

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under Section 82(1) of the Electricity Act 2003)**  
**(Central Act 36 of 2003)**

**PRESENT :**

<b>Thiru. S. Kabilan</b>	-	<b>Chairman</b>
<b>Thiru. R. Rajupandi</b>	-	<b>Member</b>
	<b>and</b>	
<b>Thiru K. Venugopal</b>	-	<b>Member</b>

DRP No.24 of 2009  
Date of hearing: 7-1-2010  
Date of Order: 25-2-2010

SRF Ltd.,  
Manali Industrial Area  
Manali, Chennai 600068

..... Petitioner  
Counsel for petitioner  
Thiru Rahul Balaji

Vs

1. Tamil Nadu Electricity Board  
Rep. by its Chairman  
800, Anna Salai  
Chennai-600 002

..... Respondents  
Counsel for Respondents  
Thiru H.S.Mohamed Rafi

The above DRP No.24 of 2009 came up for final hearing on 7-1-2010 before the Commission. The Commission upon perusing the above petition and the connected records of the case and after hearing both sides passes the following

## ORDER

### I. Prayer in DRP No.24 of 2009

The prayer in DRP No.24 of 2009 is to permit utilization of the total banked 93,70,278 units lying to the credit of the petitioner as of March 31, 2009 within a period of 12 months.

### II. Facts of the case

a) The petitioner is involved in the manufacturing of Nylon Tyre Cords. The petitioner has its units at Manali, Gummidipoondi and Viralimalai. The petitioner has installed 9 wind energy generators of a total capacity of 13.95 MW with an investment of Rs.87 Crores.

b) In its order in M.P.No.42 /2008 the Hon'ble TNERC has specifically held as follows:

“24. Therefore we direct that the method for determination of demand and energy quota for Wind energy captive users shall be the same as that of other captive users.”

### III. Contentions of the petitioner

a) The respondent has sought to take an entirely incorrect stand by stating that if the wind power generators are to be treated on par with the captive users, the banking facility would be withdrawn. Such a stand is clearly in contempt of the orders passed by this Hon'ble Commission as also the Hon. High Court, Madras. As a matter of fact, rather than denying the banking facility, this Hon'ble Commission has specifically allowed the banking facility to continue and in addition thereto, had directed providing of the banking for utilization on an instalment basis.

b) The respondents are arbitrary in discriminating against the Wind Mill owners who are wheeling the power for captive use. While conventional energy captive producers are permitted to wheel power for captive use, the petitioner is being hostilely discriminated against.

### IV. Contentions of the respondent Board in the counter affidavit

a) The direction in para (26) of the order of MP No.42 of 2008 has been implemented vide Memo No.CE / Comml / EE/ DSM/ AEE/PMM/F. Power Cut/ D.348 dated 4-08-09.

b) For Group I & Group II services who have executed Energy Wheeling Agreement, the 75% of purchase rate is being paid for the unutilized banked energy as on 31-03-09 as per TNERC order

No.3, dated 15-05-06. For the other cases with old agreement i.e. Wind Energy Generator's who have not come forward to execute the Energy Wheeling Agreement as per Order No.3, dated 15-05-06 of TNERC, the banked units are not taken as lapsed in view of the Hon'ble High Court order dated 30-03-09 in WP 30890/08 and it is maintained in their accounts. But, no action has been taken on the banked units. Since there is no carry over order either by Hon'ble High Court of Madras or by Hon'ble TNERC the above units are kept in their accounts.

c) Since the TNERC Order No.3 dated 15-05-06 has stated that no carry over is allowed to the unutilized banked energy at the end of the banking period ie.31-03-09, the units are eligible for encashment at 75% of purchase rate only.

d) The order of the TNERC in Order No.3 dated 15-5-2006 in the matter of unutilized banked energy as on 31<sup>st</sup> March of the financial year is that the WEGs should be paid 75% of the purchase rate taking into consideration the group they belong, i.e.Group I or Group II, as the case may be. Even though the said order of this Hon'ble Commission holds the field even on this date, this Hon'ble Commission, during the year 2008, considered certain alleged grievances of the WEGs, in MP No.42 of 2008 dated 28-1-2008 suo-motu passed directions to the Board as contained in paras 24 and 26 therein. After much difficulties, the said orders of this Hon'ble Commission has been implemented by Board. As explained above, the delay in implementing the said orders was neither willful; nor wanton. But for the difficulties as stated above, the orders of this Honourable Commission would have been implemented in time in its letter and spirit.

#### V. Findings of the Commission

V.1 The petitioners fall in the category of Group II Wind Energy Generators. Their units were commissioned after 15-5-2006. As per Clause 5(b) of the Energy Wheeling Agreement (EWA) executed by the petitioner with TNEB the unutilised portion of banked energy, if any, shall be purchased by the licensee at the rate of 75% of the normal purchase rate.

V..2 In paragraph 26 of order dated 28-11-2008 passed in M.P.No.42 of 2008, the Commission at para 26 observed as follows:

"26. We, therefore, direct the TNEB to permit the utilisation of banked energy between 1-12-2008 and 30-4-2009 in 5 monthly equal instalments wherever necessary by enhancing the demand and energy quota as done in the case of other captive consumers subject to the evening peak hour restrictions".

V.3 The Respondent Board challenged the said order before the Hon. High Court, Madras in

W.P.No.30890 of 2008 and had obtained an interim order of Stay. In the final order dated 30-3-2009 the High Court in the said W.P.has allowed the stay to continue for a further period of 4 weeks and also directed the Board to prefer an appeal before the Hon'ble ATE. The Hon. High Court has also held that the unutilised banked units shall not lapse. No appeal has been filed by TNEB. Hence the order of this Commission in M.P.No.42 of 2008 has become final and binding.

V.4 In a related order dated 28-10-2009 issued in Suo Motu proceedings No.1 of 2009 the Commission at para 16 observed as follows:

“16. After taking into account the submissions made by both the parties, the Commission directs as follows:-

(1) The base energy consumption and base demand shall be computed for all captive users including the wind energy captive users on the basis of the formula contained in the TNEB Memo No.CE/ Comm/EE/DSM/AEE/PMM/F. Power Cut/D.001/08 dated 1-11-2008;

(2) For any demand sanctioned after 1-10-2008, the additional energy quota and demand energy quota shall be as per the formula prescribed by the TNEB in Memo No.CE/Comm/EE/DSM/F.Powercut/D.001/2008 dated 1-11-2008;

(3) The demand and energy quota for the wind energy supplied after 1-11-2008 shall be fixed in accordance with the memo dated 17-11-2008 of TNEB;

(4) As already directed by the Commission, wind energy banked as on 1-11-2008 shall be adjusted in five equal monthly instalments between 1-12-2008 and 30-4-2009 and equivalent additional demand and additional energy quota should be allotted to them;

(5) Demand quota and energy quota after being redrawn in accordance with the above directions shall be set off against the actual demand and energy consumed between 1-11-2008 and 30-4-2009;

(6) Excess demand charges and excess energy charges for the period from 1-11-2008 to 30-4-2009 shall be computed with reference to the re-drawn demand and energy quota;

(7) The High Court has directed that the banked energy to the credit of the wind energy generators as on 31-3-2009 shall not lapse. Accordingly, we direct that any surplus banked energy remaining unadjusted on 30-4-2009 would be eligible for encashment at the rate of Rs.3.50 per unit, which is the current tariff for industrial consumers. This is because the captive consumers were prevented from utilizing the banked energy adequately between 1-12-2008 and 30-4-2009;

(8) For the period from 1-5-2009 to 31-10-2009, the formula for computation of energy quota and demand quota contained in the circular of TNEB dated 17-11-2008 shall apply, that is,. with effect from 1-5-2009 the petitioners are entitled to demand quota for current

generation in accordance with the formula of 17-11-2008; if the energy quota and demand quota during this period has been exceeded by the captive user, he will be entitled to draw from the energy banked during this period to the extent of adjusting the excess demand and excess energy consumption;

(9) The excess demand charges and excess energy charges for the period from 1-5-2009 to 31-10-2009 shall be determined with reference to the demand and energy quota calculated in accordance with para (8) above;

(10) For the future, from 1-11-2009 the base demand and base energy may continue to be fixed with reference to the formula laid down by TNEB in their memo dated 1-11-2008;

(11) Unutilised banked energy available as on 1-11-2009 may be utilized by the wind captive users in five equal monthly instalments from 1-11-2009 upto 31-3-2010 in addition to current generation of that month;

(12) The energy which remains in the bank of wind energy generators as on 1-11-2009 after adjustment in accordance with para (8) above, shall be available for consumption of the wind energy captive user between 1-11-2009 and 31-3-2010 in five equal monthly instalments. In addition, current generation would also be eligible for additional energy and additional demand quota; both current generation as well as the energy drawn from the bank would count for computation of equivalent demand;

(13) From 1-11-2009, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the memo of TNEB dated 17-11-2008; the energy so declared shall roughly be the monthly average generation;

(14) From 1-11-2009, peak hour current generation as well as peak hour banked energy shall be eligible for peak hour utilization every month subject to the limit of one-twelfth of annual peak hour generation;

(15) Energy which remains unutilized as on 31-3-2010 shall be eligible for encashment at the rate prescribed in para 8.2.2 of Order No.1 of 2009 dated 20-3-2009 of TNERC;

(16) If a consumer opts out of wheeling agreement and becomes an ordinary consumer, A and E referred in the memo dated 17-11-2008 shall be deemed to be the base energy and base demand.

(17) Demand side management (DSM) is an effective tool to handle power shortage. This is the cheapest option and least time consuming compared to capacity addition. Accordingly, the Commission directs the TNEB to initiate appropriate action towards demand side management vigorously to bring down the demand this would reduce either load shedding or the power purchase burden. An action plan on demand side management may be submitted to the Commission by 31-12-2009. “

V.5 In a similar case viz. M.P.No.17 of 2009 (Southern India Mills Association) and DRP No.15 of 2009 (Indian Wind Power Association) the Commission has ordered as follows:

“The main issue has been disposed off in Suo Motu Proceedings No.1 of 2009 of the Commission in order dated 28.10.2009. The petitioners shall submit their claims to TNEB for encashment of unutilized banked units as on 30-4-2009. The TNEB shall make payment within 60 days of the claim, failing which, the TNEB will be liable to pay interest at the rate it charges its consumers for delayed payments namely 18%.”

VI. Direction

Para 16(7) of the Order of the Commission dated 28-10-2009 in suo motu proceedings No.1 of 2009 equally applies to the case of the petitioners also. Utilisation of banked energy in subsequent years has not been contemplated in the Order No.1 of 2009 dated 20-3-2009 of the Commission. Accordingly, the petitioner shall submit their claims to TNEB for encashment of unutilised banked units as on 31-3-2009 at the rate of Rs.3.50 per unit. The quantum of banked units has been claimed by the petitioners as 93,70,278 units. This has not been disputed by the respondents. The TNEB shall make payment within 60 days of the claim failing which the TNEB will be liable to pay interest at the rate at which it charges its consumers for delayed payment viz.18% per annum.

VII. Appeal

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

**(K. VENUGOPAL)**  
Member-II

**(R. RAJUPANDI)**  
Member-I

**(S. KABILAN)**  
Chairman

