

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 167/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K.Singhal, Member

Date of Hearing: 27.02.2014

Date of Order :25.08.2014

In the Matter of

Petition under Section 66, 79 and other applicable provisions of the Electricity Act, 2003 read with Regulations 14 of Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewal Energy Certificate for renewable energy generation) Regulations, 2010 for directions and orders as considered appropriate to National Load Despatch Centre, on the issue of Renewable Energy Certificates to the Petitioner.

And in the matter of

M/s Urjankur Shree Datta Power Co. Ltd.
The IL&FS Financial Centre
Plot C-22, G Block, Bandra Kurla Complex,
Mumbai – 400051

....Petitioner

Vs.

1. National Load Despatch Centre
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016
2. Maharashtra State Load Despatch Centre
State Load Despatch Centre,
Thane-Belapur Road, P.O.Airoli,
Navi Mumbai-400 708
3. Maharashtra Energy Development Agency
Sr. No. 191, Phase-I, MHADA Commercial Complex,
Second Floor, Opp. Tridal Nagar, Yerwada, Pune-411 006

Respondents



Parties present:

Shri Sanjay Sen, Senior Advocate, USDPCL
Shri Anurag Sharma, USDPCL
Shri Arjun Krishnan, Advocate, NLDC
Shri Shailendra Verma, NLDC
Shri P.M. Buradkar, MSLDC

ORDER

The petitioner, Urjankur Shree Dutta Power Company Limited has filed this petition seeking a direction to National Load Despatch Centre to issue Renewable Energy Certificates (RECs) which have accrued to the petitioner for the renewable energy injected into the grid as per the details given in Annexure A-14 to the petition and to extend the time for issuance of RECs as per the applicable regulations and procedure.

Brief Facts of the Case

2. The petitioner is a special purpose vehicle promoted by Urjankur Trust, which is a Government of Maharashtra initiative and Infrastructure Leasing & Financial Services Limited. The petitioner has set up and is operating a 36 MW bagasse based cogeneration plant at Sree Datta Sethkari Sakhar Karkhana (Host Sugar Factory) at Sirol, Kolhapur, Maharashtra on Build, Own, Operate, Transfer



basis. The petitioner entered into a Project Development Agreement (PDA) on 10.4.2008 with the Host Factory which inter alia provided that the petitioner would be entitled to sell surplus power to MSEDCL or any other distribution licensee to any third party consumer after meeting the steam and power requirement of the Host Factory (Para 5.2.(c).(viii) of the PDA). The petitioner entered into a Power Purchase Agreement on 10.2.2010 with Reliance Energy Trading Company (RETL) for sale of power upto 36 MW or any other magnitude of power as may be mutually agreed from time to time. As per the PPA, the expected COD of the plant was 31.8.2010 and the period of energy sale was for 15 years. Further the PPA provided that 18.50 MW would be supplied during crushing season (between October/November through February/March) and 31 MW during non-crushing season (between April/May to October). The petitioner is stated to have commenced supply of power to RETL from April 2012.

3. The petitioner was accredited for 33.5 MW under the REC mechanism by the State Agency, Maharashtra Energy Development Agency (MEDA) on 3.4.2012. After accreditation, the petitioner



applied for registration under the REC mechanism to the Central Agency i.e. National Load Despatch Centre which was granted on 2.5.2012. The petitioner applied for RECs on the basis of the certified Energy Injection Report (EIR) issued by Maharashtra SLDC. The Central Agency issued RECs to the petitioner as per the details given below:

Ser No.	Month for which RECs issued	No. of RECs issued
1	May 2012	13,908
2	June 2012	13,958
3	July 2012	12,711
4	August 2012	8,484

4. After issuance of RECs for the month of August 2012, the petitioner did not apply for RECs for the month of September and October 2012. The petitioner applied for RECs for the month of November 2012 on 25.2.2013. Maharashtra SLDC vide its letter dated 21.2.2013 informed NLDC that in September 2012, the petitioner made a PPA with M/s Global Energy Private Limited (GEPL), an electricity trader. M/s BEST, the distribution licensee in Maharashtra placed an LOI on M/s GEPL for purchase of 33 MW RE power generated by the petitioner with the condition that the power

was being procured for fulfilling M/s BEST's obligation for RPO and for the corresponding energy, the petitioner could not avail any REC. Based on the information of Maharashtra SLDC, NLDC in its letter dated 14.3.2013 wrote to MEDA to investigate the matter and submit a report in this regard. Pending investigation of the matter, the applications of the petitioner for issue of RECs were put on hold. MEDA submitted the report to NLDC vide letter dated 28.3.2013. The letter is extracted as under:

"1. Clause no 5(1)(c) of CERC REC Regulations 2010 related to Eligibility and Registration for Certificates states that "it sells the electricity 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 customer at a mutually agreed price or through power exchange at market determined price."

Accordingly in line with clause no.5(1)(c)(ii) M/s Urjankur Shree Datta Power Company Limited (USPDCL) is an accredited R.E. Generator eligible to avail REC benefits upto 33.5 MW and selling power to trader at mutually agreed rate. Currently power is being sold to trader M/s Global Energy(GEPL) at mutually agreed rate & not to BEST as stated in MSLDC letter.

2. M/s GEPL as a trader is free to sale this purchased power through open access to any consumer at mutual agreed rate. Under the provision of Lol M/s GEPL sold part of this power through open access to BEST vide Lol executed between them at mutual agreed rate.

3. MSLDC in their letter dtd 21.02.2013 addressed to MEDA has mentioned that, "the firm cannot avail any REC for the RE sold to fulfill BEST RPS obligation." Taking into consideration of this, MSLDC has recommended & issued Energy Injection Report to USDPCL for the period of Nov-12 on 26/02/2013 & Dec-12 on 20/03/2013 by excluding the



Renewable energy quantum sold under preferential tariff to avoid double benefit.

4. From above it is clear that USPDCL has not violated REC Regulation. Hence it is recommended that based on the energy injection report issued by MSLDC to USPDCL for the month of November 2012 & December 2012, necessary RECs may be issued for the energy which is not sold to BEST at preferential tariff.”

5. After receipt of the report from MEDA, NLDC sought clarification from MSLDC vide its letter dated 16.4.2013 as to whether the green energy sold by the petitioner to BEST through GEPL has been accounted for in the EIR for the months of November and December 2012 and January 2013. NLDC also sought the PPA period between GEPL and BEST. MSLDC in its letter dated 23.4.2013 clarified that the tenure of PPA between GEPL and BEST is from 29.10.2012 to 31.3.2013. MSLDC further clarified that the green energy sold by the petitioner till January 2013 has been considered as sale to BEST to meet its renewable purchase obligations and has been shown as preferential tariff in respective month and the same treatment would be given to energy scheduled to BEST during February 2013 and March 2013 in accordance with the provisions of the PPA. On receipt of the clarifications from



MSLDC, NLDC submitted a letter to this Commission seeking clarification whether RECs can be granted to the petitioner since a part of the power scheduled from the petitioner's plant is being sold by M/s GEPL to BEST for meeting the latter's RPS obligations.

Submissions of the Petitioner

6. The petitioner has submitted that it entered into a PPA with RETL, an electricity trader, for sale of power on a merchant basis with a base tariff of Rs. 4.98/kWh. The petitioner commenced supply of power to RETL and started receiving RECs in respect of power sold since May 2012. On account of low realization of revenue from the sale to RETL, the petitioner in consultation with RETL entered into a PPA dated 16.9.2012 with GEPL, another trading licensee, for sale of power for a period of six months from 1.10.2012 till 31.3.2013 at a rate of Rs.3.91/kWh. The petitioner has submitted that the rate agreed under the PPA with GEPL was not for preferential tariff which satisfied the condition to be fulfilled for entitlement for issue of RECs. The petitioner has submitted that the power plant of the petitioner was shut down from September 2012 till 26.10.2012. When the



generating station started generating power, the petitioner gave a notice to GEPL regarding supply of power. The petitioner has submitted that GEPL expressed its inability to schedule the entire proposed quantum to its HT consumers and wanted to sell a part of the quantum to BEST and suggested that in the event of the petitioner voluntarily foregoing its claims to RECs against the quantum of power sourced for sale to BEST, the petitioner would be compensated @ Rs.1.43/kWh per unclaimed REC. The petitioner agreed to the proposal of GEPL and tried to modify the Energy Injection Report format to put on record the fact that the petitioner had not voluntarily claimed RECs for a certain quantum of power sourced by GEPL for further supply to BEST. The petitioner has submitted that since MSEDCL refused to certify such modified format of EIR, the petitioner was compelled to put the units for which RECs were not claimed in the “preferential tariff box” of the EIR format, even though these units were not sold by the petitioner through preferential tariff route. The petitioner has submitted that this was done to ensure that no RECs are claimed by the petitioner for the units/quantum of power sourced by GEPL for sale to BEST.



7. The petitioner has submitted that MSLDC and MEDA have investigated the matter and furnished their responses to NLDC recommending issuance of RECs to the petitioner for the renewable energy power other than the power sourced by GEPL for sale to BEST for which the petitioner had voluntarily not claimed RECs. Despite the reports of MEDA and MSLDC, NLDC has failed to take any action with respect to issuance of RECs to the petitioner and has therefore, failed to discharge its obligations under the REC Regulations. The petitioner has sought a direction to NLDC to issue RECs to the petitioner for the energy injected into the grid.

Replies of Respondents

8. NLDC in its reply filed vide affidavit dated 21.10.2013 has submitted that the power generated by the petitioner has been sold to BEST through GEPL to offset the renewable purchase obligation of BEST and at the same time, the petitioner is claiming RECs without providing any information to the State Agency or Central Agency. NLDC has submitted that the capacity which is accredited and



registered under the REC mechanism cannot be permitted to be diverted towards sale under preferential tariff or for meeting renewable purchase obligation. NLDC has submitted that if such sale is permitted, it would be against the letter and spirit of REC Regulations and would lead to breakdown of REC mechanism. NLDC has further submitted that in accordance with the Approved Procedure issued under the REC Regulations, the petitioner has furnished a declaration that the petitioner has not entered into any PPA and shall not enter into any PPA to sell electricity generated from the renewable energy generating station at preferential tariff determined by the Appropriate Commission for 33.5 MW capacity for which participation in REC scheme is availed. NLDC has submitted that selling power to BEST through GEPL for fulfilling the renewable purchase obligation of the obligated entity is in clear violation of the declaration submitted by the petitioner. NLDC has prayed that the present petition be rejected.

9. MSLDC in its reply filed vide affidavit dated 19.10.2013 has submitted that MSLDC acting on the responsibility entrusted under



REC Regulations and Approved Procedure pointed out the discrepancies to the petitioner, MEDA and NLDC and also issued all EIRs only after deducting RPO component of energy which is not eligible for REC claim.

10. MEDA in its reply dated 25.10.2013 has submitted that the petitioner was accredited and registered in accordance with REC Regulations for sale of power to third party/trading. MEDA has further submitted that as directed by NLDC, MEDA investigated the matter and submitted a report. The recommendations of MEDA were also considered by NLDC vide its letter dated 16.4.2013 in which NLDC asked MSLDC to clarify whether the green energy sold by the petitioner to BEST through GEPL had been taken care of in the SLDC report for the month of November and December 2012 and January 2013. MEDA has submitted that the petitioner may be issued RECs by NLDC for the renewable energy injected into the grid in terms of schedule I of the petition.



Submission during hearing

11. Learned senior counsel for the petitioner submitted that the petitioner does not have any power purchase agreement for the capacity related to its generation to sell electricity at a preferential tariff determined by the Appropriate Commission and the petitioner fulfills the conditions for issue of RECs as envisaged under Regulation 5(1)(b) of the REC Regulations. Learned senior counsel further submitted that the petitioner has never directly sold the power to BEST and the petitioner was always ready and willing to forego RECs for the power sold by GEPL to BEST at preferential tariff. Learned senior counsel submitted that at the instance of NLDC, MEDA investigated the matter and in its letter dated 28.3.2013 to NLDC recommended for issuance of RECs to the petitioner for the renewable energy generation other than generation sourced by GEPL for sale to BEST for which the petitioner has not been claiming RECs. However, NLDC has neither issued any show cause notice nor sought any further clarification nor raised any grounds for non-issuance of RECs to the petitioner. Therefore, NLDC has failed to discharge its responsibility under the REC Regulations. Learned



senior counsel submitted that due to arbitrary action of NLDC withholding RECs accrued to the petitioner against the energy generated and injected into the grid from November 2012 to March 2013, the petitioner is suffering losses of approximately Rs.13 crore. Learned senior counsel submitted that the petitioner cannot be denied a right which has accrued in accordance with the REC Regulations.

12. Learned counsel for NLDC submitted that the capacity accredited and registered under the REC Regulations cannot be used to offset renewable purchase obligation. In the present case, although RECs are being claimed only for the balance portion i.e. power not sold under preferential tariff, the power generated from the capacity accredited and registered towards RECs has been sold at preferential tariff as is evident from the EIRs. Learned counsel submitted that the second amendment to REC Regulations issued on 10.7.2013 introduced a new clause under Regulation 5(1) as under:



“(d) It does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the renewable purchase obligation by such entity.”

Learned counsel submitted that the above amendment was merely declaratory or clarificatory in nature and such amendment has retrospective effect. Learned counsel submitted that the second amendment to REC Regulations merely declared and clarified what was always the settled legal position and hence the claim of the petitioner deserves to be rejected.

13. Learned senior counsel for the petitioner submitted that the interpretation of Regulation 5(1)(d) of REC Regulations by learned counsel for NLDC is not correct as the said clause has the effect of a new condition or restriction which operates independent of Regulation 5(1)(b). Learned senior counsel submitted that the second amendment itself recognizes that it shall come into force with effect from the date of publication in the official gazette which means that the new condition imposed by Regulation 5(1)(d) will become effective for the future transactions and not for the past. Learned



senior counsel submitted that it is a settled position of law that retrospective effect cannot be given in a manner which takes away any accrued or vested rights. As per the provisions of Regulation 5(1)(b) of REC Regulations, the petitioner is fully entitled to receive RECs for the portion of electricity not supplied under RPO.

14. In its written submission, NLDC has relied upon the judgements of the Supreme Court in Shyam Sunder Vs Ram Kumar {AIR 2001 SC 2472}, Allied Motors Vs Commissioner of Income Tax {(1997)224 ITR 644}, Zile Singh Vs State of Haryana {(2004) 8 SCC 1} in support of its contention that the Second Amendment to the REC Regulations merely declared and clarified what was always the settled position under the regulations and hence the claim of the petitioner deserves to be rejected. The petitioner in its written submission dated 4.4.2014 has submitted that the judgements cited by NLDC have no application in the present case. It has also been submitted that it is a settled principle of law that unless the statute confers expressly or by necessary implication the power to make delegated legislation with retrospective effect, no rule, bye-law, regulation or notification can



have retrospective operation. Therefore, the principles relating to declaratory/clarificatory statute and its consequential retrospective operation are not at all applicable to delegated legislation. In this connection, reliance has been placed on the judgements of Hon'ble Supreme Court in *Hukam Chand Etc Vs Union of India & others* {(1972) 2 SCC 601}, *Bakul Cashew Company & Others Vs Sales Tax Officer, Quilon & Another* {(1986) 2 SCC 365}, *P Mahendran and Others Vs State of Karnataka and Others* {(1990) 1 SCC 411}, *Vice-Chancellor, MD University, Rohtak Vs Jahan Singh* {(2007) 5 SCC 77}. The petitioner has also submitted that in any event, retrospective operation cannot be given in a manner that takes away any accrued or vested rights and in case of the petitioner, keeping in view the original Regulation 5(1)(b), the petitioner was fully entitled to receive REC for the portion of electricity not supplied under RPO.

Analysis of the Case

17. The main objection of NLDC is that the capacity which is accredited and registered under the REC mechanism cannot be



permitted to be diverted towards sale under preferential tariff or for meeting renewable purchase obligation. NLDC has contended that this position is fortified by Regulation 5(1)(d) inserted through the second amendment to the REC Regulations which provides that a RE generator is ineligible for issue of RECs if it sells electricity either directly or through a trader to an obligated entity for compliance of the renewable purchase obligation of such entity. According to NLDC, the second amendment is declaratory/clarificatory in nature and therefore, has retrospective operation and will be applicable in case of the petitioner. This contention has been refuted by the petitioner who has submitted that retrospective operation is not permissible in case of delegated legislation, particularly when the Electricity Act, 2003 does not confer such power in the Commission. The petitioner has argued that the provisions of Regulation 5(1)(b) of the REC Regulations prior to the second amendment is applicable in its case and the petitioner is eligible for grant of RECs in terms of the said regulation.



18. Two issues arise for our consideration. Firstly, whether the case of the petitioner is covered under Regulation 5(1)(d) of REC Regulations. In other words, whether Regulation 5(1)(d) should be interpreted to have retrospective application. Secondly, if the reply to the first issue is in the negative, whether Regulation 5(1)(b) of REC Regulations as it existed prior to the second amendment would entitle the petitioner for grant of RECs for that portion of electricity which was not sold to the obligated entity to meet its renewable purchase obligations.

Issue No.1: Applicability of Regulation 5(1)(d) in case of the petitioner

19. Regulation 5(1)(d) was introduced through the second amendment to the REC Regulations notified on 11.7.2013. The said regulation provides as under:

“(d) It does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the renewable purchase obligation by such entity.”

Thus the above provision disentitles a RE generator for issue of RECs if the electricity generated by it is sold directly or through a



trader to an obligated entity for compliance of its renewable purchase obligation. The period involved in the present petition is November and December 2012 whereas the Second Amendment was notified on 11.7.2013. The question arises whether the provisions of the Second Amendment would be applicable in case of the petitioner. In our view, the Second Amendment cannot be made applicable to the petitioner since the said amendment was to take effect from the date of notification i.e. from 11.7.2013.

Issue No.2: Whether the petitioner's claim is permissible under Regulation 5 as it existed prior to second amendment to REC Regulations?

20. In view of our finding in respect of Issue 1, it needs to be considered whether the petitioner is entitled for issue of RECs in accordance with the provisions of Regulation 5 as it existed prior to the second amendment. Regulation 5 prior to 11.7.2013 read 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.

Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of premature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier ,if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement.

.....
(2) The generating company after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure:

.....”

21. As per the above provision, three conditions are required to be fulfilled for registration and subsequent issue of RECs to a RE generator. Firstly, it should have been accredited with a State Agency. Secondly, it should not have a PPA for the corresponding capacity to sell at a preferential tariff to a distribution licensee. Thirdly,



the RE generator can avail RECs only if 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 (iii) through power exchange at market determined price.

22. In this case, the petitioner has set up a bagasse-based cogeneration power plant in the State of Maharashtra with an installed capacity of 36 MW, The petitioner has been accredited by MEDA on 3.4.2012 and was registered by NLDC on 2.5.2012 for a capacity of 33.5 MW for the purpose of RECs. The petitioner, in terms of its PPA dated 10.2.2010 with Reliance Energy Trading Limited, an inter-State trading licensee, commenced supply of electricity with effect from April 2012. Based on the Energy Injection Report raised by Maharashtra SLDC, the petitioner was issued RECs for the period from May 2012 to August 2012. The petitioner did not apply for RECs during September and October 2012 and the petitioner has explained that during this period, its plant was under shutdown. Subsequently,



the petitioner signed a PPA with GEPL, an inter-State trading licensee, on 16.9.2012 for sale of power at Rs.3.91/kWh from 1.10.2012 to 31.3.2013. Therefore, the case of the petitioner is covered under Regulation 5(1)(c)(ii) of the REC Regulations as the petitioner has sold power to RETL and GEPL which are trading licensees at mutually agreed price. However, GEPL made arrangement to sell part of the electricity sourced from the petitioner to BEST at Rs. 4.79/kWh and as per the LOI issued by BEST, the electricity purchased would be utilized by BEST for offsetting its renewable purchase obligations. GEPL suggested to the petitioner to voluntarily forego its claim to RECs against the quantum of energy supplied to BEST for which GEPL would compensate the petitioner at the rate of Rs.1.43/kWh for each unclaimed REC. The petitioner supplied energy to GEPL based on the offer made and showed such sale to GEPL under the “preferential tariff” box in the Energy Injection Report format. According to NLDC, the petitioner was aware from October 2012 that power sold by it through GEPL to BEST at preferential tariff was being used to offset renewable purchase obligations. However, the petitioner did not inform MEDA or NLDC



regarding the same nor did it seek reduction in the extent/quantum of capacity accredited and registered under the REC mechanism.

23. The question for determination is whether the power sold by the petitioner through GEPL to BEST is at the rate of preferential tariff and whether petitioner was required to seek fresh registration as part of its power was sold to BEST for meeting the latter's renewable purchase obligations. One of the eligibility conditions under Regulation 5 is that the applicant for registration and issue of RECs "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". Preferential tariff has been defined as "the tariff fixed by the Appropriate Commission for sale of energy, from a generating station using renewable energy sources, to a distribution licensee".

24. As regards the question whether the power sold by the petitioner to BEST through GEPL can be treated as at preferential



tariff, it is pertinent to extract the submission of the petitioner in

Ground E of the petition:

“E.The transaction between GEPL and the distribution licensee is both separate and independent of the transaction consummated between the petitioner and GEPL. The regulations do not provide for a situation such as the present case. In any event, keeping in view the overall object/purpose of the REC Regulations, the petitioner submits that the electricity supplied by the petitioner to GEPL was an independent and stand alone transaction. Further any sale by GEPL to BEST was not at a preferential tariff and therefore the petitioner could have claimed RECs for such quantum of power. However, confirming highest ethical standards, the Petitioner refrained from claiming any RECs benefits for the transaction. The regulatory gap has to be managed by a reasonable process, and should not result in frustrating the core object and purpose of the RPO obligations.”

The petitioner has supported its contention on the basis of letter dated 25.2.2013 from GEPL (Annexure A-9) which states that “GEPL has purchased power from Urjankur Shree Datta Power Co. Ltd and the same has been sold in open market through open access.” In the letter of MEDA dated 28.3.2013, there is a contradiction about the treatment of power sold by GEPL to BEST. In para 2, it has been stated that “under the provision of Lol M/s GEPL sold part of this power through open access to BEST vide Lol executed between



them at mutual agreed price”. In para 4 of the said letter, it has been stated that “necessary RECs may be issued for the energy which is not sold to BEST at preferential tariff”.

25. In view of the above submissions, there is a need to determine whether the power sold by the petitioner to BEST through GEPL is at preferential tariff. The power purchase agreement between GEPL and BEST is not on record. However, the following facts on record lead to the conclusion that the power which is supplied by the petitioner to GEPL which is in turn supplied by GEPL to BEST is at preferential tariff:

(a) Regulation 7.2 of Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its compliance and implementation of REC framework) Regulations, 2010 provides for the following:

“7.2 Every ‘Obligated entity’ may meet its RPO target by way of its own generation or procurement of power from RE developer or by way of purchase from other licensee or by way of renewable energy certificate or by way of combination of any of the above options.

Provided further that procurement of RE power generated within the State by Distribution Licensee at rate other than rate approved by the State Commission directly from generator or from trader shall not be considered as eligible quantum for fulfillment of renewable purchase obligation of such distribution licensee.”



The proviso to Regulation 7.2 clearly provides that procurement of RE power generated within the State by the distribution licensee whether directly from the generator or from trader shall only be at the rate approved by the State Commission for the purpose of fulfillment of renewable purchase obligation. Since BEST was purchasing power from GEPL for meeting its renewable purchase obligation which was sourced from the petitioner's generating station located in Maharashtra, the inevitable conclusion is that the price offered by BEST was at the rate determined by the State Commission. This sale conforms to the definition of 'preferential tariff'.

(b) The Lol issued by BEST to GEPL carried a condition that "since this power is being procured to fulfill BEST's renewable purchase obligation, the firm cannot avail any REC for the RE sold to BEST as per the contract." The petitioner in para 1.15 of the petition has admitted that GEPL informed the petitioner about the requirement in the Lol and suggested the petitioner to voluntarily forego its claim to RECs against the quantum sourced by GEPL for supply to BEST in lieu of compensation of Rs.1.43/kWh per unclaimed REC. The petitioner has agreed to the proposal and has shown the power



supplied to BEST through GEPL under the 'preferential tariff' box of Energy Injection Report format. Therefore, the petitioner is aware that the power sourced by BEST was at preferential tariff and has accepted the compensation of Rs.1.43/kWh which is nothing but the difference between the price determined by MERC and the mutually agreed price as per the PPA with GEPL.

(c) In para 9 of its written submission, the petitioner has submitted that "in the light of the above legal backdrop, it is stated that the issue involved in the present case is whether the Petitioner is entitled for RECs for the power generated during the period November 2012 to March 2013, after excluding any power sold by the petitioner to GEPL who in turn sold such power to Brihanmumbai Electricity Supply and Transport (BEST) Undertaking at a preferential tariff, which allowed BEST to offset its RPO obligations". This is an acknowledgement of the fact that the power supplied though GEPL to BEST was at a preferential tariff.



26. In the light of the above discussion, the Commission is of the view that the first leg of transaction between the petitioner and GEPL fulfilled the conditions of Regulation 5(1)(b) read with Regulation 5(1)(c)(ii) of the REC Regulations and the petitioner was eligible for issue of RECs. The moment GEPL entered into arrangement with BEST to supply electricity to enable BEST to offset its renewable purchase obligations and the petitioner accepted compensation at the rate of Rs.1.43/kWh in lieu of foregoing its claim of RECs for the said power, the transaction was converted into sale at preferential tariff. The petitioner became ineligible in terms of Regulation 5(1)(b) of REC Regulations for issue of RECs for the electricity sold to BEST for offsetting its renewable purchase obligations. Therefore, the argument of the petitioner that both transactions are standalone transactions and the petitioner did not claim the RECs for the power sold to BEST through GEPL keeping in view the highest ethical standard cannot be accepted. The petitioner did not claim and could not have claimed the RECs for such power as it was not permissible under the REC Regulations.



27. The petitioner has claimed RECs for that part of power which was sold by the petitioner to GEPL and in turn GEPL sold that power to third parties at mutually agreed rate. The petitioner is stated to have segregated such sale in the Energy Injection Report from the power sold at preferential tariff to BEST through GEPL. Such sale at mutually agreed price has been certified by MSLDC and recommended by MEDA for grant of RECs. The question for consideration is whether the capacity which has been registered for issue of RECs can be utilized fully or partly for sale at preferential tariff subsequently without seeking a fresh registration. NLDC has submitted that once the capacity is accredited and registered under the REC mechanism, the same cannot be diverted to non-permissible usage such as sale at preferential tariff or to offset renewable purchase obligations. We have considered this aspect. Regulation 5(1) talks about registration for issuance of and dealing in RECs subject to fulfillment of certain conditions. One of the conditions is that the RE generator should not have a power purchase agreement to sell electricity at a preferential tariff determined by the Appropriate commission. In other words, only that part of the capacity of the RE



generator for which it does not have the PPA for sale at preferential tariff shall be eligible for registration. Thus there is a clear cut distinction between the capacity utilized for sale of electricity under preferential tariff and sale at mutually agreed price/pooled cost of power purchase by distribution licensee/through power exchange at market determined price for the purpose of registration for issuance of RECs. That being the case, RECs cannot be issued for sale of power otherwise than as provided in the registration. Therefore, the RE generator is not at liberty to utilize the capacity registered under RECs for sale under preferential tariff without getting the registration modified. This would create problems for proper administration of issuance of RECs by the designated agency i.e. NLDC. We are of the view that if a RE generator seeks to reallocate its capacity between sale under preferential tariff and sale under REC mechanism, it should approach the NLDC through the concerned State Agency for modification of registration of capacity covered under the REC mechanism. This procedure should be invariably followed in future. NLDC is directed to make suitable modification of the Procedure and seek approval of the Commission.



28. We are constrained to point out that the petitioner neither informed MEDA nor NLDC when it permitted GEPL to sell part of the power at preferential tariff to BEST and accepted compensation in lieu of its claims for RECs for such power. This came to the notice of NLDC and MEDA when it was pointed out by MSLDC. Such situation was avoidable by the petitioner keeping in view the prevalent regulations. NLDC has got the matter investigated and as per the report of MEDA, there is no double benefit to the petitioner. In other words, the same capacity is not utilized for claiming REC as well as preferential tariff. Taking into account the recommendations of both MEDA and MSLDC, we direct NLDC to issue RECs to the petitioner for the months of November 2012 to March 2013 for the renewable energy power after excluding the power sold to BEST through GEPL at preferential tariff for the purpose of meeting the renewable purchase obligations of the distribution licensee. The RECs should be issued subject to fulfillment of other requirements of the REC Regulations and Procedure. The decision to grant RECs to the



petitioner is a one-time exception in the facts and circumstances of the case and shall not be cited as a precedent.

29. The petition No. 167/MP/2013 is disposed of in terms of above.

Sd/-
(A K Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

