

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 23rd Day of May 2024

PRESENT:

Thiru M.Chandrasekar Chairman
Thiru K.Venkatesan Member
and
Thiru B.Mohan Member (Legal)

T.A.No.1 of 2019

1. M/s.Venkateswara Cotton Yarn Mills Salem
2. M/s. Tamil Nadu Spinning Mills Association
3. M/s. Eswar Rubber Products Pvt. Limited
4. M/s. Perumal Spinning Mills Limited
5. M/s. Thangavel Fabrics Pvt. Limited
6. M/s. Aland Spinners Pvt. Limited
7. M/s. Balaji Rubber Industries Pvt. Limited

..... Petitioners
(W.P. No.11133 to 11139
Thiru Rahul Balaji and
Thiru R.S. Pandiyaraj
Advocates for the Petitioners)

Vs.

1. The State of Tamil Nadu
Represented through the Principal Secretary
Energy Department
Fort St. George
Chennai – 600 009.
2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
10th Floor, 144, Anna Salai
Chennai – 600 002
Represented by its Chairman and Managing Director

... Respondent
Government Pleader

3. TANTRANSCO
144, Anna Salai
Chennai – 600 002.
4. State Load Despatch Center (SLDC)
144, Anna Salai
Chennai – 600 002
Represented by its Director – Operations

.... Respondents
Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO,
TANTRANSCO & SLDC

1. Consequent to the directions of the Hon'ble High Court of Madras in W.P. Nos. 11133 to 11139 of 2018 and W.M.P. Nos. 13040 to 13048, 13050 to 13061 of 2018, 19444 to 19450 of 2018, 35766, 35784, 35789, 35795, 35803, 35807 and 35808 of 2018 relating to the policy directive issued by the Government to amend the Regulations of the Commission so as to provide open access only to consumers who require supply of electricity where the maximum power to be made available at any time exceeds One Megawatt (1 MW), the matter was taken up for hearing before this Commission on 05-09-2019 in T.A. No. 1 of 2019 and other connected Transferred Applications. Notices were given to all the parties in the Writ Petitions concerned to enter appearance in person or through counsel on 17-09-2019. Meanwhile, Writ Appeals came to be filed against the orders in W.P. No.11133 to 11139 of 2018 in which the following direction was given by the Hon'ble High Court of Madras in its order dated 19-08-2021:-

“55. It is to be pointed out herein that in consequent to the directions of the learned Single Judge given in W.P. Nos. 11133 to 11139 of 2018 etc. batch cases, relating to the policy directive issued by the State Government to amend the Regulations of the Commission, the matter was taken up for hearing before the Tamil Nadu Electricity Regulatory Commission on 05-09-2019. Notice was given to all the parties in the writ petitions on 10-09-2019 for the parties to enter their

appearance through counsel or in person on 17-09-2019. It is the matter of record that after receiving notice, the writ appellants approached this court by way of present writ appeals. In view of the dismissal of the present writ appeals, this court directs the Tamil Nadu Electricity Regulatory Commission, to take up the matter for hearing, issue notice and proceed with the matter for deciding the policy directive issued by the Government. The Commission shall take into consideration the directions issued by the State Government and the submissions that are going to be made on the side of the appellants herein, analyze it and complete the proceedings as per the directions of the learned Single Judge.”

2. Further, in W.P. No. 402 of 2024 filed by the PESOT recently, the following direction has been given:-

“2. The petitioner is seeking directions to decide its representation for implementing the draft amendment.

3. Learned Counsel for the fourth respondent submits that the representation of the petitioner would be decided on its own merits within a period of eight weeks from today. The statement is accepted.

In view of the said statement, the writ petition is disposed of. All the contentions on merits are kept open. There shall be no order as to costs. Consequently, W.M.P. No. 442 of 2024 is closed.”

3. Consequent to the directions of the Hon'ble High Court of Madras in W.P.Nos. 11133 to 11139 of 2018, W.A. Nos. 3254, 3255 & 3163 of 2019 and W.P. No. 402 of 2024, the following order is passed:-

ORDER

4. The issue lies in a narrow compass and hence it is not necessary to set out the pleadings of the parties in detail and it would suffice if the seminal point for consideration and background of the case are set out.

5. The present transferred applications arise out of the order passed by the Hon'ble High Court of Madras in W.P. Nos. 11134 of 2018 to 11139 of 2018 and thereafter in W.P.

Nos. 402 of 2024 filed by the Power Engineers Society seeking directions to amend the Regulation 9 of the Intrastate Grid Connectivity and Open Access Regulations, 2014. Insofar as the present Transferred Application is concerned, the question arises for consideration is as to whether the Regulation 9 (6) is required to be amended at the present juncture though we have no quarrel on the point that the policy direction issued by the GoTN satisfies the element of public interest and only for the said reason that the draft amendment was initiated for amendment of the regulation but had to be put on hold in the light of changed circumstances. It is to be stated here that the earlier decision taken by the Commission to amend the regulations to provide for grant of open access only above 1 MW consequent to the policy direction may not stand legal scrutiny in view of the changed circumstances with the Government of India issuing rules lowering the open access limit for the renewable power. The Commission however, is of the view that it requires a wholesome reading of the provisions of the Act and the mandate on the Regulators under the Act to take an appropriate decision at this stage and accordingly the present order seeks to take a pragmatic view on the lowering of open access limit not only with reference to promotion of the renewable sources as envisaged in Gol Rules, 2022 but also with reference to all types of generation of power including conventional power. In order to understand the issue in a better perspective, it is necessary to set out a brief background of the matter pertaining to the grant of open access below 1 MW and thereafter the issue of policy direction by the State Government in 2019 to amend the regulations to reverse the grant of Open Access below 1 MW and restore the grant of open access to only 1 MW and above. Accordingly, the following chronology of happenings is set out for better

appreciation of case on hand.

6. The Commission notified TNERC– Intra-State Open Access Regulations, 2005 and as per this Regulation, in the third and final phase, Open Access was allowed to all the HT consumers with a load of 1 MW and above, which was in line with the 5th proviso of section 42(2) of the Electricity Act, 2003.

7. In view of the R&C measures prevailed during the year 2009 and based on the need expressed by the TANGEDCO, the Commission amended the Regulation 11 of TNERC- Intra-State Open Access Regulation, 2005 with effect from 17-02-2010 enabling all the HT consumers irrespective of load as the eligibility criteria for availing open access and accordingly, open access was permitted to the willing HT consumers of Tamil Nadu irrespective of load within their sanctioned demand.

8. Subsequently, the Commission vide Gazette Notification dated 07-05-2014 repealed the TNERC – Intra-State Open Access Regulation, 2005 and notified the new TNERC (Grid connectivity and intra-state Open Access) Regulations, 2014, which also allows the Open Access to all EHT & HT consumers within their contracted demand vide Regulation 9(6) in line with the previous OA Regulation.

9. However, on the request of the TANGEDCO, the Government of Tamil Nadu (GoTN) had issued a policy direction to the Commission under section 108 of the Electricity Act, 2003 vide G.O.(Ms) No. 37, Energy (D1) Department, dated 17-04-2018 to amend the Regulation 9(6) of the TNERC (Grid connectivity and intra-state Open Access) Regulations, 2014 duly allowing the Open Access to the consumers availing maximum load of 1 MW and above at any point of time in line with the 5th proviso of the section 42(2) of the Electricity

Act, 2003 citing the improved power position and withdrawal of R&C measures, etc.

10. Subsequently, few of the stakeholders filed Writ Petitions vide W.P.Nos. 11134 and 11135 of 2018 before the Hon'ble High Court of Madras against the G.O.(Ms) No. 37, Energy (D1) Department, dated 17-04-2018 issued by the GoTN and the Hon'ble Court directed the Commission to consider the policy decision of the Government and complete the proceedings within a period of 10 weeks from the date of receipt of the copy of the order.

11. In continuation, the Commission had listed the batch case as T.A. No.1 of 2019 and directed the petitioners to file the papers relating to proceedings in the High Court before the Commission. In the meantime, few of the stakeholders filed Writ Appeals vide W.A.Nos. 3254, 3255 and 3163 of 2019 before the Hon'ble High Court of Madras and the Hon'ble Court on 19.8.2021 while disposing the cases directed the Commission to take up the matter for hearing, issue notice and proceed with the matter for deciding the policy directive issued by the Government. It was further directed that the Commission shall take into consideration the directions issued by the State Government and the submissions that are going to be made on the side of the appellants therein, analyze it and complete the proceedings as per the directions of the learned Single Judge.

12. The petitioners and the TANGEDCO were heard by the Commission on 21-12-2021 and direction was given to the Registry to go for public consultation. Accordingly, the following draft amendments to the Regulation 9(6) of the TNERC (Grid connectivity and intra-state Open Access) Regulations, 2014 was issued by the Commission vide Notification No. TNERC/ISOA/11/2 and comments/suggestions were

invited from the various stakeholders on or before 15-04-2022:

“(6) 1. Open Access shall be allowed to the intra state transmission system subject to the satisfaction of the conditions contained in the Act and in these Regulations. Having regard to operational constraints and other relevant factors, open access shall be allowed to all EHT & HT consumers who require a supply of electricity where the maximum power made available at any point of time exceeds one mega watt;

Provided further that open access shall be allowed to all EHT & HT consumers within their contracted demand subject to the terms and conditions of supply.

Provided further that when a person opts for open access from a wind generating plant or solar generating plant, the contracted demand for open access shall be reckoned as a per cent of its Capacity Utilisation Factor (CUF) as illustrated below. CUF for Wind Energy Generators (WEGs) and Solar Power Generators (SPGs) shall be the applicable CUF on the date of commissioning of the WEGs and SPGs notified in the tariff orders of the Commission. A CUF of 29.15% for the WEGs commissioned from 7.10.2020 and a CUF of 21% for the SPGs commissioned from 16.10.2020 shall be considered.

Illustration:

For a 2 MW WEG commissioned in 2021, the contracted demand shall be:

*$29.15/100 * 2 = 0.583 \text{ MW.}$*

For a 2 MW SPG commissioned in 2021, the contracted demand shall be:

*$21/100 * 2 = 0.42 \text{ MW.}$*

13. In response to the above draft amendments, all the stakeholders from the HT consumer side had stated that restricting the limit of Open Access to 1 MW and above would greatly affect the industries particularly the MSME sector and while the objective of the State Government is to encourage industries in the State, it should not bring unreasonable restrictions in the load limit for Open Access, which would hinder the growth of the State. Most of the MSME consumers are having power requirement of up to 1 MW and they will be affected, if restriction for availing OA is imposed with these consumers. Further, it was stated that out of 2500 spinning mills functioning in Tamil Nadu, more than 1500 mills are having contracted load of less than 1 MW and the 2nd largest input cost to these mills is the electricity next to raw material. Most of these mills are sourcing power

under open access even when their contract demand is less than 1 MW. Any attempt to amend the Regulation to restrict the OA for less than 1 MW will greatly affect the industries and leading to affect the Tamil Nadu economy. Therefore, all these HT consumers suggested to retain the existing Regulations. The following stakeholders have given their comments:

1. M/s. Tamil Nadu Spinning Mills Association
2. M/s. Tamil Nadu Newsprint and Papers Ltd
3. M/s. Tamil Nadu Power Producers Association
4. M/s. Indian Wind Power Association
5. M/s. Tamil Nadu Electricity Consumers' Association
6. M/s. The Southern India Mills' Association
7. M/s. Kamachi Industries Ltd
8. M/s. Chettinad Cement Corporation Pvt. Ltd
9. M/s. Watsun Infrabuild Pvt. Ltd
10. M/s. Orient Green Power Company Ltd
11. M/s. CODISSIA, Coimbatore
12. M/s. TANTRANSCO

14. In the meantime, the Ministry of Power, Government of India had notified Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 in order to promote the usage of Renewable Power through Open Access, streamlining the OA procedure across the country and implement the scheme through single window for the country as a whole. The Rule framed by the MoP has recommended to allow GEOA to all consumers who have contracted demand or sanctioned load of 100 kW and above either through single connection or multiple connections of a same distribution licensee area and no such limit for the captive consumers taking power under GEOA. In line with the above

Rule, many States such as Gujarat, Karnataka, Haryana, Odisha, Madhya Pradesh, etc. have notified the Green Energy Open Access Regulations and the same is yet to be notified by this Commission.

15. The Director (Finance)/TANGEDCO vide letter dated 02-05-2024 has furnished the details of the consumers availing Open Access for the month of March, 2024, which is abstracted as below:

Description	No. of consumers			Quantum in MW			Quantum in MU		
	Third party OA	Captive Adjustm ent	Power Excha nge	Third party OA	Captive Adjustm ent	Power Excha nge	Third party OA	Captive Adjustm ent	Power Exchang e
Renewable Power									
A.Wind									
1 MW and above	96	1016	---	---	---	---	13.93	278.53	---
Below 1 MW	73	1433	---	---	---	---	1.87	69.21	---
B.Solar									
1 MW and above	134	686	---	---	---	---	60.43	389.79	---
Below 1 MW	157	776	---	---	---	---	15.2	93.4	---
C. Other RE									
1 MW and above	9	4	---	---	---	---	17.33	1.87	---
Below 1 MW	1	8	---	---	---	---	0.21	0.96	---
Conven tional Power									
1 MW and above	14	68	382	48.68 1	205.5 3	1345	7.14	96.17	267
Below 1 MW	1	49	---	0.345	23.54 9	---	---	4.53	---

16. From the above details, it is noted that the total Open Access quantum allowed for the month of March, 2024 in respect of conventional power in Tamil Nadu is around 23.549 MW and 0.345 MW only in respect of Captive adjustment and third party Open Access, which will have very less impact in the financial position on the TANGEDCO.

17. Whiles, Power Engineers society of Tamil Nadu vide its letters dated 20-10-2022 and 12-08-2023 requested the Commission to give effect to the above draft amendments without any further delay. In the meantime, M/s. Power Engineers society of Tamil Nadu filed Writ Petition before the Hon'ble High Court of Madras vide W.P.No. 402 of 2024 with the prayer to direct the Commission to notify the above draft amendments to the TNERC (Grid connectivity and intra-state Open Access) Regulations, 2014 and to grant stay for availing Open Access by the ineligible consumers (Consumers with less than 1 MW demand). The Hon'ble Court while disposing the case on 02-04-2024 directed that the matter has to be decided on merits within eight weeks by the Commission.

18. In this connection, it is also to be seen that the Hon'ble High Court of Madras in its order dated 30-07-2019 in W.P. No. 11113 and other connected WPs discussed in detail the question as to whether the policy direction issued in G.O. Ms. No. 37 will have over-riding effect over the power of the State Commission. After hearing the stand taken by GOTN that the State has prerogative to take a policy decision and that the same will prevail upon the State Commission, the Hon'ble High Court came to a conclusion that even if it is a policy decision, it must have the approval of the Regulatory Commission and without amendment to the regulations the State cannot withdraw the permission extended under the regulation.

19. The decision of the Hon'ble High Court in the said Writ Petitions was challenged in the Writ Appeal and the Division Bench of the Hon'ble High Court of Madras did not interfere with the orders of the Hon'ble Single Judge. The Commission having given anxious consideration to the directions of the Hon'ble High Court and various mandate enjoined upon it under the Electricity Act, 2003 is of the view that a paradigm shift has taken place in the electricity sector with the need for capacity addition increasing at an astounding pace since the date of issue of the policy directions and hence the matter now requires holistic approach and a conspectus evaluation of the need for considering grant of Open Access with reference to the need to maintain uninterrupted power supply. The Commission is a Regulator mandated to promote the power sector in the State of Tamil Nadu and has been pioneer in promotion of renewable energy sources and open access regime. While the Commission respectfully concurs with the policy direction issued by the Government of Tamil Nadu, at the same time, the Commission is also of the view that in the light of the Rules framed by the Ministry of Power, Government of India the issue cannot be seen solely from the legal question whether a statutory regulation can be amended by way of policy direction or not but with also reference to the need to maintain uninterrupted power supply, universal supply obligation under section 43. There have been arguments on the commercial viability of the licensee on grant of Open Access below 1 MW which have also been considered by the Commission. Though it can be argued that the R&C measures are no longer in force and the lowering of Open Access limit done under such extreme conditions need a review at this stage, without going into the merits of the same, we have to observe that given the ever increasing target set up for promotion of

renewable sources and the need to ensure uninterrupted power supply, the licensee cannot be saddled with the responsibility to satisfy universal supply obligation and uninterrupted power supply at all times on its own, and there is still a need to encourage other players to give a lending hand to the licensee. Though the licensee has not openly stated that it does not require Open Access power tied up by consumers below 1 MW, as a supplementary power generation for meeting the demand of the State grid, the fact remains that the licensee has to gear up itself continuously at all times to avoid load shedding. Viewed in such context, the licensee having not categorically declared openly or produced any solid data to substantiate that it can meet the demand of the grid at all times on its own, the Commission, as a Regulator has to ensure that the licensee fulfills its universal supply obligation and uninterrupted power supply at all times and in such context, the supplementary role played by open access consumers in meeting the demand of the State Grid cannot be overlooked at least for the present, if not for all times to come.

20. In view of the same, this Commission is firmly convinced that there is a need to maintain status quo on section 9 (6) of TNERC Grid Connectivity and Open Access Regulations, 2014 at this juncture in respect of limit of open access until such time the time is ripe for amending the regulation. However, it is made clear that the Commission has taken this decision to maintain status quo only as a temporary measure so as not to disturb the equilibrium which has been existing for more than a decade. The Commission is of the view that any change to the Regulation 9 (6) at this point of time would have cascading effect on the generation and distribution of electricity in the State of Tamil Nadu and hence at this juncture, it is not appropriate to reverse the amendment. Considering the quantum

of financial impact which is minimal as tabulated above, the Commission is convinced that a need has not arisen as of now to amend Regulation 9 (6) of TNERC Grid Connectivity and Open Access Regulations, 2014. The question of amendment of the regulation on which policy has been issued in public interest, which in our view has merits, will be taken up in future, if and when exigency arises.

On a conspectus evaluation of all facts and circumstances, this Commission decides that at present absolutely there is no necessity to amend Regulation 9 (6) of TNERC Grid Connectivity and Open Access Regulations, 2014.

This Transferred Application stands disposed of accordingly.

Parties shall bear their respective costs.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission