

N/54/06

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 13TH day of December 2007

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|------------------------|----|----------|
| 1. Shri K.P.Pandey | .. | Chairman |
| 2. Shri H.S.Subramanya | .. | Member |
| 3. Shri S.D.Ukkali | .. | Member |

Case No.OP 42 / 06

Between

Madras Cements Limited
Rama Mandiram,
Rajapalayam
Tamil Nadu - 626117

And

1. Karnataka Power Transmission Corp.Ltd.,
Cauvery Bhavan,
Bangalore-560009
2. The Bangalore Electricity Supply Co.Ltd.
Corporate Office, K.R.Circle,
Bangalore-560001
3. State Power Procurement Co-Ordination Committee,
Cauvery Bhavan,
Bangalore-560009

The Petitioner Company, which has established a 4.8 MW capacity wind energy project in Chitradurga District, Karnataka State, has filed a Petition on 29.09.2006 with the following prayer.

- "a) To pass an order or direction, directing the 1st and 2nd Respondent, to give effect to the Order of this Hon'ble Commission dated 06.07.2006 and to permit wheeling and banking with respect to electricity from the captive generating plant of the Petitioner located at Goolihosahalli, Hiriya Taluk, Chitradurga District of 4.8 MW capacity, to be utilized at the destination being the factory of the Petitioner located at Method Village, Hosadurga Taluk, as specified by the Hon'ble Commission in its Order dated 09.06.2005.
- b) Pass such other orders as the Hon'ble Commission deems fit in the circumstances of the case."

Notices were issued to the Petitioner as well as the Respondents and the Representatives of both the parties were heard.

The submissions made by the Petitioner in its Petition are briefly as under:

The Petitioner is a Company of RAMCO Group and is engaged in the business of manufacturing and selling cement. Its factory is located at Method Villaae, Hosadurga Taluk, Chitradurga District. The Petitioner is also a HT-2(A) Consumer of KPTCL and BESCO in respect of this factory. The Company has established a 4.8 MW capacity wind energy project in Hiriya Taluk, Chitradurga District in Jogimati wind zone of Karnataka. It was intended to use the energy generated from this project on a captive basis in its cement factory. The factory is located at a distance of about 20 Kms from the wind project site. The factory is a partially non-exclusive customer of BESCO since it sources its energy from its own wind energy project as also from the BESCO. It had approached KPTCL by its letter dated 22.11.2005 requesting it to allow access to its transmission network and enter into a wheeling and banking agreement in respect of the power generated from the wind power project. However, no steps were taken by the Respondents in this regard. The Petitioner, thereupon, filed a Petition before this Commission in OP 12/06 for issue of direction to the Respondents to

allow open access to the Petitioner for the supply of electricity from their generating plant to their factory and to enter into a wheeling and banking agreement, collecting wheeling and banking charges as specified by the Commission in its Order dated 09.06.2005. The Commission had issued the following directions in its interim order No.N/06/1118 dated 06.07.2006:

"Counsel for the Petitioner has filed a Memo stating that the wheeling being allowed by BESCO should be in accordance with Order No.Q.01/1 dated 09.06.2005. It is needless to state that any wheeling permitted by the ESCOMs will have to be in accordance with the Order of Commission dated 09.06.2005. Since Counsel for Respondent submits that KPTCL has written to BESCO to allow wheeling as permitted earlier vide their letter 18.02.2005. Court hereby clarify that the wheeling now being permitted shall be in terms of the Commission Order dated 09.06.2005. The Petition is disposed off accordingly."

Despite the above said Order, the Respondents have failed to permit wheeling and banking and have taken no steps to implement the Order of the Commission dated 09.06.2005. The Petitioner has been regularly pumping in electricity into the Respondent's Grid from the time it was allowed open access to the Grid and from April 2006 to August 2006 more than 44,46,600 units of energy has been pumped into the Grid. However, the Company has not been given any credit for the same. On the other hand, the Petitioner Company has continued to pay the Respondents for the electricity drawn at its factory. Despite the Commission's Order referred to above and the solemn submission made before the Commission by the Respondents that they would permit wheeling and banking, no action has been taken by the Respondents and hence this Petition.

The Petitioner has further submitted that as a Captive Generator, it has a right of open access to the transmission and distribution networks of the

Respondents in terms of Section 9(2), 40(c) and 42(2) of the Electricity Act, 2003 as also Regulation 4(3) of the KERC (Terms and Conditions for Open Access) Regulations, 2004 and Regulation 4 of the KERC (Power Procurement from Renewable Sources by Distribution Licensees) Regulations, 2004. It has also pleaded that insofar as banking facility, the Company would be paying banking charges also. The Petitioner is not liable to pay UI charges in view of Regulation 11(ix) of the KERC (Terms and Conditions for Open Access) Regulations, 2004 read with Regulation 4(3). It is submitted that the payment of UI charges would arise only in respect of other customers, other than a person operating a captive generating plant, as otherwise the right of open access as conferred by the provisions of the Electricity Act 2003 would be whittled down. Apart from the above, it is submitted that UI charges cannot be made applicable to those customers who are also independently availing power from the distribution licensee in addition to utilising power from captive generating plant. In the event of variance between the power put into the Grid by the captive generating plant and the power utilised from the grid by the consumer, ultimately the consumer would be paying to the distribution licensee for the additional power consumed as per the applicable charges. Hence, if UI charges are levied on a non-exclusive customer, then it would amount to double levy of charges, one on accounted contract demand and the other on account of UI differential.

Without prejudice to the above, it is submitted that, in the event of it ultimately being held that UI charges are payable by the Petitioner, it would be ready to do so and, therefore, there is absolutely no justification for the Respondents not to allow open access and not to enter into any agreement for wheeling and banking of electricity with the Petitioner. Although the petitioner has expressed its readiness to enter into an agreement with the Respondents on the above basis, there has been inaction on the part of the Respondents. During the course of hearing, the Petitioner's Counsel reiterated that despite the Commission's Order dated 06.07.2006, the position remains the same. Thereupon

in, terms of the Order dated 06.07.2006, the Commission had issued the following interim order on 23.11.2006.

“ Case called. Both the parties present. Mr.Hiremath undertakes to see that the earlier directions are complied within a week. Posted to 30.11.2006 for compliance.”

In the course of subsequent hearing on 30.11.2006, the Respondent's Counsel filed copy of the letter dated 29.11.2006 issued by BESCO permitting the Petitioner to avail wheeling and banking facility from their wind power project. In the course of further hearing, the Petitioner filed another Memo stating that although permission for wheeling has been given, the Company is not actually getting the benefit because of certain conditions imposed by the Respondents. On clarification given by the Respondents' Counsel, the Commission had directed that the wheeling facility must be given to the Petitioner subject to the final Order of the Commission regarding the terms and conditions of the wheeling. In the course of further hearing, the Counsels for both the parties submitted that they are discussing the issues involved and they would file a Joint Memo. However, no Joint Memo was filed and the case was heard on merits for final disposal.

The Respondents have filed written arguments by their Counter-Affidavit dated 20.9.2007 stating their case.

Having regard to the submissions made by both the parties and looking into the records, the Commission frames the following issues for decision:

- 1) Whether the Petitioner who is a Captive Power Generator of wind energy as well as a Consumer of the Respondents is entitled to both wheeling and banking facility and if so, the wheeling and banking charges payable by the Petitioner?

- 2) Whether the Petitioner is liable to pay any UI charges in the facts of the case?
- 3) Whether the Respondent is justified in insisting on fixing of feature meters by the Petitioner at the generating as well as drawal points?
- 4) Whether the Petitioner Company is entitled to due credit for the energy pumped into the Respondents' Grid from 31.03.2006 onwards?

Regarding the 1st issue referred to above, it is absolutely clear from the provisions of Section 9(2) of the Electricity Act that the Petitioner has the right to Open Access. Section 9(2) reads as under:

“Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use.”

As per Section 40(c) of the Act, it shall be the duty of the transmission licensee to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of the transmission charges.”

The Commission in para 7.04 of its Order dated 09.06.2005 has held that

“The Commission notes that the concept of open access has been introduced to bring in competition so that consumer can get power at competitive rates. Since, at present, projects based on renewable sources cannot compete with conventional sources of energy, the Commission decides that concessional wheeling charges needs to be extended to renewable sources of energy as in the neighbouring states in order to promote NCE sources under open access.”

Regarding banking facility to be provided for the renewable sources of energy, the Commission in para 7.06 of its Order dated 09.06.2005 has held that,

“The Commission notes that most of the stakeholders including the GOK and utilities are in favour of banking to infirm sources of energy. After considering the above views, the Commission hereby decides to allow banking facility in respect of wind and mini-hydel projects subject to payment of difference of UI chages between the time of injection and time of drawal of the power from these sources, as suggested by KPTCL and also payment of banking charges at 2% of the input energy.”

The Commission has further held that,

“In case the UI charges are negative, KPTCL/ESCOMs are not liable to pay the difference in UI charges. KPTCL/ESCOMs shall ensure that appropriate metering is provided both at injection and drawal points to facilitate computation of UI charges. However, merit order dispatch and scheduling shall not be applicable for these sources of energy.”

In para 9.07 of its Order dated 9.6.2005, the Commission has determined the overall wheeling charges payable by NCE sources as 5% of the energy input into the system. It has been further held that other than this wheeling charge, they shall not be liable to pay any transmission charges or wheeling charges either in cash or kind as determined in the preceding sections of this order. However, surcharge shall be payable where the wheeling of energy is other than for their own use.

In view of the above, the Petitioner Company has the right to both wheeling as well as banking facility on payment of charges as determined by the Commission in its Order dated 09.06.2005 from the date of commissioning of the project.

On the issue of installation of meters at both the generating as well as receiving points for captive use, the Main Meters have to be provided by the Generator. If the Check Meters are required to be provided, they should be provided by the Licensee. The power plant was commissioned on 29.3.2006 itself and the Respondents would not have allowed the commissioning without meters being installed to record the amount of power put into the Grid. Further, it is necessary that the Meters provided at Generating and Receiving ends will have to be ABT-compliant.

On the issue of payment of UI charges, the Commission has held in its Order dated 09.06.2005 that banking facility is allowed in respect of wind and mini-hydel projects subject to payment of difference between UI charges at the time of injection and time of drawal of power from these sources. Regarding the Petitioner's contention that as per Clause 11(9) of KERC (Terms and Conditions for Open Access) Regulations 2004, payment of UI charges would arise only in respect of other customers i.e. other than a person operating a captive generating plant, it is hereby clarified that this condition does not apply to the Petitioner as the generation is not scheduled under intra-State ABT. Thus, as per the Commission's Order dated 9.6.2005 referred to above, the Petitioner is liable for payment of UI charges, which arises due to difference in the time of injection and drawal of banking of energy.

The 4th question is about giving credit for the energy pumped into the Respondents' Grid by the Petitioner Company from 31.03.2006 onwards. The Respondents have not denied that power has been pumped into the Grid from 31.03.2006 onwards by the Petitioner. The Petitioner has contended that from April 06 till August 06, it has pumped in more than 44,46,600 units of electricity into the Grid as per detailed stated in Annexures E & F of the petition. Having received the power from the Petitioner, the Respondents are bound to give due credit to the same. The Commission directs the Respondents to do so.

From the records of the case, it is abundantly clear that the Licensees have blatantly violated the Commission's Order and Regulations on Open Access. Although the provisions of the Electricity Act, 2003 are crystal-clear about providing non-discriminatory Open Access to any Captive Generator, the Licensees have delayed providing Open Access to the Petitioner without any justifiable reason. In respect of provision of Meters, the Commission disapproves the attitude of the Licensees while dealing with this Petitioner. The Licensees ought to have ensured that appropriate Meters are provided at the time of synchronization of the project itself in terms of the Commission's Order dated

9.6.2005. In fact, the Petitioner had filed an application before the KPTCL well before the synchronization. The failure of the Licensees to ensure that appropriate Meters are provided before commissioning of the project might have resulted in losses to the Licensees themselves in terms of UI charges. The Commission views with contempt the above failures and directs the Respondents to enter into a standard commercial agreement for Open Access in terms of Clause 9(8) of KERC (Terms and Conditions for Open Access) Regulations 2004 and submit the same to the Commission for approval within 30 days from the date of this Order.

The Petition is accordingly disposed.

Sd/-
(K.P.Pandey)
Chairman

Sd/-
(H.S.Subramanya)
Member

Sd/-
(S.D.Ukkali)
Member