TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 13th Day of August 2024

PRESENT:

Thiru M.Chandrasekar .... Chairman

Thiru K.Venkatesan .... Member

and

Thiru B.Mohan .... Member (Legal)

R.A. No. 1 of 2024

M/s. KR Wind Energy LLP,
No.3, 1st Floor, 2nd Street,
Subba Rao Avenue, College Road,
Chennai – 600 006,
Represented by its Vice President
Mr.R.Senthil Maariappan

… Remand Applicant
Adv. R.S.Pandiyaraj

Versus

1. The Chief Engineer -NCES
   Tamil Nadu Generation and Distribution
   Corporation Ltd, (TANGEDCO),
   2nd Floor, 144, Anna Salai,
   Chennai – 600 002.

2. The Chief Financial Controller / Revenue,
   Tamil Nadu Generation and Distribution
   Corporation Ltd, (TANGEDCO),
   2nd Floor, 144, Anna Salai,
   Chennai – 600 002.

3. The Superintending Engineer,
TANGEDCO
Dindigul Electricity Distribution Circle,
Dindigul.

….. Respondents
Thiru N.Kumanan and
Thiru A.P.Venkatachalapathy,
Standing Counsel for Respondents

The Remand Application coming up for final hearing on 25-07-2024 in the presence of Thiru.R.S.Pandiyaraj, Advocates for the Petitioner and Thiru.N.Kumanan and Thiru.A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. The Remand Application in R.A.No.1 of 2024 concerning M/s.KR Wind Energy LLP., has arisen out of the order dated 30.11.2023 passed by the Hon'ble APTEL in Appeal No.853 of 2023 directing the Commission to consider the matter pertaining to the right of adjustment of the unutilised banked energy standing to the credit of the member who exited the group of CGP afresh in accordance with law. The simple question which arises for consideration in this case is whether a new entrant in the Group Captive Scheme is entitled to utilise the unutilised banked energy standing to the credit of the erstwhile member of Group Captive Scheme who has exited the scheme.

2. We are not tracing the chorological events leading to the present Remand Application as the issue lies in a very narrow compass and it would be suffice if the issue is considered afresh uninfluenced by the direction of Hon'ble APTEL or Hon'ble High Court.

3. On going through the earlier decision of this Commission in M/s.Mirra & Mirra Industries in D.R.P.No.8 of 2009, which is relied upon by the Remand Applicant, it is seen that it was a case where the unutilised banked energy was ordered to be adjusted from one service connection of the petitioner to the other service connection of the same petitioner. The present case is one where the unutilised banked energy is sought to be adjusted by a new entrant from and out of the banked energy left over by a member who exited the Captive Scheme. We find that there is a lot of difference between the adjustment of unutilised units in another service connection owned by the same person / entity and adjustment of unutilised banked units by a new entrant. It is to be noted that in the former case only the consumption point differs and for all practice purposes, there is no change in the ownership. But in the latter case, there is change in ownership which creates separate legal obligation and rights and hence, the decision in M/s.Mirra & Mirra cannot be said be squarely applicable to the case on hand, namely, R.A.No.1 of 2024.

4. Further, the Commission had no occasion in M/s.Mirra & Mirra's case to deal with the question of according permission to a new entrant to acquire the rights of unutilised banked energy left over by a member of a Captive Scheme who exited the arrangement. The sum and substance of the entire case in M/s.Mirra & Mirra was only

the question of permitting the adjustment of unutilised bank energy to a different service connection owned by the same WEG. It is to be further noted that the generator therein was not part of Group Captive Scheme but one operating its CGP independently and hence the decision in M/s.Mirra &Mirra cannot be made applicable to this case.

5. The Remand Applicant put forth an argument that the present case involves only change in utility i.e., change in Captive user to buttress its stand. By contending so, the applicant has faulted the respondent for treating the case of the petitioner as though it is a case of transfer of WEG from one concern to another. Here, we have to observe categorically that the petitioner is under an erroneous understanding that the term “change in utility” would also encompass unto itself the change in the composition of CGP scheme arising out of the exit of one member and induction of a new member. In our view, the term change in utility cannot be broadened to bring within its fold the change in the membership also. In our well-considered view, the change in utility can only mean any change in the point of utility i.e., point of utilisation and it cannot be stretched far enough to include any change arising out of exit of a member of CGP and induction of another person or entity in its place.

6. Another reasoning given by the remand applicant for the present claim is that the entire energy is kept in a common banking account and hence, there is an automatic entitlement to the new entrant to the unutilised banked energy left over by the previous member. This being a case concerning the rights of CGP, we have to decide the issue based on the extant statutory provisions. The only statutory framework

which governs the rights of CGP is GoI Rules 2005 apart from Section 9 of the Electricity Act, 2003.

7. It is to be stated here, that the GOI Rules 2005, which set out the criteria for the Captive status of CGP are meant to be exercised only for the limited purpose of ascertaining the shareholding and consumption required for declaring a generating company or group of generators as the CGP. Only for the said purpose, the twin criteria of shareholding and consumption coupled with the object of consumption of power generation in common, the Group Captive Scheme consisting of several units is deemed to be a single entity. However, the same analogy cannot be extended to unutilised banked units which have no commonality with the objectives of GoI Rules 2005. In other words, the adjustment of banked units is a concession given under a different provision of the Electricity Act 2003 and regulation made thereunder which is independent and distinct from GoI Rules 2005. It has no co-relation or link to GoI Rules 2005 which governs the Captive Scheme. Hence, no vested right can be claimed by a member of captive scheme to any other benefit except the ones provided under GoI Rules 2005 read with Section 9 and Section 42 of Electricity Act 2003.

8. To put in a nutshell, the concept of change in utility as strenuously canvassed by the petitioner has limited application only to shareholding and consumption criteria as laid down is GoI Rules 2005 and the flexibility given to the individual CGP to operate as a single entity under GoI Rules 2005 cannot be extended beyond the twin criteria to seek benefits relating to unutilised banked energy, which is a distinct concept. There is no provision in the Electricity Act or the Rules / Regulations made thereunder which

enables the creation of an umbrella entity of CGPs for utilisation banked energy or for that matter, for any purpose other than the twin criteria which find place in GoI Rules 2005. The ingenuous argument of the applicant that the present case is one of change in utility fails to impress us. In our view, the petitioner's case is not merely one of change in utility but a change in entity itself. It is true that the change in entity will have no bearing on the rights of CGP in terms of self consumption under GoI Rules 2005. But the same cannot be made applicable in regard to unutilised banked energy as it is not a covered subject under GoI Rules. Hence, the common banking account maintained for this purpose is not a valid defence to assume the petitioner's case to be a one of change in utility or deem it as such. Even otherwise, change in point of utilisation of the same entity would be an equitable ground to confer any entitlement to adjustment of units but the same cannot be said to be an equitable ground in the case of change in utility or entity. In our view it, would not be an equitable ground to claim adjustments of units left over by a member, who exited a CGP arrangement. This effectively means that only a change in point of consumption without any change in the entity would only confer the right of adjustment of unutilised banked units. Thus, the primary requirement for conferment of such right is there should be no change in the composition of the members of the CGP or a new entrant replacing the existing one.

9. In view of the foregoing discussion, we hold that the decision of the Commission in M/s.Mirra & Mirra is distinguishable from the facts relating to M/s.KR Wind Energy LLP., and only the utilisation of banked energy by the same entity at different point is permissible and not the utilisation of banked energy by a different entity from and out of

the banked energy standing to the credit of member of a CGP who exited the arrangement. In the result, this Commission conclude and orders that the new entrant, namely M/s.Dindigul Steel Rolling Mills Private is not eligible to utilise the unutilised banked energy left over by the Remand applicant prior to the new agreement.

Accordingly, R.A.No.1 of 2024 is decided. D.R.P.No.1 of 2023 shall stand dismissed. The parties shall bear their respective costs.

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission