

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.8 of 2009

Mirra and Mirra Industries,
Represented by Proprietor,
Plot No.119 & 120 Sidco Industrial Estate,
Phase – II, Vichur, Manali New Town,
Chennai 600 103

.. Petitioner

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,
CEDC/Chennai, North
Chennai.

4. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

.. Respondents

The above D.R.P. No.8 of 2009 came up for final hearing on 29th July 2009. The Commission upon perusing the said DRP

No.8 of 2009 and other connected records of the case and upon hearing both sides passes the following order, namely;

ORDER DATED 26th AUGUST 2009

1. Prayer of the petitioner

The prayer of the petitioner in DRP No.8 of 2009 is to direct the respondents to refund the amount of Rs.46,12,899/- being the value of unutilized banked energy in HT SC No.1594 of CEDC/West, under protest together with interest at the rate of 12% per annum.

2. Facts of the Case

The petitioner established a small scale industry engaged in the processing of steel wire rods and bars. The petitioner availed HT Service Connection No.1594 within the jurisdiction of Superintending Engineer, Chennai Electricity Distribution Circle West, Chennai. The petitioner has installed six wind electric generators (weges) in Tirunelveli and the power generated from the above weges was wheeled for consumption in HT SC No.1594 (captive consumption) through Tamil Nadu Electricity Board's lines on payment of applicable charges and for wheeling of power agreements were entered into with Superintending Engineer, Tirunelveli EDC. In the agreement the petitioner offered to bank the surplus energy available if any after adjusting the energy consumed in petitioner's HT service connection on payment of banking charges. As per the agreement the unutilized banked energy was lapsed at the end of March every year. In the year 2006, the petitioner has commissioned another unit at Vichur, Manali Town under HT SC No.1803 under the jurisdiction of Superintending Engineer, CEDC, Chennai North. The service connection available at Ambathur site was dismantled and necessary supplemental agreement were executed with reference to the change of service connection for adjusting the power generation by petitioner's weges from HT SC No.1594 of CEDC West to HT SC No.1803 of CEDC North after due approval of the respondent board. The petitioner requested the respondent board to transfer the excess current consumption deposit in HT SC No.1594 to HT SC No.1803. The

petitioner in letter dated 13.8.2007 requested the Chief Engineer, Non-conventional Energy Sources, TNEB to permit them to utilise the unutilized banked energy in HT SC No.1594. The petitioner's request for transfer of unutilized banked energy of 12,70,440 units available on the date of closing of accounts of HT SC No.1594 has not been considered so far by the respondent board. In letter dated 25.7.2009 (hereinafter referred to as the impugned letter) the respondent board has rejected the request of the petitioner.

3. Contentions of the petitioner

(a) The action of the respondent's rejection of petitioner's request is in violation of principles of natural justice and it is arbitrary and unlawful.

(b) The order of the respondent board is a non-speaking order.

(c) Because of non-consideration of the unutilized banked energy in HT SC No.1594, the petitioner is forced to pay the excess amount of Rs.46,12,899/-

4. Contentions of the respondent board

(a) Since there is no provision in the agreement executed to transfer the wind energy to another HT service which was executed with another agreement, the unutilized banked energy available at HT SC No.1594 of CEDC West was not considered.

(b) Once a company is closed and service connection is dismantled, the agreement also is terminated.

(c) Nowhere in the original agreement or in the supplemental agreement the provision for transfer of one account of unutilized banked energy to another account has been stated. Hence, the unutilized banked energy at HT SC No.1594 stood lapsed.

5. Findings of the Commission

5.1 The petitioner is a captive wind energy generator. He installed six wind mills between 1996 and 2005 with a total capacity of 2325 KW in Tirunelveli and executed a power purchase and wheeling agreement with the TNEB for captive consumption in his HT SC No.1594 in Ambattur, Chennai as detailed below:

Sl.No.	Service No.	Capacity of WEG	Agreement Date
1.	249	400 KW	28-9-1996
2.	392	225 KW	30-03-2001
3.	412	225 KW	26-09-2001
4.	460	225 KW	24-06-2003
5.	789	500 KW	31-03-2004
6.	1376	750 KW	08-09-2005

These agreements contained a clause to the effect that unutilized banked energy at the end of the banking period would lapse. These agreements were prior to the publication of Order No.3 dated 15-5-2006 of the Commission, which prescribed a different policy altogether in regard to wheeling and banking of wind energy.

5.2 The petitioner, who is a captive generator closed down operations of HT SC No.1594 in December 2007 and shifted his operations to Manali, Chennai under HT SC No.1803 in January 2008. He executed a supplemental agreement between 31-8-2007 and 21-9-2007 in regard to the entire 2325 KW for wheeling the power to the new service connection HTSC No.1803. The details are tabulated below:

Sl.No.	Service No.	Capacity of WEG	Agreement Date
1.	249	400 KW	21-9-2007
2.	392	225 KW	31-8-2007

3.	412	225 KW	21-9-2007
4.	460	225 KW	21-9-2007
5.	789	500 KW	21-9-2007
6.	1376	750 KW	21-9-2007

It is to be noted that the supplemental agreements were executed during August 2007 and September 2007 long after the Commission pronounced Order No.3 dated 15-5-2006 on the banking and wheeling of wind energy.

5.3. Clause 4 of Order No.3 dated 15-5-2006 stipulates that any agreement executed after 15-5-2006 shall be in conformity with the Order. The six supplemental agreements executed during August 2007 and September 2007 contained the following clauses:

“The above approval will be based on the existing policy of TNEB and same are liable to be modified in any manner based on the decision to be taken by the Board and other directives to be issued by the Electricity Regulatory Authorities.

Whereas it has been agreed that the banking of power will be for one year commencing from 1st April to 31st March of next year. The unutilized banked energy at the end of banking period will be treated as lapsed. The outstanding energy unutilized as on 31st March of every year is deemed to be lapsed and could not be sold to TNEB at any point of time thereafter.”

5.4 Order No.3 stipulates that unutilized banked energy at the end of the banking period will be eligible for encashment at the rate of 75% of the purchase rate. That clause of the executed agreements, which states that the unutilized banking energy shall lapse, is contrary to Order No.3 dated 15-5-2006 of the Commission and therefore, is liable to be set aside.

5.5 Wheeling is a facility available to any generator. In this particular case, the captive generator, namely the petitioner, initially executed an agreement with the TNEB for wheeling the wind energy from

his six generating service connections to consumption service connection 1594. He later changed the consumption service connection to 1803. The agreement for banking is between the captive generator and the distribution licensee. In this particular case, petitioner is the captive generator and TNEB is the distribution licensee. The petitioner is entitled to bank his surplus energy and consume it under any captive service connection or encash it at the end of the financial year as per the supplemental agreement executed with TNEB during August 2007 and September 2007 read with Order No.3 dated 15-5-2006 of the Commission.

5.6 The Commission in its Order dated 22-5-2008 passed in M.P. Nos. 6, 11, 12 etc of 2008 extended the banking period for all wind energy generators by three months upto 30-6-2008. In terms of that Order, the petitioner had the option of adjusting the unutilized banked energy between 1-4-2008 and 30-6-2008 against the new service connection or encash the energy unutilized as on 30-6-2008 at 75% of the purchase rate.

5.7 The unutilized banked energy as claimed by the petitioner at the close of the HT SC No. 1594 was 12,70,440 units. The petitioner claims to have consumed 17,62,511 units between December 2007 and June 2008 against the HT SC No.1803. That is, he has consumed 4,92,071 units more than the unutilized banked energy. Since the order of the Commission dated 22-5-2008 permitted the petitioner to avail of the extended banking period upto June 2008, it is only proper that the captive generator, namely the petitioner, is permitted to adjust the unutilized banking energy of HT SC No.1594 against the consumption of HT SC No.1803 during the period from 1-1-2008 to 30-6-2008 on slot to slot basis in accordance with the supplemental agreements executed by the captive generator with the distribution licensee during August 2007 and September 2007 read with Order No.3 dated 15-5-2006.

6. Conclusion

The unutilized banked energy of the HT SC No.1594 shall be adjusted on slot to slot basis against the consumption between January 2008 and June 2008 of HT SC No.1803.

7. Appeal

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

With the above directions D.R.P. No.8 of 2009 is finally disposed off. No costs.

Pronounced in the open court by this Commission on the 26th August 2009.

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

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

/ True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**