

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 177/MP/2016**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of Order: 20<sup>th</sup> of March, 2017**

**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 2014-15 and for future

**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  
1<sup>st</sup> 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:**

- 1) Shri M.G. Ramachandran, Advocate, IWPA
- 2) Shri Shubham Arya, Advocate, IWPA
- 3) Ms. Dipali Sheth, IWPA
- 4) Ms. Pragya Singh, POSOCO
- 5) Shri Shailendra Verma, 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 BF Utilities Limited, 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 2014-15. Further, some of the members of the Petitioner are aggrieved that they are unable to upload the REC applications for FY 2014-15 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 FY 2014-15;
- (b) Direct Respondent to issue Renewable Energy Certificates to the members of the Petitioner for the FY 2014-15 at the earliest; and
- (c) Award costs of these proceedings against the Respondents and in favour of the Petitioner.

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 BF Utilities, M/s Weizmann Limited and M/s Karma Energy Limited have achieved their commercial operation in the years 1998,

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:

<b>S. No.</b>	<b>Developer</b>	<b>Date of Accreditation</b>	<b>Date of Registration</b>
1.	M/s BF Utilities	15 <sup>th</sup> June, 2016	19 <sup>th</sup> July, 2016
2.	M/s Weizmann Limited	3 <sup>rd</sup> September, 2016	24 <sup>th</sup> September, 2016
3.	M/s Karma Energy Limited	3 <sup>rd</sup> September, 2016	3 <sup>rd</sup> September, 2016

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 (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. The Petitioner has submitted that its members sought 'Open Access' permissions from Maharashtra State Electricity Distribution Company Limited (MSEDCL) between 29.1.2014 and 2.4.2014. In the meantime, MSEDCL issued revised 'Open Access' procedure without sanction of the Maharashtra Electricity Regulatory Commission (MERC) which were in contravention of the Maharashtra Electricity Regulatory Commission (Distribution of Open Access) Regulations, 2005 (MERC DOA Regulations). In pursuance of the said procedure, MSEDCL wrongfully withheld the 'Open Access' permissions to the members of the Petitioner. Consequently, no credit notes/energy injection reports could be obtained and the Petitioner's members could not apply for RECs within the time limit stipulated in REC Regulations. The Petitioner has submitted that the action of MSEDCL to

unilaterally change the procedure for granting open access permission was challenged by the Petitioner before MERC by filing Case No. 72 of 2014. MERC set aside the revised procedures of MSEDCL vide its order dated 20.8.2014. The Petitioner has submitted that MSEDCL did not comply with the order of MERC and denied 'Open Access' to some of the members of the Petitioner on various grounds including the ground that an 'Open Access' consumer was not eligible to source power from multiple generators.

4. The Petitioner filed Case No. 9 of 2015 before the MERC seeking compliance of the order of MERC, so that members of the Petitioner can get 'Open Access' approvals and also seek issuance of credit notes and energy injection reports. MERC vide order dated 8.2.2016 decided the matter in favour of the Petitioner. Thereafter, the members of the Petitioner approached MSEDCL for issue of 'Open Access' permission. MSEDCL granted 'Open Access' permission to the members of the Petitioners on 16.5.2016 for FY 2014-15. On receipt of 'Open Access' permission, the members of the Petitioner immediately approached SLDC/MSEDCL for issuance of the energy injection reports/credit notes. The Energy Injection reports were issued as under:-

<b>S. No.</b>	<b>Developer</b>	<b>Metering Point No.</b>	<b>Period</b>	<b>Date of Energy Injection Report</b>
1.	M/s BF Utilities	2003	April 1, 2014 to April 1, 2015	June 15, 2016
		2023	April 1, 2014 to April 1, 2015	June 24, 2016
		2060	April 1, 2014 to April 1, 2015	June 24, 2016
		2141	April 1, 2014 to April 1, 2015	June 27, 2016
2.	M/s Weizmann Limited	3059	April 1, 2014 to April 1, 2015	June 20, 2016
		3077	April 1, 2014 to April 1, 2015	June 20, 2016
3.	M/s Karma Energy Limited	3152	April 1, 2014 to April 1, 2015	June 15, 2016

5. On receipt of energy injection reports, 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 applications for energy injected for the 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 BF Utilities vide its letter dated 21.6.2016 requested the Respondent for alternate methods for filing the application for allotment of the RECs. However, no response was received from NLDC.

6. The Petitioner has submitted that the applications for grant of the RECs could not be made by its members for no fault of theirs but on account of gross defaults on the part of MSEDCL and the time taken for getting appropriate directions from MERC to MSEDCL. The Petitioner has further submitted that the time period of six (6) months should be counted from the date of energy injection reports issued by the 'State Load Despatch Centre' as energy injection reports can be obtained only after 'Open Access' permissions are issued. Further, it is not possible for the members to file the applications for issuance of the RECs till the issuance of energy injection reports by the SLDC after the grant of the 'Open Access' permission. The Petitioner has prayed that either Regulation 15 of the REC Regulations, 2010 may be relaxed or dispensation may be provided by general or specific order. The Petitioner has also placed its reliance on the order in Petition No. 258/MP/2012 in the matter of Jsons Foundary Private Limited Vs. NLDC in which the Commission has considered difficulties in peculiar circumstances of the case and granted dispensation for certain period for submission of energy reports.

## **Submission of the Respondent**

7. The Respondent NLDC has submitted that the Petitioner failed to submit signed Online Energy Injection Reports within the specified time limit and RECs were not issued in strict compliance with the REC Regulations, 2010. The Respondent has also submitted that neither the REC Regulations nor the Procedure issued thereunder vests any discretionary power on the Respondent to relax, extend or condone the delay in so far as the compliance with any of the provisions contained therein are concerned. The language of the REC Regulations and the Procedure thereunder are abundantly clear that the provisions contained therein are mandatory in nature and entail strict compliance on the part of eligible entities as well as the 'Central Agency'. The Respondent has further submitted that Regulation 7 of the REC Regulations as amended vide notification dated 10.7.2013 stipulates two fold scheme for processing of REC application, namely, an eligible entity is obligated to make an application within the stipulated period of six months; and the NLDC as Central Agency is entrusted with the responsibility of scrutinizing the application for the purpose of ensuring compliance with the conditions mentioned in the Detailed Procedure. The Detailed Procedure has also prescribed a step-by-step procedure to be followed by NLDC while issuing RECs to eligible entities. According to the Respondents, the language of Clauses (1), (2), (4) and (5) of Regulation 7 and Step 1 and 5 of REC Procedure use the word 'shall' which means that the provisions have to be strictly complied with. The Respondent has submitted that in the light of the judgment of the Hon'ble Supreme Court in Commissioner of Central Excise, New Delhi Vs. Mari Chand & Ors. [(2011) 1 SCC 236] which provides that the stipulated conditions which are mandatory in nature should be

duly complied with, the failure on the part of the Petitioner in complying with the mandatory requirement of sending duly signed and stamped copy of online energy report within a stipulated period of six months is inexcusable:

8. The Petitioner in its rejoinder dated 14.12.2016 has denied the allegations/contentions made by Respondent in its reply.

### **Analysis and Decision**

9. We have heard the learned counsel for the Petitioner and the representative of the Respondent and have carefully perused the record. From the submissions of the parties, the following issues arise before the Commission:

(a) Issue No. I: Whether the members of the Petitioner are entitled to be granted RECs for FY 2014-15 on the basis of the Energy Injection Reports issued in June 2016?

(b) Issue No. II: Whether the request of the Petitioner that the application for issuance of RECs should be allowed to be made within six months of receipt of Energy Injection Reports from the distribution licensee, and not from the date of injection of renewable power as the same is not in the hands of the generator, can be acceded to?

### **Issue No. I**

10. The members of the Petitioner are M/s BF Utilities, M/s Weizmann and M/s Karma Energy who are operating commercially since 1998, 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. These generators sought 'Open Access' permissions from MSEDCL on or about end of FY 2013-14. In the meantime, MSEDCL issued revised 'Open Access' Procedure, effective from 1.4.2014, without permission of the MERC and based on the said procedure, withheld the 'Open Access' permissions to them. Consequently, no credit notes/energy injection reports could be obtained 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. 72 of 2014. MERC vide order dated 20.8.2014 decided the case in favour for the Petitioner in the following terms:-

"8. The Commission accepts the contention of the Petitioner that the Revised Procedure issued by MSEDCL is not in accordance with the provisions of the Electricity Act, 2003 and relevant Rules, Regulations and other dispensations, including the Commission's earlier orders, while departing from MSEDCL's Commercial Circular No. 194 dated 9.4.2013."

Despite the above directions of MERC, MSEDCL did not grant 'Open Access' to the members of the Petitioner on several grounds including that an 'Open Access' consumer was not eligible to source power from multiple generators. The Petitioner, again filed the Petition (Case No. 9 of 2015) before MERC seeking compliance of their order dated 20.8.2014. MERC vide order dated 8.2.2016 decided the matter in favour of the Petitioner with the following directions:

"14. The Commission set-aside MSEDCL's Revised Procedure for OA applicable from 1.4.2014 by its order dated 20.8.2014 in Case No. 72 of 2014 and other Case. That order directed MSEDCL to process the applications for grant of OA filed under the DOA Regulations, 2005 and prior to the notification of the DOA Regulations, 2014 (i.e. prior to 25.6.2014) in accordance with its Commercial Circular No. 194 dated 9.4.2013. Considering those directions and the position set out at Paras 11 to 13 of this order. MSEDCL is directed to approve OA in respect of the application cited in these proceedings (and in all other such cases) from the date on which it was sought or the date of due installations of SEMs at both the generation and consumer ends, whichever



is later. The GCNs and energy injection reports shall be issued to the concerned IWPA Members within two months and compliance reported by the Commission.”

The members of the Petitioner again approached MSEDCL (M/s Weizmann and M/s Karma Energy on 10.2.2016 and M/s BF Utilities on 28.4.2016) for the issuance of permission for ‘Open Access’ to them. MSEDCL finally granted ‘Open Access’ permission to the members of the Petitioners in June, 2016 for FY 2014-15. Based on the Energy Injection Report, the members of the Petitioner attempted to file the application with NLDC through online but could not succeed as the window was not open for the past period beyond six months.

11. The Respondent has submitted that the members of the Petitioner had failed to submit signed Online Energy Injection Report within the specified time limit; therefore, RECs were not issued in strict compliance with the REC Regulations. NLDC has further submitted that since no discretionary power is vested in NLDC under REC Regulations and 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.

12. 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.  
.....”

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....”

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.

13. 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 members of the Petitioner were pursuing the available legal remedy which resulted in the delay in grant of Energy Injection Report. On receipt of ‘Open Access’ permission, the members of the Petitioner immediately in June, 2016 approached SLDC/MSEDCL for issuance of the energy injection reports/credit notes. Thereafter, 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 Petitioners viz. M/s BIF Utilities vide its letter dated 21.6.2016 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 submission of the applications beyond the stipulated period in the present case will go against the objective and spirit of promoting renewable energy generation.

14. 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 be 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 or its own motion or on an application made before it by an interested person”.

15. The Commission in exercise of power under Regulations 15 of the REC Regulations relaxes the requirement of six months stipulated period for making the application in terms of Regulation 7 of REC Regulations and Clause 7.1 of the Detailed Procedure and direct the Respondent to entertain the applications of members of the Petitioner alongwith the Energy Injection Reports issued in June 2016 and issue RECs for the concerned period i.e. FY 2014-15 after due verification of the documents.

16. 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 prerequisites for consideration of the applications for issue of RECs.

## **Issue No. II**

17. The Petitioner has submitted that the time period of six months should be counted from the date of Energy Injection Report issued by SLDC as the report can be issued only after grant of open access. In our view, if the period is counted from the date of issue of energy injection report, then the SLDCs will be lax in issuing the Energy Injection Reports. Further, such a dispensation will defeat the very purpose of laying down a timeline for processing the applications for grant of RECs. The Commission will deal with the problem on a case to case basis as and when they arise. The submission of the Petitioner in this regard is rejected.

18. The Petitioner has prayed for award of cost against the Respondent, NLDC. In our view, the Respondent as the designated "Central Agency" was discharging its obligation under the REC Regulations and Detailed Procedure. The very fact that the Commission has granted relief to the Petitioner in relaxation of the provisions of the REC Regulations goes to prove that the Respondent did not have any discretionary power to grant REC to the members of the Petitioner in relaxation of the provisions of the REC Regulations. As there is no finding against the Respondent, there is no case for awarding cost against the Respondent. The prayer is accordingly rejected.

19. We direct the NLDC to accept the Energy Injection Reports submitted by the members of the Petitioner in June 2016 for the year 2014-15 and issue the RECs within a period of one month from the date of issue of this order, subject to fulfillment of all other conditions by the said members of the Petitioner.

20. 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/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**