

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

**PRESENT:-**

Thiru.K.Venugopal ..... Member

and

Thiru.S.Nagalsamy ..... Member

**M.P. No.16 of 2011**

Simran Wind Project Private Limited  
2F & 3F, North Block  
Park Plaza  
71, Park Street  
Kolkata – 700 016.

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

Vs

1. The Tamil Nadu Generation and Distribution  
Corporation Limited (TANGEDCO)  
Rep. by its Chairman and Managing Director  
NPKRR Maaligai  
144, Anna Salai  
Chennai – 600 002.

2. Tamil Nadu Electricity Board Ltd.,  
Rep. by its Chairman  
No.144, Anna Salai  
Chennai – 600 002.

.... Respondents  
(Thiru PH.Vinod Pandian,  
Advocate for Respondents)

**Dates of hearing : 05-08-2011, 16-11-2011, 25-11-2011 &  
24-01-2012**

**Date of order : 22-03-2012**

M.P.No.16 of 2011 came up before the Commission for final hearing on 24-01-2012. The Commission upon perusing the above petition and connected records and upon hearing both sides passes the following

**ORDER**

1. **Prayer in M.P. No.16 of 2011:-**

The prayer of the Petitioner is that the Commission may be pleased to clarify that the distribution licensee i.e. the 1<sup>st</sup> Respondent is required to pay the pooled cost of power to generators under the REC Scheme as modified from time to time and consequently direct the 1<sup>st</sup> Respondent TANGEDCO to suitably amend Clause 5 (b) in respect of each of the PPAs executed and to be executed between the Petitioner and TANGEDCO which set out the rate of energy and other charges as follows:-

*“The Distribution Licensee agrees to pay the average pooled cost of power as determined by the Hon’ble Tamil Nadu Electricity Regulatory Commission from time to time and which currently is Rs.2.37 per unit for 2009 – 10 as per Order No.TNERC/M.0.4/E/PRO dated 28-12-2010, under the REC Scheme”.*

or direct the amendment to be made in such manner as the Hon’ble Commission deems fit.

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

2.1) The Petitioner namely, M/s.Simran Wind Project Private Limited is having an installed capacity of 50.45 MW in Tamil Nadu and Karnataka upto the year 2009-10, the entire generation being injected into the State Grid through entering into a Power Purchase Agreement with the distribution companies of the respective states under Preferential Tariff, more

particularly with Tamil Nadu Electricity Board (TNEB) at the rate of Rs.3.39 per unit.

2.2) The Tamil Nadu Electricity Regulatory Commission (TNERC) in Notification No. TNERC/RPO/19/1 dated 7-12-2010 has notified the Renewable Energy Purchase Obligation Regulations, 2010 in line with the CERC Regulations and Draft Model Regulations for SERCs recommended by the Forum of Regulators.

2.3) The Petitioner made oral and written representation to TANGEDCO vide its letter dated 30-03-2011 pleading to consider its request to amend Clause 5 (a) so that it is clear and in order to reflect the true intent of the REC Scheme as evaluated by the Petitioner and the lenders to the project, i.e. to clearly state that the average pooled power cost would be as determined by the Hon'ble TNERC from time to time.

2.4)The TANGEDCO in its reply dated 05-04-2011 in Letter No.CE/NCES/SE/EE/WPP/AEE2/F.M/s.Simran Wind Project Private Limited D.414/11 has advised the Petitioner to approach this Hon'ble Commission to seek an amendment to the existing Power Purchase Agreement. Hence the Petitioner has filed the above petition.

### **3. Contention of the Petitioner:-**

- (a) As per Clause 6 of the TNERC Regulations, it is clear that an entity to be eligible under REC mechanism, inter-alia, has to sell electricity component to the utility at the pooled cost of power purchase of that utility, as defined in the Regulations.
- (b) The TNERC in Order No. TNERC/M.O.4/E/RPO dated 28-12-2010 has issued the order on pooled cost of power purchase by TANGEDCO for the

year 2009-10 and fee and charges payable under Regulation of TNERC (Renewable Energy Purchase Obligation) Regulations, 2010 and has fixed the pooled cost of power purchase by TANGEDCO for the year 2009 – 10 as Rs.2.37 / kWh.

- (c) The Petitioner, on examining the standard Power Purchase Agreement (PPA) prepared by the Respondent, observed that Clauses 5 and 8 are contrary to the spirit and intent of REC Scheme as pronounced by CERC and TNERC.
- (d) The above clauses appear to suggest that the rate of Rs.2.37 / kWh is for a period of 20 years from the date of execution of the PPA, which is not as per the letter and spirit of the CERC and TNERC Regulations described above.
- (e) The REC framework as evolved by the CERC envisages uniformity in its implementation at national level and the role of SERC is in recognizing REC as a valid instrument for meeting RPO. The REC framework does not envisage any modification by any utility including the Respondent.
- (f) The Respondent has unilaterally modified the concept of Pooled Cost of Power Purchase contrary to the very spirit and intent of REC mechanism as pronounced by the Hon'ble CERC, by fixing the rate of Rs.2.37 per unit for the Purchase Power Agreement tenure of 20 years.
- (g) A uniform rate over the period of the PPA defeats the very purpose of evolving of such scheme seeking to promote investment in green energy ventures.

**4. Contention of the Respondent in their Counter Affidavit :-**

- (a) The Hon'ble TNERC on 28-12-2010 has issued order for the determination of pooled cost of energy.

(b) The point that may be noted is that, the Hon'ble TNERC in the above order nowhere has stated that the pooled cost of energy will be revised from time to time but it has only stated in para (8) as under:-

*“8. The pooled cost of power specified in para 4 of this order will remain in force even beyond 31-03-2011, if no new rate is notified by 31-03-2011”.*

(c) The new rate has not been notified by this Hon'ble Commission. Further the point to be specifically noted here that the Hon'ble TNERC in para 5 (3) of the above said order dated 28-12-2010 while fixing the remuneration for the State Nodal Agency of REC scheme has stated as follows:-

*“5 (3). The Commission may from time to time fix the remuneration and charges payable to the State Agency for discharge of its functions under these regulations”.*

Hence the Hon'ble TNERC specifically mentioned that the rate will be revised from time to time for the remuneration only, but in the case of pooled cost of energy, it has not specifically mentioned.

(d) Since lot of representations were received from various companies for establishing projects under REC Scheme, the TANGEDCO in the letter dated 12-01-2011 has requested the Hon'ble TNERC to issue a approved Power Purchase Agreement for REC scheme.

(e) The Hon'ble TNERC in the letter dated 24-02-2011 stated that the existing Energy Purchase Agreement approved for TNERC Order No.1 dated 20-03-2009 is valid for REC Scheme also with mutandis mutandis i.e. wherever modification needed, the same may be modified.

- (f) Accordingly the TANGEDCO in its letter dated 28-02-2011 has instructed the generating end EDCs to execute the Power Purchase Agreement by incorporating the REC Scheme in the Energy Purchase Agreement as follows:-

*“The Superintending Engineer / generating end EDCs are requested to execute the Energy Purchase Agreement for REC Scheme mentioning the project coming under REC Scheme and mention the period cost of energy at Rs.2.37 per unit instead of Rs.3.39 per unit”.*

- (g) Based on the above, various companies has been commissioned their WEG's under REC Scheme for March 2011 phase commissioning and executed the Energy Purchase Agreement on 30-03-2011 and 31-03-2011 namely M/s.TVS Wind Energy Ltd. – 14.4 MW, M/s.Vayu India Power Corporation Pvt. Ltd.–17.6 MW and M/s.Paharpur Cooling Tower – 9.6 MW etc.
- (h) During this time, the Petitioner has approached and requested to amend the agreement for payment of pooled cost as per TNERC orders from time to time. Since more number of agreements has already been executed with Rs.2.37 per unit and the TNERC has stated that Rs.2.37 is valid beyond 31-03-2011 also up to the new rate notified, the Petitioner was requested to approach TNERC.
- (i) The Petitioner has commissioned the WEG's on 30-03-2011 and executed the Energy Purchase Agreement for REC Scheme on 30-03-2011 itself.
- (j) Now the Petitioner has requested amendment for the payment Clause 5 (a) as follows:-

*“The Distribution Licensee agrees to pay average pooled cost of power as determined by TNERC from time to time which is Rs.2.37 per unit for 2009-10 as per Order No.TNERC/M.0.4/E/RPO dated 28-12-2010 under REC Scheme”.*

The Petitioner seeks the said amendment so that the pooled cost of energy ordered by TNERC from time to time to bind the TANGEDCO to pay the new rate. But the same cannot be allowed.

- (k) In this connection, it is stated that the Hon’ble CERC or the Hon’ble TNERC in its Regulation (or) order, nowhere specified, mandated (or) forced the distribution licensee to purchase the energy from Renewable Energy Generator under REC Scheme at the rate of pooled cost of energy as revised from time to time. It has only specified the eligibility criteria for the generators to apply for the REC Scheme. Such, being the situation, there is no necessity for the TANGEDCO to purchase the energy at various rates on every year under REC scheme at pooled cost of energy.
- (l) While fixing the eligibility, it is clearly stated that the Renewable Energy Generator sells energy generated to distribution licensee *“at a price not exceeding the pooled cost of power purchase”* which clearly means that the actual rate is not fixed at the rate of pooled cost but a negotiable one subject to the higher limit fixed by this Hon’ble Commission.
- (m) As the price of selling the REC energy to distribution is being a negotiable one, the Petitioner cannot force the distribution licensee to pay the pooled cost of energy every year exactly at the maximum rate as fixed by this Hon’ble Commission from time to time.

(n) If the amendment is allowed, it is very likely that the pooled cost of power may in the near future will be equal to the tariff fixed for the WEGs commissioned before 15-05-2006 thereby achieving the object of getting preferential tariff indirectly. It is a settled position in law that what cannot be achieved directly cannot be achieved indirectly. Hence the petition is liable to be dismissed. Even otherwise, the prayer herein is against the Regulations of this Hon'ble Commission.

**6. Finding of the Commission:-**

6.1 This petition is filed by the petitioner M/s. Simran Wind Project Private Limited, Kolkata praying to clarify that the distribution licensee, i.e., the 1<sup>st</sup> Respondent is required to pay the pooled cost of power to generators under the REC Scheme as modified from time to time and consequently direct the 1<sup>st</sup> Respondent TANGEDCO to suitably amend clause 5(b) in respect of each of the PPAs executed and to be executed between the petitioner and TANGEDCO which set out the Rate of Energy and other charges as follows:-

*“ The Distribution Licensee agrees to pay the Average Pooled Cost of Power as determined by the Hon'ble TNERC from time to time and which currently is Rs.2.37/- per Unit for 2009-10 as per Order No. TNERC/M.O.4/E/RPO dated 28.12.2010, under the REC Scheme.”*

or direct the amendment to be made in such manner as the Hon'ble Commission deems fit;

6.2 The petitioner has signed wind energy purchase agreement with TANGEDCO on 31<sup>st</sup> March 2011 and the rate of energy purchase indicated in the Energy Purchase Agreement is Rs.2.37 per Unit under



REC Scheme. The dispute between the parties is whether the rate of Rs.2.37 per Kwhr under the REC scheme is fixed for the period of 20 years as contended by TANGEDCO or the same is subject to variation as amended by TNERC from time to time. Contention of the petitioner herein is that the average power procurement cost ordered by the Commission at the rate of Rs.2.37 per Kwhr is subject to variation as determined by the Commission and therefore the rate of Rs.2.37 per Kwhr cannot be fixed for the entire period of 20 years of the agreement as contended by TANGEDCO.

6.3 To analyse the above issue it is necessary to examine the provisions of the Regulations and the orders issued by this Commission as well as CERC. The CERC notification with regard to pricing of Renewable Energy Certificate as contained in the Regulation issued vide Notification No. L-1/12/2010-CERC dated 14<sup>th</sup> January 2010 entitled Central Electricity Regulatory Commission (terms and conditions for recognition and issuance of Renewable Energy Certificate for renewable Energy Generation) Regulations, 2010 is as follows:-

***“Pricing of Certificate:***

*(1) The price of Certificate shall be as discovered in the Power Exchange:*

*Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.*

*(2) The Commission while determining the floor price and forbearance price, shall be guided inter alia by the following principles:*

*a) Variation in cost of generation of different renewable energy technologies falling under solar and non-solar category, across States in the country:*

- b) *Variation in the Pooled Cost of Purchase across States in the Country;*
- c) *Expected electricity generation from renewable energy sources including:-*
  - (i) *expected renewable energy capacity under preferential tariff*
  - (ii) *expected renewable energy capacity under mechanism of certificates;*
- d) *Renewable purchase obligation targets set by various State Commissions.”*

From the above provision, it could be seen that variation in the Pooled cost of purchase across States in the Country is one of the guiding factor for determination of floor price and forbearance price.

6.4 Corresponding provision in the RPO Regulations issued by this Commission in its Tamil Nadu Electricity Regulatory Commission(Renewable Purchase Obligation Regulations, 2010 dated 7-12-2010) is as follows:-

“Regulation 2 (1) (h)

**“Pooled cost of power purchase’** means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation in the previous year from all the long-term energy suppliers, but excluding those based on liquid fuel, purchase from traders, short-term purchases and renewable energy sources;”

Definition of Pooled cost of power purchase as extracted above clearly means that the average pooled price at which the distribution licensee has purchased electricity in the previous year is the pooled cost of power purchase. From this, it is very clear that the pooled cost of power purchase will change every year. This Commission in its order dated 28-12-2010 specifies the pooled cost of power purchase by the TANGEDCO for the year 2009 – 10 as Rs.2.37 per Unit. The Commission has also stipulated in the same Order that the pooled cost of power specified in

Para 4 of that Order will remain in force even beyond 31-3-2011, if no new rate is notified by 31-3-2011. This also clearly indicates that the pooled cost of power purchase of Rs.2.37 per Unit for the year 2009 – 10 would apply for the financial year 2010-11 i.e. for the period 1-4-2010 to 31-3-2011. The enabling provision of continuing the same rate beyond 31-3-2011, if no new rate is notified by that date is only to enable the transactions to go on and not to create any vacuum in the system.

There is no doubt that the preferential tariff fixed by the Commission for wind generators is linked to the vintage of wind energy generators and the tariff so fixed shall remain constant for the entire life of the agreement as the tariff setting process takes into account inflation during the contract period. However, the pooled power purchase cost being fixed for the purpose of REC mechanism considers only the previous years average power purchase cost for the purpose of sale rate for the subsequent year and therefore it is bound to change year after year. In view of this, the Commission clarifies that the pooled cost of power purchase will be determined by the Commission on a yearly basis based on the records to be furnished by TANGEDCO and the rates so fixed shall be payable year after year. The fixed rate of Rs.2.37 per Unit is applicable for 2010-11 only and can be extended beyond that date if no new rate is fixed. In view of the above, we are unable to accept the arguments extended by TANGEDCO that the Regulations / Orders of the Commission does not permit year to year variation of the pooled cost of power purchase. We therefore direct that the pooled cost of power purchase shall be the rate as specified by the Commission on a yearly basis and shall be payable to

such of those generators who have entered into an Energy Purchase Agreement based on average power purchase cost for the purpose of availing REC benefit.

The Commission however recognises the views raised by TANGEDCO with regard to the fact that the average pooled cost of power purchase may after a period of time go beyond the preferential tariff fixed by the Commission. Further, the TANGEDCO has contended that what cannot be achieved directly cannot be achieved indirectly. There is merit in the arguments of TANGEDCO in this regard. The Commission would take appropriate action to link the average pooled cost of power purchase Vis-à-vis the preferential tariff for renewable energy so that there is no undue enrichment of renewable energy generators at the cost of distribution licensee / all other consumers in the State.

No order as to Cost. Ordered accordingly.

**7. Appeal:-**

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

(Sd/- .....)  
(S.Nagalsamy)  
Member

(Sd/- .....)  
(K.Venugopal)  
Member

**/True Copy/**

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**