

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 77/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Shri A.S Bakshi, Member

Date of Hearing: 31.10.2014

Date of Order : 30.04.2015

In the matter of

Application under Regulation 5 read with Regulation 14 of the Central Electricity Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 seeking clarification of the order dated 18.9.2013 in Petition No.246/MP/2012.

And

In the matter of

Timarpur-Okhla Waste Management Limited
Old NDMC Company Plant,
Behind CRRI, Mathura Road
New Delhi- 110025

....Petitioner

Vs

1. National Load Dispatch Centre,
C/o Power System Operation Corporation Limited,
B-9, Qutub Institutional Area,
Katwaria Saria, New Delhi-110016

2. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110009

....Respondents

Following were present:

Shri Pawan Upadhyay, Advocate for petitioner
Shri Sarvjit Pratap Singh, Advocate for petitioner
Shri Irfan Ahmad, TWML
Shri Neelesh Gupta, TWML



Shri Arjun Krishnan, Advocate, NLDC
Shri Shailendra Verma, NLDC
Ms. Abilia Zaidi, POSOCO

ORDER

The petitioner, Timarpur-Okhla Waste Management Limited, has set up a 16 MW Municipal Solid Waste power project at Okhla, Delhi. The petitioner executed Energy Purchase Agreement (EPA) dated 22.1.2010 with BSES Rajdhani Power Limited (BRPL) under which BRPL agreed to purchase 50% of ex-bus energy from the petitioner's plant for a period of 25 years. The EPA was directed to be modified by the Delhi Electricity Regulatory Commission vide order dated 20.1.2011 where under DERC approved the tariff of ₹2.49/kwh for 2009-10 and the levelised tariff at ₹2.833/kwh. Accordingly, the EPA was amended vide an amendment dated 27.7.2011. The petitioner has submitted that it is their obligation to supply 50% of its generation to BRPL and the balance 50% of power can be utilized for captive use or third party sale including sale to BRPL.

2. The petitioner submitted applications dated 12.1.2012, 6.2.2012 and 25.4.2014 to the 'Energy Efficiency and the Renewable Energy Management Centre' which is the designated State Agency in Delhi for accreditation of 8 MW power to be supplied to BRPL and 8 MW to be sold through open access. The State Agency granted approval for accreditation vide certificates dated 5.7.2012 for 8 MW each. Based on these certificates, the petitioner applied to NLDC for registration as an eligible entity for grant of RECs. Since, the petitioner was not registered by NLDC, the petitioner filed Petition No. 246/MP/2012 before the Commission seeking registration with effect from 4.7.2012. The Commission vide its order dated 18.9.2013 decided the petition as under:-

“26. Having regard to the above discussion, we direct NLDC to register the petitioner against 8 MW of power which the petitioner proposes to sell through open access at negotiated price or through the power exchange at market determined price, within 15 days of this order. In case, the petitioner seeks resolution of the dispute with BRPL under Article 22 of the EPA or seeks a clarification from DERC within 30 days of this order, the accreditation granted by the State Agency in its favour shall not lapse during the pendency of the dispute”

3. Pursuant to the Commission’s direction, NLDC vide e-mail dated 17.10.2013, registered the petitioner for 8 MW of power which the petitioner proposed to sell through open access. On receipt of the e-mail, the petitioner vide its letter dated 5.11.2013 requested NLDC to grant registration from the date of its online application dated 4.7.2012 under the REC Regulations. However, NLDC vide its e-mail dated 20.12.2013 informed the petitioner that NLDC had taken action in compliance with the order of the Commission dated 18.9.2013. The petitioner has submitted that cause of action in its case arose with effect from the date it made the application i.e. 4.7.2012 and therefore, in compliance with the order of the Commission, NLDC should have granted registration for 8 MW with effect from that date. Since no response was received from NLDC, the petitioner has filed the present petition with following prayers:

“(a) The Respondent No. 1 is required to register the project of the Applicant qua 8 MW of power which the petitioner proposes to sell through open access at negotiated price or through the power exchange at market determined price retrospectively with effect from 4.7.2012 i.e. the date of submission of its Application under the REC Mechanism;

(b) Pass any other or further order/s as this Hon`ble Commission may deem fit and proper in facts and circumstances of the present case.”

4. NLDC has filed its reply vide affidavit dated 24.10.2014 after notice. NLDC has submitted that pursuant to the Commission’s directions in order dated 18.9.2013, the petitioner’s 8 MW project was registered on 17.10.2013 which was done within 15 days of the receipt of complete application. NLDC relying on the order of the Commission in

Petition No. 211/MP/2012 (Simran Wind Projects Private Limited Vs. National Load Despatch Centre) has submitted that an entity is eligible to claim RECs only from the date of registration. NLDC has submitted that as per Regulation 10(1) of the REC Regulations as amended vide notification dated 10.7.2013, RECs can be issued either from the date of commissioning or the date of registration, whichever is later. In the present case, RECs can only be issued from the date of registration which was granted within 15 days of the receipt of the complete application. According to NLDC, the petitioner does not have Energy Injection Reports (EIR) for the period prior to registration, as EIRs can be issued by State Agency only after registration in terms of para 4.2 of the Detailed Procedure issued under REC Regulations. The petitioner in the written submission has averred that Regulation 5 of the REC Regulations nowhere imposes a condition that unless a complete application is submitted, the units shall not be registered. Further, in none of the documents sought, NLDC had ever stated that the application of the petitioner was incomplete and therefore, it was not being considered. The petitioner has submitted that Regulation 5 (3) of the REC Regulations does not talk about complete application. In a number of regulations where the intention is to allow from the date of complete application, the word "complete" is mentioned. As per Ministry of Environment and Forest Notification No. S.O.1324 (E) dated 15.9.2005, the period of limitation would run only upon the receipt of the complete application. In these circumstances, assertion of NLDC that the application means complete application is incorrect. The petitioner has submitted that even otherwise, complete application was submitted to NLDC and no defect in the application was notified by NLDC during the stipulated period of time. The petitioner has further submitted that the

Commission's order dated 20.11.2013 in Petition No. 211/MP/2012 is distinguishable from the present case. Therefore, the date of registration of RECs should be as per Regulation 5(3) of the REC Regulations i.e. from the date of application.

5. During the course of hearing on 4.9.2014, learned counsel for the petitioner submitted that the petitioner had applied for registration of 8 MW with effect from the date of application. Pursuant to the order of the Commission dated 18.9.2013 in Petition No. 244/MP/2012, the petitioner was entitled for registration from the date of application i.e. 4/5.7.2012. On the other hand, learned counsel for NLDC submitted that as per Regulation 10 (1) of the REC Regulations, RECs can be issued only from the date of commissioning or date of registration whichever is later. He further submitted that RECs cannot be issued prior to the date of registration since the Detailed Procedure read with the REC Regulations does not make any provisions for the same.

6. We have heard the learned counsel for the parties and perused the documents on record. The dispute between the parties revolves around interpretation of the directions of this Commission in order dated 18.9.2013 in Petition No. 246/MP/2012. Accordingly, to the petitioner, it submitted two accreditations of 8 MW each to NLDC for registration vide its online application dated 4.7.2012 followed by physical application dated 5.7.2012. It is noticed that after submission of the application by the petitioner, NLDC sought certain clarification from the State Agency vide letters dated 13.7.2012 and 10.8.2012 with respect to the accreditation and eligibility of the petitioner. Despite getting the clarification, RECs were not issued by NLDC nor any reason for non-issuance was conveyed to the petitioner. Regulation 5 (3) of REC Regulations lays

down the procedure to be followed by NLDC while dealing with the application for registration. The said regulation is extracted as under:-

“5. Eligibility and Registration for Certificates:

(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.”

7. From the reply of NLDC in Petition No. 246/MP/2012, it was observed that the main objective of NLDC for grant of registration was that the project was split into 8 MW each for the purpose of accreditation. The Commission in its order dated 18.9.2013 decided the issue as under:-

“18. NLDC in its reply has pointed out that since the petitioner has split its 16 MW project into two projects, each of 8 MW, for obtaining accreditation from the State Agency it cannot be considered for registration. NLDC has alleged that accreditation has been obtained by violating the model guidelines for accreditation, according to which the applicant having multiple RE generation projects has to file separate applications for each generation project for accreditation. From this, NLDC has deduced that when accreditation is to be obtained by RE generator for one project, single application for accreditation has to be made. We do not agree with the views of NLDC in this regard.

19. We have already extracted the relevant part of the model guidelines. There is no warrant to hold that invariably for accreditation of one project only one application should be made. The petitioner filed two separate applications as it had adopted or proposed to adopt two separate routes for sale off power. It seems that the procedure adopted was cleaner way of obtaining accreditation since it facilitated proper examination by the State Agency. The model guidelines are meant for guiding the State Agency. In the present case, the State Agency has satisfied itself regarding eligibility of the petitioner for accreditation and has granted accreditation for the Project by issuing two accreditation certificates. At this stage, the certificates issued by the State Agency need not be disturbed. In case the petitioner is directed to obtain fresh accreditation with the State Agency, the result will be that the petitioner will come back to NLDC again after getting fresh accreditation. It will delay the processes without serving any useful purpose. It may also be pointed out that the guidelines need not be enforced with such rigidity as to defeat the substantive rights of a person granted under law or instruments having force of law, such as the REC Regulations. The guidelines primarily cover the procedural aspects without creating any rights or obligations. The rights and obligations are regulated under the REC Regulations. Accordingly, we do not find any infirmity in petitioner applying for and getting two separate accreditation certificates and uphold their validity.”

8. In the above order, the Commission decided that the petitioner had sought two accreditations as it had adopted or proposed to adopt two separate routes for sale of power and directed for registration of 8 MW for which the petitioner proposed to sell power through open access. In other words, the Commission clarified the legal position regarding registration where multiple accreditations had been issued/ obtained for the same project. The petitioner had submitted the required information as per the regulation to NLDC. Registration was delayed on account of lack of clarity in cases of projects with multiple accreditations which was clarified in the order dated 18.3.2013. The delay cannot be attributed to the petitioner. In our view, the petitioner is entitled for registration on the basis of its original application dated 4/5.7.2012. Accordingly, we direct that the petitioner be registered for grant of REC with effect from 20.7.2012 after allowing 15 days of processing time to NLDC as per the requirement of REC Regulations.

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

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson