



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 36/MP/2018

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member
श्री आई. एस. झा, सदस्य/Shri I. S. Jha, Member

आदेश दिनांक /Date of Order: 29th of July, 2019

IN THE MATTER OF:

Petition under Regulation 5 read with Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 seeking directions for issuance of pending RECs and re-accreditation of the Petitioner's project under the Renewable Energy Certificate Mechanism.

AND IN THE MATTER:

M/s Rana Sugars Limited
SCO No. 49-50, Madhya Marg,
Sector 8-C, Chandigarh – 160009

...Petitioner

VERSUS

1. National Load Despatch Centre
Power System Operation Corporation Limited
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016
2. Uttar Pradesh New and Renewable Energy Development Agency
Vibhuti Khand, Gomti Nagar,
Lucknow
Uttar Pradesh- 226010

...Respondents

Parties Present: Shri Paras Choudhary, RSL
Shri Arjun Krishnan, Advocate, NLDC
Shri Sumit Srivastava, Advocate, NLDC

आदेश/ ORDER

The Petitioner, M/s Rana Sugars Ltd., is a generating company having a captive power plant with installed capacity of 27.4 MW out of which 7.4 MW is registered under the REC mechanism. The Petitioner has filed the instant Petition under Regulation 5 read with Regulations 14 & 15 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 “REC Regulations, 2010”) seeking directions to the Respondents for issuance of pending Renewable Energy Certificates (hereinafter referred to as “RECs”) and re-accreditation of the Petitioner under the Renewable Energy Certificate Mechanism.

2. The Respondent No.1, National Load Dispatch Centre is the Central Agency for issuance of RECs as provided in Regulation 3 of the REC Regulations, 2010.

3. The Respondent No.2, Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA) is the State Agency which considers the Renewable Energy projects in the State of Uttar Pradesh for accreditation under the REC Mechanism by the Respondent No.1 herein.
4. The Petitioner has made the following prayers:
 - a) *Direct the Respondents to provide the Petitioner online link to submit the online application for reaccreditation with the State Agency and thereafter, renew the registration of its project under the REC mechanism;*
 - b) *Direct the Respondents to allot the RECs for the period of March, 2016 to April, 2017 to the Petitioner herein;*
 - c) *Direct the Respondents to pay the costs of the instant petition;*
 - d) *Pass any other or further order/s as this Commission may deem fit and proper in facts and circumstances of the present case.*

Background

5. On 21.11.2011, captive power plant of the Petitioner M/s Rana Sugars Ltd. was commissioned.
6. On 13.01.2012, the Petitioner was issued a Certificate of Accreditation for 7.4 MW capacity utilizing Bio Fuel Generation (Non Solar) valid for a period of five years i.e. upto 12.01.2017.
7. On 02.08.2012, the Petitioner registered 7.4 MW under the REC mechanism utilizing Bio Fuel Generation (Non Solar) valid for a period of five years i.e. upto 01.08.2017.
8. On 28.03.2016, the Commission amended REC Regulations, 2010 and inter-alia inserted clause 1B in Regulation 5 providing that a Captive Generation Plant based on renewable energy sources having self-consumption will be eligible to participate in REC scheme if it is commissioned between 29th September 2010 and 31st March 2016; and registered with NLDC under REC scheme on or before 30th June 2016.

9. On 12.10.2016, the Petitioner was required to apply for reaccreditation of its project with the Respondent No. 2 i.e. at-least 3 months prior to the date of expiry of its accreditation.
10. On 21.06.2017, the Petitioner informed Respondent No.2 to write a mail to NLDC asking them to restore the link so that it may be able to file the online application.
11. On 22.06.2017, the Petitioner sent the email to the Respondent No.2 for forwarding the aforesaid letter dated 22.06.2017.
12. On 06.07.2016, the Petitioner sent another email to the Respondent No.2 asking them to forward its case to the Respondent No.1.
13. On 07.07.2017, the Respondent No.2 forwarded the letter written by the Petitioner to the Respondent No.1, NLDC for its consideration.
14. On 31.07.2017, the Petitioner wrote another detailed letter to the Respondent No. 2, interalia requesting to condone the delay in applying for reaccreditation and to provide the online link to submit the online application for reaccreditation with the State Agency immediately and thereafter, renew the registration of the project under the REC mechanism.
15. On 11.08.2017, the Respondent sent an email to the Petitioner rejecting its request for revalidation of the accreditation certificate of the Petitioner without giving any cogent reason for the same.
16. Hence the Petition.

Submissions of the Petitioner

17. The Petitioner has submitted that it is a Captive Power Plant having installed capacity of 27.4 MW capacity located at Village Belwara, Post Manpur, State of Uttar Pradesh and is availing 7.4 MW under the REC mechanism utilizing Bio Fuel Generation (Non Solar). The project has been accredited by Respondent No. 2 (UPNEDA) on 13.01.2012 vide Certificate Number

UP0NSRSLMB001A130112 and registered with the NLDC vide Certificate Number UP0NSRSLMB001R020812 as an eligible entity under the REC mechanism with effect from 02.08.2012 for a period of five years i.e. till 01.08.2017

18. The Petitioner has submitted that though it had been registered under the REC mechanism, the Respondent No.1 without any cogent reason whatsoever has not been issuing the RECs applied for by the Petitioner pertaining to the period of March, 2016 to April, 2017 showing them as pending for verification.
19. The Petitioner has submitted that the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 providing for the Renewable Certificate Mechanism has inter alia been amended on 28.03.2016 when clause 1B has been inserted in Regulation 5 thereof providing as under:

“(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant:-

- a) has been commissioned prior to 29th September 2010 or after 31st March 2016;*
or
b) is not registered with Central Agency under REC scheme on or before 30th June 2016.

Provided that a CGP based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, and fulfilling both the following conditions:

- a) having date of commissioning between 29th September 2010 and 31st March 2016;*
and
b) registered with Central Agency under REC scheme on or before 30th June 2016

*shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such plant does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit:
... ”*

20. The Petitioner has submitted that the project meets both the above criteria introduced vide the aforesaid amendment in the following manner:
- a. The Petitioner was commissioned on 21.11.2011
 - b. The Petitioner was registered under REC mechanism on 02.08.2012 i.e. much prior to the cut off date of 30.06.2016
21. The Petitioner has submitted that in order to apply for renewal of its registration under the REC mechanism, the Petitioner was required to apply for reaccreditation of its project with the State Agency at-least 3 months prior to the date of expiry of its accreditation i.e. 12.01.2017. However, due to an inadvertent lapse on the part of the officials in the Petitioner's company, it failed to apply for reaccreditation within the prescribed period and thereafter, once it tried to apply, the online link was withdrawn. Vide letter dated 21.06.2017 the Petitioner informed the Respondent No 2 about the failure to apply for revalidation of accreditation. Further vide its email dated 06.07.2017, Respondent No.2 forwarded the case to Respondent No.1 and intimated the same to the Petitioner vide email dated 07.07.2017. The Petitioner in its letters dated 21.07.2017 and 31.07.2017 requested the Respondent No.1 to restore the web link for revalidation of accreditation. The Respondent No.1 vide email dated 11.08.2017 rejected the appeal of the Petitioner stating that the process of revalidation of accreditation certificate should be initiated before expiration of accreditation.

Submissions of the Respondent No. 1

22. The Respondent No.1 has denied each and every averment and contention raised in the Petition except those which are matters of record.

23. The Respondent No.1 has submitted that Para 4.1(i) of the *Model Guidelines For Accreditation of a Renewable Energy Generation Project or Distribution Licensee, as the case may be Under REC Mechanism*, stipulates that :

“The Generating Company or Distribution Licensee, as the case may be, shall apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation.”

24. The Respondent No.1 has submitted that the bare reading of the aforesaid Regulation connotes that an eligible entity is compulsorily obligated to apply for revalidation of existing accreditation at least three months in advance prior to expiry of existing accreditation. Further, the Petitioner has admitted that it was required to apply for reaccreditation of its project with the State Agency at least 3 months prior to the date of expiry of its accreditation i.e. 12.01.2017 which it failed to do so. Therefore, the Petitioner has clearly admitted that it is in default of its obligations under the Regulations.

25. The Respondent No.1 has submitted that Para 4.1(f) of the ‘*Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency*’ which reads as follows :

“The generating company or Distribution Licensee, as the case may be, shall apply for revalidation or extension of validity of existing Registration at least three months in advance prior to expiry of existing Registration.

In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration

Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate.”

26. The Respondent No.1 has submitted that in view of above the Respondent is bound to reject the application of those RE generators (as the Petitioner in the present case) who have not initiated the process of accreditation / registration before the expiry of their accreditation certificate. The same was informed to the Petitioner vide email dated 11.08.2017 sent by the answering respondent to the Petitioner

27. The Respondent No.1 has submitted that according to Regulation 7(2) of the *Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010* provides as follows:

“7. Denomination and Issuance of Certificates

...

(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificates, as may be stipulated in the detailed procedure, are complied with by the eligible entity.”

Therefore, as evident above, the aforesaid Regulation read with the Procedures stipulate a scheme whereby the eligible entity is obligated to follow the steps in the procedures therein and only when the Central Agency is satisfied that the eligible entity has duly complied with the conditions, can it issue the certificates. In the present case, the Petitioner has itself admitted to the fact that it has not undertaken revalidation of its project within the time period specified in the Procedures. Therefore, the answering Respondent is within its powers to refuse its request at a later stage.

28. The Respondent No.1 has submitted that due to change in the eligibility conditions of RE Generating projects under REC Mechanism pursuant to Fourth Amendment in Central Electricity Regulatory Commission (Terms & Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010, the Central Agency sought revised declaration and checklist from the Petitioner routed through the State Agency, to ascertain its eligibility condition. Till the time the aforesaid information was received from the respective eligible entities, the issuance of REC was put on hold from March' 2016 onwards.

29. The Respondent No.1 has submitted that a number of emails were sent to the Petitioner seeking revised checklist and declaration pursuant to the aforementioned Fourth Amendment. However, no response was received from the Petitioner. Due to the aforesaid reason, the RECs were not issued to the Petitioner for the period March'2016 onwards.

Submissions of the Respondent No. 2

30. The Respondent No. 2 has submitted that the petitioner is not entitled for the relief as claimed. The petitioner was issued an accreditation certificate vide accreditation no. UPONSRSLMB001A130112 under REC mechanism which was valid till 12.01.2017. The aforesaid RE Generator was supposed to apply on REC Registry website for reaccreditation but it did not apply and therefore the accreditation of said RE Generator could not be renewed.

Submissions in the Rejoinder filed by the Petitioner

31. The Petitioner has denied the averments filed by the Respondent in its reply and also reiterated its stand taken in the Petition and as such the same has not been reproduced for the sake of brevity. The Petitioner has clarified that due to lapse on the part of its officials, the Petitioner could not apply for revalidation of accreditation within the prescribed time.

Analysis and Decision

32. The Petition was admitted on 10.04.2018 and was heard on 02.07.2019. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

33. The Petitioner owns a captive power project with installed capacity of 27.4 MW located at Village Belwara, Post Manpur in the State of Uttar Pradesh and availing 7.4 MW under the REC mechanism utilizing Bio Fuel Generation (Non Solar). The details of the project are as under:

Project Location	Total Installed Capacity (MW)	Capacity under REC (MW)	Certificate	Issue Date	Expiry Date	Certificate No.
Village Belwara, Post Manpur, Uttar Pradesh	27.4 MW	7.4 MW	Accreditation	13.01.2012	12.01.2017	UP0NSRSLM B001A020812
			Registration	02.08.2012	01.08.2017	UP0NSRSLM B001R020812

34. The Petitioner has submitted that it has been receiving the RECs for the electricity generated from the bio fuel generation based power plant. The issuance of RECs for the period March 2016- April 2017 has been pending for verification. In addition, the Petitioner could not apply for revalidation of accreditation within the prescribed time and now the accreditation and registration of the project have expired.

35. **Per Contra**, the Respondent No. 1 has submitted that despite several reminders, the Petitioner has not submitted the checklist and declaration to verify the eligibility of the power plant in accordance with the eligibility conditions for participation in REC mechanism notified in the 4th Amendment to REC Regulations, 2010. Hence, the issuance of RECs is kept pending for verification. Further, the Petitioner did not apply for revalidation of accreditation within the prescribed timeline and has approached the answering Respondent beyond the prescribed time limit, the latter having no discretionary power or authority under the REC Regulations or the detailed procedures cannot process their applications.

36. From the submissions of the parties, the following issue arises before this Commission:

Issue: Whether the delay in application for revalidation of accreditation should be condoned and whether the Respondent should be directed to issue RECs for the period of March, 2016 to April, 2017 to the Petitioner?

We discuss the issue in detail.

37. The Commission observes that the Regulation 7(2) of the REC Regulations, 2010 stipulates as under:

“7. Denomination and Issuance of Certificates

(1) The eligible entity other than distribution licensee shall apply to the Central Agency for certificates within six months from the corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the month.

*(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificates, as may be stipulated in the detailed procedure, are complied with by the eligible entity.
... ”*

38. The Commission observes that Regulation 10(1) of the REC Regulations, 2010 stipulates as under::

“10. Validity and extinction of Certificates

(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:

*Provided further that the Certificate issued under these regulations shall remain valid for one thousand and ninety five days from the date of issuance.
... ”*

39. The Commission observes that Para 4.1(i) of the Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee, as the case may be under REC Mechanism, stipulates that:

“The Generating Company or Distribution Licensee, as the case may be, shall apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation.”

40. The Commission observes that Para 4.1(f) of the “Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency” which reads as follows:

“The generating company or Distribution Licensee, as the case may be, shall apply for revalidation or extension of validity of existing Registration at least three months in advance prior to expiry of existing Registration.

In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for

revalidation of Registration. Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration.

Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate.”

41. The Commission observes that the relevant provisions of *Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency* stipulates as under: -

3. STEP-WISE DESCRIPTION OF THE PROCEDURE

3.1. Step - 1: *An application for issuance of Renewable Energy Certificate shall be made by the Eligible Entity to the Central Agency. The eligible entity shall apply for Issuance of REC on the Web Based Application as per the details given in the Energy Injection Report (EIR issued by the SLDC / Recommendation of SERC for issuance of RECs) and shall also submit the same information in physical form with the Central Agency. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report (EIR) for RE projects /Recommendation of SERC for issuance of RECs for distribution licensee, and shall be made in the specified format (FORMAT-3.1: “Application for Issuance of Renewable Energy Certificates to the Eligible Entities”/FORMAT-3.1.1 for distribution licensee) (ii) Print out of online application duly signed and stamped by Authorized Signatory (iii) Commissioning Certificate for RE Generator, only for issuance for the first month after registration. The application shall be accompanied with the details of payment of the applicable fee & charges towards issuance of certificates as determined by CERC from time to time. While making application for issuance of RECs, the Applicant (Eligible Entity) shall quote the unique Registration Number assigned to it by Central Agency at the time of registration.*

3.2. Step - 2: *After receipt of physical application for issuance of renewable energy certificates from the Eligible Entity, the Central Agency shall undertake a preliminary scrutiny within 6 working days to ensure that the Application Form is complete in all respect along with necessary documents and applicable fees and charges. As part of preliminary scrutiny, the Central Agency shall satisfy that the following conditions are fulfilled by the RE generators or distribution licensee, as the case may be:*

- a) The application is made in the format specified by the Central Agency from time to time.*
- b) The status of Accreditation of the Eligible Entity with the State Agency has not expired. The status of Registration of the Eligible Entity with the Central Agency has not expired.*
- c) The duly certified EIR/ Recommendation of SERC for issuance of RECs is attached for the same period for which application is made towards issuance of*

Renewable Energy Certificate by the Eligible Entity.
d) The application is accompanied with fees & charges.

3.3. Step - 3: *After conducting the preliminary scrutiny, the Central Agency shall intimate in writing to the Applicant for submission of any further information or clarification, if necessary, to further consider the application for issuance of Renewable Energy Certificates or reject the application.*

3.4. Step - 4: *While considering any application for issuance of Renewable Energy Certificate, the Central Agency shall verify and ascertain availability of following information:*

- a) Verification of the time period for which the Central Agency may have already issued Renewable Energy Certificates to the concerned Eligible Entity.*
- b) Verification of Renewable Energy Certificates claimed by the Eligible Entity from the duly certified Energy Injection Reports by the concerned State Load Despatch Centre in respect of concerned Eligible Entity.*
- c) Details of fee & charges made for issuance of certificates.*
- d) Confirmation of Compliance Auditor report, if any.*

3.5. Step - 5: *The Central Agency shall issue Renewable Energy Certificates to the Eligible Entity only after confirming, the claims made by the Eligible Entity, with the duly certified EIR forwarded by the SLDC/ Recommendation of SERC for issuance of RECs . In case of any discrepancy, in the EIR enclosed by the Eligible Entity along with Application and regular EIR received by Central Agency from concerned State Load Despatch Centre, the information contained in regular EIR furnished by concerned State Load Despatch Centre shall be considered as final and binding for the purpose of issuance of Renewable Energy Certificates.*

...”

42. From the above, the Commission observes that the eligible entity shall apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. In case, RE generator has submitted online application before expiry of the Accreditation Certificate and during the process of approval by State Agency, Registration Certificate gets expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to revalidation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration. Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate. The Central Agency shall duly satisfy itself that all the conditions for issuance of Certificates as stipulated in the detailed procedure are complied with by the eligible entity

and then certificate shall be issued to the eligible entity. The entity shall be eligible to avail RECs from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.

43. The Commission observes that in the instant case, the “Certificates of Accreditation” was valid upto 12.01.2017. The Petitioner was required to apply for re-validation of accreditation by 12.10.2016 i.e. at least three months in advance prior to expiry of accreditation. However, the Petitioner did not apply for re-validation of accreditation within time and tried to apply for the same later. It is also an admitted fact that the Petitioner had not initiated the process of revalidation of reaccreditation of the project under REC mechanism as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*. The Petitioner has not submitted the declaration and checklist sought by the Central Agency to review the eligibility of the project in accordance with 4th amendment in REC Regulations, 2010. The Central Agency sent several reminders. However, the Petitioner did not submit the revised declaration and checklist. The revised declaration and checklist were submitted during the hearing in the matter on 02.07.2019 i.e. after a gap of more than three years.

44. We are in agreement with the contention of Respondents. The Petitioner was required to submit the application for issuance of RECs in terms of Regulation 7 of the REC Regulations, 2010 and Detailed Procedure made thereunder. However, the Petitioner did not comply with the provisions of the REC Regulations, 2010 and Detailed Procedure. During the course of hearing, learned counsel for the Petitioner has accepted its mistake regarding non-initiation of the process of revalidation of reaccreditation of the project under REC mechanism prior to three months before as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*. Learned counsel further submitted that this error was procedural in nature and the application was punched within the time stipulated and was within limitation. The Commission observes that the RECs were denied on account of procedural and technical issues for which Respondent has no power/authority to condone the same and that it could only be permitted by the Commission. The Commission, therefore, condones the procedural delay by the Petitioner in applying for revalidation for accreditation. In view of above, the

Commission directs the Respondents to issue the RECs for the period from March, 2016 to April, 2017.

45. Accordingly, the Petition No. 36/MP/2018 is disposed of.

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