

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:  
Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S.Verma, Member**

**Date of Hearing: 9.10.2012**

**Date of Order: 1.5.2013**

**Petition No. 161/MP/2012**

**In the matter of:**

Petition under Sections 79 (1) (k) of the Electricity Act, 2003 read with Regulations 14 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010.

**And**

**In the matter of:**

L.H.Sugar Factory Limited, Pilbhit **....Petitioner**

**Vs**

Uttar Pradesh New and Renewable Energy Development Agency,  
Lucknow  
National Load Despatch Centre, New Delhi **.. Respondents**

**Petition No. 162/MP/2012**

**In the matter of:**

Petition under Sections 79 (1) (k) of the Electricity Act, 2003 read with Regulations 14 of the Central Electricity Regulatory Commission (Terms and



Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010.

**And**

**In the matter of:**

Someshwar Sahakari Sakhar Karkhana Limited, Pune ..**Petitioner**

**Vs**

National Load Despatch Centre, New Delhi  
Maharashtra Energy Development Agency, Pune  
Maharashtra State Load Dispatch Centre, Mumbai .. **Respondents**

**Petition No. 164/MP/2012**

**In the matter of:**

Petition under Sections 79 (1) (k) of the Electricity Act, 2003 read with Regulations 14 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010.

**And**

**In the matter of:**

Triveni Engineering and Industries Limited, New Delhi ..**Petitioner**

**Vs**

National Load Despatch Centre, New Delhi  
Uttar Pradesh New and Renewable Energy, Lucknow  
Uttar Pradesh State Load Dispatch Centre, Lucknow ..**Respondents**

**Following were present:**

Shri Rajiv Yadav, Advocate for the petitioners  
Shri Kulbhushan Kumar, Advocate  
Shri Ankit Sibbal, Advocate  
Shri D.C. Saraswati  
Shri Neeraj Kumar, SSSKL  
Shri Ashish Awasthi  
Shri Durga Prasad  
Miss Jyoti Prasad, NLDC



Shri Minaxi Garg, NLDC

**ORDER**

The petitioners, L.H.Sugar Factory Limited, Someshwar Sahakari Sakhana Limited and Triveni Engineering and Industries Limited are bagasse based co-generation plants and have filed these petitions being aggrieved by conduct of Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA) and Maharashtra Energy Development Agency for revocation of the accreditation of the petitioners under the Renewable Energy Certificate (REC) mechanism.

**Petition No. 161/MP/2012**

2. The petitioner, L.H.Sugar Factory Limited is engaged in the business of manufacture of sugar. The petitioner owns, maintains and operates biomass (bagasse) based cogeneration power plants in its sugar mills. The petitioner has bagasse based co-generation plant at Philbhit, U.P, the details of which are as under:

Name of the unit	Total capacity of co-gen plant	Capacity tied up PPA at preferential tariff with Distribution company for sale of surplus power	Capacity under accreditation/registration under REC mechanism
Philibhit, UP	44.25 MW	Up to 40 MW	15 MW

3. The petitioner has a self-consumption of 15 MW for its sugar mill. Since the installed capacity of the petitioner exceeds the self-consumption, the petitioner sought to sell such surplus power to the Madhyanchal Vidyut Vitran



Nigam Ltd (MVVNL), which is a distribution company in the State of Uttar Pradesh. The petitioner entered into Power Purchase Agreements (PPA) dated 9.2.2007 with MVVNL for sale of surplus power upto 40 MW. The PPA provides that the petitioner would only sell the surplus power in the co-generation plant after its own use. The petitioner applied for accreditation to UPNEDA for its captive/self consumption. Consequently, UPNEDA in its letter dated 16.3.2012 informed the RE generators in the State of Uttar Pradesh including the petitioner that the sum of capacity under the REC mechanism and the capacity under preferential tariff should not exceed the installed capacity of the project and the capacity tied up under preferential tariff even for shorter period in a year would be ineligible under REC Mechanism. UPNEDA also sought declaration from the petitioner within 14 days that it has not exceeded the difference between the installed capacity and the capacity under preferential tariff while applying for REC. The petitioner sought time for submitting the declaration on the ground that it made representation to the Commission vide letter dated 29.3.2012 and requested UPNEDA to await the directions of the Commission. Subsequently, UPNEDA vide its letter dated 20.4.2012 had granted time 14 days time for submission of declaration. UPNEDA has issued a show cause notice dated 5.6.2012 to the petitioner for willfully defaulting in submission of declaration required under letter dated 16.3.2012 and has sought to revoke the accreditation of the cogeneration plant of the petitioner. It is against the above background that the petitioner has filed the present petition for directions to



UPNEDA for not revoking or cancelling the petitioner's accreditation and for a declaration that the petitioner is entitled to accreditation for 15 MW being the connected loads of its sugar mills and no further declaration is required to be submitted.

**Petition No. 162/MP/2012 with I.A.No. 37/2012**

4. In this petition, the petitioner, Someshwar Sahakari Sakhar Karkhana Limited (SSSKL) is engaged in the business of manufacture of sugar. The petitioner also owns, maintains and operates 18 MW cogeneration power plants at Pune. The petitioner has submitted that during the sugar cane crushing season, which is typically of 5 to 6 months` duration in a year, only 11.9 MW, the plant receives only 6.1 MW for self-consumption and accordingly, the balance capacity of 15.65 MW has been tied up under the EPA for sale at preferential tariff. However, during non-cursing season, self-consumption is about 2.35 MW and therefore capacity upto 15.65 MW has been tied up under preferential tariff. The petitioner entered into Energy Purchase Agreements (EPA) dated 9.3.2010 with Maharashtra State Electricity Distribution Company Limited for sale of surplus power with respect to its co-generation unit. The EPA provides as under:

*"AND WHEREAS, the generator has approached MSEDCL for selling the surplus electricity 15.65 MW available from the said co-gen power generation facility.....The supply of the surplus power available for export will be made after meeting the consumption of sugar mill and the auxiliary consumption of the co-gen power plant."*



5. The petitioner has submitted that as per the EPA, the sale of power during on-season and off-season us as under:

Name of the Unit	Total Capacity of Co-gen plant in MW	Date of signing PPA	Gross Power Generation in MW	Surplus power in MW during Season	Surplus power in MW during Off-Season	Capacity tied up PPA at preferential tariff with MSEDCL for sale of surplus power	Capacity under Accreditation / Registration under REC mechanism
Baramati, Pune	23 MW	9.3.2010	18 MW	11.9 MW	15.65 MW	15.65 MW	6.1 MW

6. The petitioner applied for accreditation to Maharashtra Energy Development Agency (MEDA) for availing REC benefits. MEDA after verification has granted Certificates of Accreditation dated 23.2.2012 for 18 MW, which was divided between 11.9 MW for sale to distribution company and 6.1 MW for self consumption. Thereafter, the petitioner applied for registration to Central Agency for 6.1 MW, which has been granted. After registration, the petitioner was issued RECs with effect from the month of February, 2012 in respect of quantum of power internally consumed for manufacture of sugar. The petitioner has submitted that in the meeting on implementation of REC framework held at NLDC on 22.2.2012, it was clarified that the capacity of power tied up under preferential tariff even for a certain period in a year would be ineligible under REC mechanism and the State Agencies were directed to recheck the accredited projects. Consequently, MEDA in its letter dated 28.3.2012 informed by RE generators in the State of Maharashtra including the petitioner to submit an undertaking for reduced accreditation capacity and

advised NLDC to revise the accreditation capacity from 6.1 MW to 2.35 MW in the web registry. The said capacity reduction was arrived at on the basis that the 'maximum capacity tied up at preferential PPA' would not be eligible for REC benefits.

7. The petitioner has submitted that being left with no option, and despite not being agreeable to unilateral reduction of its REC eligibility, it was constrained to submit an undertaking for revised accreditation dated 7.4.2012 to MEDA. Thereafter, NLDC vide its letter dated 11.5.2012 informed the petitioner that its capacity under accreditation and registration has been reduced from 6.1 MW to 2.35 MW and further directed the petitioner to complete the formalities, including securing a revised accreditation certificate from MEDA and submit the same before 31.5.2012 to ensure that it did not lose out on its RECs for the month of February, 2012. The petitioner vide its letter dated 17.5.2012 had submitted the said undertaking to NLDC.

8. The petitioner has submitted that the SLDC, Maharashtra issued the Energy Injection Reports on 28.5.2012 for the months of February, March and April, 2012. SLDC, Maharashtra correctly noted the energy injection in terms of gross generation, quantum of energy sold under the preferential tariff and the quantum of energy available for issuance of RECs. However, the SLDC, Maharashtra, at the footnote on the Energy Injection Report has submitted



that in view of reduction of petitioner's eligibility from 6.1 MW to 2.35 MW, the petitioner would be entitled to RECs in respect of much lesser quantum of renewable energy than what was claimed. On the basis of Energy Injection Report, NLDC has issued RECs to the petitioner for the 2.35 MW of renewable energy for the months of February, March and April, 2012. Aggrieved by the order of State Agency and NLDC, the petitioner has approached the Commission for direction to MEDA and NLDC to grant accreditation and registration as per the Energy Purchase Agreement dated 9.3.2010.

**Petition No. 164/MP/2012**

9. The petitioner, Triveni Engineering and Industries Limited is engaged in the business of manufacture of sugar and owns, maintains and operates 22 MW cogeneration power plants at Saharanpur. Since the installed capacity of the petitioner exceeds the captive/self consumption, the petitioner sought to sell such surplus power to the Uttar Pradesh Power Corporation Limited (UPPCL). According to the petitioner, during the sugar cane crushing season 16.17 MW has been tied up under preferential tariff and the balance 5.83 MW capacity has been earmarked for self consumption. During non-crushing season 19.16 MW has been tied up under preferential tariff. The petitioner entered into Power Purchase Agreements (PPA) dated 29.10.2003 with UPPCL for sale of surplus power with respect to its units. The PPA provided that the petitioner would sell the surplus power generated in the co-generation plant after its captive use





to UPPCL up to 17.17 MW in crushing season and upto 19.16 MW during off season. The petitioner applied for accreditation to UPNEDA for availing REC benefits. UPNEDA after verification has granted Certificates of Accreditation dated 12.8.2011 for unit for 5.83 MW which is valid till 17.7.2016. Thereafter, the petitioner applied for registration to Central Agency which has been granted for 5.83 MW.

10. The petitioner has submitted that in the meeting on implementation of REC framework held at NLDC on 22.2.2012, it was clarified that the capacity of power tied up under preferential tariff even for a certain period in a year would be ineligible under REC mechanism and the State Agencies were directed to recheck the accredited projects. Consequently, UPNEDA in its letter dated 16.3.2012 informed by RE generators in the State of Uttar Pradesh including the petitioner that the sum of capacity under the REC mechanism and the capacity under preferential tariff should not exceed the installed capacity of the project and the capacity tied up under preferential tariff even for shorter period in a year would be ineligible under REC Mechanism. UPNEDA also sought declaration from the petitioner that it has not exceeded the difference between the installed capacity and the capacity under preferential tariff while applying for REC. Accordingly, vide letter dated 23.5.2012, declaration was submitted to the UPNEDA which disclosed the capacity tied up under preferential tariff PPA for season and off season. Despite, the said declaration, UPNEDA has issued a



show cause notice dated 5.6.2012 to the petitioner for willfully defaulting in submission of declaration required under letter dated 16.3.2012 and has sought to revoke the accreditation of the cogeneration plant of the petitioner. The petitioner has sought directions to UPNEDA for not revoking or cancelling the petitioner's accreditation and for a declaration that the petitioner is entitled to accreditation for 5.83 MW being the connected loads of its sugar mills and no further declaration is required to be submitted.

11. Against the factual background of the cases as noted above, the petitioners have submitted that such exclusion of capacities from REC scheme, what are admittedly utilized by the petitioners for self consumption during sugar season is clearly arbitrary and is not sanctioned by the REC Regulations. The petitioners have further submitted that Regulations 5 (1) (b) of the REC Regulations mandates exclusion of only such capacity from REC scheme which is being used for supplying power at preferential tariff. The petitioners have pleaded that given the seasonal nature of sugar industry and the varying capacity utilization for self-consumption, Regulation 5 (1) (b) of the REC Regulations cannot reasonably be implemented without considering whether a particular co-generation plant is operating on-season or off-season. Any interpretation of the Regulation 5 (1) (b) of the REC Regulations that discounts the distinction between capacity allocation for self-consumption during season and off-season is arbitrary and detrimental to the REC policy objective of encouraging renewable energy generation by providing additional incentives.

## **Replies of Respondents**

12. National Load Despatch Centre (NLDC), the Central Agency, in its reply in all petitions has submitted that as per Regulation 5 of the REC Regulations, the capacity tied up under REC mechanism even for a certain period in a year is not eligible to participate under REC Mechanism. NLDC has submitted that the projects were erroneously accredited by UPNEDA and subsequently registered by the Central Agency. NLDC has further submitted that as per REC Regulations, the eligible capacity under REC mechanism is the difference between the installed capacity and the maximum capacity tied under preferential tariff and the REC Regulations do not envisage seasonal eligibility criterion for participation under REC mechanism.

13. Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA) vide its reply in Petition Nos. 161/MP/2012 and 164/MP/2012 has submitted that a RE generator is required to furnish 'declaration', clearly specifying the quantity for which it does not have PPA at preferential tariff for entire validity period of accreditation/registration. REC Regulations do not provide for any provision with regard to flexibility of interchange of capacity registered under REC mechanism with the capacity tied up under preferential tariff during the entire validity period of accreditation/registration.

14. MEDA in its reply in Petition No.162/MP/2012 has submitted that in terms of Regulation 5 (1) (b) of the REC Regulations, it has accredited the petitioner for its maximum self use capacity of 6.1 MW on 23.2.2011. However, as per the direction of NLDC, the accreditation has been reduced as MEDA is bound to obey the orders of NLDC for the implementation of REC mechanism and issuance of accreditation to RE projects in the States.

**Analysis and Decision**

15. We have heard the learned counsel for the petitioners, the representatives of the Central Agency and State Agencies.

16. The basic issue involved in these petitions is what should be the quantum of electricity to be registered for REC for self-consumption in case of co-generation plant where the quantum of self-consumption varies with seasons and whether the petitioners are entitled for REC for their actual self-consumption irrespective of the capacity tied up under the preferential tariff. The Commission has dealt with a similar issue in case of Dalmia Bharat Sugar and Industries Limited Vs. Uttar Pradesh New and Renewable Energy Development Agency and others, vide its order dated 26.12.2012 in Petition No. 138/MP/2012. The relevant paras of the said order are extracted as under:

"19. \* \* \* \* \*  
*The PPA does not have a fixed capacity for sale of power under preferential tariff. The PPA provides that the petitioner would sell its entire surplus power after its captive use and the Discom has agreed to purchase all such power. If its self-consumption is zero, it can sell upto 25 MW and if its self consumption is*



say 8 MW, it can sell upto 17 MW under preferential tariff. In other words, generation from the same capacity can be used for sale under the preferential tariff as well as the REC mechanism, depending on the quantum of captive consumption. Since the power to be sold under the preferential tariff is over and above the captive consumption, it is unlikely that the same power will be sold under preferential tariff as well as used for claiming REC for self consumption. The PPA has been so made keeping in view the seasonal variation in the production of power and self consumption by these co-generating plants. Therefore, in cases of RE generators like the bagasse based co-generating plant, it is difficult to get a firm capacity under preferential tariff as the captive consumption of power varies from season to season. Only because, there is no firm capacity in the PPA for these generators, the benefits of the promotional schemes like the REC cannot be denied to them. Therefore, the REC Regulations would need to be interpreted in such a manner which advances the purpose of the regulations and does not defeat it. The moot point is determination of the capacity for which a RE generator is required to be registered after excluding the capacity covered under preferential tariff. In our view, in cases of PPAs of such flexible character, the maximum assessed load for self consumption by the RE generator should be considered for registration under REC mechanism. This is because the co-generation plant is not expected to exceed the assessed load for self consumption at any point of time. In the present case, we notice that as per the PPA, the generating company has declared a load of 10 MW power for its plant and the Discom has agreed to supply the same as per requirement at retail tariff determined by the State Commission. In our view, this declared/accepted load of the co-generation plant should be taken as the maximum capacity for the purpose of registration REC for self consumption. The RE generator can claim REC upto the maximum of 10 MW for captive consumption, subject to actual metered consumption.

20. It is not in dispute that the power used for captive consumption and the power sold under preferential tariff can be separately metered and accounted for. Therefore, there is no possibility of the same capacity being used for both captive consumption and for sale through preferential tariff at any particular time. The petitioner has submitted that it has got accreditation for 10 MW being a connected load of the units and the usual captive/self consumption by units during the crushing season. The capacity under preferential tariff is the surplus power left by the captive/self consumption by the units and varies from time to time depending upon the availability of cane for crushing and the operating conditions. In our view, the petitioner is correctly accredited and registered for 10 MW for each of its 3 units for RECs being the connected load of the units.

\* \* \* \* \*

21. The Commission is aware of the seasonal variation in self- consumption in the co-generation plants like that of the petitioner. After considering the provisions of the UPERC Regulations and the PPAs entered into by the UPPCL



*with the RE Generators in the State of Uttar Pradesh, we are of the view that a separate dispensation is required to be provided for the cogeneration plants for the purpose of accreditation and registration of their capacity on account of captive consumption. We consider it an appropriate case to exercise our power to remove difficulty to facilitate accreditation and registration of the cogeneration plants for the purpose of REC. Accordingly, in exercise of the power under Regulation 14 of REC Regulations, we direct **that in so far as eligibility under Regulation 5(1)(b) of REC Regulations is concerned, the connected load capacity of the co-generation plants as assessed/sanctioned by the concerned distribution licensee shall be considered as the capacity for captive consumption for the purpose of accreditation and registration irrespective of the capacity tied up under the preferential tariff.**"*

17. In the light of the above decision, we direct that for the purpose of eligibility under Regulation 5 (1) (b) of the REC Regulations, the connected load capacity of the petitioners as assessed/sanctioned by the concerned distribution licensee shall be considered for the purpose of accreditation and registration irrespective of the capacity tied up under preferential tariff.

18. The units of the co-generation plants of the petitioners, L.H.Sugar Factory Limited, Someshwar Sahakari Sakhar Karkhana Limited and Triveni Engineering and Industries Limited have been accredited and registered for 15 MW, 6.1 MW and 5.83 MW which corresponds to the connected load as accepted by MVVNL, MSEDCL and UPPCL, respectively. We direct the State Agency, UPNEDA to withdraw the show cause notices issued to L.H.Sugar Factory Limited and Triveni Engineering and Industries Limited and continue to consider the accreditation dated 19.7.2011 and 12.8.2011 as valid and subsisting. MEDA is also directed to treat the accreditation dated 23.1.2012 as valid and subsisting. Consequently, the Central Agency is directed to accept

and consider the applications of the petitioners for issuance of pending RECs within three months from the date of the order.

19. The petitions and IA are disposed of in terms of the above.

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

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

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

