

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 22/MP/2013

Coram:

Shri V.S.Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 2.7.2013

Date of Order : 15.7.2013

In the matter of

Petition under Section 66 and 79 of the Electricity Act, 2003 read with Regulation 3(3), 3(4) and 14 of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 ["REC Regulations"] and its amendment thereof; to issue direction and orders as considered appropriate to the National Load Despatch ("Central Agency") to consider the commissioning date of generating stations as the effective date for the issuance of Renewable Energy Certificates to the IL & FS Wind Power Limited.

And in the matter of

IL & FS Renewable Energy Limited

Petitioner

Vs

National Load Despatch Centre, New Delhi

Respondent

Following were Present:

Shi Kapeesh Rustagi, ILFS

Ms Minaxi Garg, NLDC

ORDER

The petitioner, IL & FS Renewable Energy Limited has filed present petition seeking issuance of the Renewable Energy Certificates (hereafter "RECs")



from the date of generation of electricity from RE Source. The specific prayers made in the petition are:

“(a) 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.

“(b) Direct the Respondent to issue the RECs to the Petitioners for the electricity generated and injected into 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 the WTGs, to the date of registration and, inter alia, also certification of Energy Injection Report by the concerned SLDC/State Agency.

“(c) 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 Agency for issuance of RECs under 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 development of market in power from non-conventional energy sources by issuance of transferable and saleable credit certificates, called the RECs. By virtue of clause (1) of Regulation 3 of the REC Regulations, this Commission has nominated the National Load Despatch Centre as the Central Agency to perform the functions under clause (2). The Central Agency has, after approval of this Commission, issued the detailed procedure in terms of clause (3) of Regulation 3 of the REC Regulations.



3. The petitioner`s subsidiary companies, namely IL&FS Wind Power Limited (IWPL) and Tadas Wind Energy Limited (TWEL) 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 petitioner`s subsidiary companies are as under:

(a) IL&FS Wind Power Limited (IWPL) has commissioned two wind generation plants with an installed capacity of 12 MW each in the States of Tamil Nadu and Gujarat on 10.2.2012 and 31.3.2012, respectively. The said generation from these plants are tied up for supply to the distribution companies under at the pooled power purchase cost.

(b) Tadas Wind Energy Limited (TWEL) has commissioned two wind generation plants with an installed capacity of 100 MW in the State of Karnataka and 50.4 MW in the State of Andhra Pradesh during the period May 2012 to July,2012, respectively. The generation from these plants is tied up for supply of electricity to the distribution licensee in the States of Karnataka and Andhra Pradesh at the pooled power purchase cost as determined by the concerned State Commissions.

4. The petitioner`s subsidiary companies accredited by the State Agencies concerned were registered with the Central Agency for issuance of RECs. The necessary details from the date of commissioning of Wind Turbine Generators till



the date of registration in respect of the petitioner`s subsidiary companies are tabulated below:

Project	Capacity	Date of Commissioning	Date of Application for Accreditation	Date of Accreditation	Date of Application for Registration	Date of Registration
IL&FS Wind Power Limited (Gujarat)	12	31.03.2012	14.02.2012	13.04.2012	19.04.2012	18.05.2012
IL&FS Wind Power Limited (Tamil Nadu)	12	10.02.2012	03.04.2012	29.05.2012	04.06.2012	13.06.2012
Tadas Wind Energy Limited (Andhra Pradesh)	12.8	July 2012	20.07.2012	18.09.2012	20.09.2012	11.10.2012
	3.2		20.07.2012	18.09.2012	20.09.2012	11.10.2012
	6.4		20.07.2012	18.09.2012	20.09.2012	11.10.2012
	9.6		20.07.2012	18.09.2012	20.09.2012	11.10.2012
	8		20.07.2012	18.09.2012	20.09.2012	11.10.2012
	8		20.07.2012	18.09.2012	20.09.2012	11.10.2012
	2.4		20.07.2012	18.09.2012	20.09.2012	11.10.2012
Tadas Wind Energy Limited (Karnataka)	4.8	May - June 2012	10.05.2012	29.06.2012	05.07.2012	27.07.2012
	5.6		05.05.2012	29.06.2012	05.07.2012	27.07.2012
	6.4		10.05.2012	29.06.2012	05.07.2012	27.07.2012
	16		10.05.2012	29.06.2012	05.07.2012	27.07.2012
	16.8		29.05.2012	02.06.2012	14.06.2012	10.07.2012
	19.2		05.04.2012	29.05.2012	14.06.2012	10.07.2012
	31.2		06.04.2012	29.05.2012	14.06.2012	10.07.2012

5. It has been further stated on behalf of the petitioner that though the procedures under the REC mechanism facilitate that the RE generator may apply for accreditation and registration in advance, the applications to the State Agencies could not be made within stipulated timelines for the following reasons:



(a) The application for accreditation was not possible before notification of APPC tariff by the State Commission. In case of Karnataka, the State Commission notified the first provisional pooled cost of power purchase vide its notification dated 29.3.2012. The applications to the State Agency for accreditation for initial phases of the second petitioner were made immediately thereafter on 5.4.2012 and 6.4.2012.

(b) The projects of TWEL were the first projects requiring accreditation in the States of Andhra Pradesh and Karnataka. The applications for accreditation could be made by the TWEL only after the concerned State Agency started accepting the same.

6. The petitioner has submitted that the REC Regulations do not debar issuance of RECs from the date of commissioning and no discretion is left with the Central Agency to refuse RECs corresponding to the generation of electricity and injection into the grid during the period between the date of commissioning and date registration. The petitioner has further submitted that REC mechanism is to provide a financially viable alternative mode of sale which should be applicable from the date of commissioning in similar manner as in case of sale of renewable energy under preferential tariff mode, otherwise financial viability of the project is jeopardized. The petitioner has also submitted that none of the provisions of the REC Regulations and the Procedure laid down by the Commission permit the RE generator to apply for registration after the commissioning of the generating units



which is evident from the fact that while making application for registration before the Central Agency, the actual date of commissioning is required to be stated. The petitioner has submitted that a generating unit becomes eligible for issuance of RECs from the date of commissioning.

7. During the hearing held on 28.2.2013, learned counsel for the petitioner clarified that IL & FS Renewable Energy Limited did not initiate the process of accreditation and registration in advance as required under REC Regulations and the Procedures prior to dates of commissioning as it had not signed the PPAs with the distribution company in State of Gujarat pending declaration of new APPC tariff by the State Commission. During the hearing of the petition on 2.7.2013, the representative of the petitioner submitted that unless APPC tariff is determined by the State Commission, it is not possible to apply for accreditation.

8. We have heard learned counsel for the petitioner on admission. We have given our serious consideration to the submissions made by learned counsel for the petitioner and have also gone through the petition and the additional submissions filed on behalf of the petitioner.

9. The petitioners' grievance is that the Central Agency did not issue RECs from the date of commissioning but issues RECs from the date following the date of registration of the Renewable Energy project, though the petitioner considers itself eligible for grant of REC from the date of commissioning of the respective



unit of the project. The Commission has dealt with the issue in its order dated 7.5.2013 in Petition No. 211/MP/2012 wherein it has been observed as under:

"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 15th April 2013 and is granted registration on 30th 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."

10. In view of the above decision, we hold that the petitioner is eligible for grant of REC only from the date of registration with the Central Agency and not from the date of commissioning.

11. One of the reasons given by the petitioner for delay in applying for accreditation and registration is that APPC tariff was not notified by the State Commission. In our view, determination of APPC tariff is not a condition precedent for applying for accreditation. Regulation 5 (1) of the REC Regulations provides as under:

"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.

12. Regulation 5 (1) (c) of the REC Regulations provides that either the generating company will be supplying power to a distribution licensee at a price not exceeding the pooled cost of power purchase of the distribution licensee or to any other licensee or to an open access consumer at a mutually agreed price or at the power exchange. The PPA with the distribution licensee at the price not exceeding the pooled cost of power purchase is one of the alternative requirements for eligibility. Even without having the PPA, the petitioner is eligible to apply for accreditation or registration provided it fulfills the other conditions of the regulations of the State Commission and this Commission. In our view, there is no justification in the claim of the petitioner that because of the non finalization of APPC tariff, it could not apply for accreditation and registration.

13. The petition is disposed of in terms of the above.

Sd/-

(M. Deena Dayalan)
Member

sd/-

(V.S.Verma)
Member

