



## **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

### **M.P. No. 3 of 2008**

Kaveri Gas Power Ltd.  
Rep. by its Director  
No.5/3, Ranganathan Garden,  
Anna Nagar, Chennai 600 040. .... Petitioner

**Vs.**

1. The Tamil Nadu Electricity Board,  
Rep. by its Chairman  
800, Anna Salai,  
Chennai 600 002.  
2. The Superintending Engineer  
Nagapattinam Electricity Distribution Circle  
Nagapattinam. .... Respondents

---

The above M.P.No. 3 of 2008 came up for final hearing before the Commission on 14<sup>th</sup> May 2008. The Commission upon perusing the above

petition and the affidavit filed in support thereof and the counter affidavit of the Respondent Board and all other connected records and upon hearing the arguments of both sides hereby passes the following

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

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

The prayer of the petitioner is to set aside the order passed by the 2<sup>nd</sup> Respondent in letter No. SE / NEDC / NGT / DFC / RCS / A.1 / F.CPP / D.438 / 07 dated 17.11.2007 and consequently direct the Respondent Board to demand and collect the energy charges for the energy supplied by the TNEB over and above the power generated and allocated by the petitioner to their captive consumers only at the rate applicable for HT Tariff – 1A and pass such further or other orders as this Hon'ble Commission may deem fit and proper.

#### **2. Facts of the case**

The petitioner company is a company incorporated as a special purpose vehicle under the companies Act to generate power using Natural Gas. The 2<sup>nd</sup> Respondent issued an order dated 17.11.2007 directing the petitioner to compute the quantum of power that would have been generated during the outage conditions of the petitioner's Backup Power.

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

The main contentions of the petitioner as set out in the petition are briefly as follows:

- (a) Neither para 8.5.6 of National Tariff Policy nor para 5.22.3 of the order passed by the Commission would apply to the present case where the captive consumers are already consumers of the TNEB under HT Tariff 1A and even in the case of outage or otherwise, the power utilized by the Board is billed only under HT Tariff 1A.

- (b) The captive consumers are not open access consumers under regulation 2(j) of the open access regulations 2005.
- (c) The computation of back up power should be only for the normal outage conditions and that it should not be for forced outage like grid non-availability, fuel non-availability.
- (d) The action of the Respondent Board in demanding the Grid availability charges in case of outage at Rs. 621.81 per unit is illegal and it is not contemplated in the orders issued by the Commission.

#### **4. Issues**

The following issues arise for consideration, namely:-

- 1) Whether the action of the Respondents in demanding grid availability charges in case of outage at Rs. 621.81 per unit is illegal and whether it is authorised by the orders issued by the Commission?.
- 2) Whether the outage condition would include forced outage condition like grid non-availability, fuel – non availability etc.,?.
- 3) Whether grid availability charges under order no. 2 dated 15.5.2006 can be collected from captive consumers?.
- 4) Whether captive consumers can be said to be open access customers (OA Customers) as per regulation 2 (j) of the Tamil Nadu Electricity Regulatory Commission Intra State Open Access Regulations 2005 (hereinafter referred to as OA Regulations)
- 5) Whether charging the petitioner for the outage condition by way of back up power would result in double penalty when the transmission charges at Rs. 2781 per MW per day are collected from the petitioner irrespective of the fact whether the petitioner generates power or not?.
- 6) Whether the demand of the Respondents requiring the petitioner company or their captive consumers to pay for Back up Power at the rate prevailing for HT Tariff III is legal?.
- 7) Whether the method of computation of quantum of power that would have been generated at the generation end is correct?.

## **5. Finding with reference to First Point in Issue**

With reference to the first point in issue, it is contended by the petitioner in paragraph 4 of the petition that the grid availability charges are applicable only for the generating companies and that they are not applicable to the captive consumers. At paragraph 7 of the petition, the petitioner contends that the impugned action of the Respondents in demanding grid availability charges at Rs. 621.81 per unit in the case of outage is illegal as it is not contemplated in the orders of this Commission or in the National Tariff Policy. With reference to the above point in issue, it is to be noted that clause 5.22.3 of Order No. 2 dated 15.5.2006 reads as follows:-

“para 8.5.6 of the National Tariff Policy stipulates that in case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.”

The Commission has not specified any tariff for temporary supply to HT categories. However, it has been specified in the tariff order in force from 16.3.2003, that, the industries requiring HT supply during construction period shall be charged under HT tariff III (Applicable to commercial establishment and other categories of consumers not covered under HT tariff – 1A, IIA, IIB,IV and V) Accordingly, in case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee to meet the demand of the open access beneficiary, on payment of consumption charges (energy charges plus the energy equated demand charges) applicable to HT tariff III, which is presently 621.81 paise perunit. Similarly, in case of drawal by the generator for start up power on payment of consumption charges (energy charges plus the energy equated demand charges) applicable to HT tariff III, which is presently 621.81 paise per unit.”

The said clause 5.22.3 of Order No.2 dated 15.5.2006 and clause 12(6) of Order No. 4 dated 15.5.2006 clearly contemplate the levy of grid support charges upon captive users. As such the levy of grid support charges upon captive users cannot be said to be illegal as alleged by the petitioner.

#### **6. Findings of the Commission with reference to second point in issue**

With reference to the second point in issue, the contention of the petitioner in paragraph 5 of the petition is that the back up power should not be computed on forced outage due to grid non-availability or fuel non-availability etc. In regard to this issue, the contention of the Respondent Board in paragraph 11 of the counter affidavit is that the Respondent Board is not in any way connected with the fuel availability or otherwise of captive generating plant holder and that the Board has to take care of every requirement of captive consumer of the petitioner in the case of outage of the generator. The following portion in the counter is reproduced below:

“Regarding the petitioner company’s contention that the Respondent Board is computing Back up power even for fuel non-availability, it may be stated that the Respondent Board is no way connected with the fuel availability or otherwise to the CGP holder. It is further submitted that the Respondent Board has to take care of the energy requirements of the captive users of the petitioner company also in case of outage of generator of the captive generating plant holder. The Respondent Board has got its own original plan and schedule of energy requirements of its consumers in a given area. Due to sudden outage of generators of captive power plants, the Respondent Board is burdened with the additional responsibility of meeting the requirements of its such captive users necessitating the Respondent Board to procure power from various sources even at exorbitant rates, to meet the power requirements of the captive users being existing consumers of TNEB. Otherwise, the Respondent Board will be forced to enforce load shedding in some other areas to meet the sudden demand of the HT captive consumers during such outage of the captive generating plants. The tariff as stated in the Hon’ble TNERC’s Order No. 2 dated 15.5.2006 for outage

of generator conditions viz., HT Tariff III, which is being applied for the petitioner company by the second respondent is in order and valid.”

The above views of the Respondent Board are endorsed by the Commission for fuel non-availability. During the arguments, the Respondent Board has furnished a clarificatory memo in regard to outages. Non-availability of fuel for generation is mentioned in the list of reasons attributable to CPP holder. But non-availability of grid is not mentioned in the said list. The forced outage due to grid non-availability should not be considered as outage of the captive generator. The inability of the licensee should not be classified as generator’s outage.

#### **7. Findings of the Commission with reference to the third point in issue**

The third point in issue is whether grid availability charges under order no. 2 dated 15.5.2006 can be collected from the captive consumers. With reference to this, it is to be noted that the findings of the Commission with reference to the first point in issue would equally hold good to this third point in issue also.

#### **8. Findings of the Commission with reference to the fourth point in issue**

In ground (e) at page 5 of the petition, it is contended by the petitioner that captive consumers are not OA Consumers as per regulation 2 (j) of the OA Regulations. In regard to this contention, it is to be noted that the definition of “OA Customer” clearly includes a captive consumer also. The expression “(including captive generating plant)” occurring in the said regulation 2(j) covers a captive consumer. It is to be noted that if the captive generator uses the distribution networks of the Respondent Board for the purpose of wheeling energy to his own destination, then he is clearly an OA Customer.

#### **9. Findings of the Commission with reference to the Fifth Point in Issue**

The levy of transmission charges and levy of grid availability charges are different and they are levied for different purposes.

The levy of transmission charges is for transmission of energy by utilizing Respondent Board's transmission network (grid) from the captive power generating plant to the destination of the captive consumer. The transmission charges are levied based on the transmission capacity allotted to the generator. The levy of grid availability charges is for the supply of energy at the captive consumer's end from the Respondent Board's grid when there is an outage i.e. when there is a failure to supply of energy at the captive generators plant end. Both transmission and grid availability charges are levied as per OA Regulations and Order No. 2 and 4 dated 15.5.2006. There is no double penalty which is involved in the instant case as alleged by the petitioner.

#### **10. Findings of the Commission with reference to the sixth point in issue**

With reference to the sixth point in issue, the contention of the petitioner in ground (c ) at page 5 of the petition is as follows

“the National Tariff Policy and the provision made by this Hon'ble Commission requiring the licensee to meet the demand of the open access beneficiary in case of outage on payment of consumption charges applicable to HT Tariff – III would apply only to a case where the captive consumer is not an existing consumer of TNEB and has got to be supplied energy on a temporary basis in case of outages. Since the captive consumers are already consumers of TNEB under HT Tariff – 1A, the question of applying the above provision would not apply and hence the impugned orders deserve to be set aside. “

The contention of Respondent Board in regard to the above issue at para 15 (c ) at page 10 of the counter is as follows

“the Hon'ble TNERC clearly differentiates between the periods of applying tariff under Tariff III and the period for applying the appropriate tariff of the captive consumer (here Tariff 1A). During the outage conditions of generator of the CGP holder, the licensee is supplying the power to the captive users during that time, then the open access customers (captive consumers) are to be billed under HT Tariff III only as per the provisions of clause 5.22.3 read with column 7 of

schedule of charges in order no. 2 dated 15.5.2006. When the scheduled generation is not maintained by the generator and / or when the drawal by the consumer is in excess of scheduled generation, then during that time the captive users of the CGP holder are to be billed at the appropriate tariff (here tariff 1A) for energy supplied by the licensee over and above the energy supplied by the captive generator as per the provisions of order no.2 dated 15.5.2006.”

The above views of the Respondent Board are endorsed by the Commission.

### **11. Findings of the Commission with reference to the Seventh Point in Issue**

Issue: Whether the method of computation of quantum of power supplied by the licensee based on the generation end is correct?.

The Respondent Board has furnished the formula for computation of energy supplied by the licensee during the outage condition as below:

Permitted capacity in MW x 1000 units / Hr x No. of hours in m/s is under outage in respective slot x 0.70.

Computation of energy supplied during the outage condition based on the generation capacity ( permitted capacity ) is not appropriate. The computation of energy supplied at the consumer end should be with reference to the consumption of energy at the consumer end.

During the course of argument, the respondent was asked to furnish the method for computation of energy supplied by the licensee at the captive user end during the outage condition. The respondent furnished a method for such computation.

The petitioner was asked to verify and confirm the correctness of the method. The petitioner did not agree with the method adopted by the respondent and he prayed that the back up charges need not be collected till the implementation of ABT.

The view of the petitioner is contrary to the provisions in National Tariff Policy. Since the main issue is not on the method of computation of back up charges, the Commission directs the petitioner file a separate petition on this issue.

## **12. Findings of the Commission with reference to the averments of Respondent Board**

At para 16 of the counter, the Respondent Board has stated that the petitioner company has filed three writ petitions regarding the levy of transmission charges from 17.5MW to 6.79MW which are still pending. Regarding this, it is to be noted that the MP No. 3 of 2008 is for setting aside the letter dated 17.11.2007 issued by SE / Nagapattinam which relates to levy of grid availability charges whereas the writ petitions relate to levy of transmission charges. They are different.

## **13. Findings of the Commission with reference to ground (f)(ii) to VII of the petition.**

With reference to the averments of the petitioner in ground (f) (ii) at page 5 of the petition, it is to be noted that neither the Electricity Act, 2003 or the rules, regulations made there under nor the National Tariff Policy provide for giving any allowances for scheduled engine maintenance of Force Majeure conditions. The maintenance of captive power plant is the sole responsibility of the petitioner. As per sections 9(1) and 10(1) of the Act, it is the duty of the CGP holder and generating company to maintain the captive generating plant and the generating station. Hence the contention of the petitioner in ground (f) (ii) is not acceptable.

With reference to the averment in ground (f) (iii) i.e levy of back up power charges during load shedding, it is to be noted that load shedding is attributable to the Respondent Board. As such the levy of back up charges during load shedding is not correct. The Respondent Board should refrain from levying back up charges during load shedding.

With reference to the averments in ground (f)(iv) namely the levy of back up power charges would amount to double penalty, it is to be noted that the findings of the Commission with reference to the fifth point in issue would apply. With reference to the averments in ground (f) (v) and (f) (vi), it is to be noted that the findings with reference to the first point in issue would apply. With reference to the averments in ground (f) (vii), it is to be noted that the findings with reference to the sixth point in issue would apply.

#### **14. Conclusion**

The impugned letter dated 17.11.2007 (pages 24-27 of the typed set of the petitioner) cannot be interfered with by the Commission as it is in consonance with clause 5.22.3 of Order No. 2 dated 15.5.2006 and clause 12(6) of Order No. 4 dated 15.5.2006. However, it is directed that the levy of grid support charges should not be made when the outage is due to load shedding or due to grid non-availability or any other fault attributable to the Respondent Board. Regarding the method of computation of back up charges and the correctness of applying the formula as adopted now by the Respondent Board, separate petition may be filed by the petitioner.

With the above observations M.P.No. 3 of 2008 is finally disposed of without 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

