

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

PRESENT:

Thiru S.Akshayakumar Chairman
Thiru.G.Rajagopal Member
and
Dr.T.Prabhakara Rao Member

I.A.No.1 of 2015
in
M.P.No.10 of 2015
and
M.P.No.10 of 2015

The Chief Financial Controller, Revenue
TANGEDCO
144, Anna Salai
Chennai.

... Petitioner
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

Vs.

Tamil Nadu Spinning Mills Association
No.2, Karur Road, Modern Nagar
Dindigul – 624 001.

... Respondent
(Thiru R.S.Parthasarathy,
Advocate for the Respondent)

Dates of hearing : 13-02-2015, 30-04-2015, 05-10-2015,
28-01-2016, 01-08-2016 and 09-09-2016

Date of Order : 31-07-2017

The M.P.No. 10 of 2015 filed by the Chief Financial Controller, Revenue, TANGEDCO and I.A.No.1 of 2015 in M.P.No.10 of 2015 filed by Tamil Nadu Spinning Mills Association, Dindigul came up for final hearing on 09-09-2016 and the

Commission upon perusing the connected records and after hearing the Petitioner and the impleading Petitioner passes the following:-

ORDER

1. Prayer of the Petitioner in M.P.No.10 of 2015:-

The prayer of the Petitioner is to clarify whether HT temporary supply tariff rate as notified in the Tariff Order towards the grid support charges for backup power supplied by TANGEDCO during the outage of generator, payable by the open access customer as per Tariff Order T.P.No.1 of 2013 dated 20-06-2013 and as per Intra State Open Access Regulation 2014 and render justice.

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

The Commission has fixed grid availability charges vide T.P.No.1 of 2013 dated 20-06-2013 applicable for backup power charges payable by generator for start-up power and charges payable by the consumer when scheduled generation is not maintained by the generator or when the drawal by the consumer is in excess of schedule, but has not specifically provided anything about grid support charges for backup power during the outage of generator payable by the open access customer and hence the Petitioner seeks clarification on the same.

3. **Contention of the Petitioner:-**

3.1. The Commission has fixed the grid availability charges vide T.P.No.1 of 2013 dated 20-06-2013 as follows:-

(i) Scheduling of all transactions pursuant to grant of long- term open access or medium-term open access or short-term open access shall be carried out on day-ahead basis in accordance with the relevant provisions of IEGC/CERC Open

Access Regulations for inter-State transactions and in accordance with State Grid Code/ Commission's Regulations / orders for intra-State transactions.

(ii) Deviations between the schedule and the actual injection/ drawal in respect of a open access customer who is not a consumer of the distribution licensee and the Generating Stations, shall come under the purview of the intra-State ABT, as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the UI charges specified by the Commission. Billing, collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission's orders on intra-State ABT, as may be applicable from time to time. Till the implementation of intra-State ABT, the imbalance charge shall be at the rate of applicable temporary supply tariff.

3.2. In case of deviation by Open Access Customer who is also a consumer of distribution licensee, the difference between the applicable scheduled open access load and actual drawal shall be accounted Block wise and shall be settled in accordance with the following:

- (i) The energy consumption of such customer shall be recorded in 15 minutes time block.
- (ii) Deviations between the schedule and the actual injection/ drawal shall come under the purview of the intra-State ABT as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the UI charges specified by the Commission. Billing, collection and disbursement of any

amounts under the above transactions shall be in accordance with the Commission's orders on intra-State ABT, as may be applicable from time to time. Till the implementation of intra-State ABT, the imbalance charge shall be regulated as below:

- (iii) In case of actual energy/ demand drawal is more than the scheduled energy/ demand but within the permitted energy/ demand (based on contracted load and energy or quota demand and energy as applicable), customer shall be liable to pay for such over drawal at the applicable tariff rates of that category of consumer as determined by the Commission from time to time.

- (iv) In case of actual energy/demand drawal is more than the scheduled energy/demand drawal and also more than the permitted energy/demand (based on contracted load and energy or quota demand and energy as applicable payment for the capacity above the contract demand shall have to be made at the excess demand/ energy charges as specified by the Commission for such categories of customers in the regulation/ order.

3.3. In the above orders, the Commission has dealt with the collection of grid support charges for two cases namely (a) for start-up power by generator (b) when the generation as per schedule is not maintained and when the drawal by the Open Access consumer is in excess of the schedule, but not specifically said anything about grid support charges for backup power during the outage of generator, payable by the open access customer and hence it required clarification on the same.

4. Hearing on 30-04-2015 and 05-10-2015:-

On 30-04-2015, the above Miscellaneous Petition was admitted and on 05-10-2015, the Commission directed the Petitioner to host the petition in website giving a clear 15 days time for getting objections and suggestions from stakeholders.

5. Impleading Petition filed by M/s.Tamil Nadu Spinning Mills Association:-

5.1. In the meanwhile the Tamil Nadu Spinning Mills Association has filed an impleading petition in the said M.P.No.10 of 2015 which was admitted on 28-01-2016. The impleading Petitioner objects the clarificatory petition filed by the Petitioner stating the following grounds and prayed to implead the said Association as a party Respondent to the M.P.No.10 of 2015:-

While passing the order in T.P.No.1 of 2013 dated 20-06-2013, interalia, the Commission has made it as follows, as how to deal with the grid availability charges.

“5.68 With regard to grid availability charges for open access consumers, Commission approves following norms

(i) Scheduling of all transactions pursuant to grant of long- term open access or medium-term open access or short-term open access shall be carried out on day-ahead basis in accordance with the relevant provisions of IEGC/CERC Open Access Regulations for inter-State transactions and in accordance with State Grid Code/ Commission's Regulations / orders for intra-State transactions.

(ii) Deviations between the schedule and the actual injection/ drawal in respect of a open access customer who is not a consumer of the distribution licensee and the Generating Stations, shall come under the purview of the intra-State ABT, as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the UI

charges specified by the Commission. Billing, collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission's orders on intra-State ABT, as may be applicable from time to time. Till the implementation of intra-State ABT, the imbalance charge shall be at the rate of applicable temporary supply tariff.

(iii). In case of deviation by Open Access Customer who is also a consumer of distribution licensee, the difference between the applicable scheduled open access load and actual drawal shall be accounted Block wise and shall be settled in accordance with the following:

(a) The energy consumption of such customer shall be recorded in 15 minutes time block.

(b) Deviations between the schedule and the actual injection/ drawal shall come under the purview of the intra-State ABT as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the UI charges specified by the Commission. Billing, collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission's orders on intra-State ABT, as may be applicable from time to time. Till the implementation of intra-State ABT, the imbalance charge shall be regulated as below:

(i) In case of actual energy/ demand drawl is more than the scheduled energy/ demand but within the permitted energy/ demand (based on contracted load and energy or quota demand and energy as applicable), customer shall be

liable to pay for such over drawal at the applicable tariff rates of that category of consumer as determined by the Commission from time to time.

- (ii) *In case of actual energy/demand drawal is more than the scheduled energy/demand drawal and also more than the permitted energy/demand (based on contracted load and energy or quota demand and energy as applicable) payment for the capacity above the contract demand shall have to be made at the excess demand/ energy charges as specified by the Commission for such categories of customers in the regulation/ order.*

5.2. The OA consumer (who is also a consumer with the TANGEDCO) can avail the grid support, within the limit of his contracted demand / energy just like any other consumer at applicable tariff. He may have to pay excess demand / energy charges, only when he exceeds his sanctioned demand / quota energy in case of R & C measures are enforced.

5.3. When the Regulation in Clause 33 already makes it clear, as how to collect charges in case of outage of generators and also on what tariff the Open Access Consumer needs to be charged, through its intra-State Open Access Regulation, 2014 and the tariff orders also confirm the position more clearly, filing a Miscellaneous Petition and seeking to go for a clarification whether the Open Access Consumer needs to be charged under the temporary tariff rate is an attempt which makes the whole petition into “void ab initio”.

5.4. All consumers are grid connected consumers with the grid of TANGEDCO and as such, no consumer in Tamil Nadu could become Open Access Consumer

unless he is connected with the grid of TANGEDCO. When such being the case, either by way of outage of generator or by way of any other reason, when the scheduled energy is not supplied by the generator, the open access consumer is provided with grid support and accordingly, for the support of grid provided, the Commission has already ordered to collect the tariff alone under the applicable tariff rates of the category of consumers, as grid support charge, in case whether the drawal is within the sanctioned demand and however, when it goes beyond the sanctioned demand, the concept of excess demand charges would apply. This has been the position in law which requires no clarification at all in any manner.

5.5. All the OA consumers are paying demand charges either in full for the recorded demand or 90% of the sanctioned demand whichever is higher and therefore, in a two part tariff system, the demand charges are already met with. Only for the energy, the Open Access Consumer would be not entitled to pay, in case of energy being drawn from Open Access sources. In such a case, going for a higher tariff as applicable to temporary supply of energy, is no way legally correct also. After having considered all the above arrangements only, the Commission has passed its order during 2013, released the Regulation in 2014 and reconfirmed the same again in 2014 by way of Suo Moto Tariff Order dated 11-12-2014. When such being the case, with an idea to collect, tariff at temporary supply rate is no way supported by law or even by tariff orders. It should be also noted ABT regime is not in full force and operation in the State of Tamil Nadu among all consumers.

5.6. The cause of action to file the clarification petition and the prima facie and the balance of convenience were never explained by TANGEDCO to make the

application fit for consideration by the Commission. Unless the prima facie and the balance of convenience are established first, the petition needs to be dismissed “in limine”.

6. Findings of the Commission:-

6.1. The prayer of the petitioner (TANGEDCO) is to clarify whether HT Temporary supply tariff rate as notified in the Tariff Order T.P.No.1 of 2013 dated 20.06.2013 may be collected from Open Access consumers towards the grid support charges during the outage of generator and as per Intra-State Open Access Regulation, 2014.

6.2. The petitioner was directed to host the petition in their website for getting objections and suggestions from stake holders. The petitioner has received objections/suggestions from M/s.Southern India Mills Association and M/s. Tamil Nadu Electricity Consumers' Association. M/s.Tamil Nadu Spinning Mills Association and M/s.Ind Barath Powergencom Limited have filed impleading petitions. All the stake holders were directed to submit their comments to TANGEDCO within two weeks and TANGEDCO was directed to submit the reply within two weeks thereafter. M/s.Tamil Nadu Spinning Mills Association has submitted their comments. A common reply has been filed by TANGEDCO.

6.3. The stake holders' general submission is that all consumers are connected with the grid of TANGEDCO and as such, no consumer in Tamil Nadu could become open access consumer unless he is connected with the grid of TANGEDCO. When such being the case either by way of outage of generator or by way of any other

reason, when scheduled energy is not supplied by the generator, the open access consumers are provided with grid support and accordingly, for the support of grid provided, the Commission has already ordered to collect tariff alone under the applicable tariff rates of that category of consumers, as grid support charge, in case whether the drawal is within the sanctioned demand and however, when it goes beyond the sanctioned demand, the concept of excess demand charges would apply.

6.4. The stakeholders have further submitted that all the OA consumers are paying demand charges either in full for the recorded demand or 90% of the sanctioned demand whichever is higher and therefore, in a two part tariff system, the demand charges are already met with. Only for the energy, the open access consumer would be not entitled to pay, in case of energy being drawn from open access sources. In such case, going for a higher tariff as applicable to temporary supply of energy, is no way legally correct also. After having considered all the above arrangements only, the Commission has passed its order during 2013, released the Regulation in 2014 and reconfirmed the same again in 2014 by way of Suo-Moto Tariff Order dated 11.12.2014. When such being the case, with an idea to collect tariff at temporary supply rate is no way supported by law or even tariff orders. It should also be noted that ABT regime is not in full force and operation in the State of Tamil Nadu among all consumers.

6.5. Before going into the details of the issue, let us first see the terms in the said Tariff Order 2013 for determination of tariff for generation and distribution:

“Grid Availability Charges

5.65 TANGEDCO in its petition has requested the Commission for approval of energy charges plus the energy equated demand charges applicable to HT Temporary supply tariff as Grid Availability Charges.

5.66 TANGEDCO submitted that the Grid Availability charges are for providing standby arrangements to Open access customers in the following cases:

- In case of outages of Generator supplying to an open access consumer
- For start up power by generator
- When the generation as per schedule is not maintained and when the drawal by the open access consumer is in excess of the schedule.

5.67 The tariff applicable to start-up power has been dealt in Tariff schedule of this Order.

5.68 With regards grid availability charges for open access consumers, Commission approves following norms:

(1) Scheduling of all transactions pursuant to grant of long-term open access or medium-term open access or short-term open access shall be carried out on day-ahead basis in accordance with the relevant provisions of IEGC/CERC Open Access Regulations for inter-State transactions and in accordance with State Grid Code/Commission’s Regulations/Orders for intra-State transaction.

(2).....

(3) In case of deviation by Open Access Customer who is also a consumer of distribution licensee, the difference between the applicable scheduled open access load and actual drawal shall be accounted Block wise and shall be settled in accordance with the following:

a) The energy consumption of such customer shall be recorded in 15 minutes time block.

(b) Deviations between the schedule and the actual injection /drawal shall come under the purview of the intra-State ABT, as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the UI charges specified by the Commission. Billing, Collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission’s orders on Intra-State ABT, as may be applicable from time to time. Till the implementation of intra-State ABT, the imbalance charge shall be regulated as below:

i. In case of actual energy/demand drawal is more than the scheduled energy/ demand but within the permitted energy/demand (based on contracted load and energy or quota demand and energy as

applicable), customer shall be liable to pay for such over drawal at the applicable tariff rates of that category of consumer as determined by the Commission from time to time.

- ii. In case of actual energy/demand drawal is more than the scheduled energy/demand drawal and also more than the permitted energy/demand (based on contracted load and energy or quota demand and energy as applicable), payment for the capacity above the contract demand shall have to be made at the excess demand/energy charges as specified by the Commission for such categories of customers in the regulation/order.”*

6.6. Now coming to the specific issue of the petitioner, the contention of the petitioner is that the Commission in the above said Tariff Order has dealt with the collection of grid support charges for two cases namely (a) for start up power by generator (b) when the generation as per schedule is not maintained and when the drawal by the open access consumer is in excess of the schedule but has not specifically said anything about grid support charges for back up during the outage of generator payable by the open access consumer and hence has sought the present clarification.

6.7. Even though in the Commission's above Tariff Order 2013 the Grid Availability Charges have been classified under three different cases, the Commission has consciously discussed the grid availability charges effectively under two circumstances, one as the Charges for generators and the other as charges for open access consumer and has specified the imbalance charges payable in case of deviation by Open access customer treating the outage of generator condition as deviation from schedule as well. The Commission's subsequent Grid Connectivity and Intra-State open Access Regulations, 2014 and the succeeding SMT Tariff

Order 2014 for determination of tariff of Generation and Distribution are as well on the above lines.

6.8. This Commission accordingly clarifies that in case of outage of generator supplying to an open access consumer, the open access consumer is liable to pay the grid support charges at the applicable tariff rates of that category of Consumer considering it as deviation from the schedule.

With the above clarification, I.A.No.1 of 2015 in M.P.No.10 of 2015 and M.P. No.10 of 2015 are disposed of.

7. Appeal

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(G.Rajagopal)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission