

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 28th Day of March 2023

PRESENT:

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

I.A. No. 1 of 2014
in
D.R.P. No.68 of 2014
and
D.R.P. No.68 of 2014

M/s.Dattatreya Textiles P. Limited
Therkkuthuru
Melur Road
Madurai – 625 122.

... Petitioner
Thiru.Rahul Balaji
Advocate for the Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)
Represented by its Chairman and Managing Director
144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
No. 144, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
CEDC/North, TANGEDCO
144, Anna Salai
Chennai – 600 002.

4. The Superintending Engineer
Tamil Nadu Electricity Board
Madurai Electricity Distribution Circle
Madurai – 625 007.
5. The Accounts Officer / Revenue
CEDC/ North, TANGEDCO
Chennai – 600 002.

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

This Dispute Resolution Petition stands preferred by the Petitioner M/s.Dattatreya Textiles P Limited, Madurai, with a prayer to direct the TANGEDCO to first effect adjustment of the wind energy generated from the petitioner's captive windmills operating under the REC scheme against the petitioner's service in terms of the grounds stated.

This petition having come up for hearing on 07.02.2023 in the presence of Thiru Rahul Balaji, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submission made by the Counsel for the Petitioner and Respondent, this Commission passes the following:

ORDER

1. Facts of the Case:-

This Commission issued the Comprehensive Tariff order on Wind Energy in T.O. No.6 of 2012 dated 31.07.2012. Consequent to this Tariff order, TANGEDCO issued a clarificatory working instructions vide Circular No.CFC/Rev/FC/AAO/HT/D.606/12, dated 14.09.2012 with regard to adjustment of Wind energy generated by the windmills covered under REC scheme. Aggrieved over this impugned letter

dated 14.09.2012, this petition has been filed to stay this communication and all proceedings pursuant thereto including the Excess demand/energy charges calculated on the basis of this letter. And also, sought to direct the TANGEDCO to first effect adjustment of the wind energy generated from the petitioner's captive windmills operating under the Renewable Energy Certificate (REC) scheme against the petitioner's service and thereafter adjust the energy generated by the other Windmills in terms of the grounds stated.

2. Prayer in the Interim Application of the Petitioner:-

The prayer of the petitioner in I.A. No.1 of 2014 in D.R.P. No. 68 of 2014 is to grant an interim stay of the communication of the 2nd Respondent, Chief Financial Controller, TANGEDCO bearing Ref. No.CFC/FC/REV/AAO/HT/D.606/2012 dated 14.09.2012 and all proceedings pursuant thereto including alleged excess demand and excess energy charges calculated on the basis of such Circular as evident in the current consumptions bills issued by the 5th Respondent for the year 2012-13 in HT SC No. 47.

3. Contentions of the Petitioner:-

3.1. The petitioner is a private limited company carrying on the business of manufacturing cotton yarn and has invested in captive generation windmills with a total installed capacity of 1.26 MW towards meeting its power requirement and in addition, also consumers group captive power under arrangement with M/s. Beta Wind Farm Private Limited from its Tuticorin, Tirunelveli and Udumalpet wind farms under REC and Non-REC scheme. It has consumed a total of 20,39,184 REC

units from M/s.Beta Wind Farm Private Limited from its Tuticorin and Tirunelveli EDC.

3.2. The petitioner sets out below details of the Non-REC WEG (s) supplying power to it:-

Wind mills Details (M/s.Dattatreya Textiles P. Limited)						
WEG No.	HTSC No.	Capacity in KW	Tariff	Feeder Name	Date of Commissioning	Village Name
DTL MU1	602	600	11	Enercon 11 KV rural feeder	24-09-2003	Panangudi Village, Tirunelveli Dist.
91/3028	1119	330	22	E 13 Feeder	10-03-2006	Chinnaputhur Village, Dharapuram Taluk, Erode District
91/2039	1120	330	22	E 13 Feeder	10-03-2006	Chinnaputhur Village, Dharapuram Taluk, Erode District

3.3. The National Action Plan for Climate Change (NAPCC) announced by the Hon. Prime Minister of India on June 30, 2008 envisages several measures to address global warming. One of the important measures identified involves increasing the share of renewable energy in total electricity consumption in the country. NAPCC has set the target of 5% renewable energy purchase for FY 2009-10 against current level of around 3.5%. Further, NAPCC envisages that such target will increase by 1% for next 10 years. This would mean NAPCC envisages renewable energy to constitute approximately 15% of the energy mix of India. This would require quantum jump in deployment of renewable energy across the country.

3.4. Under the Electricity Act 2003, the State Electricity Regulatory Commissions (SERC) set targets for distribution companies to purchase certain percentage of their total power requirement from renewable energy sources. This target is termed as Renewable Purchase Obligation (RPO). However, there are certain limitations of State specific approach when RE development strategies are to be deployed at national level.

3.5. The existing legal framework under Electricity Act 2003 puts responsibility for promotion of renewable energy on SERCs. As a result, the regulations developed by the SERCs differ from each other on many counts. Further, these regulations do not recognize purchase of renewable energy from outside the State for the purpose of fulfilment of RPO target set by the SERC for the distribution utility in the State. The requirement of scheduling and prohibitive long term open access charges poses major barrier for Renewable Energy ("RE") abundant States to undertake inter-State sale of their surplus RE based power to the States which do not have sufficient RE based power. Consequently, the States with lower RE potential have to keep their RPO target at lower level.

3.6. The Central Electricity Regulatory Commission (hereinafter referred to as "CERC") has notified 'Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010, vide Notification No.L-1/12/2010-CERC, dated 14th January 2010. Since renewable energy sources are not evenly spread across the country and the very high cost of generation from Renewable Energy sources discourages the

distribution companies from purchasing electricity generated from Renewable Energy sources, the Renewable Energy Certificate mechanism evolved and notified by CERC seeks to address this and many such issues connected with the Renewable Energy generation. One of the primary objectives of this mechanism is to address the mismatch between availability of Renewable Energy sources and the requirement of the obligated entities to meet their renewable purchase obligation by purchasing green attributes of renewable energy remotely located in the form of Renewable Energy Certificate (hereinafter referred to as "REC").

3.7. Further, to address the mismatch between availability of Renewable Energy sources and the requirement of the obligated entities to meet their renewable purchase obligation (RPO), the Hon'ble CERC, vide order no. L-/12/2010-CERC dated 9.11.2010 notified the detailed procedure for registration of eligible entities, verification of generation of electricity and its injection into the grid by the eligible entity and issuance of certificates, etc. under REC Scheme wherein cost of electricity generation from renewable energy sources is divided into two parts as cost of electricity generation equivalent to conventional energy sources and the cost for environmental attributes, containing inter alia the following distinct features to be complied by the Renewable Energy Generating Company:-

- A. Not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission;

- B. Sell the conventional energy component to DISCOM at a price not exceeding the pooled cost of power purchase in the previous year as determined by the SERC;
- C. Selling Environment attribute (REC part) of renewable energy in the form of Renewable Energy Certificate (hereinafter referred to as "REC") tradable in Power Exchange between the floor price and forbearance price.

3.8. The clause 5 of (amended) CERC Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010, describes the eligibility criteria for issuance of REC as under:

" (1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:

- (a) it has obtained accreditation from the State Agency;*
- (b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
- (c) it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*

Explanation.- for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre -mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an Appropriate Commission or a

competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement.

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self- consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

Provided also that the abovementioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government. The dispute, if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.

Explanation: - For the purpose of this Regulation, the expression 'banking facility benefit' shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours."

3.9. The Commission has, vide Notification No. TNERC/RPO/19/1 dated 17.12.2010 has notified the 'Renewable Energy Purchase Obligation Regulations, 2010, in line with the CERC regulations and 'draft model regulations for SERCs' recommended by the Forum of Regulators. The TNERC Regulations make it mandatory for all obligated entities to 'purchase not less than defined minimum percentage of its consumption of energy from renewable energy sources under the Renewable Purchase Obligation (RPO) during a year as specified in the Commission's tariff regulations/orders on renewable energy issued from time to time" These Regulations also provide that 'the Certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition

and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources '.

3.10. Clause 6 of the TNERC Regulations provides as under:

“6. Eligibility and Registration for Certificates.–

- (1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency if it fulfils the following conditions:*
 - (a) It does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission; and*
 - (b) It sells the electricity generated either (i) to the distribution licensee in the State of Tamil Nadu at a price not exceeding the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.”*

From the above, it is clear that an entity to be eligible under REC mechanism, *inter-alia*, has to sell electricity component to the Utility at the 'pooled cost of power purchase' of that Utility, as defined in the Regulations.

3.11. Further, the Commission vide Order No.TNERC/M.O.4/E/RPO dated 28-12-2010 has issued the “Order on Pooled Cost of Power Purchase by TANGEDCO for the year 2009-10 and fee and charges payable under regulation of TNERC (Renewable Energy Purchase Obligation) Regulations, 2010' and has fixed the 'pooled cost of power purchase' by TANGEDCO for the year 2009-10 as Rs.2.37 / kWh. Thereafter, the pooled cost of power is being notified for the subsequent periods.

3.12. In addition, for avoidance of doubt, the Commission has reiterated the definition of 'Pooled Cost of Power Purchase' (para 2 of the Order) as under:

"Pooled cost of power purchase " means the weighted average pooled price at which the distribution licensee has purchased the electricity cost of self-generation in the previous year from all the long term energy suppliers but excluding those based on liquid fuel, purchase from traders, short term purchases and renewable energy sources."

3.13. The relevant clauses, for the purpose of present petition in respect of the said agreements relating to REC WEGs, are extracted herein below:

“6. Billing

- (1) Surplus energy available after captive use are lapsed;
- (2) The distribution licensee shall raise bills on the REG or the captive consumer, as the case may be, for the charges payable towards start-up power and power drawn for other purpose, wheeling charges, excess demands and excess energy charges, cross subsidy surcharge wherever applicable etc, as per the order regulations of the commission for the time being in force.
- (3) The STU shall raise bills on the REG holder for the charges payable towards transmission charges, scheduling and system operation charges, etc. As per the order / regulations of the commission for the time being in force.
- (4) Wherever the renewable energy generation in a billing month is in excess of the consumption in that month, the balance energy shall be sold to the Distribution Licensee at a price not exceeding the pooled

cost of power purchase as defined in Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 and amendments issued from time to time.

3.14. In this regard, it would be relevant to state that under the provisions of the Electricity Act, the rights available to a generator under section 9 specifically provides that a person is entitled to construct, maintain or operate the captive generating plant and he shall have the right to open access for carrying such electricity from a captive developing plant to the destination of his use.

3.15. For over one and a half years, the adjustment of the Wind energy has been done by adjusting the units generated by the REC Windmills first and thereafter the preferential tariff based Windmills. Wherever there is any excess, the same is banked (limited to the generation of the preferential tariff windmills). The adjustment of the units generated from the annual installed WTG under the REC Scheme is also in consonance with Tariff Order No.6 of 2012 relating to Wind Energy, wherein the Commission in the context of priority of adjustment of wind energy has specifically provided under para-5 E Rule 6 that if a consumer wheels energy for adjustment from more than one Windmill, with such Wind Mill having been commissioned on different dates, priority for first adjustment shall be given to the Windmill Commissioned on a latter day. The energy generated from the wind mill commissioned on an earlier date can be adjusted last. The petitioner had therefore, even on this basis, expected that the adjustment in billing to be strictly in accordance with the applicable such priority for adjustment. It appears that consequent upon the Comprehensive Wind Tariff Order No.6 dated 31.7.2012 that

the order coming into effect on 1.8.2012 necessary working instructions had also been issued. By virtue of the tariff order, the said adjustment priority attained finality.

3.16. The petitioner was therefore surprised to receive an audit demand notice dated 17-06-2014 for the year 2012-13 in respect of its HTSC No.47 wherein the adjustment was made in a manner contrary to the specific provisions of the contract between the parties and the applicable tariff order.

3.17. Upon enquiry of such change in manner of billing it appears that the Chief Financial Controller upon a request for a clarification vide his letter dated 14.9.2012 Chief Financial Controller, TANGEDCO bearing Ref. No.CFC/FC/REV/AAO/HT/D.606/2012 had issued instructions in respect of the manner of adjustment as follows:-

- "(a) The TNERG order on wind energy & order on REG does not have any provision in regard to adjustment priority of banked energy and REC power.*
- (b) The TANGEDGO in principle adopting the procedure of adjusting the high cost power first and lesser cost power later i. e the first priority given for power generator from the later date agreement and vice versa.*
- (c) In clause 8.2.15 of TNERC Order No.6 dated 31.07.2012 on Wind Energy issued by the Commission specified that Wind Energy Generators availing REC one month adjustment period is allowed as permitted for conventional power. The unutilized REC energy will get lapsed as in the case of conventional power.*
- d) As long as the banking facilities are not extended to the WEG availing REC, this power will become cheaper than the power generated from the WEG availing banking facilities.*

e) *The Wind Energy Generator who avail banking facilities can utilize their banked energy during the period of power scarcity and TANGEDCO is liable to supply power to them by procuring in the open market at higher cost and hence this power is costlier than power generated from Wind Energy generator availing REC.*

f) *In line with the above, the higher cost power has to be adjusted first (i.e) Wind Energy generated from wind mills with banking facilities and lesser cost power shall be adjusted later i.e Wind Energy generated from wind mills under REC.*

Hence, it is clarified that the wind energy generated by wind mills with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later.”

3.18. An entirely incorrect clarification has been issued wherein wind energy generated by wind mill by banking facility was directed to be adjusted first and wind energy generated from REC scheme be adjusted later. The said manner of adjustment is contrary to the principle enshrined in the wind tariff order which always mandates adjustment from the last unit first. It is only logical that REC wind mills are permitted adjustment first since they operate on month to month lapsing of energy and if any generator already has wind mills under the preferential regime installed earlier, adjustment of units from Wind mills under the preferential regime prior to the adjustment of units generated by Wind Mills under the REC scheme would result in a situation contrary to the express purpose and intention of the REC Scheme i.e encourage investment in market determined NCES and generators would, therefore, continue to invest only in preferential tariff based wind energy generators. Such an interpretation assigned by TANGEDCO would be contrary to its own interest as it would continue to get persons interested only in preferential

tariff rate WEG - if such an interpretation is given leading to the failure of the very model of investment under the REC scheme.

3.19. The clarification is wholly arbitrary as TANGEDCO themselves admit that there is no priority stipulation from the Commission regarding which energy to be adjusted first. Therefore they ought to have approached the Commission before arriving at any adjustment if they had any doubts rather than taking a decision by themselves and the same is wholly impermissible.

3.20. The REC power is liable to lapse if not adjusted. Additionally, REC power attracts 60% more charges as transmission charges, scheduling and system operating charges, wheeling charges etc. The issue of banking of REC power is subject matter of proceedings on remand by the Hon'ble APTEL in the case of MIS Beta Wind Farm.

3.21. Since the generation of REC power attracts levying of higher charges (on generation itself) and the fact that it is liable to lapse if not adjusted, this should have the first priority of adjustment and not otherwise. The act of TANGEDCO in adjusting the REC generation last amounts to unjust enrichment as any quantum not adjusted will lapse and will be of no use to the consumer or the generator and TANGEDCO will gain by such lapsing. The right of banking what rightfully belongs to the consumer is being deprived of by such action from TANGEDCO which amounts to depriving of someone's legitimate right and is therefore entirely illegal.

3.22. The above mentioned circular of the 3rd respondent bearing Ref.No.CFC/FC/REV/ AAO/HT/D.606/2012 was challenged before the Hon'ble High Court of Madras in WP 33439 of 2013, and the Hon'ble High Court vide its order dated 9.12.2013 was pleased to grant an interim stay of the said circular. The relevant extract from the Hon'ble High Court's order is set out below:

"As the submission of the learned counsel for the petitioner appears to be reasonable, till appropriate instructions are received, there shall be an order of interim stay of the operation of the proceedings in No.CFC/FC/REV/AAO/HT/D.606/2012 dated 14.09.2012, of the Chief Financial Controller (Revenue), TANGEOCO"

3.23. The apparent position of the TANGEDCO that wind energy with banking facility is costlier to TANGEDCO thus necessitating such adjustment is wholly unreasonable considering the fact that the Banking charges are being recovered. This is to be seen in the context of the current Tariff order (TR No.6 of 2012) which clearly states that fixing of RS.0.94 per kWhr has been arrived at by calculating the difference between the Average Power Purchase Cost and maximum Preferential Tariff for wind energy that is being allowed. In other words, in the event of drawl of banked energy, the cost is being recovered from the consumer itself and TANGEDCO is insulated from additional impact if any. Thus TANGEDCO's position of bankable energy being costly to them is without basis.

3.24. The respondent TANGEDCO is, by its arbitrary and illegal actions, enjoying a double benefit i.e. that of denying adjustment to the petitioner thereby forcibly allowing the units to get lapsed and not paying for such lapsed units (the units

which have already stood generated and utilised by TANGEDCO) thereby resulting in unjust enrichment.

3.25. The adjustment that is sought to be changed and revised has been filed herewith as an enclosure. It would be evident that the manner of adjustment would leave the petitioner with the REC Windmills' generation being entirely not being used for the benefit of the petitioner and the entire generation wasted. The TANGEDCO would end in making enormous profit by such arbitrary action.

3.26. The impugned action by issuance of a 'clarification' is violative of the agreements entered into since the energy wheeling agreement itself specifically provided for sale of the surplus units, the same ought to be done on month to month basis in respect of the said REC WEG since lapsing of banked units in respect of WTG covered under the REC scheme take place on a month to month basis rather than on annual basis as in the case of preferential tariff based WTGs. The said manner of adjustment is contrary to the principle enshrined in the wind tariff order which always mandates adjustment from the last unit first. It is only logical that REC wind mills are permitted adjustment first since they operate on month to month lapsing of energy and if any generator already has wind mills under the preferential regime installed earlier, adjustment of units from Wind mills under the preferential regime prior to the adjustment of units generated by Wind Mills under the REC scheme would result in a situation contrary to the express purpose and intention of the REC Scheme i.e encourage investment in market determined

NCES and generators would, therefore, continue to invest only in preferential tariff based wind energy generators.

3.27. The Petitioner therefore prays that the Commission may allow the Petition as prayed for and render justice. The Petitioner has made out a prima facie case and the balance of convenience is also in its favour in the grant of Orders as prayed for. No prejudice, loss or hardship would be caused to the Respondents if the Petition is allowed. On the contrary, grave prejudice, irreparable loss and hardship would be caused to the members of the Petitioner if the present Petition is not allowed. The Petitioner reserves its right to file additional pleadings and documents.

4. Contentions of the Respondents:-

4.1. TNEB's practice until the issuance of the Commission's Order No.3 dated 15-05-2006 in respect of wind mill has been that the wind mill generators may either sell the surplus energy available after adjustment to TNEB at an outright price of Rs 2.70 per unit or bank the surplus energy by deducting Banking charges @ 5% of the energy banked. The banking period starts from 1st April of every year to 31st March of the succeeding year. The unutilized banked energy as on 31st March of every year will be considered as lapsed.

4.2. The Commission had issued Order.No.3 dated.15.05.2006, with regard to Power purchase and allied issues in respect of Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants, after taking into account the existing practices adopted by Tamil

Nadu Electricity Board (TNEB) and the guidelines from the Ministry for Non-Conventional Energy Sources (MNES), in respect of NCES.

4.3. In the said order the Commission had issued banking provision, classification of the WEG and tariff for wind energy as follows:-

Classification of WEG:

1. Group I Projects:

Wind power projects Commissioned, and to be commissioned based on agreements executed prior to the date of this order (i.e) 15.05.2006.

2. Group II Projects:

Wind power projects to be commissioned based on future agreements after the date of this order (i.e).15.05.2006.

Tariff computation:

No.	Particulars	Tariff Rate per KWHr.
1	WEG: Group I	Rs.2.75
2	WEG: Group II	Rs.2.90

Banking:

As followed by most of the other States/ the Commission retains the existing practice of one year (from April to March) banking period of TNEB/ for the NCES based wind electric generators. However, for the Biomass and Bagasse based co-gen generators/ banking provisions shall not apply. The Commission fixes the banking charges as 5% for WEG. The Licensee shall pay at a rate of 75% of normal purchase rate for the unutilized portion of energy banked by the NCES based wind electric generators.

Slot wise banking is permitted to enable unit to unit adjustments for the respective slots towards rebate/ extra charges. However, 'the unutilized portion at

the expiry of banking period will not be distinctly dealt with for adjustment. Such unutilized portion is eligible only for the 75% rate”.

4.4. Pursuant to the above, the Member/Generation had issued detailed working instructions in order to implement the Commission's Order.No.3 dated.15.05.2006 vide circular dated 11.12.2007 wherein it has been stated as follows:-

“II) 5. If the Wind Energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and Wind Electric Generators were commissioned before 15.05.2006 and after 15.05.2006, the higher tariff units have to be adjusted first. For the payment of unutilized banked energy; the lower tariff rate has to be paid to the Generator at Generating end.”

While wheeling the power from more than one Wind Electric Generator towards the adjustment in one HT service, the adjustment has to be done in the descending order of the wind tariff (i.e.), the higher tariff units have to be adjusted first. It is to be noted that the same procedure was followed even for the subsequent Order No.1, dt.20.03.2009 and there was no dispute by the generators.

4.5. The State Commission has issued Comprehensive Tariff Order.No.1 of 2009, dated.20.03.2009 on Wind Energy on classification of the WEG and tariff for wind energy as follows:-

Classification of WEG:

1. Group I Projects:

Wind power projects commissioned, and to be commissioned based on agreements executed prior to the date of this order (i.e). 15.05.2006.

2. Group II Projects:

The windmills commissioned between 15.05.2006 and 19.03.2009

3. Group III:

The Windmills commissioned on or after 20.03.2009.

Tariff Computation:

1. *The wind mills commissioned prior to 15-5-2006 shall be eligible for a tariff of Rs.2.75 per unit.*
2. *The wind mills commissioned between 15-5-2006 and 18-9-2008 shall be eligible for a tariff of Rs.2.90 per unit.*
3. *The wind mills commissioned between 19-9-2008 and 19-3-2009 shall be eligible for a tariff of Rs.2.90 per unit. These windmills shall be eligible for Rs.3.24 per unit from 20-3-2009 to 31-3-2009 and Rs.3.39 per unit from 01.04.2009.*
4. *The windmills commissioned on or after 20-3-2009 shall be eligible for tariff of Rs.3.24 per unit up to 31-3-2009 and the tariff of Rs.3.39 per unit from 01-04-2009”.*

4.6. In this connection to implement the above order, the Director/ Generation/ TANGEDCO had issued instruction vide Circular Memo. No. CE/NCES/ EE/WPP/ AEE-2 /F.TNERC Order No.1/D. /11, dated. 01.07.2011 as follows:-

“As per the Hon'ble ATE Judgment dated.18.03.2011 and approval of CMD/TANGEDCO dated 29-06-2011....., it is hereby instructed to implement the TNERC Comprehensive Tariff Order on wind energy Order No.1 dated 20-03-2009 in full with retrospective effect.

Hence, all the Superintending Engineer/EDCs are requested to adhere all the provisions of the TNERC Comprehensive Tariff Order on Wind Order No.1 dt.20.03.2009 in Toto with retrospective effect”.

4.7. In this regard, it is relevant to note that with regard to adjustment of wind energy for captive use is same for Order No.3 dt.15.05.2006 and Order No.1 dated 20.03.2009, the detailed working instructions already issued vide Circular dated.11.12.2007 for Order No.3 dt.15.05.2006 is followed for Order No.1 of 2009 also.

4.8. The Central Electricity Regulatory Commission has notified Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation Regulation 2010 vide notification dated 14.01.2010, wherein the REC benefit extended only to sale to TANGEDCO category. Subsequently vide its notification dt.29.09.2010, the REC benefit extended for captive generator also.

4.9. The relevant clause 5 (Amended) of the CERC Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010, describes the eligibility criteria for issuance of REC as under:-

- “(i) It sells electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*

- (ii) Provided that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self-consumption for participating in the REC scheme subject to the condition that such CPP has not availed or*

does not proposed to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty”.

4.10. From the above, the REC generator can sell the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

4.11. With regard to wheeling and adjustment of wind energy is concerned, as there is no major change in the Tariff Order No.3 dated 15.05.2006 and Order No.1, dated .20.03.2009, a detailed working procedure already issued on 11.12.2007 issued for Order No.3, dt.15.05.2006 is utilized for Order No.1 dt.20.03.2009 also. As such for Order No.3 dt.15.05.2006 there are two tariff rate i.e. Rs.2.75 & Rs.2.90/unit and for Order No.1, dt.20.03.2009 one rate Rs.3.39/- unit. If a captive generator having the above 3 type of WEGs and wheels for his HT service, the instruction was the higher tariff rate i.e. Rs.3.39/unit to be adjusted first, Rs.2.90/unit to be adjusted second and Rs.2.75/unit is the last. At the end of the banking period, for the unutilized banked energy, the 75% (or) 100% payment is being made with lower tariff rate of Rs.2.75/unit. This was the procedure adopted for Order No.3, dt.15.05.2006 and Order No.1.dt.20.03.2009.

4.12. The petitioner is having some of its WF HT Services under preferential tariff and other WF HT services under REC. The petitioner entered EWA and adjusting the energy in their HT service No.47 of Madurai EDC.

4.13. Under Order No.3, dt,15.05.2006 and Order No.1, dt.20.03.2009, the adjustment was carried out as per instructions dt: 11.12.2007 i.e, the higher tariff rate units to be adjusted first to be banked. For the unutilized banked energy the lower tariff rate was paid. The petitioner had accepted the payments from 2007 onwards without any dispute what so ever.

4.14. Now the Commission issued Tariff Order No.6 dt.31.07.2012. The TANGEDCO vide its circular dt.01.09.2012 issued instructions and implemented the above order. With regard to adjustment of wind energy from more than one wind mill with different tariff rate is concerned, the instructions issued are that if a consumer wheeled energy for adjustment from more than one windmill, which is commissioned in different dates, the priority for first adjustment shall be given to the windmill commissioned in later date and that the energy generated from the wind mill commissioned in earlier date shall be adjusted in later.

4.15. From the above, TANGEDCO has not deviated its procedure from one order to other.

4.16. The Commission has issued the Comprehensive Tariff Order on Wind Energy (Order No.6 of 2012, dt.31.07.2012), wherein it has been stated with regard to banking facility in respect of WEGs availing REC as under:

"8.2.15. With regard to WEGs availing REC, one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in case of conventional power".

4.17. From the above it is clear that the WEGs availing REC does not avail any benefit in the form of concessional /promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty in order to avail the benefit of REC.

4.18. If the banking facility has been extended to the WEGs availing REC as in the case of WEGs non-availing REC, the petitioner might not request to adjust the REC power in the first instance.

4.19. The background of issuance of banking facility is furnished in this regard to establish the position of TANGEDCO. The TANGEDCO has requested the Commission to dispense the banking facility, and the Commission in the Tariff Order No.6 dated.31.07.2012 held as follows:

“xxx

8.2.4. In response to the public notice dated 27-04-2011, the TANGEDCO in its letter dated 13-06-2011 has stated the following:-

"Extending the concessional promotional benefit of banking will hinder the financial position of the TANGEDCO and hence the concessional/ promotional benefit of banking facility may be dispensed with. The surplus

energy after adjustment on every month may be paid at 75% of the applicable power purchase cost. Further, the Electricity Act, 2003 does not speak about banking. However, if at all, the Commission think fit the provision of banking facility, the banking period may be fixed from 1st January to 31st December of every year instead of 1st April to 31st March. The TANGEDCO may settle the unutilized energy at the end of the banking period (31st December) at 75% of the normal purchase rate with increased banking charges of 20%”

4.20. In their letter dated 07-12-2011, the TANGEDCO have stated that the cash outflow for payment of unutilized banked units is increasing every year and the full Board of TANGEDCO is in favour of dispensing with- the banking provision and requested the Commission to dispense with the banking provision not only to future projects but also to the existing projects commissioned before and after 15-05-2006.

4.21. In the additional comments furnished in letter dated 02-06-2012, the TANGEDCO as stated the following on banking:-

(1) As stated already, the WEGs are allowed to supply power to captive user and third party consumers in addition to sale to TANGEDCO, as has been allowed to conventional generators. Hence, there is no need to continue banking facility to wind sector. In fact, provision of banking is alien to the Electricity Act, 2003 and on this ground a/one banking of wind energy need to be dispensed with.

(2) As has been stated already, wind energy generators by virtue of natural consequences and, fortunately, for the WEGs the wind blows during summer season, in TANGEDCOs experience, it is seen that the WEG generates energy, during May to September, without putting any

effort but encashes by adjustment at a later time by virtue of banking that too when the Distribution Licensee is experiencing power deficit due to high demand. It is an open secret that the power deficit is prevailing in most of the States in India and of late, experiencing shortage of coal & gas, difficulties in transportation of coal for various reasons, etc. Therefore, it is a right time to dispense with the banking facility. In fact, while the Wind Energy Generators withdrawing the banked energy, the Distribution Licensee is forced to make purchase of power from open market at much higher cost. Thereby also, the Distribution Licensee is made to suffer financially.

(3) In addition to dispensing with the banking system, the existing requirement on the part of Distribution Licensee to make payment for any excess energy left over after adjustment also requires to be dispensed with, in view of the position that WEG have been provided with all adequate options of distributing their energy through captive use and third party consumer in addition to Sale to TANGEDCO.

(4) Further provision of encashment of unutilized banked energy, leads to additional financial burden to TANGEDCO. The quantum of unutilized banked energy increasing every year exponentially.

In 10/2008, it was 315 MU, in 31.03.2009 it was 251.3 MU and in 31.03.2010 it was 350.658 MU. Hence cash outflow for payment of unutilized banked units is high every year. Such dispensing with may be made applicable to the existing WEGs and to prospective WEGs from the date of such tariff order irrespective of the category to which it belongs.

(5) Further, as per CERC and TNERC REC Regulations, for wheeling of wind energy for captive consumption under REC scheme, they have to forego banking. Since TANGEDCO proposed to purchase the future wind power from REC projects only, the banking may be dispensed with. Further based on the recommendation of the TANGEDCO full Board meeting held on 15.11.2011, a petition MP No.1 of 2012 filed at the Commission to dispense the banking. However, TNERC on 16.02.2012

directed the TANGEDCO to file a fresh petition by impleading the affected parties. Filing fresh petition is in the process.

Under the circumstances, it is suggested that the banking provision for wind energy shall be dispensed with not only to the future projects but also to the existing projects commissioned before and after 15.05.2006 irrespective of the tariff order to which WEG is covered and for which necessary amendments may be effected in the existing Energy Wheeling Agreement.

8.2.7 The Principal Secretary, Energy department Government of Tamil Nadu vide Letter No.10369/C2/2011-3, dated 28-03-2012 addressed to the Commission has stated that the banking provision of wind energy shall be dispensed with not only to the future projects, but also to the existing projects commissioned before and after 15-05-2006.

However, the Commission could continue the banking in pursuant to section 86(1)(e) of the Electricity Act 2003 to promote the renewable energy in the State, subject to the adjustment of energy rates between the two periods relating to banking of energy and drawal of energy from the banking."

4.22. In view of above, the banking facility has to be dispensed since in view of the position that WEGs have been provided with all adequate options of distributing their energy through captive use and third party consumer in addition to sale to TANGEDCO. In fact, while the Wind Energy Generators withdrawing the banked energy; the Distribution Licensee is forced to make purchase of power from open market at much higher cost. Thereby also, the Distribution Licensee is made to

suffer financially. Hence, TANGEDCO is being adopted the adjustment of priority as follows:

"If the Wind Energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and Wind Electric Generators were commissioned before 15.05.2006 and after 15.05.2006, the higher tariff units have to be adjusted first. For the surplus energy sale after adjustment, the lower tariff rate has to be paid to the Generator at Generating end....."

4.23. While factual position being so, the petition is not sustainable one. If the above petition is allowed serious prejudice will be caused to the respondent.

4.24. Subsequently the Commission vide its RPO amendment regulations dated 29.07.2011 extended the REC benefits to captive generators also with the condition to forego the concessional transmission charges, wheeling charges and banking facility. Further the Commission on 28.12.2011 in M.P.No.3, 9, 11 of 2011 vide its order held that the transmission charges, wheeling charges and banking in order No.1, dated 20.03.2009 are concessional one. Hence after adjustment in the month, the surplus energy was paid at Rs.2.37 per unit at APPC rate. While issuing NOC to the petitioner, the same condition was imposed. Up to 31.07.2012 the surplus units paid with the APPC rate.

4.25. In this connection it is submitted that, as per the Commission RPO amendment Regulation dated 29.07.2011, the banking facility is not extended to REC captive generator. Hence as per the agreement, the surplus energy after adjustment, payment was made to the generator at APPC rate of Rs.2.54/unit up to

31.07.2012. With regard to REC project is concerned, the project under sale to Board is governed by the CERC's REC Regulation 2010 and TNERC RPO Regulation 2010 and TNERC Order on APPC rate. With regard to REC captive generation is concerned up to 31.07.2012 it was governed by TNERC RPO Regulations 2010 only. Now only it is covered under Order No.6, dt.31.07.2012.

4.26. In the recent Tariff Order No.6, dated 31.07.2012, the Commission, it is stated that:

"8.2.15. With regard to WEGs availing REC, one month adjustment is allowed as permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power."

4.27. Even in the earlier instructions dated 11.12.2007 issued by the respondent, the adjustment of energy was ordered to be carried out in the same manner ordered in the circular No.CFC/REV/FC/AAO/HT/D.606/12, dt.14.09.2012 (viz) higher tariff rate units are to be adjusted first and the balance to be banked. Since, the banking of energy in respect of REC scheme having been withdrawn. The petitioner has now questioned the manner of adjustment of energy. On the other hand, this respondent never changed the manner of adjustment right from 2007. Hence, the above clarification is not contrary (or) deviations from the procedure already followed from 2007 vide instruction dated 11.12.2007 and the recent instruction dated 01.09.2012 for Order No.6, dt.31.07.2012. To have a demarcation between project under preferential tariff and project under REC scheme, the Commission issued direction in Order No.6, dt. 31.07.2012 to treat the surplus energy as lapsed without giving banking facility. Hence to give banking facility to

the non REC WEGs, the energy generated by the non REC WEGs adjusted first, with higher tariff rate at first and lower tariff rate at later. In order to give effect direction of the Commission for REC WEGs to treat surplus energy as lapsed, the REC units adjusted last. Even though the TANGEDCO has not deviated from the procedure followed for adjustment from one order to other. Since the REC rate is less than preferential tariff, in the descending order it is adjusted last.

4.28. For implementing Order No.6, dated 31.07.2012, TANGEDCO issued Order on 01.09.2012, wherein from more than one Wind Mills commissioned in different date, adjustment is made, it was instructed that the following to be adhered.

"If a consumer wheeled energy for adjustment from more than one windmill, which is commissioned in different dates, the priority for first adjustment shall be given to the windmill commissioned in later date. The energy generated from the wind mill commissioned in earlier date shall be adjusted in later."

4.29. The same procedure adopted for implementation of TNERC Order No.3, dt: 15.05.2006 and Order No.1, dt.20.03.2009 instructions issued on 11.12.2007.

"If the Wind Energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and the Wind Electric Generators were commissioned before 15.05.06 and after 15.05.06, the higher tariff units have to be adjusted first. For the surplus energy sale after adjustment, the lower tariff rate has to be paid to the Generator at Generating end. Similarly for the lapsed banked unit the lower tariff rate only to be paid to the Generators".

4.30. For the instructions dated 11.12.2007, there was no dispute and no objection from the generators including the petitioner and received the payment without any objection.

4.31. Consequent to the instruction dated 01.09.2012 issued for Order No.6, dt.31.07.2012, Tamil Nadu Spinning Mills Association (TASMA), M/s.Madras Cements Limited, Indian Wind Power Association (IWPA) and The Southern India Mills Association (SIMA) have filed writ petitions No.12650/2012, 12749/2012, 12750/2012 & 12883/2012 respectively at Madurai Bench of Hon'ble High Court of Madras and prayed to stay the circular instruction dt. 01.09.2012 and Madurai Bench of Hon'ble High Court of Madras on 26.09.2012 has issued interim stay order. Madurai Bench of Hon'ble High Court of Madras on 08.10.2012 directed the TANGEDCO to file a clarificatory petition before the Commission and on 17.10.2012 extended the stay order until disposal of the petition by the Commission, and with the said orders, the above said W.Ps stand disposed.

4.32. Based on the direction of Hon'ble High Court of Madras, a clarificatory petition M.P. No.38 of 2012 filed by TANGEDCO before the Commission. The Commission on 26-03-2013 has issued interim order that:

"Petition admitted. TANGEDCO is directed to host the petition in its Website. It may also be hosted in the Commissions website. Any interested persons may give their comments on or before 26.04.2013".

4.33. As per the direction of the Commission, the TANGEDCO hosted the petition at TANGEDCO website. The case is pending to be disposed of by the Commission. In the above writ petitions (MD) No.12650/2012 etc. the Wind Association have not raised objection for the above said adjustment procedure including the petitioner.

4.34. As per the provisions of the CERC's REC Regulations, wind power projects installed for captive use are allowed to avail RECs on total generation including

self-consumption, provided such projects forego the concessional transmission and wheeling charges/ losses and other benefits offered by the State Government/SERCs. Hence, contention of the petitioner that wind energy generated from WEGs avail REC shall be adjusted first is not legitimate and sustainable.

4.35. In view of the facts and circumstances of the case on hand and position of law as stated above, the petitioner has no prima facie case to further pursue the above petition. Therefore, the petitioner is not entitled to any relief as prayed for in the above petition. The balance of convenience is clearly in favour of the respondents herein. Hence, considering all the above and more particularly provision of the CERC's REC Regulation, the above petition is liable to be dismissed. By dismissing the same, no prejudice will be caused to the petitioner as he sells environment attribute of renewable energy in the form of Renewal Energy Certificate [REC] tradable in power exchange between the floor price and forbearance price.

5. Written submissions of the Respondent:

5.1. During the year 2012, the Commission issued a Comprehensive Tariff Order on Wind Energy vide order No.6, dt.31.07.2012 (effect from 01.08.2012) wherein the banking facility for the Wind Energy Generators ["WEGs"] commissioned under Renewable Energy Certificate ["REC"] category has been withdrawn. REC Category means that Renewable energy which can be converted as certificates and traded for a value. The buyers of such renewable energy

certificates [REC] will be the users who fall short of their Renewable Purchase Obligation [RPO]. On the other hand, wind energy generators i.e. commissioned under preferential tariff (Non-REC) were extended banking facility.

5.2. In that effect, some Electricity Distribution Circles have requested clarifications on the adjustment priority among the WEGs having banking facility and not having banking facility (i.e. between REC and non-REC category). Based on that, a clarification was issued vide Lr.No.CFC/FC/REV/AAO/HT/D.606/2012, dated 14.09.2012 to adjust the energy wheeled from the WEGs with banking facility first and other WEGs later. Aggrieved to the above circular, M/s. Century Floor Mills had filed a Dispute Resolution Petition before the Commission vide Dispute Resolution Petition No.19 of 2013 and the Commission has passed the order on 19.01.2015. Operative portion of the order is re-produced below:

“ xxxxx

5.6. The Commission has not issued any specific instruction for fixing the priority of adjustment at the user end for the energy generated from WEGs under REC scheme and WEG's under normal captive / third party scheme. The priority imposed by the TANGEDCO vide its letter dated 14-09-2012 for adjustment of energy in this case is arbitrary. Since such decision of the TANGEDCO affects the electricity charges to be paid by the consumers / open access consumers, the TANGEDCO's letter dated 14-09-2012 is not legally valid as mandated by Section 45 of the Electricity Act 2003. In the absence of expressed law, the best option for the TANGEDCO should have been approaching the Commission for issue of such orders. This has not been done by the TANGEDCO. Therefore we have no hesitation to declare that the TANGEDCO's letter No.CEC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012 is arbitrary and not legally valid.

5.7. xxxxx”.

5.3. Pursuant to the above, Tamil Nadu Generation and Distribution Corporation Limited [“TANGEDCO”] filed an appeal before the Hon'ble APTEL vide Appeal No. 53 of 2016 and I.A No.138 of 2016. Meantime, the Commission in its order vide

R.A.No.6 of 2013, dt.31.03.2016 has extended the banking benefit for the REC generators also though the original order dt.31.07.2012 did not provide 12 months banking for such category. However, the Hon'ble APTEL passed order on 23.09.2016 by upholding the Commission's order. The Operative portion of the order is also re-produced below:

“....We are of the considered opinion that the issues raised in the present Appeal have no merits and Appeal and I.A. are hereby dismissed. The Impugned Order dated 19.01.2015 passed by the State Commission is hereby upheld.”

5.4. The Commission initiated R.A. No. 6 of 2013 pursuant to the Orders of the Hon'ble APTEL dated.24.05.2013 made in Appeal No. 197,198, 200, 201, 208 of 2012 and Appeal No. 6 of 2013 and passed an Order dated 31.03.2016 in R.A. No. 6 of 2013 and the Comprehensive Wind Energy Tariff Order No. 3 of 2016 dated 31.03.2016 which is effective from 01.08.2012 to 31.03.2016 and from 01.04.2016 respectively, in respect of REC WEGs extended the banking provision for one year at par with the WEGs under preferential tariff and TANGECO has implemented the said Order No. 3 dated 31.03.2016 vide Memo No. CE/NCES/ SE/EE/ WPP/ AEE2/ F.Order No. 3, dated 31.03.2016/ D.1553/2016 dt. 18.08.2016 and the said position has been submitted before the APTEL during course of the hearing and also pleaded by filing Written Submission, to dispose off the appeal by granting liberty to the TANGEDCO to file Miscellaneous Petition before the Commission for framing regulations in connection with priority of adjustment between the all sources of energy such as Fossil Fuel, IEX, Wind, Solar etc.,

5.5. However, the Hon'ble APTEL has not considered the said changes in vital issue and also not passed any remarks in this issue in the judgment. On the other hand, it has been ordered erroneously that in respect of the WEGs under REC, energy after one month shall be available to TANGEDCO at the free of cost giving un-due benefit to the Appellant. In view of WEGs under REC scheme have the banking provision at par with the WEGs under preferential tariff which has a banking provision of one year with effective from 01.08.2012. Therefore, the said observation is against the core of the issue in the present case and said observation may be termed as mistake of fact and error on the face of the record.

5.6. Considering the above fallacy and the failure of the Hon'ble APTEL in noticing its own previous Order dated 24.05.2013 and also the Commission's Order dated 31.03.2016 in R.A. No. 6 of 2013 and Comprehensive Wind Energy Tariff Order while deciding Appeal No. 53 of 2016, it is arguable that Impugned Order dated 23.09.2016 is per incuriam. Therefore, the TANGEDCO could not implement the impugned Order.

5.7. Hence, aggrieved by the above order, Civil Appeal has been filed by TANGEDCO before this Hon'ble Supreme Court of India vide C.A. No. 15618 of 2017 and this Hon'ble Court has ordered (vide order dt.18.09.2017) to maintain 'status-quo'.

5.8. In this connection, it is relevant to mention that M/s. Ambika Cotton Mills filed Miscellaneous Petition before the Ld TNERC vide M.P.No.14 of 2017 in the matter

adjustment priority between wind energy generators based on principle of First In First Out [FIFO] method against the procedure which had been followed by TANGEDCO that higher purchase tariff has to be adjusted first. In this regard, the Commission passed order on 30.03.2021, the relevant portion which held as follows:

9. Findings of the Commission:-

xxxxx

"If the consumer wheels energy for adjustment from more than one windmill, commissioned on different dates attracting different tariffs, the priority of adjustment shall be in descending order of applicable tariffs i.e adjustment of energy shall be from the windmill commissioned with highest tariff first followed by wind mills commissioned with lower tariffs. The energy from wind mill commissioned in the control period with lowest tariff shall be adjusted last."

5.9. TANGEDCO has filed a miscellaneous petition before the Commission vide MP No.24 of 2021 seeking order of adjustment among various sources (viz. IEX, 3rd Party, Wind, Thermal, Solar, etc) of open access energy wheeled/purchased by the HT consumers. The same has been admitted on 29.06.2021 and it has been ordered to TANGEDCO to webhost the said petition and obtain the stakeholders comments. Pursuant to the above, TANGEDCO webhosted the said petition on 03.07.2021 requesting the stakeholders to furnish their comments on or before 03.08.2021. Based on the above, the following stake holders furnished their comments.

SL. No.	Name of the Stakeholder	Received on
1.	Tamil Nadu Spinning Mills Association.	23.07.2021
2.	Tamil Nadu Electricity Consumers' Association	24.07.2021
3.	The Southern India Mills' Association	28.07.2021
4.	Tamil Nadu Power Producers Association	29.07.2021
5.	Thiru S.Narayanaswamy-Former Member (Generation).	29.07.2021
6.	M/s. Tulsyan NEC Ltd	30.07.2021
7.	IEX-Indian Energy Exchange	03.08.2021
8.	M/s. OPG Energy Pvt Ltd.	03.08.2021
9.	M/s. OPG Power Generation Pvt Ltd.	03.08.2021
10.	Thiru A.D. Thirumoorthy- Member State Working Group on RE	03.08.2021
11.	Indian Wind Power Association	03.08.2021
12.	M/s. Watsun Infrabuild Private Limited.	03.08.2021

The above stakeholder's comments have been submitted on 11.08.2021 before the Commission. Further, it is stated that while hearing of the said Civil Appeal, the Hon'ble Supreme Court of India passed an order on 15.02.2022, the relevant portion which held as follows:

ORDER

We are pained to note that despite our noticing in the order, dated 25.01.2022 that the Regulations to be put in place is an aspect of utmost urgency and for the counsel for respondent No. 2 to take instructions in that behalf considering that the stakeholders had given their suggestions by 03.08.2021 and almost six months have expired, we are now informed that the Regulators will need another eight weeks for the said purpose. We seek to emphasize to the Regulators the importance of their function which they are required to perform and should perform and this kind of hiatus of time period does not reflect well. We give the Regulators,

the last opportunity to bring the fresh Regulations in place on or before 31.03.2022.

We are conscious that the Regulations will apply prospectively but learned counsel agree that this may reflect to some extent, the approach of the Commission on the aspect in question.

List for directions on 06.04.2022.

The Regulations duly notified to be placed before us by that date.

5.10. In continuation to the above, the Hon'ble Supreme Court of India passed an order on 11.04.2022, the relevant portion which held as follows:

ORDER

We are informed that the amended regulations have been notified on 16th March, 2022 have been gazetted/published on 21st March, 2022. Copy of the notification is taken on record.

Learned counsel for the respondent No.1 states that at least prospectively the stand of respondent No.1 stands vindicated and thus the only issue is whether it should apply for the past.

In view of the aforesaid development, we call upon the appellant(s) to examine the aforesaid submission in the larger context so that a quietus can be put to the lis.

Learned senior counsel is granted four weeks' time for the said purpose.

List for directions on 18th July, 2022 and if there is no favorable view taken, though we expect otherwise, we will set it down for hearing in the week commencing 19th July, 2022.

From the above, the only issue which is pending before the Hon'ble Supreme Court of India is whether it should apply for the past. In this regard, TANGEDCO filed

affidavit before the Hon'ble Supreme Court of India on 25.08.2022. Based on the above, the Hon'ble Supreme Court of India passed following order on 26.08.2022:

ORDER

An affidavit has been filed on 25.08.2022/affirmed on 18.08.2022 on behalf of the appellant Para 7 of the affidavit reads as under:

" It is submitted that the appellant is following certain procedure of adjustment right from the year 2008 which is one and the same as ordered by the Ld. TNERC vide notification dated 21.03.2022. With regard to the priority among WEGs under REC and Non- REC, the appellant is following the order of the Ld.TNERC dated 19.01.2015 in D.R.P.No.19 of 2013. In this connection, it is relevant to mention that the Respondents herein had also not disputed the adjustment procedure. Hence, it is respectfully submitted that it may be construed that the appellant has adopted procedure laid down in the notification dated 21.03.2022 for adjustment priority among WEGs under REC and Non-REC with effect from 01.08.2012 retrospectively. Per contra, the abovementioned notification dated 21.03.2022 shall be adopted prospectively for other energy sources of the High Tension consumers."

In view of the aforesaid, the matter can be disposed of in terms of the aforesaid paragraph as no further lis survives.

5.11. In view of the above reasons stated, it is humbly prayed that this Commission is pleased to dispose of the above petitions based on above mentioned lines and pass such further or other orders as this Commission may deem it fit and proper and thus render Justice.

6. Findings of the Commission:-

6.1. This Commission issued the Comprehensive Tariff order on Wind Energy in T.O. No.6 of 2012 dated 31.07.2012. Consequent to this Tariff order, TANGEDCO issued a clarificatory working instructions vide Circular No.CFC/Rev/FC/AAO/HT/D.606/12, dated 14.09.2012 with regard to adjustment of Wind energy generated

by the windmills covered under REC scheme. Aggrieved by the Circular dated 14.09.2012, the petitioner has filed this petition to stay the implementation of the circular and all proceedings pursuant thereto including the Excess demand/energy charges calculated on the basis of this letter and also sought direction to the TANGEDCO to first effect adjustment of the wind energy generated from the petitioner's captive windmills operating under the Renewable Energy Certificate (REC) scheme against the petitioner's service and thereafter adjust the energy generated by the other Windmills.

6.2. The operative portion of the TANGEDCO's letter (dt.14.09.2012) challenged by the petitioner is reproduced below -

a. The TNERC order on wind energy and order on REC does not have any provision in regard to adjustment priority of banked energy and REC power.

b. The TANGEDCO in principle adopting the procedure of adjusting the high cost power first and lesser cost power on later date i.e. the first priority given for power generator from the later date agreement and vice versa.

c. In clause 8.2.15 of TNERC Order No.6 dated 31-07-2012 on Wind Energy issued by the Hon'ble TNERC specified that Wind Energy Generators availing REC one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power.

d. As long as the banking facilities are not extended to the WEG availing REC, this power will become cheaper than the power generated from the WEG availing banking facilities.

e. The Wind Energy Generator who avail banking facilities can utilize their banked energy during the period of power scarcity and TANGEDCO is liable to supply power to them by procuring in the open market at higher cost and hence this power is costlier than power generated from Wind Energy Generator availing REC.

f. In line with the above, the higher cost power has to be adjusted first (i.e.) Wind Energy generated from wind mills with banking facilities and lesser cost power shall be adjusted later i.e. Wind Energy generated from wind mills under REC.

Hence, it is clarified that the wind energy generated by wind mills with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later.”

6.3. It is contended by the petitioner with reference to the Comprehensive Tariff Order No.6 dated 31.07.2012 that, if any generator already has wind mills under the preferential regime installed, adjustment of units from Windmills under the preferential regime prior to the adjustment of units generated by Windmills under the REC scheme would result in a situation contrary to the express purpose and intention of the REC scheme i.e., encourage investment in market determined NCES and generators would, therefore, continue to invest only in preferential tariff based wind energy generators. Moreover, the clarification issued by the TANGEDCO itself admits that there is no priority stipulation from the Commission regarding which energy to be adjusted first. Before arriving at such conclusion the respondent ought to have approached this Commission. The REC power plant's generation attracts 60% more charges as Transmission charges, Scheduling and System Operation charges, Wheeling charges etc., Since the generation of REC power attracts levying of higher charges and it is also liable to lapse if not adjusted, it should be adjusted first.

6.4. The Respondent has stated that even in the earlier instructions dated 11.12.2007 issued by the respondent, the adjustment of energy was ordered to be

carried out in the same manner as ordered in the circular No. CFC/Rev/ FC/AAO/ HT/D.606/12, dt.14.09.2012 (viz.,) with higher tariff rate units are to be adjusted first and the balance to be banked. Since, the banking of energy in respect of REC scheme having been withdrawn, the petitioner has now questioned the manner of adjustment of energy. On the other hand, the respondent never changed the manner of adjustment right from 2007. Hence the circular dated 14.09.2012 is not contrary or inconsistent with the procedure already followed from 2007 vide instruction dated 11.12.2007 and subsequent instruction dated 01.09.2012 for Order No.6, dt.31.07.2012. Further, no prejudice will be caused to the petitioner as he sells environment attributes of renewable energy in the form of Renewable Energy Certificate (REC) tradable in the Power Exchanges between the floor price and the forbearance price.

6.5. In order to deal with this issue, it would be pertinent to refer to the Order passed by this Commission in D.R.P.No.19 of 2013 (M/s.Century Flour Mills Ltd., Vs TANGEDCO) dated 19.01.2015, a case similar to the case on hand, wherein the Commission held as follows -

5.5. On the other hand, the respondent's letter dated 14-09-2012 compares notional cost of energy to be adjusted under REC scheme with the preferential tariff of other WEGs for fixing the priority for adjustment of energy generated by the WEGs under different schemes. However both the TANGEDCO's circular dated 11-12-2007 and the letter dated 14-09-2012 have not been approved by the Commission.

5.6. The Commission has not issued any specific instruction for fixing the priority of adjustment at the user end for the energy generated from WEGs

under REC scheme and WEG's under normal captive / third party scheme. The priority imposed by the TANGEDCO vide its letter dated 14-09-2012 for adjustment of energy in this case is arbitrary. Since such decision of the TANGEDCO affects the electricity charges to be paid by the consumers / open access consumers, the TANGEDCO's letter dated 14-09-2012 is not legally valid as mandated by Section 45 of the Electricity Act 2003. In the absence of expressed law, the best option for the TANGEDCO should have been approaching the Commission for issue of such orders. This has not been done by the TANGEDCO. Therefore we have no hesitation to declare that the TANGEDCO's letter No.CEC/ FC/ REV/AAO/HT/D.606/2012, dated 14-09-2012 is arbitrary and not legally valid.

5.7.we Order that the TANGEDCO shall first adjust the wheeled energy generated from the petitioner's WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive / third party generators which have a banking period of one year. The TANGEDCO is directed to revise the bill of the petitioner based on the energy adjustment priority specified in this Order and settle the account within a period of three months from the date of issue of this order."

6.6. The appeal preferred by the TANGEDCO before the Hon'ble Appellate Tribunal for Electricity against the Order of the Commission was disposed by the Hon'ble APTEL vide order dated 23.09.2016 passed in Appeal No. 53 of 2016. The relevant portion of the order is as follows:-

"11. xxxx xxxx xxxx
a) xxxx xxxx xxxx
viii) xxxx xxxx xxxx

From the above, it becomes clear that while Regulation 8 specifies various aspects of captive use and third party sale, there is no specific mechanism of adjustment priority of REC and Preferential mechanism of

Wind Energy. However, the State Commission can address such mode of adjustment matter under category (12) i.e. any other related issues.

ix. As per the provisions of the Section 61(h) and Section 86(1)(e) of the Act, one of the functions of the State Commission is to provide measures for promotion of renewable energy. Considering the facts specified in the Impugned Order and the provisions of the Act, we are of the considered opinion that the State Commission has rightly held that the communication dated 14.09.2012 issued by CFC, TANGEDCO regarding adjustment priority is not legally valid. Further on the question that whether the State Commission can pass an order specifying the mode of adjustment, we reply in affirmative. The State Commission in its Impugned Order has specified the mode of adjustment which is in line with the Regulation 8 of the "Power Procurement from New and Renewable Sources of Energy Regulations 2008.

x. Hence this issue is decided against the Appellant.

b) On the second issue for our consideration i.e. Whether the State Commission is required to amend the Regulations relating to procurement of wind energy and related issues?, we observe as follows;

i. The State Commission in the Impugned Order acknowledged that there is no specific instruction regarding adjustment of energy from Wind Generators under REC and preferential mechanism. The State Commission has further stated that in the absence of expressed law, the Appellant must have approached the State Commission for further orders.

ii. We have already held that the Regulation 8 of the "Power Procurement from New and Renewable Sources of Energy Regulations 2008" gives power to the State Commission to decide on the issue of mode of adjustment of wind energy of REC and Preferential mechanism.

iii. In view of above, this issue is decided against the Appellant."

6.7. Aggrieved by the above order, the TANGEDCO preferred an appeal before the Hon'ble Supreme Court of India in Civil Appeal No.15618/2017. In the course of hearing the appeal, the Apex court directed, the Commission to bring out the regulations on adjustment in the first instance.

6.8. As the Commission was already in the process of effecting amendment in the TNERC (Grid Connectivity and Intra State Open Access) Regulations 2014, in the matter of fixing priority of adjustment of energy drawn by the Open Access consumer from different sources, it was notified vide Notn.No. TNERC/ISOA/ 11/2-1, dated 16.3.2022 (Gazetted dated 21st March 2022).

6.9. In the Appeal C.A.No.15618/2017 then pending before the Hon'ble Supreme Court of India, TANGEDCO filed an affidavit, and based on that the Apex Court passed the following Order on 26.08.2022,

“ORDER

An affidavit has been filed on 25.08.2022/affirmed on 18.08.2022 on behalf of the appellant Para 7 of the affidavit reads as under:

“ It is submitted that the appellant is following certain procedure of adjustment right from the year 2008 which is one and the same as ordered by the Ld. TNERC vide notification dated 21.03.2022. With regard to the priority among WEGs under REC and Non- REC, the appellant is following the order of the Ld. TNERC dated 19.01.2015 in D.R.P.No.19 of 2013. In this connection, it is relevant to mention that the Respondents herein had also not disputed the adjustment procedure. Hence, it is respectfully submitted that it may be construed that the appellant has adopted procedure laid down in the notification dated 21.03.2022 for adjustment priority among WEGs under REC and Non-REC with effect from

01.08.2012 retrospectively. Per contra, the abovementioned notification dated 21.03.2022 shall be adopted prospectively for other energy sources of the High Tension consumers.”

In view of the aforesaid, the matter can be disposed of in terms of the aforesaid paragraph as no further lis survives.”

6.10. The order passed by the Hon'ble APTEL in Appeal No. 53 of 2016 dated 23-09-2016 and the order passed by the Hon'ble Supreme Court in C.A. No. 15618 /2017 dated 26-08-2022 not only confirmed the order passed by TNERC in D.R.P. No. 19 of 2013 dated 19-01-2015 but also approved the procedure recommended by the Commission with regard to adjustment priority among WEG's under REC and Non-REC Schemes. Further in the affidavit, TANGEDCO has candidly admitted that the procedures are adopted retrospectively with effect from 01-08-2012 in respect of wind mill generators.

6.11. Hence, the prayer of the petitioner to stay the operation of letter no. CFC/FC/Rev/AAO/HT/ D.606/2012, dated 14.09.2012 and effecting of adjustment of energy generated by the WEGs under REC scheme, by now is a settled issue as the method prescribed by the Commission in D.R.P.19 of 2013 is being adopted by the Respondent. Resultantly the Commission hereby passes the following order.

ORDER

This Commission directs that the wind energy generated from the Petitioner's WEG's under REC Scheme during the period covered under the present petition shall first be adjusted by the TANGEDCO in the Petitioner's HT SC 47 as against the other generators and such adjustment shall be made within a

month from the date of this order. The TANGEDCO shall revise / raise the current consumption charges for the relevant period as per this order. No order as to cost.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**