity. The Association has submitted two alternative methods for consideration of the Commission.

6. Representative of NTPC Ltd submitted that in the proposed methodology, electricity generated from biomass has been proposed to be estimated based on electricity generated at the Generator Terminal (GT). The energy meter installed at Generator Terminal is normally not used for billing purpose and hence, estimates based on Generator Terminal may not be acceptable to distribution licensees.

7. The comments/suggestions/objections of the stakeholders on the proposed methodology have been examined by the Commission.



Applicability of the Methodology

8. As per Para 7 of the order dated 26.11.2019 in this Suo-Moto Petition, the applicability of the methodology was proposed as under:

"7. The suggested methodology to estimate the energy generated from co-firing of biomass has been framed on the actual consumption of biomass and coal rather than on normative operational parameters of Station Heat Rate and Auxiliary Power Consumption. Such a methodology, which does not use normative operational parameters, can be applied both to thermal plants whose tariff is determined by "Appropriate Commission" under Section 62 as well as thermal plants whose tariff is adopted by the "Appropriate Commission" under section 63 of the Electricity Act, 2003."

9. The Commission had proposed to restrict the application of the methodology only to thermal plants under section 62 or section 63 of the Electricity Act, 2003 since the Commission regulates tariff of centrally owned generating stations and the generating stations having composite scheme for sale or purchase of electricity in more than one state under Section 79(1)(a) and 79(1)(b) of the Act. The methodology was not proposed to cover captive or cogeneration plants. The Captive Power Producers Association has submitted that since captive power plants and co-generation power plants are also eligible under MNRE letter dated 26.9.2019 for the purpose of renewable purchase obligation, the methodology should cover captive power plants and co-generation power plants.

10. We have perused the references of MNRE dated 26.9.2019. The MNRE has clarified that the power generated from co-firing of biomass in coal based thermal power plants is renewable energy and is eligible for meeting non-solar Renewable Purchase Obligations (RPOs).



11. We observe that biomass can also be used in thermal captive power plants similar to thermal generation station. We, therefore, are of the view that the methodology shall also be applicable to the captive power plant using co-firing of biomass. The methodology specified in this order will therefore, be applicable to the captive power plant also that co-fires biomass.

12. While in case of captive power plant, the entire heat generated from coal and biomass is used to generate power, in case of co-generation plant, only part of the heat is used to generate power. But, the underlying principle remains applicable i.e. the proportion of heat input from biomass to total heat input for power generation. Accordingly, the methodology specified in this order shall also be applicable for co-generation power plant.

Gross Calorific Value (GCV) measurement & Fuel Stock

13. The Captive Power Producers Association has submitted that GCV measurement point and methodology may be indicated so as to avoid any disputes on measurement of values. In this regard, it is observed that the GCV measurement point is already specified under the 2019 Tariff Regulations. The relevant extract is reproduced below, which shall be adopted by the captive power plants and co-generation power plants.

"(31) 'GCV as Received' means the GCV of coal as measured at the unloading point of the thermal generating station through collection, preparation and testing of samples from the loaded wagons, trucks, ropeways, Merry-Go-Round (MGR), belt conveyors and ships in accordance with the IS 436 (Part-1/ Section 1)- 1964:

Provided that the measurement of coal shall be carried out through sampling by third party to be appointed by the generating companies in accordance with the guidelines, if any, issued by Central Government:



Provided further that samples of coal shall be collected either manually or through hydraulic augur or through any other method considered suitable keeping in view the safety of personnel and equipment:

Provided also that the generating companies may adopt any advance technology for collection, preparation and testing of samples for measurement of GCV in a fair and transparent manner".

14. The format specified by the Commission in the 2019 Tariff Regulations captures the requirement of data applicable to the thermal power plants. For captive power plants and co-generation power plants, appropriate format may be developed by the respective State Electricity Regulatory Commission or certifying agency of the State.

Special Energy Meter

15. NTPC Ltd has submitted that measurement at the Special Energy Meter (SEM) installed by them at Generator Terminal (GT) may not be acceptable to the system operator and distribution licensees. In this regard, it is observed that the Auxiliary Energy Consumption (AEC) is worked out on the basis of SEM on Generator Terminal and these are similar to SEMs installed by CTU. Therefore, we do not foresee any difficulty in using SEMs installed on Generator Terminal by the generators. However, the Regional Power Committee, in constitution with respective Regional Load Dispatch Centre or State Load Dispatch Centre as the case may be, shall ensure that the SEMs installed by the generator should be got calibrated from time to time for energy accounting. The Captive Power Plant and Co-generation Power Plant shall ensure appropriate metering arrangement at generator terminal.



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16. The methodology for estimating the energy generated from bio-mass in biomass co-fired coal based thermal power plants, including captive power plants and co-generation plants has been specified in Annexure I and is a part of this order.

Sd/-
(I. S. Jha)
Member

Sd/-
(P. K. Pujari)
Chairperson

Annexure-I



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Methodology for estimation of electricity generated from biomass in biomass co-fired coal based thermal power plants, including captive and co-generation power plants co-firing bio-mass.

The methodology specified hereunder is to be followed by ISGS, RPCs for estimating electricity generated from biomass in biomass co-firing coal based thermal power plants, including captive and co-generation power plants co-firing bio-mass.

Step-1:

2. The electricity generated from biomass shall be estimated at Generator Terminal on monthly basis in accordance with the following formulae:

$$Eb(G) = [(Qb \times Gb) / ((Qc \times Gc) + (Qb \times Gb))] \times E(GT)$$

Where,

- Eb(G) = Electrical energy generated by bio-mass at Generator terminal during the month (kWh);
- Qb = Quantity of bio-mass consumed during the month (kg)
- Gb = Weighted average Gross Calorific Value (GCV) of bio-mass consumed during month (kCal/kg)
- E(GT) = Gross electrical energy generated at Generator Terminal during the month (kWh)
- Qc = Quantity of coal burnt during the month (kg)
- Gc = Weighted average GCV of coal burnt during the month (kCal/kg)

3. The product (Qb x Gb) represents heat (in Kcal) input through bio-mass during the month and shall be estimated on monthly basis by applying following formulae:



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$$\begin{aligned}
 Q_b \times G_b \text{ (kCal)} &= \{ \text{opening balance of bio-mass (kg) X weighted average GCV} \\
 &\quad \text{of opening balance of bio-mass (kCal/kg)} \} \\
 &+ \{ \text{quantity of bio-mass received during the month (kg) X} \\
 &\quad \text{weighted average GCV of bio-mass received during the} \\
 &\quad \text{month (kcal/kg)} \} \\
 &- \{ \text{closing stock of bio-mass (kg) X weighted average GCV of} \\
 &\quad \text{the closing balance of bio-mass (kCal/kg)} \}
 \end{aligned}$$

4. The product ($Q_c \times G_c$) represents heat (in Kcal) input through coal during the month (kcal) and shall be estimated on monthly basis by applying the following formulae:

$$\begin{aligned}
 Q_c \times G_c \text{ (kCal)} &= \{ \text{opening balance of coal (kg) X weighed average GCV of} \\
 &\quad \text{opening balance of coal (kCal/kg)} \} \\
 &+ \{ \text{quantity of coal received during the month (kg) X weighted} \\
 &\quad \text{average GCV of coal received during the month (kCal/kg)} \} \\
 &- \{ \text{closing stock of coal (kg) X weighted average GCV of the} \\
 &\quad \text{closing balance of coal (kCal/kg)} \}
 \end{aligned}$$

Step-2:

5. The ex-bus electrical energy generated by using bio-mass shall be estimated on monthly basis by applying following formulae:

$$E_b \text{ (ex-bus)} = E_b(G) \{ 1 - [(E(GT) - ESO) / E(GT)] \}$$

Where,

$E_b \text{ (ex-bus)}$ = Electrical energy generated by bio-mass ex-bus during the month (kWh);

$E_b(G)$ = Electrical energy generated by bio-mass at Generator terminal during the month arrived at Step-1(kWh)



E(GT) = Total electrical energy generated at generator terminal during the month (kWh) ;

ESO = Total Energy Sent Out (ex-bus) during the month (kWh);

6. The generating company shall provide information to the beneficiaries' and publish them in the following manner:

- a) The generating company shall maintain separate fuel accounts for coal and bio-mass, with opening balance, fuel received during the month and closing balance in kg. The generating company shall also maintain separate GCV (in kCal/kg) accounts for coal and bio-mass, with weighted average GCV of the opening balance, weighted average GCV of the fuel received during the month and weighted average GCV of the closing balance at the end of the month;
- b) These monthly accounts of fuel and GCV, duly signed by the authorised official of the generating company shall be published on its website along with the bills towards purchase of coal and bio-mass.
- c) These monthly fuel and GCV accounts shall be made available to authorized representative/s of beneficiaries and RLDC/SLDC on demand. Any authorised representative of beneficiaries shall be allowed to witness the GCV testing of bio-mass.
- d) Generating company shall keep beneficiaries informed about the co-firing of bio-mass with coal. Authorised representatives of the beneficiaries shall be allowed inspection during the period when bio-mass is being co-fired.



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- e) The generating company shall publish the quantum of bio-mass fired and the energy generated from bio-mass based on the formulae specified above on its website.



ANNEXURE :: Q

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Reliance
Industries Limited

Date: 2nd February 2021

To

The Director,
Gujarat Energy Development Agency
4th floor, Block No. 11 & 12
Udyog Bhavan, Sector -11,
Gandhinagar-382 017

Kind Attention : Shri Bijal Shah, IAS

Sub: Proposed Methodology for Estimation of Electricity Generated from Biomass in Biomass Co-fired Thermal Power Plants.

Dear Sir,

Reliance Industries Limited (RIL) is having its refinery and petrochemical units situated in Gujarat. For its petrochemical plants located in Dahej Manufacturing Division (DMD) and Hazira Manufacturing Division (HMD), RIL is having coal based Captive power Plants.

In order to promote co-firing of biomass in thermal power plants, Ministry of New and Renewable Energy (MNRE), Government of India, vide its notification dated 26.9.2019 has clarified that the power generated from co-firing of biomass in thermal power plants is renewable energy and is eligible for meeting non-solar Renewable Purchase Obligation (RPO) and has requested Hon'ble Central Electricity Regulatory Commission (CERC) to formulate and notify the methodology for quantifying the energy produced from biomass in biomass co-fired thermal power plants in a reliable and accurate manner. Accordingly, CERC has notified the methodology for estimation of electricity generated from Biomass in Biomass co-fired thermal power plants on 18.02.2020, copy of which is attached herewith.

Based on above, we are planning to use biomass co-firing at our DMD and HMD CPP. We propose to meet our non-solar RPO from consumption of biomass in biomass co-firing based on the methodology as approved by CERC. Please find attached herewith the documents and sample working along with the data, which

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will be used to arrive at power generated by use of biomass.

Request you to approve the proposal so as to enable us to start the use of biomass at our CPPs at DMD and HMD.

We shall provide any further details / clarifications required, if any.

Thanking you,

Your Sincerely,
For Reliance Industries Ltd.

A handwritten signature in black ink, appearing to be 'DB Shah', written over a circular stamp.

DB Shah
Sr Vice President

Cfwc: The Chairman, GEDA, Sh I M Bhavsar..... for information please

Encls.:

1. MNRE Notification Dated 26th September 2019
2. CERC Order Dated 18.02.2020.
3. A brief note on our plant.
4. CCPP SHP steam distribution PFD.
5. Proposed Format for submission of RPO compliance.

ANNEXURE ::

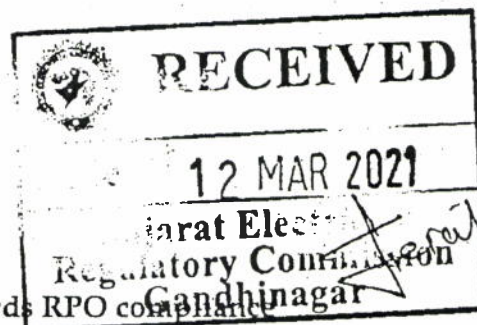
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Reliance
Industries Limited

Date: 09-03-2021

The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, Gift-One, Road 5C, Zone -5,
GIFT City, Gandhinagar.



Sub :- Consideration of Biomass Co-firing towards RPO compliance
Ref :- 1) GERC RPO Regulation No 3 of 2010
2) MNRE Notification Dated 26th Sept 2019
3) CERC order Dated 18th Feb 2020

Dear Sir,

We would like to inform you that we have coal based captive power plant at our Dahej and Hazira Manufacturing unit. According to GERC RPO Regulation 2010 we are obligated entity and required to consume renewable energy towards our RPO compliance. We are cofiring biomass in our CPP along with coal.

Whereas 'Biomass' is defined as a renewable energy source in regulation 2(p) of GERC RPO Regulation 2010, the definition also covers other sources as approved by Ministry of New and Renewable Energy, Government of India or by the State of Gujarat. The definition is reproduced below for ready reference

'Renewable energy sources' in this context means non-conventional, renewable electricity generating sources such as mini/micro hydel, wind, solar, biomass and bagasse based co-generation, urban/municipal waste or such other sources, (which are generally inexhaustible and can be replenished in a short period of time) as approved by Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;

We would like to bring it to the notice of Hon GERC that MNRE vide notification Dated 26th September 2019 clarified that co-firing of biomass in thermal power plants is renewable energy and is eligible for meeting non solar RPO. MNRE further requested CERC to issue procedure/methodology for quantifying the energy produced from biomass in biomass cofired thermal power plant which would form the basis for State Electricity Regulatory Commissions (SERCs) and other relevant agencies for computing the energy produced from biomass in biomass cofired thermal power plants.

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o/c



Reliance
Industries Limited

In response to above Hon CERC vide its order Dated 18th Feb 2020 specified methodology for estimation of electricity generated from biomass in biomass cofired coal based thermal power plants, captive power plants and co-generation plants.

Having this background we have already applied to Gujarat Energy Development Agency to consider the electricity generated by cofiring of biomass in our CPP towards compliance of non-solar RPO and submitted the data of biomass fired and electricity generated from it as per CERC methodology.

It is therefore humbly requested that Hon GERC may issue necessary order to implement the Hon CERC order in the State of Gujarat.

Thanking You

Yours faithfully
For Reliance Industries Ltd.

Ashish B Shah

(Authorized Signatory)

Copy swrt -

1. Hon Chairman, Gujarat Electricity Regulatory Commission
2. Hon Member (L), Gujarat Electricity Regulatory Commission
3. Hon Member (T), Gujarat Electricity Regulatory Commission

Enclosures:

- 1) GERC RPO Regulation 2010.
- 2) MNRE Notification Dated 26th Sep 2019
- 3) CERC order Dated 18th Feb 2020
- 4) Our letter to GEDA Dated 2nd Feb 2021

o/c

ANNEXURE :- 5

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ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

NOTIFICATION

No: OERC/RA/RE- 5/2013/2012

Dated: 31.12.2019

1. Whereas, Government of India in the Ministry of Power has notified Tariff Policy on 28.01.2016 in pursuance to Section 3 of Electricity Act, 2003.

Whereas, the said Tariff Policy under Para 6.4(1) empowers Ministry of Power, Government of India to prescribe long term growth trajectory of Renewable Purchase Obligation (RPO) in consultation with MNRE.

Whereas, in pursuance to Para 6.4 (1) of Tariff Policy, Ministry of Power, in their clarification No. 30/04/2018 – R&R dated 01.10.2019 has prescribed as follows:

3. xxxxxxxx

- i. *For CPPs commissioned before 01.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 01.04.2016 onwards, the RPO level as mandated by the appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.*
- ii. *In case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.*
- iii. *In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchanges."*

2. Whereas, as per Section 86 (4) of the Electricity Act, 2003 the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3 of the Electricity Act.

Whereas, OERC has a Regulation called "Odisha Electricity Regulatory Commission (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015".

Whereas, the Regulation 4.2 of the above Regulations provides year-wise RPO for all the obligated entities including any person consuming electricity generated from

Conventional Captive Generating Plant having capacity of one MW and above for his own use.

Whereas, several industries having CGPs have represented the Commission that they are facing hardship in complying the OERC Regulation and that the clarification of Ministry of Power, if adopted, will provide them some relief.

3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulation 12.6 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 hereby decides as follows:

- (i) The CGPs which are Commissioned before 01.04.2016, the RPO for them shall be pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:

Solar Source (%)	Non Solar sources (%)	Total (%)
0.50	2.50	3.00

- (ii) For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level of the year of commissioning as mandated by the OERC under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015.
- (iii) In case of any augmentation in the capacity of the CGP, the RPO for augmented capacity shall be pegged at a level prescribed by OERC for the year in which such augmented capacity is commissioned.
- (iv) While meeting the RPO, if CGP has surplus power than its consumption requirement, then such a CGP may sell its surplus power to the DISCOMs/GRIDCO under the prevailing arrangements or to any other consumer.

By the Order of the Commission


 SECRETARY 31.12.2019

 सत्यमेव जयते	राजस्थान राजपत्र विशेषांक	RAJASTHAN GAZETTE Extraordinary
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भाग 7

विभिन्न विभागों में प्रदायो के लिए टेन्डर मांगने की सूचनाओं को सम्मिलित करते हुये सार्वजनिक और निजी विज्ञापन।

राजस्थान विद्युत विनियामक आयोग

अधिसूचना

जयपुर, फरवरी 4, 2020

संख्या राविविआ/सचिव/ विनियम/- 135:-विद्युत अधिनियम, 2003 की धारा 86(1)(ई) के साथ पठित धारा 181 के अन्तर्गत प्रदत्त शक्तियों और इस निमित्त समर्थ बनाने वाली समस्त शक्तियों का प्रयोग करते हुये, राजस्थान विद्युत विनियामक आयोग, पूर्व प्रकाशन के पश्चात्, राविविआ (अक्षय ऊर्जा बाध्यता) विनियम, 2007 (इसके पश्चात् यथा 'मूल विनियमों' के निर्दिष्ट) को संशोधित करने के लिये एतद्वारा निम्नलिखित विनियम बनाता है, अर्थात्:-

1. लघु शीर्षक तथा प्रारम्भणः

- (1) इन विनियमों को "राजस्थान विद्युत विनियामक आयोग (अक्षय ऊर्जा बाध्यता) (छठा संशोधन) विनियम, 2020" कहा जायेगा।
- (2) ये विनियम 01.04.2019 से प्रवृत्त होंगे।

2. मूल विनियमों के विनियम 4 में संशोधनः

- (1) उपविनियम (2) के शीर्षक (ए) के अन्तर्गत प्रकट हो रही विद्यमान तालिकाओं के नीचे निम्नलिखित परन्तक अंतःस्थापित किये जायेंगे:
"बशर्ते यह भी कि 01.04.2016 से पूर्व प्रारम्भ किये गये कै.वि.सं. के लिये, आर.पी.ओ. वर्ष 2015-16 हेतु आयोग द्वारा यथा आदेशाधीन स्तर पर होगा। 01.04.2016 के पश्चात् प्रारम्भ किये गये कै.वि.सं. के लिये, आर.पी.ओ., कै.वि.सं. के चालू होने के वर्ष हेतु उर्जा मंत्रालय या आयोग द्वारा यथा आदेशाधीन स्तर, जो भी उच्चतर हो, लागू होगा।
बशर्ते यह भी कि क्षमता में किसी भी वृद्धि के मामले में, संवर्धित क्षमता पर जिस वर्ष में कै.वि.सं. का संवर्धन किया गया है उस वर्ष के लिये प्रयोज्य आर.पी.ओ. लगेगा।
बशर्ते यह भी कि ऐसे मामलों में जहां आर.पी.ओ. बाध्यता की पूर्ति के लिये कै.वि.सं. के पास अपनी उपभोग आवश्यकता से अधिक अधिशेष विद्युत है, ऐसा कै.वि.सं. अपनी अधिशेष विद्युत का विद्यमान व्यवस्थाओं के अधीन, यदि कोई हो, डिस्कॉमों को या पावर एक्सचेंज में विक्रय कर सकता है।"

- (2) उपविनियम (2) के शीर्षक (बी) के अन्तर्गत प्रकट हो रही विद्यमान तालिकाओं के नीचे निम्नलिखित परन्तक अंतःस्थापित किये जायेंगे:

“बशर्ते यह भी कि 01.04.2016 से पूर्व प्रारम्भ किये गये कै.वि.सं. के लिये, आर.पी.ओ. वर्ष 2015-16 हेतु आयोग द्वारा यथा आदेशाधीन स्तर पर होगा। 01.04.2016 के पश्चात प्रारम्भ किये गये कै.वि.सं. के लिये, आर.पी.ओ., कै.वि.सं. के चालू होने के वर्ष हेतु उर्जा मंत्रालय या आयोग द्वारा यथा आदेशाधीन स्तर, जो भी उच्चतर हो, लागू होगा।

बशर्ते यह भी कि क्षमता में किसी भी वृद्धि के मामले में, संवर्धित क्षमता पर जिस वर्ष में कै.वि.सं. का संवर्धन किया गया है उस वर्ष के लिये प्रयोज्य आर.पी.ओ. लगेगा।।

बशर्ते यह भी कि ऐसे मामलों में जहां आर.पी.ओ. बाध्यता की पूर्ति के लिये कै.वि.सं. के पास अपनी उपभोग आवश्यकता से अधिक अधिशेष विद्युत है, ऐसा कै.वि.सं. अपनी अधिशेष विद्युत का विद्यमान व्यवस्थाओं के अधीन, यदि कोई हो, डिस्कॉमों को या पावर एक्सचेंज में विक्रय कर सकता है।”

आज्ञा से
सचिव।

NOTIFICATION

Jaipur, February 4, 2020

No. RERC/Secy/Regulation- 135:-In exercise of the powers conferred under Section 86(1)(e) read with section 181 of the Electricity Act, 2003 and all power enabling it in this behalf, the Rajasthan Electricity Regulatory Commission after previous publication, hereby makes the following Regulations to amend the RERC (Renewable Energy Obligation) Regulations, 2007 (hereinafter referred to as the ‘Principal Regulations’), namely:

1. Short title and commencement:

- (1) These Regulations shall be called the “Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) (Sixth Amendment) Regulations, 2020.”
- (2) These Regulations shall come into effect from 01.04.2019.

2. Amendment in Regulation 4 of the Principal Regulations:

- (1) The following proviso(s) shall be added below the existing tables appearing under the heading (A) of sub-regulation (2):

“Provided also that for CPPs commissioned before 1.04.2016, RPO shall be at the level as mandated by the Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as mandated by the Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

Provided also that in case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.

Provided also that in case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements, if any, or in the power exchange.”

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- (2) The following proviso(s) shall be added below the existing tables appearing under the heading (B) of sub-regulation (2):

"Provided also that for CPPs commissioned before 1.04.2016, RPO shall be at the level as mandated by the Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as mandated by the Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

Provided also that in case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.

Provided also that incase, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements, if any, or in the power exchange."

By order,
Secretary

राज्य केन्द्रीय मुद्रणालय, जयपुर।

ANNEXURE : U

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BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

AT GANDHINAGAR

Petition No.1688 of 2017

In the Matter of:

Petition under GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its (First Amendment) Regulations, 2014 for revision in Renewable Power Purchase Obligation (RPO) in case of Four Subsidiary Distribution Companies of GUVNL for FY 2016-17.

Petitioner	:	Gujarat Urja Vikas Nigam Limited,
Represented By	:	Ms. Sailja Vachhrajani and Ms. Girija Dave
Co- Petitioner No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Nobody was present.
Co- Petitioner No. 2	:	Paschim Gujarat Vij Company Limited
Represented By	:	Nobody was present.
Co- Petitioner No. 3	:	Uttar Gujarat Vij Company Limited
Represented By	:	Nobody was present.
Co- Petitioner No. 4	:	Dakshin Gujarat Vij Company Limited
Represented By	:	Nobody was present.
Objector No. 1	:	Shri K. K. Bajaj
Represented By	:	Nobody was present.

CORAM:

Shri Anand Kumar, Chairman

Shri P. J. Thakkar, Member

Date: 06/05/2020.

ORDER

1. The present Petition is filed by the Petitioner seeking the following reliefs:
 - a) To allow adjustment of excess purchase of 99 MUs Solar power against shortfall in RPO of Non-Solar category.
 - b) To revise the RPO target of FY 2016-17 as per actual and exempt GUVNL / Distribution Companies from requirement of transferring funds to the Designated Account for FY 2016-17, as shortfall in compliance of RPO is on account of factors beyond the control of GUVNL / Distribution Companies and there is no willful default or failure on the part of GUVNL/Distribution Companies for RPO compliance of FY 2016-17.
2. The present Petition is filed by the Petitioner under the GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 read with (First Amendment) Regulations, 2014 for revision in Renewable Purchase Obligation (RPO) for FY 2016-17 in case of four subsidiary distribution companies of GUVNL. The facts mentioned in the Petition are stated as under:

- 2.1. Government of Gujarat notified Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 in May, 2003 for reorganization of the entire power sector in the State of Gujarat. Pursuant to this the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, erstwhile Gujarat Electricity Board was reorganized and its functions have been vested in seven different functional entities.
- 2.2. The activities of Generation, Transmission, Distribution, Bulk power purchase and supply undertaken by erstwhile Gujarat Electricity Board have been entrusted to separate seven functional entities. The generation activity is assigned to Gujarat State Electricity Corporation Limited (GSECL), transmission activity is assigned to Gujarat Energy Transmission Corporation Limited (GETCO), and the distribution activity is assigned to four distribution companies viz. Uttar Gujarat Vij Company Limited (UGVCL), Madhya Gujarat Vij Company Limited (MGVCL), Dakshin Gujarat Vij Company Limited (DGVCL) and Paschim Gujarat Vij Company Limited (PGVCL). Further, the function of bulk purchase and bulk sale of power is assigned to the Petitioner, Gujarat Urja Vikas Nigam Limited, as per the re-organization scheme and accordingly, on behalf of four subsidiary Distribution Companies, the Petitioner is carrying out bulk purchase and bulk sale of power.

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2.3. It is submitted that that the Commission is from time to time determining and deciding the preferential tariff for procurement of power by distribution licensees from various Renewable Energy (RE) Sources and in order to meet the Renewable Purchase Obligation of its subsidiary Distribution Companies (DISCOMs), GUVNL has been purchasing power from various renewable energy sources by entering into Power Purchase Agreements at the tariff determined by the Commission. The status of renewable energy capacity tied up by GUVNL as on 31.03.2017 for the purpose of meeting the RPO is as under:

Source	Capacity Tied Up (MW)
Wind*	3472
Solar**	1136 {886 + 250 (Charanka)}
Biomass	30
Small Hydel	9.6
Municipal Solid Waste***	11.2
Total	4634

* 3332 MW commissioned
 ** 861 MW + 80 (SECI-Charanka) commissioned
 *** SCOD in Dec-18

2.4. The status of RPO compliance for the FY 2016-17 as against the RPO targets stipulated by the Commission taking into account the total power purchase requirement of 72972 MUs (as approved vide GERC Suo-Motu Order dated 02.12.2015) for all four DISCOMs is as under:

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RPO Status	Wind	Solar	Others	Total
Percentage energy required to be procured as per Regulation	7.75%	1.75%	0.50%	10.00%
Energy in MUs required to be procured	5655	1277	365	7297
Renewable Energy Purchased (MUs)	4857	1376	60	6293
Renewable Energy Purchased (%)	6.66%	1.89%	0.08%	8.62%
Shortfall (+)/Excess (-)(MUs)	798	(-) 99	305	1004

- 2.5. It is submitted that as regards to fulfilment of Non-Solar RPO through Wind and Other renewable sources of energy during the FY 2016-17, Petitioner purchased 4917 MUs as against the requirement of 6020 MUs as per the percentage RPO stipulated in the Regulations. Thus, actual Non-Solar compliance is 6.74% as against 8.25% stipulated in the Regulations and there is shortfall of 1103 MUs in the Non-Solar RPO for FY 2016-17 on account of reasons not attributable to GUVNL/DISCOMs.
- 2.6. The Petitioner has submitted that as regards the Solar RPO for FY 2016-17, GUVNL has purchased 1376 MUs solar energy, i.e. 1.89% as against the requirement of 1277 MUs to meet the Solar RPO of 1.75%. Thus, there is excess purchase of 99 MUs of solar energy, which is eligible to get compensated against the shortfall of Non-Solar RPO in accordance with various orders of the Hon'ble APTEL and the Commission.
- 2.7. The Petitioner has submitted that pursuant to the Solar Power Policy, 2009 notified by the Government of Gujarat, the Petitioner had entered into Power Purchase Agreements (PPAs) with various solar project developers out of which 861 MW solar capacity has been installed and available for generation as on 31.03.2017 (excluding 80

MW SECI-Charanka) in order to meet Solar RPO. These PPAs entered in to with solar project developers in the year 2010 are for a term of 25 years and no new PPAs have been signed thereafter at preferential tariff. Moreover, taking into consideration the increasing trend of the Solar RPO during the ensuing years, GUVNL has tied up 250 MW capacity (on 28.02.2017) under 'SECI's competitive bidding under Phase-II, Batch-IV of Jawaharlal Nehru National Solar Mission of Government of India, which is scheduled to get commissioned in phased manner by December 2017 and the action of the Petitioner / Government of Gujarat has always been towards promotion of Solar Power. It is submitted that 80 MW of Solar capacity (Charanka) is commissioned as on 31.03.2017.

2.8. It is further submitted that in the year 2010 when the Petitioner entered into PPAs with Solar Project Developers, the concept of solar energy and solar technology was at nascent stage of development in the country and was not considered to be proven for power generation in comparison to other available renewable sources. Therefore, in order to give fillip to its development, Government of Gujarat has consciously promoted and encouraged installation of MW scale Solar capacity in the State of Gujarat.

2.9. It is submitted that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 provides for revising the targets of RPO in case of supply constraints or factors beyond control of the concerned distribution licensee. The Commission has power to relax as may be deemed necessary in case of RE supply

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constraints or other factors not attributable to the concerned distribution licensee under the RPO Regulations. The RPO Regulations of the Commission provides for adjustment of excess purchase of wind energy against shortfall in Solar RPO. In the same manner, it is in the interest of the consumers to allow adjustment of purchase of excess solar energy against shortfall in Non-Solar RPO more particularly when purchase of solar power is not with an intention to distort the technology specific RPOs. The Petitioner further submitted that this has been upheld in the judgements of the Hon'ble APTEL dated 25.04.2014 in Appeal No. 24 of 2013 and dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014.

2.10. It is further submitted that the average power purchase cost of solar energy is around Rs. 13.79 per unit which is almost three times costlier than the cost of power from 'Other' RE sources which works out around Rs. 3.72 per unit. The excess purchase of around 99 MUs of solar power has entailed an additional financial implication of Rs. 99 Crores on the Petitioner. Therefore, the Commission is requested to revise the RPO of FY 2016-17 as per the actual since the reasons for shortfall in Non-Solar RPO is anyway not attributable to them.

2.11. The Petitioner has submitted that as against 1103 MUs shortfall in compliance of the Non-Solar RPO, GUVNL has purchased excess 99 MUs of solar energy. Thus, the net shortfall in compliance of overall RPO fulfilment for FY 2016-17 is 1004 MUs, i.e. as

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against total RPO target of 10% the Petitioner has achieved 8.62% resulting in shortfall of 1.38% for FY 2016-17. The Petitioner has submitted that the shortfall is on account of factors beyond the control of GUVNL/Distribution Licensees and mainly attributable to the following:

- i) Lower capacity addition at National as well as State Level in past years, viz. 2012-13, 2013-14, 2014-15 and even FY 2015-16 leading to lower wind generation/wind RPO compliance during FY 2016-17;
- ii) Delay in execution and commissioning of tied up wind capacity;
- iii) Actual available generation from RE capacity at lower level as compared to normative generation.

2.12. It is further submitted that in case of Wind energy, the Petitioner has been signing PPAs at preferential tariff with all the Wind Developers that have approached GUVNL to supply power. Despite that adequate wind capacity under PPA route was not set up during the past years i.e. from FY 2012-13 up to FY 2015-16. The overall wind capacity addition was hampered during these years at National as well as State level, cumulative effect of which has impacted the wind energy generation / RPO compliance during FY 2016-17.

2.13. It is also submitted that GUVNL has tied up wind capacity to the tune of 1039.70 MW during FY 2016-17 with the Scheduled Commercial Operation Date of such tied up

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capacity mostly ranging between December 2016 to March 2017. The tied up wind capacity of FY 2016-17 is all time high record of GUVNL of executing PPAs with Wind Power Projects during a particular year. However, major capacity of WTGs was installed in the month of March 2017 and hence the generation benefit was not available for full year. Further, execution and commissioning of some of the WTGs got delayed, thereby affecting the wind RPO compliance. Further, the period between October to December 2016 happened to be a lean period during which the wind generation remained significantly low, which has impacted the overall/yearly Wind RPO compliance for FY 2016-17.

2.14. To substantiate its arguments for non-compliance of RPO for Wind it is submitted that out of 200 MW capacity tied up with M/s SITAC RE Pvt. Ltd. (formerly known as M/s Theolia Wind Power Pvt. Ltd.) only 36 MW was commissioned / operational during the entire FY 2016-17 and the balance capacity was commissioned phase-wise; most of which was commissioned during March-2017. In case this 164 MW of Wind capacity would have been commissioned as per agreed time schedule, generation of approximately 352 MUs considering normative CUF of 24.5% would have been available to meet the Wind RPO for FY 2016-17.

2.15. As regards purchase of power from the 'Other' RE sources, it is submitted that around 50.8 MW capacity is tied up by GUVNL which includes 30 MW from Biomass based

power project, 11.2 MW of Municipal Solid Waste (MSW) based project and 9.6 MW of Small/Mini Hydro projects. Since, the SCOD of 11.2 MW MSW project is in December-18, no energy could be availed therefrom. In case of Small/Mini Hydro projects, 51.80 MUs generation is availed during FY 2016-17 at PLF of 61.59% as against the normative PLF of 80% mainly on account of shortage of water. However, if the Small/Mini Hydro capacity would have operated at the normative PLF there would not have been shortfall of 15 MUs. Similarly, during the FY 2016-17, the generation from 30 MW biomass-based power project was 0.56 MUs only i.e. abysmally low PLF of 0.22%, which is significantly lower as compared to normative generation of 210.24 MUs at 80% PLF. Thus, there is a shortfall of 210 MUs from biomass based renewable energy sources.

2.16. The reasons as stated above, for shortfall in RPO are not attributable to GUVNL/Distribution Licensees and there has been no wilful default or failure on the part of GUVNL/Distribution Licensees in compliance of RPO for FY 2016-17. It is further submitted that record capacity of wind power was tied up by the Petitioner apart from proactive initiation of competitive bidding process for tie up of wind power to cater RPO for the ensuing years.

2.17. The Petitioner submitted that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 provides for revising the RPO targets in case of supply constraints or factors beyond the control of the concerned obligated entity. As

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per the RPO Regulations, the Commission has inherent power to give relaxation as may be deemed necessary in the scenario of RE supply constraints or other factors not attributable to the concerned distribution licensee. Moreover, Hon'ble APTEL has reaffirmed that the Commission under Regulation 4.2 has powers to revise the RPO targets due to inadequate capacity addition when in a resource rich State RPO targets are set up keeping in view anticipation of capacity addition in the State. Further, as per Regulation 7.2 which states that despite availability of renewable energy sources, the distribution licensee failed to meet the RPO, the pre-condition for invocation of Regulation 9 "Consequence of Default" is also not applicable.

2.18. The Petitioner referring the judgement dated 25.04.2014 in Appeal No. 24 of 2013 of the Hon'ble APTEL submitted that this Commission is empowered to revise the RPO targets specified under Regulation 4.1 due to inadequate Renewable Capacity addition in the State and reasons beyond the control of distribution licensee irrespective of the fact that whether Renewable Energy Certificates are available or not.

2.19. The Petitioner in view of the above, requested the Commission to revise shortfall in meeting RPO for FY 2016-17 and also requested to exempt GUVNL/Distribution Licensees from the requirement of transferring funds equal to shortfall quantum at forbearance price to the designated account since GUVNL/DISCOMs are already having additional financial burden of Rs. 99 Crores during FY 2016-17 due to purchase of

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additional solar power and since the shortfall in RPO compliance was on account of factors beyond the control of DISCOMs and there is no wilful default or failure on their part. The Petitioner also requested to allow adjustment of excess purchase of 99 MUs solar power against shortfall in RPO of Non-Solar category.

3. The Commission vide Daily Order dated 28.02.2018 had directed the Petitioner, to issue a public notice and upload the present Petition on their website to invite objections/suggestions on the Petition from the stakeholders as per the directives of the Hon'ble APTEL in judgment dated 25.02.2014 in Appeal No. 24 of 2013 and I.A. No. 39 of 2013. The staff of the Commission was also directed to upload the Petition on the website of the Commission and invite comments/suggestions from the stakeholders. The Petitioner has issued public notice in two daily Gujarati Newspapers (Gujarat Samachar and Sandesh) and One English Newspaper (Indian Express) on 09.03.2018 and the Petition was also uploaded on website of the Commission in accordance with the Commission's directives.
4. Objector No. 1 Shri K. K. Bajaj vide letter dated 08.02.2018 and submissions dated 11.04.2018 referring to the RPO targets for FY 2016-17 as per GERC (Procurement of Energy from Renewable Sources) Regulations 2010 as amended has submitted that the Petitioner could not fulfil the required RPO last year i.e. FY 2015-16 for which the

Commission has not passed any Order and requested that the Commission to pass the same which will have effect on this Petition.

- 4.1. The Objector No.1 tabulated the RPO achieved by the Petitioner as under:

Particulars	Solar (%)	Non-Solar (%)	Total (%)
RPO percentage specified by the Commission	1.75	8.25	10.00
RPO as per GERC- MUs	1277	6020	7297
Actual RPO in %	1.89	6.73	8.62
Actual RPO in MUs	1376	4917	6293
Excess/Shortfall in %	(0.14)	1.52	1.38
Excess/Shortfall in MUs	(99)	1103	1004

- 4.2. The Objector No. 1 has further submitted that the Petitioner has failed to sign new PPAs for wind energy which led to present shortfall in RPO of FY 2016-17 and has once again repeated its failure to procure wind energy from wind energy generators. The Objector further submitted that WEGs are not ready to sign PPAs at the preferential tariff but demanding higher tariff than the tariff approved by the Commission. The Commission should take action against such WEGs for demanding higher tariff of wind energy than the tariff approved by the Commission, filing legal cases and thereby delaying signing of new PPAs.

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- 4.3. The Objector submitted that the Petitioner has purchased excess 99 MUs of solar energy against the RPO target thereby putting unwarranted burden of Rs. 99 Crores on the consumers of Gujarat. It is further submitted that Regulation 4.1 of the RPO Regulations provides that licensee can purchase additional energy from wind and other sources to meet the shortfall in Solar RPO. However, the Regulation is silent on purchasing additional solar energy to meet shortfall in wind or other category of renewable energy. However, the Commission has powers to revise percentages of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.
- 4.4. The Objector requested the Commission to revise the RPO as per the actual for 2016-17 and direct the Petitioner to sign more Solar and Wind PPAs to meet the requirement of RPO for next five years.
5. The matter was earlier heard on 17.02.2018 and 06.06.2018. During the hearing on 06.06.2018, all the parties having made their submissions and completed their arguments were directed to file their written submissions, if any and the matter was reserved for Order. Thereafter, the matter was relisted on 19.02.2020 for mentioning/ directions on account of change in quorum, during which Objector Shri K. K. Bajaj has not remained present despite being served the hearing notice and the Petitioners submitted that they have already made their submissions and completed their

arguments earlier and no further submissions are required to be made by them in the matter and the Commission may decide the matter based on the submissions already made and the record of present Petition.

6. During the hearing on 06.06.2018, Ms. Sailja Vachhrajani, on behalf of the Petitioner submitted the facts as stated in para 2 above and the same are not repeated for sake of brevity. She further submitted that GUVNL has received objection from Shri. K. K. Bajaj in the present Petition, which is mostly in favour of the Petitioner. Therefore, based on the facts and circumstances of the case the Commission may take the appropriate decision.
7. We have carefully considered the submissions made by the parties. The issue emerged in the present case is with regard to shortfall in RPO compliance by the subsidiary distribution licensees of the Petitioner who are the obligated entities. We note that the Petitioner has complied with the directions of the Commission in Daily Order dated 28.02.2018. The Petitioner contended that the shortfall is due to factors beyond the control of the Petitioner, while the Objector Shri K. K. Bajaj, supported the contention of the Petitioner stating that the Commission has powers to revise the percentages of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee. He also submitted that the Commission should take action against the wind energy generators who are not signing the PPAs with the distribution

licensees at the preferential tariff determined by the Commission but filing legal case thereby delaying signing of new PPAs. The Commission may, therefore, revise the RPO targets by considering the actual renewable energy purchased by the Petitioner as compliance of Non-Solar RPO.

- 7.1. The Petitioner has contended that it purchased 99 MUs of Solar energy in excess of the stipulated RPO, which may be considered towards the compliance of Non-Solar RPO which is supported by Shri Bajaj. It is further submitted that, in the judgment dated 25.04.2014 of the Hon'ble APTEL in Appeal No. 24 of 2013 and I.A. No. 39 of 2013 read with judgment dated 16.04.2015 in Appeal No. 258 of 2013, it is recorded that in order to promote solar technology, PPAs with solar generators have been entered into for a capacity higher than the required capacity for meeting the Solar RPO. It was further observed that the State Commission in order to avoid additional burden of purchasing Non-Solar RECs on the distribution licensee and their consumers, has allowed to meet Non-Solar RPO by additional energy procured from solar projects. Further, the State Commission keeping in view the circumstances of the case can exercise its powers under Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 to allow adjustment of excess solar energy purchased against the shortfall in Non-Solar RPO.

7.2. The Petitioner has further contended that the shortfall in Non-Solar RPO is due to reasons beyond its control as stated below:

- (a) Lower capacity addition at National as well as State Level in the past years, viz. 2012-13, 2013-14, 2014-15 and even FY 205-16 leading to lower wind generation/Wind RPO compliance during FY 2016-17;
- (b) Delay in execution and commissioning of tied up wind capacity;
- (c) Actual available generation from RE capacity at lower level as compared to normative generation.
- (d) The Wind capacity tied up by the Petitioner during FY 2016-17 despite being the highest capacity of Wind power tied up in any year but commissioning of only part of that capacity took place during the year and whatever capacity was commissioned was mostly in the latter part of the year while balance capacity addition was in subsequent year. Hence, the generation from the entire tied up capacity was not available to the Petitioner for meeting the RPO compliance.

7.3. The details submitted for RPO compliance of the subsidiary distribution licensees by the Petitioner for the FY 2016-17 taking into account the total power purchase requirement of 72972 MUs (as approved vide GERC Suo-Motu Order dated 02.12.2015) from various renewable energy sources, i.e. Solar, Wind and Others is as under:

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RPO Status	Wind	Solar	Others	Total
Total Energy (MUs)	72972			
Percentage energy required to be procured as per Regulation	7.75%	1.75%	0.50%	10.00%
Energy in MUs required to be procured	5655	1277	365	7297
Renewable Energy Purchased (MUs)	4857	1376	60	6293
Renewable Energy Purchased (%)	6.66%	1.89%	0.08%	8.62%
Shortfall (+)/Excess (-) (MUs)	798	(-) 99	305	1004
Shortfall (+)/Excess (-) (%)	1.09%	(-) 0.14%	0.42%	1.38%

The aforesaid compliance submitted by GUVNL is also supported by GEDA, the nodal agency for monitoring the compliance of the RPO by the obligated entities.

- 7.4. It is apparent from the above that the Petitioner has worked out the RPO compliance against the total power purchase requirement of 72972 MUs approved by the Commission in its Tariff Order dated 31.03.2015. However, as per the various details submitted in tariff determination and True-up for FY 2016-17 by the Petitioner, the actual trued-up total energy requirement is 80097 MUs instead of 72972 MUs. Accordingly, the percentage of renewable energy procured and Shortfall/Surplus against the RPO targets stood revised as under:

RPO Status	Wind	Solar	Others	Total
Total Energy (MUs)	80097			
Percentage energy required to be procured as per Regulation	7.75%	1.75%	0.50%	10.00%
Energy in MUs required to be procured	6207.518	1401.698	400.485	8009.700
Renewable Energy Purchased (MUs)	4857	1376	60	6293
Renewable Energy Purchased (%)	6.06%	1.72%	0.08%	7.86%
Shortfall (+)/Excess (-) (MUs)	1350.518	25.698	340.485	1716.700
Shortfall (+)/Excess (-) (%)	1.69%	0.03%	0.42%	2.14%

- 7.5. It transpires from the aforesaid Table that the Petitioner purchased 4857 MUs of Wind energy which is 6.06% of total consumption, 1376 MUs of Solar energy which is 1.72% of total consumption and 60 MUs of renewable energy from 'Other' sources which is 0.08% of total consumption during FY 2016-17. It is apparent from above that there is shortfall of 25.698 MUs of Solar energy against Solar RPO and shortfall of 1350.518 MUs in purchase of Wind energy and 340.485 MUs from 'Other' renewable sources against Non-Solar RPO. The total shortfall in RPO compliance is 1716.700 MUs.
- 7.6. Thus, there is no excess purchase of Solar energy by the Petitioner against the Solar RPO of 1.75% stipulated by the Commission considering the trued-up total energy requirement of 80097 MUs, but on the contrary there is shortfall of 25.698 MUs of solar energy for compliance of Solar RPO. Hence, the issue of adjustment of excess purchase of 99 MUs solar power against the shortfall in the Non-Solar RPO category as prayed by the Petitioner does not arise. Moreover, there is shortfall in compliance of Non-Solar RPO with shortfall of 1350.515 MUs in purchase of Wind energy and 340.485 MUs from 'Other' renewable sources.
- 7.7. In the aforesaid background, we deal with the issue as to whether the GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 and amendments thereto permit the revision of RPO as per actuals and exempt the obligated entities from the requirement of transferring the funds to a designated account against the

shortfall in Non-Solar RPO compliance due to factors beyond the control of the obligated entities. The Petitioner submitted that the shortfall in compliance of Non-Solar RPO is due to factors beyond the control of the Petitioner and hence, the Commission may exempt the Petitioner in view of the provisions of Regulation 7 read with Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments thereto, which are reproduced below:

"

7.1 *If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.*

7.2 *Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.*

....."

The aforesaid Regulations recognize that the Commission may carry forward the shortfall of RPO percentage if the obligated entity faced genuine difficulty and whenever the carry forward of RPO percentage is allowed by the Commission, the same has be added to the RPO requirement of the next year as per the Regulations. It also provides that whenever there is excess purchase of renewable energy by the obligated entity, no set-off is to be given for such surplus energy against the RPO percentages of the next

year. It also provides that when the RPO target is not met by the obligated entity, despite availability of renewable energy sources, the Commission may impose penalty on the obligated entities.

- 7.8. It is also necessary to refer Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010. Regulation 9.1 states about the penalty to be imposed for non-fulfillment of RPO and compensation required to be paid by the obligated entity, which reads as under:

“9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

.....”

It is also necessary to refer the fifth and sixth proviso of the aforesaid Regulation 9.1, which read as under:

“

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.

.....”

It is apparent from the above that the fifth proviso provides for carry forward of RPO when genuine difficulty is faced by the obligated entity in fulfillment of RPO. Similarly, the sixth proviso provides that when carry forward is allowed by the Commission, in such case no regulatory charges shall be applicable to the obligated entities.

- 7.9. Regulation 12 of the said Regulations pertains to ‘Power to remove difficulties’, which reads as under:

“12.1 The Commission shall suo motu or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.”

Thus, the Commission is empowered for removal of difficulty when there is an application made by any person generating electricity from the renewable energy sources or a distribution licensee or suo-motu.

- 7.10. From the combined reading of the above Regulations, it transpires that the Commission is empowered to (i) revise the RPO target, (ii) carry forward the RPO to the next year, (iii) impose penalty on the obligated entities due to non-compliance of the RPO, (iv)

grant exemption from payment of regulatory charge for non-compliance of the RPO, and (v) add, amend or alter the RPO Regulations as a part of removal of difficulties by passing an appropriate order.

7.11. The Petitioner has submitted that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 provides for revising the RPO targets in case of supply constraints or factors beyond the control of the concerned obligated entity and as per the provisions of RPO Regulations, the Commission has power to give relaxation as may be deemed necessary in the scenario of RE supply constraints or other factors not attributable to concerned distribution licensee. The Petitioner referring to the judgement dated 25.04.2014 in Appeal No. 24 of 2013 of the Hon'ble APTEL has further submitted that this Commission is empowered to revise the RPO targets specified under Regulation 4.1 due to inadequate Renewable Capacity addition in the State and reasons beyond control of distribution licensee irrespective of the fact that whether Renewable Energy Certificates are available or not. Objector Shri K. K. Bajaj also submitted that the Commission has powers to revise percentages of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

7.12. In this regard it is necessary to refer Regulation 4.1 and Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and the GERC

(Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014, as under:

GERC (Procurement of Energy from Renewable Sources) Regulations, 2010:

"4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year (1)	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.50%	0.50%
2012-13	7%	5.5%	1.00%	0.50%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases,

additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

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

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

4.2 The Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee."

GERC (Procurement of Energy from Renewable Sources) First Amendment, Regulations, 2014:

"4) Substitution of Table 1 of Regulation 4.1

The table 1 provided in Principal Regulation 4.1 shall be substituted by following table 1

	<i>Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)</i>			
<i>Year</i>	<i>TOTAL</i>	<i>Wind</i>	<i>Solar</i>	<i>Others (Biomass, Bagasse, MSW, etc.)</i>
<i>2010-11</i>	<i>5.0</i>	<i>4.50</i>	<i>0.25</i>	<i>0.25</i>
<i>2011-12</i>	<i>6.0</i>	<i>5.00</i>	<i>0.50</i>	<i>0.50</i>
<i>2012-13</i>	<i>7.0</i>	<i>5.50</i>	<i>1.00</i>	<i>0.50</i>
<i>2013-14</i>	<i>7.0</i>	<i>5.50</i>	<i>1.00</i>	<i>0.50</i>
<i>2014-15</i>	<i>8.0</i>	<i>6.25</i>	<i>1.25</i>	<i>0.50</i>
<i>2015-16</i>	<i>9.0</i>	<i>7.00</i>	<i>1.50</i>	<i>0.50</i>
<i>2016-17</i>	<i>10.0</i>	<i>7.75</i>	<i>1.75</i>	<i>0.50</i>

.....”

The aforesaid Regulation 4.1 provides that in case of non-availability of solar and other renewable energy sources, in a particular year, shortfall of such energy, be made good through the energy available either from wind or other sources of energy, i.e. biomass, bagasse, etc., whereas Regulation 4.2 provides that keeping in view supply constraints or other factors beyond the control of the licensee the Commission may suo motu or at the request of a licensee, revise the percentage targets as per the aforesaid Regulation 4.1 for a year.

- 7.13. We further note that the Hon’ble APTEL in Appeal No. 24 of 2013 filed by the Appellant, Indian Wind Energy Association V/s. GERC & others has dealt with aforesaid aspects in its judgment dated 25.04.2014 and recorded as under:

"63. *Summary of our findings:*

- (i). *Appeal filed by the association of wind energy project developers against the impugned order of the State Commission allowing relaxation in Renewable Purchase obligation of the distribution licensees is maintainable.*
- (ii). *Since the present case is the first suo-motu review of compliance of the RPO obligations after the notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews, we do not want to hold that the absence of public notice in the suo motu proceeding was illegal. However, we feel that in the proceedings before the State Commission either suo motu or on a petition by a party, regarding review of RPOs in which consequential directions for relaxation or carry forward of RPO or creation of regulatory fund are given, public notice inviting suggestions and objections of the stakeholders is necessary. We have given some directions for future under paragraphs 29 and 30.*
- (iii). *We do not find any infirmity in the State Commission revising the RPO for FY 2010-11 by exercising its power under Regulation 4.2 of the RPO Regulations, 2010, in view of the reasons beyond the control of the distribution licensees.*
- (iv). *We do not see any infirmity in the distribution licensee setting priority to procure renewable energy by entering into PPAs with the renewable energy generators to meet their RPO targets when the State is endowed with adequate renewable energy sources. However, if the distribution licensees are*

not able to make arrangements to procure adequate renewable energy to meet the RPO targets, then they have to resort to alternate mechanism of REC specified in the Regulations to meet the shortfall in RPO. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand, it decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it held that adequate REC were not available. No reason was given to come to conclusion that adequate REC were not available.

- (v). *FY 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13 the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We have, however, given some guidelines to the State Commission for future under paragraph 55(A) to (D).*

(vi). *We do not find any infirmity in the State Commission exercising its powers under Regulation 4.2 for adjustment of excess solar energy procured against Non-Solar RPO in the circumstances of the present case.*

64. *In view of above, the Appeal is partly allowed to the extent as indicated above. We have also given some directions/guidelines to the State Commission to be followed in future. No order as to cost."*

7.14. The said aspect is also dealt in Appeal No. 258 of 2013 filed by the Indian Wind Power Association before the Hon'ble APTEL and the Hon'ble APTEL vide Order dated 16.04.2015 decided as under:

".....

71. *Summary of our findings:*

(i) *The National Tariff Policy and the Regulation of the Central Commission and the State Commission recognize REC as valid instrument for fulfilling Renewable Purchase Obligation cast upon the obligated entities under Section 86(1)(e) of the Electricity Act, 2003. Purchase of REC would be deemed as purchase of energy from renewable energy source for fulfilling RPO obligation. When a legal fiction has been created by a statute, the same should be given full effect.*

- (ii) *An obligated entity has option to fulfill its RPO either by procuring renewable energy in physical form or by REC or partly by REC and partly by physical renewable energy. However, a distribution licensee has to exercise the option based on economic principles. An obligated entity other than the distribution licensee may also opt for purchase of REC for fulfilling its RPO obligation to avoid the issues involved in banking, open access, sale of surplus power, etc., or if the RPO requirement is too small.*
- (iii) *Renewable energy generators like conventional generators have been given freedom under the Electricity Act in respect of choice of site, choice of counter-party buyer, freedom from tariff regulation when the generating company supplies to a trader or directly to a consumer. So far, the renewable energy generators were not able to exercise this freedom due to various constraints. The REC mechanism has opened up the market for renewable energy generators helping in expeditious exploitation of renewable energy potential in the country thus, serving the object of the Electricity Act, 2003. Thus, REC mechanism has to be encouraged. By treating REC as a valid instrument for discharge of mandatory RPO as set out in the Regulations, the State commission has only followed the mandate of the Electricity Act, 2003 under Section 86(1)(e) for promotion of renewable sources of energy in the State.*
- (iv) *The State Commission can revise the RPO before or during a year or after passing of year under Regulation 4.2 of RE Regulation 2010 as explained under*

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paragraphs 47 to 51 above. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and also has not procured REC, the State Commission should not revise RPO under Regulation 4.2. However, while revising the RPO targets, the State commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations.

- (v) If the RPO targets are revised under Regulation 4.2 due to inadequate capacity addition in a resource rich State, such reduction has to be uniform for all the entities.*
- (vi) Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.*
- (vii) Admittedly there was substantial reduction in capacity addition of wind energy and other sources of renewable energy in the State during FY 2012-13 due to reasons beyond the control of the distribution licensee. Under such a condition the State Commission can reduce RPO targets for the wind energy and other*

energy. However, such reduction due to capacity constraints has to be uniform for all the obligated entities in the State.

- (viii) In the present case, the State Commission has revised the RPO targets for various distribution licensees as per the actual. This way the State Commission has set up different RPO targets for four States owned distribution license, Torrent Power Surat and Ahmedabad at different levels for the same reason of inadequate capacity addition. This is not permissible. The State Commission has incorrectly revised the RPO for the deemed distribution licensees to zero or nearly negligible amount due to financial impact, low energy consumption, nascent stage of operation etc., in contravention to the Regulations.
- (ix) We find that RPO compliance of GUVNL for wind energy was satisfactory but compliance of biomass and other non-solar energy was quite low due to which there was default in fulfilling the non-solar RPO. Thus, during FY 2012-13 there appeared to be inadequate generation of biomass and other non-solar energy sources in the State. The State Commission has to examine the reasons for the same and take necessary measures for accelerating capacity addition of biomass and other sources of renewable energy in the State.
- (x) We remand the matter to the State Commission to reconsider the whole issue afresh in light of our findings in this judgment. The State Commission is empowered to reduce the RPO targets for all the entities uniformly in view of

reduction in capacity addition of wind energy and other sources in the State during the FY 2012-13. However, the consequences of shortfall with respect to the revised RPO for different distribution licensees/deemed distribution licensees has to be decided by the State Commission according to Regulation 9.

- (xi) We do not find any infirmity in the State Commission relaxing the RPO for those deemed distribution licensees who purchase energy from GUVNL/distribution licensees at retail supply tariff and their consumption is included in determining the RPO of the supplying distribution licensee.*
- (xii) In the circumstances of the case, we do not want to interfere with the decision of the State Commission to set off the shortfall in non-solar energy purchase with excessive solar energy procured during FY 2012-13. However, we have given certain directions in this regard for future in paragraph 68 above.*
- (xiii) As regards public hearing for review of RPO, we have already given the necessary directions in our judgment in Appeal No. 24 of 20013 which have been reproduced under paragraph 27.*

.....”

7.15. From the aforesaid decisions of the Hon'ble APTEL, it is clear that Hon'ble APTEL had recognized that revision of the RPO targets before or during a year or after passing of the year by exercising its power under Regulation 4.2 of the RPO Regulations, 2010 by

the Commission, in view of the reasons beyond the control of the distribution licensees or due to inadequate capacity addition in a resource rich State is permissible.

- 7.16. We also note that the Hon'ble APTEL in the judgment dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 at para 48 recorded as under:

".....

48. *RE Regulation, 2010 dated 17.4.2010 specified RPO for three years (2010-11 to 2012-13) with increasing quantum of RPO every year. Under Regulation 4.2, the RPOs can be revised before the beginning or during a financial year for that year if the State Commission is convinced that the targets set up by it are unrealistic and cannot be achieved. For example, on the basis of the experience of FYs 2010-11 and 2011-12, if the State Commission feels that the targets set up by the Commission for FY 2012-13 are high and unrealistic, it may revise the same at the beginning of FY 2012-13 or during FY 2012-13. The State Commission may also revise the targets during a year due to force majeure such as natural calamity occurring during the year due to which it becomes impossible to achieve the RPO targets....."*

Thus, the Hon'ble Appellate Tribunal while interpreting Regulation 4.2 read with Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 has recorded with clear findings on the powers of the Commission to revise the Renewable Purchase Obligation targets, if the same are found unrealistic considering the availability of renewable energy in the State.

7.17. Further, the finding recorded in para-49 of the Order dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 by the Hon'ble Appellate Tribunal is reproduced below:

".....

49. *The State Commission may also revise the targets after the completion of financial year under Regulation 4.2 due to supply constraints or factors beyond the control of the licensee which may be due to reasons such as:*

- i) Actual renewable energy generation is below normative generation from tied up renewable energy sources due to reasons beyond the control of the distribution licensee.*
- ii) Force majeure such as natural calamity resulting in supply constraints.*
- iii) Inadequate capacity addition in the State and RECs could not be purchased due to non-availability of REC despite efforts made by the distribution licensee. In a resource rich State where the State Commission had set up RPO targets keeping in view the anticipated capacity addition in the State, the State Commission may also revise the targets due to inadequate renewable capacity addition in the State.*
- iv) Minimum energy purchase obligation for renewable sources of energy was fixed on estimated energy consumption of the licensee in the ARR based on estimated growth but the actual consumption has been much lower due to*

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slow growth or negative growth or due to forced majeure. Thus, percentage RPO on actual energy consumption was met but minimum energy purchase target fixed in the ARR based on anticipated energy consumption could not be met.

- v) *A distribution licensee has proposed to meet a part or full RPO by purchase of REC but REC could not be purchased, despite efforts made by the licensee, due to non-availability of REC.*

.....”

As per the above decision of the Hon’ble Appellate Tribunal for Electricity, the Commission has powers to revise the Renewable Purchase Obligation targets under Regulation 4.2 in case the State Commission finds it necessary to revise the target due to inadequate Renewable Capacity Addition.

- 7.18. In the event of such revision in the Renewable Purchase Obligation targets set up under Regulation 4.1, there cannot be any further consideration of the availability of Renewable Energy Certificates. In this regard, para 51 of the Hon’ble Tribunal’s judgement dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 is reproduced below:

“

51. *We want to add that non-availability of REC may not always be a pre-condition for exercise of power to revise under Regulation 4.2. For Example, if the*

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distribution licensees had tied up adequate capacity at preferential tariff but due to actual generation being lower than the normative generation due to reasons beyond the control of the distribution licensee or there is natural calamity in the State and energy consumption in the State has gone down or renewable energy generation in the State has been affected due to natural calamity then shortage of REC may not be a pre-condition to revise RPO targets set up under Regulation 4.1. Further, if in a resource rich State the State Commission has set up RPO targets keeping in view anticipation of capacity addition in the State, the State Commission may also revise the targets due to inadequate capacity addition in the State due to reasons beyond the control of the distribution licensee.

.....”

The Hon’ble APTEL decided that non-availability of RECs may not always be a pre-condition for exercise of powers under Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010. The Commission may also revise the RPO targets in case of actual generation being lower than the normative generation due to reasons beyond the control of the Distribution Licensee or there is a natural calamity or inadequate capacity addition in the State.

- 7.19. A cogent reading of para 49 (iii) and 51, clearly establishes that in resource rich State, the Commission can revise the RPO targets in case of inadequate capacity addition,

irrespective of the fact whether RECs are available or not. The inadequate addition of renewable energy capacity is independent ground for revision of Renewable Purchase Obligation targets of the entity concerned. Regulation 4.1 notified by the Commission prescribes the RPO targets for compliance by the obligated entities. Regulation 4.2 empowers the Commission to revise the targets. Regulation 5 says that renewable energy certificate is an instrument for fulfillment of RPO. Therefore, while deciding the issue, whether there was a supply constraint or not and for revision of RPO, para 51 of the above referred judgment of the Hon'ble APTEL wherein it is held that non-availability of RECs is not a condition precedent to revise the RPO targets and in a resource rich State, the State Commission is empowered to revise the targets due to inadequate RE capacity addition and reasons beyond control of the Distribution Licensees. The said judgment nowhere restricts the powers of this Commission to consider "relevant factors" for revision of the RPO targets. The Hon'ble Tribunal in the aforesaid judgment decided that revision of the RPO targets applies uniformly for all licensees on the basis of lower availability of RE capacity addition.

- 7.20. In view of above, the availability of renewable energy sources needs to be ascertained prior to revising the RPO targets or allowing carry forward or imposing penalty on the obligated entity. The availability of renewable energy sources is dependent on the potential of renewable energy generation in the State and outside.

7.21. Prior to deciding the requirement of revision of the RPO targets, it is necessary to verify as to whether there was adequate renewable capacity addition in the State or not for fulfillment of RPO targets by the obligated entities and whether the generation from such capacity was available to the obligated entities during the year. Accordingly, capacity addition in respect of various renewable sources of generation, i.e. Wind and Solar within the State as well as at the national level was verified by the Commission as tabulated below:

Addition of Wind Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2014-15	190	2312	8.22%
2	2015-16	391	3423	11.42%
3	2016-17	1303	5526	23.58%
Total		1884	11261	16.73%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/Energy_Statistics_2018.pdf)

Addition of Solar Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2014-15	116	1112	10.43%
2	2015-16	124	3019	4.11%
3	2016-17	130	5413	2.40%
Total		370	9544	3.88%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/Energy_Statistics_2018.pdf)

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7.22. From the aforesaid tables it transpires that there was total addition of 1884 MW of wind capacity in Gujarat as compared to 11261 MW capacity addition at the National level during the period of 3 years from FY 2014-15 to FY 2016-17. Moreover, on comparison of addition in wind capacity from FY 2014-15 to FY 2016-17, it shows upward trend, both at the State level as well as at the National level. Further, there is significant addition in Wind capacity during the FY 2016-17 at the State level as compared to earlier years. However, we also note that as per Petitioner's submission most of the capacity addition took place in the last quarter during the FY 2016-17 more particularly in March-17.

7.23. We note that the increase in RPO percentage is required to be considered taking into account the incremental consumption of the licensees in the State while comparing the incremental capacity of wind energy generation in the State as well as at the National Level. The Renewable Purchase Obligation specified for Wind energy for FY 2014-15 was 6.25%, for FY 2015-16 was 7.00 % and for FY 2016-17 it was 7.75%. It is also necessary to record that the energy consumption as per the trued-up figures of PGVCL, DGVCL, UGVCL and MGVL in FY 2014-15 was 75139 MUs, for FY 2015-16 was 79673 MUs and FY 2016-17 was 80097 MUs. This shows year on year increase in total consumption in the distribution licensees area during these three years. It is, therefore, necessary to factor such incremental consumption with incremental RPO specified for wind energy, while deciding the issue. It is also observed that the wind capacity addition in FY 2014-

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15 and FY 2015-16 at National level and State level was not adequate leading to lower wind power. Another aspect which the Commission needs to look into is the approach of Wind Farm Developers to offer their capacity at preferential tariff to the distribution licensees to meet the incremental requirement of the renewable energy on year to year basis as specified in the Regulations by the Commission.

- 7.24. The Petitioner has submitted that it has been signing PPAs at preferential tariff with all the Wind Developers that have approached GUVNL to supply power but adequate wind capacity under PPA route was not set up which has also impacted the wind energy generation / RPO compliance during FY 2016-17. Further, though the Petitioner having tied up wind capacity to the tune of 1039.70 MW during FY 2016-17 with the Scheduled Commercial Operation Date of such tied up capacity mostly ranging between December 2016 to March 2017, major capacity of WTGs was installed in the month of March 2017 and hence the generation benefit was not available for full year whereas, execution and commissioning of some of the WTGs including 164 MW of M/s SITAC RE Pvt. Ltd. got delayed, thereby affecting the wind RPO compliance. Even, the Objector Shri K. K. Bajaj has submitted that the wind energy generators are not signing the PPAs with the distribution licensees at the preferential tariff determined by the Commission and filing legal cases, thereby delaying signing of new PPAs. From the above, it transpires that the availability of wind capacity in the State was limited during the above period and effectively the procurement of wind power reduced.

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7.25. As far as Solar capacity addition is concerned, it transpires from the tables above that there was total addition of 370 MW of Solar capacity in Gujarat as compared to 9544 MW capacity addition at the National level during the period of 3 years from FY 2014-15 to FY 2016-17. Moreover, on comparison of addition in Solar capacity from FY 2014-15 to FY 2016-17, it shows uniform trend at the State level with marginal increase on year-on-year basis whereas at the National level there is upward trend. The capacity addition of Solar power is ranging from 116 MW to 130 MW at the State level during these years. As noted above there is increase in total consumption in the distribution licensees area during past three years on one hand whereas addition in Solar capacity has remained more or less identical.

7.26. As noted above, the Petitioner submitted that as regards the Solar RPO for FY 2016-17, there is excess purchase of 99 MUs of solar energy as against the requirement of 1277 MUs to meet the Solar RPO of 1.75% since GUVNL purchased 1376 MUs solar energy, i.e. 1.89%, which is eligible to get compensated against shortfall of Non-Solar RPO. However, as per the Trued-up figures, the total energy requirement is 80097 MUs instead of 72972 MUs submitted in the present Petition for FY 2016-17 which indicates shortfall of 25.698 MUs of Solar energy against Solar RPO.

7.27. As far as RPO compliance in respect of "Other RE Sources" is concerned, the total tied up capacity by the Petitioner is 50.8 MW. The Petitioner has signed PPAs for 30 MW

biomass based projects but the generation from these projects during FY 2016-17 was only 0.56 MUs as against normative generation of around 210 MUs. Hence, the anticipated energy from these projects was not available. The Petitioner has also tied up 9.6 MW of Small/Mini Hydro capacity, which generated 51.80 MUs at 61.59% PLF as against the normative PLF of 80% mainly on account of shortage of water, resulting in shortfall of 15 MUs. The Petitioner tied up 11.2 MW capacity based on Municipal Solid Waste with Scheduled Commercial Operation Date in December 2018.

- 7.28. From the above, it is apparent that adequate wind capacity under PPA route was not tied up by WTGs with the distribution licensees at preferential tariff apart from inadequate addition in Wind capacity during past years. Solar capacity addition during these years is not adequate to meet the incremental requirement of the renewable energy as per the RPO targets on year to year basis on account of considerable increase in total consumption in the distribution licensees area. In case of Biomass power, there was negligible generation as the plants remained shut during the year while the in case of small hydro, due to inadequate release of water, the generation up to target PLF was not available. It is contended by the Petitioner that these were factors beyond the control of the Petitioner and the same has affected the overall availability of renewable based generation in Gujarat, consequentially resulting in to shortfall in achievement of the RPO targets for FY 2016-17.

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- 7.29. We note that Torrent Power Limited filed Petition No. 1689 of 2017 for its license area of Ahmedabad/Gandhinagar and Surat submitting its RPO compliance for FY 2016-17 and seeking revision of minimum quantum of purchase (in %) from renewable energy sources in view of supply constraints and factors beyond the control of the licensee under the provisions of Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulation, 2010 considering total energy requirement as 10790.97 MUs for FY 2016-17.
- 7.30. We also note that Torrent Power Ltd. for its license area of Dahej has filed Petition No. 1690 of 2017 submitting its RPO compliance for FY 2016-17 considering total energy requirement as 251.43 MUs. Also, MPSEZ Utilities Private Ltd. (MUPL) has filed Petition No. 1677 of 2017 for its license area submitting its RPO compliance for FY 2016-17 considering total energy requirement as 206.53 MUs. Further, the Commission also initiated suo-motu proceedings for compliance of RPO of FY 2016-17 vide Petition No. 1713 of 2018 for other licensees. We note that GEDA has also submitted the RPO compliance details of GUVNL, Torrent Power Ltd. (Ahmedabad, Gandhinagar & Surat), Torrent Power Ltd. (Dahej) and MUPL.
- 7.31. We also note that the Commission in Petition No. 1536 of 2015 filed by Torrent Power Limited pertaining to its RPO compliance for FY 2014-15 for its license area of Ahmedabad/Gandhinagar and Surat vide its Order dated 31.12.2016 at para 13.6 had decided and directed that the petitioner TPL-D is required to fulfill the shortfall of 32.42

MUs of Solar RPO over and above (in addition to) the Solar RPO of 2016-17 and at para 13.7 decided that the Petitioner has purchased sufficient quantum of Non-Solar energy which is in compliance of revised Non-Solar RPO of FY 2014-15. Therefore, it is necessary to adjust this shortfall in Solar RPO compliance of prior period. Torrent Power Ltd. in Petition No. 1689 has submitted that the Solar compliance of 265.08 MUs is achieved for FY 2016-17. After adjusting carried forward shortfall of Solar energy of 32.42 MUs of FY 2014-15, the balance Solar energy of 232.66 MUs is considered towards Solar RPO compliance achieved for FY 2016-17.

- 7.32. Similarly, the Commission in Suo-Motu Petition No. 1542 of 2015 pertaining to RPO compliance for FY 2014-15 for other licensees vide its Order dated 31.12.2016 at para 14.2 stated as under:

“.....

In case of MPSEZ Utilities Private Limited, they have not complied with the RPO of Non-Solar as well as Solar category for FY 2014-15. We note that as the financial year 2014-15 and 2015-16 are completed, we decide to carry forward the RPO specified above for the FY 2014-15 and the same is added to the RPO of FY 2016-17 as specified by the Commission. MPSEZ Utilities Private Limited shall comply with this requirement over and above (in addition to) the RPO requirement of FY 2016-17.

....”

- 7.33. We note that MUPL in Petition No. 1677 of 2017 has submitted that in compliance to the directives of the Commission to comply with the RPO of FY 2014-15 as per the Order passed by the Commission in Petition No. 1542 of 2015 has purchased 11.183 Non-Solar RECs and 2.519 Solar RECs during FY 2016-17. We note that the said aforesaid

compliance is over and above the RPO compliance submitted for FY 2016-17 in the aforesaid Petition No. 1677 of 2017.

7.34. Accordingly, the RPO targets for FY 2016-17 and compliance thereof by GUVNL and other distribution licensees is as under:

Particulars	UOM	FY 2016-17		
		Target RPO	Achieved	Excess (-) / Shortfall (+)
GUVNL				
Energy Required		80097.00		
Wind	%	7.75%	6.06%	1.69%
	MUs	6207.518	4857.000	1350.518
Solar	%	1.75%	1.72%	0.03%
	MUs	1401.698	1376.000	25.698
Others	%	0.50%	0.08%	0.42%
	MUs	400.485	60.000	340.485
Total	%	10.00%	7.86%	2.14%
	MUs	8009.700	6293.000	1716.700
TPL Ahmedabad & Surat				
Energy Required		10,790.97		
Wind	%	7.75%	5.79%	1.96%
	MUs	836.300	625.220	211.080
Solar	%	1.75%	2.16%	-0.41%
	MUs	188.842	232.660	-43.818
Others	%	0.50%	0.00%	0.50%
	MUs	53.955	0.000	53.955
Total	%	10.00%	7.95%	2.05%
	MUs	1079.097	857.880	221.217
TPL Dahej				
Energy Required		251.43		
Wind	%	7.75%	6.53%	1.22%
	MUs	19.486	16.430	3.056
Solar	%	1.75%	1.77%	-0.02%
	MUs	4.400	4.460	-0.060

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Others	%	0.50%	0.00%	0.50%
	MUs	1.257	0.000	1.257
Total	%	10.00%	8.31%	1.69%
	MUs	25.143	20.890	4.253
MPSEZ				
Energy Required		206.53		
Wind	%	7.75%	8.25%	-0.50%
	MUs	16.006	17.040	-1.034
Solar	%	1.75%	1.75%	0.00%
	MUs	3.614	3.620	-0.006
Others	%	0.50%	0.00%	0.50%
	MUs	1.033	0.000	1.033
Total	%	10.00%	10.00%	0.00%
	MUs	20.653	20.660	-0.007

7.35. It is apparent that GUVNL was unable to comply the RPO targets specified by the Commission for FY 2016-17 for all three RE sources, while in case of TPL-Ahmedabad & Surat there was shortfall of 211.080 MUs in Wind category and 53.955 MUs in 'Others' category but there was surplus of 43.818 MUs in Solar category with the resultant shortfall in total RPO compliance by 221.217 MUs i.e. 2.05% of total requirement of renewable energy. In case of TPL-Dahej there was shortfall of 3.056 MUs in Wind category and 1.257 MUs in 'Others' category but there was marginal surplus of 0.060 MUs in Solar category with the resultant shortfall in total RPO compliance by 4.253 MUs i.e. 1.69% of total requirement of renewable energy. MUPL achieved the RPO target.

7.36. The main reasons for not achieving the RPO targets are as under:

- (i) The wind generation capacity addition during the FY 2014-15 and FY 2015-16 was quite low resulting into less availability of wind power during FY 2016-17 from such addition. During FY 2016-17 the capacity addition of wind power at national level was 5526 MW, out of which 1303 MW was installed in the State of Gujarat. Further, adequate capacity to meet the RPO was not offered at preferential tariff, since the Wind Developers did not come forward to sign PPAs to meet the additional requirement of energy by the licensees of the State to fulfil the RPO taking into account the increase in consumption from 75139 MUs in FY 2014-15 to 79673 MUs in FY 2015-16 and 80097 MUs in FY 2016-17 with corresponding increase in RPO percentage.
- (ii) The wind capacity addition in terms of installed capacity during FY 2016-17 was at higher level to the tune of 1303 MW. GUVNL had signed the PPAs for 1039.70 MW. Further, the aforesaid capacity consists of the WTGs installed for self-consumption (captive consumption), sale to third party and sale to licensee like Petitioner. The WTGs capacity available to the Petitioner is the PPAs signed by the WTGs with the Petitioner i.e. 1039.70 MW. Moreover, a major capacity of WTGs was installed in the last quarter of the FY 2016-17 as well as certain tied up capacity to be commissioned got delayed and was not commissioned during FY 2016-17 as envisaged. Thus, energy generation from the capacity tied up was not available for generation of electricity for full year. The aforesaid reasons lead to paucity of

availability of WTGs generation and the Petitioner was not able to meet the incremental requirement of fulfilment of RPO for wind energy generation, which was beyond the control of the Petitioner.

(iii) As regards Solar RPO, as noted above, there is increase in total consumption in the distribution licensees area during past three years on one hand whereas addition in Solar capacity has remained more or less identical. Thus, there was no adequate capacity addition resulting into lesser availability of Solar power towards RPO compliance which again was beyond the control of the Petitioner.

(iv) There was also a shortfall in energy from 'Other' renewable sources, i.e. Biomass, Bagasse, Municipal Solid Waste generation during FY 2016-17 as under:

a) In respect of Biomass based generation of power, though GUVNL had signed the PPAs with 3 projects with total capacity of 30 MW, no generation was available from these plants during the year as the plants were not operating for the reasons beyond the control of the Petitioner. The generation from Biomass projects during FY 2016-17 was only 0.56 MUs, which is at a very low PLF of 0.22%. As against this, the normative generation at 80% PLF could have been to the tune of 210.24 MUs. Thus, if these projects had attained normative generation, then there would not have been shortfall of 210 MUs.

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- b) Similarly, the Small hydel projects with which the Petitioner had signed PPAs, operated for negligible time than at the required PLF due to less release of water. In case of these Small hydel projects, the generation was available on 51.80 MUs @ 61.59% PLF as against normative PLF of 80%, which is mainly on account of shortage of water. There would not have been shortfall of 15 MUs if these projects had attained normative generation. Thus, no adequate generation was available to the Petitioner from these plants for the reasons beyond its control.
- c) In respect of bagasse based generation, the plants with which the Petitioner had signed PPAs could not be set up by the Developers which was beyond the control of the Petitioner.

Thus, GUVNL could have procured 225 MUs more from Other RE Category if the Small Hydro and Biomass projects had operated at their respective normative PLF.

It is apparent from above that the Petitioner faced these constraints in availability of renewable energy in the State of Gujarat during FY 2016-17, which in turn resulted in shortfall in achievement of the RPO targets.

- 7.37. From the above we observe that the capacity addition as well as availability of the wind energy generation and the energy generation from the other sources, i.e. small hydro, biomass, bagasse, MSW etc. was quite low during the FY 2016-17 in the country as well

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as in the State of Gujarat. Solar capacity has remained almost uniform. Renewable Energy addition and availability for RPO compliance is inadequate as against considerable increase in total consumption in the distribution licensees area during past three years. The GERC (Procurement of Energy by Renewable Sources) Regulations, 2010 provide separate RPO for wind, solar and others. The availability of the renewable energy in the State was lower, which affected the requirement of the Distribution Licensees, which are obligated entities to meet their RPO requirements.

7.38. From the above observations we are of view that there were supply constraints of renewable energy in the State of Gujarat during FY 2016-17. Accordingly, the Commission decides to consider the actual level of achievement for the State to arrive at the weighted average of RPO compliance level. We, therefore, decide to revise the RPO of the distribution licensees of the State by adopting the weighted average formula in which the renewable energy actually procured towards the RPO compliance for FY 2016-17 by the distribution licensees is considered and decide to revise the RPO target in percentage and the status of RPO compliance by GUVNL and other obligated entities during F.Y. 2016-17 as under:

Particulars	UOM	FY 2016-17		
		Target RPO	Achieved	Excess (-) / Shortfall (+)
GUVNL				
Energy Required		80097.00		
Wind	%	7.75%	6.06%	1.69%

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	MUs	6207.518	4857.000	1350.518
Solar	%	1.75%	1.72%	0.03%
	MUs	1401.698	1376.000	25.698
Others	%	0.50%	0.08%	0.42%
	Mus	400.485	60.000	340.485
Total	%	10.00%	7.86%	2.14%
	MUs	8009.700	6293.000	1716.700
TPL Ahmedabad & Surat				
Energy Required		10,790.97		
Wind	%	7.75%	5.79%	1.96%
	MUs	836.300	625.220	211.080
Solar	%	1.75%	2.16%	-0.41%
	MUs	188.842	232.660	-43.818
Others	%	0.50%	0.00%	0.50%
	MUs	53.955	0.000	53.955
Total	%	10.00%	7.95%	2.05%
	MUs	1079.097	857.880	221.217
TPL Dahej				
Energy Required		251.43		
Wind	%	7.75%	6.53%	1.22%
	MUs	19.486	16.430	3.056
Solar	%	1.75%	1.77%	-0.02%
	MUs	4.400	4.460	-0.060
Others	%	0.50%	0.00%	0.50%
	MUs	1.257	0.000	1.257
Total	%	10.00%	8.31%	1.69%
	MUs	25.143	20.890	4.253
MPSEZ				
Energy Required		206.53		
Wind	%	7.75%	8.25%	-0.50%
	MUs	16.006	17.040	-1.034
Solar	%	1.75%	1.75%	0.00%
	MUs	3.614	3.620	-0.006
Others	%	0.50%	0.00%	0.50%
	MUs	1.033	0.000	1.033
Total	%	10.00%	10.00%	0.00%
	MUs	20.653	20.660	-0.007

Weighted Average RPO on the basis of compliance achieved:

RPO Category		Target RPO	RPO Achieved
Wind	%	7.75%	6.04%
	MUs	7079.310	5515.690
Solar	%	1.75%	1.77%
	MUs	1598.554	1616.740
Others	%	0.50%	0.06%
	MUs	456.730	60.000
Total	%	10.00%	7.87%
	MUs	9134.593	7192.430

8. As far as the RPO for Solar energy is concerned, we observe that the weighted average RPO on basis of actual RPO achieved works out to 1.77% as against 1.75% specified by the Commission in RPO Regulation. We also note that the Petitioner had signed the Power Purchase Agreements with solar power project developers and has thereby tied up solar capacity of 1136 MW as on 31.03.2017 out of which 941 MW solar capacity including 80 MW of SECI-Charanka has been installed and available for generation in order to meet Solar RPO. The Petitioner is purchasing the energy from such developers at the preferential tariff determined by the Commission having higher rate than the tariff of wind and other renewable energy sources based generation. If the Solar RPO is revised from 1.75% to 1.77%, it would burden the licensees as well the consumers. The preamble of the Electricity Act, 2003, Tariff Policy and National Electricity Policy mandate the State Electricity Regulatory Commission to protect the interest of the consumers as specified under Section 61(d) and 94 of the Act and also promote co-

generation and generation of electricity from the renewable energy sources as specified under Section 61 (h) and 86 (1) (e) of the Act. Thus, the role of the Commission is to balance the interest of the consumers as well as the promotion of renewable energy. We are, therefore, of the view that the Solar RPO need not be revised to 1.77% and therefore, we decide to maintain the Solar RPO at the level of 1.75% as stipulated in the Regulations. The Petitioner and other obligated entities shall be required to fulfill the Solar RPO @ 1.75% of their energy consumption of FY 2016-17. We also make it clear that the Solar RPO compliance @ 1.75% is to be fulfilled after adjustment of carry forward of Solar energy, if any, of previous years.

9. On the basis of above, we decide to revise the Renewable Purchase Obligations for the 'Wind' and 'Others' category as under:

RPO Category	RPO as per the Regulations notified by the Commission	Revised RPO Percentage
Wind	7.75%	6.04%
Others	0.50%	0.06%

As regards Solar RPO, the same shall be 1.75% as decided above.

- 9.1. Considering the above facts, we note that the Petitioner, GUVNL and its four subsidiary distribution companies have complied with the RPO percentage as under:

RPO Category	Revised Percentage	Achieved Percentage
Wind	6.04%	6.06%
Solar	1.75%	1.72%
Others	0.06%	0.08%
Total	7.85%	7.86%

Based on the above and allowing the adjustment of excess Non-Solar energy purchased by the Petitioner against shortfall in fulfillment of Solar RPO as per Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010, we decide that the Petitioner has fulfilled the RPO for Non-Solar as well as Solar Renewable Energy for FY 2016-17.

10. We note that the Objector Shri K. K. Bajaj has raised various other issues in the present Petition. The Commission has dealt with these issues hereunder:
 - 10.1. As regards the submission that the Commission has not passed any Order regarding RPO compliance by the Petitioner for the previous financial year which has impact on the present Petition, it is clarified that the Commission has already passed the Orders regarding RPO compliance by the obligated entities including the Petitioner for previous financial year and hence the submission of the Objector stands addressed.
 - 10.2. As regards the submission that the Petitioner has failed to sign new PPAs for wind energy repeating its failure to procure wind energy from wind energy generators leading to shortfall in RPO compliance and further submitting that WEGs are not ready to sign

PPAs and demanding higher tariff than the tariff approved by the Commission, we note that the Objector itself has addressed the issue raised by him regarding failure by the Petitioner to sign new PPAs for wind energy and failure to procure adequate wind power to avoid shortfall in RPO compliance by stating that WEGs are not ready to sign PPAs at preferential tariff and demanding higher tariff than the tariff approved by the Commission and also contesting legal cases for delaying the entire process. We further note that the Petitioner has been signing PPAs at preferential tariff with all the Wind Developers that have approached GUVNL to supply power. Therefore, the contention of the Objector is addressed by his own submission.

10.3. As regards submission that the Commission should take action against WEGs for demanding higher tariff for wind energy than the tariff approved by the Commission and filing legal cases for delaying signing of new PPAs, it is their commercial decision and Commission can neither compel Wind Developers to supply power to the distribution licensees/obligated entities nor restrain them from exercising legal remedies available under any law.

10.4. As regards the submission that the Petitioner has purchased excess 99 MUs of solar energy against stipulated in the Regulations and thereby putting unwarranted burden of Rs. 99 Crores on consumers of Gujarat, we note that the issue does not survive anymore based on our findings in this Order that there is no excess purchase of Solar energy by

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the Petitioner against the Solar RPO of 1.75% considering the trued-up total energy requirement of 80097 MUs.

11. We order accordingly.
12. With this Order the present Petition stands disposed of.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.
Date: 06/05/2020.

ANNEXURE : ✓

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Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
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Case No. 68 of 2019

**Case of Captive Power Producers Association seeking rollover of entire RPO
Obligations or otherwise for FY 2016-17, 2017-18 and 2018-19 to FY 2019-20**

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

Captive Power Producers Association (CPPA)

.... Petitioner

Maharashtra Energy Development Agency (MEDA)

.... Respondent

Appearance

For Petitioner, CPPA

: Smt. Deepa Chawan (Advocate)

For Respondent, MEDA

: Shri Manoj Pise, (Representative)

ORDER

Date: 22 May, 2019

1. Captive Power Producers Association' (CPPA), Mumbai is an Association of Industries in Maharashtra having captive power plants for their industries fulfilling their energy requirement through captively produced power. CPPA has filed this Case on 13 March, 2019 seeking rollover of Renewable Purchase Obligations (RPO) obligations for FY 2016-17, FY 2017-18 and FY 2018-19 to FY 2019-20
2. CPPA's prayers are as follows:
 - a) *defer and extend the period for the compliance of RPO targets in F. Y. 2016-17 and the following years thereafter to the year subsequent to the disposal of the Writ Petition No. 269 of 2019 by the Hon'ble High Court, Bombay;*
 - b) *this Hon'ble Commission be pleased to pass such other order(s) as this Hon'ble Commission may deem just in the present case*

3. CPPA's case is as follows:

- 3.1 It had approached the Commission in Case No. 71 of 2016, which was decided vide Order dated 28 March, 2018. Now, the CPPA has approached the Commission for limited relief of seeking extension of time as contemplated under Paragraph 23 of the order dated 28 March, 2018, in view of the grounds enumerated herein below, which are without prejudice to each other.
- 3.2 CPPA clarifies that the present Application is filed without prejudice to the rights of the Applicant in the Writ Petition No. 269 of 2019 filed in the Hon'ble Bombay High Court (High Court), and further without prejudice to the right of the Applicant to adopt appropriate proceedings qua the Order dated 28 March, 2018 in Case No. 71 of 2016.
- 3.3 The grounds for this Case are set out below which are without prejudice to each other:
 - a. On 24 December, 2015, the Commission published a draft Renewable Purchase Obligations and framework Regulation. In Regulation No.11.3 of the draft MERC RPO Regulations, 2016 the Commission had retained the following exemptions to captive users consuming powers from co-generation from applicability of RPO target as given below:
 - i. *"captive users consuming powers from grid connected fossil fuel based cogeneration plants, are exempted from applicability of RPO targets".*

In view of the above exemptions, captive users consuming power from cogeneration did not submit any objections and suggestions on the draft Regulations. Thus, CPPA was precluded from notice of the proposed Regulations, 2016
 - b. However final notified Regulation makes its obligatory upon the petitioner for purchase of renewable power under renewable power purchase obligation. Thus, the co-generation plants which have put in huge investments to establish the co-generation plants which is in furtherance of environment protection that reduces the carbon footprint are further required to expend funds to procure Renewable Energy Certificates, (REC).
 - c. In January, 2019, APTEL in the matter of M/s JSW Steel and Tamil Nadu Electricity Regulatory Commission had the occasion to consider the issue whether cogenerating plants can be fastened with the obligation to procure electricity from renewable energy sources, APTEL while rejecting the contention of Tamil Nadu Electricity Regulatory Commission in paragraph no. 40 has held as under:-

“It is manifest on the face of the judgment, as stated supra, the 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 Electricity Act, 2003 and cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. It is pertinent to note that aforesaid judgment has consistently followed by this Tribunal in several cases e.g Emami paper Mills Ltd Vs Odisha Electricity Regulatory Commission in Appeal No. 54 of 2012 dated 30.01.2013 reported in 2013 SCC Online APTEL 23.....”

In view of the above APTEL judgment and pending Writ Petition No. 269 of 2019 before the Hon'ble High Court, Bombay, the Commission is requested to extend the time period for compliance with RPO to the next financial years, when the said Writ Petition is adjudicated.

- d. In case Obligated Entity is not able to consume required amount of Renewable Energy, it needs to procure REC from the Exchange. REC once purchased cannot be sold back to either exchange or to any other entity. This would greatly prejudice the CPPA if, the decision in Writ Petition No. 269 of 2019 after adjudication is decided in favor of CPPA. In such circumstances, the Commission is requested to permit Cogeneration entity to fulfill its RPO or otherwise of 2017-18 (including for the year 2016-17) and year 2018-19 in the financial year subsequent to the date on which the Writ Petition No. 269 of 2019 is decided by the Hon'ble High Court, Bombay.
- e. Balance of convenience is in favour of CPPA in view of the recent decision of the APTEL dated 2 January, 2019 in JSW Steel (supra) and in view of that the Commission in its Order dated 28 March, 2018 has treated the National Tariff Policy, 2016 as mandatory. Further, CPPA had not been provided any opportunity to deal with the draft Regulations, 2016, which were in conformity with the earlier Regulations providing exemption from RPO to entities sourcing power captively for co-generation, thus, infringing the rights of the CPPA.
- f. Under the RPO Regulations, 2016, the Commission has absolute powers to pass any directions in the event Obligated Entity falls short of its RPO Target. The Commission has deferred the compliance of RPO Target till 2018-19 in its Order dated 28 March, 2018. In the interest of justice and in view of the pendency of the Writ Petition No. 269 of 2019 filed on 23 August, 2018, the Commission is requested to defer the compliance of RPO targets in FY 2016-17 and onwards to the year subsequent to the disposal of the said Writ Petition No. 269 of 2019 by the Hon'ble High Court, Bombay. CPPA undertakes to inform the Commission regarding disposal of Writ Petition No. 269 of 2019 by the Hon'ble High Court, Bombay, within two (2) weeks of pronouncement of the said decision.

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- 3.4 The present Application is filed only for the limited purpose of seeking rollover of RPO and extension in view of the pendency of Writ Petition No. 269 of 2019.
4. The proceedings of the hearing were held on 7 May, 2019. The representative of CPPA reiterated its submission as made in the Petition. The representative of MEDA did not submit any response to the Petition.

Commission's Analysis and Rulings:

5. CPPA had previously approached the Commission in the Petition filed under Case no. 71 of 2016 seeking amendments to the RPO Regulations, 2016 to restore the provision in the previous RPO Regulations, 2010 exempting captive users of grid-connected fossil fuel-based Co-generation Captive Generating Plants (CGP) from RPO.
6. The Commission in its Order dated 28 March, 2018 under Case No. 69, 71 and 73 of 2016 did not reinstate exemption given to fossil fuel-based Co-generation CGP. However, the Commission deferred the RPO compliance of such plants for FY 2016-17 and FY 2017-18 to FY 2018-19. The relevant excerpts of the said Order are reproduced below:

"14. On 24 December, 2015, the Commission issued a Public Notice inviting comments on the draft of the new RPO Regulations proposed for FY 2016-17 to FY 2019-20. The draft Regulations retained the RPO exemption provided in the 2010 Regulations to captive users of grid-connected fossil fuel-based Cogeneration CGPs.

15. Comments on the draft Regulations were invited by 19 January, and then upto 15 February, 2016. In the meantime, the MoP, Govt. of India, vide Resolution dated 28 January, 2016, notified the revised Tariff Policy, 2016 in pursuance of Section 3(3) of the EA, 2003. With regard to RPO, the Proviso to Clause 6.4 (1) reads as follows:

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

16. Section 86(4) of the EA, 2003 requires that, in the discharge of its functions, the Commission shall be 'guided', inter alia, by the Tariff Policy. Under Section 61 (h) also, the Commission is to be 'guided' by the Tariff Policy, among others, while specifying the terms and conditions for the determination of tariff. Thus, while finalizing the draft Regulations following the public consultation process, the Commission took into consideration the above provision of the revised Tariff Policy, 2016 which was notified after the draft Regulations and was already in the public domain for some time during the period of public consultation. The final RPO Regulations, 2016, notified on 30 March, 2016 do not exempt captive users of fossil-

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fuel based CGPs from RPO. The Statement of Reasons published by the Commission expressly refers to the above provision of the revised Tariff Policy, 2016 in this regard.

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21. Thus, the Commission is of the view that the mandate under Section 86(1)(e) of the Electricity Act, 2003 for the specification of RPO targets does not exempt the consumption by captive users of CGPs based on fossil fuel-based co-generation notwithstanding the fact that such co-generation may be more efficient than other conventional generation or have other merits.

22. In view of the foregoing discussion, the Commission concludes that the claim of the Petitioners for amendment of the RPO Regulations, 2016 so as to restore the earlier exemption from RPO to captive users of fossil fuel-based Cogeneration Plants has no merit.

23. However, having due regard to the pendency of these Petitions, the circumstances of the matter and the issues involved, the Commission may consider any consequent shortfall of such captive users of fossil fuel-based CGPs in meeting their RPO targets in FY 2016-17 and FY 2017-18 to be met in FY 2018-19 in its compliance verification proceedings for those years."

7. In the instant Petition, by referring para 23 of above quoted Order of the Commission, CPPA is seeking extension of time for complying with RPO targets from FY 2016-17 and onwards upto the year subsequent to the disposal of the Writ Petition No. 269 of 2019 filed before the Hon'ble High Court, Bombay.
8. CPPA has referred to APTEL Judgment dated 2 January, 2019 in the matter of M/s JSW Steel and Tamil Naidu Electricity Regulatory Commission (Appeal Nos. 278 of 2015, 293 of 2015, 23 of 2016, 62 of 2016 and 24 of 2016) as highlighted at para 3.21 above in support of its case that captive power plant should not be subjected to RPO.
9. The Commission notes that in its Order dated 28 March, 2018, it has elaborated detailed background and rationale for imposing RPO on fossil fuel based cogeneration plants. Subsequent to this Order, CPPA has filed Writ Petition No. 269 of 2019 before the High Court challenging MERC RPO Regulations, 2016 which has imposed RPO on fossil fuel based cogeneration plants. Admittedly, there is no Stay Order in this matter from the High Court. Under such circumstances, RPO Regulations, 2016 need to be complied with. However, CPPA contended that if it succeeds in its Writ Petition, then expenses incurred on complying with RPO would cause financial loss to it and hence it requested for rollover of RPO target till Writ Petition is finally decided by the High Court. In the opinion of the Commission one cannot take stand that it would not comply with the Law in force till its Petition challenging such Law is

decided by the Court especially when no interim relief has been granted on the writ petition.

10. The Commission in its Order dated 28 March, 2018 has already allowed CPPA to comply with its RPO for FY 2016-17 and FY 2017-18 in FY 2018-19. The Commission in its recent Orders on verification of RPO targets by various Obligated Entities has deferred the shortfall of RPO targets of FY 2017-18 to March 2020. Further, the Commission has held that it will initiate the next proceeding of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA.
11. In the light of the above-mentioned facts including the provisions of the Regulations and that since no stay is granted by the High Court, the Commission is of the opinion that the Petitioner is bound to follow the prevailing Regulations. Since the Commission has allowed other obligated entities to meet its obligation by March 2020, the Commission is allowing similar concession to the fossil fuel based cogeneration plants to fulfill its cumulative RPO targets by March 2020.
12. Alternately, as highlighted in para 10 above, the Commission will be initiating the RPO Compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA Consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained, and the petitioner shall deposit the amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the writ petition is decided by the High Court. The Commission opines that this alternative option will address the concerns of the petitioner about the possible hardship in case it succeeds in the High Court.
13. The Commission directs MEDA to submit the relevant past data for FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the years 2014-2015 to 2016-2017.
14. Hence, the following Order.

ORDER

1. The Case No. 68 of 2019 is partly allowed.

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2. Fossil fuel-based cogeneration plants are allowed to fulfill their cumulative RPO targets by March 2020 after the Commission completes the verification process for the years 2014-15 to 2016-17.
3. In the alternative, the petitioner can avail option as per para 12 above after the Commission completes the verification process for the years 2014-15 to 2016-17.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary



ANNEXURE

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Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 130 of 2020

Case of Captive Power Producers Association Seeking capping of RPO for captive power plants and to relax or waive the provisions of the MERC RPO Regulations, 2016

Captive Power Producers Association

..... Petitioner

Maharashtra Energy Development Authority

..... Respondent

Coram

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance

For the Petitioner

: Smt. Deepa Chavan (Adv.)

For the Respondent

: Sh. Arif Sheikh (Rep.)

ORDER

Date: 5 October, 2020

1. Captive Power Producers Association (CPPA) has filed the present Petition on 16 July 2020 seeking relaxation or waiver/removal of difficulty/issuance of orders and practice direction / amendment (as alternative relief) under the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulations, 2016, in view of circular dated 1 February 2019 and 1 October 2019 issued by Government of India (GoI) through Ministry of Power (MoP) regarding capping of Renewable Purchase Obligation (RPO) for Captive Power Plants (CPP)

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2. CPPA's main prayers are as follows:

- a) *The Commission be pleased to relax or waive the provisions of the MERC RPO Regulations, 2016 to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- b) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to issue orders and practice directions to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- c) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to remove difficulty by general of specific orders, to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- d) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to consider the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, and amend/or relax the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulation 2016 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders*

3. CPPA in its Case has stated as follows:

- 3.1. On 30 March 2016, the Commission notified Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligations, its compliance and implementation of REC framework) Regulations, 2016 (RPO-REC Regulations 2016).
- 3.2. The said Regulations make it obligatory upon the Obligated Entities (OE) to procure renewable power. Regulation 12 of RPO-REC Regulations 2016 further provides that in case the OE fails to fulfil the RPO target, State Commission may direct it to deposit in a separate fund, 'RPO Regulatory Charges', i.e. such amount as the Commission may determine on the basis of highest applicable preferential tariff during the year or 'Forbearance price' decided by the Central Commission.

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- 3.3. On 1 February 2019, Government of India (GoI) through Ministry of Power (MoP) issued clarification on Orders related to RPO as notified Para 6.4(1) of the Tariff Policy notified the Long-Term growth trajectory of RPO:

"The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of new and renewable energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of CPP it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPPs without any additional fossil fuel capacity being added."

- 3.4. On 1 October 2019, GoI through MoP issued further clarifications relating to renewable purchase obligations. The letter records as under:

"3. Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:

(i) for CPPs commissioned before 1st April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1st April, 2016 onwards, the RPO level as mandated by the appropriate commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

(ii) In case, of any augmentation in the capacity the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.

(iii) In case, for meeting the RPO obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.

- 3.5. On 27 December 2019, the Commission published the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulation, 2019 (RPO-REC Regulation, 2019). Regulation 7.5 states as under:

"Provided that in case of Captive user of a Captive generating Plant commissioned before 1st April, 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%

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Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned

Provided further that in case of any augmentation of the Captive generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned"

- 3.6. The Commission has already taken into consideration the said circular of the MoP in its RPO-REC Regulations, 2019. Thus, though the MoP directive has been issued on 1 February 2019, CPPA has been denied relief under the said circular. Regulation 16 of the RPO-REC Regulations, 2016 specifically confers power on the Commission to relax or waive any of the provisions of the Regulations.
- 3.7. The Commission while publishing the RPO-REC Regulation 2019, has considered the clarificatory order dated 1 February 2019 subsequently amended on 1 October 2019 with respect to capping of RPO. However, the provision has been implemented from 1 April 2020. The Commission ought to incorporate the similar provision in the RPO-REC Regulations, 2016.
- 3.8. The issue of capping of RPO on CPP as per MoP's clarification dated 1 February 2019 was raised in the case of verification of compliance of RPO by MSEDCL for FY 2017-18,. The Commission in that Order dated 27 March 2019 mentioned as under:

"As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP's clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time."

- 3.9. Further, in subsequent Order dated 22 May 2019 in Case No. 71 of 2019, on similar issue, the Commission has given the below dispensation:

"9 The Commission notes that this issue of clarification regarding MoP's letter dated 1 February, 2019 has been raised during recent RPO Verification proceeding of various Obligated Entities. The Commission through its Order dated 27 March, 2019 in Case No. 36 of 2019 has addressed this issue as follows:

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"23...As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP's clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time..."

- 3.10. On 31 December 2019, as per the MoP's clarification dated 1 October 2019, OERC issued a Notification regarding capping of RPO by exercising its power to remove difficulties. Further, RERC also amended its Regulations on 4 April 2020.
- 3.11. The RPO-REC Regulations 2016 confer power under Regulation 19 to this Commission to remove difficulty. Similarly, Regulation 17 also confer power to issue orders and practice direction. CPPA submits that the present case falls for exercise of the powers by this Commission.
4. **MEDA made the following submissions dated 30 July 2020:**
 - 4.1. Various previous Orders of the Commission itself clarify the prayers of the CPPA and the RPO-REC Regulations 2019 had covered guidelines issued by GoI in their circular dated 1 October 2019.
 - 4.2. The composite RPO target with respect to energy procurement by the captive generating plant for fulfilment of RPO is 9%. MEDA needs a bifurcation of this 9% target in terms of Solar or Non-solar sources. In this regard the Commission may issue guidelines.
5. At the e-hearing through video conferencing held on 25 September 2020, the representative of the Petitioner and Respondent reiterated their submissions.

Commission's Analysis and Rulings

6. Present Petition has been filed by CPPA seeking relaxation in RPO-REC Regulations, 2016 for Captive Power Plants in terms of GoI's communication dated 1 February and 1 October 2019. The Commission notes that Petitions seeking similar relief has already been decided by this Commission. Therefore, it is important to summarise relevant sequence of events in this matter as follows:

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- 6.1. The Commission notified the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligations, its compliance and implementation of REC framework) Regulations, 2010 (RPO-REC Regulations 2010) on 7 June 2010 and provided below RPO targets to the OEs:

Year	RPO Targets		
	Solar	Non-Solar	Total
FY 2010-11	0.25%	5.75%	6.00%
FY 2011-12	0.25%	6.75%	7.00%
FY 2012-13	0.25%	7.75%	8.00%
FY 2013-14	0.50%	8.50%	9.00%
FY 2014-15	0.50%	8.50%	9.00%
FY 2015-16	0.50%	8.50%	9.00%

- 6.2. Further, on 30 March 2016 the Commission notified the RPO-REC Regulations 2016 with the below RPO targets for OEs:

Year	RPO Targets		
	Solar	Non-Solar	Total
FY 2016-17	1.00%	10.00%	11.00%
FY 2017-18	2.00%	10.50%	12.50%
FY 2018-19	2.75%	11.50%	13.75%
FY 2019-20	3.50%	11.50%	15.00%

- 6.3. On 1 February 2019, GoI/MoP issued clarification on Orders related to RPO as notified Para 6.4(1) of the Tariff Policy relating to the Long Term growth trajectory of RPO:

"The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of new and renewable energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of CPP it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPPs without any additional fossil fuel capacity being added."

- 6.4. During the Public Hearing proceeding of MSEDCL's RPO verification for FY 2017-18 in Case No. 36 of 2019, one of the objectors referred to MoP's clarification dated 1 February 2019. The Commission in its Order dated 27 March 2019 in this matter has made following observations relating to MoP's letter dated 1 February 2019:

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"23.....As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP's clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time..."

6.5. Further, similar dispensation was provided by the Commission in its Order dated 22 May 2019 in Case No. 71 of 2019 in the matter of Century Rayon seeking exemption from RPO based on MoP's communication dated 1 February 2019.

6.6. On 1 October 2019, GoI through MoP issued further clarifications relating to RPO targets for CPPs:

"3. Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:

(i) for CPPs commissioned before 1st April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1st April, 2016 onwards, the RPO level as mandated by the appropriate commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

(ii) In case, of any augmentation in the capacity the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.

(iii) In case, for meeting the RPO obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange."

6.7. On 30 December 2019, the Commission notified the RPO-REC Regulations 2019 suitably incorporating the MoP's clarificatory Orders dated 1 February 2019 and 1 October 2019, with respect to capping of RPO for CPPs. The relevant clauses of the RPO-REC Regulations 2019 are reproduced below:

"7.5 Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open

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Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually :

Provided that in case of Captive User of a Captive Generating Plant commissioned before 1 April 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%:

Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned:

Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned:

Provided also that each Distribution Licensee shall include its plan for procurement of power from RE sources in its long-term power procurement plan such as would meet the RPO target specified above."

7. Thus, the Commission notes that its RPO-REC Regulations 2016 require CPP, which is Obligated entity, to comply with RPO targets specified in that Regulations. However, MoP's clarification dated 1 February 2019 stated that RPO targets for CPP are to be pegged at level which was applicable at the time of commissioning of the CPP. On the Petition seeking implementation of such clarification from MoP, the Commission decided to look into the issues at the time of RPO Verification Process. Thereafter, MoP vide further clarification dated 1 October 2019 stated that CPP commissioned before 1 April 2016 would have to meet RPO target set by the Commission for FY 2015-16. The Commission has implemented the said clarification in RPO-REC Regulations, 2019 notified on 30 December 2019.
8. The CPPA through present Petition has prayed that provision similar to that made in RPO-REC Regulations 2019 should be incorporated, by means of issuing clarificatory orders/practice direction/ amendment to the RPO-REC Regulations 2016.
9. The Commission further notes that in its Order dated 1 September 2020 in Case No. 65 of 2020 in the similar matter of ONGC, it has given the below dispensation:

- "10. Therefore, through RPO Regulations 2019, the Commission has clarified that CPP commissioned before 1 April 2016 have to comply with RPO target of 9%, which was applicable RPO percentage for FY 2015-16. ONGC's captive plants are commissioned before 1 April 2016 and hence this provision of Regulations is applicable to it. However, said provision is part of RPO Regulations 2019 which is applicable for FY 2020-21 to FY 2024-25. Hence, during this period ONGC needs to comply with RPO target of 9%.*
- 11. Regarding applicability of such capping of RPO targets for the period of RPO Regulations, 2016, the Commission notes that such proviso of capping RPO to the target applicable for the year in which such CPP has been commissioned was not there in the RPO Regulations 2016. Further, the Commission note that Captive Power Producers Association, of which ONGC is also the Member, has already filed a detailed Petition in Case No. 130 of 2020 before this Commission specifically seeking such capping of RPO targets during the period of RPO Regulations 2016. Therefore, in the opinion of the Commission, it would be appropriate if the Commission decides this issue in Case No. 130 of 2020 which already has been scheduled for hearing."*
10. The Commission underscores that in its earlier Orders dated 27 March 2019 and 22 May 2019 in Case No. 36 of 2019 and 71 of 2019, respectively, it has asked to initiate the proceedings of RPO compliance by CPPs from FY 2014-15 to FY 2016-17 and to address the MoP's clarifications in those proceedings. However, due to various reasons such proceedings have not been initiated. It is also a fact that RPO-REC Regulations 2016 have been challenged before the Hon'ble Bombay High Court by CPPA and the matter is still pending adjudication.
11. With the existing RPO targets notified for CPPs under RPO-REC Regulations 2016, the CPPs must comply with the composite RPO targets of 11% to 15% from FY 2016-17 to FY 2019-20. Whereas, as per the RPO-REC Regulations 2019, for the CPPs commissioned before 1 April 2016, their composite RPO target is 9% from FY 2020-21 to FY 2024-25. This creates a situation wherein RPO targets for past period (RPO-REC Regulations 2016) is more than present or future RPO targets (RPO-REC Regulations 2019). Such situation is not as per normal circumstances wherein RPO targets gradually increases over the period. In present circumstances, RPO targets have been reduced for CPPs from FY 2020-21 onwards. Therefore, in the opinion of the Commission, this is a fit case for its intervention. Regulation 19 of RPO-REC Regulations 2016 vests the Commission the 'Power to Remove Difficulties' under certain circumstances. Regulation 19 is extracted below:

"19 Power to Remove Difficulties

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If any difficulty arises in giving effect to the provisions of these Regulations, the State Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act as may appear to be necessary for removing the difficulty.

12. Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. For the Projects commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned, for the Operating Period of RPO-REC Regulations 2016 onwards.
13. Further, the Commission notes that MEDA has requested to provide the bifurcation of the composite target of 9%, in terms of Solar and Non-Solar sources. In this regard, the Commission notes that in accordance with the MoP's letter dated 1 October 2019, the Solar and Non-Solar targets are subjected to the RPO targets notified by the Commission for FY 2015-16. Accordingly, for the projects commissioned before 1 April, 2016, the Solar and Non-Solar targets shall be 0.5% and 8.5% respectively, subjected to the provisions for cross-over of one source to another, as provided in the RPO-REC Regulations 2016 and 2019.
14. Hence, the following Order.

ORDER

1. Case No. 130 of 2020 is allowed.
2. The Renewable Purchase Obligation Targets for Captive Power Plants shall be as per the dispensation provided in Para. 12.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary



ANNEXURE 1. X

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Before the
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Case No. 111 of 2020

Case of Captive Power Producers Association Seeking permission to exercise the option or otherwise for the Financial Year 2020-2021 as per the Order dated 22 May 2019 passed by the Commission in Case No. 68 of 2019

Captive Power Producers Association Petitioner

Maharashtra Energy Development Authority Respondent

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Appearance

For the Petitioner : Smt. Deepa Chavan (Adv.)
For the Respondent : Dr. J.V Torane (Rep.)

ORDER

Date: 6 October, 2020

1. Captive Power Producers Association (CPPA) has filed the present Petition on 16 July 2020 seeking appropriate directions/ reliefs towards exercising the option granted to CPPA by the Commission by its Order dated 22 May 2019 in Case No. 68 of 2019.
2. CPPA's main prayers are as follows:
 - a) *The Commission be pleased to allow the members of the Applicant Association to exercise the option as per the order dated 22 May, 2019 in Case No. 68 of 2019 by F. Y. 2020-2021.*

- b) *in the alternative to prayer (a), allow the members of the Applicant Association to exercise their option within such time as the Commission deems fit after the exercise and dispensation as contained in the order dated 22 May, 2019 in Case No. 68 of 2019, is undertaken by MEDA;*

3. CPPA in its Case has stated as follows:

- 3.1. CPPA had filed the Petition in Case No. 68 of 2019 before the Commission, seeking rollover of the Renewable Purchase Obligation (RPO). The Commission in its Order dated 22 May 2019 gave the dispensation given below with the following directions:

"12. Alternatively as highlighted in para 10 above, the commission will be initiating the RPO compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained and the Petitioner shall deposit any amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the Writ Petition is decided by the High Court. The Commission opines that the alternative option will address the concerns of the Petitioner about the possible hardship in case it succeeds in the High Court.

13. The Commission directs MEDA to submit the relevant past data for the FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the year 2014-15 to 2016-2017.

ORDER

- 1. The Case no. 68 of 2019 is partly allowed.*
 - 2. Fossil fuel based cogeneration plants are allowed to fulfill their cumulative RPO targets by March 2020 after the Commission completes the verification process for the years 2014-15 to 2016-17.*
 - 3. In the alternative, the petitioner can avail option as per para 12 above after the Commission completes the verification process for the years 2014-15 to 2016-17."*
- 3.2. The Commission granted an option to the members of the CPPA, as set out in the Order exercise of which shall be considered by Maharashtra Energy Development Authority (MEDA), in letter and spirit.

- 3.3. Pursuant to the Order dated 22 May 2019 passed by the Commission, the members of CPPA from September 2019 started approaching MEDA for guidance towards deposit of RPO shortfall as regards the mode, manner, method and computation of payment, in the event the members were to exercise that particular option. It was orally informed by MEDA that they have no instructions to accept the said deposit towards RPO from the obligated entities. One of the members of CPPA, M/s Vinati Organic Ltd has also addressed a letter to CPPA regarding the same. On 27 February 2020, a follow up e-mail was addressed by CPPA to MEDA.
- 3.4. CPPA, by its email dated 20 March 2020 approached the Commission seeking appropriate directions/reliefs towards exercising the option as contained in the Order dated 22 May 2019 in Case No. 68 of 2019.
- 3.5. MEDA by its e-mail dated 25 April 2020 requested to furnish details of the Association members who desire to exercise the option of deposit of amount as per the Order dated 22 May 2019. CPPA, by its e-mail dated 6 May 2020 sent a detailed reply to MEDA
- 3.6. The recent lockdown due to COVID-19 has resulted in major disruptions in all the business activities and has resulted in crisis of managing cash outflows in near term. Due to the prolonged conditions, this has also affected all businesses presently and it will take a while before the industries can return to normalcy
- 3.7. Its association members are facing challenges in meeting some of the fixed expenses, which they incur even during the time of lockdown, such as salaries to employees, payment to small contractors, lease rentals, office overheads, fixed cost of electricity, taxes and duties etc. However, due to closure of all industrial activities and all markets world over, there is no source of income for industries. Under such circumstances, the Industries will keep facing cash liquidity problem for time to come, even after the situation becomes normal. There has been a change of scenario, post passing of the Order dated 22 May 2019 in Case No. 68 of 2019, and the association members are also awaiting dispensation from MEDA. Therefore, equitable consideration ought to be applied to enable the Applicant to exercise the option in terms of the Order dated 22 May 2019 in Case No. 68 of 2019.
- 3.8. CPPA's Writ Petition (Writ Petition No. 269 of 2019) regarding RPO exemption for Captive users of Fossil fuel based Co-generation plants, is pending adjudication before the Hon'ble High Court of Bombay. As High Court is not fully functional due to the pandemic, CPPA is not able to move the Petition and the same remains pending for adjudication.
4. **MEDA made the following submissions dated 13 July 2020:**

- 4.1. CPPA or members of CPPA did not approach MEDA for clarification regarding the deposition of amount as per Para No. 12 of Order dated 22 May 2019 until email from CPPA 18 March 2020. Additional clarification from MEDA beyond the Order of the Commission mentioned above was not necessary.
- 4.2. Bharat Petroleum Corporation limited (BPCL) and Oil and Natural Gas Corporation (ONGC) approached MEDA regarding the deposition of amount as per the Order dated 22 May 2019 in Case No. 68 of 2019. MEDA approached the Commission for direction in that regard. The Commission in response has conveyed methodology of calculating the amount.
- 4.3. MEDA requested CPPA also to provide the list of all the entities involved in Case No. 68 of 2019. CPPA till date has never responded not provided the list of Members.
5. At the e-hearing through video conferencing held on 25 September 2020, the representative of the Petitioner and Respondent reiterated their submissions. CPPA has further added request of allowing Bank Guarantee instead of depositing the amount with MEDA.
6. **CPPA made the below additional submission on 26 September 2020:**
 - 6.1. CPPA has prayed for the following options:
 - i) to deposit the amounts towards RPO compliance by 31 March 2021 with MEDA or;
 - ii) to allow to purchase REC certificate towards RPO compliance for the previous years by 31 March 2021.
 - 6.2. Considering the present COVID-19 pandemic and the economic slowdown, the Commission is requested to allow members of CPPA the option of furnishing Bank Guarantee, instead of depositing amount, to MEDA towards RPO compliance for the previous years by 31 March 2021 till the Writ Petition filed before the Bombay High Court is decided.

Commission's Analysis and Rulings

7. CPPA had earlier filed a Petition under Case No. 68 of 2019 seeking rollover of its RPO for FY 2016-17, FY 2017-18 and FY 2018-19 to FY 2019-20. In that proceeding, the Commission noted that CPPA had filed a Writ Petition before the Hon'ble Bombay High Court seeking RPO exemption for Captive users of Fossil fuel based Co-generation plants. Accordingly, in that matter vide its Order dated 22 May 2019, the Commission gave following dispensation:

"11. In the light of the above-mentioned facts including the provisions of the Regulations and that since no stay is granted by the High Court, the Commission is of the opinion that the Petitioner is bound to follow the prevailing Regulations. Since the Commission has allowed other obligated entities to meet its obligation by March 2020, the Commission is allowing similar concession to the fossil fuel based cogeneration plants to fulfill its cumulative RPO targets by March 2020.

12. Alternatively as highlighted in para 10 above, the commission will be initiating the RPO compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained and the Petitioner shall deposit any amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the Writ Petition is decided by the High Court. The Commission opines that the alternative option will address the concerns of the Petitioner about the possible hardship in case it succeeds in the High Court.

13. The Commission directs MEDA to submit the relevant past data for the FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the year 2014-15 to 2016-2017."

Thus, the Commission has allowed CPP Users to meet their RPO targets cumulatively by March 2020. In that Order, considering pending Writ Petition before the Hon'ble High Court, the Commission has also provided option of depositing amount equivalent to the REC floor price of RPO shortfall with MEDA.

8. Now through present Petition, CPPA has requested further time upto March 2021 for cumulatively meeting their RPO targets. In support of their request it is stated that post issuance of Commission's Order dated 22 May 2019, CPPA Members approached MEDA for guidance for deposit of amount towards RPO shortfall, however, MEDA did not provide any clarification. MEDA has opposed such contention and stated that formal request for clarification was received only on 18 March 2020. MEDA has also contended that Order of the Commission is self-explanatory, and no further clarification is required.
9. In this regard, the Commission is not inclined to go into counter claims of parties about seeking clarifications. The Commission notes that till March 2020 i.e. due date for complying with cumulative RPO targets, none of the CPP users approached the Commission seeking clarification with respect to the Order dated 22 May 2019 in Case No. 68 of 2019. However,

at the request of MEDA, the Commission vide its letter dated 14 April 2020 has provided following clarification with respect of option provided in Order dated 22 May 2019:

"1.1 Fossil fuel based CPP who wants to exercise option provided by the Commission in its order dated 22 May 2019 for complying with RPO are required to deposit amount equivalent to REC floor price with MEDA computed based on following

- a. RPO shortfall in FY 2013-14 as verified by the Commission vide order dated 4 May 2018.*
- b. RPO shortfall for the period FY 2014-15 to FY 2017-18 based on verification Report prepared by MEDA and submitted to the Commission.*
- c. For all subsequent years, based on self-assessment of concerned obligated entity.*

1.2 After completion of RPO compliance verification by the Commission, difference if any in RPO shortfall unit can be adjusted with the deposited amount"

Above clarification is self-explanatory and needs no further clarification except issue of REC floor price. The Commission notes that Central Electricity Regulatory Commission (CERC) vide its Order dated 17 June 2020 has revised REC forbearance and floor price as Rs 1/kWh and Rs. 0/kWh. This Order of the CERC is presently stayed by the Hon'ble Appellate Tribunal for Electricity (APTEL). However, this CERC Order creates anomalous situation of nil floor price of RECs and hence in terms of this Commission's Order dated 22 May 2019, CPP Users would not be required to deposit any amount with MEDA towards RPO shortfall. In order to avoid such anomaly the Commission clarifies that in case REC floor prices is stipulated as zero, then whilst exercising option given in Order dated 22 May 2019, CPP Users have to deposit the amount at rate of average of floor and forbearance price of RECs.

10. Having clarified about option given in its Order dated 22 May 2019, the Commission notes that CPPA has requested additional time upto March 2021 for meeting cumulative RPO target and also requested for option of giving Bank Guarantee, instead of depositing the RPO shortfall amount to MEDA. The Commission notes the fact that Writ Petition challenging RPO applicability to CPP Users is still sub judice before the High Court. The Commission also acknowledges the contemporary hardship faced by the industries due to lockdown and economic slowdown due to management of COVID-19 pandemic. Further, CPPA has shown willingness to exercise option provided by the Commission in Order dated 22 May 2019 for complying with RPO targets. Considering these facts, the Commission allows CPP Users to fulfil their cumulative RPO targets by March 2021. The Commission doesn't think it is

appropriate to substitute the deposit of equivalent amount of REC with bank guarantee. It is primarily the responsibility of every obligated entity to comply with the statutorily mandated RPO. Commission has already given a concession to CPPA in terms of option to deposit the equivalent amount pending resolution of their grievance before Hon'ble High Court. The Commission doesn't intend to dilute the obligation any further by adopting a tedious process asking MEDA to track validity of bank guarantees of every CPPA member and liaise with banks to encash the same.

11. For the sake of completeness, the Commission would like to mention that in its Order dated 5 October 2020 in Case No. 130 of 2020 (Petition filed by CPPA), using its powers to remove difficulties and to give effect to Ministry of Power's clarifications dated 1 February 2019 and 1 October 2019, the Commission has revised CPP User's RPO targets for FY 2016-17 to FY 2019-20. The same shall be considered while arriving at cumulative RPO targets to be met by CPP Users.
12. Hence, the following Order.

ORDER

1. Case No. 111 of 2020 is partly allowed.
2. Fossil fuel-based cogeneration captive power plants are allowed to fulfill their cumulative Renewable Purchase Obligation targets by 31 March 2021.
3. The computation of amount, Renewable Purchase Obligation targets and option for compensation for Fossil-fuel based co-generation captive power plants shall be as per Paras 9, 10 and 11 above.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


 (Abhijit Deshpande)
 Secretary



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 Keyur D. Gandhi +91-9825030979
 Pranit K. Nanavati +91-9879106229
 Kunal K. Nanavati +91-9825005119

NANAVATI ASSOCIATES

Advocates, Patent & Trade Mark Attorneys

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 Behind Rajpath Club, Off S. G. Road,
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Fax: +91-79-40038086

E-mail: email@nanavatiassociates.com

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 Vesu, Surat 395 007.

Email : surat@nanavatiassociates.com

Gujarat High Court Chamber
 Nos.: 209 and 230
 Telefax: +91-79-27663980

NA/NMD/621/21

17th September, 2021

To
 The Secretary,
 The Hon'ble Gujarat Electricity Regulatory Commission
 6th Floor, GIFT ONE
 Road 5C, Zone 5, GIFT City
 Gandhinagar 382 355

Sub: Petition dated 07.09.2021 in the matter of Petition under Regulations 4, 5, 9.1 of GERC [Procurement of Energy from Renewable Sources] Regulations, 2010 and its subsequent amendments thereto

Dear Sir,

We, on behalf of our client, Reliance Industries Limited, is in receipt of the Letter No. GERC/Legal/2021/No.1312 dated 09.09.2021 of this Hon'ble Commission, informing that a balance fee of Rs.5,000/- is to be paid for the captioned Petition.

In due compliance of this Letter, please find enclosed herewith a Manager's Cheque / DD bearing No. 001504 dated 17.09.2021 in favour of this Hon'ble Commission, for Rs. 5,000/- (Rupees Five Thousand only) drawn on HDFC BANK, SINDHUBHAVAN, AHMEDABAD towards balance fee for registration and numbering of aforesaid Petition.

Kindly acknowledge the receipt and do the needful.

Yours Sincerely,
 For Nanavati Associates,

Nisarg Desai
 Nisarg M. Desai,
 Advocate.

Encl: As above.

Rs. 5000/-

MRND-2848

20/9/21

14/2019

Pl. accept the fees of Rs. 5,000/- subject to verification of GERC (Fees, Rules & Regulations, 2010)

Legal
 17/9
 Inward No - 3914
 Date : 17 SEP 2021



Gujarat Electricity Regulatory Commission

6th Floor, GIFT ONE,
Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382 355. GUJARAT, INDIA
Ph. : +91-79-2360 2000 Fax : +91-79-2360 2054/55
E-mail : gerc@gercin.org Website : www.gercin.org

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GERC/Legal/2021/No.

N - 1312

Date: 09.09.2021.

R. P. A. D.

To,

Reliance Industries Limited,
Vraj, Near Chandanbala Tower,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad - 380007.

Sub: Your Petition dated 07.09.2021 submitted through Nanavati Associates, in the matter of Petition under Regulations 4, 5, 9.1 of GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments thereto.

Dear Shri A.B. Shah,

With reference to the above subject, this is to inform you that the Office of the Commission is in receipt of your above-mentioned petition through Nanavati Associates on 06.09.2021.

In this regard, it is to inform you that upon verification of the aforesaid petition it is observed that the required fees for the same is Rs. 10,000/- as per the GERC (Fees, Fines and Charges) Regulations, 2005. As the amount of Rs. 5,000/- has already been paid by you along with the petition, you are required to pay the balance fee of Rs. 5,000/- either through demand draft or Cheque or Online Payment or RTGS, for registration and numbering of your aforesaid petition. The payment gateway and details of RTGS are available on GERC's website. i.e., www.gercin.org.

You are, therefore, directed to do the needful in this regard within 7 days, from the receipt of this letter.

With Regards,

[Roopwant Singh, IAS]
Secretary

Gujarat Electricity Regulatory Commission
Gandhinagar, Gujarat

In due compliance of this letter, please find
attached d.d no. _____ dated _____



A/C PAYEE ONLY
NOT NEGOTIABLE

MANAGER'S CHEQUE
VALID FOR 3 MONTHS ONLY

1 7 0 9 2 0 2 1

Or Order

Pay

***** GUJARAT ELECTRICITY REGULATORY COMMISSION *****

या उनके आदेश पर

अदा करे

Rupees

रुपये

FIVE THOUSAND ONLY.

₹

*5,000.00

FOR VALUE RECEIVED

NANAVATI ASSOCIATES

SINDHUBHAVAN
AHMEDABAD - 380058
REF. No. 911212001572

N. R. Thakur
B-30297

AUTHORISED SIGNATORIES
Please sign above

⑈001504⑈ 380240079⑈ 999989⑈ 12

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Keyur D. Gandhi +91-9825030979
Pranit K. Nanavati +91-9879106229
Kunal K. Nanavati +91-9825005119

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Advocates, Patent & Trade Mark Attorneys

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Vesu, Surat 395 007.
Email : surat@nanavatiassociates.com

Gujarat High Court Chamber
Nos.: 209 and 230
Telefax: +91-79-27663980

NA/NMD/634 /21

23rd September, 2021

To
The Secretary,
The Hon'ble Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar 382 355

Sub: Petition dated 07.09.2021 on behalf of Reliance Industries Ltd.
in the matter of Petition under Regulations 4, 5, 9.1 of GERC
(Procurement of Energy from Renewable Sources) Regulations,
2010 and subsequent amendments thereto.

Dear Sir,

Our client, Reliance Industries Ltd. was in the receipt of letter dated 09.09.2021 wherein the Hon'ble Commission had directed to pay balance fee of Rs. 5,000/- for registration of the captioned Petition.

Accordingly, we had made online payment through payment gateway available on the website of the Hon'ble Commission on 15.09.2021. The said amount has been debited from the account for payment of fees. However, since, the receipt was not received on the concerned email id, we had also submitted a Demand Draft being No. 001504 dated 17.09.2021 of Rs.5,000/- to the Hon'ble Commission on 17.09.2021 along with covering letter, a copy of which is enclosed as **Enclosure-I.**

AD (Legal)/Ex (Legal)
Checked with Accounts
Section and process
P.H.
27/09/2021

Legal
24/9

G.E.R.C.	
Inward	4028
Page 1 of 2	
Date: 24 SEP 2021	

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Accordingly, the balance fees for registration has been accepted, which is paid through the Demand Draft and a receipt in that regard has also been issued by the Hon'ble Commission. A copy of the receipt is enclosed herewith as **Enclosure-II**, for your record.

In view of the above, we request the Hon'ble Commission to refund the excess fees of Rs.5,000/- paid through the online payment gateway on 15.09.2021. We request the Hon'ble Commission to issue cheque / DD in the name of undersigned and oblige.

Yours Sincerely,
For Nanavati Associates,



Nisarg M. Desai,
Advocate.
(M) 9879411067

Encl: As above.

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Keyur D. Gandhi +91-9825030979
Pranit K. Nanavati +91-9879106229
Kunal K. Nanavati +91-9825005119

NANAVATI ASSOCIATES

Advocates, Patent & Trade Mark Attorneys

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Fax: +91-79-40038086

E-mail: email@nanavatiassociates.com

Enclosure-I
300
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Vesu, Surat 395 007.
Email : surat@nanavatiassociates.com

Gujarat High Court Chamber
Nos.: 209 and 230
Telefax: +91-79-27663980

NA/NMD/621/21

17th September, 2021

To
The Secretary,
The Hon'ble Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar 382 355

Sub: Petition dated 07.09.2021 in the matter of Petition under Regulations 4, 5, 9.1 of GERC [Procurement of Energy from Renewable Sources] Regulations, 2010 and its subsequent amendments thereto

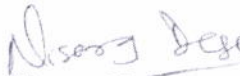
Dear Sir,

We, on behalf of our client, Reliance Industries Limited, is in receipt of the Letter No. GERC/Legal/2021/No.1312 dated 09.09.2021 of this Hon'ble Commission, informing that a balance fee of Rs.5,000/- is to be paid for the captioned Petition.

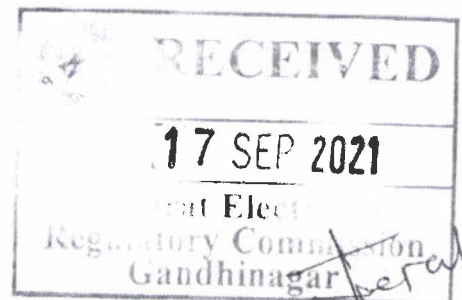
In due compliance of this Letter, please find enclosed herewith a Manager's Cheque / DD bearing No. 001504 dated 17.09.2021 in favour of this Hon'ble Commission, for Rs. 5,000/- (Rupees Five Thousand only) drawn on HDFC BANK, SINDHUBHAVAN, AHMEDABAD towards balance fee for registration and numbering of aforesaid Petition.

Kindly acknowledge the receipt and do the needful.

Yours Sincerely,
For Nanavati Associates,


Nisarg M. Desai,
Advocate.

Encl: As above.



Enclosure-II
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GUJARAT ELECTRICITY REGULATORY COMMISSION

6th Floor, GIFT ONE, Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382 355. GUJARAT, INDIA
Ph. : +91-79-2360 2000 Fax : +91-79-2360 2054/55
E-mail : gerc@gercin.org Website : www.gercin.org

Receipt No. 2848

Date : 20/09/2021

Received with Thanks From Shri/Smt./Kum./M/s. Reliance Industries Ltd.

The sum ₹. Five thousand only.

By Cash/Cheque/Draft No./I.P.O. 001504 Date 17/09/2021

Drawn On Bank HDFC Bank, Sindhurbhavan, A'bad

PARTICULAR : F. D. R. Interest ₹. _____ A/c. No. _____

Annual Licence Fee / Petition Fee / R. T. I. / Other Petition Fees

₹. 5000=00
Cheque is Subject to Realisation

Approved

Authorized Signatory

GUJARAT ELECTRICITY REGULATORY COMMISSION

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. 2007 OF 2021

Reliance Industries Ltd.

.... Petitioners

Versus

.... Respondents

VAKALATNAMA

We, Reliance Industries Ltd.
do hereby Nominate, authorize and appoint

**GANDHI LAW ASSOCIATES
ADVOCATES & SOLICITORS**

Represented by Keyur D. Gandhi, Nirav Joshi, Raheel S. Patel, Kunal J. Vyas, Nisarg Desai, Divya Pravalikha Batthini, Rachna Pastore, Devarsh Trivedi and Divyesh Bais, hereinafter called the Advocates, to be my/our Advocates in the above noted matter and authorize them:

To act, appear and plead in the above noted matter in this Hon'ble Court and/or any Quasi-Judicial Authority or any other Court where the same may be tried or heard or in the appellate courts.

To sign, file and present representations, pleadings, applications, appeals, cross objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case at all stages.

To file and take back documents.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise in or touching upon any matter relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefore and to do all things and acts which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint, instruct any other legal practitioner, authorizing him to exercise the power and authorities hereby conferred upon the advocate/s;

AND we agree to ratify all acts done by the aforesaid advocate/s in pursuance of this authority.

Dated this the 26th day of September 2022.

Nisarg Desai

Accepted

Contact Details for service:

Phone : +91- 9879411067

Email: efiling@gandhilaw.in

For, Reliance Industries Ltd.

Ashish B Shah
Authorised Signatory

Client(s) Signature :

Name :

Designation :

Company Seal :

Ashish Shah
Senior General Manager-Legal



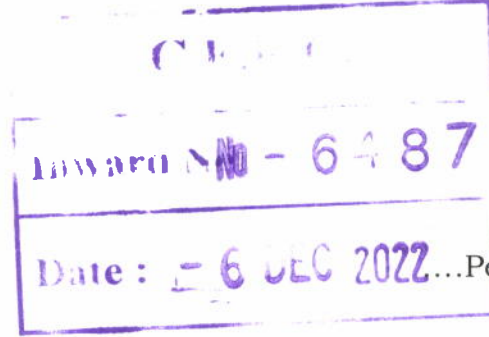
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**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR**

PETITION NO. 2007 OF 2021

IN THE MATTER OF:

Reliance Industries Limited
Vraj, Near Chandanbala Tower,
Opp. Suvidha Shopping Centre
Paldi Ahmedabad - 380007



*AD/Charged/ExCharged
Put in relevant
files
Pth
06/12/2022*

**AFFIDAVIT OF COMPLIANCE PURSUANT TO ORDER DATED 10.10.2022
OF THE HON'BLE COMMISSION**

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the present Affidavit in due compliance of the directions issued in the order dated 10.10.2022 of this Hon'ble Commission. Copy of the order dated 10.10.2022 of the Hon'ble Commission is annexed hereto and marked as **Annexure-I**.
2. The Hon'ble Commission, vide its order dated 10.10.2022 in the captioned Petition, had directed the Petitioner to issue public notices in two daily newspapers i.e. one in English language and one in vernacular language having wide circulation inviting suggestions/views/comments/objections from the stakeholders. Accordingly, the Petitioner has published Public Notice in Gujarati Newspaper 'Sandesh' dated 26.11.2022 and English Newspaper "Indian Express" dated 26.11. 2022. Copies of the Public Notices in English as well as Gujarati Newspaper is annexed hereto and marked as **ANNEXURE-II Collectively**.
3. This Hon'ble Commission has further directed the Petitioner to upload the Petition along with all relevant documents on the website of the Company and call for objections/suggestions from the concerned stakeholders within 30 days of the public notice. The petitioner submits that in due compliance of the said direction, the Petitioner has uploaded the public notice, Petition along with all documents on its website at **www.ril.com/InvestorRelations/Petitions.aspx** calling upon the stakeholders to submit their objections/suggestions within 30 days of the issuance of public notice.

Arzesh





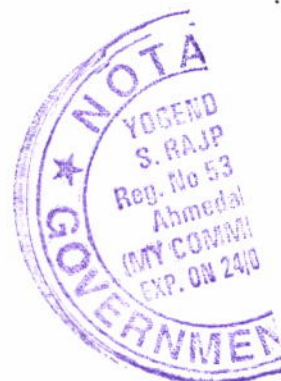
4. The Petitioner submits that the present Affidavit may be treated as due compliance of the directions issued in the Order dated 10.10.2022 of this Hon'ble Commission.



For, Reliance Industries Ltd.

Asish Bhat
Authorised Signatory

DEPONENT



304

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR

PETITION NO. 2007 OF 2021

IN THE MATTER OF:

Reliance Industries Limited
Vraj, Near Chandanbala Tower,
Opp. Suvidha Shopping Centre
Paldi Ahmedabad - 380007

....Petitioner

AFFIDAVIT

I, Ashish Shah, s/o Late Bhalchandra Shah, aged 55 years residing at Ahmedabad, do solemnly affirm and say as follows:

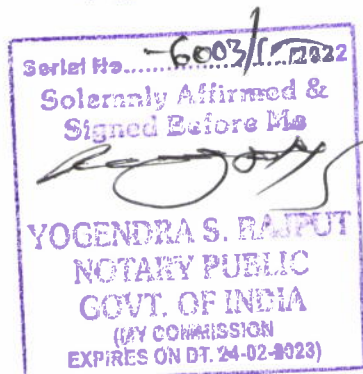
That I am working as Senior General Manager of the Petitioner Reliance Industries Limited and authorized signatory of the Petitioner Company herein and I have read the present Affidavit and I am competent and duly authorized by the Petitioner Company to file this Affidavit.

Solemnly affirmed at Ahmedabad on this 3rd day of December, 2022 that the contents of the above affidavit are true to my knowledge and belief (as derived from the records), based on information believed to be true and no part of it is false and nothing material has been concealed therefrom.

For, Reliance Industries Ltd.

Ashish B Shah
Authorised Signatory
DEPONENT

IDENTIFIED BY ME
Ashish B Shah
ADVOCATE



- 3 DEC 2022



**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2007 of 2021.

In the Matter of:

Petition under Regulations 4 & 5 and Regulation 9.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and GERC (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 and GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018.

Petitioner : Reliance Industries Limited
Vraj, Near Chandanbala Tower,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad – 380007.

Represented by : Ld. Sr. Adv. Mr. Saurabh Soparkar with Ld. Advocates
Mr. Keyur Gandhi and Mr. Nisarg Desai alongwith Mr.
Bhadresh Chauhan and Mr. Anant Kapse

CORAM:

**Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 10/10/2022.

DAILY ORDER

1. The above matter was heard on 29.09.2022.
2. At the outset, Ld. Adv. Mr. Nisarg Desai, appearing on behalf of the Petitioner, submitted that the Commission may permit filing Vakalatnama on behalf of the Petitioner in the present matter.
- 2.1. Ld. Sr. Adv. Mr. Saurabh Soparkar, appearing on behalf of the Petitioner, submitted that through this Petition, rollover of balance RPO of FY 2020-21 to FY 2021-22 or the year in when this matter is disposed by the Commission is sought while seeking relaxation or waiver of the provisions of the GERC (RPO) Regulations by giving effect to and implementing circulars dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power, Government of India so as to ensure capping of the RPO for

captive power plants as per aforesaid clarificatory Orders of the Ministry of Power. It is submitted that the Petitioner is seeking indulgence of the Commission for roll over balance RPO of FY 2020-21 in view of the non-availability of REC in the market due to stay on trading of REC in the market. It is further submitted that the Petitioner is also seeking revision of the RPO targets for the FY 2020-21 in respect of captive power plants located at various places in Gujarat which are based on liquid fuel or gas where heat is cogenerated as by-product or industrial waste and is harnessed for further power, steam generation and other industrial use as well as coal based captive power plants along with CFBC boilers to meet its power and steam requirements.

- 2.2. It is further submitted that some SERC's have implemented the above circulars dated 01.02.2019 & 01.10.2019 issued by the Ministry of Power, Government of India for which details are provided in the Petition.
3. We have considered the submissions on behalf of the Petitioner. We note that the present Petition is filed by the Petitioner under Regulations 4 & 5 and Proviso 5 and 6 of Regulation 9.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments made thereto, seeking rollover of balance RPO of FY 2020-21 to the FY 2021-22 or the FY in which the Petition is disposed of in view of the non-availability of REC in the market due to stay on trading of REC and has also sought relaxation/waiver of the GERC RPO Regulations so as to ensure capping of the RPO targets for captive power plants by giving effect to and implementing the Ministry of Power, Government of India letters dated 01.02.2019 & 01.10.2019 regarding 'Clarification on Order related to Renewable Purchase Obligation'. The Petitioner has also prayed for revision of the RPO targets for FY 2020-21. We note that the aforesaid Regulations have been notified by the Commission in exercise of the powers conferred under Sections 61, 66, 86 (1)(e) and 181 of the Electricity Act, 2003 and all other powers enabling it in that behalf and further amendments have also been issued from time to time. Since, the present matter pertains to RPO and Section 86 of the Electricity Act, 2003 and aforesaid Regulations, the Commission has the power to decide the same. Hence, we decide to admit the present Petition.

- 3.1. We also note that the Petitioner is seeking implementation of 'Clarification on Order related to Renewable Purchase Obligation' issued by Ministry of Power, Government of India vide its letter dated 01.02.2019 & 01.10.2019 and accordingly, has sought roll over/revision in RPO of FY 2020-21 to the FY 2021-22 or the FY in which the Petition is disposed of read with other prayers in present Petition. The subject matter of the present Petition is related to compliance of RPO by obligated entities and/or waiver from it, which needs to hear the stakeholders. Hence, we are of the view that it is necessary to hear stakeholders etc. prior to granting the prayers in the present matter for which, the Petitioner is required to give public notice in two daily newspapers, one in English language and one in vernacular language having wide circulation at the State/National level and invite suggestions/views/comments/objections from the stakeholders on the present Petition and thereafter, the Commission can decide the matter.
- 3.2. Accordingly, we hold that a public hearing shall be conducted to take into consideration the views/comments/suggestions/objections of the stakeholders before deciding the present matter. The Petitioner is, therefore, directed that as stated above a public notice to be issued in one daily Gujarati Newspaper and one English Newspaper having wide circulation in the State/National level stating that they have filed Petition No. 2007 of 2021 before the Commission under Regulations 4 & 5 and Regulation 9.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments made thereto, seeking roll over of balance purchase of RPO of FY 2020-21 to the FY 2021-22 or the FY in which the Petition is disposed of in view of the non-availability of REC in the market due to stay on trading of REC by the Hon'ble APTEL and has also sought relaxation/waiver in the GERC (RPO) Regulations so as to ensure capping of the RPO targets for captive power plants by giving effect to and implementing the Ministry of Power, Government of India letters dated 01.02.2019 & 01.10.2019 regarding 'Clarification on Order related to Renewable Purchase Obligation'. The Petitioner is also directed to upload the present Petition with all the documents on its website and invite comments and suggestions from the stakeholders on the Petition on affidavit within 30 days from the date of issuance of public notice. The Petitioner shall also state in the public notice that the stakeholders/objectors shall file their objections/suggestions in the Petition to the Secretary, Gujarat Electricity

Regulatory Commission, 6th Floor, GIFT ONE, Road 5C, Zone 5, GIFT City, Gandhinagar - 382355 in five copies along with affidavit in support of their submissions with a direct copy to the Petitioner. Upon receipt of the comments/views/objections/suggestions from the stakeholders, the Petitioner is at liberty to file its reply, if any, to the Commission. The staff of the Commission is also directed to upload the Petition along with all relevant documents on the website of the Commission after compliance affidavit of issuing public notice and uploading of Petition is filed by the Petitioner along with copy of public notices issued by the Petitioner is provided to the Commission and invite comments/suggestions from the stakeholders.

- 3.3. The staff of the Commission is also directed to inform/issue hearing notice for the present Petition to stakeholders/objectors who file their submissions/objections/comments before the Commission in the present matter.
4. The next date of date of hearing will be intimated separately.
5. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 10/10/2022.

જામનગરમાં ૧ અને સુરતમાં ૧ કેસ નોંધાયો છે. છેલ્લી સ્થિતિ મુજબ ૨૭ દર્દી સારવાર હેઠળ છે. જેમાંથી નાજુક સ્થિતિના કારણે ૨ દર્દીની હેટરના સહારે ચાલી રહી છે. ૨૨૫ દર્દીની સ્થિતિ સધાર પગ હોવાનો

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બાદ ઢોરને મુક્ત કરવામાં આવ્યા હતા. રખડતા ઢોરને કારણે ટ્રાફિક સમસ્યા અને રખડતા ઢોરને કારણે સર્જાતા નાનકડા ક્યારેક જીવલેણ અકસ્માતોને ગંભીર ગણાઈકોર્ટે આકરી ઝાટકણી કાઢ્યા છે. CNCD વિભાગ દ્વારા ઢોર પકડવાની કામગીરી ચલાઈ હતી. હાલમાં બાકરોલ અને ઉપરાંત નવા બનેલા ઢોરવાડામાં હાલ જેટલા ઢોર છે. જેનો નિભાવ ખર્ચ અને દે

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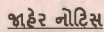
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the election concerned in place of name of



અનંત કાપસે

સીનિયર જનરલ મેનેજર

"વ્રજ", ઓરીઓન લોન પાસે, રાજપથ-રંગોલી રોડ.

તારીખ: 25.11.2022

ઓફ સિંધલવન રોડ, બોડકદેવ, અમદાવાદ - ૩૮૦ ૦૫૪

અત્રેની ૪૯-બાબુનગર વિધાનસભા સામાન્ય ચુંટણી ના કામે ચુંટણી લડતા ઉમેદવારો અને તેમના ચુંટણી એજન્ડો તથા રાજકીય પક્ષો દ્વારા કરવામાં આવતા ચુંટણી ખર્ચ ઉપર દેખરેખ અને નિયંત્રણ રાખવા સ્પષ્ટ સ્થાપના ચુંટણી પંચ દ્વારા વિગતવાર સૂચનાઓ આપવામાં આવેલ છે. ચુંટણી લડતા ઉમેદવારોએ તેઓના ચુંટણીલક્ષી ખર્ચ દૈનિક ધોરણે નિયત નમૂનાના રજીસ્ટરમાં નોંધવાના રહે છે. અને ચુંટણી અધિકારીની જે તારીખો નક્કી કરે તે તારીખો રજીસ્ટરમાં નોંધવામાં આવેલ ખર્ચ ના રજીસ્ટરો ચુંટણી અધિકારીની હિસાબી ટુકડી સમક્ષ નિરીક્ષણ ના હેતુ માટે રજુ કરવાના થાય છે. હિસાબો રજુ કરવાની તારીખો નીચે મુજબ છે.

ક્રમ	તારીખ	વાર	સ્થળ	સમય
૧	૨૫/૧૧/૨૦૨૨	શુક્રવાર	છત્રો માળ, જિલ્લા પંચાયત ભવન, લાલ દરવાજા, અમદાવાદ	સવારે
૨	૨૬/૧૧/૨૦૨૨	મંગળવાર		૧૧.૩૦ થી
૩	૦૩/૧૨/૨૦૨૨	શનિવાર		૨.૩૦

ઉમેદવારો ખર્ચના હિસાબોનું નિરીક્ષણ કરાવવા આવે તે નિયમ તારીખો અને સમય તેમજ સ્થળ પ્રાપ્ત સામાન્ય નાગરિક પણ હાજર રહી શકે છે.

તા. ૨૫-૧૧-૨૦૨૨

ચૂંટણી અધિકારી

૪૯-બાપુનગર વિધાનસભા મતદાર વિભાગ અને
નાયબ જિલ્લા વિકાસ અધિકારી (વિકાસ)

અમદાવાદ

ક્રમાંક/સંમાનિ/અમદ/૧૩૬૮/૨૦૨૨

F.No.A-4-38/2022-Estt. I

Government of India
National Archives of India,
(Ministry of Culture)

Janpath, New Delhi-110001.

Applications are invited for appointment to the 01

years (i.e. FY 2015-16 and onwards) to the DEMAT Account of IEPF.

The shareholders holding such shares in physical form which stand registered in their name will stand automatically cancelled and be deemed non-negotiable. The shareholders may further note that the details uploaded by the company on its website should be regarded and shall be deemed adequate notice in respect of issue of duplicate share certificate(s) by the Company for the purpose of transfer of shares to DEMAT Account of IEPF pursuant to the said Rules. In respect of shares held in Demat Form necessary corporate action shall be initiated by the Company for transfer of shares to DEMAT Account of IEPF as per the Rules.

The concerned shareholders may note that, upon such transfer, they can claim the said shares along with dividend(s) from IEPF for which a separate application has to be made to the IEPF in Form IEPF-5, as prescribed under the Rules and the same is available at IEPF website i.e. www.iepf.gov.in

In case the Company does not receive any communication from the concerned shareholders by 16th April, 2023 or such other extended date, the Company shall, with a view to complying with the requirements set out in the Rules, transfer the shares to the DEMAT Account of IEPF by the due date as per procedure stipulated in the Rules.

In case you need any information/clarification, please contact Registrar and Transfer Agent of the Company viz. TSR Consultants Private Limited, C-101, 1st Floor, 247 Park, L.B.S. Marg, Vikhroli (West), Mumbai-400083, Phone: 022-66568484 E-mail: csg-unit@tcplindia.co.in Fax: 022-66568494.

Place : Valsad
Date : 22nd November, 2022

For Ecoplast Limited
Sd/-

Rakesh Kumar Kumawat
Company Secretary



भारतीय वानिकी अनुसंधान एवं शिक्षा
INDIAN COUNCIL OF FORESTRY RESEARCH AND EDUCATION
(An Autonomous Body of Ministry of Environment, Forest and Climate Change)
प्लॉट नं. 03 - न्यू फॉरेस्ट, देहरादून-248 006 (Uttarakhand)

शुद्धिपत्र

दिनांक संख्या 03 / जायरेकटर / 2022 भा.वा.अ.सि.म.



PUBLIC NOTICE

M/s Reliance Industries Ltd (RIL) invites suggestions/ views/ comments/ objections from the stakeholders in Petition No 2007 of 2021 filed by RIL before Hon'ble Gujarat Electricity Regulatory Commission to seek appropriate directions under Regulations 4 & 5 and Regulation 9.1 of GERC (Procurement of Energy from Renewable Energy Sources), Regulation 2010 and subsequent amendment thereto and under Regulations 84 of GERC (Conduct of Business Regulations) 2004 in respect of difficulty in complying renewable power purchase obligation for its plant located at various places in Gujarat due to supply constraints and other factors beyond the control of RIL and to carry forward compliance requirement for the FY 2020-21 to the next year or the year in which the Petition is disposed of. RIL also seeks to get the directives of the Government of India through Ministry of Power vide their "Clarification orders related to Renewable Purchase Obligation (RPO)" dated 01.02.2019 and 01.10.2019 issued by Ministry of Power, Govt of India be implemented, and benefits thereof be given to RIL. Hon'ble GERC vide order dated 10.10.22 has directed RIL to call for comments/ objections/ suggestions from the stakeholders by issuing public notice. All the relevant documents of the said petition and GERC order dated 10.10.2022 is uploaded on <https://www.ril.com> and also on website of Commission. The stakeholders can file their suggestion/ views/ comments/ objections along with affidavit in support of their submission in the said petition within 30 days from the issuance of this public notice directly to RIL at the address given below and also to the Secretary, Gujarat Electricity Regulatory Commission, 6th Floor, GIFT ONE, Road 5C, Zone 5, GIFT City, Gandhinagar-382355, in 5 copies/sets.

Anant Kapse

Sr. General Manager - Reliance Industries Limited,
VRAJ, Nr Orion Lawn, Rajpath-Rangoli Road,
Off Sindhu Bhavan Road, Bodakdev, Ahmedabad - 380054

Date: 25.11.2022



THE SURAT DISTRICT CO-OPERATIVE BANK LTD.

REGD. OFFICE : "Shri Pramodbhai Desai Sahakar Sadan", J. P. Road, Nr. Old R.T.O., Surat-395 001.
PH. EPBAX 2466001, 2466002, 2466003, FAX 0261 - 2466000

www.sudicobank.com email : agmadm@sudicobank.com

APPENDIX-IV (Rule-8(1))

POSSESSION NOTICE

(For immovable Property)

WHEREAS The undersigned being the Authorized Officer of The Surat District co.op.Bank Ltd. Under the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 and in exercise of power conferred under Section 13(12) read with Rule 3 of the Security Interest (Enforcement) Rules, 2002 had issued demand notice under section 13(2) dated 04/03/2022 Calling Upon the

Sr No.	Name of Borrower(s) / Guarantor(s) / Director / Partner name & if bank issues public notice in News paper then date & news paper Detail (s)	Loan Details	Date of Demand Notice	As per 13(2) Notice Outstanding Amount (Rs.)	Particulars of Mortgaged property (ies) And Date of Symbolic Possession
1	Main Borrower :- M/S Farmerson Export Pvt. Ltd. Through The Director:- (1) Atulbhai Rameshbhai Patel (2) Anilkumar Rameshbhai Patel Guarantors :- (1) Rameshbhai Narromtambhai Patel (2) Chetanbhai i.e. Chandrakant Dalpatbhai Patel	(A) N.F.S. A/C No.00664610000114 (B) CC A/C No. 00660010000010	04/03/2022	(A) 6,95,09,057.41/- (B) 3,40,33,512.66/-	Survey No.152 Paiki, Block No.182, situated in AT & Post: kohli, Taluka: Vyara, Dist. Surat. Date:- 25/11/2022

To repay the total amount mentioned in the notice as on 04/03/2022 together with further contractual interest thereon till the date of payment and incidental expenses, costs, charges, incurred / to be incurred, within sixty days from the date of receipt of the said notice,

The Borrower / Guarantors having failed to repay the amounts, notice is hereby given to them and the public in general that the under signed has taken **SYMBOLIC Possession** of the property described herein below in exercise of powers conferred on him/her under section 13(4) of the said Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 on this Date. 25/11/2022

The Borrower / Guarantors in Particular and the public in general is hereby cautioned not to deal with the property and any dealing with the property will be subject to the charge of The Surat District Co. Op Bank Ltd. For an amount as on 04/03/2022 together with further contractual interest thereon till the date of payment and incidental expenses, costs, charges, etc. Due from the borrower(s) and interest thereon.

The Borrower's attention is invited to the provision of Sub-Section(8) of Section 13 of the SARFAESI Act, in respect of time available, to redeem the secured asset.

Place : Surat.
Date : 25/11/2022

Sd/-
Authorized Officer
The Surat District Co.Op. Bank Ltd

HOME LOANS

Motilal Oswal Home Finance Limited
Corporate Office : Motilal Oswal Tower, Rahimtullah Sayani Road, Opposite Depot, Prabhadevi, Mumbai-400025. Email : hqenquiry@motilaloswal.com
Kadodara, Surat - 394327, Gujarat Contact No.:- Alpeshkumar Patel - 9372705599.

NOTICE FOR E-AUCTION CUM SALE

Bidders themselves. Please note that failure of Internet connectivity (due to any reason) shall not be a valid excuse for non-bidding. Bidder's responsibility of bidders and neither MOHFL nor InventON shall be responsible for these. Bidder is required to make all the necessary arrangements to ensure that they are able to circumvent such situation and still be able to attend the auction. However, it is requested to the Bidder(s) not to wait till the last moment to bid. In our portal - <https://motilaloswalhf.com/eauction-pdf> Bidder is going to issue the sale notice to all the Borrowers/ Guarantors/ Mortgagees. The same is not received by any of the parties, then this publication of sale notice shall be deemed as mode of service.

Sd/-
Authorized Officer
Motilal Oswal Home Finance Limited

Shivalki-III, Above Axis
Mehadabad - 380054.

E-AUCTION SALE NOTICE UNDER SARFAESI ACT, 2002

Enforcement of Security Interest Act, 2002, for sale on "AS IS WHERE IS & WHAT IS THERE IS BASIS".

S. No.	Details of Immovable Property	Reserve Price	Date of Inspection	Date of e-Auction & Timing
1.	Property Bearing Office 401, 4th Floor, Near Vanija Bhavan, Diwan Kankaria, Ahmedabad-380054 measuring About 37-39 Sq.Mtrs Scheme Known As "P. B. Parekh Non Trading Corporation, Town 02, Fp No.187 Paiki, Sub Plot No. Private Plot No. C, Mouje : Rajpur-Vaninagar, Dist. & Sub District :	Rs. 36,00,000/- EMD Rs. 3,60,000/-	12.12.2022 & 19.12.2022 BETWEEN 12.00 AM & 03.00 PM	02.01.2023 at 11 AM to 12 NOON with unlimited extension of 5 Mins.
Last Date for EMD Submission 29.12.2022				
2.	Property as Shop No. 1 adm 16.89 Sq of 1st Floor, constructed on Plot No. 21 of Gandhinagar township Gandhinagar, Sub Dist and Dist	Rs. 27,30,000/- EMD Rs. 2,73,000/-	12.12.2022 & 19.12.2022 BETWEEN 12.00 AM & 03.00 PM	02.01.2023 at 11 AM to 12 NOON with unlimited extension of 5 Mins.
Last Date for EMD Submission 29.12.2022				

* The date of payment and/or realization. If the bank Ltd, there are no encumbrances. To the best of the information of the undersigned, who, however shall not be responsible for the prospective purchaser(s) are, therefore requested in their own interests, to satisfy the above mentioned property/properties, before submitting the tenders. Auction will be held on the date of payment and/or realization.

1. For Document / E-Bidding catalogue and in this notice. Further details of the immovable property will be collected/obtained from the Authorized Officer of HDFC Bank Ltd. at 3rd Floor, working day. Properties are available for inspection on the date(s) and time mentioned

2. With 10% of the Reserve Price amount towards earnest money deposit (EMD) should be submitted to the bank in favour of "HDFC BANK LTD." payable at par at Ahmedabad. Tenders that are not in accordance with the above date prescribed herein will not be considered/ treated as valid tenders, and shall be rejected.

3. Also attach Passport Size Photo and copy of his/her photo identity proof such as copy issued by the Income Tax Department, Aadhar Card. Please note that proof of residence is mandatory.

4. Assets may, if they so desire, give/sponsor their Best Possible Valid Offer(s) for the property. The additional terms and conditions for the auction are available on the website.

5. The additional terms and conditions for the auction are available on the website. The format, Application, Declaration, etc., can be Downloaded From Website :

6. The date and Time, password/user id will be provided by M/s. e-Procurement Services Pvt. Ltd. The Online Auction at <https://hdfcbank.auctiontiger.net>. Necessary trainings will be provided.

7. Bidding repair funds, transfer charges, any other taxes etc. should be ascertained by the purchaser only. The stamp duty, legal charges, registration charges and GST if applicable shall be paid by the purchaser alone.

8. The auction will be declared to be the purchaser and shall immediately after such declaration pay the balance of 90% of the purchase price within 15 days from the date of the property shall forthwith be put up for auction again and resold.

9. In case of the Immovable Properties / Secured Assets and for Queries, Please contact Mr. Mitul Bhadiyadra on 9327974575 or Email : hiren.shukla@hdfcbank.com and Bidder Support Numbers : 9265562821/ 9265562818/9265562819 / 079 - 68100000.

10. The entire auction proceedings without assigning any reasons. THE AUCTIONER UNDER RULE 8(6) OF THE SECURITY INTEREST (ENFORCEMENT) RULE, 2002

Sd/- Authorized Officer, HDFC Bank Ltd.

Ahmedabad