

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2013

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 08.08.2013

Date of Order: 02.12.2013

In the matter of

Petition under Section 61 (h), 66 and 79 (1) of the Electricity Act, 2003.

And

In the matter of

1. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara-390 007
Gujarat
2. Paschim Gujarat Vij Company Limited,
Laxminagar, Nana Mava Road,
Rajkot-360 004
Gujarat
3. Dakshin Gujarat Vij Company Limited,
Kapodara, Nana Varacha Road,
Surat-395 006
Gujarat
4. Uttar Gujarat Vij Company Limited,
Visnagar Road, Mehsana- 384 001
Gujarat
5. Madhya Gujarat Vij Company Limited,
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara- 390 007
Gujarat

....Petitioners



Vs

1. Union of India,
Through Ministry of Power,
Shram Shakti Bhawan,
New Delhi- 110 001
2. Union of India,
Ministry of New and Renewable Energy Sources,
Block-14, CGO Complex,
Lodhi Road, New Delhi- 110 003
3. Power System Operation Company Ltd (POSOCO),
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016
4. State of Gujarat,
Through Energy and Petrochemicals Dept,
Sachivalaya, Gandhinagar – 382 010

..Respondents

The following were present:

1. Shri M.G.Ramachandran, Advocate for the petitioners
2. Ms. Poorva Saigal, Advocate for the petitioners
3. Shri Rahul Tyagi, GUVNL
4. Shri V.T.Patel, GUVNL

ORDER

The petitioners, Gujarat Urja Vikas Nigam Limited and distribution licensees of Gujarat, namely Paschim Gujarat Vij Company Limited, Dakshin Gujarat Vij Company Limited, Uttar Gujarat Vij Company Limited and Madhya Gujarat Vij Company Limited have filed the present petition *inter-alia* for issuance of solar Renewable Energy Certificate (RECs) in respect of solar power purchased in excess of quantum of solar purchase obligation.

2. The petitioners have submitted that the Electricity Act, 2003, National Tariff Policy and National Electricity Policy provide for preparation of renewable sources of energy. The Government of Gujarat considering the vast potential for growth of power took the initiative for development of solar power by notifying the Solar Power Policy, 2009. Government of India has also launched the Jawaharlal Nehru National Solar Mission which envisages an installed capacity of 20,000 MW by the end of the thirteenth Five Year Plan i.e. 2022. It has been submitted that Government of Gujarat has focused on the development of solar power generation in pursuance of the Mission of the Government of India and Solar Policy of the Government of Gujarat.

3. The petitioners have submitted that subsequent to the notification of the Solar Power Policy by Government of Gujarat, a Suo-Motu proceeding was initiated by the Gujarat Electricity Regulatory Commission (GERC) through Case No. 2/2010 for procurement of power by the distribution licensees in the State of Gujarat from solar energy projects. GERC in its order dated 29.1.2010 decided the tariff terms and conditions (for a period ending 28.1.2012) for purchase of solar power by the distribution utilities in the State for fulfilling Renewable Purchase Obligation relate to solar power. Subsequently, GERC in its order dated 27.1.2012 has determined the tariff for purchase of power from Solar Power Projects for the control period from 29.1.2012 to 31.3.2015. Pursuant to the GERC order dated 29.1.2010, the petitioners have entered into Power Purchase Agreements for an aggregate capacity of 971.5 MW (946.5 MW of solar PV projects and 25 MW solar thermal projects) with total 88 project developers. As on the date of filing the application, aggregate solar capacity of 857 MW has been commissioned and has commenced injection of power into the grid.

4. The petitioners have submitted that as against the solar capacity tied up by the petitioner, the RPO for solar power on the part of the distribution licensees (Petitioners 2 to 5) as per the regulation notified by GERC is 1% for the year 2012-13 which works out to 380 MW. The petitioners have tied up significant excess solar capacity for procurement of solar power at the promotional tariff as against the requirement of 380 MW to meet 1% RPO.

5. The petitioners have submitted that in terms of Regulation 5 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), the eligibility for REC does not extend to the distribution licensees procuring solar power from the solar power developers at the promotional tariff for the quantum in excess of the Renewable Purchase Obligations of such distribution licensees specified by the State Commission.

6. The petitioners have submitted that while the petitioners have been paying promotional tariff in respect of solar power purchases including in excess of the quantum of the RPO, they are not getting any benefit of solar power purchased in excess of the quantum specified as RPO. The petitioners have submitted that such quantum of power purchased in the State of Gujarat gets completely excluded from the scheme of Renewal Energy Certificate (REC) or for any other benefit. On the other hand, the solar power developers, who have generated electricity and are consuming the same as CPP or selling through open access, are entitled to the benefit of REC and trading the same in the Power Exchange.

7. The petitioners have submitted that as per the scheme envisaged in the REC Regulations, the distribution licensees shall purchase solar power from the Solar Developers to the extent of the Renewable Purchase Obligations and thereafter, Solar Power Developers may sell further solar power quantum to the distribution licensees at the pooled power purchase cost of the licensee and become entitled to the Renewable Energy Certificates to be issued by the appropriate agency under the REC Regulations. If such solar power developer sells solar power to the distribution licensees at the same promotional tariff as applicable to the quantum of solar power sold to the distribution licensees towards fulfillment of the Renewable Purchase Obligations, the solar power developers will not get the Renewable Energy Certificates and at the same time the distribution licensees venturing to purchase excess solar power at the promotion tariff as in the case of the State of Gujarat are also not getting any benefit either in the form of the Renewable Energy Certificate or otherwise. The petitioners have submitted that this scheme creates a disincentive for the distribution licensees in the State of Gujarat who have taken initiative to promote solar power without restricting the purchase by the distribution licensees to the extent of the RPO only and also causes a financial impact on the consumers of the State who are required to pay higher tariff in regard to such purchase from solar power projects.

8. The petitioners have submitted that the local distribution licensees of the area where the Non-Conventional Power Projects including Solar Power Projects are established are best suited to purchase solar power generated from the solar project as compared with any other person including any obligated entities other than the local distribution licensees. The petitioners have further submitted that in that event, all

complications relating to open access, transmission, wheeling, system constraints, evacuation issues as well as dealing with various authorities get avoided. The petitioner has submitted that it would be in the interest of all concerned if the power is sold by the Solar Power Developers to the local distribution licensees of the area after fulfilling the RPO, provided such distribution licensees are issued with RECs.

9. The petitioner has submitted that the Commission may evolve a mechanism whereunder the distribution licensees in the State are recognized as eligible entities under Regulation 5 of the REC Regulations in regard to any quantum of renewable power purchased by them in excess of the RPO, allowing them to exchange the REC with the distribution licensees who are in deficit in the fulfillment of the RPO in regard to solar power. The petitioners' have requested the Commission to direct the NLDC, the Nodal Agency for facilitating such exchange of the RECs instead of the RECs being traded on the Power Exchange.

10. The petitioners have prayed for the following reliefs:-

"(a) Initiate a proceeding in pursuance to the above petition for inquiring into and deciding on various matters concerning the solar power development as detailed herein above;

(b) Declare that the distribution licensees shall also be made as 'Eligible Entities' for the Renewable Energy certificate under the REC Regulations in respect of the purchase of solar power by them on promotional tariff in excess of the stipulated Renewable Purchase Obligation;

(c) Advise the Central Government on the issue of fixing uniform Renewable Purchase Obligation of solar power across all the States;

(d) Other matters concerning the solar power development as mentioned herein above so as to implement a uniform policy across all the States; and

(e) Pass any such further order or order as this Hon'ble Commission may deem just and proper in the circumstances of the case."

11. During the course of hearing of the petition, learned counsel for the petitioners submitted that the purpose of the present petition is to bring to the notice of Commission the difficulties being faced by the petitioners for issuance of solar RECs in respect of solar power purchased in excess of quantum of RPO for solar power.

12. We have perused the petition and heard the learned counsel for the petitioners. After going through the contents of the petition, it appears to us that the petitioners are seeking amendments to certain provisions of the REC Regulations in order to make the distribution licensees eligible for grant of REC for the power purchased by them in excess of their RPO. According to the petitioners, this would enable the distribution licensees to meet their RPO and also encourage them to buy solar power in excess of the RPO. The Commission is of the view that the existing provisions of eligibility in the REC Regulations which is limited to generating companies is adequate at this stage of development of REC market. Without going into the merit of the issues raised, we intend to clarify that filing of the petition is not the proper process for initiating the amendment to the existing regulations. The Commission under Section 178 of the Act has been vested with the power to make, amend and repeal the regulations on the subjects which have been authorized under various provisions of the Act. Action to make or amend the regulations is initiated when the Commission is satisfied that there is need for such regulations or amendment to the existing regulations. However, the Commission has taken note of the submissions and concerns of the petitioners regarding issuance of solar RECs to the distribution licensees in excess of their RPO. We direct the staff to examine the issues and submit a proposal to address the problems, if any, for consideration of the Commission.

13. With regard to petitioners' prayer for rendering advice to the Central Government on the issue of fixing uniform RPO of solar power across all the States, it is clarified that the Commission vide its letter dated 28.12.2011 has already given its statutory advice to the Ministry of power in terms of Section 79 (2) of the Electricity Act, 2003.

14. The petition is disposed of terms of the above.

sd/-
(M.Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member