

**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. 31 of 2009**

**Date of hearing – 7-1-2010**

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

O.P.G. Renewable Energy (P) Ltd.  
No.17 Mooker Nallamuthu Street  
Chennai-600 001  
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.31 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.31 of 2009:**

The prayer of the petitioner in DRP No.31 of 2009 is to set aside the orders of the second respondent dated 5<sup>th</sup> September 2009 and issue direction to the opposite parties to revise the Energy Wheeling Agreement from 7.2 MW to 3 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 established waste heat recovery based co-generation plant and entered into Energy Wheeling Agreement on 7-2-2009 with the opposite parties to wheel the power generated from the said captive generation plant to the extent of 7.2 MW to their captive consumers.
- (b) The petitioner requested the opposite parties to revise the wheeling approval and to reduce the evacuation facility to 3 MW from the date of supply of power to the opposite parties through PTC India, viz. from 4-7-2009 Since the Respondent did not revise the wheeling approval as requested by the petitioner, this DRP is filed by the petitioner on 6-11-2009.

**3. Contentions of the Petitioner:**

- a) The petitioner was supplying 3 MW power to the opposite parties through PTC India Ltd. From 4<sup>th</sup> July 2009 to tide over the power situation.
- b) Since 3 MW is sufficient to cater to the needs of their captive consumers from out of 7.2 MW, the petitioner requested the opposite parties to revise

the wheeling approval and to reduce the evacuation facility to 3 MW from the date of supply of power to the opposite parties through PTC India viz. from 4<sup>th</sup> July 2009.

- c) On 5<sup>th</sup> September 2009, the second opposite party has sent an evasive reply and threatened to treat the petitioner power plant as a generating company.
- 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 is fully aware that they have a long term agreement for 7.2 MW as on date and in absence of any approval for relinquishment of long term open access capacity from this Hon'ble Commission, the petitioner is legally bound to pay the appropriate charges for long term open access. The petitioner should have brought it to the knowledge of the appropriate authority about the wrong and lesser claim and paid the correct amount as per agreement in force. Instead the petitioner is taking shelter under the erroneous bill and claim that the bill itself is an order for exemption which is not correct and liable to be rejected.
- b) As per Clause 4 (1) of Open Access regulations 2005 of TNERC, captive generating plants and electricity traders are eligible for open access to intra state transmission system of STU or any transmission licensee on payment of transmission and other charges as may be determined by the Commission. The company was informed that sale to PTC by the generator amounts to open access and their request for waiver of transmission charges for the quantum of sale was not considered as it was not a direct sale to TNEB.
- c) If the Hon'ble Commission approves the relinquishment of long term open access rights of the petitioner from 7.2 Mw to 3 MW, it is prayed that the respondents, may be suitably compensated at long term open access

transmission charges for 8 MW for the residual period of long term open access 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 7<sup>th</sup> February 2009 for wheeling 7.2 MW of power through the Board's grid for captive use / third party buyer. The agreement period is three years. 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 (shortly referred to as OA Regulations) shall be applicable since the EWA is entered into subsequent to the date of commencement of the said OA Regulations on 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.. As such, Clause 13 of OA Regulations is applicable in the present case. As per Clause 13(f), in case a short term customer is unable to utilize the full or substantial part of the capacity reserved, he shall inform the SLDC along with reasons for his inability to utilize 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 utilized 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 of the Commission, 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 utilized by the TNEB. Till such re-allotment or utilized on takes place, the petitioner shall be liable to pay the open access charges as laid down in the OA Regulations 2005.

- 5.5. The petitioner has stated in para 7 that they are wheeling 3 MW to the opposite parties w.e.f. 4-7-2009. The transfer point of this transaction of 3 MW is the OPG's plant switchyard 33 KV bus at OPGR'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 using the line capacity to the tune of 3 MW ever since this transaction has commenced w.e.f. 4-7-2009 and will continue upto 31<sup>st</sup> May 2010.
- 5.6. Since the reduced capacity of 3 MW has been utilized 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 since 4-7-2009. The charges collected from July 2009 to 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 such time the reduced capacity is utilized by TNEB by the above trading transaction of 3 MW between PTC and TNEB at the transfer point of the petitioner's switch yard. The charges collected from 4-7-2009 to till date shall be refunded to the petitioner. Clause 13 (h) will govern 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.

## **7. 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**