

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 120/MP/2017

Coram:

**Shri P. K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order: 1st of March, 2018

IN THE MATTER OF

Petition seeking relaxation of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and seeking directions against the Respondent, National Load Despatch Centre on the issue of Renewable Energy Certificate to the members of the petitioner for FY 2016-17 and for future.

AND

IN THE MATTER OF:

Regulation 15 of the Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010

AND IN THE MATTER OF

Indian Wind Power Association (IWPA)
Maharashtra State Council
Empire House, 214, D.No. Road
A.K. Nayak Mark, Fort
Mumbai-400001

....Petitioner

Vs.

The Nodal Officer, REC Mechanism
1st Floor, National Load Despatch Centre (NLDC) Office
Power System Operation Corporation Limited (POSOCO)
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016

....Respondent

Parties Present:

Shri M.G. Ramachandran, Advocate, IWPA
Ms. Anushree Bardhan, Advocate, IWPA
Shri Arjun Krishnan, Advocate, POSOCO
Shri Ankur Singh, Advocate, POSOCO
Shri Ashok Rajan, POSOCO

ORDER

The Petitioner, Indian Wind Power Association (IWPA), is a society registered under Section 10 of Tamil Nadu Societies Registration Act, 1975. The present petition has been filed by the Petitioner for and on behalf of its members including M/s Weizmann Limited and M/s Karma Energy Limited who have authorized the Petitioner to represent their case and seek relaxation in filing for grant of Renewable Energy Certificates (RECs) for FY 2016-17 (August, 2016 to October, 2016). Further, some of the members of the Petitioner are aggrieved that they are unable to upload the REC applications for FY 2016-17 (August 2016 to October 2016) on NLDC portal as the portal does not accept the RECs applications for credit notes relating to period earlier than six months. In the present petition, the Petitioner has sought the following reliefs:

- “(a) Direct Respondent to accept the applications of the members of the Petitioner for the months of July 2016 to October 2016;
- (b) Direct Respondent to issue RECs to the members of the Petitioner for the months of July 2016 to October 2016 at the earliest;
- (c) Award costs of these proceedings against the Respondents and in favour of the Petitioner;
- (d) Pass such other order(s) as the Hon’ble Commission may deem just in the facts of the present case.”

2. The Petitioner has submitted that its members are affected due to non-compliance of REC applications by NLDC. The Petitioner has submitted that the Wind Turbine Generators (WTGs) namely M/s Weizmann Limited and M/s Karma Energy Limited have

achieved their commercial operation in the years 2000 and 2001 respectively and have been injecting the electricity into the grid. These WTGs obtained accreditation from the State Agency in Maharashtra and registration from the Central Agency as per the details given below:

S. No.	Developer	Date of Accreditation	Date of Registration
1	Weizmann	Developer No. 3059 MHONSWEIZM001A030911 dated Sept. 3, 2011 and further renewed upto Nov. 21, 2021	September 24, 2011
		Developer No. 3077 MHONSWEIZM002A030911 dated Sept. 3, 2011 and further renewed upto Nov. 21, 2021	September 24, 2011
2	Karma Energy	Developer No. 3136 MHONSKAREN001A030911 dated Sept. 3, 2011 and further renewed upto Nov. 21, 2021	September 24, 2011
		Developer No. 3152 MHONSKAREN002A030911 dated Sept. 3, 2011 and further renewed upto Nov. 21, 2021	September 24, 2011

3. The Petitioner has submitted that Regulation 7 of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as the REC Regulations, 2010) provides that the eligible entities shall apply to NLDC for certificates within six (6) months after corresponding generation from eligible renewable energy projects and therefore, the applications for issuance of REC are required to be made within six months of generation.

4. The Petitioner has submitted that its members made an application seeking Medium Term Open Access to MSEDCL as per the Maharashtra Electricity Regulatory Commission

(Distribution of Open Access) Regulations, 2016 (hereinafter referred to as the “MERC DOA Regulations, 2016”). However, MSEDCL after a long delay informed that it will grant Medium Term Open Access from August 1, 2016 to March 31, 2017. Consequently, the members of the Petitioner sought Short Term Open Access for the month of July, 2016 which was granted only on June 28, 2016. MSEDCL wrongfully withheld the Open Access (OA) permissions to the members of the Petitioner and no credit notes/energy injection reports could be obtained and the Petitioner’s members therefore, could not make REC Applications for the energy injected from the month of July, 2016 to NLDC. The members of the Petitioner vide their letters dated September 28, 2016 and October 14, 2016 once again called upon MSEDCL to issue medium term OA permissions.

5. The Petitioner has submitted that despite various orders of the Maharashtra Electricity Regulatory Commission (“MERC”) including Order dated January 3, 2013 in Case Nos. 8, 18, 20 and 33 of 2012, directing MSEDCL to process OA applications in timely manner and issue credit notes in timely manner, the MSEDCL once again withheld the OA permissions without any justified or valid reasons. MSEDCL granted open access permission for the period from August 1, 2016 to March 31, 2017 only in the month of March, 2017.

6. The Petitioner has submitted that on receipt of OA permission, the members of the Petitioner immediately approached SLDC/MSEDCL for issuance of the energy injection reports/credit notes. The details of the dates on which energy injection reports/credit notes were issued are given below:

S. No.	Developer	Metering Point No.	Period	Date of Energy Injection Report
1.	M/s Weizmann	3059	July 2016 to February 2017	April 19. 2017
		3077	July 2016 to February 2017	April 19. 2017
2.	M/s Karma Energy Limited	3152	July 2016 to February 2017	April 19. 2017
		3136	July 2016 to February 2017	April 19. 2017

7. The Petitioner has submitted that its members immediately on receipt of the energy injection reports attempted to file the application for issuance of RECs. However, the online system does not accept online application for energy injected for a period prior to six (6) months. Thus, the application for the allotment of the RECs could not be made for no fault of the members of the Petitioner but on account of gross defaults of MSEDCL and delay in issuance of order.

8. The Petitioner has proposed that the time period of six (6) months should be counted from the date of issuance of Energy Injection Report by the SLDC as the energy injection reports can be obtained only once OA permissions are issued. One of the members viz. M/s Weizmann Ltd. vide its email dated May 7, 2017 informed NLDC regarding the Application for the RECs pertaining to the Wind Power Generation for July, 2016 to October, 2016 and requested NLDC for the alternate methods for filing the Application for allotment of the RECs. However, there has been no response till date.

9. The Petitioner has submitted that its members had faced similar issues for the FY 2014-15 wherein due to delay in issuance of OA permissions, pending litigations and consequent delay in issuance of credit notes had led to delay in filing applications for RECs. The Petitioner had approached the Commission vide M.P. NO. 177 OF 2016 and vide Order dated March 20, 2017, the Commission had directed Respondent herein to accept the application even after expiry of 6 months period. However, the said Order had

also stated that *the said Order shall not be taken as precedent*. In view of the said Order it is expedient for the Petitioner to seek similar relief for issuance of RECs for the period July, 2016 to October, 2016 and that Regulation 15 of the REC Regulations, 2010 may be relaxed.

Submission of the Respondent

10. Respondent has submitted that the petition is bad in law for misjoinder of necessary party i.e. MSEDCL which also acts as State Load Despatch Centre. The petition is also devoid of merit as the non-issuance of RECs for the period is due to the default of concerned members of the petitioner Association namely M/s Weismann Ltd. and M/s Karma Energy Ltd. The members have failed to submit applications for issuance of RECs along with relevant documents within the stipulated time limit of six months. As per the approved Procedures, the RECs to the members of the Petitioner were issued for the month of July'16, and application for the month of August, 2016 to October, 2016 were not submitted within six months from the date of corresponding generation of electricity and hence RECs for the period August, 2016 to October, 2016 were not issued. Neither the REC Regulations nor the aforesaid Procedure vests any discretionary power on the answering Respondent to relax, extend or condone the delay in so far as the compliance with any of the provisions is concerned. Regulation 7 of the REC Regulations, 2010 stipulates that an eligible entity must apply to the answering Respondent for issuance of REC within six months for the month of which the RECs are sought. The Respondent is entrusted with the responsibility of scrutinizing the application for the purpose of ascertaining the compliance of all conditions by the eligible entity prior to issuance of RECs. REC Issuance Procedure has prescribed a step by step procedure that must be

followed while issuing RECs to an eligible entity. Sub-clauses (1), (2), (4) and (5) of Regulation 7 of the REC regulations, 2010 as well as Step 1 and 5 of the REC Procedure uses the word “shall” which generally denotes that a provision is imperative in nature and must be strictly complied with. The Respondent has relied upon the judgment of Hon’ble Supreme Court in *Ramchandra Keshav Adke v. Govind Joti Chavare, (1975) 1 SCC 559* as it acknowledges the age old fundamental principle of law i.e. when a statute provides for a thing to be done in a particular manner, it must be done in that way or not at all.

11. The Respondent has stated that the Petitioner has made certain vague assertions qua MSEDCL which are not substantiated with the documents on record. The petition and documents annexed in the present form are not enough to ascertain the reason behind the purported delay caused at the end of MSEDCL in issuing energy injection report/credit note to the petitioner’s members for the period in question. The Respondent has submitted that MSEDCL/SLDC is a necessary party or a proper party to the present proceeding whose presence is required for proper adjudication in the present case. Hence, the Commission ought to dismiss the present petition for non-joinder of a necessary party or in the alternative, add MSEDCL as a Respondent to the present case.

Rejoinder submitted by the Petitioner

12. The Petitioner vide its Rejoinder dated 29.9.2017 has reiterated the facts mentioned in the Petition. Therefore, the same are not reproduced herewith for the sake of brevity.

13. Additionally, the Petitioner has submitted that the relief sought in present petition is vis-à-vis Respondent only and not MSEDCL. The Petitioner has also placed its reliance on the Order dated 8.10.2013 in Petition 258/MP/2012 in the matter of M/s Jsons Foundry Pvt.

Ltd. Vs. NLDC and Order dated 20.3.2017 in Petition No. 177/MP/2016 in the matter of IWPA Vs. NLDC wherein the Commission had considered difficulties and granted dispensation for certain period for submission of energy injection reports. The Petitioner has submitted that the Commission in its order in Petition No. 177/MP/2016 had directed the Respondents to accept the applications after expiry of the required time period of six months when there had been a delay on part of Petitioner's members in submitting the applications due to fault of State Discom. The Petitioner has submitted that they are not raising any allegations on the Respondent or SLDC. It is only seeking relaxation in filing application for issuance of RECs by the members of the Petitioner. Further, the Respondent has failed to establish the relevance of the judgment cited in context of the Petition.

Analysis and Decision

14. We have heard the learned counsel for the Petitioner and the representative of the Respondent and have carefully perused the records. From the submissions of the parties, the following issue arises before the Commission:

Issue: Whether the members of the Petitioner are entitled to be granted RECs for the months from August, 2016 to October, 2016 (FY 2016-17) on the basis of the Energy Injection Reports issued in April 2017?

15. M/s Weizmann Ltd. and M/s Karma Energy Ltd. are the members of the Petitioners and are operating since 2000 and 2001 respectively. They are generating and injecting the electricity into the grid for which NLDC was issuing RECs to them from time to time. The Petitioner has submitted that its members made an application seeking Medium Term Open Access to MSEDCL as per the MERC DOA Regulations, 2016. However, MSEDCL

after a long delay informed that it will grant Medium Term OA from August 1, 2016 to March 31, 2017. Consequently, the members of the Petitioner sought short term OA for the month of July, 2016 which was granted only on June 28, 2016. Consequently, no credit notes/energy injection reports could be obtained for the period from August to October, 2016 and the members of the Petitioner could not apply for RECs. This action of MSEDCL was challenged by the Petitioner before the MERC in Case No. 8, 18, 20, and 33 of 2012, wherein MERC directed MSEDCL to process OA application in timely manner and issue credit notes in timely manner. The relevant extract of the Order of MERC dated January 3, 2013 in Case No. 8, 18, 20, and 33 of 2012 is as under:

“As regards the issue related to delay in issuance of credit notes for third party sales and self-use by MSEDCL, the Commission notes that during the hearing held on November 2, 2011 in Case No. 19 of 2011, the Commission directed MSEDCL to issue pending credit notes and submit Citizen Charter for various activities involved in wind energy transactions. Subsequently, MSEDCL issued the Citizen Charter for NCE/CPP Decision stipulating following:

- a. Time frame for disposal of proposals at MSEDCL head office
- b. Time frame for disposal of proposals at field office
- c. Procedure for grid connectivity
- d. Procedure for execution of Energy Purchase Agreement (EPA)
- e. Procedure for change of name
- f. Procedure for change of ownership

3.152 The Commission notes that MSEDCL, under the head of Time frame for disposal of proposals at field office stipulated the time frame for issuance of generation credit notes and credit adjustment thereafter reproduced as under:

Sr. No.	Particulars	No. of Working days
1.	Issuance of Generation Credit Notes (GCN) in respect of Wind and Open Access Decisions	15
2.	Credit Adjustments after receipt of GCN – in respect of Wind and Open Access Decisions	10
3.	Payment to generators having EPA with MSEDCL Note : In respect of CPPs, in line with term and condition mentioned in the EPA	Within 60 days from receipt of Invoice in Circle Office

.....The Commission further directs MSEDCL to adhere to the timelines as stipulated in their Citizen Charter.”

16. However, in the instant case, MSEDCL once again withheld the OA permissions without any justified or valid reasons. MSEDCL granted open access permission for the period from August 1, 2016 to March 31, 2017 only in the month of March, 2017. Based on the Energy Injection Report, the members of the Petitioner attempted to file the application with NLDC through online means but could not succeed as the window was not open for the past period beyond six months. Thereafter, the energy injection reports for this period were issued by MSEDCL only in April, 2017.

17. The Respondent has submitted that the members of the Petitioner had failed to submit signed Online Energy Injection Report within the specified time limit to NLDC. Therefore, RECs were not issued by NLDC in strict compliance with the REC Regulations. NLDC has further submitted that since no discretionary power is vested in NLDC under REC Regulations or the Detailed Procedure to relax any of the conditions of the Regulations and Procedure, NLDC could not have accepted the applications of the members of the Petitioner association and processed their cases.

18. In the light of the submission of the parties, it is necessary to examine the relevant provisions of the REC Regulations and Detailed Procedure. Regulation 7 of the REC Regulations stipulates as under: -

“7. Denomination and issuance of Certificates

(a) The eligible entities shall apply to the Central Agency for certificates within six 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.”

19. Clause 7.1 with respect to timelines in the “Procedure for issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency” stipulates that:-

“7.1 The RE Generator as an Eligible Entity shall apply for issuance of renewable energy certificates within six (6) months from the month in which renewable energy was generated and injected into the electricity grid....”

20. The above provisions provide that the Energy Injection Report has to be filed within 6 months of generation and injection of RE power into the grid. These provisions do not vest any discretion in the Central Agency to accept the application for grant of REC in relaxation of the provisions of the Regulations.

21. On perusal of the sequence of events leading to the grant of Energy Injection Reports to the members of the Petitioner, we are of the view that delay in issue of Energy Injection Reports was not attributable to the members of the Petitioner. The MSEDCL did not process medium term OA application despite directions of MERC in this regard. Delay on part of MSEDCL cannot be attributed to the members of the Petitioner who were pursuing the available legal remedy. On receipt of energy injection reports/credit notes, the members of the Petitioner attempted to file the application for issuance of RECs with National Load Despatch Centre. However, since the online system did not accept online application for energy injected for a period prior to six (6) months, they were unable to apply for the RECs online. Further, one of the members of the Petitioner viz. M/s Weizmann Ltd., vide its email letter dated May 7, 2017 requested NLDC for alternate methods for filing the application for allotment of the RECs to which no response was received. In our view, denial of RECs on the ground of procedural delay (not attributable to the Petitioner) in the present case will go against the objective and spirit of promoting renewable energy generation.

22. The Commission has been vested with the power to relax any provisions of the REC Regulations to give relief to the affected parties. Regulation 15 of the REC Regulations provides as under:-

“15. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person”.

23. In view of the fact that delay in filing application was not due to fault of Members of the Petitioner, the Commission in exercise of power under Regulations 15 of the REC Regulations relaxes the requirement of six months stipulated period for submitting the application in terms of Regulation 7 of REC Regulations and Clause 7.1 of the Detailed Procedure and directs the Respondent to entertain the applications of members of the Petitioner alongwith the Energy Injection Reports issued in March, 2017 and issue RECs for the concerned period of FY 2016-17 (August, 2016 to October, 2016) after due verification of the documents.

24. It is clarified that the decision in this regard shall not be quoted as a precedent. Compliance with the provisions of the REC Regulations and the Procedure shall continue to be a prerequisite for consideration of the applications for issue of RECs. This Order is also in consonance with the order dated 20th March, 2017 given in Petition No. 177/MP/2017.

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

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

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P. K. Pujari)
Chairperson