

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

Present: Shri U. N. Behera, Chairperson
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member

Case No. 66/2019

M/s. Tata Steel Limited
Vrs.
OREDA

..... Petitioner
..... Respondent

In the matter of: Application under Regulations 12.6 & 12.7 of the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 seeking direction of the Commission to relax and exempt the petitioner company from applicability of RPO and compliance thereof since the energy produced from its CGP units at Kalinganagar steel plant is far in excess of its RPO requirements for the period from 2015-16 till date and for the further period in terms of 2015 Regulations.

For Petitioner: Shri P. P. Mohanty, Advocate on behalf of M/s. Tata Steel Limited

For Respondent: Shri A. K. Choudhury, Joint Director on behalf of M/s. OREDA.

ORDER

Date of hearing: 29.09.2020

Date of order: 08.12.2020

The present petitioner M/s. Tata Steel Ltd. is having an Integrated Steel Plant located at Kalinga Nagar in Jajpur district of Odisha. It has a gas based CGP of 2 x 67.5 MW capacity within its factory premises the units of which were commissioned on 01.02.2016 and 11.02.2016 respectively. Further the petitioner has another captive Generator of 12 MW capacity having Coke Dry Quenching (CDQ) facility in its plant premises which was commissioned on 06.02.2019. The petitioner company has another captive generator of 22 MW capacity with Top Gas Pressure Recovery Turbine (TRT) which was commissioned on 20.12.2016. In addition to these CGPs the petitioner is also sourcing some amount of power for its captive use through its Diesel Generator sets within its plant premises, which were commissioned in October, 2015. The petitioner is also sourcing power through open access from its conventional CGPs situated at Athagarh in Cuttack district and at Jamshedpur, Jharkhand as and

when required. Further the petitioner is availing some amount of power from Energy Exchanges through open access as and when required for operation of the steel plant.

2. The petitioner has submitted that they source 100% power generated from the 2 x 67.5 MW CGP for its captive consumption. The by-product gases generated in the integrated steel plant from its Blast Furnaces, LD and Coke Ovens is used as fuel in the said CGP. Over and above the waste gases generated through various metallurgical processes is also used as a fuel, which produces the steam, which is required for various processes of the integrated steel plant and to generate power. The high pressure steam generated through various processes is mainly used for generation of electricity by 2 x 67.5 MW CGP. Low pressure steam which is generated through the turbine extraction is used to meet the other processes of integrated steel manufacturing plant. The CDQ facility includes the boiler (known as CDQ boiler) which is a waste heat recovery boiler with capacity of 117 tons per hour. The high pressure steam generated from this CDQ boiler is used for generation of electricity in the 12 MW CDQ generating plant, which is having non-condensing back pressure turbine. The output of this back pressure turbine is LP steam which is further used to meet the other process requirement of the steel plant. The petitioner has further submitted that the blast furnace operated by the petitioner at Kalinganagar Plant has got power generation facility through Top Gas Pressure Recovery Turbine (TRT). The reduction process in the blast furnace generates large amount of process gas (named as BF gas) which comes out of the blast furnace through gas off-take duct at high pressure of 2.5 bar and used for generation of power through 22 MW capacity TRT generator, which would otherwise have been lost during pressure reducing process.
3. The petitioner has submitted that the term 'co-generation' is defined in terms of section 2 (12) of Electricity Act, 2003 as given below:

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

The captive power plants of Tata Steel Ltd. Kalinganagar Steel plant produces two types of output i.e. both power as well as steam for process requirement of the petitioner's steel plant (in case of CGP and CDQ) and by product gases (in TRT) produced in the steel making process is used as supplementary fuel. Thus, all the above three captive generating plants of the petitioner company i.e. 2 x 67.5 MW CGP, 12 MW CDQ generator and 22 MW top gas pressure recovery turbine-generator

(TRTG) meet the eligibility conditions to qualify as “co-generation plant” as per the above provision of Electricity Act, 2003.

4. The petitioner has submitted that one of the function of the State Commission under Section 86 of the Electricity Act is as follows:

“86 (1) (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 specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”

APTEL in its order dated 26.04.2010 in Appeal No. 57 of 2009 in Century Rayon Vrs. Maharashtra Electricity Regulatory Commission in para 45 has concluded as follows:

- “(i) The plain reading of Section 86(1)(e) does not show that the expression ‘co-generation’ means co-generation from the renewable sources alone. The meaning of 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-generation (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 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 one in preference to the other is totally contrary to the legislative intent.*
- (v) 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 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 co-generation and not co-generation or generation from renewable energy sources alone.”*

5. The petitioner submitted that APTEL while considering the co-generation and generation from renewable sources on equal footing, has observed the process of a typical cogeneration gas-based power plant in para 29 of the above said judgment :

“ 29..... In a typical co-generation power plant which is liquid fuel or gas-based, heat is cogenerated as a by-product or industrial waste and is harnessed for further power generation and for industrial use. For example, in a gas-based co-generation power plant, heat recovery steam generators are installed which recover heat from the 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.”

Further APTEL in para 46 of the said judgment has concluded as given below:

“ 46. In view of the above conclusions, we are of the considered opinion that the findings rendered by the Commission suffers from infirmity. Therefore, the same is liable to be set aside. Accordingly, the same is set aside. Appeal is allowed in terms of the above conclusions as well as the findings referred to in aforesaid paras 16, 17, 22 and 44. While concluding, we must make it clear that the appeal being generic in nature, our conclusions in this appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel. We ordered accordingly. No cost.”

6. The petitioner has submitted that the recent judgments of the APTEL have also dealt with the effect of judgement delivered by the APTEL in appeal No.53 of 2012 (Lloyds Metals Vrs. MERC) dated 23.09.2013. The issue involved in case of Lloyds Metals was with regard to fastening of obligation on distribution licensees to purchase co-generation power to fulfil renewable purchase requirements. The scope for this determination emanated from direction 45(II) of the Century Rayon judgment. While the said direction was set aside by the APTEL in Lloyds Metals case, the rest of directions contained in the Century Rayon judgment was saved and is still valid. Hence, the ratio and decision of the APTEL in Lloyds Metals case does not impact the relief prayed by the petitioner in the present case as the same is founded on the valid directions of the Century Rayon judgment. The APTEL vide its recent judgment dated 02.01.2019 in appeal No. 278 of 2015 in JSW Steel Ltd. vrs. TNERC has held the following:

“Para 41..... the Full Bench of this Tribunal, in Lloyds Metal case, after thorough evaluation of the entire material available on records and after considering the submissions of the learned counsel appearing for both the parties, has set aside only the findings in so far as recorded at para 45(II) of the judgment in Century Rayon case and not the Century Rayon judgment in its entirety.”

7. Further the APTEL in para 53 of its judgement dated 02.01.2019 in case of JSW Steel Ltd. Vrs. TNERC (Appeal No. 278 of 2015) case has held as follows:

“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."

Further the APTEL in its judgment dated 16.04.2019 in case of Rajasthan Renewable Energy Corporation Limited Vrs. Shree Cement Limited (Appeal No. 146 of 2017) at para 19 has held that *"From reading of the above section, it is clear that both the co-generation and renewable energy have to be promoted in terms of section 86(1)(e) of the Electricity Act. As long as captive consumers consume energy from co-generation unit beyond the RPO obligations, there is no obligation to purchase RE Certificates or consume renewable energy separately."*

8. The petitioner has submitted that the electrical energy in MWh produced through the aforesaid captive co-generation plants of the petitioner is clearly established on record by the petitioner to be far in excess of RPO requirement. The excess energy indicated by the petitioner in its application has neither been specifically denied nor disputed on record and has been hence admitted by the OREDA. The same is reproduced below:

Year	RPO Requirement (%)		RPO Requirement (MWh)		Co-generation Energy Produced (MWh)
	Solar	Non-solar	Solar	Non-solar	
2015-16	0.50	2.50	89	445	11593
2016-17	1.50	3.00	15356	30711	499231
2017-18	3.00	4.50	39866	59799	827039
2018-19	4.50	5.00	69638	77376	1051033

The petitioner has stated that its reconciled energy consumption data with OREDA clearly establishes that the energy units produced from the aforesaid captive co-generation plants are much more in excess of the RPO requirement. This consumption data has been submitted to OREDA on 19.10.2020.

9. The petitioner has submitted that the proviso to clause 6.4.1 of the Tariff Policy, 2016 notified by Government of India pursuant to Electricity Act, 2003 deals with the obligations of a distribution licensee to purchase minimum percentage of total consumption of electricity in the licence area from Renewable Energy Sources. However, the Petitioner in this case is a captive generating plant.
10. The petitioner has submitted that they have made the submissions in accordance with the provisions of law and various judgments of the Hon'ble APTEL in this regard. The petitioner is seeking relaxation from the operation of OREC Regulations on the premises that the grounds of such relaxation emanates from successive interpretation of Section 86 (1) (e) of the Act by the Hon'ble APTEL in its various judgments.

Further, the Hon'ble APTEL in para 23 of its judgment in Appeal No. 112 of 2014 Indian Glycol Vrs. UERC dated 01.10.2014 has held that it was a fit case for the state Commission to exercise its 'power to relax' its own regulations in order to give effect to the judgment dated 26.04.2010 in Century Rayon case in letter and spirit, even without waiting for bringing an amendment in the regulations.

11. Since, the RPO Regulations, 2015 do not provide for promotion of cogeneration, the Commission may invoke the provisions of power to relax to carry out the objective of the Act and also give effect to the judgments passed by APTEL. The Hon'ble Supreme Court in Case of State of Karnataka & Anr. Vrs. R Vivekanand Swami reported in (2008) 5 SCC 328, has held that *a public authority may exercise its power of relaxation only when there exists such a provision and such an authority while exercising power must act judiciously keeping in mind the purport and objects and thereof.*
12. The petitioner has submitted that they have purchased and deposited RECs with the OREDA for the period from FY 2015-16 to 2018-19 towards fulfilment of RPO. The consumption data and REC submitted by the petitioner were based on (a) consumption of electricity generation from the captive generating plant having capacity 1 MW or more for own use and (b) consumption of electricity procured through open access as well as third party sale in accordance with the RPO Regulations. OREDA had acknowledged the same and had never communicated any alleged deficit of RPO by the petitioner company for the said period. The petitioner has submitted that the present petition is limited to seeking exemption from the applicability of RPO Regulations, 2015 to the extent of its captive cogeneration units, pursuant to the plain and literal meaning of Section 2 (12) of the Electricity Act, 2003 as well as settled and binding interpretation of Section 86 (1) (e) of the Electricity Act, 2003 as interpreted by Hon'ble APTEL in different judgments referred in this application. The electricity produced from these captive cogeneration units of the petitioner is far in excess of the RPO requirement.
13. In view of the above submission, the petitioner has prayed the Commission to (i) recognise the aforesaid captive power plants at Tata Steel Kalinganagar as co-generation power plants; (ii) pass orders and directions to relax and exempt the petitioner from applicability of renewable purchase obligation and compliance thereof for the period from 2015-16 till date and for the further period in terms of RPO

Regulations, 2015; and (iii) pass necessary orders and directions to refund the amount of value of the RECs already purchased by the petitioner in compliance with the RPO of Tata Steel, Kalinganagar for consumption of such captive generation during the years from 2015-16 till date.

14. The respondent OREDA has submitted that the petitioner's company is an identified obligated entity under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015. In the second control period (2015-16 to 2019-20) the percentage of obligation has been fixed by the Commission, wherein no co-generation obligation was fixed for any obligated entity. For the second control period compilation for RPO in respect of the petitioner has been made by OREDA on the basis of self declaration of the petitioner from the data received from the EIC (Electricity) which shows a deficit of 13681.98 MWh.
15. OREDA has further submitted that as per the notification dated 01.02.2019 of Ministry of Power, GoI, for CPP commissioned before 01.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPP, commissioned from 01.04.2016 onwards, the RPO level as mandated by the appropriate Commission or MoP, whichever is higher, for the year in which the CPP has been commissioned or augmented shall be applicable. In case, after meeting the RPO obligation, if CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to DISCOMs under the prevailing arrangements or in the power exchanges. OREDA has further submitted that as per the notifications made by the Commission for the first and second control periods, the prayers made by the petitioner are not maintainable.
16. Heard the parties at length. The Commission observed that as per the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015, the petitioner company is an obligated entity since it consumes electricity from its CGPs having capacity of 1 MW and above and also procures power through open access for its use. In the present application the petitioner has submitted that its CGPs are having co-generation facility and cited various judgements of Hon'ble APTEL in respect of relaxation of RPO in case of Co-generation power plants.
17. Therefore, considering the various judgements of the Hon'ble APTEL as submitted by the petitioner and its prayer, this Commission is inclined to relax the provision for

industry of the Petitioner having co-generation CGP under Regulation 12.6 and 12.7 of the OERC RPO Regulations, 2015, towards its obligation for meeting renewable purchase obligation treating the Petitioner as a co-generation plant. The petitioner shall be exempted from Renewable purchase Obligation when its consumption from cogeneration CGP is more than its Renewable Purchase Obligation for the respective time period. This is because the petitioner also avails its power from sources other than Cogeneration CGP. OREDA shall monitor its Cogeneration Consumption and Renewable purchase obligation accordingly. The relaxation shall be applicable from FY 2019-20 onwards since the transaction of REC has already been settled for past periods. We are relaxing the provisions of the Regulation on the basis of the judgement of Hon'ble APTEL and the said judgements have not dealt with any refund of REC and a settled thing cannot be unsettled now. The petitioner shall provide necessary data/information on its consumption and generation and also power availed through open access, to OREDA as and when required by it for verification with regard to RPO compliance.

18. With the above observations and directions, the case is disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson