

KARNATAKA ELECTRICITY REGULATORY COMMISSION

No.9/2, 6th & 7th Floor, Mahalaxmi Chambers, M.G.Road, Bangalore-560 001

Dated : 9th Oct. 2013

Present:	Shri M.R. Sreenivasa Murthy	Chairman
	Shri Vishvanath Hiremath	Member
	Shri K. Srinivasa Rao	Member

**IN THE MATTER OF
"WHEELING AND BANKING CHARGES FOR RENEWABLE ENERGY GENERATORS"**

ORDER

- 1) This Commission, by its Order dated 9.6.2005, had determined the Wheeling and Banking charges at 5% and 2%, respectively, of the energy injected into the grid for Mini-Hydel and Wind Generators. Further, this Commission had ordered that to avail the banking facility, the generators had to pay the difference in UI charges prevailing at the time of injection and drawal of electricity.
- 2) In the meetings held with the ESCOMs by the Commission, the ESCOMs had expressed that the system of concessional Wheeling and Banking charges fixed by this Commission is resulting in a strain on their finances and therefore the same needs to be reconsidered. There were also requests from some RE generators for introduction of a regime of non-concessional Wheeling and Banking charges, as the present system rendered them ineligible for participation in the Renewable



- Energy Certificates Market as per the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010. Therefore, the Commission, on 20.6.2013, issued a Discussion Paper proposing: (a) levy of the Wheeling and Banking charges for all the Renewable Energy sources of the State on par with the charges applicable to the non-Renewable Energy generating companies; and (b) to discontinue the yearly banking facility now provided, and in its place, to introduce monthly banking, with excess energy remaining at the end of the month to be purchased by ESCOMs, at 85% of the generic tariff or at APPC fixed by this Commission for similar generating plants.
- 3) In response to the Discussion Paper, Associations of Generators and also some individual Generators have sent their comments / views (List of whom is enclosed as **ANNEXURE-1**). In order to elicit further views, this Commission also held a public hearing on 4.9.2013, after duly notifying the same in the Newspapers. Several persons (whose names are indicated in **ANNEXURE-2**) appeared and made oral submissions.
- 4) It is submitted on behalf of some of the Generators that the proposal to modify the Wheeling and Banking charges is legally untenable. According to them, the fixation of Wheeling and Banking charges done in the Commission's Order dated 9.6.2005 has continued in every subsequent Tariff Order, including the latest one issued on 6.5.2013, and the latest Order dated 6.5.2013 continues to be in force



up to 31.3.2014 as the same has become final and binding. In the absence of any Petition or Application by ESCOMs for modification of the Tariff Order, this Commission may not modify the same. Further, it is submitted that to contemplate modification of the Tariff Order dated 6.5.2013 before the same came to an end, no extraordinary situation has been pointed out by ESCOMs. It is also submitted that this Commission had fixed the Wheeling and Banking charges at concessional rates after due consideration of the nature and benefit of RE generation and also keeping in view its function of promoting generation of renewable energy. If the proposal made in the Discussion Paper is implemented, the same will be against the spirit of the provisions of the Electricity Act, 2003 and will discourage the RE Generators from new investment, and the viability of the existing units may also be affected.

- 5) Some of the Generators, during the course of hearing, also suggested that there should be separate Wheeling and Banking charges for those who desire to avail the benefit of Renewable Energy Certificates (REC) and those who do not wish to avail the REC benefit. Further, it has been suggested that the transmission charges fixed by this Commission, which are on 'Mega Watt' basis, have to be changed to 'Mega Watt Hour' basis and the Cross-Subsidy Surcharge levied in the Tariff Order needs to be withdrawn, as the same is affecting them adversely.
- 6) Shri Sriranga, learned counsel appearing for the ESCOMs, strongly supporting the proposals made in the Discussion Paper, submitted that this Commission, under



Section 62 of the Electricity Act, 2003, has the authority to modify the Tariff Order, including the Wheeling and Banking charges fixed therein before 31.3.2014. He drew the attention of this Commission, in support of his submission, to the following Judgments :

- (a) (2010) 4 SCC 603 – *PTC India Ltd. –Vs- CERC*;
- (b) (1992) 2 SCC 124 - *State of U.P. and others*;
- (c) Order dated 11.11.2011 of the Hon'ble Appellate Tribunal for Electricity in Appeal No.1/2011 in the *suo motu proceedings*.

He further submitted that the present Wheeling and Banking charges do not adequately compensate the ESCOMs for the cost they incur to transmit the electricity generated by the RE Generators, as they are scattered over a geographically wide area in the State. He further submitted that most of the Wind Generators generate infirm power during off-peak hours and draw power during peak hours and this is burdening the ESCOMs who have to purchase electricity at higher rates during peak demand period. As regards banking charges, he supported the proposal made in the Discussion Paper of doing away with annual banking and bringing in monthly banking.

- 7) We have considered the submissions made on behalf of RE Generators and the counsel appearing for the ESCOMs on the proposals made in the Discussion Paper and the Commission's Orders made on 9.6.2005 and thereafter, including the one issued on 6.5.2013.



- 8) In our view, the contention raised on behalf of the Generators that this Commission has no power to amend the Tariff Order, once issued, is not tenable. Under Section 62 of the Electricity Act, 2003, in particular Section 62(4), this Commission has power to modify the Tariff Order, even more than once in a Financial Year, as the word, 'ordinarily' has been used in Section 62(4) of the Act. As per the Oxford Dictionary, the expression, 'ordinarily' means 'normal' or 'usual'. It is held by the Hon'ble Supreme Court in the case reported in **(2001) 1 SCC 315**, in the case of *Eicher Tractors -Vs- Commissioner of Customs*, that 'ordinarily' occurring in Section 14(1) of the Customs Act does not include 'extraordinary' or 'special circumstance'. The Hon'ble High Court of Andhra Pradesh, in the case of *Re-Putta Ranganayakalu*, reported in **AIR 1956 Andhra 161**, has held that, "the plain and popular meaning of the word, 'ordinarily' means usually, 'normally', as contrasted with 'extraordinarily'." Therefore, under Section 62(4) of the Act, if there are justifiable, exceptional reasons, this Commission has power to modify the Tariff Order issued under Section 62 more than once during the Financial Year.
- 9) The next question, therefore, that arises is, 'whether there are any extraordinary circumstances to warrant modification of the Tariff Order dated 6.5.2013, which is only just 4 (four) months' old?'
- 10) In our view, the ESCOMs have not placed before us adequate material justifying the modification of the Tariff Order at this juncture. For example, they have not



given details of the adverse impact of the present Wheeling and Banking charges on their finances during the previous or current financial year.

- 11) The cases cited on behalf of the ESCOMs are only on question of law and we are in respectful agreement with the question of law as settled therein. However, these do not substantiate the submissions made on behalf of the ESCOMs in the absence of any factual data or material in support of the change of Wheeling and Banking charges presently fixed.
- 12) As submitted during the course of the public hearing, any change in the Wheeling and Banking charges already fixed requires deeper examination of the facts and material circumstances prevailing in the State, besides the financial impact of the same, both on the Generators and the Utilities. In the absence of material data in this regard, it is difficult at this juncture to modifying the Tariff Order and implement the proposals made.
- 13) Therefore, we decide not to modify the Wheeling and Banking charges fixed in the Commission's Tariff Order dated 6.5.2013 for RE Generators, who are selling electricity within the State. However, this shall not bar the ESCOMs from filing an application for re-fixing the Wheeling and Banking charges, or doing away with the annual banking by filing a proper petition or proposal, along with supporting material, while filing the ARR and ERC applications, which have to be filed on or



before 30.11.2013, so that the same can be considered by the Commission in accordance with law and pass appropriate orders.

- 14) As regards the submissions made on behalf of some of the Generators, who desire to avail the REC benefit, we are of the view that Captive Power Plants who are eligible for accreditation under the prevailing KERC (Procurement of Energy from Renewable Sources) Regulations, 2011, cannot have both the concessional Wheeling and Banking charges and the REC benefit. Therefore, if such Captive Power Plants want to opt for availing the REC benefit, then they will have to pay the normal Wheeling and Banking charges and other charges as determined by the Commission in the Tariff Orders from time-to-time.
- 15) On the submissions made for changing the basis for transmission charges and withdrawal of Cross-Subsidy Charge, we are of the view that the same cannot be considered in the present proceedings, as the Discussion Paper did not make any proposal in this regard.
- 16) In the light of the above discussions, it is ordered as follows :
- (i) The Wheeling and Banking charges fixed in the Commission's Order dated 9.6.2005 and continued thereafter, including in the Commission's Tariff Order dated 6.5.2013, shall continue till 31.3.2014 in respect of RE



generators, except captive generators opting for participation in the REC mechanism.

- (ii) Captive Generators, who desire to avail of the benefit of Renewable Energy Certificate mechanism, shall be entitled to exercise an option to that effect. On exercise of such an option, they shall be liable to pay the normal transmission, wheeling and other charges as determined in the Tariff Orders in force. They shall be allowed banking facility, which shall be on a monthly basis instead of annual basis, as set out in the Commission's Discussion Paper referred to above. The excess energy injected at the end of each calendar month shall be deemed to have been purchased by the Distribution Licensee of the area where the generator is situated and shall be paid for at the APPC rate determined by the Commission from time-to-time.


(M.R. SREENIVASA MURTHY)
CHAIRMAN


(VISHVANATH HIREMATH)
MEMBER


(K. SRINIVASA RAO)
MEMBER

Annexure 1

List of Persons who have made written submissions.

1. Indian Wind Power Association (Karnataka state council).
2. Indian Wind Energy Association
3. Wind Independent Power Producers Association.
4. Renewable Energy Developers Association of Karnataka.
5. Vaayu(India) Power corporation pvt Ltd
6. Karnataka power Transmission Corporation.
7. BESCO
8. MESCOM
9. CESC
10. GESCOM
11. HESCO
12. Power Company of Karnataka.
13. Government of Karnataka.
14. Karnataka renewable energy development Ltd.
15. Moser Baer Engineering and Constructions Ltd.
16. Doddanavar Global Energy Pvt Ltd.
17. Greenko Energies Pvt Ltd.
18. Confederation of Indian Industry.
19. Koganti Power Ltd.
20. Welspun Energy Ltd.
21. GE India Industrial Pvt Ltd.
22. Acciona Energy India Pvt Ltd.
23. ITC Ltd
24. Green infra Ltd
25. Manipal Health Systems Pvt Ltd.
26. Jindal Aluminum Ltd.
27. Aston Field.
28. First Solar Power India Pvt Ltd.
29. Orange Powergen Pvt Ltd.

Annexure 2

List of persons who made oral submissions during the hearing held on 4th Sep 2013.

Sriyuths

1. K.R.Sreenivas, WIPPA
2. S.S.Murali, Mytrah Energy
3. Manish Varma, InWEA
4. C.Purushotham, Greenko Energies
5. M.G.Balaji, Saroj Energy
6. Shankar Nesargi, DGEPL
7. Vikas Kumar, Renew Power
8. Sriranga.S, Advocate for KPTCL, BESCO, CESC, MESCOM & GESCOM
9. M/s.Vaayu Power Corporation Pvt Ltd (Made written Submissions)