

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

Appeal No. 45 of 2012

Dated: 31st January, 2013

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

In the matter of:

**M/s. Beta Wind Farm (P) Limited
4th Floor, Sigapi Achi Building
18/3, Rukmani Lakshmipathi Road
Egmore, Chennai – 600 008**

...Appellant (s)

Versus

- 1. Tamil Nadu Electricity Regulatory Commission ...Respondent (s)
No. 19A, Rukmini Lakshmipathy Salai
Egmore, Chennai – 600 008**
- 2. Tamil Nadu Transmission Corporation Ltd.
No. 144, Anna Salai
Chennai – 600 002**
- 3. Tamil Nadu Generation and Distribution
Corporation Limited
No. 144, Anna Salai
Chennai – 600 002**

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadhari

Counsel for the Respondents (s): Mr. Guru Krishna Kumar, AAG
Mr. G. Umapathy
Mr. S. Vallinayagam
Mrs. Mekhala

JUDGMENT

MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by the Beta Wind Farm Pvt. Ltd. against the order dated 28.12.2011 passed by the Tamil Nadu Electricity Regulatory Commission ('State Commission') regarding transmission charges applicable to the wind power developers who desire to avail Renewable Energy Certificate under the Regulations notified by the Central Electricity Regulatory Commission.

2. The Appellant is engaged in the business of generation and supply of power from renewable energy sources. The Appellant has established wind power projects with total installed capacity of 82.6 MW within the State of Tamil Nadu. The power generated from wind power projects of the Appellant is transmitted and wheeled to the Appellant's group companies.

The State Commission is the 1st Respondent. Tamil Nadu Transmission Corporation Ltd. and Tamil Nadu Generation and Distribution Corporation Ltd. are the Respondent nos. 2 and 3 respectively.

3. The brief facts of the case are as under:-

3.1 On 15.5.2006, the State Commission passed order no. 2, *inter alia*, deciding the methodology to determine the transmission and wheeling charges for users of the intra-State transmission system.

3.2 On the same day, that is on 15.5.2006, the State Commission passed another order no. 3 for power purchase and allied issues in respect of non-conventional energy sources. This order provided that the transmission and wheeling charges applicable to the wind power project would be @ 5 % of energy.

3.3 The State Commission by order no.1 of 2009 dated 20.3.2009 passed second Tariff Order for wind energy projects. In this

order, the State Commission decided the transmission charges, wheeling charges, banking charges, etc., applicable to wind energy projects. The State Commission also specified the banking charges including the methodology for determining the banking adjustment.

- 3.4 The Central Commission notified Regulations for Renewable Energy Certificate namely “Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. On 29.2.2010, the Central Commission amended the Renewable Energy Regulations to clarify the provisions regarding banking facility. The Renewable Energy Regulations notified by the Central Commission stated that the Renewable Energy Certificate benefit will only be available for developers not availing the concessional or promotional tariffs either on sale of electricity generated by it to the State distribution licensees or otherwise.

- 3.5 Accordingly, the Appellant filed petition being MP no. 3 of 2011 before the State Commission praying for determination of normative transmission charges so that the Appellant can avail the benefit of Renewable Energy Certificate under the Central Commission Regulations.
- 3.6 By interim order dated 20.4.2011, the State Commission directed that till the disposal of the petition, the wind energy generator can continue to pay transmission and wheeling charges at the rate of 5 %.
- 3.7 Ultimately, the State Commission passed the impugned order dated 28.12.2011 holding that the wind energy projects shall pay transmission charges @ Rs.2781 per MW per day on the basis of the installed capacity of the wind energy project. The State Commission, however, held that the banking charges shall be stipulated in the respective Tariff Order. Challenging the findings of the State Commission in the impugned order, the Appellant has presented this Appeal.

4. The Appellant has made the following submissions.
 - 4.1 The State Commission has worked out the transmission charges for 2005-06 for long term open access customers by dividing annual transmission charges of Rs.730.62 crores by available transmission capacity of 7198 MW and accordingly the transmission charges of Rs. 2781 per MW per day was fixed. The available transmission capacity of 7198 MW is the PLF adjusted capacity and not the installed capacity of 12492.68 MW. Accordingly, the transmission charges of Rs. 2781 per MW per day would be applicable on the Plant Load Factor adjusted capacity and not to installed capacity of wind energy generators.
 - 4.2 The cause of action for the Appellant to challenge transmission charges of Rs. 2781 per MW per day arose pursuant to the impugned order as prior to that the Appellant was only paying transmission charges @ 5 percent.

4.3 The State Commission could have determined the transmission charges on the basis of the installed capacity and its recovery also on the basis of the installed capacity. However, in the order no.2 dated 15.5.2006, the State Commission has determined the transmission charges on the Plant Load Factor adjusted capacity and not on the installed capacity.

4.4 Charging of transmission charges @ Rs.2781 per MW per day on the installed capacity would result in excessive transmission charges paid by the generators for use of the intra-State transmission system.

4.5 As regards conditions for availing Renewable Energy Certificate, the State Commission can not impose additional conditions, as the Renewable Energy Certificate including the terms and conditions are to be decided by the Central Commission as per its Regulations. Under these Regulations, the Central Commission has delegated the powers to the State

Commission in regard to the procedural matters and not for deciding on additional conditions to be specified.

- 4.6 The banking of energy is inherent to wind power generation, supplies and wind generation can not operate without banking. The Central Commission has specifically notified by amendment notification dated 29.9.2010 that for the purpose of the Regulations, the banking facility benefit would mean only such banking facility where the CPP gets the benefit of utilizing the banked energy at any time, including the peak hours, even when it was injected into grid in off peak hours. The State Commission's Regulations provide for time blockwise banking. Therefore the Tribunal may clarify or direct the State Commission to clarify that availing banking facility per say by the wind power developers will not amount to any promotional or concessional tariff being sought for by the wind power developers.

5. Shri Guru Krishna Kumar, Learned AAG for the Government of Tamil Nadu representing Respondent nos. 2 and 3 made

following detailed submissions supporting the impugned order.

“5.1 The Appellant can only seek clarification as to whether the transmission and wheeling charges of 5 % as per Tariff Order no. 1 of 2009 was concessional or normative. The Appellant also voluntarily undertook in the said application for the payment of difference between the normative and concessional charges if the Commission held that the transmission and wheeling charges @ 5 % are concessional charges.

5.2 In view of this, the Appellant is liable to pay the difference between normative and concessional charges. It is impermissible to challenge the Tariff Order no. 2 of 2006 while requesting for fixation of transmission charges applicable to wind energy generator availing Renewable Energy Certificate.

5.3 Regarding excess recovery of transmission charges for use of intra-State system, it is to be stated that the 2nd Respondent has not collected the transmission charges from each

generator at the rate of Rs.2781 per MW per day. On the other hand, the 2nd Respondent collected transmission charges only from long term open excess customers @ Rs.2781 per MW per day upto October, 2010. The generation, distribution and transmission of electricity in the State was carried out under a single entity till the reorganisation of the Electricity Board in October, 2010. Accordingly, the transmission charges collected from long term open access customers were deducted from the total transmission charges fixed under the Tariff Order and remainder of the transmission charges were passed on to the consumer as retail tariff. Post 2010, upon division of the generation/distribution activity and transmission activity between separate corporations namely TANTRANSCO for transmission and TENGEDCO for generation and distribution, the transmission charges as determined by the relevant Tariff Order are collected by TANTRANSCO from TANGEDCO in 12 equal monthly instalments as per the State Commission's determination of tariff for generation and distribution order no.1 of 2012 dated 30.3.2012. Thus, there is no question of collection for transmission charges over and above on the

projected revenue requirement of transmission licensees in terms of the Tariff Order.”

6. The Ld. Counsel for the State Commission submitted as follows:

“The transmission charges are never fixed on the basis of units carried but always on the basis of MWs allotted. The Appellant has questioned the treatment of banking in the Commission’s Renewable Energy Purchase Obligation Regulations, 2010 vis-à-vis Central Commission’s Renewable Energy Regulations, 2010. The Appellant is not entitled to challenge the vires of the said Regulation before this Tribunal. The Appellant had only sought clarification regarding banking charges and not relating to availability of banking facility. Therefore, the State Commission only held that banking charges will be as per the orders issued from time to time.”

7. In the light of the rival submissions made by the parties, the following questions would arise for our consideration.

- i. Whether the State Commission has erroneously determined the transmission charges as applicable to the Appellant while ignoring the implication of the same on the basis of order dated 15.5.2006.
 - ii. Whether the State Commission has erred in interpreting banking facility benefit in contravention to the Central Commission's REC Regulations as amended on 29.9.2010.
8. The above two issues have already been decided by this Tribunal by judgment dated 23.11.2012 in Appeal no. 91 of 2012 in the matter of M/s. Sai Regency Power Corporation Pvt. Ltd. Vs. Tamil Nadu Electricity Regulatory Commission where the same impugned order dated 28.12.2011 was challenged.
9. On the first issue regarding the transmission charges, this Tribunal has given the following findings:-

“30. We find that the State Commission by order no.3 dated 15.5.2006 relating to power purchase and allied issues in respect of Non-Conventional Energy Sources based generating plants **“to give encouragement for promotion of renewable energy”** decided transmission charges and wheeling charges in kind at the rate of 5% of energy for wind energy generators. By the order dated 20.3.2009 the State Commission decided to retain the transmission charges and wheeling charges at 5%, even though the Electricity Board had sought to revise the same to 15%. It is clear from the order dated 15.5.2006 that transmission and wheeling charges of 5% for wind energy generator were promotional rates and the same were not determined based on the transmission and wheeling expenses and return on investment on the transmission and distribution network.”

“34. As correctly emphasized by the Respondents, the Tariff Regulations provide that the transmission charges payable by an intra-state open access customer shall be calculated by dividing the total transmission charges by the sum of allotted transmission capacity to all long term open access customers of the intra-state transmission system and multiplied by the capacity allotted to that long term open access customer. However, in computing the rate of transmission charges, the State Commission divided the total transmission charges by Available Transmission Capacity i.e. the PLF adjusted installed capacity instead of net capacity (Installed Capacity less auxiliary consumptions) contrary to the Regulation. Available transmission capacity has not been defined in the Regulations and is not required to be used for computation of rate of transmission charges as the Regulations provide for apportioning of total Annual Transmission charges to the ratio of allotted transmission capacity to long term

open access customer and sum of allotted transmission capacity to all long term open access customers of intra state transmission system. If the rate of transmission charges of Rs.2781 per MW per day as computed in the order no. 2 dated 15.5.2006 based on PLF adjusted capacity is to be adopted, then the transmission charge payable by the Appellant has to be based on its PLF adjusted capacity. However, the Tariff Regulations provide for determination of transmission charges for open access customer by apportioning the transmission charges to transmission capacity allotted to open access customer and not PLF adjusted capacity.

35. *It is true that the order no.2 dated 15.5.2006 has since attained finality. Thus, the total transmission charges or Annual Transmission charges of Rs. 730.62 crores determined by the order dated 15.5.2006 cannot be challenged by the Appellant. However, if the transmission charges of Rs. 2781 per MW per day computed on the basis of PLF based capacity of 7198 MW in the order no.2 dated 15.5.2006 is to be applied then the normal transmission charge payable by the Appellant has to be computed on its PLF adjusted capacity only. However, this will be contrary to the Regulations which provide for transmission charges to be computed on the allotted transmission capacity of the open access customer which in the case of Appellant is its installed capacity. As the normal transmission charges are being made applicable to the Appellant for the first time in order to obtain Renewable Energy Certificate, we need to give an order which is in consonance with the Regulations without disturbing the Annual Transmission charges determined by order no. 2 dated 15.5.2006.*
36. *Learned Counsel for the Respondent No. 3 has pointed out that no transmission charges were being billed to the Electricity Board upto October, 2010 as the Board was*

working as an integrated and unbundled entity. However, other open access customers were being billed at the rate of transmission charges computed by the State Commission in order no. 2 dated 15.5.2006. The annual transmission charges after deducting the recovery of transmission charges from open access customers was considered in the ARR of the distribution business of the Board After the reorganisation of the Electricity Board in October, 2010, the activity of transmission has been entrusted to TANTRANSCO, the Respondent no. 3 and generation and distribution activities have been entrusted to TANGEDCO, the Respondent no. 4. However after the reorganisation of the Board in October, 2010, the TANTRANSCO after the recovery of transmission charges from other open access costumers at the rate determined as per order no. 2 dated 15.5.2006 was billing and recovering the remaining transmission charges from TANGEDCO. TANGEDCO was not billed at the rate of Rs.2781 per MW per day as determined by the State Commission in its order dated 15.5.2006.

37. *We are of the view that after unbundling of the Electricity Board, the annual transmission charges as of TANTRANSCO as determined by the State Commission have to be billed and recovered from TANGEDCO (R-4) and other open access customers as per the Regulations. We feel that the total Annual Transmission Charges for TANTRANSCO (R-3) as determined by the order dated 15.5.2006 have to be apportioned to TANGEDCO (R-4) and other long term open access customers including the Appellant in proportion to their respective allotted transmission capacities as per the Regulations. In our opinion after the reorganisation of the Electricity Board, the rate of transmission charges payable by TANGEDCO and other long term open access customers should have been determined. However, this was not done and as pointed by the Respondents after the reorganisation of the Electricity Board, TANTRANSCO has been billing and*

recovering from TANGEDCO the total Annual Transmission Charges less the amount recovered from other open access customers at the rate determined in order No.2 dated 15.5.2006 on the allotted transmission capacity. This is not correct as the rate of transmission charges have to be determined as per the Regulations and apportioned to the allotted transmission capacity to the distribution licensee and other long term open access customers. This is also against the principle of non-discriminatory open access as emphasized in the Electricity Act, 2003 as it is resulting in different rate of transmission charges being recovered by the transmission licensee from TANGEDCO and other long term open access customers of the intra state transmission system. According to Section 40 (C) of the Electricity Act, 2003, the transmission licensee has to provide for non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges. Accordingly, same rate of transmission charges is to be recovered from the licensee and other open access customers.

38. *In our opinion, the allotted transmission capacity for TANGEDCO should be the summation of its own net generation capacity connected to TANTRANSCO's transmission system, share in central sector stations, other long term contracted capacity from IPPs connected to the TANTRANSCO's system, etc. Similarly the allotted transmission capacity for the Appellant and other wind energy generators should be their respective installed capacity.*
39. *Therefore, on this issue we remand the matter to the State Commission with the direction to determine the transmission charges per MW per day charged by TANTRANSCO for use of its transmission network by TANGEDCO and other long term open access customers after the reorganisation of the Board on the basis of*

summation of transmission capacity allotted to long term open access customers including TANGEDCO. For the wind energy generators, the allotted capacity shall be the installed capacity of the respective generators. On the other hand the transmission capacity allotted to TANGEDCO would be on the basis of sum of net capacity (Installed Capacity less auxiliary consumption) of own generating stations connected to the transmission system, capacity contracted from IPPs, share in Central Sector Stations, etc. However, the Annual Transmission Charges determined by order No. 2 dated 15.5.2006 will not be reopened.”

10. By the above judgment, the Tribunal has already remanded the matter to the State Commission with directions to determine the transmission charges on the basis of transmission capacity allotted to long term open access customers including TANGEDCO. Accordingly directed.

11. The second issue has also been decided by judgment dated 23.11.2012 in Appeal no. 91 of 2012. The relevant extracts of the findings are reproduced below:-

“41. Let us now examine the banking facility provided to the wind energy generators in Tamil Nadu. The State Commission by its order no. 3 dated 15.5.2006 decided

maintenance of slot to slot banking account and adjust in the same way as for other renewable generators against peak/off peak/normal consumption and beyond the banking period, the unutilised portion of the banked energy as on 31st March will be treated as sold to distribution licensee at the rate fixed by the Commission. The State Commission allowed banking for wind energy generators at banking charges of 5%. For the unutilized energy at the end of the year, it was decided that the distribution licensee would pay at a rate of 75% of normal purchase rate.

42. *Thus, the wind energy generator cannot utilise the banked energy generated during off peak hours during the peak hours or normal hours.*

43. *Now let us examine the Renewable Energy Certificate Regulation, 2010 of the Central Commission. Regulation 5 as amended on 29.9.2010 provides as follows:*

“5. Eligibility and Registration for Certificates:
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. ...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.”

44. According to above Regulation, CPP cannot avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility and waiver of electricity duty for being entitled to get Renewable Energy Certificate. It has been explained that banking facility benefit shall mean only such banking facility where the CPP can utilise the banked energy at any time (including peak hours) even when it has injected into grid during off peak hours.
45. As indicated above, the banking scheme prevailing in Tamil Nadu for wind energy generators does not allow utilisation of banked energy generated during the off peak hours during peak or normal hours. Thus, the Appellant satisfies the condition laid down in the Central Commission's Regulations regarding use of banked energy. However, the banking benefit available to the wind energy generator for use of slot-wise banked energy and purchase of unutilised banked energy by the distribution licensee is on payment of banking charges at a rate of 5%. These banking charges have to be determined by the State Commission for which the State Commission has decided in the impugned order that the banking charges would be stipulated in the respective tariff order. Thus, the Appellant is entitled to REC on payment of banking charges which are prevailing at present. As and when these are redetermined by the State Commission, the same will be applicable to the Appellant.
46. Let us now examine the relevant extract of the impugned order which is reproduced below.

“The Commission also clarifies that the banking charges shall be as stipulated in the respective tariff order and does not intend giving a separate judgment for one generator, as sought for in one of

the petitions viz. M/s. Sai Regency Power Corporation Ltd.”

Thus the State Commission has decided that the Appellant is liable to pay the banking charges as stipulated in the respective tariff order. However, the State Commission has not decided the banking charges. There is no infirmity in the above order as the State Commission is empowered to determine the banking charges.

47. Thus the Appellant is entitled to avail REC on payment of banking charges prevailing at present as per the orders of the State Commission. As and when the banking charges are revised by the State Commission, the Appellant will be liable to pay the same.”

12. Accordingly this issue is also decided in line with the judgment dated 23.11.2012 in Appeal no. 91 of 2012.
13. This Appeal is decided in line with the findings of this Tribunal in judgment dated 23.11.2012 in the Appeal no. 91 of 2012 by which we have remanded the matter to the State Commission to determine the transmission charges per MW per day applicable after the reorganization of the Electricity Board on the basis of the summation of the allotted transmission capacity to long term open access customers including TANGEDCO.

14. Summary of the finding

The Appeal is disposed of in line with the findings of this Tribunal in the judgment in Appeal no. 91 of 2012 as under:-

- A) We remand the matter to the State Commission with the direction to determine the transmission charges per MW per day applicable after the reorganisation of the Electricity Board on the basis of the summation of the capacity allotted to all long term open access customers including utilisation by TENGEDCO. However, the Annual Transmission Charges as determined by the State Commission in the order no. 2 dated 15.5.2006 will remain unchanged. For the wind energy generators allotted capacity shall be the installed capacity of the respective generator. For TENGEDCO, the allotted capacity shall be calculated on the basis of sum of net**

capacity of own generation connected to the intra-state transmission system, long term contracted capacity from IPPs, share in Central Sector Stations, etc.

- B) The banking facility provided to the wind energy generator by the State Commission in its order no. 3 dated 15.5.2006 requires maintenance of slot to slot banking account and adjustment in the same way as for other the renewable generator against peak/off peak/normal consumption and the unutilised portion of the banked energy as on 31st March to be treated as sold to the distribution licensee at the rate of 75% of normal of purchase rate. The banking charges have been decided as 5%. Thus, the wind energy generator cannot utilize banked energy generated during off peak hours during the peak hours or normal hours. According to the explanation to Regulation 5 of the Central Commission Regulations for Renewable Energy Certificate, the CPP**

cannot avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility, etc. for being entitled to get REC. The banking facility benefit has been explained to mean only such banking facility where CPP can utilise banked energy at any time even when it is injected into grid during off peak hours. Thus, the Appellant satisfies the condition laid down in the Central Commission Regulations regarding banked facility benefit. However, the State Commission has correctly decided that the banking charges as determined by the State Commission in the respective tariff order will be payable by the Appellant. Thus, the Appellant is entitled to REC benefit on payment of banking charges at the prevailing rate. As and when the banking charges are revised by the State Commission the same will be applicable to the Appellant.

15. The Appeal is partly allowed to the extent indicated above in line with this Tribunal's judgment in Appeal no. 91 of 2012. The State Commission shall pass the consequential order as per the directions given in this judgment. No order as to cost.

16. Pronounced in the open court on this **31st day of January, 2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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