

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 141/MP/2017

- Subject : Petition under Section 79 (1)(f) of the Electricity Act, 2003 read with Regulations 14 and 15 of the CERC (Terms and Conditions) for recognition and Issuance of renewable energy Certificate for Renewable Energy Generation) Regulations, 2010 seeking credit of Renewable Energy Certificates for generation of energy between 21 March, 2016 and 8.11.2016.
- Petitioner : Rai Bahadur Seth Shreeram Narasingdas Private Limited (RBSSNDPL).
- Respondents : National Load Dispatch Centre & Another.
- Date of hearing : 28.9.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Parties present : Ms. Pritha Srikumar, Advocate, RBSSNDPL
Ms. Neha Mathen, Advocate, RBSSNDPL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Arjun Krishnan, Advocate, NLDC
Shri Sumit Srivastava, Advocate, NLDC
Shri Ankur Singh, Advocate, NLDC
Shri Pragya Singh, NLDC
Shri Alok Ranjan, NLDC

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition has been filed for seeking direction to SLDC, Tamil Nadu to issue the necessary injection reports for the period from 21.3.2016 to 18.11.2016 and direction to NLDC to issue Renewable Energy Certificates (RECs) for the said period. Learned counsel further submitted as under:

- a. The petitioner, a Private Limited Company was previously constituted as a partnership firm under the provisions of the Partnership Act, 1932. The petitioner, while it was previously organized as a partnership firm owned and operated a 4.00 MW wind power plant in the State of Tamil Nadu. The entire quantum of electricity generated from the said power plant was offered for sale to TANGEDCO and Energy Purchase Agreements were executed between the petitioner and TANGEDCO.

b. Pursuant to the said change in constitution from partnership firm to private limited company, the petitioner vide its letter dated 29.2.2016 to TANGEDCO sought name change in respect of the Wind Purchase Agreements already executed with TANGEDCO. Subsequently, after the receipt of the concurrence from TANGEDCO, a fresh Energy Purchase Agreement was executed between the petitioner and TANGEDCO. The petitioner vide its letter dated 11.6.2016 informed Tamil Nadu Transmission Corporation Limited (TANTRANSCO) that its name had been changed from partnership firm to a private limited company and requested that the records pertaining to its REC registration be suitably modified to reflect such change in name. TANGEDCO forwarded the petitioner's said request to National Load Dispatch Centre (NLDC) for necessary action.

c. NLDC vide email dated 28.6.2016 informed the petitioner that change of name of the petitioner in respect of registration and accreditation under the REC was not possible and suggested the petitioner to make a fresh application under the REC Scheme in the name of private limited company and seek revocation of the registration in the name of erstwhile partnership entity. Thereafter, the petitioner vide its letter dated 1.9.2016 informed TANTRANSCO that it had made a fresh application under the REC Scheme in the name of the private limited company.

d. Subsequently, the petitioner vide its letter dated 9.9.2016 to NLDC sought revocation of the previous registration from the date on which the accreditation would be conferred on the private limited company and requested that the petitioner be allowed to deal with the unsold REC Credit standing to the benefit of the erstwhile partnership entity as per the applicable CERC guidelines. The petitioner vide another letter dated 17.9.2016 to NLDC requested *inter alia* that the RECs for the generation from May 2016 till the eventual date of registration be credited to the account of the petitioner.

e. On 6.10.2016, TANTRANSCO informed the petitioner that fresh accreditation had been granted in favour of the petitioner. Subsequently, the petitioner vide its letter dated 7.10.2016 requested NLDC for registration under the REC Scheme which was granted on 8.11.2016. On 9.11.2016, NLDC informed the petitioner that its previous registration under the REC scheme in the name of the partnership firm was revoked.

f. On 22.11.2016, the petitioner requested TANTRANSCO for approval to submit application for issuance of Energy Injection Reports from 21 March 2016 till 8.11.2016 based on the energy injected by the project during the said period so that the necessary RECs could be issued to the petitioner. TANTRANSCO declined the said request of the petitioner and informed that the Energy Injection Report would only be issued from 9.11.2016 onwards and the petitioner would not have the benefit of the RECs for the power generated between 21.3.2016 and 8.11.2016.

g. Despite the undisputed certification of the quantum of energy generated by the petitioner during the period in question, the requisite registration of the petitioner under the REC Scheme and meeting all the conditions stipulated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of renewable Energy Certificate for Renewable Energy Generation)

Regulations, 2010 (REC Regulations), NLDC has refused to issue RECs in the name of the petitioner. The petitioner has been denied RECs without any valid reason by NLDC.

h. The Commission vide order dated 2.3.2017 in Petition No. 308/MP/2015 (Nu Power Renewables Pvt. Ltd. V/s National Load Dispatch Centre and Another) has held that the retrospective issuance of the energy injection reports and consequent credit under the REC scheme is permissible where there has been change in the constitution of the entity registered under the REC scheme.

i. As per Regulation 10(1) of the REC Regulations, REC credited to an entity registered under the REC scheme shall remain valid and eligible for trading on the appropriate power exchange for a period of 1095 days from the date of issuance of the said certificates. Accordingly, NLDC may be directed to issue the necessary REC credit in favour of the petitioner for the period between 21.3.2016 and 8.11.2016 taking the period of validity reckoning from the date of the eventual grant of the REC and not from the date of generation.

2. In her rebuttal, learned counsel for NLDC submitted as under:

a. The present petition is devoid of any merits as the non-issuance of RECs for the period between 21.3.2016 and 8.11.2016 is solely due to the petitioner's own default. The petitioner has failed to notify within a reasonable period of time, the change in its legal status i.e. from partnership to a company.

b. The petitioner has admitted that w.e.f. 8.4.2015, the business of M/s. RB Seth Shreeram Narsingdas, the partnership firm which was accredited and registered under REC Regulation was taken over by the petitioner. It was only when the petitioner found it convenient for its own business activities i.e. after the execution of fresh energy purchase agreements with TANGEDCO, that it intimated TANTRANSCO about the change. However, it is now an admitted fact that there was a change in the legal status, the petitioner vide letter dated 11.6.2016 informed TANTRANSCO that this was a mere "name change". The said letter was sent after more than 14 months had elapsed from the change in the legal status and no reason was given by the petitioner for such an inordinate delay.

c. Subsequently, the petitioner applied to TANTRANSCO for issuance of Energy Injection Reports for the period between 21.3.2016 to 8.11.2016 without even comprehending that the said period was elapsed due to its own default while not notifying the change in the legal status and consequently applying for a fresh accreditation and registration under the REC scheme.

d. The REC Registration procedure prescribes for a mandatory intimation on the part of the eligible entity to the State Agency as well as the Central Agency immediately, in case the legal status thereof has changed. Regulation 7(2) of the REC Regulations as well as para 4.1 (h) of the REC Registration procedure uses the word "shall" which generally denotes that a provision is imperative in nature and must be strictly complied with.

e. Although the object of the REC scheme is to incentivize and reward the generation of energy from renewable sources of energy, it does not mean that even if an entity acts in complete disregard of the regulations or the procedure brought in

place for regulating such grant of incentive/benefit shall be entitled to receive them solely because it produces energy from a renewable source. The present case ought not to be treated at par with the decision in Petition No. 308/MP/2015. Therefore, the petitioner does not deserve any equitable relief.

3. Learned counsel for TANTRANSCO submitted as under:

a. The petitioner's legal status was changed on 21.3.2016 and the petitioner intimated the same to the State Agency on 25.6.2016 i.e. after a delay of 3 months and the same was communicated to NLDC on 28.6.2016. The petitioner entered into a fresh PPA with TANGEDCO on 21.3.2016 itself for the sale of energy in the name of the new entity after change in legal status. However, it failed to intimate immediately about the change in legal status as mandated in the Detailed Procedure and cannot claim RECs for the period when there was no accredited legal entity in existence on the record of the State or Central Agency.

b. Clause 4.2 (b) of the REC Registration procedure provides that the energy injection by registered RE generator for the first month for issuance of REC shall be applicable from the date of commercial operation or from 00:00 hrs of next day of registration of such plant by the Central Agency, whichever is later till last day of the same month. Accordingly, TANTRANSCO issued Energy Injection Report to the R.B. Seth Shreeram Narsingdas upto name transfer date i.e. 21.3.2016 and then to the petitioner from next day of registration i.e. 9.11.2016.

c. The period from 15.9.2016 to 8.11.2016 is the period between revocation of accreditation in the name of R.B. Seth Shreeram Narsingdas and fresh accreditation in the name of the petitioner. There was no valid accreditation either in the name of R.B. Seth Shreeram Narsingdas or in the name of petitioner. TANTRANSCO has followed the REC Regulations and procedures in force for accreditation and issuance of Energy Injection Reports and therefore, the petition is liable to be dismissed.

4. After hearing the learned counsels for the parties at length, the Commission directed the petitioner to file on affidavit by 15.10.2017, copy of the Business Take-over Agreement with an advance copy to the respondents. The Commission directed the parties to file the written submissions, if any, by 24.10.2017 with an advance copy to each other. The Commission directed that due date of filing the information and submissions shall be strictly complied with, failing which the order shall be passed on the basis of documents available on record.

5. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**