TAMIL NADU ELECTRICITY REGULATORY COMMISSION

(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

ThiruM.Chandrasekar .... Chairman

and

ThiruK.Venkatasamy …. Member (Legal)

M.P. No.5 of 2019

Power Engineers Society of Tamil Nadu
45, Balaguru Garden
Peelamedu, Coimbatore – 641 004.

… Petitioner
(Represented by Thiru. S.Gandhi
President, PESOT)

Vs.

1. The Chairman and Managing Director
   TANGEDCO
   800, Anna Salai, Chennai – 600 002.

2. The Director (Finance)
   TANGEDCO
   800, Anna Salai, Chennai – 600 002.

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

3. Tamilnadu Spinning Mills Association
   #2, Karur Road, Modern Nagar
   Dindigul – 624 001
   Represented by its Chief Advisor
   Dr.K.Venkatachalam

…. Impleading Respondent
(Adv.R.S.Pandiyaraj on
behalf of TASMA)

Dates of hearing : 25-03-2019; 28-01-2020; 19-01-2021; 09-02-2021; 09-03-2021; 15-04-2021; and 03-08-2021

Date of Order : 31-08-2021

The M.P.No.5 of 2019 came up for final hearing on03-08-2021. The Commission upon perusal of the petition and connected records and after hearing the submissions of the petitionerhereby makes the following:-

ORDER

1. Prayer of the Petitioner in M.P.No.5 of 2019:-

The prayer of the petitioner in M.P. No.5 of 2019 is to-

(i) withdraw “banking” on any generation as it is a financial injustice to the TANGEDCO and thereby the common consumers of this State.

(ii) dispense the status of Group Captive to wind generators and order to probe the status of Group Captive classification issued earlier in conformity to the act.

(iii) order that the adjustment of generation is based only on value of the generation and not on quantity and

(iv) order to revise the billing in retrospective effect that is from the first order dated 15-06-2006.

2. Facts of the case:-

The present petition has been filed praying to dispense with the undue and unscientific facilities of banking of wind energy generation, the rights to wind generators get classified under as a group captive unit in spite of its infirm nature and allowing toadjust low valued wind energy to higher valued retail tariff in quantum than by value. The aforesaid facilities have become directions to TANGEDCO to subsidise wind generators at the heavy cost of retail consumers and the TANGEDCO and these facilities have made the retail tariff to escalate.

3. Contention of the Petitioner:-

3.1. The petitioner has come before this commission with the plea to dispense with certain facilities, which has no legal sanction but extended to wind generators for the last decade which resulted in heavy financial loss to the distribution company, namely, TANGEDCO and thereby to the retail consumers of this State. This loss had been transferred upon the common public in all the retail tariff revisions. Now the accruing heavy losses due to the undue and unscientific facilities extended to the wind generators, which may be around 20,000 crore to our calculations, threaten the electricity consumers of the State pending to be transferred future retail tariff revision. The petitioner is particularly concerned about the facilities of banking extended to the wind generators, the Group Captive unit status to these infirm power generators and adjusting low tariff generation in quantum with higher retail tariff than to be in value of tariffs fixed by the Commission.

3.2. It is well known, electricity cannot be stored and reused from the storage in megawatts. If world of science is successful in storing electrical energy and the technology is capable to adopt such inventions, it is a boon and could have saved a great amount of energy and also the environment. Unfortunately, such technology or scientific invention is not available till today to the humankind. Storage of electricity in smaller quantity in batteries cannot be compared to the banking of huge amount of electrical generation in megawatts. This is the scientific reality that the Commission erred to note in the past and extended the banking facilities to wind generators.

3.3. Such facilities of banking carries no scientific merits of regulatory function. The petitioner is constrained to call it is totally biased approach in favour of wind generators at

the cost of TANGEDCO and the retail consumers of this State.

3.4. Banking is not a subject discussed or allowed in the Electricity Act, 2003 .The regulatory bodies are not assigned with such functions .Therefore banking of energy by the wind generators as allowed by the regulator has no legal sanction .The Electricity Act, 2003 does not provide the regulators to go outside the purview of the Act than what has been classified as functions under section 86 (1) of the act. Therefore the Regulatory Commission has over stepped beyond the act and extended the banking facility without weighing its consequences upon the distribution company and thereby the retail consumers.

3.5. Even the functions classified under 86 (1)(e) of the Act very are specific and restricted s how to promote the renewable energy by mandating to ensure connectivity, allow third party sale, and to fix purchase obligation to the distribution company. The regulator has no other means of promotional function. The word banking does not appear anywhere in the Act.

3.6. Even when the banking facility was extended without jurisdiction, the Regulatory Commission had not justified the losses incurred by the distribution company, namely,TANGEDCO. The only reason regulatory commission described is the 'inherent nature' of

renewableenergy. The Commission did not see the other side of the 'inherent nature' in augmenting or consuming such a quantity of infirm power, equivalent to 60 percent of base load demand, and the wind energy generation is in a lean period of power demand. The classification as 'inherent nature' is appeared to be imported to facilitate banking to

wind generators.

3.7. The petitioner, without any prejudice against anybody but with sole intention to bring to the notice of the present Commission that the opportunity of public hearing while determining the tariff off wind energy was withdrawn by the Commission for a sole reason that the petitioner pleaded against banking during 2009 tariff determination for wind energy. The action of the Commission is arbitrary and biased.

3.8. Again in another incident while promulgating the order of power cut on 28/11/2008, the commission ordered to reuse the lapsed banking energy to the tune of 340 million units in favour of wind generators even during the difficult period of power cut suffered by the common public. It is amusing to say that such a claim on lapsed banking energy hadnot even been requested by the wind generators or by anybody during public hearing. The facility of reusing lapsed banked energy is totally voluntary on the part of the Regulatory Commission.

3.9. The life span wind generator is fixed 20 years by the commission. The wind turbines which completed their life time also enjoys banking as a facility. The wind generators are enjoying number of supports from the Union Government under the pretext of 'renewable energy' from the year 2000 such as lower interest rate, subsidy from MNRE, accelerated depreciation, tax etc. The banking facility is an extravagant support awarded by the Commission.

3.10. When the union Government had taken more care than enough about wind generation through public policy at the cost of public fund, the Commission has no area

to expand the facility by going outside the ambit of the Act. The Regulatory Commission came into existence in place of State Government to decide upon the tariff among various stake holders, and therefore the decision must be social oriented and balanced and also appearto be balanced. The Commission has to take cognizance of various support given by the Union Government to wind generators before extending any further promotional facilities. The banking facility do not reflect a balanced approach as it injures seriously the other stakeholders namelyTANGEDCO and common public. This is against the competitive market principle as laid down by the Act. Therefore, it needs immediate correction by withdrawing the same and set right the undue losses sustained by the TANGEDCO and relief to all retail consumers of the State.

3.11. Balancing the infirm power generated by wind turbines is of great difficulty to schedule and use by the Distribution Company. The generation from wind energy is totally infirm and it is at the mercy of nature and human has no control over this generation. Therefore, scheduling of wind generation is beyond once capacity .With such scientific fact of impossibility of scheduling wind generation, the Commission without any reasonable amount of thinking classified them as Group Captive generators also. It is unknown how an infirm power can be a Group Captive unit.

3.12. Group Captive is a special purpose vehicle(SPV) and a SPV cannot be a infirm power generation. Infirm generation cannot serve as group captive to power intensive consumers. With banking facility on hand and also getting classification of Group Captive has led to series of misuse by trading on' Share Holders' on roaster on monthly basis.

3.13. Under the pretext of Group Captive, the generators acted as distribution licensee

but without licence. This classification has no merit except to induce misuse of banking. The petitioner investigated during the year 2013 and 2014 the methodology of classifying wind generators as Group Captive and adjusting the energy in various othercircles and also accounting the banked energy for future adjustment. It was patheticthat TANGEDCO had no capacity even to take reading of generated energy and there is no laid procedures even check the status of Group captive, quantum of generated energy, the quantum of wheeled energy to other circles, adjustment and the balance accounted as banked energy. In majority of the circles, the adjustment is not according to tariff slots like peak hour / nonpeak hour/normal. The revenue loss due to this mindless handling amounted to Rs.12,931crore till March 2014 was accounted. The petitioner brought the facts with details to the notice of the Government, TANGEDCO andDVAC. The enquires under RTI act received scant replies.

3.14. The Electricity Act in its objectives emphasises market competition to get reduced tariff. What tariff means is only value of different generation or consumption and does not deal with product which is unit of electricity. May be the produced valued differently by its quality. So on even the quality of electricity wind generation has lesser quality because of its infirm nature. Even tariff value of the wind generation is comparatively less than conventional generation. The adjustment of captive generation should be only on valuebased and not on quantum based. Market competition relies on value of the product noton quantity. Therefore the adjustment to retail tariff should be on value of the product.

3.15. The Regulatory Commission has arrived various value per unit of electricity both at generation end and retail end for different kind generations and retail tariff depending

on different usages. They are not equal on value. The cost of wind generation is almost half the value of retail industrial tariff against which it is being adjusted and it is less than even to half the value on commercial tariff. The retail industrial and commercial tariff carries other social costs. The quantity equation in adjustments nullifies these social costs recognised by the Commission. Therefore,adjustment on quantity of electricity do not confirm the tariff orders of the Commission. So the adjustment now in practice is against theCommission's Order.

3.16. The wind generation which accounted as 'banked' is actually a lapsed energy. To use this 'banked' energy, backing down of generation is necessary. Therefore 'banked' energy actually has no value to the banker, namely, TANGEDCO. Therefore banked energy should carry less value than the cost of wind generation. Even on this footing corrective order of the Commission is prayed to set right the continued error.

4. Contention of the Respondent:-

4.1. The PESOT, the petitioner filed the petition covered in M.P. No.5 of 2019, is praying to withdraw banking on any generation and to dispense the status of Group Captive to Wind generators. The Tamil Nadu Spinning Mills Association (TASMA) has already filed its Impleading petition and accordingly, it was allowed for the impleading in the matter.

4.2. The petition in M.P. No.5 of 2019was originally taken up for hearing on 25.03.2019 first. Accordingly, on the objection raised by the Tamilnadu Spinning Mills Association (TASMA), the following order was passed by the Commission on 25.03.2019 itself:-

> *"ThiruS.Gandhi, President / PESOT appeared and argued for dispensing with banking, in regard to extension of banking facility to CGPs and payment of monetary value instead of adjusting against retail tariff rate of banked*

energy from WEGs. Thiru.R.Parthasarathy, Advocate represented the Tamil Nadu Spinning Mills Association and undertook to file vakalatnama and further opposed the arguments of Thiru Gandhi. ThiruM.Gopinathan, Advocate appeared for TANGEDCO. Arguments heard. Orders reserved on the admissibility of the petition."

4.3. Thereafter, no orders have been passed on the very admissibility of the petition covered in M.P. No.5 of 2019, even though the matter was reserved for passing orders on 25.03.2019 itself. However, without passing of any order on the admissibility of the petition and without knowing the fact, whether the petition was admitted or not, the matter was again listed for hearing on 28.01.2020. The connected Daily Order dated 28.01.2020 goes as below:-

"*Thiru.S.Gandhi, President, Power Engineers' Society of Tamil Nadu / (PESOT) appeared. Thiru.M.Gopinathan, Standing Counsel for TANGEDCO appeared. Thiru.S.P.Parthasarathy, Advocate has sought to make arguments against the prayer in the petition. Commission directed him to implead and file counter on the admissibility of the petition. The case is adjourned to 24-03-2020 for impleading and filing counter on admissibility. "*

4.4. By the above order, the matter was listed on 24.03.2020 and due' to COVID-19 pandemic background, it was not heard. Therefore, the impleading Respondent submits that as the very admissibility of the petition itself has not yet been decided till now, based on the Daily Order of the Commission dated 25.03.2019, the maintainability of the petition filed by PESOT needs to be decided first as per the recorded Daily Order dated 25.03.2019 and if the Commission decides that the petition is maintainable, then it has to record its stand over the same and thereafter only, the petition could be allowed for adjudication. Therefore, as per the Daily Order dated 25.03.2019 of the Commission, the maintainability of the petition for adjudication needs to be first decided.

4.5. However, without pre-judice to the above legal stand, the Impleading Respondent submits to add the below points also considering the following facts and circumstances of the matter and accordingly, the petition in M.P. No. 5 of 2019 may please be dismissed at this stage itself at least, as not maintainable, both on the following legal grounds and on factual matrix.

4.6. The petitioner, namely PESOT, has nowhere explained in the petition filed by it originally about the status of its constitution, either as a Society or as a Company or otherwise. It has also not even provided the Registration No. when it filed the petition in 2019. In the absence of the such vital information, as to the status of the PESOT, the proof of status of the petitioner as a legal entity and eligibility of PESOT to file such Petitions before the Commission, is a matter of serious consideration, whether PESOT could file such petitions, before Judicial or Quasi-Judicial Forums, like the State Commission.

4.7. Unless the PESOT demonstrates its current valid registration status either as a Society under Tamil Nadu Societies Registration Act 1975 or otherwise and the Registration No. and the other details as on today, such as, who are all constituting members in the PESOT, what are all the objectives and scope of the PESOT are provided before the Commission, the. petition*per se* is not maintainable in law, on the very grounds of the petitioner not being a legal entity.

4.8. On pointing out these lacunae, the petitioner has produced its Registration Certificate alone showing it that the petitioner has registered the PESOT, as a Society with the Registrar of Societies at Tiruchirappalli. However, on enquiry

through a RTI application, it was proved that the petitioner no longer exists and continuing its registration with Tiruchirappalli, Registrar of Societies and the same has been shifted to Coimbatore. In spite of our specific statement on the same, the petitioner has never come forward again to prove its Registration status, with a Coimbatore location till date. Therefore, beyond all issues, the petitioner is duty bound to first prove, whether it enjoys the right of a legal entity, by producing the Registration Certificate, the petitioner has with it currently valid / renewed corresponding to its present address and location. Without proving and demonstrating the same, the petitioner would be treated only as not a legal entity and filing such petitions before quasi-judicial forums like the Commission is not anyway possible for such non-legal entities.

4.9. Since the petitioner has not produced any document, subsequently showing its current information on its registration status, in the absence of the same, it could only be considered that the PESOT has failed to demonstrate its status as a legal entity, in filing the petition. Without the complete *locus standi*of the PESOT fully demonstrated to file the instant petition, permitting the PESOT to file the instant petition and permitting to continue the adjudication, before this Commission, is no way maintainable in law. Hence, on this very question of *locus standi* ground itself, the petition is liable to be dismissed.

4.10. The Registry of the Commission, ought to have verified all such primary details, like Registration No., Registration Certificate, List of Members constituting PESOT and all other relevant details, to make the PESOT to qualify itself to file the

instant petition, at the time of numbering the Petition itself. In the absence of such a proper scrutiny, the petition suffers from *locus standi*.

4.11. The impleading Respondent states that it has filed a letter with the Public Information Officer of Registrar of Societies, Tiruchirappalli, to get the information of the present registration status of the Power Engineers Society of Tamil Nadu (PESOT) and accordingly, on a reply received from the Public Information Officer of the Registrar of Societies, it is made known that the PESOT has been lastly registered as a Society under the Tamil Nadu Societies Registration Act 1975 under Registration No. 141 of 2004 and thereafter, all the relevant documents pertaining to the PESOT, were transferred to Coimbatore, with the address located at No. 28, Balaguru Garden, PKD Nagar, Peelamedu, Coimbatore and however, the present status of the PESOT, whether it continues to be a Society still or not, is not reported by the Public Information Officer.

4.12. It becomes necessary for the petitioner PESOT to satisfy everyone involved in the matter and in order to maintain the interest of justice, whether the PESOT enjoys still, currently any legal status, to file such petitions before Forum like the Commission. In the absence of the same, it leads to suspicion that the PESOT has no legal status, as of now to file such petitions for adjudication. Hence, the Commission may direct the petitioner PESOT to file its current Registration Certificate, containing the present address incorporated on it, to clear off all the doubts pertaining to the registration status of the PESOT and to accept that PESOT could file such petitions being a valid Registered Society even now.

4.13. It is brought out to the benign information of the Commission that the petitioner PESOT, was in the habit of filing such petitions, even without sufficient locus standi and one of such cases was already detected and identified by the Hon'ble APTEL, New Delhi and reported by the Hon'ble APTEL by its order in IA No. 112 of 2008 in Appeal No.84 of 2008, which was decided on 06.11.2008 itself. In the said judgement and order the Hon'ble APTEL has inter-alia observed as below.

> *"There are certain issues involving locus standi of the appellantsas well as of maintainability of their complaint before the Commission. The question of merit is only whether the shareholding under section 187 (C) of the Companies Act, 1956 can be excluded for assessing whether the shareholding captive users in a captive power plant is 26%. As per the Chartered Accountant's report , the shareholding of all the captive users was in excess of mandatory cut off limit of 26 % which conforms to the stipulated minimum under rule 3 (1) (a) (i) of the Electricity Rules, 2005 if the shareholding under Section 187 (C) of the Companies Act of 1956 is excluded. This report of Chartered Accountant is based on the facts and taking into consideration the details filed in Form No.2 as valid. Mr. Gandhi appearing for the appellants, Power Engineers Society, disputes the findings of the Chartered Accountant. He, however, does not dispute that shareholding under Section 187 (C) of the Companies Act, 1956 should be excluded for the purpose of calculating the 26%. He however alleges that the data given by the company in question is wrong. Mr. Gandhi has no data on the basis of he can dispute the findings of the Chartered Accountant. As such, his claim that the power plant of ArkayEnergy (Rameswaram) Limited does not fulfil the requirements of the Rule 3(1) (a) (i) of the Electricity Rules, 2005, is only bald allegations. The impugned order cannot be interfered with on the basis of such bald assertions.*
>
> *The appeal is dismissed."*

4.14. When the present petitioner namely PESOT, when filed a petition before this Commission in M.P. No. 35 of 2008, the Commission has dismissed the petition, by observing as below, in its order dated 12.01.2009:-

> *"4.7. The present one is a public interest petition which questions the proceedings before the Commission in a dispute between a generator and a distribution licensee. The Electricity Act 2003 does not envisage participation of third parties in a dispute between a generator and a distribution licensee under Section 86 of the Act. In view of the above facts, the present petition is*

liable to be dismissed as not maintainable and accordingly the above MP 35 of 2008 is dismissed without costs."

4.15. Thepetitioner PESOT has no *locus standi* to file the instant petition as observed altogether by all the Forums. Besides to it, the issue of banking to WEGs is already well settled by law through various orders passed by this Commission and also became a valid procedure by various judgements provided by the Hon'ble APTEL. Therefore, by the Principles of Res judicata, such a matter of extending banking facility to WEGs, cannot be re-agitated again before any Forum and that too when the petitioner has no locus standi on such matters.

4.16. The legal status of the petitioner is not first demonstrated in any manner and the conduct of the petitioner was already strongly commented heavily by the Commission as well as by the Hon'ble APTEL, to the extent extracted above. Therefore, the present petition covered in M.P. No.5 of 2019, is superfluous and is opposed to all canons of law, as the petition itself is devoid of merits and not maintainable in law.

4.17. The petitioner alleges that the Impleading Respondent namely, Tamilnadu Spinning Mills Association (TASMA), has no locus standi to raise such issues, on the reason that TASMA has been registered as an Association of Consumers, from reading some sources on his own and "extracting an edited portion from the contents found in the website of TASMA and wants to interpret the matter in his own fashion and style.

4.18. It can be vouchsafed from all the documents that TASMA is primarily an Association of Spinning mills, which fact continues to be as such. But however, as per Section 2(8) of the Electricity Act 2003, most of the spinning mill members of TASMA, have set up their own captive generating plants (CGPs) for their own primary use. Therefore, since the power generated from such of the CGPs, is being used for the purpose of their captive consumption, they are not only consumers, but also have WEGs for their captive consumption requirements. Under the above circumstances, the averment made by the petitioner that 'Banking and captive generation are totally related to generators' is not an acceptable statement. When the captive generation happens through the CGPs set up by the consumers themselves, it undoubtedly connects the consumers also in the network, as defined under Section 2(8) of the Electricity Act 2003. Therefore, TASMA has every right to represent generators also, as long as the generation infrastructure created by the said consumers, is for their own captive use. This position has not been correctly understood by the petitioner PESOT in the right sprit.

4.19. The petitioner PESOT is raising unnecessary questions and wasting the time of the Commission that TASMA enjoys registration with various legislations, namely as a Society and also as a Trade Union of Employers. Even though, TASMA has no responsibility to argue this matter, it shall be noted that registrations under several laws of the country is no way barred. An entity must be having multiple registrations, depending upon the applicability of laws like GST Registration, PAN and so on and so forth depending upon its requirements. Each registration has a purpose and meaning attached to it. Therefore, such kinds of observations by the petitioner are not connected to the present issue in dispute and therefore,

permitting to raise such contentions is highly objectionable, which are not relevant to the issue before the Commission.

4.20. The impleading Respondent has already obtained information under Right to Information Act 2005, as how the PESOT has paid the fee, which is found much less and much contrary to the provisions of the Fees and Fines Regulations, 2004 of the Commission. If it is an Association registered as a Society, as claimed by the petitioner and continuing its status still, it ought to have paid a fee of Rs.2,00,000.00 (Rupees Two Lakhs only) for filing the present petition in M.P. No. 5 of 2019 and however, it is understood from the reply received from the Public Information Officer of the Commission that the petition was taken on the file of the Commission, by getting a fee of Rs.10000.00 (Rupees Ten Thousand only), which is highly short of the prescribed fee payable by Associations. Therefore, PESOT has been allowed and permitted to pay a highly lesser fee, for no rhymes or reasons and the Registry of the Commission needs to justify the short payment made by the PESOT and how the Petition got numbered and how the matter was allowed for adjudication, without paying proper fees. Therefore, on the very fact of not paying the correct fee, as per the Fees and Fines Regulations 2004, the petition is liable to be dismissed.

4.21. Under all the above narrated facts and circumstances and also on the past conduct of the petitioner PESOT as stated above, the Commission may be pleased to direct a roving enquiry, on the petitioner, demonstrate its legal status first and then the locus standi, to file the instant petition and on satisfying on both the same and also by collecting the applicable fees, the Commission may direct the petitioner

to file a detailed affidavit the maintainability of the petition, both on merits as well as on law.

4.22. As the very admissibility and maintainability of the petition filed by the PESOT itself is not fully satisfied under the above grounds, as narrated by the impleading Respondent, the petition is not maintainable, both on law as well as on facts and therefore, the petition needs to be dismissed.

4.23. Further, the matter covered by this present petition in M.P. No.5 of 2019 filed by the petitioner PESOT, is already a matter settled by the Commission. When the Commission already passed an order by way of a Tariff Order No. 8 of 2020 dated 07.10.2020, on the Order on Procurement of Wind Power and Related Issues. Therefore, the petition in M.P. No.5 of 2019 the matter of banking to WEGs has been fully discussed and orders have been passed. Therefore, in a matter already settled by law, the petitioner PESOT cannot file a petition again and then such a course would be subject to the review of Principles of Res-judicata. Therefore, the petition filed by the PESOT has become totally infructuous and on that ground also, the petition in M.P. No.5 of 2019 needs to be dismissed.

4.24. The Hon'ble APTEL while passing an order in an appeal filed by the Impleading Respondent before it, in Appeal No. 191 of 2018 has categorically held as below in its order dated 28.01.2021.

> *"95. For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable. We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated*

(a) withdrawal of banking facility (i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and (ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning;

(b) increase in banking charges from 12% to 14%:

(c) increase in cross subsidy surcharge from 50% to 60%:

(d) determination of the capacity utilisation factor at high level of 29.15%:

(e) increase in open access charges from 40% of the normative charges for conventional sources of power to 50% of transmission and wheeling charges and the basis of levy on the installed capacity instead of generated units and imposing 100% scheduling and system operation charges for REC WEGs:
(f) fixed feed-in-tariff at Rs.2.86 without accelerated depreciation (AD) and Rs.2.80 with AD without considering relevant parameters: and

(g) reduction in liability for delay in Invoice payment on sale to Discoms category to 1 % interest. In the result, the orders on the above subjects, as prevailing prior to impugned order, shall stand restored and revived for the control period covered by the impugned order. The State Commission shall ensure all necessary consequential orders are passed and these directions are scrupulously complied with by all concerned."

4.25. The matter of banking to WEGs, is already recognized by various Orders of - this Commission and was further recognized by the last order dated 07-10-2020 in Order No.8 of 2020, which is continuing with a control period of another two years and hence, while an order is within the control period, even admitting the petition and attempting to re-visit its own order by the Commission, is legally not possible.

4.26. Allowing the group captive scheme is already recognized as a legal practice through Rule 3 of Electricity Rules 2005. Further, the guidelines for the verification of the CGP status were also issued by the Commission in Order No. 7 of 2019 dated 28.01.2020 and as such, this matter of allowing Group Captive, has also been covered fully by the above position by the Electricity Rules 2005 and also by the above order of the Commission. Therefore, on a matter already settled by law,

the present petitioner is attempting to file petition and is unnecessarily wasting the time of this Commission and everyone involved in the matter.

4.27. The petitioner has not demonstrated its legal status first and therefore, the locus standi of the petitioner to file the instant petition is not demonstrated fully. Further, the matters raised in the instant petition covered by M.P. No. 5 of 2019 are already settled matters and therefore, the petition is suffering from the Principles of Res-Judicata. Further, the fee paid by the petitioner is also too less. Beyond all the above, the locus standi of the petitioner to file such petitions before such Forums have already been heavily commented both by the Commission as well aswell as by the Hon'ble APTEL.

4.28. The petitioner PESOT has no locus standi to file this petition as it enjoys no legal status in any manner as of now. Due to the short payment of fees also the petition is to be dismissed. Having allowed the petitioner to drag this matter to this level is unfortunate. The Commission ought to have decided the matter of the maintainability as observed in its Daily Order dated 25.03.2019 itself.

4.29. The petition filed by the PESOT may beorderedto bedismissed at least at this stage itself, as not maintainable, as already decided by the Commission on 12.01.2009 itself as the grounds for such dismissal have not changed even after 12 years.

4.30. For having numbered the petition and allowed the adjudication for having gone to this extent, the petitioner may be directed to pay the balance of the fee of

Rs.1,90,000/- when the petitioner demonstrates itself as an Association and accordingly, if the Commission feels that the petition is not maintainable on the other grounds of legality, as well as on the locus standi as submitted above, can dismiss the petition, after imposing a heavy cost on the petitioner suitably, for having wasted the valuable time of this Commission and everyone involved in the matter.

5. Counter to the objection of the impleading petition filed by Tamil Nadu Spinning Mills Association (TASMA)

5.1. In the petitioner under M.P. No.5 of 2019 under para 2, it is clearly stated that the Power Engineers Society of Tamil Nadu (PESOT) is registered under the Tamil Nadu Societies Act, its objectives and the year from which it is functioning. The impleading petitioner raised the same question as petitioner during the hearing of M.P.No.15 of 2020 which was ordered on 08//12/2020. Still, the impleading petitionerraises the very same objections on 16/01/2021, which was settled on 08/12/2020. There is an urge to object this petition for unknown reasons.

5.2. The petitioner reiterates that it is its objective to serve the cause of common consumer in the electricity sector which has become more complex with numerous rules and regulations. The copy of Registration Certificate 141/2004 has been filed. The registered office was transferred to Coimbatore during 2010. The cases cited by the impleading petitioner itself will speak enough the unblemished service of petitioner society.

5.3. The impleading petition has totally misread and misreported the facts of the three cases to substantiate the claim of locus standi. The APTEL order in IA No. 112 of 2008 was decided on the prayer to declare the status of the Arkay Energy (Rameswaram) as not captive generator. The prayer definitely was not about locus standi. The appeal was consequent to the Commission's Order in M.P. No.4 of 2007. There was no question of locus standi during the hearing of M.P.No.4 of 2007. To be more precise the petition M.P. No. 4 of 2007 was filed on the advice of the Commission.

5.4. M.P. No. 35/2008 was not filed by PESOT. It was filed by ThiruS.Gandhi as affected person. The relevant portion of the order is reproduced herein to throw more light upon the case decided:-

> *"4.4. The Petitioner quotes the precedent common order of this Commission in M.P.No.263 of 2002 Nellikuppam Krishnamurthy Vs. (1) Tamil Nadu Electricity Board, (2) M/s.GMR Power Corporation, (3) M/s.Samalpatti Power Company Ltd., (4) Madurai Power Corporation, (5) PPN Power Generation Company Ltd., and MP No.1 of 2003 Nellikuppam Krishnamurthy Vs. (1) Tamil Nadu Electricity Board and (2) STCMS Electric Power Company. The Petitioner ThiruNellikuppamV.Krishnamurthy in these two cases prayed for a fair price for the purchase of power by the Tamil Nadu Electricity Board from the power producers. The Commission entertained the above petitions of ThiruNellikuppamV.Krishnamurthy and passed certain orders in those two petitions.*
>
> *4.6 We are constrained to disagree with the ruling of the Commission in MP No.263/2002 and MP No.1/2003 entertaining the public interest petition of ThiruNellikuppamv.Krishnamurthy."*

5.5. The prayer in M.P.No.35/2008 was against the admission of D.R.P.No.7 of 2008 and D.R.P. No.10 of 2008 claiming 484.6 crores from then TNEB in accordance to PPA wherein both the petitionersin the DRPs obtained stay order in the Hon'ble High Court of Madras that the Commission has no jurisdiction over their PPA since it was signed earlier to the formation of the Commission. Interestingly

M.P. No. 35/2008 was ordered on 12/01/2009 after the disposal of D.R.P. No. 7 of 2008 on 27/11/2008.

5.6. The impleading petitioner again misread the order of Hon'ble High court in W.P.No. 311 of 2010. The order under para 3 reads as follows:-

> "3.Section 111 of Electricity Act 2003 provides for an appeal to Appellate Tribunal for Electricity against any order passed by the appropriate Commission. Since statutory appeal has been provided, this writ petition filed bye passing the alternative remedy has nojurisdiction ….. "

5.7. The case had been disposed on the question of jurisdiction,but on locus standi as claimed by the impleading petitioner.

5.8. The impleading petitioner is trying to seek water in mirage to substantiate locus standi. Repeatedly presenting the same cases with same misreading is tiresome process. In the last decade much light has been thrown upon consumers interest and the Commission held the locus standiof the petitioner in M.P 15,M.P16,M.P17 /2020 ordered on 08/12/2020. It reads as follows:-

> *8.8 During the course of argument, the Counsel for the Petitioner has objected to theimpleadment of Thiru S. Gandhi and vehemently argued that he has no locus standi in this case. In this connection, it may be pointed out that Hon'ble APTEL in its order dated 09-09-2016 in D.F.R. No.2566 of 2015 wherein a preliminary objection was raised by the respondent in that case that Energy Watchdog was not an aggrieved person over the orders passed by the Commission in the extension of control period for solar tariff, has held as follows:-*
>
> > *"Any order which is likely to affect its members, cause legal injury to them can be challenged by Energy Watchdog as a representative body. It is not necessary to say in the appeal memo that Mr. Rama Suganthan made a grievance to Energy Watchdog. We do not feel that a busybody or a meddlesome interloper has filed this appeal. We therefore reject the submission that this appeal is a public interest litigation."*

8.9 From the above, it is clear that any order which is likely to affect the members of an association can interfere and implead as a party to a proceeding. In this case, the impleading petitioner PESOT has submitted proof of a registered entity "Power Engineers Society of Tamil Nadu" under the" The Tamil Nadu Societies Registration Act 1975" (Tamil Nadu Act 27 of 1975). PESOT has represented the case on behalf of consumers at stake who may have to bear the extra burden of roll over of banked energy to the next financial year which in PESOT's opinion would deem to occur due to the financial stress of TANGEDCO. Though PESOT is an association of the Electricity Engineers, still their members are ultimate consumers and any order passed in this case in favour of thepetitioner will have a pecuniary impact on them also. Hence, we hold the impleadment of PESOT does not suffer from any legal infirmity. However, we confine ourselves to the implementation of the orders issued by MNRE and therefore we refrain from examining the issues raised by the impleading petitioner in depth."

5.9. PESOT is not seeking relief exclusively for its member engineers like the impleading petitioner acts for its member industries. The petition is to seek remedy to the common consumers including consumer members of the impleading petitioner. The objective of PESOT is common consumer cause and as much fees paid is in accordance to the regulation applicable.

5.10. The petitioner is not seeking to appeal or review any specific order of theCommission. After filing the petition during 2019 another tariff order comprising Banking also issued by the Commission on 07/10/2020. The petition of PESOT is against the very concept of Banking on the assumption of 'inherent nature' of wind energy. It is trying to evaluate the scientific impracticability of Banking. And the concession extended cause serious financial injury upon discom which eventually being transferred upon the common consumers. So the principle "res judicata" has no standing as claimed by the impleading petitioner.

5.11. Tamil Nadu Spinning Mills Association registered under the Tamil Nadu Societies Registration Act, 1975 (Act 1975) has no locus standi to raise the issues related to the generators. The Act 1975 under section (3) reads as follows.

> *"3 Societies which may be registered: - (1) Subject to the provisions of subsection (2), any society which has for its object the promotion of education, literature, science, religion, charity, social reform, art, craft, cottage industries, athletics, sports(including indoor games) recreation, public health, social service, cultural activities, the diffusion of useful knowledge or such other useful object with respect which the state Legislature has power to make laws for the state, which may be prescribed, may be registered under this Act.*
>
> *The Tamil Nadu Societies Registration Rules, 1978*
>
> *3. Other useful objects recognised for registration of the societies. - For the purpose of section 3, the following objects namely :--*
>
> *(a) interestof consumers in the supply and distribution of essential articles,*
>
> *(b) ……"*

5.12. The website www.tasma.in/about us says".....exclusively to represent and address the problems and grievances of the spinning mills as a whole ... " Therefore Tamil Nadu Spinning Mills Association (TASMA) is registered to represent any grievances of the spinning mills as group of consumers in accordance to the Act 1975. Generators are not consumers. TASMA cannot represent generators

5.13. Banking and captive generation are totally related to generators. Generation of electricity is primary entity of the industry. They are the suppliers of electricity. The consumers are at the end of supply system and consume the supply. Generators and consumers are in the opposite ends. The consumer organisation namely TASMA is for the interest of specific industry and not even for all industries. Registered objective of TASMA has given no scope to represent as generators

cause. As consumer organisation TASMA has no different grievances than PESOT is praying for. If any benefit reached through in this petition will also be shared to the members of the impleading petitioner. There is no legal sufferings for TASMA out of M.P.No.5 of /2019.

5.14. As there is no legal injury to TASMA, the impleading petition may be dismissed as not maintainable under law.

6. Written Arguments submitted by the Petitioner:-

6.1. The interlocutory petitioner invoked well settled issue of our “locus standi” with the same old arguments which had been set aside by the Commission, not long before but recently in M.P. Nos. 15,16, and 17 of 2020. It has no steam or force to sustain the claim. It is reiterated that no organisation can be registered under two different acts, namely Tamil Nadu Society Act, 1975 and also under Indian Trade Union Act, 1926 with the same name as TASMA and organisation structure. Its Registration Number under Society Act is 330/1997 at Dindigul and under Trade Union Act is 356/210 at Dindigul. An organisation of this nature cannot have two different objectives. It is not legally valid. Further it is learnt that TASMA had not reported this fact of dual registration to the respective registering authorities namely, the District Registrar, and Deputy Commissioner of labour both of whom are at Dindigul. The legal position of TASMA is to be strictly placed for verification and directed accordingly.

6.2. The Commission, in WP 30809/2008 filed before the Hon'ble High Court of Madras on 26/02/2009, as written submission under last para of page 2 stated as follows:

> “the said Order No. 3 is a statutory order issued under section 181 read with sections 61(h), 86(1) (e) of the Electricity Act 2003. The above position has been mentioned in the preamble of the said OrderNo.3 dated 15/06/2006. 86(1) (e)of the Act casts a duty upon the respondent Commission to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures of connectivity with grid and sale of electricity to any person.”

6.3. The Commission in its own regulation of "Power Procurement from Renewable Sources of Energy Regulation 2008"(Herein after regulation 2008), under section 3 (4) states that,

> "The commission may consider appropriate banking mechanism for generation of power from particular kind of renewable sources depending upon the inherent characteristics of such sources"

6.4. Further regulation in its starts to state that,

> “Whereas under section 61 of the Electricity Act, 2003(Central Act 36 of 2003) the State Electricity Regulatory commission shall specify the terms and conditions for the determination of tariff;
>
> AND WHEREAS the regulations providing for the terms and conditions of tariff shall be subject to the previous publication and accordingly undergone previous publication.

NOW THEREFORE, in exercise of the power conferred under section 61(h) read with section 86 (l)(e) and section 181 of the said Electricity Act, 2003, and……..."

6.5. The Regulations do not define either Banking mechanism or inherent characteristics. Section 61 of the Electricity Act, 2003 (Herein after the Act) reads as follows:

61. Tariff regulation …….The Appropriate Commission shall, subject to the provision of this Act, specify the terms and conditions for the determination of tariff, and doing so, shall be guided by the following, namely:--

6.6. Section 61(h} reads as follows:

The promotion of co-generation and generation of electricity from renewable sources of energy;

6.7. Section 86(1)(e }reads as follows:

“promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption power of electricity in the area of a distribution licensee;”

6.8. Theterms “banking mechanism" or "inherent characteristics are nowhere found in the Act and it is clear as crystal there is no provision for banking, in the Act as required under section 61 of the Act.

6.9. The guidelines enumerated in regulation of 2008 under clause 4(2) do notspeak about banking mechanism or inherent characteristics. Hitherto, the

Commission even after several tariff orders for wind generation is unable to define the aforesaid banking mechanism or inherent characteristics. It remains vague.

6.10. The petitioner raised the objection of legality of banking in the public hearing held on 05-03-2009, held according to the provision regulation 4 (1) (c) of regulations of 2008 then in force. After issuing Tariff Order on 20-03-2009, the Commission then, deleted the provision of Public Hearing on 27-04-2009 for no reason.

6.11. The regulation 2008 does not say anything how an "inherent characteristics "generationcan be connected to the grid as it is the duty and function of the Commission said under section86(1) (e) of the Act for connectivity to the grid. Also the Commission so far has not said in any of its orders that wind energy alone has the inherent characteristics and other generations do not have characteristics at all.

6.12. Section 61 compels the Commission that its terms and condition for tariff must have provision in the Act. The regulations 2008, so far relied upon to banking, haveviolated the Act and banking has no legal force. The only residual reason for the provision banking is just to facilitate the wind generators exclusively, without any reasonable cause but at the cost of consumers ofthe State.

6.13. The other sections of the Act relied upon for such facilities are section 61(h) and 86(1) (e). Section 61(h) is guideline to determine tariff under section 61 and do not speak about banking. When this section 61(h) is invoked for exercise, it shall be within the provision of the Act. The boundary of exercise is within the provision

of the Act and not opened to the vagary ambition of the Commission. Therefore Banking as per provision 61(h) is unfounded and not consistent with the Act.

6.14. The other section relied upon to extend banking is section 86 (1)(e) and this section defines the functions of the State Commissions. Without any ambiguity, the aforesaid section says how to promote co generation and renewable sources of energy. It enumerates three ways for promotion such as (a) connectivity to the grid (b) sale of electricity to any person and (c) purchase of such electricity in a percentage of consumption in any distribution area. All this promotions are complied and this petitioner has no objection to those promotions whatsoever. But the section does not provide for banking mechanism as the Commission relied on section 61 and section 181(zd) to frame these regulations.

6.15. Banking is self-conferred function of the Commission without the authorisation of the Act. It causes heavy loss to TANGEDCO which awaits to be transferred upon common consumers of the state. Banking has no legs to stand on for legal tests. It has no legal sanction or force. It is invalid under law.

6.16. The very nature of electricity is that it shall be instantaneously consumed upon generation and that the generation and demand shall be in balance at all times. Thus it is well known that electricity cannot be stored or banked. The conventional storage is battery system, in the chemical form, in small capacity like UPS system employed in domestic purpose or for computer operations. It is all in kilowatts with a few hours backing time and never been in megawatts scale as required for banking of wind energy.

6.17. Storage or banking in megawatts scale is still under experimental stage. At Puduchery Electricity Department a battery storage for one megawatt is being experimented at a cost of 15 crore. The storage and supply back up is just for a day. The viability of the programme is still to be decided.

6.18. The Commission wants TANGEDCO to Bank or store 8,550 megawatt of wind power and supply it back after a period ranging from a few hours to several months. Even to store the wind energy for a day of capacity of 8,550 megawatt, extrapolating the Pudicherry example TANGEDCO may be required to pump in Rs.85,000 crore investment, which is far beyond its worth to day. By fact TANGEDCO has no such storage facilities as the Commission is well aware of it. The Commission while passing the orders introducing this 'until then unheard concept of banking' and also during subsequent issue of follow up orders didnot seem to have taken the pain to verify as to how TANGEDCO would be handling the banking. It is a technical ridicule and unfair regulatory action, to commit TANGEDCO to undertake the universal impossibility.

6.19. Actually the Commission should have attempted honestly, how to integrate 8,550 megawatt of infirm power in a grid which has a maximum demand of only 15,000 megawatt to sustain the grid stability.

6.20. Factually, TANGEDCO attempts to accommodate this 8,550 megawatt of infirm power, which has a tendency to vary in thousands of megawatt of generation within a very short while, by shedding the load to the consumers causing sharp

criticism from consumers and political circles, to avail time to search for compensating generation from alternative sources, sometimes even though time of the day purchase in power exchange at exorbitant cost to maintain supply. It is a terrible cost burden imposed unduly upon TANGEDCO to comply with the unfair orders of the Commission. The process leads TANGEDCO to also incurheavy expenditure by way of deviation settlement mechanism for not adhering to the stipulated Grid Codes.

6.21. One unique, also first in the nation, Kadamparai pumped storage scheme of capacity 400 megawatt, constructed during 1985 as underground power house with high cost of investment, with serious impact on the environment is utilised to offset a small quantum of variation. Even this storage system is suitable only for limited period operation say a day and dependent on water availability. The energy loss alone is over 30% over and above the fixed cost and other administrative and operating costs.

6.22. Therefore, the self- imposed unviable concept of banking to facilitate wind generators is a wild colonial imagination and throws the TANGEDCO into heavy loss, which results inunintended burden upon the common consumers of the State. There are valid grounds for this petitioner organisation, to believe that for delivering such favourable orders incorporating the newly introduced concept of banking, the then the Chairman of the Commission was given warm farewell party by the wind generators on 23/12/2011, which is unbecoming of any regulator and we brought out this fact promptly to concerned including the Chairperson of Hon'ble APTEL.

6.23. TANGEDCO assessed a yearly loss of 600 crore during 2007 itself because of banking, when the wind mill capacity was 2040.225 megawatt. During every discussion to decide tariff for wind generation, the Chairman of TANGEDCO used to present the likely loss to be incurred because of banking by TANGEDCO which was not given consideration by the Commission. During last tariff determination Chairman of TANGEDCO presented that the loss is to the tune of 1,905 crore annually because of banking when the capacity increased to three folds now to 8,550 MW.

6.24. A rough and modest estimate, the accrued losses on account of banking facilities till this day may be Rs.20,000crore without considering the carrying costs. ICRA, the rating company appointed by the Ministry of Power for Discoms, in its report, released during July 2021, states that TANGEDCO has a loss of Rs.l,08,338crore though its performance of AT&C loss level is below the benchmark and recoverable is within 47days. The operation of TANGEDCO is laudable though not the losses. The accrued losses due to banking constitute 20 % of the overall loss referred by the rating agency.

6.25. Now TANGEDCO is at the crossroads, in spite of its operational efficiency. The mounting losses are posing a serious threat to both the Government of Tamil Nadu and TNEB. It goes without saying that the Commission has the responsibility to explain for the losses due to banking before the public. At the end there is an argument that the Hon'ble APTEL upheld banking. It is not true. APTEL is the appellate body which decides on the order of the commission without going into the

legal sanction of banking but on other prayers like, time value for money, quantum of banking charges, and the extension of the benefit to new generators etc.

6.26. Therefore the matter is open for analysis and decision and the Commission is free to dispense the banking system on account of the stated reasons including the losses. We also find motivated inaction by the TANGEDCO, may be in connivance with wind generators, not to present detailed account of losses consequent of banking.

6.27. Any generator, connected to the grid, should send a schedule of generation for the next day to the load dispatch centre. This is a vital statutory provision to maintain the grid stability. TANGEDCO and other generating stations including central generating stations are adhering to this regulation without fail. Any deviation of the schedule attracts a penalty from the Regional Load Dispatch Centre. TANGEDCO is paying for such deviations periodically.

6.28. Wind generation is conferred must run status by the Union Government to meet the base load of the grid. According to section 86(1) (e), the connectivity to the grid is extended to all wind generators. Now it is the prime duty of the wind generators to adhere to the scheduling as provided in the Grid Code issued by the Commission. To one's surprise nogenerator among 8,550 MW, ever during the15 years, has submitted the scheduling in accordance to the provision. The Commission never directed TANGEDCO to insist on scheduling from wind generators. Because of such failures, we are confronted with unscheduled interruption in distribution to manage the deviation in generation of wind generators

in utter criticism of public and political parties. Evenwithout scheduling, the Commission has extended the facilities of captive status, withconcession in scheduling charges also.

6.29. There is haphazard handling by the TANGEDCO in conferring captive status particularly to wind generators, causing a loss about 15,000 crore, according to our calculation, as loss of cross subsidy surcharge. No one can violate the central Rule or regulations of the Commission,or the Act including the Commission. The wind generators are let free of all rules, regulations to enjoy non-statutory rights, in connivance with TANGEDCO, causing heavy losses, threatening very steep retail tariff hike. The Commission may dispense captive status to the generators of must run status without scheduling, in strict adherence to regulations with immediate effect.

6.30. The electricity is placed in regulated market economy some thirty years ago. Money, or the value in money term, is the corner stone of market economy. The regulatory bodies themselves consequent of market economy, and bound to discharge its functions on money terms say the tariff, the Hon'ble APTEL in its Order No. 98 of 2010 ordered on 18-03-2011 under para 18, observed as follows:-

> " .... On this issue let us understand the very concept of Banking of electrical energy. Banking is analogous to small savings bank account in financial bank ……... "

So it is important, the banking of energy is analogous to financial value. No financial bank will payback Rs.6.35 for a value deposit of Rs.3.10 within a period of six months. Therefore the banked energy now in vogue, should be adjusted only to

its worth collateral value and not in kind as double of its worth. Adjustment in kind is unacceptable in this economy. The value of energy in electricity stock exchange vary from Rs.0.50 to Rs.12.00/ unit as per July lEX statement. The Commission may adjust the banked energy,now in vogue only on its value and not in kind.

6.31. Even though the wind energy generation is now fully matured the Commission was continuing with the fixation of tariff for the same on a preferential basis. The major factors required for determination such as capital cost per megawatt are highly opaque. The commission is forced to take the lump sum figure circulated by the coterie with no way of ascertaining the correctness. The tariff thus determined is more than preferential. If the generator sells the power directly to the licensee namely, TANGEDCO the tariff would itself more than recover its cost. However, the generator is allowed to adjust the generation against its consumption. Consumer tariffs generally include in addition to the cost of generation, other costs such as overheads, transmission and wheeling charges, losses, cross subsidies etc. Thus adjusting against consumer tariff entails the generator additional benefits who would even without it over recover its costs. Over and above the banking system as it prevails would result in undue enrichment. This is unwarranted since it over burdens TANGEDCO and thereby the common consumer.

6.32. The wind generator is allowed to carry the power generated to its desired destination by paying concessional charges which are fractions of transmission and wheeling charges payable by other users. In case of interstate transmission, the charges are fully waived. The same is the case with respect to system operations charges, connectivity charges, scheduling charges etc.

6.33. Irrespective of the system demand any over supply from the wind generation shall not be curtailed. The discom has the statutory requirements such as, uninterrupted quality supply to the consumers, commitment to draw power as scheduled from various generators, maintaining grid discipline by strictly adhering to the Grid Codes etc. Any over or under supply from unscheduled wind generation compels the discom to deviate from one or more or all of the above mentioned commitments. It causes not only additional costs to the discom but also brings in a bad reputation of often deviating from the commitments.

6.34. The wind generating plants in the state are invariably installed by invoking the special concessional provision extended in the income tax rules, namely, accelerated depreciation. When the benefits of savings in income tax accruing is considered the actual cost of capital employed for the installation is much lower than the cost considered for determination of tariff by the Commission, which itself is much higher as explained earlier.

6.35. Over and above all the concessions indicated a luxury called 'Banking' is also extended liberally to the wind generators. By this, their generation during the season are allowed to be adjusted against their consumption not just during the time of generation but throughout the financial year. On several occasions it has extended beyond the financial year also. During the season which coincides with the monsoon when the demand will be markedly low and hydel generation at its peak, thanks to the monsoon rains. Even at such an oversupply position which continues throughout the season, the entire wind generation needs to be

considered as having been drawn by the utility and consumed. This is despite the fact that the discom is forced to spill a large quantum of energy due to the generation being far in excess of demand. The spilled energy doesn't fetch any revenue to the discom, rather it has to pay hefty penal charges for violating Grid Codes. However during the high demand period, the discom needs to allow the wind generators to adjust their consumption against the so called banked energy which is nothing but the spilled energy and it is high time to revisit this practice and take an appropriate decision and render justice to save the discom and the common consumer.

6.36. It is amply clear that already due to various promotional measures extended, the wind generators are recovering much more than what is adequate to cover their capital employed. At this juncture where the discom are expected to have full requirement tied up through long term agreements which are in the nature of penalising the discom if they are unable to honour any of the provisions which are more one sided favouring the generators, continued extension of the banking provision only adds to woes of discom which is under deep trouble. Withdrawal of banking system will not cause any loss to the wind generators rather super normal profit or profiteering may come down a little, whereas it is likely to help the discom to prune a sizable portion of its losses. The old arguments favouring the continuation of the banking system will not hold anymore in this self-sufficient stage and prayed to dispense banking of electricity, dispense captive status without scheduling and adjust the already banked energy only in value.

7. Findings of the Commission:-

7.1. We have given anxious consideration to the contention of the petitionerin M.P. No. 5 of 2019. The thrust of the petitioner's arguments is on withdrawal of banking facility to WEGs on the ground that it causes loss to TANGEDCO. We have also heard views of the impleaders as well who seek the continuance of banking facility to the generators of renewable power.

7.2. It is not necessary to delve deep into the issue or traverse the pleadings of the parties exhaustively as the issue lies in a very compass i.e. as to whether the plea for withdrawal of banking has passed the test of validity before any higher Forum. Viewed in the said angle, we have to definitely observe that the answer must be in negative. It is an open secret that the banking of electrical energy produced by the WEGs was introduced by TANGEDCO and continued for years even before the constitution of TNERC. It is true that TNERC has held in favour of continuance of banking in the past, keeping in view, the mandate under section 86 (1) (e) of the Electricity Act, 2003 and in view of the need to promote Green Energy. But then, it must not be forgotten that the Hon'ble APTEL has also upheld the order of the Commission. The Hon'ble APTEL elaborately expounded on the banking of electricity as a concept in its judgment dated 18-03-2011 in Appeal No. 98 of 2010 and judgment dated 21-09-2011 and in Appeal No. 53, 94 and 95 of 2010 which are extracted below:-

In Appeal No. 98 of 2010 dated 18-03-2011:-

"18. Before getting into the merits of Appellant Board's arguments, on this issue let us understand the very concept of Banking of Electrical Energy. Banking of energy is analogous to small saving bank account in a financial bank. A person deposits his surplus amount in a saving bank account. He can withdraw his money from bank any time according to his requirement.

For this deposited money, he earns some interest. The bank in turn gives loan to some other needy customer at a higher rate of interest in process, saving account holder as well as bank are benefited. Now come to electricity banking. Electricity is a commodity which cannot be stored. It is to be consumed at the very instant it is produced. Generation by Wind Energy Generators solely depends upon availability of wind at a particular velocity. In other words it is periodical in nature. Its generation is not constant even during a period of 24 hours of a day. It could be possible that it generates electricity when captive user does not require it. In such a case energy generator banks it with distribution licensee who supplies this energy to its consumers at applicable tariff. However, for returning the banked energy, Licensee may have to procure additional electricity from other sources. Unlike the Banks which pay interest to saving account holder, here the licensee, banker of electrical energy, earns interest on this banked energy. Thus banking rate electrical energy should be nominal. In the light of above fact situation, we would now examine the merits of Appellant Board's contentions vis-a-vis findings of State Commission on this issue.

19. The State Commission is empowered to make provisions for banking of energy generated by Renewable Sources of Energy under the Power Procurement from New and Renewable Sources of Energy Regulations, 2008. The Said Regulation is as follows:- "3. Promotion of new and renewable sources of energy..... (4) The Commission may consider appropriate banking mechanism for generation of power from a particular kind of renewable source depending upon the inherent characteristics of such source.

20. The relevant portion of the findings given on this issue by the State Commission is as follows:-

> *"8.2.1. Banking as a concept was introduced by the Tamil Nadu Electricity Board in 1986 to encourage generation of wind energy. The banking charge was fixed at 2% in 1986 and raised to 5% in 2001. The figure remained at 5% when the Commission issued order No.3 dated 15.5.2006. The banking period was fixed at one month in March 2001 by the TNEB and doubled in September, 2001. It was*

further raised by TNEB to one year in March, 2002 commencing from 1st April and ending on 31st March of the following year.

8.2.2 The banking charges shall be realised every month for the quantum of units generated during the billing month less the consumption of the captive users/third party sale. Slot-wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate/extra charges. No carry over is allowed beyond the banking period. Unutilised energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff. The Commission proposes to retain the same features with some modifications based on the suggestions made by the stakeholders. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification the plea that the unutilized energy at the end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee. The plea of the TNEB to raise the banking charge from 5% to 15% and curtail the banking period from one year to one month are too radical to be accepted by the Commission.

8.2.3. Therefore, the Commission decides to retain banking charges at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month. The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy for April. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy banked in April shall be drawn to the required extend. If the consumption during May is less than the generation during May, the balance shall be reckoned as the banked energy for May and banking charges for May will be leviable only for this component. This procedure shall be repeated every month".

From the above observations, it is clear that concept of banking has been introduced by Appellant Board itself in 1986 to encourage generation of electricity from abundant wind power potential available in the state. Banking charges were fixed at 2% in 1986 which were enhanced to 5% in 2001. The figure remained at 5% till 2009 when the impugned order was delivered by State Commission. Thus, there was no reason for State Commission to enhance the same to 15%. State Commission has rightly observed that the plea of TNEB (Appellant) to raise the banking charge from 5% to 15% were too radical. As regards Appellant Board's demand for reduction of banking period from one year to one month, it is pointed out banking period was fixed at one month in March 2001, doubled to two months in September 2001 and then further increased to one year in March 2002 by Appellant Board itself. Thus Appellant Board has increased it from one month to one year within a span of one year. There should have been some rationale on the part of Appellant Board to do so. Appellant Board has not assigned any new development, which was not present in 2001-02 and which has warranted the curtailment of banking period from one year to one month now. The State Commission has rightly rejected it as otherwise it would have rendered banking mechanism as meaningless."

Appeal No.53, 94 & 95 of 2010 dated 21-09-2011:-

"27 (d) The concept of "banking" was evolved by the State Commission which is in line with the provisions of the Act, 2003, National Electricity Policy and the National Tariff Policy. Therefore, the impugned order promotes the object of the Act/Rules and the purpose it serves. It would be impossible to set-up the Wind Energy Units without the banking facilities due to the very characteristics of wind power generation. It was only because of the promises made by the Government and the Appellant in respect of Wind Power Generation which included the concept of banking, the wind generators set-up their facilities by incurring heavy expenditure. Therefore, the Appellant is estopped from making claims contrary thereto."

7.3. The TANGEDCO too has filed appeals challenging the concept of banking and the same are pending before APTEL. Above all, in its recent judgment dated 28-01-2021 in Appeal No.191, 195 and 265 of 2018,the Hon'ble APTEL set aside the decision of the Commission not to extend banking to new WEGs commissioned after 01-04-2018. It is to be noted that the Commission is bound to act in accordance with the directions of APTEL and hence, in our view, the prayers in the present petition cannot be granted at this stage. However, this is not to say that the prayers herein are altogether devoid of merits or liable for rejection. This is only to say that the present petition cannot be entertained in the light of the present settled position and the petitioner has to work out his remedy in the appropriate higher forum. We have neither rejected the prayer outrightly nor accepted the prayer in totality and have not gone into the merits of the case as we find the same cannot be done at this juncture. We fully appreciate the concern expressed by the petitioner but in the same breath we hold that the petitioner has, failed to see the judgments of APTEL and pendency before Supreme Court.

7.4. The Commission has done a balancing act in its order dated 13-04-2018 retaining the banking period of 12 months only to those WEGs commissioned before 01-04-2018 and permitted banking facility to those WEGs commissioned after 01-04-2018 only for a period of one month. The Commission has also made it clear in the said order that there shall not be facility of banking for third party power purchase. The said order which was later set aside by the APTEL in Appeal No. 191, 195 and 265 of 2018 has been challenged before the Supreme Court by the Commission itself. Thus.at present, the Commission is having a re-look into the issue of banking and is coming out with arrangements to balance the interests of all stakeholders.

With these observations, the petition is disposed with directions to the petitioner to work out his remedy in the manner known to law.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission