

**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**

**and**

**Thiru.K.Venugopal**

**.... Member**

**DRP NO. 33 OF 2009**

M/s. Saheli Exports Pvt. Ltd.  
New No.25, Old No.10  
Sir Madhavan Nair Road  
Mahalingapuram  
Nungambakkam  
Chennai – 600 034.

.... Petitioner  
(Advocate for Petitioner, Thiru.P.Vinod Kumar)

Vs.

The Tamil Nadu Electricity Board  
Rep. by its Chairman  
No.800, Anna Salai  
Chennai – 600 002.

... Respondent  
(Thiru.H.S. Mohammed Rafi, Advocate for Respondent)

**Date of hearing 07-07-2010**

**Date of order 17-08-2010**

The above D.R.P.No.33 of 2009 which was dismissed for default of non-appearance of the Petitioner and which was subsequently restored on file of the Commission came up for hearing on **07-07-2010**. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following:-

## **ORDER**

1. **Prayer in D.R.P. No.33 of 2009:-**

The Prayer in D.R.P. No.33 of 2009 is to:-

- a. direct the Respondent to cancel the long term wheeling approval dated 28-03-2005 granted to the Petitioner in respect of the Petitioner's power plant for supply to captive consumers with effect from 01-10-2009 ;
- b. direct the Respondent to refund the amounts collected from the Petitioner for the period after 1<sup>st</sup> October 2009 towards transmission and wheeling charges as per the wheeling approval dated 28-03-2005 ; with interest @ 18% p.a. ;
- c. pass such other orders as deemed fit in the circumstances of the case ;
- d. direct the Respondents to pay costs of the present proceedings to the Petitioner.

2. **Facts of the case:-**

The Petitioner is a company registered under the Companies Act, 1956. It set up a captive power plant at Komal West Village, Mayiladuthurai Taluk. The wheeling approval for the Petitioner plant was granted by the Respondent in letter dated 28-03-2005. The Petitioner's plant is a natural gas based plant and the same was commissioned on 14-04-2005. The Petitioner has a contract with

M/s. GAIL for supply of natural gas on firm basis for use as fuel for the plant. The Petitioner in letter dated 24-06-2006 requested the Respondent to revise the wheeling approval so as to reflect the additional capacity of the plant. Accordingly the Respondent in letter dated 24-07-2006 enhanced the wheeling approval and upgraded the capacity of the plant to read as 8.81 MW instead of 6.12 MW in line with the paralleling approval for 8.81 MW. The Petitioner in letter dated 24-09-2009 intimated the Respondent his intention to come out of captive plant status and requested the Respondent to cancel the long term wheeling approval. Since there was no response from the Respondent Board, the above Petition was filed.

3. **Contentions of the Petitioner:-**

- a. The Petitioner does not have an Open Access Agreement with the Respondent since, the wheeling approval granted to the Petitioner was prior to 03-08-2005, the date of the aforesaid TNERC Intra-State Open Access Regulations 2005 ; the Open Access permitted to the Petitioner is based on the orders of the Respondent. Since there is no Open Access Agreement between the Petitioner and the Respondent, regulation 12 (h) of the Open Access Regulations, 2005 may not be applicable to the Petitioner.
- b. One of the captive users has on 23-09-2009 transferred more than fifty percentage of its shareholding in the Petitioner. On account of such share transfer, the total ownership of the captive users has

come down to less than statutory requirement of 26%. On account of the aforesaid event, the ownership of the captive users in the Petitioner has fallen below the mandatory requirement of 26%, disentitling the Petitioner from continuing as a captive user.

- c. No prejudice will be caused to the Respondent, if the wheeling approval granted to the Petitioner is cancelled. The Respondent has collected from the Petitioner the cost of creating the infrastructure for the evacuation of the 8.81 MW power and hence the Respondent would not incur any loss if the prayer sought by the Petitioner is granted. In future, the Petitioner will continue to use the infrastructure created by the Respondent for providing Open Access to the Petitioner.
- d. The Petitioner has further stated that most of the captive consumers of the Petitioners have withdrawn their power off-take commitments on account of various reasons, thereby compelling the Petitioners to find alternate customers like TNEB, PTC and third parties etc. and have been selling 5 MW power to TNEB from April 2009 to June 2009 and subsequently from July 2009 onwards, the Petitioner has been supplying 4 MW to the TNEB through PTC and the balance to third parties by paying short term transmission charges.

This has not been contested by the Respondent, TNEB.

4. **Contentions of the Respondent Board in Counter Affidavit filed by them:-**

- a. The consent under Section 44 of Electricity (Supply) Act, 1948 was issued to M/s. Saheli Exports Pvt. Ltd. (herein after referred to as the "Petitioner Company) for establishment of a natural gas based captive power plant of 7 MW capacity of Thirumalkottai Village, Thiruvarur District, vide per B.P. No.146 dated 01-12-2001.
- b. If the Petitioner company does not ensure the qualifying requirements for the captive user, the entire electricity generated shall be treated as if it is a supply of electricity by generating company [clause 3 (2) of the Electricity Rules 2005]. As per TNERC Order No.4 dated 15-05-2006, if the CGP holder has not complied with the qualifying requirements of CGP then the entire energy generated by the CGP holder is considered to be sold to distribution licensee and the entire energy consumed by the CGP user will be charged under tariff of that category of the user.
- c. As per Clause 12 (h) of the Hon'ble TNERC's Intra State Open Access Regulations, 2005 long term open access customer cannot relinquish his rights and obligations specified in the Open Access Agreement without the prior approval of the Commission and such relinquishment of transfer of right and obligation will be subject to payment of compensation, as may be determined by the Commission.

5. **Contentions of the Petitioner in the Reply Affidavit:-**

- a. The Respondent is not entitled to treat the entire electricity generated by the Petitioner's plant as sold to the distribution licensee. The Respondent's reliance on the Electricity Rules and the Order No.4 of this Hon'ble Commission is misplaced.
- b. In this Hon'ble Commission's Order No.4 dated 15.05.2006, it is noted at section 6 that if the captive generation plant has not complied with the criteria required to qualify as a captive plant, then the entire energy generated by the captive plant is considered to be sold to the distribution licensee and the entire energy consumed by the CGP user will be charged under the tariff of that category. This Hon'ble Commission vide Amending Order No.4-3 dated 10.06.2009 deleted the said note at the end of section 6 of Order No.4 with effect from 15.05.2006. In view of the said order dated 10.06.2009, the Respondent cannot contend that the entire electricity generated by the plant will be treated as sold to the distribution licensee.
- c. The Respondent has not denied the Petitioner's contention that the capacity of the substations to which the Petitioner's plant is synchronized is in negative. The Respondent is not entitled to any compensation for the reasons set out in the Petition.

6. **Arguments:-**

The learned counsel for the Petitioner referred to para 6 of the Order of the Commission dated 15-07-2008 issued in D.R.P.No.2 of 2008 and pleaded that the said order is applicable to the instant case. The learned counsel for the Respondent Board referred to Paragraphs 9 to 12 of the counter affidavit and pleaded that necessary compensation will have to be determined by the Commission and ordered to be paid to the Respondent Board.

7. **Findings of the Commission:-**

7.1 In the instant case, it is to be noted that the captive generating plant was set up on 14-04-2005, prior to the enforcement of Electricity Rules 2005, which came into force on 08-06-2005. Rule 3 of the Electricity Rule 2005, which stipulates the requirements of the captive power generating plant, will not be applicable to the Petitioner's case. The wheeling approval for the Petitioner's plant was granted by the Respondent Board in its letter dated 28-03-2005 which is also prior to the commencement of the TNERC, Intra State Open Access Regulations 2005 (hereinafter referred to as O.A. Regulations) which came into force on 03-08-2005.

7.2 As per clause 5 of the above Regulations, persons availing access to the Intra State transmission system and / or of the distribution system in the State on the date of coming into force of these regulations under an existing agreement / contract shall be entitled to continue to avail such access to the transmission and

distribution system on the same terms and conditions, as stipulated under such existing agreement / contract.

7.3 As the wheeling approval is prior to 03-08-2005, the O.A. Regulations cannot be applied to the Petitioner's case. Further in the wheeling approval dated 28-03-2005, the Condition No.4 reads as follows:-

“Bill and adjustment of energy shall be done as per the CPP policy approved by the Government of Tamil Nadu in G.O. Ms. No.48, Energy Department dated 22-04-1998 as may be amended from time to time”.

From the above Condition No.4, it is to be noted that it is only G.O. Ms. No.48, Energy Department dated 22-04-1998 which will be applicable to the Petitioner's case. In the said G.O., there is no stipulation with reference to percentage of ownership or the percentage of consumption as stipulated in the said Rule 3 of the Electricity Rules 2005. It is to be noted that in the amendment to the wheeling approval dated 24-07-2006, it has been specifically provided that the conditions mentioned in Respondent Board's original wheeling approval dated 20-03-2005 remain unaltered. In view of the above position, it is to be noted that G.O.Ms. 48 still applies to the Petitioner's case irrespective of the amendment made to the wheeling approval. In Order dated 15-07-2008 issued in D.R.P. No.2 of 2008 (M/s. O.P.G. Energy Private Limited Vs. TNEB) which is similar to the present case, the Commission has interalia held as follows:-

“The wheeling approval in the instant case has been executed prior to the commencement of Intra-State Open Access Regulations 2005, namely 03-08-2005. The wheeling approval order does not contemplate any agreement. It only contemplates an undertaking to be given by the Petitioner. Reference may be made to paragraph 5 of the wheeling approval order dated 27-03-2004 (pp 3-4 of the typed set of the petitioner). It is only Order Nos.3 and 4 dated 15-05-2006 which contemplates the execution of Energy Wheeling Agreements (EWA) by the concerned. There is no power purchase agreement or wheeling agreement in the instant case or Open Access Agreement. There is only an undertaking given by the Petitioner. Hence there is no question of applying regulation 12 (h) of O.A. Regulation in the instant case”.

7.4 The Commission endorses the view of the learned counsel for the Petitioner that the said order of the Commission in D.R.P. No.2 of 2008 will be applicable to the Petitioner.

7.5 The generating capacity of the Petitioner is utilized by sale of power to PTC / TNEB and other third parties by short term open access after paying the applicable short term open access charges as discussed in para 3 (d) of this order.

8. **Directions:-**

The Respondent Board is directed to cancel the wheeling approval dated 28-03-2005 granted to the Petitioner in respect of the Petitioner's power plant for

supply to captive consumers with effect from 01-10-2009. The Petitioner is directed to file a separate Petition furnishing details of the amounts collected from the Petitioner for the period after 01-10-2009 towards transmission and wheeling charges as per the wheeling approval dated 28-03-2005 as well as the break-up of short term open access charges levied for the same period.

9. **Appeal:-**

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act 2003 within a period of forty five days.

With the above directions, D.R.P. No. 33 of 2009 is finally disposed of. There would be no cost.

**(Sd.....)**  
**(K. Venugopal)**  
**Member**

**(Sd.....)**  
**(S. Kabilan)**  
**Chairman**

**/ True Copy /**

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**