

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary (Petition) No.225/2023

- Subject : Petition under Section 142 and 146 read with Section 66 of the Electricity Act, 2003, seeking appropriate directions against the wilful and deliberate non-compliance of Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 by the Respondent.
- Date of Hearing : 30.5.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Echanda Urja Private Limited (EUPL)
- Respondent : National Load Despatch Centre (NLDC)
- Parties Present : Shri Venkatesh, Advocate, EUPL
Shri Bharah Gangadharan, Advocate, EUPL
Shri Kartikay Trivedi, Advocate, EUPL
Shri Siddharth Nigotia, Advocate, EUPL
Shri Nihal Bhardwaj, Advocate, EUPL
Shri Kailash Chand Saini, NLDC
Shri Gajendra Sinh Vasava, NLDC

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking direction to the Respondent, NLDC, to allow the Petitioner to sell its unsold Renewable Energy Certificates (RECs) issued for generation of power up to November, 2022 which is in accordance with Regulation 19(2)(b) of the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 ('REC Regulations, 2022'). Learned counsel mainly submitted the following:

(a) The Petitioner has set-up and is operating a 100.5 MW Wind Power Project ('the Project') in the State of Tamil Nadu. The Petitioner's 61.19% (i.e. 61.5 MW) of the capacity is registered as a Captive Generating Plant (CGP) under the REC mechanism in terms of the REC Regulations, 2010, which permitted the issuance of RECs to CGP based on renewable energy sources for the entire energy generated, *albeit* subject to fulfilment of certain conditions. The Petitioner's Project duly fulfilled the such conditions, and RECs were being issued to the Petitioner which the Petitioner had been selling, from time to time, on various Power Exchange platforms.

(b) On 28.5.2022, the Commission issued the REC Regulations, 2022, which came into force w.e.f 5.12.2022. Although, under REC Regulations, 2022, the RECs issued to CGP to the extent of self-consumption are not eligible for sale,

Regulation 19(2)(b) therein clearly provides that RECs issued under REC Regulations, 2010 and not redeemed prior to the date of coming into the effect of REC Regulations, 2022 shall remain valid until they are redeemed and shall be eligible for exchange as per REC Regulations, 2022.

(c) REC Regulations, 2022 have, however, been challenged before the Hon'ble High Court of Delhi in WP (C) No. 15477 of 2022. Vide order dated 20.12.2022, the Hon'ble High Court has suspended the trading in RECs issued prior to 31.10.2022. The Petitioner has also filed WP (C) No. 825 of 2023 against the said Regulations, which came to be tagged along with WP(C) No. 15477 of 2022.

(d) During the operation of the stay order, the renewable generators including the Petitioner were not able to sell their unsold RECs causing severe financial constraints for the Petitioner. In view of the same, the Petitioner approached the Hon'ble High Court of Delhi for vacation of stay order. Vide order dated 11.5.2023, the Hon'ble High Court vacated the stay on trading of RECs issued prior to 31.10.2022 and allowed the sale of the same.

(e) Pursuant to the above, the Petitioner approached the NLDC. In response, NLDC informed the Petitioner that as per the REC Regulations, 2022, the Petitioner cannot sell its unsold RECs on the Power Exchange or otherwise.

(f) Interpretation of Regulation 19(2)(b) read with Regulation 4(3) of the REC Regulations, 2022, to the effect that the RECs issued under the REC Regulations, 2010 can only be eligible for exchange as per the REC Regulations, 2022 and since these Regulations restrict the sale of RECs issued to CPG to the extent of self-consumption, the Petitioner cannot sell its unsold RECs may not be correct. Regulation 19(2)(b) of the REC Regulations, 2022 clearly provides that RECs issued under the REC Regulations, 2010 and not redeemed prior to the date of coming into the REC Regulations, 2022 would remain valid.

(g) In the instant Petition, the Petitioner has indicated the severe financial constraints being faced by it, and if the Petitioner is not allowed to sell its inventory of RECs, it will further suffer a significant shortfall in revenues and cash flows and, in turn, will not be able to service the debt taken for its Project and its account will be classified as NPA in the books of its lenders.

2. The representative of the Respondent submitted that, as per the proviso to Regulation 4(3) of the REC Regulations, 2022, RECs issued to CGP to the extent of self-consumption are not eligible for the sale. He further submitted that the Regulation 19(2)(b) of the REC Regulations, 2022, provides that RECs issued under the REC Regulations, 2010 and not redeemed prior to the date of coming into force under these regulations shall remain valid until they are redeemed and shall be eligible for exchange as per the REC Regulations, 2022 only. In the Statement of Reasons for the said Regulations also, the Commission, at paragraph 16.3, has clarified that all RECs irrespective, of their date of issuance would be traded as per the REC Regulations, 2022.

3. Considering the submissions of the learned counsel for the Petitioner and the representative of the Respondent, NLDC, and in view of the next trading session of RECs on 31.5.2023, the Commission directed the NLDC to allow the Petitioner to sell/trade its unsold Renewable Energy Certificates (RECs) issued prior to the date of

effect of the REC Regulations, 2022 i.e. 5.12.2022 after due verification, subject to the outcome of the decision in the Petition.

4. The Commission directed the registry to number the Petition. Subject to the above. the Commission reserved order in the matter.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)