

No.N/63/09

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 6th January 2011

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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 50/2009

Between

M/s RPG Cables Limited
Hootagalli Industrial Area
Belawadi Post
MYSORE – 571 186
(Represented by its Advocate Sri Shridhar Prabhu)

.... Petitioner

And

1. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, K.G. Road
BANGALORE – 560 009
2. State Load Despatch Centre
Karnataka Power Transmission Corporation Limited
Ananda Rao Circle
BANGALORE – 560 001
3. Gulbarga Electricity Supply Company Limited
Station Road
GULBARGA – 585 101
4. Bangalore Electricity Supply Company Limited
K.R. Circle
BANGALORE – 560 01
(Represented by its Advocate Sri Sriranga)

.... Respondents

1. The petitioner which owns 1.92 MW wind power project at Hanumsagar village, Raichur District has presented this petition with the following prayer :

- (i) to issue a direction to the Respondents No.(2) & (3) to enter into Banking and Wheeling Agreement;
- (ii) to direct refund of excess energy deducted as per the orders of the Hon'ble High Court;
- (iii) to direct refund of surcharge collected by 3rd, 4th and 5th respondents along with bank rate of interest; and
- (iv) to issue a direction not to collect two times the HT(2)(a) tariff on the excess energy drawn by it in violation of the orders of this Commission.

2. The respondents have entered appearance and have filed detailed statement of objections. The respondents have also produced the Wheeling and Banking Agreement signed by the petitioner and the respondents on 22.3.2010.

3. Before proceeding further in this case, we hold that the first prayer for issuing a direction to enter into Wheeling and Banking Agreement does not survive for consideration in view of the signing of Wheeling and Banking Agreement on 22.3.2010. Accordingly no direction needs to be issued in that regard.

4. The issues that remain to be considered are –

- (i) Refund of excess energy deducted as per the Hon'ble High Court's Order.
- (ii) Refund of cross subsidy surcharge collected.
- (iii) Prohibition from charging the excess energy drawn at twice the HT(2)(a) tariff.

5. We have heard both the parties and also considered the respective pleadings and material placed before us.

6. It is submitted by Sri Shridhar Prabhu, Learned Counsel for the petitioner that though the Hon'ble High Court had directed in its order dated 14.1.2008 to give credit to the petitioner for the 3 % of energy deducted in excess of 10 % for the period from 1.6.2002 to 14.5.2007, the same has not been done till now. He has further submitted that as the Government of Karnataka through the agreement allowed the petitioner to sell electricity to third parties for a period of thirty (30) years, no surcharge can be levied on the petitioner under Section 42(2) of the Electricity Act, 2003 during the period of agreement as per the Government of India Order dated 8.6.2005 (produced as Annexure P-3). Further, he relied upon the judgment of the Hon'ble High Court of Andhra Pradesh dated 24.7.2007 rendered in the case of Ravindranath GE Medical Associates Vs. Central Power Distribution Company of Andhra Pradesh and others (WP No.12367/2006 and other connected petitions). He has also contended that the collection of two times the charges at the HT(2)(a) tariff for the excess energy drawn after the expiry of the original agreement is wrong as the energy is utilized as per the orders of the Commission.

7. In reply Sri Sriranga, appearing for the respondents, has contended that the petitioner cannot make a prayer before this Commission for the implementation of the orders of the Hon'ble High Court. As regards the prayer for refund of surcharge, he contends that the Government of India Order dated 8.6.2005 has no application to the facts of the petitioner's case as the said Government Order does not automatically exempt the open access consumer from payment of cross subsidy surcharge. As regards the prayer against the collection of charges at twice the HT(2)(a) tariff for the excess energy drawn by the petitioner, he contends that the same is also untenable.

8. The following three issues arise for consideration and decision :
- (i) whether the petitioner is entitled to refund of the excess energy deducted by the respondents as per the Hon'ble High Court's Order dated 14.1.2008;
 - (ii) whether the petitioner is entitled to refund of the cross subsidy surcharge collected by the respondents; and
 - (iii) Whether the petitioner is liable to pay two times HT(2)(a) tariff for the excess energy drawn.

Issue No.(i)

9. In our considered view, the orders of the Hon'ble High Court have to be respected and implemented promptly. No orders need be passed by this Commission on this.

Issue No.(ii)

10. It is vehemently contended by Sri Shridhar Prabhu that the Gol Order dated 8.6.2005 specifically declares that no surcharge would be required to be paid by the petitioner under Section 42(2) of the Electricity Act on the electricity sold to consumers with the consent of the competent Government granted under Section 43-A of the repealed Electricity (Supply) Act, 1948. As the petitioner was supplying electricity under the authority of Government contract, no surcharge can be collected by the respondents during the period of the agreement. In support of his argument, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Andhra Pradesh High Court in the case of Ravindranath G.E., Medical Associates and others (WP No. 12367/06 and connected cases).

11. This is strongly opposed by the respondent counsel Sri Sriranga. According to him, the Government Order cited has no application to the petitioner as the petitioner has not produced any consent obtained by it from the competent Government under Section 43-A of the Electricity (Supply) Act, 1948. Therefore according to him the cross subsidy

surcharge collected by the respondents is in accordance with the Electricity Act, 2003 and is non-refundable.

12. We have perused the GoI Order dated 8.6.2005 and the agreement signed by the petitioner with the Government on 26.2.1997 and with the then KEB on 25.4.1998. We have also perused Sections 40 and 42(2) of the Electricity Act, 2003 and also the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004. According to us, the GoI Order dated 8.6.2005 will be of no assistance to the petitioner as admittedly the petitioner is a generator and not a consumer. Under Sections 40 and 42(2) of the Electricity Act, 2003 read with Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004, it is only the consumers who avail open access are liable to pay cross subsidy surcharge and not the generator. In the instant case no consumer of the petitioner has made a grievance against collection of surcharge. Therefore in our considered opinion, petitioner therefore cannot question the levy of cross subsidy surcharge by the respondents as under the law it is only the consumer who is liable to pay cross subsidy surcharge and not the petitioner. Consequently there is no question of refund of cross subsidy surcharge collected by the respondents on the electricity sold to the consumers.

Issue No.(iii)

13. It is contended by the petitioner's counsel that collection of electricity charges at two times the HT(2)(a) tariff for the excess energy drawn by the petitioner is contrary to the orders of this Commission issued in the standard Format of Banking and Wheeling Agreement and in particular Clause 6.2(4) of the Standard Format of Wheeling Agreement. This has been refuted by the respondents.

14. In our considered view, the claim of the petitioner that he is not required to pay twice the rate at HT(2)(a) tariff for excess energy drawn is

not correct as the Clause 5.3 of the Agreement comes into operation only from the date the petitioner executes the banking and wheeling agreement and not till then. Admittedly, the petitioner has signed the banking and wheeling agreement on 22.3.2010 and therefore any excess energy drawn prior to 22.3.2010 has to be billed not as per the agreement but at the rates applicable to any other general consumer. Accordingly this issue is answered against the petitioner.

15. This petition is disposed of in terms of above findings and directions issued under the respective head.

Sd/-	Sd/-	Sd/-
(M.R.SREENIVASA MURTHY)	(VISHVANATH HIREMATH)	(K.SRINIVASA RAO)
CHAIRMAN	MEMBER	MEMBER