

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

\*\*\*\*\*

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

**Case No. 46/2021**

M/s. Visa Steel Limited  
Vrs.  
OREDA

.....Petitioner

..... Respondent

**In the matter of:**        **Application under Regulations 12.5, 12.6 and 12.7 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 read with Reg. 4.1 and 4.2 of the said Regulations, Clause-3 of the OERC Notification No. OERC/RA/RE-5/2013 dated 31.12.2019 and Section 86 (1) (e) of the Electricity Act, 2003 seeking permission/direction to relax and exempt Visa Steel Limited from the applicability of RPO.**

**For Petitioner:**        **Shri Bibhu Charan Swain, the authorized representative.**

**Respondent:**        **Ms. Sujata Das, Verifier.**

**ORDER**

**Date of hearing: 10.08.2021**

**Date of order:07.10.2021**

The petitioner M/s. Visa Steel Limited has submitted that it is having an Integrated Steel Plant located at Kalinga Nagar in Jajpur district of Odisha. It has also a CGP of 3 x 25 MW capacity within the plant premises. The petitioner has submitted that it has 4 nos. of Coke Oven Plant gas based WHRB of 24.5 TPH capacities each, one Blast Furnace waste gas based WHRB of 30 TPH capacity, two nos. of Direct Reduced Iron (DRI)/Sponge Iron Kiln gas based WHRB of 48 TPH each and one coal based CFBC Boiler of 160 TPH capacity for production of steam for utilization in the process heating and power generation. In the reduction processes enormous heat energy is generated, part of which is utilised in coke, sponge iron and hot metal production and the balance heat which is supposed to be exhausted as waste to the atmosphere, is passed through super heater section, evaporator section and economiser section of WHRB to produce super heated steam from water. The super heated steam generated in all the WHRBs and CFBC boiler is collected in a common steam distributing header from which the high pressure and high temperature steam is passed through

3x25 MW turbine generators for power generation and low pressure and low temperature steam is utilised in steel melting shop, rolling mill, blast furnace for process requirement and heating.

2. The petitioner has submitted that the term ‘co-generation’ is defined in terms of section 2 (12) of Electricity Act, 2003 as given below:

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

Its CGP has a process in which it simultaneously produces two forms of useful energy i.e. steam (heat) and electricity. Thus as per section 2(12) of the EA, 2003 its CGP meets the eligibility criteria to qualify for a cogeneration plant. The legislature has not restricted the said process to the extent of type of fuel i.e. it may be fossil fuel or non-fossil fuel.

Further, one of the function of the State Commission under Section 86(1)(e) of the Electricity Act, 2003 is as follows:

*“86 (1) (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”*

As per the above provision, the Commission is required to promote cogeneration at par with the other renewable sources. Further, as per clause 7 of the Odisha Renewable Energy Policy, 2016 the waste to energy mainly municipal solid waste (MSW), industrial and agricultural waste based power projects in Odisha are to be considered as renewable power projects and need to be promoted.

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

*“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 co-generation from the renewable sources alone. The meaning of term, ‘Co-generation’ has to be understood as defined in definition section 2(12) of the Act.*
- (ii) As per Section 86(1)(e), there are two categories of ‘generators namely (1) co-generation (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the*

*State Commission by directing the distribution licensees to purchase electricity from both categories.*

- (iii) *The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86(1)(e).*
- (iv) *The clear meaning of the words contained in Section 86(1)(e) is that both are different, and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative intent.*
- (v) *Under the scheme of the Act, both renewable source of energy and co-generation power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.*
- (vi) *The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such co-generation and not co-generation or generation from renewable energy sources alone.”*

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

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

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

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

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

*“Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-*

*generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.”*

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

6. The petitioner has submitted that in Appeal No.322 of 2016 (M/s. Ultratech Cement Ltd. Vs. Karnataka Electricity Regulatory Commission) and Appeal No.333 of 2016 (M/s. JSW Steel Ltd. Vs. Karnataka Electricity Regulatory Commission), in the matter of imposition of RPO on Captive Co-generation Plants using fuel other than renewable sources for power generation, the APTEL has concluded that the co-generators are not under a legal obligation to purchase power from renewable sources of energy in order to meet their RPO and such exemption granted to co-generation plants would not depend on the type of fuel used by them. The petitioner has submitted that on a plain reading of Section 86(1)(e) of the EA, 2003 it does not show that the expression ‘co-generation’ means co-generation from renewable sources. Further, the APTEL vide its various orders has directed that co-generation unit cannot be fastened with any obligation to purchase power generated by renewable energy sources. Therefore, in the present petition, the petitioner has sought relaxation from the operation of OERC (Procurement of Energy from Renewable Sources and its Compliance), Regulations, 2015 on the premises that the grounds of such relaxation emanates from successive interpretation of Section 86(1)(e) of the EA, 2003 by the APTEL in its various judgements. Further the APTEL in para 23 of its judgement dated 01.10.2014 in Appeal No. 112 of 2014 (Indian Glycol Vs. UERC) has held that it was a fit case for the state Commission to exercise its ‘power to relax’ its own regulations in order to give effect to the judgement dated 26.04.2010 in Century Rayon case in letter and spirit, even without waiting for bringing an amendment in its regulations.
7. The petitioner has further submitted that the Commission, in its order dated 08.12.2020 in case No.66 of 2019, was also pleased to invoke the provisions of power

to relax to carry out the objective of the Act and also give effect to the judgements passed by the APTEL in the matter of exemption and relaxation from applicability of RPO and compliance thereof to M/s. Tata Steel Ltd. which generates such captive co-generation power from waste heat recovery process. In the concluding part of the said order the Commission has passed the following direction:

“16. *Heard the parties at length. The Commission observed that as per the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015, the petitioner company is an obligated entity since it consumes electricity from its CGPs having capacity of 1 MW and above and also procures power through open access for its use. In the present application the petitioner has submitted that its CGPs are having co-generation facility and cited various judgements of Hon'ble APTEL in respect of relaxation of RPO in case of Co-generation power plants.*

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

8. The petitioner has further submitted that as per the direction of OERC, the Technical Committee under the Chairmanship of Chief Engineer (Project)-cum-CEI, Govt. of Odisha has held detailed discussions and analysed the Regulation No.A-4/95 dated 06.11.1996 of the Ministry of Power, Govt. of India and recommended the CGP of the petitioner as a co-generation plant vide its letter No.1642 dated 14.10.2009. Further, to arrive at the energy generated from co-generation process in Kwh, the following formula has been recommended by the Technical Committee as given below:

Co-generation Units (Kwh) =

Total Electrical Energy Generated in (kWh) x Steam flow from WHRB

-----  
(Steam flow from WHRB + Steam flow  
from CFBC)

Based on the above formula the petitioner has calculated the total power generated from WHRB and CFBC boiler from 10.09.2015 onwards and computed the financial year wise RPO compliance status.

9. The petitioner has submitted that OERC (Procurement of Energy from Renewable Sources and its Compliance), Regulations, 2015 has been notified on 10.09.2015 and subsequently the Commission vide notification dated 31.12.2019 has revised the RPO to 3% for conventional CGPs commissioned before 01.04.2016. Since the generating plant of the petitioner has been established prior to 01.04.2016, the petitioner has calculated its RPO target at 3% from 10.09.2015 and has stated that it has surplus of generation of co-generated power after meeting its 3% RPO on the power generated from coal based CFBC boiler based CGP. He has stated that its plant generates around 200 MU of co-generation based energy whereas its total RPO obligation is around 4 MU. After meeting the total RPO of 4 MU at present the average yearly surplus co-generation availability is around 196 MU. The details of the calculation made by the petitioner is given hereunder:

Year	Self consumption from conventional based CGP excluding Aux. Conmp. in Kwh	RPO in Kwh			Status of RPO fulfilment in Kwh	Quantum of default in Kwh
		Solar	Non-solar	Total		
2015-16 (from 10.9.15)	93190775	465954	2329769	2795723	120250089	NIL
2016-17	176398807	881994	4409970	5291964	218479505	NIL
2017-18	195719509	978598	4892988	587185	218107113	NIL
2018-19	140934257	704671	3523356	4228028	244894012	NIL
2019-20	65671034	328355	1641776	1970131	155624605	NIL
2020-21	130273129	651366	3256828	3908194	244100911	NIL
Average	133697918	668490	3342448	4010938	200242706	NIL
Total	802187511	4010938	20054688	24065625	1201456235	NIL

10. The petitioner has submitted that at present there is limited availability of solar energy in Odisha as GRIDCO has signed PPA with all the solar developers and also a limited scope for establishment of a solar power plant in its premises due to space constraint. Further, the Commission in its order dated 08.12.2020 passed in Case No. 66 of 2019 in the matter of RPO of M/s. Tata Steel Ltd., has settled that in the event of any RPO obligation arising due to consumption from open access or coal based power plants

etc. then the industry shall be exempted from RPO both solar and non-solar when its consumption from co-generation sources is more than its RPO for the respective time period. Therefore, the petitioner is not required to purchase solar and non-solar REC.

11. In view of the above, the petitioner has prayed the Commission to recognise its WHRB based CGP as co-generation power plant and relax and exempt the petitioner from applicability of RPO and compliance thereof for the period from FY 2015-16 till date and for the further period in terms of RPO regulation, 2015. The petitioner has further prayed the Commission to allow its surplus co-generation power to be carried forward and offset against current and future RPO.
12. The respondent OREDA has submitted that the petitioner is an identified obligated entity under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015. It has 3 nos. of CGP Units inside its industrial complex at Kalinga Nagar. As per the said Regulation and its amendment dated 31.12.2020, the quantum of RPO of the petitioner is given below:

FY	Total consumption from CGP - Auxiliary consumption (in kWh)	Quantum of RPO as per the Amendment Regulation dt.31.12.2020	
		Solar	Non-Solar
2015-16 (from 10.09.2015)	93190775	465953.875	2329769.375
2016-17	176398807	881994.035	4409970.175
2017-18	195719509	978597.545	4892987.725
2018-19	140934257	704671.285	3523356.425
2019-20	65671034	328355.170	1641775.850
2020-21	130273129	651365.645	3256828.225
Total	802187511	4010937.555	20054687.780

13. OREDA has submitted that the petitioner has no renewable power plant for its own use and as per the information available with OREDA, the petitioner has not purchased any REC from the power exchanges during the second control period. However, during the period from 10.09.2015 to 31.03.2019 the petitioner has reported to have consumed 1201456235 kWh of energy from their own co-generation sources. The petitioner has sought exemption from fastening of RPO citing the Commission's order passed in Case No.66 of 2019. OREDA has stated that the judgement of APTEL in Appeal No. 278 of 2015 indicates that co-generation facility irrespective of fuel is to be promoted in terms of Section 86(1)(e) of EA, 2003 and cannot be fastened with RPO as long as the co-generation is in excess of RPO placed on such entity. Further, as per the judgement of APTEL in Appeal Nos. 146/2017, 322 and 323 of 2016, the

co-generation plants are not under a legal obligation to purchase power from renewable sources of energy in order to meet their RPO in the interest of justice and equity.

14. In view of the above, OREDA has submitted that if the WHRB based power plant of the petitioner is recognised as a co-generation power plant and the power generated from such plant is considered as renewable power, the Commission may consider relaxing the provisions of applicability of RPO and its compliance in the present case.
15. Heard the parties. In accordance with various orders of the APTEL, the Commission has passed the following Order dated 08.12.2020 in Case No. 66/2019, in the matter of exemption and relaxation from applicability of RPO and its compliance to M/s. Tata Steel Ltd. which generates such captive co-generation power from waste heat recovery process:

*“16. Heard the parties at length. The Commission observed that as per the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015, the petitioner company is an obligated entity since it consumes electricity from its CGPs having capacity of 1 MW and above and also procures power through open access for its use. In the present application the petitioner has submitted that its CGPs are having co-generation facility and cited various judgements of Hon’ble APTEL in respect of relaxation of RPO in case of Co-generation power plants.*

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

16. The Commission observed that in the instant case the petitioner M/s. Visa Steel Ltd. has a CGP of 3 x 25 MW capacity having co-generation facilities. Therefore, the



directions of the Commission in the aforesaid Case No. 66/2019 dated 08.12.2020 shall be applicable to M/s. Visa Steel Ltd. in the present case for relaxation of the provisions under Regulations 12.6 and 12.7 of the OERC RPO Regulations, 2015 towards meeting RPO treating the Petitioner's WHRB based captive power plant as co-generation plant. Hence, the petitioner shall be exempted from Renewable purchase Obligation when its consumption from its cogeneration sources is more than its Renewable Purchase Obligation for the respective time period. The Commission further observed that the petitioner neither has any renewable power plant nor has purchased any REC from the power exchanges during the second control period which could have been carried forward to the future years. However, the Commission do not accept the prayer of the petitioner to carry forward and offset the surplus co-generation power of a year to the future years. Accordingly, the state agency OREDA shall compute the RPO of the petitioner based on its total consumption and compare the same with the consumption from its co-generation sources from FY 2015-16 till FY 2020-21. The petitioner is directed to provide the data/information as required by OREDA for computation of RPO. OREDA may also collect the required data/information from the offices of EIC and SLDC for verifying the compliance data provided by the petitioner. The EIC and SLDC are directed to provide the required data for the purpose as and when sought by OREDA.

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

Sd/-  
**(G. Mohapatra)**  
**Member**

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**