

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Representation of M/s Bhilangana Hydro Power Ltd. seeking clarification in the matter of impact on accreditation of its 24 MW Bhilangana-III HEP on participation in tender process invited by distribution licensees for procurement of RE Power to meet their Renewable Purchase Obligation.

**AND**

**In the matter of:**

M/s Bhilangana Hydro Power Ltd. ... Applicant

**V/s**

Uttarakhand Renewable Energy Development Agency ... Respondent

**CORAM**

**Shri Jag Mohan Lal                      Chairman**

**Shri C.S. Sharma                        Member**

**Shri K.P. Singh                         Member**

**Date of Hearing: December 18, 2013**

**Date of Order: January 16, 2014**

This Order relates to representation dated 25.10.2013 received from M/s Bhilangana Hydro Power Ltd. (hereinafter referred to as "M/s BHPL", or "Applicant") and the representation dated 31.10.2013 received from Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "UREDA", or "Respondent") wherein, clarification has been sought regarding the accreditation status of the Applicant if it does not claim RECs for the period for which the generated electricity is sold for meeting the RPO compliance of any other obligated entity.

## 1. Background

- 1.1. M/s BHPL's 24 MW Bhilangana-III HEP was accredited under REC mechanism by UREDA on 08.02.2012. The applicant vide its letter dated 25.10.2013 informed the Commission that it is participating in the tender invited by certain distribution licensees for procurement of RE Power to meet their Renewable Purchase Obligation. Vide its above referred letter the Applicant submitted that in the event of sale of power as renewable power it would not claim REC's for that period. M/s BHPL requested the Commission to inform it of the effect of such action on its existing Registration/Accreditation in REC mechanism.
- 1.2. UREDA, the State Agency vide its letter dated 31.10.2013 forwarded the similar representation of M/s BHPL and sought clarification as to whether applicant's existing Registration/Accreditation would remain unaffected in case it sells power as RE power and that it would not be claiming any RECs for the period of sale of such power. UREDA informed that the said project was accredited by considering the eligible criteria specified in the UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 (hereinafter referred to as "REC Regulations").
- 1.3. UREDA referred to the undertaking submitted by the applicant for accreditation of its 24 MW Bhilangana-III HEP wherein the Applicant had submitted that it would sell the electricity generated either (i) to the Distribution Licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such Distribution Licensee, 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. UREDA also submitted that in accordance with Regulation 11.1 of REC Regulations, the State Agency may revoke accreditation of the said project if it breaches any of the terms & conditions of its accreditation.
- 1.4. The Commission held a hearing on 18.12.2013 and heard both the parties in the matter. During the hearing, M/s BHPL submitted that non-functioning of REC markets (i.e. insufficient demand for RECs as compared to supply and the prices of non-solar RECs remaining equal to the floor price which is expected to continue for a long period of time), as the reason for participating in the tender process. M/s BHPL while referring to the Statement of Reasons issued alongwith CERC REC Regulations submitted that a project has the choice to opt for preferential tariff or the REC mechanism and that there

was no restriction on the RE project to choose between the two.

- 1.5. The Commission clarified that reference of CERC REC Regulation made by the applicant may not be binding or even applicable on entities in the State. Further, the Commission required the applicant to clarify whether it was seeking any amendment in the existing REC regulations, to which the applicant denied. The Commission also asked the Applicant whether the undertaking submitted by it was in accordance with the REC Regulations, to which the Applicant agreed to affirmatively.
- 1.6. The Applicant also made a written submission during the hearing in which it submitted that the Commission could consider either of the following two alternatives:
  - a) The accreditation by UREDA be placed in a state of temporary suspension during the period of supply of green energy and the suspension is revoked on the resumption of supply of energy as per eligibility under the REC mechanism.
  - b) The accreditation by UREDA is revoked starting from the period of supply of green energy and fresh accreditation is issued by following a simplified and summary procedure.

Further, M/s BHPL requested the Commission to consider alternate (a) in preference to alternate (b).

- 1.7. The Applicant also submitted that the procedure for getting accreditation of RE based project is a lengthy one and it took it around 11 months for accreditation of its above mentioned project. The Commission asked the State Agency to explain about the reasons for the delay caused in according accreditation to the applicant. In this regard, UREDA informed that since it was the first project which was granted accreditation and hence, some delay occurred which was also due to delay in submission of certain relevant documents by the Applicant. UREDA also submitted that in the event of cancellation of the accreditation of the Applicant, the same would be granted within the time period laid down under the Procedure issued under the REC Regulations, subject to the Applicant completing all the required formalities.

## **2. Commission's views and decision**

- 2.1. The Applicant's SHP was accredited on submission of undertaking to UREDA consistent to the Procedure laid down under the REC Regulations, which read as under:

*" I have not entered into Power Purchase Agreement (PPA) and shall not enter into PPA to*

*sell electricity at preferential tariff determined by the Uttarakhand Electricity Regulatory Commission for 24 MW of the total capacity for which participation in REC scheme is availed”*

....

*“I/we hereby also confirm that the electricity generated from the proposed RE Generating Station shall be sold either to the Distribution Licensee of the area in which the generating station is located at a price not exceeding the pooled cost of power purchase of such Distribution Licensee or to any other trading licensee or to a open access consumer at a mutually agreed price, or through power exchange”*

2.2. Regulation 11(1) of the REC Regulations specifies as under:

*“If the State Agency, after making an enquiry or based on the report of Central Agency, is satisfied that public interest so requires, it may revoke accreditation of the renewable energy generating company where such company (a) breaches any of the terms and conditions of its accreditation which are expressly declared by such accreditation so as to render it liable to revocation; and (b) makes willful and prolonged default, in the opinion of the State Agency, in doing anything required of it by or under these regulations.”*

2.3. Further, Clause 9 of Procedure under UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 for Accreditation of RE Generation Project by State Agency provides as under:

***“Event of Default:***

*(a) Following events shall constitute event of default by Eligible Entity and shall lead to revocation of accreditation granted by State Agency:*

- (v) Non-payment or delay of annual/accreditation charges by Eligible Entity beyond 15 days from due date of payment of such annual/accreditation charges.*
- (vi) Non-compliance of any of the terms/conditions/rules outlined under this Procedure by Eligible Entity.*
- (vii) Non-compliance of any of the directives issued by the State Agency, so long as such directives are not inconsistent with any of the provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 and are in accordance with the Functions and Powers outlined for the State Agency, shall constitute an event of default by that Eligible Entity.*

(viii) *Signing of PPA on preferential tariff for such project/capacity after its accreditation by the State Agency."*

*(Emphasis Added)*

The regulations/procedure mentioned above clearly stipulate that the signing of the PPA on preferential tariff for such project/capacity after its accreditation by State Agency will constitute the event of default as the same would breach the terms and conditions of its accreditation which may lead to revocation of its accreditation.

2.4. Moreover, Regulation 8.1 of UERC (Compliance of Renewable Purchase Obligation) (First Amendment) Regulations, 2013 deals with the conditions for eligibility for accreditation under REC framework. The relevant extract of the same are reproduced hereunder:

*"8.1 A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for accreditation subject to following conditions:*

...

*b. It does not have any power purchase agreement for the capacity related to such generation to sell electricity, to any Entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the appropriate Commission:*

...

*c. It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase (excluding transmission charges) of such distribution licensee as determined by the Commission, 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; and*

...

*e. It does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the renewable purchase obligation by such entity."*

Hence, the above provisions of the REC Regulations restricts the eligible entity to sell power to an obligated entity for compliance of its renewable purchase obligation. In case the eligible entity sells power to an obligated entity for meeting its RPO, it will be ineligible for accreditation and its accreditation is liable to be revoked as the same would be inconsistent with the REC Regulations and also the undertaking furnished by the

Applicant for accreditation.

- 2.5. The Applicant's contention that the project has the choice to opt for preferential tariff or the REC mechanism and that there was no restriction on the RE project to choose between the two is correct. However, getting accredited after opting for REC mechanism and then subsequently switching to sell the RE power at a tariff determined under section 62 or adopted under section 63 of the Act would render the accreditation invalid and liable to be revoked. The generator cannot be allowed to sell RE power at a tariff determined under section 62 or adopted under section 63 of the Act and at the same time keeping its accreditation valid under REC mechanism.
- 2.6. In view of the above, signing of the PPA for sale of RE power at a tariff determined under section 62 or adopted under section 63 of the Act by the Applicant's project accredited in accordance with the procedure laid down under the REC Regulations would tantamount to breach of its undertaking submitted with the State Agency for accreditation of its RE generation project as the same would be inconsistent with the Regulations. Accordingly, its accreditation may be revoked by the State Agency from the date of signing of such PPA. The Applicant should promptly inform the State Agency as and when a PPA is signed by them.
- 2.7. With regard to submission made by the applicant for delay in accreditation of RE based project by the State Agency, the Commission hereby, directs the State Agency that it should ensure compliance with the time frame laid down in the Procedure framed under the REC Regulations, subject to the completion of all the formalities by the eligible entity as laid down under the Procedure, so that the accreditation procedure does not get unnecessarily delayed.
- 2.8. With regard to the alternatives proposed by the Applicant for simplification of the procedure it is to be noted that the Commission is guided by the Regulations framed under the Act & Policies which are issued after due consultation with the stake holders & public at large. Any amendment in the procedure framed under the Regulations is not proper to be issued through an Order.
- 2.9. The matter is hereby disposed off accordingly.

**(Shri K.P. Singh)**  
Member

**(C.S. Sharma)**  
Member

**(Jag Mohan Lal)**  
Chairman