



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 70/MP/2023

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: 06th of January, 2024

IN THE MATTER OF:

Petition under Section 79(1)(k) of the Electricity Act, 2003 read with Section 178(2) (y) and Section 66 along with Regulations 17, 18 and 19 of the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations 2022 as well as 111 and 113 of the CERC (Conduct of Business) Regulations 1999, seeking issuance of Renewable Energy Certificates for FY 2019-2020 and 2020-2021 and other reliefs

AND IN THE MATTER OF:

Southern Power Distribution Company of Andhra Pradesh Ltd.
Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta,
Tirupati 517501.

...Petitioner

Versus

National Load Dispatch Centre
C/o 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 Sidhant Kumar, Advocate, SPDCAPL
Ms. Manya Chandok, Advocate, SPDCAPL
Ms. Muskaan Gopal, Advocate, SPDCAPL
Shri Kailash Chand Saini, NLDC
Shri Gajendra Sinh Vasava, NLDC
Shri Alok Mishra, NLDC

आदेश/ ORDER

The Petitioner, Southern Power Distribution Company of Andhra Pradesh Ltd., is a licensed distribution entity in the State of Andhra Pradesh, engaged in procuring and distributing electricity from renewable and non-renewable energy sources. The Petitioner filed the present Petition under Section 79(1)(k) of the Electricity Act, 2003 read with Section 178(2) (y) and Section 66 along with Regulations 17, 18 and 19 of the *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations 2022* (REC Regulations, 2022) as well as Regulations 111 and 113 of the CERC (Conduct of Business) Regulations 1999, praying for issuance of RECs in respect of the generation during FY 2019-2020 and 2020-2021 in accordance with the provisions of the 17, 18 and 19 of the *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations 2010* (REC Regulations 2010).

2. The Respondent, the National Load Dispatch Centre (NLDC), is designated as the Central Agency under Regulation 3 of the REC Regulations, 2010 and the REC Regulations, 2022 and is entrusted with the functions inter alia of granting registration and issuance of RECs as per the said REC Regulations.
3. The Petitioner has made the following prayers:

- a) Direct the Respondent to consider and decide the Petitioner's application for issuance of RECs in respect of FY 2019-2020 and 2020-2021, in accordance with the provisions of the REC Regulations 2010;
- b) Alternatively, relax the timelines stipulated under Regulation 10(3) of the REC Regulations 2022 and permit the Petitioner to file its application for issuance of Renewable Energy Certificates before the Central Agency for FY 2019-2020 and 2020-2021;
- c) Direct the Respondent *i.e.* National Load Despatch Centre to issue the Renewable Energy Certificates for FY 2019-2020 and 2020-2021 in favour of the Petitioner;
- d) Pass any other or further order(s) as this Hon'ble Commission may deem fit and proper in the interest of justice.

Brief Factual Background:

4. The Petitioner procured renewable power in excess of its obligations during the FY 2019-2020 and 2020-2021. To avail of the benefits of RECs for FY 2019-2020 and 2020-2021 under the REC Regulations, 2010, the Petitioner is required to obtain an eligibility certificate /recommendation from the relevant State Commission, namely, the Andhra Pradesh Electricity Regulatory Commission (APEREC).
5. The "recommendation" is a pre-requisite under the applicable REC Regulations 2010 to certify that during the previous financial year, the Petitioner procured renewable energy in excess of its statutory obligation.

Submission of the Petitioner:

6. The Petitioner has submitted as under:
 - a) The Petitioner submitted the timelines for obtaining the "recommendation" as under:

S.No.	Event	Date	
		For FY 2019-2020	For FY 2020-2021
1	Receiving of the requisite renewable energy procurement data from the Andhra Pradesh Power Coordination Committee (APPCC) by the Petitioner	22.12.2021	05.05.2022
2	Submission of above data by the Petitioner before the Andhra Pradesh State Load Despatch Centre (APSLDC) for issuing the Annual Status Report stating the Petitioner's compliance with its renewable power purchase obligations.	28.12.2021	03.06.2022
3	Issuance of the Annual Status Report by APSLDC. The Petitioner procured renewable power in excess of its obligations during the years 2019-2020 as well as during the	04.02.2022	27.07.2022

	previous years i.e. 2018-19, 2017-2018 and 2016-2017.		
4	Direction by the APERC to the Petitioner to file a petition for seeking issuance of recommendation for issuance of RECs from Central Agency,	16.04.2022	In accordance with the same direction of APERC vide communication dated 16.04.2022
5	The said Petition was filed before APERC in accordance with REC Regulations 2010.	(Petition bearing O.P. No. 40/2022) 16.05.2022	(Petition bearing O.P. No. 50/2022) 30.07.2022
6	Reserving of the judgment by APERC	02.11.2022	02.11.2022

- b) APERC thereafter issued a recommendation dated 05.12.2022 in favour of the Petitioner under the REC, Regulations 2010.
- c) In the meantime, this Commission issued a notification stating that the REC Regulations 2022 shall come into force with effect from 05.12.2022.
- d) Within a few days of receiving the recommendation from APERC, the Petitioner, on 20.12.2022, tried to file an application for issuance of RECs in respect of FY 2019-2020 and 2020-2021 and upload the relevant documents as per the Detailed Procedure laid down by the Central Agency.
- e) Under the REC Regulations 2010, the Petitioner was required to approach the Respondent within three (3) months from the date of receipt of the recommendation from the State Commission, i.e. by March 2023. Before the said period of 3 months could elapse, the Commission issued REC Regulation 2022, repealing the REC Regulations 2010.
- f) Because of the revised timeline under the REC Regulations 2022, the Petitioner was prevented from filing an application for issuance of RECs for the FY 2019-2020 and 2020-2021.
- g) The Petitioner emailed the Respondent on 19.12.2022 and 20.12.2022 and highlighted the difficulties faced by it. Thereafter, by letter dated 29.12.2022, the Petitioner filed a representation before the Respondent stating its grievances in respect of its application seeking issuance of RECs for the FY 2019-2020 and FY 2020-2021.
- h) The Respondent, in its response, vide email communication dated 10.01.2023, stated that no application under Regulation 10(3) of the REC Regulation 2022 could be filed beyond the period of 3 months from the end of the financial year in respect of which the RECs have been sought.

- i) The Petitioner was prevented from claiming the benefit procuring renewable energy in excess of their obligation during the financial years 2019-2020 and 2020-2021.
- j) The Petitioner was constrained to file the present Petition seeking a direction against the Respondent to consider and decide the Petitioner's application for issuance of RECs in respect of FY 2019-2020 and 2020-2021, in accordance with the provisions of the REC Regulations 2010.
- k) The Petitioner alternatively seeks the Commission's intervention to exercise its power under Regulation 18 of the REC Regulations 2022, and relax the timeline for filing the application under Regulation 10(2) in respect of the issuance of RECs for the FY 2019-2020 and 2020-2021.
- l) Additionally, the Petitioner also prayed for the passing of appropriate directions against the Respondent under Regulation 17, directing them to consider the Petitioner's application and accordingly issue the RECs for the financial years 2019-2020 and 2020-2021.

Hearing held on 20.04.2023:

7. During the course of the hearing the Commission directed the Petitioner to serve a copy of the Petition to the Respondent.

Reply submitted by NLDC on 10.05.2023:

8. NLDC has submitted as under:
 - a) Southern Power Distribution Company of Andhra Pradesh Ltd (APSPDCL), a licensed distribution entity, was accredited by Andhra Pradesh State Agency on 03.10.2018 (Accreditation number AP0DSAPSPDCLTA031018) and registered by Central Agency on 17.10.2018 (Registration number AP0DSAPSPDCLTR171018) under the REC Mechanism.
 - b) APSPDCL obtained the certificate of eligibility for issuance of RECs from APERC on 05.12.2022, and it could have applied for issuance of RECs till 04.03.2023 under the repealed REC Regulation, 2010. However, the REC Regulations 2022 came into force from 05.12.2022. Therefore, APSPDCL communicated to the Central Agency through email on 20.12.2022 and through the letter received at the Central Agency on 04.01.2023 to allow application of the issuance of RECs on the REC web portal for the financial year of 2019-20 and 2020-21.

- c) After implementation of REC Regulations 2022, the Central Agency incorporated the necessary changes in the REC web portal with effect from 05.12.2022 and as per condition for application of issuance of REC by the distribution licensee, REC web portal did not allow APSPDCL to make application on 20.12.2022 for issuance of RECs for the FY 2019-20 and FY 2020-21 as it was beyond the period of three months from the end of the financial year.
- d) The Central Agency communicated to APSPDCL on 10.01.2023 that as REC Regulations 2022 are effective from 05.12.2022 and as per these Regulations, a distribution licensee has to apply for the issuance of RECs to Central Agency within three months from the end of a financial year.
- e) In this case, the application was made beyond the period of three months from the end of the financial year. Therefore no Certificate could be issued.

Rejoinder by the Petitioner filed on 19.05.2023:

9. The Petitioner has reiterated its submissions made in the plaint. As such, they are not reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that REC Regulations 2022 became effective on 05.12.2022 after the Petitioner had already applied for the REC Certificates pursuant to the REC Regulations 2010. APERC also allowed the Petitions preferred by the Petitioner *vide* order dated 05.12.2022. Regulation 19(2)(d) of the REC Regulations 2022 stipulates that orders passed pursuant to the REC Regulations 2010 will continue to be valid and binding. The Order dated 05.12.2022 of the APERC was passed pursuant to the REC Regulations 2010, and therefore, the Respondent is bound to honour it. The REC Regulations 2022 do not provide for any provision to apply retrospectively. It is, therefore, impermissible for these rights and entitlements to be extinguished by retrospective application of the REC Regulations 2022. On 19.12.2022, the Petitioner furnished the Order of the State Commission in terms of Regulation 7(1A) of the REC Regulations 2010 within the stipulated period of three months. The Petitioner had fully complied with the REC Regulation 2010 and is entitled to availing the benefits prayed for.

Hearing held on 19.07.2023:

10. During the course of the hearing on 19.07.2023, the Petitioner submitted that the present petition was filed seeking direction to the Respondent, NLDC, to issue the RECs for the FY 2019-20 and FY 2020-21 in favour of the Petitioner. NLDC submitted that after the implementation of the REC Regulations, 2022, the Central Agency incorporated the

necessary changes in the REC web portal w.e.f. 05.12.2022 and as per the conditions specified in the said Regulations for application of issuance of RECs by distribution licensee (i.e. application has to be made within 3 months from the end of a financial year), the web portal did not allow the Petitioner to make the application for the issuance of RECs for the FY 2019-20 and FY 2020-21. Therefore, after hearing the parties, the Commission reserved the Petition for orders.

Analysis and Decision:

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

12. Brief fact of the Case: As per the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010, the Petitioner, in order to avail the benefits of RECs for the FY 2019-20 and FY 2020-21, was required to obtain a certificate/recommendation from the concerned State Commission i.e. Andhra Pradesh Electricity Regulatory Commission (APERC). Accordingly, the Petitioner approached APERC on 19.2.2022 and 30.7.2022 for its recommendation for the issuance of RECs for FY 2019-20 and FY 2020-21 in favour of the Petitioner. However, APERC issued its recommendation only on 5.12.2022. As per the REC Regulations, 2010, the Petitioner was required to approach NLDC within 3 months from the date of receipt of the recommendation from the State Commission, i.e. by March 2023. However, before the lapse of the aforesaid period of 3 months, the Commission repealed the REC Regulations, 2010 and promulgated the REC Regulations, 2022, which revised the timeline for making an application according to which the applicant was required to apply for a certificate within 3 months from the end of a financial year. In view of this revised timeline under the REC Regulations, 2022, the Petitioner was prevented from filing an application for issuance of RECs for FY 2019-20 and FY 2020-21.

13. We observe that Regulation 7 of the REC Regulations, 2010 provides as under:

“7. Denomination and issuance of Certificates:
.....
(1A) The eligible distribution licensees shall apply to the Central Agency for Certificates within three months from the date of obtaining the certification, as provided in clause (1 A) of the Regulation 5, from the concerned Appropriate Commission.”

14. Further, under the REC Regulations 2010, the Petitioner was required to approach the Respondent within three (3) months from the date of receipt of the recommendation from the State Commission. It is observed that the Petitioner obtained the required certificate of eligibility for the issuance of RECs from the APERC on 05.12.2022 and could have applied for the issuance of RECs till 04.03.2023. However, before the said period of three (3) months could elapse, the Commission issued the REC Regulation 2022 which came into effect from 05.12.2022 while repealing the REC Regulations 2010.

15. REC Regulations, 2022, regarding the issuance of certificates to an eligible distribution licensee, stipulate 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.

.....”

16. We observe that because of the revised timeline under the REC Regulations 2022, the Petitioner was prevented from filing an application for issuance of RECs for the FY 2019-2020 and FY 2020-2021. The Petitioner had initiated the action for issuance of the certificate before the new REC Regulations, 2022 came into effect. The required certification by the APERC was issued on 05.12.2022. The REC Regulations, 2022 also came into effect on the same day i.e. 05.12.2022. NLDC incorporated necessary changes in the REC web portal w.e.f. 05.12.2022 and did not allow the Petitioner to make an application on 20.12.2022 for issuance of RECs for the FY 2019-20 and FY 2020-21 as it was beyond the period of three (3) months from the end of the financial year for issuance of RECs for the FY 2019-20 and FY 2020-21.

17. We also observe that the relevant provisions of the REC Regulations, 2010 stipulate as under:

14. Power to give directions: *The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.*

15. 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 an interested person.

18. The relevant provisions of REC Regulations, 2022 stipulate as under:

“ 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).”

“19. Repeal and Savings

(1) Save as otherwise provided in these regulations, the REC Regulations, 2010 and all subsequent amendments thereto and Procedures thereof shall stand repealed from the date of coming into force of these regulations. (2) Notwithstanding such repeal: (a) anything done or any action taken or purported to have been done or taken or any accreditation or registration or permission granted or any document or instrument executed or any direction given under the repealed regulations shall, in so far as it is not inconsistent with the provisions of these regulations, be deemed to have been done or taken under the corresponding provisions of these regulations.”

19. From the above, we note that the REC Regulations 2010 have been repealed by the REC Regulations 2022. By virtue of the saving clause, in terms of Regulation 19 (2) of the REC Regulations 2022, anything done or any action taken under the repealed REC Regulations 2010 shall be deemed to have been done or taken under the REC Regulations 2022. It is also pertinent to note that both the REC Regulations, 2010 and the REC Regulations, 2022 have provisions for the power to relax and the Power to give directions.

20. As per the principle laid down for the grant of RECs, the Petitioner is an eligible entity being a distribution licensee, and it shall 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 15 of the REC Regulations, 2010 and Regulation 18 of REC Regulations, 2022, in order to achieve the object of the regulations.

21. 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 Commission decides to relax the timelines stipulated under Regulation 7(1A) of the REC Regulations, 2010 and Regulation 10(3) of the REC Regulations 2022 and permit the Petitioner to file its application for the issuance of

Renewable Energy Certificates before the Central Agency for FY 2019-2020 and FY 2020-2021.

22. Further, NLDC is directed to issue the RECs after due verification and satisfying itself that the Petitioner meets all conditions and has submitted all the required documents for the issuance of RECs.

23. The Petition No. 70/MP/2023 is disposed of in terms of the above.

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(पी. के. सिंह)
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