

N/51/06

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 13TH day of December 2007

1. Shri K.P.Pandey	..	Chairman
2. Shri H.S.Subramanya	..	Member
3. Shri S.D.Ukkali	..	Member

Case No.OP 41 / 06

Between

Rajapalayam Mills Ltd.,
IIIrd Floor, Sabari Complex,
24, Residency Road,
BANGALORE-560025

And

1. Karnataka Power Transmission Corp.Ltd.,
Cauvery Bhavan,
Bangalore-560009
2. The Bangalore Electricity Supply Co.Ltd.
Corporate Office, K.R.Circle,
Bangalore-560001
3. State Power Procurement Co-Ordination Committee,
Cauvery Bhavan,
Bangalore-560009

The Petitioner who is engaged in the business of research and development of bio-technology products has set up a plant in Nelamangala Taluk, Bangalore Rural District. The Petitioner is a consumer of BESCO. It has also set up a 3.3 MW wind energy plant in Janakal village, Hosadurga Taluk, Chitradurga District. The wind power plant was commissioned on 29.03.2006 and

since then it has been generating energy. The said plant has been set up for the purpose of captive generation of power for consumption of its unit at Mylanahalli Village, The said wind power plant has been generating energy since March 2006 and the power generated has been pumped into the Grid. The Petitioner had submitted an application on 13.03.2006 to the KPTCL for grant of open access. It had also requested the Respondents to execute a wheeling and banking agreement with it for the purpose of wheeling of electricity generated to its captive unit. There has been no response from the Respondents. The Petitioner had orally informed the Respondents that the question of levy of UI charges would not arise with regard to wind power projects and without prejudice to this, it is ready to pay the UI charges, wheeling and banking charges as per the order of the KERC dated 09.06.2005. Since the Petitioner has not been allowed wheeling and banking facility, it is unable to derive any benefit from the pumping of power to the Grid. The Petitioner has made huge investments for the purpose of setting of the wind power plant keeping in mind the advantages of captive consumption and wheeling and banking arrangements, but has not got anything in return from the utilities and has, therefore, put to huge losses. The Petitioner, therefore, pleads that, in the absence of wheeling and banking facility being allowed, the Petitioner will get absolutely no credit or benefit for the power pumped into the grid from 29.3.2006 onwards. In that circumstance, the action of the Respondents in refusing to allow wheeling and banking is arbitrary and unjust. It is also pleaded that as a consequence of making adjustments for the power consumed against the power generated, the amount paid for power consumption by the Petitioner's plant at Mylanahalli village to the extent that such consumption can be adjusted against the power pumped into the grid from 29.3.2006 has to be refunded to the Petitioner by the Respondents, as otherwise the Respondents could be unduly enriching themselves. The action of the Respondents is violative of the KERC (Terms and Conditions for Open Access) Regulations, 2004. In support of its case, the Petitioner has relied on the above mentioned Regulations as well as the provisions of Section 9(2), 40(c) and 4th and 5th Proviso to Section 42(2) of the Electricity Act, 2003. It is also submitted that Regulation 11(ix) of the KERC (Terms and Conditions for Open Access)

Regulations, 2004 has to be read along with Regulation 4(3) and the payment of UI charges arises only in respect of other customers i.e. other than a person operating a captive generating plant, as otherwise the right of open access as conferred by the provisions of the Electricity Act 2003 would be negated . The Commission has passed the intra-State ABT Order on 20.6.2006 as per which the wind power generators are exempted from intra-State ABT. Even otherwise, in view of the small size of the wind based power project and the unpredictability of the quantum of generation itself, it would be practically impossible to monitor the variations continuously. It is submitted that the Regulations framed by the Commission ought not to be interpreted in a manner which would lead to anomalous consequences or denial of benefit to a generator which has been specifically provided in the Act. The Petitioner is also independently availing power from the distribution Licensee in addition to utilizing power from its own captive generating plant. Hence, if UI charges are levied on a non-exclusive customer like the Petitioner, then it would amount to double levy of charges i.e one on accounted contract demand and the other on account of UI differential.

Without prejudice to the above, it is submitted that, in the event of it ultimately being held that UI charges are payable by the Petitioner, it would be ready to do so and, therefore, there is absolutely no justification for the Respondents not to allow open access and not to enter into any agreement for wheeling and banking of electricity with the Petitioner. Although the petitioner has expressed its readiness to enter into an agreement with the Respondents on the above basis, there has been inaction on the part of the Respondents. During the course of hearing, the Petitioner's Counsel reiterated that despite the Commission's Order dated 06.07.2006, the position remains the same. Thereupon in, terms of the Order dated 06.07.2006, the Commission had issued the following interim order on 23.11.2006.

“ Case called. Both the parties present. Mr.Hiremath undertakes to see that the earlier directions are complied within a week. Posted to 30.11.2006 for compliance.”

In the course of subsequent hearing on 30.11.2006, the Respondent's Counsel filed copy of the letter dated 29.11.2006 issued by BESCO permitting the Petitioner to avail wheeling and banking facility from their wind power project. In the course of further hearing, the Petitioner filed another Memo stating that although permission for wheeling has been given, the Company is not actually getting the benefit because of certain conditions imposed by the Respondents. On clarification given by the Respondents' Counsel, the Commission had directed that the wheeling facility must be given to the Petitioner subject to the final Order of the Commission regarding the terms and conditions of the wheeling. In the course of further hearing, the Counsels for both the parties submitted that they are discussing the issues involved and they would file a Joint Memo. However, no Joint Memo was filed and the case was heard on merits for final disposal.

The Respondents have filed written arguments by their Counter-Affidavit dated 20.9.2007 stating their case.

Having regard to the submissions made by both the parties and looking into the records, the Commission frames the following issues for decision:

- 1) Whether the Petitioner who is a Captive Power Generator of wind energy as well as a Consumer of the Respondents is entitled to both wheeling and banking facility and if so, the wheeling and banking charges payable by the Petitioner?
- 2) Whether the Petitioner is liable to pay any UI charges in the facts of the case?
- 3) Whether the Respondent is justified in insisting on fixing of feature meters by the Petitioner at the generating as well as drawal points?

- 4) Whether the Petitioner Company is entitled to due credit for the energy pumped into the Respondents' Grid from 29.03.2006 onwards?

Regarding the 1st issue referred to above, it is absolutely clear from the provisions of Section 9(2) of the Electricity Act that the Petitioner has the right to Open Access. Section 9(2) reads as under:

“Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use.”

As per Section 40(c) of the Act, it shall be the duty of the transmission licensee to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of the transmission charges.”

The Commission in para 7.04 of its Order dated 09.06.2005 has held that

“The Commission notes that the concept of open access has been introduced to bring in competition so that consumer can get power at competitive rates. Since, at present, projects based on renewable sources cannot compete with conventional sources of energy, the Commission decides that concessional wheeling charges needs to be extended to renewable sources of energy as in the neighbouring states in order to promote NCE sources under open access.”

Regarding banking facility to be provided for the renewable sources of energy, the Commission in para 7.06 of its Order dated 09.06.2005 has held that,

“The Commission notes that most of the stakeholders including the GOK and utilities are in favour of banking to infirm sources of energy. After considering the above views, the Commission hereby decides to allow banking facility in respect of wind and

mini-hydel projects subject to payment of difference of UI chages between the time of injection and time of drawal of the power from these sources, as suggested by KPTCL and also payment of banking charges at 2% of the input energy.”

The Commission has further held that,

“In case the UI charges are negative, KPTCL/ESCOMs are not liable to pay the difference in UI charges. KPTCL/ESCOMs shall ensure that appropriate metering is provided both at injection and drawal points to facilitate computation of UI charges. However, merit order dispatch and scheduling shall not be applicable for these sources of energy.”

In para 9.07 of its Order dated 9.6.2005, the Commission has determined the overall wheeling charges payable by NCE sources as 5% of the energy input into the system. It has been further held that other than this wheeling charge, they shall not be liable to pay any transmission charges or wheeling charges either in cash or kind as determined in the preceding sections of this order. However, surcharge shall be payable where the wheeling of energy is other than for their own use.

In view of the above, the Petitioner Company has the right to both wheeling as well as banking facility on payment of charges as determined by the Commission in its Order dated 09.06.2005 and both the facilities shall be provided to the Petitioner from the date of commissioning of the project.

On the issue of installation of meters at both the generating as well as receiving points for captive use, the Main Meters have to be provided by the Generator. If the Check Meters are required to be provided, they should be provided by the Licensee. The power plant was commissioned on 29.3.2006 itself and the Respondents would not have allowed the commissioning without meters being installed to record the amount of power put into the Grid. Further, it is necessary that the Meters provided at Generating and Receiving ends will have to be ABT-compliant.

On the issue of payment of UI charges, the Commission has held in its Order dated 09.06.2005 that banking facility is allowed in respect of wind and mini-hydel projects subject to payment of difference between UI charges at the

time of injection and time of drawal of power from these sources. Regarding the Petitioner's contention that as per Clause 11(9) of KERC (Terms and Conditions for Open Access) Regulations 2004, payment of UI charges would arise only in respect of other customers i.e. other than a person operating a captive generating plant, it is hereby clarified that this condition does not apply to the Petitioner as the generation is not scheduled under intra-State ABT. Thus, as per the Commission's Order dated 9.6.2005 referred to above, the Petitioner is liable for payment of UI charges, which arises due to difference in the time of injection and drawal of banking of energy.

The 4th question is about giving credit for the energy pumped into the Respondents' Grid by the Petitioner Company from 29.03.2006 onwards. The Respondents have not denied that power has been pumped into the Grid from 29.03.2006 onwards by the Petitioner. The Petitioner has contended that from March 06 till August 06, about 55 lakh units of energy have been pumped into the Grid. Having received the power from the Petitioner, the Respondents are bound to give due credit to the same. The Commission directs the Respondents to do so.

From the records of the case, it is abundantly clear that the Licensees have blatantly violated the Commission's Order and Regulations on Open Access. Although the provisions of the Electricity Act, 2003 are crystal-clear about providing non-discriminatory Open Access to any Captive Generator, the Licensees have delayed providing Open Access to the Petitioner without any justifiable reason. In respect of provision of Meters, the Commission disapproves the attitude of the Licensees while dealing with this Petitioner. The Licensees ought to have ensured that appropriate Meters are provided at the time of synchronization of the project itself in terms of the Commission's Order dated 9.6.2005. In fact, the Petitioner had filed an application before the KPTCL well before the synchronization. The failure of the Licensees to ensure that appropriate Meters are provided before commissioning of the project might have resulted in losses to the Licensees themselves in terms of UI charges. The

Commission views with contempt the above failures and directs the Respondents to enter into a standard commercial agreement for Open Access in terms of Clause 9(8) of KERC (Terms and Conditions for Open Access) Regulations 2004 and submit the same to the Commission for approval within 30 days from the date of this Order.

The Petition is disposed off accordingly.

Sd/-
(K.P.Pandey)
Chairman

Sd/-
(H.S.Subramanya)
Member

Sd/-
(S.D.Ukkali)
Member