

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

**PRESENT:-**

<b>Thiru.S.Kabilan</b>	...	<b>Chairman</b>
<b>Thiru.K.Venugopal</b>		<b>.... Member</b>
	<b>and</b>	
<b>Thiru.S.Nagalsamy</b>		<b>.... Member</b>

**D.R.P. No. 3 of 2010**

**Dates of hearing: 25-02-2010, 07-07-2010, 08-07-2010,  
17-08-2010, 07-12-2010 and 12-01-2011.**

**Date of Order : 31-01-2011**

Sree Rangaraaj Power India (P) Ltd.  
 Plot No.MMI (Part-I)  
 SIPCOT Industrial Growth Centre  
 Perundurai – 638 052  
 Erode District, Represented by its Director  
 S. Shyamsundar.

.... Petitioner  
 (Thiru.K. Seshadri, Advocate for Petitioner)

**Vs.**

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

2. The Chief Engineer / P.P.P.  
 Tamil Nadu Electricity Board  
 144, Anna Salai  
 Chennai – 600 002

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

D.R.P.No.3 of 2010 came up for final hearing before the Commission on **12-01-2011**. The Commission upon perusing the above D.R.P.No.3 of 2010 and other connected records and after hearing both sides passes the following:-

### **ORDER**

1. **Prayer in D.R.P. No.3 of 2010:-**

The prayer in D.R.P. No. 3 of 2010 is to direct the Respondents to revise the Energy Wheeling Agreement from 8 M.W. to 6 M.W. from 14-11-2009 and consequently direct the Respondents to refund the excess transmission charges collected over and above 6 M.W. from the Petitioner based on the pre-revised wheeling agreement.

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

2.1. The Petitioner established waste heat recovery based generation plant with installed capacity of 8 M.W. at Plot No.M.M.1. (Part I) SIPCOT Industrial Growth Centre, Perundurai in Erode District. On 12-12-2005, wheeling approval was accorded to wheel power so generated to i) Sri Rangaraaj Ispat (P) Ltd., Salem Electricity Distribution Circle. ii) Sree Rangaraaj Steel and Alloys (P) Ltd., Salem Electricity Distribution Circle. iii) Sri Venkateswara Steel Industries, Salem Electricity Distribution Circle and Parallel operation of 8 M.W. power was also accorded by the First Respondent on 21-12-2005.

- 2.2 Revised wheeling approval was sanctioned on 25-04-2007 based on the undertaking executed by the captive users, subject to certain conditions. On 24-05-2007 a wheeling agreement was also executed by the Petitioner with the Respondents.
- 2.3 From 01-04-2009 two of the captive users withdrew their share holdings and the same has been informed to the Respondents for the revised approval. On 17-12-2009, the Member (Generation) of the Respondent Board has issued amendment for the deletion of out going captive users.
- 2.4 Since the Petitioner's generation is constantly 7 M.W. and that they are unable to wheel more than 6 M.W. after consumption for auxiliary purposes, they requested the Second Respondent on 14-11-2009 to revise the wheeling approval dated 25-04-2007 and agreement dated 24-05-2007.
- 2.5 On 17-12-2009 the Second Respondent informed the Petitioner to obtain the prior approval of this Hon'ble Commission for relinquishment of long term open access facility as per the provision of TNERC's Intra-State Open Access Regulations 2005, subject to payment of compensation as may be determined by this Hon'ble Commission.

2.6 The Superintending Engineer, Erode Electricity Distribution Circle, in his letter dated 18-01-2006 has instructed the petitioner to pay the cost of works to the tune of Rs.53,28,300/- including a deposit of Rs.10,000/- in advance under para 554 of TNEB Manual Volume I. Accordingly on 23-01-2006, the petitioner paid a sum of Rs.53,28,300/- towards D.C.W. works for transmission system for power evacuation.

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

3.1 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 the Intra-State Open Access Regulations 2005.

3.2 Unless this Commission directs the Respondents to revise the wheeling agreement from 8 M.W. to 6 M.W., the Petitioner will be compelled to pay transmission charges and scheduling and system operation charges etc. on 8 M.W. which the Petitioner do not actually wheel and consequently the Petitioner will be put into huge financial loss and undue hardship.

3.3 Since the cost of transmission lines was entirely borne by the Petitioner, no loss or damage would be caused to the Respondents to realize from the Petitioner as contemplated under Clause 13 (h) of the Intra State

Open Access Regulations 2005. The Respondents would not incur any further expenditure on reducing the wheeling from 8 M.W. to 6 M.W.

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

4.1 The Company has executed a wheeling agreement on 24-05-2007 for three years. Transmission and wheeling charges are collected as per TNERC's Order No.2 dated 15-05-2006 for long term open access with effect from 11/2007 and orders issued vide B.P. No.95 dated 10-09-2009 to implement Order No.2 & 4 with effect from 11-10-2007 i.e. the date on which the Petitioner has given option to come under Order No.2&4 dated 15-05-2006.

4.2 The company vide letter dated 14-11-2009 has reported that even though they have got approval for wheeling for 8 MW, in practice they were not able to generate more than 7 MW and after auxiliary consumption they would be able to wheel only around 6 MW and requested to reduce approval for wheeling from 8 MW to 6 MW. The Second Respondent in letter dated 17-12-2009 have requested the Petitioner to obtain the approval of Hon'ble TNERC for relinquishment of long term open access as per the provisions of the Intra-State Open Access Regulations, 2005 subject to payment of adequate compensation as may be determined by the Commission.

- 4.3 The power is evacuated from the Petitioner's 8 M.W. captive power plant through 33 KV SC line with 7/4.09 mm ACSR conductor laid from the plant to SIPCOT 110/33-11 KV substation for a distance of 2.264 Kms. The estimate for the above works was sanctioned vide Board's B.P. No.21 dated 17-01-2006. As per the estimate the Petitioner has to pay Rs.53,28,300/- and the Petitioner has paid the amount on 18-01-2006. The works were carried out under DCW basis. There are no other generators / consumers connected to the above lines.
- 4.4 As the existing wheeling agreement is in force for three years with effect from 25-04-2007 i.e. upto 24-04-2010, the Respondents may be compensated @ Rs.2781 / M.W. for the 8 M.W. transmission capacity for the remaining period upto 24-04-2010 since the Respondents have taken into account 8 M.W. capacity of the Petitioner while planning their power management and the reduction in revenue will affect the finances of the Respondent Board substantially.
- 4.5 The company was paying the Open Access charges for the long term open access. The company has not submitted its application for wheeling under short term open access to the SLDC as per the open access regulations to treat the same under Clause 13 (h) of the Open Access Regulations 2005. Further the company has paid the Open access

registration fees and agreement fees Rs.5,000/- and Rs.50,000/- respectively that are applicable to LTOA.

- 4.6 After expiry of the EWA on 23-05-2010, the Petitioner based on the fresh application has been permitted for STOA of 6 MW capacity vide letter dated 28-09-2010 and the Petitioner has signed EWA for one year on 30-09-2010 for wheeling to captive users.

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

- 5.1 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.
- 5.2 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.

5.3 The Counsel for TNEB argued that the Petitioner having chosen to file application under Clause 12(h) of the Intra State Open Access Regulations 2005 of the TNERC, which applies to long term customers, has waived his right for being treated as a short term customer. We are unable to accept the contention of the TNEB, as there is no estoppel against law.

5.4 Therefore, 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. In the case of the Petitioner, it is not disputed by the TNEB that the cost of the interconnection lines was borne by the Petitioner. Further, the Petitioner has been assessed to demand charges for the entire sanctioned

demand. Therefore, the question of compensating the TNEB does not apply in the instant case.

## 6. **Direction**

In view of the findings of the Commission in para 5 above, the Petitioner has to be treated as a short term Open Access customer as per the Intra State Open Access Regulations, 2005 of TNERC for the period of the agreement from May 2007 to May 2010. The relief claimed by the Petitioner is limited to recovery of transmission and wheeling charges for 6 MW as against 8 MW from 14-11-2009. The relief is granted.

## 7. **Appeal:-**

An appeal under section 111 of the Electricity Act 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

(Sd.....)  
(S. Nagalsamy)  
Member – II

(Sd.....)  
(K. Venugopal)  
Member – I

(Sd.....)  
(S.Kaliban)  
Chairman

/ True Copy /

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