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

Dated : 20th June, 2017

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

OP No.57/2016

BETWEEN:

Sugnaneshwara Hydel Power Pvt Ltd.,
3, Queens Road Cross,
Bengaluru – 560 052.

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PETITIONER

[Represented by Shri M.A. Delvi, Advocate]

AND

- 1) Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Station Main Road,
Kalaburagi- 585 102
- 2) Karnataka Power Transmission Corporation Ltd.,
Corporate Office, 'Kaveri Bhavan',
Bengaluru – 560 009.
- 3) The State Load Dispatch Centre,
Race Course Road,
Bengaluru – 560 009.

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RESPONDENTS

[Respondent No.1 represented by Indus Law, Advocates]

ORDERS

- 1) The Petitioner has filed this petition praying for a direction to Respondent No.1 to pay Rs.1,16,74,499/- (Rupees One Crore Sixteen Lakhs Seventy-Four Thousand and Four Hundred Ninety Nine) only together with interest thereon, for the energy injected into the grid, from the date of generation (26.09.2013) to the date of entering into a Wheeling and Banking agreement (W&BA, in short) (30.11.2013).

- 2) The facts of the case as can be made out from the petition and Annexures are as follows:
 - (a) The Petitioner has set up a mini hydel power plant of 13.5 MW near Bhima River, Shahapur Taluk, Kalaburagi District and entered into a W&BA dated 30.11.2013 with the 1st Respondent-Gulbarga Electricity Supply Company Limited (GESCOM) and the 2nd Respondent-Karnataka Power Transmission Corporation Limited (KPTCL) to wheel the power from the point of generation at Sonathi Small Hydro Electric Power Generating Station, for intra State third party sale.

 - (b) The Petitioner started power generation on 26.09.2013 and fed the power to the grid till the date of execution of W&BA, i.e., 30.11.2013 to the extent of 31,55,270 units, during the period from 26.09.2013 to

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30.11.2013, amounting to ₹.1,16,74,499/- (Rupees One Crore Sixteen Lakh Seventy-Four Thousand Four Hundred Ninety-Nine) only at ₹.3.70 per unit.

(c) The Petitioner addressed letters on 14.11.2013, 20.04.2014, 18.11.2014, 12.01.2016, 22.01.2016 and 15.03.2016 to the Respondents to make payment for the said energy but no payment was made, despite accounting the energy in the B forms.

(d) The Petitioner has submitted that as per the orders passed by the Commission in R P No.1/2014 dated 12.03.2014 and R P No.2/2014 dated 15.10.2014, payment for the energy injected before the execution of W&BA has to be made.

2) Upon issuance of Notice, Respondent No.1 has appeared through its Counsel and in the Statement of Objections filed, has stated as follows:

(a) That prior to the date of execution of the W&BA, there is no agreement or schedule for the energy injected and there is no contract to pay for such energy.

(b) That on synchronisation of a project to the grid, readings have to be taken in order to account for the energy input of the grid irrespective of whether any agreement is executed or not. That, therefore, even if 'B' forms were generated by the Respondent No.1, for the period between 26.09.2013 to 30.11.2013, it cannot be construed as an

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agreement to make payments towards the energy injected during the said period. That, hence, no payment can be made or credit of such unscheduled energy be given in the absence of a commercial agreement either with any Electricity Supply Company (ESCOM) or a third party.

- (a) That, as per the provisional interconnection approval granted to the Petitioner, the Respondents are not liable to make payments for any unscheduled power pumped in the absence of any contractual agreement.
- (b) That, in R P No.2/2014, this Commission while reviewing the Order passed in Suo motu case No.1/2014, came to the conclusion that payments ought to be made only for energy injected post the 30 days' period, prescribed in Regulation 9(6) of the KERC (Terms & Conditions for Open Access) Regulations, 2004. That, even in OP No. 1/2015, this Commission had held that the 30 days' period, prescribed in Regulation 9(6) ought to be treated as 'reasonable time' for approval of the Wheeling & Banking Agreement.
- (c) That, in this case, the Petitioner has not alleged any delay on the part of the 1st Respondent (GESCOM) in executing the W&BA. That, if at all there has been any delay in execution of the W&BA, the same can only be attributable to the Petitioner. That, as per the Petitioner's letter dated

14.11.2013, which is produced at Annexure 'D', the project was commissioned on 23.12.2011 and approval for Wheeling and Banking was received from the 2nd Respondent (KPTCL) on 02.12.2011. However, due to pending completion of rehabilitation issue of the project, there was no storage in the Barrage and therefore, the generation was not possible. That, the Petitioner has further specifically stated that as there was uncertainty in generation, the Petitioner was unable to identify the buyers and therefore, the W&BA could not be concluded. That, hence, as admitted by the petitioner, the delay in execution of the W&BA is attributable to its failure to identify buyers and that hence, the 1st respondent cannot be asked to make payments for energy injected during the period when the W&BA was pending execution.

- (d) That, the energy injected by the Petitioner during the period from 26.09.2013 to 31.10.2013 was not included in the share of the 1st Respondent (GESCOM) while computing the energy balance during FY 2013 -14 and therefore, the entire liability of payment, if any, cannot be imposed solely on 1st Respondent (GESCOM).

- 3) We have heard the Counsel for both parties and perused the records. The following issues arise for consideration:

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- (1) Whether the Petitioner is entitled to payment for the energy injected into the grid from the date of commencement of generation to the date of execution of the W&BA?
- (2) What Order?
- 4) Our answers on the above issues are as follows:
- 5) **Issue No.1:** *Whether the Petitioner is entitled to payment for the energy injected into the grid from the date of commencement of generation to the date of execution of the W&BA?*
 - (a) In the Petition, the Petitioner has stated that the cause of action arose on 26.09.2013, when the petitioner started generation and pumped energy into the grid and again on 30.11.2013, on the date of execution of the W&BA.
 - (b) In the Petition, the Petitioner has not narrated the facts necessary for adjudication. The documents produced are mostly letters, addressed to the Respondent requesting for payment for the energy injected. Some factual aspects can be made out in the letter dated 14.11.2013. The letter dated 14.11.2013, which is produced at Annexure 'D', addressed by the petitioner to Respondent No.2 is extracted below:

"No. AME/SHPPL/SON/W&B/07

14th Nov, 2013

The Director (Transmission)
Karnataka Power Transmission Corporation Limited
Kaveri Bhavan
Bangalore – 560 009.

Dear Sir,

Sub.: Request for considering energy generated from our 3x4.5 MW (with 10% Continuous Over load) Sonathi SHEP in Yadgiri District as banking – Reg.

- Ref.: 1) Letter no. CEE/SLDC/SEE/TBC-EEE-2/AEE-6/2659 dated 02.12.2011- Approval for wheeling and banking energy.
- 2) SLDC- KPTCL consent for Wheeling and Banking vide No. CEE/SLDC/SEE/TBC/EEE-3/AEE6/2800-02 dated 23-08-2013 for sale of power to M/s SVE Castings Pvt Ltd., Bellary.
- 3) Our application No. AME/B/SG/SON/DF/P6/1029 dated 09.10.13 to GM (Technical)- KPTCL for executing Wheeling and Banking Agreement.

We have established a Sonathi Small Hydro Electric Power project near Hursugundagi village, Shahapur Taluk, Yadgir District. The project with an installed capacity of 3x4.5 MW has been developed as run-of-the river project across river Bhima on the Right Bank of Sonathi Barrage constructed by Krishna Bhagya Jala Nigam Limited.

The evacuation of power is through 110kV, single circuit line of length 17 km to Kanapur substation of KPTCL.

We have proposed for intra- State third party sale of power and have obtained approval vide reference cited above.

The project was commissioned on 23rd Dec 2011 (commissioning report is enclosed) and approval for Wheeling and Banking had been received from KPTCL on 2.12.2011. However, due to pending completion of rehabilitation issues of the project, there was no storage in the Barrage and therefore, generation was not possible during last 2 seasons.

Due to partial storage of water by KBJNL during Sept 2013, (storage of 4 m has been made against full contemplated level of 8 m), generation has started from 26th Sept, 2013. As there was uncertainty in generation, we could not identify the buyers and therefore, we could not conclude Wheeling and Banking Agreement until now.

Wheeling and Banking Agreement has been signed by KPTCL on 26th Oct 2013 and the same has been submitted to GESCOM for signature.

There has been a total generation of about 2.5 Million units during the period 26th Sept 2013 to 13th Nov 2013 (period before the W&B Agreement).

We request your kind approval for considering the energy generated before signing of Wheeling & Banking agreement as banking and enable us to sell the same through Intra- State Third Party Sale.

Due to delay in start of generation, the project cost has increased to Rs.85 Crores and repayment of loan has not been possible and the interest is accumulating resulting in severe financial loss.

As we are facing severe financial problems due to delay in generation from this project, we once again request you to kindly accord approval for considering the quantity of generation before signing of W&B Agreement as banking.

We shall be grateful for your kind help in this regard.

Thanking you,

*Yours faithfully,
For Sugnaneshwara Hydrel Power Private Limited*

Sd/-

(Authorised signatory)"

- (c) The Respondent has relied on the above letter to contend that in the absence of an agreement to inject energy into the grid and the delay in

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signing the W&BA being attributable to the petitioner, the energy injected cannot be treated as banked or be paid and there was no assurance to pay whatsoever. It has been stated that the issuance of the 'B' forms is only a procedure for accounting of the energy and cannot be treated as an assurance to pay.

- (d) The petitioner has relied on the decisions of the Commission in R.P.No.1/2014 dated 12.03.2014 and R.P.No.2/2014 dated 15.10.2014, to submit that the energy injected before the execution of W&BA has to be paid. We note that, our decisions in these cases do not help the case of the petitioner, as the facts of the cases are different and no order was passed in these cases directing payment for the energy injected before the execution of the W&BA. In fact, RP No.1/2014, quoted by the Petitioner, does not relate to the subject on the issue. In RP No. 2/2014, the Commission had only allowed the submission of the Counsel for the Respondents that payments will be made for the power injected by the generating company for the period subsequent to the 30 days' limit prescribed in Regulation No. 9(6) of the KERC (Terms and Conditions for Open access) Regulations, 2004. Subsequent to this decision, the generation company, Renew Wind Energy (AP) Pvt. Ltd., filed OP No.1/2015, before the Commission, praying for payment for the energy injected into the grid from the date of commissioning up to the end of the 30 days' period, specified in the Regulations, for grant or denial of open access. In OP No.1/2015 decided on 10.03.2016, the Commission,

after detailed analysis, held that the generating company is not entitled to any payment for the energy injected during the said 30 days' period.

- (e) We note that, to claim compensation for the energy injected, negligence on the part of utilities has to be proved. Whenever there was unexplained and inordinate delay in granting of Open Access and execution of W&BA by the Utilities, this Commission has allowed 'compensation' to the generators for the energy injected into the Grid during the delayed period.
- (f) Admittedly, the Petitioner's plant was test synchronized with the 2nd Respondent's (KPTCL) Grid on 23.12.2011. However, generation commenced only on 26.9.2013 and W&BA executed on 30.11.2013. Further, admittedly, the approval of Wheeling and Banking of energy granted on 02.12.2011 by the Respondent No.2 referred to in the Petitioner's letter dated 14.11.2013 extracted earlier was not taken as subsisting by either parties and therefore a fresh approval for wheeling and banking of electricity was issued on 23.08.2013, as mentioned in the Petitioner's letter dated 14.11.2013 and in the recital of W&BA dated 30.11.2013 (Annexure 'A'). It can be inferred from the letter dated 14.11.2013 that, the Petitioner had made an application to the 2nd Respondent (KPTCL) for execution of the W&BA on 09.10.2013. However, the date of receipt of such letter by the 2nd Respondent (KPTCL) and the date of forwarding the W&BA signed by the Petitioner to

the 2nd Respondent (KPTCL) has not been disclosed by the Petitioner. Hence, it is safe to assume that, there has been no delay in signing of the W&BA by the 2nd Respondent (KPTCL). We find from the Petitioner's letter dated 18.11.2014 (Annexure-I) that, the Petitioner had raised the issue of delay of one month in the signing of the W&BA by 1st Respondent (GESCOM) while seeking payment towards energy injected between 26.09.2013 to 30.11.2013, though this has not been specifically pleaded by the Petitioner. While the 1st Respondent (GESCOM) has attributed the delay in execution of the W&BA, after granting of approval for wheeling and banking by the 2nd Respondent (KPTCL) on 02.12.2011, to lack of generation and the Petitioner's inability to identify buyers, it has not given any explanation for the delay caused in signing of the W&BA after it was sent from the 2nd Respondent (KPTCL) pursuant to the application of the Petitioner dated 09.10.2013.

- (g) We have no difficulty in holding that the Petitioner is not entitled for payment of the energy injected, from 26.09.2013 (date of commencement of generation) to 26.10.2013 [the date of signing of W&BA by the 2nd Respondent (KPTCL)], presumably, immediately after it was received from the Petitioner), which is in line with our earlier decisions, in OP No.32/2014 and OP No.1/2015, as we find that there is no specific pleading by the Petitioner about this period to be treated as delay in grant of open access and execution of the W&BA, nor do we find that there has been any delay. In the recent decision of the

Hon'ble Appellate Tribunal for Electricity, in Appeal No.120/2016 decided on 08.05.2017 (*Kamachi Sponge & Power Corporation Ltd. Vs Tamil Nadu Generation and Distribution Corporation Ltd and another*), it has been held that a generating company is not entitled to any payment for the energy injected in to the grid without any agreement or schedule, would support our similar consistent stand on this issue.

- (h) The Petitioner in its letter dated 18.11.2014 (Annexure-I) has pointed out a delay of one month in signing of the W&BA by the 1st Respondent (GESCOM) [perhaps assuming that the time required in transit of the W&BA from the 2nd Respondent (KPTCL) to the 1st Respondent (GESCOM) cannot be deemed as delay] and this has not been specifically denied or disputed by the 1st Respondent (GESCOM). We find that the 1st Respondent (GESCOM) has not furnished any reasonable explanation for such delay.
- (j) Therefore, on the facts and in the circumstances of the case, we are of the considered opinion that, the Petitioner is entitled to compensation for the quantum of energy injected into the grid during the one month period of delay by the 1st Respondent (GESCOM) in the execution of the W&BA (1.11.2013 to 30.11.2013) at the rate of generic tariff applicable to mini hydel projects, prevailing at the relevant point of time (₹3.40 per unit). Accordingly, we answer Issue No. (1) in the above terms.

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6) **Issue No.2** : *What Order?*

For the forgoing reasons, we pass the following:

ORDER

Respondent No.1 (GESCOM) is directed to pay for the energy injected into the grid by the Petitioner for the period from 01.11.2013 to 30.11.2013 at the generic tariff of ₹3.40 (Rupees Three and Paise Forty Fifty) only per unit, within 30 (thirty) days from the date of this Order.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER