



**THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION
CHENNAI**

**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.2 of 2007 and M.P.No. 2 of 2007

M/s. KTV Oil Mills,
48/310, Thambu Chetty Strteet,
Chennai-represented by its
Partner Mr. K.T.V. Kannan.

Petitioner

Vs.

1. Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2
represented by its Chairman.
2. The Chief Engineer, NCES,
TNEB, Anna Salai, Chennai-2.
3. The Superintending Engineer, TNEB,
Tirunelveli Electricity Distribution Circle,
Tirunelveli-627 011.
4. The Superintending Engineer, TNEB,
Tuticorin Electricity Distribution Circle,
Tuticorin-628 002.

5. The Superintending Engineer, TNEB,
ChennaiNorth Circle, Chennai-2.

Respondents.

The above petitions viz. D.R.P.No.2 of 2007 and M.P.No. 2 of 2007 came up for final hearing before the Commission on the 11th December 2007, the Commission upon perusing the petitions and the counter affidavit and all records connected with the case and upon hearing the arguments of Learned Counsels of both sides and having stood over for the consideration of the Commission till this day, passes the following

ORDER

1. The Prayer of the Petitioner in D.R.P.No.2 of 2007

The prayer of the petitioner is to call for the orders of Superintending Engineer Tuticorin and Chennai dated 01.09.2006 and 12.12.2006 claiming Wheeling Charges at 5% on the total energy supply to the Grid as mentioned by the Respondents in WEG 2 and 3 bearing HT SC Nos. 1418 (SF.No.94), HT SC 1444 (SF.No.79) and to set aside the same and direct the respondents not to levy wheeling charges on the energy supplied / sold to them under the Power Purchase Agreements dated 27/09/2005 and the Supplemental Agreements dated 17/07/2006.

2. The Prayer of the Petitioner in M.P.No.2 of 2007

The prayer of the petitioner is to stay the operation of letters dated 01.09.2006 bearing Ref.No.CE/NCES/SE/EE/WCB/AEE/F.TNERC/D.550/06 and 12.12.2006 bearing Ref.No.47055/AO/Rev/RCS/A3/F.WM1444/2006 dated 12.12.2006 issued by the 2nd and 4th respondents, namely, the Superintending Engineer, Tuticorin and Chennai pending disposal of the Dispute Resolution Petition.

3. Facts of the Case

The petitioner is a partnership firm and they entered into three Power Purchase Agreement with the 3rd respondent for the 3 WEG (wind energy generators) for the supply of 3 x 1650 KW of electricity. The petitioner WEG 1 supplies electric energy to the respondents without any wheeling charges. The second WEG 2 of the petitioner firm

was initially supplying the entire energy to the respondents without any wheeling charges. Subsequently, as the petitioner needed certain power for captive consumption, a supplemental agreement was entered on 17.07.2006, wherein it was clearly mentioned that the petitioner can adjust the energy generated from WEG II for their captive consumption use and sell the surplus to the respondents. The petitioner entered PPA for WEG III also. The petitioner had written letters to the Commission seeking for clarification as to whether wheeling charges were to be paid for the entire energy generated or only for the energy consumed by the petitioner. The petitioner was directed to refer Order No.3 of the Commission dated 15.05.2006. The petitioner had written a letter to the 2nd respondent on 21.06.2006 requesting to collect wheeling charges for the energy consumed and not for total energy generated. However, the respondents have issued a letter on 01.09.2006 demanding wheeling charges for entire energy generated. Aggrieved by the above action of the respondents in demanding wheeling charges for entire energy generated, the petitioner has filed the above petitions before the Commission.

4. Contentions of the Petitioner

- a) The impugned letters of the respondents demanding wheeling charges for the entire energy generated are contrary to the Commission Order No.3 dated 15.05.2006.
- b) The demand is discriminatory, as no wheeling charge on WEG 1 is being charged for the entire energy consumed by the respondents.
- c) The procedure for the levy of wheeling charge has been laid down in the Electricity Supply and Distribution Code 2004 and any deviation would only contravene the doctrine of occupied field.
- d) The respondents are estopped from claiming the wheeling charge since they are parties to the Order No.3 dated 15.05.2006.

5. Contentions of the Respondent Board

The contentions of the respondent board in the common counter affidavit are as follows.

- a) The Respondent Board follow the procedure laid down in BP (FB) No.129, dated 29.03.1986 with regard to collection of wheeling charges.

- b) In Order No.3 dated 15.05.2006 the Commission has not interfered in any way with the existing procedure adopted by the Respondent Board with regard to wheeling of wind energy.
- c) The statement of the petitioner that the procedure for wheeling charge has been laid down in the Supply and Distribution Code is denied.
- d) Order No.3 dated 15.05.2006 has not spelt out specifically about the collection of wheeling charges.
- e) In the agreement it is clearly mentioned that if wheeling is opted by the firm then 5% of the gross energy generated by the wind mill shall be deducted towards wheeling charge.

6. Point in issue

The point in issue is whether wheeling charges are to be paid for the entire energy generated by the petitioner or for the energy consumed by the petitioner for their captive use.

7. Findings of the Commission

In order to examine the point in issue involved in the instant case, it would be necessary to reproduce the definitions of “wheeling” and “transmit” in Sections 2 (76) and 2 (74) of the Electricity Act,2003 (Central Act 36 of 2003).

“Section 2(76) “wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.

Section 2(74) “transmit” means conveyance of electricity by means of transmission lines and the expression “transmission” shall be construed accordingly.”

From the above definitions, it would be clearly seen that in wheeling operation, the electricity supplied by the petitioner is fed into TNEB Grid for the purpose of conveyance of electricity to third party or to the petitioner for captive use through

transmission lines of TNEB. In energy wheeling operation there is conveyance of electricity through the transmission lines, which is used by a third party other than the TNEB. Hence the wheeling charges are to be levied only on the energy conveyed through the transmission lines of the respondent board and that it cannot be levied on the energy generated by the petitioner in their wind mill. In regard to the energy sold to the TNEB by the petitioner out of the energy generated through wind mills the petitioner is not availing the transmission facility and it is the obligation of the respondent board to take energy to the TNEB grid without levy of wheeling charges. The respondent board in para 9 of their counter affidavit have contended that the Commission in page 51 of Order No.3 dated 15.05.2006 has stated that regarding the transmission and wheeling charges the existing practice which includes the losses in transmission will continue. The above contention is not correct. At page 51 of the order, the Commission has stated as follows.

“Regarding the transmission and wheeling charges, the existing practice (which includes the line losses in kind) is given below.”

In the above portion, the Commission has not used the word “continue.” Further, it is only the wheeling charges which are mentioned in the above portion. In paragraph 4 of the counter the respondents board contended that in the agreement it is clearly mentioned that if wheeling is opted for by the firm, then 5% of the gross energy generated by the petitioner shall be deducted towards wheeling charges and the balance be made available to HT industries at the place or places where power is required. Regarding, the above contention it is to be noted that under section 23 of the Contract Act an agreement cannot defeat the provisions of any law. Further, as per section 174 of the Electricity Act, 2003, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. In view of the above position, the agreement entered into by the petitioner with the respondent Board cannot prevail over the provisions of section 2(76) of the Act, according to which the wheeling charges are to be paid only for the use of the transmission facility of the respondent board for the conveyance of electricity fed into the grid of the respondent board for captive use and not for the entire energy generated

at the wind mill of the petitioner firm. Hence all the contentions of the respondent board are liable to be rejected.

8. Conclusion

The prayer of the petitioner is allowed and the letters dated 01.09.2006 and 12.12.2006 of the second and fourth respondents are set aside and the respondents are directed not to levy the wheeling charges on the energy supplied / sold to them under the Power Purchase Agreement dated 27.09.2005 and the Supplemental Agreement dated 17.07.2006. With the above directions the above petitions namely D.R.P.No.2 of 2007 and M.P.No.2 of 2007 are finally disposed of. There would be no costs.

Pronounced in the open court by this Commission on 5th February 2008.

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

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission