

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BANGALORE**

**Dated : 15<sup>th</sup> October, 2014**

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|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar        | Member   |
| 3. Sri D.B. Manival Raju      | Member   |

**OP No.18/2014**

**BETWEEN:**

Fortune Five Hydel Projects Private Limited,  
No.173, 3<sup>rd</sup> Main, 11<sup>th</sup> Cross,  
Dollars Colony, RMV 2<sup>nd</sup> Stage,  
Bangalore-560 0094

*[Represented by M/s.Link Legal India Law Services, Advocates]*

**PETITIONER**

**AND**

- 1) Karnataka Power Transmission Corporation Limited  
Cauvery Bhavan,  
Bangalore – 560 009
- 2) Hubli Electricity Supply Company Limited (HESCOM),  
P.B. Road, Navanagar,  
Hubli – 580 025
- 3) Bangalore Electricity Supply Company Limited (BESCOM),  
K.R. Circle,  
Bangalore - 560 001

**RESPONDENTS**

*[Respondents represented by M/s. Induslaw, Advocates]*

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- 1) This Petition is filed seeking a direction to the 3<sup>rd</sup> Respondent to comply with the communication dated 10.3.2014 of the 2<sup>nd</sup> Respondent and permit the Petitioner to wheel the accounted energy.

- 2) The brief facts of the case are as follows :
- (a) The Petitioner owns and operates a Wind Power Plant of 51.2 Mega Watts (MW) capacity in Basavana Bagewadi Taluk, Bijapur (Project).
  - (b) The Petitioner addressed a letter dated 21.9.2013 to the Chief Engineer, State Load Despatch Centre (SLDC), seeking approval for executing Wheeling & Banking Agreement (W&BA) to sell electricity to M/s. Welcast Steel Limited, Bangalore.
  - (c) The 3<sup>rd</sup> Respondent issued a Commissioning Certificate dated 27.12.2013, to the effect that the Plant is commissioned on 9.11.2013.
  - (d) The W&BA was executed between the Petitioner and the Respondents on 20.2.2014.
  - (e) The Petitioner, vide letter 21.2.2014, requested the 3<sup>rd</sup> Respondent to permit it to wheel the energy to its additional consumers, duly informing that substantial quantum of the banked energy had to be wheeled before 31.3.2014 and that the process of fixing ABT meters had been initiated.

- (f) The 2<sup>nd</sup> Respondent addressed a letter to the 3<sup>rd</sup> Respondent on 10.3.2014, communicating its approval to credit the energy injected by the Petitioner into the grid from the date of commissioning of the Project to the date of signing of the W&BA (from 9.11.2013 to 20.2.2014) and to wheel the accounted energy, after taking into account the transmission loss, wheeling and banking charges, etc.
- (g) The Petitioner addressed letters dated 21.3.2014, 1.4.2014 and 9.5.2014 to the 2<sup>nd</sup> Respondent, requesting for payment at the rate of generic tariff for Wind Power Projects, for the energy injected into the grid during the aforesaid period, relying upon the Order dated 12.3.2014 passed by this Commission in *Suo Motu* Case No.1/2014 (*Renew Power Ventures Private Limited -Vs- SLDC and others*) and for adding the names of new consumers to the W&BA.
- (h) The 2<sup>nd</sup> Respondent addressed a letter dated 21.5.2014, in supersession of its letter dated 10.3.2014, informing that the payment for the energy would be based on the outcome of the Review Petition (RP No.2/2014) filed by the 1<sup>st</sup> Respondent against the Order dated 12.3.2014 in the *Suo Motu* Case No.1/2014.
- 3) The Petitioner's case is that although it had applied for execution of the W&BA on 21.9.2013, well before the commissioning of the Project, the Respondents have failed to execute the same within the period of thirty days

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provided in the KERC (Terms and Conditions for Open Access) Regulations, 2004, and by virtue of the delay in the execution of the W&BA, it is entitled to credit of 1,71,23,550 Units of energy injected to the grid during the period from the date of commissioning of the Plant to the date of execution of the W&BA (9.11.2013 to 20.2.2014).

4) Upon Notice, the Respondents have entered appearance through their learned counsel and have filed their Statement of Objections, contending as follows :

(a) The Plant of the Petitioner was commissioned on 9.11.2013 and this date has to be considered as the date of application for grant of wheeling and banking of energy, and not 21.9.2013.

(b) Under Article 6.1 of the W&BA, the Petitioner is required to submit a list of exclusive consumers and partly exclusive consumers, to whom it proposes to wheel the energy by way of submission of a 'C' Form, fifteen days in advance. The Petitioner failed to submit the 'C' Form for the energy injected into the grid by it from 9.11.2013 to 20.2.2014. Instead, the Petitioner filed a 'C' Form seeking to wheel 69,00,000 Units of energy to be generated for the month of March, 2014. Considering the permissible deductions, an Official Memorandum was issued for wheeling 66,55,400 Units of energy and an additional quantum of 12,00,000 Units of energy from February, 2014. Even though the Respondents had accepted to

wheel the energy, the Petitioner failed to provide the details of the energy to be wheeled and the installations to which the energy had to be wheeled, within 15.3.2014. According to Article 6.2.3 of the W&BA, the banked energy would lapse at the end of the Wind Year. The Petitioner's conduct amounts to waiver, hence, it cannot seek credit of the energy.

- (c) Without complying with the terms of the W&BA as mentioned above, the Petitioner addressed a letter to the 1<sup>st</sup> Respondent on 21.3.2014, requesting to be paid for the energy injected into the grid at the rate of generic tariff, relying on the Order dated 12.3.2014 in the case of *Review Power (Suo Motu Case No.1/2014)*, for the energy it had sought credit on an earlier occasion. This act of the Petitioner, viz., seeking credit of the energy on one occasion and payment at the rate of generic tariff on another occasion, cannot be accepted.
- (d) The Respondents had never stated that they are unwilling to abide by the Order of the Commission, but had informed that a Review Petition had been filed before this Commission, seeking review of the Order in *Suo Motu Case No.1/2014*.
- (e) On 8.7.2014, in the matter of Wheeling and Banking Agreement for Renewable Sources of Energy, this Commission has directed that the banked energy at the end of a Wind Year shall be deemed to have been purchased by the distribution licensee and shall be paid at the rate of 85%

of the generic tariff. If the Commission comes to the conclusion that the energy injected into the grid by the Petitioner between 9.11.2013 and 20.2.2014 has to be paid for, considering the same as banked energy, the said Order of the Commission should be made applicable.

5) We have heard the learned counsel for the parties. From the rival contentions of the parties, the following issue would arise for our consideration :

(1) Whether the Petitioner is entitled to the credit of the energy injected into the State grid during the period from 9.11.2013 to 20.2.2014, as prayed for ?

6) After considering the material placed on record and the respective submissions of the parties, our findings on the above issue are as follows :

(a) At the outset, we would like to make it clear that the terms of the W&BA would be binding on the parties only after they execute the same. The period involved in this Petition is prior to signing of the W&BA. Therefore, the contention of the Respondents that, as the Petitioner has not complied with the terms of the W&BA, it cannot seek credit of the energy, cannot be accepted.

(b) In this Petition, the Petitioner has sought for credit of energy from the date of commissioning of the Project to the date of execution of the W&BA, on

the premise that it had submitted the application requesting for execution of the W&BA even before commissioning of its Plant and there is a delay in granting the approval.

(c) It is to be noted that under the KERC (Terms and Conditions for Open Access) Regulations, 2004, the Nodal Agency (SLDC) is required to assess the available capacity, based on the system studies by the distribution licensee, and communicate about the same to the applicant, within thirty days from the date of receipt of the application. This has not been done by the SLDC and no reason for the delay is forthcoming. We do not, therefore, accept the submission of the Respondents that date of commissioning of the Plant has to be considered as the date of application for approval of the W&BA. The SLDC is expected to act expeditiously on every application for open access. In the present case, admittedly, the application for open access was made by the Petitioner on 21.9.2013 and the W&BA was executed on 20.2.2014 (after a lapse of about five months). In the meanwhile, the Petitioner's Plant was commissioned on 9.11.2013. Even if this date is construed as the date of application for open access, there is no explanation for the delay beyond the period of thirty days provided in the said Regulations.

(d) Now, coming to the point as to whether the Petitioner is entitled to the credit of the energy, we note that the Petitioner has been changing his stance in this regard. In its letters dated 21.3.2014, 1.4.2014 and 9.5.2014,

the Petitioner has sought payment at the rate of generic tariff for the unscheduled energy injected into the grid, whereas, in the earlier letter dated 21.2.2014, it had sought credit of the energy wheeled. In the Petition also, the Petitioner has sought for credit of the energy wheeled. We are not inclined to direct the Respondents to give credit of the energy wheeled by the Petitioner, as the Wind Year 2013-14 has already come to an end on 31.3.2014, well before the Petition was filed.

- (d) Admittedly, the Petitioner has been allowed to inject energy into the grid and the energy injected by the Petitioner has been utilized by the Respondents. In the Statement of Objections, the Respondents have indicated that they are not averse to making payment for the energy injected into the grid and have suggested that the Commission may direct payments to be made to the Petitioner at 85% of the generic tariff, in terms of the Order of the Commission dated 8.7.2014. This submission of the Respondents cannot be accepted, as the said Order dated 8.7.2014 is applicable from the current Wind Year onwards, and not for the period in question in the present case.
- (e) While considering the similar cases in the past, wherein there was delay in granting 'NOC" for open access, this Commission had taken a consistent view that the generator was required to be compensated for the energy injected into the grid and utilized by the distribution licensees, under the principles of Section 70 of the Indian Contract Act, 1872. In such cases,



this Commission had directed the distribution licensees to make payments to the generator at the rate of generic tariff applicable. Applying the same principles, we deem it appropriate to direct the Respondents (ESCOMs) to pay for the energy injected into the grid, from 9.11.2013 to 20.2.2014, at the rate of generic tariff applicable to the Wind Power Projects that was prevailing at the relevant point of time.

7) For the foregoing, we pass the following :

### **ORDER**

The Respondents (ESCOMs) are directed pay for the energy injected into the grid by the Petitioner, for the period from 9.11.2013 to 20.2.2014, at the rate of generic tariff applicable to the Wind Power Projects, within thirty days from the date of this Order.

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

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER