



नईदिल्ली
NEW DELHI

याचिकासंख्या. /Petition No.: 449/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेशदिनांक /Date of Order: 17th of January, 2022

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act 2003 read with Regulations 14 & 15 of the Central Electricity Regulatory Commission (Terms and Conditions of Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 challenging the non-grant of Renewable Energy Certificate.

ANDIN THE MATTER:

Shri Suryakant Gupta,
Proprietor M/s Rajaram Maize Products Solar Power Division,
Through General Power of Attorney Holder Mr. Manoj Choubey,
Village Indawani, District Rajnandgaon,
Chhattisgarh – 491441

...Petitioner

Versus

National Load Despatch Centre (NLDC),
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110016

...Respondent

Parties Present: Shri Pradeep Aggarwal, Petitioner

ORDER

The Petitioner, Shri Suryakant Gupta, is a sole-proprietor of M/s Rajaram Maize Products Solar Division. The Petitioner is engaged in generation of renewable energy and owns and operates 4.8 MW Solar Power Plant at Village Indawani, District Rajnandgaon, Chhattisgarh. The project is under captive use and was set up under the Chhattisgarh State Solar Energy (hereinafter referred to as “CSSE”) Policy 2012. The Petitioner has filed the petition under Section 79 of the Electricity Act 2003 read with Regulation 14 & Regulation 15 of the Central Electricity Regulatory Commission (Terms and Conditions of Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as “REC Regulations”) seeking issuance of Renewable Energy Certificates (RECs). The Petitioner has made the following prayers:

- (a) Direct the Respondent to issue the RECs for energy generated for the months of April 2017 and for the months of November 2018 to May 2019;*
- (b) Direct the Respondent to obtain the Injection Report from the State Load Dispatch Centre (SLDC) for the period from May, 2017 to October, 2018 and thereafter to issue the REC certificate for this period also;*
- (c) Direct the Respondent to also issue Renewable Energy Certificates for energy generated from May 2019 till 17.5.2021 as per the prevalent policy;*
- (d) Direct the Respondent to pay costs of the instant Petition;*
- (e) Pass any other or further order(s) as the Commission may deem fit and proper in facts and circumstances of the present case.*

Submissions of the Petitioner

2. The Petitioner has submitted that:
 - i. Since 1983 Rajaram Maize Products is carrying on the business of wet-milling and manufacturing of starch, liquid glucose etc. at Village Bhotipar.

- ii. The Government of India launched the JNNSM in January 2010 and Chhattisgarh introduced Chhattisgarh State Solar Energy Policy, 2012 for the period 2012-2017 ('CSSE Policy').
- iii. In furtherance to the CSSE Policy, 2012, the Petitioner installed Solar Power Plant for the purpose of the captive use and for selling electricity to third party in case of surplus. The Petitioner invested a sum of approx. Rs.30,00,00,000/- (Rupees Thirty Crores Only) for installation of 4.8 MW Solar Power Plant on 23 acres of the Petitioner's own land at Village Indawani, District Rajnandgaon, Chhattisgarh.
- iv. On 26.11.2015, the CSPDCL annexed a copy of the finalized Connection Agreement dated 24.11.2015 for connectivity of 4.8 MV Solar PV Power Plant with Grid.
- v. On 11.01.2016, the Petitioner wrote a letter to the CSERC stating therein that the Petitioner had set up 4.8 MW Solar Power Plant in Indawani, Rajnandgaon and the Petitioner wants to use the said power in its Starch Plant Unit. The Petitioner requested the CSPDCL to issue the consent letter so that it could deposit the application for open access wheeling with the CSPTCL.
- vi. On 21.01.2016, the CSERC replied to the Petitioner stating therein that the wheeling charges would be @ 6 % of the energy input into the system for the consumer using State grid for procuring power from renewable energy based power generating stations.
- vii. On 23.01.2016, the solar power generated by the Petitioner was injected to the Board's Service Station on 23.01.2016 at 33/11 KV at Somni Sub Station.
- viii. The said Solar Plant generates approximately 25,000 units per day and after deducting combined charges (wheeling and transmission charges at the rate of 6% at injection point), the same works out to approx. 23,500 units per day.
- ix. On 27.02.2016, the Petitioner filed a Petition No.12 of 2016 (M) before the CSERC wherein it was, inter-alia, prayed that the CSPDCL be directed to make immediate arrangement for captive use of the electricity generated by the Petitioner.
- x. On 18.05.2016, CREDA issued a Certificate of Accreditation for REC to Petitioner's RE Generating Station for the period from 18.5.2016 to 17.5.2021 to the Petitioner.
- xi. The CSERC passed an Order dated 20.07.2016, wherein the Petitioner was given captive status along with banking facilities and other facilities/ benefits to produce and use the said solar energy in accordance to the CSSE Policy, 2012.

- xii. Further, the petitioner has not availed any benefit in any form of concessional/ promotional transmission or wheeling charges and/or banking facility. In fact 6% wheeling and transmission charges and 2% banking charges were deducted from the total units exported by the Petitioner. No concession is given by CSPDCL to the Petitioner.
- xiii. As such, the Petitioner is fully covered by the Proviso to Clause (1B) of the Fourth Amendment to REC Regulations and hence the benefit of REC could not be denied to it.
- xiv. Further, as per the letter dated 19.10.2016, the project is registered under REC mechanism from 29.06.2016 and has received benefits of REC from June 2016 to March 2017. However, for the month of April 2017, NLDC has failed to approve the RECs and it is pending verification before the REC Registry of India.
- xv. From May 2017 to October 2018, State Load Dispatch Centre (SLDC) has not forwarded the energy injection report (EIR) to NLDC and from November 2018 to May 2019, NLDC has again failed to approve the REC and it is pending verification before the REC Registry although SLDC has forwarded the EIR to NLDC during this period.
- xvi. It filed before CSERC an application dated 12.09.2016 under Section 142 of the Electricity Act against CSPDCL for violating the CSERC Order dated 20.07.2016. CSERC vide Order dated 03.03.2017 disposed of the application under section 142 of Act with the directions that the Petitioner's project is entitled for captive usage. Prior to the status of captive generation plants, the Petitioner was registered under the REC Mechanism.
- xvii. Pursuant to the Order dated 03.03.2017 passed by CSERC, NLDC stopped issuing RECs to the Petitioner on the ground that the captive generation plants shall be eligible for registration with the Central Agency under the REC scheme if registered on or before 30.06.2016 and the status of the Petitioner has changed to captive usage after the aforesaid date.
- xviii. The Petitioner has submitted that its project was registered under the REC Scheme prior to 30.06.2016 i.e. on 29.06.2016. Therefore, it is entitled for registration with the Central Agency under the REC Scheme.
- xix. CSPDCL did not comply with the Order dated 03.03.2017 and after passing of the

Order dated 03.03.2017, the Petitioner filed an application dated 27.06.2017 before CSERC seeking certain clarifications in the Order dated 03.03.2017. CSERC disposed of the application vide Order dated 14.11.2017 and held, *inter alia* that the cause of action will be from 03.03.2017, when the Commission issued the Order in Petition No.61 of 2016. The Petitioner filed an appeal before the Appellate Tribunal for Electricity being Appeal No. 172 of 2018 against the CSERC Order dated 14.11.2017, which is pending.

- xx. On 04.01.2018, CREDA sent an email to the Respondent that the status of the Petitioner has been changed to captive generating power plant.
- xxi. NLDC vide its email dated 06.06.2018, held that the Petitioner is not eligible for registration with the Central Agency under the REC scheme as the Petitioner is not registered prior to 30.06.2016.
- xxii. However, the Petitioner claims that it is covered by the proviso to Clause (1B) Fourth Amendment to REC Regulations in as much as the Petitioner started generation of solar power from 23.01.2016 and was registered with the REC with effect from 29.06.2016. Further, no benefits were availed by the Petitioner. As such the issuance of the REC by the Respondent cannot be denied to the Petitioner.

Submission of the Respondent NLDC

- 3. The Respondent NLDC has submitted that
 - a) The Petitioner's 4.8 MW RE project was accredited by the State Agency i.e. CREDA on 18.05.2016 and subsequently the project was registered under REC mechanism on 29.06.2016.
 - b) As per the checklist provided by the Petitioner to NLDC vide email dated 30.05.2016, the off-take route of electricity of the project was Average Pool Power Cost (APPC). The project did not claim to be selling power under the captive route.
 - c) On 08.09.2016, NLDC received the revised checklist for the project of the Petitioner through CREDA letter dated 03.09.2016. NLDC highlighted that in the check list received, the Petitioner specified off-take route of electricity as Open Access and no information regarding captive consumption was provided. The issuance of RECs in terms of the Regulations was therefore continued as the project qualified under Open Access route.

- d) On 27.07.2017, the Petitioner wrote to the NLDC, requesting for a change in the off-take of electricity from APPC to CGP and in this regard, the NLDC sought clarification from CREDA. CREDA by its email dated 04.01.2018, confirmed to the Respondent that the Petitioner had changed the status of its off-take route from APPC to CGP.
- e) On 06.06.2018, it conveyed its decision of disallowing the issuance of RECs to the Petitioner on the following grounds:
- Pursuant to Fourth Amendment in REC Regulations, a CGP based on renewable energy sources shall be eligible, if registered with the Central Agency under REC scheme on or before 30.06.2016.
 - Also, as per CERC REC modified approved procedure, CGP based project on renewable energy sources, shall not be eligible for registration under REC mechanism.
- f) On 06.06.2018, CREDA communicated to the Respondent that the Petitioner's plant was to be treated as a CGP in terms of the CSERC Order dated 03.03.2017 in Petition No 61 of 2016(M). CREDA further recommended that the status of the Petitioner be changed to CGP from the COD i.e. 23.01.2016. The Petitioner, on 15.06.2018 requested that it be treated as CGP and RECs be issued accordingly.
- g) The REC approved procedure, notified on 16.03.2018 clarifies 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, shall not be eligible for Accreditation/Registration for the energy generated from such plant to the extent of self-consumption.
- h) RECs were issued to the Petitioner from June 2016 to March 2017 as per its status under the APPC/Open Access route. The Petitioner is seeking to migrate from APPC status to CGP status on a future date while carrying with itself the eligibility of REC from a past date. It is essential to point out that the qualification of Petitioner's plant in 2016 was done on the basis of it approaching through the APPC route and not through CGP. If the Petitioner now seeks to migrate its status, its eligibility shall be tested on the touchstone of the current status on the current date, as per which it is ineligible for issuance of RECs.
- i) The Petitioner does not qualify as a CGP registered before 30.06.2016 as it was only after 03.03.2017 that the Petitioner sought to invoke its status as a CGP. The

Petitioner cannot now retrospectively claim benefit based on an Order of CSERC which by its own admission is applicable from 03.03.2017.

Submissions of the Petitioner in the Rejoinder

4. The Petitioner through rejoinder has further submitted that:
- a) The 'No Objection' dated 17.8.2015 issued by CREDA stated that the said Solar Power Plant shall be for captive use. On 11.01.2016, Petitioner wrote to CSERC that they had setup 4.8 MW plant and as there was no PPA with CSPDCL, they want to use the said power in their Starch Plant unit.
 - b) Accordingly, it requested CSPDCL to issue the consent letter so that the Petitioner could deposit the application for open access wheeling with CSPTCL. On 21.01.2016, CSERC ordered stating that the wheeling charges would be @ 6 % of the energy input into the system for the consumer using State grid for procuring power from renewable energy based power generating stations.
 - c) On 12.02.2016, it applied before CREDA enclosing all necessary documents in respect of captive use. Thereafter, as it was not provided with open access, it was constrained to enter into a PPA with CSPDCL to sell the electricity under APPC from the date of commencement i.e. 23.01.2016 till 27.02.2016 (date of filing the Petition before CSERC). As it had set up the solar plant only for captive use, after 27.02.2016, there was no PPA and as such, the supply of 71, 85,400 units had not been adjusted against the use of electricity by the Petitioner from the grid.
 - d) On 18.05.2016, CREDA granted Accreditation Certificate to the Petitioner and even after applying for captive usage, open access was not granted and the Petitioner was constrained to apply under APPC route under REC mechanism.
 - e) CSERC vide its Order dated 20.07.2016 granted captive status to the Petitioner and directed CSPTCL to provide open access to it according to the prevailing Regulations. On 17.02.2017, open access permission was granted to the Petitioner by CSPTCL. Since there was considerable delay, it filed an application before CSERC against CSPDCL stating that there is a violation of the Order dated 20.7.2016. Accordingly, CSERC vide Order dated 03.03.2017 disposed of the application with the directions that the Solar Plant of the Petitioner is entitled for captive usage.
 - f) In pursuance to the CSERC Order dated 03.03.2017, the Respondent stopped giving

REC benefits to the Petitioner on the grounds that CGP shall be eligible for registration with Central Agency under the REC scheme if registered on or before 30.06.2016 and that the status of the Petitioner has changed to captive usage.

- g) It was registered under the REC Scheme prior to 30.06.2016 i.e. on 29.06.2016. Therefore, it was entitled for registration with the Central Agency under the REC Scheme.
- h) It applied for captive use on 27.02.2016 and satisfies all the conditions as mentioned in the REC Regulations dated 28.03.2016 and is eligible for REC. The delay was entirely on the part of CSPDCL. The Respondent further failed to consider the fact that 6% wheeling and transmission charges and 2% banking charges were deducted from the total units exported by the Petitioner and no concession is given by the CSPDCL to the Petitioner.

Analysis and Decision

- 5. The Petition was admitted on 14.01.2020 and came up for virtual hearing on 03.09.2021 and the Commission reserved the petition for Order.
- 6. Brief facts of the case are that the Petitioner achieved commercial operation for its project on 23.01.2016 and consequent to its accreditation by CREDA on 18.5.2016, the project was registered with the Central Agency under the REC mechanism on 29.06.2016. The Petitioner claimed that in the absence of grant of open access, it was constrained to sell the electricity from the project to CSPDCL under APPC from the date of commencement i.e. 23.01.2016 till 27.02.2016. However, subsequent thereto, there was no arrangement/ PPA with CSPDCL. On 27.02.2016, the Petitioner filed the Petition No. 12/2016 before 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 20.07.2016 observed, inter alia, that no permission is required for setting up the plant and its captive use under the provisions of the Electricity Act, 2003 and that the Petitioner has the right of captive use of the electricity generated from its solar power plant and can also have open access as per the applicable rules/ regulations. However, NLDC denied RECs to the Petitioner on the ground that 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 03.03.2017 (passed in Petition No. 61/2016 filed by the Petitioner under Section 142 of the Electricity

Act, 2003 against CSPDCL for violation of the Order dated 20.7.2016), that the Petitioner sought to change this status from APPC to CGP route.

7. From the submissions of the parties, the following issues arise before this Commission:

Issue No.1: Whether the Petitioner's solar plant is eligible for issuance of RECs as captive generating plant?

Issue No.2: Whether the Respondent should be directed to issue RECs to the Petitioner for the month of April 2017 and for the months from November 2018 to May 2019 and onwards?

8. No other issues were pressed or claimed. We discuss the issues one by one:

Issue No.1: Whether the Petitioner's solar plant is eligible for issuance of RECs as captive generating plant?

9. The Commission observes that Regulation 5 of the REC Regulations stipulates as under.

"5. Eligibility and Registration for Certificates:

.....

(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:

Provided further that if such plant meeting the eligibility criteria for REC, forgoes on its own, the benefits of concessional transmission or wheeling charges and/or banking facility benefit, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits:

Provided also that the above mentioned condition for participating in the REC scheme shall not apply if the benefits given to such plant in the form of concessional transmission or wheeling charges and or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

Provided also that if any dispute arises as to whether a CGP or any other renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

.....”

10. Regulations 7(2) & 7(4) of the REC Regulations, 2010 stipulate as under:

“(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.

(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]13] 14 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.”

11. Regulations 14 & 15 of the REC Regulations, 2010 stipulate as under:

“14. Power to give directions: The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.

15. 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.”

12. The Commission observes that the proviso of Regulation 5(1B) of the REC Regulations provides that a Captive Generating Plant (CGP) shall be eligible for the entire energy generated from such plant for participating in the REC scheme provided it fulfils the following conditions: (a) it is commissioned between 29.09.2010 and 31.03. 2016; (b) it is registered with Central Agency under REC scheme on or before 30.06.2016 and (c) such plant does not avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit.
13. In the instant case, it is observed that the Petitioner achieved commercial operation for its project on 23.01.2016. The project was accredited by CREDA on 18.05.2016 and was registered with NLDC under REC mechanism on 29.06.2016.
14. The Petitioner has submitted that since it is eligible for REC under captive route NLDC may be directed to issue the RECs for the energy generated for the month of April 2017 and for the months of November 2018 to May 2019 and to obtain the Injection Report from the SLDC for the period from May, 2017 to October, 2018 and thereafter to issue RECs for this period as well. However, NLDC has submitted that 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 30.06.2016. 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 indicated the off-take route of the project as APPC as on 30.6.2016. 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. In the letter of CREDA dated 06.06.2018, referring to the Order of CSERC dated 03.03.2017 in Petition No. 61/2016 it has been stated, inter alia, that the status of the solar power plant of the Petitioner is being treated as the captive from the date of Order.
15. The Commission observes that vide Order dated 20.07.2016 in Petition No. 12/2016(M), CSERC has held as under:

“13. According to the provisions of the electricity act for setting up of the Solar plant and for captive use requirement of the permission of the commission is not necessary, though the compliance of the Rules & Regulations for prevalent in this connection is desirable. Keeping in view the averments made by the petitioner and the objections raised by the respondents we reach to the conclusion that:

- (a) the petitioner has the right of captive use of electricity generation from the Solar Power Plant set up by the petitioner for their own starch plant, which is located in Village Bhothipar, Post Surgi, District Rajnandgaon. He can also have the open access according to the Rules. Both the parties to act in this connection according to the mutual consent reached in the meeting held between them on 17.05.2016.*
- (b) On the petitioner moving a proper application the respondent no. 2 shall provide open access to him according to the prevailing regulations;*
- (c) after captive use if the electricity goes to the Grid or additional electricity is taken from the Grid then its adjustment shall be done according to the prevailing regulations;*
- (d) the petitioner shall have the right to get all those facilities for a solar power plant which are available to the electricity producers from the renewable power sources and the captive users according to the regulations.”*

16. The Commission observes that vide Order dated 03.03.2017 in Petition No. 61/2016(M), CSERC has inter-alia held as under:

*“The petitioner Shri Suryakant Gupta, Proprietor M/s Rajaram Maize products, Solar Power Division, Rajnandgaon, has **filed the petition under section 142 of the Electricity Act 2003 against respondents Chhattisgarh State Power Distribution Company Limited (CSPDCL)***

*2. Petitioner has submitted that respondent CSPDCL has violated the orders issued by the commission on 20.07.2016 in petition Number 12/2016(M) by issuing conditional NOC for open access. **In order dated 20.07.2016 it has been held that the petitioner can take open access for captive use for solar power plant. It was also held that solar power plant will be entitled to draw benefits as specified in the appropriate regulations for renewable energy.***

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Commission's View

*10. It is observed that this is a peculiar case where the capacity to generate power by the petitioners power plant is higher than its end consumption during day hours. Secondly, the petitioner's power plant being solar power plant it cannot generate power during evening and night hours. During the night hours and evening hours the power at end user end has to meet from retail supply by licensee. **Taking into consideration the spirit of Act and various policies prescribed by Govt. of India to promote solar generation and all the relevant aspect of this case the provisions of DSM Regulations (ABT Regulations) has to be relaxed for this peculiar case. In order to facilitate consumption from the solar power plant, the Commission has tried to relax certain provisions in the existing regulations/order so that the spirit***

of Act is protected.

11. For the banking of solar energy generated during the day hrs, relevant para of 'the Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based renewable energy sources) (Second Amendment) Regulations, 2016 is reproduced below (emphasis added);

"11.8 Banking of Energy: Banking of energy for RE generating plants would be permissible for three months for those plants which have not entered into agreements with distribution licensee for supply of electricity generated in full to the distribution licensee. Provided that the RE generating plants install the ABT meter at the point at which licensee receives power. Provided that 2% of the energy will be adjusted by distribution licensee while releasing the energy by distribution licensee as banking charge per month. Provided also that when the generator withdraws energy during peak hours, which is deposited during off-peak hrs as defined in the tariff order, he should compensate the licensee by paying the difference between the cost of his power and the annual average power purchase cost of that financial year."

The Commission is of view that petitioner solar power plant division will have to enter into the PPA with CSPDCL for sale of the surplus solar energy available after meeting its captive requirement and banking will be available for the entire year however energy settlement is to be carried out on month to month basis.

12. In the DSM Regulations, 2016, provisions for payment of demand charges for multi supply consumer (MSC) has been made as summation of contract demand for retail supply agreement and approved open access quantum for conventional power. **As mentioned above the petitioner would use the wires of licensee in the day hours only for meeting its captive use/end use requirement and the same wires would be utilized for availing retail supply during evening and night hours. In absence of express provision related to such supply arrangement where the wires of licensee shall be used for open access during day hours and retail supply during evening and night hours, the demand charges shall be paid by M/s Rajaram Maize Products for their starch plant as per their retail supply agreement only i.e. 1500 KVA contract demand.** Regarding deviation charges for settlement from deviations from schedule by the drawee entity i.e. M/s Rajaram Maize Products, the settlement mechanism is being specified in the subsequent paragraph. After operation of this mechanism, there will not be any deviation charges/UI charges.

...

”

17. The Commission observes that vide Order dated 14.11.2017 in Petition No. 40/2017(M), CSERC has held as under:

“5. Petitioner further submitted that they have established plant for captive use/third party sale. Minimum 51% of the generated electricity has to be used for captive use by the petitioner which is also clearly mentioned in CSPDCL letter dated 29.11.2016.

In CERC Regulation 2003, there is clear provision for solar generators having rights for third party sale and captive use. In the order dated 03.03.2017 there is no clear mention for third party sale, which is necessary to mention for avoiding possible disputes in future.

...

7. Relief sought by the petitioner are as follows:-

- i. That solar production has started from 23.01.2016, the date of adjustment should be considered from the date of start of production.*
- ii. That the facility of banking of electricity should be per year instead of per month.*
- iii. That the remaining electricity after captive consumption should be allowed for third party sale.*
- iv. That CSPTCL is asking for scheduling every week, so it is necessary to advice them that, because of exemption from DSM, there is no need of scheduling.*
- v. That the petitioner is facing financial loss due to non payment or adjustment of amount by the respondent for the unit 7185400 from date 01.03.2016 to 28.02.2017 for their generation of solar electricity supplied to the grid. Therefore for the said unit respondents are bound to pay/adjust the amount, therefore respondent should be advised in this matter.*

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Commission's view and Order:

8. The Commission is of the view that the issues raised in the present petition have already been decided in the Commission's Order dated 03.03.2017 in P.No.61 of 2016 after due deliberations. In the Order dated 03.03.2017, the Commission held as follows;

“XXXXXXXX

As the modality of settlement of energy and demand of this transaction has been finalized in this Order, it doesn't appear proper to penalize and imposed section 142 of the Act at this stage as pleaded by the petitioner. XXXXXXXXXXXX.”

The Commission while issuing the order dated 03.03.2017 has relaxed various provisions of the regulations/orders in the spirit of the Act.

Therefore, the cause of action will be from the date 03.03.2017, when the Commission issued the Order in P.No.61 of 2016.

18. From the above, the Commission observes that vide Order dated 20.07.2016 CSERC has already held that the petitioner has the right of captive use of electricity generation from the Solar Power Plant set up by the Petitioner for its own starch plant and the Petitioner shall have the right to get all those facilities for its project which are available to the electricity producers from the renewable power sources and the captive users according to the regulations. Also, it is observed that Petition No. 61/2016(M) was filed with CSERC under

section 142 of the Electricity Act 2003 against respondents CSPDCL. Vide Order dated 03.03.2017, CSERC held that the petitioner's project being solar power plant cannot generate power during evening and night hours. Therefore, during the night hours and evening hours the power at user end has to meet from retail supply by the licensee. Accordingly, the provisions of DSM Regulations (ABT Regulations) have to be relaxed for this peculiar case. It was also held that the Petitioner will have to enter into the PPA with CSPDCL for sale of the surplus solar energy available after meeting its captive requirement and banking will be available for the entire year however energy settlement is to be carried out on month to month basis. The Petitioner would use the wires of licensee in the day hours only for meeting its captive use/end use requirement and the same wires would be utilized for availing retail supply during evening and night hours. Also vide another Order dated 14.11.2017, CSERC has held that the cause of action for the relaxed provisions of the regulations/orders will be from the date of Order in Petition No. 61/2016(M) viz. 03.03.2017.

19. From that above, the Commission is of the view that the captive status of the Petitioner already stands adjudicated by CSERC vide Order dated 20.07.2016 whereas vide Order dated 03.03.2017, CSERC has given a few relaxations to the Petitioners and vide Order dated 14.11.2017 CSERC have held that the relaxations were to be implemented from 03.03.2017.
20. The Commission further observes that on 17.08.2015 CREDA issued 'No objection certificate' that the power produced from the project shall be for *captive usage and for the third party sale*. Further, vide letter dated 12.02.2016 issued by the Petitioner to CREDA, the Petitioner had annexed *undertaking regarding captive use of generating energy*.
21. The Commission observes that NLDC has pointed out that the Petitioner on 30.06.2016 had indicated in the checklist the off-take route of electricity for the project as APPC and in the declaration of August 2016 the Petitioner had indicated the off-take route of electricity for the project as open access. The Commission notes that when the Petitioner was litigating its case about captive status before CSERC, it should have informed the same to the Respondent NLDC as it had done to the State Nodal Agency viz., the CREDA. It is definitely a procedural lapse on the part of the Petitioner. However, the Commission is inclined to condone this procedural lapse in view of the Order dated 20.07.2016 of CSERC vide which the captive status of the Petitioner stands adjudicated. Further, it is observed that in the letter

dated 06.06.2018, CREDA has recommended to NLDC to change the status of the project of the Petitioner to captive plant for eligibility of REC from the date of COD i.e. 23.01.2016.

22. From the discussion above, the Commission observes that the Petitioner faced procedural difficulties as a result of the CSPDCL not granting open access to the Petitioner for transfer of power from its captive plant to the point of consumption, despite repeated orders by the CSERC. Therefore, the Commission is of the view that the Petitioner cannot be denied RECs on account of the delay in recognizing the captive status of the Petitioner. NLDC during the hearing stated that it would have no objection should the Commission direct the registration of the Petitioner and its entitlement for RECs. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy. Considering that registration is only a procedural condition and the fact that the substantive conditions have been fulfilled by the Petitioner as per the Order of CSERC and certification of CREDA the State Nodal Agency, the Commission holds that the Petitioner is eligible under REC Regulations for issuance of RECs as captive generating plant from its date of commissioning i.e. 23.01.2016.
23. The issue is decided accordingly.

Issue No.2: Whether the Respondent should be directed to issue RECs to the Petitioner for the month of April 2017 and for the months from November 2018 to May 2019 and onwards?

24. In light of the discussions held in Issue No.1 above, the Commission holds that the Petitioner is entitled for RECs for the month of April 2017 and for the months of November 2018 to May 2019 as per the terms and conditions of REC Regulations, 2010. Accordingly, we direct the Respondent to process the case of the Petitioner for grant of RECs after due verification and fulfilment of other conditions for issuance of RECs as per REC Regulations.
25. Accordingly, the Petition No. 449/MP/2019 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
पी. के. पुजारी
(अध्यक्ष)