

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82(1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

Thiru M. Chandrasekar ... Chairman  
Thiru K. Venkatasamy ... Member (Legal)  
and  
Thiru R.Jarard Kishore ...Member

**M.P No.38 of 2021**

M/s. OPG Power Generation Pvt. Ltd.  
Represented by its Authorised Signatory  
OPG Nagar, PeriyaObulapuram Village  
NagarajaKandigai, Madharapakkam Road  
Gummidipoondy, Thiruvallur, Tamil Nadu  
Pin: 601 201

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

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.  
(TANGEDCO)  
Represented by its Chief Financial Controller  
144, Anna Salai  
Chennai – 600 002.
2. The Chief Engineer / PPP  
TANGEDCO  
Chennai – 600002.

...Respondents  
(Thiru. M. Gopinathan  
Standing Counsel for TANGEDCO)

**Dates of hearing :** 12-10-2021; 26-10-2021; 09-11-2021;  
30-11-2021; 15-12-2021; 04-01-2022;  
and 01-02-2022

**Date of order:** 23-02-2022

The M.P.No.38 of 2021 came up for hearing on 01-02-2022. The Commission, upon perusal of the petition and connected records and after hearing the submissions of the petitioner hereby makes the following order:-

**1. Prayer of the Petitioner in M.P. No.38 of 2021:-**

The prayer of the Petitioner in M.P. No.38 of 2021 is to impose penalty upon the Respondents in accordance with section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 15-12-2020 in M.P. No.7 of 2019 and consequently direct the Respondents to make payments of the pending amounts along with interest till date of payment.

**2. Facts of the Case:-**

This petition has been filed for not initiating action under section 142 of the Electricity Act, 2003 in the matter of non-compliance of order of this Commission dated 15-12-2020 in M.P. No. 7 of 2019.

**3. Contentions of the Petitioner:-**

3.1. The present petition is filed due to the non-compliance of order of this Commission dated 15-12-2020 in M.P. No.7 of 2019 which was filed by the petitioner herein and for initiating action under Section 142 of the Electricity Act, 2003. The Chief Financial Controller, TANGEDCO is being made a party to this petition since they have not approved the payment due to the Petitioner under the Order of the Commission dated 15.12.2020 in M.P. No.7 of 2019.

3.2. The Petitioner filed M.P. No.7 of 2019 praying the Commission to pass an order directing the Respondents to comply with the order of the Commission in P.P.A.P. No.3 of 2014 dated 29.07.2016 and comply strictly with the P.P.A. dated 12.12.2013 in terms of the petitioner's communication of adherence to the approved PPA in its letter dated 22.05.2018 and consequently, prepare the MOD stack taking into account the approved terms of the PPA and issue schedules accordingly. The petition was filed seeking to set aside the instructions issued by the 1<sup>st</sup> Respondent vide its letter dated 07.08.2018, directing that the power supplied by the Petitioner shall be continued to be at an energy charge of Rs.3.1170/- Kwh after availing a discount of Rs.1.20/- per unit despite the cost being fixed at by an adoption order under section 63 of the Electricity Act, 2003 by the Commission and incorporated in the terms of the PPA being Rs.4.3170/- Kwh.

3.3. The Petitioner is engaged in the business of electricity generation and supplying to discoms within the State of Tamil Nadu. A petition being M.P. No. 37 of 2012 was filed by the 1<sup>st</sup> Respondent, wherein the Commission approved to float a tender for procurement of 1000 MW  $\pm$  20% with certain deviations. Thereafter, the 1<sup>st</sup> respondent floated tender on 21.12.2012 to procure 1000 MW  $\pm$  20% RTC 34 Power of long term under Case-I bidding procedure being base load requirement of TANGEDCO over a period of 15 years from 01.10.2013 to 30.09.2028. The petitioner had also submitted its bid for supply of 74 MW power amongst other companies. The petitioner was ranked 11<sup>th</sup> in the process with an actual levelised tariff of Rs.7.502 per kwhr. Thereafter, the first respondent has

procured 1208 MW of power at a revised levelised tariff of Rs.4.910 per kwhr from first four successive bidders. TANGEDCO had proposed to purchase 3330 MW of power from nine private power generators and two power traders and a Case I bidding at a levelised tariff of Rs.4.910 per kWhr by entering into PPS with those generators for a period of 15 years.

3.4. The 1<sup>st</sup> respondent after considering the availability of power and power demand in the State of Tamil Nadu proposed to procure a balance of 2222 MW power from the total quantum of 3430 MW in Tender No.03/PFLT/2012 after negotiating with the remaining bidders including the petitioner herein and requested them to match with the revised levelised tariff of Rs.4.910 per kwhr. The petitioner was one among the bidders who agreed to match the revised levelised tariff of Rs.4.910 kwhr and accepted to offer an additional rebate on payment against provisional bill raised. The Lol was issued to the petitioner on 14.11.2013 and was accepted unconditionally by the petitioner. Thereafter, a PPA was entered between the petitioner and the first respondent on 12.12.2013 for supply of 74 MW RTC power on long term from the petitioner's power plant at Gummidipoondi, Tamil Nadu from 01.01.2014 as per terms of the PPA.

3.5. Subsequently, the 1<sup>st</sup> respondent filed P.P.A.P. NO.3 of 2014 praying to adopt the levelised tariff of Rs.4.910 per kwhr for purchase of 74 MW base load power from the petitioner's company amongst different loads from different companies in terms of section 63 of the Electricity Act, 2003. During the pendency of the P.P.A.P. No.3 of 2014, the petitioner offered a conditional

discount of Rs.1.20/- per unit and the said discount was reported to the Commission by TANGEDCO (Respondent) and the Commission has recorded the submission of the TANGEDCO. The discount offered by the Petitioner was conditional, unilateral and voluntary on the basis that the 2<sup>nd</sup> respondent would provide the petitioner a schedule of at least 85% of the contracted capacity of the PPA. This is evident from the original letter dated 27-01-2016 sent by the petitioner, extracted below:-

*"As you are aware, Tamil Nadu suffered from severe flooding causing widespread damage and financial stress to the State and the EB systems. As our humble contribution in the flood relief and restoration of electrical infrastructure, we are pleased to offer a discount on the Monthly Energy Charge in Rs./kWh ( "MEPn" as defined in the PPA) contained in the PPA. This discount is for the period from 28-01-2016 upto 31-05-2016.*

*We humbly offer a discount of Rs.1.15 per kWh (One Rupee Fifteen Paise per Kwh) on the MEPn for the period from 28-01-2016 till 31-05-2016.*

*In the event of any outage at our plant during the relevant period (i.e., 28-01-2016 to 31-05-2016) and our available capacity is less than 85% we confirm that the above level of discount will apply on the actual power scheduled. We further confirm that the amount forgone by us by the above mentioned discount will not be claimed by us subsequently. "*

3.6. In its subsequent letter dated 01.02.2016, it clarified that the discount was of Rs.1.20/- per unit and not Rs.1.15/- per unit, which was confirmed in its letter dated 03.02.2016 stating as follows:

"We humbly offer a discount of Rs.1.20 per kWh on the monthly energy charge(MEPn) contained in the PPA. This discount is for a period of 5 years and the same can be extended as required. We hope that our request is considered favourably and we request you to consider, if possible, a schedule of 85% of the contracted capacity"

3.7. After taking into account the arguments of all parties and the letters concluded that the intention underlying the discount offer is evident that the petitioner is offering discount in order to get 85% schedule of the contractual capacity. The operative portion of the Order of the Commission dated 15.12.2020, is reproduced hereunder for ready reference:-

*“9.13. Further, we have to determine the issue within the contours of the provisions of the PPA. It is noticed that the PPA has not been amended to give effect to the discounts offered by the petitioner. Nor the Commission has passed any specific orders on the discount made by the petitioner. The Commission has only recorded the submission made by the TANGEDCO regarding the discount offered by the petitioner. Now, it appears that the condition of the petitioner is not fulfilled by respondent and in such circumstance, the person making such conditional offer can withdraw it as it has no binding effect. The discount offered by the petitioner is not legally enforceable when it decides to withdraw it. Therefore, we hold that the petitioner is entitled to withdraw its discount offer and the respondent is liable to pay the tariff to the power supplied by it to the respondent at the tariff approved in the PPA dated 12-12-2013 and this order taken effect from the date of filing of this petition i.e. on 16-04-2019.*

*With the above orders, this petition is finally disposed of.”*

3.8. However, till date the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 15.12.2020 in M.P. No.7 of 2019. They sent a letter dated 02.01.2021 to the Director, Finance, TANGEDCO requesting them to comply with the Order of the Commission and make the payment of the pending amount with interest till date, but to no avail. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its financial obligations. The delay in payments by TANGEDCO has further hampered the Petitioner's capacity to carry on its business. The Petitioner is being constrained to seek the

Commission's indulgence to enforce its rights under the PPA and Order of the Commission.

3.9. On the reason of the continuing non-compliance of this Commission's Order dated 15-12-2020, the Respondents have rendered themselves for proceedings and punishment under section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 is reproduced hereunder for ready reference:-

*"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):*

*In case any complaint is filed before the Appropriate Commission by any person or if the Commission is satisfied that any person has contravened any of the provisions of this act or the rules or regulations made thereunder, or any direction issued by the commission, the appropriate commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Rs.6000 for every day during which the failure continues after contravention of the first such direction. "*

3.10. In light of the fact that the Respondents have not complied with the Order of the Commission and have not made any payments to the Petitioner till date, the Petitioner is constrained to approach the Commission for enforcement of the Order. Moreover, since the Respondents have failed to comply with the Order of the Commission dated 15.12.2020, they have rendered themselves for punishment under Section 142 of the Electricity Act, 2003.

#### **4. Contention of the Respondents 1 & 2:-**

4.1. M/s.OPG Power Generation Pvt. Ltd (hereinafter referred as "Petitioner") had filed Miscellaneous Petition No.38 of 2021 before the Commission praying to impose penalty upon the Respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 15.12.2020 in M.P No.7 of 2019 and consequently direct the respondents to make payments of the pending amounts along with the interest till the date of payment.

4.2. Once the offer made by Petitioner was accepted, the Petitioner is bound by its offer and the offer of discount could not have been withdrawn unilaterally. Therefore, the letter dated 22.05.2018 misconceived and cannot be relied upon. The Respondent No.1 & 2 suitably responded to the same on 07.08.2018.

4.3. The Petitioner offered bid for 74 MW RTC power under long term and was declared successful at the levelized tariff rate of 4.91/kwhr. The Commission approved and adopted the same vide order dated 29.07.2016 after recording the voluntary discount offered by the Petitioner along with other two Intra-State generators. The Commission in order dated 29.07.2016 while adopting the tariff has noted as under:

*"7.7. During the hearing of the above P.P.A.P. held on 23-02-2016, the TANGEDCO submitted interalia that M/s. Coastal Energen Private Ltd., M/s..IL&FS Tamil Nadu Power Company Ltd. and OPG Power Generation Pvt.Ltd. have offered some reduction in the rate discovered in the tender for specific periods. The Commission directed the TANGEDCO to file Written Statement to the above effect. Accordingly TANGEDCO filed Written Statement on 26-02-2016. In para 17 of the said Written Statement, TANGEDCO has stated as follows:-*

*"Though it is out of context to the issue of adoption of levelised tariff, which is the average tariff over the period of the contract (15 years) duly escalated as per the escalation indices and discount factors issued by CERC for the purpose of evaluation, the voluntary discounts offered by M/s. Coastal Energen, M/s.IL&FS and M/s.OPG Power are enclosed for the information of the Commission "The above statement of the TANGEDCO is recorded"*

It is further submitted that subsequently, in the tariff order dated 11.08.2017, the Commission notified the Petitioner as unapproved source for FY 2017-2018 and approved source for FY 2018-19, taking into consideration the discount offered in the energy charges”.

4.4. As is evident from a reading of the letter dated 03.02.2016, the discount offered was voluntary and unconditional. The letter dated 03.02.2016 clearly uses the word, “if possible” which shows that no obligation was cast upon TANGEDCO to schedule 85% as alleged, nor was the offer conditional upon the same. The letter dated 03.02.2016 as reproduced:-

*" ..... This has reference to our long term PPA with TANGEDCO entered into on 12.12.2013 for supply of 74 MW power from our power plant at Gummdipoondi, Tamil Nadu for 15 years.*

*We humbly offer a discount of Rs.1.20 per kWh on the monthly energy charge (MEPn) contained in the PPA. This discount is for a period of 5 years and the same can be extended as required.*

*We hope that our request is considered favourably and we request you to consider, if possible, a schedule of 85% of the contracted capacity .....* "

4.5. Without prejudice, the scheduling follows the principle of Merit Order Dispatch (MOD). The Petitioner cannot in any event, seek to enforce a condition that is contrary to the regulatory framework governing scheduling of power.

4.6. Further, it is not open to the Petitioner to contend that the PPA has not been amended considering that the Petitioner has made a unconditional offer of discount. The Petitioner cannot unilaterally withdraw the offer, once the same has been accepted by the Respondent No.1 & 2.

4.7. The Petitioner's interpretation of the order passed by the Commission in MP No.7 of 2019 is untenable. Hence, Appeal Petition DFR No.42 of 2021 filed by the Respondent No.1 & 2 before Hon'ble APTEL praying to set aside the order dated 15/12/2020 passed by the Commission in M.P.No.7 of 2019.

4.8. The impugned Order seeks to award relief which has not been prayed for by the Petitioner and deserved to be set aside on this ground alone. Had the petition No.7 of 2019 been filed for refund of discounted tariff, then it would have considered as Dispute Resolution Petition (DRP) before TNERC which warrants remittance of 1% of disputed amount. But the Petitioner had filed only Miscellaneous Petition praying to place them under MOD considering the Quoted Tariff in the PPA without discount and had not mentioned anything about payment. In spite of it, the Commission had directed Respondent No.1 & 2 for payment of discounted charges from the date of filing of petition by the Petitioner till the date of order by which the Respondent No.1 & 2 will incur heavy financial commitment.

4.9. The Respondent No.1 & 2 had filed an Appeal Petition vide DFR No.42 of 2021 before Hon'ble APTEL challenging the Commission Order dated 15.12.2020 in M.P No.7 of 2019.

4.10. The Respondent No.1 & 2 had also filed application IA No.1785 of 2021 for urgent listing of DFR 42 of 2021 and IA No.1784 of 2021 praying to grant stay for the order dated 15.12.2020 passed by the Commission in M.P No.7 of 2019.

4.11. The application IA No.1785 of 2021 filed by The RespondentNo.1 & 2 in DFR No.42 of 2021 & IA Nos.1084 (Application for condonation of delay in refiling the appeal) & 1784 of 2021 (Stay Application) came up for hearing on 16.11.2021 before Hon'ble APTEL.

4.12. The Hon'ble APTEL vide its daily order dated 16.11.2021 requested State Commission not to pass any effective/final orders in the execution proceedings.

4.13. Due to the above stated reasons, it is not applicable for initiating action under Section 142 of the Electricity Act, 2003 against the Respondent No.1 & 2.

4.14. For the reasons stated hereinabove, it is requested that the Commission may not to pass any effective/final orders in the execution proceedings as ordered by the Hon'ble APTEL.

4.15. Further, based on the outcome of the Appeal Petition DFR No.42 of 2021, filed by the Respondent No.1 & 2 before Hon'ble APTEL, compliance of the Order of the Commission dated 15.12.2020 in M.P No.7 of 2019 will be considered and act upon accordingly.

**5. Rejoinder filed on behalf of the Petitioner:-**

5.1. The instant Rejoinder Affidavit is being filed in response to the two Counter Affidavits dated 26.11.2021 and 15.12.2021 filed by the Respondents. The Respondents have filed two counter affidavits without prior leave of this Commission and as such, it is prayed that this Commission may pass necessary orders in this regard.

5.2. The present petition was filed due to the non-compliance of Order of the Commission dated 15.12.2020 in M.P. No.7 of 2019 which was filed by the Petitioner herein and for initiating action under Section 142 of the Electricity Act, 2003. The Petitioner filed M.P. No. 7 of 2019 praying the Commission to pass an order directing the Respondents to comply with the order of the Commission in P.P.A.P. No.3 of 2014 dated 29.07.2016 and comply strictly with the P.P.A. dated 12.12.2013 in terms of the petitioner's communication of adherence to the approved PPA in its letter dated 22.05.2018 and consequently, prepare the MOD stack taking into account the approved terms of the PPA and issue schedules accordingly. The petition was filed seeking to set aside the instructions issued by the 1<sup>st</sup> Respondent vide its letter dated 07.08.2018, directing that the power supplied by the Petitioner shall be continued to be at an energy charge of

Rs.3.1170/- Kwh after availing a discount of Rs.1.20/- per unit despite the cost being fixed at by an adoption order under section 63 of the Electricity Act, 2003 by the Commission and incorporated in the terms of the PPA being Rs.4.3170/- Kwh.

5.3. The Petitioner is engaged in the business of electricity generation and supplying to discoms within the State of Tamil Nadu. Consequent to filing of a petition being M.P. No. 37 of 2012 by the 1<sup>st</sup> Respondent, this Commission approved to float a tender for procurement of 1000 MW  $\pm$  20% with certain deviations which the 1<sup>st</sup> respondent floated on 21.12.2012. The petitioner had also submitted its bid for supply of 74 MW power amongst other companies. The petitioner was ranked 11<sup>th</sup> in the process with an actual levelised tariff of Rs.7.502 per kwhr. Thereafter, the 1<sup>st</sup> respondent procured 1208 MW of power at a revised levelised tariff of Rs.4.910 per kwhr from first four successive bidders. TANGEDCO had proposed to purchase 3330 MW of power from nine private power generators and two power traders and a Case I bidding at a levelised tariff of Rs.4.91 per kwhr by entering into PPA with those generators for a period of 15 years.

5.4. The 1<sup>st</sup> respondent after considering the availability of power and power demand in the State of Tamil Nadu proposed to procure a balance of 2222 MW power from the total quantum of 3430 MW in Tender No.03/PFLT/2012 after negotiating with the remaining bidders including the petitioner herein and requested them to match with the revised levelised tariff of Rs.4.910 per kwhr. The petitioner was one among the bidders who agreed to match the revised

levelised tariff of Rs.4. 910 per kwhr and accepted to offer an additional rebate on payment against provisional bill raised. The Lol was issued to the petitioner on 14.11.2013 and was accepted unconditionally by the petitioner. Thereafter, a PPA was entered between the petitioner and the 1<sup>st</sup>respondent on 12.12.2013 for supply of 74 MW RTC power on long term from the petitioner's power plant at Gummidipoondi, Tamil Nadu from 01.01.2014 as per terms of the PPA.

5.5. Subsequently, the 1<sup>st</sup>respondent filed P.P.A.P. No.3 of 2014 praying to adopt the levelised tariff of Rs.4.91 per kwhr for purchase of 74 MW base load power from the petitioner's company amongst different loads from different companies in terms of section 63 of the Electricity Act, 2003. During the pendency of the P.P.A.P. No.3 of 2014, the petitioner offered a conditional discount of Rs.1.20/- per unit and the said discount was reported to the Commission by TANGEDCO and the Commission has recorded the submission of the TANGEDCO. The discount offered by the Petitioner was conditional, unilateral and voluntary on the basis that the 2<sup>nd</sup>Respondent would provide the Petitioner a schedule of at least 85% of the contracted capacity of the PPA. This is evident from the original letter dated 27.01.2016 sent by the Petitioner, extracted below:

*"As you are aware, Tamil Nadu suffered from severe flooding causing widespread damage and financial stress to the State and the EB systems. As our humble contribution in the flood relief and restoration of electrical infrastructure, we are pleased to offer a discount on the Monthly Energy Charge in Rs./kWh ( "MEPn" as defined in the PPA) contained in the PPA. This discount is for the period from 28-01-2016 upto 31-05-2016.*

*We humbly offer a discount of Rs.1.15 per kWh (One Rupee Fifteen PaisePer Kwh) on the MEPn for the period from 28-01-2016 till 31-05-2016.*

*In the event of any outage at our plant during the relevant period (i.e., 28-01-2016 to 31-05-2016) and our available capacity is less than 85% we confirm that the above level of discount will apply on the actual power scheduled. We further confirm that the amount forgone by us by the above mentioned discount will not be claimed by us subsequently. "*

5.6. The Petitioner in its subsequent letter dated 01.02.2016, it clarified that the discount was of Rs.1.20/- per unit and not Rs.1.15/- per unit, which was confirmed in its letter dated 03.02.2016 stating as follows:

*"We humbly offer a discount of Rs.1.20 per kWh on the monthly energy charge(MEPn) contained in the PPA. This discount is for a period of 5 years and the same can be extended as required. We hope that our request is considered favourably and we request you to consider. if possible, a schedule of 85% of the contracted capacity"*

5.7. The Commission after taking into account the arguments of all parties and the letters concluded that the intention underlying the discount offer is evident that the petitioner is offering discount in order to get 85% schedule of the contractual capacity. The operative portion of the Order of the Commission dated 15.12.2020, is reproduced hereunder for ready reference:

*"9.13. Further, we have to determine the issue within the contours of the provisions of the PPA. It is noticed that the PPA has not been amended to give effect to the discounts offered by the petitioner. Nor the Commission has passed any specific orders on the discount made by the petitioner. The Commission has only recorded the submission made by the TANGEDCO regarding the discount offered by the petitioner. Now, it appears that the condition of the petitioner is not fulfilled by respondent and in such circumstance, the person making such conditional offer can withdraw it as it has no binding effect. The discount offered by the petitioner is not legally enforceable when it decides to withdraw it. Therefore, we hold that the petitioner is entitled to withdraw its discount offer and the respondent is liable to pay the tariff to the power supplied by it to the respondent at the tariff approved in the PPA dated 12-12-2013 and this order taken effect from the date of filing of this petition i.e. on 16-04-2019.*

*With the above orders, this petition is finally disposed of. "*

5.8. However, till date the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 15.12.2020 in M.P. No.7 of 2019. The Petitioner sent a letter dated 02.01.2021 to the Director, Finance, TANGEDCO requesting them to comply with the Order of the Commission and make the payment of the pending amount of Rs.48,86,74,292/-, but to no avail. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its financial obligations. The delay in payments by TANGEDCO has further hampered the Petitioner's capacity to carry on its business. The Petitioner is being constrained to seek the Commission's indulgence to enforce its rights under the PPA and Order of the Commission. On the reason of the continuing non-compliance of this Commission's Order dated 15.12.2020, the Respondents have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003.

5.9. The Petitioner states that the Respondents have filed two counter affidavits dated 26.11.2021 and 15.12.2021. The Counter Affidavit dated 26.11.2021 merely records that the Respondents have filed an Appeal against the Commission's Order dated 15.12.2020 in M.P. No.7 of 2019, vide DFR No. 42 of 2021 before the Hon'ble APTEL. Admittedly, the IA No. 1785 of 2021 for urgent listing of the Appeal and IA No. 1084 of 2021 for condonation of delay in filing the appeal was allowed. Further, I.A. No. 1784 of 2021 seeking a stay of the order of the Commission was listed on 16.11.2021, wherein the Hon'ble APTEL

requested the Commission not to pass any effective/final orders in the present petition stating, however, that the formal proceedings may continue. Thus, the contents of the counter affidavit dated 26.11.2021 merit no response from the Petitioner. Consequently, the appeal filed by the TANGEDCO was numbered as Appeal No.321 of 2021 and final arguments were heard and concluded on 21.12.2021, on which date judgment has been reserved by the Hon'ble APTEL. Since, the Hon'ble APTEL has categorically allowed for the formal proceedings in the present petition to continue only staying the final orders, the appeal filed by the TANGEDCO is no bar for continuing the present proceedings.

5.10. The Commission has categorically held that the offer of discount was conditional and as such could be withdrawn by the petitioner, if the Respondent did not fulfill the condition. As such, the contention of the Respondents that the letter dated 22.05.2018 is misconceived, is contrary to facts and incorrect.

5.11. The Respondents are repeatedly misinterpreting the offer of the petitioner as unconditional, when clearly and as rightly held by the Commission, the offer was contingent upon the obligation of TANGEDCO to schedule 85% of the contracted capacity. The Respondents are misinterpreting the Petitioner's offer to provide discount and trying to enforce the same and take advantage of the petitioner's offer without fulfilling the responsibility from their end. It is denied that the condition to schedule 85% of the contracted capacity is contrary to the regulatory framework and the Respondents are put to strict proof of the same. The Respondents had accepted the petitioner's offer which came with a condition

and now, without fulfilling the condition are seeking to take advantage of the discount offered by the Petitioner.

5.12. The Commission has categorically held that the issue has to be determined within the terms of the PPA and has issued orders consequent to the same. The order issued by this Commission is well within its powers. The Respondents' contention that the payment of discounted charges will lead to financial difficulty is untenable as the same cannot be a reason for non-payment.

5.13. It suffices to state that mere filing of an appeal does not act as a bar for initiating action for non-compliance of the Order. Moreover, the order of the Hon'ble APTEL requesting the Commission not to pass final orders, however, permitting formal proceedings in the instant petition to continue, was issued only on 16.11.2021 and thereafter, the said appeal was fully heard and judgment has been reserved by the Hon'ble APTEL on 21.12.2021. Thus, the Respondents' contention that action under Section 142 of the Electricity Act, 2003, cannot be initiated is untenable.

## **6. Findings of the Commission:-**

6.1. The prayer of the Petitioner in M.P. No.38 of 2021 is to impose penalty upon the Respondents in accordance with section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 15-12-2020 in M.P. No.7 of 2019 and consequently direct the Respondents to make payments of the pending amounts along with interest till date of payment.

**6.2. Hearing held on 12-10-2021:-**

Thiru Rahul Balaji, Advocate appeared for the petitioner and argued that in proceedings under section 142, the prayer for release of payment is permissible. ThiruM.Gopinathan, Standing Counsel for TANGEDCO appeared. The counsel for the respondent submitted that the TANGEDCO has gone for an appeal against the order of the Commission in M.P.No.7 of 2019 and this petition is summarily dismissed.

**6.3. Hearing held on 26-10-2021:-**

The counsel for TANGEDCO sought time as appeal is pending against the orders of the Commission and it is to be decided whether during the pendency of appeal proceedings under section 142 can be taken up. The Counsel for TANGEDCO also contended that the present petition is not a Miscellaneous Petition (M.P.). The counsel for the petitioner argued that in the absence of stay, the order has to be complied with. Commission observed that the petition is one of Miscellaneous Petition as only enforcement of earlier order is sought to be done and further observed that in the absence of stay, the order of the Commission has to be complied with and any non-compliance would be visited with recovery of interest on account of delay from the concerned officials. The counsel for TANGEDCO agreed to convey the same to the officials concerned.

**6.4. Hearing held on 01-02-2022:-**

In the hearing held on 01-02-2022, the Counsel for the Petitioner submitted that the order of the Commission in M.P. No. 7 of 2019 filed by the

petitioner company has been set aside by the Hon'ble APTEL and hence prayed to permit him to withdraw the petition with a liberty to file fresh petition.

The Commission upon perusing the records and after hearing the submission of both parties passes the following:-

**ORDER**

The Petitioner is permitted to withdraw the petition with liberty to file fresh petition. Accordingly, the petition is closed as withdrawn.

(Sd.....)  
**(R.Jarard Kishore)**  
Member

(Sd.....)  
**(K.Venkatasamy)**  
Member (Legal)

(Sd.....)  
**(M.Chandrasekar)**  
Chairman

/True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**