



**THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION
CHENNAI**

**Constituted under Section 82(1) of the Electricity Act, 2003
(Central Act 36 of 2003)**

PRESENT :

Thiru S. Kabilan - Chairman

Thiru B. Jeyaraman - Member

and

Thiru R. Rajupandi - Member

D.R.P.No. 28 of 2008

Siddhanantha Textiles P. Ltd.
Rep. by its Director N. Ashokkumar
139/4 Shalapalayam, Pungambadi (PO)
Perundurai Taluk, Erode 638 112.

: Petitioner

Vs.

1. The Chief Engineer
Non Conventional Energy Sources
Tamil Nadu Electricity Board, Anna Salai
Chennai-2
2. The Superintending Engineer (SE)
Erode Electricity Distribution Circle (EEDC)
Tamil Nadu Electricity Board, Erode.
3. The Superintending Engineer, TNEB,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Electricity Board, Tirunelveli.

The above petition viz. D.R.P.No.28 of 2008 came up for final hearing before the Commission on the 1st April 2009. The Commission upon perusing the petitions and the counter affidavit and all records connected with the case and upon hearing the arguments of Learned Counsels of both sides and having stood over for the consideration of the Commission till this day, passes the following

ORDER DATED 22nd APRIL 2009

1. The Prayer of the Petitioner in D.R.P.No.28 of 2008

The prayer of the petitioner is to issue appropriate direction to all the respondents regarding calculation of wheeling charges for the past, present and future bills for the sale of excess units to TNEB as said in the erstwhile order of this Hon'ble Commission dated 5-2-2008, on the petition bearing nos. DRP No.2 of 2007 and M.P. No.2 of 2007, and also to reimburse the excess wheeling charges deducted by the TNEB on the past and present bills as said above.

2. Facts of the Case

The petitioner's WEG 1 no. of GAMESA G58 model of capacity 850 kva is located in S.F. No.568/1,2 and 569/1,2 Perungudi Village, Radhapuram Taluk, Tirunelveli District. The electricity generated from the above said WEG is wheeled to Petitioner's H.T.S.C.No.128 of their spinning unit located in Shalapalayam Village, Pungambadi (PO), Erode District, which comes under the Erode Electricity Distribution Circle (EEDC), of TNEB. As per the power purchase agreement executed on 15-11-2005 between Petitioner's Company and the TNEB authorities, the petitioner agreed to sell the excess power to TNEB at the end of every month, by producing bills in favour of TNEB, if not banked. Regarding the calculation of the wheeling charge on the excess units generated from the captive generation WEG, sold to the TNEB, which have to be at 5% on the total units sold to the TNEB, the TNEB authorities are calculating on the basis of 5% on the total unit generated by the captive WEG installed. The same was objected by the petitioner on various occasions by letters to all the

three respondents. But they have not turned up so far. In spite of the repeated request made by the petitioner, the respondent No.2, was insisting for the execution of a fresh PPA / PWA based on the Order No.3 dated 15-5-2006, which had no relevancy with the said problem of calculating the wheeling charges.

3. Contentions of the Petitioner

Regarding the wheeling charges calculation, the TNERC, Chennai has in its orders on petitions bearing No. DRP No.2 of 2007 and M.P. No.2 of 2007 both dated 5-2-2008 given a clear verdict for the units deducted as wheeling charges against the units sold to TNEB from captive generation plants. If the wheeling charges are deducted for the excess units sold to TNEB, then the provisions of section 2 (76) and 2 (74) of the Electricity Act 2003, which defines the term “wheeling” and “transmit” are violated.

4. Contentions of the Respondent Board

The contentions of the respondent board in the common counter affidavit are as follows.

- a) The Respondent Board follow the procedure laid down in BP (FB) No.129, dated 29-3-1986 with regard to collection of wheeling charges.
- b) In Order No.3 dated 15-5-2006 the Commission has not interfered in any way with the existing procedure adopted by the Respondent Board with regard to wheeling of wind energy.
- c) In the agreement it is clearly mentioned that if wheeling is opted by the firm then 5% of the gross energy generated by the wind mill shall be deducted towards wheeling charge.

5. Point in issue

The point in issue is whether wheeling charges are to be paid for the entire energy generated by the petitioner or for the energy consumed by the petitioner for their captive use.

6. Findings of the Commission

In order to examine the relevant issue, it would be necessary to reproduce the definitions of “wheeling” and “transmit” in Sections 2 (76) and 2 (74) of the Electricity Act,2003 (Central Act 36 of 2003).

“Section 2(76) “wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.

Section 2(74) “transmit” means conveyance of electricity by means of transmission lines and the expression “transmission” shall be construed accordingly.”

From the above definitions, it would be clearly seen that in wheeling operation, the electricity supplied by the petitioner is fed into TNEB Grid for the purpose of conveyance of electricity to third party or to the petitioner for captive use through transmission lines of TNEB. In energy wheeling operation there is conveyance of electricity through the transmission lines, which is used by a third party other than the TNEB. Hence the wheeling charges are to be levied only on the energy conveyed through the transmission lines of the respondent board and that it cannot be levied on the energy generated by the petitioner in their wind mill. In regard to the energy sold to the TNEB by the petitioner out of the energy generated through wind mills the petitioner is not availing the transmission facility and it is the obligation of the respondent board to take energy to the TNEB grid without levy of wheeling charges. The respondent board in para 6 of their counter affidavit have contended that the Commission in page 51 of Order No.3 dated 15.05.2006 has stated that regarding the transmission and wheeling charges the existing practice which includes the losses in transmission will continue. The above contention is not correct. At page 51 of the order, the Commission has stated as follows.

“Regarding the transmission and wheeling charges, the existing practice (which includes the line losses in kind) is given below.”

In the above portion, the Commission has not used the word “continue.” Further, it is only the wheeling charges which are mentioned in the above portion. In paragraph 3 of the counter the respondents Board has contended that in the agreement it is clearly mentioned that if wheeling is opted for by the firm, then 5% of the gross energy generated by the petitioner shall be deducted towards wheeling charges and the balance be made available to HT industries at the place or places where power is required. Regarding, the above contention it is to be noted that under section 23 of the Contract Act an agreement cannot defeat the provisions of any law. Further, as per 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 the Act. In view of the above position, the agreement entered into by the petitioner with the respondent Board cannot prevail over the provisions of section 2(76) of the Act, according to which the wheeling charges are to be paid only for the use of the transmission facility of the respondent board for the conveyance of electricity fed into the grid of the respondent board for captive use and not for the entire energy generated at the wind mill of the petitioner firm. Hence the contentions of the respondent board are liable to be rejected.

In this context, it is to be noted that in the letter dated 23-7-2008 addressed to the second respondent herein, the petitioner had brought to the notice of the second respondent the earlier orders dated 5-2-2008 issued by the Commission in DRP No.2 of 2007 and MP.No.2 of 2007 in respect of M/s. KTV Oil Mills with similar prayer. In the said order dated 5-2-2008, the Commission had referred to paragraph 4 of the counter of TNEB wherein TNEB contended that in the agreement it is mentioned that if wheeling is opted for by the firm then 5% of the gross energy generated by the petitioner shall be deducted towards wheeling charges. In regard to the above contention the Commission has noted that under Section 23 of Contract Act an agreement cannot defeat the provision of any law, namely Section 2 (76) of the Electricity Act 2003.

It is to be noted that CE, NCES and SE Tirunelveli EDC are parties to the earlier DRP No.2 of 2007 in which the said order dated 5-2-2008 has been issued as well as the present petition filed by TNEB. It is unfortunate that in the counter affidavit in paragraph 3, TNEB has raised the same contention which was raised by TNEB in the counter affidavit to DRP No.2 of 2007 which was rejected by the Commission in the said orders dated 5-2-2008.

The attitude of TNEB in not following the earlier order of the Commission is deprecated. As this has led to unnecessary litigation, the Commission orders that the cost of the litigation of the petitioner shall be paid to the petitioner by the Respondent.

7. Conclusion

The prayer of the petitioner is allowed and the respondents are directed not to levy the wheeling charges on the energy supplied / sold to them under the Power Purchase Agreement dated 15-11-2005. The Respondents are directed to refund to the Petitioner the excess amount collected as per the working sheet at Table I and II enclosed with the petition after verifying the correctness of the same. With the above directions DRP No.28 of 2008 is finally disposed of. The cost of the litigation of the petitioner shall be paid to the petitioner by the Respondent Board within thirty days from the date of receipt of this order.

Pronounced in the open court by this Commission on the 22nd April 2009

**(Sd.....)
(R. RAJUPANDI)
Member**

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

**(Sd.....)
(S.KABILAN)
Chairman**

/ True Copy /

Assistant Secretary (i/c)
Tamil Nadu Electricity
Regulatory Commission