



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. 6 of 2008

Fenner (India) Ltd.,
Corporate Officer "Khivraj Complex-II
5th Floor, 480, Anna Salai
Nandanam, Chennai – 600 035. Petitioner

Vs

The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai - 600 002. Respondent

The above petition namely D.R.P.No. 6 of 2008 came up for final hearing before the Commission on 25.08.2008 in the presence of Thiru. R.S. Pandiyaraj Advocate for the petitioner and Thiru. H.S. Mohamed Rafi for the respondent and upon perusing the petition and counter affidavit and hearing the arguments of both sides passes the following

ORDER DATED 19th September 2008

1. Prayer of the petitioner

The prayer of the petitioner is to quash Letter No. CE/NCES/SE/EE/WPP/AEE-1/F.M/s. Change in utility/D.230/2008 dated

28.05.2008 and direct the respondent to permit the petitioner for change of utility point from Madurai to Chengalpet as requested in the petitioner's letter dated 14.01.2008 by executing a supplementary agreement to the existing agreement executed prior to 15.05.2006.

2. Summary of the case

The facts of the case are briefly as follows:

- a) The petitioner is a HT consumer and therefore falls within the scope of definition and meaning of the term "consumer" as stipulated in Section 2(15) of the Electricity Act, 2003. They are using the Electrical Energy to run their machines which are installed in their various premises.
- b) The petitioner owns Wind Mills at S.F. No. 34/2 and 35/1, Aralvoimozhi village in Kanyakumari District, coming under the Kanyakumari Electricity Distribution Circle with HT SC No. 166 / KKEDC and this, producing electricity therefrom and supplying to the respondent TNEB at the above circle.
- c) The petitioner requested the Chief Engineer, Non-Conventional Energy Sources of the respondent with necessary representation in their letter dated 14.01.2008.
- d) In letter No. CE/NCES/SE/EE/WPP/AEE-1/F.M/s. Change in utility/D.1438/2008 dated 26.02.2008 the petitioner was asked to approach the Superintending Engineer, Kanyakumari Electricity Distribution Circle regarding the mode of adjustment.
- e) When they approached the Superintending Engineer, Kanyakumari Electricity Distribution Circle, they were informed in their letter no. SE/KKEDC/ NGL/AO/REV/RCS/A/3/F. TNERC-EPA/D/0708 dated 05.03.2008 that they have to execute a fresh Energy Wheeling Agreement for change of utility point and also to pay Rs.5000/- towards the long term open access application registration fee and Rs.50,000/- towards long term open access agreement fee & Rs.1000/- per day towards system operation charges for generator capacity 1650KW & above (or) in

proportion for the generator capacity less than 1650KW, shall be paid in advance for every month to the concerned SE/EDC's.

- f) The petitioner requested the respondent to consider change of utility point without insisting upon payment of any fees.
- g) The chief Engineer, NCES, Chennai has issued the impugned letter No. CE/NCES/SE/EE/WPP/AEE-1/F.M/s. Change in utility/D.230/2008 dated 28.05.2008 giving a non-speaking order as to why he insists upon for submission of application for long term open access along with payment of open access registration fee besides system operation charges.

3. Contentions of the Respondent Board

The contentions of the Respondent Board are briefly as follows:

i) The request of the petitioner to wheel the wind energy generated from WF HT SC No. 166 to wheeling end Distribution HT SC No. 578 of Chengalpet EDC is a new arrangement involving execution of new agreement. So the petitioner has to execute a new Energy Wheeling Agreement (EWA) as per the TNERC Order No. 3, dated 15.05.2006.

ii) As per Electricity Act, 2003 the Electricity Rules 2005, TNERC Intrastate Open Access Regulations 2005 and Order No. 3 dated 15.05.2006, the Wind Electric Generators are treated as Captive Generating Plants and the wind energy wheeling / availing customers are long term open access customers.

iii) As per the existing policies of the Board, the supplementary agreement was executed with amendment to the existing agreement for a change in the utility of the wind energy prior to the issue of Order No. 3.

iv) After the issuance of Order No. 3, the rules, regulation and orders in force at the time of request is to be taken for considering the present request.

v) Before 15-05-2006, the change in utility point was effected with supplementary agreement with amendment to the original agreement. Now new rules and policies framed by the TNERC are in force and for any change in the existing agreement, a new agreement has to be executed.

4. Issue:

Whether the impugned Letter No. CE/NCES/SE/EE/WPP/AEE-1/F.M/s. Change in utility/D.230/2008 dated 28.05.2008 is without authority of law as contended by the petitioner ?.

5. Findings of the Commission

At paragraph 11 of the petition, the petitioner stated that in their letter dated 07.05.2008 they requested the CE, NCES to consider change of utility point without insisting upon payment of any fees. At paragraph 12 of the petition, the petitioner contended that the impugned letter is not a speaking order as to why the CE insists upon the submission of application for long term open access along with payment of open access registration fee besides system operation charges while they seek only change of utility point under the existing agreement entered into prior to 15.05.2006 for which Order No. 3 dated 15.05.2006 clearly states that the existing agreements would continue to be valid unless and until it is mutually re-negotiated in line with Order No.3. The Respondent Board in paragraph 6 of their counter affidavit while referring to the conditions prescribed in rule 3 of the Electricity Rules 2005, stated that besides the conditions prescribed in the said rule 3, the payments of the fees are to be made as per the TNERC Open Access Regulations 2005 (hereinafter referred to as OA Regulations) for wheeling under open access. Regulation 12 of OA Regulations specifies the registration fee as well as open access agreement fee. Clause (a) of the said regulation 12 stipulates the particulars to be provided for in the application form for open access to be submitted by an open access customer. As per clause (b) of the said regulation 12 the application shall be accompanied by a non-refundable application registration fee of Rs. 5000/-. As per clause (f)

of the said regulation 12, a sum of Rs.50,000/- shall be payable to the Nodal Agency. The existing agreement is for wheeling of energy to the factory premises situated at Madurai. The proposal of the petitioner which involves a change of utility is a substantial change. As such a fresh agreement has to be executed. Even if a supplemental agreement has to be executed, Order No.3 will be applicable as the date of execution of the new agreement or supplemental agreement is subsequent to 15.05.2006 and as such Order No. 3 dated 15.05.2006 would apply to the new agreement or supplemental agreement. The last sentence in 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.”

In view of the above clause 4, all new agreements or supplemental agreements executed after 15.05.2006 would be covered by the said Order No.3. The fee of Rs.50,000/- for open access agreement and Rs.5000/- for registration as stipulated in the said regulation 12 of OA Regulations will apply. The impugned letter which is based on the said regulation 12 of OA Regulations and clause 4 of the Order No. 3 dated 15.05.2006 cannot be interfered with by the Commission.

6. Conclusion

The Impugned Letter No. CE/NCES/SE/EE/WPP/AEE-1/F.M/s. Change in utility/D.230/2008 dated 28.05.2008 which is based on regulation 12 of TNERC – Open Access Regulations 2005 and clause 4 of Order No. 3 dated 15.05.2006 cannot be interfered with by the Commission. Hence D.R.P.No. 6 of 2008 is dismissed without 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