

**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 R. Rajupandi - Member**

**and**

**Thiru K. Venugopal - Member**

**D.R.P. NO. 29 of 2009**

**Date of hearing – 7-1-2010**

**Date of Order: 10-3-2010**

O.P.G. Energy (P) Ltd.  
No.26, K.B. Dasan Road  
Teynampet, Chennai-600 018  
Rep. by its General Manager  
D. Eswaramurthy

.. Petitioner

Counsel for Petitioner  
Thiru K. Seshadri

**Vs.**

1. The Chairman  
Tamil Nadu Electricity Board  
144 Anna Salai  
Chennai-600 002.

2. The Chief Engineer  
Tamil Nadu Electricity Board  
144 Anna Salai  
Chennai-600 002.

Opposite parties

Counsel for Respondents  
Thiru H.S. Mohamed Rafi

D.R.P. No.29 of 2009 came up for final hearing before the Commission on 7<sup>th</sup> January 2010. The Commission upon perusing the above petition and connected records and upon hearing both sides passes the following

### **ORDER**

#### **1. Prayer of the petitioner in DRP No.29 of 2009**

The prayer of the petitioner in DRP No.29 of 2009 is to issue direction to the opposite parties to revise the Energy Wheeling Agreement from 10 MW to 1 MW retrospectively from 27<sup>th</sup> January 2009 and direct the opposite parties to refund the transmission and wheeling charges collected from the said date.

#### **2. Facts of the case**

- a) The petitioner applied for wheeling approval of power from their captive Power Plant of 17.5 M.W. to their Group of companies and the opposite parties accorded approval on 18-9-2003. Revised approval was accorded on 27-3-2004. Since the petitioner could not generate and Wheel power of 17.5 MW as permitted due to shortage of supply of Gas by the Gas Authority of India, the petitioner had requested the opposite parties to revise the wheeling from 17.5 M.W. to 10 M.W. When the opposite parties declined for the revision of wheeling agreement the petitioner approached this Commission and obtained orders in D.R.P. No.2 of 2008 dated 15-7-2008 and consequently revised wheeling agreement was executed on 15-11-2008 for 10 MW.
- b) From February 2009 to June 2009 the petitioner was supplying power as per the terms of the tender dated 24-12-2008 to the opposite party and requested the second opposite party on 27-01-2009 and 4-5-2009 to amend the Energy Wheeling Agreement from 10 M.W. to 1 M.W. Since the respondent did not comply with the above request, this D.R.P. has been filed by the petitioner on 6-11-2009.

3. Contentions of the Petitioner:

- a) The petitioner was supplying power as per the terms of the tender dated 24-12-2008 to the opposite party and requested the second opposite party on 27-1-2009 which was acknowledged by them to amend the Energy Wheeling Agreement from 10 MW to 1 MW and for the payment of transmission and wheeling charges for 1 MW.
- b) The second opposite party namely CE, PPP in his letter dated 9<sup>th</sup> June 2009 has informed that the amendment to Energy Wheeling Agreement from 10 MW to 1 MW cannot be entertained by the Board, as the 10 MW Energy Wheeling Agreement is a Long Term Bilateral Energy Wheeling Agreement for a period of three years from 15-11-2008 which extends upto 2011.
- c) On 7<sup>th</sup> July 2009, the petitioner once again requested the first opposite party to reduce the transmission capacity from 10 MW to 1 MW from the date of their first letter dated 27<sup>th</sup> January 2009 since they have been wheeling 9 MW of power to the opposite parties through PTC India from 1<sup>st</sup> July 2009 to tide over power shortage and on the fact that transmission charges for wheeling power to the opposite parties are not being levied to other generators who supply power to the opposite party.
- d) The petitioner understands that the relinquishment or transfer of rights and obligations specified in the open access approval shall be done with the prior approval of this Hon'ble Commission as contemplated under Regulation 12 (h) of the Intra State Open Access Regulations 2005.

4. Contentions of Respondent in the Counter-affidavit

- a) The petitioner had been supplying 10 MW energy directly to the respondent Board till January 2009 and thereafter 9 MW through PTC India and 1 MW through the existing network only.
- b) The petitioner himself stated in the petition they are aware that the relinquishment of transfer of rights and obligation specified in the open access

approval shall be done only with the prior approval of this Hon'ble Commission as contemplated under Clause 12 (h) of the Intra State Open Access Regulations, 2005.

- c) Therefore without the approval of the Commission the petitioner is not entitled to the relinquishment. Moreover the petitioner has not chosen to terminate the Energy Wheeling Agreement and the petitioner is bound by the terms of the Energy Wheeling Agreement.

#### **5. Findings of the Commission:**

- 5.1. In the instant case, the Energy Wheeling Agreement (EWA) was executed by the petitioner with TNEB on 15<sup>th</sup> day of November 2008 for wheeling 10 MW of power through the Board's grid for captive use. As per Clause 9 of EWA the agreement period is three years. As per Clause 11 (d) of EWA the allotted capacity is 10 MW with effect from 24-12-2007. As per Clause 5 (a) of EWA, the transmission charges shall be payable for the allotted transmission capacity and wheeling charges shall be payable for the gross energy wheeled in 22 / 11 KVA network.
- 5.2. In the instant case, the TNERC Intra State Open Access Regulations, 2005 (henceforth referred to as OA Regulations) shall be applicable since the EWA has been executed subsequent to the date of commencement of the said OA Regulations i.e. 3<sup>rd</sup> August 2005.
- 5.3. In the instant case, the agreement period is 3 years and hence as per note 1 under Clause 6 of OA Regulations, the agreement has to be treated as a short term open access agreement. Clause 13 of OA Regulations is applicable in the present case. As per Clause 13 (f) of the OA Regulations, in case a short term customer is unable to utilise the full or substantial part of the capacity reserved, he shall inform the SLDC along with reasons for his inability to utilise the reserved capacity and may surrender the reserved capacity. Clause 13 (h) reads as follows:

*“The short term customer, who has surrendered the reserved capacity or whose reserved capacity has been reduced or cancelled, shall bear*

*full transmission or distribution charges as the case may be and the scheduling and system operation charges based on original reserved capacity till such time it is not utilised by the utility or allotted to any other open access customer and limited to the period for which the capacity was reserved.”*

- 5.4. Since the petitioner has been granted open access for a period of 3 years in terms of Clause 13 of the OA Regulations which is a case of short term open access, even if the petitioner surrenders OA capacity allotted to him, he can escape the charges only when the transmission capacity is re-allocated to somebody else or utilised by the TNEB. Till such re-allotment or utilisation takes place, the petitioner shall continue to pay the open access charges as laid down in the OA Regulations 2005.
- 5.5.** The petitioner submits that they have entered into a contract to sell power to the respondents through PTC India Ltd., from July 2009 to May 2010 to the extent of 9 MW and the balance available capacity of 1 MW is being used by the petitioner. The transfer point of this transaction of 9 MW is the OPG's plant switchyard (i.e.) the transaction between the petitioner and PTC takes place at the Plant's switchyard and resale by PTC to the respondent TNEB also takes place at the same switchyard. The TNEB therefore has started utilising the line capacity to the tune of 9 MW ever since this transaction commenced in July 2009.
- 5.6. The petitioner has stated in para 9 that they are wheeling 9 MW to the opposite parties w.e.f. 1-7-2009. The transfer point of this transaction of 9 MW is the OPG's plant switchyard 110 KV bus at OPG's plant i.e., the transaction between the petitioner and PTC takes place at the plant's switchyard and resale by PTC to the Respondent TNEB also takes place at the same switchyard. The TNEB therefore has started utilising the line capacity to the tune of 9 MW ever since this transaction has commenced w.e.f. 1-7-2009 which is expected to continue upto 31<sup>st</sup> May 2010.
- 5.7. Since a capacity of 9 MW has been utilised by the TNEB, as per Clause 13 (h) the transmission charges scheduling and system operation charges should not have been levied and collected by TNEB as STU for the period

commencing from 1-7-2009. The charges collected from July 2009 till date shall be refunded to the petitioner.

**6. Direction**

TNEB shall not collect the transmission and scheduling and system operation charges from the petitioner from the date of this order till the reduced open access capacity continues to be utilised by TNEB by the above trading transaction of 9 MW between PTC and TNEB at the transfer point of the petitioner's switch yard. The charges collected from 1-7-2009 till date shall be refunded to the petitioner. Clause 13 (h) will apply for levy of charges in case capacity is surrendered by a short term open access customer keeping in view whether such surrendered capacity is reallocated or used by the TNEB.

**6. 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 45 days.

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

(Sd.....)  
**(R. Rajupandi)**  
**Member**

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission