TAMIL NADU ELECTRICITY REGULATORY COMMISSION

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

PRESENT:

Thin M. Chandrasekar	**…**	**Chairman**
ThiruK.Venkatesan	**…**	**Member**
Thiru B. Mohan	**…**	**Member (Legal)**

D.R.P. No.2 of 2024

DhanalakshmiSrinivasan Sugars Pvt. Ltd.
Udumbiyam Village
Venganur Post
Veppanthattai (Taluk)
Perambalur- 621116

....Petitioner
Thiru.RahulBalaji
Advocate for the Petitioner

Vs

1. Tamil Nadu Generation And
Distribution Corporation Ltd.
Represented by its Chief Engineer- NCES,
2nd Floor, 144, Anna Salai,
Chennai- 600 002

2. Ministry of New and Renewable Energy
Represented by its Secretary
Block-14, CGO Complex,
Lodhi Road, New Delhi-110 003, India

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

This Dispute Resolution Petition stands preferred by the Petitioner M/s. Dhanalakshmi Srinivasan Sugars Pvt. Ltd., with a prayer to exercise regulatory powers in furtherance of the recommendations made by the 2nd Respondent vide Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 and as ordered by the TNERC in M.P. No. 20 of 2021, direct the TANGEDCO to roll over and reallot 18,23,391 units value of Rs.1,26,90,801/- (6.96 x 1823391) that the petitioner exported to the TANGEDCO's grid during April 2020 and permit to adjust by Petitioner's captive users during FY 2024-25 or to allow the petitioner to encashRs.1,26,90,801/- as directed by the Commission in various orders and set out the manner, methodology for its implementation and alternatively pass such regulatory orders so as to balance the rights of parties in order that there is no unjust enrichment to the licensee or there are no losses to the Petitioner and pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

This petition coming up for final hearing on 18-07-2024 in the presence of Thiru Rahul Balaji, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondent and on consideration of the submissions made by the Counsel for the Petitioner and the 1st Respondent, this Commission passes the following:

ORDER

1. Contention of the Petitioner:-

1.1. The first respondent is Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), an electrical power generation and distribution public sector undertaking that is owned by the Government of Tamil Nadu. It was formed under Section 131 of the Electricity Act of 2003 and is the successor to the erstwhile Tamil Nadu Electricity Board. The electricity board's generation and distribution wings are its nucleus. TANGEDCO is a subsidiary of TNEB Limited.

1.2. The 2nd Respondent is the nodal Ministry of the Government of India for all matters relating to new and renewable energy. The broad aim of the Ministry is to develop and deploy new and renewable energy for supplementing the energy requirements of the country.

1.3. The Petitioner is filing the present petition seeking for appropriate directions with respect to implementation of the recommendations made by the 2nd Respondent to the 1st Respondent with regard to Rollover of electricity generated directly as well as through banking by Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale Category of FY 2020-21 to FY 2023-24. The present petition is being filed by the petitioner as a bagasse based captive generating plant

and also for the captive consumers of such plant since the relief is sought for, for the entire plant and its captive consumers.

1.4. The Petitioner is a sugar mill and has set up its 23MW bagasse based co-generation power plant (HTSC No. 76) at Udumbiyum Village, VeppanthattaiTaluk, Perambalur District in Tamil Nadu which is connected to the Perambalur Electricity Distribution Circle. As classified under Go TN's letter No:11232/P1/2020-1 dated 24-03-2020, Petitioner's sugar industry is a continuous process Industry and also Agri based Industry. The Petitioner's Power Plant was operating continuously as a continuous process industry along with sugar processing plant as per the directions of the Tamil Nadu government.

1.5. The nationwide lockdown imposed by the Govt. of India caused by the pandemic due to the Coronavirus, the Sugar Industry as a whole, was severely affected. In fact, most of Petitioner's group captive consumers (52 consumers) had to suddenly stop their Industry Operations and were in complete shutdown. Even despite the lifting of certain restrictions, the issues plaguing the sector continued and only after around 6 months of the imposition of the lockdown in March, 2020 did industries limp back to normalcy. During this entire period, in view of the Petitioner's power plant being a continuous process industry as per the Tamil Nadu government order and due to the technical compulsion to run the allied power plant along with

sugar processing plant, the electricity continued to be generated and fed into the grid. At no point in time was any directive issued by the Commission, TANTRANSCO or TANGEDCO to shut down generation by reliance upon any of the statutory or regulatory provisions. The Petitioner is an NCES generator and is therefore required to be treated as a distinct class to ensure its promotion

1.6. The Petitioner's power plant due to its very classification has to be operated continuously since it generates power through a renewable source and cannot be shut down. Further no backdown instructions on grounds of any grid issues were issued by the SLDC, which monitors and regulates the entire power generation and injection in the State thus allowing for the power generated to be fed into the grid in a manner permitted under law and the Regulations.

1.7. The December to May is peak cane crushing season every year for the sugar industry. Since the lockdown was announced from 24th March 2020, the Petitioner had balance cane to be crushed for the sugar season 2019-20 as well as the restrictions imposed by the Central Government in view of the COVID 19 pandemic.

1.8. The sugar is an essential commodity under the Essential Commodities Act, 1955 and is duly regulated. In view of the same, sugarcane crushing industries such as the Petitioner have to follow the orders of Controller of Sugar. Further, Petitioner

buys sugar cane from farmers who depend on the Petitioner for their livelihood and will be severely affected if the Petitioner's unit remains shut. For all these reasons and since non crushing and wastage of cane may cause social unrest among farmers which may cause a law and order problem for the State, Petitioner was constrained to continue its operations despite the Covid lock down declared by the Government.

1.9. Apart from the essential service, Bagasse based Co-generation plant has a technical compulsion to run the allied power plant along with sugar processing plant. The petitioner's Power plant has to generate a minimum of 60% of its full capacity of 23-MW i.e., 14 MW, to supply low pressure steam to the sugar plant for the processing of sugar. Out of the 14 MW, only 5 MW constitutes the self-consumption and the balance 9 MW has to be exported to the grid for the consumption of the Petitioner's Captive users. During April 2020, the Petitioner's plant ran at around the technical minimum of 15MW only. The Petitioner's generation schedule given for the month of April, 2020 demonstrates the same. Since the Petitioner's captive user industries were under lockdown due to Pandemic during the period, the Petitioner had no other option except to export the power to the TANGEDCO grid. Thus, during April 2020, the Petitioner **exported** 1694597 **units** which were not consumed by its Captive users due to the lockdown declared by the Government on the account of

Covid Pandemic. As a result of the lockdown, the Petitioner's Renewable Energy power plant implemented under Captive Scheme through Intra State Open Access System in Tamil Nadu were unable to consume/sell the generated power to its consumers and the power was accounted as "deemed injection" / unutilised energy.

1.10. The 2nd Respondent, aware of the widespread difficulties that would be faced by those in the Renewable Energy Sector, has sought to alleviate the concerns of the Petitioner vide its Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020. The 2nd Respondent clarified that the pre-existing Office Memorandum No. 283/20/2020-GRID SOLAR dated 4th April, 2020, clarifying that the "Must Run" status of Renewable Energy (RE) remains unchanged during the COVID-19 Lockdown period and that the Renewable Energy must not be curtailed but for energy security reasons. Further, the Office Memorandum stated as follows:

> ***"2.*** *Due to nationwide lock-down in the wake of COVID-19, industries and commercial establishments using* ***electricity generated directly as well as through banking, from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale****, are running their operations at their lowest and consequently their demand of electricity has reduced to minimum since mid-March'20. Due to this, the generated and banked units in previous months could not be utilized by such consumers. The lapse of such banked units or purchase thereof at APPC rate would severely affect the profitability of both the developers and consumers associated with such Solar PV Rooftop Projects and Open Access Renewable Energy*

Generating Stations. This situation is likely to continue for another few months (FY 20-21) till the pandemic is controlled and the industrial production and commercial footfalls return to normal.

3. *Representations have been received in this Ministry for issuing an advisory to States of Andhra Pradesh, Karnataka and Tamil Nadu allowing rollover of banked electricity from such projects.*

4. *Accordingly, the undersigned is directed to convey to Power/Energy Departments and DISCOMs of Andhra Pradesh, Karnataka and Tamil Nadu that they may consider permitting* ***Rollover of banked electricity (from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale) of FY 2019-20 and FY 2020-21 to FY 2021-22"****.*

1.11. The said Memorandum in Para 2 clearly recommends the roll-over of **"***electricity generated directly as well as through banking, from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale".* In the said memo, the 2nd respondent has recommended to roll over both the banked energy and the energy directly generated from the RE generating stations during the Pandemic period. The Commission in its order dated 28-12-2021 in M.P. No.20 of 2021 *(Indian Wind Power Association Vs TANGEDCO)* has ordered roll over of banked energy. **This present case is exactly a similar case but instead of banked energy it is directly generated and supplied by the RE generator under captive consumption.** The said Memo of the second Respondent clearly recommends roll over of the directly generated RE energy also

as discussed hereinabove. However, despite the issuance of the Office Memorandum on 23.04.2020, till date no steps have been taken by the 1st Respondent to implement the recommendations issued by the 2nd Respondent. The bagasse-based co-generation being an agriculture oriented, essential and continuous process industry and therefore, it is justifiable to permit rollover for adjustments of energy generated during lockdown. Further, in the petition filed by IWPA in M.P. No. 20 of 2021, only the Power plant and the TANGEDCO are involved. However, in the present case, a large number of farmers would have been affected if the power plant had stopped functioning due to lockdown declared under pandemic and the same would have caused social unrest among farmers and further law and order problem for the State Government. Hence, the present petition.

1.12. The Petitioner will be severely affected if it is not permitted to roll over the generated and supplied units (to the TANGEDCO) during the Pandemic period, in so far as huge financial commitments to banks and financial institutions will be unable to be completed.

1.13. The issue highlighted and foreseen by the 2nd Respondent indeed happened. Due to outbreak of Covid-19 in March 2020, Government of India and Tamil Nadu have imposed lot of restrictions in the movement of men, material and supply of Goods and Services. It also ordered Complete shutdown of all Industrial activities for

about 8 months. These restrictions were lifted in a phased manner and further restrictions continued for free movement of men and materials till December, 2021. Supply of material and services also got disturbed due to these restrictions and the Industry has not yet recovered fully.

1.14. The details of the restrictions are documented in the Government Orders themselves. As a matter of example, it would be pertinent to state that

a. General Lock down started & stopped industrial production from 25.3.20. Thereafter, consequent to 3 modifications, the Government permitted only on 31.05.2020 resumption of 100% operations.

b. G.O.(Ms.) No.172 - 25.03.2020 – Industrial establishment closure with exception to Production units, which require continuous process, after obtaining required permission from the State Government, Revenue and Disaster Management Department.

c. G.O.(Ms.) No.202 - 22.04.2020, Clarification on the industries classification as continuous process. Revenue and Disaster Management Industries Department Listed 10 Industries including sugar mills

d. G.O.(Ms.) No.262Revenue and Disaster Management Department – dated 31.05.2020 provided Permission to work 100% for all industries

e. Thereafter, various restrictions were imposed from time to time in various areas and on movement of goods, men and materials which continued to disrupt and delay the resumption of industries. When industries were able to start, they could not do so fully.

f. It is pertinent to state that generation was specifically exempted from restrictions. This together with the fact that there was no directive of any nature to stop electricity generation specifically considering the fact that renewable energy is a national asset which cannot be wasted and could be utilised by the TANGEDCO during a difficult period. The generators in the State thus came to their rescue.

g. While so, the continuous challenges through the 2nd and potential 3rd waves of Covid, continued to wreak havoc on the industry in the State and the industry is faced with more and more challenges. During such time, a just and equitable approach protecting interest of all stake holders is essential.

1.15. With the continuous operation of captive power plants, the energy generated got accumulated. However, due to reduced consumption during the months of May to October, 2020 the units generated were treated as “deemed injection” / unutilised

energy. Even though, partial recovery happened in most of the Industries, lot of energy consuming Industries did not reach their normal level of operation until very recently. With the restrictions on travel and non-availability of proper public transports, most of the labour force did not turn up to the work during the said period. In addition, restrictions on operation of AC and restriction on persons to assemble in public places, etc. resulted very lesser energy consumption in the Hospitality industries too. This unforeseen situation resulted excess units getting lapsed on 31st March 2021.

1.16. Regarding the quantum of the lapsed units accumulated due to Pandemic as on 30th April 2021 for the reasons explained hereinbefore, the following table gives the clear picture and is easily verifiable.

Details of Excess unused units as on 30th April for the FY 2019-2020
FY 2020
(Units in Lakhs)
16,94,602

The above table also clearly shows that the unused units in large quantities are accumulated as on 30th April 2021 to the tune of 1694602 units. These details are submitted to the Commission in support of the following observation made by the Commission in its order on MP No.17 of 2020 dated 08.12.2020.

"7.16 The case itself has been filed prematurely as it is only at the end of the financial year would one know the actual status of energy banked and unutilized for the wind energy generators."

1.17. Section 86 (1)(e) of The Electricity Act, 2003 provides as follows:

"*86 (1) The State Commission shall discharge the following functions, namely:-*

…..

(e) "Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also to specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee".

1.18. According to the above, the State Electricity Regulatory Commission (SERC) is mandated to promote the Renewable Energy (RE), issue the regulations for grid connectivity and sale of RE Power to the distribution utility, CPP or open access consumer. Any instruction issued by SERC shall have to be followed by respective agencies for promoting the RE Power in the State.

1.19. Further, the National Electricity Policy as extracted below provides that the renewable Energy potential should be exploited fully to create additional power capacity and private participation should be encouraged by providing necessary promotional measures.

"5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass 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 sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures".

1.20. Furthermore, such rollover has been done even in the past by the TNERC. As a matter of example, when consumers were disabled from utilising the renewable wind power during R&C measures that were in force in Tamil Nadu during 2008 onwards, the Commission specifically allowed for rollover of the banked energy and allowed it to be utilised over 5 months in the next year. This situation is similar where the consumption of the generated units is not capable of being done due to governmental directives. Force Majeure is a principle specifically recognized in this regard. The Commission had in the above order considered the Pandemic effects on the "Distribution Licensee" and the "WEGs". No doubt both the parties including the consumers are affected. The Petitioner herein is, however, not claiming the energy it has lost or rejected by the SLDC due to the poor demand of the grid during the Pandemic. The Petitioner is only seeking for directives to the Distribution Licensee with regard to the energy actually supplied by it and consumed (sold) by the Distribution Licensee at the average sales revenue **of Rs.6.96 per unit (2021-22)** as per the Energy Department's Policy Note 2022-23 of Government of Tamil Nadu. The

TANGEDCO is only a gainer and it may be directed to provide the average sales revenue for the relevant period which would only show that it is much higher than the unit cost of generation which they are entitled to consume and not be paid a miniscule portion for such generation that too after reduction of 25%. Due to the Pandemic, the Distribution Licensee has lost its revenue due to poor demand and the Petitioner lost its generation due to poor intake of the grid and both the parties have been affected/suffered in that aspect. But the Petitioner is not claiming the energy which it has lost due to poor demand of the grid. The Petitioner is claiming only the energy which was actually absorbed by the Distribution Licensee during the Pandemic and already sold to the consumers at the average billing rate of Rs.6.96 per unit. The only relief sought by the Petitioner is the extension of recovery period and it is for the units already sold by the Distribution Licensee received from the Petitioner worth Rs.1,26,90,801/- along with the interest as directed by the Commission in various orders.

1.21. There is no regulatory or factual basis in view of the developments of 2020-2021 that there would be devolving of the expenses on the consumers since the Petitioner is claiming the energy which it has actually supplied to the Distribution Licensee. The Petitioner is not asking any compensation/money from the Distribution Licensee for their purported loss. While returning the unit to its user, the loss to

TANGEDCO can occur only if their cost of purchase of energy from the other supplier is more during Pandemic. In case of any increase of power purchase of Distribution Licensee during the extension of recovery Period, the same can be examined on the basis of verifiable data to be submitted by the TANGEDCO. The data of the past years shows that there is in fact no additional cost that will be incurred.

1.22. The generated units injected by the project are not fully consumed by the captive user and is used by TANGEDCO for the purposes of maintaining supply to its consumers without the necessity to pay any amount to the Petitioner. There will be no adverse financial implications at this stage to TANGEDCO. In fact, at this stage TANGEDCO will save on variable or energy charge as it can back down conventional generation and avoid payment of energy or variable charges, to the extent of the energy purchased from the Petitioner. Therefore, there is a financial gain to TANGEDCO.

1.23. In view of the above, the Commission may direct the 1st Respondent to Rollover the energy supplied to the TANGEDCO during the pandemic of unused electricity from through Open Access from the Petitioner's Renewable Energy generating station.

2. Counter Affidavit filed on behalf of the Respondents:-

2.1. The petitioner M/s.Dhanalakshmi Srinivasan Sugars (p) Ltd is a captive co-generator with the captive exportable capacity of 9 MW, and executed captive wheeling agreement as per the TNERC Tariff order by which they are wheeling the generated energy to their captive users.

2.2. The petitioner has the option to allot the generated energy to any of the captive users slot wise as per their consumption at the end of the month after ascertaining their actual consumption.

2.3. As per the Energy Wheeling agreement, there is no banking facility extended to the co-generation captive users and the units after adjustment gets lapsed after allotment. There is no encashment of unutilized energy at the end of the month as per the energy wheeling agreement, and the TNERC Tariff orders.

2.4. Since there is no banking provision made in the agreement, the prayer of the petitioner to rollover the units cannot be sustainable legally and encashment of this units is beyond the scope of the Energy Wheeling agreement.

2.5. The present petition is not similar to the petition M.P.No.20 of 2021 filed by the Indian Wind Power Association praying for rollover of the banking units of wind generation since the banking facility is given to the wind captive generators as per

the tariff order and as mandated in the wheeling agreement itself where as the petitioner's captive wheeling agreement does not have any such banking provision.

2.6. Having known the pandemic during April 2020, the generator has not planned his captive generation and the allotment to the captive generators. Also he has failed to allot the units proportionally to the captive generators having known their consumption at the time of allotment itself and making amends for his lapses through this petition which is not maintainable.

2.7. After the said period of April 2020 the captive generator has made three changes to their captive users and made three amendments to their wheeling agreement and so after a lapse of nearly 34 months the prayer to allow the lapsed units allotted during April 2020 to the present new captive users is beyond the scope of the captive norms as mandated in the Electricity Rules 2005. Hence the petition is to be rejected.

2.8. Further the prayer of the petitioner for encashment of this lapsed units at a tariff of Rs.6.96 is not maintainable since the TANGEDCO has also faced the Impact of Covid-19 by which the TANGEDCO was forced to shut down its own plants and paying the fixed charges to the CGP and IPP generators due to reduced consumption of the grid.

2.9. Not only the petitioner who was affected due to nationwide lockdown imposed by the Government of India caused by the pandemic due to Corona virus but the DISCOM's also faced heavy revenue loss during the pandemic period. The TANGEDCO has evacuated maximum RE generation keeping its own generation idle at heavy financial loss. Hence, further consideration of the rollover of energy inadvertently injected and not utilized by their captive users will further affect the financials of TANGEDCO and inturn the general public. Further these revenue cannot be passed on to the tariff retrospectively to the common consumers after 34 months.

2.10. This petition is similar to the M.P.No.17 of 2020 filed by National Solar Energy Federation of India rather than the M.P.No.20 of 2021 filed by IWPA since the banking of energy is not provided for solar energy in the TNERC solar tariff order similar to the petitioner's co-gen plants and the EWA is also similar to solar captive plants. Hence it is relevant to refer the order dt.08.12.2020 by TNERC in M.P.No.17 of 2020 (NSEF's vs TANGEDCO) by which this Hon'ble TNERC has rejected the prayer of the captive solar generation for rollover of banking on similar grounds as that of the present petitioner.

Relevant extracts from the order of the Commission Order in M.P.No.17 of 2020;

7.15. In this case in question, both the petitioner and the respondents are affected parties. TANGEDCO has the obligation to pay their generators for the fixed cost of power contracted for supply. To compensate the claimed loss by RE generators would mean devolving the expenses on the consumers who were also affected parties during covid 19.

7.20.In view of the foregoing discussions and in as much as the Distribution licensee's revenues also have been affected by the pandemic, Commission decides that there shall be no carry forward of banked energy in the case of WEGs and solar generators under REC/non REC scheme to the subsequent financial years/months, as the case maybe. Banking charges as notified in the tariff orders for wind energy shall be applicable.

7.21. The excess generation /unutilized energy may be encashed at 75% of applicable tariff at the end of the financial year /billing period as per the provisions of respective tariff orders applicable.

7.22. The petitioner has mentioned about carryover of unutilized energy from rooftop plants that have been installed for captive consumption. If the rooftop is in parallel operation with the grid, it is expected that the industry takes all precautions not to inject energy into the grid, to be put in other words to switch off the plants when the industry is not functioning. Therefore, off grid and rooftop solar in parallel operation is of no consequence to this case. If any petitioner is under net metering, Commission's order on net metering will be applicable. During the course of argument Thiru.Rahul Balaji, learned counsel for the petitioner in M.P.No.16 of 2020 fairly submitted that the MNRE letter is only in the nature of advisory to the implementing agency and not mandatory and it is for the Commission to allow the rollover as prayed for by taking into account the pandemic situation. In this connection , we are constrained to point out that when the whole country has been suffering economically, particularly weaker section of the society and every citizen is sharing the economic distress of the nation proportionate to their standard of living, it is not only unreasonable but unconscionable and unethical on the part of the petitioner to claim such benefits involving public exchequer as in

the prayer specially when the Commission has already allowed them to pay 20% M.D. charges during the pandemic period.

2.11. The Commission in its order dt 08.12.2020 in M.P.No.17 of 2020 has further observed as follows :-

7.19 A force majeure clause in the contract exempts both parties from their contractual liability or obligation when prevented by such an unforeseeable event from fulfilling their obligations. What is sought here by the petitioner is a concession to allow extended period of banking. The Energy purchase Agreement (EPA) and Energy Wheeling Agreements (EWA) are between the generator and the Distribution Licensee, where both are the affected parties due to the pandemic. Commission taking suo motu cognizance of the pandemic has already passed an order in SMP No.2 of 2020 for payment of minimum 20% demand charges from the affected HT consumers.

2.12. The observations of the Commission in M.P.No.17 of 2020 itself is sufficient to dismiss this petition, since the similar issue of rollover of banking to the solar generators has not been allowed and considering this petition will also open the avenue for solar generators to go for fresh round of litigation and cause hardship to the general exchequer and public. The D.R.P.No.2 of 2024 is not maintainable and Commission may be deem fit and proper to pass any orders.

3. Findings of the Commission :-

3.1. Having considered the rival submission and perusal of material records, we find that there are three issues which requires consideration, namely,

1) Whether a co-generating plant, which injected energy without due permission during a particular period into the Grid of the respondent, can later seek to roll over the same to the subsequent years or encash the same during subsequent years in view of the COVID conditions prevailing then ?
2) Whether the stand taken by the petitioner that it was left with no option but to inject energy into the Grid in view of it being a continuous processing industry deserves consideration?
3) Whether the petitioner is entitled to any relief ? If so, to what extent.

4. Findings of the Commission on the first issue.

4.1. It is the case of the petitioner that the MNRE's office memorandum F.No.283/25/2020 – GRID SOLAR dated 16.04.2020 made it clear that the "Must Run" status of the RE remains unchanged even during COVID period and that GoI recommended the rollover of the electricity generated directly as well through banking from solar RV Rooftop Projects and Open Access Renewable Energy Generating Stations under captive and third party sale. The petitioner has drawn our

reference to this Commission's own order dated 28.12.2021, in M.P.No.20 of 2021 in IWPA Vs. TANGEDCO which permitted rollover of unutilised bank energy. The petitioner has sought to canvass for the proposition that the present case's similar to M.P.No.20 of 2021 except for the fact that in the said case, the banked energy pertained to solar generators and in the present case energy has been generated and supplied by the petitioner under captive consumption. The petitioner has also set out various other reasons including social and economic reasons such as antagonising the farming community and to avoid default to the financial institutions to which it has huge financial commitment in support of its decision to run the plant.

4.2. Apart from the above grounds, the petitioner has relied upon National Electricity Policy which envisages in para 5.2.20. the full explanation of hydro, wind and bio-mass to increase the overall share of RE power in the electricity mix and further referred to the rollover allowed by the Commission for 5 months during the period covered by R&C measures. All the same, the petitioner has made it clear that it is not claiming the energy it has lost or rejected by SLDC due to the poor demand in the Grid during the pandemic but only seeking directives to TANGEDCO to pay for the energy actually supplied by the petitioner and consumed by TANGEDCO at average sales revenue of Rs.6.96 (2021-22) as per the Energy Policy note 2022-2023 of GoTN.

4.3. Per contra, the respondent has contended that there is no provision for banking facility to co-generation captive users in the EWA and hence, the prayer for rollover of units or encashment of the same is not permissible. It is further the case of the respondent that the present petition is not similar to M.P.No.20 of 2021 filed by IWPA as contended by the petitioner but it is similar to the one in M.P.No.17 of 2020 filed by National Solar Energy Federation of India. Above all, the respondent submitted that the petitioner failed to plan its generation and allotment to the captive users despite being aware of the outbreak of pandemic.

4.4. Having given a careful consideration to the arguments advanced by both sides on this issue, we find that the contention of the respondent that rollover of the units or encashment of the same cannot be permitted in the absence of a provision for banking in the EWA has got force. It is to be observed here that the rollover of banked units is only a fall-out of the inability of a RE generator to consume banked units during a given period. We find that the petitioner is under an erroneous understanding that rollover of energy is a vested right which automatically accrues due to crisis such as COVID in the past thereby enabling him to seek rollover in the future. We find that such understanding is absolutely flawed. It is only the banking of energy which is a vested right accrued on a generator in view of the explicit clauses in the EWA and the claim for rollover is only incidental to such substantive right of

banking and not vice versa. In other words, the rollover may be or may not be granted, the same being discretionary, it is predicated on the substantive right of banking. Without a substantive right to banking of energy, we fail to see as to how the corresponding right to rollover would arise in the first place. In order to get the corresponding right of rollover, it is incumbent on the part of the petitioner to establish its substantive right of banking first. It is manifestly clear that there is no provision in the EWA for banking. To go a little bit farther, it must be said that banking of energy is a fiction created to accommodate the infirm power which cannot be predicted precisely. It is only for the said reason that infirm powers such as solar and wind are allowed to inject energy as and when generated and the generators are permitted re-draw the same at times of need with a supplementary provision for encashment at 75% of the preferential tariff in case of lapsing.

4.5. In our considered opinion, the co-generation power in no way can be called an infirm power. It is inconceivable as to how the question of banking arises in such cases. The GoI communication in this regard cannot be read in-between lines and has to be read in totality. The fourth para of the GoI memorandum dated 4th April 2020 which appears to be permitting all RE generators to avail roll-over has to be read along with para 2 of the same communication. While para 2 sets out the actual problem encountered by the RE units, i.e., the inability of the RE generators to utilise

the generated and banked units, the para 4 is nothing but a final recommendation on the issue dealt with in para 2. More than the same, it cannot be stretched further to make out a case for substantive relief. It is only the substantive right which must have a final say on the eligibility of an unit for rollover. Even otherwise, the primary requirement for rollover as recommended in para 4 is such that the energy ought to have been generated and banked which means it is not sufficient merely to generate and inject energy alone but such energy should have been banked. In the instant case the energy has been generated and injected at will without the essential requirements of banking of energy to seek corresponding claim for rollover. It is clear that the final recommendation in GoI communication is only with reference to banked units and there is no reference to generated units. It is all the more important to state here that as rightly contended by the respondent, the counsel for the petitioner in M.P.No.16 of 2020 fairly conceded during the proceedings in the said case that MNRE communication on rollover is only advisory in nature to the implementing agency and the same is not mandatory. When there is an unanimity of view on the part of both side that the MNRE memorandum is only recommendatory in nature, we see no reason to accede to the prayer of the petitioner to permit rollover especially when the very right of the petitioner as a co-generation plant to bank its energy is itself under question much less the corresponding right of rollover. For the reason

set out a above, the first issue is decided against the petitioner.

5. Finding of the Commission on the second issue :-

5.1. Having decided that a co-generation plant cannot seek incidental claim for rollover when the very right of banking of energy is itself nebulous, we now proceed to discuss whether the other contention advanced by the petitioner that it being a continuous processing plant in itself is sufficient to hold in favour of petitioner.

5.2. It may be true that the petitioner's plant is a continuous processing industry and that it is mandated to follow the orders of Controller of Sugar. It may also be true that the petitioner's Bagasee based co-generation plant has a technical compulsion to run the allied power plant with sugar processing plant and that the petitioner had to generate 60% of its fuel capacity of 23MW i.e., 14MW. But a careful reading of the petitioner's averments makes it clear that only 5MW of such energy generated constituted self-consumption and balance of 9MW was exported to the Grid. We find the justification given by the petitioner for export of 9MW of energy into the grid is appalling, to say the least in the absence of prior approval. It is not known how such 9MW could have been injected into the grid without prior approval of the SLDC or the licensee. It is a clear case of egregious violation of Regulation 8 of TN Grid Code which mandates advance information on scheduling.

5.3. More than anything else, as rightly contended by the respondents, there is

lack of planning on the part of the petitioner to which the respondent cannot be made accountable or liable. The petitioner, being aware of its technical minimum, ought to have planned a fair distribution of 9MW among its captive users or stopped generation or after informing the appropriate authorities, ought to have injected energy. Act such as the one committed by the petitioner came to be deprecated by Hon'ble APTEL in Indo-Rama's case.

5.4. There is nothing on record to suggest or establish conclusively that the petitioner was under a compulsion to generate 14MW of power failing which it would be liable for penal action by any Government instrumentality. The view held by the respondents that the generation was done beyond the self-consumption and that the energy was injected indiscreetly to the extent of 9MW cannot be brushed aside given the incomprehensible conduct of the petitioner. It is not the case of the petitioner that prior approval was obtained from the respondent for injection of energy beyond the permissible limits and payment was denied. It is also not the case of the petitioner that such statutory compulsion to inject energy arising of Sugar Controller's order or the necessity to maintain the technical minimum was well intimated to the SLDC or the licensee in advance. Hence, all contention in this regard fail. Accordingly the second issue is also decided against the petitioner.

6. Finding of the Commission on the third issue :-

In view of the findings to 1st & 2nd issues, this Commission decides that the petitioner is not entitled to any relief.

Accordingly this issue is decided.

In the result, the petition is dismissed. Parties shall their respective cost.

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission