

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S.Verma, Member

Shri M.Deena Dayalan, Member

Date of Hearing: 26.4.2012

Date of Order: 18.10.2012

Petition No. 34/MP/2012

with

I.A. Nos. 6/2012 and 9/2012

In the matter of:

Petition under Sections 79 (1) (c) and (f) and 142 of the Electricity Act, 2003 read with Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulation, 2010.

And

In the matter of:

Mawana Sugars Limited, New Delhi

Petitioner

Vs

Uttar Pradesh State Load Despatch Centre, Lucknow

National Load Despatch Centre, New Delhi

Respondents

Petition No. 36/MP/2012

with

I.A. No. 8/2012

In the matter of:

Petition under Section 86 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4), 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulation, 2010.

And

In the matter of

Dhampur Sugar Limited, New Delhi.

Petitioner

Vs

National Load Despatch Center, New Delhi

Uttar Pradesh State Load Despatch Centre, Lucknow

Uttar Pradesh New and Renewable Development Agency, Lucknow

Respondents

Petition No. 37/MP/2012

In the matter of

Petition under Section 86 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4), 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulation, 2010.

And

In the matter of

Balrampur Chini Mills Limited, Kolkata

Petitioner

Vs

National Load Despatch Center, New Delhi

Uttar Pradesh State Load Despatch Centre, Lucknow

Uttar Pradesh New and Renewable Development Agency, Lucknow

Respondents

Petition No. 45/MP/2012

In the matter of :

Petition under Section 79 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4), 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulation, 2010.

And

In the matter of

Dalmia Bharat Sugar and Industries Ltd, New Delhi

Petitioner

Vs

National Load Despatch Center, New Delhi



Petition No. 46/MP/2012

In the matter of

Petition under Section 79 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4), 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulation, 2010.

And

In the matter of

DCM Shriram Consolidated Limited, New Delhi

Petitioner

Vs

National Load Despatch Center, New Delhi

Uttar Pradesh State Load Despatch Centre, Lucknow

Respondents

Following were present:

Shri Sanjay Sen, Advocate for the Petitioners
Shri Rajiv Yadav, Advocate for Petitioners
Shri Anurag Sharma, Advocate for the Petitioners
Miss Ranjitha Ramchandran, Advocate for DCMSCCL
Shri S.K.Sonee, POSOCO/NLDC
Shri V.K.Agarwal, POSOCO/NLDC
Shri V.V.Sharma, POSOCO/NLDC
Miss Minaxi Garg, POSOCO/NLDC
Shri S. Prakesh, POSOCO/NLDC
Shri S.Singh, POSOCO/NLDC
Miss Joyti Prasad, POSOCO/NLDC
Shri R.K.Jain, DCMSIL
Shri Rahul Srivastava, Advocate for UP SLDC
Shri R.K.Gupta, UP SLDC
Shri Durga Prasad, U.P.Co-generation Association
Shri Pankaj Rastogi, DSL

ORDER

The petitioners, Mawana Sugars Limited, Dhampur Sugar Limited, Balrampur Chini Mills Limited, , Dalmia Bharat Sugar & Ind. Ltd. and DCM Shriram Consolidated Limited are bagasse based co-generation plants in the State of Uttar Pradesh and have filed these petitions being aggrieved by the

conduct of Uttar Pradesh State Load Despatch Centre for not certifying the Energy Injection data of these generators for the months of November and December 2011 and January 2012 for the purpose of issuance of Renewable Energy Certificates and consequent refusal by the National Load Despatch Centre to issue these certificates.

2. These petitions have been made with similar facts and raise similar issues. Therefore, we have referred in this order to the facts of Mawana Sugars Limited as the representative case.

3. The Petitioner, Mawana Sugars Limited, has submitted that it is a co-generating plant having three units namely, Mawana Sugar Works, Titwani Sugar Complex and Nanglamal Sugar Complex with installed capacities of 31.5, 22.0 and 12.4 MWs respectively. These units were accredited by Uttar Pradesh New Renewable Energy Development Agency (UPNEDA), which is the State Nodal Agency, on 22.9.2011 in terms of the Uttar Pradesh Electricity Regulatory Commission (Promotion of Green Energy through the Renewable Purchase Obligations) Regulations, 2010. Subsequently, these units were registered on 13.10.2011 with the National Load Despatch Centre, which has been designated as the Central Agency under 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 "REC Regulations"). Pursuant to such accreditation and registration, the petitioner is eligible for issuance of

RECs for the quantum of energy generated and injected after deducting the energy sold under preferential tariff. The Petitioner has submitted that during the months of November 2011, December 2011 and January 2012, the petitioner is eligible for RECs for the following quantum of energy:

Name of Unit	(in MW)		
	November 2011	December 2011	January 2012
Mawana	7272.4	9893.96	9520.78
Tiwani	4991.36	9446.63	8456.68
Nanglamal	3890.01	4940.48	4828.33

4. The Petitioner has submitted that in accordance with the 'Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity by the Central Agency' (hereinafter "REC Procedure"), the Central Agency has an obligation to issue REC to the eligible entity after confirming the claims of the eligible entity with the energy injection report submitted by SLDC. Further, the REC Procedure provides that the eligible entity shall apply for issuance of renewable energy certificates within three months from the month in which renewable energy was generated and injected into the grid after issuance of the monthly energy injection report by the concerned SLDC. However, UP SLDC, Respondent No.1, has failed and neglected to act in accordance with the REC Regulations and REC Procedure and has failed to verify the generation and injection data submitted by the petitioner from November 2011 onwards. The failure on the part of UPSLDC has severe adverse consequences on the petitioner as there is likelihood of the petitioner losing

the RECs after a lapse of a period of three months from the respective month. The Petitioner has further submitted that since UP SLDC failed to act on the energy data submitted by other similarly placed renewable generators, proceedings were initiated by UP State Electricity Regulatory Commission and vide orders dated 26.12.2011, 10.2.2012, 16.2.2012 and 24.2.2012, the State Commission addressed the issues raised by UP SLDC and directed UP SLDC to certify the energy injection data. However the UP SLDC instead of verifying and certifying the energy injection data solicited certain information from the petitioner and other renewable energy generators. The petitioner has submitted that UP SLDC has no jurisdiction to raise the question of eligibility after the matter has been examined by the State Agency and UPERC. Under the circumstances, the petitioner was compelled to forward the energy generation and energy injection data duly verified by the concerned distribution licensee alongwith all other required information to NLDC. However, NLDC is not in a position to act on the same in view of the failure of UP SLDC to verify the energy injection data. NLDC in its e-mail dated 24.2.2012 has directed the petitioner to submit (i) print out of energy injection report signed and stamped by Authorised Signatory;(ii) copy of SLDC report; (iii) payment details; and (iv) commissioning certificate and has clarified that the energy injection report can be processed after the documents are submitted. It has been further clarified that for the month of November 2011, RECs cannot be issued if the documents are not furnished by last week of February 2012. In the meanwhile, UP SLDC in compliance with the order

dated 10.2.2012 of UPERC has forwarded the report to NLDC on 23.2.2012 without checking the data.

5. It is against the above factual context that the petitioner has filed the present petition. The Petitioner has submitted that the Commission has the jurisdiction to entertain the petition under section 79(1)(k) read with section 66 of the Act as the difficulty has arisen in this case on account of failure on the part of UPSLDC to verify the energy injection report in accordance with the REC Regulations and REC Procedure notified/approved by the Commission. The petitioner has submitted that unless the prayers are granted, apart from the petitioner losing vital commercial opportunity, there will be a direct impact on the REC market as the RECs legally generated cannot be issued and used by the obligated entities for redemption to meet their RPO obligations. The Petitioner has sought indulgence of the Commission under Regulation 15 of the REC Regulations and Para 10 of the REC Procedure to remove the difficulty arising out of the failure of UP SLDC to certify the energy injection data and to relax the timeline for submission of information to NLDC. Accordingly, the petitioner has prayed for directions to the Central Agency to issue RECs to the petitioner against the energy injection report submitted by the petitioner duly verified by the distribution company and pending issue of such directions, relax the timeline for grant of RECs to the petitioner.

6. National Load Despatch Centre, Respondent No.2, in its reply filed vide affidavit dated 6.3.2012 has submitted that it has taken various steps for

capacity building of stake holders including SLDCs to sensitize them with respect to various issues relating to REC Mechanism. NLDC vide letter Ref: POSOCO/CERC/REC 2 dated 3.9.2010 addressed to all SLDCs, has highlighted the role of SLDCs under REC mechanism. As per para 3.1 of REC Procedure, the application for issuance of certificate shall include energy injection report duly verified by the concerned SLDC and the registration certificate. Since the Petitioner failed to submit the energy injection report duly certified by UP SLDC, Respondent No.2 could not process the applications for issuance of RECs. Respondent No.2 vide its letter dated 16.1.2012 requested UP SLDC to certify the injection reports of the RE Generators at the earliest and forward the same to the Central Agency in order to avoid the lapse of energy and its associated loss to concerned RE generators. It has been further submitted that the issue was discussed in the review meeting on "Implementation of REC Framework" held on 22.2.2012 and UP SLDC was advised to forward the verified energy injection report to the Central Agency for further action.

7. UP SLDC in its reply affidavit dated 9.3.2012 has raised the following issues for consideration of the Commission:

- (a) As per the REC Regulations as amended on 29.9.2010, only Captive Power Plants (CCPs) are eligible for issuance of RECs for self consumption subject to certain prohibitions. Co-generation plants are not CPPs, and hence are not eligible for RECs on self consumptions. However, the Commission by a letter dated 21.6.2011 has clarified that

a CCP/IPP/Co-generation plant would be treated as any other generator and would be eligible for entire energy generated for such plants including self-consumption for participating in the REC scheme subject to the condition that such generator meets the REC eligibility requirement applicable for a generating company. Statutory regulations cannot be amended by a letter and in view of the provisions of REC Regulations, co-generators are not eligible for entire energy generated from such plants including self-consumption for participating in the REC scheme. Moreover, the Petitioner and other co-generators in the State are availing one or other benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefits and waiver of electricity duty and even on the basis of the letter dated 21.6.2011, they are not eligible for the entire energy generated from such plants including self-consumption for participating in REC scheme. In the State of UP, the petitioner and other co-generation plants are exempted from depositing the electricity duty on self consumption vide UP Govt. order dated 6.2.1998 and since they are availing the benefits of waiver of electricity duty, they are not eligible for participating in REC scheme.

(b) There is variation in the Procedure approved by CERC and the Procedure approved by UPERC for accreditation of RE energy generation projects by State Agency. UPERC approved procedure

provides that the State Agency shall verify and ascertain availability of certain information including permission letter from SLDC that it possesses the necessary infrastructure required to carry out energy metering and time block wise accounting. However, no such permission letter was obtained by the UPNEDA before considering the application for accreditation of RE project and without obtaining such permission from UP SLDC, UPNEDA has allowed accreditation to the petitioner and other co-generating plants. Moreover, the declaration adopted by the petitioner and other co-generating plants before UPNEDA was not in accordance with the procedure approved by CERC and hence they are not entitled for participation in the REC scheme.

(c) The Petitioner and other cogenerating plants have submitted their applications for participation in the REC scheme for self-consumption without giving the required declaration before the State Agency. Accordingly, UPSLDC asked the RE generators in its letter dated 6.2.2012 to give the required information, mainly two information, such as whether the RE generators are following UP Grid Code and Indian Electricity Grid Code as per Regulation 7(4) of REC Regulations; and the information which will prove that the RE generators have not availed any benefits in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty. It has been submitted that most of the RE generators

have not submitted the information to UP SLDC and some of them have maintained that they have already been registered by NLDC after due verification and they have submitted the required undertaking to NLDC for not availing any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty. UPSLDC has submitted that the co-generation plants including the petitioner have submitted false undertaking before NLDC as they are availing the benefit of waiver of electricity duty in pursuance of the UP Government Order dated 6.2.1998.

(d) As per Paras 4.2 and 4.3 of REC Procedure, the distribution companies/transmission licensees shall submit the energy injection report to SLDC and only thereafter, SLDC shall communicate the same to the Central Agency. However, the distribution licensees/transmission licensees have not submitted the report but the reports have been submitted by the RE generators. Respondent No.1 has submitted that in the absence of the report by the distribution licensees/transmission licensees, certification of such reports by SLDC will be in clear violation of the REC Procedure. It has been further submitted that for compliance of Regulation 7(4) of the REC Regulations, it is necessary to obtain data of duly accounted energy in the energy accounting system as per the Indian Electricity Grid Code or State Grid Code by the SLDC and for this it is necessary that the co-generators like the

petitioner give their declared capacity to SLDC as per the relevant Grid Code and ABT order passed by UPERC and obtain scheduled generation from the SLDC. However, the co-generation plants including the petitioner are not following the Grid Code and not giving their declared capability to SLDC and not obtaining scheduled generation from SLDC and therefore, it is not possible for SLDC to prepare implemented schedule and energy account according to the Grid Code. In the absence of the compliance of the said requirement, UPPTCL is not in a position to do energy accounting for grid injected energy and SLDC is not in a position to certify the energy account data for self consumption/auxiliary consumption.

(e) As the REC Procedure requires the SLDC to follow the Grid Code, Respondent No.1 has sought a direction to the petitioner and other co-generating plants to provide their declared capability to SLDC for the energy injected into the grid as per the Grid Code and obtain scheduled generation from SLDC so that implemented schedule and grid injected energy account can be prepared by SLDC. After receiving weekly MRI data from the transmission/distribution licensee as the case may be, energy accounting can be prepared as per the Grid Code and their data can be certified by SLDC and sent to NLDC as per the approved procedure.

8. The petitioner in its rejoinder 24.4.2012 has submitted as under:

(a) The applicability of the REC scheme or the regulations is not restricted to only captive power producers but as has been clarified by the Commission's letter dated 21.6.2011, if a generator based on renewable energy sources fails to qualify as a captive power plant under the Electricity Rules, 2005, it shall be treated as any other generator and would be eligible for participating in REC scheme provided it meets the eligibility requirements applicable to a generating company. The co-generation plant would be treated as any other generator and would be eligible for entire energy generated for such plants including self consumption for participating in the REC scheme.

(b) The Commission's letter dated 21.6.2011 is not in the nature and spirit of an amendment but is a clarification for implementation of the REC Regulations and is in consonance with the aims and objectives envisaged to be achieved under the Act and National Electricity Policy and the objective to promote electricity generation from renewable and non-conventional energy sources.

(c) The order dated 6.2.1998 issued by the UP Government abolishing the electricity duty on RE generators is an omnibus abolition made pan industry without having any special benefit or waiver for any particular captive generating plant or plants. The abolition of electricity duty

cannot be equated with the benefits or waiver within the meaning of Regulation 5 of the REC Regulations.

(d) The procedure approved by UPERC is in consonance with the model procedure approved by the Commission and there is no difference or inconsistency in the declarations required to be submitted by the RE generators. In any case, the "Model Procedure/Guidelines for Accreditation of Renewable Energy Generation Project for REC Mechanism by State Agency" has been issued by the Commission for guidance of the entities for implementing the REC mechanism.

(e) The REC Procedure approved by the Commission under Regulation 3(3) of the REC Regulations casts obligations on SLDC to communicate the energy injection report for each accredited RE project of the registered eligible entity within the State to the Central Agency on monthly basis. Under the REC Procedure, Respondent No.1 is required to establish a protocol for receipt of information and maintenance of the record of meter readings of RE projects and till date no protocol has been established by Respondent No.1. In the absence of protocol, the Respondent No.1 cannot shy away from its failure to discharge its obligations under the Procedure. The Petitioner had submitted the energy injection data duly certified by the distribution company to Respondent No.1. The distribution company

has now furnished the energy injection report and meter readings to Respondent No.1 in its letters dated 17.3.2012 and 2.4.2012.

(f) As regards providing the schedule, the petitioner has submitted that the petitioner's claim for REC is in respect of self consumption of power generated by it and therefore, there is no requirement to provide a schedule. Similar issue was raised by the Respondent No.1 before the UPERC in Petition No.771/2011 and UPERC in its order dated 26.12.2011 has clarified that "the provision of scheduling and dispatch shall not be applicable on self consumption and auxiliary consumption". As regards the insistence of Respondent No.1 on declared capacity, the State Commission has held that "self-consumption deemed to be injected into the grid shall not require any declared capacity,"

9. The Respondent No.1 has filed supplementary affidavit dated 23.4.2012 in which it has reiterated its submissions made in its affidavit dated 9.3.2012. The Respondent No.1 has submitted that as per the amended provisions of Regulation 4(1)(c) and Regulation 7(4) of the REC Regulations read with Para 4.1(e) of the REC Procedure, only in case of CPP, the entire generation from the CPP would be eligible for REC. Moreover under Para 4.2(d) of the REC Procedure, the SLDC is required to maintain the record of meter reading of the self consumption of CPP only. Since the petitioner and other RE generators are not admittedly CPPs, SLDC has no obligation to maintain the record of meter reading of their self consumption. It has been further

submitted that the petitioner's assertion that DC is being given through web is a misleading statement as UPSLDC's web based software is under trial and the petitioner and other co-generation plants have to give their DC through Fax. Respondent No.1 has further submitted that order of UPERC dated 26.12.2011 in Petition No.771/2011 is not a final order since the said petition is still pending.

10. The Petitioner has filed a supplementary rejoinder to the second supplementary affidavit filed by Respondent No.1. The Petitioner has submitted that the issues raised by Respondent No. 1 particularly relating to clarification of the meaning of self consumption in case of cogenerating plant and applicability of provisions of scheduling and dispatch, have been decided by the UPERC in its order dated 26.12.2011 and the said order has attained finality as no appeal or review of the said order has been filed by Respondent No.1. The appeal filed against the order of UPERC passed on 10.2.2012 under section 142 of the Act has been dismissed by the Appellate Tribunal for Electricity. Therefore, the issues raised by Respondent No.1 are hit by the principles of res judicata and the Respondent No.1 is not entitled re-agitate the same issue in a different forum. The Petitioner has further submitted that the Commission vide amendment dated 29.9.2010 has used the term "captive power producer" in a general sense and not in the manner envisaged in section 2(8) of the Act read with Electricity Rules, 2005 which are in the context of "captive generating plant". Conceptually there is a difference between a producer and a plant and the Commission's letter

dated 21.6.2011 has to be seen in the context of overall scheme and not as an independent clarification. It has been submitted that since the petitioner is consuming substantial power generated internally in its industrial activity apart from coming within the definition of the captive power producer in the general sense of the term, is also entitled to REC benefit on the ground that such internal consumption of power is a deemed sale to the grid. Had the petitioner not been utilizing power from internal resources, the Petitioner would have purchased power from the grid, which it is not doing during the sugar season. The Petitioner has further submitted that REC Regulations are aimed at promoting generation from renewable sources with the object of creating a market for RECs and an interpretation has to be given which promotes the objects of the regulations.

11. After hearing the learned counsel for the Petitioner and Respondent No.1 and the representative of NLDC, we had directed the Respondent No.1 to submit the following information:

(a) Whether self consumption (deemed injection) quantum for cogeneration unit was required to be scheduled or not in accordance with existing State Grid Code;

(b) What impact in existing Grid system shall make if Schedule for such self consumption (deemed injection) is not provided and provided by Co-generating units;

(c) Existing protocols and procedures of UPSLDC to collect energy injection quantum from co-generation units and to approve/reject the self consumption, auxiliary consumption and export to State Grid;

(d) Existing procedure for energy audit and billing for energy injected into the State Grid based on respective grid connectivity level i.e DISCOM Grid and transmission grid;

(e) Details of verifying Nodal Officer/Authority for certifying energy injected into the grid from C-Generation plants/conventional power plant connected to Distribution and Transmission Grid network; and

(f) Details of Nodal Officer from UPSLDC, representing SLDC during existing joint meter reading for accounting of energy export to Grid.

12. The Respondent No.1 in its reply vide affidavit dated 23.5.2012 has submitted the required information as under:

(a) According to the existing State Grid Code, self consumption quantum for cogeneration unit is not required to be scheduled but the energy which the co-generators are selling to the distribution companies through PPAs and are being injected into the grid are required to be scheduled.

(b) Since the self consumption quantum for cogeneration unit is not required to be scheduled, there would be no impact on the existing grid

system if the schedule for such self consumption is not provided by co-generation units. However, if the grid injected energy by co-generators are not scheduled, then it is difficult for SLDC to perform its duties and obligations under section 32 of the Act.

(c) Respondent No.1 has referred to Clauses 6.4, 6.4.4, 6.4.5 and 6.5 of the UP Electricity Grid Code and Clauses 3.0 of the "Procedure for Scheduling, Despatch, Energy Accounting & Settlement System of Open Access Transactions" approved by UPERC in support of its contention that the co-generation plants are duty bound to give their DC/schedule generation as per the UP Grid Code and the Procedure in the absence of which it is not possible for the SLDC to do energy accounting of the grid injected energy and in the absence of grid injected energy, self consumption cannot be obtained as $\text{Self Consumption} = \text{Total generation} - \text{grid injected energy} - \text{Auxiliary Consumption}$.

(d) There is a procedure for energy accounting as per the UP Electricity Grid Code and "Procedure for Scheduling, Despatch, Energy Accounting & Settlement System of Open Access Transactions". As the web based software of UP SLDC is on trial, all generators are giving their DC through fax.

(e) At present energy accounting is being done by SLDC-EO unit of UP SLDC which is functioning under the Superintending Engineer in charge of the unit.

(f) There is no Nodal Officer as UPSLDC has no role during existing joint meter reading for accounting of energy export to the grid. For this reason, UPSLDC is requesting the co-generation plants to submit their DC/schedule generation to the UPSLDC so that SLDC would be able to do energy accounting which is necessary for certifying energy injection report sent by the transmission licensee and distribution licensee.

13. We have considered the submissions of the petitioners and the respondents and perused the materials on record. The main prayer of the Petitioners is that on account of failure of UP SLDC to certify the energy injection report, directions be issued to NLDC to issue the RECs to the Petitioners based on the energy injection report submitted by them duly certified by the distribution companies. NLDC has submitted that as verification and certification of energy injection reports by SLDC is a condition precedent for issue of RECs as per the REC Procedure, it is constrained to issue the certificates in the absence of report of SLDC. UP SLDC has raised several issues regarding eligibility of the co-generation plants under the REC Regulations for counting the energy under self consumption for the purpose of RECs, non-compliance of the Grid Code and UP State Grid Code, non-declaration of the schedule by the co-generating plants etc.

14. The following issues arise for our consideration:

(a) Whether co-generation plants are eligible for the benefits of renewable energy certificates for self consumption in accordance with the REC Regulations?

- (b) What is the role of SLDC under the framework of REC Regulations?
- (c) Whether the miscellaneous issues raised by UP SLDC are germane to discharging its functions under the REC Regulations and REC Procedure?
- (d) Whether certification by SLDC can be dispensed with when the SLDC refuses to certify the energy injection?
- (e) Whether any direction can be issued to NLDC to consider the cases of the petitioner for issue of renewable energy certificate?

A. Eligibility of co-generation plants for REC for self consumption of electricity generated

15. Regulation 5 (1) of the REC Regulations notified on 14.1.2010 specifies the eligibility criteria for participation in the REC scheme as under:

"5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

- a. it has obtained accreditation from the State Agency;*
- b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
- c. it sells 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 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.*

Explanation.- for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."

16. The general eligibility conditions as set out in Regulation 5(1)(a) to (c) are applicable to all RE generators which may be briefly enumerated as under:

(a) The generating company is engaged in generation of electricity from renewable sources;

(b) The generating company has obtained accreditation from the State Agency;

(c) The generating company does not have any power purchase agreement for the capacity related to such generation for sale of electricity at a preferential tariff as determined by the Appropriate Commission;

(d) The generating company sells electricity to the distribution licensee of the area in which the generator is located at a price not exceeding the pooled cost of electricity of such distribution licensee or to any other licensee or to an open access customer or at the Power Exchange;

17. Regulation 5 of the REC Regulations was amended vide Notification dated 29.9.2010 by adding the following provisos under Regulation 5(1)(a) to (c) :

“Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an

Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement.

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only"

18. First we consider the settled principle of law for interpretation of a proviso. It has been held by Privy Council in Madras & Southern Maharashtra Ry Co. Ltd v. Bezwada Municipality {AIR 1944 PC 71} that "the proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case". It has been held in Ram Narain Sons Ltd v Asstt Commissioner of Sales Tax { AIR 1955 SC 765} that "it is a cardinal principle of construction that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other." Further it has been held by the Supreme Court in CIT, Mysore v. Indo Mercantile Bank Limited {AIR 1959 SC 713} that "the proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily, it is foreign to the

proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment." The Supreme Court in *Dwaraka Prashad v. Dwaraka Das Saraf* {1976(1)SCC 128} has held that "a proviso ordinarily is but a proviso, although the golden rule is to read the whole section inclusive of the proviso in such manner that they mutually throw light on each other and result in a harmonious construction." In the light of the above legal position it emerges that a proviso serves the following purpose:

- (a) A proviso embraces the field which is covered by the main provision to which it is a proviso;
- (b) It carves out an exception to the main provision in particular cases which are covered under the proviso;
- (c) It qualifies the generality of the main provision by providing an exception;
- (d) The whole provision including the proviso should be read together for the purpose of harmonious construction.

In the light of the above legal position with regard to proviso, we need to consider whether the conditions applicable to the captive power producers covered under the last two provisos of Regulation 5(1) of REC Regulations would be applicable in case of the petitioners which are co-generators.

19. Regulation 5(1)(a) to (c) of REC Regulations deal with the eligibility of all generating companies engaged in generation of electricity from the renewable energy sources. The first proviso deals with the cases of eligibility of generating companies on account of premature termination of power

purchase agreements for sale of electricity at preferential tariff. The second and third provisos deal with the eligibility of the captive power plant based on renewable sources of energy. In the present case, we are concerned with second and third proviso only. These two provisos carve out an exception in case of Captive Power Producer (CPP) based on renewable energy sources from the general eligibility of RE generators for grant of REC. These exceptions are in addition to the general eligibility conditions of a RE generator which have to be fulfilled by a CPP. Briefly the provisos lay down the following requirements for eligibility of a CPP for grant of RECs:

(a) A CPP based on renewable energy sources is eligible for the entire energy including self-consumption if it does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefits or waiver of electricity duty;

(b) If the CPP foregoes the said benefits, then it will be eligible for issue of renewable energy certificates.

It is apparent from the above that a CPP has to be treated on a different footing from the other RE generators in so far as the eligibility for registration and issue of renewable energy certificates are concerned. The conditions applicable to a CPP will not be applicable to other RE generators who shall be strictly governed by the conditions laid down in Regulation 5(1)(a) to (c) of REC Regulations. In other words, the last two provisos carve out an exception in case of CPPs by providing additional conditions which have to be fulfilled by the CPPs alone.

20. The term 'Captive Power Producer' or CPP as used in last two provisos has not been defined in REC Regulations. As per Regulation 2(2) of REC Regulations, words which have not been defined in the regulations but defined in the Act or any other regulations shall have the same meaning as defined in the Act or regulations. Section 2(1)(8) of the Electricity Act, 2003 defines 'captive generating plant' as under:

"(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;"

It has been argued by the petitioner that the term "captive power producer" has been used in last two provisos to Regulation 5(1) of the REC Regulations in a general sense and not in the manner envisaged in section 2(8) of the Act pertaining to the definition of "captive generating plant" read with Electricity Rules, 2005 and conceptually there is a difference between a producer and a plant. In our view, no such distinction can be made between a 'captive generating plant' and 'captive power producer'. Captive Power Producer refers to a person who may construct, maintain or operate a captive generating plant. This conclusion flows from the various provisions of the Act. For example, section 9(1) provides that "notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission line". Section 9(1) provides that every person who has constructed a captive generating plant and maintains

and operates such plant, shall have the right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use". Fourth proviso to sub-section (2) of section 42 of the Act provides that "such surcharge shall not be leviable in case of person who has established a captive generating plant for carrying the electricity to the destination of his own use". 'Captive user' has been defined in the Electricity Rules "to mean the end user of the electricity generated in the Captive Generating Plant and the term 'captive use shall be construed accordingly". Therefore, it follows that a Captive Power Producer is a person who constructs, maintains or operates a Captive Generating Plant and is the end user of electricity produced by such plant. The conditions of captive generating plant in the Electricity Rules are applicable mutatis mutandis to the captive power producers.

21. Next we consider the specific features of a captive generating plant. Rule 3 of the Electricity Rules provides that no power plant shall qualify as a 'Captive Generating Plant' unless 26% of the ownership is held by the captive user(s) and not less than 51% of the aggregate capacity generated in such plant, determined on annual basis, is consumed for the captive use. Thus a captive generating plant will be required to fulfil the requirements of the Electricity Rules, 2005 in order to avail the benefits of second and third provisos to Regulation 5(1) of REC Regulations. In other words, a CPP/CGP which consumes 51% or more of power generated by it and sells balance power to outside parties will retain its CGP status.

22. The Act vests certain rights in the CGP. Sub-section (2) of Section 9 of the Act provides that "every person who has constructed a captive generating plant and maintains and operates such plants, shall have the right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use". Further, fourth proviso to sub-section (2) of Section 42 of the Act provides that "such surcharge and cross subsidies shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use." Thus a captive generating plant is entitled for certain benefits under the Act which are not admissible to other generators. Keeping in view the above, it was provided in the last two provisos to Regulation 5 (1) that the captive power producer who is availing concessional, transmission/wheeling facility or banking facility or exemption from electricity duty shall not be eligible for registration and issue of REC. Thus the eligibility conditions for availing RECs by a CGP/ CPP are different from the eligibility conditions required to be fulfilled by other RE generators and these conditions cannot be made applicable to other RE generators.

23. It is however observed that the CGP status of a generating plant is not static in accordance with the Electricity Rules, 2005 and it may vary from year to year depending on the amount of captive consumption. Rule 3 (2) of the Electricity Rules 2005 in this connection is extracted overleaf.

"(2) It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company."

It is evident from the above that where the minimum percentage of captive use is not complied with in any year, the entire electricity generated by such plant shall be deemed to be supply of electricity by the generating company. In other words, a captive generating plant will be treated on the same pedestal as any other generator if it fails to achieve minimum of 51% of consumption for self use and consequently will be deprived of all benefits admissible to a captive generating plant under the Act. Moreover, the entire electricity generated by it shall be treated as if it is a supply of electricity by a generating company. Section 10(2) of the Act provides that a generating company may supply electricity to any licensee in accordance with the Act and the rules and regulations made thereunder and supply electricity to any consumer subject to regulations made under sub-section (2) of section 42. Thus a CGP which fails to achieve 51% of captive consumption in a year, its entire generation of electricity including captive consumption shall be deemed to have been supplied to the licensees or open access consumers. In that case such a plant will have to fulfil the conditions laid down in Regulation 5(1)(a) to(c) to avail the benefits of RECs and will not be subject to the conditions required to be fulfilled by a CGP or CPP as required under the last two provisos.

24. There is not much difference between a co-generation plant having captive consumption of less than 50% of its generation of electricity and a CGP which has failed to use 51% of its generation for captive use. A co-generation plant with more than 51% of its generation for captive use will be classified as a CGP under the Act and with less than 51% will be treated as any other generating station. It therefore follows that where a cogeneration plant has used less than 51% of its generation for captive consumption, its entire generation will be deemed to be treated as supply of electricity by a generating company. In other words, the captive consumption by a co-generation plant shall be treated as supply of electricity by a generating station by operation of law and shall be eligible for RECs subject to fulfilment of the conditions specified in Regulation 5(1)(a) to (c) of the REC Regulations. Such a plant will not be subject to the conditions under last two provisos under Regulation 5(1) which are applicable to CGP/ CPP only. The clarification of the Commission in the letter dated 21.6.2011 needs to be considered in the light of the foregoing discussion. The purpose of the letter was not to issue an amendment to the REC Regulation as contended by UP SLDC but only to amplify the scope of the regulations in its proper perspective.

25. In the light of the above discussion, we are of the view that the self consumption of electricity by co-generation plants not meeting the requirement of a CGP under the Electricity Rules, 2005, shall be deemed to be supply of electricity by a generating company which can either be to a

licensee or to an open access consumer. Once, a co-generation plant is considered as any other RE Generator and its captive consumption is deemed to be supply of electricity by a generating company, it follows that its captive consumption can be counted towards issuance of REC subject to fulfilment of the conditions laid down in Regulations 5 (1) (a) to (c) of the REC Regulations. Such a plant not being a CPP will not be entitled to any of the benefits available to the CPP and in case, any co-generation plant is availing any concessional benefits or banking facility or waiver of electricity duty etc, it shall be required to forgo these benefits before availing the RECs for the entire generation from the plant including self consumption.

B. Role of SLDC

26. REC Regulations specify the responsibilities of the State Load Despatch Centre (SLDC) for issuance of RECs. Regulation 7(4) of the REC Regulations states as under:-

*"The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid, and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, **or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators** which are not covered under the existing scheduling and dispatch procedures."*

27. The Commission has approved detailed procedure under REC mechanism submitted by NLDC (Central Agency) vide order dated 9.11.2010. Para 4.2 of the said procedure lays down the roles and responsibilities of

various entities involved *inter alia* the State Load Despatch Centre in issuance of the RECs. The same is reproduced as under:-

"4.2. State Load Despatch Centre

- (a) Follow Indian Electricity Grid Code and State Grid Code for the purpose of accounting renewable energy injected into the grid.*
- (b) In case the Eligible Entity is connected to the transmission network, maintain the record of meter readings and communicate the energy injection report for each accredited RE project of the registered Eligible Entity within State to the Central Agency on monthly basis.*
- (c) In case the Eligible Entity is connected to the distribution network of Distribution Utility, establish protocol for receipt of information and maintenance of the record of meter readings for such RE projects. Further, arrange to communicate injection report for each accredited RE project of the registered Eligible Entity within the State to the Central Agency on monthly basis.*
- (d) In case the Eligible Entity is CPP and is connected to the transmission/distribution network of Transmission/Distribution Utility, SLDC shall establish protocol for receipt of information and maintenance of the record of meter readings including self consumption for such RE projects. Further, SLDC shall arrange to communicate injection report for each accredited RE project of the registered Eligible Entity within the State to the Central Agency on monthly basis.*
- (e) Communicate renewable energy injected into the grid for each accredited RE project of the registered Eligible Entity within State to the State Agency."*

28. From the above, it is clear that the SLDCs have to establish protocol for receipt of information and maintenance of the record of meter readings including self consumption for such co-generation projects. SLDCs also have to arrange to communicate energy injection report for such co-generation project to the Central Agency on monthly basis. For carrying out the above mentioned responsibilities, SLDCs are required to follow Indian Electricity Grid Code and State Grid Code for the purpose of accounting renewable energy injected into the grid. UPSLDC has also submitted in its reply that scheduling is

not required in case of self consumption and scheduling is required only in case of power injected into the grid. Since self consumption is equal to energy generated minus energy injected into the grid minus auxiliary consumption, SLDC can keep the accounts of self consumption by establishing protocol to get the data from distribution companies. This is in conformity with the role of SLDC under section 32(2)(c) which vests the function of keeping the accounts of the quantity of electricity transmitted through the State grid. Accordingly, we direct UPSLDC to submit the energy injection report in respect of the petitioners with its certification to NLDC by 30th November, 2012.

Miscellaneous Issues raised by UPSLDC

29. UPSLDC has raised the following miscellaneous issues in its reply to the petitions:-

(a) There is variation in the procedure specified by the Central Commission and the procedures specified by the State Commission in the matter of accreditation of the RE generators with the State agencies.

(b) The petitioners and other co-generation plants have not furnished the required details to UPSLDC and have given false declarations before NLDC that they are not availing any benefits whereas the

petitioners and other co-generation plants are availing waiver of electricity duty.

(c)The petitioners and other co-generation plants are not complying with the Grid Code and State Grid Code and are not declaring their schedule in respect of self consumption to the SLDC.

(d)The petitioners are not eligible for registration for RECs as they are availing the benefit of waiver of electricity duty, as per the letter of Government of U.P.

30. As regards the issue of variation in the procedure, it is observed that UPSLDC is referring to variation between the model procedure approved by the Commission and the procedure approved by the UPERC. The following variations are noted between the model procedure approved by the Commission and the procedure approved by the UPERC for accreditation:-

(a)In the model procedure approved by the Commission, there is no requirement to consult the SLDC by the State Agency while accrediting the RE generators for the purpose of REC. However, clause 5.5 of UPERC approved procedure requires the State Agency to forward the application for accreditation to UPSLDC for its concurrence. The relevant portion of the procedure is extracted below :-

"5.3 STEP-3: After receipt of application for accreditation, UPNEDA shall conduct a preliminary scrutiny to ensure application Form is complete in all respect along with necessary documents and applicable processing fees. Nodal Officers shall undertake preliminary scrutiny of the Application.

The State Agency shall forward the application for accreditation to SLDC and concerned licensee (STU/Distribution Licensee to whose system the eligible entity/Obligated Entity is concerned) to seek concurrence."

(b) In the model procedure, there is no provision for permission letter from SLDC to the effect that the RE generators possess necessary infrastructure required to carry out energy metering and time block-wise account. However, the UPERC approved procedure contains the following provisions:

5.5 STEP-5: While considering any application for accreditation of RE generation project, UPNEDA shall verify and ascertain availability of following information:

- a) Undertaking with respect to land being in possession of the applicable for setting up the generating station.
- b) Permission letter from the State Transmission Utility or the concerned Distribution Licensee, as the case may be, with respect to Power Evacuation Arrangement.
- c) Permission letter from SLDC that it possesses the necessary infrastructure required to carry out energy metering and time-block-wise accounting."

UPSLDC is aggrieved that the above procedures have not been followed by the State Agency while accrediting the RE generators, including the petitioners. The petitioner in its rejoinder has submitted that the above provisions have been deleted by the UPERC which has been conveyed by the Secretary, UPERC vide letter dated 1/6.6.2011 to the State agency. Consequent to the deletion of the said provisions, the State Agency has not

sought the concurrence and permission from UPSLDC. In this connection, we would like to clarify that the Commission in its order dated 1.6.2010 has approved a detailed procedure namely the "Model Guidelines for Accreditation of Renewable Energy Generating Project for REC Mechanism" for guidance of all the concerned entities. The procedures are in the nature of model guidelines and aim at providing guidance to the State Commissions and the State Agencies to grant accreditation to the RE generators. The State Commissions have complete freedom to adopt the said procedure with such modifications, as may be considered necessary or adopt their own procedure. UPERC while approving the accreditation procedure had prescribed clause 5.3 and 5.5, as quoted above. However, UPERC has subsequently deleted the second para under clause 5.3 and clause 5.5(c), which required concurrence or permission from SLDC before accreditation. It is further noticed that the petitioners have been accredited on 22.9.2011 after deletion of the provisions on 1/6.6.2011. In other words, the conditions for concurrence or permission of UPSLDC was no more a requirement on the date of accreditation of the petitioners and therefore, we do not find any infirmity in the action of the State Agency by not consulting the UPSLDC while granting accreditation to the petitioners. It is also noticed from the order dated 26.12.2011 passed by UPERC in Petition No.771/2011 that no role was initially envisaged by the State Commission for UPSLDC in the matter of accreditation of the RE generators but only after the issue of the REC Procedure with the approval of the Commission, UPERC accepted the role of SLDC for verification of the energy injection by the RE generators. Thus it is

evident that neither the Accreditation Procedure of UPERC nor the REC Regulations and REC Procedure of the Commission envisages any role for UPSLDC to verify the eligibility of the RE generators for accreditation and registration for RECs. Accordingly, we do not find any merit in the submission of the UPSLDC that the petitioners and other co-generation plants should have furnished the details regarding their eligibility for accreditation or registration for REC to UPSLDC.

31. The next issue raised by UPSLDC is that the petitioners have given false declaration before NLDC to the effect that the petitioners are not availing any concessional benefits in transmission and wheeling charges, banking facility and waiver of electricity duty whereas they are availing waiver of electricity duty granted by Government of Uttar Pradesh. UPSLDC called for the information from the petitioners and other RE generators in that regard which have not been furnished. We find that under the REC Regulations and REC procedure of this Commission, SLDC has not been assigned the responsibility to look into the veracity of declarations given by RE generators. Under the REC Regulations, these aspects have to be verified firstly by State Agency i.e. UPNEDA and by the NLDC, while allowing the registration of RE generators for the purpose of REC. According to the petitioners, they have given the necessary declarations to NLDC and based on the same, NLDC has registered the petitioners for the purpose of REC. We expect that NLDC has discharged its responsibility in accordance with the REC Regulations and REC

Procedure while registering the petitioners and other co-generation plants UPSLDC has made specific allegation that the accreditation by UPNEDA is not as per the REC procedure. As it is the responsibility of UPNEDA to verify all requirements before accreditation of RE generators and accreditation is subject to the jurisdiction of UPERC, we are not inquiring into the issue. It is for NLDC to satisfy itself before registration that all procedures for accreditation have been followed.

32. The next objection of UPSLDC is that the petitioner and other co-generation plants are not complying with the Grid Code or State Grid Code and are not declaring their schedule in respect of self consumption to the SLDC. In this connection, it is pertinent to mention that UPSLDC had raised this point before UPERC in petition No. 771 of 2011. UPERC in its order dated 26.12.2011 has decided the issue as under:-

“4. Whether such generating station supplying electricity to more than one person and is required to declare capacity.

The Commission held that the injected energy shall be governed as per U.P. State Grid Code and Self consumption deemed to be injected into Grid shall not require any declared capacity.”

UPERC has further clarified that the provisions of scheduling and dispatch shall not be applicable on self consumption and auxiliary consumption. In reply to the queries raised in the Record of Proceedings, UPSLDC has also clarified that according to the existing State Grid Code, self consumption quantum for co-generation unit is not required to be scheduled, but the

energy which the co-generators are injecting into the Grid require scheduling. From the order of UPERC and submissions of UPSLDC, it appears to us that in so far as self consumption of co-generation plants is concerned, there is no requirement to schedule the said energy. As regards the power being sold by the petitioners through PPAs which are being injected into grid, the same has to be scheduled in accordance with the Grid Code and State Grid Code and it is the responsibility of UP SLDC to ensure that the petitioners and other co-generation plants declare their schedule and follow the procedure laid down in Clause 4.1 of Procedure for accreditation of Renewable Energy Generation Project for Renewable Energy Certificate by State Agency which is extracted as under:

"4.1 SLDC shall undertake necessary steps to maintain monthly energy account in terms of Gross energy generation, Captive Use (Self Use), AUX Consumption and Grid Injection of the plant for which accreditation has been issued by the State Agency, on the basis of the data submitted by STU/concerned Distribution Licensee in whose system eligible entity is connected, in the manner of established metering protocols. Necessary sealing arrangements for the meters in the plant shall be undertaken by concerned Distribution Licensee or STU, as the case may be, within 15 days of accreditation. The Applicant shall provide all infrastructural assistance such as room, piping etc required for sealing of the meters."

In case of non-compliance, UP SLDC should initiate the appropriate action under section 33 of the Act.

33. The next issue raised by UPSLDC is that the petitioners are not eligible for registration for REC as they are availing benefit of waiver of electricity duty granted by the Government of Uttar Pradesh in its letter dated 6.2.1998. The petitioners have argued that this is applicable to all cases of captive

consumption pan industry and not to RE generators only. We have perused the letter of Government of U.P. waiving the duty on captive consumption which was issued vide letter dated 6.2. 1998. The said letter provides that the electricity duty @ 3 paise/kWh determined to be paid on captive consumption for industrial and other purposes has been waived from the date of notification. It appears to us that this waiver of electricity duty has been provided on all cases of captive consumption irrespective of the source of generation and irrespective of whether the plant is enjoying the status of CGP/ CPP or not. However, we have also come to the conclusion under the first issue that the petitioner and other co-generation plants are eligible for registration under the REC scheme since their entire generation including captive consumption is deemed to be supply of electricity by a generating company. Once the captive consumption is deemed as supply of electricity by a generating company for the purpose of REC by operation of law, the petitioners and other co-generation plants cannot avail the waiver of electricity duty or any other benefits admissible to CPP for captive consumption while availing the benefits of REC. NLDC is directed to satisfy itself that the petitioners and other co-generation plants have not availed the benefit of electricity duty and any other benefits admissible for the captive consumption for which RECs have been sought. However, in so far as UP SLDC is concerned, the issues are not germane to discharging its responsibility under the REC Regulations and REC Procedure and it is for the UPNEDA to adhere to the guidelines.

D. Whether certification by SLDC can be dispensed with in case of refusal?

34. In view of our finding that SLDC is statutorily bound to do the energy accounting and under the REC procedure. It is required to establish the required protocol to maintain monthly energy account in terms of gross energy generation, captive use (self use), auxiliary consumption and grid injection of each plant for which accreditation has been issued by the State Agency on the basis of the data submitted by the STU/Distribution licensees in whose system the eligibility connectivity is connected. Hence, the question of dispensing with the certification by SLDC does not arise. If SLDC encounters any difficulty to get the required information from the concerned distribution company/ transmission licensee, it is at liberty to seek appropriate remedy in accordance with law for violation of its direction by the concerned distribution company/ transmission licensee. However, UPSLDC cannot refuse to certify the energy injection report on extraneous considerations which fall outside its purview.

E. Directions to NLDC, if any

35. In view of our decision that UPSLDC shall certify the energy injection of the petitioners based on the energy injection data submitted by the distribution companies/transmission licensees, in accordance with the Grid Code and U.P. Grid Code and the applicable regulations/procedures of UPERC by 30th November 2012, we also direct NLDC to consider the case of

the petitioners for issue of RECs strictly after verifying their eligibility in terms of our clarifications given in this order. While verifying the eligibility of the petitioners and other co-generation plants, NLDC shall take a certification from the State Agency that the petitioners and other co-generation plants have not availed any benefits which are admissible to the CPPs/CGPs/Co-generation plants. We further direct NLDC to issue RECs to the petitioners for the period ending 31st August 2012 by 31st December 2012, subject to the above conditions.

36. The petitions are disposed of in terms of the above. Our decision in this order shall be applicable in all cases having similar facts and similar cause of action.

37. DCM Shriram Industries Ltd. and Simbaoli Sugar Limited have filed I.A. Nos. 9/2012 and 10/2012 seeking permission to be arrayed as petitioners in Petition No. 34/MP/2012. In view of our decision in para 36 above, the IAs have become infructuous and are accordingly disposed of.

38. Petition Nos. 34/MP/2012 with I.A. Nos. 6/2012 and 9/2012, Petition Nos. 36/MP/2012, 37/MP/2012, 45/MP/2012 and 46/MP/2012 are disposed of in terms of the above.

39. We observe that certain disputes including the present dispute relating to REC have arisen due to lack of clarity regarding the co-generation plants

and Captive Power Plants and the benefits availed by them. We direct the staff to examine the issues in detail in a holistic manner after taking into account the regulations and procedures made by the State Commissions for the purpose of ensuring clarity and submit draft amendment to the REC Regulations for consideration of the Commission.

sd/-

(M. Deena Dayalan)
Member

sd/-

(V.S. Verma)
Member

sd/-

(S. Jayaraman)
Member

sd/-

(Dr. Pramod Deo)
Chairperson