



THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION

(Constituted under Section 82(1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

Thursday, the 22nd day of May 2008

PRESENT :

Thiru S. Kabilan - Chairman

Thiru B. Jeyaraman - Member

and

Thiru R. Rajupandi - Member

COMMON ORDER

IN

M.P. Nos. 6, 11, 12 and 16 of 2008 and M.P.No. 15 in 12 of 2008

M.P. No.6 of 2008

1. Sri Saravana Spinning Mills (P) Ltd., Unit II,
Renganathapuram, Vedasandur - 624 711.
2. Sri Saravana Spinning Mills (P) Ltd. Unit I,
Pithalaipatty, Dindigul – 2.
3. Samba Publishing Company (P) Ltd.,
Kasipalayam, Vedasandur Taluk, Dindigul District.
4. SP Superfine Cotton Mills (P) Ltd.
Cuddalore Main Road, Kalpaganur Peddanaickenpalayam via
Attur Taluk, Salem District.

5. Sarmangal Synthetics Ltd.
S.F. No.136/2, S. Mettupalayam Post,
Kovilpalayam Via, Pollachi – 642 110, Coimbatore Dt.
6. Mr. P.K. Ganeshwar of M/s. Shri Ganesa Textiles,
No.21, Pollachi Road, Palladam - 641 664 Coimbatore Dt.
7. Vasu Yarn Mills India (P) Ltd.
Thingalur Road, Vijayamangalam - 638 056.
8. Fisher Spinning Mill India (P) Ltd.
NH-7, Nagampatty Village, Vedasandur - 624 710.
9. Kutti Spinners (P) Ltd.
No.83, Salem Road, Tiruchengodu - 637 211.
10. Startime Apparels,
Behind Tamilnadu Theatre, SF.No.654/2
Palladam Road, Tirupur - 641 005.
11. Top Light Lables,
78, Top Light Building, Palladam Road, Tirupur - 641 005.
12. Mani Spinning Mills (P) Ltd.
Nagampatty, Vedasanthur - 624 710.
13. Best Cotton Mills (P) Ltd.
Pollachi Road, Dharapuram - 638 657.
14. S.P. Apparels Ltd.,
39-A, Extension Street, Kaikattipudur, Avinashi - 641 654.
15. Anugraha Valve Castings Limited,
391/2, Sengoda Goundenpudur,
Arasur Village, Coimbatore - 641 407.
16. T.T. Limited, (Unit of Tirupathi Spinning Mills)
Thevampalayam, Palangarai,
Avinashi 641 654. Petitioners

M.P. No.11 of 2008

1. Sakthi Murugan Roller Flour Mills Ltd.
Post Box No.15, Avinashi - 641 654.
Coimbatore District.
2. Sakthi Murugan Agro Foods Ltd.
Post Box No. 15, Pudupalayam,
Avinashi - 641 654.
3. Balu Exports
60 A5, Palladam Road, Arulpuram Post
Tirupur - 641 605.
4. Raghav Industries Limited.,
T.S.No. 7, Kattipalayam, Elanagar Post
Tiruchengode - Namakkal Main Road
Namakkal District.
5. Gangotri Textiles Ltd., Unit - IV
Pushpathur Village,
Palani Taluk - 624 618.
6. Amarjothi Spinning Mills Ltd.,
Amarjothi House
157, Kumaran Road, Tirupur - 641 604.
7. Sri Saradhambika Spintex (P) Ltd.,
SF No. 526/2B, Bilichi Post
Maddampalayam, Coimbatore - 641 019.
8. M.T.A. Mills (P) Ltd.,
10/32-C, Paarai Thottam
Kannampalayam Post, Sulur Via
Coimbatore - 641 402. Petitioners

M.P. No.16 of 2008

1. Arasan Syntex Ltd.,
Mill Premises
Eppodumvendran - 628 712.
Tuticorin District. Petitioner

Rep. by Thiru K. Venkatachalam, Chief Advisor of TNSMA in all the above petitions.

Vs.

The Tamil Nadu Electricity Board,
No.144 , Anna Salai,
Chennai 600 002.
Rep. by its Chief Engineer / NCES

- Respondent

M.P. No. 12 and 15 of 2008

1. Sri Marudhamalai Andavar Cotton Spinning Mills
Perur Main Road, Coimbatore - 641 039.
2. Sri Marudhamalai Andavar Spinning Mills
Perur Main Road, Coimbatore - 641 039.

Rep. by Thiru. G. Sripathy, Managing Partner Petitioner

Vs.

1. The Chief Engineer,
NCES / TNEB,
Chennai – 2.
2. The Superintending Engineer,
Coimbatore EDC, Coimbatore
3. The Superintending Engineer,
Tirunelveli EDC, Tirunelveli.

..... Respondents

The above petitions M.P. No. 6 of 2008, M.P. 11 of 2008, M.P. 12 of 2008. M.P. 15 of 2008 and M.P.No.16 of 2008 came up for final hearing on 14th May 2008. The Commission upon perusing the petitions filed by a batch of petitioners referred to above, the counter affidavit of Respondent Board and all connected records of the case and upon hearing the arguments of both sides passes the following

COMMON ORDER DATED 22 - 05 - 2008

(1) (a) Prayer of the Petitioners in M.P. No. 6, 11 & 16 of 2008

The common prayer of all the petitioners is to order the Respondent Board to carry over the entire accumulated units found unutilized in the banking account of the petitioners during 2007-08 for the following financial year 2008-09.

(b) Prayer of the Petitioner in M.P. No.12 and 15 of 2008

The prayer of the petitioner in M.P. No.12 of 2008 is to pay compensation of Rs.21,44,681/- in respect of Sri Marudhamalai Andavar Cotton Spinning Mills and compensation of Rs.11,07,456/- in respect of Sri Marudhamalai Andavar Spinning Mills or in the alternative to extend the banking period by six months from 31-3-2008. The prayer in M.P. No.15 of 2008 is to stay the respondents from raising April and May bill for HT service connections to the extent of available banked surplus units of 6,12,766 units and 3,16,416 units pending disposal of the main petition.

(2) Contentions of the Petitioners as set out in the petitions Nos. 6, 11, & 16 of 2008 and M.P.No. 15 and 12 of 2008

(a) During the year 2007-08 the Respondent Board was not in a position to supply uninterrupted power to HT Industries due to high level of power interruption and frequent power shedding and the declaration of one day in a week as a power holiday. Due to the above situation, industries were not able to avail power without interruption. The Commission in its Order No.3 dated 15-5-2006 has provided for encashment of the unutilized banked energy

available at the close of the financial year to the extent of 75%. Even though enough banked energy is available in the accounts of the consumer the Petitioner is not able to utilize the same, as there was high level of power shedding and interruption in power supply to the level of more than 25% to 40% for the past six months. This resulted in inadequate availability of power through TNEB grid and consequently this has resulted in non-utilization of power kept in the banking account of the petitioner. Hence this petition is filed for directing TNEB to carry over the entire accumulated power as on 31-3-2008 in the banking account of the petitioner to the financial year 2008-09.

(b) In M.P. No.12 of 2008, it has been contended that the petitioner could not consume the wind mill generated power due to the failure of the Respondent Board to provide continuous power.

(3) Contentions of the Respondent Board as set out in the counter affidavit

(a) The contentions of the petitioners in paras 2,3 and 5 are correct. Due to shortage of power in the state of Tamil Nadu, the State Government has announced the '**power holiday**' for the HT Industrial consumers. In addition, the HT consumers have to observe peak hour restriction i.e. 6.00 a.m. to 9.00 a.m. and 6.00 p.m. to 10.00 p.m.

(b) The contention of the petitioners in para 6 of the petition that, the respondent Board has not made any efforts to implement the order till today is not admitted. The respondent Board has implemented the Order

No.3 and detailed working instructions have been issued along with the Energy Purchase Agreement (EPA) and Energy Wheeling Agreement (EWA). But the wind mill generators have not come forward to execute the above Energy Purchase Agreement (EPA) and Energy Wheeling Agreement (EWA).

(c) The contentions of the petitioners in paras 7,8 and 9 are acceptable, since the energy generated from their wind mills could not be adjusted against their consumption in their HT services due to '**power holiday**' and load shedding imposed by the respondent Board due to shortage of power.

(d) In the TNERC Order No.3 dated 15-05-2006 under the issue (No.6, page No.44) banking, it is stated that the distribution licensee cannot make any planning based on the unutilized portion of the power, and that considering the above facts and the time value of power generation, the Commission decided a rate of 75% of normal purchase rate for purchasing the unutilized portion of energy banked by the NCES based Wind Electric Generators. It is further stated that the suggestion for extending the banking period (in case of unutilized energy) is not acceptable and that the unutilized portion of the expiry of banking period will not be dealt with for adjustment.

(e) The applicability of the Order No.3, dated 15-5-2006 for the Group I WEG's is from the date of execution of revised agreement. Since the Wind Mill Generators have not executed the revised agreement no order for purchase of unutilized power at 75% can be issued. Similarly, the

Group II WEG's have also not executed the revised agreement. Even though the applicability of the Order No.3 for the Group II WEG's is retrospective, the above said 75% purchase rate cannot be ordered for the Group II WEG's also, since they have not executed the revised agreement as per Order No.3 dated 15-05-2006.

- (f) Since, the respondent Board has announced power holiday and load shedding, it is possible that the energy generated from the wind mills could not be adjusted in their HT consumption point in full thereby lot of Wind Mill Generators has to lose their wind energy at the end of banking period as having lapsed. In order to give sympathetic consideration to the unutilized banked energy at the end of banking period of 31st March 2008, the respondent Board is willing for extension of the banking period by three months upto 30-06-2008 as a special case.
- (g) The Hon'ble Commission may be pleased to allow the petition subject to the following conditions and pass such other or further orders as this Hon'ble Commission may deem fit and proper and thus render justice.
- (i) To extend the banking period for the year 2007-08 by three months upto 30-06-2008 as a special case.
 - (ii) No carry over of surplus units beyond 30-06-2008 may be allowed for any Wind Energy Generator.

(4) Point in issue

The point in issue is whether the prayer of the petitioners in M.P. Nos. 6, 11 and 16 of 2008 for directing the TNEB to carry over the entire accumulated units in the banking account of the petitioners for the financial year 2008-09 and the prayer of the petitioner in M.P. No.12 of 2008 for payment of compensation or in the alternative to extend the banking period by six months from 31-3-2008 are admissible.

(5) Arguments of petitioners and Respondent Board

The Learned Counsel for petitioners contended that due to Respondent Board's failure to supply uninterrupted power the petitioners were not able to utilize the banked units. He further contended that there is no fault on the part of the petitioners. He stated that the agreement does not speak about power cut. He also stated that the petitioners should not be made to suffer because of the fault of the Respondent Board.

The Learned Counsel of Respondent while referring to paras 6, 10 and 13 of the counter affidavit, stated that due to unavoidable reasons the Respondent Board is willing for extension of the banking period by three months upto 30-06-2008 as a special case. He further stated that if the banking period is extended beyond three months, then there will be heavy loss to the Respondent Board.

(6) Findings and conclusions of the Commission

1. Order No.3 dated 15-5-2006 of the Commission applies to all wind mills commissioned after 15-5-2006. This Order provides for encashment of

the unutilized wind energy at the close of the financial year at the rate of 75%. As regards the wind mills commissioned prior to 15-5-2006, Order No.3 provided that the existing agreement between the licensee and wind mill generators would continue to be valid unless and until they mutually renegotiate the agreement in line with Order No.3.

2. Clause 20 of the agreement between the licensee and generators of wind mills commissioned prior to 15-5-2006 reads as follows: “Power supply would be subject to the restrictions and control Orders of the Board in force from time to time”. It is evident that the licensee has the authority to enforce restrictions and control on power supply. While it is conceded that the power situation between November 2007 and March 2008 was extraordinary leading to severe restrictions on power availability on the grid, thus forcing the captive users to curtail their consumption, the other side of the coin is that November to March is a lean period in terms of wind energy generation and therefore the energy generated upto October should have been normally utilized during this lean period. At best, there is a case for marginal relief for utilization beyond March in as much as power availability in the grid was severely restricted between November 2007 and March 2008.
3. The generators whose wind mills were commissioned prior to 15-5-2006 ought to have utilized this period between November 2007 and March 2008 to execute a fresh agreement with the licensee in order to avail of the benefits of Order No.3 dated 15-5-2006, particularly the

one relating to encashment of unutilized wind energy. But, the present petition of those generators tantamounts to virtually seeking a benefit of Order No.3 without going through the formalities of executing a fresh agreement with TNEB. They want to have the cake and eat it too.

4. Considering the fact that the attitude in regard to execution of Order No.2, 3 and 4 dated 15-5-2006 of the Commission by the licensee was lukewarm and equivocal and considering the fact that the situation was fluid between November 2007 and March 2008 in regard to finalization of Energy Wheeling Agreement and Energy Purchase Agreement, the Commission believes that one-time relief may be granted to all the wind mills, whether commissioned before 15-5-2006 or after that, providing for the unutilized wind energy at the close of 2007-08 to be adjusted in the consumption of April, May and June 2008. The licensee has admitted the severe power crisis between November 2007 and March 2008 and expressed its readiness for this arrangement.
5. The Commission makes it clear that this is a one time relief necessitated by the uncertainties all around in regard to implementation of Order No.3 dated 15-5-2006 and also the acute power crisis between November 2007 and March 2008. Now that the licensee has implemented the Orders 2,3, and 4 dated 15-5-2006 of the Commission in toto, the Commission would like to reiterate its direction that all those generators whose wind mills were

commissioned prior to 15-5-2006 should execute fresh agreement in line with Order No.3 with the licensee, if they wish to avail of such benefits in future. Similarly, the Commission observes that all the generators whose wind mills were commissioned after 15-5-2006 should execute Energy Wheeling Agreement and Energy Purchase Agreement forthwith, failing which they will be deemed to have contravened the Orders of the Commission.

6. Power shortage is likely to recur during this financial year too to some extent and therefore all the wind mill generators and captive users are advised to provide for such contingencies by executing appropriate agreements with the licensee. There will be no justification for invoking this special dispensation again.
7. It is hereby directed that the unutilized banked wind energy at the close of 2007-08 of all generators of wind mills whether commissioned prior to 15-5-2006, or after that, shall be permitted to be adjusted in the consumption of April, May and June 2008. With the above directions M.P. Nos. 6 of 2008, 11 of 2008, 12 of 2008, 15 of 2008 and 16 of 2008 are finally disposed of without costs.

Pronounced in the open court by the Commission on 22nd May 2008.

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

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

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

/ True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**