

No. N/58/11

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE

Dated 13th January 2012

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

No. OP 27/2011

BETWEEN

M/s. Ambuthirtha Power Private Limited
No.137, 7th Floor, HMG Ambassador Building
Residency Road
BANGALORE – 560 025

(Represented by M/s. Shridhar Prabhu Associates)

... Petitioner

AND

1. M/s. Mangalore Electricity Supply Company Limited
1st Floor, Paradigm Plaza, A.B. Shetty Circle
MANGALORE – 575 001

2. M/s. Gulbarga Electricity Supply Company Limited
Station Road
GULBARGA – 585 101

3. State Load Dispatch Centre, Karnataka
KPTCL
Ananda Rao Circle, Race Course Road
BANGALORE – 560 001

4. M/s. Karnataka Power Transmission Corporation Limited
Cauvery Bhavan, Kempegowda Road
BANGALORE – 560 009

(Represented by Just Law Advocates)

... Respondents

1. The petitioner M/s. Ambuthirtha Power Private Limited which operates a mini hydel plant has come up with the present petition with the following prayers:

- a) Declare that the order of this Hon'ble Commission in the case of M/s. Graphite India Limited Vs. Managing Director, CESC and others in Case No. OP 22/2009 dated 1st July 2010 produced herein at Annexure P-3 is applicable to and binding on the Petitioner and Respondents herein;

- b) Consequently direct the respondents to honour the definition of the Water Year in the Agreement dated 2nd June, 2010 produced herein as Annexure P-1, as it stands revised by the order passed by this Hon'ble Commission dated 1st July 2010, at Annexure P-3; and
 - c) Pass any other order/s including an order to grant cost to this petition, to meet the ends of justice and equity.
2. The respondents have put in their appearance through their counsel and have filed detailed objections to the petition and have sought rejection of the petition.
3. We have heard Sri Shridhar Prabhu, learned Counsel for the Petitioner and Sri Sriranga, learned Counsel for Respondents. We have also considered the petition and objection averments and other material placed before us.
4. It is not in dispute that the petitioner owns / operates 22 MW mini hydel plant at MG-HE Tail Race Jog and has entered into a Wheeling and Banking Agreement on 2.6.2010 with KPTCL for the purpose of wheeling the energy generated by it on the terms agreed to therein.
5. The petitioner in this petition has now sought for a modification of the term 'Water Year' contained in the Agreement relying upon the order of this Commission dated 1.7.2010 passed in OP No. 22/2009.
6. It is submitted by Sri Shridhar Prabhu that this Commission, in a similar case of M/s. Graphite India Limited Vs. MD, CESC, has considered a similar prayer and has ordered to modify the definition of 'water year' as first June to 31st May instead of first July to 30th June.

7. Per contra Sri Sriranga has contended that in the case of M/s. Graphite India Limited, MESCOM was not a party and hence the order made by this Commission therein is not automatically applicable to it. Further, it is contended that in the said case the petitioner Company therein had sought for change in the definition of 'water year' from 1st June to 31st May as against its earlier definition, i.e., from 1st July to 30th June by producing data to show that monsoon in its area sets in from June itself and if 'water year' is taken from July it would lose substantial energy generated by it on account of the lapsing clause. It had also produced the details of the energy exported by it from January 2003 to December 2009 to buttress its claim that there will be a loss to them. Therefore the petitioner whose circumstances are not identical cannot rely only on the orders of this Commission in support of its claim for change of the definition of 'water year'. The Petitioner has to establish its case independently by producing necessary material as was done in the case of M/s. Graphite India Limited. It is also contended on behalf of the respondents that the prayers made by the petitioner, if granted, will put the respondents to an economical disadvantage as the power generated during the month of June may be allowed to be wheeled in the next summer months during which period usually there is a power shortage and rates of power are high.

8. The only question that arises for consideration in this case is whether the petitioner has made out a case to treat it on par with M/s. Graphite India Limited to order for a change of the definition of 'water year' as incorporated in the Wheeling and Banking Agreement between the parties.

9. This Commission in the case of M/s. Graphite India Limited has held as follows :

“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”.

10. In our considered opinion, the case of the petitioner is no different from that of Graphite India's case so far as ‘water year’ is concerned. Petitioner's mini hydel plant for which relief is claimed is in the same region in which M/s. Graphite India's plant is set up. Monsoon months in the entire Western Ghats region are the same and rain start from the beginning of June itself. There is no difference on this count. Therefore the contention of the respondents that the case of M/s. Graphite India Limited has no application to the case of the petitioner cannot be accepted. The generation data produced by the respondents themselves along with a memo dated 13.10.2011 does not support the case put forward by the petitioner. It is observed that for the months of July to October, generation is almost the same and the change of definition make not much of difference for

the respondents. However, this Commission has to follow uniformity in defining 'water year'. Therefore, Commission accepts to modify the 'water year' definition as has been accepted in M/s. Graphite India's case.

11. The contention of Sri Sriranga that MESCOM was not a party to M/s. Graphite India's case and therefore the order in that does not bind it has to be rejected. Whether MESCOM was a party to the case decided or not it does not make a difference so far as the principle settled therein is concerned, as like cases shall have to be decided alike and everyone need not come to this court for the same relief if its case is similar to the one already decided.

12. Therefore we allow this petition and direct the parties to modify the definition of 'water year' with prospective effect from 1st June 2012 to 31st May of the following year and thereafter during the period of agreement.

13. The definition of 'water year' has to be uniform. We direct all ESCOMs to adopt 'water year' definition from 1st June 2012 to 31st May of the following year in all the cases of mini hydel generating plants.

14. Office of the Commission is also directed to bring in the 'water year' definition as ordered in this case in all the agreements to be signed hereafter.

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