

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 211/MP/2012**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

**Shri V.S. Verma, Member**

**Shri M. Deena Dayalan, Member**

**Date of Hearing: 13.12.2012**

**Date of Order : 07.05.2013**

**In the matter of**

Petition for directions to the Respondent, National Load Despatch Centre on the issue of Renewable Energy Certificates to the Petitioners from the date of commissioning of the generating station

**And**

**In the matter of**

Petition under Section 66, 79 and other applicable provisions of the Electricity Act, 2003 read with Regulation 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**

Simran Wind Projects Private Limited, Kolkata  
Paharpur Cooling Towers Limited, Kolkata  
Green Infra Wind Power Projects Limited, New Delhi

**Petitioners**

**Vs**

National Load Despatch Centre, New Delhi

**Respondent**

**Parties Present:**

Shri M.G.Ramchandran, Advocate for the petitioners  
Shri Anand K. Ganesan, Advocate for the petitioners  
Shri Niraj Gulati, SWPPL  
Miss Minaxi Garg, NLDC

## ORDER

The petitioners, M/s Simran Wind Projects Private Limited, M/s Paharpur Cooling Towers Private Limited and M/s Green Infra Power Projects Limited are engaged in the business of generation and supply of electricity from the renewable energy sources, namely wind energy. The details of generation and supply of electricity by the petitioners are as under:

(a) The petitioner No.1, M/s Simran Wind Projects Private Limited has an installed capacity of 50.45 MW of wind generation in Tamil Nadu and Karnataka till 2009-10 and the said generation is tied up for supply to the distribution companies under preferential tariff. During the period March 2011 to February 2012, the petitioner has commissioned 111.90 MW in Tamil Nadu for supply of electricity to the distribution licensee in the State at the pooled power purchase cost.

(b) The petitioner No.2, M/s Paharpur Cooling Towers Private Limited, has an installed capacity of 30.40 MW of wind generation in Tamil Nadu and Maharashtra till 2009-10 and the said generation is tied up for supply to the distribution companies under preferential tariff. During the period March 2011 to December 2011, the petitioner has commissioned 33.50 MW in Tamil Nadu, Gujarat and Rajasthan for supply of electricity to the distribution licensee in the Tamil Nadu at the pooled power purchase cost.

(c) The petitioner No.3, M/s Green Infra Wind Power Projects Limited has installed a capacity of 24 MW of wind generation in Tamil Nadu during May 2012 and the said generation is being supplied to a group of captive generators

2. According to the petitioner, the capacities of in the present petition have made the following prayers, namely -

“i. Clarify and hold that the Petitioners are entitled to the RECs from the date of commissioning and generation of electricity from the renewable energy units,

ii. Direct the Respondent to issue the RECs to the Petitioners for the electricity generated and injected in the grid from the date of commissioning of respective WTGs or date of application, wherever application for registration has been made after the commissioning of WTGs, to the date of registration and. inter alia, also certification of Energy injection Report by the concerned SLDC/State Agency,

iii. Direct the respondent to give 3 months time to the petitioners for getting Energy Injection Report certified by the concerned SLDC and submission thereof to the Respondent for issuance of certified RECs,”

2. This Commission has specified the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereafter “the REC Regulations”), for the development of market in power from non-conventional energy sources by issuance of transferable and saleable credit certificates, called the Renewable Energy Certificates (hereafter “the RECs”). The petitioners have installed and commissioned Wind Turbine Generators (WTGs) in different States in the country which fall under the category of renewable energy. The first and second petitioners are supplying electricity generated to the distribution companies in the State Tamil Nadu at the pooled power purchase cost and the third petitioner is injecting its entire generation into the grid for

supply to a group of captive consumers within the State of Tamil Nadu. As the petitioners intended to avail of the facility of RECs, they sought and were granted accreditation by the State Agencies. The petitioners have also registered themselves with the Central Agency for issuance of RECs after obtaining accreditation from the State Agency.

3. The petitioners have submitted that while issuing the Registration Certificates, the Central Agency has indicated the date of registration by inserting the words “with effect from ....” therein, which, according to the petitioners mean they would be entitled to receive the RECs in respect of generation of electricity from or after the date of registration. The petitioners have alleged that the respondent has not issued the RECs for the electricity generated from the date of commissioning of the generating units up to the date of registration with the Central Agency. Accordingly, the first petitioner made a representation dated 21.2.2012 pointing out that there is no provision in the REC Regulations or the Detailed Procedure approved by this Commission to issue RECs from the date of registration with the Central Agency, particularly so when the generating company can seek registration even after commissioning of renewable energy source unit. In its representation to the respondent, the first petitioner claimed that it was entitled to receive RECs from the date of commissioning of its WTGs. The petitioners have stated that the first petitioner did not receive any reply to the representation but was orally informed that the RECs would be issued only with effect from the date of registration.

4. The petitioners have submitted if RECs are issued from the dates of registration, the petitioners would suffer losses on account of non-admissibility of RECs between the dates of commissioning and date of registration as per the details given below:

<b>Simran Wind Project Private Limited</b>								
S.No.	Total Cap. (MW)	Dates of commissioning		Date of			Loss	
		From	To	Accreditation Application	Accreditation	Registration	KWh	REC
1.	15.0	31.3.2011	31.3.2011	7.4.2011	16.5.2011	8.6.2011	4149061	4149
2.	8.4	30.3.2011	31.3.2011	7.4.2011	16.5.2011	8.6.2011	2621038	2621
3.	4.5	15.4.2011	10.5.2011	7.4.2011	16.5.2011	8.6.2011	1049909	1050
4.	16.8	31.5.2011	8.8.2011	8.6.2011	2.7.2011	19.7.2011	885384	885
5.	16.5	31.5.2011	6.8.2011	8.6.2011	2.7.2011	19.7.2011	2969826	2970
6.	25.5	10.6.2011	12.8.2011	8.6.2011	6.7.2011	19.7.2011	4262963	4263
7.	10.5	2.9.2011	22.9.2011	1.8.2011	3.9.2011	20.9.2011	573586	574
8.	4.2	14.9.2011	20.9.2011	9.9.2011	30.9.2011	13.10.2011	200362	200
9.	6.3	8.2.2012	24.2.2012	14.11.2011	20.12.2011	2.2.2012	0	0
<b>Total</b>	<b>111.9</b>						<b>16712129</b>	<b>16712</b>

<b>Paharpur Cooling Towers Limited</b>									
S.No.	Total Cap. (MW)	Date of Commissioning		Dates of				Loss	
		From	To	Accreditation Application	Accreditation	Registration Application	Registration	KWh	RECs
1.	9.6	8.4.2011	8.4.2011	2.5.2011	22.6.2011	30.6.2011	29.8.2011	15,233,088	15,233
2.	5.6	30.9.2011	14.10.2011	13.10.2011	19.11.2011	6.12.2011	27.1.2012	673,668	674
3.	1.6	29.3.2011	29.3.2011	7.3.2011	26.3.2011	19.4.2011	13.9.2011	1,834,920	1,835
4.	2.4	26.3.2011	31.5.2011	7.3.2011	26.3.2011	19.4.2011	13.9.2011	2,237,091	2,237
5.	6.4	23.9.2011	30.11.2011	22.6.2011	20.7.2011	2.9.2011	2.11.2011	443,528	444
6.	1.6	13.12.2011	13.12.,11	17.9.2011	27.9.2011	20.12.2011	29.3.2012	508,790	509
7.	6.3	9-6.2011	9.6.,2011	3.3.2011	13.3.2011	25.1.2011	13.3.2012	8,054,526	8,055
<b>Total</b>	<b>33.5</b>							<b>28,985,611</b>	<b>28,986</b>

<b>Green Infra Wind Power Projects Limited</b>									
s. No	Total Cap (MW)	Date of commissioning		Dates of				Loss	
		From	To	Accreditation Application	Accreditation	Registration Application	Registration	MW	RECs
1		24.5.2012	25.5.2012	21.5.2012	23.6.2012	25.5.2012	10.7.2012	6008	6008

5. The Central Agency, the respondent herein, in its reply has submitted that the petition is not maintainable for the following reasons:

- (a) The directions sought by the petitioners for issuance of the RECs from the date of commissioning of generating units and supply of electricity to the grid is contrary to clause (2) of Regulation 7 of the REC Regulations and the Detailed Procedure approved by this Commission under which a generator of renewable energy source (hereafter “the RE generator”) becomes entitled for issuance of RECs only after it receives certificate of registration from the Central Agency.
- (b) In order to seek registration as eligible entity the RE generator has to first get accreditation with the respective State Agency and thus cannot be given registration certificate from a date prior to the date of accreditation.
- (c) The RE generator can apply for accreditation six months prior to date of commissioning and for registration, three months prior to that date. These provisions give an opportunity to the RE generator to initiate the process of accreditation and registration in advance to avail the benefit of RECs from the date of commissioning. In order to avail the benefits of RECs from the date of commissioning, the petitioners should have applied for accreditation and registration before the commissioning of the projects.
- (d) The position was clarified in the meeting of the Implementation of REC Framework consisting of the officials of CERC, State Agencies, SLDCs and NLDC, held on 8.9.2011 as under:

“The energy injection for issuance of REC by Registered RE Generator shall be applicable from the next day of registration to last day of the same month for the first month. However, for the subsequent months, period of energy injection shall be from the first of the month last day of the same month.”

(e) The petitioners were granted registration within 15 working days of submission of complete documents to the Central Agency.

6. In their rejoinder, the petitioners have submitted that the claim and entitlement of RECs from the date of commissioning flow from the REC Regulations framed by this Commission and applicability of the regulations cannot be restricted by the procedure followed by the respondent. The petitioners have submitted that the procedural aspects of implementation of REC mechanism cannot take away substantive right of the RE generators so long as conditions specified under the REC Regulations are satisfied.

7. We have heard learned counsel for the petitioners and the representative of the respondent. The case of the petitioners is that a right to get RECs gets vested in favour of the RE generators on the date of injection of electricity into the grid on fulfillment of the criteria laid down under the REC Regulations and such a vested right cannot be defeated on account of procedural delay in seeking accreditation and registration. According to learned counsel for the petitioner, the registration granted by the respondent should be related back to the respective dates of commissioning of the RE generation units of the petitioners and accordingly, the petitioners should be entitled to issuance of RECs from their respective date of commissioning. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Saiyad Mohammad Bakar El-Edroos Vs Abdul Habib Hasan Arab and others* [(1998) 4 SCC 343]. On the contrary, the representative of the respondent has strenuously argued that RE generation upto the date of registration with the Central Agency cannot qualify for issuance of RECs

since registration is a necessary condition for this purpose and issue of RECs from the dates of commissioning of the generating units irrespective of the dates of registration is contrary to Regulation 7(2) of the REC Regulations.

8. Thus the controversy relates to whether Regulation 7 of the REC Regulations which deals with issue of RECs is controlled by or independent of Regulation 5 which deals with registration with the Central Agency for the purpose of issuance and dealing in RECs. The Hon'ble Supreme Court in the case of State of West Bengal Vs Union of India {AIR 1963 SC 1241} has held as under:

“The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other part of the law, and the setting in which the clause to be interpreted occurs.”

9. In order to understand the dispute in its correct perspective, it is necessary to understand the REC scheme as conceived in the REC Regulations. Regulation 3 deals with the designation of Central Agency and its functions. The four main functions assigned to the Central Agency are (i) registration of eligible entities; (ii) issuance of certificates; (iii) maintaining and settling accounts in respect of certificates; and repository of transactions in certificates. Thus the registration of eligible entities and issuance of certificates to such eligible entities based on actual generation are two distinct activities performed by the Central agency. Regulation 3(4) provides that the Central Agency with the approval of the Commission issue a Detailed Procedure for registration of eligible entity, verification of generation of electricity and its injection into the grid by the eligible entity, issuance of certificates and other relevant and residual

matters. Regulation 4 categorises certificates into solar certificates and non-solar certificates. Regulations 5 and 6 of REC Regulations deal with eligibility for registration, actual registration and revocation of registration. Regulations 7 to 10 deal with the issuance, dealing in, pricing, validity and extinction of certificates. Regulations 11 to 13 deal with such incidental matters like fees and charges of Central Agency with regard to the services rendered for the renewable energy certificates, capacity building of State agencies and appointment of Compliance auditors etc. Regulation 14 deals with 'power to give directions' and Regulation 15 deals with 'Power to relax' to facilitate implementation of the REC Regulations.

10. It emerges from the scheme of REC Regulations that there is a step by step approach leading to the issue and dealing with the certificates. The first step in this direction is the registration of the eligible entity for issue of renewable energy certificates. Regulation 5 of the REC Regulations lays down the criteria and procedure for the purpose of registration and dealing in renewable energy certificates. Regulation 5 is extracted overleaf.

***"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 fulfills 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 at a preferential tariff determined by the Appropriate Commission; and*

*c. it sells the 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.*

*Explanation.- for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.*

*(2) The generating company after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure.*

*(3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration;*

*Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.*

*(4) A person aggrieved by the order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within fifteen days from the date of such order, and the Commission may pass order, as deemed appropriate on such appeal."*

11. Regulation 5(1) of the REC Regulations provides that "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 fulfills the following conditions....". It is therefore clear that a generating company will have to first apply for registration for issuance and dealing in certificates. In order to be eligible for registration for issuance of RECs, the RE generator has to fulfill the following three 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. Regulation 5(2) of REC Regulations provides that the RE generator after fulfilling the eligible conditions will be required to apply for registration in accordance with the Detailed Procedure. In accordance with the Detailed Procedure, the RE generator is required to apply for registration at least three months before the date of commissioning. Thus the purpose of a timeline in the Detailed Procedure is to facilitate the RE generators to take steps for registration well in advance so that they are registered before the commissioning in order to avail the benefits of REC from the date of commissioning. In our view, this provision in the Detailed Procedure is in furtherance of the mandate of the REC Regulations and does not take away the right vested in the RE generator under the RE Regulations as contended by the petitioners. Regulation 5(3) of REC Regulations provides that the Central Agency shall accord registration to an eligible applicant within 15 days of the application for such registration. Further proviso to Regulation 5(4) provides that in case of rejection of application, the Central agency shall give an opportunity to the applicant for being heard. Regulation 5(4) provides that any applicant aggrieved by the rejection of its application may file an appeal before the Commission. Thus consideration of the provisions of the Regulation 5 read with the Detailed Procedure leads us to the conclusion that only after registration, an eligible entity is entitled for RECs for the energy generation and injection into the grid, unless it

is proved that the registration was withheld or delayed by the Central Agency for any reason not attributable to the applicant RE generator.

12. The next step is the actual issuance of RECs. Regulation 7 of the REC Regulations 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.*

*(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible entity.*

*(3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities."*

13. Regulation 7(1) of REC Regulations speaks about the application by 'eligible entities' for certificates within three months after corresponding generation from the eligible generation projects. The language used is 'eligible entities' and not 'registered entities'. One may argue that irrespective of the date of registration, an eligible entity is entitled to apply for RECs within three months from the date of commissioning and generation of electricity as Regulation 7(1) has not been made subject to Regulation 5(1) of the REC Regulations. In our view, such an interpretation will do violence to the scheme of the REC Regulations. The scheme of the REC Regulations is to first grant registration to the eligible entity by the Central Agency. Thereafter, the eligible entity is

entitled to apply for RECs as no right for issue of and dealing in RECs vests in an eligible entity without it being registered by the Central Agency. Registration of an eligible entity is not a mere procedural formality. It is an exercise undertaken to ascertain whether an entity claiming to be eligible fulfills the conditions specified in the REC Regulations or not. Precisely, for that reason, a period of three months has been prescribed in the Detailed Procedure to an applicant to approach the Central Agency for registration before it starts generation and injection of power into the grid and the Central Agency has been mandated under the REC Regulations to grant the registration within 15 days of such application. Therefore, the term 'eligible entity' in Regulation 7(2) will mean an eligible entity which has been registered with the Central Agency after due verification of its eligibility. Any other interpretation will make the scheme unworkable. For this purpose, let us consider Regulation 7(1) of REC Regulations which provides that an eligible entity shall apply for RECs within three months from the date of corresponding generation from the eligible renewable energy projects. Suppose, a renewable energy project has been commissioned in January 2013 but it applies for registration on 15<sup>th</sup> April 2013 and is granted registration on 30<sup>th</sup> April 2013. After registration, it applies for RECs for the generation during January 2013 in May 2013. Since the period of three months corresponding to the month of generation in January 2013 has already expired by the time application is made, it would require relaxation of Regulation 7(1) to extend the period for making application for issuance of RECs for which an application has to be made before this Commission. Therefore, it is neither the scheme nor the intention of the REC Regulations that an eligible entity shall be eligible for issue of RECs for the period prior to its registration with the Central Agency.

Reliance by the petitioner on the judgement of the Hon'ble Supreme Court in Saiyad Mohammad Bakar EL-Edroos Vs Abdul Habib Hasan Arab & Others{(1998) does not advance the case of the petitioner as registration is not merely a procedural requirement under the REC Regulations. On the other hand, it is a substantive requirement as only after registration, an eligible entity is entitled for issue of and dealing in renewable energy certificates. Therefore, we reject the first prayer of the petitioners that they are eligible for issue of RECs from the date of commissioning, irrespective of the dates of registration with the Central Agency.

14. The second prayer of the petitioner is as under:

*“ii. Direct the Respondent to issue the RECs to the Petitioners for the electricity generated and injected in the grid from the date of commissioning of respective WTGs or date of application, wherever application for registration has been made after the commissioning of WTGs, to the date of registration and. inter alia, also certification of Energy injection Report by the concerned SLDC/State Agency,”*

The above prayer of the petitioners is for issue of RECs from the date of commissioning or from the date of such application where application has been made after commissioning, irrespective of the date of registration. It is evident from the prayer itself as well from the tables in para 4 above that the petitioners have applied for accreditation and registration much after the dates of commercial operation of the units. It is not the case of the petitioners that issue of registration was delayed at the end of the Central Agency. On the other hand, Central Agency in its reply has submitted that the registrations have been issued within 15 days of the receipt of the physical applications complete with all relevant documents. These statements have not been specifically refuted by the petitioners in their rejoinders. It is to be noted that the REC

Regulations came into force 18.1.2010 whereas the units of the petitioners have been commissioned in February 2011 and afterwards. The petitioners have not been able to explain as to what prevented them to apply for accreditation and registration well in advance to take advantage of the RECs from the dates of commissioning of their respective units.

15. In view of the above we do not find any merit in the claims of the petitioners that they should be granted RECs from the dates of commissioning or from the dates of applications where applications have been made after commissioning. Accordingly, the petition is dismissed.

sd/-  
**(M. Deena Dayalan)**  
Member

sd/-  
**(V. S. Verma)**  
Member

sd/-  
**(S. Jayaraman)**  
Member

sd/-  
**(Dr. Pramod Deo)**  
Chairperson