

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

PRESENT:-

Thiru.S.Kabilan ... **Chairman**

Thiru.K.Venugopal **Member**

and

Thiru.S.Nagalsamy **Member**

M.P. No.3 of 2011

M/s.Beta Wind Farm (P) Limited
3rd Floor, Egmore Benefit Society Building
25, Flowers Road, Chennai – 600 084. **Petitioner**
(Thiru A.Jenasenan & E.Manoharan Advocates for Petitioner)

Versus

1) The Chairman
TNEB, No.144, Anna Salai
Chennai – 600 002.

2) TANTRANSO
No.144, Anna Salai
Chennai – 600 002.

3) TANGEDCO
No.144, Anna Salai
Chennai – 600 002. **Respondents**
(Thiru P.H.Vinod Pandian, Advocate for Respondents)

M.P.No.9 of 2011

M/s.Sai Regency Power Corporation Private Limited
Office No.3, II Floor, Crown Court
128, Cathedral Road, Chennai – 600 084. **Petitioner**
(Thiru A.Jenasenan & E.Manoharan Advocates for Petitioner)

Versus

1) The Chairman
TNEB, No.144, Anna Salai
Chennai – 600 002.

2) TANTRANSCO
No.144, Anna Salai
Chennai – 600 002.

3) TANGEDCO
No.144, Anna Salai
Chennai – 600 002.

.... Respondents
(Thiru P.H.Vinod Pandian, Advocate for Respondents)

M.P. No.11 of 2011

TVS Wind Power Limited
Jayalakshmi Estates, 29, Haddows Road
Chennai – 600 006.

.... Petitioner
(Thiru A.Jenasenan & E.Manoharan Advocates for Petitioner)

Vs.

1) The Chairman
TNEB, No.144, Anna Salai
Chennai – 600 002.

2) TANTRANSCO
No.144, Anna Salai
Chennai – 600 002.

3) TANGEDCO
No.144, Anna Salai
Chennai – 600 002.

.... Respondents
(Thiru P.H.Vinod Pandian, Advocate for Respondents)

M.P. No.12 of 2011

TVS Wind Power Limited
Jayalakshmi Estates, 29, Haddows Road
Chennai – 600 006.

.... Petitioner
(Thiru A.Jenasenan & E.Manoharan Advocates for Petitioner)

Vs.

1) The Chairman
TNEB, No.144, Anna Salai
Chennai – 600 002.

2) TANTRANSCO
144, Anna Salai
Chennai – 600 002.

3) TANGEDCO
No.144, Anna Salai
Chennai – 600 002.

.... Respondents
(Thiru P.H.Vinod Pandian, Advocate for Respondents)

M.P. No.3 of 2011

**Dates of hearing: 23-3-2011, 20-4-2011, 17-6-2011,
14-7-2011, 19-8-2011, 11-10-2011
and 21-10-2011**

M.P. No.9 of 2011

**Dates of hearing: 20-4-2011, 17-6-2011, 14-7-2011,
19-8-2011, 11-10-2011 and 21-10-2011**

M.P. No.11 of 2011

**Dates of hearing: 26-4-2011, 17-6-2011, 14-7-2011,
19-8-2011, 11-10-2011 and 21-10-2011**

M.P. No.12 of 2011

**Dates of hearing: 26-4-2011, 17-6-2011, 14-7-2011,
19-8-2011, 11-10-2011 and 21-10-2011**

Date of Order : 28-12-2011

The prayer in M.P.Nos.3 of 2011, 9 of 2011, 11 of 2011 and 12 of 2011 is the similar namely to clarify whether the transmission and wheeling charges of 5% provided for in the Tariff Order No. 1 of 2009 is the normative transmission and wheeling charges or concessional / promotional charges and if it is held that

the levy of 5% as transmission and wheeling charges is concessional / promotional, determine the normative transmission and wheeling charges payable by captive power plants in order to avail the benefit of obtaining REC for the energy generated by them in terms of the CERC Regulations.

Since the prayer in all the above petitions is similar, all the above petitions are clubbed together for the purpose of passing a common order by the Commission. The Commission upon perusing all the above petitions and other connected records and after hearing both sides passes the following common order as the issues involved in the above petitions are same:-

COMMON ORDER

1. **Prayer in M.P.No.3 of 2011:-**

The prayer in M.P. No.3 of 2011 is to clarify as to whether the transmission and wheeling charges of 5% provided for in the Tariff Order No. 1 of 2009 dated 20-3-2009 is the normative transmission and wheeling charges or concessional / promotional charges and

If it is held that the levy of 5% as transmission and wheeling charges is concessional / promotional, the normative transmission and wheeling charges payable by captive power plants / group captive power plants in order to avail the benefit of obtaining REC for the energy generated by them in terms of the CERC Regulations.

2. **Prayer in M.P.No.9 of 2011:-**

The prayer in M.P. No. 9 of 2011 is the same one as in the prayer in M.P. No. 3 of 2011 referred to in para 1 above with the additional prayer to direct the Respondent Board to incorporate the APPC tariff in place of preferred tariff in the agreement entered into between the Petitioner and the Respondent Board to purchase any surplus power that may be generated and sold to the Board.

3. **Prayer in M.P.No.11 of 2011:-**

The prayer in M.P. No. 11 of 2011 is the same one as the prayer in M.P. No. 3 of 2011 extracted at para 1 above.

4. **Prayer in M.P.No.12 of 2011:-**

The prayer in M.P. No. 12 of 2011 is the same one as the prayer in M.P. No. 3 of 2011 extracted in para 1 above.

5. **Facts of the case in all the above M.P. Nos. 3, 9, 11 and 12 of 2011:-**

The petitioners in all the above M.Ps. are companies registered under the Companies Act, 1956 engaged in the business of setting up of power plants through renewable energy sources. All the petitioners are having wind energy generators and they intend to obtain Renewable Energy Certificates (hereinafter referred to as REC). Since the key condition for obtaining REC is that the CPPs should not have availed or does not propose to avail any benefit in the form of

concessional / promotional transmission or wheeling charges and promotional banking facility. Under the REC scheme, the Petitioners have filed the above petitions to the Commission for clarifying their position as to eligibility.

6. Contentions of the Petitioners in all the above M.Ps.:-

6.1. Currently the distribution licensee / Electricity Board, based on Tariff Order No. 1 dated 20-3-2009, is collecting transmission and wheeling charges at 5% uniformly for captive use and third party sale of wind energy in the case of HT / EHT consumption. The Tariff Order does not stipulate / differentiate concessional or promotional rate from normative rate for transmission and wheeling. It has stipulated 5% in general.

6.2. The Tariff Order does not specify what is concessional and what is normative charges and has plainly stipulated 5%. The Petitioner is constrained to file the current petition seeking appropriate direction from the Commission as to the stipulation / identification of rates for concessional and normative charges.

6.3. The Petitioner is willing to pay the normative rates regarding transmission or wheeling and does not intend to avail any promotional / concessional benefit such as promotional banking facility. In the event that it is held that the Petitioner starts generation before the adjudication of this clarification petition and is left with no other option but to pay the current rates, in order to initiate generation,

the Petitioner is even willing to pay the differential amount in case the current rate is held to be concessional and not normative.

6.4. Since there is only one rate of transmission and wheeling charges prescribed in the Tariff Order No. 1 of 2009 available by the generating units like the Petitioner, they are willing and propose to pay the same for the energy generated by them and which is to be wheeled and transmitted through the Respondent Electricity Board. The Petitioner submits that in the event of this Commission holding the above rate is a promotional / concessional rate, the Petitioner is willing to pay the normative rates as fixed by this Commission.

6.5. The fact that the Petitioner is still paying @ 5% as prescribed in the Tariff Order until the above M.Ps. are decided should not be construed as the Petitioner availing promotional / concessional benefits. Since there is only one rate prescribed, the Petitioner has offered and is willing to pay at the said rate on the assumption that it is the normative rate.

7. Contentions of the Respondent in M.P. No. 3 of 2011:-

7.1. While referring to Section 86 (1) (e) of the Electricity Act, 2003, it has been stated as follows:-

a. TNERC issued the Tariff Order No.1 of 2009 dated 20-3-2009 for wind energy in exercise of the powers conferred under Section 86 (1) (e) of Electricity Act, 2003. It clearly shows that the TNERC has fixed the tariff

and other issues on concessional basis only in order to promote generation, inter-alia from renewable sources.

- b. The TNERC in Page No. 33 of Order No. 3, dated 15-5-2006 under issue No. 3, dealing with purchase price states the following:-

It is complex and difficult to calculate the per unit environmental benefit for the generation of clean power from wind and other renewable energy sources. However, the Commission has compensated this benefit to the NCES based generators by advantageously, fixing the other factors like, transmission and wheeling charges, banking provisions etc.”

- c. The TNERC in Page No.51 of Order No.3, dated 15-5-2006 under issue No.7, dealing with transmission and wheeling charges and line losses has stated the following:-

“To give encouragement for promotion of renewable energy and co-generation, the Commission decides the following transmission and wheeling charges which include the line losses in kind:

Wind Energy Generators: 5% of energy”

It clearly shows that the TNERC has fixed the transmission and wheeling charges on concessional basis only.

- d. The TNERC in Page No. 23 of Order No.1, dated 20-3-2009 under Issue No. 8.3, transmission and wheeling charges has stated the following:-

“The Commission adopted the same rate of 5% towards the transmission and wheeling charges including line losses in Order No. 3, dated 15-5-2006. The TNEB has now pleaded for stepping up the charges to 15% on the ground that transmission and distribution losses have gone up in the recent years. The transmission and distribution losses of the TNEB has remained static at 18% since 2003 and therefore, the Commission does not see merit in the plea of the TNEB to raise the charges to 15% and the Commission decides to retain the wheeling and transmission charges including line losses at 5% uniformly”.

It clearly shows that the TNERC has fixed the transmission and wheeling charges on concessional basis only.

- e. The TNERC in Page No. 44 of Order No.3, dated 15-5-2006 under issue No.6, banking has stated the following:-

“Considering this fact, the Commission decides to retain the existing banking charges of 5%.

Slot wise banking is permitted to enable unit to unit adjustments for the respective slots towards rebate/extra charges. However, the unutilized portion at the expiry of banking period will not be distinctly dealt with for adjustment. Such unutilized portion is eligible only of the 75% rate.... ”

It clearly shows that the TNERC has fixed the banking provision on concessional basis only.

f. The CERC in the amendment Regulation dated 29-9-2010 has given *explanation for banking facility as follows:-*

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

Since the TNERC Order No.1 dated 20-3-2009 permits the adjustment of wind energy of peak hour generation and normal hour generation in the lower slot consumption, it amounts to the concessional banking facility as mentioned in the above amendment Regulation.

g. While extracting order of the Commission in S.M.P. No. 1 of 2009 dated 28-10-2009, it has been contended as follows:-

“It clearly shows that the Hon’ble TNERC has fixed the banking provision on concessional basis only. In view of the position stated above, the averment that the tariff order does not stipulate / differentiate concessional or promotional rate from normative rate for transmission and wheeling is denied as false and misleading. Perhaps to attain the object at its sweet will”.

h. The Petitioner has accepted and willing to pay the normative rates regarding transmission and wheeling charges and willing to forego the promotional / concessional benefits of banking facility. Further the Petitioner

requested the Commission to permit to pay the existing transmission and wheeling charges of 5% of energy and accepted and willing to pay the difference in amount when the TNERC has clarified and fixed the normative transmission and wheeling charges. It is to be noted that the TNERC in Order No. 2 dated 15-5-2006 has fixed the transmission charges of Rs.2,781/- per day per MW and wheeling charges of 14.74 paise per unit for long term open access customer. Hence the Petitioner has to pay transmission charges of Rs.2,781/- per day per MW and wheeling charges of 14.74 paise per unit and they should not avail the banking facility besides satisfying each and every eligibility criteria stipulated in Regulation 5 of the CERC (terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 as amended by first amendment Regulations, 2010 herein after referred to as CERC Regulations, 2010.

i. The Petitioner cannot pray the Commission to fix a separate tariff for the above energy in a miscellaneous petition instead of filing a separate tariff petition.

j. When the existing wheeling category generators who have executed the energy wheeling agreement applies to avail REC benefit, from the date of foregoing of concessional transmission wheeling charges, banking facility and electricity duty, they have to wait for 3 years to avail the benefit of REC scheme. hence from the date of foregoing of the above said concessional charges, they

have to pay normative charges for transmission and wheeling charges, there is no banking facility and the unutilized surplus energy after adjustment on every month is treated as lapsed.

7.2. Contentions of Respondent in M.P. No. 9 of 2011:-

The Respondent in M.P. No. 9 of 2011 has raised the same contentions as noted in M.P. No. 3 of 2011 referred to in para 7.1 above with the following additional contentions in para 3 of counter:-

The above petition is not maintainable before this Commission in as much as the prayer seeks relief in utter contravention of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

7.3. Contentions of Respondent in M.P. No. 11 of 2011:-

The Respondents have raised the same contention as raised by them in the counter in M.P. No. 3 of 2011.

7.4. Rejoinder to the Counter by the Petitioner in M.P. No. 11 of 2011:-

In the rejoinder to the counter in M.P. No. 11 of 2011, the Petitioners have stated as follows:-

a. The rates quoted by the Respondent applying Order No. 2 of 15th May 2006, treat unequals equally. The Respondent has not taken into consideration

the various limitations / factors pertaining to the wind sector and have arbitrarily quoted the rates mentioned in its affidavit.

b. Promotion of renewable energy by the Commission in exercise of its power under Section 86 (1) (e) of the Electricity Act, 2003, does not amount to providing concessions. A reading of the National Tariff Policy, National Electricity Policy and the Electricity Act, 2003 established the need for an overwhelming emphasis on environmental friendly renewable sources of energy. The methodology adopted by the Commission for fixing the tariff and other charges has been clearly enunciated in Section 6 of Tariff Order No. 1 of 2009. The said methodology does not factor any concession for the promotion of wind energy.

c. The Commission retained the charges at 5% in its Tariff Order No. 1 of 2009 as it found no merit in TNEB's argument for an increase of charges to 15%. Hence it cannot be said that the current transmission and distribution charges are concessional in nature as the basis of rejection of Respondent's plea for increase thereof was that no further cost was required to be recovered by the Respondent.

d. Further, under Clause 9.5 of the consultative paper annexed to Tariff Order No. 1 of 2009, the Commission has stated that the said transmission and wheeling charges (which includes line losses) of 5% in kind would get reduced if the point of injection and point of drawal are in high / extra high voltages and

such cases shall be specifically brought to the Commission's notice and approval obtained.

e. The Tariff Order No. 1 of 2009 alone has to be applied in the case of the Petitioner and not Order No. 2 dated 15th May 2006 as is sought to be done by the Respondent and in the absence of any specific mention of the charges under Tariff Order No. 1 of 2009 being concessional in nature, such charges are to be construed as normative only.

f. The Commission has considered PLF of 27.15% for wind energy generators in its Tariff Order No. 1 of 2009. As the said PLF, 23,78,340 kWh of energy would be produced per MW of wind energy capacity per annum and the annual transmission charges payable by the generator per MW would be Rs.10,51,065/-, which would work out to 42.68 paise per kWh. In contrast, the same transmission charges for a firm power CPP with a normative PLF of 70%, would work out to 17.14 paise per kWh. The Petitioner submits that such enormous burden which the Respondent seeks to impose on the Petitioner is unwarranted, especially so when Order No. 2 of 2006 dated 15-5-2006 is not applicable to the case of the Petitioner, in view of this Commission having framed Tariff Order No. 1 of 2009 specific to wind energy.

7.5. Counter of Respondent in M.P. No. 12 of 2011:-

The Respondent has raised the same contentions as raised by them in M.P. No. 3 of 2011.

7.6. Rejoinder to the Counter in M.P. No. 12 of 2011 filed by the Petitioner:-

The rejoinder filed by the Petitioner to the counter in M.P. No. 12 of 2011 is the same one as the rejoinder in M.P. No. 11 of 2011 referred to in para 7.4. above.

8. Interim order of Commission in M.P. No. 3 of 2011 passed in the hearing on 20-4-2011:-

8.1. During the hearing of M.P. No.3 of 2011 on 20-4-2011, the Commission after hearing Thiru.R.Muthukumarasamy, Senior Counsel, passed the following order namely:-

“The TNEB was directed to file counter in respect of M.P. No. 3 of 2011 of Beta Wind Farm Pvt. Ltd., in 4 weeks. In the mean while the Petitioner prays an interim relief permitting to pay transmission and wheeling charges at 5% as prescribed by T.O. No. 1 of 2009 till such time the Commission indicates the normal transmission and wheeling charges.

The Petitioner is permitted to pay transmission and wheeling charges at 5% from the date of commissioning. As and when the Commission indicates the normative transmission and wheeling charges, the difference should be paid by the Petitioner to the concerned licensee”.

8.2. Interim Application for impleading TANTRANSCO and TANTRANSCO:-

In the hearing held on 17-6-2011, the Commission has allowed the interim application to implead TANTRANSCO and TANGEDCO as Co-Respondents.

9. I.A. No. 1 of 2011 in M.P. No. 9 of 2011:-

9.1. After hearing of the arguments of Thiru R.Muthukumarasamy, Senior Counsel, the Commission has passed the following interim order namely,

“The Petitioner prays for interim relief permitting to pay transmission and wheeling charges at 5% as prescribed by T.O. No. 1 of 2009 till such time the Commission indicate the normal transmission and wheeling charges.

The Petitioner is permitted to pay transmission and wheeling charges at 5% from the date of commissioning. As and when the Commission indicates the normative transmission and wheeling charges, the difference should be paid by the Petitioner to the concerned licensee.

The TNEB is directed to file counter in 4 weeks”.

9.2. Interim order for impleading of TANTRANSCO and TANGEDCO as Respondents:-

In the hearing held on 17-6-2011, the Commission has allowed the I.A. No. 2 of 2011 to implead TANTRANSCO and TANGEDCO as Respondents in M.P.No. 9 of 2011.

10.1. Interim order in M.P. No. 11 of 2011:-

On 26-4-2011, the Commission after hearing the arguments and Thiru.R.Muthukumarasamy, Senior Counsel for the Petitioner passed the following interim order namely,

“The Petitioner is permitted to pay provisionally transmission and wheeling charges at 5% from the date of commissioning. As and when the Commission indicates the normative transmission and wheeling charges, the difference should be paid by the Petitioner to the concerned licensee.

The Respondent is directed to file counter within 4 weeks”.

10.2. Interim order in M.P. No. 11 of 2011:-

On 17-6-2011, the Commission has allowed I.A. No. 2 of 2011 to implead TANTRANSCO and TANGEDCO as Co-Respondents in M.P. No. 11 of 2011.

11. Interim order in M.P. No. 12 of 2011:-

11.1. On 26-4-2011, the Commission after hearing the learned Senior Counsel, Thiru.K.Muthukumarasamy for the Petitioner passed the following interim order namely,

“The Petitioner is permitted to pay provisionally transmission and wheeling charges at 5% from the date of commissioning. As and when the Commission indicates the normative transmission and wheeling charges, the difference should be paid by the Petitioner to the concerned licensee.

The Respondent is directed to file counter within 4 weeks”.

11.2. On 17-6-2011, the Commission has allowed the prayer in I.A. No. 2 of 2011 for impleading TANTRANSCO and TANGEDCO as Co-Respondents in M.P. No. 12 of 2011.

12. Hearing on 21-10-2011 in regard to all the above M.P. No. 3 of 2011, M.P. No. 9 of 2011, M.P. No. 11 of 2011 and M.P. No.12 of 2011:-

In hearing held on 21-10-2011, the Commission after hearing the arguments of Thiru.R.Muthukumarasamy, Senior Counsel for the Petitioner in all the above M.Ps., directed that both the parties in the above M.Ps. are to file their Written Submissions / Additional Submissions by 31-10-2011.

13. Written Submissions:-

13.1. Pursuant to the order of Commission to file written submission, both the Petitioners and Respondents in all the above M.Ps have filed a common Written Submission to the Commission on 30-10-2011 and 3-11-2011 respectively:-

13.2. Common Written Submission of the Petitioners in all the above M.Ps.:-

In the common Written Submission, it has been contended by the Petitioners as follows:-

a. The Respondents have contended that the Petitioners would have to comply with the following in order to avail the REC benefits:-

- (i) To pay the normative transmission charges of Rs.2781/- per day per MW, wheeling charges of Rs.14.74 per KWh as ordered by TNERC in Order No. 2 dated 15-5-2006 for the present.
 - (ii) To pay transmission charges and wheeling charges as fixed by the Commission in future.
 - (iii) To forgo banking facility by allowing the unutilized energy to lapse after adjustment on monthly basis.
- b. Wind Energy Generators should not be required to pay the transmission charge of Rs.2781/- per MW per day and they should be permitted to pay transmission charges on the basis of the 25.84% PLF considered by the Commission in arriving at net transmission capacity in Clause No. 5.9 of its Order No. 2 dated 15-5-2006.
- c. The banking provision availed on slot to slot basis shall not be considered as concessional or promotional in terms of the CERC regulations.
- d. In support of the above submissions (ii) and (iii), the Petitioners have stated as follows:-

“The transmission charges of Rs.2781 per day per MW for long term open access customer was arrived at in Clause 5.12 of Order No.2 dated 15-5-2006 of the Commission. While doing so, the Commission took into account the annual transmission charges of Rs.730.62 crores for the year 2005-2006. After having

arrived at the said figure, the Commission proceeded to determine the available net transmission capacity and in the process took into account the net transmission capacity of each generating station reckoned by multiplying the installed generation capacity by its normative PLF as given in Clause 5.9. The annual transmission charges arrived was divided by the net transmission capacity to arrive at the figure of Rs.2781 per MW per day transmission charges. In the said process, the Commission had assumed a normative PLF of 10% for the 19.36 MW of wind energy generation capacity owned by TANGEDCO and normative PLF of 25.84% for the private wind mill generation capacity of 2020.87 MW. Having regard to the above working, it would be obvious that PLF of the respective generating stations have to be considered for computing the transmission charges payable by the said generating station. So far as the wind energy consumers are concerned, the transmission charges payable would be Rs.2781 per MW per day adjusted for normative PLF. If Rs.2781 per MW per day is to be adopted with reference to the installed capacity of all generators, it would lead to a figure which would be substantially higher than the annual transmission charges determined by Order No. 2 of 2006, which would amount to unjust enrichment and also treating unequal's as equals.

e. For levy of transmission charge, it is not the installed generation capacity that is to be reckoned, but the allotted transmission capacity which has been taken note of, which is the actual power transferred in MW between the specified point of injection and point of drawal taking into account the PLF of the

generating station. The transmission charges are to be collected for the energy that is actually transmitted which has been held by the Commission to depend on generation at specified PLF.

It is therefore submitted that wind generators would be liable to pay the transmission charges based on their normative PLF or the actual power transfer effected by them in MW.

f. As regards the contention of the Respondents that the Petitioners should forgo banking by agreeing for lapse of the unutilized energy to avail the benefits of REC, it is submitted that the same is contrary to the provisions of CERC Regulations, 2010. Explanation to Regulation 5 of the CERC's REC Regulation, 2010 clearly states that for the purpose of the said Regulation banking facility benefit shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected to grid during the off peak hours. The above Regulation of CERC makes it clear that slot-to-slot banking provision is not considered as a concessional or promotional facility.

g. The conditions stipulated in Regulation 6 in the TNERC RPO Regulations originally framed also contain the same condition found in the CERC Regulations relating to REC eligibility. An amendment has been brought about by the State Commission to the above Regulations on 29-7-2011. The amendment to the said Regulations issued by the TNERC seeks to add three provisos to Regulation

No.6. The said provisions are in conformity with CERC Regulations. The fact that the explanation to Regulation 5 of the CERC Regulations is not found reproduced in the TNERC's amended regulations on banking, does not militate against the claim made by the Petitioners for two reasons, firstly, it is the CERC which has determined the eligibility criteria for availing REC and secondly, the Regulation 2 (2) of the TNERC Regulations makes it clear that the words and expressions used and not defined to these Regulations but defined in the Act or the Regulations issued by the Central Commission shall have the meaning respectively assigned to them in the Act or such Regulations. Since the CERC Regulations defines and explains the words banking facility benefit in explanation to Regulation 5, it has got to be read into the TNERC Regulations as well. In other words, the banking facility benefit would not include slot to slot banking as understood specifically by the CERC Regulations.

h. The appropriate Commission may have the power to frame Regulations within its purview in the manner it likes. But in relation to a subject like the one covered by Section 66 of the Electricity Act, 2003 where both the CERC and SERC have the power to make Regulations, it is submitted that such exercise must be consistent with each other and not inconsistent. It is more so, in view of the fact that the REC and its eligibility criteria have been dealt with by the CERC and the State Commission which is exercising its powers to deal with RPO, cannot be inconsistent with the CERC Regulations, particularly when the Act

does not provide for an overriding power with one or the other Commission when the subject has an All India effect and impact.

i. So far as M.P. No. 9 of 2011 filed by Sai Regency Power Corporation Limited is concerned, they had intimated TNEB even on 23-3-2011 that they would be supplying energy to group captive consumers and avail REC benefits without availing any concessional or promotional transmission and wheeling charges and banking facility benefit as defined in the CERC Regulations. It is only, thereafter, they had obtained orders from the Commission on 20-4-2011 permitting them to pay 5% as transmission charges without prejudice to the claim made in the M.P. In the light of these facts, it is submitted that they would also stand in the same footing like others for claiming various reliefs.

13.3. Common Written Submissions of Respondent in all the above M.Ps.:-

In the common written submissions filed by TANGEDCO, it has been stated as follows:-

a. The Petitioners have stated that the Order No. 1 dated 20-3-2009 does not factor any concession for the promotion of wind energy. In this connection, it is stated that the Order No. 1 of 2009 dated 20-3-2009 is an extension of Order No. 3 of 2006 dated 15-5-2006. The Order No. 3 of 2006 dated 15-5-2006 has extended various promotional benefits to wind energy. On expiry of control period of Order No. 3, the Order No. 1 has been issued. The same 5% transmission and wheeling charges, same

5% banking charges are all extended from Order No. 3 of 2006 dated 15-5-2006. The Commission vide page (10) in para (5.2) of Order No. 1 of 2009 dated 20-3-2009 stated that the order is issued based on the representation of IWTMA.

b. The Commission by adopting the CEA / CERC norms has fixed the transmission and wheeling charges for conventional power in order No. 2 of 2006 dated 15-5-2006 that by considering the total expenditure incurred for the transmission network and the total capacity of power to be transmitted on the basis of Rs/MW. The Tariff Policy, National Electricity Policy, Electricity Act, 2003, CEA norms, CERC norms has nowhere stated that the transmission and wheeling charges are to be calculated and collected based on PLF of generating station and special consideration to NCES power like wind energy.

c. While referring to a decision of Maharashtra Electricity Regulatory Commission in the case of M/s. Renewable Energy Developers Association, Maharashtra Vs. Maharashtra State Electricity Distribution Company Ltd., it has been stated as follows:-

“It is stated that the transmission network is common to all, whether it is conventional or non-conventional like wind, solar, bio-mass, co-gen, the quantity of power only varies, that too at any point of time the network is transmitting the combined power from all the sources, not with single power one by one. Hence

special consideration cannot be given for payment of normative transmission charges based on PLF to wind energy. Further when the provision is not available in Electricity Act, 2003, it cannot be extended and hence the PLF based payment is not at all applicable”.

d. The TANGEDCO in para (J) of its counter affidavit stated that, for fixing the normative charges, if any amount in between 5% and Rs.2,781/- per day per MW is fixed, it is also promotional one. Now the Petitioner want to fix the transmission charges based on PLF. If the rate is considered based on PLF, it would be about 1 / 4 of Rs.2,781/- per day per MW only i.e. about Rs.755/- per day per MW, it amounts to Rs.2,75,575/- annually, which is again a promotional one, since such rate would be by considering the infirmness of the wind energy.

e. The Petitioner prayed before the Commission to determine the normative transmission charges in terms of CERC Regulation. In this connection, it is stated that, the Hon’ble CERC in the Statement of Reasons (SOR) while ensuring the amendment to the REC Regulations on 29-9-2010 has clarified the “concessional / promotional transmission charges” as follows:

“Definition of “concessional / promotional transmission charges”

e. One of the stakeholder M/s. A to Z group suggested that the phrase “concessional / promotional transmission charges” should be defined in the Regulations.

Findings of the Commission

The Commission would like to clarify that the expression “concessional / promotional transmission / wheeling charges” in the amendment Regulation means levy of transmission / wheeling charges at a rate lower than the rate as applicable to a normal open access customer”.

“The TNERC has already fixed the normative transmission and wheeling charges in Order No. 2, dated 15-5-2006 as per CERC Regulation and REC Regulation. If any rate below, that is a concessional / promotional one, that too PLF based rate i.e. $\frac{1}{4}$ of Rs.2,781/- is very much promotional one only”.

f. The Commission has not directed the TANTRANSCO to recover the expenditure by way of transmission charges at PLF rate. It is to be further noted that since STU / TANTRANSCO has not carrying out any generating activities with the transmission network, the PLF cannot be brought in and fit in to it for arriving at the transmission and wheeling charges. If PLF based transmission charges are considered, the STU / Transmission Licensee cannot recover its expenditure in its life period as such PLF rate based charges would not even meet the interest on the investment.

g. With regard to banking facility, it has been stated that it is a promotional one. It has been further stated as follows:-

Each State, according to their States condition, provided the banking facility. The CERC in their NCES Regulations, 2009, dated 16-9-2009 and its Suo Moto Order No. 1 of 2010 has not specified the banking provision. But only

in REC Regulations, the CERC has issued the explanation for banking facility, only for the REC Regulations which is of different type and which is not acceptable and not suitable to Tamil Nadu State. TANGEDCO followed the State Commission ruling, but the CERC has taken a different interpretation for the REC benefit, which is not in practice and is not acceptable to TANGEDCO. Further, a Writ Petition No. 311 of 2011 is pending before the Hon'ble High Court of Madras in the matter of jurisdiction of the Commission to fix the banking facility. And further, the Commission has called for the additional comments for tariff revision of wind energy. In which, it is stated that,

8) Whether banking period to be retained, reduced or dispensed with in view of the satisfactory growth in the installed capacity of wind generators?

“Further the TNERC while issuing amendment to the Renewable Purchase Obligations Regulations, 2010 on 29-7-2011 has not mentioned and taken out the banking provision.

Hence the banking provision extended by the Commission is promotional / concessional one only”.

h. While referring to the provisions in Regulation 6 (1) of the TNERC (Renewable Energy Purchase Obligation), Regulations 2008 as amended, it has been stated as follows:-

Since M/s.Sai Regency Power Corporation Pvt. Ltd., M/s. Beta Wind Farm (P) Ltd., M/s. TVS Wind Energy Pvt. Ltd., and M/s. TVS Wind Power Pvt. Ltd., have already commissioned the WEGs under preferential tariff and executed the

energy wheeling agreement, they are not eligible for REC scheme and they have to wait for three years from the date of termination of earlier Power Purchase Agreement, which was clearly mentioned in para (I) of the counter affidavit.

14. Finding of the Commission:-

14.1. MP No. 3 of 2011, MP No.9 of 2011, MP No. 11 of 2011 and MP No. 12 of 2011 were filed by M/s. Beta Wind Farm Pvt. Ltd., M/s.Sai Regency Power Corporation Pvt. Ltd., TVS Wind Power Ltd and TVS Wind Energy Ltd respectively. All these petitions were filed seeking a clarification as to whether the transmission and wheeling charges of 5% provided in the comprehensive tariff Order No.1 for wind energy dated 20-3-2009 is concessional and if so the transmission and wheeling charges payable by such captive wind energy generators in order to avail the benefit of renewable energy certificates for the energy generated by them.

14.2. The Commission passed an interim order on 20-4-2011 in these petitions permitting them to pay transmission and wheeling charges at 5% from the date of Commissioning and this was subject to the condition that as and when the Commission indicates the normative transmission and wheeling charges, the difference should be paid by the petitioner to the concerned licensee.

14.3. These cases were listed on 17-6-2011 wherein IA No. 2 of 2011 was allowed by the Commission to implead TANTRANSCO & TANGEDCO as

Respondents. The matter was listed on 14-7-2011 and the hearing was adjourned at the request of the Counsel for the petitioner. These cases were listed again on 19-8-2011 and had to be adjourned at the request of the petitioner. The matter was yet again listed on 11-10-2011 and was adjourned at the request of the petitioner and the next date of the hearing was indicated as 21-10-2011 on the same date observing that no further adjournment will be granted.

14.4. The matter was heard on 21-10-2011. The Learned Senior Counsel Thiru R.Muthukumarasamy argued the matter for all the four petitioners. He submitted that wind generators constitute a separate class and therefore they have to be treated differently and further argued that unequals should not be treated as equals. He further submitted that even the power injected during off peak hour and banked can be availed by the customer during off peak hour. In this connection, he filed the CERC terms and conditions for recognition and issuance of renewable energy certificate for renewable energy generation (1st amendment Regulations, 2010). The notification issued by the CERC on 29-9-2010 envisages that a renewable energy generator shall be eligible for the REC if he has not availed or does not propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of Electricity duty. This notification further provides that if such a CPP forego on its own such benefits, It shall become eligible for

participating in the REC scheme only after a period of 3 years as elapsed from the date of foregoing such benefit.

14.5. Similar provisions have been incorporated in the Regulations issued by the TNERC with regard to renewable energy certificates. The Respondent TANTRANSCO / TANGEDCO filed a common counter and argued that all the petitioners shall pay the normative charges for transmission @ Rs.2781 per day per MW and wheeling charges of paise 14.74 per unit for the present period as ordered in TNERC Order No.2 dated 15-5-2006 and direct the parties to pay the transmission charges and wheeling charges, as may be revised by the TNERC from time to time and to forego banking provision and wait upto 3 years from the date of termination of power purchase agreement executed earlier, for availing REC benefits since the companies have executed the agreement under preferential tariff. On conclusion of the arguments, the learned senior counsel for the petitioner requested time for filing written submissions. The Commission reserved Orders and allowed time to all the parties to file their written submissions by 31-10-2011.

14.6. The petitioners filed common written submission for all the four cases. The written submission has actually gone beyond the arguments made before the Commission on various hearing dates. Para 4(a) of the written submission after the conclusion of the hearing raised a new issue regarding methodology adopted by this Commission in deciding the long term open access charges.

The petitioners have stated that the PLF of wind generators has been considered as 10% for the 19.36 MW of wind energy generation capacity owned by the TANGEDCO and normative PLF of 25.84% for the private wind mill generation capacity of 2020.87 MWs. It was further contended that if Rs.2781 per MW per day is to be adopted with reference to the installed capacity of all generators, it would lead to a figure which would be substantially higher than the annual transmission charges determined by Order No. 2 of 2006 which would amount to unjust enrichment and also treating unequals as equals. The written submissions also compare various provisions of the Regulation issued by CERC and TNERC in this regard. In these submissions the petitioners prayed that the Commission may issue direction regarding transmission charges payable by the wind generators based on their normative PLF and also to hold that the banking facility availed on slot to slot basis would not disentitle them to claim REC benefits. The Commission has examined the submissions of the petitioners at this late stage after conclusion of the hearing. Raising of new points after conclusion of hearing is not normally accepted. Since some new issues have been raised, the Commission would like to deal with these issues as well. The contention of the petitioner that PLF has been considered for fixing the transmission charges at Rs.2781 per MW per day is not well founded. The PLFs considered by this Commission in its Order No.2 dated 15-5-2006 was for the purpose of arriving at the available transmission capacity. Design of power system does not depend upon the PLF at which the plants operate. In this connection, the Commission would like to refer to the transmission planning

philosophy draft document issued by the CEA as a part of National Electricity Plan. Para 3.8.7 of the document is reproduced below:-

“The adequacy of the transmission system should be tested for different load generation scenarios corresponding to one or more of the following so as to test the scenario of maximum burden on the transmission system:

- *Summer Peak Load;*
- *Summer Off-peak Load;*
- *Winter Peak Load;*
- *Winter Off-peak Load;*
- *Monsoon Peak Load;*
- *Monsoon Off-peak Load;”*

14.7. If the PLF is considered for various generating capacity and the transmission system designed based on the average generating capacity, it will not be possible to evacuate the entire generation. The PLF in case of thermal projects is to provide for the planned shut down for maintenance, planned short term outage and to cater to forced outage such that 80 – 85% availability is considered for thermal power plants. As regards hydro power plants, generation from hydro stations depend upon the hydrological parameters like monsoon and also the type of the project such as storage type power project, power projects with limited storage and run of the river power project. In case of wind, the wind generation is confined to the wind season wherein the maximum generation would be available and during non-wind season the wind generation almost comes to nil. Even during the wind season there are daily variations in generating capacity. If the transmission system is designed taking into account the capacity utilization factor of wind at 27%, it will not be possible to evacuate the entire wind generation when it is generating at its best.

14.8. It is also necessary to examine the method of sharing of annual transmission charges. Since the petitioners have raised this issue we would like to examine this issue as well. Both in the TNERC Regulation and in the CERC Regulation, the sharing of transmission charges by various long term transmission customers is based on the ratio of allotted capacity to long term customers to the sum of the allotted transmission capacity to all the long term open access customers. By and large, the same methodology has been continued even under the point of connection charges prescribed by the CERC. In view of this, the arguments of the petitioners in their submission dated 31-10-2011 is not logical. The transmission system should be designed in such a manner that it is able to evacuate all the generation available and it does not lead to backing down of generation or shedding of load, as the case may be. In view of this, the prayer of the petitioners for considering the PLF of wind energy generators at 25.84% for arriving at the open access charges cannot be accepted. Further, undue enrichment to the licensee will not arise since the entire transmission charges are shared in the ratio of MWs allocated to each of the users. What the petitioners are seeking is to levy a lower charge for them thereby shifting the burden on to other consumers which also cannot be agreed to. Since the capacity is allotted based on the MW usage by various generators, the Commission does not agree with the argument of treating unequals as equals.

14.9. In fact, all the generators are treated alike as far as the utilization of transmission facility goes. In the light of the above discussions, the Commission concludes that there are only two charges prescribed by the Commission, one is the concessional charges as provided in Order No. 1 of 2009 for wind energy dated 20-3-2009 and other is the charges prescribed in Order No. 2 dated 15-5-2006 which is under revision. In view of this, the wind energy generators will have to make a choice between the concessional charges available to wind energy generators or the normal charges for transmission stipulated in Order No. 2 dated 15-5-2006. The other benefits like REC, etc will depend upon the choice they make. When the users of transmission system shares the transmission charges based on allotted capacity there is an equitable treatment for all users. If a concessional charge is provided, the burden of the transmission charge gets shifted to other users. Thus, if the concessional treatment is to be granted for providing REC benefits, there is undue loading of other users of transmission system which cannot be agreed to.

14.10. The Commission therefore orders that if a wind energy generator is to become eligible for the benefit of REC, he shall pay the normal transmission charges as ordered by the Commission from time to time. The Commission further clarifies that on a particular issue if there is a specific provision in the TNERC Regulation the same would apply, notwithstanding different provision made in the CERC Regulation. This is in view of the fact that CERC Regulation acts as a guideline for all other Commissions in formulating their respective

Regulations. The Commission also clarifies that the banking charges shall be as stipulated in the respective tariff order and does not intend giving a separate judgement for one generator, as sought for in one of the petitions Viz., M/s. Sai Regency Power Corporation Ltd.

15. Appeal:-

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission