

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 255/MP/2012

**Coram:
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 14.2.2013
Date of Order : 29.7.2013**

In the matter of

Petition under the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 for the development of market in power from Non Conventional Energy Sources by issuance of transferable and saleable credit certificates with to (i) Issuance of REC against the energy injected into the grid for the month of August, 2012 and (ii) issuance of REC for the generation injected into the grid from the date of commissioning of the WTGs accredited under REC Scheme.

And

In the matter of

M/s Surajbari Windfarm Development Pvt. Limited

Petitioner

Vs

National Load Despatch Center, New Delhi

Respondent

Parties Present:

Mr. Rakesh Rathore for the petitioner
Ms. Minaxi Garg, NLDC
Ms. Joyti Prasad, NLDC
Shri Satiya Prakash, NLDC

ORDER

The petitioner in the present petition filed under 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 (the REC Regulations) has made the following prayers, namely -

“(a) hold and clarify that the three months period be constituted for application for issuance of REC shall be from the date of receipt of the energy certificate by the renewable energy generator from the SLDC.

(b) hold that the petitioner received the energy injection certificates from the SLDC Gujarat on 9th October, 2012 for the energy injected in the month of August, 2012. Therefore the three months for applying the receipt of REC will start from 9th October, 2012 and it will end on 8th January, 2013.

(c) hold that three months period stipulated in the regulation 7(1) of the CERC REC Regulations, 2010 means three months clear days for applying for the issuance of REC for the getting of REC and the same period not restricted to less period of 2 months and 15 days.

(d) hold that the non-issuance of the REC on the application dated 19.11.2012 of the petitioner to the Central Agency till date without assigning any reason is in contravention of the CERC REC Regulations, 2010.

(e) decide that the petitioner is eligible to get the REC for the 4153.422 MWh energy generated in the month of the August, 2012.

(f) decide that the petitioner is eligible to get REC from the date of commissioning and the energy injected into the grid.

(g) direct the respondent to issue the REC for the 2382.485 MWh energy injected into the grid between the dates of commission of the accredited renewable generator to the date of registration issued by Central Agency.”

2. By virtue of clause (1) of Regulation 3 of the REC Regulations, the Commission has nominated the National Load Despatch Centre as the Central Agency to perform functions under clause (2), which include issuance of Renewable Energy Certificates (RECs) under these regulations. The Central Agency has, after approval of the Commission, issued the detailed procedure in terms of clause (3). Regulation 5 of the REC Regulations lays down the criteria for registration of the eligible entity for issuance of RECs. In accordance with clause (1) of Regulation 5, a generating company engaged in generation of electricity from renewable energy sources (RE Generator) is eligible to

apply for registration to the Central Agency for issuance of RECs on fulfilling the following conditions, namely:

- (a) It has obtained accreditation from the State Agency,
- (b) It does not have PPA for the capacity related to such generation to sell electricity at a preferential tariff, and
- (c) It sells electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

3. Regulation 7 of the REC Regulations deals with issuance of RECs. Under clause (1) of Regulation 7, the eligible entity has to apply to the Central Agency for issuance of RECs within three months after corresponding generation from eligible renewable energy project. Clause (1) of Regulation 7 of the REC Regulations is extracted below:

“7. Denomination and issuance of Certificates

(1) The eligible entities shall apply to the Central Agency for Certificates within three 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.”

4. From clause (1) of Regulation 7 of the REC Regulations it follows that RE Generator is required to apply for issuance of RECs within three months from the



generation date. Further, the application for the purpose has to be made either on first day of the month or fifteenth day of the month.

5. Clause 7.1 of the detailed procedure published by the Central Agency for issuance of RECs is extracted below:

“The Eligible Entity shall apply for issuance of renewable energy certificates within three (3) months from the month in which renewable energy was generated and injected into the electricity grid after issuance of the monthly energy injection report by the concerned SLDC. However, the eligible entity shall apply for issuance of RECs for the complete month in sequential manner.

For example, in the month of May, the applicant may apply for issuance of RECs for the months of February, March and April. However, since the monthly injection report for May would not be available with the Central Agency before month end, application for issuance of RECs against energy injected during May can be made on a fortnightly basis in the subsequent three months. However, the eligible entity shall ensure that it should apply first for February before applying for March.”

6. Thus, the RE Generator who has obtained accreditation with the State Agency and registration with the Central Agency is required to apply for issuance of RECs for the complete month in sequential manner.

7. The petitioner, Surajbari Windfarm Development Private Limited, the wind energy generator, has installed 10 wind turbines in the State of Gujarat, with a total capacity of 18 MW. It was given accreditation by the State Agency, namely Gujarat Energy Development Agency on 23.5.2012. Thereafter the petitioner made an application for registration, the application was received by the Central Agency on 7.6.2012. The project was registered by the Central Agency on 29.6.2012.

8. After registration, the petitioner made applications for issuance of Renewable Energy Certificates (RECs) for the energy generated and injected into the grid from 9.6.2012 and onwards. The petitioner was, however, issued RECs by the Central Agency for the energy generated and injected into the grid with effect from 30.6.2012, the date immediately following the date of registration but was not issued RECs for the generation for the month of August 2012. The month-wise details of energy injection in the grid and issuance of RECs is given below:

Sl. No.	Month	Monthly Energy Injection (MWh)	Number of RECs issued
1	June 2012	0095.443	95
2	July 2012	4396.821	4,397
3	August 2012	4153.422	-
4	September 2012	2362.518	2,362
Total		11008.204	6,754

9. The petitioner is aggrieved on account of non-issuance of RECs for the period 9.6.2012 to 29.6.2012 and August 2012.

10. The petitioner has submitted that it fulfilled the eligibility criteria for issuance of RECs from 9.6.2012 as the application was made to the Central Agency within the period of three months from the date of generation and injection of energy into the grid as specified under clause (1) of Regulation 7 of the REC Regulations. The petitioner has submitted that the delay in making the application was because of procedural delay in getting registration and without any fault of its own part. As regards RECs for the generation for August 2012, the petitioner has submitted that the readings for the electricity generated were delayed by the State Load Despatch Centre (SLDC) and the State Agency and the Energy Injection Certificate was issued by SLDC on 9.10.2012 at

belated stage for which too it cannot be blamed. The petitioner has further submitted that after 31st August 2012 it got effectively two and half months period for applying for RECs instead of three months period, because the application was required to be made latest by 15th day of the third month (15th November 2012) and was, therefore, deprived of the opportunity to receive RECs for the electricity generated and injected by it into the grid. The petitioner has submitted that the matter was taken up by it with the Central Agency by e-mail dated 17.11.2012 followed by the letter dated 20.11.2012 to allow it to make application for issuance of RECs for August 2012. However, the petitioner has submitted, the Central Agency has not allowed it to make application. The petitioner has urged that the three months effective period should be counted from the date of issuance of the Energy Injection Certificate by SLDC because any procedural delay in issuance of the Energy Injection Certificate should not adversely affect the entitlement of the petitioner to receive RECs.

11. The respondent has submitted that in accordance with the provisions of the REC Regulations and the detailed procedure approved by the Commission, RECs can be issued only after the project is registered with the Central Agency. It has been pointed out that for new projects, there is a provision under Clause 2.3 of the 'Model guidelines for accreditation' and Clause 2.2 of 'procedure for registration' that the application for accreditation may be filed 6 months prior to the date of commissioning and, the application for registration may be filed 3 months prior to the date of commissioning. The respondent has submitted that there is no provision for issuance of RECs retrospectively, that is, from the date prior to the date of registration. According to the respondent, issuance of RECs from the date of commissioning but before the date of



registration may jeopardize the entire mechanism as it will bring uncertainty in duration of period for issuance of RECs and open the doors for unwarranted litigation.

12. With regard to the second grievance of the petitioner, the respondent has submitted that the software designed for implementation of REC mechanism is in line with the REC Regulations and approved detailed procedures allows RE Generators to make on-line application for issuance of RECs on 1st and 15th date of every month. However, after making on-line application, RE Generator is required to submit the application in physical form till last working day of the month. The respondent has submitted that the example given under Clause 7.1 of the Procedure for issuance of RECs makes the entire process explicit. The respondent has submitted that the understanding of the petitioner that the prescribed period of three months for applying for issuance of RECs commences from the date of issuance of monthly Energy Injection Report by SLDC is not correct. In particular, the respondent has submitted that the petitioner had received the Energy Injection Certificate issued by SLDC for the month of August, 2012 on 9th October 2012 itself. Thus the petitioner should have applied on-line within the stipulated timeframe and thereafter should have submitted the application in physical form till the last working day of November 2012. However, the petitioner failed to apply for issuance of RECs on the on-line portal for the successive three months. Thus the lapse is attributed to the petitioner itself in not making application in time.

13. We have heard the representatives of the parties and considered the matter very carefully.



14. The first grievance of the petitioner relates to non-issuance of RECs for the period 9.6.2012 to 29.6.2012. According to the petitioner, it is entitled to RECs for the generation and injection of energy during the said period since it made the application within the specified period of three months as the REC Regulations does not specifically prohibit issuance of RECs from the date prior to the date of registration. This issue should not detain us as the question is no longer *res integra*. The Commission in its order dated 7.5.2013 in Petition No 211/2012 has already held that RECs can be issued only after registration of the RE project with the Central Agency. The concluding part of the discussion on the issue is extracted below:

“13. Regulation 7(1) of REC Regulations speaks about the application by ‘eligible entities’ for certificates within three months after corresponding generation from the eligible generation projects. The language used is ‘eligible entities’ and not ‘registered entities’. One may argue that irrespective of the date of registration, an eligible entity is entitled to apply for RECs within three months from the date of commissioning and generation of electricity as Regulation 7(1) has not been made subject to Regulation 5(1) of the REC Regulations. In our view, such an interpretation will do violence to the scheme of the REC Regulations. The scheme of the REC Regulations is to first grant registration to the eligible entity by the Central Agency. Thereafter, the eligible entity is entitled to apply for RECs as no right for issue of and dealing in RECs vests in an eligible entity without it being registered by the Central Agency. Registration of an eligible entity is not a mere procedural formality. It is an exercise undertaken to ascertain whether an entity claiming to be eligible fulfills the conditions specified in the REC Regulations or not. Precisely, for that reason, a period of three months has been prescribed in the Detailed Procedure to an applicant to approach the Central Agency for registration before it starts generation and injection of power into the grid and the Central Agency has been mandated under the REC Regulations to grant the registration within 15 days of such application. Therefore, the term ‘eligible entity’ in Regulation 7(2) will mean an eligible entity which has been registered with the Central Agency after due verification of its eligibility. Any other interpretation will make the scheme unworkable. For this purpose, let us consider Regulation 7(1) of REC Regulations which provides that an eligible entity shall apply for RECs within three months from the date of corresponding generation from the eligible renewable energy projects. Suppose, a renewable energy



project has been commissioned in January 2013 but it applies for registration on 15th April 2013 and is granted registration on 30th April 2013. After registration, it applies for RECs for the generation during January 2013 in May 2013. Since the period of three months corresponding to the month of generation in January 2013 has already expired by the time application is made, it would require relaxation of Regulation 7(1) to extend the period for making application for issuance of RECs for which an application has to be made before this Commission. Therefore, it is neither the scheme nor the intention of the REC Regulations that an eligible entity shall be eligible for issue of RECs for the period prior to its registration with the Central Agency. Reliance by the petitioner on the judgement of the Hon'ble Supreme Court in Saiyad Mohammad Bakar EL - Edroos Vs Abdul Habib Hasan Arab & Others{(1998) does not advance the case of the petitioner as registration is not merely a procedural requirement under the REC Regulations. On the other hand, it is a substantive requirement as only after registration, an eligible entity is entitled for issue of and dealing in renewable energy certificates. Therefore, we reject the first prayer of the petitioners that they are eligible for issue of RECs from the date of commissioning, irrespective of the dates of registration with the Central Agency.”

15. The petitioner has stated that delay in making the application for the period prior to the date of registration is procedural as it was taking steps for getting accreditation with the State agency and registration with the Central Agency. From the details made available by the petitioner, we do not find that there was any inordinate delay on the part of the Central Agency in granting registration. The application was received on 7.6.2012 and registration was granted on 29.6.2012. The time taken by the Central Agency appears to be reasonable. There is force in the submission of the respondent that the petitioner could take advance action, that is, before the date of commission, for seeking accreditation and registration. As pointed out by the respondent, the petitioner could approach the State agency for accreditation six months prior to commissioning and for registration three months prior thereto. The petitioner has not given any reasons for taking steps for accreditation and registration in accordance with the detailed procedure.

16. In view of the above discussion, the respondent's refusal to issue RECs for the period prior to the date of registration is in order and is upheld.

17. The next grievance of the petitioner is regarding non-issuance of RECs for the month of August 2012. The petitioner has submitted that it was issued Energy Injection Certificate for the month of August, 2012 on 9.10.2012. Therefore, the petitioner could make on-line application on 15th October, 1st November and 15th November in accordance with the REC Regulations and the approved detailed procedure. The petitioner has submitted that due to closure of offices in Maharashtra on account of Diwali holidays from 11.11.2012 to 16.11.2012, the petitioner could not make the online application on 15.11.2012. However, the petitioner has made physical application on 20.11.2012, which has been received by PGCIL on the same date. The petitioner is well aware that it is required to make the application online on 1st and 15th day of the month. Moreover, the system is available for making the application on 1st and 15th of the month irrespective of whether these dates fall on Sunday or closed holidays. Applications could have been made online from any place by accessing the website of the Central Agency and it is immaterial whether the petitioners' office is open or closed on these days. The petitioner has failed to make the online application on the stipulated dates. Mere submission of the physical application without filling the application online will not make the RE generator entitled for issue of RECs as the procedure prescribed by the Central Agency has the approval of this Commission. Since the petitioner has failed to make the applications online by 15.11.2012, he is not entitled for REC for the month of August 2012.



18. The petition is disposed of in terms of the directions above.

Sd/-

(M. Deena Dayalan)
Member

sd/-

(V.S.Verma)
Member

