

**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 R. Rajupandi - Member

and

Thiru K. Venugopal - Member

D.R.P. NO. 13 of 2009

Date of hearing – 29-10-2009

Date of Order:16-11-2009

M/s. Saheli Exports Pvt. Ltd.
New No.25, Old No.10
Sir Madhavan Nair Road
Mahalingapuram
Nungambakkam
Chennai – 600 034.

- Petitioner
Counsel for Petitioner
Thiru P. Vinod kumar

Vs.

Tamil Nadu Electricity Board
Represented by its Chairman
No.800 Anna Salai
Chennai-600 002.

Respondent
Counsel for Respondents
Thiru H.S. Mohamed Rafi

M/s. Saheli Exports private Limited, Chennai

(hereinafter called as the petitioner) filed DRP No.13 of 2009 on 19-6-2009. The petitioner has prayed for:-

- a) direct the respondent to permit to the petitioner the units deducted during the period from July 2006 till November 2007, towards wheeling charges from the petitioner at the rate of 15% of the total units fed into the grid by the petitioner.
- b) direct the respondents to pay costs of the present proceedings to the petitioner.
- c) pass such other orders as deemed fit in the circumstances of the case.

The petitioner has also filed an IA on 20-7-2009 to add the following as the second prayer to the prayer referred to above.

“direct the respondents to pay the interest at the rate of 18% on the amount of Rs.3,13,52,069/- from the date when such units were deducted by the respondent till the date of remitting the units to the petitioner.”

1. **Facts of the case**

1.1. The petitioner commissioned a power plant with an installed capacity of 6.12 MW on 6-4-2005. The respondent, TNEB, based on the request made by the petitioner, accorded wheeling approval to the petitioner's power plant on 28-3-2005. Wheeling charges were fixed at 15% of the total units fed into the grid and 85% of the total energy fed into the grid was permitted to be withdrawn / consumed by the petitioner.

1.2. The Commission had issued Order No.2 on 15-5-2006 fixing transmission charges, wheeling charges and other charges specified under the Intra State Open Access Regulations, 2005 and payable by an

open access customer. The order of the Commission was made applicable to all the open access customers covered under the TNERC Intra State Open Access Regulations, 2005 which came into effect on 3-8-2005. The petitioner whose agreement was open ended (without specifying any period), can opt to come under Order No.2 and on such option, the respondent was required to agree for the same. Since the wheeling approval accorded to the petitioner was an open ended one, the petitioner has stated that he was entitled to opt for the applicability of Order No.2.

1.3. Since the installed capacity of 6.12 MW was not able to absorb the allocated gas, the petitioner decided to install an additional engine and accordingly sought open access for the enhanced capacity of 8.81 MW which was also accorded to by the respondent.

1.4. Although the petitioner petitioned the TNEB for switching over to the terms and conditions covered by order No.2 in June 2006, the same was effected by the respondent only from November 2007. During this period, it has been alleged by the petitioner that the respondent has deducted 15% of the total energy fed by the petitioner into the grid. The surplus quantity of energy so deducted by the respondent from June 2006 to November 2007 has been worked out as 8,957,734 units. If Order No.2 was implemented by the respondent immediately on switching over by the petitioner, the petitioner would have been required to pay Rs.1,39,47,548/- towards charges specified in Order No.2 of the Commission. The petitioner has also stated that they have written a letter on 24-3-2009 requesting the respondent to remit the units of energy wrongly deducted and have also agreed to pay an amount of Rs.1,39,47,548/- which is the actual amount payable towards transmission, scheduling and wheeling charges.

1.5. The respondent in their response filed on 25-9-2009 have indicated that they have implemented Order No.2 and 4 of the Commission in full effective from September 2007 and re working modalities for the period prior to September 2007 was approved by the Board as follows:

- a. To adopt the effective dates for various CGPs and co-gen plants as mentioned in Annexure and Energy Wheeling Agreements (EWAs) may be executed for a period of three years from the date of signing the agreement and made operational from the effective date since the Board has already implemented the relevant orders of the Hon'ble TNERC.
- b. Adjustment of the surplus energy against captive consumption by reworking the entire bills both at the generating end and captive users end for the respective month.
- c. To request the CPPs concerned to file a petition before Hon'ble TNERC if required, to fix a tariff for surplus energy if any that may arise on account of reallocating and accounting the units.

1.6. It was further explained by the respondent that out of the 15% units deducted in kind towards wheeling charges, loss in kind depending upon the voltage of injection / drawal will be deducted and the petitioner will be asked to re allocate the balance to the existing captive user in the same month after allocating these units to the captive users who are also existing consumers of the power, their billing will be revised and all applicable credit will be given to them and such credits adjusted with the future monthly bills. The respondent has also stated that all applicable charges will have to be paid by the generators as per Order No.2 and 4 dated 15-5-2006. The respondent has also submitted that the

quantum of units which could not be adjusted against the consumption of the captive users only will be treated as sale to TNEB and for payment of such units the generator can approach the TNERC for fixing the tariff. The petitioner has submitted reply to the counter filed by the respondent. The matter was heard by the Commission on 29-10-2009.

2. Findings of the Commission

2.1. The Commission issued Order No.2 on 15-5-2006 in the matter of determination of transmission charges, wheeling charges, cross subsidy surcharge and additional surcharge in exercise of powers conferred under Section 42 of the Electricity Act, 2003, after consulting all stakeholders including the TNEB and after conducting a public hearing. As this order was not challenged, it became final and binding on all parties.

2.2. The petitioner pleads that the TNEB has not implemented Order No.2 dated 15-5-2006 in letter and spirit. The TNEB has chosen to implement the order from November 2007. For the period prior to November 2007, the TNEB has devised a complicated formula for implementing the order, which has the effect of bringing into picture the captive consumers. It should be noted that this is a bilateral dispute between a captive generator and the licensee. Third party captive consumers are nowhere in the picture. The formula of the TNEB, which seeks to shift the burden of payment to the captive consumers is untenable. The TNEB is obliged to recover the transmission and wheeling charges in cash directly from a captive generator and similarly a captive generator is liable to

pay the distribution and transmission loss to the licensee in kind. There is no role for a third party captive consumer in this bilateral dispute.

2.3. The petitioner has claimed interest at the rate of 18% for the dues from the TNEB in the interim application filed in August 2009. As the claim has been filed belatedly we do not support the claim for interest.

3. Conclusion

We direct as follows:

3.1. The TNEB shall recover the transmission and wheeling charges in cash from the petitioner at the rates prescribed in Order No.2 from July 2006 till November 2007.

3.2. Similarly, the petitioner shall pay the licensee for the distribution and transmission losses in kind at the rates prescribed in order No.2 from July 2006 to November 2007 as against the 15% units recovered by the TNEB.

3.3. The excess recovery by the TNEB in kind shall be compensated to the captive generator at the rate of Rs.3.50 per unit, which is the rate at which energy was supplied by the TNEB to captive consumers.

3.4. The figures may be worked out monthwise. The payment shall be made by the TNEB within three months of submission of claim by the petitioner, failing which interest would be payable at the rate at which TNEB charges its consumers for belated payment, viz. 18%.

4. **Appeal**

An appeal against this order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of 45 days.

**Pronounced in the open Court by this Commission on this day of
16th November 2009**

(K. VENUGOPAL)
Member

(R. RAJUPANDI)
Member

(S. KABILAN)
Chairman