

**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

and

Thiru R. Rajupandi

- Member

DRP No.3 of 2009

Date of Order:23-10-2009

M/s. Ind-Barath Energies (Thoothukudi) Limited
Registered Office: Plot No.30A, Road No.1
Film Nagar, Jubilee Hills,
Hyderabad – 500 037.

Petitioner

Counsel for Petitioner:
Thiru K. Seshadri
Thiru AR.L. Sundaresan
Senior Advocate

Vs.

1. The Chairman
Tamil Nadu Electricity Board
No.144 Anna Salai
Chennai-600 002.

2. The Chief Engineer / NCES
Tamil Nadu Electricity Board,
No.144 Anna Salai
Chennai-600 002.

3. The Superintending Engineer (SE)
Tuticorin EDC

Respondents
Counsel for Respondents
Thiru M.S. Mohamed Rafi

The above DRP No.3 of 2009 came up for final hearing before the Commission on 26-8-2009. The Commission upon perusing the above DRP No.3 of 2009 and the connected records of the case and upon hearing both sides passes the following

ORDER DATED 23rd OCTOBER 2009

1. Prayer of the petitioner

The prayer of the petitioner in DRP No.3 of 2009 is

- (i) to direct the respondents to revise the tariff for the energy purchased from the petitioner as contemplated under the agreement dated 15-3-2004, the tariff order dated 15-3-2003 and the various definitions referred to in the Electricity Laws and
- (ii) to direct the respondent Board to pay the sum of Rs.11,71,09,023/- along with interest to the petitioner being the outstanding amounts from the year 2006.

2. Facts of the case

- (a) The petitioner company namely M/s Ind Barath Energies (Thoothukudi) Limited is a Company registered under the Companies Act, 1956 (Central Act 1 of 1956) which is engaged in the generation of electricity and it has got a 20 MW biomass based power plant at Tuticorin which was commissioned on 9-6-2006.

- (b) The petitioner executed a Power Purchase Agreement (hereinafter referred to as PPA) on 15-3-2004 with the Respondent Board for the sale of the surplus energy to the Respondent Board.
- (c) In their letters dated 17-7-2008, 7-1-2009 and 21-2-2009 the petitioner requested the Respondent Board to pay Rs.4.442 per unit of the electricity purchased from them from the years 2006 to 2009 and a sum of Rs.11,71,09,023/- has become outstanding for the power sold to the Respondent Board from the 20 MW biomass based power plant. Since there is no response to the above letters from the Respondent Board, the petitioner Company is compelled to file the above DRP for the issuance of directions to the Respondent Board to comply with their request made in the above letters.

3. Contentions of Petitioner

- (a) The Respondents have been considering only the energy component of the HT category I Tariff at Rs.3.50 instead of Rs.4.442 per unit which is the HT tariff. The action of Respondent in omitting the demand and other charges is in total violation of the agreed terms of the PPA.
- (b) In accordance with the PPA, the Respondents are obligated to pay for the power purchased as per the statement enclosed subject to the ceiling of 90% of HT I tariff of Rs.4.442 per unit.
- (c) As per Tariff Order 15-3-2003, the two part tariff includes both the energy charges as well as the demand charges but the Respondent Board is of the view that only energy charges of Rs. 3.50 per unit alone is the HT Tariff and

that the demand charges does not form part of tariff, when power is purchased from other generators.

- (d) The petitioner submits that when the petitioner is treated on par with other HT consumer and charged at HT Tariff I without extending any concession to its generating company, the duty is cast on the Respondents to pay all charges inclusive of demand charges for the energy purchased from it.
- (e) Section 2 (7) of the Tamil Nadu Tax on consumption and sale of Electricity Act, 2003 (Tamil Nadu Act 12 of 2003) provides that energy charge would mean the tariff fixed by the Commission which includes demand charges and power factor surcharge also. In this context, kind attention is invited to Section 45 (3) (a) of the Electricity Act, 2003 (Act 36 of 2003) according to which the charges for electricity includes fixed charge in addition to the charge for the actual electricity applied.

4. Contentions of the Respondent Board

- (a) As per B.P. (FB) No.59 dated 11-4-2000, purchase price for bio mass power is fixed at the rate of Rs.2.73 per unit for 2000-2001 with 5% annual escalation for nine years upto 2010, such price shall not exceed 90% of energy charges of HT tariff I applicable for industrial tariff. The power purchase price was pegged at the rate of Rs.3.15 per unit on attaining 90% of energy charges of Rs.3.50 per unit.
- (b) Though the HT tariff I is a two part tariff i.e. (energy charges + demand charges) as per B.P. (FB) No.59 dated 11-4-2000 and clause 7 (a) of the PPA dated 15-3-2004, the petitioner Company is entitled for availing

purchase price of Rs.3.15 per unit (i.e.) 90% of energy charges of HT tariff I applicable for industrial consumer.

(c) As per B.P. (FB) No.59 dated 11-4-2000, 90% of energy charges of HT Tariff I A applicable for industrial consumers is the maximum limit in fixation of power purchase price. Hence, the petitioner's contention that consideration of all factors (energy charges + demand charges) of HT Tariff I applicable for industrial consumers including demand and power factor surcharge for fixing purchase price is not correct and not acceptable.

(d) Even after the petitioner company raised disputes on applicability of power purchase price, in the month of June 2006 they have claimed power purchase bill at the rate of Rs.3.15 per unit.

(e) The power purchase price of Rs.3.15 per unit earlier adopted by the respondent Board is also allowed to be continued vide TNERC Order No.3 dated 15-5-2006.

5. Findings of the Commission

5.1. The petitioner, M/s.Ind-Bharath Energies (Thoothukudi) Limited, entered into a Power Purchase Agreement (PPA) with the Tamil Nadu Electricity Board (TNEB) on 15th March 2004 for sale of biomass based energy. As per Clause 16 of the PPA, the agreement shall remain in force for a period of 15 years or for the useful life period of the plant, whichever is less, from the date of the agreement. The plant was commissioned on the 9th June 2006. Clause 7 (a) of the PPA stipulated that the purchase price of biomass based energy

generated and exported to the TNEB grid shall be at the rates specified in the Permanent BP (FB) No.59 dated 11-4-2000 of the TNEB.

5.2. The BP referred to above fixed a rate of Rs.2.73 per unit effective from 1-4-2000 with 5% annual escalation with the rider that the price so fixed shall not exceed 90% of the prevailing HT tariff-I applicable for industrial consumers. The Commission on 15-3-2003 determined the HT Tariff I as Rs.3.50 per unit for the energy component and Rs.300/ KVA for the demand component. The purchase price of biomass energy should be Rs.3.16 per unit on 1-4-2003, on applying 5% escalation per year over Rs.2.73, effective from 1-4-2000. Imposing the ceiling of 90% of Rs.3.50 per unit, the TNEB pegged the tariff at Rs.3.15 per unit on 1-4-2003 and it remains at that level since the retail tariff has not been revised till date.

5.3. The TNEB contends that HT Tariff I is a two part tariff (energy charges + demand charges) and the petitioner is entitled to 90% of energy charges of HT Tariff I equivalent to Rs.3.15 per unit as per BP (FB) No.59 dated 11-4-2000. The TNEB has imported the word “energy” into the permanent BP (FB) No. 59 dated 11-4-2000 in place of “HT Tariff I” and has, thus, evaded the issue altogether. The counter does not address the petitioner’s interpretation of HT Tariff I.

5.4. On the other hand, the petitioner contends that the HT tariff-I referred to in the BP should be construed as two part tariff consisting of energy charges of Rs.3.50 per unit and demand charges of Rs.300 per KVA as determined by the TNERC on 15-3-2003. According to the petitioner, the tariff should be Rs.3.658 per unit for 2006-07 (escalated at 5% from

the base of Rs.2.73 with effect from 1-4-2000), Rs.3.841 per unit for 2007-08 (escalated at 5% from the base of Rs.2.73 effective from 1-4-2000) and Rs.3.998 per unit for 2008-09 (90% of Rs.4.442) as against the tariff of Rs.3.15 fixed by the TNEB. According to the petitioner, the HT tariff-I should be reckoned as Rs.4.442 per unit, 90% of which works out to Rs.3.998 per unit. The petitioner has arrived at the rate of Rs.4.442 per unit as the aggregate of Rs.3.50 per unit towards energy charges, Rs.0.525 per unit towards peak hour charges and Rs.0.417 per unit towards demand charges. It is to be noted that peak hour charges are applicable only for consumption during peak hours. Further, rebate is available to consumers who choose lean hours for consumption. The petitioner has not reckoned rebate for tariff computation. As regards demand charges, Rs.0.417 per unit has been arrived at by dividing the demand charges of Rs.300 per KVA by the number of hours in a month (720 hours), unity power factor and 100% load factor. The petitioner has claimed Rs.11,71,09,023 payable as difference between the tariff claimed by him and the tariff of Rs.3.15 per unit paid by the TNEB for the period 2006-07, 2007-08 and 2008-09.

5.5. The petitioner supports his claim by taking recourse to Section 45 (3)(a) of the Electricity Act, 2003 wherein the charges for electricity supply includes a fixed charge in addition to the charge for the actual electricity supplied. He also relies upon the definition of tariff under Section 2(7) of the Tamil Nadu Tax on Consumption and Sale of Electricity Act, 2003 to say that the energy charge includes demand charges. It needs to be mentioned here that both Section 45 of the Electricity Act, 2003 and Section 2 (7) of the Tamil Nadu Tax on

Consumption and Sale of Electricity Act, 2003 refer to charges applicable for consumers and have no relevance for a generator such as the petitioner.

5.6. The tariff for a generator is determined by the Commission in exercise of powers vested in Section 62 of the Electricity Act, 2003 and accordingly the Commission determined the tariff for bio mass generation in Order No.3 dated 15-5-2006 at Rs.3.15 per unit.

5.7. Interpretation of the word "HT Tariff I" has to be contextual and read along with other relevant clauses of the PPA. Clause 10 (a) of the PPA is reproduced below:

"10) a) i) Drawal of power from Board's grid as recorded by the import meter shall be charged at Board's H.T.Tariff I rate applicable for Industrial consumers. Maximum Demand Charges shall be charged based on tariff Notified by the TNERC. Penal and other surcharges shall be levied as per the notified tariff conditions if the sanctioned demand is exceeded or power is availed during peak load hours as the case may be or as per conditions imposed from time to time by the Board and TNERC.

ii) Power drawn from the TNEB grid for the purpose of Bio-mass based power plant maintenance works, trial run of equipments, water works etc., shall be charged under Board's H.T. Tariff III including M.D. charges based on tariff Notified by the TNERC from time to time"

5.8. Drawal of power from the Board's grid for startup shall be charged at HT Tariff I rate. The PPA specifically prescribes that maximum demand charges for start-up shall be charged as per the rate fixed by the TNERC. Similarly, power drawn for maintenance shall be charged at HT Tariff III rate. Here again, there is specific reference to maximum demand charges. It is evident that the tariff for start up as well as maintenance specifically refers to the demand charges, whereas there is no such reference to demand charges for the purchase price of biomass based energy in the PPA.

5.9. Further, Clause 14 of the PPA reads

as follows:

“14) The Power Generating company agrees that the Board shall have the right to vary from time to time, the tariff, policy on banking and wheeling and terms and conditions of this agreement by special or general proceedings and the conditions relating to generation of electricity through biomass and such variations ordered by TNERC and TNEB shall be binding on the company.”

5.10. Clause 14 makes it clear that the tariff ordered by TNERC shall be binding on the company. The tariff for biomass units was determined by the TNERC at Rs.3.15 per unit effective from 15-5-2006 vide Order No.3 dated 15-5-2006. In our view, this rate should be applicable to the petitioner, whose plant was commissioned on 9-6-2006.

5.11. Reading together the various clauses of the PPA, the inescapable conclusion is that what the TNEB means by HT tariff I is the energy component of HT tariff I. Apart from the above logic, even from a practical point of view, computation of precise demand-equivalent energy charges is impossible since such a calculation will have to assume a certain power factor for the load of the consumer and a certain load factor. The figures of power factor and load factor vary from consumer to consumer and there is no universal figure which can be adopted for the computation of demand equivalent charges. Therefore, the figure of Rs.0.417 per unit calculated on the assumption of unity power factor and 100% load factor is irrational. The figure of Rs.0.417 would be higher, if a lower power factor or if lower load factor is adopted. Again, the peak hour charges would apply only to consumers, who choose to utilize power during peak hours. Further, off-peak hour rebate is available to consumers, who choose to utilise power during late night / early

morning hours. The petitioner has totally ignored the rebate in his computation. In any case, peak hour charges, off-peak rebate, power factor and load factor are applicable only for consumers and not for generators. Consequently, the aggregate figure of Rs.4.442 per unit adopted by the petitioner is an irrational figure.

5.12. We are constrained to record here that the defence drummed up by the TNEB is poor. It has not exerted itself to marshal adequate evidence. With the result, the Commission had to put in considerable labour for rendering justice.

6. Conclusion

The Commission endorses the interpretation of the TNEB that the energy component of HT Tariff I should be reckoned for the purpose of bio mass energy purchase. The petition is dismissed.

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 45 days.

Pronounced in the open Court by this Commission on this day of 23rd October 2009.

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

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

/ True copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission