

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

Dated : 15th February, 2018

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

Complaint No.1/2017

BETWEEN:

Raibahadur Seth Shreeram Narasigdas Pvt. Ltd.,
D. No.199/1, P.O. Box No.38,
Kariganur Post,
Hosapete – 583 201.

.. **COMPLAINANT**

[Represented by Keystone Partners, Advocates & Solicitors]

AND:

1) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.

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

.. **RESPONDENTS**

*[Respondent-1 is represented by Justlaw, Advocates,
Respondent-2 is represented by M. Raghavendrachar & Associates, Advocates]*

ORDERS

- 1) This Complaint is filed under Section 142 of the Electricity Act, 2003 requesting for imposing a penalty of `1,00,000/- on the Respondents for having not complied with the directions issued in the Order dated 10.12.2015 passed by this Commission in OP No.6/2015, and also for imposing a penalty of `6,000/- per day on the Respondents, during the period when the non-compliance of the said Order continued, till the date of its compliance.

- 2) The operative portion of the Order dated 10.12.2015 passed in OP No.6/2015, reads thus:

“(a) The second Respondent (HESCOM) and the third Respondent (GESCOM) should take into account the quantum of energy injected at the injection point of the Project and the energy drawn at the captive consumption point of the Petitioner, for the period from 01.06.2014 to 31.03.2015, and raise the monthly energy bills in terms of the Wheeling and Banking Agreement dated 13.10.2014, as if the wheeling has taken place from 01.06.2014, and refund the excess amount collected, if any, to the Petitioner, within 2 (months) from the date of this Order; and,

(b) The Petitioner is not entitled to any other reliefs claimed in the Petition.”

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- 3) One M/s. R.B. Seth Shreeram Narasingdas, a Partnership Firm registered under the Partnership Act, 1932, had filed OP No.6/2015 against the Respondents 1 to 5 therein, viz., Karnataka Power Transmission Corporation Limited (KPTCL), Hubli Electricity Supply Company Limited (HESCOM), Gulbarga Electricity Supply Company Limited (GESCOM), Bangalore Electricity Supply Company Limited (BESCOM) and Karnataka State Load Despatch Centre (SLDC), seeking reliefs of: (1) accounting for the electricity generated and injected by it to the State Grid from 23.04.2014 till the date of execution of the Wheeling and Banking Agreement (W&BA) dated 13.10.2014; and (2) considering the credit of such energy towards its captive consumption and for settling the accounts as per the terms of the W&BA dated 13.10.2014. After considering the rival contentions and the material placed on record, this Commission passed the Order dated 10.12.2015, as noted above.
- 4) The present Complainant, viz., Raibahadur Seth Shreeram Narasigdas Pvt. Ltd., a Private Limited Company registered under the Companies Act, 1956, was incorporated on 29.10.2012. The present Complaint does not disclose the date on which the present Complainant-Company has taken over the assets and liabilities of the Partnership Firm, which filed OP No.6/2015. In the Complaint it is stated that, the affairs of the erstwhile Partnership Firm had been taken over by the Complainant herein. Even after passing of the Order in OP No.6/2015, all the correspondences with the present

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Respondents have been made only in the name of the Partnership Firm, viz., M/s. R.B. Seth Shreeram Narasingdas, till 10.09.2016, as could be seen from the documents produced along with the Complaint. Therefore, the Complainant should have produced evidence as to the date on which the rights and liabilities of the erstwhile Partnership Firm have been taken over by the present Complainant-Company. For the sake of convenience, the Petitioner in OP No.6/2015 would be referred to as the Complainant, henceforth.

5) The material facts required to understand the issues involved in the present case may be stated as follows :

(a) That the Complainant constructed, in the year 2014, a 4.8 MW capacity Wind Power Project, located at Harathi Village, Gadag Taluk, within the jurisdiction of the 1st Respondent (HESCOM). Out of the 4.8 MW capacity Wind Power Project, 4 MW capacity of Wind Power Turbines were commissioned on or before 31.05.2014 and 0.8 MW capacity Wind Power Turbine was commissioned on 11.09.2014. The energy generated from the first commissioned Wind Power Turbines from its Effective Dates of commissioning was being injected to the Sub-Station of the 1st Respondent (HESCOM). The Complainant applied for grant of Open Access, vide its letter dated 05.03.2014, to wheel the energy to its Captive Consumption Point, bearing R.R.No.EHT-28, located within the jurisdiction of the

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2nd Respondent (GESCOM). The grant of Open Access was concluded by executing a Wheeling and Banking Agreement (W&BA) dated 13.10.2014. Thereafter, the energy was being wheeled to the Captive Consumption Point of the Complainant and the rights and liabilities of the parties were being adjusted, as per the terms of the W&BA. The energy injected, earlier to the execution of the W&BA dated 13.10.2014, was not accounted for by the Respondents. After hearing the rival contentions, this Commission held that there was a delay in the execution of the W&BA on the part of the Respondents and other authorities concerned. Therefore, the Order dated 10.12.2015 was passed by this Commission, as noted above.

(b) Subsequent to the passing of the Order dated 10.12.2015 by this Commission, the Respondents have not complied with the directions issued in the said Order. The Complainant claims that, his request to the Respondents to comply with the directions did not yield any fruitful results. Therefore, the Complainant has filed the present Complaint on 16.01.2017.

(c) The 2nd Respondent (GESCOM), in its Statement of Objections dated 15.05.2017, has contended as follows :

(i) That, the 1st Respondent (HESCOM) informed this Respondent that no energy was wheeled to R.R.No.EHT-28 of the Complainant, during the period from June, 2014 to September, 2014; that, the State Load

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Despatch Centre (SLDC) informed that the Wheeling and Banking transactions of the Complainant were being carried out at the 1st Respondent (HESCOM)'s end; and that, it did not have any details of the said transactions;

- (ii) That, in the absence of the information regarding the quantity of energy wheeled to R.R.No.EHT-28, this Respondent was not in a position to comply with the directions given by this Commission in the Order dated 10/12/2015 in OP No.6/2015;
- (iii) That, the account of the Consumer, viz., R.R.No.EHT-28, and the energy balance for the year 2014-15 were already finalized, based on which, a detailed Tariff Order was also issued, therefore, the question of refund / payment of any amount to the Complainant towards the consumption bills pertaining to R.R.No.EHT-28 for the period from June, 2014 to September, 2014, assuming that the wheeling had already taken place from 01.06.2014, does not arise;
- (iv) That, there is no wilful or intentional disobedience of the directions given in the Commission's Order in OP No.6/2015.

Therefore, the 2nd Respondent (HESCOM) has requested for dismissal of the Complaint.

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(d) The 1st Respondent (HESCOM) pleaded for time to settle the dues and to file its version. However, the 1st Respondent (HESCOM) neither settled the dues nor filed its Statement of Objections. The 1st Respondent (HESCOM) filed its written submissions on 07.09.2017, after the case was reserved for Orders. The gist of the its written submissions are as follows :

(i) That, as per Article 6.1.1 of the W&BA dated 13.10.014, the generator is required to issue a requisition indicating the quantum of energy that it would propose to wheel in the following month and this is commonly referred to as the 'C' Form. That, it is only after receipt of this 'C' Form, the Distribution Licensee can issue a 'B' Form, acknowledging the quantum of energy actually injected; that, in the present case, the 'C' Forms were issued only in June, 2017, in response to the letter dated 30.05.2017, therefore this Respondent cannot be fastened with any liability;

(ii) That, unless the 2nd Respondent (GESCOM) issued an endorsement confirming the receipt of the quantum of energy wheeled by the Complainant, this Respondent would not be in a position to make adjustments of the payments to the Complainant.

Therefore, the 1st Respondent (HESCOM) has requested that the complaint against it be dismissed.

- 6) We have heard the learned counsel for the parties in the matter. The Complainant as well as the Respondents have filed their written submissions of their oral arguments.

- 7) From the rival contentions, the following issues would arise for our consideration:
 - (1) Whether the directions issued by this Commission against the Respondents, in its Order dated 10.12.2015 in OP No.6/2015, could not have been complied with, as contended by the 2nd Respondent (GESCOM)?

 - (2) If Issue No.(1) is held in the negative, what should have been the appropriate further steps that should have been complied with by the Respondents?

 - (3) Whether the Respondents have contravened the directions issued by this Commission in its Order dated 10.12.2015 in OP No.6/2015?

 - (4) What Order?

- 8) After considering the material placed on record and the submissions of the parties, our findings on the above issues are as follows :
- 9) **ISSUE No.(1):** *Whether the directions issued by this Commission against the Respondents, in its Order dated 10.12.2015 in OP No.6/2015, could not have been complied with, as contended by the 2nd Respondent (GESCOM)?*
- ISSUE No.(2):** *If Issue No.(1) is held in the negative, what should have been the appropriate further steps that should have been complied with by the Respondents?*

As Issue Nos.(1) and (2) are interconnected, accordingly, we deal with these two issues together below.

- (a) The 2nd Respondent (GESCOM) has raised the following points to contend that the directions given by this Commission in its Order dated 10.12.2015 in OP No.6/2015 could not be complied with.
- (i) That, there was no wheeling of energy during the period from June, 2014 to September, 2014 and for these months the HT consumer of EHT-28 at Hosapete had consumed the energy supplied by this Respondent and for these months, this Respondent had raised the regular consumption bills under the HT-2(a) tariff and the consumer had paid the amounts due under these bills. Further that, the energy

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so supplied to the EHT-28 installation was purchased by this Respondent for the year FY14-15 and for which, the energy balance exercise was carried out by all the Electricity Supply Companies (ESCOMs) and the Demand, Collection and Balance (DCB) was finalized long back;

(ii) That, any payment to be made by this Respondent, to comply with the Order of the Commission, would amount to double payment causing huge financial loss to it;

(iii) That, as on the dates of signing of the Objections Statement of this Respondent (i.e., on 15.05.2017), no information had been received to show that what quantum of energy had been injected at the 1st Respondent (HESCOM)'s area and what quantum of energy had been wheeled to R.R.No.EHT-28. That, in the absence of these particulars, this Respondent cannot be fastened with any liability.

(b) None of the above grounds, stated by the 2nd Respondent (GESCOM), is sustainable to contend that the directions, issued in the Order of this Commission in OP No.6/2015, could not be complied with by the 2nd Respondent (GESCOM). There was no wheeling of energy for the months from June, 2014 to September, 2014, as the W&BA was executed on 13.10.2014. The Commission noted that, as there were laches on the part of the authorities concerned in granting the Open Access and in executing

the W&BA, it was ordered to consider the wheeling, as if it had taken place from 01.06.2014. In the absence of the W&BA, the HT consumer of EHT-28 was billed under the HT-2(a) tariff for the energy, consumed during these months. The direction of the Commission shows that, for these months, considering the energy injected at the 1st Respondent (HESCOM)'s jurisdiction and the energy drawn at the 2nd Respondent (GESCOM)'s jurisdiction, the rights and liabilities of the parties shall be ascertained afresh and adjusted, accordingly, as if there had been wheeling and banking in terms of the W&BA dated 13.10.2014. Such an exercise could be done even at a future date, as the quantum of energy injected and the quantum of energy consumed are very well available for those months. The terms contained in the W&BA dated 13.10.2014 do not contemplate issuance of any 'C' Form proposing the quantum of energy to be wheeled for the following month. The definition of 'Banking', contained in the W&BA dated 13.10.2014 makes the above fact very clear. The said definition of 'Banking' reads thus:

*“**Banking**; means the facility by which electrical energy remaining unutilized by the 'Exclusive' or 'Non-Exclusive' Consumer or 'Captive Consumer' out of the energy injected by the Company into the transmission and/or distribution system of Corporation/ESCOM/s, which is allowed to be utilized for wheeling to 'Exclusive' or 'Non-Exclusive' Consumers of the Company or Captive Consumer for later use, as per the terms and conditions set forth in this agreement.”*

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The said W&BA also provides for dealing with different situations where the energy consumption by a consumer is less or more than the energy injected, for adjusting the rights of the parties.

- (c) Where wheeling of the energy is allowed, the generator is permitted to use the network of the utility for conveyance of the electricity generated by it to any Open Access consumer on payment of certain charges to the utility. Therefore, it is nothing but the generator transmitting the energy generated by it to its consumer on payment of certain charges to utility for making use of its network. Here, the utility does not sell any energy to the Open Access consumer and it collects only the Open Access charges and taxes, etc., as per law. Where the Injection Point and the Drawal Point are in different ESCOMs in a Wheeling and Banking transaction, necessary adjustment entries are to be made during the energy balancing by the Nodal Agency reflecting the credit of unutilized banked energy, deemed to have been purchased, to the account of the Injection Point ESCOM and the credit of energy consumed by the Open Access consumer, to the extent of the wheeled energy, to the account of the Drawal Point ESCOM. On the other hand, in the case of supply of the energy by a Distribution Licensee to its consumer, the energy purchased by the Distribution Licensee is supplied to its consumer by charging the approved tariff. When there is a direction to treat the energy supplied to a HT consumer of EHT-28 installation as 'wheeled energy', treating the transaction as 'Wheeling and Banking', the

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energy supplied to the said consumer would not amount to supply of energy by the 2nd Respondent (GESCOM). The consumption of the HT consumer of EHT-28 installation would amount to consuming the energy that was wheeled by the generator to the Consumption Point. Therefore, when there is a direction to treat the consumption of a HT consumer of EHT-28 installation for the months from June, 2014 to September, 2014, as if wheeling had taken place from 01.06.2014, necessary adjustment entries are to be made. The Commission is of the considered opinion that such an adjustment of entries could be carried out, even after the closure of the energy balance exercise (DCB) of that financial year.

- (d) The W&BA entered into between the parties provides for payment of 85% of the latest generic tariff, applicable to the relevant category of RE power, to the generator by the ESCOM in whose jurisdiction the power is injected by the generator, for the banked energy remaining unutilized at the end of a year (Article 5.7 of the W&BA). The effect of this provision is that the ESCOM concerned is deemed to have purchased the unutilized banked energy at the end of a year. Therefore, while doing the energy balance exercise, this purchase of energy, by the ESCOM concerned, should also be taken into account. In the present case, the Injection Point was within the jurisdiction of the 1st Respondent (HESCOM) and, therefore, the banked energy, which remained unutilized as at the end of 31.03.2015, should be considered as having been purchased by the 1st Respondent (HESCOM) for FY14.

(e) The grounds raised by the 1st Respondent (HESCOM), in its written submissions, are also not valid. The contention that, Article 6.1.1 of the W&BA dated 13.10.2014 requires the generator to issue a requisition indicating the quantum of energy that it would propose to wheel in the following month, is not correct. Article 6.1.1 of the W&BA provides for submitting a list of consumers, to whom it proposes to wheel the energy, indicating the quantum of power to be wheeled to such consumers, at least 15 days prior to the commencement of wheeling. The submission of the list contemplated is for one time, before the commencement of the wheeling but not on a month-on-month basis, indicating the quantum of energy intended to be supplied to the consumer. The 'C' Form, which is said to be in vogue in the Wheeling and Banking transactions as per the internal guidelines of the ESCOMs, is not contemplated under the W&BA. The procedure of issuing a 'C' Form, indicating the quantum of energy to be wheeled in the following month by the generator, cannot create a new right or liability between the parties, contrary to or inconsistent with the rights and liabilities that would arise from the terms of the W&BA dated 13.10.2014.

(f) The further contention of the 1st Respondent (HESCOM) that, for the months of June, 2014 to September, 2014, the Complainant has not submitted the 'C' Forms and in the absence of the 'C' Forms, the energy accounting

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could not be done, is also incorrect for the reasons already stated above. After service of Notice of the present Complaint, the 1st Respondent (HESCOM) had called upon the Complainant to submit the 'C' Forms for the period from 01.06.2014 to 30.09.2014 and the same was furnished to it on 13.06.2017 and thereafter, the 1st Respondent (HESCOM) issued an Official Memorandum confirming the quantum of energy to be wheeled, as indicated in the 'C' Forms for the period from June, 2014 to September, 2014. The 1st Respondent (HESCOM) states that, after issuing the Official Memorandum, it cannot be made liable for the delay in accounting of the energy till the 2nd Respondent (GESCOM) confirms the receipt of the quantum of energy wheeled by the Complainant. As already noted above, the direction is, to treat the injection of power by the Captive Generator and the consumption of it, or a part thereof, by the Captive Consumer, as if the Wheeling and Banking had started from 01.06.2014, though there was no such agreement till 13.10.2014. Therefore, following the issuance of 'C' Form formality would be of no use. The rights and liabilities of the Respondents (HESCOM and GESCOM) should have been adjusted, as already noted above, in the energy balancing. Therefore, the 1st Respondent (HESCOM) cannot contend that it has not received any confirmation from the 2nd Respondent (GESCOM) confirming the quantum of energy wheeled by the Complainant.

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- (g) For the above reasons, we answer Issue No.(1) in the negative and Issue No.(2), as above.
- 10) **ISSUE No.(3):** *Whether the Respondents have contravened the directions issued by this Commission in its Order dated 10.12.2015 in OP No.6/2015?*
- (a) The directions in OP No.6/2015 were issued by this Commission, by its Order dated 10.12.2015, directing the Respondents to take into account the quantum of energy injected at the Injection Point of the Project of the Complainant and the energy drawn at the Captive Consumption Point of the Complainant, for the period from 01.06.2014 to 31.03.2015 and raise the monthly energy bills in terms of the W&BA dated 13.10.2014, as if the wheeling had taken place on 01.06.2014 and to refund the excess amount collected, if any, to the Petitioner (Complainant) within two months from the date of the said Order.
- (b) Soon after passing of the Order dated 10.12.2015, the 1st Respondent (HESCOM), by letter dated 14.01.2016, informed the Complainant to indicate its concurrence regarding the way in which it suggested for settlement of the unutilized banked energy for the period from 01.06.2014 to 31.03.2015. The 1st Respondent (HESCOM) suggested to treat the quantum of wheeled energy from 01.06.2014 to 30.09.2014, as 'Nil' and to treat the energy injected during this period as 'Banked Energy'. The Complainant

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countered the said suggestion and stated that, the energy consumed at the Captive Consumption Point, during each of these months, has to be treated as the quantum of energy wheeled in those respective months and the energy charges paid by the Captive Consumer for these months should be refunded duly deducting the Open Access charges and other charges. Such reply was given by the Complainant, by its letter dated 02.03.2016. Thereafter, by letter dated 26.08.2016 (ANNEXURE-L to the Petition) the 1st Respondent (HESCOM) requested the 2nd Respondent (GESCOM) to confirm the quantum of energy consumed by the HT consumer of R.R.No.EHT-28, for the period from 01.06.2014 to 30.09.2014. But, the 2nd Respondent (GESCOM) did not give any reply to it. Thereafter, both the Respondents kept quiet and did not answer the several letters written by the Complainant to comply with the Commission's Order dated 10.12.2015. The Complainant itself had supplied copies of the energy bills issued to the Captive Consumer by the 2nd Respondent (GESCOM), for the period from 01.06.2014 to 30.09.2014 containing the required particulars. Therefore, the Respondents could have arrived at the unutilized banked energy, as on 31.03.2015, and could have easily calculated the amount to be refunded to the Complainant, which was already collected towards the energy bills by the 2nd Respondent (GESCOM) for these months, when there was no W&BA.

- (c) The Respondents have taken untenable contentions in the present proceedings. If there was any difficulty for them to comply with the Order

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they could have approached this Commission, seeking further clarifications of the directions given in the Commission's Order dated 10.12.2015. The Commission is, therefore, of the considered view that, the directions given in the said Order of the Commission could have been complied with by the Respondents, but there were no genuine efforts on their part to comply with the same. Therefore, we answer Issue No.(3) in the affirmative.

11) **ISSUE No.(4):** *What Order?*

- (a) The liability of the Respondents, to refund the amounts found due to the Complainant, is joint and several. The 1st Respondent (HESCOM) has to pay 85% of the generic tariff for the banked energy remaining unutilized at the end of the year as on 31.03.2015, as the said quantum of energy is deemed to have been purchased by the 1st Respondent (HESCOM). The 2nd Respondent (GESCOM) is liable to refund the energy charges for the quantum of energy it supplied to the Captive Consumer when there was no W&BA, for the period from 01.06.2014 to 30.09.2014, as the quantum of energy it supplied to the Captive Consumer would have to be treated as the energy wheeled to the Consumption Point of the Captive Consumer.
- (b) The Calculation Sheets produced by the Complainant would show that the quantum of unutilized banked energy at the end of 31.03.2015 would be 6,08,969 units and 85% of the generic tariff of such energy would work out to

`21,74,018/- and an amount of `1,13,06,320/- is to be returned by the 2nd Respondent (GESCOM), as a consequence of the deemed wheeling of energy consumed by the Captive Consumer. The claim for refund of the amounts, as noted above, by the Complainant appears to be correct. The liability of both the Respondents are joint and several. Therefore, we deem it proper that, both the Respondents should pay the total amounts due, for the present, in equal shares, without waiting for the energy balance exercise to be carried out by the SLDC or such other competent authority, in this regard. After the energy balance exercise is done, both the Respondents may effect necessary adjustments, *inter-se*.

- (c) Considering the facts of the case, this Commission deems it proper to grant a reasonable time to the Respondents to calculate the actual amounts payable to the Complainant as explained above, and thereafter, to consider whether to impose penalty or not, on the Respondents.
- (d) For the foregoing reasons, we pass the following:

ORDER

- (1) The Respondents (HESCOM and GESCOM) have contravened the directions, issued in the Order dated 10.12.2015 of this Commission in OP No.6/2015, without there being any valid grounds;

- (2) The Respondents (HESCOM and GESCOM) shall arrive at the actual amount to be refunded to the Complainant, taking into account the quantum of energy injected at the Injection Point of the Wind Power Project of the Complainant and the energy drawn at the Captive Consumption Point of the Captive Consumer, for the period from 01.06.2014 to 31.03.2015, in terms of the W&BA dated 13.10.2014, as if the wheeling of energy had taken place from 01.06.2014 and shall pay the amount found to be due, in equal shares, upon the Complainant complying with the direction given at Sl.No.(4) below and file compliance of this direction before this Commission within 04 (four) weeks from the date of this Order;
- (3) The Order regarding the imposition of penalty on the Respondents (HESCOM and GESCOM) under Section 142 of the Electricity Act, 2003 would be passed after the Respondents (HESCOM and GESCOM) file their compliance report, as per the directions given at Sl.No.(2) above;
- (4) The Complainant shall file, before this Commission, the relevant document(s) in proof of taking over of the assets and liabilities of the Partnership Firm, viz., M/s. R.B. Seth Shreeram Narasingdas, which filed OP No.6/2015, within 15 (fifteen) days from the date of this Order; and,
- (5) Office is directed to list the case for further Orders on 22.03.2018.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER