

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
(Constituted under Section 82(1) of the Electricity Act 2003)  
(Central Act 36 of 2003)

**PRESENT** :

Thiru. S. Kabilan	-	Chairman
Thiru. R. Rajupandi	-	Member
	and	
Thiru K. Venugopal	-	Member

**D.R.P. No. 26 of 2009**

**Dates of hearing: 4-12-2009, 6-1-2010, 10-2-2010 and 25-2-2010**

**Date of Order 18-3-2010**

In the matter of determination of charges payable by the Co-generation Plant to the Tamil Nadu Electricity Board

M/s. Harihar Power And Alloys P) Ltd.  
Door No.37, A, SF NO.230, 231 & 234  
Lakshmanampatty Village,  
Kulathur Taluk,  
Pudukkottai District

.. Petitioner  
Counsel for Petitioner  
Thiru. Seshadri

Versus

- 1) The Chairman,  
Tamil Nadu Electricity Board,  
144, Anna Salai,  
Chennai-600 002.
- 2) The Member Generation,  
Tamil Nadu Electricity Board,  
144, Anna Salai,  
Chennai-600 002.

..Respondents  
Counsel for Respondents  
Thiru H.S. Mohamed Rafi

The above DRP 26 of 2009 came up for hearing on 25<sup>th</sup> February 2010. The Commission upon perusing the above petition and the connected records and upon hearing both sides passes the following

**Order**

**1. Prayer:**

The prayer is to

- a) direct the respondents to treat the petitioner generating plant as fossil based Co-generation Plant and collect the wheeling charges as per the clarification order No.4-1 dated 21-3-2008 in kind and
- b) direct the Respondents to refund the amounts paid under protest by the petitioner.

**2 Facts of the case:**

- a) The petitioner has established a 6 MW Waste Heat recovery based generation plant at Lakshmanampatti Village, Kulathur Taluk, Pudukkottai District.
- b) Power to the extent of 3.5 M.W. generated through the said Co-generation Plant was being Wheeled to its sister concern M/s.Harihar Alloys Castings (P) Ltd., at Pulivalam, H.T.Sc.No.47, Trichy Electricity Distribution Circle/North by obtaining wheeling approval dated 19-9-2005 from the Respondents.
- c) The petitioner's plant was brought under Order No.4 dated 15-5-2006 with effect from November, 2006.
- d) On 15-11-2008, the petitioner had requested to treat them as Waste heat recovery co-generation plant instead of Captive

Power Plant on par with other Waste heat recovery Plants. The petitioner had also requested to amend the earlier orders dated 28-10-2008. Since the respondents did not comply with the above request for treating the petitioner as a co-generation plant, this DRP is filed by the petitioner on 8-10-2009.

3. Contentions of the petitioner:

- a) On 25-06-2009 the second Respondent has imposed various conditions treating the petitioner generating Plant as C.P.P. and directed to pay (1) Open Access Transmission charges at the rate of Rs.28-97 per M.W.Hr. for utilizing the State transmission network (as determined by clause 6.1(b) of TNERC Order 2 dated 15-5-2006). (2) Scheduling and system operation charges at the rate of Rs.500/- per day per transaction (as per clause 6.4 of TNERC Intra State Open Access Regulations 2005) (3) Wheeling charges if any at the rate of 14.74 Ps./Unit and (4) TNEB's Transmission losses stipulated under clause 6.3 of TNERC Order 2 dated 15-5-2006.
- b) The petitioner submits that though the petitioner have not lost the status of Co-generation Plant and they are not liable to pay any charges as claimed by the second respondent, they were forced to pay the above charges under protest with a request to refund the amounts on amendment of the orders by the second respondent for the restoration of Co-generation status to the petitioner and the payment of charges in kind under order No.4 dated 15-5-2006.
- c) On August 2009, they have paid Rs.30,03,022.55 under protest and they are entitled to the refund of the said amount as it was

collected against the orders of this Honourable Commission in clarification order No.4-1 dated 21-2-2008.

4. Contentions of the respondents in the counter-affidavit:

- a) The company has requested for Co-gen status only on 15-11-2008. Based on their request, approval was accorded on 12-5-2009 for treating their plant as Co generation plant with captive plant status.
- b) The terms and conditions regarding the short term intra state open access indicating the short term open access charges stipulated by TNERC open access Regulation 2005 dated 15-5-06 and TNERC Order No.2 dated 15-5-06 were only applied in this case and charges collected accordingly.
- c) The matter regarding granting of the Status of Co-generation plant is under the consideration of TNEB.

5. Findings of the Commission:

- 5.1 The respondent Board in paragraph 4 of the Affidavit dated 11<sup>th</sup> December, 2009 have stated that the petitioner had executed an undertaking on 27-11-2006 for the sale of power to TNEB and that date was taken as option date for coming under Order No.2 and 4 of the TNERC.
- 5.2 At paragraph 1 of the Counter affidavit the Respondent Board have stated that M/s.Harihar Power Alloys (P) Ltd. is having a generating plant with an installed capacity of 6 Mw through Waste Heat recovery plant at HT Sc No.111 Pudukkottai EDC. From the above averment it is to be noted that the petitioner is a Co-generator and the above process falls within the definition of Co-generation in section 2(12) of the Electricity Act, 2003 (Act 36 of 2003). As such

Order No.4 dated 15-5-2006 is applicable to the petitioner with effect from 27-11-2006 i.e. the date on which the petitioner had given an undertaking to sell power to the respondent Board.

5.3 The contention that since the petitioner has requested for Co-gen status only on 15-11-2008, the approval was accorded on 12-5-2009 for treating their plant as Co-generation plant with captive plant status cannot be accepted since Order No.4 dated 15-5-2006 would automatically apply to the petitioner and all contracts/agreements executed after 15-5-2006 should be in conformity with the said Order.

5.4 The second paragraph to Clause 12(4) of the said order No.4 dated 15-5-2006 reads as follows:

“To promote cogeneration as provided in Section 86(1)(e) of the Act, the Commission decided to allow a wheeling charge of 3% if the user is within 25 Kms and 7% for users beyond 25 Kms for fossil fuel based Cogeneration only. The wheeling charges fixed as above will get reduced, if the voltage level at the point of injection and at the point of drawal is equal to or more than 110 KV. The reduction will be based on the Commission’s order against the petition no. TP1/2005 from TNEB. As an example, if the injection voltage by the NCES generator is at 110 KV and the drawal for captive usage is also at 110 KV, the transmission charges specified by the Commission in the above said order will work out to around 5.80%. Such cases shall be specifically brought to the Commission; and the rate revised.”

5.5 Paragraph 2 of the clarificatory order No.4-1 dated 21-2-2008 reads as follows:

“The Commission clarifies that, for the wheeling and transmission charges as mentioned in paragraph 2 of clause 12.4 of Order No.4 dated 15-5-2006 extracted above, the following wheeling and

transmission charges alone shall be payable by the Fossil Fuel based Co-generation plant irrespective of voltage of injection and voltage of drawal

- a) 3% of the energy wheeled where the usage is within 25 KMs and
- b) 7% of the energy wheeled where the usage is beyond 25 KMs.

Suitable amendments to the said order No.4 dated 15-5-2006 will be issued separately. This clarificatory order shall take effect immediately.”

5.6 The petitioner as a Co-generator is entitled to the concessional rates of wheeling and transmission charges as specified in paragraph 2 of Clause 12.4 of the Order No.4 dated 15-5-2006 as extracted above, with effect from the date of undertaking viz.27-11-2006. No open access charges are payable for the quantum of energy sold to the respondent TNEB.

6. Direction:

- (a) The petitioner is liable to pay only the wheeling and transmission charges as specified in para 2 of Clause 12.4 of the Order No.4 dated 15-5-2006 as extracted above with effect from 27-11-2006 for the energy wheeled to third party use and captive use.
- (b) No OA charges are payable for the quantum of energy sold to Respondent TNEB. The Respondent Board is directed to refund all the charges collected in cash from the petitioner and the petitioner is directed to supply energy to the Respondent TNEB towards wheeling charges in kind as stipulated in order No.4 dated 15-5-2006. Both these transactions will take place simultaneously.

7. Appeal:

An appeal against this order lies with the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of 45 days.

(Sd.....)  
**(K. VENUGOPAL)**  
Member-II

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

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

**/ True Copy /**

**Assistant Secretary  
Tamil Nadu Electricity  
Regulatory Commission**