

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

Dated : 29th May, 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 |

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BETWEEN :

Pearlite Liners Private Limited
N.T.Road
SHIMOGA – 577 202 .. **PETITIONER**
[Represented by M/s. Shridhar Prabhu Associates, Advocates]

AND:

- 1) Mangalore Electricity Supply Company Limited
Paradigm Plaza, 4th Floor
A.B. Shetty Circle
MANGALORE – 575 101
- 2) Bangalore Electricity Supply Company Ltd.
K.R. Circle
BANGALORE – 560 001
- 3) Karnataka Power Transmission Corporation Limited
K.R. Circle
Cauvery Bhavan
BANGALORE – 560 009 .. **RESPONDENTS**
[Respondents represented by M/s. Justlaw, Advocates]

1) In this Petition, in essence, the Petitioner has prayed for a direction to the 1st Respondent to recognize the credit of 1,69,422 (One Lakh Sixty Nine Thousand Four Hundred and Twenty Two only) Units of energy in its favour, being the available balance of wheeled energy for the month of March, 2012 and to

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effect necessary correction in the HT Bill issued to the Petitioner for the said month.

2) The material facts relevant for the purpose of disposal of this case are stated as follows :

(a) The Petitioner owns, operates a Wind Power Project (Project) with a gross capacity of 1.5 Mega Watt (MW) at Koppa Village, Survey No.68, Harihar Taluk of Davanagere District, situated within the distribution area of the 2nd Respondent.

(b) The electricity generated from the Project of the Petitioner is being utilized for the captive consumption of the Petitioner at R.R.No.HT-14, P.B.No.100, N.T. Road, Shimoga (Consumption Point), within the distribution area of the 1st Respondent. The Petitioner also draws energy from the grid of the 1st Respondent as and when required by it.

(c) For wheeling of electricity from the Project to the Consumption Point, the Petitioner has executed a Wheeling & Banking Agreement (WBA) dated 24.8.2010 with the Respondents, as per ANNEXURE-P1 to the Petition.

(d) As per the WBA, the energy generated at the Project is metered, recorded and wheeled to the consumption point and necessary documentation is issued by the 2nd Respondent, and on the basis of the

- same, the 1st Respondent has to issue necessary credit in the energy bill to be prepared for the energy consumed at the Consumption Point.
- (e) As per the prevailing practice, the Petitioner is required to furnish C-Form, in advance, to the 2nd Respondent, indicating the quantity of electricity to be wheeled during the following month from the Project to the Consumption Point.
- (f) During February, 2012, the Petitioner intimated the 2nd Respondent (in C-Form) about wheeling of 1,50,000 Units of energy during March, 2012. On the basis of this intimation, the 2nd Respondent, in its Energy Account for the month of March, 2012 in respect of the Petitioner, recorded the wheeling of energy as 1,50,000 Units and intimated the same to the 1st Respondent.
- (g) Accordingly, the 1st Respondent issued the HT consumption bill for March, 2012 to the Petitioner, taking into consideration the wheeled energy as 1,50,000 Units.
- (h) It was found after March, 2012 that the total quantum of energy injected from the Project during the month of March, 2012 was actually 1,69,423 Units. Thereafter, the Petitioner issued a revised C-Form on 5.4.2012 to the 2nd Respondent, requesting to revise quantum of energy to be wheeled during March, 2012 from 1,50,000 Units to 1,69,422 Units. This request was

accepted by the 2nd Respondent and it issued a revised intimation dated 2.5.2012 to the 1st Respondent, intimating that the wheeled energy (including banked energy) was 1,69,422 Units for the month of March, 2012. The 1st Respondent refused to act on the revised intimation received from the 2nd Respondent, for the reason that there is no provision for allowing wheeling of energy on the basis of revised C-Form after expiry of Wind Year in WBA. Hence, the 1st Respondent refused to recognize 1,69,422 Units as the wheeled energy for the month of March, 2012 and to revise the HT Bill issued for the said month.

- 3) The submissions and contentions of the Respondents may be stated as follows :
 - (a) The Respondents have admitted the execution of the WBA and the several correspondences between the Petitioner and themselves in the matter.
 - (b) They have contended that Article 6.1.1 of the WBA states that the Petitioner has to furnish a list of Exclusive and Partly Exclusive Consumers to whom it proposes to wheel the energy during a month at least fifteen days in advance. In compliance with the same, the Petitioner submitted a C-Form on 16.2.2012 disclosing the energy to be wheeled during March, 2012, as 1,50,000 Units, and thereafter the Petitioner submitted a revised C-Form on 5.4.2012 indicating that the number of Units to be wheeled was

- 1,69,422 Units for the month of March, 2012 and that submission of this revised C-Form by the Petitioner was not contemplated in the WBA.
- (c) The Wind Year commences from April month of a year and ends with March of the next year. The Petitioner gave the revised C-Form on 5.4.2012, i.e., after the expiry of the Wind Year. The balance of energy at the end of the Wind Year would become 'nil', and therefore either issuing the revised C-Form for the month of March, 2012, or acting upon it, would not arise after the Wind Year. On the above grounds, the Respondents have prayed for dismissal of the Petition.
- 4) We have heard the arguments of the learned counsel for the parties.
- 5) The following points would arise for our consideration:
- (1) Whether the Petitioner is entitled for a direction to the 1st Respondent to recognize the credit of 1,69,422 (One Lakh Sixty Nine Thousand Four Hundred and Twenty Two only) Units of energy in its favour, as per the Revised C-Form submitted by it, and to effect necessary correction in the HT Bill issued to the Petitioner for the said month?
- (2) What Order?

6) After considering the records and the oral submissions made by the learned counsel for the parties in the case, our findings on the above points are as follows :

Point No.1 :

7) It is useful to note the definition of 'Banking' and the relevant Article 6.2 of the WBA relating to banking, applicable for Wind projects:

“‘Banking’ means residual electrical energy after utilization by the ‘Exclusive’ or ‘Partly Exclusive’ Consumer or ‘captive consumption’ out of the injected energy in a month into the transmission and/or distribution system of Corporation/ BESCO/MESCO which will be utilized for its own use or for wheeling to its ‘Exclusive’ or ‘Partly Exclusive’ Consumers at a later date/month, as per the terms and conditions set forth in this agreement.”

“6.2 BANKING (Applicable for Wind and Mini Hydel only)

6.2.1 The Company shall be permitted to ‘Bank’ the energy generated in the plant, with Utility, for its own use at a later months or for Wheeling to its Exclusive Consumers and Partly Exclusive Consumers in accordance with the norms

prescribed by the KERC in its order dated 11.07.2008.

6.2.2 Energy generated at the plant shall be banked on Water/Wind year basis and will be permitted to be carried forward from month to month within the same Water/Wind year. No carry forward of Banked energy is permitted from Water/Wind year to Water/Wind year.

6.2.3 Banked energy will become ZERO at the commencement of next Water/Wind year and utilities are not liable to pay any amount for the energy lapsed on account of expiry of the year.”

8) The contention of the Respondents that as per Article 6.1.1 of the WBA, the Petitioner had been submitting the C-Form fifteen days before wheeling of energy in a month, is not correct. Article 6.1.1 of the WBA states that Company should furnish a list of Exclusive and Partly Exclusive Consumers to whom it proposes to wheel the power using the transmission and distribution network of the utility, at least fifteen days in advance, and the utility shall, subject to availability of transmission and distribution network, approve the same. The same procedure shall be followed in case of any addition / deletion to the said list. This requirement is to be complied with only to ascertain the availability of transmission and distribution network and to augment the same, if

necessary. The ESCOMs also are allowed to adopt a suitable format for the monthly energy transactions and billing, etc., under Article 7.4 of the WBA. It is therefore clear that the ESCOMs, for their own convenience, can ask the generators to file the C-Form in advance indicating the quantum of energy that should be wheeled during the next month, only for the purpose of keeping account of the monthly energy transactions, billing, etc.

9) The reading of the definition of 'Banking' along with the terms contained in Article 6.2 of the WBA, makes it clear that 'Banked Energy' is the residual electrical energy remaining after utilization by the Exclusive or Partly Exclusive Consumers out of the injected energy in a month and that the banked energy can be used during a later month, and that the balance of banked energy is permitted to be carried forward from month to month within the same Wind year, and that at the closure of the Wind year, the balance, if any, lapses and that the utilities are not liable to pay any amount for the energy lapsed on account of the expiry of the year. Therefore, the terms of the WBA would establish that the banked energy in a particular month is to be reckoned at the end of that month, deducting the total energy utilized in a month out of the total energy injected during that month, as provided in the terms of the WBA. In the same way, as to how much of the banked energy gets lapsed on account of the expiry of

the Wind year should be calculated, taking into consideration the total banked energy available at the end of that year and the total energy consumed during the last month of the Wind year. In other words, at the end of the last month of the Wind year, if the total banked energy is more than the total consumption for that month, the balance energy will be lapsed.

10) In the present case, the Petitioner issued the C-Form during February, 2012, estimating the energy to be wheeled for the month of March, 2012 as 1,50,000 Units. At the end of March, 2012, it was found that the net energy available for wheeling was 1,69,423 Units and the energy actually wheeled was 1,69,422 Units, leaving a balance of just one Unit, which lapsed as per WBA. Therefore, the Petitioner is entitled to credit of the entire 1,69,422 Units of energy, if its consumption at the Drawal Point is more than the energy at its credit at the end of March, 2012. The 2nd Respondent issued on 2.5.2012, a revised statement indicating the quantum of net energy available for wheeling as 1,69,423 Units during the month of March, 2012 and the energy wheeled during March, 2012 as 1,69,422 Units. The 1st Respondent refused to act upon the same, on the ground that as per the C-Form, the energy to be wheeled for the month of March, 2012 was only 1,50,000 Units and that revision of the quantity of energy wheeled after the end of Wind Year is not permissible under WBA.

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This procedure of accounting adopted by the 1st Respondent for the last month of the Wind year is incorrect. The Petitioner is entitled to claim credit of the total energy available for wheeling and actually wheeled during the last month of the Wind year as per the terms of the WBA. This right cannot be taken away by the 1st Respondent in the guise of the procedure adopted by it for the energy accounting and billing. The procedure adopted by the Respondents regarding submitting of C-Form and accounting of the wheeled energy as shown in the C-Form does not affect the right of the Petitioner in any month other than the last month of the Wind year. In the present case, admittedly, the Respondents were required to ascertain the total energy that was available for wheeling and actually wheeled during March, 2012. Therefore, the contention of the 1st Respondent is not valid in law. For the above reasons we hold Point No.1 in the affirmative.

Point No.2 :

11) Accordingly, we pass the following :

ORDER

We direct the 1st Respondent to recognize the credit of 1,69,422 (One Lakh Sixty Nine Thousand Four Hundred and Twenty Two only) Units of energy in favour of the Petitioner, if the utilization of energy by the Petitioner is 1,69,422 Units (One

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Lakh Sixty Nine Thousand Four Hundred and Twenty Two only) or more during March, 2012, and accordingly to effect the necessary correction in the HT Bill issued to the Petitioner for the said month, and to refund to the Petitioner the excess amount charged, if any, or to adjust the same in future bills. If the energy utilized by the Petitioner for the month of March, 2012 is less than 1,69,422 Units (One Lakh Sixty Nine Thousand Four Hundred and Twenty Two only), the balance energy shall lapse as provided in the Wheeling & Banking Agreement.

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

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

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