

No.N/62/12

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

**Dated : 7<sup>th</sup> March, 2013**

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

**RP No.7/2012**

**BETWEEN :**

Ambuthirtha Power Private Limited  
7<sup>th</sup> Floor, HMG ambassador Building  
Residency Road  
BANGALORE – 560 001

*[Represented by Shri K. Shashikiran Shetty, Advocate]*

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**Petitioner**

**AND**

1) Mangalore Electricity Supply Company Limited  
Paradigm Plaza, A.B. Shetty Circle  
MANGALORE – 575 001

2) Gulbarga Electricity Supply Company Limited  
Station Road  
Gulbarga – 585 101

3) State Load Despatch Centre, Karnataka  
Ananda Rao Circle  
BANGALORE - 560 009

4) Karnataka Power Transmission Corporation Limited  
Cauvery Bhavan  
Bangalore – 560 009

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**Respondents**

*[R1 represented by M/s.Justlaw, Advocates]*

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1) This Petition is filed to review the Order passed by this Commission on 13.1.2012 in OP No.27/2011, on the ground that the impugned Order is erroneous

in law, as while passing the said Order the Commission has failed to observe the Order dated 1.7.2010 passed by it in OP No.22/2009 in the case of *Graphite India Limited –Vs- CESC and another*, and consequently has failed to give a similar benefit to the Review Petitioner, as the facts of the Review Petitioner's case are on par with the facts of the said case. Further, it is submitted that this Commission has given effect to its Order dated 1.7.2010 in the *Graphite India Limited* case from the Water Year of June, 2010 and that the Review Petitioner in the present case should get the benefit of the said Order from June, 2010.

2) The 1<sup>st</sup> Respondent has put in appearance and has filed its Objections on 3.10.2012. It is contended on behalf of the 1<sup>st</sup> Respondent that in the Review Petition, the Review Petitioner has not made out the grounds on which this Commission can review its Order dated 13.1.2012, and therefore, the Review Petition has to be rejected. Further, it is contended that the Order passed in the *Graphite India Limited's* case was not an order in general and it was made in the light of the specific facts submitted in that case. It is also contended that it is in the Review Petitioner's case that this Commission has made a general Order and not limited in application to the *Graphite India Limited's* case.

3) We have considered the Review Petition filed by the Review Petitioner and the grounds urged therein, and the Objection Statement filed by the 1<sup>st</sup> Respondent. We have also heard the learned Counsel appearing for both the parties.

4) The question that arises for consideration and decision is:

“Whether the Review Petitioner has made out a case for review of the Order passed by this Commission in its case on 13.1.2012 in OP No.27/2011?”

5) The main contention of the Petitioner is that as per the Order dated 1.7.2010 passed in the Graphite India Limited's case in OP No.22/2009, the Petitioner is entitled to get the benefit of the Water Year from June, 2010 onwards. Therefore, we may consider what this Commission has stated in the Order dated 1.7.2010 in the Graphite India Limited case. Paragraph-10 of the said Order is the relevant paragraph, which is extracted below :

*“10. We accordingly allow the petition in the light of facts placed in this case and direct both the parties to sign the wheeling and banking agreement duly modifying the definition of ‘water year’ and clause 11.2(a) as sought by the petitioner. Modifications now approved shall be incorporated in the standard agreement to be signed and shall come into effect only from the water year of 2010 onwards (i.e., from 01.06.2010 onwards).”*

6) A careful reading of the above paragraph makes it clear that the modifications approved in the said Order were in the light of the facts of that case. The words, “modifications now approved shall be incorporated in the Standard Agreement to be signed” meant that the order was specific to the parties in that case and was not meant to be applied to all Agreements signed already or signed thereafter. Therefore, the contention of the Petitioner that this

Commission's Order in the Graphite India Limited case is a general order and the benefit of it shall be given to it also, cannot be accepted. As contended by the 1<sup>st</sup> Respondent, the general Order, to be applicable in all future cases, was made subsequently in the Review Petitioner's own case (OP No.27 of 2011) which is now sought to be reviewed, and not in that of the Graphite India Limited case. Therefore, there is no 'error' in the Order passed by this Commission in the Petitioner's case on 13.1.2012 and the Review Petition is liable to be dismissed.

7) Accordingly, this Review Petition is rejected.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)  
MEMBER

Sd/-

(K.SRINIVASA RAO)  
MEMBER