

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Application in pursuance to Show-Cause notice no. UERC/6/TF-142/12-13/2013/1720 dated March 12, 2013.

And

In the matter of:

Declaring the Petitioner Company being captive user as Cogeneration outside the purview of the "Obligated Entity" as defined under UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010.

And

In the matter of:

M/s Birla Tyres Kesoram Industries ...Petitioner

And

In the matter of:

1. M/s Gujarat Ambuja Exports Ltd.
2. M/s Sidharth Papers Ltd. (Unit-2)
3. M/s Siddheshwari Paper Udyog Ltd.
4. M/s Century Pulp and Paper Mill
5. M/s Shree Shyam Pulp and Board Mill
6. M/s India Glycols Ltd.
7. M/s BAHIL Paper Mills Ltd.
8. M/s Hanung Toys & Textiles Ltd. ...Petitioners

And

In the matter of:

Uttarakhand Renewable Energy Development Agency ...Respondent

CORAM

Shri Jag Mohan Lal	Chairman
Shri C.S. Sharma	Member
Shri K.P. Singh	Member

Date of Order: April 10, 2014

The Order relates to the Petition filed by M/s Birla Tyres Kesoram Industries, (hereinafter referred to as "Petitioner" or "Generator"), on 17.05.2013 in the matter of "reply in pursuance to Show-

Cause notice no. UERC/6/TF-142/12-13/2013/1720 dated 12.03.2013” and in the matter of “declaring the petitioner Company, being captive user having co-generation plant, based on conventional & non-conventional fuel, outside the purview of the “Obligated Entity” as defined under UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010” (hereinafter referred to as “RPO Regulations, 2010”).

1. Background

The Commission had issued show-cause notice dated 12.03.2013 to the above mentioned 9 nos. captive users including the petitioner for non-compliance of the RPO Regulations, 2010. In reply, some of the captive users submitted that as they are co-generation based captive user, therefore, in accordance with the of the Hon’ble ATE’s Order dated 26.04.2010 in the matter of Century Rayon vs. MERC (Appeal no. 57/2009) RPO compliance should not be imposed on them. M/s Birla Tyres Kesoram Industries preferred to file a petition in the matter. Since the matter pertains to the applicability of provision of the regulation on a certain group of the entities, hence, the Commission considered all the remaining captive users alongwith the Petitioner also as petitioners in the matter. Accordingly, views & decision taken in the matter shall be applicable to all such captive generation based co-generators.

The Petitioner vide above Petition had sought following relief in the matter:

- a) To declare that its Captive Generating Plant is a cogeneration plant and is under no obligation to make purchases of renewable energy certificates under RPO Regulations, 2010.
- b) To declare that its Captive Generating Plant is outside the purview of “Obligated Entity” as defined in RPO Regulations, 2010.
- c) To quash the letter dated 07.1.2013 & 23.02.2013 sent by UREDA to it.
- d) To permanently restrain UREDA from taking any action against the petitioner pursuant to the above letters.

On receipt of the Petition, a hearing was held on 01.07.2013 wherein, M/s Birla Tyres Kesoram Industries & UREDA made their submissions in the matter. The Commission vide Order dated 08.07.2013 admitted the petition and also directed Uttarakhand Renewable Energy Development Agency (hereinafter referred to as “UREDA” or “State Agency” or “Respondent”) to file its views on the petition. Submissions made by both the parties are as following:

- 1.1 The Petitioner is co-generation based captive user having a 7.5 MW generating plant based on non conventional energy sources and one 7.5 MW coal generating plant. It has been granted

consolidated consent dated 21.01.2013 to operate under the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as well as authorisation under Rule 5 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2008 notified under the Environment (Protection) Act, 1986.

- 1.2 The Petitioner submitted that the Respondent vide its letter dated 07.01.2013, asked it to provide the statement of estimated RE requirement for the ensuing year, quarterly RPO compliance and yearly RPO compliance in accordance with RPO Regulations, 2010. The petitioner vide its letter dated 29.1.2013 submitted its statement depicting no compliance of RPO had been made by it. The Respondent again wrote a letter dated 23.02.2013 to the Petitioner stating that in accordance with RPO Regulations, 2010 it was liable to submit the Statements within timeframe else the matter would be recommended to this Commission for imposition of penalty in accordance with the Regulation 7.2 of the RPO Regulations, 2010. The Petitioner in reply dated 22.03.2013 submitted its Statement showing nil compliance of RPO as required under RPO Regulations, 2010.
- 1.3 The Petitioner submitted that on receipt a Show-cause notice dated 12.03.2013 issued by the Commission for non-compliance of RPO Regulations, 2010 it made a reply dated 23.03.2013 stating that it is a non conventional energy source based captive user and also submitted that it was under the process to get connectivity to the State network. The Petitioner further submitted it had submitted all the Statements/details therefore, it had made all the compliances in accordance with RPO Regulations, 2010.
- 1.4 The Petitioner while referring to the Order dated 26.04.2010 of the Hon'ble ATE in the matter of Century Rayon vs. MERC (Appeal no. 57/2009) wherein, Co-generation based captive generator were absolved from any obligation, stated that being a Co-generation based captive generator the above referred Order should be applicable on it. The Petitioner also made a supplementary petition on 04.07.2013 vide which it submitted that if the Regulations do not apply to the Petitioner then submission of Statement in accordance with the Regulations would violate the Order of the Hon'ble ATE. It also referred to the judgement dated 10.04.2013 of the Hon'ble ATE in the matter of M/s Hindalco Industries Ltd. Vs UPERC wherein, the Hon'ble ATE again clarified the Order dated 26.04.2010.
- 1.5 The Respondent vide its reply dated 20.07.2013 submitted that in accordance with the then existing Regulations captive users were also considered as "Obligated entity" and are required to fulfil their RPO compliances. However, it had further submitted that, in view of the Hon'ble ATE's judgment the Commission may also declare all the captive users generating electricity through co-

generation irrespective of the fuel used outside the purview of the “Obligated entity”.

2. The Commission’s views & decision

2.1 The Petitioner, a Co-generation based captive user, had filed the Petition in the month of May, 2013 and the same had been admitted during July, 2013. At the time of filing as well as admission of the above referred petition definition of “Obligated entity” in accordance with the then prevailing RPO Regulations, 2010 was as under:

““Obligated Entity” means the distribution licensee, captive user and open access consumer in the State, which is mandated to fulfill renewable purchase obligation under these regulations;”

Since the above referred regulation/definition also includes captive user to be an “Obligated entity”, hence, all the captive users would be considered as “Obligated entity” under the above referred definition till the applicability of the above referred definition under RPO Regulations, 2010.

2.2 The Commission amended the above definition of “Obligated entity” vide UERC (Compliance of Renewable Purchase Obligation)(First Amendment), Regulations, 2013 w.e.f. 28.12.2013 as following:

““Obligated Entity” means the distribution licensee, captive user (excluding co-generation based captive power plants) and open access consumer in the State, mandated to fulfill renewable purchase obligation under these regulations.”

Based on the above referred amendment the “co-generation based captive power plants” would not be considered as “Obligated entity” w.e.f. 28.12.2013. In this regard, the Commission has already taken a view in the similar matter vide Order dated 13.03.2014, relevant extract of the same is reproduced hereunder:

“V. Co-generation based Captive Power Plant

Respondent no. 19 has submitted that being a co-generation based Captive Power Plant it is not liable to comply with the RPO as the definition of “obligated entity” excludes such consumers in accordance with the UERC (Compliance of Renewable Purchase Obligation) (First Amendment) Regulations, 2013. In this regard, it is hereby, clarified that all the Captive Power Plant were covered under the ambit of “obligated entity” since the earlier UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 (effective from 1st April 2008) and they continued to remain obligated entity even in later Regulations applicable for further control periods namely UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 and Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable

Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013. Further, RPO enforcement mechanism was laid down by the Commission through notification of separate Regulation namely, UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 w.e.f. November 2010. The aforesaid amendment to RPO Regulation 2010 have recently come into force w.e.f. December 28, 2013 absolving co-generation based Captive Power Plant from such obligations. These amendments have prospectively changed the provisions of the principle regulations. Hence, all the co-generation based Captive Power Plant as per prevalent definition of "obligated entity" are required to make RPO compliances in accordance with provisions of the Regulations for the period from FY 2011-12 upto December 27, 2013, i.e. a day prior to the applicability of the above amendment Regulation. Therefore, all such "obligated entities" are hereby, allowed carrying forward of unmet RPO of FY 2011-12 & FY 2012-13 to FY 2013-14 with the direction to either make procurement of RE Power from non-Solar as well as from Solar sources and/or to purchase equivalent RECs so as to meet shortfall in compliances for the previous years alongwith the current financial year (upto December 27, 2013) in accordance with the Regulations latest by March 31, 2014 and submit the compliance status by April 10, 2014."

Emphasis added

In view of the above ruling of the Commission, all the co-generation based captive generators would be treated as "Obligated entity" prior to the date of applicability of amendment Regulations. Accordingly, the Petitioners & all such generators would be liable to comply with the obligations as stipulated in the RPO Regulations, 2010. All the co-generation based captive users including the Petitioners in the matter are hereby, directed to demonstrate that required procurement was made of RE Power from non-Solar as well as from Solar sources or else purchase equivalent RECs so as to meet shortfall in compliances of RPO for FY 2011-12, FY 2012-13 & FY 2013-14 (upto 27.12.2013) in accordance with the Regulations latest by 31.05.2014 and submit the compliance status by 10.06.2014. These entities are also required to submit the details in the enclosed **Format-A** to UREDA with a copy to the Commission latest by 10.05.2014.

- 2.3 It is hereby also clarified that all the other captive users would continue to be treated as "Obligated entity" and hence, are liable to make compliances of the RPO Regulations, 2010 and the amendment Regulations, 2013 accordingly. These captive users are directed to make procurement of RE Power from non-Solar as well as from Solar sources and/or to purchase equivalent RECs so as to meet shortfall in compliances of RPO for FY 2011-12, FY 2012-13 & FY 2013-14 in accordance with the Regulations latest by 30.04.2014 and submit the compliance status by 10.05.2014. These entities are also required to submit the details in the enclosed **Format-A** to UREDA with a copy to

the Commission latest by 10.05.2014.

- 2.4 Failure to ensure compliance by “Obligated entities” of UERC(Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 & RPO Regulations, 2010 would attract penal action under Section 142 of the Electricity Act, 2003 and the Regulations. Section 142 of the Electricity Act, 2003 is reproduced hereunder:

“142. In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

- 2.5 The Petitioner also requested for quashing of letters dated 07.01.2013 & 23.02.2013 issued by the Respondent to it. In this regard, the Commission is of the view that since the Petitioner and all such generators are liable to be treated as “Obligated entity” prior to the applicability of the above referred amended regulations, i.e. upto 27.12.2013, therefore, all the obligations stipulated under the Regulations would be required to be complied accordingly. The State Agency vide above referred letters had asked the Petitioner to make compliance of the Regulations, hence, this request of the Petitioner is not accepted.

- 2.6 Accordingly, above Petition is hereby, disposed off.

- 2.7 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Jag Mohan Lal)
Chairman

Name of Captive User with address									RPO Non Solar Statement			
FY 2011-12			FY 2012-13			FY 2013-14			FY 2011-14 (Total)			
Gross Energy Consumption	RPO as stipulated by UERC (@4.5%)	Purchase of RECs during the FY 2011-12	Gross Energy Consumption	RPO as stipulated by UERC (@5.0 %)	Purchase of RECs during the FY 2012-13	Gross Energy Consumption (GEC)	RPO as stipulated by UERC (@6.0 %)	Purchase of RECs during the FY 2013-14	Total Gross Energy Consumption (GEC)	Total RPO as stipulated by UERC	Total Purchase of RECs	Shortfall/ (Excess)
(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh/ RECs)
1	2	3	4	5	6	7	8	9	10 (1+4+7)	11 (2+5+8)	12 (3+6+9)	13 (11-12)

Name of Captive User with address									RPO Solar Statement			
FY 2011-12			FY 2012-13			FY 2013-14			FY 2011-14 (Total)			
Gross Energy Consumption	RPO as stipulated by UERC (@0.025%)	Purchase of RECs during the FY 2011-12	Gross Energy Consumption	RPO as stipulated by UERC (@0.05 %)	Purchase of RECs during the FY 2012-13	Gross Energy Consumption (GEC)	RPO as stipulated by UERC (@0.05 %)	Purchase of RECs during the FY 2013-14	Total Gross Energy Consumption (GEC)	Total RPO as stipulated by UERC	Total Purchase of RECs	Shortfall/ (Excess)
(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh/ RECs)
1	2	3	4	5	6	7	8	9	10 (1+4+7)	11 (2+5+8)	12 (3+6+9)	13 (11-12)

Note:

1. Submit the RPO statement on above format on letter head of the company and to be duly attested by Authorised Signatory.
2. Provide the contact details with email-id and phone number of the authorized signatory.
3. Submit the copy of all RECs purchased with its details on stamp paper.
4. If the RPO statement of any fiscal year, submitted earlier, differ from the statement submitted under this format, than statement provided under this format would be consider as final statement. However in this case, the obligated entities would also require to submit fresh statement as per format provided in Procedure under the UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 for Accreditation of RE Generation Project by State Agency.