

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**

Thiru.K.Venugopal **Member**

Thiru. S. Nagalsamy **Member**

M.P. NO. 31 OF 2010

Tamil Nadu Electricity Board
No.144, Anna Salai
Chennai – 600 002
Rep. by its Chief Engineer / NCES

... Petitioner

(Thiru.H.S. Mohammed Rafi, Advocate for Petitioner)

Versus

M/s. Tamil Nadu Newsprint and Papers Ltd.
67, Mount Road
Guindy, Chennai – 600 032.

.. Respondent

(M/s.Sivakumar and Suresh, Advocate for Respondent)

Date of hearing: 7-9-2010, 24-1-2011 and 15-3-2011

Date of Order: 20-04-2011

The M.P.No.31of 2010 came up for final hearing before the Commission on **15-3-2011**. The Commission upon perusing the above M.P. No. 31 of 2010 and other connected records and after hearing both sides passes the following:-

ORDER**1. Prayer in M. P. No.31 of 2010:-**

To pass appropriate order for fixation of the purchase price for power supplied from 24.62 MW fossil fuel based captive plant for the period from 17-10-2006 till the date of installation of ABT meter and pass such further or other orders as this Hon'ble Commission may deem fit and proper.

2. Facts of the case :-

2.1 Tamil Nadu Newsprint and Papers Limited (TNPL) is supplying surplus power available with their 24.62 MW captive co-generation plant located at Pugalur village, Karur district, to Tamil Nadu Electricity Board (TNEB) grid from 27-11-2001. The power purchase agreement for the period of 5 years from 17-10-2001 has been executed with the Superintending Engineer / Karur Electricity Distribution Circle on 17-10-2001.

2.2 The purchase price for power supplied by Tamil Nadu Newsprint and Papers Limited which is a public sector company has been fixed at the rate of Rs.2.25 per unit for the year 2000-2001 with 5% annual escalation vide permanent B.P. (FB) No.58 dated 12-05-2001. The purchase price during the period of 2005-06 was Rs.2.73 per unit.

2.3 Tamil Nadu Newsprint and Papers Limited has agreed to supply power to Tamil Nadu Electricity Board for further period of three years from 17-10-2006 at the rate of Rs.2.73 per unit. The above proposal was

accepted by Tamil Nadu Electricity Board vide permanent B.P. (FB) No.227, dated 27-10-2006.

3. **Contentions of the Petitioner:-**

- 3.1 Instead of executing power purchase agreement, for the above period, Tamil Nadu Newsprint and Papers Limited approached Government of Tamil Nadu seeking power purchase price applicable for Captive Power Plants. In accordance with G.O.(MS) No. 48, Energy, dated 22-04-1998, the power purchase price applicable for Captive Power Plants for the year 2004-05 was Rs.3.01 per unit and the same price is being continued till date.
- 3.2 Tamil Nadu Newsprint and Papers Limited executed EPA applicable for fossil fuel based Captive Power Plant for the period of three years from 17-10-2006 on 06-03-2009 in the format approved by Tamil Nadu Electricity Regulatory Commission in line with Tamil Nadu Electricity Regulatory Commission Order No.4, dated 15-05-2006.
- 3.3 As per the above EPA frequently linked tariff (UI rate) is applicable for the above referred power plant. The implementation of ABT meter is under process and technical specification of ABT meter has been communicated to Tamil Nadu Newsprint and Papers Limited. Since the ABT meter is not available with the Board, Tamil Nadu Newsprint and Papers Limited is in process of procurement of ABT meter. In the

absence of ABT meter, the power purchase price has to be fixed for the extended agreement period which expired on 16-10-2009.

4. **Contentions of the Respondent Tamil Nadu Newsprint and Papers Limited in Counter Affidavit :-**

4.1 Tamil Nadu Newsprint and Papers Limited requested the Petitioner Board to purchase the surplus power from 24.62 MW Captive Power Plant as early as 1999. Initially, Tamil Nadu Electricity Board was reluctant to purchase the surplus captive power from Tamil Nadu Newsprint and Papers Limited. After a lot of persuasion, Tamil Nadu Electricity Board agreed to purchase surplus power from Tamil Nadu Newsprint and Papers Limited captive co-generation plant during the year 2001-02.

4.2 According to the Government policy on captive power vide G.O. (MS) No.48, Energy Department, dated 22-04-1998, the tariff applicable for captive power was:

Year	Rate / Unit
2001 – 02	Rs.2.60
2002 – 03	Rs.2.73
2003 – 04	Rs.2.87
2004 – 05	Rs.3.01
2005 – 06	Rs.3.16

Tamil Nadu Electricity Board has restricted the payment to other customers also at Rs.3.01 per unit.

4.3 Tamil Nadu Electricity Board agreed however, to purchase the surplus power at lower rates as below:-

Year	Rate / Unit	Rates lower by
2001 – 02	Rs.2.25	Re.0.35
2002 – 03	Rs.2.36	Re.0.37
2003 – 04	Rs.2.48	Re.0.39
2004 – 05	Rs.2.60	Re.0.41
2005 – 06	Rs.2.73	Re.0.28

4.4 Since Tamil Nadu Newsprint and Papers Limited was given a rate less than the prevailing captive power tariff, Tamil Nadu Newsprint and Papers Limited requested Tamil Nadu Electricity Board to maintain parity with other Captive Power Plants. Tamil Nadu Electricity Board did not respond to the request of Tamil Nadu Newsprint and Papers Limited. Tamil Nadu Newsprint and Papers Limited requested Tamil Nadu Electricity Board for renewal of agreement for next 3 years from 17-10-2006. Tamil Nadu Electricity Board did not agree for parity with other Captive Power Plants and offered a rate of Rs.2.73 per unit for all the 3 years. Tamil Nadu Newsprint and Papers Limited did not enter into the agreement since the offered rate of Rs.2.73 per unit was less than the rates as per Government policy vide G.O. (MS) No. 48, Energy, dated 22-04-1998.

4.5 In April 2008, Tamil Nadu Electricity Board agreed to maintain parity with other Captive Power Plants and offered the rate of Rs.3.01 per unit for the period from 17-10-2006 to 31-03-2008 vide B.P. (FB) No. 61 dated 10-04-2008 and also to follow the Tamil Nadu Electricity Regulatory Commission guidelines from 01-04-2008. It was further clarified by Tamil Nadu Electricity Board that until the implementation of ABT metering, the rate of Rs.3.01 per unit will be adopted. However, eventhough Tamil Nadu Electricity Board agreed for the rate of Rs.3.01 per unit from

17-10-2006, Tamil Nadu Electricity Board continued to pay only at Rs.2.73 per unit. Tamil Nadu Electricity Board insisted Tamil Nadu Newsprint and Papers Limited to accept the ad-hoc payment of Rs.2.73 per unit until the rate is decided by Tamil Nadu Electricity Regulatory Commission.

- 4.6 Tamil Nadu Newsprint and Papers Limited has implemented ABT metering from 15-09-2009 and the issue of parity in captive power tariff would be only for the period between 17-10-2006 till 15-09-2009 when the ABT meter has been implemented.

5. **Findings of the Commission:-**

- 5.1 The petitioner and the respondent entered into a Power Purchase Agreement for a period of 5 years effective from 17-10-2001 for purchasing the surplus power from the 24.62 MW captive co-generation plant of the respondent at Pugalur. The agreement fixed a rate of Rs.2.25 per unit for 2001-02 with 5% annual escalation as per BP (FB) No.58 dated 12-5-2001. The purchase price during 2005-06 was Rs.2.73 per unit. With mutual consent, the same rate was adopted for 2006-07. The agreement expired on 16-10-2006.
- 5.2. On expiry of the contract on 16-10-2006, the TNPL continued to supply power to TNEB at the rate of Rs.2.73 per unit. The rate was approved by the TNEB in (Per) B.P (FB) No.227, Technical Branch, dated 27-10-2006. The two parties entered into an agreement on 6-3-2009 for the period from

17-10-2006 to 16-10-2009. The tariff was supposed to be in accordance with Order No.4 dated 15-5-2006 of the Commission.

- 5.3. Since ABT meters had not been installed in accordance with Order No.4, frequency linked tariff could not be implemented. The TNEB continued to pay Rs.2.73 per unit from 17-10-2006.
- 5.4. Vide (Per) B.P. (FB) No.61, Technical Branch, dated 10-4-2008, the TNEB agreed to fix the rate of Rs.3.01 per unit for the period from 17-10-2006 to 31-3-2008 and thereafter to follow the guidelines proposed by TNERC. The prayer of the TNEB is for the Commission to fix the tariff for the period from 17-10-2006 till 15-9-2009, the date of installation of ABT meters by TNPL.
- 5.5. We wish to observe that whatever agreement was entered into prior to the enforcement of Electricity Act, 2003 between the parties is protected by Section 185 of Electricity Act, 2003 and accordingly the tariff of Rs.2.73 is approved upto 16-10-2006. After the enforcement of the Electricity Act 2003 on 10-6-2003 the powers of tariff determination have been vested in State Electricity Regulatory Commissions and therefore the proceedings of the TNEB in (Per) B.P.(FB) No.227, Technical Branch dated 27-10-2006 and Per.B.P.(FB) No.61, Technical Branch, dated 10-4-2008, which determined tariff effective from 27-10-2006 are struck down as ultra vires of Electricity Act, 2003.

- 5.6. The TNPL stated during the arguments that in accordance with (Per) B.P. (FB) No.61, Technical Branch dated 10-4-2008 they have raised invoices retrospectively for the period from 17-10-2006 to 31-3-2008 at the rate of Rs.3.01 per unit. But, since the BP has been declared ultra vires of the Electricity Act 2003, the tariff fixed by the TNEB is struck down. For the limited period from 17-10-2006 upto 15-9-2009, the TNPL raised the bill at the rate of Rs.2.73 per unit, which was settled by TNEB in full. After 15-9-2009, the rates would be as per Order No.4 of 2006.
- 5.7. (Per) B.P.(FB) No.227, Technical Branch, dated 20-7-2006 has been issued by Thiru.S.Amalorphanathen, Chief Engineer, NCES and Per.B.P.(FB) No.61, Technical Branch, dated 10-4-2008 has been issued by Thiru.C.Santhana Gopalakrishnan, Chief Engineer, NCES.
- 5.8. The TNPL was as much at fault as the TNEB for signing a contract on 6-3-2009 to bring the TNPL under Order No.4 of 2006 of the Commission without installation of ABT Meters, which were installed subsequently on 15-9-2009, six months after execution of the contract.

6. Directions:-

In view of the findings in paragraphs 5.1 – 5.8 above, the Commission directs as follows:-

6.1 The tariff for the period from 17-10-2006 to 15-9-2009 would be Rs.2.73 per unit and for the period from 15-9-2009 it will be in accordance with Order No.4 dated 15-5-2006 of the Commission.

6.2. The Secretary of the Commission is directed to proceed against the authors of (Per) B.P.(FB) No.227, Technical Branch, dated 20-7-2006 and (Per) B.P.(FB) No.61, Technical Branch dated 10-4-2008 for violation of Electricity Act, 2003.

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.

(Sd.....)
(S. Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity Regulatory Commission

