

(Registered Post with acknowledgement due)

To

Date: - 10-2021

The SE/Distribution

(IWPA Member may fill the SE/Distribution's address who has issued the Notice)

Sir,

Sub: Issuance of notice to us in contravention of law (whose WEGs were served 20 years of life period), insisting to execute fresh Agreements irrespective of valid existing wheeling Agreement and period – Immediate withdrawal is requested - Reg.

Ref: Your Lr. No SE*(IWPA Members may mention the letter received from the SE concerned as reference)*

1. We invite a kind reference to your letter cited under reference wherein we have been requested to submit our willingness to execute fresh wheeling Agreements irrespective of the validity of the existing Agreement.

2. It is not known on what legal basis the letter has been issued to us. The TNERC order referred to in your letter, i.e., the Hon'ble TNERC's 2016 wind power tariff order, **talks about 20/25 years life period of WEGs only for the purpose of determination of Feed in Tariff (FIT) and other related parameters. It is nothing to do with the wheeling agreement of the Captive generators/Users.**

3. Further, it has been clearly declared by the Hon'ble TNERC vide its recent order in M.P. No.3 of 2019 dated 02-02-2021 that the **"decommissioning of a WEG and its safety"** are squarely covered by the "Indian Wind Turbine Certification Scheme" to be issued by the MNRE and it shall be followed as and when it is issued. The relevant part of the order is reproduced below.

8.9.3.4 Lifetime extension, safety of machines, decommissioning –

.....
(v)Regarding safety of machines and decommissioning procedures, the WEGs are expected to comply with relevant statutes, regulations, codes on safety over their lifetime. The WEGs shall adhere to the safety instructions of inspecting authorities of CEIG. MNRE has issued a Draft Indian Wind Turbine Certification Scheme on 5.11.2018. Volume IV of the above scheme deals with „Failure Assessment, Safety & Performance

Assessment and Decommissioning". The scheme as and when notified shall be followed.

4. Further, the open access obtained under the wheeling agreement by us (captive generators/users) are exclusively and exhaustively covered by the sections 2,9 and 42 of the Electricity Act 2003. The relevant parts of the Electricity Act 2003 are reproduced below.

Section 2(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

Section 2(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

.....
"Section 42. (Duties of distribution licensee and open access):-

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by

notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

.....

Thus, for a captive generator/user like us, the right of open access is guaranteed under Section 9 and this is further strengthened by the provisions of Section 42 of the Electricity Act 2003. It is the duty of the TANTRANSCO and TANGEDCO to provide non-discriminatory open access to the Captive Generator/user who wheels his power from his generating plant to the destination of his use as long as he is having a valid wheeling agreement and on payment of necessary open access charges as per the Open Access Regulations issued by the Hon'ble TNERC.

5. Further, as on date, the matter is sub-judice since the Hon'ble Madurai Bench of Madras High Court in WP(MD) No.13255 of 2021 and WMP(MD)NOS.10238 AND 10240 OF 2021 has issued a stay order on 03/08/2021 against a similar notice issued by the Distribution circle.

6. Above all, the Hon'ble HIGH COURT OF MADRAS in its order on W.P.No.26266 of 2013 & others dated 27.08.2021 has given a clear direction about the procedures to be followed by the TANGEDCO to issue circulars to the consumers/stakeholders, the relevant part of the order is reproduced below.

I. TANGEDCO should establish clear policies for immediate implementation of orders issued by the TNERC and the Implementation should commence immediately after the tariff orders are issued.

II. Such implementation should take place by way of appropriate Implementation Circulars for adherence by the jurisdictional officers and the consumers/public.

III. Prior to issuance of such implementation Circulars, the draft should be placed before the TNERC for approval and on its website for any public comments to be provided directly to the TNERC.

IV. The TNERC shall within a strict timeline, approve such circulars with such modifications or changes as it deems fit after considering all aspects/inputs.

V. The approval of the implementation Circular in as much as it is done on the administrative and regulatory side by the TNERC would not by itself affect the rights of stakeholders, since it is only the orders issued under the Statute and Regulations, which would cover the field and be paramount. However, such best practice is advisable for reasons of transparency and avoiding unnecessary litigation.

VI. In terms of mandate of S.45(2)(b), the implementation circulars or instructions issued by the TANGEDCO to its field officers should mandatorily be made available on the website of the TANGEDCO and be easily accessible to all. This would ensure that all stakeholders are fully aware of the orders and the manner of their implementation.

7. None of the procedures as directed by the Hon'ble High Court have been followed by you to issue your letter cited under reference. From the above, it is abundantly clear that your letter cited under reference is illegal and inconsistent with the law and therefore invites action under section 142 of the Electricity Act 2003. Hence, we kindly request you to withdraw your letter cited under reference with immediate effect.

Yours sincerely,

(Authorised signatory of the Member's Company/Institution)
Company/institution's address