

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 30th Day of May 2024

PRESENT:

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

D.R.P. No. 7 of 2023

M/s. Saravana Global Energy Limited
Represented by its Manager – Marketing
Thiru C. Madhavan
No.15, New Giri Road
T.Nagar
Chennai – 600 017.

Also at
Virudhachalam Road
P.N. Kuppam, Kurinjipadi Post
Cuddalore – 607 302.

... Petitioner
Thiru E.Sathish Kumar
Advocate for the Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.,(TANGEDCO),
Represented by its Chairman & Managing Director
144, Anna Salai,
Chennai – 600 002.
2. The Superintending Engineer
TANGEDCO
Cuddalore Electricity Distribution Circle
Cuddalore

3. The Accounts Officer / Revenue
TANGEDCO
Cuddalore Electricity Distribution Circle
Cuddalore.

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

This Miscellaneous Petition stands preferred by the Petitioner M/s.Saravana Global Energy Limited, Chennai – 600 017 with a prayer to call for the records pertaining to the Demand Notice Lr.No.SE/CEDC/,CUD/DFC/AO/RCS/AS/A4/ F.Audit/D.497-3/2016, dated 13-04-2016 for Rs.13,01,941/- issued by the 2nd respondent along with the BOAB Audit Slip No.3 dated 06.02.2016 and consequent demands of the said Transmission and Distribution loss charges through the High-Tension Bill (Provisional) No.H4180118042311, dated 01.05.2023 issued by the 3rd Respondent and quash the same.

This matter coming up for hearing before the Commission on 26-10-2023 in the presence of Thiru E. Sathish Kumar, Advocate for the Petitioner and Thiru N.Kumanan and A.P.Venkatachalapathy, Standing counsel for the Respondents and upon hearing the submission made by the counsel for the petitioner and the respondents, on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. Contentions of the Petitioner :-

1.1. The Petitioner executed an Energy Wheeling Agreement (HTSC.No.2303) dated 18.02.2010 with the TANGEDCO to wheel the wind energy generated from its Wind Energy Generator No. 2303 of NEG Micon make having capacity of 1650 KW installed at Survey Field Nos.124/15 &124/16 of Soundarapandiapuram Village, Radhapuram Taluk, Tirunelveli District through the Tamil Nadu Electricity Board's transmission/distribution network for captive use of the Petitioner's Company, HT Service No. 118 (HT Tariff Industrial) of Cuddalore Electricity Distribution Circle and bank the surplus energy available after adjustment as per the orders of the Commission in force.

1.2. The 2nd Respondent demanded Rs.14,52,736/- (Rupees fourteen lakh fifty-two thousand seven hundred and thirty-six only) from the Petitioner in six instalments as Electricity Transmission Charges for the period from August, 2012 pertaining to the Petitioner's HT.SC.No.118 vide Letter No.MePo/KaMiPaVa/KaDa/ThuNiKaAa/ /KaAa/KaMe/2013 dated--(Nil). 10.2013 and the same has been duly paid by the Petitioner.

1.3. The Petitioner sold the Wind Energy Generator No. 2303 in March 2015 to Array Land Developers Private Limited and all the documents related to the wind mill have been handed over to the said company.

1.4. During April 2016, the Petitioner received another demand Letter No.SE/CEDC/CUD/DFC/AO/RCS/AS/A4/F.Audit/D.497-3/2016, dated 13.04.2016 from the 2nd Respondent along with the BOAB Audit Slip No.3 dated 06.02.2016 by which the 2nd Respondent demanded another sum of Rs.13,01,941/- (Rupees thirteen lakh one thousand nine hundred and forty-one only) from the Petitioner stating that on review of HT billing file pertaining to the Petitioner's HT.SC.No.118, the Transmission and Distribution loss charges for wheeling of wind mill generation units for the period between August, 2012 and January, 2014 have not been included and collected as per the TNERC's instructions resulting in huge revenue loss to the TANGEDCO. The demand period and the demand made by Letter No. MePo/KaMiPa Va/KaDa/ThuNikaAa/ KaAa/KaMe/2013 dated-Nil). 10.2013 pertain to the same period. The 2nd Respondent informed the Petitioner that the above said Transmission and Distribution loss charges have been calculated as per 2014-2015 Audit A.S.No.3 dated 06.02.2016 and raised illegal demands of Rs.13,01,941/- from the Petitioner.

1.5. In view of the continuous demands by the Respondents, the Petitioner sent a reply to the above demand on 05.05.2016 and informed the 2nd Respondent that the Wind Energy Generator No.2303 was sold in July 2015 itself to M/s. Arrav Land Developers Private Limited and furnished the proof of sale. Thereafter, no communication has been received from the Respondents in this regard, and till date the Petitioner is regular in payment of its electricity high tension bills, consumption charges and deposits to the Respondents.

1.6. Thereafter, again the 2nd Respondent demanded Rs.4,88,358/- (Rupees four lakh eighty-eight thousand three hundred and fifty-eight only) from the Petitioner as Transmission and Distribution Fees for the period from April 2014 to December 2014 vide letter No.SE/CEDC/CUD/DFC/AO/RCS/AS/F.AUDIT/D.651/2017 dated 24.05.2017 along with the BOAB Audit Sip No.51 dated 12.04.2017 and advised to pay in five instalments and the Petitioner has paid two instalments till date through online payments.

1.7. All of a sudden after more than a year, the 3rd Respondent, without giving proper opportunity to the Petitioner, added the above said Transmission and Distribution loss charges of Rs.13,01,941/- in the High-Tension Bill (Provisional) No.118 dated 31.08.2017 and demanded Rs.25,81,964/- (Rupees twenty five lakh eighty one thousand nine hundred and sixty-four only) including the regular consumption charges of Rs.12,80,470/- (Rupees twelve lakh eighty thousand four hundred and seventy only). The alleged demand made by the 3rd Respondent was without basis and no records or evidence were given by the 3rd Respondent in support of their alleged charges. The 3rd Respondent, even without giving any proper opportunity to the Petitioner, has added a huge sum of Rs.13,01,941/- in the regular electricity bill of August, 2017.

1.8. The officials of the Petitioner were in due touch with the 2nd Respondent throughout and duly paying all transmission charges, consumption charges and deposits as per the agreement dated 18.02.2010. It is pertinent to note that the Respondents did not supply any documents in support of the alleged demand/charges and the Petitioner also handed

over all the relevant documents to M/s. Array Land Developers Private Limited as the wind mill was sold to them. Due to the non-availability of the records, the Petitioner could not raise their objections over the Transmission and Distribution loss charges of Rs.13,01,941/-. Hence left with no other option, the Petitioner requested further time from the 2nd Respondent till 31.08.2017 to pay the disputed charges/demand, and paid current consumption charges of Rs.12,80,470/- in lieu of the August, 2017 bill No.118 on 15.09.2017.

1.9. No record was given by the Respondents to the Petitioner evidencing the mismatch of charges during the audit period. Therefore, the demand of the Transmission and Distribution loss charges for wheeling of wind mill generation unit for the period between August, 2012 and January, 2014 and the demand notice dated 15.04.2016 issued by the 2nd Respondent and adding the said charges in the electricity bill dated 31.08.2017 by the 3rd Respondent are illegal, arbitrary and liable to be quashed.

1.10. Since, there was a threat of disconnecting electricity supply to the Petitioner plant, which is huge threat to livelihood of more than 500 workmen and their families, left with no option, the Petitioner approached the Hon'ble Madras High Court vide writ petition in W.P.No.25835 of 2017 to quash the demand notice, along with W.M.P.No.27280 of 2017 to stay the further proceedings in the demand notice. The Hon'ble High Court stayed further proceedings of the demand notice by its order dated 16.10.2017 and directed the Petitioner to deposit 50% of the demand. The same has

been complied by the Petitioner by depositing Rs.6,50,971/- with the 2nd Respondent on 17.10.2017. Further, the writ petition was disposed on 28.02.2023, with a direction to file a petition in terms of section 86 of the Electricity Act, 2003 before the Commission and this Petitioner has been given liberty to file petition without referring to limitation.

1.11. Due to non-availability of the management as they were directly affected by Covid, the Petitioner was not able to file the Petition before the Commission within three weeks. The 3rd Respondent even without giving any proper opportunity to the Petitioner has again added a huge sum of Rs.13,01,941/- in the regular electricity bill dated 01.05.2023.

1.12. The impugned demand notice Lr.No.SE/CEDC/CUD/DFC/AO/RCS/ AS/A4/ F.Audit/D.497-3/2016, dated 13.04.2016 issued by the 2nd Respondent along with the BOAB Audit Slip No.3 dated 06.02.2016, and the High-Tension Bill No.118 dated 31.08.2017 issued by the 2nd and 3rd Respondents are illegal and arbitrary as it did not disclose the materials on which charges on the Petitioner has been levied, since the period for which the demand made by the 2nd Respondent by a Letter No.MePo/ KaMiPaVa/KaDa/ThuNiKada/Kada/KaMe/2013 dated_(Nil).10.2013 has already paid by the Petitioner.

1.13. As per clause 7(a) of the Energy Wheeling Agreement (HT.SC.No.2303), Transmission and wheeling charges shall be 5% of the energy wheeled. This includes line loss charges also". As per the energy wheeled statements issued by the 2nd Respondent, the 5% charges has been already demanded and paid by the Petitioner.

1.14. The Audit Report, Demand Notice and Bill issued by the Respondents are bereft of particulars and do not disclose the mismatch of charges paid by the Petitioner with the demand made by the Respondents and therefore the notices are arbitrary and liable to be set-aside.

1.15. The Respondent failed to consider that the Petitioner sold the Wind Energy Generator No. 2303 in July 2015 to another Company and all the documents related to the windmill have been handed over to the said company and therefore the unlawful demand by the Respondents is liable to be quashed.

1.16. The Respondent failed to consider that the Petitioner has paid entire Charges as per the agreement dated 18.02.2010 without any due for the entire transaction including the audit period and hence the demand notice issued by the 2nd Respondent adding the illegal demand amount of Rs.13,01,941/- in the electricity bill of August, 2017 by the 3rd Respondent is liable to be set aside.

1.17. The alleged finding of the Respondents pertaining to the Petitioner's HT.SC.No.118 and with regard to Transmission and Distribution loss charges for wheeling of wind mill generation units for the period between August, 2012 and January, 2014 as mentioned in the audit report is contrary to the records.

1.18. The demand of the Transmission and Distribution loss charges for wheeling of wind mill generation units for the period between August, 2012 and January, 2014 of Rs.13,01,941/- by the Respondents is against the clauses 6 & 7 of the Agreement dated

18.02.2010 and also against the instructions of the Commission and liable to be set aside.

1.19. The Respondents failed to see that as per the Agreement clauses, the differential amount/charges must be paid or adjusted on monthly basis and it should not be accounted for subsequent periods. Hence, the demand notice issued by the Respondents is liable to be quashed. The findings of the respondents with regard to Transmission and Distribution loss charges are illusionary.

1.20. The respondent has made an erroneous finding that the petitioner has to pay the Transmission and Distribution loss charges in order to avoid revenue loss to TANGEDCO. This is contrary to the facts since the petitioner has already paid the same in six instalments and also duly paid all the charges as per the Agreement from time to time.

1.21. The Petitioner is law abiding and has been paying electricity consumption charges and deposits till date is born on records and as found in the documents filed along with this petition. Therefore, the demand of the respondents is illegal and unwarranted and liable to be set-aside.

1.22. The Respondents have not applied proper procedure in calculating the Transmission and Distribution charges for wheeling of wind mill generation units of the petitioner. Therefore, the alleged demand notice and bill is liable to be set aside.

1.23. The Respondents failed to follow the procedures established by the Commission. Therefore, the demand of the Respondents is illegal and unwarranted and liable to be set aside.

1.24. In any event, the impugned demand notice issued by the Respondents as one resulting out of non-application of mind and presumption based on wrong interpretation/calculation is liable to be set aside.

1.25. The Respondents failed to consider that the Petitioner has not been given proper opportunity to file objections to the demand notice and also failed to see that the Petitioner had not evaded any charges to the Respondents and regularly paying all charges and deposits for the services availed by the Petitioner. These facts were completely ignored by the 3rd Respondent while adding the demand charges in the electricity consumption bill.

1.26. The demand notice issued by the 2nd Respondent was issued without considering the merits and providing sufficient time to the Petitioner to verify the accounts. The 3rd Respondent is demanding the charges with regular Consumption bill.

1.27. The Petitioner had not evaded any charges and has been discharging its liabilities by regular payment to the Respondents. It is evident from the receipts which confirm the payment of the regular consumption charges by the petitioner. However, the Petitioner is facing a threat from the Respondents to disconnect the electricity supply on 23.05.2023

to its manufacturing unit if the Petitioner failed to pay the demand charges on or before 07.05.2023 which is huge threat to livelihood of more than 500 workmen and their families. Left with no other option, the petitioner has approached this Commission seeking redressal and have the impugned demand notices dated 13-04-2016 and 01-05-2023 issued by the second and third respondent respectively quashed.

2. Contention of the Respondents:--

2.1. The petitioner being a consumer of licensee is bound by the provision of the Electricity Act, 2003, the Tamil Nadu Electricity Distribution Code 2004 and the Tamil Nadu Electricity Supply Code, 2004 and as such estopped from disputing the demand.

2.2. Based on the Energy Wheeling agreement (herein after called as EWA) executed between the petitioner and the Superintending Engineer/Tirunleveli EDC to wheel the wind energy generated from WEG.No.2303. Accordingly, the energy was adjusted in the HT SC.No.118 M/s.Saravana Global Energy Limited, Cuddalore as per the conditions of EWA and as per the provisions of relevant orders issued by the Commission from time to time. As such, applicable Transmission and Distribution loss should be deducted from the energy wheeled for adjustment by the petitioner, every month.

2.3. A sum of Rs.14,52,736/- (Rupees Fourteen lakhs fifty two thousand seven hundred and thirty six only) as mentioned in the petitioner's affidavit is related to transmission charges and said amount was collected from the petitioner as per the advice from the Superintending Engineer/ Tirunelveli Electricity Distribution Circle.

2.4. The petitioner, in its petition, has stated that the WEG No.2303 was sold to M/s.ARRAY Land Developers Private Limited during the month of March, 2015. The demand for Transmission and Distribution loss pertains to the period from 08/2012. During the said period the EWA was valid and as such the outstanding dues concerning transmission and distribution loss has to be paid by the petitioner.

2.5. The BOAB Audit of Villupuram Region while conducting audit of HT Accounts, issued a Slip No.3 dated 06.02.2016 towards non - levy of Transmission and Distribution loss which is to be collected for the period from 08/2012 to 01/2014 for a sum of Rs.13,01,941/- (Rupees Thirteen lakhs one thousand nine hundred and forty one only). This demand relates to Transmission and Distribution loss and it is not related with transmission charges. The petitioner has misrepresented the same as if it was already paid as mentioned in the para No.(4). Hence, the demand of Rs.13,01,941/- is legal and it is Transmission and Distribution loss (hereinafter referred as T&D Loss) which is payable by the petitioner.

2.6. The petitioner has paid the regular electricity charges as per the consumption but has not remitted the Transmission and Distribution loss as demanded by the TANGEDCO. The sale on the WEG to another party is its own business activity. The demand is within the agreement period and hence the petitioner is liable to pay the Transmission and Distribution loss charges as demanded.

2.7. Based on the Audit Slip No: 51 dt 12.04.2017 towards short fall in Transmission Distribution charges for the period from April 2014 to December 2014, a sum of

Rs.4,88,388/- (Rupees Four lakhs eighty eight thousand three hundred and eighty eight only) was demanded and the petitioner was advised to pay in 5 installments at its request. Consequently, a sum of Rs.2,93,015/-(Rupees two lakhs ninety three thousand and fifteen Only) has been paid by the petitioner in 3 installments.

2.8. Due to non-payment of the Transmission Distribution loss charges amounting to Rs.13,01,941/- the same was included in the 08/2017 monthly CC charges after providing enough opportunities to the petitioner.

2.9. The required relevant documents have been given to the petitioner and thereupon, the demand has been issued and included in the 08/2017 CC bill. The audit slip has also been given to the petitioner. The demand of Transmission charges is as per the agreement and it is legitimate to collect the shortfall as it is a lawful revenue to TANGEDCO. The petitioner is, thus, liable to settle the outstanding dues to TANGEDCO.

2.10. Non-payment of the legitimate charges payable to TANGEDCO, is against the natural justice. The supporting documents have been provided to the petitioner and hence the demand of Transmission and Distribution loss charges for wheeling of wind mill generation units for the period from 08/2012 and 01/2014 and demand notice dated 15.04.2016 and inclusion of such charges in 08/2017 in monthly CC bill is legally valid. It is the petitioner's responsibility to remit the applicable charges as per WEG agreement.

2.11. The demand notice issued is legal since Transmission and Distribution loss charges are to be paid by the petitioner as per the energy wheeling agreement executed by M/s. Sarava Insulator Limited.

2.12. As per the WEG agreement, Supply Code, Electricity Act 2003 and the tariff orders issued by the Commission from time to time, the transmission charges are to be paid by the petitioner.

2.13. Even though the wind energy generator No.2303 was sold to another company in July 2015 and all the documents related to wind mill have been handed over to M/s.ARRAY Land Developers Private Limited, the Transmission charges demanded for the period from 2012-2014 is lawfully due since Energy Wheeling Agreement provides as follows:-

*“Transmission and wheeling charges “
Transmission and wheeling charges shall be 5% of the energy wheeled. This includes line loss also.*

2.14. The Transmission Distribution loss charges for wheeling of wind mill generation units for the period from 08/2012 to 01/2014 is legally valid and it was omitted during the billing. Upon review of the HT billing file, the omission has been detected and demand raised.

2.15. The demand of Transmission charges is as per the agreement dated 18.02.2010 and also as per the direction of the Commission.

2.16. The shortfall of T&D loss is liable to be paid by the petitioner as per the agreement clause. 7. The T&D loss charges claimed for the prior period (i.e. 2012 to 2014) is liable to be settled by the petitioner. The T&D loss charges is not illusory and it is payable by the petitioner as per the Commission's orders. The petitioner has remitted only the Transmission charges in 6 installments and not paid the T&D loss charges as mentioned in the prayer. The T&D loss charges is one among the other charges payable by the petitioner. The Electricity consumption charges and deposits are levied for the consumption for business activity. The demand on T&D loss is also legally valid and payable by the petitioner. The T&D loss charges for wheeling of wind mill generation units has been calculated as per the provisions of the tariff orders issued by the Commission.

2.17. All the procedures as framed by the Commission have been followed without any deviation and hence the demand is a legal one. All the calculations regarding the demand notice have been properly done and there is no violation. Sufficient opportunity has been extended to the petitioner on 13.04.2016 and 24.05.2017 respectively to remit the T&D loss charges after lapse of one year from the notice period. Only after providing enough opportunities, the said charges have been included in the regular CC charges for the month 08/2017. The demand notice was issued to the petitioner only after considering the merits and sufficient time given to remit the charges.

2.18. The petitioner is liable to pay T&D loss charges as per the orders of the Commission. Since the petitioner did not come forward to settle the T&D loss charges

amounting to a sum of Rs.13,01,941/-, it was included in the regular CC bill for the month of 08/2017.

2.19. However, instead of remitting the charges, the petitioner had filed a petition before the Hon'ble High Court of Madras vide W.P.No.25835 of 2017 and as per the direction of the Hon'ble High Court of Madras, an amount of Rs.6,50,971/- was paid on 21.10.2017. The balance 50% of T&D loss charges of Rs.6,50,970/- (Rupees Six lakhs fifty thousand nine hundred and seventy only) as per the Audit Slip No.3, dated 06.02.2016 and Rs.1,95,371/- towards the dues arising out of 4th & 5th Audit Slip No.5, dated 12.04.2017 totalling to Rs.8,46,341/- (Rupees Eight lakhs forty six thousand three hundred and forty one only) is payable towards T&D loss charges payable by the petitioner. In view of the above referred facts, absolutely there is no merit in the application and as such the petition deserved to be dismissed.

3. Rejoinder filed by the Petitioner:-

3.1. The Respondents have just only one argument to support their demand that the earlier demand of windmill energy transmission charges of Rs.14,52,736/- (Rupees fourteen lakh fifty- two thousand seven hundred and thirty-six only) for the period from August, 2012 pertaining to the Petitioner's HTSC.No.118 made by the 2nd Respondent vide a Letter No. MePo/KaMiPaVa/KaDa/ThuNiKaAa/KaAa/KaMe/2013 dated (Ni).10.2013 was only for Energy Transmission Charges (which is duly paid by the Petitioner) and that the subject demand is for Energy Transmission Loss Charges.

3.2. As per clause 7(a) of the Energy Wheeling Agreement (HT:SC.No.2303), Transmission and wheeling charges shall be 5% of the energy wheeled. This includes line loss charges also". No separate agreement was made for the line loss charges and hence the Respondents cannot segregate the transmission charges and line loss charges. As per the energy wheeled statements issued by the 2nd Respondent, 5% charges have been already demanded and paid by the Petitioner. Therefore, the demand of Rs.13,01,941/- is illegal and the Petitioner is not bound to pay it.

3.2. The Petitioner paid entire dues and/ or installments under the Audit Slip No.5. However, it is not a subject matter of the Petition. With a sole intention to mislead the Commission, the Respondents are saying that the Petitioner has not paid 4th & 5th instalments. But surprisingly, till date there is no communication or demand from the Respondents to recover this so-called instalment dues.

4. Arguments advanced on either side heard. Evidence on record perused. Relevant provisions of law traversed.

5. The vital point that crops up for consideration is as to whether the demand notice dated 13-04-2016 issued by the 2nd Respondent on the basis of the BOAB Audit Slip dated 06-02-2016 and the consequent demand notice dated 01-05-2023 issued by the 3rd Respondent are arbitrary, ultravires and not sustainable under law as contended by the petitioner.

6. Findings of the Commission:-

6.1. The question which arises for consideration in the present petition is whether the claim made by TANGEDCO to the extent of Rs.13,01,941/- arising out of the audit slip No.3 dated 06.02.2016 and consequential demand for transmission and distribution charges is sustainable under law. Having gone through the pleadings on both side and evidence adduced before us we find that there is no dispute with regard to the demand of transmission loss charges as such for the period from August 2012 to the extent of Rs.14,52,736/- and the present issue is limited only to extent of the transmission and distribution loss charges, namely, line loss charges for the period from August 2012 to January 2014. We are not inclined to traverse all the averments set out by both side as the issue is limited to the point whether the claim made by the respondent based on BOAB's audit slip 3 is tenable.

6.2. Having said that let us examine the bone of contention with reference to the reliance placed by both sides on facts and law. It is the contention of the petitioner that the demand for the transmission, distribution loss charges for wheeling of generated units from the wind mill of the petitioner for the period between August 2012 and January 2014 to extent of Rs.13,01,941/- is against clauses 6 & 7 of the Agreement dated 18.02.2010 entered into between the parties. In specific, the petitioner contends that the transmission wheeling charges as per clause 7 (a) of the EWA @ 5% of energy wheeled is inclusive of line loss charges. It is further the contention of the petitioner that the audit report, demand, notice, and the bill issued by the respondent are bereft of particulars and

do not disclose the mismatch of charges paid by the petitioner with the demand made by the petitioner and therefore all the notices are liable to be set aside.

6.3. Per contra, the Counsel for the respondent contends that the impugned demand relates to transmission / distribution loss not to transmission charges and that the petitioner being consumer of the licensee is bound by the Electricity Act 2003, TN Electricity Distribution Code, TN Electricity Supply Code and Tariff orders issued by the Commission, and hence the petitioner is estopped from disputing the demand.

6.4. For the purpose of understanding the present issue in a better perspective, it is necessary to reproduce the relevant portions of the agreement between the parties, namely EWA especially clause 7 & 9.

7. Charges:

a. Transmission and Wheeling Charges: Transmission and Wheeling charges shall be 5% of the energy wheeled. This includes line loss also

b. Banking Charges: Banking charges shall be 5% of the energy banked

c. Energy Charges: The energy charges shall be payable by the Wind Energy Generator, for the energy supplied by the Board at the rate as applicable for that category as per the tariff order in force.

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9. Applicability of the Acts and Regulations:

Both the parties shall be bound by the provisions contained in the Electricity Act, 2003., Regulations, notifications, orders and subsequent amendments, if any, made from time to time.

6.5. A reading of the above provision in the EWA, no doubt, confirms the stand taken by the petitioner that the transmission and wheeling charges shall be 5% of energy wheeling which includes the line loss also. In this connection the respondent has not

disputed the fact that T&D loss charges / line loss is embedded in the Transmission charges which is charged @ 5% of the energy wheeled and the only contention advanced by the respondent is that the impugned claim is as per the statutory provisions in force. However, on perusal of the material records, we find that the respondent mechanically proceeded to issue the impugned notice solely on the basis of the audit slip without an independent application of mind. Nowhere in the reply, there is a faintest of indication to establish that the respondent applied its mind independently to establish that the impugned claim is in order. There is no discussion as to the applicability of clause 7(a) of EWA on the part of the respondent which is the focal point of reliance made by the petitioner.

6.6. The impugned communication of SE/Cuddalore dated 13.04.2016 merely encloses the audit slip dated 06.02.2016 and seeks payment within 30 days. The audit slip dated 06.02.2016 merely states that transmission and distribution loss charges have not been included and have to be collected as per the instructions of TNERC and CFC instruction dated 09.07.2013 and further states that the same has resulted in revenue loss to TANGEDCO. Though the audit slip sets out the calculation for the claim in question, in our view, it abjectly falls short of explaining how the claim is sustainable in the light of clause 7(a) of the EWA. After all, it is incumbent on the part of the BOAB to set out the validity of a claim with reference to the specific statutory provisions and discuss the same with the clauses in the EWA and how the provisions relied upon it

overrides a provision in the EWA. That has not been done in this case and merely calculations have been furnished.

6.7. In all fairness, atleast the Superintending Engineer / Cuddalore ought have applied his mind to the facts of the case by considering clause 7 (a) of the EWA before issuing the impugned demand which has not been done. We find that the reliance on clause 9 of the EWA is not sustainable as the said provision is general in nature. In order to override clause 7 of the EWA, the petitioner ought to have pointed out another provision in EWA which has overriding effect or the specific provision of law or the regulations. In the absence of any such defence on the part of the respondent, we are left with no alternative but to give our stamp of approval to clause 7(a) of the EWA.

6.8. For the above reasons, we find that the impugned claim made for transmission and distribution loss (which is otherwise called line loss) is patently against the provisions of the EWA more so, the threat of disconnection which is an abuse of process of law. In all fairness, such inclusion of claims in the demand notice merely based on the audit slips without independent appreciation of the claim by the concerned authorities should be avoided in future to avoid unnecessary litigation.

6.9. In view of the preceding discussions and legal conclusion arrived at by this Commission, there remains no shadow of doubt that the demand notice dated 13-04-2016 issued by the 2nd Respondent based on the BOAB Audit Slip No. 3 dated 06-02-2016 is arbitrary, ultravires and hence not sustainable under law.

Accordingly this point is answered in favour of the petitioner.

In the result, the Commission pass the following order:-

- (i) The demand notice in Lr. No. SE/CEDC/CUD/DFC/AO/RCS/AS/A4/F.Audit/D 497-3/2016, dated 13-04-2016 issued by the 2nd Respondent along with the BOAB Audit Slip No. 3 dated 06-02-2016 and the consequent demands of the said Transmission and Distribution loss charges through the High Tension Bill (provisional) No.H4180118042311 dated 01-05-2023 issued by the 3rd Respondent shall stand set aside being arbitrary and not sustainable under law;
- (ii) The amounts remitted by the petitioner or collected from the petitioner in this regard shall be adjusted by the respondents in the forthcoming CC bills.
- (iii) Parties shall bear their respective costs.

Petition stands disposed of accordingly.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission