

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 168/MP/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order : 28th of February, 2017

In the matter of

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

Porwal Auto Components Limited
209, Industrial Sector-1
Pithampur, Distt. Dhar (MP)

....Petitioner

Vs

1. Chief Executive Officer
National Load Dispatch Centre
Power System Operation Corporation Limited
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi- 110016.

2. Managing Director
MPPKVV Co. Limited,
GPH Compound, Pologround Indore

3. Managing Director
MP Urja Vikas Nigam Limited
Urja Bhawan, Link Road No. 2,
Shivaji Nagar, Bhopal (MP)

4. Chief Engineer
SLDC, Nayagaon
Jabalpur-482008 (MP)

...Respondents

Following were present:

Shri Ajay Porwal, PACL
Ms. Jayantika Singh, NLDC
Shri R.A. Sharma, NLDC
Ms. Abilia Zaidi, POSOCO
Shri Ashok Rajan, POSOCO
Shri Shailendra Verma, POSOCO

ORDER

The petitioner, M/s Porwal Auto Components Ltd. (PACL), has filed the present petition seeking a direction to National Load Despatch Centre (NLDC) to issue the Renewable Energy Certificate (REC) from the date of commissioning of the generating station under the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations).

2. The submissions of the petitioner are as under:

(a) The petitioner has set up a 1.5 MW (AC) Captive Solar PV power plant (Project) at Ujjain under the Government of Madhya Pradesh Solar Policy, 2012. The petitioner was granted accreditation by the Madhya Pradesh Urja Vikas Nigam Ltd.(MPUVNL) vide letter dated 27.12.2013. The project was commissioned on 27/28.12.2013. Thereafter, on 3.1.2014, the petitioner made online application to National Load Despatch Centre (NLDC) for grant of REC registration along with metering installation report and sent the hard copy along with enclosures on 6.1.2014 which was received by NLDC on 13.1.2014.

(b) NLDC vide its letter dated 16.1.2014 requested the petitioner to submit a copy of the commissioning certificate. On the same being made available to

NLDC on 7.2.2014, NLDC again asked for the commissioning certificate on the letterhead of Madhya Pradesh Pashcim Kshetra Vidyut Vitran Company Ltd. The petitioner sent the commissioning certificate to NLDC, however, NLDC again refused to accept it on the ground that commissioning certificate is not legible.

(c) The petitioner submitted typed certificate to NLDC on 28.3.2014. Thereafter, on 11.4.2014, NLDC sought confirmation from State Nodal Agency (SNA) regarding commissioning certificate. SNA verified the certificate on 22.4.2014.

(d) The petitioner was registered under REC mechanism by NLDC on 5.5.2014 for which information was sent by NLDC to Madhya Pradesh State Load Despatch Centre (SLDC, MP). SLDC, MP vide its letter dated 15.5.2014 informed the petitioner that certification of energy shall be done by SLDC based on the joint meter reading report. SLDC, MP further informed that joint meter reading should be done for the period from 6.5.2014 to 31.5.2014 i.e. from the next date of registration with NLDC.

(e) In response, the petitioner, vide its letter dated 20.6.2014 objected the requirement of SLDC, MP as the same was not in line with Regulation 7 (4) of RE Regulations and requested SLDC, MP to issue the injection report for the period 27.12.2013 (Date of commissioning) to 5.5.2014 (Date of registration).

(f) SLDC, MP vide its letter dated 28.7.2014 informed the petitioner that in terms of Regulation 10 (1) of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) (Second Amendment) Regulations, 2013, the petitioner is eligible for issuance of REC from date of registration and accordingly, SLDC issued the Energy Injection report with effect from 6.5.2014 i.e from the next day of registration. SLDC, MP vide its letter dated 20.4.2015 informed the petitioner that since NLDC has registered eligible renewable energy generators for REC, the petitioner has to take up the matter with NLDC for revision of date of registration and if NLDC revises the date of registration as date of commissioning, the same shall be considered by SLDC, MP and injection reports would be issued accordingly.

(g) The petitioner vide its letter dated 10.4.2015 brought to the knowledge of CEO, NLDC that as per the observation of the Commission in para 11 of the Commission's order dated 7.5.2013 in Petition No. 211/ MP/2012 (Simran Wind Projects (P) Ltd, Kolkata & Ors Vs NLDC), an eligible entity is entitled for RECs only after registration, unless it is proved that the registration certificate was withheld or delayed by the Central Agency for any reason not attributable to the applicant RE Generator. The petitioner requested NLDC to direct concerned office to issue the remaining RECs.

(h) NLDC vide its letter dated 15.5.2015 informed the petitioner that as per Regulation 10 (1) of the REC Regulations, Clause 2.3 of the Model Procedure/Guidelines for Accreditation of Renewable Energy Generation

Project or Distribution Licensee and Clause 2.2 of Detailed Procedure for registration of renewable energy generation project by central agency, which provide an option to RE generators to initiate the process of accreditation and registration well in advance to avail the benefits of REC mechanism, RECs are to be issued with effect from the day after the registration of the project.

3. In the above background, the petitioner has submitted that as per para 11 of the Commission's order dated 7.5.2013 in Petition No. 211/MP//2012, the eligible entity is entitled for RECs for the energy generation and injection into the grid after registration, unless it is proved that the registration withheld or delayed by the Central Agency for any reasons not attributable to the application RE Generator. The petitioner has stated that it submitted the commissioning certificate on 3.1.2014 which was not accepted by NLDC, the same not being on the proper format or typed or illegible. Further, the petitioner had initiated the process of REC registration on 9.11.2013 which was much before the due date of commissioning of 28.12.2014 in line with the REC Regulations. The petitioner has made the following prayers:

“(a) May direct Respondent 1 (NLDC) to revise the registration w.e.f 28.12.2013, the date of actual commissioning of the plant;

(b) May direct Respondent 2 (SLDC) to send the injection report (joint meter reading) w.e.f the date of commissioning;

(c) May direct to reimburse the entire cost of this Petition ; and

(d) Any other relief which the Commission may deem fit.”

3. The petition was admitted 18.8.2015 and notice was issued to the respondents to file their replies.

4. SLDC, MP, vide its reply dated 6.10.2015, has submitted as under:
- (a) The petitioner's contention that it was accredited by SLDC, MP is wrong, as the State Agency for accreditation under REC mechanism is MP Urja Vikas Nigam Ltd., and not the SLDC.
- (b) SLDC, MP certifies the monthly energy injection and communicates the same to NLDC for issuance of RECs to renewable energy generators registered by NLDC under the REC mechanism.
- (c) The commissioning certificate was issued to the petitioner by Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co Ltd. vide letter No. SLDC/REC/07 dated 27.2.2015.
- (d) No confirmation was obtained by NLDC from SLDC, MP regarding commissioning certificate. NLDC, vide e-mail dated 5.5.2014 intimated SLDC, MP that the petitioner has been registered w.e.f 5.5.2014.
5. National Load Despatch Centre, vide its reply dated 23.9.2015, has submitted as under:
- (a) On 5.5.2014, the petitioner was issued registration certificate by NLDC in terms of the provisions of Regulation 5 of the REC Regulations. As per detailed procedure approved by the Commission, RE generator has to submit the commissioning certificate issued by concerned authorities at the time of submission of the application for registration. As per Regulation 5 (3) of REC Regulations, after the verification of the documents by the Central

Agency, the project has to be registered within 15 days of the submission of the application.

(b) The petitioner did not enclose the commissioning certificate with its application. Moreover, in the online application, the commissioning date was indicated as 30.12.2013. However, in the covering letter, it was mentioned as 28.12.2013. In view of the said discrepancy, NLDC sought a copy of the certificate from the petitioner as the plant had already commissioned before the submission of the application for registration of the project under REC mechanism.

(c) Subsequently, the petitioner under its letter dated 7.2.2014, submitted a copy of the recommendation of the State Agency and the commissioning certificate. However, the commissioning certificate was submitted by the petitioner on plain paper indicating the commissioning date as 27.12.2013.

(d) As different dates were being given by the petitioner and the certificate being on plain paper, NLDC sought commissioning certificate on the letter head of the issuing authority. NLDC vide its e-mail dated 11.4.2014 also sought confirmation of the commissioning certificate to the State Agency which was confirmed on 24.4.2014.

(e) After verification of the application, the petitioner was registered on 5.5.2014 by the Central Agency under REC mechanism.

(f) Regulation 10(1) of the REC Regulations provides that the RE Generator would be eligible for issuance of RECs from the date of

commercial operation or from the date of registration of the plant, whichever is later. Therefore, the petitioner is eligible for RECs from 5.5.2014 and not from the date of CoD.

6. The petitioner, vide its rejoinder to the reply of NLDC has reiterated the submissions made in the petition and has submitted that the reason for discrepancy in the dates of commissioning in the online application and in the covering letter is due to the installation of Meter Equipment (ME) and Availability Based Tariff (ABT) meters on 27/28.12.2013. Therefore, the actual load was taken on 30.12.2013, when the commissioning certificate was issued based on MRI report. The petitioner has further submitted that since NLDC did not prescribe any format for the commissioning certificate, the meter installation report should have sufficed to be treated as commissioning certificate as it has three signatures of authorized officers. The petitioner has submitted that the process of registration was started on 30.7.2013 by obtaining the GoMP registration. Only after the registration, Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd (MPPKVV Co Ltd) gave connectivity permission. Therefore, the final connectivity permission was granted only on 26.12.2013.

Analysis and Decision:

7. We have considered the submissions of the parties and perused documents available on record. The issue for our consideration is whether the petitioner is entitled to benefits of RECs from the date of commissioning or from the date of registration. The petitioner has relied upon the decision of the Commission in order dated 7.5.2013 in Petition No. 211/MP/2012 in support of its claim that since

registration was delayed for reasons not attributable to it, the date of registration should be revised to the actual date of commissioning of the project. The petitioner has submitted that the Commission in the said order dated 7.5.2013 had observed that an applicant is eligible for RECs only after registration, unless it is proved that the registration certificate was withheld or delayed by the Central Agency for any reason not attributable to the RE Generator. Before we go into the question whether the case of the petitioner is covered under order dated 7.5.2013 in Petition No. 211/MP/2012, the facts leading to the issue of the said order need to be briefly discussed. In Petition No. 211/MP/2012, the petitioner had sought clarification that it is entitled to the RECs from the date of commissioning of the project. The Commission after examining the provisions of the REC Regulations rejected the prayer of the petitioner that it is eligible for issuance of RECs from the date of commissioning, irrespective of the dates of registration with the Central Agency.

9. Aggrieved by the said order dated 7.5.2013, Simran Wind Projects Private Limited and others filed an Appeal No.156 of 2013 before the Hon`ble Appellate Tribunal for Electricity (Appellate Tribunal). Appellate Tribunal vide its judgment dated 28.11.2014 set aside the Commission`s order and held as under:

“35. Summary of our findings:

(a) to (c) *****

(d) Thus, the Appellants would be entitled to the REC from the COD of the respective renewable energy projects subject to Regulation 7(1) of the REC Regulations which allows Appellants to apply for REC within three months after the corresponding generation.”

10. The Commission challenged the judgment of the Appellate Tribunal dated 28.11.2014 before the Hon`ble Supreme Court. The Hon`ble Supreme Court vide its

order dated 9.7.2015 in Appeal No. 17807/2015 has stayed the judgment of the Appellate Tribunal and appeal is to be listed for hearing on merit. In view of the above, the Commission`s decision in the order dated 7.5.2013 is not applicable in case of the petitioner.

12. The petitioner has submitted that it is eligible for grant of REC from the date of commissioning of the generating station. Para 2.2, 3.4 (b), 3.6 of the revised Detailed Procedure under REC Regulations approved vide order dated 5.11.2015 provides as under:

“2.2 The Central Agency shall undertake the registration of any RE Generating Company as ‘Eligible Entity’ for its RE generation project not earlier than three months prior to the proposed date of commissioning of such RE generation project. For an existing RE Generation Project, the Central Agency shall undertake the registration after receipt of the Commissioning Certificate issued by the concerned State authorities.”

3.4 (b) While considering any application for Registration, the Central Agency shall verify and ascertain availability of following information:

...

b. Commissioning Certificate/ Synchronization Certificate for existing projects or Commissioning Schedule for new projects, whichever is applicable.”

“3.6 STEP 6: The process of registration shall normally be completed within 15 days from date of receipt of complete information including the details of fee paid by the applicant to Central Agency. In case registration is not granted at this stage, the reasons for rejecting the application for registration shall be recorded and intimated to Applicant in writing.”

As per the above provisions, NLDC is required to verify the commissioning certificate/synchronization certificate for existing projects or commissioning schedule for new project before grant of registration and the applicant is required to submit the commissioning certificate to NLDC along with the application for grant of RECs. Any application incomplete in any respect is required to be summarily rejected and intimation to that effect is to be given to the applicant.

13. The petitioner has submitted that its project was commissioned on 28.12.2013 and was granted accreditation by Madhya Pradesh Urja Vikas Nigam Ltd. vide letter dated 27.12.2013. Thereafter, the petitioner applied online to NLDC on 3.1.2014 for grant of REC registration along with metering installation report and sent the hard copy along with enclosures on 6.1.2014 which was received by NLDC on 13.1.2014. The petitioner has submitted that NLDC initially sought the commissioning certificate as it did not receive the same along with application form. The petitioner sent the commissioning certificate to NLDC. However, NLDC refused to accept it on the ground that commissioning certificate is not legible and it is not on the letter head of SLDC, MP. After taking a confirmation from SLDC, MP regarding the commissioning certificate, NLDC issued the registration of REC on 5.5.2014. The petitioner has submitted that in the absence of a prescribed format for the commissioning certificate, the metering report should have sufficed to be treated as commissioning certificate.

14. NLDC has submitted that the petitioner did not enclose the commissioning certificate along with its application. Moreover, in the online application, the commissioning date was indicated as 30.12.2013. However, in the covering letter, it was mentioned as 28.12.2013. Therefore, in view of the said discrepancy, NLDC sought from the petitioner, a copy of the certificate. NLDC has submitted that subsequently, the commissioning certificate was submitted by the petitioner on plain paper indicating the commissioning date as 27.12.2013. As different dates were given by the petitioner and the certificate being on plain paper, NLDC sought certificate on the letter head of the issuing authority. NLDC has submitted that it also sought confirmation of the commissioning certificate to the State Agency by e-

mail on 11.4.2014 which was confirmed on 24.4.2014. NLDC has submitted that after verification of the petitioner's application, the petitioner was granted REC in terms of the provisions of the REC Regulations.

15. We have considered the submissions of the petitioner and NLDC. Based on the records it is clear that on 27.12.2013 Madhya Pradesh Urja Vikas Nigam Limited granted the accreditation to the petitioner. On 03.01.2014 the petitioner applied for the grant of REC registration to NLDC. On 14.01.2014 NLDC advised the petitioner to submit commissioning certificate along with declaration from State Nodal Agency stating that all procedures approved by the Commission were followed for accreditation. However, the documentation submitted by the petitioner on 07.02.2014 was not on the letter head of the issuing Discom and hence was not accepted by NLDC. The petitioner again submitted the commissioning certificate on 11.03.2014, however the same was again not accepted by NLDC as the certificate was not legible. The petitioner again submitted the documentation on 28.03.2014. On 11.04.2014 NLDC advised the State Nodal Agency to confirm the commissioning certificate since the same was received after the accreditation granted by Madhya Pradesh Urja Vikas Nigam Limited. The State Nodal Agency on 24.04.2014 confirmed the commissioning certificate of the petitioner. On 02.05.2014 the application of the petitioner was verified by NLDC and the petitioner was advised to deposit the one time registration fees in order to complete the registration process. On 05.05.2014 the petitioner deposited the one time registration charges along with annual charges with NLDC and on the same day the registration was confirmed by NLDC to the petitioner. During the course of hearing, the Commission enquired from NLDC whether any format has been prescribed by the Central Agency. In response, the representative of NLDC submitted that NLDC

has not prescribed any format for the commissioning certificate. The representative of NLDC further submitted that the petitioner should make request for registration of RECs from 13.01.2013 which is the date of commissioning. During the hearing, the representative of the petitioner and NLDC confirmed that the date of commissioning of the project can be treated as 30.12.2013.

6. Regulation 10 (1) of REC Regulations provides as under:

*"(1) After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations **from the date of commercial operation or from the date of registration** of such plant by the Central Agency whichever is later."*

As per the above provisions, the RE Generator would be eligible for issuance of RECs from the date of commercial operation or from the date of registration of the plant, whichever is later.

17. According to NLDC, the petitioner is eligible for RECs from the date of submission of all documents pertaining to grant of RECs to NLDC i.e. 13.1.2014 and not from the date of COD. During the course of the hearing, both the petitioner and NLDC accepted the date of commissioning as 30.12.2013. In our view, the delay in registering the project for RECs is primarily procedural in nature and is attributable to the correspondence between the petitioner and NLDC to decide the date of commissioning of the project. Accordingly, the petitioner is entitled to grant of RECs w.e.f. 13.1.2014 i.e. date of receipt of the complete documents by NLDC. We direct NLDC to issue RECs to the petitioner w.e.f 13.1.2014 within one month from the date of issue of the order.

18. The petition is disposed of in terms of above.

Sd/-
(Dr.M.K. Iyer)
Member

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson