



**THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION**

**[Constituted under Section 82 of the Electricity Act, 2003]**  
**[Central Act 36 of 2003]**

**PRESENT:**

**Thiru. S. Kabilan** - **Chairman**  
**Thiru. B. Jeyaraman** - **Member**  
**and**  
**Thiru. R. Rajupandi** - **Member**

**PPAP No.2 of 2008 and I.A. No.3 IN PPAP No.2 of 2008**

Madras Cements Ltd.  
98A Dr. Radhakrishnan Road  
Mylapore, Chennai 600 004  
Represented by its Deputy General Manager  
(Wind Farms) Mr. A.S. Sivakumar ... **Petitioner**

**Vs.**

1. The Chairman  
Tamil Nadu Electricity Board,  
No.144, Anna Salai, Chennai 2.
2. The Member (Generation)  
Tamil Nadu Electricity Board,  
No.144, Anna Salai, Chennai 2.
3. The Chief Engineer / PPP  
Tamil Nadu Electricity Board,  
No.144, Anna Salai, Chennai 2. ... **Respondents**

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The above petitions namely PPAP No. 2 of  
2008 and IA No.3 in PPAP No.2 of 2008 came up for final hearing before the

Commission on 23-10-2008. The Commission upon perusing the petition and counter affidavit and hearing the arguments of both sides passes the following order namely:

**ORDER DATED 27<sup>th</sup> November 2008**

**1. Prayer in PPAP No. 2 of 2008**

The prayer in PPAP No.2 of 2008 is to  
direct the Respondent to-

- (a) purchase surplus power that the petitioner generates from its CPP and pay the petitioner Rs.5/- per unit, or such rate as this Hon'ble Commission may fix as an interim measure, subject to adjustment with the final rate that may be determined by this Hon'ble Commission pending disposal of the petition.
- (b) enter a fresh agreement for sale of power with the petitioner with purchase rate at Rs.5.00 per kWh of energy of 5 MW supplied by the petitioner in order to maintain the existing power supply arrangement till regulations are framed, direct the Respondents to permit the petitioner to make supply of its surplus power to its Group Companies.

**2. Prayer in IA No. 3 of 2008**

The prayer in IA No.3 of 2008 is to direct the  
Respondent to-

- (a) purchase surplus power that the petitioner generates from its CPP and pay the petitioner Rs.5 per unit, or such rate as this Hon'ble Commission may fix as an

interim measure, subject to adjustment with the final rate that may be determined by this Hon'ble Commission pending disposal of the petition.

- (b) enter a fresh agreement for sale of power with the petitioner with purchase rate at Rs.5.00 per kWh of energy of 5 MW supplied by the petitioner in order to maintain the existing power supply arrangement till regulations are framed, direct the Respondents to permit the petitioner to make supply of its surplus power to its Group Companies, and thus render justice.

### **3. Facts of the case**

The petitioner is engaged in the business of manufacturing and selling cement. He has established a coal based Thermal Power Plant of capacity 36 MW ( 2 x 18 MW) for captive consumption. By an interim agreement dated the 28<sup>th</sup> June 2007 the petitioner has agreed to feed their surplus power in Board's grid and the Board has agreed to draw the said surplus power and to pay therefor. During the execution of the said agreement, the rate has been fixed at Rs.2.32 per Kwhr as an adhoc arrangement on the understanding that this rate would be revised after one year. The above adhoc arrangement has not been incorporated in the said interim agreement. The petitioner requested for review of the rate of sale of power to TNEB in view of increase of coal which is the raw material for the production of thermal power plant of the Petitioner Company. Taking advantage of the position that there is no clause for reviewing the price after one year and the prevailing rate is valid for three years, the Respondents are reluctant to revise the rate. In the meantime, the Respondents have through their correspondences wanted the Petitioner Company to install ABT compliance meters and to revise the interim arrangement for parallel operation and sale of power to TNEB for payment of UI

charges as per the provisions of Electricity Act 2003 which is applicable for Open Access consumers. The petitioner has also agreed to provide the same effective from July 2007. However, for want of necessary software to calculate UI, the Respondents decided to adopt the existing metering system till the Respondents come out with a suitable software installed in their systems. The petitioner in their letter dated 25-7-2008 intimated the termination of the above agreement and that they will stop supply of electricity under the said agreement with effect from 1-9-2008. In the said letter the Petitioner has informed the TNEB that they reserve their rights to approach the Commission to permit them to enter a revised PPA in line with the order of the Commission dated 15-5-2006. The petitioner has filed the above PPAP No. 2 of 2008 as well as IA No.3 of 2008. The prayer of both the above petitions as referred to above is the same.

#### **4. Contentions of the petitioner**

The Learned Counsel for the petitioner contended that the earlier order of the Commission is unviable and the rate quoted by the petitioner is quite reasonable.

#### **5. Counter affidavit of Respondent Board**

The contentions of the Respondent Board as set out in their counter affidavit are briefly as follows:

- (a) TNEB has offered Rs.2.32 per unit only as a temporary measure for the implementation of ABT mechanism as envisaged in TNERC Order No.4 dated 15-5-2006. In as much as TNERC has notified the UI rates for purchase of power from CPPs the question of revision of rates fixed by TNEB does not exist at all;

- (b) As the tariff for power purchase from fossil fuel based captive power plants is already fixed by the Commission is in force there is no necessity to fix fresh tariff as claimed by the petitioner.
- (c) The Petitioner has signed the interim agreement fully aware of the fact that it is only temporary measure and they had to sign the revised PPA as approved by TNERC and the rates will be applicable as per TNERC's Order No.4 date 15-5-2006. The Learned Counsel for the Respondent Board while referring to the letter dated 22<sup>nd</sup> August 2008 (page 99 of typed set) argued that the contention of the Petitioner that order of 15-5-2006 is no longer applicable when the coal price has increased to the current level and there is a need to adopt UI rates as per CERC's latest revision is not correct.

## **6. Issues**

Two issues arise for consideration namely:

- (I) Whether the claim of the Petitioner to fix the purchase rate at Rs.5.00 per Kwhr of energy of 5 MW supplied by them to TNEB can be allowed?
- (II) The extent of relief to which the Petitioner is entitled to?

## **7. Findings with reference to 1<sup>st</sup> point in issue**

The Petitioner being a Fossil fuel based captive plant generator of electricity is governed by Order No.4 dated 15-5-2006. As per clause 4.0 of the said Order No.4 dated 15-5-2006, every new contract / agreement should be in line with the said order. The interim agreement dated 28<sup>th</sup> June 2007 which is executed subsequent to the date of issue of the said order No.4 dated 15-5-2006 ultra vires of Order No.4 and as such it is invalid in law.

**8. Findings with reference to 2<sup>nd</sup> point in issue**

The Counsel for Petitioner requested for upward revision of rates for the purchase of surplus energy from CPP specified in Order No.4 dated 15-5-2006. The Commission is in the process of upgrading the rates and separate orders will be issued in due course after observing the legal formalities as required under the law. The petitioner is directed to install ABT mechanism as required under the said order No.4 dated 15-5-2006. Till such time, the rate for purchase as specified in Order No.4 dated 15-5-2006 is applicable. The Petitioner states that they are accepting the rate fixed in the said Order No.4.

**9. Conclusion**

The Petitioner is directed to install ABT compliance meter as per Order No.4 dated 15-5-2006. Till such time namely installation of ABT compliance meter in the Petitioner's Plant, the purchase rate for the energy supplied by the Petitioner to the Respondent from the CPP of the Petitioner shall be Rs.2.60 per unit as per the said Order No.4 dated 15-5-2006.

With the above directions, PPAP No.2 of 2003 and IA No.3 of 2008 are finally disposed off. No costs.

**Pronounced in the open court by this Commission on  
twenty seventh day of November 2008**

(Sd.....)  
**(R.RAJUPANDI)**  
**MEMBER II**

(Sd.....)  
**(B.JEYARAMAN)**  
**MEMBER I**

(Sd.....)  
**(S.KABILAN)**  
**CHAIRMAN**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission