

other order or orders as the Commission may deem fit and proper in the facts of the case.

2. Facts of the Case:-

This petition has been filed to fix the adjustment priority among various sources of open access energy against HT consumption.

3. Contentions of the Petitioner:-

3.1. The present Miscellaneous Petition seeks to fix the adjustment priority among various sources of open Access energy against HT consumption.

3.2. The Commission issued Order.No.2 dated 15.05.2006 and Order.No.4 dated 15.05.2006 in the matter of Determination of Transmission Charges, Wheeling Charges, Cross Subsidy surcharge and Additional Surcharge and Power purchase and allied issues in respect of fossil fuel based Group Captive Generating Plants and fossil fuel based Cogeneration plants respectively. In continuation to the above, Chief Engineer/Private Power Project [CE/PPP] issued procedure and working instructions for accounting, adjustment of Energy and collection charges vide Memo.No.CE/PPP/SE/PP/EE/ABE/CPP/F.TNERC/D.4091 07, dated 06.11.2007, as follows:-

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In the case of billing where adjustment for Captive Power Plant generation and wind generation are to be made slot-wise, the Consumption shall be adjusted against the Captive generation units slot-wise initially, and then the balance consumption may be adjusted against slot wise Wind energy generation.”

3.3. Due to prevailing of acute power shortage, based on the instructions from the Government of Tamil Nadu vide Lr.No.121, Energy Department dt.22.10.2008 and as per Regulation 38 of the TNE Distribution Code, Restriction and Control measures were implemented from 01.11.2008. In order to manage the power cuts, the HT consumers were permitted to procure power from other sources under short-term open access and the cross-subsidy surcharges supposed to be paid by the HT consumers for the purchase of power from 3rd party/IEX sources was also waived until lifting of R & C measures. Thereby the HT consumers started purchasing the power from IEX/3rd party sources to meet out their requirement in addition to their captive sources. The purchase of Third party power/IEX power was considered as additionality for availing Energy/demand quota over and above the quota fixed taking in to account the base energy/demand during the period prior to implementation of R & C. Prior to implementation of R & C measures, the captive wheeling was mostly from their own wind mills which is infirm nature. In order to adjust the power purchased by the HT consumers from IEX, 3rd party Captive sources etc illustrations with regard to adjustment of energy purchased/wheeled from various sources were issued vide Circular Memo. CFC/GL/DFC/REV/AS.3/D.NO.04/11 dt.14.02.2011. As per the instructions the adjustment method among open access sources is as follows:

- i. IEX
- ii. 3rd party power
- iii. Thermal power through captive wheeling
- iv. Renewable energy through captive wheeling

3.4. During the year 2012, the Commission issued a Comprehensive tariff on wind energy vide Order No.6dated 31.07.2012 (effect from 01.08.2012) wherein the banking facility for the WEGs commissioned under 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]. The REC generators are not given any concession in Open Access charges which would normally be available for any other RE generators. In that effect, some EDCs 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, dt.14.09.2012 to adjust the energy wheeled from the WEGs with banking facility first and other WEGs later. Since, wind season normally starts from May middle and lasts up to September end or early October. During the wind season the excess energy generated over and above the consumption is banked after deduction of banking charges in kind [in units] which is presently @ 14%.The banked energy isdrawn during both the wind season and non wind season when sufficient wind generation could not materialize. Thus, effectively TANGEDCO has to purchase/generate power to supply to the consumers having wind banking facilityduring the non wind season.

Due to the above reasons adjustment priority was issued between the wind energy with banking and wind energy without banking.

3.5. Aggrieved to the above circular, M/s. Century Floor Mills had filed a Dispute Resolution Petition before the Commission vide DRP No.19 of 2013 and the Commission has passed the order on 19.01.2015. Operative portion of the order is re-produced below:-

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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. Having declared that the TANGEDCO's letter dated 14-09-2012 is arbitrary and not legally valid, let us now devise a prudent method for fixing the priority for adjustment of energy generated by WEGs in this case. The wheeling agreement signed by the parties as well as the Commission's Order on Wind Energy recognize only one month energy adjustment period for wheeling of power by WEG under REC scheme. However, the other captive generators which are not availing Renewable Energy Certificate (REC) are eligible for banking of energy for a period of one year from April to March next year as specified in the comprehensive orders on wind energy issued by the Commission from time to time. Therefore, the energy to be adjusted under REC scheme has a shelf period of one month whereas the energy to be adjusted under normal scheme has a shelf period of one year. In such circumstances, it is prudent to follow the doctrine of efficacy to decide on the priority. In one such case, the Hon'ble APTEL on Appeal No. 38 of 2010, has referred the following observation of the Hon 'ble Supreme Court in the matter of Union of India vsD.N.Revri& Company reported in (J 976) 4 SCC 147".

“7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation ”Applying the above principle in this case, 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 ”.

3.6. Pursuant to the above, TANGEDCO filed an appeal before the Hon'ble Appellate Tribunal for Electricity [APTEL] vide Appeal No. 53 of 2016 and I.A. No.138 of 2016. Meantime, the Commission in its order R.A.No.6 of 2012, 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 has passed the order on 23.09.2016 by upholding the TNERC's order. The Operative portion of the order is also reproduced 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”.

3.7. Aggrieved by the above order, TANGEDCO had filed a Civil Appeal before the Hon'ble Supreme Court of India vide C.A. No. 15618 of 2017 and Hon'ble Court has ordered (vide order dt.18.09.2017) to maintain 'status-quo'. The said appeal was last listed on 02.03.2020 for final disposal. TANGEDCO is pleading the Hon'ble Court to remand the matter to the Commission for deciding the priority since the Commission has extended 12 months banking facility for the REC generators with retrospective effect i.e.w.e.f. 01.08.2012. This is the adjustment position among the RE generators under REC and Non-REC as on date.

3.8. M/s.Ambika Cotton Mills filed a Miscellaneous Petition before the Commission vide M.P.No.14 of 2017 in the matter adjustment priority between wind energy generators based on principal 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 has passed order on 30.03.2021, the relevant portion which held as follows:-

"9. Findings of the Commission:-

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The priority of adjustment where energy is wheeled by a consumer from multiple windmills commissioned on different dates in different control periods with different tariffs applicable, shall be as follows:-

"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”.

“9.18 As to the prior approval for adjustment of energy, the petitioner has also not agitated the issue as long as for 10 years which leads to an inescapable conclusion that the petitioner did not find the method of assessment illogical or unreasonable. However, the licensee is directed to take prior approval of the Commission for any action that violates the rules/orders/regulations or is a subject of contention between the stakeholders.

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3.9. From the above order, the Commission upheld the method of adjustment procedure followed by TANGEDCO among the wind energy generators commissioned on various control period from year of 2007 (i.e. High Cost power to be adjusted first, so that in the event of unutilised energy becoming payable, TANGEDCO will pay only the least rate). Further also, it is ordered that the licensee is directed to take prior approval of the Commission for any action that violates the rules/orders/regulations or is a subject of contention between the stakeholders.

3.10. The following procedure is being followed for adjustment of energy when a HT consumer wheel / purchase from various source of energy under open access:

- i. IEX power
- ii. 3rd party power
- iii. Captive Thermal energy
- iv. Captive Solar power
- v. Captive Wind energy without banking
- vi. Wind energy with banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the payout for the unutilized quantum of energy)

However, as like captive category, now, the HT consumers are purchasing energy under 3rd party arrangement from the more than once source viz. fossil fuel, wind, solar, bio-mass and bagasse based co-gen. Therefore, in order to adopt the principle and to maintain must run status of the renewable energy sources, to encourage the green power and to curtail the revenue loss to TANGEDCO, the predefined sequence of adjustment is essential for the open access sources. Moreover, the no. of HT consumers and the open access quantum of energy are also increasing year after year. A table showing year wise Gross energy and net consumption is tabulated as follows:

Details of HT Adjustments (in MU)							
Sl. No.	Year	Gross Consumption	IEX	Third Party	Captive Consumption	Total Adjustment	Net consumption from TANGEDCO
1	2014-15	25985.79	293.490	697.200	9212.710	10203.40	15782.39
2	2015-16	27064.820	321.831	232.773	10280.076	10834.680	16230.140
3	2016-17	28557.780	146.400	64.79	14968.725	15179.915	13377.870
4	2017-18	30187.920	350.240	176.360	16151.780	16678.380	13509.540
5	2018-19	32458.470	1195.200	345.270	15243.230	16783.700	15674.770
6	2019-20	32421.000	2471.540	602.830	14480.353	17553.723	14867.277
7	2020-21	27917.000	2848.590	812.270	12731.750	16391.610	11525.390

3.11. The HT consumers who are having captive wind energy generation is wilfully availing the IEX/3rd party, captive thermal during the wind peak generation period so as to bank the excess wind energy and utilize during the wind off-season period at the cost of TANG ED CO. The quantum of power purchase from the IEX/3rd party and fossil fuel sources by a HT consumer (HT SC

No.099094110573) who is also having wind energy under captive category is shown as below:

Month	Consumption	IEX	Captive Thermal	Captive Solar	Wind		Banked Units
					Allotted	Adjusted	
May 2020	1678500	0	951000	0	1507776	727500	780276
June 2020	3155400	0	0	0	4384340	3155400	1228940
July 2020	4671600	1260439	1488000	0	3214075	1923161	1290914
August 2020	5116600	0	1488000	0	4268456	3628600	639856
September 2020	6411200	0	1116000	0	5486381	5295200	191181
October 2020	6400500	0	1488000	0	5088474	4912500	175974
November 2020	5160700	1204741	3979313	0	187837	27119	160718
December 2020	7174200	3988245	2734480	0	493854	449216	44638
January 2021	5782000	5063227	0	263322	749809	336618	413191
February 2021	6141300	3919432	0	1812533	29639	1425	28214
March 2021	7494000	4662341	0	1955995	2360236	658808	1701433
Total	59186000	20098425	13244793	4031850	27770877	21115542	6655335

3.12. Due to the existence of banking facility, the above HT consumer is purchasing power from the IEX|3rd party and fossil fuel sources even during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season. Moreover, the wind generation is having must run status and the Commission has generously extended banking facility and concession in OA charges to the wind energy generators to promote the RE generation in the State. In all ways benefits are extended to the Wind Generators.

Further, the Commission has issued guidelines on the procedure of banking of wind energy in every order issue on wind energy that;

“.....The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the banking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.”

3.13. As per above guidelines, the HT consumer has to exhaust the wind energy generated during any month against the industrial consumption. But as shown in the table, the HT consumer is purchasing power from the IEX/3rd party and fossil fuel sources even during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season.

3.14. The Commission may issue clear guidelines on the sequence of adjustment among various kinds of Open Access sources duly taking into consideration of the financial aspects viz. open access charges, cross subsidy surcharges, etc. leviable for these adjustments. The Commission has generously given concession to the RE generators in open access charges as well as cross subsidy surcharges also besides extended banking facility for the wind energy generators. As a result of these concessions, TANGEDCO is facing negative impact on its financials. Hence the Commission may kindly make a note of the above, pronounce a clear order of adjustment so as to streamline the adjustment

of energy wheeled/purchased from different sources by the HT consumers under open access. In this connection TANGEDCO is submitting the following sequence of adjustment for kind consideration of the Commission. The order of priority has been made on the basis of the open access charges and cross subsidy surcharges leviable for the open access sources.

Non-captive category:

- i. IEX power
- ii. TPP
 - a. 3rd party from thermal generator
 - b. 3rd party from bagasse generator
 - c. 3rd Party from biomass generator
 - d. 3rd party from bagasse generator
 - e. 3rd party from biomass generator

Captive category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (HigherCost first and lower cost later)
- c.. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)
- d. Solar power (higher cost first lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. Thermal energy (surplus units lapsed)

4. Affidavit filed by the Petitioner:-

4.1 The petitioner filed Miscellaneous Petition seeking order of adjustment among various sources of open Access energy against HT consumption vide M.P.No.24 of 2021. The same has been admitted on 29.06.2021 and it has been ordered to TANGEDCO to webhost the said petition and to 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 stakeholders have 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	ThiruS.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 Generators 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. WatsunInfrabuild Private Limited	03-08-2021

4.2. The stakeholders mentioned in Sl.No.1 and 2 have stated that the matter of Priority of Adjustment is already sub-judice before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 filed by TASMA. With respect to the above comment, it is submitted that the impugned circular issued vide Circular Memo No.CE/GO/SE/Comml.Opn/EE/OA/F.Exchange/D102/20, dated 7.07.2020 is only relevant to approval and accounting of IEX power purchased by the HT consumers under inter-state open access. In said circular, the sequence or adjustment or energy among various sources of open access power was not mentioned. Hence, the contention of the stakeholders is not correct. Further, it is submitted that with regard to other issues (viz. Civil Appeal No.15618 of 2017, M.P.No.14 of 2017, etc.) raised by the stakeholders in their comments, most of

the issues were already covered in the original petition filed by the petitioner TANGEDCO.

ORDER

In view of the fact Grid Connectivity and Intra-State Open Access Regulations, 2014 have been amended providing for priority on adjustment of Open Access energy vide Notification TNERC/150A/11/2-1, dated 16-03-2022 consequent to the direction of the Hon'ble Supreme Court of India in the Civil Appeal No.15618 of 2017 filed by M/s. Century Flour Mills Limited, nothing survives in this petition and accordingly the petition is dismissed as infructuous.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission