

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 15th October, 2014

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.12/2014

BETWEEN:

Mac Charles (India) Ltd.,
No.28, Sankey Road,
BANGALORE ..
[Petitioner in person]

PETITIONER

AND

Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bangalore - 560 001 ..
[Represented by M/s. Induslaw, Advocates]

RESPONDENT

1) In this Petition, the Petitioner has prayed to issue necessary directions to the Respondent to permit it to utilize the unutilized energy wheeled during the months of August, November and December, 2013, on the subsequent months before the end of the Wind Year, i.e., 31.3.2014.

- 2) The brief facts of the case are as follows :
- (a) The Petitioner has set up a Wind Mill of 2.1 Mega Watts (MW) capacity at Halaguru Village, Sirguppa Taluk, Bellary District. It had entered into Wheeling & Banking Agreement (W&BA) dated 19.4.2010 with the Karnataka Power Transmission Corporation Limited (KPTCL) and Gulbarga Electricity Supply Company Limited (GESCOM). The Petitioner had applied to the Respondent, vide letter dated 17.3.2014, to allow it to utilize the unutilized quantum of 53,380 Units of energy wheeled during the months of August, November and December,2013, in the subsequent months before 31.3.2014, treating the same as banked energy. The Respondent, vide letter dated 7.4.2014, replied to the Petitioner rejecting its request.
- (b) Being aggrieved by the rejection of its request by the Respondent, the Petitioner has filed the present Petition.
- 3) Upon Notice, the Respondent appeared through its learned counsel and filed its statement of objections. The main contentions urged by the Respondent in its statement of objections are as follows :
- (a) As per Article 6.1.1 of the W&BA, the generating company is required to submit a 'C' Form, giving details of 'exclusive consumers' and 'non-exclusive consumers' , to whom it proposes to wheel the energy, fifteen

- days in advance. Based on this 'C' Form, the Respondent issues an Official memorandum for the month, approving the energy to be wheeled. The approved energy wheeled by the generating company is presumed to be utilized by the consumer and any energy unutilized by the consumer cannot be considered as 'banked energy.'
- (b) After submitting the 'C' Form to the Respondent and the State Load Despatch Centre (SLDC), it is presumed that the quantum of energy mentioned in the 'C' Form is utilized and the same cannot be altered subsequently. If the consumer does not utilize the quantum of energy approved by the Respondent during the same month, it lapses and cannot be considered as 'banked energy'.
- 4) During the course of hearing on 31.7.2014, the learned counsel for the Respondent undertook to file the details of the general practice adopted by it in treating the unutilized energy, proposed for utilization in the 'C' Form. On 14.8.2014, the Respondent has filed a Note on the general practice adopted by it in the matter. In this Note, the Respondent has stated that under Article 6.1.1 of the W&BA, the generating company is required to submit a 'C' Form, giving details of 'exclusive consumers' and 'non-exclusive consumers', to whom it proposes to wheel the energy, fifteen days in advance. Based on the availability of the transmission and distribution network, the distribution utility issues an Official Memorandum (OM). This OM is issued based on the recorded quantum of energy generated by the company during fifteen days of a month plus the

anticipated energy to be generated during the next fifteen days. As a special case, for the last month of the Wind Year, the 'C' Forms are accepted on the last day of that month or within the next one or two days, and an Official Memorandum will be issued based on the 'C' Form. Irrespective of the fact that the entire energy as per the Official Memorandum is utilized by the consumer or not, the network for the said quantum would have been made available by the utility to the generating company. If the generating company does not provide the correct estimate of the energy to be wheeled, the excess capacity of the network would have been made available by the utility, which may deprive the other needy consumers of the energy due to resultant corridor constraints. Based on the Official Memorandum and the consumption, the utility prepares the bill for the calendar month. At the end of the Wind Year, the banked energy will be 'zero' and the utility is not liable to pay for the energy lapsed on account of expiry of the Wind Year. The W&BA is executed by the generating company with the KPTCL and the ESCOM concerned. The consumer, to whom the energy is wheeled, is not a party to the Agreement. Hence, any unutilized quantum of energy by such consumer cannot be claimed as 'banked energy' by the generating company. All these procedures are based on the clauses in the W&BA dated 19.4.2010, as per the W&BA approved by this Commission, vide Order dated 11.7.2008 and the supplemental W&BA dated 31.8.2010.

5) We have heard the submissions made by the representative of the Petitioner and the learned counsel for the Respondent.

6) The following issue would arise for our consideration:

(1) Whether the Petitioner is entitled to utilize the 53,380 Units of unutilized energy wheeled during the months of August, November and December, 2013, and accordingly requires a direction, in this behalf, to the Respondent ?

7) After considering the records and the oral submissions made by the parties in the case, our findings on the above points are as follows :

Issue (1) :

8) It is useful to note the definition of 'Banking' and the relevant Article 6 of the WBA relating to banking, applicable for Wind projects:

"1.1 'Banking' means residual electrical energy after utilization by the 'Exclusive' or 'Partly Exclusive' Consumer or 'captive consumption' out of the injected energy in a month into the transmission and/or distribution system of Corporation / GESCOM which will be utilized for its own use or for wheeling to its 'Exclusive' or 'Partly Exclusive' Consumers at a later date/month, as per the terms and conditions set forth in this agreement."

XXX

XXX

XXX

“6.1 Wheeling of Energy:

Company shall submit a list of ‘exclusive consumers’ and ‘partly exclusive consumers’ to whom it proposes to wheel power using the utility transmission and distribution network at least 15 days in advance. The utility shall subject to availability of transmission and distribution network approve the same. Any addition / deletion to the list or change in allocation shall be got approved by the utility. An Agreement shall be entered into between company and consumers agreeing to all the relevant conditions of this Agreement and shall be made available to the utility before commencement of wheeling.”

“6.2 BANKING (Applicable for Wind and Mini Hydel only)

6.2.1 The Company shall be permitted to ‘Bank’ the energy generated in the plant, with Utility, for its own use at a later months or for Wheeling to its Exclusive Consumers and Partly Exclusive Consumers in accordance with the norms prescribed by the KERC in its order dated 11.07.2008.

6.2.2 Energy generated at the plant shall be banked on Water/Wind year basis and will be permitted to be carried forward from month to month within the same Water/Wind year. No carry forward of Banked energy is permitted from Water/Wind year to Water/Wind year.

6.2.3 Banked energy will become ZERO at the commencement of next Water/Wind year and utilities are not liable to pay any amount for the energy lapsed on account of expiry of the year."

9) From the above, it is seen that the submission of 'C' Form by the generating company is only to ascertain the availability of transmission / distribution network for the quantum of energy to be wheeled during the subsequent month. This does not have any relation to the banking of energy. A conjoint reading of the definition of Banking and Article 6.2 of the W&BA would indicate that 'banked energy' is the residual energy which remains after utilization by the consumers during a month, and the same can be utilized by the generating company for its own use or for wheeling to its consumers at a later date / month. The unutilized energy can be carried forward from month-on-month within the same Wind Year and the banked energy will become 'zero' at the end of the Wind Year.

10) It is relevant to quote below the letter dated 17.3.2014 addressed by the Petitioner to the Respondent:

*"The details of energy requested as per Form C and wheeled to our industries **RR Nos.W4HT-33** at BESCO's Jurisdiction and as per HT bills for August-2013, November-2013 and December-2013 are as follows :*

Sl. No.	Month	RR Nos.	Wheeled Energy as per this Office OM (as per Form-C)	Actual consumption as per BESCO's HT bills in KWH	Wheeled energy deducted as per BESCO's HT Bills In KWH	Unutilized quantum of energy in KWH
A	B	C	D	E	F	G = (D-E)
01	August-2013	W4HT-33	3,00,000	2,70,760	3,00,000	29,240
02	November-2013	W4HT-33	2,80,000	2,67,150	2,80,000	12,850
03	December-2013	W4HT-33	2,70,000	2,58,710	2,70,000	11,290
TOTAL			8,560,000	7,96,620	8,50,000	53,380

Unutilized quantum of **53,380 Units** of energy for August-2013, November-2013 and December-2013 from our windfarm of capacity 2.1 MWs at Halaguru village, Sirguppa Taluk, Bellary District, we hereby request you to kindly approve the as banked energy and this should be utilized before 31.03.2014. The copies of our letters dated 10.10.2013, 31.12.2013 & 10.01.2014 along with enclosures are attached for your ready reference. ..."

11) It is also relevant to quote the letter dated 7.4.2014 of the Respondent, which reads thus:

"... The approval for wheeling of energy to the desired and eligible consumers are issued based on the 'C' Form of the IPP's for the month for the quantum of energy to be wheeled against each HT installation. Hence, once the firm have submitted 'C' Form and approval OM is issued for the same by this Office that approved wheeled energy has been considered as utilized by consumer.

In view of the above, as the quantum of energy approved to be wheeled based on 'C' Form of the IPP are considered to be utilized, it is the responsibility of the consumers. Hence your request cannot be considered. "

12) We are unable to accept the contention of the Respondent that the quantum of energy submitted by the generating company in the 'C' Form and approved by the Respondent is considered to be utilized by the consumer. Such a contention is not in consonance with the provisions of the W&BA, and if such a contention were to be upheld, the purpose of banking of energy would be defeated. From the correspondence enclosed to the Petition, it is seen that, under similar circumstances, the Respondent had given credit for the unutilized quantum of 3,58,293 units of energy to the Petitioner for the period from July, 2010 to February, 2011, treating the same as 'banked energy'. For the period in question, the Respondent has adopted a different approach, for which no justification is forthcoming. This is also in contravention of the provisions of the W&BA executed between the parties, as the residual energy will lapse only at the end of a Wind Year, and not at the end of each month, if the quantum mentioned in the 'C' Form is unutilized.

13) We had an occasion to address a similar issue in an earlier case, viz., OP No.2/2013 in the case of *Pearlite Liners Private Limited –Vs- MESCOM and others*, wherein we have taken a view as follows:

“The terms of the WBA would establish that the banked energy in a particular month is to be reckoned at the end of that month, deducting the total energy utilized in a month out of the total energy injected during that month, as provided in the terms of the WBA. In the same way, as to how much of the banked energy gets lapsed on account of the expiry of the Wind year should be calculated, taking into consideration the total banked energy available at the end of that year and the total energy consumed during the last month of the Wind year. In other words, at the end of the last month of the Wind year, if the total banked energy is more than the total consumption for that month, the balance energy will be lapsed.”

14) Viewed from any angle, we are of the opinion that, as per the clauses in the W&BA, the Petitioner was entitled to utilize the banked energy before the expiry of the Wind Year. The Petitioner was required to place on record the quantum of energy utilized by the open access consumer(s) at the end of March, 2014, i.e., the expiry of the Wind Year. The said information is not available on record. If the open access consumer(s) had consumed more than the quantum of energy banked, the Petitioner would have been entitled to the credit of the banked energy. If the open access consumer(s) had consumed less than the quantum of energy banked, the unutilized banked energy would have lapsed at the end of the Wind Year, as per the terms of the W&BA. In this case, the Petitioner has claimed 53,380 KWhr as banked energy.

15) For the foregoing reasons, we pass the following:

ORDER

We direct the Respondent to recognize credit of 53,380 KWhr of energy in favour of the Petitioner, if the utilization by the open access consumer(s) is 53,380 KWhr or more, in the month of March, 2014, and to effect necessary correction in the bill issued to the Petitioner for the said month, and to refund the excess amount charged, if any, or adjust the same against future bills. If the energy utilized by the open access consumer(s) for the month of March, 2014 is less than 53,380 KWhr, the unutilized energy shall lapse, as provided in the W&BA.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER