

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 258/MP/2012

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 20.6.2013

Date of Order : 08.10.2013

In the matter of

Petition for directions to the Respondent, National Load Despatch Centre on the issue of Renewable Energy certificates to the petitioner from the date of commissioning of the generating station. Petition under Sections 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

M/s JSONS Foundry Private Limited, Maharashtra

Petitioner

Vs

National Load Dispatch Center, New Delhi

Respondent

Parties Present:

Shri Anshuman Sinha, Advocate for the petitioner

Ms Minaxi Garg, NLDC

Ms. Joyti Prasad, NLDC

ORDER

The petitioner in the present petition has made the following prayers, namely -

“(a) *The Hon'ble Commission may please hold and clarify that the three months period be constituted for application for issuance of REC shall be from the date of receipt of the energy certificate by the renewable energy generator from the SLDC.*



- (b) *The Hon'ble Commission may be pleased hold that three months period stipulated in the regulation 7(1) of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 means three months clear days for applying for the issuance of REC for the getting of REC and the same period not restricted to less period of 2 months and 15 days.*
- (c) *The Hon'ble Commission may be pleased to hold that the non-issuance of the REC on the application dated 26.06.12 submitted on 29.06.12 of the petitioner to the Central Agency till date without assigning any reason in writing is in contravention of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.*
- (d) *The Hon'ble Commission may be pleased to hold that the Petitioners No. 1 & 2 are eligible to get REC for 1139 MWH energy & 413 MWH respectively generated in the month of March, June and August 2012 issued by SLDC Maharashtra.*
- (e) *The Hon'ble Commission may be pleased to direct to the respondent Central Agency to process the pending applications dated 26.06.12 (submitted on 29.06.12), 16.09.12 (submitted on 20.09.12) and 16.11.12 (submitted on 29.11.12) of the petitioners for the REC for the energy injected into the grid for the month of March, June and August 2012 and issue the REC against above energy.*
- (f) *The Hon'ble Commission may pass any further order as deemed fit in the interest of justice.”*

2. The petitioner has set up six Wind Turbine Generators (WTGs) (2 × 0.8 MW and 4 × 0.23 MW) in the State of Maharashtra. The WTGs are said to be under commercial operation since 31.3.2010 and electricity generated is being injected into the grid. After the petitioner obtained accreditation from the State Agency and registration from the Central Agency, Renewable Energy Certificates (hereafter “RECs”) were issued to it by

the Central Agency from time to time. The details of accreditation and registration furnished by the petitioner are as under:

| S. No. | Particulars | JSONS Foundry Private Ltd | |
|--------|-----------------------------------|---------------------------|---------------|
| | | 2 Nos. 800 kW | 4 Nos. 230 kW |
| 1 | Date of Accreditation Certificate | 31.8.2011 | 20.06.2012 |
| 2 | Date of Registration Certificate | 25.11.2011 | 07.08.2012 |

3. The petitioner has alleged that it applied for issuance of RECs for the months of March, June and August 2012 within the stipulated time of three months time in accordance with 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”), but the Central Agency has not issued RECs. The petitioner has submitted that for the month of March 2012, it made application dated 26.6.2012 to the Central Agency on 29.6.2012. However, the Central Agency has not issued RECs since the official of the Central Agency had been insisting that the application was not received. The petitioner has further alleged that it was not issued RECs for the month of June 2012 for which the application dated 16.9.2012 was submitted on 20.9.2012, on the ground that the Central Agency had sent an e-mail dated 21.9.2012 to the petitioner informing it of the defect in the application since the certified copy of the Energy Injection Report had not been filed along with the application. The petitioner has denied to have received any such email from the Central Agency. As regards the month of August 2012, the petitioner has submitted that it made on-line application on 16.11.2012 and subsequently on 29.11.2012, it submitted the said application in physical form which the Central Agency

did not entertain on the ground of non-submission of on-line application and thus RECs for the month of August 2012 too have not been issued.

4. The petitioner has submitted that under proviso to clause (1) of Regulation 7 of the REC Regulations, the RE Generators get effectively two months and a half instead of three clear months as specified under the main clause for making the application for RECs. The petitioner has submitted that three months period should be clearly available to the eligible entity to apply for the certificate. The petitioner has further submitted that on account of the delay/default in issuance of the relevant Energy Injection Report by SLDC, the RE Generators would not get sufficient time for applying for RECs. The petitioner has accordingly urged that the time period of three months should be counted from the date of issuance of Energy Injection Report by the SLDC.

5. The respondent, NLDC, which has been declared as the Central Agency under the REC Regulations in its reply dated 13.2.2013, has submitted as under;

(a) The understanding of the petitioner that the period of three months for applying for RECs should commence from the date of issuance of monthly Energy Injection Report by SLDC is not correct as the RE Generators are required to apply for issuance of RECs after completing all the formalities like getting the certified Energy Injection Report from the concerned SLDC within the stipulated period of three months.

(b) The web portal designed by the Central Agency allows filing of applications on 1st and 15th day of every month. However after applying on line, the RE Generators

are required to submit physical application to the Central Agency till last working day of the month in accordance with clause (1) of Regulation 7 of the REC Regulations and the detailed procedure approved by this Commission.

(c) For the month of March 2012, the on-line application was made by the petitioner but the application in physical form was not submitted till 27.6.2012. The petitioner on 27.6.2012 was asked to submit the application in physical form along with the supporting documents. However, the application was not received till the last day of June 2012. As such, RECs for the month of March 2012 could not be issued.

(d) As regards RECs for the month of June 2012, the application in physical form was received by the Central Agency on 21.9.2012. However, it was not accompanied by a copy of the certified Energy Injection Report from SLDC. The petitioner was asked the same day to submit the said document. However, since the said document was not received within stipulated time, RECs could not be issued.

(e) For the month of August 2012, the petitioner had the flexibility to submit the web application from 1.9.2012 to 15.11.2012. Thereafter, it could submit the application in physical form to the Central Agency till last working day of November 2012. However, the petitioner did not apply on-line within the stipulated timelines. In the absence of application, RECs could not be issued to the petitioner.

6. The petitioner in its rejoinder dated 22.2.2013 has submitted that receipt of the application for month of March, 2012 was acknowledged by PGCIL and that Central Agency has issued RECs in many occasions earlier on the basis of the applications acknowledged by PGCIL. So far as the month of June, 2012 is concerned, the petitioner has submitted that it did not receive the communication dated 21.9.2013 through the web application/email from the Central Agency. As regards the month of August 2012, the petitioner has stated that its office was closed during 11.11.2012 to 16.11.2012 on account of Diwali holidays and therefore, the applications could not be submitted on-line within stipulated time.

7. We have heard learned counsel for the petitioner and the representative of the respondent. We have carefully perused the record. We examine the petitioner's prayers accordingly.

Re: Prayer (a)

8. The petitioner's first prayer is to the effect that the three months period provided under clause (1) of Regulation 7 of the REC Regulations should be counted from the date of receipt of the Energy Injection Report by the RE generator from SLDC. The total period of three months for making the application before the Central Agency should take into account the time taken by SLDC to verify the data of the energy injected and for issuing the Energy Injection Report. The petitioner has not pointed out any difficulties in obtaining Energy Injection Report from SLDC within the stipulated time period of three months. In our view, the period of three months allowed is considered sufficient for completing the necessary pre-application procedural requirements including obtaining

Energy Injection Report from the concerned SLDC. The petitioner's prayer at (a) is untenable and is rejected.

RE: Prayer (b)

9. The petitioner has next prayed that clear three months period stipulated in clause (1) of Regulation 7 of the REC Regulations should be available for applying for the issuance of RECs and the period should not be restricted to two months and a half while giving effect to proviso to clause (1).

10. In order to examine the second prayer, we first consider it appropriate to analyze clause (1) of Regulation 7 of the REC Regulations which deals with issuance of RECs.

For reference purpose, the said regulation so far it is relevant is extracted below:

"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."

11. After a generating company has been registered by the Central Agency as an eligible entity on fulfilling the criteria laid down for registration specified under Regulation 5 of the REC Regulations, it can approach the Central Agency for issuance of RECs. The Regulation 7(1) of the REC Regulations provides that an eligibility entity shall apply for RECs within three months from the date of corresponding generation from the eligible renewable energy projects. In other words, the application for issuance of RECs made beyond three months from the date of generation from renewable energy source does not qualify for issuance of RECs. However, the proviso to clause (1) makes it mandatory for an applicant to make application for issuance of RECs on 1st or 15th day of a month. According to the detailed procedure, online applications are permitted to be made on 1st and 15th day of the month to be followed by submission of physical applications. The purpose of the procedure is to ensure that the applicant makes the application online first and then submit the physical applications so that the Central Agency carries out the certification and issues the certificates. Without making online applications, the physical application cannot be processed. The process prescribed by the Central Agency has the approval of this Commission and it is mandatory. Therefore, it is in the interest of petitioner that it should have made the online application by 15th of the third month. The online application payment is open on 1st and 15th day of the month irrespective of whether the date falls on a closed holiday or Sunday. An applicant can access the website from anywhere with the help of its username and password. Therefore, one cannot say that it will not be required to apply online by 15th of third month only because the applications are accepted upto three months.

Re: Prayers at (c), (d) and (e)

12. The petitioner's grievances stem from non-issuance of RECs for the months of March, June and August 2012. These three prayers are being considered together.

13. There is no dispute that the petitioner submitted the on-line application for the month of March 2012 on time. However, the dispute is regarding the receipt of the application in physical form. According to the petitioner, it submitted the application on 29.6.2012 which was acknowledged by the office of PGCIL. The petitioner has filed evidence in support of receipt of the application by PGCIL. The petitioner has claimed that on earlier occasions, on the basis of the applications and other documents acknowledged by PGCIL, RECs were issued by Central Agency. NLDC has submitted that online application for issuance of RECs was made by the petitioner but the physical application was not submitted till 27.6.2012. Central Agency reminded the petitioner through REC web application on 27.6.2012 to submit the physical application. The copy of the said communication has been placed on record. NLDC has contended that despite reminders, physical application for issuance of RECs was not received till 30.6.2012 as a result of which RECs corresponding to the month of March, 2012 could not be issued. NLDC has further contended that the stamping of the letter with the seal of Power Grid cannot be considered as acknowledgement, since NLDC gives stamp with particular reference number for hand delivered REC related documents. In the acknowledgement received from the PGCIL office, there was no corresponding reference number. Therefore, it cannot be said that the said document was received in

NLDC office. It is noted that the offices of PGCIL and the Central Agency are located in the same premises and therefore, there is a possibility of handing over the application by the representative of the petitioner to the officials of PGCIL. Since the application was not available with NLDC, the petitioner was reminded to submit the physical application before the due date. However, the petitioner has not taken appropriate steps to submit the physical application to the Central Agency. No explanation is available as to why the petitioner did not submit the application after it was specifically asked by NLDC. However, as a special case, we grant another opportunity to the petitioner to submit the physical application within 15 days from the date of issue of this order to the Central Agency who shall consider the application and issue the RECs within 15 days thereafter. In order to obviate to possibility of recurrence of such instances in future, we direct the Central Agency to take steps to make necessary arrangement for receipt of physical applications during specified hours on working days and issue appropriate acknowledgement therefor.

14. For the month of June 2012, the on-line application and the application in physical form were made by the petitioner on time. According to the Central Agency, it was pointed out to the petitioner that the application was not accompanied by certified copy of the Energy Injection Report. The Central Agency has stated on affidavit that it sent web-based communication dated 21.9.2012 asking the petitioner to submit the required document before the last week of September 2012 failing which its application would be rejected. The petitioner has denied receipt of the communication from the Central Agency. The petitioner, along with the rejoinder, has annexed the copy of the

Energy Injection Report dated 4.9.2012 for the month of June 2012 issued by SLDC Maharashtra. There is no dispute that Energy Injection Report was received by Central Agency through email dated 5.9.2012 from SLDC Maharashtra. However, the same could not be considered by the Central Agency as the certified hard copy was not supplied by the petitioner. In our view, it is the responsibility of the petitioner to submit a hard copy of the Energy Injection Report as required under the Procedure. The petitioner has submitted that it could not comply with the directions of NLDC since it did not receive the web-based mail dated 21.9.2012. Though we are not convinced with the explanation of the petitioner, we give benefit of doubt to the petitioner and direct the petitioner to submit the Energy Injection Report for the month of June, 2012 in physical form to NLDC within a period of 15 days from the date of issue this order and NLDC to consider and issue the RECs with a period of 15 days thereafter.

15. The petitioner has submitted that for allotment of RECs for the month of August 2012, it made on-line application on 16.11.2012 and submitted the hard copy of the application on 29.11.2012. However, it was not allotted RECs against these applications. The reason for non-allotment seems to be that the on-line application made on 16.11.2012 was not accepted by the system as the web portal is designed to accept only the applications made on 1st and 15th of the month. The petitioner is well aware that the online applications are only allowed to be made on 1st and 15th of the month and the petitioner should have taken steps to ensure that the application is made by 15th of the month. We are of the view that the petitioner has not been able to advance any convincing reason as to why it could not make the online application on 15.11.2012. Accordingly, the prayer of the petitioner is rejected.

16. We have allowed the prayers of the petitioner for grant of RECs for the month of March and June 2012 due to peculiar circumstances of the case. Our decision in this order shall not be quoted as a precedent. It is clarified for the information of all concerned that compliance with the provisions of REC Regulations and the Procedure are prerequisites for consideration of the application for issue of RECs and should be duly complied with by the RE generators applying for RECs.

17. With the above directions, the petition stands disposed of.

Sd/-

(M. Deena Dayalan)
Member

sd/-

(V.S.Verma)
Member