

No.N/20/11

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE**

**Dated : 29<sup>th</sup> March, 2012**

- |                               |          |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath    | Member   |

(Sri K. Srinivasa Rao, Member, pronouncing a separate Order)

**OP No. 11/2011**

**BETWEEN**

M/s. Reliance Infrastructure Limited  
'H' Block, 1<sup>st</sup> Floor, Dhirubai Ambani Knowledge City (CAKC)  
Thane Belapur Road  
NAVI MUMBAI – 400 710  
(Represented by M/s. Mulla & Mulla & Carraigie & Caroe)...

**Petitioner**

**AND**

1. Bangalore Electricity Supply Company Limited  
K.R. Circle  
BANGALORE – 560 001
2. Karnataka Power Transmission Corporation Limited  
Kaveri Bhavan, Kempegowda Road  
BANGALORE – 560 009  
(Represented by Assistant Law Officer, BESCOM) ...

**Respondents**

1. The petitioner company M/s. Reliance Infrastructure Limited (hereinafter referred to as 'RIL') is a generator having 7.59 MW wind energy plant at Jogimatti wind zone with a Power Purchase Agreement (PPA) with Bangalore Electricity Supply Company Limited (hereinafter referred to as BESCOM) which expired on 29.9.2009. Considering the fact that the PPA period was coming to an end, the petitioner entered into correspondence with the respondents for availing Open Access to supply electricity to Reliance Communication Ltd. Ultimately the

Wheeling and Banking Agreement came to be executed by the 1<sup>st</sup> Respondent on 11.1.2010.

2. In the meanwhile, from the date of expiry of PPA and the date of execution of the Wheeling and Banking Agreement, energy continued to be generated and fed into the Grid. For this energy the petitioner is seeking credit / payment from BESCO at the PPA rates, which is quantified at Rs.1,36,37,590/- along with interest.

3. The respondents have put in appearance and have filed a detailed statement of objections rebutting the claim.

4. We have heard counsels appearing for the parties and considered the averments made and the documents produced.

5. It is the contention of the petitioner that even though immediately prior to the expiry of the PPA it followed up with the respondents for execution of a Wheeling and Banking Agreement, the respondents did not act promptly and delayed execution of the Wheeling Agreement. Therefore the Respondents are liable to give credit to the electricity generated during the interregnum or, in the alternative, to make payment for the same at the PPA rates.

6. Per contra it is contended by BESCO that once the PPA expired there is no obligation on the part of it to purchase the electricity as per the PPA or to give credit for the same in view of its specific statement made to the petitioner that it is not liable to pay any amount for the energy pumped after the date of expiry of the PPA. It is submitted by BESCO that it has executed the Wheeling

and Banking Agreement immediately on the Petitioner fulfilling the required conditions by the petitioner and there is no delay on its part.

7. The question that arises for consideration is whether the petitioner in the facts of this case is entitled to seek credit for the energy pumped into the grid or in the alternative entitled to be paid for at the PPA rates for the energy pumped during the period from 30.9.2009 to 10.1.2010.

8. We have gone through the list of dates and events produced by the petitioner at Page A, B, C, D & E. Going by the said dates and letters exchanged, we do not find any undue delay caused by the respondents in executing the Wheeling and Banking Agreement. The correspondence between the parties is in the normal course of commercial transaction. There is no dispute that the requirement of the conditions specified in Article 8.1, 8.2 and 8.7 of the Wheeling and Banking Agreement has to be fulfilled by the petitioner for commencement of Wheeling and Banking and admittedly, it fulfilled them only on 6<sup>th</sup> January 2010 (the same was intimated to BESCO on 7<sup>th</sup> January 2010) and BESCO has executed the Wheeling and Banking Agreement on 11.1.2010, i.e., within three (3) days thereafter. Therefore no undue delay can be attributed to the respondents in executing the Wheeling Agreement.

9. There is no dispute that the Power Purchase Agreement between the parties expired on 29.9.2009 and BESCO was not under the obligation to buy the power generated by the Petitioner's plant. It is also not disputed that BESCO had made it clear that it will be under no obligation to purchase the power of the Petitioner from 29.9.2009 and onwards.

10. In a recent case of M/s. Indo Rama Synthetics (I) Limited Vs. MERC in Appeal No. 123 of 2010, the Hon'ble Appellate Tribunal for Electricity (ATE) while upholding the MERC's Order that generator is not entitled to be paid for the energy pumped into the grid without scheduling the same, at Para 7 of its Order, has observed as under :

"In this connection, we would like to refer to the submissions of the SLDC before the State Commission which have been recorded in para 20 of the impugned order and observation of the State Commission in para 28 which we are reproducing below:

*"20. SLDC, MESTCL, further, submitted that, since the petitioner injected the energy without any contract/schedule or knowledge of SLDC, MSETCL the question of making payment for the same does not arise. If such transaction is permitted, it will result in creation of wrong precedence and result in more such cases. Further, SLDC, MSETCL added that in future, a number of open access generators, who are unable to sell their costly off peak power especially during night hours, will simply inject the power without any contract/ schedule at the time when such power is not needed. Considering the above fact, SLDC, MSETCL requested the Commission, not to consider the present Petition".*

*"28. The Commission notes as per MSLDC's submission that the energy injection of 1.607 MU under consideration pertains to the period June 1, 2008 to June 8, 2008 for the duration 00:00 hrs. to 09:00 hrs. for which no contract was valid or no intimation was provided to MSLDC for scheduling such power, the fact which has not been denied by the Petitioner. The Commission opines that any injection, without valid contract and/or complying with scheduling requirements as per prevalent procedures for scheduling and dispatch, (however, unintentional and caused due to technical operational misunderstanding as submitted by the Petitioner) would not in principle be in the interest of disciplined operations of the grid which is of paramount concern from the perspective of reliable and safe operations*

*of the Grid. Accordingly, the Section 32(2) mandates the SLDC to be responsible for optimal scheduling and dispatch of electricity within State, in accordance with the Contracts entered into with the licensees or generating companies operating in that State".*

We are in agreement with the contentions of the SLDC and the observation of the State Commission in the impugned order. Admittedly, in this case power has been injected by the appellant primarily during the off peak hours. Moreover, the power generated by the appellant on liquid fuel is expensive. The expensive power was injected by the appellant without any schedule, contract or agreement or knowledge of the SLDC and the distribution licensee. The appellant has also not been able to cite any sections of the 2003 Act, rules or regulations which would entitle him to any compensation for the injection of power without any schedule and agreement."

11. Further, the Hon'ble ATE at Para 8 of the said Order has held that :

"Unlike other goods electricity can not be stored and has to be consumed instantaneously. The generating plants, interconnecting transmission lines and sub-stations form the grid. State grids are interconnected to form Regional Grids and interconnected regional grids form the National Grid. The SLDC prepares the generation schedule one day in advance for the intra-state generating station and drawal schedules for the distribution licensees based on the agreements between the distribution licensee and the generators/trading licensees, declared capacity by the generators and drawal schedule indicated by the distribution licensees. The generators and the licensees are expected to follow the schedule given by the SLDC in the interest of grid security and economic operation. If a generator connected to the grid injects power into the grid without a schedule, the same will be consumed in the grid even without the knowledge or consent of the distribution licensees. However, such injection of power is to be discouraged in the interest of secure and economic operation of the grid. In the present case, the expensive power was injected by the appellant without the knowledge or consent of the distribution licensee or agreement and without any schedule from SLDC. Admittedly, the appellant's power was high cost power for which none of the distribution licensees had any agreement with the appellant. Therefore, there is no substance in the contention of the appellant for compensation."

12. As per the above Order of the Hon'ble ATE, the generator, who pumps the power without scheduling or without having an agreement or without being asked for, cannot as a matter of right demand charges for the energy pumped in. Duly following the above judgment of the Hon'ble ATE, we hold that the petitioner, in this case also, cannot demand payment for the electricity pumped into the grid after the expiry of agreement at the rates of the PPA.

13. The next question is whether petitioner shall be totally denied of payment for the energy pumped in and utilized by the respondents in view of the above judgment. The Hon'ble ATE in the above case has denied the total payment considering the peculiar facts of that case such as, the generator was pumping power only during off peak hours to get the maximum rates, the electricity generated was too expensive and was generated from oil-based Power Plant and could therefore have been regulated by reducing generation when it did not need power.

14. In the present case, admittedly the petitioner is a small Wind Generator of 7.59 MW. As is well known, Wind generation cannot be regulated, as generation depends on wind, which will not be constant and dependent on the weather, and the Generator has virtually no control over generation, like on the generation by a thermal power plant using oil or gas. Further, as of now, wind projects are exempted from application of Intra State ABT as per the orders of

this Commission dated 20.6.2006, and installation of the Meters is required only after signing of the Wheeling and Banking Agreement to account for banked energy. Further, the terms of the Wheeling and Banking Agreement comes into operation only after signing the same, i.e., on 11.1.2010. Therefore, delay in putting up of ABT meters cannot be a ground for denying the Petitioner of the charges entirely. Further the Group Company, to which the petitioner sought to supply on Open Access basis during the period in question, has already paid at HT 2(b) tariff for the power consumed from the BESCO's network.

15. As observed above, the Petitioner was in the process of entering into a Wheeling and Banking Agreement with the Respondents and was willing to comply with the condition of metering once the Agreement is signed, and utilization of Meters will mainly arise only when banking facility is availed. In our view, depriving the Petitioner of the energy charges totally, on the ground that Respondent No.1 had informed that it will not pay for the electricity pumped into the grid till the Agreement is signed, will not be fair and proper, as the Generator incurs cost for generation and utility has made use of the same. Therefore, it will be equitable if we direct Respondent No.1 to pay for the energy pumped in at the rate of Rs.3.40 per unit, which is the rate determined by this Commission at the relevant point of time for wind energy projects. Accordingly, we direct Respondent No.1 to account the energy fed into the grid, at Rs.3.40 per unit minus the applicable Wheeling and Banking charges, payable towards the future Bill payments to be made by Reliance Communication Ltd., to whom power is being supplied by the Petitioner. The payment to the petitioner shall be

made within a period of three (3) months from the date of this Order. Ordered accordingly.

Sd/-  
(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER



No.N/20/11

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**Dated : 29<sup>th</sup> March, 2012**

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|-------------------------------|----------|---|
| 1. Sri M.R. Sreenivasa Murthy | Chairman | } (Will pronounce<br>a separate<br>Order) |
| 2. Sri Vishvanath Hiremath    | Member   |   |
| 3. Sri K. Srinivasa Rao       | Member   |   |

**OP No. 11/2011**

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BANGALORE – 560 009  
(Represented by Assistant Law Officer, BESCOM) ...

**Respondents**

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1. Being not in agreement with the views expressed by my colleague-Members in the Order in this case, I am detailing my views in respect of this Petition as under.

2. The following are the issues that arise in the present case :

**(A) ISSUES:**

Whether the petitioner in the facts of this case is entitled to seek credit for the energy pumped into the grid or in the alternative entitled to be paid for at the PPA rates for the energy pumped during the period from 30.9.2009 to 10.1.2010.

**(B) MY VIEWS :**

The Petitioner is not entitled either to credit for the energy pumped into the grid or entitled to be paid at PPA rates for injecting power during the period from 30.9.2009 to 10.1.2010, for the following reasons :

- (a) It is seen that as early as in March, 2009, Respondent No.1-BESCOM, by making a reference to the Petitioner-Reliance Infrastructure's communication, have intimated to the Petitioner that after the expiry of the PPA, the Wheeling and Banking Agreement has to be entered into for the required transfer of electricity to the Petitioner's Group Company. Nothing could have prevented the Generator (Petitioner) to study the relevant requirements as per the Standard Wheeling and Banking Agreement, at that time itself, and in preparing itself for meeting the requirements as per the relevant provisions under Article 8, like SCADA, Metering. It is settled that ignorance of law is not an excuse and cannot claim benefits for

one's own deficiencies. At the time of expiry of the PPA in September, 2009, the Petitioner has admitted that it would require additional three months' time to fulfil the requirements as per Article 8 of the Standard Wheeling and Banking Agreement (WBA);

- (b) BESCO had, vide its letter dated 25.11.2009, conveyed to the Petitioner-Reliance Infrastructure that fixing of ABT Meters was mandatory and that the signing of the WBA will be done only after fixing of ABT Meters. Although, both the Petitioner and Respondent No.1 (BESCO) have used the term 'ABT Meters' in a casual way, the necessity is for meeting with the requirements as per Article 8.1, 8.2 and 8.7 of the Standard Wheeling and Banking Agreement Format approved by the Commission, which details parameters like specification of the Meters to be fixed at the sending and receiving ends and also the SCADA requirement to be implemented by the Petitioner;
- (c) The Hon'ble Appellate Tribunal for Electricity in **Appeal No.123/2010** in the case of *Indo Rama Synthetics (I) Limited -Vs- MERC* has upheld MERC's Order, wherein it has been held that Generator is not entitled to be paid for the energy pumped into the grid without scheduling the same. Duly following the above Judgment, I hold that the Petitioner in this case cannot demand payment for the electricity pumped into the grid after the expiry of the PPA without

a valid WBA; also that the Hon'ble ATE in the above case has denied total payment considering the facts of that case, such as Generator was pumping power only during off-peak hours, electricity generated was too expensive and the generation could have been regulated, etc. The Petitioner, should have satisfied the requirements of Article 8 of the Standard Wheeling and Banking Agreement, approved by the Commission, before injecting power into the grid;

- (d) Facts like electricity generated is by Wind Mill, the Petitioner was making correspondence with the Respondents, was in the process of entering into a WBA much before the expiry of the PPA, and that the 1<sup>st</sup> Respondent has collected charges for the power supplied to the Company, for whose consumption the Petitioner had intended to supply the energy during the period in question, do not entitle the Petitioner for any payment, because the Petitioner did not possess either a valid PPA or WBA on the dates of energy injection into the grid. It is incumbent upon Reliance /communication to pay as a HT 2(b) Consumer till such time WBA is finally entered into;
- (e) It is my view that even in the case on hand, though it is not a costly power that has been injected, though it is not injected during off-peak hours, though there is no Schedule by the State Load

Despatch Centre (SLDC), the Generator in this case is not entitled for any payment in view of the following :

- (1) In the case of infirm power sources, like that of Wind Generator in the case of the Petitioner, instead of Scheduling by SLDC, the Wheeling and Banking Agreement (WBA) has been authorized by the Commission to be entered into and has to be entered into before any injection of power into the grid, if there is no PPA, which is the position in the case of the Petitioner. Without any form of Agreement, in terms of WBA or PPA, injecting power into the grid even after being warned accordingly, amounts to defiance of law and taking it into one's hand ;
- (2) The question is not about the costly power in this case, but it is about which ESCOM is the recipient of the power in the absence of a PPA or a WBA. If any payment were to be allowed to the Generator, it will be a pass through to the consumer, who will be unduly burdened for energy not planned to be received, which does not effectively go to meet consumer load. Such injection of power goes only to improve System frequency, which is not the job entrusted to the Petitioner. This is also the spirit and purpose of Hon'ble ATE's Order;

- (3) Application or otherwise of Intra-State ABT to Wind Generation has no relevance to that of the dispute in this case, like providing Meters as per Article 8.2, absence of WBA and others. ABT is only for levying UI charges; whereas Meter requirement as per Article 8.2 is for accuracy of measurement of energy injected. Petitioner itself conceded its obligation to satisfy Article 8.2 requirement and around September, 2009 pleaded for three months' time. One cannot be allowed to take advantage of its own deficiencies;
- (4) The additional question is about the Generator taking law into its hands, injecting power without a proper Agreement – knowing full-well that the cause of delay in execution of the WBA was entirely on him for being ignorant and having not fulfilled the required conditions under Article 8 of the Standard WBA Format in time;
- (5) In the operation of the Power System, the Generator or the Electricity Supply Company (ESCOM) have always a remedy to seek under the Electricity Act, 2003 and the Regulations framed thereunder, and have no right to take law into their hands, since whatever compensation, due to them, could

always be obtained through a proper recourse to legal remedies;

- (6) The receiving end Company, viz., Reliance Communications, has the obligation to pay the tariff [HT 2(b)] till such time the WBA is formally entered.

**3.** While finalizing the Order in this Petition, I have come across the Order of the Hon'ble ATE, dated 11.1.2012 passed in Appeal No.5 of 2011, filed by M/s. *Orange County Resorts & Hotels Ltd.*, which was an Appeal against the Order of this Commission in OP No.14 of 2010. At paragraph-8 of the said Order, it has been held by the Hon'ble ATE, that 'it does not appear that the Appellant (M/s. Orange County Resorts and Hotels Limited) was responsible for such inordinate delay in the matter of execution of the WBA. It was Respondent No.2 (HESCOM) and Respondent No.3 (KPTCL) who were instrumental in exchanging correspondence in the whole matter. In such circumstance the Appellant was without any alternative but to supply power to Respondents 2 and 3.'

**4.** In the case on hand, the Petitioner, though as early as in March 2009, was informed by Respondent No1-BESCOM that WBA has to be entered into after the expiry of the PPA, did not apparently keep itself informed of the requirements of the Standard Wheeling and Banking Agreement Format approved by the Commission. This Format contained Article 8, which required Clauses 8.1, 8.2 and 8.7, among other things, to be satisfied. As per Clause 8.1, injecting and drawal

of energy shall be metered at the receiving Sub-Station Point and Drawal Point of the Company (Petitioner). As per Clause 8.2, the Metering Equipment, especially Main Meters, was to be owned and installed by the Company (Petitioner), dedicated core of both CTs and PTs of required accuracy shall be made available by the Company, etc. As per Clause 8.7, the Company (Petitioner) shall install and maintain, at its cost, Communication Network Facilities to the Generating Stations / injection Points as well as Drawl Points for Remote Meter Data Acquisition at SLDC and ALDC, on a periodical basis. The Petitioner's supposed ignorance of relevant provisions cannot be an excuse for the Petitioner to say, even as late as on 26.11.2009, about one and a half month after the expiry of the PPA, that they had already placed a Work Order for installation of ABT Meters at the Drawal Points in the Reliance Communications at Bangalore, and thereby requesting execution of WBA as early as possible. The facts show that the delay in execution of the WBA up to January, 2010, was totally on account of the Petitioner, and hence, the Order of the Hon'ble ATE, passed in the case of Orange County Resorts and Hotels Limited, does not apply in the case of the Petitioner on hand. It is totally the default on the part of the Petitioner in not fulfilling its obligations - which came to be completed only by 7.1.2010, and the WBA came to be executed on 11.1.2010 - indicating no delay on the part of the Respondents.

**5.** Summarising the above, I hold that, for the reasons stated above, the Generator being not entitled to inject power without a valid Agreement, either by way of a PPA or WBA, the Petitioner in this case is not entitled to any charges



for the energy pumped in on account of self-inflicted deficiencies and delays. It is well known that in case the payment for the energy is ordered on the ESCOM, it will be a pass-through to the unsuspecting consumer, inflicting injustice to its interest, imposing an undue burden on it.

6. While on this, it will be more apt for me to bring forth a point that both Generators and Utilities should act in a more justifiable manner, so that avoidance of undue litigations could go a long way, resulting in saving of considerable time and effort of all concerned.

Sd/-  
(K.SRINIVASA RAO)  
MEMBER