

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^a 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:

^aStatement of Objects and Reasons

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

1.1 xxx

1.2 xxx

1.3 xxx

2. xxx

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

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

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

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

[iii] There is provision for private transmission licensees.

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

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

[vi] The State Electricity Regulatory

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

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

[b] obligation to supply.

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

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

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

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

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

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

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

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

5 xx xx

6. xx xx

Preamble

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

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] A 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 voltage 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 subsection (2) of section 42.

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

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

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

11. Directions to generating companies:-

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

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

Part VII Tariff

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

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

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

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

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

[e] the principles rewarding efficiency in performance;

[f] multi year tariff principles;

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

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

[i] the National Electricity Policy and tariff policy:

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

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

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

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

[b] transmission of electricity ;

[c] wheeling of electricity;

[d] retail sale of electricity.

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

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

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

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

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

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

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

[e] promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area

of a distribution licence;

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

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

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

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

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

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

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

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

[ii] promotion of investment in electricity industry;

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

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

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

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

181. Powers of State Commissions to make regulations±

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

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

National Action Plan on Climate Change

4.2.2 Grid Connection Systems

The Electricity Act and the National Tariff Policy,

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.⁹

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 ^arenewable source^o 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.⁹

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.⁹

[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-subjecting it to licensing control of the authority or commissions, but, under an obligation to follow various directions issued by the Electricity Regulatory Commission in consonance with the Act of 2003, Rules and Regulations framed thereunder.

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

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

Section 86(1)(e) is;

-to protect

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

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

-for, viz. connectivity with the grid

-sale of electricity to any person

-also to specify

-for **purchase** of electricity from **Asuch 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 Commissioner & Ors. fell into consideration in Appeal No.53 of 2012 and by order dated 29.12.2011 interim relief to enable sale of electricity from co-generation plant based on industrial waste heat generated by the sponge iron plant with the use of fossil fuel [coal] and directions to be issued to the distribution licensee came to be rejected, but the issue that whether the distribution licensee would be

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

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

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

39. Summary of our findings:

Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy,

Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the sanding 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.º

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 imp leaded 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.)

*pvv



Annexure P-9

C/LPA/847/2015

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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

With

LETTERS PATENT APPEAL NO. 598 of 2015

In

SPECIAL CIVIL APPLICATION NO. 171 of 2011

TO

LETTERS PATENT APPEAL NO. 601 of 2015

In

SPECIAL CIVIL APPLICATION NO. 597 of 2011

With

LETTERS PATENT APPEAL NO. 828 of 2015

In

SPECIAL CIVIL APPLICATION NO. 10471 of 2013

TO

LETTERS PATENT APPEAL NO. 829 of 2015

In

SPECIAL CIVIL APPLICATION NO. 7084 of 2011

With

LETTERS PATENT APPEAL NO. 832 of 2015

In

SPECIAL CIVIL APPLICATION NO. 791 of 2011

With

CIVIL APPLICATION NO. 4995 of 2015

In

LETTERS PATENT APPEAL NO. 847 of 2015

With

CIVIL APPLICATION NO. 4315 of 2015

In

LETTERS PATENT APPEAL NO. 598 of 2015

With

CIVIL APPLICATION NO. 4334 of 2015

In

LETTERS PATENT APPEAL NO. 599 of 2015

With

CIVIL APPLICATION NO. 4336 of 2015

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

=====

ARVIND LIMITED(FORMERLY KNOWN THE ARVIND MILL S
 LIMITED....Appellant(s)

Versus

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

=====

Appearance in LPA Nos. 847, 598 to 601 of 2015 with C.A. Nos. 4995, 4315, 4334, 4336, 4338 of 2015:

MR SN SOPARKAR, SENIOR ADVOCATE WITH MR SANDEEP SINGHI,
 ADVOCATE FOR SINGHI & CO, ADVOCATE for the Appellant(s) No. 1
 MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
 FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1

Appearance in LPA Nos. 828 & 829 of 2015 with C.A. Nos. 4779 & 4778 of 2015:

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

Appearance in LPA No. 832 of 2015 with C.A. No. 4804 of 2015:

MR RASESH SANJANWALA, SENIOR ADVOCATE WITH MR DILIP

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

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

Date : 05/05/2015

ORAL ORDER

(PER : **HONOURABLE MR.JUSTICE KS JHAVERI**)

ORDER IN LETTERS PATENT APPEALS

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

ORDER IN CIVIL APPLICATIONS

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

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

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

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

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

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

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

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

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

technology to be promoted.

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

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

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

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

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

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

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

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

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

(ii) Renewal source of energy.

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

45. Summary of our conclusions is given below:-

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

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

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

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

(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.

C/LPA/847/2015

ORDER

(K.S.JHAVERI, J.)

(A.G.URAIZEE, J.)

divya



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

WEB COPY

Annexure P-10

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.

16/1/2018 - EFM
Ministry of New and Renewable Energy

Block 14 CGO Complex,
Lodhi Road New Delhi-110003
26 April 2019

Office Memorandum

Subject: Clarification Order of the Ministry of Power related to Renewable Purchase Obligation (RPO)- reg

This refers to this Ministry's OM of even number dated 26 December 2018 and the Ministry of Power's Clarification Order no 30/04/2018-R&R dated 1 February 2019 on the subject cited above.

2. On further examination and interaction with various stakeholders, including State Nodal Agencies for Renewable Energy, it has been observed that about 25 GW capacity Captive Power Plants (CPPs) out of the total CPPs of around 45 GW capacity have been set up prior to 2007-08 when most of the States had no RPOs. The Ministry of Power's Clarification Order of 1 February 2019, in effect, exempts all these CPPs from RPOs.

3. It may further be mentioned that CPPs have been importing/exporting electricity from/to the grid, as per the requirement and cost-competitive considerations. Under RPO, the CPPs will have to either buy or generate renewable power according to the RPO for the particular year. Increasing RPO trajectory will necessitate either increasing power export to the grid, cutting down import from grid. As such, under the prevailing renewables costs and trends thereof, increasing RPO trajectory may not put CPPs in financially disadvantageous position across the CPP landscape. However, increasing RPO may be disadvantageous to certain categories of CPPs (say CPPs in Aluminum industry) on technical grounds.

4. In view of the above, it is suggested that the Ministry of Power may consider issuing Clarification Order in supersession to the order referred to in paragraph 1.0 above of 1 February 2019. The Clarification Order may propose that while considering RPOs for CPPs, the SERCs may permit deviation from the RPO trajectory as notified by the Ministry of Power only in the cases where:- i) achieving RPO trajectory will put the industry deploying CPP in a financially disadvantageous position; or ii) increasing renewable power consumption is not technically feasible for operations of the industry deploying CPPs. The above may act as guiding principle for SERCs in determining applicability of RPOs for CPPs.

The Chief Engineer (R&R)
Ministry of Power
Rafi Marg, Shram Shakti Bhawan
New Delhi-110001

(Terun Singh)
Scientist-C

29/05/2019
29/4/19

2022

Discussed
28/4/19

US:RRJ: Pl put up

1.5.19
S. S. (R. K.) 29/4

Annexure P-12

221

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

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

To

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

Subject: Clarification on Orders related to Renewable Purchase Obligation.

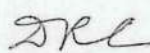
Sir,

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

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

Yours faithfully,

Encl: As above


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

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

Annexure P-13**GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHIAGAR****Draft Gujarat Electricity Regulatory Commission (Procurement of
Energy from Renewable Sources) (Third Amendment) Regulations,
2020****Draft Notification No.....of 2020**

In exercise of the powers conferred under sections 61, 66, 86 and 181 of the Electricity Act 2003 (Act No.36 of 2003) and all powers enabling it in that behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following Regulations, to amend Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter referred to as "The Principal Regulations") namely:

1. Short Title, Extent and Commencement

- i. These regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2020.
- ii. These Regulations extend to the whole of the State of Gujarat.

2. These regulations shall come into force with effect from the date of their publication in the Official Gazette.**3. Amendment in Regulation 2.1(aa) of the Principal Regulations to be read with First Amendment:**

Regulation 2.1(aa) of the Principal Regulations to be read with First Amendment shall be deleted.

4. Amendment in Regulation 2.1(p) of the Principal Regulations:

Regulation 2.1(p) of the Principal Regulations shall be substituted as under:

"(p) 'Renewable energy sources' in this context means non- conventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass, Biogas and bagasse based co-generation, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period of time)

as approved by the Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;”

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

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

Para: 1

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

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

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

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

Para: 2

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

6. Amendment in Proviso of the Regulation 5.1 of the Principal Regulations to be read with First and Second Amendments:

Proviso of the Regulation 5.1 of the Principal Regulations to be read with First and Second Amendments shall be substituted as under:

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with the Regulation 4.

7. Amendment in Regulation 5.4 of the Principal Regulations to be read with First Amendment:

Regulation 5.4 of the Principal Regulations to be read with First Amendment shall be deleted.

8. Amendment in Regulation 5.5 of the Principal Regulations read with First Amendment:

Regulation 5.5 of the Principal Regulations read with First Amendment shall be renumbered as Regulation 5.4 and substituted as under:

5.4 In case of renewable energy generator set up under the REC scheme notified by the Central Electricity Regulatory Commission supplying power for captive use or sale to third party, the distribution licensee shall compensate to such RE generator at the rate as determined by the Commission from time to time for the surplus energy available after giving set off for the consumption by such captive consumer or the third party.

9. Amendment in Regulation 8.3 of the Principal Regulations read with First and Second Amendments:

Regulation 8.3 of the Principal Regulations read with First and Second Amendments shall be substituted as under:

8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in the Regulation 4 as above. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per Regulation 9.

10.Amendment in Regulation 11 of the Principal Regulations :

Regulation 11 of the Principal Regulations shall be deleted.

Sd/-
[Roopwant Singh, IAS]
Secretary
Gujarat Electricity Regulatory Commission
Gandhinagar, Gujarat

Date: 17.07.2020
Place: Gandhinagar.



भारत का राजपत्र The Gazette of India

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असाधारण
EXTRAORDINARY

भाग III—खण्ड 4
PART III—Section 4

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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नई दिल्ली, मंगलवार, मई 24, 2022/ज्येष्ठ 3, 1944

No. 272]

NEW DELHI, TUESDAY, MAY 24, 2022/JYAISHTHA 3, 1944

केन्द्रीय विद्युत विनियामक आयोग

अधिसूचना

नई दिल्ली, 9 मई, 2022

सं. आरए-14026(11)/1/2022-केविआ.—केंद्रीय विद्युत विनियामक आयोग, विद्युत अधिनियम, 2003 की धारा 178 की उप-धारा (2) के खंड (म) के साथ पठित धारा 66 और धारा 178 की उप-धारा (1) के अधीन प्रदत्त शक्तियों और इस निमित्त सभी अन्य सामर्थ्यकारी शक्तियों का प्रयोग करते हुए, तथा पूर्व प्रकाशन के पश्चात् एतद्वारा नवीकरणीय ऊर्जा प्रमाणपत्रों के माध्यम से नवीकरणीय ऊर्जा स्रोतों से विद्युत में बाजार के विकास के लिए निम्नलिखित विनियम बनाता है:

1. संक्षिप्त नाम तथा प्रारंभ

- इन विनियमों का संक्षिप्त नाम केंद्रीय विद्युत विनियामक आयोग (नवीकरणीय ऊर्जा उत्पादन के लिए नवीकरणीय ऊर्जा प्रमाणपत्रों हेतु निबंधन व शर्तें) विनियम, 2022 है।
- ये विनियम आयोग द्वारा शासकीय राजपत्र में यथा अधिसूचित तारीख से प्रवृत्त होंगे।

2. परिभाषाएं

- इन विनियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,
 - 'अधिनियम' से विद्युत अधिनियम, 2003 (2003 का 36) अभिप्रेत है;
 - 'केंद्रीय एजेंसी' से इन विनियमों के विनियम 3 में यथा संदर्भित एजेंसी अभिप्रेत है;
 - 'प्रमाणपत्र' से इन विनियमों के अनुसार केंद्रीय एजेंसी द्वारा जारी नवीकरणीय ऊर्जा प्रमाणपत्र अभिप्रेत है;

- (घ) 'प्रमाणपत्र मल्टीप्लायर' से इन विनियमों के विनियम 12 के अधीन यथा अवधारित मल्टीप्लायर अभिप्रेत है;
- (ङ) 'आयोग' से अधिनियम की धारा 76 की उप-धारा (1) में संदर्भित केंद्रीय विद्युत विनियामक आयोग अभिप्रेत है;
- (च) 'संपूर्ण आवेदन' से विस्तृत क्रियाविधि में यथा अनुबंधित प्रारूप में हर प्रकार से संपूर्ण आवेदन अभिप्रेत है;
- (छ) 'विस्तृत क्रियाविधि' से इन विनियमों के अधीन केंद्रीय एजेंसी द्वारा जारी क्रियाविधि अभिप्रेत है;
- (ज) 'पात्र इकाई' से इन विनियमों के अधीन प्रमाणपत्रों के निर्गमन के लिए पात्र इकाई अभिप्रेत है;
- (झ) 'ग्रिड कोड' से अधिनियम की धारा 79 की उप-धारा (1) के खंड (ज) के अधीन आयोग द्वारा विनिर्दिष्ट ग्रिड कोड अभिप्रेत है;
- (ञ) 'राष्ट्रीय भार प्रेषण केंद्र' से अधिनियम की धारा 26 की उप-धारा (1) के अधीन स्थापित राष्ट्रीय भार प्रेषण केंद्र अभिप्रेत है;
- (ट) 'बाध्य इकाई' से वह इकाई अभिप्रेत है जिसके लिए राज्य आयोग ने नवीकरणीय क्रय बाध्यता को पूरा करने हेतु अधिनियम की धारा 86 की उप-धारा (1) के खंड (ड) के अधीन आवश्यकता विनिर्दिष्ट की है;
- (ठ) 'पावर एक्सचेंज' से केंद्रीय विद्युत विनियामक आयोग (पावर बाजार) विनियम, 2021 के विनियम 2 के खंड (1) के उप-खंड (कध) के अधीन यथा परिभाषित पावर एक्सचेंज अभिप्रेत है;
- (ड) 'आरईसी विनियम, 2010' से समय-समय पर यथा संशोधित केंद्रीय विद्युत विनियामक आयोग (नवीकरणीय ऊर्जा उत्पादन के लिए नवीकरणीय ऊर्जा प्रमाणपत्र की मान्यता और उन्हें जारी करने के लिए निबंधन व शर्तें) विनियम, 2010 अभिप्रेत है;
- (ढ) 'प्रादेशिक भार प्रेषण केंद्र' या 'आरएलडीसी' से अधिनियम की धारा 27 की उप-धारा (1) के अधीन स्थापित प्रादेशिक भार प्रेषण केंद्र अभिप्रेत है;
- (ण) 'पंजीकरण' से नवीकरणीय ऊर्जा प्रमाणपत्रों को जारी करने के प्रयोजन हेतु केंद्रीय एजेंसी द्वारा पात्र इकाइयों का पंजीकरण अभिप्रेत है;
- (त) 'नवीकरणीय ऊर्जा स्रोतों' से हाइड्रो, पवन, सौर और संयुक्त चक्र, बायोमास, बायो ईंधन सहउत्पादन, शहरी या नगरपालिका अपशिष्ट और केंद्र सरकार द्वारा मान्यता प्राप्त या अनुमोदित ऐसे अन्य स्रोतों के साथ इसके एकीकरण सहित नवीकरणीय ऊर्जा के स्रोत अभिप्रेत हैं;
- (थ) 'नवीकरणीय क्रय बाध्यता' या 'आरपीओ' से नवीकरणीय ऊर्जा स्रोतों से विद्युत के क्रय हेतु इकाई के लिए अधिनियम की धारा 86 की उप-धारा (1) के खंड (ड) के अधीन राज्य आयोगों द्वारा विनिर्दिष्ट आवश्यकता अभिप्रेत है;
- (द) 'राज्य एजेंसी' से प्रमाणपत्र प्रदान किए जाने हेतु पात्र इकाइयों के प्रत्यायन के लिए संबंधित राज्य आयोग द्वारा नामित एजेंसी अभिप्रेत है;
- (ध) 'राज्य आयोग' से अधिनियम की धारा 2 की उप-धारा (64) में संदर्भित राज्य आयोग अभिप्रेत है;
- (न) 'राज्य ग्रिड कोड' से अधिनियम की धारा 86 की उप-धारा (1) के खंड (ज) के अधीन राज्य आयोग द्वारा विनिर्दिष्ट राज्य ग्रिड कोड अभिप्रेत है;
- (प) 'व्यापार अनुज्ञप्ति विनियम, 2020' से समय-समय पर यथा संशोधित केंद्रीय विद्युत विनियामक आयोग (व्यापार अनुज्ञप्ति प्रदान करने के लिए क्रियाविधि, निबंधन व शर्तें और अन्य संबद्ध मामले) विनियम, 2020 और उसका पुनराधिनियमन अभिप्रेत है; और
- (फ) 'वर्ष' से वित्तीय वर्ष अभिप्रेत है।

(2) इन विनियमों में प्रयुक्त शब्दों और पदों का, जो यहाँ परिभाषित नहीं हैं परंतु अधिनियम या आयोग द्वारा जारी किसी अन्य विनियमों में परिभाषित हैं, वही अर्थ होगा जैसा कि क्रमशः अधिनियम या आयोग द्वारा जारी ऐसे किसी अन्य विनियम में है।

3. केंद्रीय एजेंसी और इसके कार्य

(1) राष्ट्रीय भार प्रेषण केंद्र, इन विनियमों के प्रयोजन हेतु केंद्रीय एजेंसी होगा:

परंतु यह कि आयोग यह संतुष्ट होने पर कि ऐसी एजेंसी के पास इन विनियमों के अधीन यथा उपबंधित कृत्यों को करने का अपेक्षित सामर्थ्य है, किसी अन्य एजेंसी को केंद्रीय एजेंसी के रूप में नामित कर सकता है।

(2) केंद्रीय एजेंसी के कृत्य निम्नलिखित होंगे:

- i) पात्र इकाइयों का पंजीकरण करना,
- ii) प्रमाणपत्रों के संबंध में उत्पादन और बिक्री के लेखांकन के लिए तंत्र का निर्माण करना;
- iii) प्रमाणपत्रों को जारी करना,
- iv) प्रमाणपत्रों के संबंध में लेखा का रखरखाव और निपटारा करना,
- v) प्रमाणपत्रों में संव्यवहारों के निधान संग्रह के रूप में कार्य करना,
- vi) प्रमाणपत्रों की रजिस्ट्री का रखरखाव,
- vii) इस खंड के उप-खंड (i) से उप-खंड (vi) तक से संबंधित ऐसे अन्य कृत्यों को करना, और
- viii) आयोग द्वारा यथा समनुदेशित किसी अन्य कार्य को करना।

4. प्रमाणपत्र जारी करने की पात्रता

(1) निम्नलिखित इकाइयां प्रमाणपत्र जारी करने के लिए पात्र होंगी:

- (क) नवीकरणीय ऊर्जा उत्पादन स्टेशन,
- (ख) नवीकरणीय ऊर्जा स्रोतों पर आधारित कैप्टिव उत्पादन स्टेशन,
- (ग) वितरण अनुज्ञप्तिधारी, और
- (घ) निर्बाध पहुंच उपभोक्ता

(2) नवीकरणीय ऊर्जा उत्पादन स्टेशन प्रमाणपत्रों को जारी करने के लिए पात्र होगा, यदि वह निम्नलिखित शर्तों को पूरा करता है:

(क) ऐसे नवीकरणीय ऊर्जा उत्पादन स्टेशन का टैरिफ, पूरी क्षमता या कुछ भाग के लिए अधिनियम की धारा 62 या धारा 63 के अधीन क्रमशः अवधारित या अंगीकृत नहीं किया गया है, या उत्पादित विद्युत की किसी बाध्य इकाई द्वारा आरपीओ अनुपालन के लिए सीधे रूप से या विद्युत व्यापारी के माध्यम से या पावर एक्सचेंज में बिक्री नहीं की गई है:

(ख) ऐसे नवीकरणीय ऊर्जा उत्पादन स्टेशन ने किसी (प) किसी छूट का या रियायती पारेषण प्रभारों या (पप) छूट का या रियायती व्हीलिंग प्रभारों का लाभ नहीं उठाया है।

(3) नवीकरणीय ऊर्जा स्रोतों पर आधारित और नवीकरणीय ऊर्जा उत्पादन स्टेशन के संबंध में इस विनियम के खंड (2) के अधीन यथा विनिर्दिष्ट शर्तों को पूरा करने वाले कैप्टिव उत्पादन स्टेशन प्रमाणपत्रों को जारी करने के लिए पात्र होंगे:

परंतु यह कि ऐसे कैप्टिव उत्पादन स्टेशन को स्व-उपभोग की सीमा तक जारी किए गए प्रमाणपत्र, बिक्री के लिए पात्र नहीं होंगे।

(4) किसी वितरण अनुज्ञप्तिधारी या निर्बाध पहुंच उपभोक्ता के रूप में बाध्य इकाई, जो कि संबंधित राज्य आयोग द्वारा यथा अवधारित नवीकरणीय क्रय बाध्यता से अधिक नवीकरणीय ऊर्जा स्रोतों से विद्युत का क्रय करती है, नवीकरणीय ऊर्जा स्रोतों से ऐसी अधिक विद्युत के क्रय की सीमा तक प्रमाणपत्रों को जारी किए जाने के लिए पात्र होगी।

5. प्रक्रियाएं

इन विनियमों में यथा विनिर्दिष्ट प्रक्रिया में (i) प्रमाणपत्रों के लिए पात्र इकाइयों का प्रत्यायन और (ii) प्रमाणपत्रों के लिए पात्र इकाइयों का पंजीकरण और (iii) प्रमाणपत्रों का निर्गमन, विनिमय और मोचन शामिल है।

6. प्रमाणपत्रों के लिए प्रत्यायन प्रदान किया जाना

(1) अंतःराज्यिक पारेषण प्रणाली से संबद्ध पात्र इकाइयों को प्रत्यायन राज्य एजेंसी द्वारा प्रदान किया जाएगा:

परंतु यह कि पात्र इकाइयों को इन विनियमों के प्रवृत्त होने की तारीख से पूर्व प्रदान किए गए प्रत्यायन को उनके संबंधित प्रत्यायनों की वैधता तक इन विनियमों के अधीन प्रदान किया गया प्रत्यायन समझा जाएगा।

(2) अंतर-राज्यिक पारेषण प्रणाली से जुड़ी पात्र इकाइयों को प्रत्यायन, विस्तृत क्रियाविधि के भाग के रूप में केंद्रीय एजेंसी द्वारा जारी की जाने वाली प्रत्यायन के लिए क्रियाविधि के अनुसार उस क्षेत्र की आरएलडीसी द्वारा प्रदान किया जाएगा जिसमें ऐसी पात्र इकाइयां स्थित हैं।

परंतु यह कि पात्र इकाइयों को इन विनियमों के प्रवृत्त होने की तारीख से पूर्व प्रदान किए गए प्रत्यायनों को इन विनियमों के अधीन प्रदान किए गए प्रत्यायन समझा जाएगा और उनके प्रत्यायन उनके संबंधित प्रत्यायनों की वैधता की तारीख तक वैध होंगे।

(3) पात्र इकाइयां जिन्हें प्रत्यायन प्रदान किए गए हैं, इस विनियम के खंड (2) में संदर्भित, प्रत्यायन प्रदान किए जाने के बाद जिनके नाम अथवा विधिक प्रारिथिति में परिवर्तन हुआ है, कंपनी रजिस्ट्रार या राष्ट्रीय कंपनी विधि अधिकरण या किसी अन्य न्यायालय जैसे समुचित प्राधिकरण से सुसंगत दस्तावेजों के साथ संबंधित आरएलडीसी को सूचित करेंगे, जो दस्तावेजों के सत्यापन के बाद, इस परिवर्तन को ऐसी सूचना की तारीख से 30 दिनों के अंदर अपने रिकॉर्ड में अद्यतन करेंगे और इसे केंद्रीय एजेंसी को सूचित करेंगे।

(4) इस विनियम के खंड (1) और खंड (2) में उपबंधों के होते हुए भी, इन विनियमों के विनियम 4 के खंड (4) में विनिर्दिष्ट पात्रता शर्तों को पूरा करने वाले वितरण अनुज्ञप्तिधारी या निर्बाध पहुंच उपभोक्ता को इन विनियमों के अधीन पंजीकरण प्रदान किए जाने के लिए प्रत्यायित किया गया समझा जाएगा।

7. प्रत्यायन का प्रतिसंहरण

संबंधित आरएलडीसी, जांच करने और नोटिस देने के बाद, ऐसे प्रतिसंहरण के लिए कारणों को रिकार्ड करते हुए, इन विनियमों के विनियम 6 के खंड (2) में संदर्भित पात्र इकाई को प्रदान किए गए प्रत्यायन को प्रतिसंहृत कर सकता है, यदि पात्र इकाई अपने प्रत्यायन के किसी भी निबंधनों या शर्तों का उल्लंघन करता है, जिसका उल्लंघन इस प्रकार के प्रत्यायन द्वारा स्पष्ट रूप से प्रतिसंहरण के लिए उत्तरदायी बनाने हेतु घोषित किया गया है।

8. प्रमाणपत्रों के लिए पंजीकरण प्रदान किया जाना

(1) पात्र इकाई जिसे प्रत्यायन प्रदान किया गया है या जिसे इन विनियमों के अधीन प्रत्यायन प्रदान किया गया समझा गया है, विस्तृत क्रियाविधि के भाग के रूप में केंद्रीय एजेंसी द्वारा जारी किए जाने वाले प्रमाणपत्रों के लिए पंजीकरण हेतु क्रियाविधि के अनुसार केंद्रीय एजेंसी द्वारा पंजीकरण प्रदान किए जाने के लिए पात्र होगी:

परंतु यह कि इकाइयां जिन्हें आरईसी विनियम, 2010 के अधीन पंजीकरण प्रदान किया गया है, उन्हें इन विनियमों के अधीन पंजीकरण प्रदान किया गया समझा जाएगा।

(2) इन विनियमों के निबंधनों में अनुदत्त पंजीकरण, पंजीकरण की तारीख से पच्चीस वर्षों के लिए वैध होगा:

परंतु यह कि आरईसी विनियम, 2010 के अधीन अनुदत्त पंजीकरण और इन विनियमों के अधीन समझा गया अनुदत्त पंजीकरण, समझे गए पंजीकरण की तारीख से पच्चीस वर्षों की अवधि के लिए वैध होगा।

(3) पंजीकरण अनुदत्त की गई इकाइयां जिनके पंजीकरण प्रदान किए जाने के बाद नाम या विधिक स्थिति में परिवर्तन हुआ है, वे कंपनी रजिस्ट्रार या राष्ट्रीय कंपनी विधिक अधिकरण या किसी अन्य न्यायालय जैसे समुचित प्राधिकरण से सुसंगत दस्तावेजों के साथ केंद्रीय एजेंसी को सूचित करेंगी, जो दस्तावेजों के सत्यापन के बाद ऐसे आवेदन की तारीख से 30 दिनों के अंदर अपने रिकॉर्ड में ऐसे परिवर्तन को अद्यतन करेगी।

9. पंजीकरण का प्रतिसंहरण

केंद्रीय एजेंसी, जांच करने और नोटिस देने के बाद, ऐसे प्रतिसंहरण के लिए कारणों को रिकार्ड करते हुए, इन विनियमों के विनियम 8 के खंड (1) में संदर्भित पात्र इकाई को प्रदान किया गया पंजीकरण को प्रतिसंहृत कर सकता है, यदि पात्र इकाई अपने पंजीकरण के किसी भी निबंधनों या शर्तों का उल्लंघन करता है, जिसका उल्लंघन इस प्रकार के पंजीकरण द्वारा स्पष्ट रूप से प्रतिसंहरण के लिए उत्तरदायी बनाने हेतु घोषित किया गया है।

10. प्रमाणपत्रों का निर्गमन

(1) पात्र इकाई, जिसे पंजीकरण प्रदान किया गया है या जिसे पंजीकरण प्रदान किया गया समझा गया है, वह विस्तृत क्रियाविधि के भाग के रूप में केंद्रीय एजेंसी द्वारा जारी किए गए प्रमाणपत्र के निर्गमन की क्रियाविधि के अनुसार केंद्रीय एजेंसी को प्रमाणपत्रों के निर्गमन हेतु आवेदन कर सकता है।

(2) पात्र इकाई द्वारा प्रमाणपत्रों के निर्गमन हेतु आवेदन, नवीकरणीय ऊर्जा उत्पादन स्टेशन या नवीकरणीय ऊर्जा स्रोतों पर आधारित या कैप्टिव उत्पादन स्टेशन होने के नाते, पात्र इकाई द्वारा संबंधित उत्पादन से छह मास के अंदर केंद्रीय एजेंसी को किया जाएगा:

परंतु यह कि यदि संबंधित उत्पादन से छह मास की अवधि के बाद आवेदन किए जाते हैं, तो कोई प्रमाणपत्र जारी नहीं किया जाएगा।

(3) पात्र इकाई द्वारा प्रमाणपत्रों के निर्गमन हेतु आवेदन, वितरण अनुज्ञप्तिधारी या निर्बाध पहुंच उपभोक्ता होने के नाते, संबंधित राज्य आयोग द्वारा यथावधारित नवीकरणीय क्रय बाध्यता के आधिक्य में नवीकरणीय ऊर्जा स्रोतों से विद्युत के क्रय के बारे में संबंधित राज्य आयोग से प्रमाणपत्र की प्रति के साथ, वित्तीय वर्ष के अंत से तीन मास के अंदर किया जाएगा:

परंतु यह कि यदि वित्तीय वर्ष के अंत से तीन मास की अवधि के बाद आवेदन किए जाते हैं, तो कोई प्रमाणपत्र जारी नहीं किया जाएगा।

(4) केंद्रीय एजेंसी, पात्र इकाई से प्रमाणपत्रों के निर्गमन हेतु संपूर्ण आवेदन की प्राप्ति की तारीख से पंद्रह दिनों के अंदर प्रमाणपत्र जारी करेगी या रद्द के लिए कारणों को रिकॉर्ड करते हुए आवेदन रद्द करेगी और इसे संबंधित इकाई को सूचित करेगी।

(5) प्रमाणपत्रों को नवीकरणीय ऊर्जा उत्पादन स्टेशन या नवीकरणीय ऊर्जा स्रोतों पर आधारित कैप्टिव उत्पादन स्टेशन के नाते पात्र इकाई को जारी किया जाएगा जो उत्पादित और ग्रिड में अंतःक्षेपित विद्युत या नवीकरणीय ऊर्जा स्रोतों पर आधारित पात्र कैप्टिव उत्पादन स्टेशन द्वारा स्व-उपभोग के मामले में अंतःक्षेपित समझा जाएगा और ऊर्जा लेखांकन प्रणाली में विधिवत् लेखांकित किया जाएगा:

- i) यथास्थिति ग्रिड कोड या राज्य ग्रिड कोड के अनुसार, या
- ii) नवीकरणीय ऊर्जा उत्पादन स्टेशन द्वारा ऊर्जा इनपुट और नवीकरणीय ऊर्जा स्रोतों पर आधारित कैप्टिव उत्पादन स्टेशन, जो मौजूदा अनुसूचीकरण और प्रेषण क्रियाविधियों के अधीन शामिल नहीं हैं, के संबंध में संबंधित राज्य भार प्रेषण केंद्र या प्रादेशिक भार प्रेषण केंद्र को वितरण अनुज्ञप्तिधारी के लिखित संप्रेषण के आधार पर।

(6) वे इकाइयां जिन्हें पंजीकरण प्रदान किया गया है या जिन्हें इन विनियमों के अधीन पंजीकरण प्रदान किया गया समझा गया है, उनके पंजीकरण की वैधता अवधि के लिए प्रमाणपत्रों के निर्गमन हेतु पात्र होंगी।

11. प्रमाणपत्रों का विनियम और मोचन

(1) केंद्रीय एजेंसी प्रमाणपत्रों की रजिस्ट्री का रखरखाव करेगी।

- (2) प्रमाणपत्रों को पावर एक्सचेंजों या विस्तृत क्रियाविधि में केंद्रीय एजेंसी द्वारा यथा अनुबंधित ऐसी आवधिकता में विद्युत के व्यापारियों के माध्यम से विनियमित किया जाएगा।
- (3) पावर एक्सचेंज (एक्सचेंजों) में प्रमाणपत्रों के विनियम के लिए पावर एक्सचेंज संबंधित उपनियमों और नियमों के लिए केंद्रीय विद्युत विनियामक आयोग (विद्युत बाजार) विनियम, 2021 के अधीन आयोग का यथा आवश्यक अनुमोदन प्राप्त करेगा।
- (4) विद्युत व्यापारियों के माध्यम से प्रमाणपत्रों का विनियम निम्नलिखित के अध्याधीन होगा:
- (क) पात्र इकाइयां विद्युत व्यापारियों के माध्यम से विक्रय किए जाने वाले प्रमाणपत्रों की संख्या के बारे में केंद्रीय एजेंसी को अग्रिम रूप में सूचित करेंगी।
- (ख) केंद्रीय एजेंसी रजिस्ट्री में इस प्रकार के प्रमाणपत्रों की संख्या को ब्लॉक करेगी जैसे कि इस खण्ड के उक्त खण्ड (क) के अनुसार पात्र इकाइयों द्वारा सूचित किया गया है।
- (ग) इस खण्ड के उपखण्ड (ख) के अधीन ब्लॉक किए गए प्रमाणपत्रों को पावर एक्सचेंज (एक्सचेंजों) के माध्यम से विनिमेय की अनुमति नहीं होगी।
- (घ) विद्युत व्यापारी इस खण्ड के उपखण्ड (ख) के अधीन ब्लॉक किए गए प्रमाणपत्रों की बिक्री के बाद केंद्रीय एजेंसी को सूचित करेंगे।
- (ङ) विद्युत व्यापारियों के माध्यम से प्रमाणपत्रों के विनियम के लिए व्यापार मार्जिन विद्युत के एक मेगावाट घण्टे का प्रतिनिधित्व करने वाले एक प्रमाणपत्र को निरूपित करते हुए विद्युत अनुज्ञप्ति विनियम 2020 द्वारा अधिशासित होगा।
- (5) पावर एक्सचेंज (एक्सचेंजों) के माध्यम से या विद्युत व्यापारियों के माध्यम से और बाध्यकारी इकाइयों द्वारा आरपीओ के अनुपालन के लिए प्रयुक्त एक बार विनिमेय प्रमाणपत्र मोचित होगा।
- (6) मोचन होने पर, केंद्रीय एजेंसी रजिस्ट्री से उक्त प्रमाणपत्रों को समाप्त करेगी और इसके रिकार्ड को अद्यतन करेगी।
- (7) स्व-उपभोग की सीमा तक नवीकरणीय ऊर्जा स्रोतों पर आधारित केप्टिव उत्पादन स्टेशनों को जारी किए गए प्रमाणपत्र आरपीओ के अनुपालन पर मोचित होंगे।

परंतु कि राज्य एजेंसी प्रमाणपत्रों के इस प्रकार के मोचन के बारे में केंद्रीय एजेंसी को सूचित करेंगे जिस पर केंद्रीय एजेंसी इस प्रकार के प्रमाणपत्रों को समाप्त करेगी और इसके रिकार्ड को अद्यतन करेगी।

12. प्रमाणपत्र का मूल्यवर्ग

- (1) इन विनियमों के अधीन जारी किया गया प्रत्येक प्रमाणपत्र नवीकरणीय ऊर्जा स्रोतों से उत्पादित और ग्रिड में अंतःक्षेपित या किए जाने के लिए मोचित (नवीकरणीय ऊर्जा स्रोतों पर आधारित पात्र केप्टिव उत्पादन स्टेशन द्वारा स्व-उपभोग के मामले में) विद्युत के एक मेगावाट घण्टे को प्रतिनिधित्व करेगा:

परंतु कि प्रमाणपत्र मल्टीप्लायर इस विनियम के खण्ड (2) के अनुसार आयोग द्वारा अवधारित किया जाए।

परंतु यह कि प्रमाणपत्रों को उत्पादित विद्युत के एक मेगावाट घण्टे और ग्रिड में अंतःक्षेपित या अंतःक्षेपित किए जाने के लिए मोचित के लिए इस विनियम के खण्ड (2) के अनुसार निर्दिष्ट प्रमाणपत्र मल्टीप्लायर के गुणज में जारी किया जाएगा।

- (2) इन विनियमों के प्रभाव की तारीख से तीन वर्षों की अवधि के लिए या इस प्रकार की अन्य अवधि के लिए प्रमाणपत्र मल्टीप्लायर जिसे परिशिष्ट-I में यथाअवधारित आयोग द्वारा निर्णित किया जाता है, निम्नानुसार होगी:

नवीकरणीय ऊर्जा प्रौद्योगिकी	प्रमाणपत्र मल्टीप्लायर
ऑन-शोर पवन एवं सौर	1
हाइड्रो	1.5
म्युनिसिपल सॉलिड वेस्ट (एमएसडब्ल्यू) और गैर-जीवाश्म ईंधन आधारित सह-उत्पादन	2
बायोमास एवं बायोफ्यूल	2.5

परंतु कि उक्त सारणी में कवर नहीं की गई अन्य नवीकरणीय ऊर्जा के लिए, प्रमाणपत्र मल्टीप्लायर को परिशिष्ट-I में निर्धारित सिद्धांतों पर आधारित मामला दर मामला आधार पर आयोग द्वारा अधिसूचित किया जाएगा।

परंतु कि आयोग विभिन्न नवीकरणीय ऊर्जा प्रौद्योगिकियों की लागत और परिपक्वता स्तर की समीक्षा के आधार पर समय समय से प्रमाणपत्र मल्टीप्लायर को संशोधित करेगा।

(3) इस विनियम के खण्ड (2) के अनुसार लागू प्रमाणपत्र मल्टीप्लायर इन विनियमों की प्रवृत्त होने की तारीख के बाद आरंभ किए गए नवीकरणीय ऊर्जा स्रोतों पर आधारित नवीकरणीय ऊर्जा उत्पादन स्टेशनों और केप्टिव उत्पादन स्टेशनों को निर्दिष्ट किया जाएगा।

(4) नवीकरणीय ऊर्जा उत्पादन स्टेशन के लिए एक बार निर्दिष्ट प्रमाणपत्र मल्टीप्लायर नवीकरणीय ऊर्जा स्रोतों पर आधारित केप्टिव उत्पादन स्टेशन या इस प्रकार के नवीकरणीय ऊर्जा उत्पादन स्टेशन के आरंभ होने की तारीख से 15 वर्षों की अवधि के लिए वैध होंगे।

परंतु कि नवीकरणीय ऊर्जा उत्पादन स्टेशन या नवीकरणीय ऊर्जा स्रोतों पर आधारित केप्टिव उत्पादन जैसे स्टेशन के आरंभ होने की तारीख से पंद्रह वर्षों से आगे उनकी रजिस्ट्रेशन की वैधता की अवधि के लिए, इस प्रकार के नवीकरणीय ऊर्जा उत्पादन स्टेशन या नवीकरणीय ऊर्जा स्रोतों पर आधारित केप्टिव उत्पादन स्टेशन को उत्पादित विद्युत और ग्रिड में अंतःक्षेपित या अंतःक्षेपित की जाने वाली विद्युत के एक मेगावाट घण्टे के लिए एक प्रमाणपत्र जारी किया जाएगा।

13. प्रमाणपत्रों की कीमत

(1) प्रमाणपत्रों की कीमत पावर एक्सचेंज (एक्सचेंजों) या पात्र इकाइयों तथा विद्युत व्यापारियों के बीच पारस्परिक रूप से सहमति के अनुरूप अभिज्ञात होगी।

परंतु कि पावर एक्सचेंज (एक्सचेंजों) तथा विद्युत व्यापारी ब्योरों सहित सभी संव्यवहारों को लेकिन मात्रा, कीमत, क्रेता और विक्रेता तक सीमित नहीं को मासिक आधार पर केन्द्रीय एजेंसी को रिपोर्ट करेगे।

(2) इस बात से संतुष्ट होने पर कि निम्नलिखित कोई परिस्थिति अस्तित्व में है या उसके घटित होने की संभावना है, आयोग पावर एक्सचेंज (एक्सचेंजों) या विद्युत व्यापारियों या नोडल एजेंसी को, जिसे वह आवश्यक समझता है को इस प्रकार के निर्देशों का आदेश दे सकता है:

- (क) प्रमाणपत्रों की कीमतों में असामान्य वृद्धि या कमी
- (ख) प्रमाणपत्रों की कीमतों में आकस्मिक उतार-चढ़ाव
- (ग) पावर एक्सचेंज के प्रमाणपत्रों की आकस्मिक उच्च या कम संव्यवहार मात्रा

14. प्रमाणपत्रों की वैधता

(1) जारी किए गए प्रमाणपत्र तब तक वैध रहेंगे जब तक वे मोचित नहीं किए जाते:

परंतु कि जहां एक पात्र इकाई ने झूठी सूचना के आधार पर या भौतिक सूचना को छुपाने के आधार पर प्रत्यायन या रजिस्ट्रेशन प्राप्त किया है और इस प्रकार की इकाई का प्रत्यायन या रजिस्ट्रेशन बाद की तारीख में पुनः संहारित किया जाता है, तो इस प्रकार की इकाई को पहले से जारी किए गए, लेकिन मोचित नहीं किए गए, प्रमाणपत्र इस प्रकार के प्रमाणपत्रों को जारी करने की तारीख से समाप्त हो जाएंगे और पहले से मोचित किए गए प्रमाणपत्रों के संबंध में, इस प्रकार की इकाई एक वर्ष की अवधि के निधि आधारित ऋण दर की भारतीय स्टेट बैंक मार्जिनल लागत

(एमसीएलआर) में दो सौ (200) से अधिक आधार प्वाइंट की दर पर ब्याज सहित इस प्रकार के प्रमाणपत्रों की बिक्री से वसूल की गई रकम केन्द्रीय एजेंसी को जमा करेगी।

15. फीस एवं प्रभार

केन्द्रीय एजेंसी से प्रस्ताव के आधार पर आयोग प्रत्यायन, रजिस्ट्रेशन, प्रमाणपत्रों को जारी करने और उससे संबंधित अन्य मामलों के लिए पात्र इकाइयों द्वारा प्रतिदेय फीस एवं प्रभारों को निर्धारित करेगा।

16. विस्तृत क्रियाविधि

(1) केन्द्रीय एजेंसी इन विनियमों की अधिसूचना के तीन माह की अवधि के अंदर स्टैकहोल्डरों से परामर्श करने के बाद विस्तृत क्रियाविधि जारी करेगी और आयोग को सूचना के लिए उसे प्रस्तुत करेगा।

(2) विस्तृत क्रियाविधि में निम्नलिखित सहित लेकिन उस तक सीमित नहीं, को शामिल किया जाएगा:

- (क) इन विनियमों के विनियम 3 के खण्ड (2) में यथाउल्लिखित पात्र इकाइयों के संबंध में उत्पादन के लेखांकन के लिए क्रियाविधि;
- (ख) इन विनियमों के विनियम 6 के खण्ड (2) में यथाउल्लिखित प्रत्यायन के लिए क्रियाविधि;
- (ग) इन विनियमों के विनियम 8 के खण्ड (1) में यथाउल्लिखित प्रमाणपत्र के लिए रजिस्ट्रेशन के लिए क्रियाविधि;
- (घ) इन विनियमों के विनियम 10 के खण्ड (1) में यथाउल्लिखित प्रमाणपत्र को जारी करने के लिए क्रियाविधि;
- (ङ) इन विनियमों के विनियम 11 के खण्ड (2) में यथाउल्लिखित पावर एक्सचेंज के माध्यम से या विद्युत व्यापारियों के माध्यम से प्रमाणपत्र के विनियम के लिए आवधिकता;
- (च) अन्य संबंध और आकस्मिक मामले।

(17) निर्देश देने की शक्ति

आयोग समय समय से इस प्रकार के पद्धति निर्देशों और आदेशों को जारी करें जिसे वे इन विनियमों के कार्यान्वयन के लिए उचित समझता है।

(18) शिथिल करने की शक्ति

आयोग, लिखित में अभिलिखित किए जाने वाले कारणों के लिए, सामान्य या विशेष आदेश से, और इन विनियमों के किसी भी उपबंध को शिथिलता प्रदान करते हुए प्रभावित होने के लिए संभावित पार्टियों को सुनवाई का अवसर प्रदान करने के बाद स्वप्रेरणा से या इच्छुक व्यक्ति (व्यक्तियों) द्वारा किए गए आवेदन पर इन विनियमों के किसी उपबंध को शिथिल कर सकेगा।

(19) निरसन एवं व्यावृत्तियां

(1) इन विनियमों में अन्यथा उपबंधित के अनुसार, आरईसी विनियम, 2010 और सभी परवर्ती संशोधन और उसकी क्रियाविधियां इन विनियमों के लागू होने की तारीख से निरस्त होंगे।

(2) ऐसे निरसन में किसी बात के होते हुए भी:

(क) निरसित विनियमों के अधीन की गई कोई बात या की गई कोई कार्रवाई या कोई प्रत्यायन या रजिस्ट्रेशन या प्रदान की गई अनुमति या निष्पादित कोई दस्तावेज या लिखित या कोई निर्देश जो अब तक इन विनियमों के उपबंधों के अनुरूप नहीं है, इन विनियमों के तदनुरूपी उपबंधों के अधीन की गई या की गई कार्रवाई मानी जाएगी।

(ख) आरईसी विनियम, 2010 के अधीन जारी किए गए और इन विनियमों के प्रवृत्त होने की तारीख से पूर्व मोचित नहीं किए गए प्रमाणपत्र (01.04.2017 से पूर्व जारी किए गए गैर-सौर प्रमाणपत्रों को छोड़कर)

तब तक वैध रहेंगे जब तक उन्हें मोचित नहीं किया जाता और इन विनियमों के अनुसार विनियम के लिए पात्र होंगे।

(ग) 01.04.2017 से पूर्व जारी किए गए गैर-सौर प्रमाणपत्रों का विनियम याचिका संख्या 14/एसएम/2017 में दिनांक 04.06.2018 के शुद्धिपत्र के साथ पठित दिनांक 28.05.2018 के आयोग के पत्र द्वारा अधिशासित होना जारी रहेगा जब तक उन्हें 2018 की सिविल अपील संख्या 4801 में माननीय सर्वोच्च न्यायालय के किसी निर्देशों के अध्याधीन आरईसी विनियम, 2010 के अधीन उनकी वैधता के अनुसार मोचित नहीं किया जाता।

(घ) निरस्त विनियमों के अनुसरण में जारी किए गए किसी आदेश या निर्देश या प्रदान किए गए अनुमोदन या की गई कोई नियुक्ति, यदि इन विनियमों के आरंभ में प्रवृत्त है, जारी रहेगी और प्रभावी होगी यदि इसे इन विनियमों के अनुसरण में या उसके अधीन जारी किया गया या निर्देश दिया गया, वही प्रभाव होगा जब तक कि इन विनियमों के अधीन अन्यथा विशिष्ट रूप से अपेक्षा न की गई हो।

हरप्रीत सिंह प्रुथी, सचिव

[विज्ञापन III/4/असा./92/2022-23]

परिशिष्ट—I

प्रमाणपत्र मल्टीप्लायर के अवधारण के लिए सिद्धांत

- (क) प्रमाणपत्र मल्टीप्लायर को निम्नलिखित को ध्यान में रखते हुए विभिन्न नवीकरणीय ऊर्जा स्रोतों के टैरिफ रेंज के आधार पर अवधारित किया गया है:
- अधिनियम की धारा 63 के अधीन बोली प्रक्रिया के माध्यम से अभिज्ञात नवीकरणीय ऊर्जा परियोजनाओं का टैरिफ
 - विभिन्न नवीकरणीय ऊर्जा स्रोतों पर आधारित परियोजनाओं के लिए आयोग द्वारा जारी किए गए टैरिफ आदेश।
 - नवीकरणीय ऊर्जा परियोजनाओं के लिए राज्य विद्युत विनियामक आयोगों द्वारा जारी किए गए टैरिफ आदेश।
 - उपयुक्त आयोग द्वारा अवधारित नवीकरणीय ऊर्जा परियोजना विनिर्दिष्ट टैरिफ, यदि कोई है।
- (ख) उक्त सिद्धांतों के आधार पर, प्राक्कलित नवीकरणीय ऊर्जा प्रौद्योगिकी और नवीकरणीय ऊर्जा प्रौद्योगिकी को निर्दिष्ट प्रमाणपत्र मल्टीप्लायर के लिए स्तरीकृत टैरिफ निम्नानुसार है:

नवीकरणीय ऊर्जा प्रौद्योगिकी पर आधारित	टैरिफ रेंज रु./किलोवाटघण्टा	प्रमाणपत्र मल्टीप्लायर
ऑन-शोर पवन एवं सौर	≤4	1
हाइड्रो	4-6	1.5
म्युनिसिपल सॉलिड वेस्ट (एमएसडब्ल्यू) और गैर-जीवाश्म ईंधन आधारित सह-उत्पादन	6-8	2
बायोमास एवं बायोफ्यूल	8-10	2.5

CENTRAL ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

New Delhi, the 9th May, 2022

No. RA-14026(11)/1/2022-CERC.—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