



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004

O.P.No.11 of 2014

Dated: 02-05-2015

Present: Justice Sri. G. Bhavani Prasad ... Chairman
Dr. P. Raghu ... Member
Sri P. Rama Mohan ... Member

Between :

M/s Sirius Overseas Pvt. Ltd ... Petitioner

AND

A.P. State Load Despatch Centre (State Agency) ... Respondent

The present petition has come up for hearing on 25-04-2015, and the Commission having considered the submissions of both the parties and the material available on record passed the following order :

ORDER

M/s Sirius Overseas Pvt. Ltd (petitioner) has filed the petition u/s 86 (1) (e) of the Electricity Act, 2003 and Regulations 8(1) and 55(1) of the APERC (Business Rules of the Commission) Regulations 1999 read with Regulation 1 of 2012, against the proceedings issued by Chief Engineer/SLDC in his Lr.No. CESLDC /SEPP/ D2/ F.REC/ D.No.226/13 dt: 03-05-2013, wherein, the APSLDC has rejected the claim of the petitioner made under APERC Regulation No.1 2012 for accreditation under REC Regulations and issue of Renewable Energy Certificate (REC). The petitioner seeks a declaration / finding by the Commission that it is eligible for REC accreditation u/s 6 (b) (ii) of the APERC - REC Regulations.

2. The relevant facts stated by the petitioner are as under :
- i) The petitioner is a private limited Company constituted with the objective of carrying on business of generation of renewable power using biomass fuel etc. The Petitioner has set up a 9 MW power plant, situated at Valuthimmapuram Road, Peddapuram - 533 437, East Godavari District, Andhra Pradesh. The fuel for generation of electricity is only agricultural waste. The unit was established in the year 2009 and commercial operations were commenced from 10-06-2009.
 - ii) The APERC has notified the REC Regulation w.e.f 01-04-2012, after the issue of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, vide L-1/12/2010-CERC, dt:14th January 2010, further amended on 29-09-2010.
 - iii) In the APERC Regulation 1 of 2012, it is provided that, purchase of REC issued under CERC REC regulations shall also be treated as fulfilment of RPP0 prescribed therein. The CERC Regulation provides the eligibility criteria for REC accreditation, and stipulated that the state agency shall function in accordance with procedures/rules laid by Central Agency for discharge of its functions under CERC REC Regulations.
 - iv) Consequently the petitioner has submitted its application online and also through letter dt: 21.09.2012, to the respondent as per the procedure prescribed, seeking REC accreditation, claiming that due to the delay in issue of the same, it was incurring losses.
 - v) In view of the delay in disposal of applications, one of the applicants in a similar case has approached the Hon'ble High Court of A.P., which has directed the respondents to dispose-off the accreditation application of the petitioner within a period of 4 weeks.
 - vi) As per the High Court orders, in such a similar case, the Respondent has decided the matter rejecting the petitioner's claim for

accreditation under APERC- REC Regulation, vide his Letter No. CESLD/SEEP/ D2/F.REC/D.No. 226/13, dt: 03-05-2013.

3. Thus, the present petition is against the above order / letter/ proceedings issued by the Respondent.

4. In its petition as well as the oral and written submissions made during the hearing, the petitioner has contended that, the respondent in rejecting the REC application has erred on two counts i) by mis-interpretation of APERC-REC Regulations and ii) ignoring the CERC statement of objects and reasons on technical grounds.

5. The detailed submissions of the petitioner on the above two counts are as under :

- a. The Petitioner contends that, it doesn't come under the category of a seller of electricity to the distribution licensee at the pooled cost of power as held by the respondent in its order but it comes under the category of seller of electricity to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price. It is also contended that, the petitioner is not ineligible as it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a tariff determined by the Commission from time to time for sale of energy to a distribution licensee.
- b. The Petitioner also contends that it is selling its power to a trader who is a licensee u/s 14 of Electricity Act, 2003 under a short-term contract, and doesn't fall within the purview of APERC. The sale is through a market driven PPA, though the trader in turn may sell the power from Petitioner's plant to APDISCOM, that too, through a transparent bidding process.
- c. The APERC on same/similar set of facts has decided the issue in favour of the petitioner M/s Roshni Powertech pvt. Ltd., in O.P.No. 56 of 2013, vide its order dt: 12-08-2013, holding that the petitioner is eligible for accreditation under APERC Regulation No.1 of 2012. Hence, the Commission has directed the respondent to issue such accreditation to the petitioner therein.

5.1. Based on the above contentions and arguments, the Petitioner claims that the respondent has erred in rejecting the application of the petitioner for accreditation without any valid reasons, and it is in violation of CERC Statement of Objects and Reasons, which are extracted as under :

“3.5.4 On the suggestion that - in the event of sale of electricity component through open access etc resulting in recovery of cost higher than the preferential tariff, such sale should not be eligible for REC - the Commission would like to articulate that the price of electricity sold through traders, Power Exchange or open access is market determined and involves risks and returns of varying nature. As such, it would not be desirable to put restriction as suggested on such transactions”.

5.2 Adverting to the respondents contentions before the Hon’ble High Court in W.P.No. 5860 of 2013, that it is bound by APERC- REC regulations and not by CERC Statement of objects and reasons, it is claimed that such argument is without any basis or logic for the reason that the eligibility criteria adopted by APERC-REC regulations are exactly identical in meaning and interpretation to the ones stipulated by CERC-REC regulation, to that extent it is relevant in this context. In the light of this contention, the petitioner claims that the benefit of REC is available in case of selling power through a trader, power exchange or open access and irrespective of price, whether higher or lower than APPCC or the preferential tariff.

5.3 The petitioner also contends that, its writ petition filed against GoMs.No.117, Energy (RES) dt: 13.10.2003 on Levy of Electricity Duty has no relevance in the context of grant of accreditation under REC regulation.

5.4 The petitioner seeks a direction from the Commission to the Respondent to grant accreditation to the petitioner by rejecting/overruling the stand of respondent in its order dt: 03-05-2013.

6. In the counter filed by the respondent, it has reiterated the same reasons as given in its order dt: 03-05-2013 rejecting the petitioner’s claim for REC accreditation. Further, it has also referred to APERC Regulation No.1 of 2012 and

amended CERC regulation dt: 10-07-2013. The contentions of the respondent are summarised as under :

- i. The Writ Petition filed by petitioner against the levy of electricity duty before Hon'ble High Court is pending, and hence matter is subjudice and thus disentitles the petitioner from claiming eligibility for accreditation, pending the disposal of writ petition.
- ii. As per APERC-REC Regulations and CERC-REC amended regulation dt 10.7.2013, even if the generator supplied the power through trader to DISCOMs at a price which is more than pooled cost of power purchase, the said supplier is not eligible for REC certificate/accreditation.
- iii. As per amended CERC regulation dt: 10.7.2013, the petitioner is not eligible for REC accreditation as the petitioner is supplying power through a trader i.e. M/s Knowledge Infrastructures Pvt. Ltd.,

6.1. Based on the above arguments, the respondent claimed that its refusal of accreditation to the petitioner under APERC-REC regulation is in accordance with the Law.

Issue

7. In the light of the facts and the contentions raised by both the parties, narrated above, the issue to be decided is whether the petitioner is eligible for grant of accreditation as per the APERC-REC regulation 1 of 2012 read with CERC / REC regulations 2010 as amended on 10-07-2013?

8. After considering the rival contentions on the facts of the case and the relevant guidelines / regulations issued by APERC/CERC, we are of the firm view that the petitioner is eligible and entitled for grant of accreditation under APERC - REC regulation for the following reasons :

8.1 The petitioner's case falls under clause 6 (b) (ii) of the APERC Regulation No.1 of 2012 and not 6(i) thereof. Sale of power through a market driven price through M/s Knowledge Infrastructures Pvt. Ltd., is as per the REC guidelines and the fact that this company has sold the power to APDISCOMS later has no relevance

in deciding the petitioner's eligibility. For the sake of clarity the relevant clause is reproduced hereunder :

"6. Eligibility and Registration for Certificates:

(1) A generating company (including a Captive Power Plant) in Andhra Pradesh engaged in generation of electricity from renewable energy sources shall be eligible for obtaining Accreditation from the state agency if it fulfils the following conditions :

a) It does not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a tariff determined by the Commission from time to time for sale of energy to a distribution licensee; and

b) It sells the electricity generated either:

(i) to the distribution licensee in the State of Andhra Pradesh at the pooled cost of power purchase, 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. (emphasis added)

Note.....

c) That in respect of CPP, it has not at all availed or does not at all propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility and waiver of electricity duty.

8.2 The petitioner's case doesn't fall under either 6(1)(a) or (c) or 6(1)(b)(i). It falls squarely under 6(b)(ii), making the petitioner eligible for accreditation. The respondent has not filed any material or evidence to dispute such claim of the petitioner which is found to be correct.

8.3 The pendency of the writ petition filed by the petitioner before the Hon'ble High Court of A.P. against the levy of electricity duty has no relevance in the context of deciding the petitioner's eligibility for accreditation under APERC/CERC-REC Regulations. Mere filing of the writ petition will not disentitle the petitioner from accreditation, if it is otherwise entitled to the same.

8.4 The amended CERC Regulation dt: 10-07-2013 is also not relevant in this context as the petitioner has not sold the power to an obligated entity for the purpose of meeting its renewable purchase obligation.

8.5 The decision of the Commission (APERC) in the case of M/s Roshini Powertech Pvt. Ltd. Vide O.P.No.56 of 2013, dt: 12-08-2013 is on a similar set of facts and is directly applicable to the facts of the petitioner's case. The fact that the respondent has filed an appeal against this decision before the Appellate Tribunal for Electricity (APTEL) and it was admitted by itself is not sufficient to keep the proceedings pending in the present case as the APTEL has not granted any stay or suspension on APERC's order cited above in the case of M/s Roshini Powertech Pvt. Ltd.

9. For the detailed reasons given above, the Commission is of the opinion that the petitioner is eligible for grant of accreditation under APERC-REC Regulation No1 of 2012 and the respondent is accordingly directed to grant such accreditation to the petitioner as per its application.

10. In the result the petition is allowed and the parties shall bear their own costs.

This Order is corrected and signed on this the 2nd day of May, 2015.

Sd/-
P. RAMA MOHAN
MEMBER

Sd/-
P. RAGHU
MEMBER

Sd/-
Justice G. BHAVANI PRASAD
CHAIRMAN