



**THE 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 B. Jeyaraman** - **Member**  
**and**  
**Thiru R. Rajupandi** - **Member**

**D.R.P. No. 1 / 2008 and M.P.No. 10 of 2008**

Kaveri Gas Power Ltd.,  
No.5/3, Ranganathan Garden  
Anna Nagar, Chennai – 600 040.

Petitioner.

Vs.

1. The Chairman,  
Tamil Nadu Electricity Board  
800, Anna Salai, Chennai.
2. The Member (Generation)  
Tamil Nadu Electricity Board  
800, Anna Salai, Chennai.

Respondents.

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The above petition namely D.R.P.No. 1 of 2008 came up for final hearing before the Commission on 24.4.2008. The Commission upon perusing the above petition, the affidavit filed in support thereof, the counter affidavit of the Respondent Board and all other connected records of the case and upon hearing the arguments of both sides, passes the following

## **ORDER DATED 15-07-2008**

### **1. Prayer of the petitioner**

The prayer of the petitioner is to set aside the proceedings of the second respondent in Letter No. CE / PPP / SE / PP / EE / AEE / CPP2 / D. 468/07 dated 15.12.2007 and direct the Respondent Board to amend the wheeling approval order dated 24.5.2006 to indicate the installed capacity of the petitioner unit as 6.79 MW instead of 17.5 MW indicated therein.

### **2. Summary of the case**

The petitioner is a gas based captive power plant holding company was accorded by the Respondent wheeling approval on 24.5.2006 for wheeling power from petitioner's unit with installed capacity of 17.5 MW through the Respondent Grid to its joint venture companies subject to various conditions as specified in the wheeling approval letter. In letter dated 19.10.2007 the petitioner requested the Respondent to amend the plant capacity in the wheeling approval letter from 17.5 MW to actual capacity of 6.79 MW. By letter dated 15.12.2007 (impugned letter) the petitioner was called upon to approach the Commission for according approval for the reduction of the installed capacity from 17.5 MW to 6.79 MW in the original wheeling approval letter dated 24.5.2006. Hence this petition.

### **3. Contentions of the petitioner**

- (a) This is not a case of a claim for reduction of the installed capacity from 17.5 MW to 6.79 MW but only a claim for amending the alleged installed capacity from 17.5 MW to 6.79 MW which is the actual installed capacity in the petitioner plant. In the circumstances, the question of requiring the petitioner to get approval for reduction in the installed capacity would not arise.
- (b) The reference to 17.5 MW as installed capacity in the wheeling approval is a mistake and therefore the claim made by the petitioner is to be considered only as a claim for amendment or correction of the said figure to 6.79 MW.

#### **4. Contentions of the Respondent Board**

- (a) While referring to the definition of “Allotted Transmission Capacity” in the amending Order No. 2.1 dated 29.11.2007 issued by the Commission, it is contended that transmission charges are to be levied on the permitted transmission capacity.
- (b) While referring to clause 12(h) of Open Access Regulations 2005, it is contended that the relinquishment or transfer of the rights and obligations of long term Open Access Customer is subject to payment of compensation which is within the purview of the Commission.
- (c) The infrastructure has been created for the petitioner’s company for evacuation of 17.5 MW of power which amounts to reserving the transmission capacity.
- (d) The petitioner has filed WP No. 35736 of 2007 in the Hon’ble High Court of Madras for challenging the Order dated 19.11.2007 which relates to the levy of transmission charges for 17.5 MW and pending disposal of the said writ petition, the petitioner has approached another forum namely this Commission.

#### **5. Issues**

The following issues arise for consideration namely:-

- (i) Whether the application for relinquishment of the wheeling capacity should be addressed to the Commission or to the licensee by the Open Access Customer?.
- (ii) What should be considered as fair compensation to the licensee?.
- (iii) What should be reckoned as the date for relinquishment?.

#### **6. Findings of the Commission with reference to the First Point in issue**

Regulation 12(h) of the TNERC – Intra State Open Access Regulations 2005 (hereinafter referred to as OA Regulations) deals with the relinquishment of the rights and obligations of the parties to open access agreement. The said regulation 12(h) of OA Regulations reads as follows:

“(h) A long – term open access customer shall not relinquish or transfer of his rights and obligations specified in the open access agreement without prior approval of the Commission. The relinquishment or transfer of right and obligations shall be subject to payment of compensation as may be determined by the Commission.”

From the expression “without prior approval of the Commission” occurring in the said regulation 12(h), it would be seen that it is only the Commission to whom the application for relinquishment of rights has to be made. However it is to be noted that in the first instance there must be an open access agreement entered into by the parties. The wheeling order in the instant case was issued prior to the commencement of OA Regulations i.e. 3<sup>rd</sup> August 2005. The wheeling order is not an agreement, as seen from the last paragraph of the order dated 24.05.2006. Orders 3 and 4 dated 15.5.2006 of this Commission contemplate the execution of Energy Wheeling Agreement (EWA) by the concerned persons. There is no power purchase agreement or wheeling agreement in the instant case or open access agreement. Regulation 12(h) of OA Regulations does not apply to this case.

### **7. Findings of the Commission with reference to the Second Point in Issue**

With reference to the second point in issue, the Respondent Board in paragraph 6 of the counter affidavit have stated as follows:

“The infrastructure has been created for the petitioner company for evacuation of 17.5 MW of power which amounts to reserving the transmission capacity. Even though the Respondent Board have collected the cost of creating infrastructure on DCW basis, such reservations would affect the other prospective captive power plants in that area”. The Respondent Board were directed to substantiate the above averments. The Respondent Board were reminded on several occasions. The Respondent Board has failed to substantiate the above averments with sufficient data. In the absence of sufficient proof, there is no case for compensating the Board. In this context, it is to be noted that as per clause

(c) of regulation 11 of OA Regulations, a person covered by a policy relating to captive generation shall be eligible to avail open access for their own use irrespective of contract demand. Section 9(2) of the Electricity Act, 2003 also confers the right to open access to a captive generating plant holder for carrying electricity to the destination of his own use.

In the additional grounds filed by the petitioner in the instant case, in item (d) the petitioner has stated as follows

“The available capacity of a substation is very well explained in Reg. 8(1)(b). The Regulation reads as follows

“8 (1) (b) Available open access capacity of a sub-station:= TC – SP – AC where TC= Transformer capacity of the sub-station in MVA, SP=sub-station peak in MVA and AC=Already allotted capacity but not availed in MVA. The STU shall update these values on monthly basis on the first calendar day of the month and publish it in their website.”

“The capacity of the palaiyur substation’s transformer is 16MVA. The peak load is 5.5 MVA. Allotted capacity but not availed in MVA is 28.57 MVA. (Allotted capacity to OPG 17.5 MW, Kaveri 6.79 MW, Saheli 9 MW).

Hence the open access capacity of the SS is  $16 - 5.5 - 17.33 = - 6.83$  MVA. Please note that the open access capacity is in negative. This proves that the respondent never lost any money on account of capacity under utilization.”

The Respondent Board has not offered any comment over the above averments. In view of the above position, there is no case for awarding any compensation to the Respondent Board.

### **8. Findings of the Commission with reference to the Third Point in Issue**

With reference to the third point in issue, the petitioner has contended that the mention of 17.5 MW as the installed capacity of the petitioner unit in the

wheeling order is obviously a mistake which ought to have been amended on the basis of the claim made by the petitioner on 19.10.2007.

It is to be noted that in the wheeling order dated 24.5.2006 (pages 6-9 of the typed set of the petitioner) the approval for wheeling of the power to the captive users is given for 17.5 MW. That approval is given as per section 9(2) and 39(2) (d) of the Electricity Act, 2003.

In condition 10 to the said wheeling order it is stipulated as follows:-

“The power wheeled from the CPP of the M/s. Kaveri Gas Power shall be used by the above said companies only.”

It is to be noted that the above wheeling approval letter was issued only with reference to letter of request dated 24<sup>th</sup> August 2005 issued by the petitioner company which has been cited in the reference to the above wheeling order. Further in the said letter dated 24<sup>th</sup> August 2005, the petitioner company in para 1 has stated as follows.

“In the first phase we will be generating 6.79 MW”. In letter dated 17.2.2006 the petitioner company in the first paragraph stated that “due to the reduced availability of gas, initially we will set up a power plant to generate 6.79 MW.” The above statements of the petitioner company would indicate that the mentioning of 17.5 MW in the said wheeling order as installed capacity is not a mistake. The wheeling order should be modified accordingly. The modification should take effect from 19<sup>th</sup> October 2007.

**9. Findings of the Commission with reference to the averments of Respondent Board in paragraph 7 of the counter-affidavit.**

At paragraph 7 of the counter, it has been contended as follows:-

“It is to be informed that in the case of Sree. Rengaraj Power India Pvt. Limited, the Commission has dismissed the dispute resolution petition No. 9 of 2007 filed by the Sree Rengaraj Power India Pvt. Limited on the grounds that the company has filed a writ petition in the High Court of Madras for the same prayer which

was pending in the Commission. The petitioner prayer pending in the Commission also, is to be treated on par with the Commissions directions in the case of Sree Rengaraj Power India Pvt. Limited.”

The prayer of the writ petition no. 35736 of 2007 is to set aside the order dated 19.11.2007 which relates to transmission charges for the month of October 2007 and November. The prayer of the WP No.1964 of 2008 is to set aside the impugned order dated 19.01.2008 in respect of transmission charges of Rs.15,39,693/- for the month of January 2008. But the prayer in the D.R.P. No. 1 of 2008 is to set aside the impugned letter dated 15.12.2007 issued (page 30 of typed set of the petitioner) by 2<sup>nd</sup> Respondent which has required the petitioner to approach this Commission. They are different.

### **10.Conclusion**

The prayer in the above D.R.P.No. 1 of 2008 in so far as it relates to the amendment of the wheeling order dated 24.5.2006 so as to indicate the installed capacity of the petitioner unit as 7 MW (6.79 MW rounded off to 7MW) instead of 17.5 MW is allowed. The Respondent Board is directed to modify the impugned wheeling order to the above effect. As the dispute in the instant case is the availability of transmission capacity, this Commission has got jurisdiction to decide the dispute under the second proviso to section 9(2) of the Electricity Act, 2003. Further as per section 86(1)(f) of the Act, the Commission is competent to decide any dispute between a generating company and a licensee and there is no restriction in regard to the nature of dispute which is to be adjudicated by this Commission. Therefore, the impugned letter cannot be set aside as prayed for by the petitioner. However, it is to be noted that under regulations 12 and 13 of OA Regulations which relate to applications for long and short term open access, it is stipulated therein, that the application should contain details in regard to “capacity needed”. That being so, the petitioner company has got a right to ask for reduced capacity.

The Respondent Board is therefore directed to reduce the allocated capacity for transmission from 17.5 MW to 7 MW (6.79 rounded off to 7) with effect from

19.10.2007. Accordingly, the transmission charges will be levied for a capacity of 7 MW with effect from 19.10.2007. If the collection of the respondent board has been in excess of the amount so determined, the excess shall be refunded to the petitioner excepting for the months of October 2007, November 2007 and January 2008 for which the petitioner has separately approached the Hon'ble High Court of Madras for remedy. The dues for the above three months will be subject to the orders of the Hon'ble High Court of Madras.

With the above directions D.R.P.No. 1 of 2008 is finally disposed off. Consequently the connected M.P.No. 10 of 2008 is closed. No costs.

Pronounced in the open court by this Commission on 15<sup>th</sup> July 2008.

**(Sd.....)**  
**(R. RAJUPANDI)**  
**Member**

**(Sd.....)**  
**(B.JEYARAMAN)**  
**Member**

**(Sd.....)**  
**(S.KABILAN)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission