



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 207/MP/2022

कोरम/ Coram

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member

श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member

श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 21<sup>st</sup> of September, 2023

**IN THE MATTER OF:**

Petition under Section 178, 79(1)(k) of the Electricity Act, 2003 read with Regulation 4(2) and Regulation 18 (Power to Relax) of the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 seeking issuance of appropriate order(s)/ direction(s)/ declaration by the Commission that sale of untied (without PPA) power from 600 MW (4×150 MW) Kameng Hydro Electric Project of the Petitioner as sold under DAM/RTM becomes eligible for issuance of HEC (Non- Solar REC) under the Hydro Power Obligation from 2021-22 to 2029-30 as per the order dated 8.3.2019 and 29 January, 2021 of the MoP, GoI.

**AND IN THE MATTER**

**North Eastern Electric Power Corporation Limited (NEEPCO),**  
Brookland Compound, Lower New Colony,  
Shillong- 793003

...Petitioner

**Versus**

- 1. National Load Despatch Centre (NLDC),**  
B-9 (1st Floor), Qutab Institutional Area,  
Katwaria Sarai, New Delhi -110016
- 2. Indian Energy Exchange Limited (IEX),**  
Plot No C- 001/A/1, 9th Floor,  
Max Towers, Sector-16B, Noida
- 3. Assam Power Distribution Company Limited,**  
Bijulee Bhawan,  
Paltan Bazar, Guwahati – 781001
- 4. Department of Power, Government of Arunachal Pradesh,**  
Bidyut Bhawan, 'O' Point Tiniali, Itanagar – 791111
- 5. Department of Power, Government of Nagaland,**  
Electricity House, Kohima-797001
- 6. Meghalaya Power Distribution Corporation Limited,**  
Short Round Road, Lumjingshai, Shillong – 793001
- 7. Manipur State Power Distribution Corporation Limited,**  
3rd Floor, New Directorate Building, Near 2nd M.R Gate,  
Imphal- Dimapur Road, Imphal, Manipur – 795001
- 8. Tripura State Electricity Corporation Limited,**  
“Bidyut Bhawan”, Banamalipur, Agartala – 799001
- 9. Power & Electricity Deptt., Kawlpetha ,**  
New Secretariat Complex,  
Aizawl - 796005, Mizoram
- 10. Haryana Power Purchase Centre,**  
2nd Floor, Shakti Bhawan, Sector-VI,  
Panchkula, Haryana-134016
- 11. Punjab State Power Corporation Limited,**  
Thermal Sheds, T 1-A, Patiala147001

- 12. Rajasthan Urja Vikas Nigam Limited,**  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur - 302005.
- 13. U.P. Power Corporation Limited,**  
14th Floor, Shakti Bhawan Extn.,  
14-Ashok Marg, Lucknow - 226001.
- 14. BSES Yamuna Power Limited,**  
2nd Floor, B-Block, Shakti Kiarn Building,  
Karkardooma, New Delhi - 110092.
- 15. BSES Rajdhani Power Limited,**  
2nd Floor, B-Block, BSES Bhawan,  
Nehru Place New Delhi - 110 019
- 16. Tata Power Delhi Distribution Limited,**  
NDPL House, Hudson Lines,  
Kingsway Camp, New Delhi - 110 009
- 17. Electricity Operation Circle,**  
Room No. 511, 5th Floor, Deluxe Building,  
Sector 9-D, Chandigarh - 160 017
- 18. Chhattisgarh State Power Distribution Company Limited,**  
4th Floor, Vidyut Sewa Bhawan,  
Dangania (CSEB), Raipur - 492013.
- 19. Gujarat Urja Vikas Nigam Limited,**  
Sardar Patel Vidyut Bhavan,  
Race Course, Vadodara – 390007
- 20. M.P. Power Management Company Limited,**  
Shakti Bhawan, Vidyut Nagar,  
Rampur, Jabalpur - 482008.
- 21. Maharashtra State Electricity Distribution Co. Limited,**  
Power Purchase Section, 5th Floor, “Prakashgad”,  
Bandra (East), Mumbai 400051

- 22. Government of Goa, Office of the Secretary (Power),**  
Secretariat, Porvorim, Goa – 403521
- 23. North Eastern Regional Power Committee,**  
NERPC Complex, Dong Parmaw, Lapalang,  
Shillong-793006, Meghalaya
- 24. North Eastern Regional Load Despatch Centre,**  
Dongtich, Lower Nongrah, Lapalang,  
Shillong -793006, Meghalaya
- 25. Power System Operation Corporation Limited,**  
Northern Regional Load Despatch Centre  
18-A, Shaheed Jeet Singh Sansanwal Marg,  
Katwaria Sarai, New Delhi – 110016
- 26. Eastern Regional Load Despatch Centre,**  
14, Golf Club Road,  
Tollygunge, Kolkata-700033
- 27. Southern Regional Load Despatch Centre,**  
29, Race Course Cross Road,  
Bangalore-560009
- 28. Western Regional Load Despatch Centre F-3,**  
M.I.D.C. Area, Marolandher(East),  
Mumbai-400093
- 29. State Load Despatch Centre, Assam,**  
SLDC Complex , AEGCL,  
Kahilipara Guwahati -781019
- 30. Chhattisgarh State Load Despatch Centre,**  
Raipur, Load Despatch Centre,  
CSPTCL,Daganiya-HQ,Raipur - 492013.
- 31. Delhi SLDC,**  
33kV, Sub Station Building,  
Minto Road New Delhi -110002

- 32. SLDC Gotri,**  
Vadodara, Gujarat, 132kV Gotri s/s compound,  
Opposite Kalpvruv Complex,  
Gotri Road, Vadodara – 390021
- 33. Haryana SLDC,HVPL,**  
Sewah Panipat, XEN/LD & PC,  
SLDC Complex, Sewah Panipat – 132103
- 34. State Load Despatch Centre, MPPTCL,**  
Jabalpur, (SLDC), MPPTCL, Nayagaon,  
Jabalpur Madhya Pradesh -482008.
- 35. SLDC Airoli Navi Mumbai,**  
Airoli ThaneBelapur Road 400708  
Navi Mumbai -400708
- 36. SLDC Meghalaya, 132 kV,**  
NEHU Substation Complex,  
Umjarain, Shillong -793022.
- 37. Mizoram State Load Despatch Centre,**  
Mizoram State Load Despatch Centre Circle,  
Power House Complex, Electric Veng Aizawl -796001.
- 38. Department of Power, Government of Nagaland, SLDC Nagaland,**  
Electricity Colony,Full Nagarjan,  
Nagaland Dimapur -797112
- 39. Punjab SLDC,**  
Ablowal, Patiala, SLDC Building,  
near 220KV Grid Substation, PSTCL,  
Patiala Ablowal - 147001.
- 40. State Load Despatch Centre, Manipur,**  
Yurembam Power House, Imphal West – 795004
- 41. Rajasthan SLDC, State Load Despatch Centre,**

Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Ajmer Road Heerapura Jaipur -302024

**42. State Load Despatch Centre, Agartala,**

79 tilla, Kunjaban,  
Tripura (West) Agartala -799006

**43. UPSLDC, UP Power Transmission Corporation Ltd. (A Govt. undertaking),**

UPSLDC Parisar, Vibhuti Khand-II  
Gomati Nagar Lucknow -226010.

**44. SLDC, Department of Power,**

Government of Arunachal Pradesh,  
Itanagar – 791113

**45. State Load Despatch Centre, Electricity Department of Goa,**

Panjim, Goa – 403001

.....Respondents

**Parties Present:** Shri Ripunjoy Bhuyan, NEEPCO  
Shri Susanta, NEEPCO  
Shri Partha Sen, NEEPCO  
Ms. Elizabeth Pyrbot, NEEPCO  
Shri Kailash Chand Saini, NLDC  
Ms. Nikita Chouksey, Advocate, MSEDCL  
Ms. Astu Khandelwal, Advocate, MSEDCL  
Ms. Preetika Dwivedi, Advocate, Punjab SLDC  
Shri Abhishek Mohanty, Advocate, Punjab SLDC

**आदेश/ ORDER**

The Petitioner, North Eastern Electric Power Corporation Limited (NEEPCO), commissioned its largest Hydro Project Kameng (600 MW), in the North Eastern Region. The commercial operation of Unit-I (150MW), Unit-II (150 MW), Unit-III (150 MW) and Unit-IV (150 MW) was declared w.e.f. 00:00 hours of 17.06.2020, 00:00 hours of 01.07.2020, 00:00 hours of 22.01.2021 and 00:00 hours of 12.02.2021 respectively. NEEPCO has filed the petition seeking

the issuance of an appropriate direction that the sale of untied (without Power Purchase Agreement (PPA)) power from 600 MW Kameng Hydro Electric Project of the Petitioner as sold under DAM/RTM becomes eligible for the issuance of Hydro Electricity Certificates (HEC) (Non-Solar REC) under the Hydro Power Obligation (HPO) from 2021-22 to 2029-30 as per the order dated 08.03.2019 and 29.01.2021 of the MoP, GoI.

2. The Petitioner has made the following prayers:

- (i) *Approve that the untied (without PPA) power of 345 MW is neither section 62 nor section 63 power and thus, eligible for retrospective issuance of REC/HEC vide Regulation 4(2) read with regulation 18 (Power to Relax) of REC Regulation, 2022 since CoD of the station was achieved on 12.2.2021 i.e. after issuance of policy guidelines by MoP vide order dated 8.3.2019*
- (ii) *Approve that such untied (without PPA) power sold in the power exchanges are not meant for “RPO compliance by an obligated entity” as only the electricity component is sold, thus the green attributes remain intact for issuance of HEC for obligated entities to fulfill their Hydro Power Obligation.*
- (iii) *Direct NLDC/POSOCO, the Central Agency, to allow issuance of Hydro Energy Certificates (HEC) for the energy sold through power exchanges since CoD to help recover the cost of generation to some extent, since average price fetched in such exchange sale of power is much below the CERC/levellised tariff.*
- (iv) *Pass such other relief as the Hon’ble Commission deem fit and appropriate under the circumstances of the case and interest of justice.*

**Factual Matrix:**

3. On 14.07.2009, Ministry of Power (MoP) allocated the share of power from the 600 MW Kameng Hydro Electric Project, to the beneficiary States of the Northern Region, Western Regions and North Eastern States.
4. Subsequently, Punjab, Delhi, Maharashtra, Gujarat, Madhya Pradesh, Rajasthan, Tripura, Mizoram and Manipur surrendered the total share viz. 345 MW allocated.

5. On 15.01.2020, the Ministry of Power, in consonance with the Order dated 19.12.2019 of the Commission, de-allocated 345MW and allocated the quantum to NEEPCO.
6. Meanwhile, the State of Goa also applied to MoP for de-allocation of its share of 2 MW and thereafter surrendered 2 MW.
7. In view of the above, out of 600 MW of power from Kameng HEP, NEEPCO has untied capacity of 347 MW, which is sold through power exchange under DAM/RTM in the absence of a regular PPA.
8. On 29.12.2022, NEEPCO applied for accreditation for untied capacity of 347 MW under the REC Mechanism to the North Eastern Load Despatch Centre (NERLDC) and got accreditation on 11.01.2023.
9. On 23.01.2023, NEEPCO applied for Registration under the REC Mechanism on 23.01.2023, and got registered on 14.02.2023.
10. NEEPCO has argued that only the electricity component is traded in the sale of power through power exchange (under DAM/RTM), leaving the green (REC) attributes unutilized, which the obligated entities could purchase to fulfil their Hydro Power Obligation (HPO), as part of non-solar REC following the declaration of “*Measures for promotion of Hydro Power in India*” by MoP, Govt. of India on 08.03.2019. Therefore, NEEPCO is eligible for the issuance of HEC (Non- Solar REC) under the Hydro Power Obligation from 2021-22 to 2029-30 as per the order dated 08.03.2019 and 29.01.2021 of the MoP, GoI.

**Submission of the Petitioner:**

11. The Petitioner has submitted as under:
  - (a) NEEPCO has executed PPAs with the beneficiary States accounting for 253 MW of capacity, viz., Assam, Arunachal Pradesh, Nagaland, Meghalaya, Uttar Pradesh, Chhattisgarh, and Haryana.



- (b) The Ministry of Power, vide letter dated 14.7.2009, had allocated the share of power from Hydro project Kameng of 600 MW to the beneficiary States of the Northern and Western regions in addition to the seven North Eastern States. Subsequently, Punjab, Delhi, Maharashtra, Gujarat, Madhya Pradesh, Rajasthan, Tripura, Mizoram, and Manipur accounting for allocated shares totalling 345 MW surrendered their shares.
- (c) Upon declaration of COD of the project, NERPC vide letter dated 11.02.2021 has confirmed the State-wise allocation as follows:

Sl. No.	State	Share of Allocation (MW)	Share of Allocation (%)
1.	Arunachal Pradesh	#83	13.83
2.	Assam	65	10.83
3.	Meghalaya	15	2.50
4.	Nagaland	9	1.50
5.	Haryana	13	2.17
6.	Uttar Pradesh	55	9.17
7.	Chhattisgarh	13	2.17
8.	Goa	*2	0.33
9.	NEEPCO	345	57.50
	<b>TOTAL</b>	<b>600</b>	<b>100.00</b>

# Arunachal Pradesh share includes 12% Free Power to Home State

\* PPA not signed as Goa had applied to MoP to surrender its share of 2 MW.

- (d) The de-allocated shares of 345 MW, which were allocated to NEEPCO, were declared merchant power, and this untied power was sold through power exchanges under DAM/RTM.
- (e) There has been substantial underrecovery of capital cost since 345 MW of untied/merchant power is sold on short-term/power exchange (under DAM/RTM) at an average price of Rs. 3.20 per unit as compared to the first-year tariff of Rs. 5.23 per unit and levelized tariff of Rs. 4.75 per unit as per tariff petition (No. 51/GT/2021) submitted before the Commission in terms of 2019 Tariff Regulations.
- (f) On 08.03.2019, Ministry of Power, GOI issued an order “Measures for promotion of Hydro Power in India”, inter-alia, declaring large hydropower projects including pump storage projects having capacity more than 25 MW (LHPs), which came into commercial operation after 08.03.2019 as renewable energy source and further specifying Hydro Power Obligation (HPO) within Non-Solar Renewable Purchase Obligation (RPO). As per the

order dated 29.01.2021 of MoP, GOI, HPO is included in Renewable Purchase Obligation (Trajectory) from the years 2021-22 to 2029-30.

- (g) The Commission on 09.05.2022 notified the regulatory framework for REC, viz., “*Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation Regulations, 2022*” with eligibility and other parameters for the issuance of RECs by eligible RE Project.

*“4(2)...A renewable energy generating station shall be eligible for issuance of Certificates, if it meets the following conditions:*

*(a) the tariff of such renewable energy generating station, for part or full capacity, has not been either determined or adopted under section 62 or section 63 of the Act respectively, or the electricity generated is not sold directly or through an electricity trader or in the Power Exchange, for RPO compliance by an obligated entity:*

*(b) such renewable energy generating station has not availed any (i) waiver of or concessional transmission charges or (ii) waiver of or concessional wheeling charges.”*

- (h) Based on the above Regulation 4(2), the untied (without PPA) power of Kameng HEP becomes eligible for the issuance of REC.
- (i) The tariff petition (51/GT/2021) for Kameng HEP has been submitted before the Commission for the determination of tariff under section 62, but drawing the analogy of Regulation 8(2) of CERC Tariff Regulation, 2019, it can be construed that the untied (without PPA) power of Kameng HEP is neither under section 62 nor section 63 . Regulation 8(2) of Tariff regulation, 2019 is reproduced as below:

*“8(2)...“Where only a part of the generation capacity of a generating station is tied up for supplying power to the beneficiaries through long term power purchase agreement, the units for such part capacity shall be clearly identified and in such cases, the tariff shall be determined for such identified capacity. Where the unit(s) corresponding to such part capacity cannot be identified, the tariff of the generating station may be determined with reference to the capital cost of the entire project, but tariff so determined shall be applicable corresponding to the part capacity contracted for supply to the beneficiaries.”*

- (j) Out of 600 MW of power from Kameng HEP, NEEPCO has untied capacity of 345 MW, which has so far been sold through power exchange in the absence of a regular PPA. Therefore, the following regulation 8(2) of CERC Tariff Regulation, 2019, while the tariff

in respect of 255 MW is to be determined under section 62 of Electricity Act, 2003, the balance 345 MW is outside the scope of sections 62 and 63 of the Electricity Act.

- (k) The Commission may consider invoking “*Power to Relax*” under Regulation 18 and declare that a total of 1858.70 MUs of energy (without PPA) till 31.05.2022 from this HEP is eligible for the issuance of REC as the same is not section 62 power and only the electricity components have been sold through exchange under DAM.
- (l) Though such untied power (without PPA) is sold through a power exchange (IEX), such power is not meant for “*RPO compliance by an obligated entity*”, as required under regulation 4(2)(a) of REC Regulation 2022.
- (m) As per regulation 4(2)(b) of REC Regulation, Kameng HEP, NEEPCO has neither availed any (i) *waiver of or concessional transmission charges nor (ii) waiver of or concessional wheeling charges.*”
- (n) 345 MW of untied/merchant power from Hydro power station, which is sold in power exchange at an average price of Rs. 3.20 per unit is eligible for the issuance of Renewable Energy Certificates (Hydro Energy Certificate) as per regulation 4(2)(a) of REC Regulation 2022, since the petition for the determination of tariff (51/GT/2021) under section 62 is submitted before the Commission. Even though it is for part capacity, if REC (HEC) could be issued for such untied power as sold on the exchanges, the obligated entity can purchase the same to fulfil their Hydro Power Obligation (HPO) and the generating company can recover some portion of the project cost through the sale of RECs (HEC).
- (o) Many States/DISCOMs have so far purchased 2026.42 MUs of power (only the electricity component) from Kameng HEP through short-term/power exchanges, but in the absence of any regulatory framework for Hydro Energy Certificate (HEC), prior to 09.05.2022 (Introduction of REC Regulation, 2022), no HEC could be issued against such green attributes of hydro power.
- (p) It is submitted that the Commission may direct the NLDC, the Central Agency in accordance with Regulation 3(1) of REC Regulation, 2022 so that HEC may be issued retrospectively against such untied (without PPA) power which is sold through the power exchange since declaration of CoD.

### **Hearing on 13.12.2022**

12. The Petition was listed for hearing on 13.12.2022. The Commission directed NEEPCO to implead RLDCs and SLDCs as parties to the Petition. Further, the Commission directed NEEPCO to serve a copy of the Petition to the Respondents, and the Respondents to file their replies to the Petition on maintainability as well as merits and to file a detailed note describing how the various procedures/requirements for the issuance of renewable energy certificates will be met/complied with in respect of its untied capacity from the Project upon its registration and accreditation.

**Reply on behalf of Respondent No. 21 – Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)**

13. Briefly, MSEDCL has submitted as follows:

- (a) NEEPCO was free to sell 345 MW of power from its Project to any person/entity. Exercising this liberty, NEEPCO sold this re-allocated power in the short-term market and on power exchanges.
- (b) NEEPCO did so with full knowledge and understanding that the average sale price in the short term market and power exchange is lower than the tariff approved for the first year (i.e. Rs. 5.23 per unit) and levelized tariff (i.e. Rs. 4.75 per unit). However, they sold their power in the short-term market and on power exchanges and thus had unequivocally elected to sell their power at a lower rate.
- (c) NEEPCO has filed the present Petition solely and primarily to claim their purported losses incurred due to the sale of power in the short-term markets/power exchanges.
- (d) Recovering additional amounts through HECs from different consumers on post facto basis will set a wrong precedent, as there are other hydro projects who are selling power through short term markets/ exchanges.
- (e) The inefficiencies of NEEPCO's Project due to which it was not able to achieve commissioning on time, cannot be considered as an advantage to reap benefits from a policy that was notified by the Ministry of Power contemporaneously.
- (f) Due to the delay in the commissioning of NEEPCO's Project, the Project's cost escalated by about 4 (four) times. This increase in the cost of the Project is ostensibly on account of the incompetency of the Project developer, and it would not be prudent to pass on the cost of such inefficiencies of the Project developer to the distribution companies under the guise

and illusion of the requirement to achieve Hydro Power Obligation, that too merely because of NEEPCO's Project was commissioned after the Ministry of Power's notification.

- (g) If such recovery is allowed, the same would set an inappropriate precedent, giving the impression that retrospective recovery of additional charges incurred due to inefficiency in commissioning a project is being countenanced, and in fact, permitted by the Commission. Then the purpose of determination of tariff and true-up in accordance with Tariff Regulations will be defeated, encouraging generators to recover any charges which are being disallowed by the Commission and various fora.

**Rejoinder by the Petitioner to the reply filed by MSEDCL**

14. Briefly, NEEPCO in its rejoinder has submitted the following:

- (a) A separate tariff petition (No. 51/GT/2021) has been submitted by the petitioner before the Commission in terms of the 2019 Tariff Regulation, where the detailed reasons for the time and cost overrun of the project have been submitted for consideration.
- (b) 1858.70 MUs of energy as on 31.05.2022 had been purchased by DISCOMs from Kameng HEP through the short-term market/exchange. However, in the absence of any regulatory mechanism necessary to operationalize HPO, the benefit of the issuance of HEC could not be availed of both by the hydro generator and the obligated entities.
- (c) The absence of a regulatory framework/guidelines for the operationalization of HPO (which was declared by MoP in March 2019) cannot fall either on the Hydro generators or on the obligated entities. While there is an urgent need to promote hydro with its inherent balancing capabilities since RE penetration into the power system of the country is greater than ever before, the Commission may like to allow the issuance of REC retrospectively since all the records of the power sale through short-term/power exchange are available on record (Energy Accounting) which will also provide an opportunity to the obligated entities to fulfil the HPO as a separate trajectory as envisioned in MoP policy guidelines dated 08.03.2019.

**Reply on behalf of Respondent No. 1 – National Load Despatch Center (NLDC)**

15. NLDC has submitted as under:

- (a) The repealed *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010* (REC Regulations 2010), eligibility condition for RE Generators did not allow registration of partial capacity of Generators and therefore, Kameng HEP did not qualify for the issuance of RECs under the repealed REC Regulations 2010.
- (b) As per the SOR for *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022* (REC Regulations 2022), the primary criteria for a RE generating station to qualify for the issuance of REC(s) is that the power sold from such RE generating station is not accounted for in the RPO compliance of any obligated entity. This makes the untied capacity of Kameng HEP eligible for the issuance of a REC, provided that other eligibility conditions are also fulfilled.
- (c) NEEPCO provided documentary proof that the State of Goa has declined PPA of 2 MW on 20.03.2020, so the untied capacity has increased from 345 MW to 347 MW.
- (d) Kameng HEP having a capacity of 600 MW of NEEPCO for an untied capacity of 347 MW under the REC Mechanism to NERLDC got accreditation on 11.01.2023 and got registered on 14.02.2023.
- (e) As per the REC Regulation 2022, there is no classification of certificates as per source of energy. Though the RECs are fungible, the Central Agency indicates the origin of source of RE technology in the Certificates. As sought by NEEPCO, there is no concept of Hydro Energy Certificate (HEC). Under the present REC Mechanism governed by REC Regulation 2022, only one single, technology agnostic, fungible, Renewable Energy Certificates (RECs) is being issued. Instead, the present regulations have brought the concept of multipliers for different energy sources. However, since the Kameng HEP was commissioned before 05.12.2022 (the day of enforcement of the REC Regulation 2022), it is not eligible for the multiplier.

**Rejoinder by Petitioner to reply filed by NLDC**

16. Briefly, NEEPCO in its rejoinder has submitted the following:

- (a) No regulatory framework was in place for HEC till REC Regulation 2022 was issued by

the Commission on 09.05.2022. NEEPCO could not apply for registration since a regulatory mechanism was not in place. The revised *“Procedure for Implementation of REC Mechanism”* has been issued by NLDC, the central agency, only in December 2022. Therefore, NEEPCO could not apply for registration at the time of COD of the project i.e. 12.02.2021 in spite of specific policy decision in the order of MoP issued on 29.01.2021 on *“Renewable Purchase Obligation Trajectory- regarding”*.

- (b) The question of the issuance of REC to Kameng HEP does not arise at all under REC Regulation 2010. The absence of suitable regulatory mechanism as well as the updated guidelines for REC, has severely affected the interests of NEEPCO by denying the issuance of REC against the untied (without PPA) hydro power generated by Kameng HEP of NEEPCO, COD for which was declared on 12.2.2021, much after the issuance of the MoP order dated 08.03.2019. Such non-issuance has also created a shortage of HEC in the market, which the obligated entity could have purchased to meet their Hydro Purchase Obligation (HPO).
- (c) NEEPCO does not deny the statement of NLDC that the accreditation for untied capacity of 347 MW was received on 11.01.2023. The COD of Kameng HEP was declared on 12.02.2021, much after the policy declaration viz. *“Measures for promotion of Hydro Power in India”* of the Ministry of Power GoI dated 08.03.2019. If both the Regulatory framework as also the Procedure were in place earlier, the issuance of REC against untied (without PPA) power could have been possible for NEEPCO. Thus, due to the delay in the accreditation process, the opportunity for issuance of REC (hydro) in respect of untied power (without PPA) would be lost where both Renewable Electricity Generating Station (REGS) and the obligated entity will be denied their respective opportunities, and the availability of REC (hydro) in the market will also be reduced to that extent.
- (d) The Commission may intervene for the greater interest of the sector, without any loss to either side and pass necessary orders for retrospective issuance of certificate against the untied (without PPA) power of Kameng HEP since the COD of the 1st Unit i.e.17.06.2020 by invoking Regulation 18 (Power to Relax) of the REC Regulation 2022.
- (e) By virtue of the delayed enforcement of REC Regulation 2022, the multiplier as allowed to other large hydro, cannot be denied to Kameng HEP since the COD of this station was declared on 12.02.2021 i.e. prior to the enforcement of REC Regulation on 05.12.2022.

### **Additional information w.r.t ROP by NEEPCO**

17. In compliance with the ROP dated 13.12.2022, the Petitioner has submitted as under:
- (a) A detailed note describing how the various procedures/requirements for the issuance of renewable energy certificates will be met/complied with in respect of its untied capacity from the Project upon its registration and accreditation.
  - (b) Since the declaration of COD of Unit-I (i.e. 17.06.2020) of Kameng HEP, a total of 2790579 MWh) of energy have been sold through power exchange till January, 2023.
  - (c) The data relating to the sale of untied power through power exchange may be verified by the 'Central Agency' while allowing the issuance of the certificates retrospectively.

### **Hearing dated 14.03.2023**

18. The petition came up for hearing on 14.03.2022. NEEPCO submitted that it had been granted accreditation & registration in respect of its Kameng HEP for 347 MW (out of 600 MW) of untied (without PPA) power under the REC mechanism w.e.f. 14.02.2023. NEEPCO submitted that the only remaining issue is the issuance of RECs against the untied power of Kameng HEP from the date of commercial operation of its 1st Unit i.e. 17.06.2020 and the applicability of the multiplier to the Kameng HEP, which achieved the COD on 12.02.2021. NEEPCO prayed for the retrospective issuance of a certificate in light of the O.M. dated 08.03.2019 and the Order of the Ministry of Power dated 29.01.2021. The Respondent submitted that as per the REC Regulations, 2022, an entity is eligible for issuance of RECs thereunder only after its registration i.e. 14.02.2023 in NEEPCO's case. Grid Controller of India(GCIL) (formerly, POSOCO) also submitted that as per the REC Regulations, 2022, only the generating stations and the captive generating stations based on the renewable energy sources which are commissioned after the date of coming into force the REC Regulations, 2022 are eligible for the multiplier as specified therein. Considering the submissions made by the parties, the Commission permitted MSEDCL to file its reply/written submissions.

### **Submission by U.P. Power Corporation Limited (UPPCL):**

19. Briefly, UPPCL has submitted as under:



- (a) Kameng HEP was commissioned on 12.02.2021 and on this day, MoP OM dated 08.03.2019 and Order dated 29.01.2021 were pre-existing. NEEPCO cannot deny prior knowledge of these provisions.
- (b) On the date of COD, NEEPCO was aware of the mechanism for the sale of power at power exchanges through REC. However, it never showed the intention of seeking issuance of REC for the sale of power at power exchanges or seeking registration with the Central Agency as an eligible entity for that purpose.
- (c) On COD dated 12.02.2021, NEEPCO's scheme for the sale of power was through PPAs where the tariff is determined by this Commission under Section-62 of the Electricity Act, 2003, as well as through DAM/RTM at power exchanges. For determination of tariff under Section 62 of the Act, 2003, NEEPCO has filed a Petition 51/GT/2021, the proceedings of which are in progress. Therefore, the instant Petition seeking retrospective issuance of certificates since 12.02.2021 has been filed as an afterthought. Even now, NEEPCO is not showing any intention to seek registration with the Central Agency for the sale of power through HEC at Power Exchanges.
- (d) NEEPCO has prayed to the Commission to invoke its power under Regulation 18 "*Power to Relax*" of REC Regulations, 2022 for the issuance of certificates retrospectively. However, NEEPCO has not mentioned which provisions of the REC Regulation 2022 it wants to be relaxed to enable the Commission to issue directions to the Central Agency for the issuance of certificates retrospectively.
- (e) Retrospective effect of any provision of MoP Office Memorandum dated 08.03.2019, MoP Order dated 29.01.2021 and the provisions of CERC REC Regulation, 2022 cannot be made for issuance of Certificates unless enabling provisions have specifically been made under the said OM/Order or Regulations for giving effect to the provisions made thereunder.
- (f) Hydro Power obligation (HPO) is a promotional measure for the promotion of hydro power and made by the Central Government through MoP Office Memorandum No. 15/2/16-H-I(Pt) dated 08.03.2019. Therefore, the said OM applies prospectively.
- (g) Kameng HEP was commissioned on 12.02.2021 after MoP issued an Office Memorandum dated 08.03.2019 and an Order dated 29.01.2021. In terms of the said OM/Order, Kameng HEP is a large Hydro Plant (LHP) qualified to sell power for the purpose of HPO of the

obligated entities through HEC at the Power Exchange in accordance with the REC Regulations of CERC. NEEPCO has prayed to allow the issuance of HEC retrospectively since the COD of Kameng HEP was on 12.02.2021. There is no provision in REC Regulations 2022 which allows retrospective operation including accreditation, registration, communication with the Regional Load Despatch Centre (RLDC) and the accounting of injections in the Energy Accounting System (EAS). Therefore, the said Regulations apply prospectively.

- (h) NEEPCO has not complied with Regulations- 4, 6(2), 5, 8, 10(1), 10(5), and 11(1) of the said REC Regulations 2022 to become eligible for the issuance of Certificates by the Central Agency
- (i) The tariff of NEEPCO is being determined under section 62 of the Electricity Act, 2003 (the Act), while it sells untied-up power under DAM/RTM at power exchanges, Thus, it does not meet the eligibility criteria specified under Regulation 4(2) of the said Regulations, 2022 for accreditation by NERLDC, and registration by the Central Agency.
- (j) NEEPCO has prayed to invoke “Power to Relax” under Regulation 18 for a declaration that a total of 1858.70 MU of energy (without PPA) [from COD till 31.05.2022] is eligible for the issuance of REC. There is no provision in the REC Regulations 2022 that allows retrospective operation of any provision of the REC Regulations,2022.
- (k) MoP Office Memorandum dated 08.03.2019, MoP Order dated 29.01.2021 and the provisions of REC Regulation, 2022 apply prospectively as such for the issuance of certificates. Further, accreditation, registration, written communications with distribution licensee/obligated agency, accounting of injection for the purposes of issuance of HEC and recording of certificates in the registry of the Central Agency under Regulation-4, 6(2), 5, 8, 10(1), 10(5), and 11(1) retrospectively cannot be materialized. Therefore, the proposal of NEEPCO for the issuance of certificates retrospectively since COD 12.02.2021 is not maintainable.
- (l) There is no concept such as, ‘electricity component’ or ‘green attribute’ under MoP Office Memorandum dated 08.03.2019, MoP Order dated 29.01.2021 and the provisions of CERC REC Regulation, 2022 as coined by the Petitioner. These imaginary concepts should be rejected.

**Submission by Chhattisgarh State Load Despatch Centre (CSLDC)**

20. Briefly, Chhattisgarh State Load Despatch Centre has submitted as under:
- a. Chhattisgarh has been allocated 13 MW of power from the Kameng HEP.
  - b. Further, 345 MW untied power (i.e. without PPA) of Kameng HEP of NEEPCO has never been brought on the screen of CSLDC for any of the CSLDC's business such as Scheduling, Monitoring etc. Therefore, SLDC Chhattisgarh cannot pledge for untied power of Kameng HEP of NEEPCO for RPO compliance by an obligated entity if any, at this stage.
  - c. The proceedings under Section 79(1)(k) of the Electricity Act, 2003, if any against CSLDC be dropped and the petition be dismissed.

**Reply on behalf of MSEDCL to the additional submissions filed by NEEPCO:**

21. MSEDCL has reiterated its submissions made in its reply and hence the same are not being reproduced herewith for the sake of brevity. Additionally, MSEDCL has submitted as under:
- a. NEEPCO did not raise any objection to the aforesaid re-allocation at the relevant time. It had elected to act in accordance with the letter dated 15.01.2020 issued by MoP. As such, NEEPCO sold this re-allocated power in the short-term market and power exchange with full knowledge and understanding that the average sale price in short term market and power exchange is lower than the tariff approved for the first year (i.e. Rs. 5.23 per unit) and levelized tariff (i.e. Rs. 4.75 per unit). NEEPCO filed the Petition primarily to claim purported losses incurred due to the sale of power in short-term markets/power exchanges.
  - b. The claim of NEEPCO with respect to HPO is untenable. MoP OM dated 08.03.2019 applies prospectively and cannot apply retrospectively.
  - c. NEEPCO Project was initially expected to be completed in December 2009 and if it would have achieved the same, as per the expected date of commissioning (i.e. Dec 2009), or to that extent even till 07.03.2019, which is 10 (ten) years after its scheduled commissioning, it would not have been eligible for consideration for fulfilment of HPO.
  - d. Merely because NEEPCO's Project came to be commissioned after an inordinate 12 (twelve) year delay does not in itself entitle the Petitioner eligible for achieving HPO. The inefficiencies of NEEPCO's Project due to which it was not able to achieve commissioning

on time, cannot be considered as an advantage to now reap benefits from a policy that was notified by the Ministry of Power contemporaneously.

- e. It is a settled law that the ‘power to relax’ conferred on the Commission cannot be exercised to amend the regulations in effect and substitute them with a new provision/regulation. Though the power of relaxation can be exercised by the Commission in the public interest, the Petitioner in the present case has failed to make out a case for a grant of relaxation in terms of the settled parameters. Rather by seeking these relaxations, Petitioner is trying to reap benefit out of its own inefficiencies due to which it was not able to achieve commissioning on time.
- f. NEEPCO does not qualify for issuance of RECs for the previous period. There is an elaborate process that an ‘eligible entity’ is required to go through the process specified under Regulation-4, 6(2), 5, 8, 10(1), 10(5) and 11(1) of the said CERC REC Regulations 2022 to become eligible for issuance of Certificates by the Central Agency, which the Petitioner has not complied with.

**Rejoinder by the Petitioner to reply filed by MSEDCL**

22. Briefly, NEEPCO has submitted as follows:

- (a) The COD of the first unit and that of the station in respect of the Kameng HEP were declared on 17.06.2020 and 12.02.2021 respectively i.e. after issuance of Office Memorandum 15/2/16-H-I (Pt) dated 08.03.2019 of MoP. So, considering the MoP order, the prayer to issue HECs is prospective only.
- (b) The delay in the completion of the project is not the subject matter of the instant petition. This may be argued in the Tariff Petition (No.51/GT/2021), submitted by NEEPCO under Tariff Regulation 2019, which is presently under the consideration of the Commission.
- (c) Regulation 18 is abundantly clear as to the power of the Commission which is absolutely relevant in the context of the instant petition. However, had there been any provision viz. “Power to Remove Difficulty” in REC Regulation, 2022, NEEPCO would have sought to invoke that too.
- (d) NEEPCO prayed for retrospective issuance of a certificate for making an adequate number of REC-Hydro available in the market so that obligated entities can buy these RECs to fulfil their HPO. A separate trajectory has been mandated by an MoP order dated

29.01.2021. This retrospective issuance of REC-Hydro/HEC is a win-win situation as no one is affected with zero cost, but the electricity sector as a whole is benefitted.

- (e) NEEPCO, obligated entities and the power sector could not take the benefit of the introduction of HEC/REC-Hydro since 17.06.2020 i.e. declaration of COD of Unit-1 of Kameng HEP. This loss can be made good for the interest of the power sector as a whole in the country only through retrospective issuance of REC-Hydro/HEC at no cost to anyone.
- (f) With regard to compliance with various provisions as mentioned by the present respondent, immediately after the detailed procedures were introduced by GCIL, the same have been complied with. Till such time the regulatory mechanism and detailed procedures are in place for REC-Hydro/HEC, the policy as declared by GoI in March 2019 with regard to HPO cannot be implemented. Therefore, the Petitioner prayed for the following two issues:
  - i. Retrospective issuance of HEC from COD of Unit-1 (17.6.2020)
  - ii. Denial of multiplier (1.5) only because the COD of Kameng HEP was declared before 05.12.2022, but very much after the declaration of the Policy on HPO by MoP on 08.03.2019.
- (g) With regard to records relating to Energy Accounting etc. to substantiate the position, once the order of the Commission upholding the appeal of the petitioner is in place, the same would be submitted to the “Central Agency”.
- (h) With regard to section 4(2) of REC Regulation 2022, the key point is such power is not sold “*for RPO compliance by obligated entity*”. In this case, only the electricity component of the power from Kameng HEP is sold on the power exchanges, leaving the green attributes intact for the issuance of REC.
- (i) The accreditation by NERLDC and registration by ‘Central Agency’ have been done following due procedure.

### **Analysis and Decision**

- 23. We have heard the learned counsels of the Petitioner and the Respondents and have carefully perused the records.
- 24. The brief facts of the case are that on 08.03.2019, the Ministry of Power, GOI issued an order detailing “*Measures for promotion of Hydro Power in India*” inter-alia declaring large

hydropower projects including pump storage projects having a capacity of more than 25 MW (LHPs), which came into commercial operation after 08.03.2019 as a renewable energy source. As per the Order dated 29.01.2021 of MoP, GOI, HPO is included in Renewable Purchase Obligation (Trajectory) from the year 2021-22 to 2029-30. The Commission on 09.05.2022 notified the REC Regulations, 2022.

25. The petition came up for hearing on 14.03.2022. During the hearing, NEEPCO submitted that the only remaining issues are (1) *issuance of RECs against the untied power of Kameng HEP from the date of commercial operation of its 1st Unit i.e. 17.06.2020* and (2) *the applicability of the multiplier to the Kameng HEP which achieved the COD on 12.02.2021*.
26. NEEPCO has submitted that it has commissioned Kameng HEP (600 MW) in the North Eastern Region. The project is a run-of-the River scheme with storage envisaging utilization of the water of the Bichom and Tenga Rivers (both tributaries of the Kameng River) for the generation of power. The commercial operations of Unit-I (150MW), Unit-II (150 MW), Unit-III (150 MW) and Unit-IV (150 MW) were declared on 17.06.2020, 01.07.2020, 22.01.2021 and 12.02.2021 respectively. Out of 600 MW, the tariff in respect of 253 MW is to be determined under section 62 of the Electricity Act, 2003 (through another petition no. 51/GT/2021), the balance 347 MW (including 2MW by the State of Goa) remains untied (in the absence of regular PPA) and is outside the scope of sections 62 and 63 of the Electricity Act, 2003. Out of the untied capacity of 347 MW, 345MW has been sold through power exchange.
27. NEEPCO has further submitted that based on Regulation 4(2) of REC Regulations, 2020 along with Regulation 8(2) of *Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019* (Tariff Regulations, 2019), the balance 347 MW untied power (without PPA) of Kameng HEP is eligible for issuance of REC since only the electricity components have been sold through exchange under DAM and such power is not meant for “*RPO compliance by an obligated entity*”. Further, Kameng HEP has neither availed any (i) waiver of or concessional transmission charges nor (ii) waiver of or concessional wheeling charges. States/ DISCOMs have so far purchased 2026.42 MUs of power (only the electricity component) from Kameng HEP through short-term/power exchanges, but in the absence of any regulatory framework (prior to

the introduction of REC Regulation, 2022) for Hydro Energy Certificate (HEC), no HEC could be issued against such green attributes of hydro power. A total of 2790579 MWh of energy has been sold through power exchange till January 2023, but the benefit of issuance of HEC could not be availed by the hydro generator and the obligated entities. The Commission may consider invoking “*Power to Relax*” under Regulation 18 and declare that Kameng HEP is eligible for issuance of REC since COD viz. 17.06.2020 and direct NLDC accordingly.

28. *Per contra*, UPPCL has submitted that there is no concept such as ‘electricity component’ or ‘green attribute’ under the MoP Office Memorandum dated 08.03.2019, MoP Order dated 29.01.2021 and the provisions of REC Regulation, 2022 as being coined by the Petitioner. Further, the retrospective effect of any provision of O.M. dated 08.03.2019 and Order dated 29.01.2021 and the provisions of REC Regulation, 2022 cannot be made for issuance of Certificates unless the enabling provisions have specifically been made under the said OM/Order or Regulations for giving effect to the provisions made thereunder. The tariff of NEEPCO is being determined under section 62 of the Electricity Act, 2003 (the Act), while it sells untied power under DAM/RTM at power exchanges and as such it does not meet the eligibility criteria specified under Regulation 4(2) of the said REC Regulations, 2022.
29. Chhattisgarh State Load Despatch Centre (CSLDC) has submitted that 345 MW untied power (i.e. without PPA) of Kameng HEP has never been brought before the CSLDC for Scheduling, Monitoring etc. Therefore, SLDC Chhattisgarh cannot pledge for untied power of Kameng HEP of NEEPCO for RPO compliance by an obligated entity if any at this stage.
30. MSEDCL has submitted that NEEPCO sold 345 MW (untied power) in short-term market and the power exchanges with full knowledge and understanding that the average sale price in short term market and power exchange is lower than the tariff approved. NEEPCO has not complied with the process specified under Regulations 4, 6(2), 5, 8, 10(1), 10(5) and 11(1) of the said REC Regulations, 2022 to become eligible for issuance of Certificates by NLDC. Further, MoP OM dated 08.03.2019 applies prospectively. In case retrospective recovery of additional charges (incurred due to inefficiency in commissioning a project) is countenanced, the purpose of determination of tariff and true-up in accordance with Tariff Regulations, will be defeated.

31. NLDC has submitted that the REC Regulations, 2010, did not allow registration of partial capacity of RE Generators and therefore, Kameng HEP does not qualify for issuance of RECs under the repealed REC Regulations, 2010. As per the REC Regulations, 2022, there is no concept of a Hydro Energy Certificate (HEC) and only one single, technology agnostic, fungible REC is issued.

32. We observe that the Commission issued the *Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010* (REC Regulations, 2010) for the development of the market in power from the renewable energy sources by the issuance of RECs. The relevant regulations of REC Regulations, 2010 stipulate as under:

**2. Definitions and Interpretation:**

(1) *In these regulations, unless the context otherwise requires,*

...

l) *'renewable energy sources' means renewable sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste **and such other sources as recognized or approved by MNRE:***

m) *'renewable purchase obligation' means the requirement specified by the State Commissions under clause (e) of sub-section (1) of section 86 of the Act, for the obligated entity to purchase electricity from renewable energy sources;*

**4. Categories of Certificates:**

(1) *There shall be two categories of certificates, viz., solar certificates issued to eligible entities for generation of electricity based on solar as renewable energy source, and non-solar certificates issued to eligible entities for generation of electricity based on renewable energy sources other than solar:*

(2) *The solar certificate shall be sold to the obligated entities to enable them to meet their renewable purchase obligation for solar, and non-solar certificate shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources other than solar.*

**5. Eligibility and Registration for Certificates:**

(1) *A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:*

a. *it has obtained accreditation from the State Agency;*

(b) *it does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of*



meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under Section 63 of the Act by the Appropriate Commission

**10. Validity and extinction of Certificates**

**(1) After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations from the date of commercial operation or from the date of registration of such plant by the Central Agency whichever is later:**

*Provided further that the Certificate issued under these regulations shall remain valid for one thousand and ninety five days from the date of issuance:*

*Provided that the RECs which expired in the financial year 2014-15 and the RECs issued till the date of effect of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third Amendment) Regulations, 2014 shall remain valid for one thousand and ninety five days from the date of issuance or up to 31<sup>st</sup> March 2017, whichever is later.*

*Provided also that the Certificate issued to an eligible entity for the electricity generated at a time when such entity fulfilled the eligibility criteria for accreditation, shall remain valid for the said period of one thousand and ninety five days, even if accreditation of such entity is revoked at a later date:*

*Provided that where an eligible entity has obtained accreditation and registration on the basis of false information or by suppressing material information and the accreditation of such entity is revoked at a later date, the Certificates already issued to such entity but not redeemed shall stand revoked from the date of issue of such Certificates and in respect of Certificates already redeemed, such entity shall deposit the amount realized from sale of such Certificates along with the interest with the Central Agency at the rate of two (2) percent in excess of the applicable State Bank of India Base rate per annum.*

*(2) Subject to the time limit as provided in clause (1) of this Regulation, a Certificate shall be deemed to have been extinguished after it has been exchanged by way of sale and purchase in the Power Exchange.*

33. 'Salient Features of REC framework' annexed to Statement of Objects and Reasons on REC Regulation, 2010, as Annexure – I, stipulates as under:

**/ ANNEXURE – I /**

**Salient Features of REC framework**

- *Renewable Energy Certificate (REC) mechanism is a market based instrument to promote renewable energy and facilitate renewable purchase obligations (RPO)*
- *REC mechanism is aimed at addressing the mismatch between availability of RE resources in state and the requirement of the obligated entities to meet the renewable purchase obligation (RPO).*

- Cost of electricity generation from renewable energy sources is classified as cost of electricity generation equivalent to conventional energy sources and the cost for environmental attributes.
- RE generators will have two options i) either to sell the renewable energy at preferential tariff or ii) to sell electricity generation and environmental attributes associated with RE generations separately.
- The environmental attributes can be exchanged in the form of Renewable Energy Certificates (REC).
- REC will be issued to the RE generators for 1 MWh of electricity injected into the grid from renewable energy sources.
- REC would be issued to RE generators only.
- REC could be purchased by the obligated entities to meet their RPO under section 86 (1) (e) of the Act. Purchase of REC would be deemed as purchase of RE for RPO compliance.
- Grid connected RE Technologies with minimum capacity of 250 KW and approved by MNRE would be eligible under this scheme.
- RE generations with existing PPAs are not eligible for REC mechanism.
- SERC to recognize REC as valid instrument for RPO compliance.

34. The REC Mechanism stipulates that the cost of electricity generation from RE sources includes (i) the cost of electricity generation equivalent to the conventional energy sources and (ii) the cost for environmental attributes. The environmental attributes can be exchanged in the form of REC. REC is issued to the RE generators for 1 MWh of electricity injected into the grid from renewable energy sources.

35. REC Regulations, 2010 recognized small hydro, wind, solar, biomass, bio fuel cogeneration, and urban or municipal waste as renewable energy sources. Further, the REC Regulations, 2010, recognized two categories of certificates, viz., solar certificates and non-solar certificates to meet their RPO. A generating company engaged in the generation of electricity from renewable energy sources is eligible for registration for REC if it fulfils inter alia the following conditions: (a) it has obtained accreditation from the State Agency; (b) it does not have any PPA related to such generation for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the Appropriate Commission.

36. We observe that there was no provision for issuance of REC for partial capacity of RE Generators, in REC Regulations, 2010. Further, REC Regulations, 2010 recognized, *inter-alia*,

the small hydro (and not large hydro) as a renewable energy source.

37. Vide F.No. 15/2/2016-H-1(Pt.) dated 08.03.2019, the Ministry of Power issued the guidelines which, *inter-alia*, stipulate as under:

**OFFICE MEMORANDUM**

***Subject: MEASURES TO PROMOTE HYDRO POWER SECTOR***

*In reference to communication received from Cabinet Secretariat vide D.O. No. 11/CM/2019(iii) dated 7.3.2019, the undersigned is directed to inform that the Government has approved the following measures to promote hydropower sector:-*

**2 *Declaring LHPs (> 25 MW projects) as Renewable Energy source:***

**2.1 *Large Hydropower Projects (LHPs, i.e. > 25MW projects) are declared as Renewable Energy source. However, LHPs would not automatically be eligible for any differential treatment for statutory clearances such as Forest Clearance, environmental clearance, NBWL clearance, related Cumulative Impact Assessment & carrying Capacity study, etc., available to Small Hydropower Projects (SHPs), i.e., projects of capacity up to 25 MW. Ministry of Power shall continue to be the administrative Ministry for LHPs.***

**3 *Hydro Purchase Obligation (HPO) as a separate entity within Non-solar Renewable Purchase Obligation (RPO):***

**3.1 *Hydropower Purchase Obligation (HPO) is notified as a separate entity within Non - Solar Renewable Purchase Obligation (RPO). The HPO shall cover all LHPs commissioned after issue of this Office Memorandum as well as the untied capacity (i.e., without PPA) of the commissioned projects. This HPO will be within the existing Non Solar RPO after increasing the percentage assigned for it so that existing Non-Solar RPO for other renewable sources remains unaffected by the introduction of HPO. The trajectory of annual HPO targets will be notified by Ministry of Power based on the projected capacity addition plans in hydropower sector. Necessary amendments will be introduced in the Tariff Policy and Tariff Regulations to operationalize HPO.***

**4 *Tariff rationalisation measures for bringing down hydropower tariff:***

**4.1 *Tariff rationalisation measures including providing flexibility to the developers to determine tariff by back loading of tariff after increasing project life to 40 years, increasing debt repayment period to 18 years and introducing escalating tariff of 2%.***

**4.2 *The levellized tariff over the useful life of the project may be calculated on the basis of the norms specified in the CERC regulations and thereafter, the determination of year wise tariff, for a long term PPA for procurement of Hydro Power for a period of not less than specified years (depending upon the repayment plan for the debt raised by the generator such that major part of the loan is repaid during the tenure of such PPA). may be left to the Developer and DISCOMs as per their feasibility and depending upon the terms of repayment of loan negotiated with the lenders subject to-***

- (a) *submission of such complete calculations with assumptions to be provided by the generator of hydro power at the time of filing of the application; and***
- (b) *upfront approval by the appropriate Regulatory Commission.***

38. Vide Order (No. 23/03/2016-R&R), dated 29.01.2021, MoP has, *inter-alia*, held as under:

## ORDER

*Subject: Renewable Purchase Obligation (RPO) trajectory - regarding.*

*In exercise of the powers conferred under section 3(3) of Electricity Act, 2003, the Central Government had notified the revised Tariff Policy, which was published in Gazette of India, Extraordinary, Part-I, Section-1 dated 28.01.2016.*

*2. Para 6.4(1) of the Tariff Policy 2016 provides as follows:*

*“Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) **will be prescribed by the Ministry of Power in consultation with MNRE.**”*

*Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.”*

*3. In light of para 6.4(1) of the Tariff Policy 2016, and with the objective of creating renewable power capacity of 175 GW by March, 2022; **the Ministry of Power, after consultation with Ministry of New and Renewable Energy, had notified the long term trajectory of Renewable Purchase Obligations (RPOs) for solar and non-solar power vide its orders dated 22nd July 2016 and 14th June 2018.***

***4. On 8th March 2019, the Government had issued an order detailing various policy measures to promote hydropower sector in India inter-alia declaring large hydropower projects including pumped storage projects having capacity of more than 25 MW (LHPs) which come into commercial operation after 8.3.2019 as renewable energy source and to specify Hydropower Purchase Obligation (HPO) within Non-Solar Renewable Purchase Obligation (RPO).***

*5. In compliance of the above decision and with the objective to add 30,000 MW of hydropower capacity by the year 2029-2030, Ministry of Power has prepared a revised trajectory of RPO including long term trajectory for HPO considering the LHPs commissioned after 8th March, 2019.*

...

...

***10. HPO benefits may be met from the power procured from eligible LHPs commissioned on and after 8.3.2019 and upto 31.03.2030 in respect of 70% of the total generated capacity for a period of 12 years from the date of commissioning. Free power is to be provided as per agreement with the State Government and that provided for Local Area Development Fund(LADF), shall not be included within this limit of 70% of the total generated capacity.***

*11. HPO liability of the State/ Discom could be met out of the free power being provided to the State from LHPs commissioned after 08.03.2019 as per agreement at that point of time excluding the contribution towards LADF if consumed within the State/Discom. Free power (not that contributed for Local Area Development) only to extent of HPO liability of the State/Discom, shall be eligible for HPO benefit.*

*12. **In case the free power, as above, is insufficient to meet the HPO obligations, then the State would have to buy the additional hydro power to meet its HPO obligations or may***

have to buy the corresponding amount of Hydro Energy Certificate to meet the non-solar hydro renewable purchase obligations.

13. The Hydro Energy Certificate mechanism under Regulation to be developed by CERC to facilitate compliance of HPO obligation, would have a capping of Rs.5.50/Unit of electrical energy w.e.f. 8th March 2019 to 31st March, 2021 and with annual escalation @5% thereafter for the purposes of ensuring HPO compliance.

From the above, we observe that the Central Government with the aim to promote hydropower sector declared Large Hydropower Projects (LHPs, i.e. >25MW projects) commissioned after 08.03.2019 as renewable energy sources. The Central Government also notified the Hydropower Purchase Obligation (HPO) as a separate category within Non-Solar RPO which covers all LHPs commissioned after 08.03.2019, as well as the untied capacity (i.e., without PPA) of the commissioned projects.

39. The Commission formulated the *Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2022* (REC Regulations, 2022) for the development of a market in power from renewable energy sources through renewable energy certificates.

40. The REC Regulations, 2022 stipulate as under:

## **2. Definition**

(1) In these Regulations, unless the context otherwise requires,

p) 'renewable energy sources' means sources of renewable energy such as **hydro**, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste **and such other sources as recognized or approved by the Central Government;**

q) 'renewable purchase obligation' or 'RPO' means the requirement specified by the State Commissions under clause (e) of sub-section (1) of Section 86 of the Act for an entity to purchase electricity from renewable energy sources;

## **4. Eligibility for Issuance of Certificates**

(1) Following entities shall be eligible for issuance of Certificates:

- (a) Renewable energy generating stations,
- (b) Captive generating stations based on renewable energy sources,
- (c) Distribution licensees, and
- (d) Open access consumers

(2) A renewable energy generating station shall be eligible for issuance of Certificates, if it meets the following conditions:

- (a) the tariff of such renewable energy generating station, for part or full capacity, has not been either determined or adopted under section 62 or section

63 of the Act respectively, or the electricity generated is not sold directly or through an electricity trader or in the Power Exchange, for RPO compliance by an obligated entity:

(b) such renewable energy generating station has not availed any (i) waiver of or concessional transmission charges or (ii) waiver of or concessional wheeling charges.

(3) A captive generating station based on renewable energy sources and meeting the conditions as specified under clause (2) of this Regulation in respect of renewable energy generating station shall be eligible for issuance of Certificates:

Provided that the Certificates issued to such captive generating station to the extent of self-consumption, shall not be eligible for sale.

(4) An obligated entity being a distribution licensee or an open access consumer, which purchases electricity from renewable energy sources in excess of the renewable purchase obligation as determined by the concerned State Commission shall be eligible for issuance of Certificates to the extent of purchase of such excess electricity from renewable energy sources.

...

#### **10. Issuance of Certificates**

(1) An eligible entity which has been granted registration or deemed to have been granted registration may apply for issuance of Certificates, to the Central Agency in accordance with the Procedure of Issuance of Certificate to be issued by the Central Agency as part of the Detailed Procedure.

(2) Application for issuance of Certificates shall be made by an eligible entity being a renewable energy generating station or a captive generating station based on renewable energy sources, to the Central Agency within six months from the corresponding generation by the eligible entity:

Provided that no Certificate shall be issued in case the application is made beyond the period of six months from the corresponding generation.

(3) Application for issuance of Certificates shall be made by an eligible entity being a distribution licensee or an open access consumer within three months from the end of a financial year, along with a copy of certification from the concerned State Commission about purchase of electricity from renewable energy sources in excess of the renewable purchase obligations as determined by the concerned State Commission:

Provided that no Certificate shall be issued in case the application is made beyond the period of three months from the end of the financial year.

(4) The Central Agency shall, within fifteen days from the date of receipt of complete application for issuance of Certificates from an eligible entity, issue Certificates or reject the application recording the reasons for such rejection and intimate the same to the concerned entity.

(5) The Certificates shall be issued to the eligible entity being a renewable energy generating station or a captive generating station based on renewable energy sources, on the basis of the electricity generated and injected into the grid or deemed to be injected in case of self-consumption by the eligible captive generating station based on renewable energy sources and duly accounted in the Energy Accounting System:

(i) as per the Grid Code or the State Grid Code, as the case may be, or

(ii) based on written communication of distribution licensee to the concerned State Load Despatch Centre or Regional Load Despatch Centre with regard to the energy input by the renewable energy generating station and captive generating station based on renewable energy sources which are not covered under the existing scheduling and dispatch procedures.

(6) The entities granted registration or deemed to have been granted registration under these regulations shall be eligible for issuance of Certificates for the validity period of their registration.

**12 Denomination of Certificate**

(1) Each Certificate issued under these regulations shall represent one Megawatt hour of electricity generated from renewable energy sources and injected or deemed to be injected (in case of self-consumption by eligible captive generating station based on renewable energy sources) into the grid:

Provided that Certificate Multiplier may be determined by the Commission as per clause (2) of this Regulation:

Provided further that Certificates shall be issued in multiple of the assigned Certificate Multiplier as per clause (2) of this Regulation for one Megawatt hour of electricity generated and injected or deemed to be injected into the grid.

(2) The Certificate Multiplier for the period of three years from the date of effect of these regulations or such other period as may be decided by the Commission, as determined in Appendix-1 shall be as under:

<b>Renewable Energy Technologies</b>	<b>Certificate Multiplier</b>
On-shore Wind and Solar Certificate	1
Hydro	1.5
Municipal Solid Waste (MSW) and non-fossil fuel-based cogeneration	2
Biomass and Biofuel	2.5

Provided that the Certificate Multiplier for other renewable energy technologies, not covered in the above table, shall be notified by the Commission on a case-to-case basis based on the principles stipulated in Appendix-1:

Provided further that the Commission may, from time to time, based on review of the maturity level and cost of various renewable energy technologies, revise the Certificate Multiplier.

(3) Applicable Certificate multiplier as per clause (2) of this Regulation shall be assigned to the renewable energy generating stations and captive generating stations based on renewable energy sources, commissioned after the date of coming into force of these regulations.

(4) The Certificate Multiplier once assigned to a renewable energy generating station, shall remain valid for a period of fifteen years from the date of commissioning of such renewable energy generating station or captive generating station based on renewable energy sources:

Provided that for the period of validity of their Registration beyond fifteen years from the date of commissioning of such renewable energy generating station or captive generating station based on renewable energy sources, such renewable energy generating station or captive generating station based on renewable energy sources

*shall be issued one Certificate for one Megawatt hour of electricity generated and injected or deemed to be injected into the grid.*

**16. Detailed Procedure**

*(1) The Central Agency shall issue the Detailed Procedure after stakeholders' consultation within a period of 3 months of notification of these regulations and submit the same for information to the Commission.*

*(2) The Detailed Procedure shall contain procedures including, but not limited to:*

- (a) Procedure for accounting of generation in respect of eligible entities as referred in clause (2) of Regulation 3 of these regulations;*
- (b) Procedure for Accreditation as referred in clause (2) of Regulation 6 of these regulations;*
- (c) Procedure for Registration for Certificate as referred to in clause (1) of Regulation 8 of these regulations;*
- (d) Procedure for Issuance for Certificate as referred to in clause (1) of Regulation 10 of these regulations;*
- (e) Periodicity for exchange of Certificate through power exchange or through electricity traders as referred to in clause (2) of Regulation 11 of these regulations;*
- (f) other related and incidental matters.*

**17. Power to give directions**

*The Commission may, from time to time, issue such practice directions and orders as considered appropriate for the implementation of these regulations.*

**18. Power to Relax**

*The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these regulations on its own motion or on an application made before it by interested person(s).*

41. Statement of Objects & Reasons (SOR) of REC Regulations, 2022 stipulates as under:

*2.10 On the issue of hydro project, the Commission would like to highlight that the Explanatory Memorandum (in short "the EM") had explained that the definition of renewable energy sources has been modified in view of the notification of the Ministry of Power, dated 08.03.2019 declaring the large hydro projects with more than 25 MW installed capacity and commissioned after 08.03.2019 as renewable energy source. Accordingly, the term 'hydro' used in the definition of "renewable energy sources" would imply small hydro projects (up to 25 MW) as well large hydro projects with more than 25 MW installed capacity and commissioned after 08.03.2019.*

*2.11 Further, as regards the other sources of renewable energy, the Commission is of the view that reference of the Central Government as the nodal authority for recognition of any resource as renewable is well established. The definition of renewable energy sources is broad enough to include any other technologies and when approved by the Central Government as renewable energy source.*

*2.12 Accordingly, the Commission has decided to retain the definition as proposed in the Draft Regulations.*



...

4.77 *The Commission would like clarify that the primary criteria for a generating station to qualify for REC is that the power sold from such a generating station is not accounted for RPO compliance of the obligated entity. As such, any renewable generating station selling power to the obligated entities including Distribution Company under MoU Route directly or through traders would not be eligible under REC mechanism if such sale is being accounted for RPO compliance of the obligated entity. The same principle will apply even for a generating station with multiple PPAs. The final REC Regulations have also clarified that the capacity of a generating station, in part or full, as long as such capacity is not tied up for sale to an obligated entity for RPO compliance, shall be eligible for REC.*

42. From the above, we observe that the REC Regulations, 2022, recognize the concept of one single, technology agnostic, fungible RECs and further stipulate that for the eligibility of RECs, the REGS should have accreditation and registration under the REC mechanism. The REC Regulations, 2022, *inter-alia*, recognized hydro (small hydro as well as large hydro) as a renewable source of energy and also introduced the concept of Certificate Multiplier for different RE technologies and accordingly, for RE projects based on the Hydro resource, certificate multiplier of 1.5 was assigned. However, as per Clause (3) of Regulation 12 of the REC Regulations, 2022, the RE Projects commissioned after the date of coming into force of these regulations i.e. 05.12.2022 are eligible for Certificate Multiplier. Further, the eligible entities already granted accreditation/registration under the REC Regulations, 2010, are deemed to have been accredited for grant of accreditation/registration under the REC Regulations, 2022 and are eligible for issuance of Certificates for the validity period of their registration. As per Regulation 16 (2) of the REC Regulations, 2022, the Central Agency (NLDC) is required to issue the Detailed procedure, *inter-alia*, including ‘*Procedure for accounting of generation in respect of eligible entities*’ after consultation with stakeholders and submit the same for information to the Commission.

43. The ‘Detailed Procedure’ was notified by the Central Agency in September, 2022. The relevant portion of the detailed procedure mandates as under:

**2.7 The energy injection data of REGS/ CGP for the first month, for issuance of REC, shall be applicable from the date of commercial operation or from the date of registration of such plant by the Central Agency, whichever is later till the last day of the same month.** However, for the subsequent months, period of energy injection shall be from the first day of the month to the last day of the same month. In order to do

*accounting for the calendar month, SLDCs/ RLDCs may calculate on pro-rata basis, or any other method deemed suitable by the SLDC/ RLDC. Auxiliary Consumption shall not to be considered for issuance of REC.*

44. From the above, we observe that for issuance of RECs, the energy injection data is applicable from the date of commercial operation of the renewable energy generation plant or from the date of its registration, whichever is later.
45. From the discussion in the preceding paragraphs, we observe that REC Regulations, 2010 recognized, *inter-alia*, the small hydro (and not large hydro) as a renewable energy source and such other sources as recognized or approved by MNRE. Further, the renewable energy generation plant was eligible for issuance of Certificates from the date of commercial operation or from the date of its registration by the Central Agency, whichever is later.
46. We further observe that the REC Regulations, 2022 recognize, *inter-alia*, Hydro (small hydro as well as large hydro) as renewable energy sources and such other sources as recognized or approved by the Central Government. The REC Regulations, 2022 read with the detailed procedure issued by the Central Agency retained the philosophy/provisions regarding the eligibility for issuance of Certificates from the date of commercial operation or from the date of registration of such plant by the Central Agency, whichever is later. The REC Regulations, 2022 also do not contain any provision for issuance for any separate category of REC such as HEC for hydro power generated through hydro power stations. The regulations rather provide for the concept of Certificate Multiplier for different RE technologies commissioned after the date of coming into force of these regulations i.e. 05.12.2022. Pertinently, the concept of technology agnostic REC and the multiplier for new and costly RE technologies was also supported by the Ministry of Power.
47. In the instant case, NEEPCO commissioned the Kameng HEP (600 MW) in the North Eastern Region. The commercial operation of Unit-I (150MW), Unit-II (150 MW), Unit-III (150 MW) and Unit-IV (150 MW) of Kameng HEP, is 17.06.2020, 01.07.2020, 22.01.2021 and 12.02.2021 respectively. We note that Kameng HEP (600 MW) was commissioned after 08.03.2019. Further, out of 600 MW, 347 MW (including 2MW by the State of Goa) remains untied. Hence,

Kameng HEP becomes eligible for RECs for partial generation (347 MW) under the REC Mechanism as per the REC Regulations, 2022. However, NEEPCO got Registration for an untied capacity of 347 MW under the REC Mechanism on 14.02.2023. Therefore, any benefit of certificate Multiplier along with corresponding RECs under the REC Regulations, 2022 accrues/can be given to the Petitioner only from 14.02.2023. We are of the view that the ‘power to relax’ cannot be exercised by the Commission to give retrospective effect to provision(s) of the REC Regulations, 2022. For any such retrospective operation, there has to be a specific provision in the regulations, which is not there under the REC Regulations, 2022 to cover the instant case. Accordingly, we hold that no benefit of certificate Multiplier along with corresponding RECs can be given to the Petitioner before the date of Registration (14.02.2023) for the untied capacity of 347 MW of Kameng HEP under the REC Mechanism based on the extant provisions of the REC Regulations, 2022.

48. However, we are of the view that in India’s journey towards energy transition, clean technologies like hydro generation need promotion, more so to take care of the intermittency of wind and solar and to meet the peak demand of the country. The intent of the Ministry of Power’s guidelines dated 08.03.2019 on Measures to Promote the Hydro Power Sector is also in sync with this view of the Commission. It, therefore, makes a case to explore the feasibility of recognising the green attributes of hydro generation, with special reference to the large hydro generation capacities commissioned after 08.03.2019, through suitable provisions in the REC Regulations, 2022. Accordingly, we also hold that if and when a regulatory dispensation to this effect is brought by the Commission by following the regulatory process, the Petitioner shall be at liberty to approach the Central Agency for issuance of RECs, if any, in accordance with the provisions of the regulations.

49. Accordingly, the Petition No. 207/MP/2022 is disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

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अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
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