



## **ORDER**

### **1. Prayer of the Petitioner in DRP No.7 of 2015:-**

The prayer of the Petitioner in the above DRP No. 7 of 2015 is to fix the charges/tariff payable by the Petitioner towards Development charges, Service Connection charges and Meter Caution Deposit and consequently direct the Respondent to refund the amounts collected unauthorisedly with interest as contemplated under Section 62(6) of the Electricity Act, 2003 and the costs of this petition.

### **2. Facts of the case:**

The present petition has been filed before this Commission seeking orders for the payment of Development charges, Service Connection charges and Meter Caution Deposit by the petitioner for getting supply for startup purpose, when the Respondent has not laid any new lines for the supply of electricity as contemplated under Section 43 of the Electricity Act 2003.

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

3.1. The petitioner has established 1 x 60 M.W. Coal based captive generating plant at No.207, SithurnathamSirupulapettai and Eguvarpalayam Village, GummidipoondiTaluk, Thiruvallur District. The petitioner has also obtained grid connectivity from the respondents by temporary arrangement in the existing 230 KV Gummidipoondi line and achieved commercial operation on and from 25.06.2013.

3.2. The 2nd Respondent in his letter No.SE/CEDC/N/AEE/Dev/AE/D2/F EHT/ARS temp Supply/ D/781/13 dated 22.05.2013 has sought for payment of a

sum of Rs.17,50,000/- towards development charges Rs.3,000/- as service connection charges and Rs.1,00,000/- towards meter caution deposit with a direction to execute the agreement within 15days from the date of receipt of the above letter and further informed that the work will be taken up immediately after payment of the aforesaid amount and execution of agreement by the petitioner and the demand will be effected on completion of TANGEDCO side work and the probable date of effecting supply is 7 days from the date of payment of all charges and execution of Agreement. The petitioner has also been directed to produce CEIG/CEA safety certificate and completion certificate on or before the date of completion of the TANGEDCO side works and avail the H.T. Supply, failing which, the 1<sup>st</sup> 3 months notice will be issued to the petitioner to avail the H.T. Supply and the monthly minimum charges will be levied from the date of issue of the 1st 3 months notice. The said amount as demanded by the Respondent was paid on 22.05.2013.

3.3. The petitioner being the Generator of Electricity, it need not have a separate service connection for getting startup power of generator during outages. The generators' evacuation lines which are already in existence will facilitate the import of electricity for startup purpose Li from the Respondents' grid. The development charges, service connection charges and meter caution deposit have been claimed without the approval of the Commission and the amounts demanded are beyond the scope and sanction by the Commission under Non-tariff related miscellaneous charges.

3.4. The Respondent has collected the said Development charges, Service Connection charge and Meter Caution Deposit without executing any work for

erecting entire temporary or permanent lines and effecting separate supply to the petitioner. The said amounts are sought to be collected treating the petitioner as a H.T. Consumer of TANGEDCO and as contemplated under Tamil Nadu Electricity Distribution Code 2004.

3.5. The Respondent has failed to consider the petitioner as a generator to whom no separate H.T. Supply is necessary or contemplated anywhere in the Electricity Act, 2003 or the Regulations framed by this Commission. The Respondent ought to have realized the necessity to install ABT Meter through which, both exported and imported energy can be found out for billing purpose and there is no necessity for the generator to have separate H.T. supply by remitting Rs.18,53,000/-

3.6. The Respondent has collected the huge amounts without the approval or orders of this Commission relying on Note 1 para 554 of T.N.E.B, Manual Vol. 1. The Respondent failed to note that after coming into being of the Electricity Act 2003, all other Acts, Rules then prevailed had been repealed and they have become redundant and the TANGEDCO and its activities are governed by the orders and Regulations of this Commission.

3.7. The Respondent has erred in treating the petitioner as an ordinary H.T. Consumer applying Distribution Code and Supply Code 2004 for collecting the above charges.

3.8. The petitioner is constrained to file this petition before the Commission for redressal of its grievance as to whether the petitioner being the generator has to

avail a separate supply where already transmission lines as laid by the petitioner to export power is available and to fix the appropriate charges/tariff payable by the petitioner for getting E.H.T. supply for startup purposes during outages of Generator.

#### **4. Contentions of the Respondent:**

4.1. The Petitioner has proposed to establish of 2 x 60 MW capacity coal based power plant at No. 207, Sithurnatham, Sirupuzhalpettai and Eguvarpalayam Village, Gummidpoondi Taluk, Thiruvallur District. As per the original load flow study results, the power plant has to be connected to the proposed 400 KV Thervoikandigai SS with 230 KV Bay provision work at and the transmission scheme of 230 KV SC line from the power plant to the proposed 400 KV Thervoikandiagi SS has been finalized. However, M/s. A.R.S. Metals (P) Ltd., had informed that the first set of our 1 x 60 MW Generator is likely to be commissioned by July 2012, and the establishment of Thervoikandigai 400 KV SS would not match with the commissioning of their plant and hence required for temporary connectivity. Once Thervoikandigai 400 KV SS is commissioned, M/s. A.R.S. Metals (P) Ltd., has to be connected permanently as per the original load flow study recommendations.

4.2. The petitioner's request for temporary connectivity has been considered and approval has been accorded to M/s. A.R.S. Metals (P) Ltd. for temporary and connectivity of 1st unit of 60 MW Generator to Gummidipoondi 230 KV SS at 230 KV level until the commissioning of Thervoikandigai 400 KV SS subject to the specific conditions as mentioned below and as per terms and conditions vide

**Specific Conditions:-**

- (i) M/s. A.R.S. Metals (P) Ltd., shall establish, operate and maintain the dedicated transmission lines for both temporary and permanent connectivity as per Section 10 (1) of Electricity Act 2003, The expenditure including the supervision charges for both the 230 KV temporary connectivity to Gummidipoondi 230/110 KV SS and also for the 230 KV permanent connectivity to Thervoikandigai 400 KV SS has to borne by the company.
- (ii) M/s. A.R.S. Metals (P) Ltd., has to bear the recurring maintenance cost of the bay equipments at Gummidipoondi 230/110 KV SS for the temporary connectivity of first 60 MW unit and the rental charges for the bay to the Gummidipoondi 230/110 KV SS and the same condition is also applicable for the permanent connectivity to Thervoikandigai 400 KV SS.
- (iii) The company shall back down due to evacuation constraints or grid requirements and shall not claim any reimbursements from TANGEDCO/TANTRANSCO for the backing down of their generation during the temporary connectivity period or while establishing of permanent connectivity.
- (iv) Once Thervoikandigai 400 KV SS is commissioned, M/s. A.R.S. Metals (P) Ltd., has to be connected permanently as per original load flow study communicated.
- (v) The essential amount for the establishment of bay provisions ac 5 both the 230 KV temporary connectivity to Gummidipoondi 230/110 KV SS and also for the *permanent connectivity to Thervoikandigai 400 KV SS will be communicated and the same has to be paid by the company.*

4.3. As per the temporary approval and as per Section 10 (1) of *Electricity Act* 2003, which states that "The duties of a Generating Company shall be to establish, operate and maintain generating stations, tie-lines, Substations and dedicated transmission lines connected therewith in accordance with the provisions of this act or rules or regulations made thereunder", the petitioner company has established the dedicated transmission line towards temporary connectivity.

4.4. On the verge of completion of the dedicated *transmission line towards* temporary connectivity, M/s.A.R.S.Metals (P) Ltd., requested High tension supply for a Maximum Demand of 5000 KVA at 230 KV allegedly for start up of their power plant auxiliaries & for synchronization of their first unit of 60 MW Captive Power Plant with TNEB grid.

4.5. Before commencing the erection works, private power plant promoters avail service connection with certain demand. The power is meant for the construction and testing and commission purpose. This service connection is to be treated like any other service connection with certain demand. The term start up power is referred under a totally different context. *After construction works are over and the generator gets synchronized with the grid, the sanctioned demand option. When the generator trips due to some reason or the other and restarted, the power required for the auxiliaries is drawn from the grid which is called start up power.*

4.6. The Commission has issued Order dated 20.6.2013 in T.P. No. 1 of 2013 for Generation and Distribution Tariff which states that *from 21.06.2013* onwards, the

Generators are eligible to get start up power under HT temporary supply tariff after declaration of COD. This is limited to 10% of the highest capacity of the Generating unit of the Generating Station or the percentage of auxiliary consumption *in the regulation, whichever is less. The supply shall be restricted to 42 days in a year. Drawal of power for a day or part thereof shall be accounted as a day for this purpose.*

4.7. As the petitioner requested for EHT supply for testing and pre-commissioning activities of their power plant auxiliaries & for synchronization of their first unit of 60MW Captive Power Plant with TNEB grid (before COD of their Generator Unit), the same could not be considered as a Generator start up power connection and could be considered only under temporary supply service connection category applicable for all consumers. Moreover, the generator becomes a consumer on all practical purpose when the supply is received from the licensee. As such, the petitioner was requested to pay the Registration Charges of Rs.500/- and EMD charges of Rs.40,00,000/- (@ Rs.800/- per KVA) vide Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F.HT.ARS temp supply pwr/D.724/13 dt.10.5.2013. The petitioner paid the above charges on 10.5.2013 and hence the HT application was registered on the same day. Necessary load sanction was accorded for extension of EHT supply from the existing Gummidipoondi 230 KV SS to M/s. ARS Metals (P) Ltd. for a demand of 5000 KVA at 230 KV for testing and pre-commissioning activities of their first unit of 60 MW coal based thermal power plant vide (per) (CMD) TANGEDCO Proceedings No.203 dt.21.5.2013 and technical sanction was accorded vide Memo. No. CE/D/CNR/EE/T1/F. Ext Est 5/13-14 dated 22.5.2013.

4.8. Based on the said technical sanction, the petitioner was requested to pay the Development charges of Rs.17,50,000/- (@ Rs.350/- per service Connection charges of Rs.3,000/- and Meter Caution deposit of Rs.1,00,000/- vide Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F.EHT ARS temp supply/D.781/13 dated 22.5.2013 and the consumer paid the above said charges on 22.05.13 and executed the agreement on the same day. The petitioner produced the CEIG approval for their first unit of 60 MW power plant on 22.5.2013. The 230 KV line from 230 KV Gummidipoondi SS to M/s. A.R.S Metals (P) Ltd., (erected by the company as per clause 10(1) of the Electricity Act, 2003) has been satisfactorily energized on 22.5.2013 and the temporary supply has been given to the company on 23.05.13 with HT SC No 1984. After completion of the testing and pre-commissioning activities of its first unit. The petitioner has synchronized its first unit of 60 MW *Generator units with TNEB Grid on 30.7.2013*. The date of COD of its plant was 10.8.2013. The bills of this HT service connection were also processed. On verifying the HT bills for the months of May 2013 to July 2013, it was ascertained that there was NIL evacuation of energy till COD of their power plant. In as much as there was nil evacuation of energy till COD of their power plant & only Import of Energy from Grid till COD of their unit, it is be concluded that the Petitioner has availed testing & pre-commissioning activities of their power plant only.

4.9. As per Tamil Nadu Electricity Distribution Code 46,47, & 48, the licensee is authorized to collect Meter Caution deposit, Development Charges and Earnest Money Deposit from all *applicants for HT & LT industrial applicants at the rates*

specified by this Commission from time to time.

4.10. The development charge is meant to meet out the cost of Infrastructure and system development & the EMD is collected to *ensure the earnestness and seriousness of the applicants* and as soon as the service is effected, this deposit is converted to the Current Consumption Deposit (Refundable).

4.11. The Development charges is a onetime payment to meet out the cost of infrastructure and overall system development *to meet out the load of prospective consumers which is being collected from all new and additional load applications irrespective of the extension works involved. Even for a mere service connection, development charge is being collected as per Commission's approved rates. Further, when such quantum of supply is drawn from the licensee, by a Generator/HT & LT consumers, the Licensee should be in a position to supply the demand from its Grid.* For an example, in the case of 100 MW generator if the auxiliary consumption termed as startup power is 9 % then 9 MW power may be required for start up. If such high quantum of demand is drawn from the existing grid, it would affect the system and to avoid this, the existing system has to be developed. Hence, for overall system development & to meet out the cost of infrastructure (to accommodate the load of prospective consumers / Generators), the development charges are being collected from all new and additional load applicants irrespective of the extension works involved. In this case, even though the petitioner has established the transmission network for power evacuation by itself. (As per clause 10(1) of the Electricity Act.2003), development charges are collected to meet out the cost of infrastructure and overall system (Grid)

development of the Licensee. Commission in its order on Non-Tariff related miscellaneous charges has dealt with development charges in 3.12. The development charges are meant to meet out the cost of infrastructure and system development to meet out the additional load of the prospective consumer. This charge is being fixed on the basis of average investment required for serving additional load/demand.

4.12. As far as generators are concerned, the Company may avail supply for construction activities with a sanctioned demand till the plant is ready and it should be billed only at the HT temporary supply tariff (Energy and demand separately billed). The issue of startup power will arise only after declaration of the COD.

4.13. The petitioner availed the EHT service connection on 23.5.2013 for testing and pre-commissioning activities of its power plant auxiliaries before synchronization of their generation with the Grid (i.e. on 30.7.2013). As such, it has to be treated like any other HT service connection with certain demand for which collection of EMD, Development charges, Service Connection Charges and MCD are applicable as per Tamil Nadu Electricity Supply and Distribution Code norms.

4.14. In view of the above the petitioner cannot claim the status of the generator till Commercial Operation Date and as such collection of EMD, Development charges, service Connection Charges and MCD towards availing HT service are applicable as per Tamil Nadu Electricity Supply and Distribution Code norms and the petitioner is not entitled to any reliefs from this Commission.

4.15. In as much as the petitioner was a consumer of the TANGEDCO for the purpose of availing EHT supply prior to COD, the petitioner is not entitled to raise dispute before the Commission under Section 86 of the Electricity Act, 2003, *as has been held by the Hon'ble Supreme Court in Maharashtra State Electricity Distribution Co. Ltd-Vs-Lloyds Steel Industries Limited in Civil Appeal No.3551 of 2006 dated 14.8.2007 reported in AIR 2008 SC 1042.* Further, the petitioner has paid the amount without any demur *and for this reason also the petitioner is not entitled to any relief.*

4.16. The first limb of the petitioner's prayer in the above petition is to fix the charges/tariff payable on the ground that the petitioner cannot be treated as an ordinary HT consumer. The said prayer of the petitioner cannot be through a Dispute Resolution Petition under Section 86 (1) of the Electricity Act, 2003. *Even otherwise, the petitioner is a consumer and as such the charges collected from the petitioner as the statutory provisions stated above are in order there is no occasion/necessity to fix the charges/tariff payable. The petitioner is not entitled to any refund with (or without) any interest, as sought for in the second limb of the prayer. In so far as the last limb of the prayer to grant interest as contemplated under Section 62 (5) of the Electricity Act, 2003 is concerned, the provision has no nexus to the issue on hand in as much as Section 62 relates to Determination of Tariff for Supply of electricity by a generating company to a Distribution Licensee, transmission of electricity, wheeling of electricity and retail sale of electricity and the petitioner's case is not covered under any part of the said section.*

4.17. In view of the above, the Petitioner is not entitled to any relief from the Commission and hence the above Dispute Resolution Petition may be dismissed as devoid of any merit.

**5. Written Submissions on behalf of the Petitioner:**

5.1. Being a Generator by itself there was no necessity for separate service connection for getting start up power during outages. Petitioner's evacuation lines which were already in existence have sufficient facilities for import of electricity for startup purpose from the Respondent Grid which occurs very rarely.

5.2. A.B.T. Meter fixed by the petitioner records both the export of electricity by the petitioner as well as the import of electricity if any for the purpose of startup power. However, the Respondent have raised a demand of Rs.17,50,000/- towards Development Charges, Rs.3,000/- towards Service Connection Charge Rs.1,00,000/- towards Meter Caution Deposit in all amounting to Rs.18,53,000/- (Rupees Eighteen Lakhs and Fifty three Thousand only) under the letter 22.5.2013 and the Petitioner remitted the said amount on the same day.

5.3. Even as per the counter at (paragraph 10), it is submitted that the line has been erected by the petitioner and the Temporary supply was given on 23.5.2013 under HTSC No. 1984 and as such, no equipment has been supplied by the Respondent. No infrastructure has been provided by the Respondent and no Meter has been provided by the Respondent. There is no denial of these facts by the Respondent in the Counter. The Development Charges can be collected by the Respondent only if there is any supply, development done by the Respondent for

the purpose of effecting a separate service to the petitioner as contemplated under section 43 of the Electricity Act, 2003. Under such circumstances, the Respondent is not entitled to levy, demand and collect Development Charges, Service Connection Charges and Meter Caution Deposit.

5.4. For the existing lines which have already been provided by the petitioner at the petitioner's cost for the purpose of evacuation of power from the point of generation to the 230 KV Gummidipoondi sub-station when the same line is used for the purpose of effecting start up power if and when required, there cannot be Development Charges or Meter Caution Deposit or Service Connection Charges levied.

5.5. The Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No.166 of 2010 dated 24.5.2011 states that a Generator requiring start up power from the Grid occasionally cannot be termed as a consumer. In the light of the Appellate Tribunal Judgment, the demand made by the Respondent is arbitrary, illegal and unjust. If the Respondent is allowed to retain the amount, it amounts to unjust enrichment.

5.6. The Commission may direct the Respondent to refund the sum of Rs.18,53,000/- (Rupees Eighteen Lakhs and fifty three Thousand only) together with interest from 22.5.2013 to till date of payment.

## **6. Findings of the Commission:**

6.1. We have heard the submissions of learned Counsel appearing for the Petitioner and the Respondents. The Petitioner has filed this petition to fix the charges/tariff payable by the Petitioner towards Development Charges, Service Connection Charges and Meter Caution Deposit and consequently directing the respondent to refund the amounts collected unauthorisedly with interest as contemplated under 62(6) of the Electricity Act, 2003 and with cost.

6.2. On perusal of the petition, it is seen that the Petitioner has paid an amount of Rs.17,50,000/- towards Development charges, Rs.3000/- as service connection charges and Rs. 1,00,000/- towards Meter Caution Deposit on 22-05-2013.

6.3 The Respondent have submitted that before commencing of the erection works, private power plant promoters avail service connection with certain demand. The power is meant for testing and pre-commissioning activities of their first unit of 60 MW coal based thermal Captive Power Plant with TNEB grid (before COD of their Generator Unit). The said power connection could not be considered as a Generator start up power connection and could be considered only under temporary supply. This service connection is to be treated like any other service connection with certain demand. The term start up power is referred under a totally different context. After construction works are over and the generator gets synchronised with the grid, the sanctioned demand may be surrendered at their option. When the generator trips due to some reason or the other and restarted, the

power required for the auxiliaries is drawn from the grid. This is the startup power. This argument of the Respondent is acceptable one. Therefore the order of Hon'ble APTEL in Appeal No.166 of 2010 dated 24-05-2011 does not apply to this case, since this is a clear case of availing a temporary service connection obtained prior to the commissioning date of the plant and the power availed therefore is not a startup power.

6.4. The Commission has issued an order dated 20-06-2013 in T.P.No. 1 of 2013 for generation and Distribution tariff in which it is stated that from 21-06-2013 onwards the generators are eligible to get start up power under HT Tariff-V temporary supply tariff after declaration of COD. This shall be limited to 10% of the highest capacity of the Generating unit of the generating station or the percentage of auxiliary consumption as specified in the regulation, whichever is less. The supply shall be restricted to 42 days in a year. Drawal of power for a day or part thereof shall be accounted as a day for this purpose.

6.5. It is evident from the documents filed by the Respondent, the Petitioner has requested on 10-05-2013 in Form-IV of Tamil Nadu Electricity Distribution Code, 2004, for EHT supply with a maximum demand of 5000 KVA at 230Kilo Voltage level and the Petitioner has specifically mentioned in the HT Form-IV, under column brief details

of Industry to be served as "Power Plant – Testing & Pre-commissioning".

6.6. The contentions of the Respondent in collecting the EMD, Development charges are acceptable. As per this Commission's tariff order dated 20-06-2013, power supply for testing and pre-commissioning activities & for synchronizing of any power plant can be considered only under temporary supply service connection category applicable for all HT consumers.

6.7. The contention of the Petitioner that the Development Charges, Service Connection Charges and Meter Caution Deposit are collected without executing any work for erecting entire temporary or permanent lines and effecting supply to the petitioner is not acceptable, since the Licensee is authorized to collect the Non-Tariff related Miscellaneous charges viz., EMD, Development charges, Service Connection charges, MCD, etc., from all HT service applicants as stipulated under section 46, 47, 48 of the Electricity Act, 2003 at the rates prescribed in the Order of M.P.No.41 of 2003 including HT Tariff-V. Hence, there is no need to fix the charges separately which is payable by the petitioner and his case is already covered by the Commission's order in M.P. No.41 of 2003.

6.8. The Development charge is a charge based on overall cost involved in infrastructure and system development. Even though the

petitioner has established a particular span of transmission network, it cannot set off against the cost involved in cost of overall system. That too, deductible as other income from the total annual expenses to arrive at the Aggregate annual Revenue Requirement (ARR) as per the TNERC (Terms and conditions for determination of Tariff) Regulations,2005.

6.9. From the records submitted by the Respondent, it is seen that the Petitioner had agreed to pay the necessary charges for availing the HT service for Testing & Pre-commissioning to the Respondent without making any protest. It is only an afterthought that the petitioner is disputing the above said charges. It is the practice in vogue of the Respondent to collect such charges from such similarly placed generators.

6.10. In view of the above findings, we are unable to accept the contention of the Petitioner and accordingly the petition is dismissed.

(Sd.....)  
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Member (Legal)

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
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(Sd.....)  
**(M.Chandrasekar)**  
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Secretary  
Tamil Nadu Electricity  
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