

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

**Dated : 10<sup>th</sup> March, 2016**

**Present:**

- |                                 |          |
|---------------------------------|----------|
| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar          | Member   |
| 3. Sri D.B. Manival Raju        | Member   |

**OP No.10 / 2015**

**BETWEEN:**

Shilpa Medicare Limited,  
10/80, Rajendra Gunj,  
RAICHUR – 584 102

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**PETITIONER**

*[Represented by Keystone Partners, Advocates & Solicitors]*

**AND:**

- 1) The Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru – 560 009.
- 2) Hubli Electricity Supply Company Limited,  
P.B. Road, Navanagar,  
Hubballi – 580 025.
- 3) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi - 585 101
- 4) Karnataka State Load Despatch Centre,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru-560 009.

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**RESPONDENTS**

*[Represented by Just Law, Advocates]*

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**ORDERS**

- 1) In substance, the Petitioner in the above Petition has sought for the following reliefs :
  - (a) To treat the energy injected into the Grid by the Wind Power Project of the Petitioner from the date of the provisional interconnection approval (7.5.2014) upto the date of execution of the Wheeling and Banking Agreement (W&BA) (13.10.2014), as "banked energy";
  - (b) To quash the letter dated 16.3.2015 issued by second Respondent-Hubli Electricity Supply Company Limited (HESCOM) to the Petitioner, purporting to levy a penalty of Rs.4,24,57,713/- payable to the third Respondent-Gulbarga Electricity Supply Company Limited (GESCOM) and Rs.14,632/- payable to the second Respondent (HESCOM);
  - (c) To pass such other reliefs, in the interest of justice.
- 2) The material facts for adjudication of the controversy involved in this case, may be stated as follows :
  - (a) The Petitioner is a Company registered under the Companies Act, 1956. The Government of Karnataka, vide Government Order dated 4.3.2014 (ANNEXURE – P2), accorded approval for transfer of 3.2 Mega Watts (MW) capacity Wind Power Project (Project) in favour of the Petitioner, out of 27.2 MW capacity, which was already allotted in favour of

M/s.J.N.Investments and Trading Company Pvt.Ltd. Thereafter, by letter dated 14.3.2014 (ANNEXURE – P3), the Petitioner requested the 4<sup>th</sup> Respondent-Karnataka State Load Despatch Centre (SLDC) to arrange for wheeling of electricity from the Switching Station of M/s.Wind World (India) Limited, located at Harthi Village, Gadag Taluk, situated within the jurisdiction of the 2<sup>nd</sup> Respondent (HESCOM), to the captive consumption premises of the Petitioner, bearing R.R.Nos.HTR47, HTR64 and HTRR03, located within the jurisdiction of the 3<sup>rd</sup> Respondent (GESCOM), intimating that the completion of the Project was in an advanced stage and was expected to be commissioned during March, 2014 itself. The Petitioner has produced six documents, as per the Checklist annexed to its letter dated 14.3.2014, and requested for grant of time to produce a few other documents as per the checklist, immediately upon receipt of the said documents. The four Wind Turbines of the Petitioner's Project, each with a capacity of 0.8 MW, were commissioned on 7.5.2014. The Commissioning Certificate dated 8.5.2014 is at ANNEXURE – P6 of the Petition.

- (b) Immediately after commissioning of the Wind Turbines, the energy was being injected into the Grid and the energy so injected was confirmed by issuance of B-Forms by the 2<sup>nd</sup> Respondent (HESCOM), at the end of each month, from June, 2014 onwards.

(c) In the meanwhile, the Petitioner kept on following up with the Respondents to have the W&BA executed at the earliest. By letter dated 26.6.2014 (ANNEXURE – P10), the 4<sup>th</sup> Respondent (SLDC) intimated the Petitioner to submit the W&BA to the Deputy General Manager (Tech.), KPTCL. On the same day, the Petitioner produced the W&BA to the Deputy General Manager (Tech.), KPTCL, for taking further action. In turn, the Deputy General Manager (Tech.), KPTCL, wrote a letter dated 26.6.2014 (ANNEXURE – P12) to the 3<sup>rd</sup> Respondent (GESCOM), enclosing four sets of the W&BA to be entered into between the Petitioner and the Respondents, and requesting the 3<sup>rd</sup> Respondent (GESCOM) to sign the W&BA and forward the same to the 2<sup>nd</sup> Respondent (HESCOM), for its signature, as per the procedure. By letter dated 9.7.2014 (ANNEXURE – P13), the 3<sup>rd</sup> Respondent (GESCOM) forwarded the four sets of the W&BA, signed by the Petitioner, KPTCL and GESCOM, to the 2<sup>nd</sup> Respondent (HESCOM), instructing it to sign the same and conclude the process of executing the W&BA.

(d) The Petitioner has stated that, despite the necessary steps having been taken, the execution of the W&BA was not concluded and it received a copy of the letter dated 22.7.2014 (ANNEXURE – P14) issued by the 2<sup>nd</sup> Respondent (HESCOM) to the 1<sup>st</sup> Respondent (KPTCL), requesting that a fresh draft of the W&BA be supplied to it in the new Format approved by this Commission on 8.7.2014. The Petitioner has stated that, after several months, the W&BA dated 13.10.2014 (ANNEXURE – P16), in the new

Format, was finally executed between the Petitioner and the Respondents 1 to 3.

- (e) The Petitioner, by its letter dated 15.10.2014 (ANNEXURE – P18) addressed to the 2<sup>nd</sup> Respondent (HESCOM), requested to wheel the energy to its captive consumption points, for the month of October, 2014, as requested in the C-Form attached therewith. In response thereto, the 2<sup>nd</sup> Respondent (HESCOM) addressed letter dated 3.11.2014 (ANNEXURE – P19) to the 3<sup>rd</sup> Respondent (GESCOM), requesting that an Official Memorandum be issued confirming the wheeling of the energy to the Petitioner's captive consumption points, as per the C-Form. Thereafter, by letter dated 12.11.2014 (ANNEXURE – P20), the 3<sup>rd</sup> Respondent (GESCOM) issued an Official Memorandum, according approval to wheel the energy, as per the C-Form, for the month of October, 2014. In the same way, the Petitioner requested the 2<sup>nd</sup> Respondent (HESCOM) to wheel the energy, as per the C-Form, to its captive consumption points, for the months of November, 2014 to February, 2015. For these months, the electricity was supplied to the captive consumption points of the Petitioner, as per its request. The Petitioner has stated that, despite having run from pillar to post from May, 2014, the Respondents have refused to confirm the amount of energy injected by the Petitioner from May, 2014 onwards, as "banked energy". The Petitioner has contended that it has injected 48,56,400 Units of energy into the Grid from the date of commissioning, i.e., from 8.5.2014, till 28.2.2015, and accounting for

- transmission losses and imported energy at 115%, as well as wheeling charges of 5% and banking charges of 2%, the net energy available for wheeling should have been 44,83,608 Units. The calculation sheets are produced at ANNEXURES – P29 and P30 of the Petition.
- (f) The Petitioner has stated that it received a letter dated 16.3.2015 (ANNEXURE – P31) issued by the 2<sup>nd</sup> Respondent (HESCOM), intimating the Petitioner to pay penalty of Rs.4,24,57,713/-, payable to the 3<sup>rd</sup> Respondent (GESCOM) towards the over-drawal of energy at the captive consumption points and to pay Rs.14,632/- to the 2<sup>nd</sup> Respondent (HESCOM), within eighteen days from the date of receipt of the letter, and in default, to stop wheeling of the energy.
- (g) The Petitioner has contended that the penalty sought to be imposed on it, is illegal and not supported in any manner and that the Respondents have failed to take into account the energy injected from the date of commissioning of the Project till the date of execution of the W&BA, i.e., from 8.5.2014 to 12.10.2014, as "banked energy", therefore the Respondents 2 and 3 have wrongly come to the conclusion that the Petitioner had drawn excess energy from the Grid.
- (h) The Petitioner has contended that, once its Wind Power Project has been commissioned, the energy injected ought to be taken into consideration and the signing of the W&BA is only a mere formality and that the

Petitioner should not be forced to forfeit the energy that was generated and injected into the Grid, in the meanwhile. Further that the Petitioner did not intend to generate and deliver energy into the Grid gratuitously and it was always understood that the purpose of generating and delivering the energy into the Grid was for captive consumption. Therefore, the Petitioner has filed the present Petition on 31.3.2025. Along with the Petition, the Petitioner has filed I.A.No.1 for interim relief to stay the effect of the Notice dated 16.3.2015 (ANNEXURE – P31), which has sought for levy of penalty on the Petitioner. The Commission granted the interim prayer sought for by the Petitioner and the same has been continued till the final disposal of the case,

- 3) On issuance of Notices, the Respondents appeared through the learned counsel and filed their Statement of Objections. The gist of the contentions raised by the Respondents in their Statement of Objections is as follows :
  - (a) The Respondents have denied the contention of the Petitioner that there was an inordinate delay in the execution of the W&BA. They have contended that, during the process of execution of the W&BA, this Commission had revised the standard Format of the W&BA with effect from 8.7.2014 and therefore the 2<sup>nd</sup> Respondent (HESCOM) had returned the W&BA to the 1<sup>st</sup> Respondent (KPTCL), without signing the same, so as to enable them to seek clarifications. Further that the 1<sup>st</sup> Respondent

(KPTCL) had addressed a letter to this Commission on 30.8.2014, seeking clarification on the issue and that this Commission replied to the said letter, vide letter dated 18.9.2014, and thereafter, the 1<sup>st</sup> Respondent (KPTCL) informed the 2<sup>nd</sup> Respondent (HESCOM) to arrange for execution of the W&BA in the new Format. It is stated that, thereafter the W&B in the new Format was executed on 13.10.2014. Therefore, the Respondents have contended that the delay, if any, caused in this regard, was not attributable to them and that the contention of the Petitioner was wholly untenable and baseless.

- (b) It is contended that, Article 1.1(f) of the W&BA defines "Commercial Operation Date" as the date declared jointly by the generator and KPTCL / Electricity Supply Companies (ESCOMs), on which the Project or any of its Unit/s is/are declared as "available for commercial operation"; but, no such declaration has been executed by the Petitioner and the Respondents. Therefore, it is contended, in the absence of such a declaration, the only joint declaration, wherein the Petitioner has indicated that it is in a position to commence generation, is the W&BA, and hence, the question of either treating the energy generated by the Petitioner as 'banked energy' or allowing wheeling of the same, would only arise after the execution of the W&BA. Further, it is contended that, for these reasons, the energy injected into the grid prior to the signing of the W&BA can only be treated as "infirm energy" and no credit can be given for the same as 'banked energy'.



- (c) The Respondents have contended that the Notice dated 16.3.2015 (ANNEXURE – P31), claiming penalty, is valid and legal, and it has been issued as per Article 5.4 of the W&BA for over-drawal of energy by the Petitioner. It is contended that, mere furnishing of B-Forms does not entitle the Petitioner to treat the energy as 'banked energy' and the same is not contemplated in the W&BA. Therefore, the Respondents have prayed for dismissal of the Petition.
- 4) We have heard the learned counsel for both sides and considered the respective pleadings and documents produced by the parties in the case.
- 5) Based on the controversies involved between the parties in the case, the following issues would arise for our consideration :
- (1) Whether the energy injected into the Grid by the Wind Power Project of the Petitioner, from the provisional Interconnection Approval up to the execution of the W&BA, has to be treated as, "banked energy"?
  - (2) Whether the energy injected, from the date of provisional interconnection till the date of execution of the W&BA, can be treated as 'infirm power', as contended by the Respondents?
  - (3) Whether the Petitioner is entitled to any compensation for the energy injected into the grid prior to the date of W&BA, on the principles stated in Section 70 of the Indian Contract Act, 1872?

- (4) Whether there was any delay in granting of open access and in executing the W&BA, so as to warrant awarding of compensation to the Petitioner?
- (5) Whether the penalty imposed by the second Respondent (HESCOM) on the Petitioner, vide letter dated 16.3.2015, is valid?
- (6) To what reliefs the Petitioner is entitled?
- 6) After considering the rival contentions and the respective pleadings and documents produced by the parties, our findings on the above issues are as follows :
- 7) **ISSUE No.(1):** *Whether the energy injected into the Grid by the Wind Power Project of the Petitioner, from the provisional Interconnection Approval up to the execution of the W&BA, has to be treated as, "banked energy"?*
- ISSUE No.(2):** *Whether the energy injected, from the date of provisional interconnection till the date of execution of the W&BA, can be treated as 'infirm power', as contended by the Respondents?*
- ISSUE No.(3):** *Whether the Petitioner is entitled to any compensation for the energy injected into the grid prior to the date of W&BA, on the principles stated in Section 70 of the Indian Contract Act, 1872?*
- (a) Similar issues as in the present case had arisen before this Commission for consideration in OP No.6/2015, in the case of *M/s. R.B.Seth Shreeram Narasingdas –Vs- The Karnataka Power Transmission Corporation Limited and others*, decided on 10.12.2015. The facts stated in the present Petition and the objections raised thereto, are almost similar to those

- mentioned in OP No.6/2015. In both the cases, the same learned counsels have appeared for the parties. The Respondents in both the cases are the same.
- (b) In OP No.6/2015, the above three issues have been held in the negative, for the reasons stated therein.
- (c) During the course of arguments in the present case, the learned counsel for the parties have not urged to take a different view or findings on the above three issues, than the one recorded in OP No.6/2015. We have also found no reason to differ from the earlier findings given on the above issues. Therefore, we answer Issue Nos.(1), (2) and (3) in the present case, in the negative.
- 8) **ISSUE No.4:** *Whether there was any delay in granting of open access and in executing the W&BA, so as to warrant awarding of compensation to the Petitioner?*
- (a) The same issues regarding the delay in granting the open access and in executing the W&BA had arisen in OP No.6/2015. After noticing the provision of law warranting the award of compensation for the negligence in discharging a legal duty, this Commission took the view in the said case, in paragraph 11(c) to (f) of its Order, as follows :

“(c) The term, “open access” is defined in Section 2(47) of the Electricity Act, 2003, as follows :

*‘open access’ means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;*

*There is a duty prescribed under the Electricity Act, 2003 against the transmission utility, transmission licensee and also on a distribution licensee, to provide non-discriminatory open access to its transmission or distribution system for transmission of electricity in accordance with the Regulations specified by the appropriate Commission. This Commission has framed the KERC (Terms and Conditions for Open Access) Regulations, 2004. Regulation 9 of the said Regulations provides for the procedure for applying for grant of open access. Regulation 9(6) of the said Regulations casts a duty on the Nodal Agency to communicate the capacity available or otherwise for open access to the applicant, within seven days from the date of receipt of application in case of short-term open access, and within thirty days from the date of receipt of application in case of long-term open access. The other clauses in Regulation 9 provide that the open access customer shall enter into W&BA with the concerned and a copy of the same shall be furnished to the Nodal Agency, and thereafter, within three days from the date of receipt of a copy of the W&BA, the Nodal Agency shall inform the open access customer, the date from which the open access would be available. Therefore, the Nodal Agency has a duty to intimate, within three days from the date of receipt of a copy of the W&BA from the open access customer, the date from which the open access would be available.*

(d) *The procedure specified for applying for grant of open access does not prescribe the time-limit within which the open access customer and others have to execute the W&BA, after receipt of the intimation of the availability of open access*

from the Nodal Agency. Regulation 15 of the said Regulations provides for installation of special Energy Meters (ABT Meters), with the specifications stated therein, by the open access customer, before actual wheeling of energy could take place.

(e) The Petitioner has established Wind Power Plants and has applied for grant of open access for captive consumption of electricity. Any delay in granting of open access would certainly result in incurring of loss by the Petitioner. A duty is cast on the transmission and distribution licensee to provide non-discriminatory open access to the applicant within the time specified in the Regulations. Therefore, a duty is owed by the utilities to exercise due care and diligence in processing the applications seeking grant of open access. This duty of exercising due care and diligence is meant for avoiding any delay, which one can reasonably foresee, that it would be likely to injure the open access applicant. The utilities would stand on a special relationship with the open access applicant, and they are under a statutory duty to process the application for grant of open access without any delay, in order to protect the interest of the open access customer.

(f) In the absence of any special circumstances, the reasonable period for grant of open access can be taken as the period allowed under Regulation 9 of the said Regulations. As noted above, within thirty days from the date of receipt of the application for grant of open access, the Nodal Agency has to intimate the granting of open access or otherwise to the long-term open access applicant. The open access applicant has to furnish the W&BA, duly signed by him, for execution of the same by the other parties concerned. For this purpose, no time limit is mentioned in the Regulations. The W&BA has to be executed by the transmission licensee, injecting ESCOM and drawal ESCOM. Therefore, one week's time may be taken as the 'reasonable time' for this purpose. Thereafter, within three days, the Nodal Agency should intimate the date from which the open access would be available. The open access applicant has to install the Special Energy Meters (ABT Meters), as required, at the Drawal Point before the actual wheeling of energy could take place.

*He should also submit the W&BA, without any loss of time, upon receipt of intimation of granting of the open access. If there is any delay on the part of the open access applicant in installing the Special Energy Meters or in tendering the W&BA for execution by the parties concerned, such period of delay is to be added to the period within which the open access is to be granted to the Applicant."*

- (b) In the present case, there was no delay on the part of the Petitioner in submitting the W&BA and in installing the ABT Meters, as required. Therefore, had the open access application been allowed and the W&BA executed within forty days from the date of receipt of the open access application, one can say that there was no delay on the part of the Respondents in disposing of the open access application.
- (c) In the present case, the Petitioner filed the application for grant of open Access on 14.3.2014 (ANNEXURE – P3), stating that the Project was in an advanced stage of completion and was expected to be commissioned by the end of March, 2014 itself. Along with the said application, the Petitioner has not produced: (1) Single Line Diagram; (2) Government Electrical Inspectorate approval; and (3) Synchronization approval, relating to the Project, which were required to be produced along with the open access application. The Petitioner has stated that these documents would be produced upon receipt of the same, as these documents were being in the process of finalization by the concerned authorities. The synchronization approval proceedings had taken place on 7.5.2014 by the concerned authorities (as per ANNEXURE - P7 to the

Petition). The Electrical Inspectorate approval had been given on 30.4.2014. At the same time, the Electrical Inspectorate approved the Single Line Diagram. On the basis of these proceedings of the concerned authorities, the Commissioning Certificate dated 8.5.2014 (ANNEXURE – P6) was issued by the Executive Engineer, O&M Division, HESCOM, Gadag. It can be said that, without production of these documents, the open access application is not complete in all respects. Therefore, the 'Effective Date' of filing of the open access application should be taken as the date on which the above documents were furnished by the Petitioner to the Nodal Agency for grant of open access. The Petitioner does not say as to when these documents were furnished to the Nodal Agency. The provisional interconnection approval has been given on 7.5.2014. Therefore, we are of the considered opinion that the 'Effective Date' of filing of the open access application should be taken as '7.5.2014'. In such an event, the Nodal Agency should have intimated to the Petitioner about the grant of open access or otherwise, on or before 6.6.2014. Had the Petitioner furnished the signed W&BA on 6.6.2014 itself, the execution of the same by the Respondents 1 to 3 should have been completed on or before 13.6.2014. But, the Nodal Agency (SLDC) communicated the grant of open access to the Petitioner only on 26.6.2014 (ANNEXURE – P10) and asked the Petitioner to execute the W&BA. There is no explanation for this delay of twenty days in communicating the grant of open access to the Petitioner and informing it to execute the W&BA. The Petitioner filed the required

number of sets of the W&BA, with its signatures, on 26.6.2014 itself, for further needful. Therefore, we are of the considered view that there was no delay on the part of the Petitioner in submitting the W&BA. Therefore, it could be said that, had the open access and wheeling of energy allowed at least on 13.6.2014, there would have been no delay on the part of the Respondents in granting of open access.

(d) The learned counsel for the Respondents submitted that, during the process of finalizing the W&BA, this Commission specified a new Format of the W&BA with effect from 8.7.2014 and that the 2<sup>nd</sup> Respondent (HESCOM) had to obtain clarifications, and soon after receipt of the clarifications, the W&BA was executed between the parties on 13.10.2014. Therefore, the learned counsel for the Respondents submitted that, in view of this 'special circumstance', the Respondents cannot be held responsible for the delay, if any, in executing the W&BA. As already noted above, the wheeling should have been allowed on or before 13.6.2014, after completion of all the formalities. Therefore, any change in the Format of the W&BA with effect from 8.7.2014 cannot be taken as a 'special circumstance' to exonerate the delay on the part of the Respondents.

(e) The learned counsel for the Petitioner submitted that, an application requesting for grant of open access can be filed before effecting the interconnection of the Project to the Grid. Further, he contended that, in



the present case, even in the absence of certain documents, the date of filing of the open access application, viz., 14.3.2014, needs to be treated as the 'Effective Date' for the purpose of granting of open access. Therefore, according to the learned counsel for the Petitioner, the open access should have been granted within thirty days from 14.3.2014 and the process of execution of the W&BA should have been completed early, thereafter, and the Nodal Agency (SLDC) should have allowed the open access immediately after synchronization of the Project with the Grid.

- (f) Regulation 9 of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004, specifies the procedure for applying for open access. Clause (2) of the said Regulation 9 states that, the application shall contain such details as capacity needed, point of injection, point of drawal, voltage level, phase arrangement, duration of open access, peak load / time, average load, and any other additional information that may be specified by the Nodal Agency. Clause (4) of the said Regulation 9 provides that, the Nodal Agency shall issue necessary guidelines, procedure and application form within thirty days of the publication of the said Regulations in the official Gazette. Pursuant to it, the Nodal Agency has prescribed the list of documents to be produced along with the open access application. It is not disputed that the Petitioner had not produced some of the documents as per the Checklist annexed to the open access application

dated 14.3.2014 (ANNEXURE – P3). Therefore, it can be said that, unless these documents were produced along with the open access application, the Nodal Agency need not act upon it. When the procedure specifies the production of the documents, a party cannot claim exemption from producing the same, but one has to follow the same. The procedure suggested by the Petitioner may lead to some anomaly and difficulties, in the event the synchronization of the Project does not take place or it is delayed indefinitely. Therefore, we are unable to accept the contention of the learned counsel for the Petitioner in this regard.

(g) In view of the above findings, we hold that the wheeling and banking of the energy should have commenced from 13.6.2014. Accordingly, we answer Issue No.(4) in the affirmative.

9) **ISSUE No.(5)** : *Whether the penalty imposed by the second Respondent (HESCOM) on the Petitioner, vide letter dated 16.3.2015, is valid?*

(a) The second Respondent (HESCOM) has issued a Notice dated 16.3.2015 (ANNEXURE – P31) to the Petitioner, claiming penalty for over-drawal of energy from the grid, beyond the quantum of energy for which it was entitled under the W&BA. The second Respondent (HESCOM) has arrived at the quantum of over-drawal of energy, taking into consideration the quantum of energy injected from 13.10.2014, i.e., the date on which the

wheeling and banking of energy was allowed. As we have come to the conclusion that the wheeling and banking should have been allowed from 13.6.2014, the quantum of energy injected should be calculated from 13.6.2014, and not from 13.10.2014. Therefore, the present Notice imposing penalty against the Petitioner for over-drawal of energy is to be withdrawn and a fresh calculation to ascertain the over-drawal of energy, if any, needs to be done.

- (b) The 2<sup>nd</sup> Respondent (HESCOM) relied upon Article 5.4 of the W&BA to impose penalty against the Petitioner for over-drawal of energy. The said Article reads thus :

*"The ESCOM shall recover from the Exclusive Consumer, twice the energy charges applicable for the relevant category for the overdrawal of power from the grid beyond that contracted under wheeling with the Company."*

This Article 5.4 applies only in the case of "Exclusive" consumers. It is necessary to ascertain whether the Petitioner was an existing consumer of the third Respondent (GESCOM), within whose jurisdiction the captive consumption point is situated, prior to granting of wheeling and banking of energy from the Wind Power Project in question, and whether the existing demand for energy from the third Respondent (GESCOM) was continued or not. If the Petitioner is found to be a "Partly Exclusive"

consumer of the third Respondent (GESCOM), then Article 5.4 of the W&BA does not apply. For the above reasons, we answer Issue No.(5) in the negative.

10) **ISSUE No.(6) : To what reliefs the Petitioner is entitled?**

- (a) From the above discussions, it could be seen that the wheeling and banking of energy should have been allowed from 13.6.2014 and the second Respondent (HESCOM) and the third Respondent (GESCOM) should have taken into account the energy injected and drawn from 13.6.2014 to 31.3.2015 for the purpose of ascertaining the rights and liabilities of the Petitioner in respect of the wheeling and banking transactions.
- (b) For the foregoing reasons, we pass the following :

**ORDER**

- (i) The second Respondent (HESCOM) and the third Respondent (GESCOM) should take into account the quantum of energy injected at the injection point of the Project and the energy drawn at the captive consumption points of the Petitioner, for the period from 13.6.2014 to 31.3.2015, and raise the monthly energy bills in terms of the Wheeling and Banking Agreement dated 13.10.2014, as if the wheeling has taken place from 13.6.2014, and refund the excess amount collected, if any, to the Petitioner, within 2 (months) from the date of this Order, and recover the shortfall, if any, from the Petitioner; and,

(b) The Petitioner is not entitled to any other reliefs claimed in the Petition.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

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

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