

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: Review Petition under section 94(1)(f) of the Electricity Act, 2003, seeking Review of the order dated 07.10.2024 passed in Suo Moto Petition No. 45 of 2024.**

**ORDER**

**(Date of Order: 13.05.2026)**

**M/s Associated Alcohols & Breweries Pvt. Ltd.,**  
4<sup>th</sup> Floor, BPK Star Tower,  
A.B. Road, Indore (MP)-452008

- **Petitioner**

Shri Siddharth Nanderkar, Advocate appeared on behalf of the petitioner.  
Shri Amit Dubey, Advocate appeared on behalf of the petitioner.

The subject review petition is filed by M/s Associated Alcohols & Breweries Pvt. Ltd., Under Section 94(1)(f) of the Electricity Act, 2003..

2. By affidavit dated 24<sup>th</sup> September' 2025, the petitioner broadly submitted the following in its petition:

**Brief Factual Background**

- i. The Applicant, Associated Alcohols & Breweries Pvt. Ltd. (AABL), is a company incorporated under the Companies Act and engaged in manufacturing and allied activities in Madhya Pradesh. The Applicant is generating waste heat which is being used for co-generation or electricity production as by product about 2.4 MW within its industrial premises. The electricity generated is used for self-consumption.
- ii. The Madhya Pradesh Electricity Regulatory Commission (MPERC), in exercise of its statutory powers under the Electricity Act, 2003, notified the Cogeneration and Generation of Electricity from Renewable Sources of Energy Regulations, 2010 (and subsequent amendments). Under these Regulations, captive and open access consumers are classified as "obligated entities" required to fulfil Renewable Purchase Obligations (RPOs).
- iii. Over the period from FY 2010-11 to FY 2023-24, the Commission periodically reviewed RPO compliance of distribution licensees, captive producers, and open access consumers. During these reviews, it was alleged that the Applicant had a shortfall in meeting its RPO obligations.
- iv. In view of the alleged shortfall, the Commission initiated Suo Moto Petition No. 45 of 2024 against the Applicant and issued notices calling upon it to show cause why directions and penal action under the Electricity Act, 2003, should not be issued for alleged non-fulfilment of RPO obligations.
- v. That the generation of electricity as a by-product of the manufacturing process

using incidental heat and process-related waste, cannot be equated with electricity generated from other sources.

- vi. The Applicant made bona fide attempts to procure Renewable Energy Certificates (RECs) or renewable energy during the compliance period.
- vii. The Applicant highlighted that the cumulative shortfall calculated over 14 years is disproportionate to the nature of its operations and the scale of its captive generation.
- viii. After considering the submissions and the record, the Commission, vide Order dated 07.10.2024, held that the Applicant failed to meet its RPO obligations from 10.11.2010 to 31.03.2024.
- ix. The Commission directed the Applicant to make good the shortfall by procuring renewable energy or RECs corresponding to the unmet obligations.
- x. Additionally, invoking Section 142 of the Electricity Act, 2003, the Commission recorded non-compliance and issued directions for appropriate enforcement.
- xi. The Applicant is aggrieved by the impugned order and submits that it suffers from errors apparent on the face of record, including non-consideration of by-product/captive generation of electricity.

### **Grounds**

- i. That, the Hon'ble Commission has equated the Petitioner's captive/co-generation-like process with renewable generation for RPO purposes. However, the Hon'ble APTEL in Tata Steel Ltd. v. OERC (2024) has expressly held that Sections 86(1)(e) and 61(h) of the Act do not mandate that co-generation and renewable sources be treated on the same footing. Similarly, in JSW Steel Ltd. v. MERC, the Tribunal reiterated that electricity generated from waste-heat/by-product does not ipso facto qualify as "renewable" for RPO compliance. The omission to apply or distinguish these binding rulings constitutes an error apparent on record.
- ii. That, the Petitioner's CPP generates electricity incidentally from process-related heat/by-product.
- iii. That, the impugned order saddles the Petitioner, a small captive consumer (2.4 MW), with a compliance burden spanning nearly 14 years without phased relief. The Hon'ble APTEL in JSW Steel and Lloyds Metal has underscored that penalties must be proportionate and mindful of bona fide constraints. The order does not consider availability of RECs, systemic constraints, or the Petitioner's bona fide limitations, thereby warranting review.
- iv. That, the Petitioner had specifically placed reliance on binding Tribunal rulings distinguishing co-generation from renewable energy. These are neither

discussed nor distinguished in the order. Non-consideration of binding precedent itself is a valid ground for review.

v. That, the applicant reserves its right to raise additional grounds.

3. With the aforesaid submissions the petitioner prayed the following:

- i. *Review and modify the order dated 07.10.2024 in SMP No. 45 of 2024;*
- ii. *Grant relaxation/waiver or phased compliance for any residual RPO shortfall, instead of imposing immediate penalty under Section 142; and*
- iii. *Pass such other or further orders as may be deemed just and proper in the facts and circumstances of the case.*

4. Petitioner has also filed two IAs along with his petition & prayed as under:

**1<sup>st</sup> IA No. 29 of 2025:**

1. That the Applicant is constrained to file the accompanying Review Petition against the order dated 07.10.2024 passed by this Hon'ble Commission in Suo Moto Petition No.45 of 2024.
2. That the contents of the Review Petition may be treated as part and parcel of the instant application and the same are not being reproduced herein for the sake of brevity.
3. That immediately upon receipt of the impugned order dated 07.10.2024, the Applicant sought consultations and legal advice. The matter involved intricate issues relating to the applicability of Renewable Purchase Obligations to captive/by-product generation and required examination of binding precedents, including judgments of the Hon'ble Appellate Tribunal for Electricity in *Tata Steel Ltd. v. OERC* and *JSW Steel Ltd. v. MERC*. The preparation of the Review Petition thus necessitated consultations with technical experts, and multiple communication between the Applicant and Counsel in order to file the instant review petition. This same, was time-consuming but bona fide, has caused the delay in filing the present Review Petition.
4. That, the Applicant further relies upon the judgment of the Hon'ble Supreme Court in *Balkar Singh v. State of Punjab & Ors.*, AIR 2005 SC 1567 wherein a delay of 680 days was condoned by clearly laying out that while considering an application for condonation of delay, merits of the case should be analyzed and a liberal approach should be taken as the justice would not be served by refusing to condone the delay. Also, that such delay must be condoned as a matter of legal necessity, not discretionary indulgence. Relevant portion of the judgement is thus reproduced hereunder-

*“we do not think interest of justice would be served by refusing to condone the delay, the consequence of which would be to perpetuate an illegal order and more so, in the background of the fact when we have today quashed an identical order arising from*

*the complaint. In the said view of the matter, we are of the opinion, that the delay in filing the special leave petition should be condoned and it is ordered accordingly”*

5. That the Applicant submits that it has a good prima facie case in the accompanying Review Petition. The order impugned suffers from errors apparent on the face of record and non-consideration of binding precedents, including judgments of the Hon'ble Appellate Tribunal for Electricity.
6. That, this Hon'ble Commission in the interest of justice has condoned the delay in several cases bearing no. 7, 15 and 16/2025 M/s J. K. Cement Panna and Ors. Vs. MP Poorva Kshetra Vidhyut Vitran Company Limited and Anr. And 6, 24 and 25/2025 M/s J. K. Cement Panna and Ors. Vs. M. P. Urja Vikas Nigam limited. The Applicant is here requesting this Hon'ble Commission to condone the delay of 350 days and to further adjudicate the said matter in the interest of justice.
7. That unless the delay in filing is condoned, the Applicant shall suffer grave prejudice, whereas no irreparable injury shall be caused to the other side if the delay is condoned and the matter is decided on merits.

**Prayer:-**

- i. *Commission may be pleased to condone the delay of 350 days in filing the accompanying Review Petition under Section 5 of the Limitation Act, 1963, in the interest of justice, equity and fair play. And for this act of kindness, the Applicant as in duty bound shall ever pray.*

**2<sup>nd</sup> IA No. 30 of 2025:**

- I. That the Applicant has filed the accompanying Review Petition against the order dated 07.10.2024 passed by this Hon'ble Commission in SMP No.45 of 2024, whereby the Applicant has been directed to make good the alleged RPO shortfall for the period from 10.11.2010 to 31.03.2024, and proceedings under Section 142 of the Electricity Act, 2003 have been invoked.
- II. That the contents of the Review Petition may be treated as part and parcel of the instant application and the same are not being reproduced herein for the sake of brevity.
- III. That the Applicant submits that it has a strong prima facie case in the accompanying Review Petition. The impugned order suffers from errors apparent on the face of record, including failure to appreciate the settled law laid down by the Hon'ble Appellate Tribunal for Electricity in *Tata Steel Ltd. v. OERC* (Appeal No. 57 of 2009) and *JSW Steel Ltd. v. MERC* (Appeal No. 38 of 2010), which categorically distinguish between co-generation/by-product generation and renewable energy generation for the purpose of RPO obligations.
- IV. That the matter involves complex technical and regulatory issues, and the Applicant has demonstrated bona fide conduct in participating in proceedings and attempting to comply with regulatory requirements to the extent feasible.

- V. That unless the operation of the impugned order is stayed, the Applicant will suffer grave and irreparable prejudice as it will be compelled to immediately procure renewable energy or Renewable Energy Certificates for a cumulative period of more than a decade, entailing an onerous financial burden which may ultimately be rendered unnecessary if the Review Petition succeeds.
- VI. That the balance of convenience is in favour of the Applicant, and no prejudice will be caused to the Commission or the regulatory framework if the order is kept in abeyance during pendency of the Review Petition.
- VII. It is therefore in the interest of justice, equity and fair play that the operation and effect of the impugned order dated 07.10.2024 be stayed till the final disposal of the Review Petition.

**Prayer:-**

- I. *Stay the operation and effect of the order dated 07.10.2024 passed in SMP No. 45 of 2024, during the pendency of the accompanying Review Petition; and*
  - II. *Pass such other or further orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.*
5. At the motion hearing held on 16.12.2025, Petitioner sought a short adjournment in the matter as the Sr. Counsel representing the case was not available. Motion hearing in the matter was adjourned. The case was fixed for motion hearing on 13.01.2026.
6. Petitioner vide his affidavit dated 16<sup>th</sup> December' 2025 made following additional submission:
- i. That, the Petitioner is undertaking manufacturing of alcohol at the impugned premises under Madhya Pradesh Excise Act, and rules and regulations framed thereunder. The applicant is generating waste heat during the manufacturing process which is being used for generation co-generation of electricity.
  - ii. That the entire process of production alcohol is carried out by the licensees under the licenses issued by the State Government under Madhya Pradesh Excise Act, 1915 ("MP Excise Act"), Madhya Pradesh Distillery Rules, 1995 ("MP Distillery Rules") and Madhya Pradesh Country Liquor Rules, 1995 ("MP Country Liquor Rules") which is prerogative, privilege and right of the State Government to undertake the production. Thus, the State Government controls the entire production in the State of Madhya Pradesh.
  - iii. That the State Government grants D-1 license to the Distilleries to produce potable alcohol/ rectified spirit under the MP Distillery Rules which is under the direct supervision of a dedicated Excise Officer at each Distillery.
  - iv. That the production mechanism including steam generation unit which produces the electricity as by-product are strictly under control of state government, and licensees are not allowed to make any alterations.

- v. That, in the light of the above-mentioned submissions, facts and grounds of review petition, and binding rulings of tribunal, it is humbly requested that the pending petition be allowed in favour of the petitioner.
7. At the motion hearing held on 13.01.2026, Petitioner sought a short adjournment in the matter as the Sr. Counsel representing the case was not available. Motion hearing in the matter is adjourned. The case is fixed for motion hearing on 21.01.2026.
8. At the motion hearing held on 21.01.2026, Ld. Counsel for Petitioner explained the reasons for condonation of delay in filing review petition. Having heard the Petitioner, order on IA No. 29 of 2025 for condonation of delay was reserved.
9. The Petitioner vide his affidavit dt. 22<sup>nd</sup> January' 2026, made following additional submission in support of his prayer for condonation of delay:
- i. That, the Petitioner is undertaking manufacturing of alcohol at the impugned premises under Madhya Pradesh Excise Act, and rules and regulations framed thereunder. The applicant is generating waste heat during the manufacturing process which is being used for generation co-generation of electricity.
- ii. That the production of alcohol is carried out by licensees strictly under licences granted by the State Government under the Madhya Pradesh Excise Act, 1915, the Madhya Pradesh Distillery Rules, 1995 and the Madhya Pradesh Country Liquor Rules, 1995, such production being a privilege and prerogative of the State. Consequently, the entire process of alcohol production in the State of Madhya Pradesh remains under the complete control and supervision of the State Government.
- iii. That distilleries are granted D-1 licences under the M.P. Distillery Rules and operate under the direct and continuous supervision of a dedicated Excise Officer, with the entire production mechanism, including the steam generation unit producing electricity as a by-product, being strictly regulated by the State Government and not amenable to alteration by the licensee. In view of these undisputed facts and the binding rulings of the Hon'ble Tribunal, it is humbly prayed that the present Condonation of delay be allowed in favour of the Petitioner.
- iv. That immediately upon receipt of the impugned order dated 07.10.2024, the Applicant sought legal advice, as the matter involved complex issues concerning the applicability of Renewable Purchase Obligations to captive/by-product generation and required examination of binding precedents of the Hon'ble Appellate Tribunal for Electricity, resulting in bona fide delay due to necessary legal and technical consultations. It is further submitted that this Hon'ble Commission, in the interest of justice, has consistently adjudicated cases bearing Nos. 7, 15 & 16 of 2025 and 6, 24 & 25 of 2025 (M/s J.K. Cement Panna & Ors. v. MP Poorva Kshetra Vidyut Vitran Company Limited & Anr. and M.P. Urja Vikas Nigam Limited), admitted on 25.08.2025, which are similar matter having similar grounds that of the Petitioner, therefore the Petitioner here feel appropriate and humbly request this Hon'ble Commission to further consider and adjudicate the

present Review Petition.

- v. That, the Applicant further relies upon the judgment of the Hon'ble Supreme Court in *Balkar Singh v. State of Punjab & Ors.*, AIR 2005 SC 1567 wherein a delay of 680 days was condoned by clearly laying out that while considering an application for condonation of delay, merits of the case should be analysed and a liberal approach should be taken as the justice would not be served by refusing to condone the delay. Also, such delay must be condoned as a matter of legal necessity, not discretionary indulgence. Relevant portion of the judgement is thus reproduced hereunder-

*"we do not think interest of justice would be served by refusing to condone the delay, the consequence of which would be to perpetuate an illegal order and more so, in the background of the fact when we have today quashed an identical order arising from the complaint. In the said view of the matter, we are of the opinion, that the delay in filing the special leave petition should be condoned and it is ordered accordingly"*

- vi. It is well settled that while considering an application for condonation of delay, a liberal and justice-oriented approach is required, especially where refusal to condone the delay would result in rejection of the matter without adjudication on merits. Procedural rules are meant to advance justice and not to defeat substantive rights, and therefore, where the delay is bona fide and not deliberate, condonation becomes a legal necessity rather than a matter of discretionary indulgence.

10. The Commission passed an order dated 27<sup>th</sup> February' 2026 and directed as under :

1. The Applicant has submitted that immediately upon receipt of the impugned Order, it sought detailed legal advice as the matter involves complex issues relating to the applicability of Renewable Purchase Obligations to captive/by-product generation and the interpretation of binding precedents of the Hon'ble APTEL. It has been contended that the delay occurred on account of bona fide legal and technical consultations and was neither deliberate nor intentional
2. In case of **N. Balakrishnan Vs. M. Krishnamurthy 1998(7) SCC 123**, their lordship held;

*"Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be un-condonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. - Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly---It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost*

*consideration to the suitor"*

3. In view of the foregoing, and in the interest of justice, equity, and fairness, the delay of 350 days in filing the Review Petition was condoned and I.A. No. 29 of 2025 was allowed. No relief on IA No. 30 of 2025 for stay of order dated 07.10.2024 in SMP No. 45 of 2024 was granted. The Review Petition was listed for hearing on merits.
  
11. At the last hearing held on 28.04.2026, Ld. Counsel for Petitioner concluded his arguments and case was reserved for orders.

**Commission's observations and findings:**

12. The Commission has heard the petitioner, examined the pleadings, and carefully considered the documents placed on record. The matter is now being decided with reference to the legal position governing review jurisdiction and the regulatory framework applicable in the State. The Commission has observed the following:
  - a. The present Review Petition has been filed by the Petitioner, operating WHRS based cogeneration captive power plants, seeking recall and modification of the Commission's order dated 07.10.2024 passed in Suo Moto Petition No. 45 of 2024. By the said order, the Commission had imposed RPO compliance upon the Petitioner and directed procurement of RECs for the shortfall in meeting RPO targets for the relevant years.
  - b. The petitioner submits that the heat generated in the process of manufacturing of alcohol is used in WHRS-based cogeneration plant and it has been wrongly treated as an obligated entity under the RPO framework. It has contended that the generation of electricity as a by-product of the manufacturing process using incidental heat and process related waste, cannot be equated with electricity generated from other sources and is contrary to judicial precedents of the Hon'ble APTEL and the Hon'ble Supreme Court. The Petitioner further contended that the production mechanism including steam generation unit which produces the electricity as by-product are strictly under control of the State Government and the rules/ Acts of State Government are binding on them. It has, therefore, urged that the impugned order suffers from error apparent on the face of the record and deserves to be recalled.
  - c. The Commission has carefully examined the review petition filed under Section 94(1)(f) of the Electricity Act, 2003 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908, as applicable. The Petitioner has sought recall and modification of the Commission's order dated 07.10.2024 passed in SMP No. 45 of 2024, primarily on the ground that the impugned order allegedly ignores binding judicial precedents and amounts to an "error apparent on the face of the record."
  - d. The Petitioner has urged that the impugned order, by imposing RPO compliance on its WHRS-based cogeneration captive power plant, disregards the law laid down in judgments of the Hon'ble APTEL and the Hon'ble Supreme Court. It has further submitted that, in view of the consistent judicial

pronouncements exempting cogeneration-based entities from RPO, the Commission's directions requiring procurement of RECs are unsustainable.

- e. Before addressing these contentions, it is necessary to recall the well-settled law governing the scope of a review petition. Order XLVII Rule 1 CPC circumscribes the jurisdiction of the court or tribunal exercising review powers on the following three narrow grounds:
  - (a) discovery of new and important matter or evidence which, after due diligence, was not within the applicant's knowledge or could not be produced at the relevant time;
  - (b) mistake or error apparent on the face of the record; and
  - (c) any other sufficient reason;
- f. It is pertinent to mention that review is not an appeal in disguise, nor a forum to reargue the merits, but a corrective jurisdiction strictly confined to rectifying patent errors or considering material facts previously unavailable.
- g. The Commission has noted that at the time of submission of data during hearing of SMP No. 45 of 2024, Review Petitioner had submitted data regarding generation from **Coal based 2.4 MW and 8.5 MW Steam Generators** and RPO was accordingly determined by the Commission. The fact regarding technology used in captive power generation was well known to the Petitioner at the time of submitting data on notice served under SMP No. 45 of 2024. Now, the Petitioner is claiming that their generation was from Waste Heat Recovery System (WHRS) based co-generation plant. The Commission is of the view that claim of using WHRS based Captive Generation cannot be considered in review as new and important Evidence as the facts were already known to the Petitioner during the proceedings in original petition.
- h. In the present case, the Commission finds that the alleged error sought to be demonstrated by the Petitioner is, in truth, a matter of submission of altered data regarding WHRS based captive power plant which was earlier submitted as from coal-based steam generator. Such error in submission of data by Petitioner during original proceedings cannot be equated with an error "apparent on the face of the record."
- i. The Commission holds that the Review Petitioner cannot seek modification of the data submitted during the original petition in review petition. In original SMP No. 45 of 2024, Petitioner had submitted data related to coal-based steam turbine generation which cannot be modified as waste heat recovery-based generation in review jurisdiction.
- j. The Commission further finds that even if the contention of Petitioner in subject Review Petition is considered i.e. the captive power plant of the Review Petitioner is considered as waste heat recovery system (WHRS) based generation plant, in such case also the regulatory framework notified by the

Commission consciously treats non-renewable WHRS-based cogeneration captive plants as obligated entities for the purpose of RPO thus need no reconsideration. This is a deliberate and well-reasoned decision balancing the dual legislative mandate of promoting renewable energy and cogeneration while ensuring enforceable compliance mechanisms under the RPO regime. It is pertinent to emphasize that the MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, as amended from time to time, were framed in exercise of the Commission's statutory power under Section 181 of the Act. These regulations are the product of careful deliberation, issued after due notification and public hearing and are fully in consonance with the Tariff Policy notified by the Central Government under Section 3 of the Act.

- k. The contention of the Petitioner that imposition of RPO upon its captive power plant (WHRS-based cogeneration unit) is contrary to judicial precedent has been duly dealt in the contemporary case i.e. Petition no. 07,15 & 16 of 2025 and Petition No. 06,24 and 25 of 2025. This very question has also already been examined by the Commission in the impugned order dated 07.10.2024 in SMP No. 45 of 2024 and in the aforesaid substantive petitions, wherein exemption from RPO was sought on identical grounds. The Commission had, in Petition Nos. 06, 24, and 25 of 2025, categorically held as under:

*"In light of the foregoing analysis, the Commission is of the considered view that the Petitioners have failed to demonstrate any of the limited grounds on which a review petition can be entertained under Order XLVII Rule 1 CPC. No discovery of new evidence has been shown, nor has any error apparent on the face of the record been established. On the contrary, the issues raised pertain to the merits of the case and the regulatory policy framework, both of which have already been thoroughly deliberated and settled in earlier proceedings of this Commission. The MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, as amended, remain valid subordinate legislation framed in due exercise of statutory powers and in conformity with the National Tariff Policy, consciously treating WHRS-based cogeneration captive power plants as obligated entities under the RPO framework. The reliance placed by the Petitioners on parallel proceedings in Petition Nos. 07, 15, and 16 of 2025 is of no relevance as in these cases, matter has been decided against the petitioners. Consequently, the Commission finds no merit in the grounds urged, holds that the impugned order dated 21.10.2024 does not suffer from any error apparent on the record, and accordingly dismisses the Review Petition."*

- l. The Commission, therefore, holds that the Petitioner has failed to establish the existence of any error apparent on the face of the record or any other sufficient cause warranting review of the order dated 07.10.2024. The submissions advanced amount to alteration of originally submitted data and a re-argument on merits which falls outside the limited scope of review jurisdiction. Thus, the review petition deserves to be dismissed.

### **13. Conclusion**

In light of the foregoing analysis, the Commission is of the considered view that the Petitioner has failed to demonstrate any of the limited grounds on which a review petition can be entertained under Order XLVII Rule 1 CPC. No discovery of new evidence has been shown, nor has any error apparent on the face of the record been established. On the contrary, the issues raised pertain to the merits of the case and the regulatory policy framework, both of which have already been thoroughly deliberated and settled in earlier proceedings of this Commission. The MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, as amended, remain valid subordinate legislation framed in due exercise of statutory powers and in conformity with the Tariff Policy, consciously treating WHRS-based cogeneration captive power plants as obligated entities under the RPO framework. Consequently, the Commission finds no merit in the grounds urged and holds that the impugned order dated 07.10.2024 does not suffer from any error apparent on the record, and accordingly the Review Petition being devoid of merit is hereby dismissed and disposed of.

**(Gajendra Tiwari)**  
**Member**

**(Gopal Srivastava)**  
**Acting Chairman**