

No.N/33/09

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 1st July 2010

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

Case No. OP 22/2009

Between

M/s Graphite India Limited
Visvesvaraya Industrial Estate
Whitefield Road
B A N G A L O R E – 560 048
(Represented by its Advocate Sri Shridhara Prabhu)

... Petitioner

And

1. The Managing Director
CESC
927, LJ Avenue Commercial Complex
New Kantharaja Urs Road
MYSORE – 560 009
2. The Managing Director
KPTCL
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009
(Represented by its Advocate Sri Sriranga)
- ... Respondents

1. This petition has been filed by M/s. Graphite India Limited seeking approval for the draft of wheeling and banking agreement to be executed between the petitioner and the respondent with the changes suggested in Annexure P-16 at Page Nos. 130, 135 & 142, namely the definition of 'water year' and Clause 11.2(a) or alternatively to issue direction to the respondents to provide wheeling and banking facility by granting extension of agreement

dated 20.8.1996 for a period of 10 years by accepting remittance of wheeling and banking and other applicable statutory charges as fixed and may be fixed by the Hon'ble Commission from time to time.

2. The respondents have appeared through a counsel and have filed their statement of objections. The petitioner has also filed a rejoinder to the objections filed by the respondents.

3. We have heard both the counsels and considered the averments made in the petition, in the objection statement and in the rejoinder. We have also considered the additional material produced by the petitioner in support of its prayer.

4. The question that arises for consideration is whether the changes sought by the petitioner in the draft model agreement published by the Commission be accepted either wholly or partly.

5. The first change that has been sought by the petitioner is to the definition of the 'water year' contained in the model draft agreement prescribed by the Commission. 'Water year' is defined in the model draft as to mean 'from the first day of July to the thirtieth day of June next year'. The petitioner wants this to be modified as from 'the first day of June to the thirty first day of May next year'. In support of this change the petitioner contends that the monsoon in Karnataka commences on first June itself and not on first July as has been taken while preparing the draft model agreement and on account of starting the water year on first July the petitioner is losing the energy generated in the month of June which is substantial. Energy generated in June, if not used, becomes zero as carryover is not permitted to the next water year. In support of this contention the petitioner has produced a map showing the dates of onset of southwest monsoon and also produced a statement depicting generation and export by his plant during the months of June vis-à-vis during other months of January to December of 2003 to 2009. In the objection statement it is contended by the respondents that the change sought for the definition of water year cannot be

agreed as the monsoon months are defined in the 1996 Wheeling and Banking Agreement as July, August, September and October. According to respondents, taking the first of July as the starting point of the water year is in order and needs no change. Further it is contended by the respondents that the petitioner has come up with the present petition without raising the same when this Commission approved the draft agreement and the definitions cannot be changed to suite to the needs of the petitioner, as approval to the modification sought will bring in similar demands from other generators.

6. Section 86(1)(e) of the Electricity Act, 2003 enjoins upon the Commission the function of promoting cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specifying, for the purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. In discharge of the above function the Commission has passed orders providing for wheeling and banking to the captive generators to enable them to utilize the electricity generated by them.

7. In the present case, the petitioner has set up a mini hydel power plant which is a renewable source of energy by making capital investment with an intention to utilize the electricity generated for its captive purpose, that is, to their graphite manufacturing plant at Bangalore and have sought for wheeling and banking facility for the same. There is no dispute between the petitioner and the respondents as regards the clauses included in the draft Wheeling and Banking Agreement approved by the Commission except the changes sought by the petitioner in regard to the definition of the water year.

8. On considering the material produced by the petitioner we are of the opinion that the change sought to the definition of 'water year' is well justified as monsoon starts in the concerned areas from June first week and not in July and consequently the inflow of water in the river starts in June itself. If this is not considered then the generator will be put to unnecessary disadvantage for no

fault of its. Not considering the change will also go against the spirit of the Act. Allowing the change sought by the petitioner in no way affects the respondents as they get their wheeling charges independent of when the power is transmitted and consumed. Definition of 'monsoon months' as July to October need have no relevance for the definition of 'water year'. Therefore we do not accept the contention of the respondents in this regard.

9. As regards the third change sought to Clause 11.2(a) we are of the considered opinion that this modification also needs to be accepted as it is obvious that the petitioner cannot generate electricity in case of non availability of water in the river.

10. We accordingly allow the petition in the light of facts placed in this case and direct both the parties to sign the wheeling and banking agreement duly modifying the definition of 'water year' and clause 11.2(a) as sought by the petitioner. Modifications now approved shall be incorporated in the standard agreement to be signed and shall come into effect only from the water year of 2010 onwards (i.e., from 01.06.2010 onwards).

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER