

Notes and Notifications

CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Dated: 28th March, 2016

NOTIFICATION

No. L-1/12/2010-CERC: In exercise of powers conferred under Section 178 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations to amend the 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 "the Principal Regulations"), namely:

1. Short title and commencement

- (1) These regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fourth Amendment) Regulations, 2016.
- (2) These regulations shall come into force with effect from the date of their publication in the Official Gazette.

2. Amendment to Regulation 5 of the Principal Regulations:

- (1) Second, third, fourth, fifth and sixth proviso including the explanation under sub- clause (c) of Clause (1) of Regulation 5 of the Principal Regulations shall be deleted.
- (2) The following provisos shall be added after the first proviso under sub-clause (c) of Clause (1) of Regulation 5 of the Principal Regulations:

"Provided further that a renewable energy generator selling electricity component to third party through open access shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such generator does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefit:

Provided also that if such a renewable energy generator forgoes on its own, the benefits

of concessional/promotional transmission or wheeling charges or banking facility benefit, it shall become eligible for participating in the REC scheme only after the date of forgoing such benefits:

Provided also that the above mentioned condition for renewable energy generator selling electricity component to third party through open access for participating in the REC scheme shall not apply if the benefits given to such renewable energy generator in the form of concessional transmission or wheeling charges and/or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government: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 renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation: For the purpose of this Regulation, the expression "banking facility benefit" shall mean only such banking facility whereby any renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours."

- (3) A new Clause shall be inserted after Clause (1A) as under:

"(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.

Explanation:—For the purpose of this regulation, the expression ‘banking facility benefit’ shall mean only such banking facility whereby the CGP or any other renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”

3. Amendment to Regulation 8 of the Principal Regulations:

Clause (3) of Regulation 8 of the Principal Regulations shall be substituted as under:

“An eligible renewable energy generator including an eligible captive generating plant shall be permitted to retain the certificates for offsetting its renewable purchase obligation as a consumer subject to certification and verification by the concerned State Agency:”

Sd/-
(T. Rout)
Chief (Legal)

Note:

The Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 were notified in Part III, Section 4, No. 26 of the Gazette of India (Extraordinary) dated 18.1.2010 and amended vide:-

- (a) First Amendment Regulations published in Part III, Section 4, No. 249 of the Gazette of India (Extraordinary) dated 01.10.2010.
- (b) Second Amendment Regulations published in Part III, Section 4, No. 192 of the Gazette of India (Extraordinary) dated 11.7.2013.
- (c) Third Amendment Regulations published in Part III, Section 4, No. 380 of the Gazette of India (Extraordinary) dated 31.12.2014.
- (d) Corrigendum dated 27.1.2015.

Court Decision

ITEM NO.44

COURT NO.12

SECTION IVA

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) Nos. 37508-37510/2013

(Arising out of impugned final judgment and order dated 10.07.2012 in WA No. 3956/2009, WA No. 4161/2009 and WA No. 4162/2009 passed by the High Court Of Karnataka At Bangalore)

SOUTH INDIAN SUGAR MILLS ASS. (KAR.) & ANR

Petitioner(s)

VERSUS

U.O.I. & ORS

Respondent(s)

(With interim relief and office report)

(For final disposal)

Date: 11.03.2016 These petitions were called on for hearing today.

CORAM: HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s) Mr. Balaji Srinivasan, Adv.
Mr. H. N. Sashidhara, Adv.
Ms. Srishti Govil, Adv.
Ms. Pratiksha Mishra, Adv.
Ms. Vaishnavi Subrahmanyam, Adv.
Mr. Arunava Mukherjee, Adv.

For Respondent(s) Ms. Kiran Suri, Sr. Adv.
Ms. Rukhsana Choudhury, Adv.
Ms. Niranjana Singh, Adv.
Mr. Neeraj Kr. Sharma, Adv.
Mr. Vibhu Shanker Mishra, Adv.
Mr. Sudhir Agrawal, Adv.
Mr. S.J. Amith, Adv.
Dr. (Mrs.) Vipin Gupta, Adv.
Mr. Rambhaj, Adv.
Mrs. Anil Katiyar, Adv.
Ms. Anitha Shenoy, Adv.

UPON hearing the counsel the Court made the following

ORDER

On the peculiar facts of this case, we do not want to interfere with the orders of the High Court. Thus, the SLP (C) Nos. 37508–37510/2013 special leave petitions are dismissed leaving the question of law open.

However, on the amount payable by the petitioners pursuant to the orders of the High Court, the members of the petitioners shall not be liable to pay interest provided the amount is paid within three months from today.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master