

TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION

Regd. No. 181-8524/1998 – CIN.No. U37102TZ1998GAP008524
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TECA : SD: 2017-2018/005
February 6, 2017

To
The Chief Engineer,
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, 144, Anna Salai,
Chennai – 600 002.

Sir,

- Ref: 1. The Daily Order of the Hon'ble TNERC in M.P.No. 24 of 2016 dated 29.12.2016.
2. Copy of the Petition in M.P.No. 24 of 2016 webhosted in the website of TANGEDCO.

Sub: COMMENTS/OBJECTIONS/SUGGESTION/ OF THE TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION TO THE PETITION FILED IN M.P.NO.24 of 2016 IN THE WEBSITE OF TANGEDCO.

Tamil Nadu Electricity Consumers' Association (TECA) represents consumers from all over Tamil Nadu, mainly; large, medium and small industries from the Textiles, Engineering, Chemicals and Fertilizers, Pharmaceuticals, Automobiles and Building Materials sectors. The total membership of our Association is 564 accounting for a sanctioned load of 900 MW about 10% of the HT Load in Tamil Nadu.

We submit the below comments / suggestions/ objection from our Association on behalf of our members associate with our Association.

Comments on "Not to allow banking facility for future wind projects to be established in future (i.e.) from 01.011.2016".

From various Tariff Order passed by TNERC it is reiterated that the Hon'ble Commission has always been ordering to maintain a consistency in the matter of allowing banking facility to WEGs and whenever, the TANGEDCO pleaded for withdrawal of banking facility, the Hon'ble Commission, quoting the National Electricity Policy and its own Regulation, has every time rejected the claim of TANGEDCO in the matter of withdrawal of banking facility to WEGs.

The right for banking was reiterated in TNERC order No. 1 of 2009 dated 20.03.2009 vide para No. 8.2.4, 8.2.5 and 8.2.6 which is extracted below for your immediate reference.

"8.2.4 A view has been expressed that the facility of banking permitted for the wind energy generator is not contemplated in the Electricity Act 2003. We wish to deliberate on this proposition. Section 86(1)(e) of the Electricity Act 2003 states that the State Commission shall promote generation of electricity from renewable sources of energy. Section 61(h) of the Act states that the Appropriate Commission shall specify the terms and conditions for the determination of tariff and in doing so shall be guided by the policy of promotion of generation of electricity from renewable sources of energy. Clause 5.2.20 of the National Electricity Policy stipulates that feasible potential of non-conventional energy source mainly, small, hydro, wind and biomass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy source in the electricity mix, efforts will be made to encourage private sector participation

through suitable promotional measures. Para 6.4(3) of the National Tariff Policy states that the Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding. The National Electricity Policy and National Tariff Policy have the force of law in terms of Section 3 of the Act. Section 181 of the Act empowers the Commission to make regulations consistent with the Act and the rules to carry out provisions of the Act. Banking would squarely be covered by this provision.

8.2.5. The above provisions of the Act are supplemented by the Commission. Clause 4 of the Power Procurement from new and renewable sources of energy Regulations 2008 of the Commission empowers the Commission to devise appropriate banking mechanism for generation of power from renewable sources of energy depending upon the inherent characteristics.

8.2.6. Further, the guidelines of the Ministry of New and Renewable Energy, Government of India on promotion of energy from nonconventional sources recommend that the State Electricity Board provide for the electricity generated to be banked for a period of one year."

This position was further enlarged and enhanced by the Hon'ble APTEL in its order dated 21-09-2011 in Appeal No. 53 of 2010 filed by Tamil Nadu Electricity Board.

Further the Hon'ble Commission reiterated this position in its Wind Energy Tariff Order No. 6 of 2012 dated 31.07.2012.

Therefore, the TANGEDCO's attempts to seek approvals to withdraw the banking system for new windmills which are going to be commissioned on or after 01.11.2016 and to alter the existing system of banking, are considered as illegal and unsustainable due to the pronouncement of regulatory orders.

2. Change of Banking Period from 1st April to 31st March to 1st January to 31st December

We wish to bring to your notice that even though the banking period has undergone several changes, for the past 15 years, the banking period is continuing for 12 months from 1st April to 31st March. Under the powers vested under Sections 181, 61 (h) and 86 (1) (e) of the Electricity Act 2003, the first order relating to wind energy was released on 15.05.2006 after completing all the consultative processes. Thereafter, the Commission had issued three tariff orders one in 2009 (20.03.2009) and another in 2012 (31.07.2012) and the fourth one, during 2016 (31.03.2016) wherein the banking period was considered and continued as 12 months from April to March.

More over all the Captive Consumers have planned to use the Banked Units up to March end as per the existing Banking period. By changing the Banking period suddenly with effect from 01.11.2016, it will lead to heavy loss to the Captive users.

Also note that the captive consumers of any energy, is subjected to compliance of the "Captive Consumption Norms" in respect of their Financial stake as well as the consumption of power in a specified time period with a specified quantum. The time period for verification of the captive consumption compliance norms is provided as "**Annual Basis**" and accordingly, the term "Annual Basis" is also defined as Financial Year, as per the above quoted provisions under the Electricity Rules 2005.

Hence, in order to satisfy the eligibility to become a captive consumer, only the consumption made during the Financial Year is required to be taken for account and accordingly, to qualify the captive consumption norms, the statute provides only the Financial Year for verification of the norms. Therefore, under the authority of the above quoted statute, changing the Annual Basis of Financial Year to Calendar Year is not legally possible by any manner. Any attempt therefore would be illegal.

TNERC in its Comprehensive Tariff Order bearing No.3 of 2016 dated 31.3.2016 on wind energy has fixed tariff regulations of wind energy. In this order the Commission *decides that the control period of this order shall be for two years from the date of issue of this order.*

There is no provision to modify the clauses before the expiry of the Control Period. The modification can be suggested only in the next tariff revision Hence, TANGEDCO petition filed seeking modification of wind energy tariff regulations is invalid.

Also as per the legal provision made available in Clause 6 of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 of the Hon'ble Commission such an attempt to seek revision is not possible legally. In view of the control period already prescribed, any attempt to file a petition and seek to alter the terms and condition is to be dismissed *in limine*, as such an effort is unsustainable to law.

All the Captive users will be banking the surplus Wind Energy from their WEGs during Wind season between May and September and drawing them during unseason from October to March next year. If the Banking period is changed, it is very difficult to use entire banked Units in the short period of three months (October to December). This would take away the rights of the wind energy captive consumers as was ensured by various statutory orders provided by Hon'ble APTEL and also by this Hon'ble Commission. Allowing altering the banking arrangement from Financial Year to Calendar Year would collapse the whole system and all the wind energy generators would become financially sick.

The banking period, if allowed to be closed by December as sought for by the CE NCES in the impugned petition, the energy for encashment would be abundantly available to TANGEDCO and the said energy is allowed for encashment only at the 75% of its sale value. Mostly, at the cost of 75% of Rs.2.75, it will be allowed for encashment at Rs.2.06 per unit, whereas the TANGEDCO would have sold the energy already at Rs.6.57 on an average to industrial consumers. This would take away the whole equity enjoyed so far by both and goes in favour of TANGEDCO and would go against the very aspect of the principles of equity in all its fairness, as guaranteed by the Constitution of India.

Hence, considering all the above stated facts, we suggests that the CE NCES- TANGEDCO to withdraw the petition in M.P. No. 24 of 2016 and thus to promote more wind energy projects in Tamil Nadu and thus to reduce the global warming.

Thanking You,

for TamilNadu Electricity Consumers' Association

(Sd/-)
K Ilango
Secretary

Copy to:

The Secretary

Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmiipathy Salai,
Egmore, Chennai – 600 008.