

Annexure 2

**FORM 2**

**(See regulation 19(1) Affidavit in support)**

**BEFORE THE HONOURABLE TAMIL NADU ELECTRICITY REGULATORY  
COMMISSION**

**FILING No.**

**CASE No.                      Miscellaneous Petition No.38 of 2012**

**IN THE MATTER OF: Seeking Clarification to Order No 6 of 2012 -  
Comprehensive Tariff Order on Wind Energy in  
regard to applicability of the order in respect of  
allied issues.**

**IN THE MATTER OF**

**Tamil Nadu Generation & Distribution  
Corporation Limited,  
Represented by its Chief Engineer/  
Non-Conventional Energy Sources  
144, Anna Salai,  
Chennai - 600 002.**

**..... Petitioner**

**Vs**

**- Nil -**

**..... Respondent**

Affidavit verifying the petition / application

I R.N.Sekar, Son of R.Nagarathinam aged about 57 years, residing at Chennai do solemnly affirm and as follows:

1. That I am the Authorized Representative of TANGEDCO and as such familiar with the facts and circumstances of the case and hence competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Application, which has been drafted by our Counsel under my instructions. The contents of Para 1 to 16 thereof are true and correct to the best of my knowledge based on official records maintained in usual course of business and information received and believed to be true and correct. No part of it is false and no material has been concealed there from.

Solemnly affirmed at Chennai  
this the 15<sup>th</sup> day of October 2012  
and signed his name in my presence.

Before me

Advocate Chennai.

**BEFORE THE TAMILNADU ELECTRICITY REGULATORY COMMISSION  
CHENNAI**

**Miscellaneous Petition No.38 of 2012**

**In the matter of:      Seeking Clarification to Order No 6 of 2012 -  
Comprehensive Tariff Order on Wind Energy in  
regard to applicability of the order in respect of  
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**Tamil Nadu Generation & Distribution  
Corporation Limited,  
Represented by its Chief Engineer/  
Non-Conventional Energy Sources  
144, Anna Salai,  
Chennai - 600 002.**

**..... Petitioner**

**Vs**

**- NIL -**

**..... Respondent**

**CLARIFICATORY PETITION FOR ORDER NO.6 OF 2012 FILED BY  
TANGEDCO UNDER REGULATION 16(1) OF TNERC (CONDUCT OF  
BUSINESS) REGULATIONS, 2004**

**MOST RESPECTFULLY SHOWETH:-**

The Petitioner above named beg to state as follows:-

The Madurai Bench of Hon'ble High Court of Madras has orally directed to obtain certain clarification regarding order No.6, dt: 31.07.2012 issued by the Tamil Nadu Electricity Regulatory Commission (herein after called as "TNERC").

1.0.      The present clarification petition is filed based on the oral direction of Hon'ble Madras High Court (Madurai Bench) on 08-10-12 in the course of hearing in a batch of writ petitions No.12650/2012, 12750/2012 12883/2012 filed by various Associations of Wind Energy Generators and W.P No.12749 of 2012 filed by M/s.Madras Cements Ltd., seeking clarification for some of the issues in Order No.6, dt: 31.07.2012 on Comprehensive Tariff order on Wind Energy issued by the Hon'ble TNERC.

2.0      The background of the present petition is submitted as follows:-

2.1      On 31.07.2012, the Hon'ble TNERC issued Comprehensive Tariff Order on wind energy in Order No.6, dt: 31.07.2012 in supersession of the order No.1, dated 20.03.2009. In the said order, the Hon'ble TNERC ordered to collect charges on cash basis. In order to implement the above order, the Tamil Nadu Generation and

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Distribution Corporation Limited (herein after called as TANGEDCO) issued a Circular Memo, dt: 01.09.2012 containing the instructions and procedures to be followed by the Superintending Engineer/Electricity Distribution Circles. **(Annexure 1).**

2.2. In the said circular memorandum, dated 01.09.2012 , among other things, the following are ordered:-

(i) For wheeling of wind energy, it was instructed to collect the charges at the generating end, namely, (i) transmission charges of Rs.2593.20 per day per MW (or) Part thereof (40% on Rs.6483 per day per MW); (ii) wheeling charges of 9.31 paise per unit (40% on 23.27 paise per unit); (iii) Transmission & Distribution loss based on the injection and drawal voltage; (iv) Reactive energy charges at 25 paise per KVARh upto 10%, 50 paise per KVARh for above 10%; and (v) scheduling and system operation charges of Rs.600/- per day for 2 MW and above and for lesser capacity at proportionate rate.

(ii) On wheeling of energy, it was instructed to collect the charges at the wheeling end (Consumer end), namely, (i) banking charges of 94 paise per unit on drawal from banking account; and (ii) net energy charges for the energy supplied by the TANGEDCO at the appropriate tariff, after adjusting the energy supplied from wind energy generation and banking.

(iii) For adequate security for the transmission charges, scheduling and system operation charges, it was instructed to collect the amount equivalent to three months average billing as security deposit. It was further instructed to collect this security deposit at the generating end either in cash or in the form of irrevocable Letter of Credit.

3.0. It is submitted that the Tamil Nadu Spinning Mills Association (TASMA), M/s.Madras Cements Limited, Indian Wind Energy Producers Association (IWPA) and the Southern India Mills Association (SIMA) have filed writ petitions No.12650/2012, 12749/2012, 12750/2012 & 12883/2012 respectively at Madurai Bench of Hon'ble High Court of Madras challenging the said Circular Memo dated 01.09.2012, among other things, on the following aspects:-

(i) Instead of collecting transmission charges at pro rata basis based on the capacity of the Wind Energy Generator, TANGEDCO is collecting the charges per day per MW or part thereof, even though the Hon'ble TNERC has not instructed to do so in Order NO.6, dt: 31.07.2012.

(ii) TANGEDCO is collecting security deposit of charges equivalent to 3 months for transmission charges and scheduling system operation charges even though the Hon'ble TNERC has not instructed to do so in Order NO.6, dt: 31.07.2012.

(iii) Instead of collecting all the charges at wheeling end circles as instructed by Hon'ble TNERC in Order No.6, dt: 31.07.2012, the TANGEDCO is collecting at generating end circles.

4.0. It is submitted that the Madurai Bench of Hon'ble High Court of Madras on 26.09.2012 has granted interim stay of operation of the Circular Memo, dated 01.09.2012 upto 08.10.2012.

5.0. It is submitted that the TANGEDCO filed its Counter Affidavit on 08.10.2012 and the case came up for hearing on 08.10.2012. During the hearing of the case, the TANGEDCO argued that, order No.6, dt: 31.07.2012 was implemented as it is without any deviation.

6.0 It is submitted that in order No.3, dt: 15.05.2006 and order No.1, dt: 20.03.2009, the transmission charges, wheeling charges and line losses were fixed as 5% in kind. In Order No.6, dt: 31.07.2012, except line losses, all other charges are payable in cash.

7.0 It is submitted that in Order No.6, dt: 31.07.2012, each and every issue was explained in detail, and as per TANGEDCO's understanding of the said order, TANGEDCO issued the instructions to collect the transmission charges at per day per MW or part thereof. For collection of charges at generating end EDC the TANGEDCO argued that since the TNEB has been unbundled as TNEB Ltd, TANGEDCO and TANTRANSCO, to have a proper accounting to the concerned departments, it was instructed to collect certain charges at generating end EDC and certain charges at wheeling end EDC. For collection of security deposit for transmission charges and scheduling system operation charges, TANGEDCO argued that based on the TNERC Intra State Open Access Regulation, 2005 the security deposit is collected. But, the Associations contention was that for wheeling of wind energy, the TNERC Intra-State Open Access Regulation, 2005 will not apply and that

the order No.6, dt: 31.07.2012 alone will apply for all the transactions in as much as in the order No.6 of 2012, the Hon'ble TNERC has not deliberated the action of TANGEDCO eventhough Para 8.8 of Order No.6 of 2012 was brought to the notice of the Hon'ble Court.

8.0 It is submitted that the Madurai Bench of Hon'ble High Court of Madras during the course of hearing on 08-10-2012 orally directed the TANGEDCO to file a clarificatory petition before the Hon'ble TNERC and file a copy of the petition along with the affidavit to the Court on the next hearing on 17.10.2012. **(Annexure II)**

9.0. It is submitted that based on the direction of the Hon'ble High Court, the present clarification petition is filed before this Hon'ble TNERC.

10.0. It is submitted that based on the bona fide understanding of Order No.6 of 2012, the circular Memo, dated 01-09-2012 was issued by the TANGEDCO in respect of the following:-

**10.1. Transmission Charges:-**

- (i) In order No.2 of 2012, dated 30-03-2012, the Hon'ble TNERC has fixed transmission charges of Rs.6483/MW/day for conventional power.
- (ii) As a promotional measure under section 86 (1) (e) of the Electricity Act, 2003 Act, the TNERC has decided to fix 40% of the conventional power to the Wind power in Order No.6 of 2012, dated 31.07.2012.
- (iii) In the said Order, it has not been clearly specified about the charges collectable for part capacity fractional capacity.
- (iv) In Order No 2, dated 15-05-2006, the Hon'ble TNERC fixed transmission charges of Rs.2781 per day per MW for the conventional power.
- (v) Subsequently in amendment Order No.2-1, dated 29-11-2007 the Hon'ble TNERC issued the amendment to Order No.2, dated 15-5-2006. In the amendment order, the TNERC fixed the transmission charges at Rs.2781/- per day per MW or part thereof.
- (vi) On the same analogy, the TANGEDCO issued the present instruction, dt:01.09.2012 to the field officials to collect the transmission charges at Rs.2593.20 per day/per MW or part thereof from the wind energy generators.

- (vii) However, in clause 8.9 of the order (scheduling and system operation charges), the Hon'ble TNERC fixed Rs.600 per day for 2 MW capacity and that if the capacity is less than 2 MW, the charges should be in proportion.
- (viii) For recovery of scheduling and system operation charges, the Hon'ble TNERC specifically mentioned that it should be in proportion to the capacity.
- (ix) Based on the analogy of the previous order of the Hon'ble Commission including Order No.2 of 2006, dated 15.05.2006, it was instructed to levy the transmission charges at Rs 2593.20/- per day per MW or part thereof.

**10.2. Security Deposit:**

- (i) Regulation 18 of the TNERC Intra-State Open Access Regulations, 2005 mandates the generators including Wind Energy Generators to maintain deposit equal to three months of the average billing with the State Transmission Utility So also in respect of scheduling and system operating charges, deposit is to be made to State Load Despatch Centre. Likewise, in respect of wheeling charges, the same is to be maintained before the Distribution Licensee. Consequently, the TANTRANSCO, SLDC and TANGEDCO are mandated to recover the average three months billing of transmission charges, scheduling and system operation charges wheeling charges as security deposit, respectively.
- (ii) Such security deposit should have to be either cash deposit or by irrevocable letter of credit from a local branch of a nationalized bank.
- (iii) Based on the provisions contained in the TNERC Intra-Sate Open Access Regulations, 2005, it was instructed to collect the security deposit equivalent to three months average billing of transmission charges, scheduling and system operation charges.

**10.3 Collection of charges at generation end and wheeling end:**

- (i) Till 31-07-2012, the transmission and wheeling charges are paid only in kind and not in cash and hence the place of recovery does not raise.

- (ii) Para 8.11.2 of Order No.6, dated 31-07-2012 specified that if a wind energy generator utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the month for the net energy supplied.
- (iii) Accordingly, TANGEDCO advised to collect the current consumption charges for the net energy supplied by the distribution licensee after adjusting the energy supplied by the generators from current month generation and banking at the wheeling end.
- (iv) As per the para 8.12.2 of the order No. 6, dated 31-07-2012, the security deposit for energy bill (current consumption charges) is equivalent to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year.
- (v) Regulation 18 of the TNERC Intra-State Open Access Regulations, 2005 permits the licensee to recover the average three months billing of transmission charges, wheeling charges, scheduling and system operation charges as security deposit by the respective agency.
- (vi) The security deposit for transmission charges and wheeling charges have to be made to the respective agency within 30 days from the date of commencement of the availing of open access.
- (vii) The above provisions clearly say that the billing treatment should be different for energy charges covered by the Tamil Nadu Electricity Supply Code for the energy supplied by the Distribution Licensee and the open access charges under the Intra State Open Access Regulations, 2005 read with the Order on Wind Energy passed by the Hon'ble TNERC including Order No.6 of 2012.
- (viii) The net energy charges of the consumer is collected from the consumer after adjusting the energy allocated by the Wind Energy Generators to the consumer at the wheeling end.
- (ix) The Electricity Act, 2003 and the Intra State Open Access Regulations, 2005 permits the generator to adjust the generation in more than one service connections. Most of the generators adjust their generation in more than one service connections. Such being the situation,

the TANGEDCO has been facing much difficulty in allocating and collecting transmission charges and the scheduling and system operation charges from each and every wheeling (user) end consumer. Hence, it was instructed to collect the transmission and scheduling and system operation and wheeling charges at the generator end so that the amount collected towards the same in one lumpsum will be transferred to the TANTRANSCO, SLDC and TANGEDCO accordingly..

- (x) Moreover, collection place is left to the convenience of the distribution licensee and the Wind Energy Generators have no say in this regard.
- (xi) Considering the above and the necessity to streamline the collection of the above charges, it has been decided to collect open access charges at generating end and energy charges and banking charges, if any, at wheeling end.
- (xii) The above arrangement for collection of charges is in tune with the collection mode mandated by the Intra State Open Access Regulations, 2005.

11.0 It is submitted that the petitioners before the Madurai Bench of the Madras High Court contended the following

11.1 **Transmission Charges:**

- (i) In order No.2 of 2012, dated 30-03-2012 the Hon'ble TNERC has fixed transmission charges of Rs.6483/- per day per MW for conventional power. As a promotional measure under section 86 (1) (e) of the Electricity Act 2003, the Hon'ble TNERC has decided to fix 40% of the conventional power to the wind power in Order No.6, dt: 31.07.2012. In the Order No.6, it has not been clearly specified about the part capacity. Hence, the transmission charges should be recovered in proportion to the capacity in fraction only.

11.2 **Security Deposit:**

- (i) The Hon'ble TNERC has not pointed out in any place of the Order No.6, dt: 31.07.2012 to collect average three months billing of transmission charges, wheeling charges, scheduling and system operation charges as security deposit.

- (ii) The provisions contained in the Hon'ble TNERC Intra-State Open Access Regulations 2005 will not apply in regard to wind energy generation and the provisions contained in Order No.6 of 2012 of the TNERC will only apply in regard to wind energy for levy of charges. (This was argued during the hearing on 08.10.2012).
- (iii) In clause 8.12.2 of Order No 6 of 2012 dated 31-07-2012, the Hon'ble TNERC permitted to collect only the charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit and hence the licensee can not collect average three months billing of transmission charges, wheeling charges, scheduling and system operation charges as security deposit as contained in the Intra- State Open Access Regulations, 2005.

11.3. **Collection at generating end:**

- (i) Order No 6 of 2012, dated 31-07-2012 does not authorize the distribution licensee to raise the bill in two places as demanded by the TANGEDCO.
- (ii) Clause 8.11.4 of the Order No.6 of 2012, dated 31-07-2012 specified that excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply. Transmission and wheeling charges, scheduling and system operation charges and cross subsidy surcharge as applicable shall be recovered from the open access customer. Transmission & Distribution loss shall be adjusted in kind as per para 8.3 of the said order. The net amount recoverable from the consumer shall be raised in the bill.
- (iii) As per the above para, the distribution licensee shall raise only one bill for net amount recoverable from the consumer and should not raise two bills one at generating end and one at consumer end which is against the order of the Hon'ble TNERC.

12.0. It is submitted that before issuance of Order No.3, dt: 15.05.2006, for wheeling of wind energy to captive use, TANGEDCO has followed a set of rules and

regulations. While issuing Order No.3, dt: 15.05.2006 and order No.4, dt: 15.05.2006 for wheeling of energy for captive use and third party sale, the provisions of Intra-State Open Access Regulations, 2005 and the Electricity Rules, 2005 were duly followed by the Hon'ble TNERC.

13.0. It is submitted that while implementing Order No.3, dt: 15.05.2006, in the circular, dt: 11.12.2007 issued by TANGEDCO, it was clearly mentioned that the Wind Energy Generators are to be treated as Captive Generating Plants as per section 9 of Electricity Act, 2003 and the Electricity Rules, 2005 and that the wind energy generators who wheel their energy are to be considered as Long Term Open Access Customers.

14.0. It is submitted that at the time of implementing Order No.1, dt: 20.03.2009, the procedure specified in the Order and the provisions contained in the TNERC Intra State Open Access Regulations, 2005 have been followed.

15.0. It may be relevant to submit that during these times, the transmission and wheeling charges were recovered in kind and hence the question of collection of security deposit did not arise in regard to the wind energy.

16.0. It is submitted that now the Petitioner's Associations and M/s.Madras Cements Ltd. contended before the Madurai Bench of Hon'ble High Court of Madras that the TNERC Open Access Regulation, 2005 does not apply to WEG for captive use. It is submitted that, already lot of representations from various Generators and Associations were received by TANGEDCO, for treating WEG as Captive Generating Plant as per section 9 of Electricity Act, 2003 and the Electricity Rules, 2005 for wheeling of wind energy for captive use. In order to avoid litigations and to have a clear cut explanations to treat the wind energy generators as Captive Generating Plant, the TANGEDCO has submitted the following as suggestions/views for revision of Order No.1, dt: 20.03.2009 and requested this Hon'ble TNERC to address the issue in the order to be issued on Comprehensive Tariff order on Wind Energy.

It is submitted that the Hon'ble TNERC after elaborately hearing the Stake Holders, ordered in Para 8.8. (Adjustment of generated energy) of Order No.6, dt: 31.07.2012 that, Section 9 (2) of the Electricity Act, 2003 confers on the captive generator the right to open access for the purpose of carrying electricity from the

captive plant to the destination of his use. Adjustment of generated energy shall be done as per the Commission's open access regulation in force. Therefore, it is evident that Wind Energy Generator is to be treated as a Captive Generating Plant and as such the Intra-State Open Access Regulations, 2005 are applicable to the Wind Energy Generators also.

It is submitted that even assuming but not admitting that TNERC Intra State Open Access Regulations, 2005 is not applicable to Wind Energy Generators then the Licensee / TANGEDCO has no obligation to permit wheeling of wind energy by the respective WEG and consequently TANGEDCO may be relieved off from the said obligation.

It is submitted that the Order No.6, dt: 31.07.2012 is effective from 01.08.2012, and as such any clarification issued by the Hon'ble TNERC in this regard, may also be made effective with effect from 01.08.2012.

Under these circumstances, the TANGEDCO humbly prays that this Hon'ble TNERC may be pleased to:-

- (i) To clarify whether the transmission charges to be collected by TANGEDCO may be per day per MW or part thereof basis (or) in proportion to the capacity of the WEG.
- (ii) To confirm that the TNERC Intra State Open Access Regulations, 2005 is squarely applicable to the wind energy generators who wheeled their power for captive use or for third party sale.
- (iii) To clarify whether collection of security deposit equivalent to three months average billing of transmission charges, wheeling charges and scheduling system operation charges from the wind energy generator who wheeled their energy for captive / third party use by TANGEDCO is in order.
- (iv) To declare that open access charges such as transmission charges, wheeling charges, scheduling system operation charges and reactive power charges ordered to be collected at generating end EDC itself is in order, so as to have a proper and effective collection mechanism and for proper allocations/appropriation of the amount so collected to the respective agencies such as TANTRANSCO, SLDC and TANGEDCO.

- (v) Pass such further or other orders as the Hon'ble TNERC may deem fit and proper and thus render justice.

DEPONENT

Verification

I R.N. Sekar S/o R.Nagarathinam aged about 57 years , Chief Engineer/ NCES, TANGEDCO of the Petitioner do here by solemnly affirm and state that what is stated in Paragraphs 1 to 16 are true to the best of my knowledge and belief and are based on records.

Dated at Chennai On this 15<sup>th</sup> day of October 2012

(R.N.SEKAR)  
DEPONENT

Counsel for Petitioner: