



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

**29<sup>th</sup> DAY OF MAY 2006**

**PRESENT:**

**The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson**

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

**and**

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

**M.P. Nos. 4 of 2004 and 9 of 2004**

Dindigul Spinners Association  
No.24, 11<sup>th</sup> Cross Street,  
Thiruvalluvar Nagar,  
Spencer Compound, Dindigul – 3  
represented by its advisor, Mr. K.Venkatachalam ... Petitioner

**VERSUS**

Tamil Nadu Electricity Board,  
No.800, Anna Salai,  
Chennai 600 002.  
represented by its Chairman ... Respondent

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These petitions coming on for final orders before this Commission, in the presence of Thiru R.S. Pandiaraj, Advocate, for the Petitioner and of Thiru G. Vasudevan, Advocate for the Respondent and upon perusing the petition, counter affidavit and other connected documents and upon hearing the arguments of the counsels for both sides and having stood over for consideration till this day, this Commission deliver the following:

**ORDER**

**1. Prayer by the Petitioners**

The prayer in M.P. No. 4 of 2004 is that this Commission may order ;the Respondent TNEB to allow the full Power Factor Rebate to all the eligible

consumers of the Petitioner's Association from 16.03.2003 onwards, based on the total units consumed at their respective mills and it may also order to dispense with the system of allowing Power Factor Rebate after the adjustment of the windmill energy or any other energy, as the case may be and thereby render JUSTICE.

The prayer in MP No. 9 of 2004 is that this Commission may order the Respondent Board to allow the full power factor rebate to all the eligible consumers of the Petitioner Association from 16.3.2003 onwards based on the gross amount of current consumption charges including the peak hour charges.

## **2. Point at issue**

The point at issue that arises for consideration in both the above petitions is whether the system of allowing the electricity Power Factor Rebate after the adjustment of the wind energy produced by the members of Petitioner Association and restricting the rebate only to the net charges payable by the members of the Petitioner Association is in consonance with the Tariff Order of this Commission and whether the Petitioner Association is entitled to the relief prayed for.

## **3. Averments of Petitioner and TNEB made in the Petition 4 of 2004 and Counter Affidavit**

- (A) The averments of the Petitioner in the Petition are briefly set out as follows:
- (i) In order to avoid low Power Factor Penalty the consumers have to install capacitors, etc. to improve the Power Factor for no fault on their part. The energy is supplied by TNEB and the consumer has nothing to do with the quality of the energy as he only consumes the energy in the form it is supplied to him. (para 5 / p 2 of the petition)
  - (ii) The High Court has ordered the stay of the system of collection of low Power Factor penalty. (Para 6 / p 3 of the petition)
  - (iii) Reference to para 7.17 of the Tariff Order wherein a rebate of 0.5% has been allowed on every increase of 0.01 lag of Power Factor over and above 0.95 lag. All HT consumers who were keeping a high Power Factor of over and above 0.95 lag received the benefit of rebate of 0.5% for every increase of 0.01

lag of Power Factor over and above 0.95 lag (Para 7 / p 3 of the Petition)

- (iv) From 16.3.2003 onwards TNEB has also allowed the Power Factor Rebate uniformly to all HT consumers according to the actual Power Factor maintained at their mills and member mills were also receiving the same. (Para 8 / p 3 of the petition)
  - (v) All of a sudden TNEB has started to allow the PFR (Power Factor Rebate) only to the balance of units available at mills, after adjustment of the windmill produced energy. The earlier allowance of uniform PFR was ordered to be recovered from all the consumers stating that **they are not eligible to receive the same to the entire units consumed by the consumer at his mills**. The above is contrary to para 7.17 of Tariff Order. (Para 9 / p 3 of the petition)
  - (vi) By installation of capacitors only Power Factor could be stabilized and improved to the required extent. Hence the energy produced at the windmills of a consumer has nothing to do with the energy consumed at his mills as far as the matter of maintenance of Power Factor is concerned. Hence the decision to curtail and cut short the PFR is arbitrary and not supported by Tariff Order. (Para 10 / p 4 of the Petition)
  - (vii) Members of the Petitioner's Association who are not having any windmills are able to avail higher amount of PFR whereas Members of the Petitioner's Association who are having Windmills are being deprived the full benefit of PFR. This is against the principle of natural justice as equals are being treated as un-equals. (Para 11 / p 4 of the petition) The Petitioner has made the same contentions in Petition No. 9 of 2004 also.
- (B) The averments of the TNEB set out in their counter affidavit to MP No. 4 of 2004 are briefly as follows:
- (i) Petitioner being an agreement holder is bound by Terms and Conditions of Supply of Electricity and as such estopped from contending otherwise. (Para 4 / p1 of the counter)
  - (ii) With reference to para 5, TNEB has stated that Power Factor falling below 0.90 lag is because of the quality of the installations of the consumer end due to non-provision of adequate capacitors to

maintain the power factor. If the consumer maintains low power factor the same results in Board's power system are being loaded unnecessarily and hence the system will be under utilised. Therefore, the power factor penalty is imposed not only now as contended by Petitioner but also even before the Tariff Order dated 15.3.2003. (para 5 / p 2 of the counter)

- (iii) With reference to para 6, all Writ Petitions are dismissed and there is no stay for imposing the power factor penalty. (para 6 / p 2 of the counter)
- (iv) With reference to paras 7 and 8 of Petition No. 4 of 2004, it may be stated that wherever power factor of HT service exceeds 0.95 lag, a PFR of 0.05% of the amount of the current consumption charges for every increase of 0.01 lag in power factor above 0.95 lag is allowed. Current Consumption Charges includes recorded demand charges and energy charges at the notified tariff rates excluding the concession if any. (Para 7 / p 3 of the counter)
- (v) With reference to paras 9 and 10 of the Petition No. 4 of 2004 , it may be stated that where wheeling of energy is involved the Current Consumption Charges are worked out on net energy consumed after adjusting the wheeled energy on unit to unit basis as per the agreement entered into by the Wind Energy Producers with the Board. Since the Current Consumption Charges for the consumer who is wheeling power from their windmill are being levied only on net energy, it is appropriate to allow incentive or levy of penalty for the net energy only after adjustment. Wind energy is pumped into the TNEB grid and when there is wind irrespective of whether the energy is required by TNEB. (Paras 8 and 9 / p 3 of the counter). The Respondent Board has made the same contention in Counter Affidavit for MP No. 9 of 2004 also.

#### **4. Arguments of the Petitioner**

The Petitioner has filed a written statement in MP No.4 of 2004, incorporating their oral arguments made before the Commission. In the written statement, the Petitioner has reiterated their contentions put forth in their petition extracted above in para 3. The new contentions as put forth in the written statement are as follows:

- (i) The Respondent has failed to consider the fact that there is no nexus between the power produced at the windmills and the Power Factor

maintained at the consuming end at their respective industries. On the Power Factor Rebate allowed to the members of the Petitioner's Association, there is absolutely no contribution by the Respondent in any manner. For maintaining high power factor by the members of the Petitioner's Association, they have by themselves to invest highly on capacitors at their own cost in their industries, towards which the Respondent has no say in any manner.

- (ii) The Respondent is taking the total consumption without any deduction for the purpose of deciding the adequacy of CCD, whereas, for giving power factor rebate alone, they give different meaning and treatment and taking into account the net units alone, which practice is discriminatory and contradictory to each other and therefore, it is unreasonable to take a different stand when a benefit is to be given to the consumers. This is highly arbitrary, unreasonable and unsustainable in Law.
- (iii) The action of the Respondent is without jurisdiction and without any statutory force and therefore liable to be set aside.
- (iv) The Hon'ble Supreme Court in the case reported in 2000 (3) SCC 242 at para 17 at page 248 has held that anything, which is not specifically prohibited in law, the presumption for the Court should be that it is permitted in law. In the instant case also, there is no specific prohibition in the Tariff Order No. 1 of 2002 for giving the benefit of Power Factor Rebate for the entire unit and therefore, the presumption should be that it is permitted and accordingly the members of the Petitioner's Association are eligible for the full power factor rebate for the entire units without deducting the units produced from their wind mills.
- (v) The Respondent, TNEB, while levying power factor penalty, in case of maintenance of Low Power Factor, it takes into account only the gross units consumed at the consuming end before the adjustment of the wind energy if any. On the other hand, only in the case of allowance of High Power Factor Rebate, the TNEB is taking into account only the net charges, which procedure is totally against the principles of equality and therefore it is against the settled principles of Natural Justice. The arguments made in MP No. 9 of 2004 are the same as above made in MP No. 4 of 2004.

## 5. Arguments of the Respondent Board

Thiru Vasudevan, Learned Counsel for the Respondent Board stated that the adjustment is covered by separate agreement. The additional current consumption deposit is levied as per cl 15 of the Terms and Conditions of Supply of electricity, which are statutory in nature. He pointed out that the adjustment and levy of additional Current Deposit are different. He contended that the Board purchases wind energy at the rate of Rs.2.70 per unit whereas the adjustment is made at the rate of Rs.3.50 per unit. He contended that wind energy is infirm and that the Board is giving uninterrupted supply to HT consumers. He stated that the Board is implementing the Tariff Order without any deviation and that the action of the Respondent Board in regard to the adjustment is fully justifiable under the law. The same arguments are made to MP No.9 of 2004 also.

## 6. Findings of the Commission

Para 7.17 (iv) at p 183 of the Tariff Order relates to the grant of incentive for High Power Factor. For the sake of easy reference the above para 7.17 (iv) of the Tariff Order is reproduced below:

**“Incentive for High Power Factor:** Wherever the power factor of HT services exceeds above 0.95, a Power Factor rebate at 0.5% of the amount of current consumption charges for every increase of 0.01 in PF above 0.95 shall be allowed

**Note:** Current consumption charges include the charges of recorded demand and the energy charges at notified tariff rate excluding concessions, if any.”

The expression “of the amount of current consumption charges” is significant. From the above expression, it would be seen that in the said para 7.17 (iv) of the Tariff Order the Power Factor Rebate is allowed only on the amount of Current Consumption Charges. the Respondent Board in para 8 of their Counter Affidavit stated as follows:

"..... in cases of services where wheeling of energy is involved, the current consumption charges are worked out on net energy consumed after adjusting the wheeled energy on unit to unit basis as per agreement entered into by the Wind Energy producers with the Board. For calculating both the power factor incentive or penalty the Current Consumption Charges are calculated based on the net energy. Since the Current Consumption Charges for the consumer who is wheeling power from their Wind Mill are being levied

only on net energy it is appropriate to allow incentive or levy of penalty for the net energy only after adjustment."

Further, in this connection, it would be relevant to point out that as per clause 21 of the agreement, the Respondent Board has got the right to vary from time to time the power purchase tariff, wheeling charges, banking charges, name transfer, etc. and the terms and conditions of supply under the agreement by special or general proceeding and the conditions relating to the generation of electricity through wind electric generator of the Company.

The Commission accepts the above contention in view of the agreement for adjustment entered into by the Petitioner with the Respondent Board as referred to in para 8 of the Counter Affidavit of the Respondent Board in MP No. 4 of 2004 and in view of the power to vary the conditions of agreement as per cl 21 referred to above. In this connection, it may be relevant to point out that as per para 4.0 of the order No. 3 dt.15.5.2006, the existing contracts and agreements between NCES based generators and the distribution licensee signed prior to the date of issue of the order would continue to remain in force. In view of the said para 4.0 of the said order, the power factor rebate will be allowed only on the amount payable for the net energy as mentioned in the CC Bill.

## **7. Conclusion**

In the above circumstances, the action of the Respondent Board in not allowing the incentive to the members of the Petitioner's Association on the total consumption of energy and allowing the rebate on the net energy is upheld.

M.P.No. 4 of 2004 and MP No. 9 of 2004 are therefore dismissed without costs.

In this connection, it would be relevant to point out that this Commission under paragraph 10.9 PF incentive / disincentive at page 96 of the Order No.3 dated 15.5.2006 has observed as follows:

"As per Section 7.17 part 1 (1.0) of the Commission's Tariff Order dated 15.3.2003 PF incentive / disincentive is applicable to the consumer as a percentage of current consumption charges. In the same line, the PF incentive / disincentive is applicable to all user on the current consumption charges bill prepared based on the gross energy and applicable demand as

per this order. However, the average PF recorded by the meter will be the reference for calculation of PF incentive / disincentive."

As per paragraph 4 of the said order, the order shall be applicable to all future and renewal of existing contracts / agreements for the Non-Conventional Energy Sources (NCES) based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants located within the State of Tamil Nadu. As per the said para 4, the existing contracts and agreements between NCES based generators and the distribution licensee signed prior to the date of issue of this order would continue to remain in force. The above order comes into force on 15<sup>th</sup> May 2006. In view of the said para 4 of the order, it is open to the Petitioner to opt for coming under the above new order in toto by giving termination notice of existing agreements to the Respondent Board and in that case the Respondent Board shall accept the notice of termination of existing agreement and allow the Petitioner for coming under the above new order in toto on execution of revised agreement. With the above directions, the M.P. Nos. 4 of 2004 and 9 of 2004 are finally disposed off.

**Pronounced in the Open Court by this Commission on this the 29<sup>th</sup> day of May 2006.**

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

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

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

**/Certified Copy/**

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**