

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
	and	
Thiru.S.Nagalsamy	Member

M.P.No. 29 of 2011

and

I.A. No.1 of 2011 in M.P. No.29 of 2011

The Southern India Mills' Association
Rep. by its Secretary General
Dr.K. Selvaraju
41, Race Course Road
Coimbatore – 18.

.... Petitioner
(Thiru. N.L.Rajah, Advocate for Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director
144, Anna Salai
Chennai – 600 002.

2. The Chief Engineer / NCES
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
144, Anna Salai
Chennai – 600 002.

.... Respondents
(Thiru.P.H. Vinod Pandian, Advocate for Respondents)

Dates of hearing: 3-11-2011 and 16-11-2011

Date of Order : 16-11-2011

M.P.No. 29 of 2011 and I.A. No. 1 of 2011 in M.P. No. 29 of 2011 came up for final hearing before the Commission on **16-11-2011**. The Commission upon perusing the above petitions and other connected records and after hearing both sides passes the following:-

ORDER

Prayer in M.P.No.29 of 2011:-

1. To set aside the Respondents' Proceedings, viz. TANGEDCO Proceedings (CMD) No. 216 dated 25-6-2011 and TANGEDCO Proceedings (CMD) No. 13 dated 16-11-2010 and all proceedings pursuant thereto including raising bill for O & M charges on the members of the Petitioner Association.

Interim Prayer in I.A. in M.P.:-

2. To grant interim stay of the Respondents' Proceedings, viz., TANGEDCO Proceedings (CMD) No. 216 dated 25-6-2011 and TANGEDCO Proceedings (CMD) No. 13 dated 16-11-2010 and all proceedings pursuant thereto including raising bill for O & M charges on the members of the Petitioner's Association, pending disposal of this petition.

Facts of the case :-

3. Several of the Petitioner's members had invested heavily in wind energy generators and substantial portion of the energy generated by the wind turbines

set up by the Petitioner is being wheeled for own use of the Petitioner's members.

4. Three types of sub-stations are operated for distribution and transmission, viz. (i) owned and operated by the first Respondent TANGEDCO, (ii) built by third party and given to the first Respondent TANGEDCO for operation; and (iii) built, operated and maintained by third party. The Respondents are seeking to levy a uniform O & M charge on the members of the Petitioner's Association who are operating wind energy generator.

Contentions of the Petitioner:-

5. The expenditure for setting up of wind turbines is borne by the WEGs such as the Petitioner's members. As per Section 10 of the Electricity Act, 2003 the generating companies are required to establish, operate and maintain generating stations, sub-stations and transmission lines. Initially, the WEGs were small scale operators and could not erect the facilities required to transmit the electricity generated by them into the grid. The TNEB took on the responsibility of erecting separate sub-stations for the benefit of such small scale WEGs.

6. TNEB sought to collect the expenditure for erecting such sub-stations from the WEGs in the name of Infrastructure Development Charges (IDC). The same

were imposed by the TNEB since 1995 and the TNEB had been continuing the regime even after coming into force of the Electricity Act, 2003.

7. The action of TNEB in seeking to impose IDC was challenged before the Commission on the ground that specific permission had not been sought from the Commission as per Section 32 of the Act and the Commission held IDC to be invalid on the ground that the same is not contemplated as per the provisions of Section 32 of the Act. On appeal, the Appellate Tribunal for Electricity (APTEL) overruled the decision of the Commission and upheld IDC on the ground that the same is a result of the respective contractual obligations of the TNEB and WEGs and as something particular to the facts and circumstances therein.

8. The ruling of the APTEL has been challenged and the same is pending before the Hon'ble Supreme Court. It is significant that the levy was upheld by the Hon'ble APTEL only on the ground that it was the wind mill developer who had agreed to pay the IDC charges by entrusting the task of setting up of the infrastructure to the TNEB and therefore pursuant to such agreement was duty bound to do so. The said judgment has evidently been sought to be misconstrued by the Respondents to allow them to collect charges on the ground of an agreement between parties. In the present case, no such agreement has been reached between the members of the petitions and the Respondent.

9. The O & M charges are an integral part of the tariff fixed by the Commission for Wind Power Generators. For instance, Section 4 (2) of the Tamil Nadu Electricity Regulatory Commission (Power Procurement from New and Renewal Sources of Energy) Regulations, 2008, mandates that while deciding the tariff for power purchase by distribution licensee from new and renewable sources based generation, the Commission shall as far as possible be guided by the principles and methodologies specified by inter-alia the Central Electricity Regulatory Commission and National Electricity Policy.

10. The Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2009, in Section 9 while dealing with tariff structure mandates that tariff for renewable energy technologies shall be single part tariff consisting of six fixed cost components, namely return of equity; interest on loan capital; depreciation; interest on working capital; operation and maintenance expenses; and O & M charges. Therefore, the O & M charges are already built into the tariff charges determined by the Commission.

11. The definition of “sub-station” and “wheeling” would establish that the power would be transmitted from the generating end to the consuming end and it includes the operation and maintenance of substation. Therefore, the Commission has determined 5% as transmission charges. They have taken into

consideration not only general line loss of 18%, but also of O & M charges of sub-station.

12. Sections 10 and 42 of the Electricity Act, 2003 introduced the concept of Open Access, which essentially means that any generator would, upon satisfaction of the conditions be entitled as a matter of right to use the transmission facilities of a distribution / transmission licensee. The Commission has already notified the Tamil Nadu Electricity Regulatory Commission-Intra State Open Access Regulations, 2005 to regulate the Open Access. The charges for Open Access have been set out in Regulation 9 of the said Regulations and the charges have been approved for (i) transmission charge / wheeling charge, (ii) surcharge, (iii) additional surcharge, (iv) scheduling and system operation charges, (v) unscheduled interchange pricing, (vi) reactive energy charges, (vii) grid availability charges and (viii) restoration charges.

13. Every aspect of the operations of the transmission and distribution activity has been covered under the various heads of charges. The Commission also approved various rates of levy and the same are being levied and collected by the Respondents. Therefore, there exists no other activity of the first Respondent, TANGEDCO which are not compensated for by the WEG owners for the purposes of wheeling and / or sale of the electricity that is generated.

14. The levy of O & M charges in the impugned proceedings is one without authority and an obvious attempt on the part of the first Respondent to unjustly enrich itself. It appears that the said charge is being levied only with the objective of shoring up the precarious financial condition of the first Respondent through illegal levies.

15. The Tamil Nadu Electricity Supply Code, 2004 under Rule 4 prescribed the charges to be recoverable by the licensee. Accordingly an O & M charge is a tariff related charge and such charge cannot be levied without the Commission's approval.

Finding of the Commission:-

16. M.P. No. 29 of 2011 and I.A. No. 1 of 2011 in M.P.No. 29 of 2011 were filed by the Southern India Mills Association, Coimbatore. These petitions were taken up for admission on 3-11-2011. During the hearing on admission, the parties pointed out that writ petitions have been filed by various parties before the High Court of Madras wherein the judgement was reserved. Accordingly, the Commission decided to keep the petition pending till the issue of orders by the High Court of Madras.

17. The High Court of Madras has delivered its judgment on 21-10-2011, and thereafter the matter was listed for arguments on 16-11-2011. The learned counsel for the petitioner argued that the issue of approval of the Commission for

levy of any charge was not the subject matter before the High Court of Madras and the same is raised in this petition before the Commission and therefore the Commission can proceed in the matter for determination of the O&M charges. In this connection, the Commission referred to Paragraphs 15 and 17 of the judgement of the High Court during the hearing. These paragraphs are extracted below:-

“15. While Infrastructure Development Charges are one time charges for establishment or creation of generating stations, tie-lines, sub-stations and dedicated transmission lines, the Operation and Maintenance Charges are recurring for operation and maintenance of the same. For the benefit of the petitioner/generating companies, TANGEDCO cannot incur loss. To put it differently, to arrest the loss being incurred in respect of the petitioners/generating companies, the TANGEDCO has resorted to collect the O&M Charges, as calculated above, which cannot be found fault with. Since it was the duty of the generating companies to comply with Section 10(1), the collection of O&M Charges did not fell for consideration of TNERC. Instead, in the instant case, the said duty of the companies is being performed by TANGEDCO, in which case, it is the exclusive domain of TANGEDCO to collect O&M Charges from the generating company. In order to avoid the O&M Charges, the generating companies should be independent in their duties cast under Section 10(1) and they should not depend on any other agency or entity as against the one in this case, namely, TANGEDCO. Therefore, the levy of O&M Charges, being the annual recurring expenditure, from the petitioners/generating companies is based on equity and in public interest, enabling the authority to serve better, which cannot be interfered with. However, it is made clear, the revision of charges from 01.11.2011, shall be decided only after consulting all the stakeholders.

17. On an analysis of the entire factors and considering the totality of facts and circumstances of these cases, coupled with the grievance of the respondents that they are incurring huge loss to their exchequer because of the services rendered by them to the petitioners, this Court has no iota of doubt in coming to an irresistible conclusion that the

impugned proceedings of the Chief Engineer, NCES, TANGEDCO, Chennai, dated 16.11.2010, and the consequential proceedings, dated 25.06.2011, in respect of demand of O&M Charges for the petitioners' Wind Energy Generators, are in accordance with law. For the reasons cited as above, all these writ petitions are dismissed."

18. As the High Court of Madras has pronounced a judgement on the same issue, the Commission does not deem it necessary to proceed with the present petition.

Order:-

19. In view of the findings in paragraphs 16–18 above, M.P. No. 29 of 2011 and I.A. No. 1 of 2011 in M.P. No. 29 of 2011 are dismissed in limine.

Appeal:-

20. An appeal under section 111 of the Electricity Act, 2003 against this order shall lie before the Hon'ble Appellate Tribunal for electricity within a period of 45 days.

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

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission

