

M.P.No.30 of 2011 came up before the Commission on 27-11-2012 for final hearing. The Commission upon perusing the above petition and connected records of the case and upon hearing Counsel for the Petitioner and officials of TANGEDCO passes the following

ORDER

1. **Prayer in M.P. No.30 of 2011:-**

The prayer in M.P.No.30 of 2011 is,-

(a) to direct the Respondent Board to execute the Renewable Energy Wheeling Agreement under REC scheme in place of the agreement executed and to direct the Respondent to treat the energy sold to the grid as having sold at APPC tariff instead of preferential tariff and clarify that the Petitioner is eligible for applying and procuring REC Certificates immediately and

(b) to direct the Respondent / State Nodel Agency to consider the Petitioner machines for accreditation of REC effective from the date of commissioning immediately without waiting for the final disposal of the petition as REC would take prospective effect and the Petitioner may be put to severe losses if the registration had to wait until the disposal of the petition and the Petitioner is willing to give suitable undertaking.

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

2.1. The Petitioner has installed wind turbines capable of generating to the tune of 18.7 MW in Udumalpet, Tirupur District, 33 MW in Koodunkulam in Tirunelveli District, 40.8 MW in Kazhugumalai in Tirunelveli District.

2.2. The Petitioner was also intending to obtain Renewable Energy Certificates with regard to the power generated by them.

2.3. As per Regulation 6 of this Commission regarding Renewable Energy Purchase Obligation, a generating company should not have any Power Purchase Agreement (PPA) to sell electricity at preferential tariff. Since the later mentioned prior approval granted to the Petitioner was to sell energy to Board under preferential tariff, the Petitioner did not commission their plant under the said approval, as the same would negate their claim for accreditation under the REC scheme. The Petitioner wanted to make sure that they were eligible under all the regulations in order to procure the REC immediately without delay.

2.4. One of the eligibility conditions for obtaining Renewable Energy Certificate immediately under the CERC regulations was that the generator should not have availed benefits in the form of concessional / promotional, transmission and wheeling charges, tax exemption, promotional / concessional banking benefit etc. The Distribution Licensee based on Tariff Order No.1, dated 20-03-2009 is collecting transmission wheeling charges at 5% uniformly for captive use and third party sale of wind energy in the case of HT / EHT consumption. The tariff order does not stipulate / differentiate concession or promotional rate from normative rate for transmission and wheeling. It has stipulated 5% in general. In order to clarify whether the charges are promotional or concession, the Petitioner herein had filed Miscellaneous Petition No.3 of 2011 before the Commission seeking clarification as to whether the 5% provided for is normative or concessional and if held concessional, to determine the normative rates so that the Petitioner may avail the normative rates in order to obtain the benefit of obtaining REC for the energy

generated by them immediately rather than wait for 3 years. The Petitioner had also sought for interim directions to permit the Petitioner to pay transmission and wheeling charges at 5% as prescribed by Tariff Order No.1 of 2009 without prejudice to their rights to claim the REC pending disposal of the application or determination of the normative / concessional rates. The Commission on 20-04-2011 was pleased to grant interim orders as sought for.

2.5. Subsequent to the issuance of the interim orders by the Commission, the Petitioner addressed a letter dated 23-05-2011 to the 1st Respondent requesting the entire energy generated by them may be permitted to be wheeled to all the Petitioner's group captive consumers with banking the surplus energy after adjustment of every month. The Petitioner had also agreed to sell the un-utilised surplus energy at the end of the financial year to the Respondent at APPC tariff and also undertook to pay the differential charges, if any in respect of transmission and wheeling as and when they are notified by the Commission, retrospectively from the date of commissioning.

2.6. The Petitioner again addressed a letter dated 06-07-2011 requesting the 1st Respondent to issue the amended NOC for wheeling the power under the REC mechanism. The Petitioner was ready for commissioning and despite the same, there was no response from the Respondent Board regarding the said issue and as such the inaction of the Respondent was causing considerable cost and financial burden upon the Petitioner as the machines could not be commissioned during the peak wind season.

2.7. To avoid further loss, the Petitioners were forced to commission 16 machines (13.6 MW) and inject the power into the grid under the specific understanding that they would not bill for the energy so injected under the preferential tariff in terms of the agreement in place, and would await a revised NOC and a revised Wheeling Agreement under the REC scheme and bill for the energy so injected under the proposed revised agreement. Soon after such commissioning, the Petitioners also addressed a letter dated 08-08-2011 to the Board requesting them to permit the power generated to be wheeled to their group captive consumers with the surplus if any, to be allowed to be banked. The said request was made in order to bring about a termination on the earlier PPA by mutual agreement so as to enable them to be eligible to seek accreditation and eventual REC immediately and without the waiting period of 3 years.

2.8. On 29-08-2011, the 2nd Respondent addressed a letter wherein they have given approval to the Petitioner to wheel the energy generated by them to their group captive consumers along with permission to bank the surplus energy if available after adjusting consumption with provision to sell the unutilized surplus energy at the end of each financial year to the Board.

2.9. The Petitioner is willing to accept and charge at APPC rate in respect of units sold to the grid from the date of commissioning till the date of change in the utility arrangement for wheeling of power under group captive arrangement and is further willing to pay normative charges as determined by the Commission while passing the orders on our petition no for this arrangement and to sell the surplus energy to the Respondent Board at APPC tariff. However, as the Respondent Board did not accord approval for wheeling of power with eligibility to claim REC inspite of

repeated attempts by the Petitioner, the agreements executed with the Respondent Board are based on the standard agreement formats for sale to board under preferential tariff which was later on cancelled and a revised agreement for wheeling of power to group captive consumers with banking and surplus energy to be sold at preferential tariff was executed by the Petitioner.

2.10. The Petitioner is willing to execute the Renewable Energy Wheeling Agreement under REC scheme as stipulated by the Commission for wheeling of power to group captive consumers in place of the existing one which shall take effect from the date the approval was accorded by the Respondent Board.

3. Hearing on 16-11-2011:-

The Counsel for the Petitioner submitted that the PPA was executed on 23-03-2011 and generation commenced during the 1st week of August 2011. The TNEB granted NOC for sale to the TNEB. However, the Petitioner sought amendment to the PPA to wheel energy to its entire consumers and to sell balance of energy to the Board at the preferential rate. The Petitioner has not raised any bill claiming preferential tariff. He further submitted that the agreement was executed prior to the date on which the form has been prescribed by the Commission and prayed that the Respondent may be directed to execute the REW agreement under REC scheme. The petition was admitted and the Respondent was directed to file counter within four weeks. The Respondent filed counter on 04-11-2011.

4. Hearing on 20.11.2012 and 27-11-2012:-

On 20.11.2012, the counsel for the petitioner informed that they seek permission for withdrawing the petition and will file necessary papers before

27.11.2012. On 27-11-2012, the Counsel for the Petitioner filed a petition to permit him to withdraw the petition as per the instructions of his client.

5. Finding of the Commission

The Counsel for the Petitioner in his petition dated 27-11-2012 is seeking permission to withdraw the petition in M.P.No.30 of 2011. The Petitioner is accordingly permitted to withdraw the above petition No. M.P. 30 of 2011 and the same is dismissed as withdrawn.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission