

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

RECORD OF PROCEEDING

Petition No. 246/MP/2012

Subject : Petition under Regulation 14 read with Regulation 5 (4) of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2012 in relation to non-grant of registration to Timapur-Okhla Waste Management Company Private Limited.

Date of hearing : 2.4.2013

Coram : Dr Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : Timarpur-Okhla Waste Management Company Pvt. Ltd.

Respondents : National Load Despatch Centre, New Delhi
BSES Rajdhani Power Limited, New Delhi

Parties present : Shri M.G.Ramchandran, Advocate for the petitioner
Shri Vishal Anand, Advocate, BRPL
Shri Neelesh Gupta, TOWMCPL
Shri Rahul Tyagi, TOWMCPL
Shri Kumar Mihir, TOWMCPL
Ms Minaxi Garg, NLDC
Ms. Joyti Prasad, NLDC
Shri Satya Prakash, NLDC
Shri M.K.Gupta, NLDC
Mss. Shruti Nisha Singh
Shri Amit Kapur, Advocate, BRPL

Learned counsel of the petitioner submitted as under:

- (a) The petitioner satisfies all the conditions of eligibility under Regulation 5 (1) of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2012 (REC Regulations).
- (b) The petitioner does not have any power purchase agreement to sell electricity at a preferential tariff.
- (c) Out of 16 MW of total generation capacity, petitioner is selling 8 MW to BRPL at levellised tariff of ₹ 2.83/kWh determined through competitive bidding.
- (d) The petitioner has started generation from January 2012. No promotional tariff has been determined by the Delhi Electricity Regulatory Commission under the Section 86 (1) (e) of the Act in request of the petitioner.
- (e) The petitioner is selling power to BRPL at a lower rate than the cost of generation and Average Pooled Purchase Cost (APPC) of BRPL. The petitioner is selling balance 8 MW through open access.
- (f) As per the provisions of Energy Purchase Agreement, the petitioner is not obliged to sell power to BRPL for 25 years.
- (g) Power Purchase Agreement does not specify that supply of power under the PPA is to enable BRPL to meet its RPO obligation.
- (h) In terms of Regulation 5 (3) of the REC Regulations, the NLDC is required to accord registration within 15 days from the date of application if the petitioner satisfies the condition of eligibility of Regulation 5 (1) of the REC Regulations.
- (i) NLDC be directed to grant registration under Regulations 5 (3) of the REC Regulations for issuance of RECs with respect to the 8 MW capacity to be supplied to BRPL under the PPA and for the 8 MW capacity to be sold to third parties through open access, retrospectively with effect from the date of petitioner`s application dated 4.7.2012 .

2. In response to the Commission`s query whether the competitive bidding was for green energy, learned counsel of the petitioner submitted that a composite competitive bidding was done by NDMC, MCD and BRPL for 'waste to energy' project and at that time, there was condition that the project would be for fulfilling the RPO by BRPL.

3. In response to the query of the Commission as to why tariff through competitive bidding should not be considered as equivalent to preferential tariff, learned counsel stated that in the competitive bidding, the petitioner has competed with others and the competitive bidding cannot be treated as equivalent to preferential tariff.

4. The representative of NLDC submitted that total installed capacity of petitioner's project is 16 MW having only one unit. However, NLDC received two applications on 6.7.2012 for two projects having capacity of 8 MW each for registration. Since multiple applications are not allowed for a single project, the two applications filed by the petitioner for registration are not admissible. These issues were brought to the notice of the State Agency vide letters dated 13.7.2012, 10.8.2012 and 26.10.2012 in which it was requested to clarify the eligibility of the projects in question for accreditation for 8 MW each under REC mechanism. However, the State Agency in its reply has not addressed the issues.

5. Learned counsel of the petitioner submitted that the State Agency in its letter dated 6.9.2012 clarified that the accreditation is combined one for two units of 8 MWs each.

6. The learned counsel of the BRPL submitted as under:

(a) RFQ and RFP documents on which bids were invited have not been filed. The Commission may direct petitioner to produce all such documents on which competitive bidding was conducted by State Agency.

(b) State Agency also be directed to clarify the queries raised by the NLDC vide its letter dated 26.10.2012.

(c) DERC in its order dated 17.8.2012 has recorded submissions of the petitioner "*that the standard bid documents released by the Ministry of Power, Govt. of India are framed, keeping in mind the large thermal and Hydro Power Plants and for supply of firm power. However, bidding in this case is for small size special power plants on renewable sources of energy (waste) having infirm power certain deviations from the standard documents have been suggested for their approval by the Commission...*" and such deviation were allowed related to competitive bidding guidelines, RFQ, RFP and model Power Purchase Agreement. All such documents should be placed before the Commission for adjudication.

(d) The petitioner has not disclosed the subsidy amount ₹ 10 crore it has received from MNRE for the 16 MW project. Such subsidy amount should have been factored in the quoted tariff at the time of bidding.

7. The Commission observed that there is no difficulty for registration of 8 MW. As regard the remaining 8 MW, the issue that is required to be discussed whether it should be treated as preferential tariff since price discovered through competitive bidding is lower than the average APPC.

8. The Commission directed the State Agency to file all documents such as RFQ, RFP and PPA on which bidding was invited as well as report of the Committee constituted for accreditation, on affidavit, on or before 30.4.2013, with an advance copy to the petitioner and respondents. The parties may file their comments by 15.5.2013.

9. The petition shall be listed for hearing on 30.5.2013.

By order of the Commission

**Sd/-
(T. Rout)
Joint Chief (Law)**