



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 132/MP/2021

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 24th of January, 2022

IN THE MATTER OF:

Petition filed under Section 79(1)(k) of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business Regulations) 1999, and Regulations 3, 7, 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 condonation of delay in complying with the procedure for issuance of Renewable Energy Certificates for the month of February, 2020 and to further direct the Respondent No.1/NLDC to issue the certificates due to the Petitioner.

AND

IN THE MATTER OF:

Urjankur Shree Tatyasaheb Kore Warana Power Company Limited,
C/O Shree Tatyasaheb Kore Warana SSK,
Warananagar, Tal-Panahla, District-Kohlapur- 416113

[Registered Office: The IL&FS Financial Centre,
Plot C-22, G Block, Bandra-Kurla Complex, Bandra (E),
Mumbai – 400 051]

...Petitioner

VERSUS

- 1) National Load Despatch Centre,
Power System Operation Corporation Limited,
B- 9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110 016
- 2) Maharashtra State Load Despatch Centre,
Maharashtra State Electricity Transmission Company Limited,
Thane-Belapur Road, P.O. Airoli,
Navi Mumbai – 400 708

...Respondents

Parties present: Shri Piyush Joshi, Advocate, USTKWPCL
Ms. RV Anuradha, Advocate, USTKWPCL
Ms. Sumiti Yadava, Advocate, USTKWPCL
Ms. Vatsla Bhatia, Advocate, USTKWPCL
Shri Evneet Uppal, USTKWPCL
Shri Akshay Terkar, USTKWPCL
Shri Subhash Patil, USTKWPCL
Shri Sudhanshu Choudhari, Advocate, MSLDC
Shri Kailas Chand Saini, POSOCO
Shri Gajendra Sinh Vasava, POSOCO

आदेश/ ORDER

The Petitioner herein, Urjankur Shree Tatyasaheb Kore Warana Power Company Limited (USTKWPCL), is a Special Purpose Vehicle (SPV) promoted by the Urjankur Trust. The Petitioner has been promoted by “Urjankur Nidhi Fund” (UNF) which is a dedicated private equity fund set up by the Government of Maharashtra under Urjankur Trust to finance the development of non-conventional energy projects in the State of Maharashtra. The UNF is an initiative of the Government of Maharashtra, through the Ministry of New & Renewable Energy

(MNRE) and Infrastructure Leasing & Financial Services Limited (IL&FS).The Petitioner has installed a 44 MW bagasse based Cogeneration Power Plant (RE plant) utilising bio-fuel cogeneration (Non-Solar) in Warananagar, Maharashtra having registered 25.259 MW under the Renewable Energy Certificate (REC) mechanism with National Load Despatch Centre (NLDC). The Petitioner has filed the Petition under Section 79(1)(k) of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business Regulations) 1999, and Regulation 3, Regulation 7, Regulation 14 and Regulation 15 of 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”).

- 2) The Respondent No. 1, NLDC, is the Central Agency for undertaking the process of registration of eligible entities and issuance of RECs as provided under Regulation 3 of the REC Regulations, 2010.
- 3) The Respondent No. 2, Maharashtra State Load Despatch Centre (MSLDC), is the State Load Despatch Centre of the State of Maharashtra.
- 4) The Petitioner has made the following prayers:
 - i) *Condone the delay of 11 hours in making the online application to the Respondent No.1/ NLDC for issuance of Renewable Energy Certificates and the delay of 9 days in ensuring the physical delivery to the Respondent No.1(NLDC) of the copy of application for issuance of 5,446 (Five Thousand Four Hundred Forty Six) Renewable Energy Certificates for the month of February 2020;*
 - ii) *Direct the Respondent No.1(NLDC) to issue the 5,446 (Five Thousand Four Hundred Forty Six) Renewable Energy Certificates due to the Petitioner for the month of February 2020; and*

iii) Pass any further orders as this Hon'ble Commission may deem fit and proper in the circumstances of this case.

Submissions of the Petitioner

5) The Petitioner has submitted as under:

- a) It has executed a Project Development Agreement (PDA) with Shree Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Ltd. (STKWSSKL / Host Sugar Factory), which is a leading cooperative society of approximately 20,000 farmer members and its activities contribute to the development of 110 villages in the Kolhapur region in the State of Maharashtra.
- b) It was issued 'Certificate of Accreditation' by the Maharashtra Energy Development Agency ('MEDA') on 10.12.2014, which was renewed on 10.01.2020.
- c) It was issued 'Certificate of Registration' by NLDC on 06.02.2015, which was renewed on 06.02.2020.
- d) It has been consistently successful in obtaining the RECs from NLDC since February 2015.
- e) On 02.03.2020, Deputy Executive Engineer from sub-division office of MSEDCL collected the joint meter readings of the Petitioner's REC meter.
- f) On 11.03.2020, it made payments to MSEDCL for the issuance of the proforma Energy Injection Report (EIR).
- g) On 12.03.2020, it applied (along with the joint meter reading duly approved by the Deputy Engineer) for obtaining the proforma EIR from the office of the Superintending Engineer, MSEDCL.
- h) In order to contain the spread of COVID-19, the Government of Maharashtra began imposing certain restrictions from 20.03.2020 in addition to imposing a State-wide lockdown on 23.03.2020 which resulted in closure of all private establishments including the office of the Petitioner. This was prior to the national lockdown imposed by the Central Government on 25.03.2020.
- i) Owing to the COVID-19 lockdown related restrictions, the timing of the subsequent steps as was required to be undertaken under the REC Regulations, 2010, was progressively delayed, for reasons that were completely beyond the Petitioner's control.

- j) On 18.05.2020, it collected the EIR from MSEDCL, the delay being due to practical difficulties arising due to the lockdown, including the need to obtain relevant movement passes.
- k) On 02.06.2020, it submitted REC application with MSLDC along with all the required annexures, as per the CERC guidelines, for the approval of the EIR. During this period also, the prevailing lockdown measures presented several challenges. The Petitioner's representatives were located in different districts, i.e. Osmanabad and Mumbai, respectively, during this period, and their access to the Petitioner's RE Plant in Kolhapur was affected by the restrictions on inter-district movement of persons.
- l) On 30.07.2020, the REC Application was issued after having obtained signatures from the authorized signatories.
- m) In order to ensure that the physical copies of the REC Application are submitted to SLDC in a timely manner, the Petitioner also sought the assistance from its consultant- Manikaran Power Limited (Manikaran), which is located in close proximity to the SLDC office in Thane District. However, Manikaran's offices were also closed from 21.03.2020 till 20.09.2020 due to the lockdown. As such, the REC Application sent by courier by the Petitioner to Manikaran's office on 30.07.2020, was returned undelivered on 10.08.2020.
- n) On 11.08.2020, it subsequently electronically sent a scanned copy of the REC Application along with the proforma EIR and meter readings, as approved by MSEDCL, to Manikaran. Subsequently Manikaran submitted the same to MSLDC on the same day.
- o) On 28.08.2020, MSLDC approved the Petitioner's EIR and the Online EIR was generated by MSLDC only in the late evening of 31.08.2020.
- p) On 31.08.2020, immediately upon receiving the EIR approved by MSLDC, the Petitioner started the process for collating all relevant material for the REC application to be made to NLDC. Despite all best efforts, the ongoing limitations on public transport, etc. arising from the lockdown related measures resulted in the application being ready only by the next day, i.e., 01.09.2020, at 11 am.
- q) As per the REC Regulations, 2010, the six-month period for the Petitioner to submit the application for RECs to NLDC ended on the midnight of 31.08.2020. The Petitioner submitted the web-based application to the Respondent No.1/NLDC by 11:21 AM on

01.09.2020, which was 11 hours beyond the time limit of 6 months as specified under the REC Regulations.

- r) A physical copy of the said application was sent by speed post through India Post on 02.09.2020 and received by NLDC on 09.09.2020.
- s) It sent a follow-up email to NLDC on 04.09.2020 explaining that SLDC had uploaded the EIR only late evening of 31.08.2020, and since there were travel restrictions in Kolhapur region due to the COVID-19 pandemic, the application could be emailed to the Respondent No.1/NLDC only on the morning of 01.09.2020, thereby resulting in a delay of 11 hours in the submission of the application for issuance of REC.
- t) Upon receipt of the physical copy of the application, NLDC *vide* its email dated 18.09.2020, informed the Petitioner that since the application for the month of February 2020 has been received after the prescribed timeline of six months under the REC Regulations, 2010, the said application would not be accepted and no RECs would be issued. As per the said email, NLDC stated that the Petitioner's application was received by them on 11.09.2020, although the tracking report available on the India Post website indicates that it was delivered at NLDC on 09.09.2020.
- u) It can be seen that it faced difficulties in respect of compliance with the procedural formalities for applying for issuance of RECs for the month of February 2020, as a result of which there was 11-hour delay in submitting the electronic web-based filing with Respondent No.1/NLDC and subsequently 9 day delay in the physical delivery of its application to the Respondent No.1/NLDC's office at New Delhi. These procedural delays which were the consequence of circumstances beyond its control, have resulted in NLDC rejecting its application for issuance of RECs for February 2020.
- v) The application for the period of February 2020 was for issuance of 5,446 (Five Thousand Four Hundred Forty Six) RECs. The Petitioner has, in the past, achieved REC sale price ranging between Rs.1000/- to Rs. 1750/-. Even assuming the price of RECs at Rs.1,000/-, the estimated financial loss for the Petitioner, if it is denied RECs for the month of February 2020, would be approximately Rs. 54,46,000/- (Rupees Fifty Four Lakhs Forty Six Thousand only). Thus, non-issuance of the RECs has significant financial implications for the Petitioner.

- w) MNRE has also recognized the severe restrictions and impediments faced by the renewable energy industry as a result of the lockdown due to the COVID-19 pandemic and has issued several office memoranda and communications for relaxing various provisions and otherwise granting relief to the renewable energy industry.
- x) The petitioner had genuine difficulty in submitting the application for issuance of RECs within the stipulated time due to circumstances which, as explained above, were beyond its control. Despite all odds, it has undertaken all the steps as reasonably practicable, and respectfully submits that it should not be prejudiced by the delay of a few hours in making its electronic submission of the REC application for February, 2020. The delay being inadvertent and without any *mala-fide* intention as it was caused by various difficulties and restrictions faced by the Petitioner due to the lockdown and did not result in any grave difficulty to the NLDC, makes it a fit case for the Commission to relax the provision for making application within six (6) months of generation by exercising its powers under Regulation 15 of the REC Regulations, 2010.
- y) The Commission has in the past exercised its power to condone delay in complying with the procedure for issuance of RECs and has further directed NLDC to issue the certificates due to other entities when the delays have been due to reasons not in the control of such entities. This Commission has condoned delay in complying with the procedure for issuance of RECs in several instances such as in the matter of *Olam Agro India Pvt. Ltd. v. NLDC* (Petition No. 75/MP/2018), *DCM Shriram Industries Limited v. NLDC* (Petition No. 243/MP/2019), *Balrampur Chini Mills Limited v. NLDC* (Petition No. 50/MP/2019), *ITC Limited v. NLDC* (Petition No. 05/MP/2019), and *India Glycols Limited v. NLDC* (Petition No. 15/MP/2019).

Submissions of Respondent No. 2 (MSLDC)

- 6) MSLDC has submitted as under:
 - a) As per Clause No. (5) of REC Regulations, 2010, the Petitioner is eligible entity for obtaining Renewable Energy Certificates.
 - b) MSLDC had received application along with EIR for the month of February, 2020 from Manikaran (the Consultant of the Petitioner) vide e-mail dated 11.08.2020.

- c) After processing the application, MSLDC sent EIR through e-mail on 28.08.2020 vide L. No. SE/EA/REC/ 18778 dated 28.08.2020 to NLDC along with copy to Manikaran.
- d) The Petitioner has alleged that MSLDC has uploaded EIR on late evening of 31.08.2020. However, it is clarified that MSLDC does not upload any EIR but only issues EIR of the eligible entity to NLDC for issuance of REC along with copy to the respective generator or its consultant and the same was issued on 28.08.2021. Hence, the contention raised by the Petitioner has no substance and hence denied.
- e) There is no delay on the part of MSLDC for processing an application of the Petitioner as claimed by the Petitioner.

Rejoinder of the Petitioner

- 7) The Petitioner submitted that:
 - a) there is an inadvertent error in its Petition wherein it has been erroneously stated that the “Online EIR uploaded by SLDC” and acknowledges that SLDC does not upload the EIR and that the EIR is generated at the time of filing of the application before NLDC
 - b) On 31.08.2020, immediately upon finalizing the signed and stamped Online EIR, the Petitioner started the process for collating all relevant material for the REC application to be made to NLDC. Despite all best efforts from the Petitioner, the ongoing limitations on public transport, etc. arising from the lockdown related measures, resulted in the application being ready only by the next day, i.e. 01.09.2020, at 11 am.

Analysis and Decision

- 8) We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
- 9) The brief facts of the case is that the Petitioner is a Special Purpose Vehicle (SPV) promoted by the Urjankur Trust which is an initiative of the Government of Maharashtra, through the Ministry of New & Renewable Energy (MNRE) and Infrastructure Leasing & Financial Services Ltd (IL&FS). The Petitioner was issued ‘Certificate of Accreditation’ by MEDA on 10.12.2014, which was renewed on 10.01.2020. It was issued ‘Certificate of Registration’ by NLDC on

06.02.2015, which was renewed on 06.02.2020. It has been consistently obtaining the RECs from NLDC since February 2015. Owing to the COVID-19 lockdown related restrictions there was delay of eleven (11) hours in the electronic web-based filing and subsequently nine (9) days delay in the physical delivery in respect of compliance with the procedural formalities for applying for issuance of RECs for the month of February 2020.

- 10) The case was called out for virtual hearing on 21.12.2021.
- 11) During the course of hearing, the Petitioner submitted that it has filed the present Petition, inter alia, seeking condonation of delay of 11 hours in making the online application to NLDC for issuance of RECs and direction to NLDC to issue RECs to the Petitioner for the month of February 2020. The learned counsel for MSLDC submitted that the Respondent has already filed its reply to the Petition. The representative of NLDC submitted that they do not have any objection to the Petition.
- 12) The Commission observes that the relevant provisions of the REC Issuance Procedure 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.
... ”

13) Regulation 7(2) of the REC Regulations, 2010 provides as follows:-

“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

(1A) The eligible distribution licensees shall apply to the Central Agency for Certificates within three months from the date of obtaining the certification, as provided in clause (1 A) of the Regulation 5, from the concerned Appropriate Commission

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

(3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.

(4) The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid [or deemed to be injected in case of self consumption by eligible captive generating plant and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures.”

- 14) Regulation 15 of the REC Regulations, 2010 stipulates that the Commission is empowered to relax the provisions of the Regulations or provide dispensation by general or specific order:

“Power to Relax:

The Commission may by 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 on its own motion or on an application made before it by an interested person.”

- 15) From the above, the Commission observes that as per the REC Regulations, 2010 and the REC Issuance Procedures, the eligible entity has to apply for issuance of RECs on the web-based application as per the details given in the Energy Injection Report and also submit the same information in physical form with the Central Agency (NLDC) within six months. The Central Agency has to verify the application in terms of the Energy Injection Report issued by the concerned State Load Despatch Centre in respect of the Eligible Entity.

16) The Commission observes that the Petitioner has accepted the delay of eleven (11) hours in filing the web-based application and nine (9) days delay in physical application for issuance of RECs for the month of February 2020 and that the delay was due to travel restrictions due to State lockdown on account of the COVID 19 pandemic and has prayed for condoning the delay and issuance of equivalent RECs. NLDC has submitted that they do not have any objection to the Petition. In our view, the delay in uploading EIR on website of NLDC for issuance of RECs for the month of February, 2020 was because of delay due to lockdown on account of COVID 19 pandemic which is beyond the control of the Petitioner. Therefore, the Commission in exercise of the powers under Regulation 15 of the REC Regulations, 2010, hereby condones the delay in uploading EIR by the Petitioner and directs the Respondent NLDC to process the case of the Petitioner for issuance of RECs for the month of February 2020 after due verification.

17) Accordingly, the Petition No. 132/MP/2021 is disposed of.

Sd/-
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(आई. एस. झा)
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Sd/-
(पी. के. पुजारी)
अध्यक्ष