



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 299/MP/2023

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 11th of April, 2024

IN THE MATTER OF:

Petition under Regulation 18 of the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation), Regulations, 2022 seeking condonation of delay in submitting application to the Central Agency for issuance of Renewable Energy Certificates for FY 2022-23 for additional 82 days beyond the specified due date of 30th June 2023.

AND IN THE MATTER OF:

India Power Corporation Limited

Plot no. X 1,2 & 3, Block - EP, Salt Lake,
Sector - V, Kolkata-700091.

...Petitioner

Versus

National Load Dispatch Centre,
Grid Controller of India
(Formerly Power System Operation Corporation Ltd.)
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110016.

...Respondent

Parties Present: Shri Anand Ganesan, Advocate, IPCL
Ms. Aishwarya Subramani, Advocate, IPCL
Shri Harsha V Rao, Advocate, IPCL
Shri Kailash Chand Saini, NLDC
Shri Kashif Usman, NLDC
Shri Alok Mishra, NLDC

आदेश/ ORDER

The Petitioner, India Power Corporation Limited (IPCL) is a deemed distribution licensee within the provisions of Section 14 of the Electricity Act 2003 and operates under the jurisdiction of the West Bengal Electricity Regulatory Commission (WBERC). The Petitioner is supplying power in the Asansol-Raniganj area of West Bengal and also has a 12 MW embedded thermal generation. In addition to power sourcing through conventional sources, the Petitioner also sources power through a 2 MWp Solar PV from West Bengal Green Energy Development Corporation Limited (WBGEDCL) and a 100 MW RE (Wind-Solar hybrid) power purchase agreement (PPA) on a long-term basis with Solar Energy Corporation of India Ltd (SECI). Full capacity is available for despatch from the said hybrid RE project from 29.09.2022 onwards. The Petitioner has filed the present Petition under Regulations 18 of the *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations 2022* (the REC Regulations, 2022) and is seeking condonation of delay in submitting an application for the issuance of REC for FY 2022-23 for additional 82 days beyond the specified due date of 30.06.2023.

2. The Respondent, the National Load Dispatch Centre (NLDC), is designated as the Central Agency under Regulation 3 of the REC Regulations, 2022 and is entrusted with the functions of granting registration and issuing RECs as per the said REC Regulations.
3. The Petitioner has made the following prayers:
 - (a) *Admit the present petition.*
 - (b) *Grant extension of 82 days beyond due date of 30th June 2023 to the Petitioner for submission of application of issuance of Renewable Energy Certificates for FY 2022-23 to the NLDC in relaxation of the condition as specified in Proviso to Reg 10(3) of*

the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022.

- (c) *Direct NLDC to condone the delay of 82 days in submission of the REC application and accept the application submitted by the Petitioner on 20.09.2023 for the issuance of the Renewable Energy Certificates (REC) for FY 2022-23;*
- (d) *Pass such other order(s) and grant relief(s) that this Hon'ble Commission deems fit in the interest of justice and equity.*

Brief Factual Background

4. Regulation 4(4) of the REC Regulations, 2022, stipulates that any obligated entity, including a distribution licensee having purchased electricity from renewable energy sources in excess of the renewable purchase obligation (RPO) 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. In the instant petition, the Petitioner procured renewable power in excess of its obligations during the FY 2022-2023. Accordingly, to avail of the benefits of RECs, the Petitioner was required to obtain a certificate/recommendation from the relevant State Commission, i.e. the West Bengal Electricity Regulatory Commission (WBERC), that during the previous financial year, the Petitioner procured renewable energy in excess of its statutory obligation. Thereafter, the Petitioner was to submit the application to the NLDC for issuance of RECs within three months from the end of the financial year.

Submission of the Petitioner

5. The Petitioner has submitted as under:
- a) WBERC issued the *WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (First Amendment) Regulations, 2020* (WBERC First Amendment, 2020) in which the RPO Targets were specified for the FY 2020-21 to FY 2022-23.
- b) The Petitioner procured electricity from renewable energy sources in excess of the RPO target for FY 2022-23 as indicated in the following table:

Total Consumption of electricity in the area of supply during FY2022-23 (MWh)		960911
Target RPO to be achieved as per WBERC RE Regulations (MWh)	Solar	57655
	Non-Solar	105770

Actual Drawl/Purchase of energy from renewable energy sources (MWh)	Solar	200295
	Non-Solar	57492
Excess (+)/Shortfall (-) of RPO (Actual - RPO) in MWh	Solar	(+)142640
	Non-Solar	(-) 48208
	Total	(+) 94432

- c) On 12.04.2023, vide Letter No. RA/II/002/23-24/106, the Petitioner filed a petition before WBERC seeking certification with respect to the renewable energy purchased in excess of the RPO target for the FY 2022-23 as required under Regulation 10(3) of the REC Regulation, 2022, i.e., after eleven (11) days of the end of the financial year.
- d) On 07.06.2023, vide letter no. RA/II/002/2023-24/127, the Petitioner also approached the WBSLDC with regard to certification under Form 3.6 as prescribed in the *Detailed Procedures for Implementation of REC Mechanism* issued by the Grid Controller of India Limited in December 2022.
- e) On 11.09.2023, WBERC issued the order on certification of excess RE purchased by the Petitioner vide Order in Case No. OA-453/23-24. WBERC, in its Order, held that “*based on the certification of WBSLDC regarding procurement of solar and non-solar power and the auditor’s certificate regarding total consumption of electricity in the area of supply of IPCL during the FY 2022-23, it is satisfied that a quantum of 1,42,640 MWh of excess solar power has been purchased by IPCL during FY2022-23.*”
- f) The excess RE quantum, as certified by the WBERC, was issued on 11.09.2023 and posted on the website of WBERC on 12.09.2023. The Petitioner received the certified copy of the order on 15.09.2023.
- g) Based on the certification received from the WBERC, the Petitioner submitted the REC application before the Nodal Agency, NLDC on 20.09.2023, i.e. after 82 days of delay beyond the due date of 30.06.2023 (as specified in Regulation 10 (3) of the REC Regulations, 2022).
- h) Hence, the delay in submitting the application to NLDC was caused by a delay in the issuance of the requisite certificate by WBERC, which was beyond the control of the Petitioner.
- i) The application, as per Regulation 10 (3) of the REC Regulations, 2022, was submitted to NLDC on 20.09.2023 only after receiving the requisite certification from the WBERC and WBSLDC.
- j) The Petitioner requests the Commission to direct NLDC to condone the delay of 82 days beyond the specified time limit of 30.06.2023 and consider the application of the

Petitioner for the issuance of RECs for FY 2022-23 by exercising its Power to Relax in accordance with Regulation 18 of the REC Regulations, 2022.

Hearing held on 05.12.2023

6. During the course of the hearing dated 05.12.2023, the Petitioner submitted that since WBERC issued the Order regarding the certification of the excess renewable energy purchased by the Petitioner on 11.09.2023, the Petitioner could submit its application for the grant of RECs with NLDC thereafter on 20.9.2023, i.e. after 82 days of delay beyond the due date 30.06.2023. The representative of the Respondent, NLDC, accepted the notice and sought liberty to file a reply in the matter. The Commission directed the involved parties to file the reply.

Submission by NLDC on 18.12.2023

7. NLDC has submitted as under:
- a) The Petitioner applied for registration on 20.09.2023, which was beyond the timeline of three months from the end of the financial year as per the REC Regulations, 2022. They started the application process for registration under the REC mechanism on the REC Web Portal on 20.09.2023 faced some technical difficulties, but they successfully concluded the application process on 19.10.2023.
 - b) On 10.11.2023, the Petitioner submitted clarifications in response to the queries raised by NLDC. NLDC proceeded to verify the Petitioner's application on 16.11.2023. However, the payment of the Registration Fee was pending at the Petitioner's end. NLDC was to proceed with the Petitioner's registration upon the receipt of the Registration Fee.
 - c) The Ministry of Power (the MoP) notified RPO trajectory wherein the Solar and Non-Solar RPO are categorized under the same category of "Other RPO". Further, the REC Regulations 2022 and subsequent to the Commission's Orders on this subject deem RECs as fungible and technology agnostic. Furthermore, the Commission in Petition No. 375/MP/2022 and Petition No. 379/MP/2022 vide its Order dated 08.10.2023 observed that the FOR in its 84th Meeting held on 03.02.2023 deliberated on the issue of '*Fungibility of RPO*' and unanimously agreed to allow fungibility of RECs to fulfil any RPO specified by the State Commission.
 - d) Although the Petitioner purchased excess Solar energy to the extent of (+) 1,42,640 MWh it has a shortfall of Non-Solar energy to the extent of (-) 48,208 MWh with respect to its RPO target for the FY 2022-23, thereby leaving only 94,432 MWh as surplus. Therefore, for the purpose of issuance of RECs, keeping in view the latest RPO trajectory issued by

MoP and the principle of fungibility of REC introduced by the Commission and Regulation 4(4) of the REC Regulations, 2022, the excess of total renewable energy purchased with respect to the total renewable energy target may be considered.

- e) Since the overall surplus RE purchase of the Petitioner is (+) 94,432 MWh with respect to its total RPO target as per WBERC First Amendment, 2020.
- f) If the Commission grants relaxation to the Petitioner, the overall renewable energy surplus, i.e. (+) 94,432 MWh, may be considered eligible for issuance of RECs to the Petitioner.

Rejoinder by the Petitioner filed on 28.12.2023

- 8. The Petitioner, in its rejoinder, has reiterated its submissions made in the plaint, and as such, the same are not reproduced here for the sake of brevity. Additionally, the Petitioner has submitted that:
 - a) The contention raised on setting off the RPO compliance between solar and non-solar is erroneous.
 - b) The treatment of the excess solar energy purchased by the Petitioner to meet non-solar RPO on the ground of fungibility of RECs cannot be accorded at this belated stage, as the same has neither been recognized in the *WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2020* along with Amendments, nor the REC Regulations, 2022.
 - c) Due to the absence of a regulatory basis for the adjustment, the Petitioner could face two potential disadvantages. *Firstly*, even if NLDC deems the Petitioner to have fulfilled its non-solar RPO, WBERC might not recognize it during the APR/Truing up stage, leading to IPCL's non-solar RPO for FY2022-23 being deemed deficient. *Secondly*, while WBERC acknowledged an excess actual procurement of 1,42,640 MWh, the Petitioner may only be entitled to RECs for the procurement of up to 94,432 MWh of excess solar energy, posing a significant discrepancy in certification.
 - d) The Registration Fee for registration under REC mechanism on the REC Web Portal stands paid as of 22.12.2023.

Hearing held on 16.02.2024

- 9. During the course of the hearing on 16.02.2024, the Petitioner submitted that NLDC, in its written response, proposed adjusting excess solar energy purchased by the Petitioner against non-solar energy shortfall before considering the issuance of RECs for the excess solar

energy. However, the Petitioner's REC application must be processed based on WBERC's Order certifying the excess renewable energy purchased, as per existing Regulations. NLDC's representative confirmed the submission of their reply. Considering these arguments, the Commission reserved the matter.

Analysis and Decision

10. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

11. The brief facts of the case are that the Petitioner is a deemed distribution licensee with 12 MW embedded thermal generation and operates under the jurisdiction of WBERC. The Petitioner procured excess renewable energy in FY 2022-23, surpassing the RPO targets and purchased an excess of solar energy to the extent of 1,42,640 MWh. The Petitioner filed a petition before the WBERC on 12.04.2023, seeking certification for the excess renewable energy. The petition was filed 11 days after the end of the financial year, and thereafter, WBERC issued the order on certification of excess RE purchased by the Petitioner, vide order dated 11.09.2023, submitted that the quantum of 1,42,640 MWh of excess solar power was purchased by the Petitioner during FY2022-23. The Petitioner submitted the application for issuance of REC to the Central Agency (NLDC) on 20.09.2023, i.e. 82 days beyond the specified deadline of 30.06.2023 (i.e. 3 months after the end of the Financial year). Hence, the Petitioner has requested to direct NLDC to condone the 82-day delay and consider the application of the Petitioner for the issuance of RECs for FY 2022-23, citing Regulation 18 of the REC Regulations, 2022.

12. We observe that the REC Regulations 2022 provide that the distribution licensee is required to apply to the Central Agency (NLDC) for the issuance of RECs within 3 months from the end of the financial year. The relevant provision regarding the issuance of certificates to an eligible distribution licensee stipulates as under:
 10. *Issuance of Certificates*
.....
(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.

.....”

13. From the above, we observe that the Petitioner was required to approach the Respondent within three months from the end of the financial year, along with the certification from WBERC. We observe that the Petitioner has filed a Petition before the WBERC on 12.04.2023, i.e. after 11 days of the end of FY2022-23. However, the Certification of WBSLDC regarding the procurement of solar and non-solar power was obtained on 23.06.2023, and the Order of WBERC certifying the excess procurement of solar power was issued on 11.09.2023. Accordingly, in this case, the Petitioner could not adhere to the above-mentioned timeline for issuance of RECs for FY 2022-2023, causing a delay of 82 days. As submitted by the Petitioner, the primary cause of this delay was the time taken for the order to be issued, which certified excess procurement of solar power by the Petitioner during the previous financial year. We observe that the delay in submission of the application to NLDC within the stipulated time of three (3) months was beyond the control of the Petitioner. Further, the Petitioner has clarified in its rejoinder that the Registration fee for registration under the REC mechanism has been paid by the Petitioner on 22.12.2023.
14. On the issue of setting off the excess procurement of solar energy purchased by the Petitioner to meet the shortfall of non-solar RPO, as suggested by the Respondent, we observe that WBERC has certified that the quantum of 1,42,640 MWh of excess solar power purchased during 2022-23 by the Petitioner and has also given liberty to the Petitioner to approach the NLDC for the issuance of RECs. We are of the view that setting off the RPO compliance between solar and non-solar comes under the purview of the State Electricity Regulatory Commission, i.e. WBERC (in the instant case) and hence, no directions in this regard can be issued by this Commission.
15. The relevant provisions of the REC Regulations, 2022 stipulate as under:

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).

16. As per the principle laid down for the grant of RECs, the Petitioner is an eligible entity being a distribution licensee, and it will be entitled to RECs subject to fulfilment of the criteria for the issuance of RECs to such entities. The main objective of the REC framework is to promote the generation of renewable energy. Therefore, we are inclined to exercise the “Power to relax” under Regulation 18 of REC Regulations, 2022, in order to achieve the objective of the regulations.
17. In our view, the delay in the application for issuance of REC is procedural in nature due to the reasons stated by the Petitioner and is not likely to prejudice any of the stakeholders, including the Respondent. Accordingly, the timelines stipulated under Regulation 10(3) of the REC Regulations 2022 are hereby relaxed, and the Petitioner is permitted to file its application for the issuance of RECs before the Central Agency for FY 2021-2022. Further, NLDC is directed to issue the RECs after due verification and satisfying itself that the Petitioner meets all other conditions and has submitted all the required documents for the issuance of RECs.
18. The Petition No. 299/MP/2023 is disposed of in terms of the above.

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