

**No.: N/34/14**

---

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

**Dated : 11<sup>th</sup> February, 2016**

**Present:**

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

**OP No. 14 / 2014**

**BETWEEN:**

Graphite India Limited,  
Visvesvaraya Industrial Area,  
White Field Main Road,  
Bengaluru – 560 048

.. **PETITIONER**

*[Represented by Shri S.V. Bhat, Advocate]*

**AND:**

- 1) Mangalore Electricity Supply Company,  
Paradigm Plaza, 3<sup>rd</sup> Floor,  
A.R. Shetty Circle,  
Pandeshwara,  
Mangaluru – 575 001.

*[Represented by Indus Law, Advocates]*

- 2) Chamundershwari Electricity Supply Corporation Limited,  
No.29, Kaveri Grameena Bank Road,  
Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019

.. **RESPONDENTS**

*[Represented by Just Law, Advocates]*

-----

**ORDERS**

1) This Petition is filed under Regulations 19 and 21 to 23 of the Karnataka Electricity Regulatory Commission (General & Conduct of Proceedings) Regulations, 2000, praying for the following reliefs :

- (i) Direct the Respondents to restore / re-establish double circuit dedicated evacuation line of 11 kVA Double Circuit from the Project Site of the Petitioner, i.e., from Link Canal, off Visveswarayya Canal in Peehalli Village, Srirangapatna Taluk, Mandya District to Mandya Sub-Station and till such time they compensate the Petitioner for the energy deemed to have been generated had the evacuation line is in operation and is without any failure;
- (ii) Direct the Respondents to pay a sum of Rs.7,76,489/- being the amount for loss of generation to the Petitioner along with interest thereon at 18% per annum from the date of respective debit notes and also to pay for the loss of energy for the period from March, 2014, upto the date of restoring the dedicated line;
- (iii) Direct the Respondents to pay cost of the above Petition and grant such other and further reliefs as are just.

2) The material facts necessary for disposal of the case are as follows : –

(a) The Petitioner established a Mini-Hydro Generation Station (Project) of 1.5 Mega Watts (MW) capacity across Link Canal, off Visweshwarayya Canal, Peehalli village, Srirangapatna taluk, Mandya district and entered

into a Power Purchase Agreement (PPA) on 21.12.2001 with Karnataka Power Transmission Corporation Limited (KPTCL) (ANNEXURE – A of the Petition). The Petitioner had, at its cost, constructed an 11 kV Double Circuit (DC) evacuation line for evacuation of the power from its Project to Mandya Sub-Station and handed over the same to Resopondent-2 for maintenance on 21.7.2009. The PPA, originally entered into with the KPTCL, was assigned to the 1<sup>st</sup> Respondent-Mangalore Electricity Supply Company Limited (MESCOM) and even after formation of Chamundeshwari Electricity Supply Corporation Limited (CESC), the 2<sup>nd</sup> Respondent, the PPA continued with the 1<sup>st</sup> Respondent (MESCOM) although the Project is in the territorial jurisdiction of the 2<sup>nd</sup> Respondent (CESC). On completion of ten year period, a supplemental PPA was entered with the 1<sup>st</sup> Respondent (MESCOM) on 31.7.2013 (ANNEXURE – B of the Petition).

- (b) On 28.2.2012, the evacuation line snapped near A. Hulikere village, but could not be restored due to agitation by farmers, despite intervention of police and local politicians. Hence, a temporary evacuation arrangement was made by the 2<sup>nd</sup> Respondent (CESC) in August, 2012, by connecting one circuit of the DC line to Kodiyala Tubinakere line. It is the case of the Petitioner that this line was an industrial feeder and resulted in frequent outages due to line clearance / grid problems, causing loss of generation to the Petitioner. It is alleged that, despite repeated requests to settle the issue, the line is not restored and the

2<sup>nd</sup> Respondent (CESC) has given three proposals as follows, for the Petitioner to take up under 'self-execution' :

- a) to repair the evacuation line by by-passing the concerned village;
  - b) to lay a new line from the Project to new Gamanahalli Sub-Station at a distance of 7 KMs;
  - c) to change the existing conductors to Aerial Bunched Cables (ABC) for the disputed length of the evacuation line.
- (c) The Petitioner alleges that, it had constructed the DC line at its cost and handed it over to the 2<sup>nd</sup> Respondent (CESC) for maintenance as per the terms of the PPA and it cannot be called upon to build another line. The generation loss claimed by the Petitioner from 1.4.2013 to 31.3.2015 due to line outages is 1,75,161 units, quantified at Rs.7,76,489/-. It is alleged that no payment is made by the Respondents inspite of raising debit notes and issuing reminders and Legal Notice.
- (d) The Petitioner states that, it was required to maintain the line only upto the metering / delivery point and thereafter it was the responsibility of 2<sup>nd</sup> Respondent (CESC) to maintain the line. It is alleged that, as the snapping took place beyond the metering point, it is the duty of the Respondents to maintain the same and restore the line.

- 3) On issuing notices, the Respondents have entered appearance through their counsel and filed objections.
- 4) The gist of the objections of the 1<sup>st</sup> Respondent (MESCOM) is as follows :
  - (a) The 11 kV DC line built by the Petitioner was taken over by the 2<sup>nd</sup> Respondent (CESC) for maintenance as per Official Memoranda dated 21.7.2009 and 22.7.2009 (ANNEXURES R-1 and R-2) and hence Petitioner should approach the 2<sup>nd</sup> Respondent (CESC) for redressal of its grievances and the 1<sup>st</sup> Respondent (MESCOM) is not responsible for any loss. Hence, the debit notes sent by petitioner were sent to 2<sup>nd</sup> Respondent (CESC), vide letters at ANNEXURE - R4.
  - (b) Under section 10 of the Electricity Act, 2003, it is the duty of the generation company to establish and maintain dedicated transmission lines. This has been reiterated by the Hon'ble Appellate Tribunal for Electricity (APTEL), in the decision reported in **2012 ELR (APTEL) 980**, in the case of *The Chairman, Tamil Nadu Electricity Board –Vs- M/s. Ind Bharath Thermal Power Limited*. Further, Clause 4.1(iv) of the PPA provides that the Petitioner has to maintain the interconnection facilities from the generating station to the substation and the definition of interconnection facilities includes dedicated Transmission Lines. Hence, it is the responsibility of the Petitioner to restore the line.

- 5) The gist of objections of the 2<sup>nd</sup> Respondent (CESC) is as follows :
- (a) The Article 10 of the PPA provides for a dispute resolution mechanism to resolve any dispute between the parties. As the Petitioner has not resorted to the same before filing the Petition before the Commission, the Petitioner is not maintainable.
- (b) The evacuation line got cut due to falling of trees on 28.2.2002 at Hulikere Village and efforts to restore the line went in vain as the villagers resisted and prevented the officers from carrying out the repair work. Hence, a complaint was lodged on 10.5.2012 and police protection was sought. In the meeting held with the villagers in the presence of MLA, DYSP, officials of CESC and others, it was decided to shift the line outside the Village limits by the Petitioner along the Canal Road by an additional distance of 1.6 KMs (ANNEXURE - R1). As the shifting of the line outside the Village limits was not feasible, it was decided to provide a reliable feeder line (F 7 Urban Kodiyala feeder) for evacuation of power from the project, considering that the average peak generation achieved was 0.8 MW. The said alternate arrangement was made on 24.5.2012.
- (c) The Petitioner was given three options for evacuation of power by the 2<sup>nd</sup> Respondent (CESC). The contention of the Petitioner that it would not be

in a position to accept any of the three options, as it would have to incur additional expenditure, is untenable, as one of the options, viz., providing ABC for 0.52 KM at a cost of about Rs.4.2 lakhs, as per letter dated 5.9.2013 (ANNEXURE - R4) was reasonable. The Petitioner had come forward to carry out the evacuation works through an alternate feeder from Gamanahalli Sub-Station and sought clarification as to whether any land was required to be acquired, vide letter dated 9.7.2012 (ANNEXURE-R-3), but later abandoned the plan.

- (d) There was no generation from the project from 28.12.2011 to 13.7.2013 due to break down of generators and turbines.
- (e) The snapping of the line was due to reasons beyond the control of the 2<sup>nd</sup> Respondent and the falling of trees should be construed as a force majeure condition as per Article 8 of the PPA.
- (f) The 2<sup>nd</sup> Respondent has instructed the concerned Engineers to reduce interruptions on the F-7 feeder line and take precautionary measures to minimise the interruptions, if any.

- (g) Under section 10 of the Electricity Act, 2003, the petitioner is required to maintain the dedicated transmission line. The 2<sup>nd</sup> Respondent had never agreed to carry out the work of establishing an alternative DC line.
- 6) The Respondents have prayed for dismissal of the petition.
- 7) We have heard the counsel for both the parties and perused the materials on record. The following issues come to the fore for our consideration:
- (1) Whether the Petitioner has proved that the 2<sup>nd</sup> Respondent had to restore the transmission line from the Petitioner's Plant to the Sub-Station, when the line was damaged ?
  - (2) Whether the Petitioner is required to construct the new dedicated line from its Project to the sub-station?
  - (3) Whether the Petitioner is entitled to compensation of Rs.7,76,489 with interest at 18% per annum from the Respondents for the loss of generation claimed to have been incurred due to non-grant of proper evacuation?
  - (4) What order?

Each of the issues raised above is discussed, as under:



7) **ISSUE No.(1) :**

- (a) The Petitioner had entered into a PPA on 21.12.2001 for supply of power from its Project to KPTCL. It had constructed a DC line from the project to Mandya Sub-Station for evacuation of power. As per the PPA, the Petitioner was required to establish the transmission line from its generating point to the grid point, without, however, having to maintain it. It was also agreed in the PPA that the line would be maintained by KPTCL. Vide Official Memorandum dated 21.7.2009, the line was taken over by the 2<sup>nd</sup> Respondent (CESC) for maintenance. The 2<sup>nd</sup> Respondent (CESC) had taken the responsibility of maintaining the transmission line, under the PPA, and was bound to maintain it. Therefore, we hold that the Petitioner was the 'Owner' of the line, but the 2<sup>nd</sup> Respondent (CESC) was responsible for the maintenance of the line.
- (b) The Petitioner has contended that having taken the responsibility of 'maintaining' the line, the 2<sup>nd</sup> Respondent (CESC) failed to do so. For this, we need to see if 'reasonable' care was taken by the 2<sup>nd</sup> Respondent in maintaining the line and whether it was required to restore the line when the line had snapped and whether it was prevented, for sufficient reasons, from restoring the line. Admittedly, the line snapped on 28.2.2012 due to falling of trees and the line could not be restored, despite best efforts by the 2<sup>nd</sup> Respondent (CESC). We note that

'maintenance' of the line ordinarily includes works like clearing vegetation along the line on a regular basis, straightening slanted poles, replacing chipped out / failed insulators, stringing loose spans (sagging wires) and other related works, to ensure safe and reliable operation of the system and this does not mean replacement of the line, when it snaps. For reasons beyond its control, the line had snapped, and the 2<sup>nd</sup> Respondent (CESC) cannot be made liable for such events. On snapping of the line, alternative arrangements were made by the Respondent on 25.8.2012 for evacuation of power from the Petitioner's Project by connecting it to Kodyala Tubinkere industrial feeder line as there were agitations by farmers for laying/ restoring the line. We, therefore, feel that the 2<sup>nd</sup> Respondent (CESC) had no intention to cause generation loss from the Petitioner's Project. We hold that for reasons / acts beyond its control, the 2<sup>nd</sup> Respondent (CESC) cannot be held responsible for damage to the evacuation line and liable for its restoration. We, therefore, answer Issue No.(1) in the negative.

8) **ISSUE No.(2) :**

- (a) We deem it appropriate to quote the relevant Articles in the PPA for deciding the issue:

**“Article 1****DEFINITIONS**

- 1.1 For all purposes of this Agreement, the following words and expressions shall have the respective meanings set forth below :

XXX                      XXX                      XXX

**‘Delivery Point’** shall be the point or points at which interconnection is made between the interconnection Facilities of the Company and the Grid System of the Corporation, i.e., after the high voltage side of the step up transformer.

XXX                      XXX                      XXX

**‘Interconnection Facilities’** in respect of the Company shall mean all the facilities installed by the Company to enable Corporation to receive the Delivered Energy from the Project at the Delivery Point, including transformers, and associated equipments, relay switching equipment, protective devices and safety equipments and transmission lines from the Project to Corporation’s nearest sub-station.”

**“4.1 Obligations of the Company:**

XXX                      XXX                      XXX

- (vi) The Company shall undertake at its own cost construction / upgradation of (a) the Interconnection Facilities and (b) the transmission lines as per the specifications and requirements of the Corporation, as notified to the Company.
- (vii) The Company shall undertake at its own cost maintenance of the Interconnection Facilities,

*excluding the transmission line as per the specifications and requirement of Corporation, as notified to the Company, in accordance with Prudent Utility Practices. The transmission lines so connected shall remain as dedicated transmission line without provisions for any tappings.*

XXX                      XXX                      XXX

**4.2 Obligations of Corporation:**

XXX                      XXX                      XXX

*(ii) to off-take all the Electricity made available by the Company at the Delivery Point subject to system constraints and Force Majeure conditions.*

XXX                      XXX                      XXX"

- (b) Under the above Articles of the PPA, the generating company is required to construct, upgrade and maintain the interconnection facilities from the project at the delivery point to the nearest Sub-Station. In view of the above, we are unable to accept the contention of the petitioner that it is bound to maintain the line only upto the metering/delivery point. Further, Section 10 of the Electricity Act, 2003 provides that a generating company is duty-bound to establish, operate and maintain the tie-lines and the dedicated transmission lines up to the Sub-Station. The Act had come into force, when the line had snapped on 28.2.2012 and hence the provisions of the Act will apply to the case.

- (c) It is the contention of the Petitioner that it had spent certain sums of money in constructing the transmission line from its Plant to the Sub-Station at Mandya as per the PPA and that it is not proper on the part of the Respondents to insist on the Petitioner to build another line. We note that the Petitioner had constructed the transmission line as per the Agreement entered into under the Electricity Supply Act, 1948. Under section 18-A of the Electricity Supply Act, 1948, the generating company was required to establish, operate and maintain the generating station and the lines, sub stations and main transmission lines. When the line had snapped, the Electricity Act, 2003, had come into force. We have held that the Petitioner was the 'Owner' of the transmission line constructed as per the PPA and that the Respondents, who were entrusted with the maintenance work, were not responsible for the snapping of the line or such other events, which were beyond their control. The 2<sup>nd</sup> Respondent (CESC) had stated in the letter dated 5.9.2013 (ANNEXURE - R-4) that after detailed discussions it is proposed to reconstruct the evacuation line by providing Aerial Bunched Cable in the troubled corridor for a distance of 0.52 km in the village limits under DCW / self-execution at a cost estimate of about Rs.4.2 lakhs. Admittedly, the Respondent had given three options to the Petitioner for resolving the issue of lack of efficient evacuation line, including their estimated cost, as per letter dated 30.9.2013 in Page-64 of the Petition, which are as follows :

- "1. Estimate No.5.0 KHEA-52/15.05.2012 to divert the evacuation line by-passing the A. Hulikere village – Cost Approx. Rs.9.45 Lacs.*
- 2. Estimate No.KNL-1 dtd.24.07.2012 for laying the new evacuation line from our Peehally to Marasingahaaly 66/11 KV substation at Gamonhally – Cost Approx. Rs.44.70 Lacs, and*
- 3. Estimate No.KOD/234 dtd.22.8.2013 for changing the existing conductor for a distance of 0.52 KMs. within A.Hulikere village limits by Insulated A.B. Conductors - Cost Approx. Rs.4.31 Lacs."*

The Petitioner in the above-referred letter has requested the 2<sup>nd</sup> Respondent (CESC) to take a decision that would be a permanent solution to its problem. We feel that it is proper that the 2<sup>nd</sup> Respondent (CESC) indicates the best possible option that would provide unhindered evacuation of the power generation by the Petitioner.

- (d) The Petitioner is, therefore, required to provide suitable interconnection as required under law to its project, by considering the options provided by the 2<sup>nd</sup> Respondent (CESC). The Petitioner can make use of the material in the line constructed by it, from its Plant to the Mandya Sub-Station, in construction of a new line as indicated by the 2<sup>nd</sup> Respondent (CESC). Issue No.(2) is answered accordingly.

9) **ISSUE No.(3)** :

- (a) The Petitioner has claimed Rs.7,76,489/- for the alleged loss of generation of 1,75,161 units during the period of outages of the line from 4.12.2013 to 2.4.2014, as detailed in ANNEXURES - D1 to D4 of the Petition. The claim is not supported by material evidence. The actual loss of generation due to snapping of the line connecting to the feeder line and the outages cannot be made out. The Petitioner has only mentioned the duration of outages and estimated the loss of generation. The basis for such estimation is not known. The Petitioner could have produced the generation data of the period just preceding the period of outages and the generation data of the period after the outages so that the estimation of loss of generation could have been done. It could have also produced the generation data of the whole day or a few days during the period of outages to estimate the actual loss, or the details of generation during the remaining period on the days on which the outages had not occurred. In the absence of such material, it is not possible to assess the actual loss of generation. It is stated by the Respondent in the Statement of Objections that the average peak generation was not more than 0.8 MW (45-50 Amps). The Petitioner has not denied this aspect in the rejoinder. However, this data may not be sufficient to assess the loss. Without specific data to estimate the loss of generation during the period of outages alleged, it may not be

- possible to quantify the loss or to provide damages based on the pleadings.
- (b) Further, in the letters dated 17.12.2012 and 8.5.2013, produced with the Petition, at pages 57 and 59 of the Petition, the Petitioner has stated that the Project is generating only 40% of the expected generation (4 MU as against 10.1 MU as per DPR) and hence, the project is not economically viable. It is not known as to on what basis the loss of generation is claimed in the Petition. Therefore, there is no basis either for quantification of loss of generation of 1,75,161 units of energy or the compensation of Rs.7,76,489/-. Accordingly, we answer Issue No.(3) in the negative.

10) **ISSUE No.(4) :**

- (a) The 2<sup>nd</sup> Respondent (CESC) is evacuating power using the Kodyala Tubinkere Feeder. This arrangement has continued from August, 2012, till date. Considering that the Petitioner had borne the cost of the transmission line built earlier, which has now become unavailable, we deem it appropriate to direct the 2<sup>nd</sup> Respondent (CESC) to continue evacuation of power from the Petitioner's Plant as per the current arrangement, for a period of one year or till construction of a new transmission line, whichever is earlier.



(b) For the foregoing reasons, we pass the following:

**ORDER**

- (1) The Petitioner is not entitled in law to any of the reliefs sought for;
- (2) The Petitioner is required to construct a dedicated transmission line from its Plant upto the nearest Sub-Station or make any other suitable evacuation arrangement, as agreed to by the parties; and,
- (3) The Petitioner shall be permitted to evacuate power from its Project through the Kodyala - Tubinkere feeder, for a period of one year from the date of this Order or till the construction of a new dedicated transmission line by the Petitioner, whichever is earlier.

Sd/-

(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER