

**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**

**and**

**Thiru R. Rajupandi** - **Member**

**D.R.P. No.11 of 2009**

RRB Energy Limited  
No.17, Vembuliamman Koil Street,  
KK Nagar (West),  
Chennai 600 078.

... Petitioner

Vs.

The Chief Engineer / NCES,  
Tamil Nadu Electricity Board,  
144, Anna Salai,  
Chennai 600 002.

... Respondent

The above DRP No.11 of 2009 came up for final hearing before the Commission on 29-7-2009. The Commission upon perusing the above DRP No.11 of 2009 and other connected records of the case and after hearing both sides passes the following:

**ORDER DATED 26<sup>TH</sup> AUGUST 2009**

**1. Prayer of the petitioner Company in DRP No.11 of 2009**

The prayer in DRP No.11 of 2009 is to direct the Respondent to effect the name change of the Petitioner Company in the records of the Respondent Board without insisting payment of Rs.1,00,000/- per HT service per Wind Electric Generator and payment of registration fee.

**2. Facts of the case**

(a) The petitioner Company was incorporated in the year 1987 as a public limited company bearing registration No.U29299 DL 1987 PLC0 29949, and has also installed Wind Electric Generators (WEGs) in the state of Tamil Nadu for generation of power as per the guidelines issued by Tamil Nadu Electricity Board (TNEB).

(b) The petitioner Company, after checking the availability of name from the Registrar of Companies, Ministry of Corporate Affairs, Government of India, New Delhi changed the name of the Petitioner Company from “Vestas RRB India Ltd.,” to “RRB Energy Limited” with effect from 25 April 2008. The Government of India has also issued a fresh certificate of Incorporation of change of name to the petitioner Company. However, with the change of name of the Petitioner Company, the date of incorporation of the company, legal status of the Company, does not change. The change in the name of the Petitioner Company neither affects the constitution of the Petitioner Company nor does it any way affect any right or obligation of the Petitioner company. The change of name also does not affect any legal proceedings by or against the Petitioner company. It does not have any effect on any contract, agreement or deed entered into or any obligations or liabilities incurred, by the Petitioner Company, prior to the change of name.

(c) The change in the name of the Petitioner Company has been made under the provisions of Section 21 of the Companies Act, 1956. On change of name of the Petitioner Company, neither the entity of the Petitioner Company nor its continuity as the same entity has been affected. The Petitioner Company remains for all practical purposes the same entity with the same rights, privileges and liabilities as before.

(d) By letter dated 11 June 2008, the Petitioner Company requested for name change of H.T. service of 13 Nos. of Wind Electric Generators (WEGs) located at Tirunelveli.

(e) By two communications dated 06 January 2009, the Respondent directed the Petitioner Company to pay altogether

Rs.13,00,000/- as name change fee at the rate of Rs.1,00,000/- per H.T. service per WEG. Additionally the petitioner Company was directed to pay Rs.40,000/- at the rate of Rs.5,000/- per H.T. service towards registration fee for 8 WEG. Subsequently, the Respondent by letter dated 12-02-2009 reduced the registration fees for 8 HT services at Rs.200/- per H.T. Services and demanded Rs.1,600/- for 8 H.T. Services.

(f) The petitioner Company gave further representation on 14 February 2009 pointing out that the entity (Petitioner Company) owning their WEGs remains the same as the WEGs have not been transferred due to a legal succession or sale and therefore the proposal of the TNEB to charge Rs.1,00,000/- per WEG requires re-examination. However, the request of the petitioner Company was rejected by the Respondent by their letter dated 26 February 2009 stating that the request made by the Petitioner Company in their letter dated 14 February 2009 is not feasible for compliance. Hence the above DRP.No.11 of 2009 has been filed by the petitioner company.

### **3. Contentions of the Petitioner Company**

(a) The request of the Petitioner company for name change service is not one arising out of legal succession or sale of property but, only name correction on account of name change after having applied and obtained fresh certificate of incorporation from the Registrar of Companies, Ministry of Corporate Affairs, Government of India as per the provisions contained in the Companies Act, 1956. Thus there has been no legal succession or sale involved.

(b) The TNERC order in M.P.No.41 of 2003 dated 31 August 2004 relates to charges for name transfer of service on account of legal succession or sale. This order is not applicable to the present case since there is no legal succession or sale involved but only name correction i.e. change of name.

(c) The Honourable Supreme Court held in AIR 1963 SC 1319, as follows:

*“A fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it.”*

Hence, fee cannot be imposed arbitrarily for raising general revenue as imposition of fee without rendering a service would be *ultra vires*.

#### **4. Contentions of Respondent Board**

(a) The Commission by order dated 31-8-2004 made in MP No.41 of 2003, has held that the work involved in processing of Name transfer application due to legal succession and sale of property is not different one and it is one and the same. Therefore the Commission had held that the charges for Name transfer shall be the same, irrespective of whether the transfer is due to succession or sale.

(b) The petitioner has changed its company name from M/s.Vestas RRB India Limited to M/s.RRB Energy Limited and for changing their name they have paid the fees to the Registrar of Companies, Commercial Tax office and Sales Tax office etc., Therefore as stated by the Hon'ble Supreme Court in AIR 1963 SC 1319 for the services rendered by the Board for changing the name, the petitioner is liable to pay the Name transfer fee fixed by the Commission.

(c) The petitioner has changed its name from M/s.Vestas RRB India Limited to M/s.RRB Energy Limited, which squarely comes under the clause 7.0 of miscellaneous charges contained MP.No.41 of 2003, and the petitioner is bound to pay the charges for the change of name, as the change of name or transfer of name tantamount to one and the same.

#### **5. Findings**

5.1. Non tariff related miscellaneous charges such as service connection charges, meter rent and meter related charges, meter caution deposit, reconnection charges, charges for replacement of meter card, service charge for dishonoured cheque, charges for name transfer, development charges, registration charges, earnest money deposit, current consumption deposit and erection charges were determined by the Commission on 31-8-2004 in exercise of the powers conferred under Sections 45, 46, 47 and 50 of the Electricity Act 2003. The charges were brought into force with effect from 1-10-2004. These charges were finalized with reference to petition No.M.P.41 of 2003 filed by the Tamil Nadu Electricity Board. Para 2.1.8. of the Order of the Commission refers to the representations of various organizations before the Commission on the charges of name transfer.

5.2. Para 2.1.8. is extracted below:

*“2.1.8. a) Indian Wind Power Association, in their written submission and during the public hearing expressed their concern for the exorbitant charges for name transfer of services of windmills and prayed for fixing the same at Rs 7500.*

*b) SIMA have stated that “The decision for transfer of ownership of assets from one owner to another is based on the evaluation of various commercial considerations. This being the case, imposition of abnormally high name transfer fee would adversely affect the cost of the transfer. Thus we, urge the Commission to waive the name transfer fee.”*

*c) Mr. C.A.Balasubramanian has stated that “ The transfer of properties,either domestic or industrial with power supply from TNEB by sale or legal succession are governed by State Laws and TNEB has nothing to do with the sale or legal succession of consumer’s properties. The exorbitant charges demanded by TNEB for name transfers are not valid, not justifiable as fair and will not stand under the scrutiny of law. Hence the levy of charges for name transfer for all categories of consumers should be deleted.”*

d) *The Planters Association of Tamil Nadu stated that “Commercial category (Tariff-V), the payment of Rs.2000/- for name transfer of service by sale of property is excessive. This should be reduced to Rs.750/-, on par with the fee for name transfer of service in the case of legal succession. Name transfer of HT service, both for legal succession as well as by sale of property should be pegged at Rs.1000/- per service. The rates fixed for transfer for wind power mill is too high. High amounts has nothing to do with the expenditure involved in providing the service by the TNEB.*

e) *Tamil Nadu Electricity Consumers Association (TECA) noted as to “Whether the name transfer charges for wind energy generators at an incremental rate of Rs.50000/- for each 250 KW incremental capacity are really reasonable.”*

f) *CAG and Mr. V.Rajaraman object to the levy of charges for name transfer of service. They are of the opinion that the levy of exorbitant charges for this simple administrative measure is unnecessary.*

g) *The Tamil Nadu Varthagar Nala Kazhagam and Kudanthai Unavuporul Varthagar Sangam have questioned the rationale for fixing different charges for name transfer due to legal succession and sale. Is it based on any work study or any other accounting method ? Cuddalore District Chamber of Commerce and Industry and Madurai District Public Welfare Association have also raised similar questions and expressed that the charges for name transfer of windmill services is frightening. They recommend a uniform rate of Rs 100 for LT and Rs 500 for HT.”*

5.3. Para 2.4. contains the views of the TNEB on the representation regarding charges for name transfer:-

*“2.4. Regarding the exorbitant rate said to be charged for name transfer of windmill services, it is to be noted that “ some developers who do not have own or subsidiary industry , initially install windmills and claim 80 % accelerated depreciation in income tax and subsequently opt for sale of windmill to another*

*party having own / subsidiary HT industry and seeks approval of the Board for name transfer of the windmill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff (1) rate to the extent of wheeled quantum and causing revenue loss to the Board and providing substantial benefit for the developer. The amount of transaction of windmills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence it is considered that a name transfer fee at 0.5 % of the value of the property transacted is reasonable.” For name transfer of service arising out of sale of property, the sale deed has to be scrutinized thoroughly, which is not applicable when the name transfer is due to legal succession. Hence the difference in name transfer charges. Considering the quantum of work involved, this charge cannot be waived.”*

5.4. Para 3.9. of the Order of the Commission on charges for name transfer is reproduced below:

**“3.9.** *The major issues / objections relate to (i) Whether the levy of exorbitant charges for a simple administrative nature is necessary , (ii) Why should there be a different rate for name transfer due to legal succession and sale (iii) What is the justification and logic for the special treatment of windmills. Whether the name transfer charges for windmills at an incremental rate for each 250 KW incremental capacity is reasonable and (iv) Can a reduction and a uniform rate be considered?*

*TNEB, in their reply to clarifications on this matter, have informed with a working sheet that “ More man power is required for name transfer of service through sale of property than through legal succession due to scrutiny of sale deeds” As regards the windmill services they have replied that “ Some developers, who do not have own or subsidiary industry, initially install windmills and claim 80% accelerated depreciation in income tax and subsequently opt for sale of windmill to another party having own / subsidiary industry and seeks approval of the Board for name transfer of the wind mill service. Availing of wheeled energy in*

*HT industry results in avoidance of HT tariff –1 to the extent of wheeled power, thereby causing revenue loss to the Board and providing substantial benefit to the wind farm developer. The Board has to render frequent services in all such windmill services, that too resulting in loss of revenue. Moreover, review made in some of the cases of name transfer proposals showed that the amount involved in transaction of wind mills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence, it was considered reasonable that a name transfer fee at 0.5% of the value of the property transacted be collected “*

*Commission is not able to appreciate the contention of TNEB that the work involved in the processing of name transfer applications due to legal succession and sale can be so much different. It needs to be noted that the process of name transfer has now been very much simplified. Accordingly, the Commission decides that the charges for name transfer shall be the same irrespective of whether the transfer is due to succession or sale. The hut services, which are categorized as below poverty line group shall be charged at a concessional rate.*

*As regards the windmills, the Commission appreciates the points raised by TNEB regarding the loss of revenue to Board due to the name transfer in certain cases. The Commission agrees with TECA regarding the proposed incremental rate for name transfer, based on incremental capacity. The Commission is also not in favour of totally reversing the existing pattern of name transfer charges. In the context of the above, Commission decides to have a single rate for the name transfer of windmill services.”*

5.5. Schedule 7 of the Order of the Commission prescribes the charges for name transfer. The charges in regard to legal succession and sale of property collected by the TNEB prior to 1-10-2004 are reproduced below:

<b>Sl.No.</b>	<b>Category</b>	<b>Legal succession</b>	<b>Sale of property</b>
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<b>III.</b>	<b>Wind Mills</b>		
1.	<i>Upto 250 KW</i>	<i>Rs.50000/-</i>	<i>Rs.50000/-</i>
2.	<i>More than 250 KW to 500 KW</i>	<i>Rs.100000/-</i>	<i>Rs.100000/-</i>
3.	<i>More than 500 KW to 750 KW</i>	<i>Rs.150000/-</i>	<i>Rs.150000/-</i>
4.	<i>More than 750 KW to 1000 KW</i>	<i>Rs.200000/-</i>	<i>Rs.200000/-</i>
5.	<i>More than 1000 KW</i>	<i>Rs.200000 plus 50000 for every additional 250 KW or part thereof</i>	<i>Rs.200000 plus 50000 for every additional 250 KW or part thereof</i>

The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. one lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.

5.6. We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:

*“A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:*

***Provided** that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word “Private”, consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.”*

5.7. It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating

to legal succession or sale of property and that the change of name under Section 21 of the Companies Act 1956 is not covered under the above category and therefore the charge of Rs.one lakh per service connection levied by the TNEB should be set aside. Section 23 of the Companies Act 1956, which deals with the effect of change of name is reproduced below:

*“23(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.*

*(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.*

*(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”*

5.8. Section 23(3) of the Companies Act 1956 makes it clear that the change of name shall not affect any rights or obligations of the Company, or render defective any legal proceedings by or against it and any legal proceedings which might have been continued or commenced by or against the Company by its former name may be continued by or against the company by its new name.

5.9. We conclude that the Order of the Commission does not prescribe any charge for these categories namely change of name.

## **6. Conclusion**

The charges levied by the TNEB in Lr.No.CE/NCES/SE/EE/WPP/A3/WE IIC.SC.No.126, 138, 139, 143, 144, 298, 393, 394/NT/M/s.RRB Energy Ltd.,/D 342/08 dated 6-1-2009 as if they relate to legal succession or sale of property are set aside. The respondent Board is directed to refund the charges if any collected from the petitioner Company. It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act 1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.

**7. 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 forty five days.

With the above directions D.R.P. No.11 of 2009 is finally disposed off. No costs.

Pronounced in the open court by this Commission on this 26<sup>th</sup> day of August 2009.

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

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

**/ True Copy /**

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**

