

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

R.P. No.3 of 2011
in
D.R.P. No. 13 of 2010

The Chief Financial Controller
TANGEDCO
No.144, Anna Salai
Chennai – 600 002.

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

Vs.

M/s. L.S. Mills Ltd
Review
H.T.S.C. No. 33
Muthuthevanoatt
Theni
Rep. by its Managing Director
S.Manivannan

.... Respondent
(Thiru.R.S.Pandiaraj, Advocate for Respondent)

R.P. No.4 of 2011
in
D.R.P. No. 14 of 2010

The Chief Financial Controller
TANGEDCO
No.144, Anna Salai
Chennai – 600 002.

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

Vs.

M/s. Durgesh Nandini Spinning Mills Ltd
S.C. No. 52
Cumbum Road
Theni
Rep. by its General Manager
N.P. Perumal

.... Respondent
(Thiru.R.S.Pandiaraj, Advocate for Respondent)

**Dates of hearing: 17-6-2011, 11-7-2011, 19-8-2011 and
15-11-2011**

Date of Order : 15-11-2011

R.P.No.3 of 2011 and R.P.No.4 of 2011 in D.R.P. No. 13 of 2010 and D.R.P.No.14 of 2010 respectively came up for final hearing before the Commission on **15-11-2011**. The Commission upon perusing the above petitions and other connected records and after hearing both sides passed the following common order as the issues involved in both the above petitions are same:-

COMMON ORDER

1. **Prayer in R.P.No.3 of 2011 in D.R.P. No. 13 of 2011:-**

The prayer in R.P. No.3 of 2011 is to review the order dated 14-3-2011 passed in D.R.P. No. 13 of 2010, in so far as it relates to the computation of excess demand charges (i.e.) the actual excess demand charges of Rs.1,15,840/- has to be levied and collected as per S.M.P. No. 1 of 2009 and Circular dated 17-11-2008 for the month of 07/2010 from the Respondent with regard to quota already revealed in the C.C. Bill of the Respondent.

2. **Prayer in R.P.No.4 of 2011 in D.R.P. No. 14 of 2011:-**

The prayer in R.P. No.4 of 2011 is to review the order dated 14-3-2011 passed in D.R.P. No. 14 of 2010, in so far as it relates to the computation of excess demand charges (i.e.) the actual excess demand charges of Rs.1,29,312/- has to be levied and collected as per S.M.P. No.1 of 2009 and Circular dated 17-11-2008 for the month of 07/2010 from the Respondent with regard to quota already revealed in the C.C. Bill of the Respondent.

3. Condonation of delay in the two Review Petitions:-

3.1. The Commission at the sitting held on 11-7-2011 condoned the delay of 28 days in filing the R.P. No. 3 of 2011 and R.P. No. 4 of 2011 and admitted the Review Petitions.

4. Contentions of the Petitioner in R.P. No. 3 of 2011:-

4.1. The Commission has considered only the computation of excess energy charges as per S.M.P. No. 1 of 2009 and Circular Memo dated 17-11-2008 and not considered the computation of excess demand charges.

4.2. The Respondents utilized the energy from their own wind generation and from TANGEDCO and the excess charges if any shall be collected in accordance with formula contained in the Circular Memo dated 17-11-2008 which was approved by the Tamil Nadu Electricity Regulatory Commission in connection with fixing of demand and energy quota of wind energy captive user.

4.3. The order is not in terms of the order passed in S.M.P. No. 1 of 2009 of Commission and Circular Memo dated 17-11-2008 in connection with computation of excess demand charges.

4.4. The Respondent is bound by principles of estoppel and they are legally bound to supply energy as proposed. The quota is fixed in advance taking into account of the quantum of energy proposed to be wheeled by the consumer. It is expected that the same quantum are to be supplied and consumed. They should not propose the lower quantum of energy and take the advantage of the higher quota of TNEB portion.

5. Contentions of the Respondent in R.P. No. 3 of 2011:-

5.1. The remedy for the Review Petitioner lies only under Section 111 of the Electricity Act, 2003 by way of an appeal before the Hon'ble Appellate Tribunal for Electricity, New Delhi.

5.2. While referring to the decision of the Hon'ble Supreme Court in the case of Kerala State Electricity Board Vs. Hitech Electrothermics & Hydropower Ltd., (2005) 6 SCC 651, the Respondent contended that the review is permissible only in the case of error apparent on the face of record.

5.3. The Respondent has not committed any violation of the quota given by TNEB.

5.4. Had the Petitioner issued quota for the month of July, 2010 with split up details of the wind energy portion and the TNEB portion, the Respondent would not have violated the quota. However, for the subsequent months, the Petitioner has issued quota showing separately.

6. Extract of the Finding of the Commission in D.R.P. No. 13 of 2010

The Commission in para 5 of its order dated 14-3-2011 in D.R.P. No. 13 of 2010 has inter-alia observed as follows:-

“The TNEB, in their letter dated 27-6-2010 communicated to the Petitioner that the demand quota for the month of July 2010 would be 1182 KVA and the energy quota 6,29,499 units. The bill of the TNEB for the month of July 2010 indicates that the maximum recorded demand is 1159 KVA and the energy consumed is 6,38,624 units, excess being 9125 units. The bill of TNEB for July 2010 indicated an excess demand charges of Rs.67,381/- and excess energy charges of Rs.3,11,772. The excess energy charges have been levied for 35,700 units as against 9125 units. The TNEB is estopped from going back on the demand and energy quota communicated in advance. We have no hesitation in setting aside the excess demand charges and excess energy charges other than the actual excess of 9125 units. The balance may be refunded by the TNEB to the consumer/generator. The Learned Counsel for TNEB states that it has refunded to the consumer the excess amount in respect of excess energy consumption”.

7. Extract of the Finding of the Commission in D.R.P. No. 14 of 2010

The Commission in para 5 of its order dated 14-3-2011 in D.R.P. No. 14 of 2010 has inter-alia observed as follows:-

“The TNEB in their letter of 27-6-2010 fixed the demand quota for the petitioner for the month of July 2010 at 764 KVA and the Energy Quota at 4,21,308 units for July 2010 of which evening peak hour quota was 1,17,200 units. The recorded peak demand as revealed in the Bill of the TNEB for the month of July 2010 was 754 KVA and energy consumed for July 2010 was 3,76,404 units. The Consumer who is also a Wind Generator neither exceeded the demand quota nor the energy quota. All the same the bill for July 2010 levied excess demand charges of Rs.79,317/- and excess energy charges of Rs.1,85,607/-. The total penalty was Rs.2,64,924/-. The limited question before us is whether TNEB is bound by estoppel and whether the bill for July 2010 can be at variance with the demand and energy quota communicated in advance by the TNEB for the month of July 2010. The answer should be a categorical ‘No’. The consumer has abided by the demand and energy quota communicated in advance by the TNEB for the month of July 2010 and therefore we have no hesitation in setting aside the excess demand and excess energy charges levied by the TNEB for the month of July 2010”.

8. Contentions of the Respondents in R.P. No. 4 of 2011 in D.R.P.No.14 of 2010:-

The Respondent has reiterated the same argument in R.P. No. 3 of 2011 for R.P.No.4 of 2011 also.

9. Conclusion

9.1. The TANGEDCO has sought review of the Order passed by the Commission in D.R.P. No.13 of 2010 and D.R.P. No.14 of 2010. The learned counsel for TANGEDCO stated that the Commission in its order dated 14-3-2011 estopped the TNEB from going back on the demand and energy quota communicated in advance to the Petitioner. He sought a review on this question. This is a matter for appeal and has to be adjudicated in the appellate forum.

9.2. The learned counsel for TANGEDCO further stated that the total demand quota communicated by the Superintending Engineer, Theni, which is 1182 KVA should be split up into TANGEDCO component and demand supplied by the captive generator. This is eventually reopening an issue which has already been settled. When the TANGEDCO prescribed a total demand quota of 1182 KVA we presume that this is the total demand quota and there is no scope to further read into the breakup of this quota. We understand from the arguments of the learned counsel for the Respondent that for the subsequent months the bills of Superintending Engineer, Theni show correct demand quota and energy quota. Clause 43(1) of the Conduct of Business Regulations of 2004 reads as follows:-

“The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decisions, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record.”

9.3. The Petitioners have failed to demonstrate any mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Therefore the Review Petitions are dismissed.

10. 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