

**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

**M.P. No.29 of 2012**

Savita Oil Technologies Limited  
66/67 Nariman Bhavan  
Nariman Point  
Mumbai 400 021

.... Petitioner  
(Thiru Rahul Balaji,  
Advocate for Petitioner)

**Vs.**

1) Tamil Nadu Generation and Distribution  
Corporation Ltd. (TANGEDCO)  
Rep. by its Chairman and Managing Director  
NPKRR Maaligai, 144, Anna Salai  
Chennai -600 002.

2) The State Load Despatch Centre,  
Rep. by its Authorised signatory  
SLDC Block, 144, Anna Salai  
Chennai 600 002.

.... Respondents  
(Thiru P.H.Vinod Pandian,  
Standing Counsel for Respondents)

**Dates of hearing : 18-10-2012, 28-11-2012 and 30-01-2013**

**Date of Order : 04-06-2013**

This petition is filed by M/s. Savita Oil Technologies Limited, Mumbai with a prayer to declare that the power purchase agreement dated 11-8-2004 executed by the petitioner for the wind energy generators in HTSC Nos 477, 478,

479, 480 do not fall under the purview of the proviso to Regulation 6(1) (b) of the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 and the petitioner upon termination of the PPA with the 1<sup>st</sup> Respondent by giving 3 months notice would not be a pre-mature termination and the petitioner would be entitled to the benefits under the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 without having to wait for the 3 year cooling off period.

**Contention of the petitioner as set out in the petition:-**

2. The petitioner in his petition has stated that they had established four Wind Energy Generators (WEGs) with a capacity of 750 KW each in Coimbatore District. These WEGs were commissioned in the year 2004.

3. The petitioner further submits that the power generated by the WEGs is being sold to the first respondent TANGEDCO pursuant to power purchase agreement executed between the petitioner and the respondent. Some of the salient clauses contained in the PPA are extracted by the Petitioner in his petition as under.

*“2.. The Board agrees to purchase the power generated by the wind mill at the rate of Rs.2.70 per unit on monthly basis under power feed scheme of the Board, from the time of commissioning the Wind Electric Generator and tied up with the grid.*

*3. If wheeling is opted for by the Company, for which Board conveys that it is agreeable, then 5% of the gross energy generated by the wind mill shall be deducted towards wheeling charge and the balance be made available to the HT Industry at the place or places where power is required. If banking is also opted for, for which Board conveys that it*

*agreeable for it, then 5% of the energy banked shall be deducted towards banking charge. The banking period shall be from 1<sup>st</sup> April to 31<sup>st</sup> March of the financial year, after which any unutilized banked energy shall be deemed to have lapsed at the end of the financial year.*

*24. This agreement shall come into force from the date of execution of this agreement by the company and shall remain in force till it is terminated. The agreement can be terminated by the firm at any time by giving three months notice in writing to the Board expressing its intentions to do so. The Board can terminate the agreement with the company at any time by giving three months notice in case of breach of the terms of the agreement by the company. If the agreement is terminated, the board is not liable to pay any compensation.”*

4. The petitioner further submitted in his petition that the PPA can be termed as an agreement at will inasmuch as the agreement does not have any fixed tenure which can be terminated by either party with notice period of 3 months. The petitioner has also confirmed in his petition that they are not wheeling the power generated by the 4 WEGs to any HT consumers and has not availed the facility of banking. The petitioner has heavily relied on the Regulations of the CERC and the TNERC and the relevant portion of the petition is reproduced below:-

*“The petitioner is extracting hereunder some of the regulations of the CERC Regulations as amended relevant to the case at hand.*

***Regulation 2 (1) (c) “Certificate”*** means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it under the provisions specified in these regulations.

***Regulation 2 (1) (n) “State Agency”*** is defined as the agency in the concerned State as may be designated by the State Commission to act as the agency of accreditation and recommending the renewable energy projects for registration.

**Regulation 5 “Eligibility and Registration for Certificates”**

*(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:*

- a. it has obtained accreditation from the State Agency;*
- b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchanged at market determined price.*

*Explanation – For the purpose of these regulations ‘Pooled Cost of Purchase’ means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short – term, but excluding those based on renewable energy sources, as the case may be:*

*Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre-mature termination of the agreement, be eligible for participating in the REC scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement:*

*Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty etc.:*

*Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty etc., it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits:*

*Provided also that the above mentioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government.*

*The dispute, if any, on the question as to whether such concessional / promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.*

*Explanation:- For the purpose of this Regulation, the expression 'banking facility benefit' shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.*

*(2) The generating company after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure.*

*(3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration. Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.*

*(4) A person aggrieved by the order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within fifteen days from the date of such order, and the Commission may pass order, as deemed appropriate on such appeal.*

*11. The petitioner submits that the Tamil Nadu Electricity Regulatory Commission (TNERC) has issued the Renewable Purchase Obligation Regulations, 2010 (hereinafter referred to as the "RPO Regulations") in pursuance of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. The Petitioner submits that the RPO Regulations were further amended in the year 2011. The petitioner is extracting hereunder certain provisions of the RPO Regulations pertinent to the case at hand.*

***Regulation 2 (1) (d) "Certificate"*** means the Renewable Energy Certificate (REC) issued by the Central Agency in accordance with the procedures prescribed by it and under the provisions specified in the Central Electricity Regulatory Commission (Terms and Condition for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

**Regulation 2 (1) (m) “State Agency”** means the State Load Despatch Centre as defined under section 2 (66) of the Act or the Agency so designated by the Commission under regulation 5 (4) of these Regulations.

**Regulation 6 “Eligibility and Registration for Certificates”**

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

- a. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and
- b. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price:

Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre-mature termination of the agreement, be eligible for participating in the REC scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order of ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement:

Provided further that a grid connected CGP based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CGP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty etc.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty etc., it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

(2) The dispute, if any, on the question as to whether such concessional / promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.”

5. The petitioner further submits that eligibility criteria set out in the CERC Regulations and the RPO Regulations for Renewable Energy Generators for registration in the Renewable Energy Certificate (REC) Scheme are identical. The petitioner also submits that the provisions required that a Renewable Energy Generator should not be party to an agreement to sell power to the distribution licensee at a preferential tariff and provided that the Renewable Energy Generator is party to such an agreement, then the said generator cannot participate in the REC Scheme for a period of three years from the date of termination of the agreement or till the scheduled date of expiry of the agreement whichever is earlier. The petitioner also submits that it is desirous of participating in the REC Scheme and it has not availed of any concessional or promotional benefit from the distribution licensee such as banking or wheeling pursuant to the PPA executed by it with the first respondent. The main thrust of the argument of the petitioner in his petition is that agreement entered into by it with the first respondent does not have a fixed tenure and it is an agreement at will inasmuch as the agreement can be terminated with a three month notice by either party.

6. The petitioner further submits that it had addressed a letter to the second respondent on 12<sup>th</sup> July 2012 seeking a clarification from the second respondent as to whether the petitioner would be able to participate in the REC scheme upon termination of the PPAs dated 11-08-2004 without having to wait for a period of three years to become eligible for participation in REC scheme and having not received any response to that letter have filed this petition.

### **Views of the Respondents in its Counter:**

7. The petitioner himself admits that they have 4 Nos 750 KW WEGs and executed the power purchase agreement on 11-8-2004 with TANGEDCO for sale of wind energy at the rate of Rs.2.70 per unit and this is an old power purchase agreement. The tariff order No.3 dated 15-5-2006 issued by Tamil Nadu Electricity Regulatory Commission has stated that existing agreements are continued to be valid. In order to avail the benefits of Order No.3 dated 15-05-2006, the Tamil Nadu Electricity Regulatory Commission directed to execute Energy Purchase Agreement in line with the said Order No.3 dated 15-05-2006. The present petitioner has not opted for revising their agreement as per Tamil Nadu Electricity Regulatory Commission's Order dated 15-5-2006 but retained old power purchase agreement. The Respondents further submitted that the old TNEB power purchase agreement is common for both power purchase scheme and wheeling and banking scheme. They further argued that even though there was no agreement period mentioned in the agreement it does not mean that it can be terminated at any time but the agreement has to be used up to the life period of the plant. They further contend that the provision to terminate the agreement with three months notice period was given for change in the option of the usage of wind energy whether sale of power or wheeling and banking since third party sale of wind energy was not permitted before 15-5-2006 and the petitioner had the only option to sell the wind energy to the Board or wheel and bank the wind energy for their own use.

8. Referring to CERC's Regulations and TNERC's Regulation, the respondent contend as follows:-

- i) *RE Generator does not and shall not have any power purchase agreement for the capacity related to such generation to sell electricity at preferential tariff determined by the Appropriate Commission.*
- ii) *A period of three years or the period up to scheduled date of expiry of power purchase agreement (in case of scheduled date of expiry of power purchase agreement (PPA) is either than three years, the hard copy of said PPA has to submitted to Central Agency), has elapsed from the date of pre-mature termination of PPA due to material breach of terms and condition of said PPA by eligible entity.*

OR

- iii) *The premature termination of PPA with obligated entity is with mutual consent or due to material breach of terms and condition of said PPA by the obligated entity (for which necessary documentary evidence has to be submitted by eligible entity in hard copy to Central Agency).*
- iv) *Eligible Entity has not availed or does not propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.*

OR

- v) *A period of three years has elapsed from the date of for going the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.*

OR

- vi) *The benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty has been withdrawn by the State Electricity Regulatory Commission and/or the State Government.*

9. The main thrust of the argument of respondents is that the petitioner should not terminate the agreement in order to avail REC benefits especially when it had signed a power purchase agreement based on the preferential tariff of Rs.2.70 per unit. The respondents further relied on the statement of reasons for the amendment to the REC Regulations of CERC.

*“Restriction of 3 years post foregoing of concessional benefits by CPPS.*

*Eligibility of CPPs based on renewable fuels should be without the preconditions of concessional wheeling, banking and waiver of electricity Duty. Further, the three years term fixed for being eligible to get REC is arbitrary and without justification same should be withdrawn for existing CPPs.*

*Findings of the Commission*

*The Commission would like to reiterate that the REC mechanism should not encourage perverse incentive either to existing CPPs or for the early termination of PPA. The provision of three years term after termination for being eligible under REC frame work is kept with the intention that it would act as deterrent to the existing CPPs getting concessional benefits and RE Generators against such early termination of PPA. Moreover, the main objective of REC mechanism is to encourage new capacity addition in RE segment.”*

10. It is the plea of the respondents that since the petitioner has executed the PPA under preferential tariff, they are not eligible for REC scheme and they have to wait for three years from the date of termination of the present agreement. In the light of the above argument the respondents pleaded that the petition be dismissed in limini.

**Finding of the Commission:**

11. The issue raised in this petition is that whether the power purchase agreement between the petitioner and the respondent could be terminated and

the petitioner could switch over to REC scheme without waiting for the mandatory cooling off period of three years. The following aspects need to be considered to answer the above question.

- 1) The date of entering into PPA which is 11-8-2004.
- 2) The agreement has not been renegotiated at any stage.
- 3) The PPA entered into is for sale of power at Rs.2.70 per Kwhr which was subsequently ratified by the Commission in order No. 3 dated 15-5-2006.
- 4) The REC Regulations of the CERC and TNERC are developments of subsequent dates i.e. after 2008 or later.

The concept of RECs came about in the year 2008. The CERC as well as this Commission issued Regulations from 2008 onwards. In the instant case the PPA was signed on 11-8-2004 for sale of energy at the preferential tariff of Rs.2.70 per Kwhr. The term of the PPA is not indicated in the agreement but the wind energy tariff order issued by the Commission in 2006, which recognized the tariff fixed earlier, considers the life of wind energy generator as 20 years. The life of the Wind Energy Generators has been considered as 20 years in the subsequent Wind Energy Tariff Orders issued by the Commission in March 2009 and July 2012. No amendment has also been made to the PPA although such an option was provided in the three successive wind energy tariff orders issued by the Commission in 2006, 2009 and 2012. The respondents have brought out the statement of reasons for the amendment to the REC Regulations issued by the CERC which is discussed in para 9 above. The finding of the CERC was that the REC mechanism should not encourage perverse incentive either to existing CPPs or for the early termination of PPA. The provision of three years term after

termination for being eligible under REC frame work is kept with the intention that it would act as deterrent to the existing CPPs getting concessional benefits and RE generators against such early termination of PPA. More over, the main objective of REC mechanism is to encourage new capacity addition in RE segment.

Going by the findings of the CERC, it becomes very clear that early termination of the PPA, only for the purpose of availing REC mechanism, should not be encouraged especially when it provides perverse incentive to the CPPs / RE Generators.

12. In the light of the above, the Commission does not see any merit in the prayer of the petitioner and clarifies that upon termination of the PPA the petitioner shall have to wait for the three year mandatory cooling off period as laid down in the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation Regulations 2010).

**APPEAL:**

13. 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 from the date of receipt of a copy of the order.

Ordered accordingly.

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

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission