

No.N 46/2014

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

Dated the 28th January 2015

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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 |

Case No. OP 22 of 2014

Between :

Green Infra Wind Power Generation Limited,
Tower II, 2nd Floor, NBCC Plaza,
Pushp Vihar Sec V Saket,
New Delhi – 100 017

... Petitioner

(Petitioner represented by Link Legal India Law Services, Advocates)

And :

1. State Load Dispatch Centre,
Ananda Rao Circle,
Race Course Road,
Bengaluru - 560 001

2. Karnataka Power Transmission
Corporation Limited,
Kaveri Bhavan,
Bengaluru – 560 009

3. Hubli Electricity Supply Company Limited,
Navanagar,
Huballi – 580 025

4. Bangalore Electricity Supply Company Limited,
K.R.Circle,
Bengaluru – 560 001

5. Chamundeshwari Electricity Supply Corporation Limited,
927, L.J.Avenue,
New Kantharaj Urs Road,
Saraswathipuram,
Mysuru – 570 009

... Respondents

(Respondents represented by Indus Law, Advocates)

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1. This petition is filed under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 21(1) of Karnataka Electricity Regulatory Commission (General & Conduct) Regulations, 2000, for the following reliefs :

- (i) Order or direction, directing the respondents, jointly and severally to account for and credit the energy generated from the Petitioner's Project to the respective captive Open Access consumers of the Petitioner;
- (ii) Direct the Respondents jointly and severally, to pay the cost of the petition to the Petitioner.

2. The brief facts of the petition as mentioned in the petition are as follows :

The petitioner, a wind energy power project of 20 MW, at Ramdurga Taluk, in Belagavi District, made an application to respondent No.1 informing that it would utilize the power generated for Captive Consumption and requested for execution of Wheeling & Banking Agreement (WBA) vide letter dated 16.09.2013 (Annexure P-1). The respondent No.1 responded vide letter dated 23.12.2013 (Annexure P-2) informing the petitioner that it was required to instal ABT compliant meters at the point of injection and drawal as per KERC/CERC Regulations. In the meanwhile the plant was commissioned on 09.01.2014 (Annexure P-3). The petitioner communicated ABT compliance on 06.02.2014 (Annexure P-4). The WBA was signed on 17.03.2014 (Annexure P-8). The petitioner made a representation to respondent No.1 on 21.03.2014 requesting to pay for the energy injected from the date of commissioning to the date of execution of WBA at the generic tariff applicable to wind energy projects relying on the Order of the Commission in Renew Power case (Annexure P-9).

Respondent No.3 rejected the request of the petitioner and returned the invoices on 28.03.2014 (Annexure P-11). Being aggrieved, the petitioner has filed this petition praying for credit of the energy generated from the project to the Captive Consumers of the petitioner.

3. It is the case of the petitioner that the energy injected into the grid by its plant has to be credited to its account as the delay in execution of WBA is on account of the failure on the part of the Respondents to act on the application within the time limit of thirty days stipulated in the KERC (Terms & Conditions of Open Access) Regulations, 2004.

4. On issuance of the notice, the respondents have entered appearance through their Counsel and filed the statement of objections on 13.11.2014. The contentions of the respondents are as follows :

(a) As per Article 6.2.3 of the WBA, the banked energy lapses at the end of the Wind Year i.e. on 31.03.2014. The petition is filed in June 2014 after the expiry of the Wind Year due to which the credit of energy cannot be considered.

(b) Before the expiry of the wind year the petitioner in its letter dated 21.03.2014 had sought payment at generic tariff for the energy injected during the period from 9.1.2014 when the plant was commissioned and 17.3.2014 when the WBA was signed, but in the petition the petitioner has sought credit of the very same energy. Such conduct of the petitioner amounts to waiver of its right of credit of energy.

(c) The third respondent replied on 28.03.2014 (Annexure P-11) that the Commission's Order in Renew Power case was case

specific and the Orders passed therein cannot be relied upon to seek payment and that the Review Petition filed in the Renew Power case was pending. In the circumstances, the petitioner was informed that payment towards the energy pumped during the period from 09.01.2014 to 17.03.2014 will be based on the outcome of the Review Petition (RP 2/2014). The respondents had never stated that they would not abide by the Orders of the Commission.

- (d) With regard to the contention of the petitioner that ABT meters are not required for wind energy projects, the respondents have relied on Regulation No.15 (7) of KERC (Terms & Condition for Open Access) Regulations, 2004 and Clauses 6.12 and 12.1.1(b) of Karnataka Electricity Grid Code 2005. It is their contention that the petitioner was requested to install ABT meters on 23.12.2013 but the same was complied with 06.02.2014 and the delay is attributable to the petitioner and no payment can be made for such period.
- (e) Though the application for Open Access was filed by the petitioner on 16.09.2013, the project was commissioned on 09.01.2014. For all practical purposes, 09.01.2014 should be considered as the date of the application and the thirty days period mentioned in the Regulations has to be counted from this date.
- (f) Soon after the compliance of ABT meters by the petitioner, the consent to execute the WBA was given on 11.02.2014. The general procedure is that after the consent is given, the generating company has to submit a draft WBA. Subsequent to submission of the draft WBA, the petitioner sought for permission to add an additional installation as Open Access Consumer on

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20.02.2014 (Annexure P-6). Consent was accorded on 22.02.2014 for adding the additional installation for Open Access. As the WBA had to be signed by respondents 2 to 5 at different locations, some delay was caused in signing the WBA.

(g) The energy injected during the period from 09.01.2014 to 17.03.2014 may be ordered to be paid at 85% of the generic tariff in accordance with the order of the Commission dated 12.09.2014.

5. The petitioner has filed the rejoinder dated 04.12.2014 stating that the respondents had to act on the application for Open Access within thirty days from the date of receipt of the application i.e. 16.09.2013. However, after a lapse of about three months, the first respondent began processing the application without furnishing any reason for the delay and informed about fixing of ABT meters. There is no requirement to fix ABT meters in respect of wind energy projects and even if there were to be such a provision, the respondent should have indicated the same within thirty days from the date of application. The provisions quoted by the respondents for fixing ABT meters are not applicable as fixing of meters according to the said provisions is the responsibility of the Licensee. Even though the petitioner was not required to fix the ABT meters, it was coerced to fix the same due to harassment and economic loss caused. The order of the Commission dated 12.09.2014 relied upon by the respondents is applicable to the standard WBA executed after 08.07.2014 and does not apply to the case.

6. We have heard both the parties and perused the records. During arguments the parties have reiterated the submissions made in their pleadings.

7. The issue that arises for consideration is "Whether the petitioner is entitled to credit of energy injected into the grid from the date of commissioning (09.01.2014) to the date of execution of WBA (17.03.2014) or whether the respondents should be directed to pay for the energy injected into the grid by the petitioner, from 09.01.2014 to 17.03.2014"?

8. Admittedly, the petitioner had filed the application for Open Access on 16.09.2013. The KERC (Terms & Conditions for Open Access) Regulations, 2004, provide that the Nodal Agency (SLDC) is required to assess the available capacity and communicate to the applicant within thirty days from the date of receipt of the application. In this case, after a lapse of more than three months, the first respondent SLDC addressed a letter dated 23.12.2013 informing the petitioner to install ABT meters at the injection and drawal points. There is no explanation for the delay of more than three months in communicating this aspect to the petitioner. The respondents have contended that the date of commissioning of the project (09.01.2014) is to be treated as the date of application for Wheeling & Banking and processing the application begins thereafter. We are unable to accept this submission. The Regulations do not provide that an application for Open Access has to be made only after commissioning of the plant. We feel that SLDC has failed to act immediately on receipt of the application and inform the petitioner within the time frame provided in the Regulations. There is no ground made out to condone the delay of more than three months.

9. The petitioner has installed ABT meters and submitted compliance to the respondents on 06.02.2014, without raising any dispute that it was not required under law to instal the meters. After complying with the requirement put forth by the respondents the petitioner cannot now turn around and say that it was not required to do so and it was coerced to instal the meters. We find no material on record to show any coercion or harassment as alleged by the petitioner. Therefore, we are not inclined to

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go into issue as to whether installation of ABT meters was required or not. However we note that Clause 7.5 of the Karnataka Electricity Grid Code provides that the provisions of meters, their installation and operation shall be in accordance with the Regulations issued by the Central Electricity Authority, as per the provisions of Sections 177 and 55 of the Electricity Act, 2003.

10. Now we need to see if the petitioner is entitled for credit of energy injected from 09.01.2014 to 17.03.2014. In the letters dated 21.03.2014 and 26.03.2014, the petitioner had informed respondent No.3 HESCOM that it is ready to sell the banked energy of 44,63,460 units as on 17.03.2014 at generic tariff applicable to wind energy projects as per Order of the Commission dated 10.10.2013 read with Order dated 13.03.2014 in Suo motu case No.1 of 2014 (Renew Power case). We note that the petitioner had also made an interim prayer in the petition seeking payment at generic tariff. Thus, we infer that the petitioner was ready to sell the energy to HESCOM at generic tariff.

11. In response to these letters, HESCOM (third respondent) replied vide letter dated 28.03.2014 (Annexure P-11) as follows :

"This is with reference to your letter dated 21.03.2014. The KERC order is case specific. However for any difficulties arising in Wheeling & Banking, you are hereby requested to approach the KPTCL, being the nodal Agency.

Hence, your invoices for banked energy of around 44 lakhs is returned herewith.

Further this is again to inform you that the unscheduled energy to be shared by all ESCOMs and payable on specific approvals/orders".

12. A perusal of the above letters reveals that the petitioner had sought for generic tariff and there is no denial by the respondents to pay the

same. The third respondent HESCOM has stated that the injected unscheduled energy has to be shared by all ESCOMs and payable on specific approval/order and has requested the petitioner to approach the Nodal Agency. Even during the arguments, the Counsel for the respondents submitted that the power would be apportioned between ESCOMs and paid for. Admittedly the petitioner was allowed to inject energy into the grid and such energy has been utilized by ESCOMs. The Commission had decided cases in the past holding that generic tariff has to be paid by ESCOMs for compensating the generating company. The ESCOMs can set off the energy so paid for, against their Renewable Purchase Obligation.

13. We note that the petition is filed on 27.06.2014 after the lapse of the Wind Year on 31.03.2014. We are not therefore inclined to direct credit of energy to the petitioner. With regard to the proposal of the respondent that payment at 85% of the generic tariff will be made as per the Order of the Commission dated 12.09.2014, we note that the Order is applicable for the WBAs executed after 08.07.2014 and does not apply to the present case.

14. We had an occasion to deal with a similar issue in case in OP No.18 of 2014 (Fortune Five Hydel Projects Pvt. Ltd – vs – KPTCL & others). We had held in that case that SLDC has to process the application for Open Access within thirty days from the date of receipt of the application. We had held that for the energy injected into the grid by the generating company when there is delay in granting NoC for Open Access, the generating company has to be compensated under the principles of Section 70 of the Contract Act, 1872, and we had therefore directed payment of generic tariff applicable.

15. Following the same reasoning, we deem it appropriate to direct the respondents to pay for the energy injected into the grid by the petitioner, from 09.01.2014 to 17.03.2014 at the applicable generic tariff.

16. For the foregoing, we pass the following Order:

ORDER

The Respondents (ESCOMs) are directed to pay for the energy injected into the grid by the Petitioner from 09.01.2014 to 17.03.2014 at the rate of generic tariff for wind power projects within eight weeks from the date of this Order.

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

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

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