

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

Dated : 15th 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 |

RP No.2/2014

BETWEEN:

- 1) Karnataka Power Transmission Corporation Limited (KPTCL),
Cauvery Bhavan, K.G. Road,
Bangalore – 560 009
 - 2) Bangalore Electricity Supply Company Limited (BESCOM),
2nd Floor, K.R. Circle,
Bangalore 0 560 001
 - 3) Hubli Electricity Supply Company Limited (HESCOM),
P.B. Road, Navanagar,
Hubli – 580 025
 - 4) Mangalore Electricity Supply Company Limited (MESCOM),
Paradigm Plaza, A.B. Shetty Circle,
Mangalore – 575 001
 - 5) Gulbarga Electricity Supply Company Limited (GSCOM),
Station Road,
Gulbarga – 585 102
 - 6) Chamundeshwari Electricity Supply Corporation Limited (CESC),
No.927, L.J. avenue,
New Kantharaj Urs Road,
Mysore – 570 009
- .. **PETITIONERS**

[Petitioners represented by M/s.Induslaw, Advocates]

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AND

- 1) Renew Power Ventures Pvt.Ltd.,
Tower 4A, DLF Corporate Park,
M.G. Road,
Gurgaon – 122 002
- 2) Renew Wind Energy (AP) Pvt.Ltd.,
Gobind Bhawan,
Gali No.4A, Tulsi Dass Street,
Ansari Road, Darya Ganj
Delhi – 110 002
- 3) The Chief Engineer (Electricity),
State Load Despatch Centre,
28, Race Course Road,
Bangalore – 560 009

.. **RESPONDENTS**

[Respondent No.2 represented by M/s. Link Legal India Law Services, Advocates]

- 1) This Review Petition is filed seeking review / clarification of the Order dated 12.3.2014 in *Suo Motu* Case No.1/2014.
- 2) The brief facts of the case are as follows :
 - (a) Respondent No.2 addressed a letter dated 8.7.2013 to Respondent No.3, informing that its wind-based Project of 8 Mega Watts (MW) capacity is commissioned on 29.6.2013 and that it intends to utilize the power for captive use and sought execution of Wheeling and Banking Agreement (W&BA). As it did not receive any communication from Respondent No.3 even after a lapse of 165 days, Respondent No.1 addressed a letter to the

- Commission on 20.12.2013, complaining about the delay and seeking intervention of the Commission in the matter.
- (b) Subsequently, the Commission decided to treat the above letter dated 20.12.2013 of Respondent No.1 as a Petition (*Suo Motu* case No.1/2012) and issued Notice to the State Load Despatch Centre (SLDC), Hubli Electricity Company Limited (HESCOM) and Bangalore Electricity Supply Company Limited (BESCOM). The parties entered appearance through their counsel .
- (c) On 6.3.2014, the Commission directed the Respondents in the *Suo Motu* case to file an Affidavit on the reasons for the delay in granting open access, along with the details of any other similar cases pending with them for more than thirty days. An Affidavit was filed by the General Manager of the Karnataka Power Transmission Corporation Limited (KPTCL) on 12.3.2014, intimating that the W&BA was signed on 31.1.2014 and explaining the delay in giving consent for open access. It was also stated that there were no other cases of delay beyond the period of thirty days.
- (d) During the hearing on 12.3.2014, an offer was made by the counsel appearing for KPTCL that the Electricity Supply Companies (ESCOMs) would pay for the power injected into the State grid till the signing of the W&BA at the generic tariff applicable at the relevant point of time.

Recording this submission and granting two weeks' time to the ESCOMs for making payment, the matter was treated as closed, vide this Commission's Order dated 12.3.2014.

3) Now, KPTCL and ESCOMs have sought a review of the above Order of the Commission, on the ground that the Order does not specify the date from which the payment has to be made and whether it includes the thirty days period provided under Regulation 9(6) of the KERC (Terms and Conditions for Open Access) Regulations, 2004 to the Nodal Agency for communicating to the Applicant about the approval or rejection of its application for open access.

4) It is contended by the Review Petitioners that during the hearing on 12.3.2014, the offer made by the counsel for KPTCL was only to pay for the energy injected into the State grid by the generating company beyond the thirty days period, as no liability would arise to pay for the unscheduled energy that would have been injected prior to the grant of approval for open access. It is further contended that such injection of energy without any authority / approval may lead to a chaotic situation resulting the grid security being threatened, and hence, such injection of energy into the State grid should be considered as a gratuitous act by the generator.

5) Respondent No.2 has filed its objections on 18.7.2014 through its counsel. The main contentions raised in the objections are as follows :

- (a) The Review Petition is in the guise of seeking clarification or modification of the Order of the Commission and it does not satisfy the conditions stipulated in Order LXVII Rule 1 of the Code of Civil Procedure, 1908.
- (b) The Review Petition is not maintainable, as the Order dated 12.3.2014 was an Order passed based on the oral consent given by the counsel for KPTCL for making payments for the energy injected into the State Grid.
- (c) The thirty days period for grant of approval for open access cannot be construed as an impediment for the injection of energy, as the Project of Respondent No.2 had already been synchronized with the State Grid and the technical parameters relating to the grid stability would have been examined during synchronization of the Project with the grid.
- 6) We have perused the pleadings and heard the learned counsel for both parties.
- 7) We note that while passing the order on 12.3.2014 in Suo Motu Case No.1/2014, the Commission had not gone into the merits of the case. The order was passed after recording the submission made by the learned counsel for KPTCL, Review Petitioner No.1, to the effect that KPTCL would have payments made by the ESCOMs for the power injected by the Complainant till the signing of the Wheeling and Banking Agreement at the generic tariff applicable. We

also note that the Review Petitioners have paid the amount as committed by them.

8) During arguments of the Review Petition, the learned Counsel for the Review Petitioners cited the decision of the Hon'ble Supreme Court reported in (2005) 4 SCC 741 in the case of Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others, and relied upon Paras 89 & 90 of the decision which reads thus :

“89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which could include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words sufficient reason in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate...”

9) In view of the averments made in the Review Petition that the learned counsel for the Review Petitioners had only made a submission offering to have payments made for the power injected by the generating company for the period subsequent to the thirty (30) days time limit within which Wheeling and Banking Agreements are required to be processed by the Nodal Agency, as per Regulation No.9(6) of the KERC (Terms and Conditions for Open Access)

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Regulations, 2004, the Commission considers it appropriate to record this submission of the Respondents, invoking the power under Order LXVII Rule 1 of Code of Civil Procedure. Accordingly, we accept this submission of the learned counsel and take it on record. However, we leave it open to the generating company to initiate separate proceedings, if it so desires, in the matter of any claims it may choose to prefer with regard to the power injected during the thirty days period specified in the Regulation No.9(6) of the KERC (Terms and Conditions for Open Access) Regulations, 2004.

10) The Review Petition is disposed of accordingly.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER