

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 119/MP/2013

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 17.09.2013

Date of Order : 03.12.2013

In the matter of

Petition under Section 79 (1) (k) of the Electricity Act, 2003 read with Regulation 3 (4) 14 of the Central Electricity Regulatory Commission ((Terms and Conditions for Recognition and Issuance of Renewable energy certificate for renewable energy generation) Regulations, 2010.

And

in the matter of

M/s Peethambra Granites Private Limited
80, Civil Lines,
Jhansi-284 001, Maharashtra

Petitioner

Vs

National Load Despatch Center
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

Maharashtra State Load Despatch Centre
Thane-Belpur Road, P.O. Airoli,
Navi Mumbai-400 708

Respondents

Parties Present:

Shri Rajiv Yadav, Advocate for the petitioner
Shri Kulbhushan Kumar, PGPL
Shri Arjun Krishnan, Advocate, NLDC
Shri A.Banerjee, Advocate, NLDC
Ms. Jyoti Prasad, NLDC
Shri Sailendra Verma, MSLDC

ORDER

The petitioner in the present petition filed under Regulations 3 (4) and 14 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations) has made prayer to direct National Load Despatch Centre (NLDC) to issue Renewable Energy Certificates (RECs) in terms of application for the month of May, 2012.

2. By virtue of clause (1) of Regulation 3 of the REC Regulations, the Commission has nominated the National Load Despatch Centre as the Central Agency to perform functions under clause (2), which include issuance of Renewable Energy Certificates (RECs) under these regulations. The Central Agency has, after approval of the Commission, issued the detailed procedure in terms of clause (3). Regulation 5 of the REC Regulations lays down the criteria for registration of the eligible entity for issuance of RECs. In accordance with clause (1) of Regulation 5, a generating company engaged in generation of electricity from renewable energy sources (RE Generator) is eligible to apply for registration to the Central Agency for issuance of RECs on fulfilling the following conditions, namely:

- (a) It has obtained accreditation from the State Agency,
- (b) It does not have PPA for the capacity related to such generation to sell electricity at a preferential tariff, and

(c) It sells electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

3. Regulation 7 of the REC Regulations which deals with issuance provides as under:

“7. Denomination and issuance of Certificates

(1) The eligible entities shall apply to the Central Agency for Certificates within three months after corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on fortnightly basis, that is, on the first day of the month or on the fifteenth day of the month.”

4. From clause (1) of Regulation 7 of the REC Regulations it follows that RE Generator is required to apply for issuance of RECs within three months from the corresponding generation date. Further, the application for the purpose has to be made either on first day of the month or fifteenth day of the month.

5. A Detailed Procedure approved by the Commission lays down the actual process of processing of applications for grant of RECs. Clause 7.1 of the Detailed Procedure is extracted below:

“The Eligible Entity shall apply for issuance of renewable energy certificates within three (3) months from the month in which renewable energy was

generated and injected into the electricity grid after issuance of the monthly energy injection report by the concerned SLDC. However, the eligible entity shall apply for issuance of RECs for the complete month in sequential manner.

For example, in the month of May, the applicant may apply for issuance of RECs for the months of February, March and April. However, since the monthly injection report for May would not be available with the Central Agency before month end, application for issuance of RECs against energy injected during May can be made on a fortnightly basis in the subsequent three months. However, the eligible entity shall ensure that it should apply first for February before applying for March.”

6. As per the above provisions, the RE Generator who has obtained accreditation with the State Agency and registration with the Central Agency is required to apply for issuance of RECs for the complete month in sequential manner.

7. The petitioner has set up 2x1.25 MW wind generation unit in the State of Maharashtra. It was granted accreditation by the State Agency, namely Maharashtra Energy Development Agency (MEDA) on 27.7.2011. The project was registered by the Central Agency on 13.9.2012. The petitioner become eligible for issue of RECs for December 2011.

8. The petitioner entered into a contract with Global Energy Private Limited, a trading licensee for supply of wind energy through open access to M/s Essar Steel Limited at negotiated tariff. The petitioner`s transaction for supply of power through the trading licensee commenced from 1.4.2011. After the petitioner obtained accreditation from the State Agency and registration from the Central Agency, Renewable Energy

Certificates (hereafter “RECs”) were issued to it by the Central Agency from time to time.

9. The petitioner has alleged that as per Energy Injection Report (EIR) dated 17.8.2012 issued by Maharashtra SLDC, for the month of May, 2012, it supplied 788.38 MWh of wind energy. The petitioner has submitted that the application submitted to NLDC for issuance of RECs was received in NLDC office on 21.8.2012 within the stipulated time of three months from the date of actual generation in accordance with the REC Regulations. However, the Central Agency has not issued RECs for the month of May, 2012. The status of the said application was shown as 'pending for verification' on the website of Central Agency.

10. The petitioner has submitted that the matter was taken up by it with Central Agency by e-mail dated 8.11.2012 followed by the letter dated 4.3.2013 for issuance of RECs for the month of May, 2012. However, no response was received from Central Agency. The petitioner has submitted that owing to NLDC's failure to conduct itself in accordance with the REC Regulations, it has been deprived of its legitimate RECs entitlement and the revenue that it would have realized there from.

11. Maharashtra State Load Despatch Centre (MSLDC) in its reply dated 20.7.2013 has submitted as under:

(a) Energy Injection Report (EIR) from MSELDC in respect of the petitioner for the month of April, 2012 was received by MSLDC by fax at 03.02 P.M. on the last day of July 2012.

(b) The Open Access (OA) permissions for the respective month were not enclosed with the application. However, the applications for the respective months were processed/approved by MSLDC and EIR was sent to Central Agency by MSLDC considering with following facts:

(i) The REC claim would have lapsed after 31.7.2012;

(ii) Confirmation to SLDC from M/s. Shivshakti Urja Pvt. Ltd (SUPL), coordinating agency for the petitioner, on telephone that the RE power has not been sold by the RE generator at preferential tariff;

(iii) OA permission / Notarized affidavit regarding sale of RE power to 3rd party for the month of April 2012 would be submitted to SLDC immediately in the next month;

(iv) Reminder was given to the petitioner for submission of the said affidavit, by email dated 6.8.2012 at 12.02 PM and 04.31 PM;

(v) The petitioner did not submit the OA permission and affidavit along with the REC applications for the months of May and June 2012. Based on the assurance given by SUPL to submit the affidavits for the months of May and

June 2012, REC applications were processed / approved by SLDC and EIRs were sent to NLDC on 18.8.2012;

(vi) However, till 31.8.2012 neither the OA permissions nor the said affidavits were submitted by the petitioner to SLDC. A common email therefore, listing out the Renewable Energy Generators including the petitioner who had not submitted/not received the OA permission from MSEDCL was sent to NLDC on 31.8.2012 at 16.55 hrs.

(vii) Subsequently, the petitioner submitted OA permission in the month of September, 2012. The same was informed to NLDC vide the email dated 24.9.2012 at 04.59 pm.

(viii) There has been no delay or default on the part of MSLDC in sending EIRs of M/s. Peethambra Granites Pvt. Ltd. for the months of April, May and June, 2012 to NLDC.

12. NLDC in its reply dated 18.7.2013 has submitted that the application for issuance of RECs corresponding to Month of May 2012 was received by Central Agency on 21.8.2013. However, during the course of the steps being taken by Central Agency for issuance of RECs, an email dated 31.8.2013 was received from Maharashtra SLDC stating inter- alia that open access permission was not granted to the petitioner and the distribution licensee may claim Renewable Purchase Obligation (RPO) for such power procured from the RE Generators. Therefore, RECs for the month of May 2012, could

not be issued. Subsequently, Maharashtra, SLDC vide its email dated 24.9.2012 clarified that open access permission was granted to the petitioner with effect from August 2012. In view of the clarification issued by SLDC, RECs for the subsequent month has been issued to the petitioner. The RE Generators are required to apply for issuance of RECs after completing all the formalities like getting the certified Energy Injection Report from the concerned SLDC within the stipulated period of three months. Since the communication from SLDC regarding grant of open access to the petitioner from April, 2012 was by Central Agency vide letter dated 24.9.2012 which was beyond the prescribed time limit of 3 months, the Central Agency did not issue the RECs for the month of May, 2012.

13. The petitioner in its rejoinder dated 4.8.2013 has submitted that no intimation was received from MSLDC regarding non-submission of open access permission. On the contrary, MSLDC itself had granted open access permission on 30.7.2012 and therefore, the same ought to have been within its knowledge while intimating about the non-receipt of open access to NLDC. The petitioner has explained the procedure adopted in the State of Maharashtra regarding injection of wind power and its accounting as under:

"8. In addition to the above, it is submitted that the Petitioner has applied for requisite open access permission on 24.7.2012. The open access permission came to be granted to the Petitioner on 30.7.2012 for the period 1.4.2012 to 30.9.2012. In this regard, it may be noted that given the nature of wind transaction, all wind units are injected under the banking protocol, devised by the State Commission. The wind units are not accounted for and financially settled in real time. Banking of units allows a wind generator the flexibility of treating the injected units as 'supply to the discom' or 'sale to a bilateral buyer/consumer'.

Until open access permission is granted, the wind power is deemed to have been banked to the local discom. It is only after open access is granted, can wind power be deemed to have been supplied to a bilateral buyer, who will then get credits for such power in the monthly electricity bill. It is, therefore, not unusual for open access permissions to be granted post injection of power into the grid. Open access in case of wind generation is primarily for the purpose of 'accounting and financial settlement' of wind units injected into the grid. The grant of open access in a given case determines whether the wind units shall be counted towards the ROP obligation of the local discom or a bilateral sale of HT consumers."

14. The petitioner has further submitted that the wind units generated by it in the month of May, 2012 were indeed supplied to an open access consumer on bilateral terms. However, such units were admittedly, not considered for meeting the renewable power purchase of the local discom.

15. During the hearing on 17.9.2013, learned counsel of petitioner submitted that on 21.8.2013, the petitioner applied to NLDC for issuance of RECs for the month of May, 2012 within the prescribed limit of three month from the date of actual generation. However, NLDC has not issued RECs for the month of May, 2012 till date. The Status of the said application was shown as "pending for verification" on the website of Central Agency. The petitioner was not informed about any deficiency in its REC application for the month of May, 2012 by the Maharashtra, SLDC. However, from the reply of NLDC to the petitioner, it is noticed that MSLDC vide its e-mail dated 31.8.2012 informed NLDC that certain generators, including the petitioner, had not submitted open access permissions, and the distribution licensee might claim the energy injected into the grid for the month of May 2012 for fulfillment of RPO. Subsequently, MSLDC vide its email dated 24.9.2012 confirmed to NLDC that open access permission for the relevant period had been obtained by the petitioner. However, by the time such confirmation was

communicated to NLDC, the prescribed period of three months under Regulation 7 (1) of the REC Regulations had lapsed and therefore, NLDC refused to issue RECs for the month of May, 2012. The requisite open access permission/NOC had been obtained by the petitioner, as early as 30.7.2012, and the same had been duly submitted to SLDC under letter dated 13.8.2012. Since the said letter dated 13.8.2012 bears the receipt stamp of MSLDC and MSLDC never informed the petitioner about any missing enclosure. it evidently follows that the open access permission/NOC was indeed provided to SLDC. Since, open access permission was obtained for the purpose of applying for RECs, the petitioner had no reason to withhold the open access permission from MSLDC.

16. The representative of the MSLDC submitted that the petitioner's application dated 13.8.2012 was received by SLDC without any annexure. Even though the open access permission was not received, the energy injection report was issued by MSLDC to M/s Shiv Shakthi Ojha Pvt. Ltd which is the coordinating agency dealing on behalf of the petitioner with SLDC and the non-submission of open access permission was intimated to such coordinating agency on 6.8.2012. He clarified that open access permission has been granted by MSETCL and not by MSLDC.

17. Learned counsel for NLDC submitted that MSLDC's confirmation regarding petitioner's open access permission was received on 24.9.2012. Since by such date, the prescribed period for issuance of RECs had lapsed, NLDC could not issue RECs for the month of May, 2012. Learned counsel further submitted that the Commission may

consider whether retrospective permission of open access should be considered to regularize the open access transaction.

18. We have heard learned counsels for the petitioner, Central Agency and the representative of the MSLDC. We have carefully perused the record. The main issue for consideration is whether the RECs can be disallowed to the petitioner on the ground that the petitioner failed to submit the open access permission to the SLDC before the expiry of the period of three months from the month of energy injection.

19. From the pleadings of the parties, it emerges that the petitioner has made online application for grant of REC for the month of May, 2012 on 14.7.2012, based on its own estimation of energy injection in that month. Subsequently, the petitioner has submitted Energy Injection Report for the month of May and June, 2012 to MSLDC vide its letter dated 13.8.2012. Based on the information submitted by the petitioner, MSLDC has issued Energy Injection Report on 17.8.2012. Thereafter, the petitioner has submitted the physical application to NLDC on 21.8.2012. As per the requirements of the REC Regulations, NLDC was required to issue the RECs within 15 days from the date of receipt of the physical application, which happened to be 5.9.2012, in case of the petitioner. During the period of processing the application, NLDC got an email dated 31.8.2012 from the MSLDC, stating that the OA permission was not granted to the petitioner and the distribution licensee may claim RPO. On the basis of the said information, NLDC did not issue REC for the month of May, 2012. Subsequently, MSLDC in its email dated 24.9.2012 clarified to NLDC that the open access permission for the period from April 2012 has not been issued in respect of the petitioner and other

RE generators. NLDC has not granted REC on the ground that the period for grant of REC for the month May, 2012, has expired by that time.

20. From the factual matrix as discussed in para 19 above, it is noticed that the petitioner has made the online and physical application for the month of May, 2012 before 31.8.2012. MSLDC vide its letter dated 17.8.2012 has forwarded Energy Injection Report to NLDC, with the understanding that the petitioner would submit the open access permission from MSEDCL to MSLDC. In fact, MSLDC has sent two emails on 6.8.2012 to coordinating agency acting on behalf of petitioner – one asking for certain reconciliation in the Energy Injection Report and the other conveying that the OA permission for the month of May, 2012 has not been enclosed. The petitioner in para 4 of its rejoinder filed vide its affidavit dated 4.9.2012 has submitted as under :-

“..... Specifically, it may be noted that no intimation was received by the petitioner from Maharashtra SLDC regarding the absence of OA permission in its application for issuance of RECs. Further, it is submitted that Maharashtra SLDC, itself had issued the OA permission to the petitioner on 30.7.2012, and, therefore, the same ought to have been within the knowledge of the Maharashtra SLDC.”

21. The petitioner has placed on record a copy of the open access permission dated 30.7.2012 as **Annexure-P2** of the petition. A perusal of the said permission reveals that it has been issued by Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) and not by Maharashtra State Electricity Transmission Company Ltd. (MSETCL)/MSLDC. Moreover, the permission letter is addressed to the petitioner and no copy thereof has been endorsed to MSLDC/MSETCL. Therefore, the submission of the petitioner that MSLDC has issued OA permission to petitioner is not correct. In fact, it is the responsibility of the petitioner to submit its Energy Injection Report, along with

OA permission from MSEDCL to MSLDC for further processing of the case. We are, therefore, not inclined to accept the contention of the petitioner that the OA permission was given to MSLDC prior to 31.8.2012, when MSLDC intimated NLDC regarding deficiency in the application of the petitioner. MSEDCL has submitted that only after the petitioner submitted the photocopy of the NOC, it intimated NLDC vide its email dated 24.9.2012 that open access permission has been received.

22. We do not find any infirmity in the action of either MSLDC or NLDC in processing the application of the petitioner. It was incumbent on the petitioner to satisfy MSLDC and NLDC with appropriate information within the specified time, so that the RECs are processed and issued in time. In our view, the petitioner cannot be allowed to take advantage of its own wrong. However, considering the fact that the application for grant of REC for the month of May, 2012 has been submitted in time and even the NOC from MSEDCL for grant to third party has been issued within time i.e. on 30.7.2012 and keeping in view the objectives of the REC Regulations, we take a lenient view in the matter and direct NLDC to process the case of the petitioner for grant of REC for the month of May, 2012 within 15 days from the date of issue of this order. We also administer a strong warning to the petitioner to be careful in future regarding the factual accuracy of its submission before the Commission.

23. With the above directions, the petition stands disposed of.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member