

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.K.Venugopal **Member**

Thiru. S. Nagalsamy **Member**

D.R.P. No.2 OF 2010
&
I.A. No.2 of 2010
in
D.R.P. No. 2 of 2010

M/s. Madras Cements Limited
 98A, Dr. Radhakrishnan Road
 Mylapore
 Chennai – 600 004.

.... Petitioner
 (Thiru. Rahul Balaji, Advocate for Petitioner)

Vs.

1. Tamil Nadu Electricity Board
 Rep. by its Chairman
 New No.144, Anna Salai
 Chennai – 600 002.
2. The Member (Distribution)
 Tamil Nadu Electricity Board
 No.144, Anna Salai
 Chennai – 600 002.
3. The Superintending Engineer (PEDC)
 Tamil Nadu Electricity Board
 No.255B/19A, N.S.K. Mahal
 Vadakku Madavi Road
 Perambalur 621 212.

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

Dates of hearing 10-2-2010, 7-7-2010, 17-8-2010, 19-10-2010 & 3-11-2010

Date of order 2-3-2011

The D.R.P.No.2 of 2010 came up for final hearing before the Commission on **3-11-2010**. The Commission upon perusing the above D.R.P.No.2 of 2010 and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in D.R.P. No.2 of 2010:-**

The prayer in D.R.P. No. 2 of 2010 is to set aside the order of the Second Respondent dated 09-07-2009 bearing Ref. No. SE/PEDC/PBLR/AO/RCS/JA1/F.E.HT.SC.No.43-EWA/DNo.308.9 as being arbitrary and illegal and direct termination of the wheeling arrangement from the Petitioners 2 x 18 MW captive generating plant at Alathiyur to its unit at Ariyalur bearing E.HT.S.C. No.69 in terms of its letter dated 2-06-2009 and not to levy any further charges effective under the Energy Wheeling Agreement dated March 2009 in so far as it relates to its Ariyalur Plant and not to levy any further charges in that regard from the date of the Petitioner submitting its application.

2. **Prayer in I.A. No.2 of 2010 :-**

The prayer in I.A. No. 2 of 2010 is

- (1) to issue an order of interim injunction restraining the Respondents from in any manner seeking to levy transmission charges, Scheduling and Systems Operation charges under the agreement dated March 2009 in so far as it relates to the Petitioner's plant bearing EHT.SC.No.69 at Ariyalur ; and

- (2) to issue an interim order of stay of the impugned demand dated 18-07-2009 in Letter No.SE/PEDC/PBLR/AO/RCS/JA1/F.E.HT.SC.43CPP/D.No.313/ 99 and all further proceedings pursuant thereto pending disposal of the petition.

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

- 3.1 The Petitioner is a manufacturer of cement and has its cement plants at Alathiyur of Perambalur District, R.R. Nagar of Virudhunagar District and Ariyalur of Ariyalur District in the State of Tamil Nadu. The Petitioner's cement manufacturing activities require uninterrupted supply of power. The Petitioner, in order to ensure availability of power, has set up fossil fuel based captive generating plants and also put up WEGs of a total capacity of 180 MWs. The Petitioner has set up a thermal captive generating plant at Alathiyur. The power plant is of 2 x 18 MW capacity coal based thermal power plant and the power generated is essentially for the purpose of Petitioner's cement plant situated at Alathiyur.
- 3.2 The Petitioner submits that in view of the provisions of the Electricity Act, 2003, the Respondent Board entered into a Energy Wheeling Agreement in March 2009 with the Petitioner. The said agreement provided for wheeling of 1 M.W. to the R.R. Nagar factory and 5 MWs to the Ariyalur factory. The said agreement further provided for payment of certain charges, pertaining to the cost towards interfacing the CPP with the Respondent's grid and other charges. The Petitioner duly made payment of the charges.

- 3.3 The petitioner decided to withdraw the wheeling of 5 MW power to its Ariyalur cement unit. It accordingly issued a letter dated 12-6-2009 to the third respondent seeking termination of the arrangement in so far as the wheeling of energy relates to its Ariyalur unit. The petitioner did not receive any response to their communication dated 12-6-2009 and therefore issued a further letter dated 27-6-2009 terminating the wheeling agreement. The petitioner finally received the impugned letter dated 9-7-2009 from the third respondent.
- 3.4 The respondent stated in the impugned order dated 9-07-2009 that the agreement could be terminated only in the event of any breach or default on the part of the respondents and hence the petitioner will have to pay the transmission charges and scheduling system operation charges continuously every month till the expiry of the agreement whether power is wheeled or not to its Ariyalur unit, for the remainder of the three year period set out in the agreement.

Aggrieved by the said impugned letter, the Petitioner has filed the above D.R. P. No.2 of 2010.

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

- 4.1 The impugned letter is violative of Article 14 and provisions of the Electricity Act, 2003.
- 4.2 The impugned order is liable to be set aside in as much as the Respondent would not be prejudiced in any manner by the Petitioner withdrawing from the wheeling arrangement since the expenditure for the

infrastructure for interfacing the captive generating plant with the Respondent's grid has been borne by the Petitioner and it is only the system operation and scheduling charges and the wheeling charges will be a loss to the TNEB. The Respondent cannot seek payment of the same even in a case, where no wheeling is actually taking place.

- 4.3 In the additional affidavit dated 29-10-2010 filed by the petitioner, it is contended that though 5 MW energy to Ariyalur plant and 1 MW energy to R.R. Nagar plant are not exported by the petitioner company, every month a sum of Rs.5,30,580/- is being paid to TNEB. Further, 3 to 12.9 MW energy is now being generated and sold to third parties through the TNEB transmission facility and the petitioner is paying charges for the same. It is further contended that the respondents cannot therefore, claim charges on a multiple basis for the same facility.

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

In the counter affidavit filed by the 3rd respondent on behalf of all the 3 respondents, the TNEB has contended as follows;

- 5.1 The company has executed an agreement with TNEB for a period of 3 years from the date of agreement (07-03-2009) for wheeling of 6 MW i.e 1 MW of energy to their plant at R.R. Nagar and 5 MW of energy to their plant at Ariyalur.
- 5.2 Only if there is any breach or violation of the agreement the party concerned shall be at liberty to cancel the agreement by giving 30 days notice as per clause 9 (a) and (b) of the agreement. Therefore, the

- Petitioner is not entitled to terminate the Energy Wheeling Agreement unilaterally.
- 5.3 The company in their letters dated 4-6-2009 and 27-6-2009 have stated that wheeling of 5 MW power to their Ariyalur plant is not required from 4-6-2009 in view of the recent relaxation of power cut and commissioning of Genset at their Ariyalur plant and that the respondents replied to the company vide letter dated 9-7-2009 that the request is not feasible of compliance as per clause 9 (a), (b) of the agreement.
- 5.4 Though the Generator has right to seek Open Access for its requirement, the power to order relinquishment of Open Access rights lies with the TNERC as per clause 12 (h) of Open Access Regulations. Therefore the claim of the Generator that they can withdraw Open Access right by themselves is not correct.
- 5.5 As per clause 12 (h) of the 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 the payment of compensation as may be determined by the Commission.
- 5.6 In the additional counter affidavit filed by the respondents it has inter alia been contended that the amount of Rs. 5,30,580/- per month paid by the petitioner is on par with EWA executed by the petitioner on 7-3-2009. Similarly, the petitioner has to pay if third party sale of energy is involved through TNEB network as per the rules in vogue. So, the question of

charging the petitioner on multiple basis for the same facility does not arise due to different kind of utilization (ie) wheeling and third party sale.

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

- 6.1. It is to be noted that in the instant case, an Energy Wheeling Agreement (EWA) has been executed between the Petitioner and the Respondent on 7-3-2009 for wheeling 6 MW of power through Board's grid for captive use. As per Clause 9 (a) of EWA, the agreement shall remain in force for a period of three years. As the EWA was executed in March 2009, i.e subsequent to the date of coming into force of the Intra-State Open Access Regulations 2005 made by the Commission, the said regulations would be applicable to this case.
- 6.2 At the outset, the Commission would like to observe that there is considerable confusion in the categorisation of Open Access customers in the mind of generators as well as the TNEB. Clause 6(i) of the Intra-State Open Access Regulations, 2005 states that customers availing Open Access for a period of one year or less shall be treated as short term customers. Clause 6(ii) states that customers availing of Open Access for a period of five years or more shall be treated as long term customers. Note-1 of Clause 6 states that Open Access applications for a period of less than five years and more than a year shall be considered under short term Open Access only and shall be allowed at a time for a period not exceeding one year.

- 6.3 We admit that Clause 6 could have been better drafted. Apparently, the Regulations of the State Commission on Open Access framed in 2005 have been modelled on the line of CERC Regulations on Open Access, 2004. The CERC Open Access Regulations, 2004 states that the customers availing Open Access for a period of twenty five years or more shall be long term customers and others short term customers. The duration for short term Open Access has been limited to one year with the proviso that customers can seek fresh reservation after expiry of one year.
- 6.4 Any customer who avails Open Access for less than five years has to be treated as a short term Open Access customer. The Petitioner will, therefore, have to be treated as a short term Open Access customer and compensation has to be determined with reference to Clause 13 (h), which fastens liability on a customer, only if reserved capacity remains idle.
- 6.5. Clause 13 (f) of the Intra-State Open Access Regulations, 2005 reads as follows:-

“In case a short-term customer is unable to utilize the full or substantial part of the capacity reserved, he shall inform the State Load Dispatch Centre along with reasons for his inability to utilize the reserved capacity and may surrender the reserved capacity”.

Clause 13 (h) of the said Regulations, 2005 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”.

- 6.6 In the case of the Petitioner, it is not disputed by the TNEB that the expenditure for infrastructure for interfacing the captive generating plant with the grid of the TNEB was borne by the Petitioner. Further, the Petitioner has been assessed to demand charges for the entire sanctioned demand.
- 6.7 It is also noted that the capacity reserved for the Petitioner through open access is being utilized by the utility itself for providing power supply to the Petitioner consequent to reduction of power cut to 20% with effect from 16-06-2009.
- 6.8 The Petitioner has also stated that 3 to 12.9 M.W of power is now being generated and sold to third party through the same TNEB transmission system and the Petitioner is paying necessary charges for the same which statement has not been refuted by the Respondents.
- 6.9 In the light of the findings in paras 6.1 to 6.8 above, the question of compensating the TNEB by the Petitioner consequent to the termination of wheeling arrangement requested by the Petitioner does not arise and therefore the impugned letter dated 9-07-2009 is unsustainable.

7. **Direction :-**

In view of the findings in paragraph 6.1 to 6.9 above, the letter of the third Respondent No.SE/PEDC/PBLR/AO/RCS/JA1/F.E.HT.SC.No.43-EWA/D No.308.9, dated 9-07-2009 is set aside.

The respondents are directed to terminate the wheeling arrangement from the Petitioners 2 x 18 MW captive generating plant at Alathiyur to its unit at Ariyalur bearing E.HT.S.C. No.69 as requested by the Petitioner vide its letters dated 2-06-2009 and 27-06-2009 and not to levy any further charges effective from 27-6-2009 under the Energy Wheeling Agreement dated 7-3-2009 in so far as it relates to its Ariyalur Plant.

8. **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.

(Sd.....)
(S. Nagalsamy)
Member

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity Regulatory Commission