

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

PRESENT:-

Thiru.K.Venugopal **Member**

and

Thiru.S.Nagalsamy **Member**

D.R.P. No.19 of 2011
and
I.A. No. 1 of 2011
in
D.R.P. No.19 of 2011

SJLT Spinning Mills Private Limited
NH-7, Namakkal-Karur Main Road
Pillaikalathur, Paramathi Post
Paramathi-Velur Taluk
Namakkal District.

.. **Petitioner**
(Thiru R.S.Pandiyaraj,
Advocate for Petitioner)

Vs

1. The Chairman
TANGEDCO
800, Anna Salai
Chennai – 600 002.
2. The Chief Engineer (Commercial)
Tamil Nadu Electricity Board
800, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
Namakkal Electricity Distribution Circle
Tamil Nadu Electricity Board
Namakkal.

.... **Respondents**
(Thiru PH.Vinod Pandian,
Advocate for Respondents)

Dates of hearing : 13-09-2011, 11-10-2011, 24-01-2012 & 16-02-2012

Date of order : 22-03-2012

D.R.P. No. 19 of 2011 along with I.A. No. 1 of 2011 came up for final hearing before the Commission on 16-02-2012. The Commission upon perusing the above petitions and connected records and upon hearing both sides passes the following

ORDER

1. **Prayer in D.R.P. No.19 of 2011:-**

The prayer in D.R.P. No. 19 of 2011 is to pass an order in the nature of a direction, directing the Respondents to fix pro-rata demand and energy quota to the Petitioner based on the present wind energy generation capacity of 1.35 MW instead of taking 5.72 MW that was then existing during the base period.

2. **Prayer in I.A. No.1 of 2011 in D.R.P. No.19 of 2011 :-**

The prayer in I.A. No. 1 of 2011 in D.R.P. No. 19 of 2011 is to pass an interim direction, directing the third Respondent to permit the Petitioner to run the industry with 80% of base demand and base energy vide Circular Memo dated 20-06-2011 issued by the Second Respondent.

3. **Facts of the Case:-**

(i) The Petitioner is a private limited company registered under the Companies Act, 1956 having its mills at Namakkal District and are in the business of manufacture of textile related products.

(ii) The Petitioner is a H.T.consumer and they are using the electrical energy to run their machines which are installed in their various processes.

(iii) The Petitioner also own wind mills for captive consumption and the energy generated through their wind mills are given adjustments in the Petitioner's consumption at their HT SC No. 249 coming under the third Respondent.

(iv) The first Respondent issued Circular Memo dated 17-09-2010 giving a method of calculation of demand and energy quota for wind energy generators much against the order passed by the first Respondent in M.P. No. 6,9 and 17 of 2010 and D.R.P. No.9 of 2010 dated 07-09-2010.

(v) Aggrieved by the method of calculation of demand and energy quota in Circular Memo dated 17-09-2010 issued by the first Respondent, the Petitioner has filed W.P. No.22392 of 2010 before the Hon'ble High Court of Madras. The Hon'ble High Court of Madras was pleased to pass a detailed order in W.P. No.23166 of 2010 batch cases on 28-02-2011 setting aside the Circular Memo dated 17-09-2010 issued by the first Respondent and directed to pass fresh circulars giving quota formula based on the minutes of the meeting held before the Deputy Chief Minister and also set aside the penalty levied by the third Respondent and directing the Respondent to amend the Circular Memo dated 17-09-2010 in accordance with the orders passed by the Hon'ble Court in the above batch of Writ Petitions.

(vi) The Petitioner was having wind mills with capacity of 5.72 MW during the base period i.e. October 2007 to September 2008. However, the wind energy capacity of the Petitioner has come down drastically due to the new conditions stipulated in the energy wheeling agreement that for claiming captive consumption

status, it is mandatory to have 26% stake in the generating company and 51% of the total generation should be used for captive consumption.

(vii) From 01-11-2009 i.e. after the order passed by the first Respondent in Suo Motu Proceeding No.1 of 2009, dated 28-10-2009, the demand and energy quota was fixed to the Petitioner every month based on the declaration made by the Petitioner vide para 16 (13) of the above order. Therefore, since the declaration was made by the Petitioner based on their actual wind energy generation in their existing wind mill, there was no difficulty for the Petitioner to get the required quota.

(viii) However, the difficulty arose only after issue of Circular Memo dated 17-09-2010 wherein the quota was fixed taking into account the base period as October 2007 to September 2008 and the quota letter dated 25-09-2010 issued by the first Respondent Board instead of taking declaration as stipulated under para 16 (13) of the Suo-Motu Proceedings No.1 of 2009 dated 28-10-2009.

(ix) The Petitioner has made representation dated 08-08-2011 to all the Respondents requesting to fix quota proportionately based on the present capacity of wind mills, i.e. 1.35 MW instead of 5.72 MW that was then available during the base period (October, 2007 to September 2008) to the present level of 1.35 MW). But till date, there is no response from the Respondent Board.

(x) In order to maintain justice and to seek suitable remedies, the Petitioner has got no other remedy except to approach this Hon'ble Commission, under its powers

and functions as vested under Section 86 (1) (f) of the Electricity Act, 2003 and accordingly files this petition before this Commission.

4. Contention of the Petitioner:-

(i) As per paragraph 12 (2) of the common judgment dated 28-02-2011 in W.P. No. 23166 of 2010 batch cases, the Hon'ble High Court of Madras has specifically directed to retain the benefit arising out of the order made in Suo Motu Proceeding No.1 of 2009 dated 28-10-2009.

(ii) The Petitioner on the strength of the interim order granted by the Hon'ble High Court of Madras and the final orders passed thereto is running the mills with the quota granted to the Petitioner vide quota letter dated 27-05-2010 till date, i.e. 80% of the base demand and energy including wind energy generation in wind mills.

(iii) The revised circular memo dated 20-06-2011 which prescribes consumer's choice is also not meeting the grievance of the Petitioner since the Petitioner is in a peculiar situation wherein their wind energy generation capacity has come down from 5.72 MW during base period to 1.35 MW at the present level from 2008–2009. Therefore, if the base period capacity of wind mill is taken for fixing quota, the Petitioner's quota would be considerably reduced because the present capacity of wind energy generation is only 1.35 MW.

(iv) It is just, equitable and necessary to meet the ends of justice that the quota for the Petitioner has to be fixed based on the present wind energy generation capacity,

viz. 1.35 MW and not the capacity they were having during base period viz. 5.72 MW.

(v) Since the Petitioner has run their industry based on the quota given by the Respondent Board vide their letter dated 27-05-2010 i.e. 80% quota level, the fixation of quota may also be done from September, 2010. Otherwise, the Petitioner would be facing levy of penalty for no fault of the Petitioner. As a matter of fact, the Petitioner's consumption is all along within the quota fixed by the Respondent Board and there is no violation in any manner.

5. Contention of the Respondent in the Counter Affidavit:-

(i) The quota fixed for TANGEDCO supply based on base demand / energy is the same for consumers who had availed other sources. If the concession of relaxation in quota fixation due to reduction in wind energy generation is granted to the Petitioner all other consumers who had availed other sources of supply during the base period would follow suit and thus render the restrictions in force on HT services as meaningless.

(ii) The request of the Petitioner to fix the quota from September 2010 cannot be considered on any account since there can be no change in the base period. Any deviation from the above declaration cannot be entertained as per the Hon'ble High Court order dated 28-02-2011 and the Tamil Nadu Electricity Regulatory Commission order dated 17-04-2011 and TANGEDCO is not in any way responsible for the excess charges levied. Further the request for retrospective effect cannot be complied with since the present power supply is arranged to cater to the current

requirement of the consumers and any concession offered would be a burden to TANGEDCO. TANGEDCO had only followed the orders of the Hon'ble High Court and the Commission in imposing the fixation of quota and other restriction and control measures and excess charges. The request of the Petitioner cannot be complied with.

(iii) In the event of back down of wind energy generations the consumer has many options to avail power supply through private purchase either from within the State or outside the State. Whereas TANGEDCO will have to bear the additional burden of catering to the requirements of those consumers since there would be an excess in the anticipated demand and it would be compelled to procure this additional quantity by way of private purchase which will only add to the financial burden of TANGEDCO.

(iv) If the Petitioner is permitted to revise the quota on proportionate basis there would arise a possibility of increasing the procurement from other generations in future. This would again require revision of base demand. Hence revision of quota as per the wishes of the consumer cannot be allowed. This would not only result in unpredictable anticipated demand but also problems in billing.

6. Finding of the Commission:-

(i) It has been stated by the Petitioner that reduction of his wind energy capacity has taken place during 2008-2009 subsequent to issue of R & C orders in November 2008. The R & C order of TNEB dated 17-11-2008 has adopted the following formula for fixing up quota:-

Fixing of Energy Quota:-

(i)	Monthly base energy consumption as illustrated in working instructions dated 01-11-2008	A
(ii)	In that the actual energy supplied (monthly average) for the above three months average by the CPP	B
(iii)	The actual energy availed by consumer from TNEB	$A - B = C$
(iv)	60% energy on C ($C \times 60/100$)	D
(v)	The quota fixed for energy	$B + D$

(ii) On the corresponding basis demand quota was also fixed. As per this, there will not be any difference in the quota irrespective of whether a consumer brings in lesser captive power or higher captive power than that was supplied during the base period i.e. "B".

(iii) In the Commission's order S.M.P. No. 1 of 2009 the captive users were permitted to declare the energy proposed to be brought in by them at the beginning of the month which will be additional to the quota based on "D" in the table above. During this period also the consumer had no problem.

(iv) Subsequently in order dated 07-07-2010 in M.P. No. 6,9 and 17 of 2010 and D.R.P. No. 9 of 2010, the Commission had dispensed with the advance declaration of energy to be brought in and instead ordered that out of the actual energy consumed during the particular period the energy actually brought in by him from other sources would be subtracted and the balance taken as energy consumed from TANGEDCO and if it exceeds the quota, it will be construed as an excess over quota

fixed, which will attract excess demand charges. Accordingly TNEB has issued instructions under its Circular dated 11-02-2011.

(v) In the Commission's order No. S.M.P. 1 of 2009 dated 28-09-2009 it has been permitted that such of those consumer who have opted out of wheeling arrangement subsequent to the base period as defined in the TNEB's Circular dated 17-11-2008, shall get its energy quota fixed based on the total recorded consumption i.e. "A" as per the Circular dated 17-11-2008. In this case, the actual energy brought in by the consumer is reduced due to reduction in the generating capacity from what was available during the base period i.e. 5.7 M.W. to 1.35 M.W.

(vi) Comparing this case as similar to the one where the consumer has opted out of wheeling arrangement after the base period, pro-rata energy may be fixed for Item "B" in the Circular dated 17-11-2008 and the same may be taken for Item "(C)" i.e. $C = \{A - (1.35 / 5.72) B\}$.

(vii) This shall be given effect from September 2010 when advance declaration of captive generation was withdrawn by the Commission.

7. Appeal:-

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

(Sd/-)
(S.Nagalsamy)
Member

(Sd/-)
(K.Venugopal)
Member

/True Copy/

**Secretary
Tamil Nadu Electricity
Regulatory Commission**