

No.N/25/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 1<sup>st</sup> July 2010**

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

**Case No. OP 14/2010**

**Between**

M/s Orange Country Resorts and Hotels Limited  
St. Patrik's Business Complex, 2<sup>nd</sup> Floor  
No.21, Museum Road  
BANGALORE – 500 025  
(Represented by its Advocate Sri Shridhara Prabhu)

.... Petitioner

**And**

1. Hubli Electricity Supply Company Limited  
Navanagar, P.B. Road  
BANGALORE – 580 029
2. Karnataka Power Transmission Corporation Limited  
Kaveri Bhavan, Kempegowda Road  
BANGALORE – 560 009
3. State Load Dispatch for Karnataka  
Anand Rao Circle  
BANGALORE – 560 009
4. Chamundeshwari Electricity Supply Corporation Limited  
L.J.Avenue Commr. Complex, New Kantharaja Urs Road,  
Saraswathipuram  
MYSORE – 570 009  
(Represented by its Advocate Sri Sriranga)

... Respondents

1. This petition is filed by the petitioner to issue a direction to the 1<sup>st</sup> and 2<sup>nd</sup> respondents to sign the Wheeling and Banking Agreement in the format approved by the Commission and also a direction to the 1<sup>st</sup> respondent to

reimburse the energy charges collected during the period in which the power generated by it was allowed to be used.

2. We have heard both the counsels appearing for the parties and also perused the material placed in support of the same.

3. The undisputed facts in the case are that the petitioner has established 0.6 MW wind energy based power project at Gowdagere village, Ron Taluk of Gadag District to generate electricity and use the same to its resort and hotel established in the area of Chamundeshwari Electricity Supply Corporation Limited (CESC).

4. On commissioning of the plant on 4.4.2009 petitioner requested the respondents for signing Wheeling and Banking Agreement. After exchange of correspondences, produced as Annexures, the 3<sup>rd</sup> respondent approved the execution of the Wheeling and Banking Agreement subject to the addition of two new clauses 5.1(b) and 5.1(c) vide its letter dated 15.10.2009. The petitioner vide its letter dated 5.11.2009 (Annexure P-13) accepted even these additional clauses and signed the Wheeling and Banking Agreement on 7.11.2009. Thereafter the said agreement was signed by the 2<sup>nd</sup> respondent also on 30.12.2009.

5. It is contended by the petitioner that since the respondents caused delay in signing the Wheeling and Banking Agreement, it had to pay electricity charges under HT2(b) category to the Respondent No.4 and therefore the charges have to be reimbursed to it.

6. In reply it is contended by the respondents' counsel that there is no deliberate delay on the part of the respondents in signing Wheeling and Banking Agreement as before signing any agreement the parties have to discuss and arrive at an agreement. According to him the correspondence between the petitioner and the respondents is in that process and therefore on this score the petitioner cannot seek of the refund of the charges legitimately paid by it towards the electricity consumed as a consumer of the 4<sup>th</sup> respondent. As

regards prayer for signing the Wheeling and Banking Agreement the prayer has become infructuous in view of the admitted fact that the Wheeling and Banking Agreement has been signed by all the parties and has been given effect to it.

7. Since the Wheeling and Banking Agreement has already been signed and has been given effect to, the prayer relating to the same has become infructuous. Therefore there is no need to pass any order.

8. The only prayer which survives for consideration is whether the delay on the part of the respondents be considered as culpable delay so as to entitle the petitioner for the refund of charges paid by it for the electricity consumed.

9. The correspondence produced by the petitioner itself shows that the parties were interacting with each other and arrived at the final agreement after that and signed the Wheeling and Banking Agreement on 30.12.2009. (Pursuant to this agreement petitioner has been allowed to wheel the energy generated for its captive use).

10. From the facts placed before us, it is clear that the petitioner was not entitled to wheeling and banking till signing of the agreement on 7.11.2009 and therefore it cannot be said that during the period of correspondence the wheeling and banking was denied to them. As respondents have allowed the petitioner to avail the facility of banking and wheeling immediately after the agreement was signed no fault can be attributed to the respondents, merely because they took time to sign the agreement. No party is expected to sign an agreement on the date it is submitted or signed by one party. Every party is entitled to examine the proposal and take decision thereafter. To take an adverse note on the conduct of the respondent no material is placed before the Commission to show that there was a deliberate attempt on the part of respondents to delay the execution of the agreement. Therefore in our opinion petitioner is not entitled to refund of the charges it has paid as a consumer of the 4<sup>th</sup> respondent for the electricity used.

11. Then next question that arises for consideration is what shall happen to the energy pumped by the petitioner to the grid till signing of Wheeling and Banking Agreement.

12. Admittedly the petitioner is a generating company and producing electricity after making substantial investments. It was also not the intention of either of the parties to treat the electricity generated be supplied free. In the circumstances of this case we deem it proper to order the respondents to pay the petitioner for the energy pumped to the grid at the rate of Rs.3.40 (which is the rate fixed by this Commission to the wind energy). The respondents may pay this in cash or adjust against the charges payable by the petitioner in future either towards wheeling and banking charges or electricity charges to respondents.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER