



**IN THE HON'BLE TAMIL NADU ELECTRICITY REGULATORY
COMMISSION
CHENNAI**

9th DAY OF JUNE 2006

PRESENT:

The Hon'ble Chairman Mr.A.Balraj, I.A.S., Retd., - Chairperson

The Hon'ble Member Mr.S.Thangarathnam - Member

and

The Hon'ble Member Mr. B.Jeyaraman - Member

Dispute Redressal Petition No. 1 of 2006

M/s. Arkay Energy (Rameswaram) Ltd.,
Rep. by its Director Sri G. Manoharan,
GF 1 A, Prince Villa,
15, Rajamannar Salai,
T. Nagar Chennai 600 017. : Petitioner

-vs-

1. Tamil Nadu Electricity Board,
Rep. by its Chairman.
800 Anna Salai, Chennai 600 002. : Respondent

2. Sai Regency Power Corporation Pvt. Ltd.
Second Respondent is impleaded as per Order dated 2.6.2006 in
M.P. No. 1 / 2006.

This petition coming on for final orders before this Commission, upon perusing the petition, the affidavit filed in support thereof and the Implead Petition MP 1 of 2006 in the above DRP No. 1 of 2006, the counter affidavit of the Respondent Board and all other connected records and after hearing the

arguments of Learned Sr. Counsel Tvl. R. Muthukumarasamy and Somayaji and the Learned Counsel for Respondent Board and having stood over for the consideration of this Commission till this day, this Commission pronounces the following

ORDER

1. Prayer of the Petitioner

The prayer in DRP No. 1 of 2006 is that this Hon'ble Commission may be pleased to set aside Clause 11 of the Wheeling Order dated 17.2.2006 and provide for uninterrupted evacuation of power from the Petitioner's unit through the Respondent Board's grid in accordance with the original power evacuation scheme vide B.P. No. 121 dated 9.3.2005

2. Contentions of Petitioner

In the Petition, the contentions of the Petitioner are briefly as follows:

- (a) In B.P. No. 121 dt.9.3.2005, the Respondent Board accorded approval to the Petitioner's Project and permission was granted to evacuate power for the load of 65 MW in accordance with the provisions of Electricity Act 2003 and in consonance with section 51 of the Indian Electricity Act 1910.
- (b) When all works were completed except the 110 KV SC line from the Petitioner unit to the sanctioned Velathur 230 KV sub station, the Respondent Board issued the Wheeling approval letter dated 17.2.2006 which is contrary to original approval granted under BP No. 121 dt. 9.3.2005 and the statutory provisions contained in the Electricity Act 2003 as well as the Intra State Open Access Regulations 2005.
- (c) Clause 11 of the Wheeling Order stipulating that the available power evacuation capacity have to be shared by the Petitioner plant and another CPP, M/s. Regency Power Corporation Limited by allowing

the other CPP to generate on alternate 15 days brought about a severe restriction of limiting the petitioner unit to generate only for 15 days in a month and thus forcing them to stop their plant for next 15 days.

- (d) The Respondent Board's approval vide B.P. No. 311 dated 28.2.2006 issued to the said M/s. Regency Power Corporation Limited specifically contemplated grid connectivity from their plant to the proposed 230 KV sub station at Valathur and not to the existing line through which the power is being evacuated by the petitioner presently, viz. to Melakavanoor 230 KV / 110 kV via Keelakarai Mandapam Line.
- (e) The Respondent Board issued two amendments to the original B.P. 311 dated 15.7.2005 vide BP No. 136 dated 25.3.2006 and BP No. 172 dated 25.4.2006 to the said M/s. Regency Power Corporation Limited directly affecting our right to evacuate power on a continuous basis.
- (f) The evacuation of power through 110 KV DC line panther conductor on the existing Keelakari – Mandapam 110 KV line is specifically approved for the benefit of the Petitioner under the original order issued and as such the same cannot be modified arbitrarily so as to accommodate some other unit which has not even started generating power as of this date.

3. Contentions of the Respondent Board

The contentions of the Respondent Board in their Counter Affidavit are briefly as follows:

- (a) Wheeling approval was issued for an installed capacity of 65 MW with a condition to limit the generation to 3 or 4 machines or say 35 MW to the Applicant is not contrary to BP 121 dt. 9.3.2005 as the

said BP is only an administrative approval and the wheeling approval was issued as per the Electricity Act 2003 and as per Intra State Open Access Regulations 2005 (para 7.1 of the counter)

- (b) The TNEB being the State Transmission Utility has got every right to determine the quantum of power evacuation facility through its grid (para 8 of the counter)
- (c) In the above BP it has been clearly mentioned that a 110 KV SC line on SC tower with panther conductor has to be erected from M/s. Arkay Energy Ltd. (CPP) (now Arkay Energy (Rameswaram)'s Ltd.) to the sanctioned Valuthur 230 / 110 KV SS for a route length of 8 kms for power evacuation. Hence it is clear that without commissioning of Valuthur 230 KV sub station and the above lines full generation of 65 MW could not be accommodated.
- (d) The lines once laid are the property of TNEB even though the cost has been borne by the Petitioner, and TNEB is duty bound to act judiciously, in such a manner that the available evacuation facilities are shared by all the players in the field without giving any room for monopoly to any particular company or group of companies.
- (e) The Electricity Act 2003 in the section 9 of captive generation item, it stipulates that every person who has contracted a captive generating plant and maintenance and operate such plants shall have the rights to open access for the purpose of carrying electricity for their captive generating plants to the destination of his use "provided that such open access shall be subject to the availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility as the case may be"
- (f) Further the Petitioner has submitted his application before the issue of Open Access Regulations 2005. Hence the Petitioner's claim that

they have to be treated on the basis of first come first served basis cannot be accepted.

- (g) The lines envisages for evacuation facility by the petitioner lines are grid lines and not dedicated line to / from the Company and power flow will be there in the line from all the generating stations.
- (h) It is also submitted that the Petitioner themselves agree but they have exceeded the generation without the consent from TNEB. This clearly shows that the Petitioner has scant respect for the wheeling agreement.
- (i) The Petitioner's contention that they have already generating is close to 65 MW in the existing lines, and hence they are to be permitted to generate full capacity cannot be accepted since there was lesser generation in that area during that time and the company has violated the agreement.

4. Contentions of Impleaded Respondent viz. M/s. Sai Regency Power Corporation Ltd.

M/s. Sai Regency Power Corporation Ltd. who has filed Implead Petition M.P. 1 of 2006 in DRP 1 of 2006 has contended as follows:

- (a) The TNEB had accorded permission to it to evacuate power on fortnightly basis by rotation on 15 days per month and the applicant in Lr. CE/Comm/EE1/AEE2/D 141/06 mdt.17.2.2006 (para 3 of the petition)
- (b) As per clause 13 of the agreement dt. 18.2.2006 entered into by the Applicant with the TNEB, both Sai Regency Power Corporation Ltd. and the Applicant shall share the available evacuation capacity for 15 days each in a month alternatively.(para 4 of the petition)
- (c) The applicant has signed the agreement with TNEB after understanding the contents of the agreement. (para 5 of the petition)

5. Points in issue

The following points in issue arise for consideration of this Commission, namely:

- (i) Whether cl. 11 of the wheeling letter dated. 17.2.2006 is violative of Regulation 7 (e), (f), (g) of TNERC Intra State Open Access Regulations 2005 (hereinafter shortly referred to as Open Access Regulations) as contended by the Petitioner?
- (ii) Whether cl. 13 of the agreement for wheeling of power entered into by the Petitioner with the Respondent Board which incorporated cl 11 of the wheeling letter dated 17.2.2006 is violative of regulation 7 (e) (f) and (g) of the said Open Access Regulations?
- (iii) Whether the Impugned cl 11 of the Wheeling letter dt. 17.2.2006 is arbitrary and violative of Article 14 of the Constitution of India as contended by the Petitioner?
- (iv) Whether the Petitioner is entitled to the relief prayed for in the second part of his prayer viz. providing for uninterrupted evacuation of power from its unit to the grid of Respondent.

6. First point in issue

The first point in issue is whether cl. 11 of the wheeling letter dated. 17.2.2006 is violative of cl. 7 (e), (f) and (g) of the Open Access Regulations. With reference to the above point in issue, it would be relevant to extract both cl 11 of the wheeling letter dated 17.2.2006 and cl. 7 of Open Access Regulations.

Extract of Cl. 11 of the wheeling letter

"The Company have to bring only 3 or 4 machines into operation and back down their generation depending on the grid condition. This arrangement will

continue till the evacuation scheme proposed in the sanctioned power generation is completed. M/s. Arkay Energy (Rameswaram) Ltd. will also share with M/s. Regency Power Corporation Ltd. the available evacuation capacity till that time by allowing to generate on alternate 15 days by M/s. Arkay Energy (Rameswaram) Ltd. and M/s. Regency Power Corporation Ltd."

Extract of cl. 7 of Open Access Regulations

"7. Allotment Priority

The priority for allotment of open access shall be decided on the following criteria-

- (a) A distribution licensee shall have the highest priority in allotment of open access capacity irrespective of whether the open access request is for long term or short term.
- (b) Other long term open access customers shall have the priority next to the Distribution Licensee?
- (c) The short term open access customer shall have the priority next to the long term open access customer.
- (d) Allotment priority for short term open access customer shall be decided subject to capacity availability.
- (e) An existing open access customer shall have the priority higher than new open access customer under respective category provided he applies for the renewal thirty days prior to the expiry of existing term of open access.
- (f) Subject to clauses (a) to (e) above, the decision shall be based on the basis of first come first served.
- (g) During capacity availability constraints, the allotment can be made available to the next senior applicant, provided that the first senior is not able to limit his requirement to the available capacity and so on.

The Learned Senior Counsel Thiru R. Muthukumaraswamy contended that as per said cl. 7 of the Open Access Regulations, the first come should be first served. The Learned Sr. Counsel Thiru Somayaji on behalf of the Impleaded Respondent M/s. Regency Power Corporation Ltd. contended that the said Regency Company has filed its application on 2.7.2004 itself. The Respondent Board at para 12 of the Counter Affidavit stated as follows:

"Further the Petitioners have submitted his application before the issue of Open Access Regulations 2005" (para 12 of the counter)

From the above contentions, it is seen that both the Petitioner and the Regency Company have filed their applications prior to the date of commencement of Open Access Regulations 2005. For the interpretation of the expression "**first come first served**" occurring in the said Regulation 7 (f) of the Open Access Regulations, the date of application is not relevant. The main criteria for deciding as to who is the **first come** person within the meaning of the said cl 7 (f) of the said Regulations, is the readiness of the person with the installation of Captive Generating Plant as to feed into the Grid. The above is the intention in framing the said regulations by this Commission under the statutory provisions of the Electricity Act 2003. As per the contentions made in the petition, it is seen that it is the Petitioner who has completed all the works required to be done by the Respondent Board.

The above fact has not been disputed by the Impleaded Respondent viz. Regency Company or the Respondent Board. During the course of arguments, the Learned Sr. Counsel, Thiru R. Muthukumaraswamy has pointed out that even now the Regency Company has not completed the works as contemplated in the BP issued to the Regency. The above contention has not been disputed by the Learned Sr. Counsel representing Regency Company and the Learned Counsel representing the Respondent Board. The Respondent Board in para (ii) of its letter D 141 dt.17.2.2006 (page 2 of the typed set of Regency) has observed as follows:

"In the event of M/s. Regency Power Corporation Ltd., ready for synchronization by 23rd March 2006, M/s. Arkay Energy (Rameswaram) Ltd. shall stop generation from 23rd March 2006 till 15.4.2006 and you shall be allowed for evacuating the generation."

The above observation would clearly indicate that the Regency is not ready for evacuation of generated electricity. The very fact that the order dated 17.2.2006 according approval for wheeling of energy was issued first in time to the Petitioner would only show that the Petitioner is the first come person within the meaning of the said cl 7 of the said Open Access Regulations and as such the Petitioner should be served first in regard to the transmission facilities in preference to Regency which is not yet ready for evacuation of power so far. The said cl 7 (f) does not contemplate any sharing of transmission facilities. The expression **'first served'** in the said cl 7 (f) does not contemplate any sharing but it only means the affording of available transmission facility in full to the first come person. Further as per the expression namely, **'during capacity availability constraints, the allotment can be made available to the next senior applicant provided the first senior is not able to limit his requirement to the available capacity and so on'** in cl. 7 (g) of the said Regulations clearly contemplates that the allotment to the next senior applicant shall be made if the first person is not able to limit his requirement to the available capacity.

From the above provisions of cl 7 (g), it is clearly seen that the available capacity cannot be shared by the applicants but it should be exclusively given to the next senior applicant in case if the senior most is not able to limit his requirement to the available capacity. The sharing of available capacity between the Petitioner and Regency is against the spirit of the said cl 7 (f) and (g). In view of the above position, this Commission is of the view that the said cl 11 of the wheeling letter dated 17.2.2006 is contrary to the said cl 7 (f) and (g) as rightly contended by the Petitioner.

7. Second point in issue

The second point in issue is that whether cl. 13 of the agreement for wheeling of power entered into by the Petitioner with the Respondent Board which incorporated cl 11 of the wheeling letter dated 17.2.2006 is violative of regulation 7 (e) (f) and (g) of the said Open Access Regulations?

In regard to this point, the Learned Sr. Counsel Thiru Somayaji has pointed out that the Petitioner did not challenge the agreement though he has challenged cl. 11 of the wheeling letter. The Learned Sr. Counsel Thiru R. Muthukumaraswamy appearing for the Petitioner contended that the agreement was entered into due to pressure. In support of this contention, the Learned Senior Counsel Thiru R. Muthukumaraswamy in his written argument has stated as follows:

"As regards the allegations that the Petitioner had agreed to the condition, it is submitted that the same was forced upon the Petitioner contrary to the statute and statutory regulations and the Petitioner Company having invested huge amounts and the plant being ready was necessarily forced into such a position, but for which they could not have started generating power. Having regard to the statutory provision including the Open Access Regulations and the fact that the Petitioners were not in a bargaining position, the question of agreement being put against the Petitioner while questioning the above illegal condition would be of no avail and for this proposition, we rely upon the Judgement of the Supreme Court reported in 1997 (7) SCC page 251 **paras 9 and 43 to 56.**"

The Learned Senior Counsel Thiru Somayaji has pointed out that there are certain decisions of Supreme Court to the effect that the doctrine of promissory estoppel is not applicable to commercial transactions.

With reference to the above, it may be stated that the Learned Senior Counsel Thiru R. Muthukumaraswamy has not contended that the doctrine of promissory estoppel is applicable. He has only cited the above decision of Hon'ble Supreme Court in support of his proposition that the agreement is signed

under pressure. However, for deciding the point in issue involved in the instant case, it is not necessary to see whether the agreement is signed under pressure or not. The real question is whether the agreement which is not in consonance with cl 7 (g) of Open Access Regulations can be given effect to.

Further he has pointed out that the provisions of section 23 of the Contract Act will be taken into account while considering the agreement. According to the said section 23 of the Contract Act, an agreement which defeats the provisions of law is void. Further according to section 174 of the Electricity Act 2003 the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

The following extract at page 1130 of N.S. Bindra' s Interpretation of Statutes (Ninth Edition) would be relevant.

"It is well settled that rules made under a statute must be treated for all purposes of constructions or application exactly as if they were in the Act and are be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction and application. Such rules cannot be treated as administrative directions."

From the above, it would be seen that the Open Access Regulations issued under the section 181 of the said Electricity Act 2003 shall be deemed to form part and parcel of the Act itself. In view of the above position, cl 13 of the wheeling agreement which is violative of cl 7 (f) and (g) of Open Access Regulations cannot be taken into account by this Commission. This Commission is not bound to rely on the agreement and it is bound only by cl 7 (f) and (g) of the Open Access Regulations while dealing this issue. So far as the Respondent Board is concerned, it may be pointed out that as per cl. 4 (1) of the General conditions contained in Part II of TNERC (Licensing) Regulations 2005, the

Respondent Board being a deemed licensee shall comply with cl 7 of the Open Access Regulations.

As per cl. 15 of the General conditions of Licensing Regulations the above cl 4 (1) will apply to the Respondent Board which is a deemed licensee. Hence, it shall be obligatory for the Respondent Board to comply with cl 7 (f) and (g) of the Open Access Regulations. The wheeling agreement entered into by Respondent Board is also against the said cl 4 (1) read with cl 15 of the General conditions in TNERC Licensing Regulations.

8. Third point in issue

The third point in issue is whether the Impugned cl 11 of the Wheeling letter dt. 17.2.2006 is arbitrary and violative of Article 14 of the Constitution of India.

The judicial meaning of the expression "**arbitrary**" is at p 71 of Concise Law Dictionary / 1997 Edn. by V.R. Manohar is as follows:

"Arbitrary – Depending on will or pressure" based on mere opinion or preference"

This Commission in Open Access Regulations made under section 181 of the Electricity Act 2003 specified statutory provisions of law which have to be complied with by the Respondent Board. Cl. 7 provides for Allotment Priority. As already stated above cl 7 (f) and (g) do not contemplate sharing of available transmission facilities by the applicants as now stipulated in cl. 11 of the wheeling letter by the Respondent Board.

The intention of the Respondent Board is to accommodate Regency Company and to give undue preference in spite of the fact that it is not ready for evacuation even now. Whereas the Petitioner has completed all the works and it is ready for evacuation of power. The action of Respondent Board in introducing cl. 11 of the wheeling letter dated 17.2.2006 which is contrary to the above

statutory regulation 7 of Open Access Regulations is arbitrary and is violative of Article 14 of the Constitution of India.

9. Fourth point in issue

With reference to the fourth point in issue, it may be stated that this Commission has appointed a Committee consisting of the Director (Engg.) of this Commission Thiru R. Rajupandi as the Chairman, Thiru C. Vijayakumar from TNEB and Thiru T.S.Das representative of M/s. Arkay Energy Ltd. as Members, to undertake the study for power evacuation facility. Computer simulated Power Flow Studies for evacuation of power from the generation of Valuthur area were conducted in the presence of the Committee and Committee has submitted its report. The following conclusion arrived at by the said Committee is relevant for deciding the fourth point in issue.

"Conclusion

- (a) The Arkay (Rameswaram) CPP can be allowed to generate 45 MW ex-bus with keeping open the switch at Mandapam SS towards Arkay (Rameswaram) CPP. Whenever there is outage of any one of the three feeders viz. Valuthur – RSMadai feeder, Valuthur _Arkay IPP feeder and Valuthur – Karaikudi feeder the switch at Mandapam SS towards Arkay (Rameswaram) CPP will have to be closed and the generation by Arkay (Rameswaram) shall be kept at the level specified by the LD Centre.
- (b) Whenever, any margin is available due to reduction in generation of any or all of the generating plants, viz. Valuthur GTPP, Arkay IPP and Coromandel CPP, the Arkay (Rameswaram) CPP can be permitted by LD Center to generate to the excess extent feasible subject to the satisfaction of protection scheme and actual line loading at that instant of time.

The above two conclusions are arrived at based on computer simulated power flow studies based on actual field conditions and as per the capacities of various plants mentioned above."

The Commission concurs with the above study report and conclusion of Committee in toto.

10. Findings with reference to contentions of Respondent Board as referred to in para 3 above.

The Respondent Board in its Counter Affidavit has made certain contentions which are briefly referred to in para 3 above. It is only Learned Sr. Counsel Thiru Somayaji who has argued and he has represented the Regency Company only.

Though the Learned Counsel for Respondent Board did not argue, this Commission has to give its findings with reference to the contentions made by the Respondent Board.

(a) Contention (a) in para 3 above

The issue involved in the dispute is not whether the wheeling approval is an administrative approval or technical approval. The issue involved is whether cl. 11 of the wheeling letter is violative of cl. 7 (e), (f) (g) of the Open Access Regulations.

(b) Contention (b) in para 3 above

The dispute involved is not whether TNEB has the right to determine the quantum of power evacuation facility through its grid. As already stated above the issue is about the legality of cl. 11 of the wheeling letter.

(c) Contention (c) at para 3 above

The contention in para 6 of the Counter Affidavit is that without commissioning of Valuthur 230 KV substation and 110 KV SC line with panther conductor to be erected, full generation of 65 MW could not be

accommodated. With reference to the above contention, it may be stated that the prayer in the DRP No. 1 of 2006 is to set aside of cl 11 of the wheeling letter. This contention is not relevant to the points in issue involved in the dispute.

(d) Contention in (d) at para 3 above

The contention at (d) in para 3 above is that the lines once laid are the property of TNEB even though the cost has been borne by the Petitioner and as such the available evacuation facilities are shared by all the players in the field without giving any room for monopoly to any particular company. With reference to this contention, the finding of this Commission is that cl 7 (g) of Open Access Regulations does not contemplate any sharing of the Transmission facilities. As such this contention is not legally sustainable as it is against the spirit of the said cl 7 (g).

(e) Contentions (d) at para 3 above

The right of the Respondent Board as STU to determine the availability of transmission facility is not disputed by the Petitioner. The real issue is whether the transmission facility can be allowed to be shared by the applicant.

(f) Contention (f) at para 3 above

With reference to the contention (f) at para 3 above, it may be stated that this Commission has at para 6 above elaborately dealt with the above contention (f) at para 3 above and has given its findings.

(g) Contention (g) at para 3 above

The contention (g) at para 3 above is not relevant to the point in issue which is different.

(h) Contention (h) at para 3 above

The question, as to whether the Petitioner has scant respect for wheeling agreement, or not, is not the issue involved in the case. Further this contention is not relevant to the points in issue involved in the instant case.

(i) **Contention (i) at para 3 above**

The contention (i) at para 3 above is that the Petitioner Company has violated the agreement. In regard to this contention, it may be pointed out that this contention is not relevant to the points in issue involved in the instant case. Further for breach of agreement, the penalty provision in the agreement can be invoked.

11. Findings with reference to written submission of Respondent No.2

In written submission filed by Respondent No.2 while referring to the extract of the decision of the Hon'ble Supreme Court in the case of Master Marine Services Private Ltd., Vs. Metcalfe and Hodgkinson Private Limited (AIR 2005 SC2299: 2005(6) SCC 135), the Respondent has stated as follows:

“Applying the ratio, in the present case, the Commission can only decide whether the decision to grant evacuation to the petitioner is tenable but cannot decide the terms of such grant. In other words, the Commission can question the basis of the wheeling order dated 17.2.2006 in entirety but cannot go into the question as to whether each and every clause of the contract dated 18.2.2006 is appropriate. The petition of the petitioner is only asking the Commission to look into the validity of one particular clause, namely clause 11 of the wheeling order dated 7.2.2006. Applying the above ratio, the petition cannot be entertained by the Commission.

The decision of Hon'ble Supreme Court as extracted in the written submission is reproduced below for easy reference:

“While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to

whether there has been any infirmity in the “decision making process”. By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time the Courts can certainly examine whether “decision making process” was reasonable rational, not arbitrary and violative of Article 14 of the Constitution. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract...”

With reference to the above contention, it may be stated that as per the decision referred to above, in respect of contracts entered into on behalf of the state, the Court is concerned primarily as to whether there has been any infirmity in the decision making process”. In as much as the decision of the Respondent Board in introducing Clause 11 of the wheeling order which is contrary to regulation 7 (f) and (g) of Open Access Regulations, this Commission has got the power to interfere.

Further, the principle of Open Access was introduced by the Commission, by a Regulation, namely TNERC Open Access Regulations 2005 much before the agreement between the EB and the parties was entered into.

In the above decision, the Hon'ble Supreme Court has observed that the Court can certainly examine whether “decision making process was reasonable, rational not arbitrary and violative of Article 14 of the Constitution. In as much as the decision making process of Respondent Board is challenged as arbitrary and violative of Article 14 of the constitution, by the Petitioner Company, this Commission has got a duty to examine and scrutinize as to whether Clause 11 of the wheeling order is arbitrary or not, so as to issue a speaking order.

Further in this context it is relevant to point out that as per regulation 17 of the TNERC Licensing Regulations 2005, the licensee shall comply with all the provisions of Electricity Act, rules and provisions of any other codes or regulations in force. In order to ensure the compliance of the said regulation 17 read with regulation 7 of Open Access Regulations, this Commission has got ample power to ensure whether the Respondent Board being a deemed licensee has complied with regulation 7 of Open Access Regulations for the purpose of examining the point in issue in the instant case. Further as per section 129 (1) of Electricity Act 2003, this Commission has got the statutory power to give suitable directions to the Respondent Board being a deemed licensee to comply with regulation 7 of Open Access Regulations while allotting transmission facilities. Moreover as per clause 4 of General Conditions read with Clause 15 of the General conditions of Tamil Nadu Electricity Regulatory Commission Licensing Regulations 2005, the Respondent Board is legally bound to comply with the provisions of the Electricity Act, rules and Regulations made thereunder.

In view of the above statutory provisions of law, this Commission has got power and jurisdiction to entertain this petition and examine the contention of the petitioner as to whether Regulation 7 of Open Access Regulations is violated by the Respondent Board and this Commission cannot sit idle and it has to pass a speaking order on the Petitioner's contention.

12. Conclusion

In the above circumstances, the Commission hereby directs as follows:

- (a)** Cl. 11 of the wheeling letter dated 17.2.2006 and cl. 13 of the wheeling agreement embodying the said cl 11 cannot be made applicable to the Petitioner Company, as they are violative of cl 7 of the Open Access Regulations and they are also arbitrary and violative of Article 14 of the Constitution of India.

- (b) The Respondent Board is directed to strictly comply with cl 7 (f) and (g) of the Open Access Regulations as interpreted by this Commission in para 6 above.
- (c) The Petitioner Company has to be treated as First Come person within the meaning of cl 7 (f) of the Open Access Regulations, in as much as the petitioner approached the Board with readiness and respondent Board also issued the wheeling order 17.02.2006 to the Petitioner first in time.
- (d) The Respondent Board is directed to strictly adhere to the observations made in the conclusion of the report of the Committee extracted at para 9 above which has been concurred by this Commission in toto. In otherwords, it may be stated that the conclusion of the report of the Committee entered at para 9 above should be complied with in toto.
- (e) When the grid conditions warrant for reduction of generation from the petitioner, the petitioner shall also comply with the directions if any issued by the SLDC.
- (f) (i) Valathur 230 KV Substation works should be expedited to accommodate more generators.

(ii) In Valathur GTPP to Karaikudi 230 KV Substation Transmission Line, the improvement works wherever proposed should be expedited besides the proposed Thiruvadanai to Devakottai Link Line.
- (g) There would be no costs.
- (h) DRP 1 of 2006 and MP 1 of 2006 in DRP 1 of 2006 are finally disposed of with the above directions.

**Pronounced in the Open Court by this Commission on this the day of
9th June 2006.**

Sd.....
(B. JEYARAMAN)
Member

Sd.....
(S. THANGARATHNAM)
Member

Sd.....
(A. BALRAJ)
Chairman

/Certified Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission