

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 24 of 2021
Date of Order: 28.09.2021

Petition under Regulation 68 to 72 of Chapter XIII and other relevant provisions of the Conduct of Business Regulations, 2005 as amended up to date and Regulation 7 to 10 of PSERC (RPO and its compliance) Regulations, 2011 as amended up to date and other relevant rules and regulations as approved by the Commission for granting exemption from the renewable purchase obligation (RPO) to the petitioner with regard to the power generated and consumed by the petitioner using coal as fuel from its dual fuel based fully captive-cum-co-generation power plants set up by the petitioner at its paper mill at Hoshiarpur, in terms of the judgment dated 09.04.2019 passed by Hon'ble APTEL.

AND

In the matter of: Kuantum Papers Limited, Village – Saila Khurd,
District Hoshiarpur.

...Petitioner

Vs

1. Punjab State Power Corporation Ltd. (PSPCL),
The Mall, Patiala.
2. Punjab Energy Development Agency (PEDA),
Sector 33D, Chandigarh.

...Respondents

Present: Mr. Viswajeet Khanna, Chairperson
Ms. Anjali Chandra, Member
Mr. Paramjeet Singh, Member

ORDER

1. The Petitioner has filed the present petition seeking grant of exemption from the RPO with regard to the power generated and

consumed from its dual fuel based fully captive-cum-cogeneration power plants. The submissions made by the petitioner in brief are as under:

- a) That the petitioner is a Large Supply Industrial Consumer of PSPCL and in order to ensure uninterrupted steam and power availability in its factory, has set up 3 fully captive-cum-cogeneration power plants, which can be run on the dual fuel i.e. coal or renewable fuel (rice husk, reject of paddy etc.) or mixture of the two as per their availability and viability.
- b) That the Commission, vide the PSERC (RPO and its compliance) (Amendment-1) Regulations, 2015 has specified the 'Captive user(s)' of the electricity generated in a Captive Generating Plant as an 'obligated entity' to fulfil the RPO.
- c) That the issue of imposition of RPO on captive cogenerating plants using fuels other than renewable sources was brought under challenge by M/s Ultratech Cement Ltd. in Appeal No. 322 of 2016 and M/s JSW Steels Ltd. in Appeal No. 333 of 2016 before Hon'ble APTEL. The matter was decided by Hon'ble APTEL vide its judgment dated 09.04.2019, whereby exemption of RPO on cogeneration plant being run on conventional fuel has been allowed.
- d) That the petitioner approached the Commission vide its letter dated 14.10.2019 with request to decide the issue with regard to the compliance of RPO for conventional fuel based fully captive-cum- cogeneration with reference to Hon'ble APTEL judgment. The Commission vide its letter

dated 17.02.2020 informed the petitioner to approach PSPCL and in case the matter remains unresolved, they are at liberty to approach the Commission.

- e) That the petitioner vide letter dated 05.03.2020 approached PSPCL seeking exemption from RPO with reference to Hon'ble APTEL judgment. The meeting of the coordination committee of PSPCL and PEDDA was held on 17.11.2020 wherein it was decided as under:

“.....exemption in RPO and its compliance fall under purview of State Regulatory Commission. Also requisite amendments including eligibility criteria for declaring such plants as complying with co-gen cycle need to be carried out in the RPO Regulations, 2011 notified by the Hon'ble State Commission before adopting the Hon'ble APTEL Judgment dated 09.04.2019 in the state of Punjab.....In view of the above, the Committee decided that the M/s Khanna Paper Mills Limited and Kwantum Papers Limited be advised to file a Petition in PSERC for grant of exemptions from RPO compliance in view of the orders of Hon'ble APTEL...”

- f) Accordingly, the petitioner is constrained to file the present petition. It is pertinent to mention that in terms of the meeting of the Coordination Committee consisting of the officials of PEDDA and PSPCL, none of the parties have objected or have disputed the admissibility of exemption of RPO to the petitioner.
- g) That, in light of the above it is prayed to:
- i) Grant exemption from the RPO to the petitioner with regard to the power generated with coal as fuel and consumed by the petitioner from dual fuel based fully captive-cum-co-generation power plants set up by the

petitioner at its paper Mill at Hoshiarpur, in terms of the judgment dated 09.04.2019 passed by Hon'ble APTEL.

ii) Carry out the necessary amendment in the prevailing RPO regulations, required, if any, for rendering exemption from the RPO to the petitioner from the date of notification i.e. 03.06.2011 with regard to the power generated using coal as fuel and consumed by the petitioner from dual fuel based fully captive-cum-cogeneration set up by the petitioner at its paper Mill at Hoshiarpur, in terms of the judgment dated 09.04.2019 passed by Hon'ble APTEL.

2. PEDDA vide its reply dated 10.05.2021 has submitted that:
- a) As per the prevailing PSERC (RPO & its compliance) Regulations, 2011 there is no provision of granting benefit of RPO for dual fuel usage. The petitioner falls under the definition of obligated entity and is required to comply with the RPO for power consumed from its dual fuel (including coal) based power plant until an exemption is granted or RPO Regulations are amended.
 - b) The coordination committee has categorically stated that the matter does not fall under the domain of the Committee and rendering exemption is the prerogative of the Commission.

3. The petition was admitted vide Commission's Order dated 17.05.2021 with directions that PSPCL and PEDDA may file their respective reply to the petition by 26.05.2021 and petitioner may file rejoinder, if any, by 02.06.2021.

4. PSPCL filed its reply vide letter dated 27.05.2021. The submissions relevant to the prayer made in the petition are as under:

- a) PSPCL does not dispute the position of law laid down by Hon'ble APTEL in its judgment dated 09.04.2019 in Appeal No. 322 of 2016 and 333 of 2016.
- b) The PSERC (RPO & its compliance) Regulations, 2011 have not been amended to reflect the exemption sought by petitioner. PSERC may consider whether the exemption is to be granted from the fulfillment of RPO.
- c) The petitioner needs to provide the details to demonstrate that its generating plants are cogeneration plants.

5. The petitioner filed its rejoinder dated 04.06.2021, to the reply of PSPCL, submitting as under:

- a) That its prayer is only with regard to grant of exemption of RPO compliance for its cogeneration plants irrespective of the fuel used and there is no prayer in its petition related to CPP on capping of the RPO.
- b) The petitioner agrees to the submission of PSPCL that it is the prerogative of PSERC to issue amendment in the RPO Regulations.
- c) The petitioner meets the eligibility criteria of a cogeneration plant and enclosed a certificate from Chartered Engineer demonstrating the fulfillment of eligibility criteria.

6. After hearing the parties on 09.06.2021, the Commission vide Order dated 11.06.2021 directed the Nodal Agency, PEDDA in association with PSPCL to verify the status of the petitioner's cogeneration plants. In compliance thereof, PEDDA vide its memo dated 28.07.2021 submitted that, the Joint Committee of officers of

PEDA and PSPCL visited the facility of the petitioner on 07.07.2021 and it was observed that petitioner's facility satisfies the condition of process using two or more forms of energy including electricity as per Section 2(12) of Electricity Act, 2003.

7. Findings and Decision of the Commission

The Commission has carefully gone through the petition, replies of PEDA and PSPCL, rejoinder by the petitioner, arguments made by the parties and the report of PEDA prepared in association with PSPCL. The findings and decision of the Commission are as under:

7.1 The Petitioner is seeking exemption from the RPO with regard to the power generated and consumed by the petitioner from its fully captive cogeneration power plants with coal as fuel, in terms of Hon'ble APTEL judgment dated 09.04.2019 and to carry out the necessary amendment in the prevailing RPO regulations, if any. PEDA, the State Agency assigned with the responsibility of monitoring of RPO by the obligated entities in the State, in association with PSPCL, have also verified the status of the petitioners power plants as a cogeneration facility as per Section 2(12) of the Electricity Act, 2003. The Act defines Cogeneration as under:

“2(12) Cogeneration means a process which simultaneously produces two or more forms of useful energy (including electricity).”

7.2 The Commission observes that in Hon'ble APTEL judgment dated 09.04.2019 in Appeal No. 322 of 2016 and 333 of 2016, it has been held as under:

“24. According to Appellants, the electricity generated through the process of co-generation which is consumed by captive generation plant has to be treated towards fulfilment of RPO irrespective of the nature of fuel used. This is in

terms of Renewable Regulations of 2011. Therefore, they contend that self-consumption of electricity by the Appellants, which is more than the prescribed percentage of use of electricity generated from co-generation sources further cannot be fastened with the liability of RPO.

25. They heavily rely upon decision of the co-ordinate Bench of this Tribunal in *JSW Energy Steel Limited vs. Tamil Nadu Electricity Regulatory Commission (in Appeal No. 278 of 2015 and batch dated 2.1.2019)*. On perusal of this decision, we note that the controversy which arose for consideration of the Bench in those batch of Appeals is exactly the same in these Appeals. It would be just and proper to quote the issues raised in those Appeals and how they were considered by the co-ordinate Bench. The judgment in *Century Rayon*, the full Bench judgment in *Lloyd Metals* by this Tribunal as well as the Judgment of the Hon'ble Supreme Court in *Hindustan Zinc Limited*, are discussed at length and have answered ultimately that co-generation facilities irrespective of fuel are to be promoted in terms of Section 86(1)(e) of the Electricity Act. Therefore, they cannot be fastened with the obligation of Renewable Purchase Obligation under the same provisions of the Act. The relevant paragraphs are as under:

"I. Whether the appellants, co-generators are under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation?

II. Whether the exemption granted to co-generation plants would depend on the type of fuel used by them?

.....
39. The aforesaid question arose for consideration before this Tribunal in the case of *Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors* reported in 2010 SCC Online APTEL 37: [2010] APTEL 37 vide judgment dated 26.04.2010 wherein paragraph 45 & 46 of the judgment read hereunder:

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 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)

(III) *The fastening of the obligation on the co-generator to procure electricity from renewable energy procurers 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 fastening of liability on one in preference to the other is totally contrary to the legislative interest.*

(V).....

(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.*

46..... *While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel.*

40. *It is manifest on the face of judgment, as stated supra, the Captive consumers having cogenerating plants cannot be fastened with the obligation to procure electricity from renewable energy sources, as that would defeat the object of section 86(1)(e) of the Electricity Act 2003.....It is pertinent to note that the aforesaid judgement has been consistently followed by this Tribunal in several cases e.g. Emami Paper Mills Ltd. Vs. Odisha Electricity Regulatory Commission in Appeal No. 54 of 2012 dated 30.01.2013 reported in 2013 SCC*

Online APTEL 23: [2013] APTEL 74..

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44. It is, further, fortified by the fact that this Tribunal has in India Glycols Case dated 01.10.2014, much after the judgment of the Full Bench in Lloyds Metal case, continued to rely on Century Rayon case in so far as the question whether cogeneration based captive power plant can at all be fastened with Renewable Purchase Obligation is concerned as held in para.:

23. SUMMARY OF OUR FINDINGS

The Co-generation based Captive Power Plant/Captive user cannot be fastened with renewable purchase obligation as provided under UERC (Compliance of RPO) Regulations, 2010, as subsequently, amended by UERC (Compliance of RPO) (First Amendment) Regulations, 2013. The judgment, dated 26.04.2010 of this Appellate Tribunal in Appeal No. 57 of 2009 in the case of Century Rayon vs. MERC, whereby the provisions of Section 86(1)(e) of the Electricity Act, 2003 were interpreted and in compliance of which the learned State Commission has amended the definition 'Obligated entity' as was then existing in UERC (Compliance of RPO) Regulations, 2010 by UERC (Compliance of RPO) (First Amendment) Regulations, 2013, shall be held to be applicable from the date of the judgement itself. ...”

.....
51. In the case of Hindustan Zinc Ltd. vs. Rajasthan Electricity Regulatory Commission (2015) 12 SCC 611...

..... It is also rightly pointed out by the learned counsel for the Appellants that, this Tribunal has consistently held that co-generation plants are exempted from these regulations by virtue of the special status granted to them in the light of Section 86(1)(e) of the Electricity Act, 2003. It is not in dispute that this Tribunal has proceeded to hold that even where the Regulations

provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section(1)(e) of the Electricity Act, 2003. It is not in dispute that this Tribunal has proceeded to hold that even where the Regulations provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section 86(1)(e) of the Electricity Act, 2003.

.....
53.Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.

54. In view of the facts and circumstances, as stated supra, we hold that, the Appellants herein, being co-generation plants, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation in the interest of justice and equity.”

26. After going through the above judgment of the co-ordinate Bench, we are of the opinion that we totally concur with the opinion of the co-ordinate Bench. There is no reason to differ from the view expressed by the co-ordinate Bench with regard to co-generation plant vis-a-vis RPO...”

The Commission notes that Hon’ble APTEL has interpreted Section 86(1)(e) of the Electricity Act and held that; as the co-generation facilities irrespective of fuel are to be promoted in terms of Section 86(1)(e) of the Electricity Act, therefore, they cannot be fastened with the obligation of

Renewable Purchase Obligation under the same provisions of the Act. It was also held that, the Appeal being generic in nature, conclusions will be equally applicable to all co-generation based captive Power Plants who may be using any fuel.

7.3 Regarding the petitioner's prayer to carry out the necessary amendment in the prevailing RPO regulations, required if any, for rendering exemption from the RPO, in terms of Hon'ble APTEL judgement dated 09.04.2019, the Commission refers to the provisions of the PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2011 specifies as under:

“3. Renewable Purchase Obligation

Every obligated entity shall purchase electricity from renewable energy sources including solar, not less than a percentage specified by the Commission from time to time, of its consumption of electricity”

Further, 1st Amendment dated 6th May, 2015 to the Regulations defines the obligated entity as here under:

“‘obligated entity’ means the ‘distribution licensee(s)’, ‘captive user(s)’ of the electricity generated in a Captive Generating Plant and ‘Open access customer(s)’ which are mandated under clause (e) of sub-section (1) of Section 86 of the Act to fulfil the renewable purchase obligation;”

The Commission observes that the existing provisions of PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2015 do not in any way prevent the implementation the Hon'ble APTEL's judgments under consideration. Moreover, provisions of the Electricity Act as interpreted by the Competent Court shall mutatis mutandis

apply. The Commission also observes that the Hon'ble APTEL has held that even where the Regulations provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section 86(1)(e) of the Electricity Act, 2003. Thus the Co-Generation plants are not under legal obligation to purchase power from renewable sources.

In view of above, the Commission is of the view that the Hon'ble APTEL's Judgments are applicable mutatis mutandis on all co-generation plants using any fuel, subject to fulfillment of conditions as specified in the Electricity Act, 2003.

The prayer in the petition is thus allowed and disposed of in terms of the above.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Anjuli Chandra)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 28.09.2021