

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

Dated : 28th April, 2016

Present:

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

OP No.12 / 2015

BETWEEN:

RNS Power Ltd.,
Naveen Complex,
No.14, 7th Floor,
M.G. Road,
Bengaluru – 560 001

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PETITIONER

[Represented by Shetty & Hegde Associates, Advocates]

AND:

- 1) 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) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 4) Karnataka State Load Despatch Centre,
Cauvery Bhavan,
K.G. Road,
Bengaluru-560 009.

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RESPONDENTS

[Represented by Justlaw, Advocates]

ORDERS

- 1) The Petitioner in the above Petition has sought for the following reliefs :
 - (a) To direct the Respondents to give full credit to the Petitioner for the energy injected by it from March, 2014, as shown by the Petitioner in ANNEXURE - 46;
 - (b) To quash the letter dated 19.3.2015 issued by the 2nd Respondent – Hubli Electricity Supply Company Limited (HESCOM) produced as ANNEXURE - 28;
 - (c) To pass any other order/s in the interest of justice and equity.
- 2) The material facts made out by the Petitioner may be stated as follows:
 - (a) The Petitioner is a Company incorporated under the Companies Act, 1956. The Government of Karnataka, vide its Order No. EN 191 NCE 2013, dated 01.08.2013 (ANNEXURE-1), granted approval to the Petitioner for establishment of a 7.2. Mega Watts (MW) capacity Wind Power Project (Project) at Adavi Somapur and Kalasapur Villages in Gadag District, more fully described in the Schedule to the said Order.

- (b) The Petitioner, by its application dated 22.8.2013 (ANNEXURE-8), requested the Chief Engineer (Elec) of the 4th Respondent-State Load Despatch Centre (SLDC) for arranging execution of a Wheeling and Banking Agreement (W&BA) for transmission of electricity from the Wind Power Project to its captive consumption points, situated within the jurisdiction of the 2nd and 3rd Respondents, as detailed in the said application.
- (c) Thereafter, the Wind Turbines of the Petitioner's Project, each having 0.8 MW capacity, were established and commissioned in three stages, as noted below:

Stage No.	Number of Turbines	Date of Commissioning	Total Capacity (MW)	Date of Commissioning Certificate
I.	7	13.03.2014	5.6	14.03.2014 (Annexure-4)
II.	1	21.08.2014	0.8	25.08.2014 (Annexure-5)
III.	1	11.09.2014	0.8	15.09.2014 (Annexure-6)

- (d) Pursuant to the Petitioner's application (ANNEXURE-8) for execution of the W&BA, the Respondents 1 to 3 and the Petitioner have entered into the W&BA (ANNEXURE-7) on 30.06.2014. The W&BA provides for the banking facility as per the terms stated therein. In the W&BA, the following are shown as the Drawal Points, as specified by the Petitioner :

BESCOM Jurisdiction :

- (i) M/s. Naveen Hotels Limited,
M.G. Road, Bangalore. .. RR No.3EHT23
- (ii) M/s. Naveen Hotels Limited,
Yeshwanthapur, Bangalore. .. RR No.N5HT494

HESCOM Jurisdiction :

- (i) M/s. Naveen Hotels Limited,
Unkal, Hubli. .. RR No.HT-59

- (e) Upon commissioning of the Wind Power Project, the energy was being injected into the State Grid and the same was being confirmed by issuance of B-Forms (ANNEXURES – 30 to 42) every month by the 2nd Respondent (HESCOM), within whose jurisdiction the Injection Point of the Petitioner's Project is situated.
- (f) Soon after the execution of the W&BA, the energy was being wheeled as per the prevailing procedure to the Drawal Points of the Petitioner, as per its request made in the C-Forms, till the end of March, 2015.
- (g) The Respondents have accounted for the energy that has been injected into the State Grid subsequent to the date of execution of the W&BA. The request of the Petitioner to account for the energy that has been injected from the date of commissioning of the Wind Turbine Generators (WTGs) to

- the date execution of the W&BA (i.e., from 13.03.2014 to 30.06.2014), has not been considered by the Respondents.
- (h) In the meanwhile, the 2nd Respondent (HESCOM) issued a provisional Notice dated 19.03.2015 (ANNEXURE-28) demanding the penal payments amounting to Rs.73,10,073/- payable to the 3rd Respondent (BESCOM), for excess drawal of energy for the month of February, 2015, and also for payment of an amount of Rs.27,629/- to the 2nd Respondent (HESCOM) towards the Meter reading charges, etc. The said Notice also stated that the amount demanded should be paid within eighteen days from the date of the said Notice and in default the wheeling of energy would be stopped.
- (j) The Petitioner has filed the present Petition on 16.04.2015 before this Commission along with an Interim Application praying for staying the operation of the provisional Notice dated 19.03.2015. This Commission granted the prayer of the Petitioner made in the Interim Application till the final disposal of the Petition.
- (k) The Petitioner has urged that it is entitled to credit of the energy injected for the period from 13.03.2014 to 30.06.2014. In support of this contention, in substance, the Petitioner has stated thus :

- (i) The date of commercial operation of the Wind Power Plant is the date of issuance of the Commissioning Certificate, and from the date of commissioning, the Respondents ought to have given full credit of the energy injected into the State Grid;
- (ii) The Petitioner did not intend to generate and deliver energy into the State Grid gratuitously. It was always understood that the purpose of generating and injecting energy into the Grid was for captive consumption;
- (iii) The 2nd Respondent (HESCOM) had issued B-Forms every month for the injected energy during March, April, May and June, 2014, even before execution of the W&BA dated 30.06.2014. The 2nd Respondent (HESCOM) and the 3rd Respondent (BESCOM) had acted on the C-Form, submitted by the Petitioner for wheeling of energy and issued an official Memorandum each month. The 4th Respondent (SLDC) wrote a letter dated 31.03.2015 (ANNEXURE-29) to the 1st Respondent-Karnataka Power Transmission Corporation Limited (KPTCL) requesting approval for accounting of energy from the date of commissioning of the Plant (13.03.2014) to the date of execution of the W&BA (30.06.2014). Therefore, subsequently, the Respondents cannot deny to account for the energy injected into the Grid from 13.03.2014 to 30.06.2014 and they are estopped from denying credit of the energy to the account of the Petitioner;

- (iv) There was an inordinate delay on the part of the Respondents in the execution of the W&BA because of which the Petitioner should not be penalized. The execution of the W&BA should have coincided with the date of commissioning of the First Stage of the Project, viz., on 13.03.2013.
- (l) For the above reasons, the Petitioner has submitted that the Notice dated 19.03.2015, proposing imposition of penalty (ANNEXURE – 28) is bad in law.
- 3) The Respondents appeared through their learned counsel and filed Statement of Objections, individually. The contentions urged in all the Statements of Objection are similar in nature. The gist of their contentions may be stated thus:
- (a) That the Petitioner is not entitled to the credit of the energy injected from the date of commissioning of the First Stage of the Project (13.03.2014) to the date of execution of the W&BA (30.06.2014) and that the banking of energy would come into picture only after execution of the W&BA and as per the terms and conditions stated therein.
- (b) That there was no delay on the part of the Respondents in executing the W&BA and it was executed within a reasonable time from the date the Petitioner had confirmed the installation of ABT Meters. The ABT Meters

were installed by the Petitioner only on 05.03.2014 for RR Nos.: (1) HT-59; (2) N5HT-494; (3) 3EHT-23, and on 29.10.2014 for RR Nos.: (1) AKLHT-305; (2) HT-9, and on 27.01.2015 for RR Nos.: 1) GRHT-23; (2) S2HT-18. Based on the request of the Petitioner made on 10.03.2014 for grant of wheeling of energy to the three Consumption Points, where ABT meters were installed on 05.03.2014 the 1st Respondent (KPTCL), vide its letter dated 14.03.2014 (ANNEXURE – 33), issued its consent to wheel the energy generated from the subject Project to the three HT installations referred to above. The 1st Respondent (KPTCL) instructed the Petitioner to submit the W&BA for further needful. Accordingly, on 24.03.2014, the Petitioner submitted the W&BA duly signed by it, to the 1st Respondent (KPTCL). In the meantime, the validity of the Standard Format of the W&BA, which had earlier been extended vide this Commission's Order No.V/03/9 dated 10.10.2013, had expired on 31.03.2014. Subsequently, this Commission, vide Order No.V/03/09, dated 24.04.2014, again extended the validity of the Standard Format of the W&BA upto 30.06.2014 or till the issuance of a revised Standard Format. Based on the above extension Order four sets of the W&BAs were signed by the Petitioner and the 1st Respondent (KPTCL) on 23.05.2014 and the same were forwarded under the covering letter (ANNEXURE – 25) on the same day to the 3rd Respondent (BESCOM) for its signature, and to forward the same to the 2nd Respondent (HESCOM) for its signature, as per the procedure. The 3rd Respondent (BESCOM) signed the four sets of the W&BA and forwarded the same to the 2nd Respondent (HESCOM) , as per letter dated 19.06.2014 (ANNEXURE – 26). Thereafter,

- the signing of W&BA was finally completed on 30.06.2014. Therefore, it is contended by the Respondents that there was no delay on their part in executing the W&BA.
- (c) That the Petitioner could inject the energy and draw the same only to the extent stipulated in the W&BA. As per the terms of the W&BA, the Generator is required to pay for over-drawal of energy as against the injected and banked energy, at the end of a month at the rate of one and a half time the tariff applicable to HT-2A.
- (d) That the Petitioner had drawn excess energy as shown in the Notice dated 19.03.2015 (ANNEXURE – 28). Thereby, the Petitioner was liable to pay the penalty as stated in the said Notice.
- (e) The Respondents have denied the maintainability and legality of the other contentions urged by the Petitioner, as indicated in paragraph-2(k) above.
- (f) The Respondents therefore have prayed for dismissal of the Petition.
- 4) We have heard the oral submissions made by the learned counsel for the parties and perused the respective pleadings and documents on record.

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5) Based on the controversies involved between the parties, 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 13.03.2014 to 30.06.2014, should be credited to the account of the Petitioner for the reasons stated by it?

(2) Whether the penalty imposed on the Petitioner under the provisional Notice dated 19.03.2015 (ANNEXURE - 28) is valid?

(3) To what relief the Petitioner is entitled ?

6) 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 13.03.2014 to 30.06.2014, should be credited to the account of the Petitioner for the reasons stated by it?*

(a) We have already noted the four grounds urged by the Petitioner to claim credit of energy injected during the period from 13.03.2014 to 30.06.2014, as indicated in paragraph-2(k) above.

- (b) Firstly, the Petitioner has contended that, the date of commercial operation of the Wind Power Plant should be the date of issuance of the Commissioning Certificate, and from the date of commissioning, the Respondents ought to give full credit of the energy injected into the State Grid. We shall now discuss this contention. The Commissioning Certificates are produced at ANNEXURES – 4 to 6 of the Petition. Each of these Certificates states that the particular Wind Turbine referred to in the Commissioning Certificate has been commissioned on a particular day and further it states that this Certificate has been issued on the basis of the provisional Interconnection Approval issued by the Chief Engineer (Elec’y.) (Planning & Co-ordination), KPTCL, Bangalore.
- (c) Therefore, the terms and conditions incorporated in the provisional Interconnection Approvals are deemed to be the terms and conditions of the Commissioning Certificates. It may be noted that, in each of the Commissioning Certificates, the date of commissioning of the Wind Turbine corresponds to the date of provisional Interconnection Approval, and they are one and the same. Therefore, it can be inferred that the date on which the provisional Interconnection Approval was given, is treated as the date of commissioning of the Wind Turbine. It may be noted that the provisional Interconnection Approval specifically stipulates that the said approval would only indicate the technical connectivity of the installation in question with KPTCL's grid for synchronization. Further,

the provisional Interconnection approval does not say anything regarding the commercial operation of the Wind Project. A Project can become available for commercial operation only when a commercial agreement like Power Purchase Agreement with any of the Electricity Supply Companies (ESCOs) or third parties, is entered into for sale of energy generated by the Project. Mere injection of energy into the grid, without intending to sell it, in pursuance of a commercial agreement, to any person, would not amount to commercial operation of the Project. In the present case, the energy was injected soon after the provisional Interconnection Approval was given on 13.03.2014, without there being any commercial agreement for sale of energy to anyone. Therefore, it cannot be said that the commercial operation of the Project has taken place on the date of issue of Commissioning Certificate on 14.03.2014. The issuance of Commissioning Certificate only implies the connectivity of the Project to the transmission system, certifying the technical feasibility to inject the power generated into the grid. If the date of commercial agreement for sale of energy to any person coincides with the date of commissioning, then it could be stated that the Commercial Operation Date (COD) and the date of commissioning are one and the same. Therefore, the date of commercial operation is to be ascertained from the facts of each case. Hence, the date of injection of energy into the grid, in pursuance of some commercial agreement for sale, etc., of the energy, should decide the COD, and the COD should be understood accordingly

in cases wherever it is applicable. Therefore, the first contention of the Petitioner cannot be accepted.

- (d) Secondly, the Petitioner has contended that it did not intend to generate and deliver energy into the State Grid gratuitously. It was always understood that the purpose of generating and injecting energy into the Grid was for captive consumption. The Petitioner can succeed on this ground, only if it meets with the provisions of Section 70 of the Indian Contract Act, 1872.

- (e) Section 70 of the Contract Act reads as follows :

“70. Obligation of person enjoying benefit of non-gratuitous act.

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

- (f) The analysis of the facts of the present case shows that the principles stated in Section 70 of the Contract Act cannot be applied to the present case. The basis of Section 70 is that, something had been done by one party for the other, which the other party has voluntarily accepted. It is based on the doctrine of restitution, which prevents unjust enrichment by retaining anything received by a party and which does

not belong to him, and he must return it to the person from whom he received it or to pay for its value. The Commentary under Section 70 of the Contract Act by the learned Authors, Pollack & Mulla, 14th Edition, Volume II, states the circumstances under which the ingredients of the said Section are not made out, and it reads thus :

"... A claim on the basis of something done against the express provisions of statute cannot be claimed under this Section...."

"...Where the Defendant informed the Plaintiff that he did not want the work done, the work was not done lawfully. ..."

"...The voluntary acceptance of the benefit of the work done or under delivery is the foundation of the claim under Section 70. The person on whom the benefit is conferred, enjoys the benefit voluntarily. It means that the benefit must not have been thrust upon him without his having the option of refusing it. Nobody has a right to forcing the benefit upon another. ..."

- (g) As noted above, the provisional Interconnection Approval would stipulate that, such approval was given only to provide technical connectivity of the Wind Turbines of the Petitioner's Project with the KPTCL's grid for synchronization. It cannot be disputed that a person cannot inject the energy into the Grid, without grant of open access to wheel the energy to the permitted destination. Further, it can be noted that the electrical energy injected into the Grid cannot be stored and it would be consumed instantly, and there would be no option for the Respondents either to accept or reject the said energy. Therefore, it is

- not a case of enjoying the benefit voluntarily by the Utilities, but it amounts to thrusting it upon them without having the option of refusing it.
- (h) In this connection, the decision of the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal Nos.123 and 124 of 2007, decided on 8.5.2008, in the case of *Hyderabad Chemicals Limited -Vs- Andhra Pradesh Electricity Regulatory Commission and others* can be usefully referred to. In the said case, the Generating Company approached the APTRANSCO by means of a letter, stating that, in case the generator pumps the energy into the Grid of the APTRANSCO before commissioning of the Project and entering into a PPA or necessary Banking-cum-Wheeling Agreement, the APTRANSCO would not be required to pay any consideration for the same. After giving such a letter, the Generating Company pumped certain quantity of power into the Grid and subsequently made a claim for the quantity of power injected before the date of entering into the PPA. The Hon'ble ATE has held that the principles under Section 70 of the Contract Act cannot be applied on the facts and in the circumstances of that case, stating that, once the energy is injected into the Grid it is instantaneously consumed and the Distribution Licensee has no choice to reject the supply of energy, apart from holding that the Appellant intended to deliver the energy gratuitously and there was no obligation on the person, to whom delivery had been made, to pay compensation to the former. In the present case, the injection of energy into the Grid by the Petitioner only on the basis of the provisional Interconnection

Approval cannot be treated to have been done as per law, but on the other hand, it would be against the provisions of the Grid Code. Further, the utilization of such energy cannot be treated as 'voluntary acceptance' of the benefit by the ESCOMs, but it may amount to thrusting the benefit upon the ESCOMs. Therefore, the second contention of the Petitioner cannot be accepted.

(j) Thirdly, the Petitioner has contended that, the Respondents are estopped from denying credit of the energy to the account of the Petitioner by their own conduct. The Petitioner has relied upon the issuance of B-Forms every month for the injected energy during March, April, May and June, 2014 and even before the execution of the W&BA dated 30.06.2014. Further, it has relied upon the action taken by the 2nd Respondent (HESCOM) and the 3rd Respondent (BESCOM) on the C-Forms submitted by the Petitioner for wheeling of the energy. It has also relied upon the letter dated 31.03.2015 (ANNXURE – 29) of the 4th Respondent (SLDC) addressed to the 1st Respondent (KPTCL) requesting for approval for accounting of energy from the date of commissioning of the Plant to the date of execution of the W&BA.

(k) We are of the considered view that the principles of *estoppel* do not apply to the facts of the circumstances of the present case. As already noted above, the Petitioner was not legally entitled to inject energy into the Grid, before executing the W&BA. The officials of the Utilities cannot

allow such injection of energy into the Grid. Therefore, issuance of B-Forms evidencing the injection of energy and writing a letter to account for such energy injected, are not within the purview of their official or ostensible authority. If such acts of the officials of the Utilities were to be accepted, it would defeat the statutory provisions of law, which prohibit the injection of energy into the State Grid before entering into a commercial Agreement with the concerned. Therefore, the third contention of the Petitioner cannot also be accepted.

- (l) Fourthly, the Petitioner has contended that there was an inordinate delay on the part of the Respondents in the execution of the W&BA, because of which the Petitioner should not be penalized. The Respondents have contended that there was no inordinate delay and the W&BA was executed within the reasonable time.

- (m) On consideration of the facts of the case, we find some merit in the said contention of the Petitioner. The Petitioner has filed the application dated 22.08.2013 (ANNEXURE – 8) requesting for grant of open access and to execute the W&BA stating that the Project was likely to be commissioned in October, 2013. The Petitioner has mentioned, in its application, seven Consumption Points within the jurisdiction of the 2nd Respondent (HESCOM) and the 3rd Respondent (BESCOM). The Petitioner has also furnished the required documents except the Synchronization Approval, Government Electrical Inspectorate Approval and Single Line Diagram,

stating that the said documents are in the process and would be submitted immediately upon receipt of the same.

- (n) The first Stage of the Project was commissioned on 13.03.2014. The W&BA was executed on 30.06.2014. The 3rd Respondent (BESCOM), vide letter dated 22.11.2013 (ANNEXURE - 16) addressed to the 4th Respondent (SLDC) gave its concurrence to wheel the generated energy from 7.2 MW capacity Wind Power Project of the Petitioner to the two Consumption Points falling within its jurisdiction, stated in the Petitioner's application (ANNEXURE – 8), subject to installation of the ABT Meters at the Generating and Drawal Points. In the same manner, the 2nd Respondent (HESCOM) vide letter dated 23.11.2013 (ANNEXURE - 17) addressed to the 4th Respondent (SLDC) gave its concurrence to wheel the generated energy from 7.2 MW capacity Wind Power Project of the Petitioner to the Consumption Points falling within its jurisdiction, stated in the Petitioner's application (ANNEXURE – 8), subject to installation of ABT Meters at the Generating and Drawal Points. The Petitioner, vide letter dated 05.03.2014 (ANNEXURE-22), addressed to the 4th Respondent (SLDC), informed that the ABT Meters were installed as required at RR No.HT-59 within the jurisdiction of the 2nd Respondent (HESCOM) and at RR Nos.N5HT-494 and 3EHT-23 , within the jurisdiction of the 3rd Respondent (BESCOM). In the said letter, the Petitioner has intimated that the replacement work of ABT Meters at other Drawal Points would be completed before 15.03.2014 without fail. Thereafter, the Petitioner addressed a letter to the 4th Respondent (SLDC)

to wheel the energy only to the three Drawal Points, where the ABT Meters had already been installed. Subsequently, by its letter dated 14.03.2014 (ANNEXURE – 23), the 1st Respondent (KPTCL) conveyed its approval to the 4th Respondent (SLDC) to wheel the energy to the three Drawal Points, where the ABT Meters had already been installed. Therefore, as on 14.03.2014, the 4th Respondent (SLDC) was aware that the Respondents 1 to 3 had given their 'No Objection' for wheeling the energy generated to the three Consumption Points, where the ABT Meters had already been installed.

- (p) 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.

- (q) 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.

- (r) 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.
- (s) 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.

- (t) Keeping in mind the above yardstick, we may now analyze the facts relating to the present case, in order to find out whether there is any delay in granting the open access to the Petitioner.

- (u) As already noted above, as on 14.03.2014, the Nodal Agency (SLDC) was aware that, for grant of open access to the Petitioner, the requisite capacity in the transmission and distribution system was available and that the ABT Meters were installed. In that event, the 4th Respondent (SLDC) should have intimated the grant of open access to the Petitioner within one or two days from 14.03.2014 and directed the Petitioner to take necessary steps for execution of the W&BA. In the above circumstances,

- the entire exercise of executing the W&BA should have been completed latest by 31.03.2014. Therefore, the explanation offered by the Respondents that the validity of the Standard Format of the W&BA had expired on 31.03.2014 and the subsequent extension was issued by this Commission, vide Order dated 24.04.2014, is not tenable. It may be seen that the Respondents could complete the execution of the W&BA only on 30.06.2014, after more than two months from 24.04.2014, which delay cannot be accepted.
- (v) For the above reasons, on Issue No.(1) we hold that the energy injected into the Grid from 01.04.2014 to 30.06.2014 shall be credited to the account of the Petitioner.
- 8) **ISSUE No.(2)** : *Whether the penalty imposed on the Petitioner under the provisional Notice dated 19.03.2015 (ANNEXURE - 28) is valid?*
- (a) The 2nd Respondent (HESCOM) has arrived at the quantum of over-drawal of energy, taking into consideration the quantum of energy injected into the Grid from 30.06.2014, i.e., the date on which the W&BA was executed. As we have come to the conclusion that the wheeling and banking should have been allowed from 01.04.2014, the quantum of energy injected should be calculated from 01.04.2014 and not from 30.06.2014. Therefore, the present Notice imposing the penalty on the Petitioner for

over-drawal of the energy is to be withdrawn and a fresh calculation for over-drawal of the energy needs to be done, in accordance with the terms of the W&BA (ANNEXURE – 7).

- (b) The Respondents appear to have mechanically accepted the claim of the Petitioner that the energy was being wheeled to its Captive Consumption Points. The Petitioner is a Company registered under the Companies Act, 1956. The names of the Consumers indicated in the Petitioner's open access application (ANNEXURE – 8) would show that they are also different Companies and may be sister-concerns of the Petitioner. Therefore, the Petitioner and its sister-concern Companies are different legal entities. In that event, for fulfilling the requirements of a Captive Generating Plant, the ingredients stated in Rule 3 of the Electricity Rules, 2005, are to be met with, which would have an effect on payment of Cross-Subsidy Surcharge. In view of the above, this requires further detailed examination by the 2nd Respondent (HESCOM) and the 3rd Respondent (BESCOM) to take further necessary action in this regard, by co-ordinating with any other competent authority.

- (c) For the above reasons, we answer Issue No.(2) in the negative.

9) **ISSUE No.(3)** : *To what relief the Petitioner is entitled ?*

For the foregoing reasons, we pass the following :

ORDER

- (a) The second Respondent (HESCOM) and the third Respondent (BESCOM) should take into account the quantum of energy injected at the injection point of the Project and the energy drawn at the consumption points, for the period from 01.04.2014 to 31.03.2015, and raise the monthly bills in terms of the Wheeling and Banking Agreement dated 30.06.2014 (ANNEXURE-7), on examining the captive status of the open access consumers to whom the energy has been wheeled, as if the wheeling had taken place from 01.04.2014, and adjust the rights and liabilities of the Petitioner, taking into account the payments received by the Petitioner, if any, within 2 (two) months from the date of this Order and report compliance thereof, to this Commission; and,
- (b) The Petitioner is not entitled to any other relief(s) claimed in the Petition.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER