

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 449/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 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 challenging the non-grant of REC Certificates.

Date of Hearing : 3.9.2021

Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Suryakant Gupta
Proprietor of Rajaram Maize Products Solar Power Division

Respondent : National Load Despatch Centre (NLDC)

Parties Present : Shri Pradeep Aggarwal, Advocate for Petitioner
Shri Arjun Aggarwal, Advocate for Petitioner
Ms. Abiha Zaidi, Advocate, POSOCO

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking direction to the Respondent, NLDC for issuance of Renewable Energy Certificates ('RECs') for energy generated for the months from April 2017 to May 2019 from its 4.8 MW solar power plant, which has been utilized by the Petitioner for its captive use. The learned counsel mainly submitted the following:

(a) As per the first proviso to Regulation 5(1B) 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'), only such Captive Generating Plant ('CGP'), based on renewable energy, is eligible for participating in the REC scheme for entire energy generated from the power plant, which fulfils the conditions, namely, (a) having date of commissioning between 29.9.2010 and 31.3.2016; (b) registered with Central Agency under REC scheme on or before 30.6.2016.

(b) The Solar Power Plant of the Petitioner achieved the commercial operation on 22.1.2016 and consequent to its accreditation by Chhattisgarh State Renewable Energy Development Agency ('CREDA') on 18.5.2016, it was registered with Central Agency under the REC scheme on 29.6.2016. Thus, the Solar Power Plant of the Petitioner satisfies both the conditions specified in first proviso to Regulation 5(1B) of the REC Regulations.

(c) Since its inception, the solar power plant of the Petitioner was meant for captive use only and the same can be verified from 'No Objection Certificate' issued by CREDA dated 17.8.2015, letter dated 11.1.2016 sent by the Petitioner to Chhattisgarh State Electricity Regulatory Commission ('CSERC') and undertaking furnished by the Petitioner dated 12.2.2016 to CREDA.

(d) Since the Petitioner was not provided with open access, it was constrained to sell the electricity generated from its solar power plant to Chhattisgarh State Power Distribution Company Limited ('CSPDCL') under APPC from the date of commencement i.e. 23.1.2016 till 27.2.2016. However, subsequent thereto, there was no arrangement/ PPA with CSPDCL, which can also be noted from the various energy injection reports issued by Chhattisgarh, SLDC for solar power plant of the Petitioner.

(e) The Petitioner had filed Petition No. 12/2016 in CSERC, seeking directions to CSPDCL to make an immediate arrangement for captive use of electricity generated by the Petitioner from its solar power plant. CSERC vide its order dated 20.7.2016, *inter alia*, observed that no permission is required for setting up of the plant and its captive use under the provisions of the Electricity Act, 2003 and that the Petitioner has right of captive use of electricity generated from its solar power plant and can also have open access as per the applicable rules/ regulations.

(f) However, NLDC has denied RECs to the Petitioner on the ground that solar power plant of the Petitioner was registered in the year 2016 with the status as sale of power to State licensee at APPC and that it was only pursuant to the order of CSERC dated 3.3.2017 (passed in Petition No. 61/2016 filed by the Petitioner under Section 142 of the Electricity Act, 2003 against CSPDCL for violation of order dated 20.7.2016), the Petitioner sought to change this status from APPC to CGP route.

(g) The first proviso to Regulation 5(1B) of the REC Regulations does not provide that CGP is required to have self-consumption between 29.9.2010 and 31.3.2016. In the present case, since the Petitioner had applied for captive use on 27.2.2016 itself, it is eligible for grant of RECs.

(h) CREDA in its letter dated 6.6.2018 to NLDC has also recommended to change the status of the solar power plant of the Petitioner to captive plant for eligibility of RECs w.e.f. 23.1.2016.

(i) Reliance was also placed on the decision of the Commission dated 12.4.2019 in Petition No. 292/MP/2018 (Gokak Power & Energy Ltd. v. NLDC and Ors.)

3. Learned counsel for the Respondent, NLDC mainly submitted as under:

(a) The question that arises for consideration of the Commission in the present case is about eligibility of the solar power plant of the Petitioner for issuance of RECs in the event of the modification of status in the off-take route of electricity from 'open access' to 'captive' after 30.3.2016.

(b) Pursuant to the Fourth Amendment to REC Regulations, in the checklist circulated by NLDC in order to verify the status and eligibility of the solar power plants registered under the REC mechanism, the Petitioner had itself indicated the off-take route electricity of project with APPC as on 30.6.2016.

(c) The Petitioner, in its declaration of August 2016, had also indicated the off-take route of electricity as open access/ selling power to third parties under open access.

(d) In the letter of CREDA dated 6.6.2018, referring to the order of CSERC dated 3.3.2017 in Petition No. 61/2016, *inter alia*, it has been stated that the status of the solar power plant of the Petitioner is being treated as the captive from the date of order.

4. In response to the specific query of the Commission regarding filing/ pendency of an Appeal by the Petitioner before the Appellate Tribunal for Electricity, the learned counsel for the Petitioner submitted that the said Appeal has been filed against the order of CSERC dated 14.11.2017 with regard to modality and settlement of banked energy and the demand and has no relevance with the subject matter of the present Petition relating to the RECs.

5. After hearing the learned counsel for the Petitioner and the representative of the Respondent, NLDC, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**