

No.N/46/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 14th May 2010

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 32/2009

Between

M/s RB Seth Shreeram Narsingdas
PO Box No.38, Kariganur Post
H O S P E T – 583 201
(Rep. By M/s Indus Law, Advocates)

... Petitioner

And

1. The Managing Director, KPTCL
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009
2. Karnataka Load Despatch Centre
28, Race Course Road
BANGALORE – 560 009
3. HESCOM
Corporate Office
Navanagar
H U B L I – 580 025

4. GESCOM
Main Road
G U L B A R G A – 580 025

... Respondents

(Represented by its Advocate Sri Sriranga)

1. The petitioner, a generating company, has put up a wind power project of 1.6 MW capacity in Harti village of Gadag district and obtained an inter connection approval to connect the same with the grid from the

1st respondent on 3.9.2009 and commissioned the same on 5.9.2009. Since then the petitioner is generating electricity.

2. The petitioner who has a mining company at Hospet has desired to utilize the energy generated from the above plant for its own use and therefore sought to sign wheeling and banking agreement with the respondents in the format approved by the Commission. Though the 2nd respondent who agreed to execute the wheeling and banking agreement unilaterally directed the petitioner to incorporate two additional clauses in the standard format approved by the Commission. The petitioner did not agree to the additional clauses and insisted on signing the Wheeling and Banking Agreement strictly as per the prescribed format. The respondents did not agree. Aggrieved, the petitioner has initiated the present petition seeking the following reliefs :

- (1) Pass an order or direction, directing the 1st and 3rd respondents to execute a Wheeling and Banking Agreement with the Petitioner, in the Standard Form approved by this Commission vide its order dated 11.7.2009, without insisting on any additional conditions or new clauses;
- (2) Pass an order directing the Respondents to give effect to the wheeling and banking of power that has been supplied to the grid by the Petitioner, from 05.09.2009 i.e., the date of commissioning of the Petitioner's plant, till the date of execution and implementation of the Wheeling and Banking Agreement by the Respondents, in terms of this Commission's order dated 11.7.2008;
- (3) Pass an order directing the Respondents to refund the amounts paid by the Petitioner as charges to the 3rd Respondent for drawing power, on account of its not being permitted to wheel and bank the power generated by it, from 05.09.2009, with 15% interest on the said sum;

(4) Pass an order directing the Respondents to permit the Petitioner to carry forward any banked power that is unconsumed as on March 2010, to the next wind year of 2010-11; and

(5) Pass such other orders as this Commission deemed fit in the circumstances of the case.

3. On 17.12.2009 this Commission passed an interim order permitting the petitioner to use the electricity generated for captive use subject to payment of required charges fixed by the Commission pending further orders.

4. Though the respondents have put in appearance through their counsels, have not filed any counter. However, the respondents' counsel submitted that the wheeling and banking agreement has been now executed and the prayer relating to the same has been met. Therefore to that extent the petitioner's claim has become infructuous. As regards the energy already pumped in, they have no submissions to make and the Commission could pass orders on merits.

5. We have considered the petition averments and the documents furnished along with the petition and also the oral submissions made by the respondents' counsel.

6. In our considered opinion insistence by the respondents on including two additional clauses not approved by the Commission and not signing the agreement in the format prescribed by the Commission was illegal. The proposed additional clauses were redundant and unnecessary. The standard format approved by the Commission specifically provides for payment of all charges as decided by the Commission from time to time. If respondents were of the opinion that additional clauses were required to be added nothing prevented them

from seeking specific approval for the same from the Commission. The respondents being public utilities shall abide by the statute and statutory regulations/agreements. Further, they cannot include any condition/s unilaterally without obtaining prior approval of the Commission. If only the the agreement was signed in the standard format approved by the Commission without insisting on the redundant clauses, the petitioner would have used the energy generated by it and the present litigation could have been avoided. Be that as it may, since it is submitted now that wheeling and banking agreement has been signed in the standard format Prayer No.1 does not survive for consideration and no order is required.

7. As regards the power already pumped into the grid from 5.9.2009 to the date of signing of the banking and wheeling agreement we sought for the views of both the parties so that there will be a mutually acceptable solution. Though the petitioner made some suggestions, respondents did not make use of the opportunity to give any response in the matter. Therefore we have considered the prayer in the facts and circumstances of the case. In our opinion as the petitioner has already paid for the energy used by it to the Respondent No.4 at the prescribed tariff, we direct Respondent Nos. 3 & 4 to adjust the energy pumped at the rate of Rs.3.40 per unit against the tariff paid by it and after such adjustments the amount found in excess shall be adjusted towards future liability of dues of the consumer company to Respondent No. 4.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER