

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 183 of 2008**

**Dated: 10<sup>th</sup> February, 2009**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

**Kaveri Gas Power Ltd.,  
No. 5/3, Ranganathan Garden,  
Anna Nagar,  
Chennai – 600 040**

**... Appellant (s)**

**Versus**

**1. The Chairman,  
Tamil Nadu Electricity Board,  
800, Anna Salai, Chennai – 600 002**

**2. The Member,  
Tamil Nadu Electricity Board,  
800, Anna Salai, Chennai – 600 002**

**3. Tamil Nadu Electricity Regulatory Commission,  
No. 17, Third Main Road,  
Seethammal Colony, Alwarpet,  
Chennai – 600 018**

**... Respondent (s)**

**Counsel for the Appellant (s) : Mr. Rana S. Biswas & Mr. Deepak Biswas**

**Counsel for the Respondent (s) : Mr. P.R. Kovilan for TNEB**

## ORDER

The only ground urged by the learned counsel for the appellant in this appeal is that the effective date for amendment of allocation for transmission capacity shall not be 19.10.2007, but it should be 24.05.2006, the date on which the allocation of transmission capacity is originally made by the wheeling approval.

2. Of course, three issues were raised by the appellant before the Tamil Nadu Electricity Regulatory Commission (for short 'the Commission') in M.P. No. 10 of 2008. The Commission while disposing of the said M.P. has given a finding in favour of the appellant in respect of issue Nos.1 and 2, but in respect of issue No. 3, it held that the amendment of allocation for transmission capacity will be effective from 19.10.2007, i.e., the date on which the representation made by the appellant seeking for such an amendment.

3. As correctly pointed out by the learned counsel for the respondent, the appellant thought it fit to ask for amendment only on 19.10.2007 by filing a representation, but not earlier. The counter filed by the respondent would make it clear that the wheeling approval was issued for 17.5 MW of power through letter dated 24.05.2006, and thereafter, on 08.09.2007, the respondent-Board decided to implement the Commissions Order Nos. 4 and 2 dated 15.05.2006, and issued orders

to that effect on 08.09.2007. That apart, the respondent-Board issued detailed working instructions to the field offices for implementation of the Commission's order dated 15.05.2006. Only thereafter, on 19.10.2007, the appellant made a representation for amending their capacity as 6.79 MW from 17.5 MW in the original wheeling approval issued on 24.05.2006. It is also noticed from the letters written by the appellant to the Board that the appellant company specifically stated that they propose to generate electricity 6.79 MW in the first phase. More over the appellant has kept silent from 24.05.2006 to 19.10.2007 regarding the amendment of the wheeling approval.

4. According to the learned counsel for the respondent, only on coming to know from the instructions given by the Board on 08.09.2007 that they have to pay Rs. 2,781 per MW per day for 17.5 MW from the date of issue of wheeling approval, the appellant Company thought it fit to send representation to the respondent Board on 19.10.2007 to amend the wheeling approval to 6.79 MW in the wheeling approval dated 24.05.2006. When we asked the learned counsel for the appellant to show any material to indicate that he claimed through letters to the Board that the generation was started or the operation was commenced immediately after 24.05.2006, he failed to do so.

5. On the other hand, the letters dated 24.08.2005 and 17.02.2006, referred to in the records, would indicate that the appellant company stated in those letters that the appellant propose to generate 6.79 MW in the first phase. As a matter of fact, in the letter dated 24.08.2005, the appellant Company stated " in the first phase we will be generating 6.79 MW" and also in the letter dated 17.02.2006 it is stated, "Due to the reduced availability of gas, initially we will set up a power plant to generate 6.79 MW."

6. In view of the above facts, the contention of the counsel for the respondent that the above statement of the appellant company, as mentioned in the letters dated 24.08.2005 and 17.02.2006 would indicate that mentioning of 17.5 MW in the said wheeling order as installed capacity is not a mistake and therefore the amendment, which is made by the Commission should take effect from 19.10.2007, on which date the representation has been sent by the appellant seeking amendment is correct has to be accepted.

7. Admittedly, on 21.04.2005, the load flow study was conducted for a load of 17.5 MW and transmission system was installed at a cost of Rs.107.166 lakhs under Deposit Contribution Works (DCW) basis at the request of the appellant. Therefore, it is clear that the appellant has

very well known about the fact that transmission system power evacuation approved is for 17.5 MW and not for 6.79 MW.

8. Therefore, in view of the above circumstances, the finding given by the Commission that the amendment should be made effective from 19.10.2007, in our opinion, is perfectly justified. There is no merit in the appeal.

9. Accordingly, the appeal is dismissed. No order as to costs.

**(A.A. Khan)**  
Technical Member

**(Justice M. Karpaga Vinayagam)**  
Chairperson