



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
Thiru R. Rajupandi - Member
and

D.R.P. No. 11 of 2008

Sri Marudhamalai Andavar Spinning Mills
Perur Main Road, Coimbatore – 641 039. Petitioner

Vs

1. The Chief Engineer, NCES
Tamil Nadu Electricity Board
800 Anna Salai, Chennai - 600 002.
2. The Superintending Engineer
Udumalpet Electricity Distribution Circle
Udumalpet.
3. The Superintending Engineer
Tirunelveli Electricity Distribution Circle
Tirunelveli. Respondents

The above petition namely D.R.P.No. 11 of 2008 came up for final hearing before the Commission on 29.08.2008. The Commission upon perusing the above petition and all other connected records of the case and upon hearing the petitioner in the presence of the Learned counsel for the Respondent Board passes the following

ORDER DATED 19th September 2008

1. Prayer of the petitioner

The prayer of the petitioner in D.R.P.No. 11 of 2008 is to pass orders for payment of Rs. 10,31,025/- (Rupees Ten Lakhs Thirty One Thousand and Twenty Five Only) from TNEB.

2. Facts of the Case

The facts of the case of the petitioner are briefly as follows:

- i) The petitioner having a wind mill at Tenkasi SF No. 468 / IB (HT SC No. 1558) entered into agreement with the Respondents on 13.02.2006 for Wheeling and Banking to the petitioner's spinning mill located in Udumalpet HT SC No. 171 (Udumalpet Electricity Distribution Circle)
- ii) The petitioner M/s. Marudhamalai Andavar Spinning Mills had entered into an Energy Wheeling Agreement with the TNEB on 30.03.2008 on mutual renegotiation and executed the agreement in line with Order No. 3 dated 15.05.2006.
- iii) The petitioner contends that as per the Energy Wheeling Agreement executed, they are entitled for encashment of 75% of the unutilized wind energy at the close of the financial year @ 2.75 per unit.
- iv) The petitioner had requested for payment for this unutilized wind energy in their letter to the Superintending Engineer, Tirunelveli dated 05.05.2008 who replied that the petitioner are not entitled for the benefits of Order No. 3.
- v) Since the unutilized banking energy could not be adjusted in three months the petitioner wanted encashment for 75% of the unutilized banking energy @ Rs.2.75 / unit and addressed the Superintending Engineer, Tirunelveli again seeking encashment as per the terms and conditions of the energy wheeling agreement.
- vi) The petitioner's contention is that TNEB failed to provide requisite supply for almost 10 months starting from October and it is not the petitioner's fault. Hence, they must accordingly be compensated and be paid as per the terms and conditions of the energy wheeling

agreement mutually renegotiated and executed in line with Order No. 3 dated 15.05.2006.

3. Contentions of Respondent Board

The contentions of the Respondent Board are as follows:

- a) Prior to the execution of the Energy Wheeling Agreement (EWA) the existing old agreement would apply and that as per the above old agreement the unutilized surplus energy at the end of banking period as on 31.03.2008 will be treated as lapsed.
- b) The petitioner claimed encashment of unutilized surplus energy available at the end of banking period i.e. as on 31.03.2008 at 75% of the normal purchase rate, but the Superintending Engineer / EDC / Tirunelveli has refused. Since the petitioner has executed the Energy Wheeling Agreement (EWA) only on 30.03.2008, the benefits of the TNERC Order No. 3 dated 15.05.2006 would be available to the petitioner only from 30.03.2008. Hence, the letter issued by the Superintending Engineer / EDC / Tirunelveli as per Order No. 3 is correct.

4. Point in issue

The point in issue is whether the petitioner is entitled to encashment of 75% of the unutilized banked energy as per the new Energy Wheeling Agreement?.

5. Findings of the Commission

The contention of the petitioner is that as per the new Energy Wheeling Agreement (EWA), the petitioner company are entitled for encashment of 75% of the unutilized banked energy at the close of the financial year at Rs. 2.75 per unit. The petitioner further contended that the said agreement has been signed on 30th March 2008. The learned counsel for the Respondent Board contended

that the earlier agreement would hold good. He further contended that the petitioner could not claim any retrospective effect.

It is to be noted that the old agreement ceases to operate once the EWA is signed by both the parties on the 30th March 2008. As per clause 5 (b) of the EWA, the unutilized portion of banked energy if any shall be purchased by the licensee at the rate of 75% of the normal purchase rate. As per clause 10 (a) of EWA the agreement shall come into force from the date of execution and shall remain in full force for a period of twenty years. Since the date of execution of the said EWA was 30th March 2008, the petitioner would be entitled to encashment of 75% of the unutilized portion as on 31-03-2008 of banked energy. The Respondent Board is legally bound to give effect to the above clause 5(b) of EWA which has been agreed by them. Further the last sentence of clause 4 of Order No. 3 dated 15.05.2006 which relates to applicability of order reads as follows:

“Any renewal of the said contracts / agreements, new contracts / agreements shall be in line with this order.”

The second sentence of the said Order No. 3 reads as follows:

“This order shall be applicable to all future and renewal of existing contracts / agreements for the non-conventional energy sources (NCES) based generating plants located within the State of Tamil Nadu.”

From the expression “future” occurring in the said clause 4 of Order No. 3, it is to be noted that the said Order No. 3 will apply to the EWA which is signed subsequent to 15.05.2006. The petitioner company is legally entitled to encashment of 75% of the unutilized banked energy as per the EWA as well as clause 4 of Order No. 3 dated 15.05.2006 referred to above.

With reference to the contention of the Respondent Board in paragraph 14 of the counter affidavit, it is to be noted that the respondent has misunderstood the Order of the Commission dated the 22nd May 2008. The interpretation made in paragraph 14 of the counter that as per the judgment dated 22.05.2008, a single

benefit of extension of banking period is only allowed is not correct. The said Order dated 22.05.2008 simply provides for the extension of banking period for all wind energy generators. Nowhere in the Order, it has been stated that a single benefit of extension of banking period was only allowed. The petitioner can utilize the unutilized banked energy at the end of the extended banked period i.e. 30th June 2008 as per the Order No.3 dated 15.05.2006 as well as clause 5(b) of the new EWA referred to above.

In view of the above position, the contentions of Respondent Board in paragraph 14 of the counter affidavit are not correct.

Conclusion

The prayer of the petitioner in paragraph 15 of above petition namely D.R.P. No. 11 of 2008 is allowed. The Respondent Board is directed to pay Rs. 10,31,025/- (Rupees Ten Lakhs Thirty One Thousand and Twenty Five Only) to the petitioner after verification of the correctness of the said amount claimed by the petitioner.

With the above observations the D.R.P.No. 11 of 2008 is finally disposed off. There would be no orders as to costs.

Pronounced in the Open Court by this Commission on 19th September 2008.

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

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission

