

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. OF 2019

IN THE MATTER OF:

Regulation 5 and Proviso 5 and 6 of Regulation 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.

IN THE MATTER OF:

Reliance Industries Limited

Having its Office Address at:

“Vraj”, Nr. Chandanbala Tower,

Opp. Suvidha Shopping Centre,

Paldi, Ahmedabad – 380 007

... Petitioner

MOST RESPECTFULLY SHEWETH THAT:

Preamble:-

1. The Petitioner is filing the present Application seeking appropriate directions under Proviso 5 and 6 of Regulation 9.1 of Gujarat

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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 Dahej Manufacturing Division and Hazira Manufacturing Division, due to supply constraints and other factors beyond the control of Petitioner and to carry forward the compliance requirement of FY 2018-19 to the next year i.e. FY 2019-20

BRIEF FACTUAL BACKGROUND:-

2. The Petitioner is in the business, inter alia, of producing 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 powers. In these power plants, which are liquid fluid or gas based, heat is cogenerated as a by-products or industrial waste and is harness for further power, steam generation and other industrial use. The Petitioner have 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, Petitioner has also installed Coal Based Captive Power Plants of 360 MW at Hazira and 270 MW at Dahej. The Petitioner's Captive Power Plants have all been recognised as co-generation plants by the appropriate Authorities under the Act.
3. The Petitioner states that on 14th January, 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,

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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 Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010.

4. On 17th April, 2010, this 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 "Regulations". Annexed hereto and marked as **Annexure-"B"** is a copy of the said Regulations.
5. On 1st July, 2015, the Hon'ble Commission issued Notification No 2 of 2015 wherein the RPO was made applicable on captive users with effect from July 1, 2015. Hereto annexed and marked as **Annexure "C"** is a copy of the said notification.
6. The Petitioner states that the Regulation 5 inter alia provide 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) Regulations 2010. Regulation 5 of the CERC Regulations is quoted hereinbelow for ready reference:

"5. Certificates under the Regulations of the Central Commission

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



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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:

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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.



7. 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 12th March, 2015, rejected the Petition filed by the Petitioner and other parties. Hereto annexed and marked as **Annexure-"D"** is a copy of Order dated 12th March, 2015 passed by Hon'ble High Court of Gujarat.

8. On 4th March, 2014, this Hon'ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources)(First Amendment) Regulations, 2014. By the said Regulations, this Hon'ble Commission 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.

9. The Petitioner states that being aggrieved by the common judgment/ Order dated 12th March, 2015, the Petitioner filed Letters Patent

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Appeal before the Hon'ble High Court of Gujarat. In the said Appeal, the Petitioner had also filed a Civil Application No. 4804 of 2015 seeking stay of the impugned Judgment and Order dated 12th March, 2015. On 5th May, 2015, the Hon'ble 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."

Hereto annexed and marked as **Annexure-"E"** is a copy of Order dated 5th May, 2015 passed by the Hon'ble High Court of Gujarat.

10. The Petitioner stated that CERC, vide Order dated 30th March, 2017 in Petition No. 99 of 2010) prescribed forbearance price and floor price for dealing in Renewable Energy Certificate ("REC") with effect from 1st April, 2017 under CERC (REC) Regulations, 2010. The CERC's Order dated 30th March, 2017 was challenged by the Green Energy Association and Indian Wind Power Association. Interim directions were passed by the Hon'ble Supreme Court vide order dated 8th May, 2017 and dated 14th July, 2017, *interalia* directing that till the pendency of Appeal before Hon'ble APTEL, the difference between the earlier floor price and present floor price shall be deposited by the obligated entity with CERC.

11. Vide order 12th April, 2018, APTEL dismissed the Appeals and upheld the CERC's Order dated 30th March, 2017. Indian Wind Power Association had challenged the Order dated 12th April, 2018 by filing Civil Appeal (being Appeal No. 4801 of 2018) before Hon'ble Supreme

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Court. Vide Order dated 14th May, 2018, the Hon'ble Supreme Court had further clarified that the interim order will not apply to RECs issued on or after 1st April, 2017. The Petitioner craves leave to refer to and rely upon copies of the order passed by Hon'ble CERC, Hon'ble APTEL and Hon'ble Supreme Court as and when produced.

12. On 24th April, 2018, this Hon'ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy From Renewable Sources) (Second Amendment) Regulations, 2018. By the said Amendment it 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)
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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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."

Annexed hereto and marked as **Annexure-"F"** is copy of the aforementioned Second Amendment Regulations.

13. The Petitioner's two petrochemical plants located at Dahej and Hazira in Gujarat are coal based captive power plants and steam generation plants. The below mentioned table shows the total power consumptions at these two plants during FY 2018-19:

Sr. No	Plant	Power Consumption (MWH)
1	Dahej Manufacturing Division	1,180,706
2	Hazira Manufacturing Division	2,004,455
3	Total	3,185,161

14. 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 abovementioned plants mainly meet the renewable purchase obligation by procuring Renewable Energy Certificates (RECs) from the power exchanges.

15. The Petitioner states that the plants have purchased Solar and Non-solar REC certificates for the FY 2018- 19 in various months till date.

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However, it is stated that sufficient numbers of REC were not available for trading. The Petitioner states that till date only 15% of their Solar RPO and 70% of their Non Solar RPO has been met, this is due to the fact that only 14% of their Solar REC bids and 38% of their Non solar REC bids have been cleared. A detailed chart with respect to trading carried out by the Petitioner with respect to REC is as under:-

Details of REC Procurement during FY 2018-19

r. N o	Month	Solar Bid	Solar Cleared	Solar RPO	Unfulfilled Solar RPO	Non-Solar Bid	Non-Solar Cleared	Non-Solar Obligation	Unfulfilled Non-Solar RPO
1	Nov 18	50,887	20,203	1,35,369		1,58,598	37,734	2,69,146	
2	Dec 18	39,997				1,39,131	10,192		
3	Jan 18	52,012	-			2,03,076	1,14,902		
4	Total	1,42,896	20,203	1,35,369	1,15,166	5,00,805	1,88,828	2,69,146	80,318
5	% Cleared		14.1 %	14.9%			37.7%	70.2%	

The Petitioner states that based on the REC market condition and the fact that Petitioner's REC bids were not getting cleared, in order to comply with the above Regulations, the Petitioner made an attempt to procure the Renewable Energy to meet its RPO target. The Petitioner had published its Expression of Interest to select developers/ traders. However, the Petitioner did not receive any response for supply of Renewable Energy for two months. Annexed hereto and marked as **Annexure-"G"** is a copy of the aforementioned Expression of Interest published by Petitioner.

16. On 1st February, 2019, Ministry of Power (MoP) has issued a clarification in reference to its earlier orders dated 22nd July, 2016

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and dated 14th June, 2018 regarding long term growth trajectory of RPOs from Years 2016-17 to 2021-22, which reads as follows:-

"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 2016-10 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."*

Hereto annexed and marked as **Annexure-"H"** is copy of clarification dated 1st February, 2019. The Petitioner submits that in view of the aforesaid clarification, this Hon'ble Commission may have to consider to notify the RPO levels for Years 2016-17 to 2021-22.

17. The Petitioner states that they have filed a separate Petition (being Petition no.1781 of 2019) before this Hon'ble Commission seeking appropriate directions for roll-over of RPO compliance for the FY 2017-2018 to FY 2018-19. The same is pending for hearing.

18. The Petitioner states that in the abovementioned circumstances during the FY 2018-19, Petitioner was unable to purchase the REC due to supply constraints and other factors beyond the control of Petitioner and non-availability of sufficient REC in the market.

SUBMISSIONS OF THE PETITIONER:

19. The Petitioner submits that the generation of REC by Renewable Energy producers is on decline. For the aforesaid reasons and low generation of

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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 Non Solar and Solar REC available in the market for obligated entities for discharge of obligations under the impugned Regulations.

REC Market Analysis

a. Non-Solar RECs

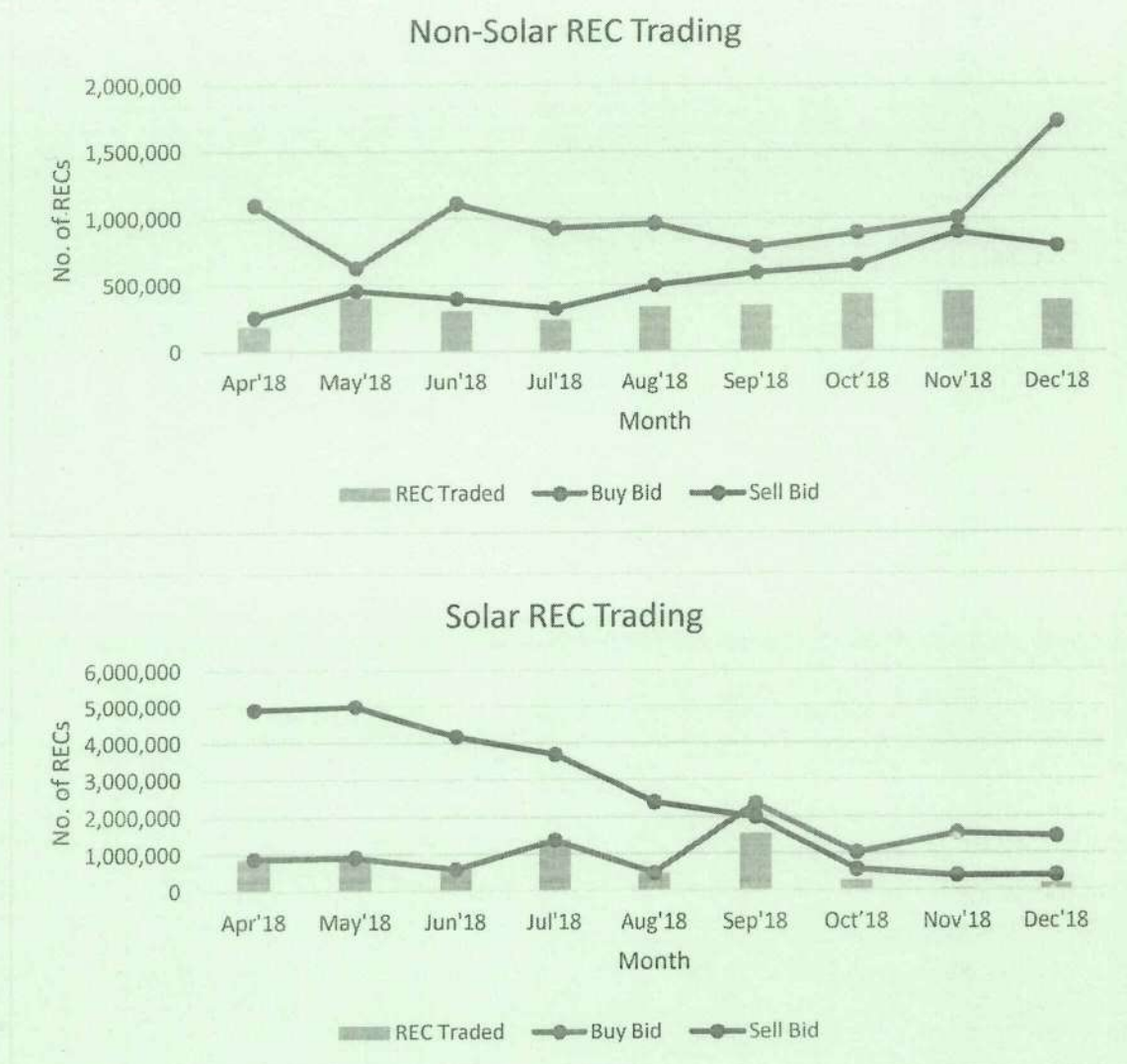
Sr. No.	Description	2015-16	2016-17	2017 - 18	2018-19 (upto Jan-19)
1	Opening balance REC	1,05,77,625	1,32,81,006	1,29,26,303	14,94,184
2	Addition in REC	73,58,397	60,10,472	49,92,891	43,93,366
3	REC Sold	43,06,952	59,30,725	1,59,75,749	37,50,830
4	REC Retained by Generator	3,48,064	4,34,450	4,49,261	3,91,902
5	Closing balance REC (available)	1,32,81,006	1,29,26,303	14,94,184	17,44,818

b. Solar RECs

Sr. No.	Description	2015-16	2016-17	2017- 18	2018-19 (Upto Jan 19)
1.	Opening balance REC	15,99,598	33,10,962	49,08,376	59,98,101
2.	Addition in REC	23,75,443	21,85,291	13,33,925	9,47,496
3.	REC Sold	6,48,201	5,57,014	2,08,402	64,39,355
4.	REC Retained by Generator	15,878	30,863	35,798	7,937
5.	Closing balance REC	33,10,962	49,08,376	59,98,101	4,98,305



c. Buy and Sell volumes during April 2018 to January 2019:



The Petitioner respectfully submits that there is significant drop in Solar REC Inventory by around 92 % from around 60 Lakhs RECs in Apr'18 to around 5 Lakhs RECs in Jan'19 due to huge demand for RPO compliance. The Average Issuance of Solar REC in these months is approx. 90,000 Nos. of Solar REC against the average monthly demand of approx. 11,85,000 Nos. of Solar REC

20. The Petitioner respectfully submits that in case of Non-Solar RECs, the inventory remained marginally constant throughout this year (approx. 18 lakhs). The average sell bid is approx. 5,40,000 RECs against buy bid during these months is 10,15,000 RECs. Sell bids are lower than buy

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bids and traded volume is almost similar to REC issued during the year. Even if, all the sell bids gets cleared still there will obligated entities who will not be in a position to fulfil their RPO obligation due to shortage of RECs

21. The Petitioner respectfully submits that the 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.

22. 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)***

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.*

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and hence request the Hon'ble Commission, on going 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 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."

However, similar amendment is not made in proviso of Regulation 5.1, whereby it is permitted to procure Non-Solar REC when Solar RECs are not available in order to fulfil RPO.

26. The Petitioner respectfully submits that this Hon'ble Commission 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."

27. Without prejudice to the aforesaid, the Petitioner submits that the RPO percentages are prescribed by this Hon'ble Commission in accordance with the long-term grown trajectory specified by the Ministry of Power vide orders dated 22nd July, 2016 and dated 14th June, 2018. In view of

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the clarification dated 1st February, 2019 issued by Ministry of Power, this Hon'ble Commission will have to notify RPO percentage for Captive Power Plants (CPPs) for the years 2016-17 to 2021-22 in accordance with the said clarification. In view of this, it is just, proper, in the interest of justice and to avoid multiplicity of proceedings that this Hon'ble Commission allows the Captive Power Plants (CPPs) including the Petitioner herein to roll over their RPO.

28. In the abovementioned circumstances, the Petitioner is humbly requesting Hon'ble Commission to allow Petitioner to roll over balance REC of the year 2018-19 to FY 2019-20 and to pass directions in that regards.

PRAYER CLAUSE

29. In the aforementioned facts and circumstances, the Petitioner most humbly respectfully prays that:
- (a) that this Hon'ble Commission be pleased to allow Petitioner to roll over balance purchase of REC of the FY 2018-19 to FY 2019-20;
 - (b) that this Hon'ble Commission be pleased to allow Petitioner to use Solar REC to meet its obligation for Non Solar RPO and vice-versa for FY 2018-19.
 - (c) any other order this Hon'ble Commission may deem fit in the matter.

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.

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Place: Ahmedabad
Date: 08/03/2019

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[Signature]
For Nanavati Associates
Advocates for Petitioner

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

PETITION NO. OF 2019

IN THE MATTER OF:

Regulation 5 and Proviso 5 and 6 of
Regulation 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 Address at:
"Vraj", Nr. Chandanbala Tower,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad - 380 007

... Petitioner

[Signature]

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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 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 14th day of March, 2019, 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

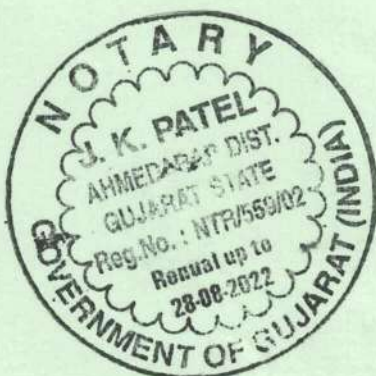
Date: 14.03.2019

Ashish B Shah
Deponent

Identified by me

Devi Chaur

Jyotsna K. Patel
Advocates for the Petitioner



Sr. No. 1326 /2019
SOLEMNLY AFFIRMED
BEFORE ME
Jyotsna K. Patel
JYOTSNA K. PATEL
NOTARY
GOVT. OF GUJARAT
d/t. 14/03/19

**BEFORE THE HON'BLE GUJARAT ELECTRICITY
REGULATORY COMMISSION AT AHMEDABAD**

DISTRICT:

_____ NO.

OF 2019

Reliance Industries Limited APPLICANTS
PETITIONERS

VERSUS

Respondent(s)

~~Opponent(s)~~

VAKALATNAMA

I/WE

Petitioner

The abovenamed, 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, Nandish Y. Chudgar, Pranit K. Nanavati, Kunal K. Nanavati, Nirav A Joshi, Nisarg M. Desai, Raheel S. Patel, Kunal J. Vyas, Priyal M. Parikh, Laukik Pant and Shriraj Khambhete 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 before this Commission or any other Commissioner 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 _____ day of _____ 2019

Accepted

Phone : (079) 40038081-05

FAX 079-40038086

email@nanavatiassociates.com



Client(s) Signature :

Name :

Designation :

Company Seal :

Ashish B. Shah

Ashish B. Shah

Sr. General Manager

for Reliance Industries Ltd

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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]¹³¹⁴ 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

- 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

નવીનીકરણપાત્ર 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 રૂએ ગુજરાત વિદ્યુત નિયંત્રક આયોગ, નવીનીકરણપાત્ર વીજળી સાધનોમાંથી પ્રાપ્ત વીજળીનું કોઈપણ વ્યક્તિ વેચાણ કરવા પ્રોત્સાહન આપવા અને ગુજરાત રાજ્યની અંદર વિતરણ પરવાનેદાર દ્વારા નવીનીકરણપાત્ર સાધનોમાંથી વીજળી પ્રાપ્ત કરવા અંગેના નીચેના વિનિયમો અહીં કરે છે.

૧. ટૂંકું શીર્ષક, વ્યાપ અને પ્રારંભ :

- (૧) આ વિનિયમો ગુજરાત વિદ્યુત નિયંત્રક આયોગ (નવીનીકરણપાત્ર) સાધનોમાંથી વીજળી પ્રાપ્તિ), વિનિયમો ૨૦૧૦ કહેવાશે.
- (૨) આ વિનિયમો સમગ્ર ગુજરાત રાજ્ય સુધી વ્યાપ્ત છે.
- (૩) આ વિનિયમો ખંડ ૩ ને બાદ કરતાં રાજપત્રમાં 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.

- (ધ) “કેન્દ્રિય આયોગ” એટલે અધિનિયમની કલમ-૭૬ની પેટા કલમ (૧) માં ઉલ્લેખ કરેલ કેન્દ્રીય વીજળી નિયંત્રણ આયોગ
- (ચ) “પ્રમાણપત્ર” એટલે કેન્દ્રીય સંસ્થા દ્વારા કરાવેલ કાર્યપદ્ધતિ અનુસાર અને કેન્દ્રીય વીજળી નિયંત્રણ આયોગ (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર માન્ય કરીને આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ માં નિર્દિષ્ટ જોગવાઈઓ અન્વયે સંસ્થાએ આપેલ નવીકરણપાત્ર વીજળી પ્રમાણ પત્ર
- (છ) “આયોગ” એટલે ગુજરાત વિદ્યુત નિયંત્રક આયોગ
- (જ) “વિતરણ પરવાનેદાર” એટલે તેના પુરવઠાના વિસ્તારમાં ગ્રાહકોને વીજળી પૂરી પાડવાની વિતરણ વ્યવસ્થાના સંચાલન અને જાળવણી કરવા અધિકૃત પરવાનેદાર
- (ઝ) “તળિયાના ભાવ” એટલે કેન્દ્રીય વીજળી નિયંત્રણ આયોગ દ્વારા તેના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતાને તે આપવા અંગેની શરતો) ૨૦૧૦ના વિનિયમો અનુસાર નક્કી કરાવેલ ન્યૂનતમ ભાવ, જે અન્વયે પ્રમાણપત્ર વીજળી વિનિયમોમાં હાથ ધરી શકાશે.
- (ઞ) “ફોરબેરન્સ પ્રાઈઝ” એટલે કેન્દ્રીય વીજળી નિયંત્રણ આયોગ, તેના ૨૦૧૦ના વિનિયમો અનુસાર (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રથી માન્યતા અને તે આપવા અંગેની શરતો) જે અન્વયે વીજળી વિનિયમો અનુસાર નક્કી કરવામાં આવે તે ટોચના ભાવ. જે અંતર્ગત માત્ર પ્રમાણપત્રો વીજળી વિનિયમ અંગે હાથ ધરી શકાશે.
- (ઠ) MNRE એટલે નવીન અને નવીકરણપાત્ર ઉર્જા મંત્રાલય
- (ડ) “જવાબદાર હસ્તિ” એટલે અધિનિયમની કલમ-૮૬ની પેટા કલમ(૧) ના ખંડ (ઈ) અન્વયે નવીકરણપાત્ર વીજળી ખરીદીની જવાબદારી પરિપૂર્ણ કરવા આદેશ અપાયેલ અને આ વિનિયમોના ખંડ-૩ અન્વયે મુકરર કરેલ હસ્તિ
- (ઢ) “વ્યક્તિ” માં સંસ્થાપિત હોય ન હોય, તેવી કોઈપણ કંપની, કોર્પોરેટ સંસ્થા કે એસોસિએશન કે વ્યક્તિઓની સંસ્થા અથવા કૃત્રિમ અદાવતી વ્યક્તિ
- (ણ) “વીજળી વિનિયમ” એટલે કેન્દ્રીય આયોગે ઇશ્યૂ કરેલા આદેશોના સંદર્ભમાં વીજળી માટે વીજળી વિનિયમ તરીકે સંચાલિત કોઈપણ વિનિયમ (એક્સચેન્જ),
- (ત) “અગ્રાધિકાર પ્રશુલ્ક” એટલે નવીકરણપાત્ર વીજળી પર આધારિત વીજ મથકમાંથી વીજળીનું વિતરણ પરવાનેદારો વેચાણ કરવા આયોગે નક્કી કરેલ પ્રશુલ્ક,
- (થ) “ખરીદીનો જથ્થો” એટલે આ વિનિયમોમાં નિર્દિષ્ટ કર્યા પ્રમાણે નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળીની કુલ ખરીદીનો ટકાવારી હિસ્સો જથ્થો એટલે નવીકરણપાત્ર વીજળી સાધનો પર આધારિત વીજ-મથકોમાંથી તમામ સીધી ખરીદી અને નવીકરણપાત્ર વીજળી સાધનોમાંથી ઉત્પન્ન અન્ય કોઈપણ પરવાનેદાર પાસેથી કરેલી ખરીદીનો સરવાળો થશે.
- (દ) આ સંદર્ભમાં “ નવીકરણપાત્ર વીજળી સાધનો” એટલે બિનપરંપરાગત, નવીકરણપાત્ર વીજળી ઉત્પાદન સાધનો, જેમકે મીની માઈક્રો હાઈડલ, પવન, સૌર્ય, બાયોમાસ અને બાયોગેસ આધારિત સહ-ઉત્પાદન, શહેરી/મ્યુનિસિપલ કચરો અથવા આ બીજાં સાધનો (જે સામાન્ય રીતે) જે વપરાઈ જતાં નથી અને ટૂંકા સમયમાં ફરીથી ભરાઈ જાય છે તેવાં નવીન અને નવીકરણપાત્ર ઉર્જા મંત્રાલય, ભારત સરકાર અથવા ગુજરાત રાજ્ય દ્વારા મંજૂર કર્યા મુજબનાં સાધનો :
- (ધ) “રાજ્ય” એટલે ગુજરાત રાજ્ય
- (ભ) “રાજ્ય સંસ્થા” એટલે નવીકરણપાત્ર વીજળી પરિયોજનાઓમાંથી નોંધણી માટે માન્યતા આપવા અને ભલામણ કરવા અને વિનિયમો હેઠળ કાર્યો હાથ ધરવાં સંસ્થા તરીકે કામ કરવા આયોગ દ્વારા નામ નિર્દિષ્ટ ગુજરાત રાજ્યની સંસ્થા,
- (પ) વીજળીના સંબંધમાં “પુરવઠા” એટલે પરવાનેદાર કે ગ્રાહકને વીજળીનું વેચાણ
- (ફ) “વર્ષ” એટલે નાણાંકીય વર્ષ.

આ વિનિયમોમાં વપરાયેલ અને વ્યાખ્યા ન અપાયેલ, પરંતુ અધિનિયમમાં વ્યાખ્યા અપાયેલ શબ્દો અને શબ્દપ્રયોગોને અર્થ અધિનિયમોમાં તેને માટે નિર્દિષ્ટ કરાયેલ અર્થ રહેશે. અહીં વપરાયેલ પરંતુ વિનિયમો કે અધિનિયમોમાં વ્યાખ્યાની ન અપાયેલ પરંતુ સક્ષમ વિધાનસભા દ્વારા પસાર કરાયેલ કોઈપણ કાયદા હેઠળ વ્યાખ્યા કરાયેલ અને રાજ્યમાં વીજળી ઉદ્યોગને લાગુ પડતા શબ્દપ્રયોગોનો અર્થ આવા કાયદામાં નિર્દિષ્ટ કરાયા મુજબનો અર્થ રહેશે. અહીં વપરાયેલ પરંતુ

વિનિયમો કે અધિનિયમો કે સક્ષમ વિધાનસભાએ પસાર કરેલ કાયદામાં ખાસ વ્યાખ્યા ન અપાઈ હોય તેવા શબ્દપ્રયોગોનો અર્થ, વીજળી ઉદ્યોગના સામાન્ય તથા નિર્દિષ્ટ હોય તે મુજબનો રહેશે.

૨.૨ અર્થઘટન :

સંદર્ભથી અન્યથા જરૂરી હોય તે સિવાય આ વિનિયમોનું અર્થઘટન નીચે પ્રમાણે થશે.

- ક યથાપ્રસંગ એકવચન કે બહુવચન શબ્દોમાં, અનુક્રમે બહુવચન કે એકવચન શબ્દોનો સમાવેશ થતો હોવાનું ગણવામાં આવશે.
- ખ “સમાવિષ્ટ” અથવા “સહિત” શબ્દો, આવા શબ્દો પછી આયાત જેવા શબ્દો કે વાક્યાંશો આવે કે કેમ તે લક્ષમાં લીધા વિના “મર્યાદા રહિત” અથવા “તેટલા પૂરતું મર્યાદિત નથી” એમ આવતા હોવાનું ગણવામાં આવશે.
- ગ “વિનિયમો” ને લગતા અહીં આપેલા સંદર્ભોના અર્થ, અમલમાં હોય તે કાયદા અનુસાર આયોગ દ્વારા વખતોવખત ફેરફાર કે સુધારો કરાય તે પ્રમાણે આ વિનિયમોને લગતા સંદર્ભ તરીકે કરવામાં આવશે.
- ઘ શીર્ષકો અનુકૂળતા માટે આપ્યા છે અને તેને આ વિનિયમોના અર્થઘટનના હેતુ માટે વિચારણામાં લઈ શકાશે નહીં.
- ચ કાનૂનો, વિનિયમો કે માર્ગદર્શક સૂચનાઓને લગતા સંદર્ભો, યથાપ્રસંગ આવા કાનૂનો, વિનિયમો કે માર્ગદર્શક સૂચનાઓને એકત્રિત કરતી, સુધારણા કરતી કે ફેરબદલી કરવી વૈધાનિક જોગવાઈઓનો સમાવેશ કરતા હોવાનું ગણાશે.

૩. નવીકરણપાત્ર ખરીદી જવાબદારીની પ્રયોજ્યતા :

આ વિનિયમો લાગુ પડશે.

(૧) વિતરણ પરવાનેદાર

- (૨) (૧) પ મે.વો. અને તેથી વધુ ક્ષમતા ધરાવતા પરંપરાગત કેપ્ટિવ વીજ ઉત્પાદન પ્લાન્ટમાંથી તેના પોતાના ઉપયોગ માટે ઉત્પાદિત અને/અથવા (૨) ખુલ્લા પ્રવેશથી અને ત્રીજા પક્ષકારના વેચાણ મારફત પરંપરાગત વીજ ઉત્પાદનમાંથી મેળવેલ વીજળીનો વપરાશ કરનાર બીજી કોઈપણ વ્યક્તિ

૪. નવીકરણપાત્ર વીજળી ખરીદીના જથ્થાની જવાબદારી :

- ૪.૧ દરેક વિતરણ પરવાનેદાર, વર્ષ દરમિયાન પ્રવાહન અને વિતરણ ઘટ સહિત તેના વપરાશકારોના કુલ વપરાશથી નિયત ન્યૂનતમ ટકાવારીએ, નવીકરણપાત્ર ઊર્જા સાધનોમાંથી વીજળી (કિ. વો. કલાકમાં) ની ખરીદી કરશે.

તે જ પ્રમાણે, કેપ્ટિવ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહકો વર્ષ દરમિયાન તેની/તેણીની નિયત ન્યૂનતમ ટકાવારીએ નવીકરણપાત્ર ઊર્જા સાધનોમાંથી વીજળીની (કિ. વો. કલાકમાં) ખરીદી કરશે.

નિયત ન્યૂનતમ ટકાવારી કોઠા -૧ માં નીચે દર્શાવી છે.

કોઠો-૧

વર્ષ	નવીકરણપાત્ર ઊર્જા સાધનોમાંથી ખરીદીને (૦ % માં) ન્યૂનતમ જથ્થો (કિ. વો. કલાકમાં)			
	કુલ	પવન	સૌર્ય	બાયોમાસ, બાયોગેસ અને અન્ય
૧.	૨.	૩.	૪.	૫.
૨૦૧૦-૧૧	૫ %	૪.૫ %	૦.૨૫ %	૦.૨૫ %
૨૦૧૧-૧૨	૬ %	૫.૦ %	૦.૫ %	૦.૫ %
૨૦૧૨-૧૩	૭ %	૫.૫ %	૧.૦ %	૦.૫ %

ચોક્કસ વર્ષમાં સૌર્ય અને અન્ય નવીકરણપાત્ર ઊર્જા સાધનોમાંથી ખરીદીનો ઉપર્યુક્ત ન્યૂનતમ જથ્થો ન મળી શકે તો પછી આવા કેસોમાં ખાના ૩ અને ૫ માં દર્શાવ્યા ઉપરાંત વધારાની પવન કે અન્ય ઊર્જાનો ખાના-૨ અનુસાર નવીકરણપાત્ર ખરીદીની જવાબદારી પરિપૂર્ણ કરવા ઉપયોગમાં લેવાશે.

પરંતુ આવી નવીકરણપાત્ર વીજળી ખરીદવાની જવાબદારીમાં સંબંધિત જવાબદારીવાળી હસ્તિ દ્વારા નવીકરણપાત્ર વીજળી સાધનોમાંથી કોઈ ખરીદી કરાય તો તેનો સમાવેશ થશે.

પરંતુ, વિતરણ પરવાનેદારોએ, નવીનીકરણપાત્ર વીજળી સાધનોથી ખરીદી માટે કરેલ વીજ ખરીદી સમજૂતિઓ અન્વયે વીજળીની ખરીદી, તેની વર્તમાન કાયદેસરતા રહે ત્યાં સુધી, આવી સમજૂતિઓ હેઠળની કુલ ખરીદી અહીં ઉપર નિર્દિષ્ટ કર્યા મુજબની ટકાવારી કરતાં વધી જાય તો પણ ચાલુ રહેશે.

૪.૨ આયોગ પરવાનેદારની વિનંતીથી આયોગ, સ્વયં, પુરવઠા અવરોધો તથા પરવાનેદારના કાબૂ બહારના અન્ય પરિબળો ધ્યાનમાં રાખીને આ વિનિયમોના ખંડ ૪.૧ અનુસાર વર્ષ માટે ટકાવારીના લક્ષ્યાંકમાં ફેરફાર કરી શકશે.

૪.૩ ૨૦૦૮-૧૦ ના નાણાકીય વર્ષ માટે આયોગના ૨૦૦૫ના જાહેરનામા નં. ૧૫ અન્વયે ૨૦૦૮-૦૯ ના વર્ષ માટે નિર્દિષ્ટ RPO લાગુ પડશે.

૪.૪ ૨૦૧૨-૧૩ના નાણાકીય વર્ષ માટે નિર્દિષ્ટ નવીકરણપાત્ર વીજ-ખરીદી જવાબદારી, આ અંગે આયોગ દ્વારા કોઈ ફેરફાર અમલમાં ન મૂકાય ત્યાં સુધી ૨૦૧૨-૧૩ પછી પણ ચાલુ રહેશે.

૫. કેન્દ્રીય આયોગ વિનિયમો અન્વયે પ્રમાણપત્ર :

૫.૧ આ વિનિયમોમાં સમાવિષ્ટ શરતોને અધીન રહીને, કેન્દ્રીય વીજળી નિયંત્રણ આયોગના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતા અને તે આપવા અંગેની શરતો) વિનિયમો ૨૦૧૦, નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ખરીદવાની જવાબદાર હસ્તિઓ માટે આ વિનિયમોમાં ઠરાવેલ આદેશાત્મક જવાબદારીઓ બજાવતા, કાયદેસર દસ્તાવેજ તરીકે ગણાશે.

પરંતુ જવાબદારી ધરાવનાર હસ્તિઓ પ્રમાણપત્રોથી ખરીદી દ્વારા નવીકરણપાત્ર ખરીદીની જવાબદારી પરિપૂર્ણ કરે તેવા કેસમાં, સૌર્ય સિવાય અન્ય નવીકરણપાત્ર વીજળી પર આધારિત ઉત્પાદનમાંથી વીજળી ખરીદવાની જવાબદારી, બિન-સૌર્ય, પ્રમાણપત્રમાંથી ખરીદી દ્વારા પરિપૂર્ણ કરી શકાશે અને નવીકરણપાત્ર વીજળી સાધન તરીકે સૌર્ય પર આધારિત ઉત્પાદનમાંથી વીજળીની ખરીદી માત્ર સૌર્ય પ્રમાણપત્ર ખરીદીને જ પરિપૂર્ણ કરી શકાશે. ચોક્કસ વર્ષમાં સૌર્ય પ્રમાણપત્રો ઉપલબ્ધ ન હોય તો આવા કેસોમાં, કોઠાના-૧ અનુસાર RPO ની પરિપૂર્ણતા માટે વધારાના બિન-સૌર્ય પ્રમાણપત્રો ખરીદવામાં આવશે.

૫.૨ આયોગ વખતોવખત આપે તેવા આદેશોને અધીન રહીને, જવાબદારીવાળી હસ્તિ, આ વિનિયમો અન્વયે નવીકરણપાત્ર ખરીદી જવાબદારી પરિપૂર્ણ કરવા પ્રમાણપત્રોની પ્રાપ્તિ કેન્દ્રીય વીજળી નિયંત્રણ આયોગ દ્વારા જાહેર કરાયેલ કેન્દ્રીય વીજળી નિયંત્રણ આયોગના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતા અને તે આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ સાથે સુસંગત રહીને કામ કરશે.

૫.૩ આ વિનિયમોના ખંડ ૫.૧ માં દર્શાવેલ કેન્દ્રીય આયોગના વિનિયમના સંદર્ભમાં જવાબદારીવાળી હસ્તિઓએ પાવર એક્ઝેન્જમાંથી ખરીદેલ પ્રમાણપત્રો, જવાબદારીવાળી હસ્તિઓ ખરીદીના ૧૫ દિવસની અંદર આયોગ પાસે અનામત મૂકશે.

૬. રાજ્ય સંસ્થા :

(ક) નવીકરણપાત્ર વીજળી પરિયોજનાઓની માન્યતા અને તેની ભલામણ કરવા અને આ વિનિયમો હેઠળ કાર્યો હાથ ધરવાં આયોગ રાજ્ય સંસ્થા તરીકે એક સંસ્થા નામ નિર્દિષ્ટ કરશે.

(ખ) રાજ્ય સંસ્થા, આયોગે આપેલા આદેશો અનુસાર કામ કરશે અને કેન્દ્રીય વીજળી નિયંત્રણ આયોગ (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતાઓ તે આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ ની જોગવાઈઓ અનુસાર કામ કરશે.

(ગ) રાજ્ય સંસ્થા, આયોગને, તેણે નિયત કરેલા ઢાંચામાં જવાબદારીવાળી હસ્તિ દ્વારા નવીકરણપાત્ર ખરીદી જવાબદારીના પાલન અંગેની સ્થિતિ દર ત્રણ મહિને રજૂ કરશે તથા નવીકરણપાત્ર ખરીદી જવાબદારીના પાલન માટે જરૂરી જણાય તો આયોગને યોગ્ય પગલાં સૂચવશે.

(ધ) આયોગ, આ વિનિયમો અન્વયે રાજ્ય સંસ્થાએ બજાવવાનાં કાર્યો માટે તેને ચૂકવવાપાત્ર વળતર અને ચાર્જ વખતો-વખત નક્કી કરશે.

૭. વિતરણ પરવાનેદાર :-

૭.૧ દરેક વિતરણ પરવાનેદાર, આયોગ જાહેર કરેલ વિનિયમો અનુસાર આગામી વર્ષ માટે, પ્રશુલ્ક/વાર્ષિક કામગીરી સમીક્ષા પીટિશનમાં નવીકરણપાત્ર વીજળી સાધનોમાંથી ખરીદીનો અંદાજ જથ્થો, તેની પૂરતી સાબિતી સાથે દર્શાવશે. ખરીદીનો અંદાજ જથ્થો, આગામી વર્ષ (વર્ષો) માટે મંજૂર કરેલ વીજળી ખરીદી જથ્થાના આ વિનિયમોના ખંડ ૪.૧ અનુસાર રહેશે. લાઈસન્સના વિસ્તારમાં ખરેખરો વપરાશ, આયોગે મંજૂર કર્યો હોય તે કરતાં જુદો હોય તેવા પ્રસંગે, ખંડ ૪.૧ અનુસાર નવીકરણપાત્ર ખરીદી જવાબદારીમાં ફેરફાર કર્યો હોવાનું ગણવામાં આવશે. વિતરણ પરવાનેદાર જવાબદારી પરિપૂર્ણ કરી શકે તેમ ન હોય તો, તે વર્ષના નિર્દિષ્ટ જથ્થાની ઘટ, આગામી વર્ષના નિર્દિષ્ટ જથ્થામાં ઉમેરવામાં આવશે. આમ છતાં નવીકરણપાત્ર વીજળી સાધનોમાંથી અતિશય ખરીદીની જમા-નોંધ આગામી વર્ષમાં સમાયોજિત કરાશે નહીં.

૭.૨ નવીકરણપાત્ર વીજળી સાધનોની પ્રાપ્યતા છતાં, વિતરણ પરવાનેદાર નવીકરણપાત્ર વીજળી સાધનોમાંથી ન્યૂનતમ જથ્થાની ખરીદી પરિપૂર્ણ કરવામાં નિષ્ફળ જાય તો તે આ વિનિયમોના ખંડ-૧ અનુસાર વળતર ચૂકવવા જવાબદાર બનશે.

૮. કેપિટલ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક (ગ્રાહકો) :-

૮.૧ ખંડ ૪.૧ માં દર્શાવેલ RPO નો જથ્થો, સરકારી રાજ્યપત્રમાં જાહેર કરાય તે તારીખથી કેપિટલ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહકો(કો) ને લાગુ પડશે.

૮.૨ દરેક કેપિટલ અને ખુલ્લા પ્રવેશના ગ્રાહક(કો)/વપરાશકર્તા(ઓ) અને, રાજ્ય સંસ્થાને ૩૦મી એપ્રિલ કે તે પહેલાં વાર્ષિક ધોરણે, RPO ની પરિપૂર્ણતા માટે નવીકરણપાત્ર સાધનોમાંથી વીજળીની ખરીદી અને વીજળીના કુલ વપરાશની કુલ વપરાશની જરૂરી વિગતો રજૂ કરવાની રહેશે.

૮.૩ કેપિટલ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક(ઓ), આ વિનિયમોના કોઠા-૧માં દર્શાવ્યા પ્રમાણે નવીકરણપાત્ર વીજળીની ખરીદી કરશે. કેપિટલ વપરાશકર્તા(ઓ) અને ખુલ્લા પ્રવેશના ગ્રાહક(કો) માપદંડ પરિપૂર્ણ ન કરી શકે તો, લક્ષ્યાંકિત જથ્થાની ઘટ માટે ખંડ-૧ અનુસાર નિયંત્રક ચાર્જની ચુકવણી કરવાની રહેશે.

૮.૪ કેપિટલ / ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક(કો) ઉપરના ખંડ-૬ માં જોગવાઈ કર્યા પ્રમાણે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર મારફત તેના RPO પરિપૂર્ણ કરી શકશે.

૯. કસૂરનાં પરિણામો :-

૯.૧ જવાબદાર હસ્તિ કોઈપણ વર્ષ દરમિયાન જોગવાઈ કર્યા પ્રમાણે નવીકરણપાત્ર ખરીદી જવાબદારી પરિપૂર્ણ ન કરે અને પ્રમાણપત્રો ન ખરીદે તો આયોગ જવાબદાર હસ્તિને ફરમાવી શકે કે તેણે ઉભા કરવાના જાળવવાના અલગ ફંડમાં, આયોગ RPO ના એકમોનાં ઘટને આધારે નક્કી કરે તેટલી રકમ અને કેન્દ્રીય આયોગ દ્વારા નક્કી કરાયેલ ફોરબેરેન્સ રકમ અનામત મૂકે.

પરંતુ આ રીતે ઉભા કરેલ ફંડનો ઉપયોગ, આંશિક પ્રમાણપત્રો ખરીદવા અને આંશિક નવીકરણપાત્ર વીજળી સાધનો પર આધારિત વીજ ઉત્પાદન મથકોમાંથી વીજળી ખાલી કરવા પ્રવાહન પૂર્વજરૂરી માળખું વિકસાવવા આયોગ ફરમાશે જે મુજબ કરશે.

પરંતુ જવાબદાર હસ્તિ, આયોગની પૂર્વમંજૂરી વિના ઉપરના અનુસંધાનમાં ઉભા કરેલ ફંડનો ઉપયોગ કરવાની સત્તા રહેશે નહીં.

પરંતુ આયોગ, ફંડની રકમમાંથી જવાબદારીને પરિપૂર્ણ કરવામાં પડેલી ઘટના પ્રમાણમાં પાવર એક્સચેન્જમાંથી જોઈતી સંખ્યાનાં પ્રમાણપત્રો મેળવતા રાજ્ય સંસ્થાના અધિકારીને સત્તા આપી શકે.

પરંતુ વિતરણ પરવાનેદાર, આદેશ આપ્યાના ૧૫ દિવસની અંદર આયોગ ફરમાવેલ રકમ અનામત મૂકવામાં નિષ્ફળ જાય તો તે લાઈસન્સની શરતનો ભંગ ગણાશે.

પરંતુ નવીકરણપાત્ર વીજળી સાધનો કે REC પાસેથી વીજળી ન મળવાને કારણે નવીકરણપાત્ર ખરીદી જવાબદારીનું પાલન કરવાના કોઈ સાચી મુશ્કેલી હોય તો, જવાબદાર હસ્તિ, બીજા વર્ષની પાલન જવાબદારી આગળ ખેંચવા આયોગનો સંપર્ક કરી શકશે.

પરંતુ વધુમાં, આયોગ પાલનની આવશ્યકતા આગળ ખેંચવાની સંમતિ આપી હોય ત્યાં ઉપર નિર્દિષ્ટ કરેલ નિયંત્રક ચાર્જની ચુકવણી અંગેની જવાબદારી લાગુ પડશે નહીં.

૧૦. ગ્રિડ જોડાણ :

૧૦.૧ સ્થાપિત શક્તિને લક્ષમાં લીધા વિના કોઈ વ્યક્તિ નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પન્ન કરતી હોય તો તેને, યથાપ્રસંગ કોઈપણ પરવાનેદારની પ્રવાહન સિસ્ટમ અને/અથવા વિતરણ સિસ્ટમ અથવા ગ્રિડમાં ખુલ્લો પ્રવેશ મળી રહેશે. આવી વ્યક્તિ પાસેથી અરજી મળતાં, પ્રવાહન જે વિતરણ પરવાનેદાર, નવીકરણપાત્ર વીજળી પરિયોજનામાંથી વાણિજ્યત સંચાલનની તારીખ પહેલાં, શક્ય હોય તેટલા પ્રમાણમાં યોગ્ય આંતર-જોડાણ પૂરું પાડશે. આવું આંતર-જોડાણ કર્યા બાદ ભારતીય માનક ગ્રિડ સંહિતા, રાજ્ય ગ્રિડ સંહિતા અને / અથવા કેન્દ્રીય વીજળી તંત્ર દ્વારા ઠરાવેલી રીતે પ્રમાણે ગ્રિડ જોડાણ ધોરણો અનુસરવાના રહેશે.

STU/SLDC/ પરવાનેદાર, નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળીનું વહન કરવા સમયસર ખુલ્લો પ્રવેશ પૂરો પાડવા સિસ્ટમને સંગીન કરવાના ઉત્તમ પ્રયત્નો કરશે.

૧૧. કોસ સબસીડી :-

નવીનકરણપાત્ર વીજળી સાધનોમાંથી ત્રીજા પક્ષકારના વેચાણને, આયોગના વખતોવખત નક્કી કરે કે કોસ સબસીડી સરચાર્જમાંથી મુક્ત રાખશે.

આમ છતાં, ખુલ્લા પ્રવેશ મારફત નવીકરણપાત્ર વીજળી સાધનોમાંથી પુરવઠા માટે (ત્રીજા પક્ષકારને વેચાણ) કોઈ બેન્કિંગ સુવિધા અપાશે નહીં. ૧૫ મિનિટમાં દરેક બ્લોક માટે વીજળી હિસાબ કરવા સક્ષમ ABT સુસંગત ઈન્ટરફેઝ મીટરીંગ સિસ્ટમ પુરવઠો તેમજ ઉપાડના એમ બંને સ્થળોએ પૂરી પડાશે.

ત્રીજા પક્ષકારને વેચાણ માટે, ૧૫ મિનિટના દરેક સમય બ્લોકમાં નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પાદનો, તે જ ૧૫ મિનિટના સમય બ્લોકમાં કેપ્ટિવ/ખુલ્લા પ્રવેશ વપરાશકર્તાના વપરાશ સામે મજરે આપવામાં આવશે.

૧૨. મુશ્કેલીઓ દૂર કરવાની સત્તા :-

૧૨.૧ આયોગ સ્વયં અથવા નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પન્ન કરનાર કોઈ વ્યક્તિ પાસેથી અથવા પરવાનેદાર કે કેપ્ટિવ વપરાશકર્તા કે ખુલ્લા પ્રવેશના ગ્રાહક પાસેથી અરજી મળ્યેથી આ વિનિયમોની સમીક્ષા, ઉમેરો, સુધારો કે ફેરફાર કરશે અને આ વિનિયમોની જોગવાઈઓ અમલી બનાવવામાં પડતી કોઈપણ મુશ્કેલીઓ દૂર કરવા યોગ્ય ઉદ્દેશો પસાર કરશે.

૧૩. રદ કરવું :-

૧૩.૧ તા. ૨૮ ઓક્ટોબર, ૨૦૦૮ નો અગાઉનો વિનિયમ નં. ૧૫ અહીં રદ કરવામાં આવે છે.

સ્થળ : અમદાવાદ

તારીખ : ૧૭ એપ્રિલ, ૨૦૧૦

સહી/-

સંજય નંદન અગ્રવાલ,

સચિવ

ગુજરાત વિદ્યુત નિયંત્રક આયોગ.

સરકારી મધ્યસ્થ મુદ્રણાલય, ગાંધીનગર.

Extra No. 344



सत्यमेव जयते

ANNEXURE - C

વાર્ષિક લવાજમનો દર રૂ. ૩૫૦૦/- ⁴¹

The Gujarat Government Gazette

EXTRAORDINARY

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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.

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

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

- =====
- THE HIGH COURT
OF GUJARAT
- 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)

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

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.

[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 RPPD 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.

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

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 factor 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

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

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.

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

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

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,

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

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

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

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:

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT
"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.

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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

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

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

3. xx xx

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 sub-section (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 particular 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,

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

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

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

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

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-submitting 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 APTEL in Appeal No.57 of 2009 in the matter of Century Rayon Ltd. vs. Maharashtra Electricity Regulatory Commission & 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.

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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.

(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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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

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)

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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

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
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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.

(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,

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.

(K.S.JHAVERI, J.)

(A.G.URAIZEE,J)

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**THE HIGH COURT
OF GUJARAT**

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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)

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.

Government Central Press, Gandhinagar



RELIANCE INDUSTRIES LIMITED

Expression of Interest

for

Procurement of Renewable Energy

Under Short Term basis

To

**Reliance Industries Limited, Hazira
Manufacturing Division**

And

**Reliance Industries Limited, Dahej
Manufacturing Division**

Reliance Industries Limited

Reliance Corporate Park, Thane-Belapur Road, Ghansoli, Navi Mumbai -
400701

Content

Expression of Interest

General Terms and Conditions

Annexures:

Annexure 1: Bidder Company Information and details of Source
of Power

Annexure 2: Price Bid Format

Annexure 3: Draft Power Purchase Agreement Term Sheet

Expression of Interest

1.0 Reliance Industries Limited (RIL), Navi Mumbai invites Expression Of Interest (EOI) for procurement of renewable energy from Generators, IPPs, CPPs & Traders having valid Inter/Intra State Trading License issued by the Central Electricity Regulatory Commission (CERC) or State Electricity Regulatory Commissions(SERC) for interstate and/or intrastate trading of energy for meeting its RPO.

2.0 The power will be supplied at following locations:

2.1 Reliance Industries Ltd, Hazira Manufacturing Division, Hazira, Gujarat.

2.2 Reliance Industries Ltd., Dahej Manufacturing Division, Dahej, Gujarat.

3.0 Details of power requirement is mentioned in the table below:

Quantum of Renewable (Solar/Non-Solar) Power for purchase at Delivery Points:

Period	Duration	Solar (MW)	Non-Solar (MW)
1 st February 2019 to 31 st March 2019	To be specified	55	150

4.0 Bid submission Details:

1.	EOI Submission Address	Kind Attn.: Shri Ashok Singh Block 7B, Second Floor, Reliance Corporate Park, Thane-Belapur Road, Ghansoli, Navi Mumbai - 400701
2.	Email address for EOI submission	Ashok3.Singh@ril.com
3.	Last date for submission of Bids	21 st January, 2018, 16:00 Hours
4.	Date of opening of price bid	21 st January, 2018, 17:00 Hours

- 5.0 RIL reserves the right to increase/decrease the quantum mentioned in the above table as per its requirement before placing the LOA to successful bidder(s).
- 6.0 Bids, in requisite formats, should reach the mentioned address or to the mentioned E-Mail ID on or before the last date of Bid submission.
- 7.0 RIL reserves the right to reject any or all bids or to accept any bid in full or in part, as may be decided by RIL, without assigning any reason whatsoever.

General Terms and Conditions

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1. Introduction:

RIL is in the business of Refinery, Petrochemicals, Telecom and Retails. RIL is having two of its manufacturing Plants in Hazira and Dahej. RIL is inviting EOI from Generators, IPPs, CPPs & Traders having valid Inter State/Intrastate Trading License issued by CERC/SERCs for trading of energy for supply of Renewable Energy for meeting its RPO requirements at the two plants.

2. Renewable Energy Requirement:

2.1 RIL requires the Renewable Power (Solar and Non-Solar) at both the locations as per details provided below:

Period	Duration	Solar (MW)	Non-Solar (MW)
1 st February 2019 to 31 st March 2019	To be specified	55	150

3. Delivery Points:

3.1 For Hazira Manufacturing Division (HMD), the Delivery Point shall be HMD CCPP, ex-bus connected to 220 KV Gujarat Energy Transmission Company (GETCO), the State Transmission Utility (STU) of Gujarat, network.

3.2 For Dahej Manufacturing Division (DMD), the Delivery Point shall DMD CCPP, ex-bus connected to 220 KV GETCO network.

4. Bid Requirements:

4.1 All bidders must provide the details of source of power in the prescribed formats.

4.2 Offers from traders duly accompanied by details of the respective source(s) and confirmation from Generators shall only be considered.

4.3 The Traders submitting bids should have a valid license from the CERC or SERC for Inter-State/Intra-State trading of Electricity. The trader is also required to submit a photocopy of the same along with the bid.

4.4 The Bidders shall indicate the quantum (MW) which it is ready to supply at delivery point. The bidder is required to bid for a minimum of 10 (Ten) MW for Solar or 25 (Twenty-Five) MW for Non-Solar, otherwise its bid may be liable to be rejected.

4.5 The Bids shall be valid for at least 30 days from the last date of submission. The Bid validity may be extended further by the Bidders, at their own discretion, based on request from RIL.

5. Price Bid submission

5.1 The Bidder shall quote the Price Bid (in Rs./kWh) for the energy to be supplied at Delivery Points in the prescribed Formats only. The price bids not submitted as per the format are liable to be rejected by RIL.

5.2 The Price Bid should be on firm basis only and there shall be no change in the Price during the contractual period.

5.3 The Price Bid shall be inclusive of all Open Access charges such as transmission charges (POC Injection & Withdrawal charges), transmission losses (POC Injection & Withdrawal losses), Gujarat STU Charges & Losses, RLDC/SLDC charges, application/concurrence charges, or any other charges covered under Open Access Regulations notified by Central//Gujarat Electricity Regulatory Commission (CERC//GERC) and the procedure for Open Access stipulated by the Central/State Transmission Utility (CTU/STU) (as amended up to date), including GST, if any, applicable on such charges.

5.4 The Price Bid shall be exclusive of any taxes and levies such as Electricity Duty, Cross-subsidy surcharge, and Additional Surcharge.

5.5 RIL shall not be liable to pay any other charges up to delivery point except for the charges of energy delivered at Delivery Points and except for the charges as specifically agreed by RIL in this document.

5.6 Energy charge to be paid by RIL shall be based on the actual Scheduled Energy as approved by the Gujarat SLDC. Bidder will be responsible for any Deviation and the resultant settlement with SLDC/RLDC.

5.7 If the Price Bid is conditional with any deviation to the terms and conditions herein, RIL reserves the right to accept or reject such Price Bid without assigning any reasons thereof.

6. Open Access and Scheduling

Successful bidder(s) shall be responsible for getting all the requisite Open Access permissions as per the latest open access Regulations/Guidelines in vogue and will be responsible for day to day scheduling of the energy.

7. Bid Evaluation

7.1 All the Bids which are meeting the minimum requirement of power supply shall be considered further.

7.2 Bids which are not submitted as per the requisite formats and / or not in line with the major terms and conditions as per this documents, are liable to be rejected.

7.3 RIL may select one or more Bidder as Selected Bidder(s) for the supply of Power at agreed Power and for agreed quantum.

7.4 RIL may reject any or all the Bids, without assigning any reasons thereof.

8. Letter of Award (LOA):

RIL will issue an LOA, as per the mutually agreed tariff and terms & conditions, to the successful bidder(s) as soon as the successful bidders are decided.

9. Power Purchase Agreement (PPA):

The successful bidder(s) shall have to enter into a Power Purchase Agreement(PPA) with mentioned Terms and Conditions of this document and as per annexed Draft PPA Term Sheet, unless otherwise agreed by both parties, within 15 (fifteen) days from the date of LOA.

10. Disclaimer:

This document shall not be construed as an offer and RIL shall not be bound to purchase energy from any bidder pursuant to this document. RIL reserves the right to modify or withdraw from the process initiated by it. RIL also reserves the right to reject any or all bids, or any portion of a specific bid without assigning any reasons thereof. RIL reserves the right to enter into PPA with one or more of the bidders. RIL assumes no obligation to provide a reason for rejection of a bidders' bid in full or in part.

Annexure – 1

Bidder Company Information and Power Source details

1. Name of Bidder:
2. Whether Generator / Trader / Any other:
3. Complete Address of the Bidder
4. Contact Person Details:
 - a. Full Name
 - b. Email
 - c. Contact Numbers: Office no - _____ Mobile no- _____
5. Source of Power
 - a. Plant Name
 - b. Location(s)
 - c. Capacity
 - d. Ownership of Plant
 - e. Connectivity with Grid (Voltage Level and connectivity level at STU/CTU/Discom
6. Please attach following documents:
 - a. Certification of Incorporation
 - b. Copy of Trading License, if applicable
 - c. Copy of PAN card
 - d. Copy of GST certificate.

Signature of the Authorized Representative with Company Seal

Name : _____

Designation: _____

Annexure – 2
Price Bid Format

169

Sr No	Particular	Value
1	Solar Energy	
1.1	Quantum at Delivery Point (MW)	
1.2	Source (Location)	
1.3	Period	
1.4	PLF	
1.5	Total Monthly Units (Mus)	
1.6	Price (Rs/kWh)	
2	Non-Solar Energy	
2.1	Quantum at Delivery Point (MW)	
2.2	Source (Location)	
2.3	Period	
2.4	PLF	
2.5	Total Monthly Units (Mus)	
2.6	Price (Rs/kWh)	

Note:

1. Rates at Delivery Points shall include trader margin and all applicable Open access charges.
2. Price shall be firm for the quoted period and shall not be subjected to change due to any reason.

Signature of the Authorized Representative with Company Seal

Name: _____

Designation: _____

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 .

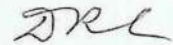
Sir,

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.

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/-



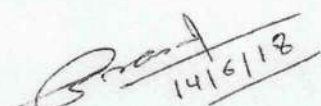
- 2 -

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)

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

Sirram 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.

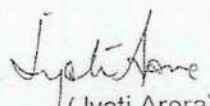
4.0 Now, in view of the above provisions and in order to achieve the target of 1,75,000 MW of renewable capacity by March, 2022, the Ministry of Power in consultation with

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)

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Nandish Y. Chudgar +91-9825016498
Pranit K. Nanavati +91-9879106229
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Gujarat High Court Chamber Nos.:
209 and 230
Telefax: +91-79-27663980,
27660692

NA/KDG/5888/2019

12.09.2019

To,
The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE,
Road 5C, Zone 5,
GIFT City,
Gandhinagar - 382355,
Gujarat, India.

Subject: Petition Nos. 1792 of 2019 and 1781 of 2019

Sir,

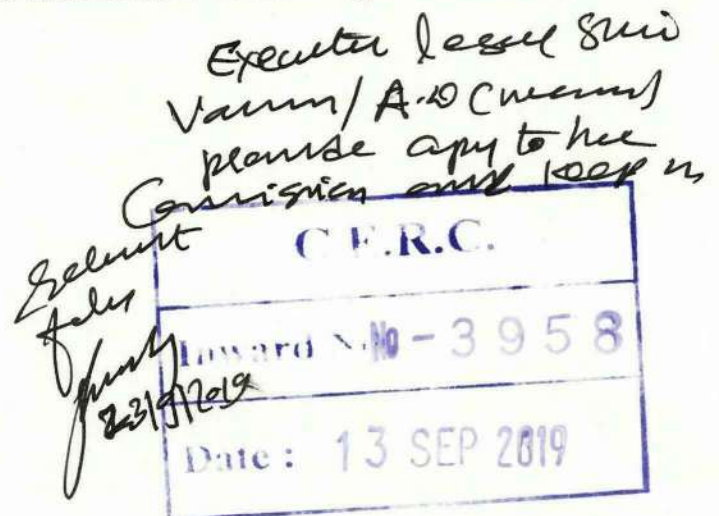
1. We represent our clients M/s. Reliance Industries Limited, i.e., the Petitioner in the captioned petitions, which are pending adjudication before this Hon'ble Commission.
2. The captioned petitions are listed for hearing on 16.09.2019 before this Hon'ble Commission. Since there is difficulty on part of the Ld. Senior Advocate for the Petitioner to appear, we request the Hon'ble Commission to adjourn the captioned Petitions on any other day as per convenience of this Hon'ble Commission.

We request this Hon'ble Commission to do the needful in this regard and oblige.

Yours faithfully,

For, M/s. Nanavati Associates,

For *Nisarg Desai*
Keyur D. Gandhi
Advocate



*Ok
Vann
13/09/19*

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Email: surat@nanavatiassociates.com

Gujarat High Court Chamber Nos.:
209 and 230
Telefax: +91-79-27663980,
27660692

No. NA/NMD/6911/2020

To,
The Secretary,
The Hon'ble Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar 382 355

July 17, 2020

Sub: - Regarding listing of Petition nos. 1781 of 2019 and 1792 of 2019

Dear Sir,

1. This is with regard to the captioned Petitions nos. 1781 and 1792 of 2019 filed by our client Reliance Industries Ltd. i.e., the Petitioner before this Honorable Commission praying for rolling over of RPO for the years 2017-18 and 2018-2019. Petition no. 1781 of 2019 was filed on 11.02.2019 and Petition no. 1792 of 2019 was filed on 16.03.2019. The Petitioner had also filed an Interlocutory Application on 04.10.2019 praying for amendment in the Petition no. 1792 of 2019. The Hon'ble Commission, vide letter dated 21.10.2019, had also directed the Petitioners to cure certain deficiencies, which were cured by the Petitioner vide its letter dated 24.10.2019.
2. The captioned Petitions were lastly listed for hearing before the Hon'ble Commission on 16.09.2019. Thereafter, the Petitions have not been listed for hearing.

3. The Petitions were filed in 2019 and are yet to be heard for Admission by the Hon'ble Commission, while the prayers prayed for in the Petitions are for roll over of RPO for the years 2017-18 and 2018-19.
4. In view of the abovementioned facts and circumstances, we request this Hon'ble Commission to list the captioned Petitions along with I.A. in Petition no. 1792 of 2019 for hearing, at the earliest possible date and oblige.

For Nanavati Associates,



Nisarg M. Desai
Advocate

1792/2019 ← 178
1781/2019 354

Subject: Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792
Date: Sunday, 16 August 2020 at 5:03:37 PM India Standard Time
From: Wasim Ansari <wasim@gercin.org>
To: Varun Gupta <varun@gercin.org>
Attachments: LETTTER TO GERC PETITION 1781 AND 1792.pdf

FNA.

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From: GERC <gerc@gercin.org>
Sent: Friday, August 14, 2020 5:24:09 PM
To: Wasim Ansari <wasim@gercin.org>; P.J.Jani <dydirlegal@gercin.org>
Subject: Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

For kind perusal please
- Hon'ble Chairman Sir
- Hon'ble Member Sir
- Hon'ble Member Sir
- Hon'ble Secretary Sir
Varun
19/08/2020

GERC

From: DB Shah <DB.Shah@ril.com>
Sent: Friday, August 14, 2020 5:09:42 PM
To: GERC <gerc@gercin.org>; D. R. Parmar <drparmar@gercin.org>
Subject: Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

Dear Sirs,

We have submitted attached request letter for early listing for hearing of the subject petition please

Kindly do the needful pl

With best regards

Yours sincerely

DBShah

Legal
17/8
Process
PHE
18/08/2020

G.E.R.C.	
Inward No.	178-3019
Date :	17 AUG 2020

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From: Harsh Brahmabhatt <Harsh.Brahmbhatt@ril.com>
Sent: Friday, August 14, 2020 4:49:01 PM
To: DB Shah <DB.Shah@ril.com>; Anant Kapse <Anant.Kapse@ril.com>; Ashish B Shah <ashish.b.shah@ril.com>
Subject: FW: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

Regards.

From: Nisarg Desai <nisarg@nanavatiassociates.com>
Sent: Friday, August 14, 2020 4:32 PM
To: efilings@gercin.org
Subject: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.

Dear Sir,

Please find attached a letter requesting the Hon'ble Commission for the early listing of Petition nos. 1781

180 179
355
and 1792 of 2019.

With Kind Regards,

Nisarg M. Desai
Associate Partner
Nanavati Associates
M: +91-9879411067

"Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), are confidential and may be privileged. If you are not the intended recipient, you are hereby notified that any review, re-transmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return email and delete this message and any attachments from your system.

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Email: surat@nanavatiassociates.com

Gujarat High Court Chamber Nos.:

209 and 230

Telefax: +91-79-27663980

August 14, 2020

To,
The Secretary,
The Hon'ble Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar 382 355

Sub: - Request for listing of Petition nos. 1781 of 2019 and 1792 of 2019

Dear Sir,

1. This is with regard to the captioned Petitions nos. 1781 and 1792 of 2019 filed by our client Reliance Industries Ltd. i.e., the Petitioner before this Honorable Commission praying for rolling over of RPO for the years 2017-18 and 2018-2019. Petition no. 1781 of 2019 was filed on 11.02.2019 and Petition no. 1792 of 2019 was filed on 16.03.2019. The Petitioner had also filed an Interlocutory Application on 04.10.2019 praying for amendment in the Petition no. 1792 of 2019. The Hon'ble Commission, vide letter dated 21.10.2019, had also directed the Petitioners to cure certain deficiencies, which were cured by the Petitioner vide its letter dated 24.10.2019.
2. The captioned Petitions were lastly listed for hearing before the Hon'ble Commission on 16.09.2019. Thereafter, the Petitions have not been listed for hearing.
3. The Petitions were filed in 2019 and are yet to be heard for Admission by the Hon'ble Commission, while the prayers prayed for in the Petitions are for roll over of RPO for the years 2017-18 and 2018-19. We have also filed a request

357

184

NANAVATI ASSOCIATES

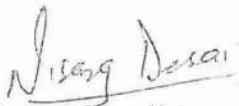
Advocates, Patent & Trade Mark Attorneys

Continuation Sheet

letter dated 17.07.2020 requesting the Hon'ble Commission to list the captioned Petitions along with IA for hearing at an earliest possible date.

4. In view of the abovementioned facts and circumstances, we once again request this Hon'ble Commission to list the captioned Petitions along with I.A. in Petition no. 1792 of 2019 for hearing, at the earliest possible date and oblige.

For Nanavati Associates,


for Keyur Gandhi
Advocate

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1792 OF 2019

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 16 day of March, 2022.

Nisarg Desai

Accepted
Contact Details for service:

Phone : +91-9925000763
Email: efiling@gandhilaw.in

for kind perusal pl
- Hon'ble Chairman
- Member
- Secretary

For, Reliance Industries Ltd.

Ashtish B Shah

Authorised Signatory

Client(s) Signature : _____
Name : _____
Designation : _____
Company Seal : _____



AD (Legal)/Exo (Legal)
Put on relevant files
31/03/2022

INWARD NO. - 1878
DATE : 30 MAR 2022

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1792 OF 2019

Reliance Industries Limited

.... Petitioners

Versus

.... Respondents

VAKALATNAMA

We, Reliance Industries Limited
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-
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)



Subject: Request for listing of Petition nos. 1781 and [✓]1792 of 2021 along with IAs

Date: Monday, 14 November 2022 at 7:44:59 PM India Standard Time

From: Nisarg Desai

To: Wasim Ansari

CC: P.J.Jani, GERC

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Dear Sir,

We refer to the captioned matters which were listed on 01.11.2022 by the Hon'ble Commission wherein the Petitioner has filed IAs for amendment.

In view of the fact that other Petitions of the Petitioner are listed on 24.11.2022 wherein Sr. Counsel Mr. Soparkar appears on behalf of the Petitioner, we request the Hon'ble Commission to also list the captioned Petition Nos. 1781 and 1792 of 2021 also on 24.11.2022, subject to convenience of the Hon'ble Commission.

--
Warm Regards,

Nisarg M. Desai
Partner
+91-98794 11067



GANDHI LAW ASSOCIATES
ADVOCATES AND SOLICITORS

AD (Legal) / Ex (Legal)
Prasad
15/11/2022

For kind perusal pl.

- Haikhe chairman
- " member
- " member
- Secretary

15/11/22

Legal
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GERC
Inward No - 6074
Date : 15 NOV 2022

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

PETITION NO. 1792 OF 2019

RELIANCE INDUSTRIES LIMITED

...PETITIONER

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G.E.R.C.
Inward No. = 4749
Date : 11 OCT 2023

Date: 10.10.2023

Place: Ahmedabad


For, Gandhi Law Associates

Advocates for Petitioner

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AMENDED MEMO OF PETITION

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

PETITION NO. 1792 OF 2019

IN THE MATTER OF:

Regulation 5 and Proviso 5 and 6 of Regulation
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 Address at:
"Vraj", Nr. Chandanbala Tower,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad-380 007

...Petitioner

MOST RESPECTFULLY SHEWETH THAT:

Preamble:-

1. The Petitioner is filing the present Application seeking appropriate directions under Proviso 5 and 6 of Regulation 9.1 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010 and also under Regulation 84 of GERC (Conduct

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of Business Regulations) in respect of - difficulty in complying with the renewable purchase obligation for its plants located at Dahej Manufacturing Division and Hazira Manufacturing Division, due to supply constraints and other factors beyond the control of Petitioner and to carry forward the compliance requirement of FY 2018-19 to the next year i.e. FY 2019-20.

BRIEF FACTUAL BACKGROUND: -

2. The Petitioner is in the business, inter alia, of producing 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 powers. In these power plants, which are liquid fluid or gas based, heat is cogenerated as a by-products or industrial waste and is harness for further power, steam generation and other industrial use. The Petitioner have 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, Petitioner has also installed Coal Based Captive Power Plants of 360 MW at Hazira and 270 MW at Dahej. The Petitioner's Captive Power Plants have all been recognised as co-generation plants by the appropriate Authorities under the Act.
3. The Petitioner states that on 14th January, 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 Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010.
4. On 17th April, 2010, this 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 "Regulations". Annexed hereto and marked as **Annexure-"B"** is a copy of the said Regulations.

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5. On 1st July, 2015, the Hon'ble Commission issued Notification No 2 of 2015 wherein the RPO was made applicable on captive users with effect from July 1, 2015. Hereto annexed and marked as **Annexure "C"** is a copy of the said notification.

6. The Petitioner states that the Regulation 5 inter alia provide 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) Regulations 2010. Regulation 5 of the CERC Regulations is quoted hereinbelow for ready reference:

"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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9.1

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.

7. 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 12th March, 2015, rejected the Petition filed by the Petitioner and other parties. Hereto annexed and marked as Annexure-"D" is a copy of Order dated 12th March, 2015 passed by Hon'ble High Court of Gujarat.

8. On 4th March, 2014, this Hon'ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014. By the said Regulations, this Hon'ble Commission specified the minimum

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quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016-17. 188

The Petitioner carves leave to refer to and rely upon the said Regulations at the time of hearing.

The Petitioner states that being aggrieved by the common judgment/ Order dated 12th March, 2015, the Petitioner filed Letters Patent Appeal before the Hon'ble High Court of Gujarat. In the said Appeal, the Petitioner had also filed a Civil Application No. 4804 of 2015 seeking stay of the impugned Judgment and Order dated 12th March, 2015. On 5th May, 2015, the Hon'ble High Court disposed of the said Application by passing following order:

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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."

Hereto annexed and marked as **Annexure-"E"** is a copy of Order dated 5th May, 2015 passed by the Hon'ble High Court of Gujarat.

10. The Petitioner states that CERC, vide Order dated 30th March, 2017 in Petition No. 99 of 2010) prescribed forbearance price and floor price for dealing in Renewable Energy Certificate ("REC") with effect from 1st April, 2017 under CERC (REC) Regulations, 2010. The CERC's Order dated 30th March, 2017 was challenged by the Green Energy Association and Indian Wind Power Association. Interim directions were passed by the Hon'ble Supreme Court vide order dated 8th May, 2017 and dated 14th July, 2017, *inter alia* directing that till the pendency of Appeal before Hon'ble APTEL, the difference between the earlier floor price and present floor price shall be deposited by the obligated entity with CERC.

11. Vide order 12th April, 2018, APTEL dismissed the Appeals and upheld the CERC's Order dated 30th March, 2017. Indian Wind Power Association had challenged the Order dated 12th April, 2018 by filing Civil Appeal (being Appeal No. 4801 of 2018) before Hon'ble Supreme Court. Vide Order dated 14th May, 2018, the Hon'ble Supreme Court had further clarified that the

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interim order will not apply to RECs issued on or after 1st April, 2017. The Petitioner craves leave to refer to and rely upon copies of the order passed by Hon'ble CERC, Hon'ble APTEL and Hon'ble Supreme Court as and when produced.

On 24th April, 2018, this Hon'ble Commission issued Gujarat Electricity Regulatory Commission (Procurement of Energy From Renewable Sources) (Second Amendment) Regulations, 2018. By the said Amendment it 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	Total

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	(%)	(%)	(Biomass, Bagasee, MSW andHydro) (%)	(%)
(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 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-"F"** is copy of Regulations.

13. The Petitioner's two petrochemical plants located at Dahej and Hazira in Gujarat are coal based captive power plants and steam generation plants. The below mentioned table shows the total power consumptions at these two plants during FY 2018-19:

Sr. No.	Plant	Power Consumption (MWH)
1.	Dahej Manufacturing Division	1,180,706
2.	Hazira Manufacturing Division	2,004,455
3.	Total	3,185,161

14. 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

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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 abovementioned plants mainly meet the renewable purchase obligation by procuring Renewable Energy Certificates (RECs) from the power exchanges.

15. The Petitioner states that the plants have purchased Solar and Non-solar REC certificates for the FY 2018- 19 in various months till date. However, it is stated that sufficient numbers of REC were not available for trading. The Petitioner states that till date only 15% of their Solar RPO and 70% of their Non Solar RPO has been met, this is due to the fact that only 14% of their Solar REC bids and 38% of their Non solar REC bids have been cleared. A detailed chart with respect to trading carried out by the Petitioner with respect to REC is as under:-

Details of REC Procurement during FY 2018-19

Sr. No.	Month	Solar Bid	Solar Cleared	Solar RPO	Unfulfilled Solar RPO	Non-Solar Bid	Non-Solar Cleared	Non-Solar Obligation	Unfulfilled Non-Solar RPO
1	Nov 18	50,887	20,203	1,35,369		1,58,598	37,734	2,69,146	
2	Dec 18	39,997				1,39,131	10,192		
3	Jan 18	52,012	-		1,15,166	2,03,076	1,14,902		
4	Total	1,42,896	20,203	1,35,369		5,00,805	1,88,828	2,69,146	80,318
5	% Cleared		14.1%	14.9%			37.7%	70.2%	

The Petitioner states that based on the REC market condition and the fact that Petitioner's REC bids were not getting cleared, in order to comply with the above Regulations, the Petitioner made an attempt to procure the Renewable Energy to meet its RPO target. The Petitioner had published its Expression of Interest to select developers/ traders. However, the Petitioner did not receive any response for supply of Renewable Energy for two months. Annexed hereto and marked as **Annexure-"G"** is a copy of the aforementioned Expression of Interest published by Petitioner.

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16. On 1st February, 2009, Ministry of Power (MOP) has issued a clarification in reference to its earlier orders dated 22nd July, 2016 and dated 14th June, 2018 regarding long term growth trajectory of RPOs from Years 2016-17 to 2021-22, which reads as follows:-

"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 2016-10 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."

Hereto annexed and marked as **Annexure-"H"** is copy of clarification dated 1st February, 2019. The Petitioner submits that in view of the aforesaid clarification, this Hon'ble Commission may have to consider to notify the RPO levels for Years 2016-17 to 2021-22.

17. The Petitioner states that they have filed a separate Petition (being Petition no.1781 of 2019) before this Hon'ble Commission seeking appropriate directions for roll-over of RPO compliance for the FY 2017- 2018 to FY 2018-19. The same is pending for hearing.

18. The Petitioner states that in the abovementioned circumstances during the FY 2018-19, Petitioner was unable to purchase the REC due to supply constraints and other factors beyond the control of Petitioner and non-availability of sufficient REC in the market.

SUBMISSIONS OF THE PETITIONER:

19. 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

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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 Non Solar and 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 (UPTO Jan-19)
1.	Opening balance REC	1,05,77,625	1,32,81,006	1,29,26,303	14,94,184
2.	Additional in REC	73,58,397	60,10,472	49,92,891	43,93,366
3.	REC sold	43,06,952	59,30,725	1,59,75,749	37,50,830
4.	REC Retained by Generator	3,48,064	4,34,450	4,49,261	3,91,902
5.	Closing balance REC (available)	1,32,81,006	1,29,26,303	14,94,184	17,44,818

b. Solar RECs

Sr. No.	Description	2015-16	2016-17	2017-18	2018-19 (upto Jan 19)
1.	Opening balance REC	15,99,598	33,10,962	49,08,376	59,98,101

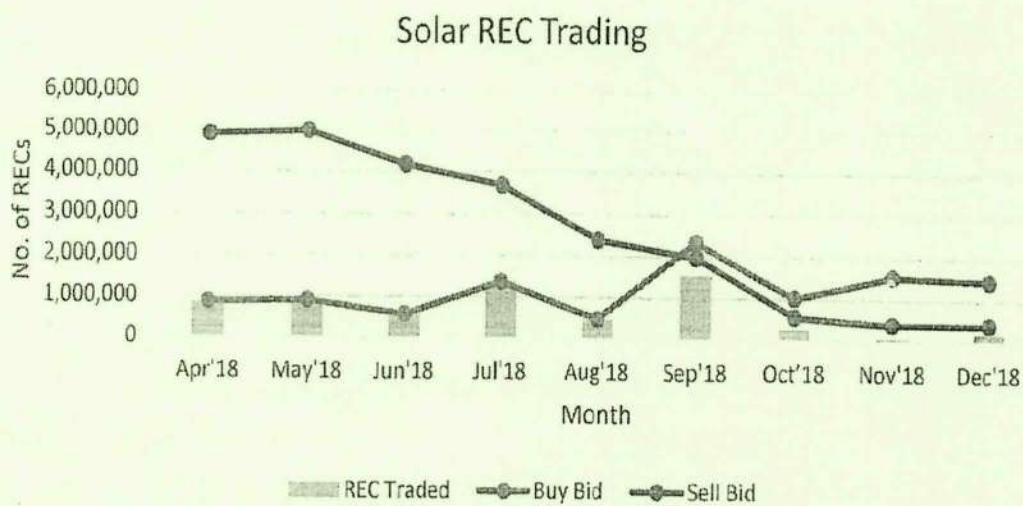
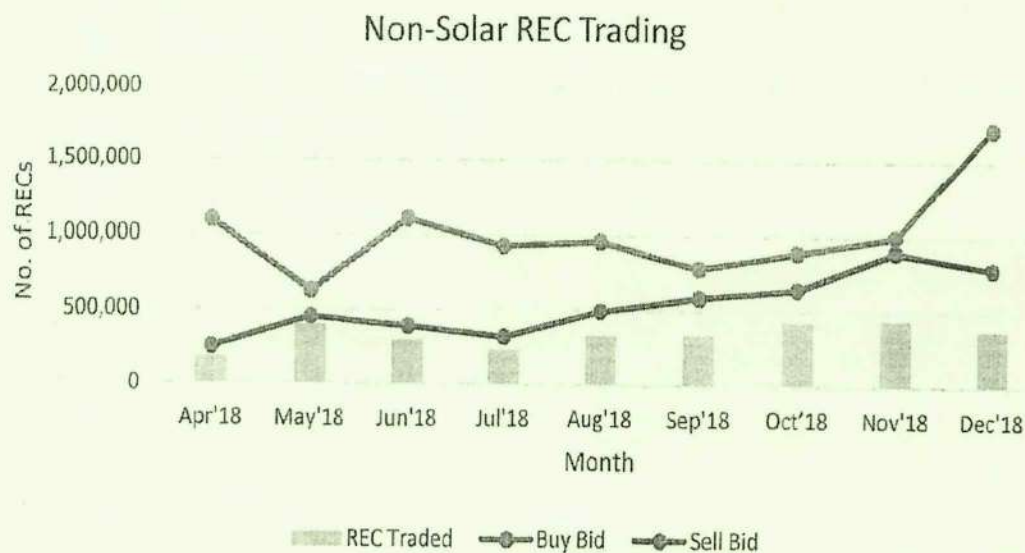
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2.	Additional in REC	23,75,443	21,85,291	13,33,925	9,47,496
3.	REC sold	6,48,201	5,57,014	2,08,402	64,39,355
4.	REC Retained by Generator	15,878	30,863	35,798	7,937
5.	Closing balance REC (available)	33,10,962	49,08,376	59,98,101	4,98,305

c. Buy and Sell volumes during April 2018 to January 2019:



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The Petitioner respectfully submits that there is significant drop in Solar REC Inventory by around 92% from around 60 Lakhs RECs in Apr'18 to around 5 Lakhs RECS in Jan'19 due to huge demand for RPO compliance. The Average Issuance of Solar REC in these months is approx. 90,000 Nos. of Solar REC against the average monthly demand of approx. 11,85,000 Nos. of Solar REC.

20. The Petitioner respectfully submits that in case of Non-Solar RECs, the inventory remained marginally constant throughout this year (approx. 18 lakhs). The average sell bid is approx. 5,40,000 RECs against buy bid during these months is 10,15,000 RECs. Sell bids are lower than buy bids and traded volume is almost similar to REC issued during the year. Even if, all the sell bids gets cleared still there will obligated entities who will not be in a position to fulfil their RPO obligation due to shortage of RECS.

21. The Petitioner respectfully submits that the 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.

22. 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)

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.*

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

23. The Petitioner submits that since matter related to RPO on Cogeneration captive plants is sub-judice and pending before the Hon'ble High Court of Gujarat, the Petitioner purchased Solar and Non Solar REC for its RPO on coal based power plants at its Hazira and Dahej facility, in compliance of RPO of FY 2018-19. Due to non-availability of sufficient Solar and Non Solar REC, the Petitioner is not able to get requisite number of RECs. Following table summarises the bid quantity, cleared quantity and total obligation:-

Sr. No.	Particular	RPO (MWH)	Cumulative Bid (MWH)	Cumulative Cleared (MWH)	% of RPO cleared	% Bid cleared
1	Solar	135369	142896	20203	15%	14%
2	Non Solar	269146	500805	188828	70%	38%

24. The Petitioner submits that there is not sufficient quantity 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 I of Second Amendment Regulations. However vice versa is not permitted i.e., if non-solar certificates are not available in a particular year, then additional solar certificates cannot be purchased for fulfilment of the RPO.

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25. The Petitioner respectfully submits to this Hon'ble Commission that non availability of Solar and Non Solar REC is a concern as stated in para 21 and hence request the Hon'ble Commission, on going 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 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."

However, similar amendment is not made in proviso of Regulation 5.1, whereby it is permitted to procure Non-Solar REC when Solar RECs are not available in order to fulfil RPO.

26. The Petitioner respectfully submits that this Hon'ble Commission 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."

27. Without prejudice to the aforesaid, the Petitioner submits that the RPO percentages are prescribed by this Hon'ble Commission in accordance with the long-term grown trajectory

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specified by the Ministry of Power vide orders dated 22nd July, 2016 and dated 14th June, 2018. In view of the clarification dated 1st February, 2019 issued by Ministry of Power, this Hon'ble Commission will have to notify RPO percentage for Captive Power Plants (CPPs) for the years 2016-17 to 2021-22 in accordance with the said clarification. In view of this, it is just, proper, in the interest of justice and to avoid multiplicity of proceedings that this Hon'ble Commission allows the Captive Power Plants (CPPs) including the Petitioner herein to roll over their RPO.

28. In the abovementioned circumstances, the Petitioner is humbly requesting Hon'ble Commission to allow Petitioner to roll over balance REC of the year 2018-19 to FY 2019-20 and to pass directions in that regards.

28 A. It is to state that on 01.02.2019, the Ministry of Power (MoP) 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 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.*"

Answered



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

28B. On 01st October, 2019, the Government of India through Ministry of Power issued further clarifications relating to Renewable Purchase Obligations. The letter dated 01st October, 2019 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.

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Annexed hereto and marked as **Annexure-“J”** is a copy of the letter dated 01.10.2019 of the Ministry of Power.

28C. The Petitioner submits that based on the aforesaid clarification dated 01.10.2019 of the MOP, the Odisha Electricity Regulatory Commission (hereinafter referred to as “OERC”) was pleased to issue Notification dated 31.12.2019 regarding capping of RPO. The OERC, in exercise of its power to remove difficulties was pleased to issue following directions:-

“ 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.”

Ansel



28D. The Petitioner submits that Rajasthan Electricity Regulatory Commission (hereinafter referred to as "RERC") to bring the Regulations in line with MOP clarifications considered it appropriate to modify the Regulations by way of making suitable amendments. RECR on 04.02.2020 was pleased to amend the Regulation 4 of the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) (Sixth Amendment) Regulation 2020 in view of the clarificatory order dated 01.10.2019. The Applicant craves leave to produce the aforesaid orders of OERC and RERC during the hearing before the Hon'ble Commission, as and when required.

28E. It may be noted that 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.

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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)

Hereto annexed and marked as Annexure-“K” is the copy of the Order dated 06.10.2020 passed by the Hon'ble MERC in Case No. 130 of 2020.

28 F. The Petitioner submits that as mentioned above, other State Regulatory Commissions have implemented the Ministry of Power's clarification with retrospective effect so as to cover the period prior to the current Regulations.”

PRAYER CLAUSE

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

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- (a) that this Hon'ble Commission be pleased to allow Petitioner to roll over balance RPO of the FY 2017-18 to FY 2018-19 or the FY in which this petition is disposed off, whichever is later;
- (b) that this Hon'ble Commission be pleased to allow Petitioner to use Solar REC to meet its obligation for Non Solar RPO and vice-versa for FY 2018-19;
- (b-1) Considering Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 for capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders and Draft Regulations to that effect published by GERC, it is requested to revise the RPO rate applicable for the CPPs in the Regulation 4 as per the GOI, Ministry of Power letter dated 01.10.2019 and the same is considered for present roll over request prayed in the captioned Petition;
- (b-2) That this Hon'ble Commission be pleased to revise the RPO targets for the FY 2017-2018;
- (c) any other order this Hon'ble Commission may deem fit in the matter.

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.

For, Reliance Industries Ltd.

Ashish B Shah
Authorised Signatory

DEPONENT



UNDERTAKING

We, Advocates for Petitioner, have filed IA being IA no. 30 of 2022 before the Hon'ble Commission for seeking Amendment under the Para 28 and Para 29 of the Petition which has been allowed by Hon'ble Commission during the hearing of the matter on 25.09.2023 and vide Order dated 30.09.2023.

We undertake that all the other averments except the amendment under Para 28 and Para 29 of the Petition are as per the Original Petition.

For, Reliance Industries Ltd.

Ashtish L B Shah
Authorised Signatory

DEPONENT

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JUN 10 1964

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,**GANDHINAGAR****PETITION NO. 1792 OF 2019**

IN THE MATTER OF:

Regulation 5 and Proviso 5 and 6 of Regulation 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

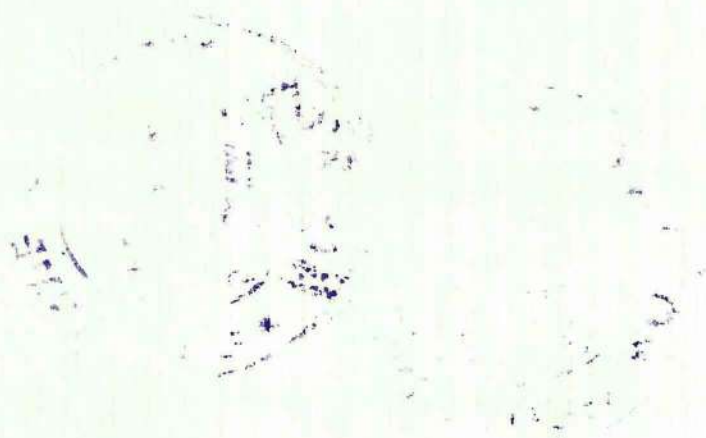
...Petitioner

AFFIDAVIT VERIFYING THE AMENDED PETITION

I, Ashish Shah S/o Late Balchandra Shah, Adult, residing at Ahmedabad, do solemnly affirm and
say as follows;

1. I am Senior General Manager of Reliance Industries Ltd., the Petitioner Company herein
and I have read the Amended Petition pertaining to the above case and I am competent and
duly authorized by the Petitioner Company to make this Affidavit to Amended Petition.
2. The Petitioner Company in compliance of the Order dated 30.09.2023 in IA no. 30 of 2022
passed by the Hon'ble Commission has carried the Amendment under the Para 28 and Para
29 of the Petition as allowed by Hon'ble Commission.

Ashish Shah



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Solemnly affirmed at Ahmedabad on ____ day of October 2023, that the contents of the above Amended Petition are true to my knowledge and belief (as derived from the records) based on the 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

INDETIFIED BY ME
[Signature]
ADVOCATE / CLERK

SR.NO. 106547 2023
SOLEMNLY AFFIRMED
BEFORE ME
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D.H.SADHWANI NOTARY
DATE 10-10-2023

