

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

PRESENT:-

Thiru.S.Nagalsamy **Member**

and

Thiru.G.Rajagopal **Member**

D.R.P.No.19 of 2013

M/s.Century Flour Mills Ltd.
Represented by its Authorised Representative
Registered Office: Indian Chamber Building
First Floor, 6, Esplanade
Chennai – 600 108.

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

Vs

1. TANGEDCO
Rep. by its Chairman & Managing Director
No.144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
CEDC / Central
TANGEDCO
Chennai – 34.
4. The Superintending Engineer
Tamil Nadu Electricity Board
Udumalpet Electricity Distribution Circle
Udumalpet

....Respondent
Thiru P.H.Vinod Pandian
(Standing Counsel for the Respondents)

Dates of hearing : 13-09-2013, 29-01-2014 and 04-03-2014

Date of order : 19-01-2015

The above D.R.P.No.19 of 2013 came up for final hearing before the Commission on 04-03-2014. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order:-

ORDER

1. Prayer of the Petitioner:-

The prayer of the Petitioner is to –

- (a) set aside the communication of the Chief Financial Controller, TANGEDCO bearing Ref. No.CEC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012 as arbitrary and illegal and consequently direct the Respondents to first effect adjustment of the wind energy generated from Gamesa Make 850 KW WEG at Sankarandampalayam, Tirupur District, operating under the Renewable Energy Wheeling Agreement under the REC scheme dated 20-03-3012, against the Petitioner's HTSC No.2140 and thereafter adjust the energy generated by wind mills with banking facility.

ALTERNATIVELY

- (b) direct payment of a sum of Rs.25,04,461/- being the sum due and payable being the payments due and payable for the units that were treated as sold to the Board under clause 6 (iv) of the Renewable Energy Wheeling Agreement under the REC scheme dated 20-03-2012 as also direct payment in respect of the further months after the filing of this petition and to pass such further or other orders as the Commission may deem fit and proper.

2. Facts of the Case:-

The Petitioner is a company incorporated under the Companies Act, 1956 and is manufacturing Maida, Sooji, Atta, Bran etc. It has installed Wind Energy Generators of varying types commissioned on various dates. All of such Wind Energy Generators except one 1.65 MW Wind Energy Generators HT SC No.1723 commissioned on 19-04-2010 are for captive consumption covered by wheeling agreements. The one commissioned on 19-04-2010 was for direct sale of power to TANGEDCO. Further, the Petitioner installed (by name transfer) one number of 850 KW Gamesa Make Wind Energy Generator at Sankarandampalayam, Tirupur District (commissioned on 20-03-2012) and entered into Renewable Energy Wheeling Agreement under REC scheme with TANGEDCO on 20-03-2012. While so, the CFC/TANGEDCO vide Lr.No.CFC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012 has clarified to the Superintending Engineer, Chennai EDC / Central, Chennai in the matter of adjusting the energy generated from Wind Energy Generators, wherein he has clarified inter-alia that the wind energy generated by wind mill with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later. Aggrieved by the said clarification, the Petitioner has filed the present D.R.P.

3. Contention of the Petitioner in the affidavit:-

3.1. The Petitioner is a leading manufacturer of Maida, Sooji, Atta and Bran and is one of the leading entities in its line of trade and has built up an enviable record of high quality products, for using the latest technology and making large investments in its equipments. Its products are marketed under the "RISING SUN" brand and it has been handling, on an average, about 84000 Metric tons per annum. The

Petitioner has a countrywide sales network and its products have a nationwide market.

3.2. As part of its diversification activity and being encouraged by the Energy Policy in the State of Tamil Nadu, the Petitioner to secure a captive and environmentally safe source of power, commenced making substantial investment in wind energy power through its wind mill division from the year 1994-95.

3.3. The Petitioner has installed and commissioned wind mills of varying capacities year after year and the details of the wind mills being the area of installation, capacity and year of installation as set forth below:-

Sl. No.	SF No. & Village	Capacity-make	Date of commissioning
1	1445/1B Pazhavor Village, Tirunelveli	1x225 KW- Vestas	15-02-2002
2	1442 (part) Panagudi Village, Tirunelveli	1x750 KW- NEG Micon	26-02-2003
3	505/1 Panagudi Village, Tirunelveli	1x600 KW- Enercon	30-09-2004
4	934/9, 10 & 15 of Kambaneri Pudikudi Village, Tirunelveli	1x500 KW- Vestas	31-03-2006
5	462/(p) V.Kallipalayam Palladam, Coimbatore	1x225 KW – Vestas	29-09-2007
6	464(p) 465/B(p)–Kongalnagaram, Udumalpet	1x1650 KW – Vestas	23-02-2010

3.4. All the wind mills set up prior to April 2011 are for captive consumption with adjustment through wheeling agreements except one 1.65 MW WTG (HTSC No.1723) which was commissioned on 19-04-2010 being a direct sale of power to TANGEDCO. The Petitioner, in accordance with the regime pertaining to wind energy, wheels and adjust energy so generated from the wind mill and is paid for the units that remained unadjusted at applicable and specified rates at the end of each

year. In respect of wind energy sold to the TNEB, the Petitioner gets paid in terms of the applicable wind tariff order. The above wind mills are all covered under the preferential regime.

3.5. The National Action Plan for Climate Change (NAPCC) announced by the Hon'ble Prime Minister of India on June 30, 2008 envisages several measures to address global warming. One of the important measures identified involves increasing the share of renewable energy in total electricity consumption in the country. NAPCC has set the target of 5% renewable energy purchase for FY 2009-10 against the current level of around 3.5%. Further, NAPCC envisages that such target will increase by 1% for next 10 years. This would mean NAPCC envisages renewable energy to constitute approx. 15% of the energy mix of India. This would require quantum jump in deployment of renewable energy across the country.

3.6. Under the Electricity Act, 2003, the State Electricity Regulatory Commissions (SERCs) set targets for distribution companies to purchase certain percentage of their total power requirement from renewable energy sources. This target is termed as Renewable Purchase Obligation (RPO). However, there are certain limitations of State specific approach when RE development strategies are to be deployed at national level.

3.7. The existing legal frame work under Electricity Act, 2003 puts responsibility for promotion of renewable energy at SERCs. As a result, the regulations developed by the SERCs differ from each other on many counts. Further, these regulations do not recognize purchase of renewable energy from outside the State for the purpose of

fulfillment of RPO target set by the SERC for the distribution utility in the State. The requirement of scheduling and prohibitive long term open access charges poses major barrier for RE abundant States to undertake inter-state sale of their surplus RE based power to the States which do not have sufficient RE based power. Consequently, the States with lower RE potential have to keep their RPO target at lower level.

3.8. The Central Electricity Regulatory Commission (CERC) has notified “Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010” vide Notification No.L-1/12/2010-CERC, dated 14th January 2010. Since RE sources are not evenly spread across the country and the very high cost of generation from RE sources discourages the distribution companies from purchasing electricity generated from sources, the Renewable Energy Certificate (REC) mechanism evolved and notified by CERC seeks to address this and many such issues connected with the RE generation. One of the primary objectives of this mechanism is to address the mismatch between availability of RE sources and the requirement of the obligated entities to meet their renewable energy remotely located in the form of REC.

3.9. To address the mismatch between availability of RE sources and the requirement of the obligated entities to meet their RPO, the CERC, vide Order No. L-/12/2010-CERC, dated 09-11-2010 notified the detailed procedure for registration of eligible entities, verification of generation of electricity and its injection into the grid by the eligible entity and issuance of certificates etc. under REC scheme wherein cost of electricity generation from RE sources is divided into two parts as cost of electricity generation equivalent to conventional energy sources and the cost of

environmental attributes, containing inter-alia the following distinct features to be complied by the Renewable Energy Generating Company:-

- a. Not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission;
- b. Sell the conventional energy component to DISCOM at a price not exceeding the pooled cost of power purchase in the previous year as determined by the SERC;
- c. Selling Environment attribute (REC part) of renewable energy in the form of REC tradable in Power Exchange between the floor price and forbearance price.

3.10. Clause 5 of (amended) CERC Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation Regulations, 2010, describes the eligibility criteria for issuance of REC.

3.11. The Commission vide notification No.TNERC/RPO/19/1, dated 17-12-2010 has notified the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010, in line with the CERC regulations and “draft model regulations for SERCs” recommended by the Forum of Regulators. The TNERC Regulations make it mandatory for all obligated entities to “purchase not less than defined minimum percentage of its consumption of energy from renewable energy sources under the Renewable Purchase Obligation (RPO) during a year as specified in the Commission’s tariff regulations / orders on renewable energy issued from time to time ...”. These Regulations also provide that “the certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the

mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources....’.

3.12. Clause 6 of the TNERC Regulations provides as under:

6. Eligibility and Registration for Certificates –

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency if it fulfills the following conditions:-

- (a) It does not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission; and
- (b) It sells the electricity generated either (i) to the distribution licensee in the State of Tamil Nadu at a price not exceeding the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

From the above, 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.

3.13. The Commission vide 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. Therefore, the pooled cost of power is being notified for the subsequent periods.

3.14. For avoidance of doubts, the Commission has reiterated the definition of “Pooled Cost of Power Purchase” (para 2 of the order) as under:-

“Pooled cost of power purchase” means the weighted average pooled price at which the distribution licensee has purchased the electricity 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”.

3.15. To contribute a little to promote green power generation as envisaged by the National Action Plan of Climate Change (NAPCC) and REC Regulations notified by CERC and TNERC and in view of its experience in including wind projects, the Petitioner has undertaken the installation of additional capacity of REC regime windmills in Tamil Nadu at a capital outlay of Rs.5.23 crores (Rupees Five Crores Twenty Three lakhs) on the following premises:-

- a. Based on the spirit of the REC Mechanism as pronounced by CERC, adopted by TNERC, the Petitioner considered Average Pooled Cost of Power Purchase (APPC) of the previous year to be applicable to current year to be variable and sale of Renewable Energy Certificate (REC) in Power Exchange, to be the basis of revenue earning to work out the techno economic viability of the project.
- b. Average revenue earning under REC scheme (APPC tariff + REC price) justified the project to give reasonable return on equity and also sustainability of loan funds, compared to conventional preferential tariff of Rs.3.39 per unit.

3.16. The Petitioner accordingly initiated process for commissioning, which inter-alia, needed execution of Power Purchase Agreement with the distribution licensee. The Petitioner therefore decided to install a Gamesa Make 850 KW WEG at Sankarandampalayam, Tirupur District. The said investment in generation capacity was determined to be made under the REC mechanism and the Petitioner sought to fund the same through internal accruals and bank funding with term loan of

Rs.423 lakhs being obtained from HDFC bank which constituted 75% of the investment in the generating plant.

3.17. The Petitioner made applications seeking for appropriate permissions in this regard and entered into a Renewable Energy Wheeling Agreement under the REC scheme dated 20-03-2012 with the Superintending Engineer, Udumalpet Electricity Distribution Circle (EDC), the 3rd Respondent herein. The relevant clauses, for the purpose of present petition, are as below:-

“6. Billing

- (1) The Distribution Licensee shall raise bills at the end of the month for the net energy consumed by the captive user after adjusting the wheeled energy at the rate applicable to that category of consumer where the consumption by the captive user is more than the generation of the REG.*
- (2) The distribution licensee shall raise bills on the REG or the captive consumer, as the case may be, for the charges payable towards startup power and power drawn for other purpose, wheeling charges, excess demands and excess energy charges, cross subsidy surcharges wherever applicable etc. as per the order / regulations of the Commission for the time being in force.*
- (3) The STU shall raise bills on the REG holder for the charges payable towards transmission charges, scheduling and system operation charges etc. as per the order / regulations of the Commission for the time being in force.*
- (4) Wherever the renewable energy generation in a billing month is in excess of the consumption in that month, the balance energy shall be sold to the distribution licensee at a price not exceeding the pooled cost of power purchase as defined in Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 and amendments issued from time to time”.*

3.18. The Respondents through Director (Generation) had also accorded approval upon the usual terms as is evident from its letter bearing ref. No.CE/NCES/SE/EE/WBP/AEE2/F.M/s.Century Flour Mills Limited/WEG No.REC 169(U)/R.002778/D.648/2012, dated 16-03-2012. After considering the application of the Petitioner, the Director (Generation) recorded in the said Memo as follows:-

- “1. *Since this approval considered based on the CERC REC Amendment Regulation and TNERC RPO Amendment Regulation vide reference (13) & (14) and TNERC Order dated 28-12-2011 in M.P.No.3,9,11& 12 of 2011 and TNERC approved Renewable Energy Wheeling Agreement under REC scheme, and based on your undertaking for REC Scheme.*
- d) *As of now you are requested to pay the normative transmission charges and wheeling charges as per TNERC Order No.2 dated 15-05-2006 and which is under revision. As and when TNERC issued orders for revision, the same has to be paid.*
- e) *The banking provision is not permitted. Every month after adjustment of the generated wind energy in your / your group captive companies, the surplus energy shall be sold to TANGEDCO at the rate of pooled cost of energy @ Rs.2.37 per unit.*
- f) *You are requested to pay the Government duty, if any, as and when announced by the Government”.*

3.19. Under clause 4 of the Memo No.CE/NCES/SE/EE/WBP/AEE2/F.M/s.Century Flour Mills Ltd./WEG No./REC.169(U)/R.002778/D.649/2012, dated 16-03-2012, after recognizing that the project was operating under the REC Wheeling Scheme, it has been recorded that banking would not be permitted. The Petitioner duly carried out the commissioning of the generating plant and thereafter was issued with a commissioning certificate recording that the commissioning has taken place on 20-03-2012 and tie up with the TNEB 33 KV grid has taken place as is evident from the commissioning certificate issued by the Third Respondent vide No.Lr.No.SE/UEDC/UDT/AO/AS/JA4/F.M/s.Century Flour Mills Ltd.SC No. UGA-99/12 dated 25-04-2012.

3.20. The petitioner had followed up the matter with the Superintendent Engineer, CEDC, Central, TANGEDCO, Chennai, by letter dated 22-03-2012, intimating the commissioning of the WEG and specifically placing on record the Petitioner’s request to adjust the units generated from the new WEG first on a monthly basis against the Petitioner’s industrial consumption being HTSC No.2140 and requesting that the energy generated / banked from the other existing WEG had to be adjusted later.

Under the provisions of the Electricity Act, the rights available to a generator under section 9 specifically provides that a person is entitled to construct, maintain or operate the captive generating plant and he shall have the right to open access for carrying such electricity from a captive developing plant to the destination of his use.

3.21. The request made by the Petitioner for adjustment of the units generated from the annual installed WTG under the REC scheme is also in consonance with Tariff Order No.6 of 2012 relating to Wind Energy. The Commission, in the context of priority of adjustment of wind energy, has specifically provided under para-5 E Rule 6 that if a consumer wheels energy for adjustment from more than one windmill, with such Wind Mill having been commissioned on different dates, priority for first adjustment shall be given to the Wind Mill commissioned on a latter day. The energy generated from the Wind Mill commissioned on an earlier date can be adjusted last. The Petitioner had, therefore, expected that the adjustment in billing to be strictly in accordance with the applicable such priority for adjustment. It appears that consequent upon the comprehensive Wind Tariff Order No.6 dated 31-07-2012 that the order coming into effect on 01-08-2012 necessary working instructions had also been issued.

3.22. The Respondent TANGEDCO also specifically agreed to adjustment in the manner sought for as they issued specific communication in this regard. By virtue of the tariff order, the said adjustment priority attained finality. Since the energy wheeling agreement itself specifically provided for sale of the surplus units, the same ought to be done on month to month basis in respect of the said Gamesa WEG since lapsing of banked units in respect of WTG covered under the REC scheme take

place on a month to month basis rather than on annual basis as in the case of preferential tariff based WTGs.

3.23. The Petitioner was surprised to receive the CC Bill for December 2012 in respect of its HTSC No.2140 wherein the adjustment was made in a manner contrary to the specific provisions of the contract between the parties and the applicable tariff order. In view of the same, the Petitioner issued communication dated 21-01-2013 to the Superintending Engineer, CEDC, Central, Chennai-34, since the jurisdictional Superintending Engineers informed the Petitioner that instructions in this regard had to be issued from the head office. In the said letter, the Petitioner pointed out that it has received CC bill for its service connection for December 2012 and had effected payment in view of the short time that had been made available to it to make the payment and it had verified records and it was evident that 10,12,307 units were available in the bank for adjustment whereas only 24,736 units had been adjusted and billed. The Petitioner also provided details of its several wind mills and requested for adjustment of the REC WEG first.

3.24. The Chief Financial Controller had, upon a request for a clarification, vide his letter dated 14-09-2012 issued instructions in respect of the manner of adjustment as follows:-

- a. The TNERC order on wind energy and order on REC does not have any provision in regard to adjustment priority of banked energy and REC power.
- b. The TANGEDCO in principle adopting the procedure of adjusting the high cost power first and lesser cost power on later date i.e. the first priority given for power generator from the later date agreement and vice versa.
- c. In clause 8.2.15 of TNERC Order No.6 dated 31-07-2012 on Wind Energy issued by the Hon'ble TNERC specified that Wind Energy Generators availing REC one month adjustment period is allowed as

- permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power.
- d. As long as the banking facilities are not extended to the WEG availing REC, this power will become cheaper than the power generated from the WEG availing banking facilities.
 - e. The Wind Energy Generator who avail banking facilities can utilize their banked energy during the period of power scarcity and TANGEDCO is liable to supply power to them by procuring in the open market at higher cost and hence this power is costlier than power generated from Wind Energy Generator availing REC.
 - f. In line with the above, the higher cost power has to be adjusted first (i.e.) Wind Energy generated from wind mills with banking facilities and lesser cost power shall be adjusted later i.e. Wind Energy generated from wind mills under REC.

Hence, it is clarified that the wind energy generated by wind mills with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later.

3.25. An entirely incorrect clarification has been issued in the letter dated 14-09-2012, wherein wind energy generated by wind mills by banking facility was directed to be adjusted first and wind energy generated from REC scheme be adjusted later. The said manner of adjustment is contrary to the principle enshrined in the wind tariff order which always mandates adjustment from the last unit first. It is only logical that REC wind mills are permitted adjustment first since they operate on month to month lapsing of energy and if any generator already has wind mills under the preferential regime installed earlier, adjustment of units from Wind Mills under the preferential regime prior to the adjustment of units generated by Wind Mills under the REC scheme would result in a situation contrary to the express purpose and intention of the REC scheme i.e. encourage investment in market determined NCES and generators would, therefore, continue to invest only in preferential tariff based wind energy generators. Such an interpretation assigned by TANGEDCO would be contrary to its own interest as it would continue to get persons interested only in

preferential tariff rate WEG—if such an interpretation is given leading to the failure of the very model of investment under the REC scheme.

3.26. The Superintending Engineer, Chennai Division, issued a communication confirming the said opinion expressed. The Petitioners thereafter followed it up with a detailed letter bearing no CFM/CMD/413/12-13, dated 27-03-2013 setting out various facts and the incorrect interpretation that should be adopted by TANGEDCO. The Petitioner has not received any favourable reply and is suffering from several arbitrary actions on the part of the Respondents i.e. (i) incorrect adjustment of wind energy generated from REC Machines as the last adjustment (ii) non-payment for units which remained banked at the end of the month which ought to be treated as sale to the Board at the end of every month in the event same is not adjusted.

3.27. The TANGEDCO is by its arbitrary and illegal actions enjoying a double benefit i.e. that of denying adjustment to the Petitioner thereby forcibly allowing the units to get lapsed and not paying for such lapsed units (the units which have already stood generated and utilized by TANGEDCO) thereby resulting in unjust enrichment.

3.28. If the first prayer is allowed, as evident from the adjustments, there will be no units that would have lapsed. Alternatively, if the TANGEDCO's position is upheld, the Petitioner would be entitled to payment for units at the end of the month that has remained unutilized. With the view to protect its alternative claim, the Petitioner has issued appropriate Debit Notes seeking payment of a sum of Rs.25,04,461/-. In view of the position already taken by the Respondent the Petitioner does not expect to get any payment in that regard, unless appropriate orders are issued by this

Commission. It has become necessary to make a determination on the dispute and pass appropriate directions against the arbitrary and illegal action of the Respondent.

4. Contention of the Respondents in the Counter Affidavit:-

4.1. The TNEB's practice until the issuance of the Commission's Order No.3 dated 15-05-2006 was that in respect of Wind Mill, the Wind Mill Generators may either sell the surplus energy available after adjustment to TNEB at an outright price of Rs.2.70 per unit or bank the surplus energy by deducting banking charges @ 5% of the energy banked. The banking period starts from 1st April of every year to 31st March of the succeeding year. The unutilized banked energy as on 31st March of every year will be considered as lapsed.

4.2. The Commission had issued Order No.3 dated 15-05-2006, with regard to Power Purchase and allied issues in respect of Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants, after taking into account the existing practices adopted by the Tamil Nadu Electricity Board and the guidelines from the Ministry for Non-Conventional Energy Sources (MNES), in respect of NCES.

4.3. In the said order, the Commission had issued banking provision, classification of the WEG and tariff for wind energy as follows:-

Classification of WEG:-

(a). Group I Projects: Wind power projects commissioned, and to be commissioned based on agreements executed prior to the date of this order (i.e.) 15-05-2006.

(b). Group II Projects: Wind power projects to be commissioned based on future agreements after the date of this order (i.e.) 15-05-2006.

Tariff Computation:-

No.	Particulars	Tariff Rate per KWHr
1	WEG : Group 1	Rs.2.75
2	WEG : Group 2	Rs.2.90

Banking:

As followed by most of the other States, the Commission retains the existing practice of one year (from April to March) banking period of TNEB, for the NCES based wind electric generators. However, for the biomass and bagasse based co-gen generators, banking provisions shall not apply.

The Commission fixes the banking charges as 5% for WEG. The Licensee shall pay at a rate of 75% of normal purchase rate for the unutilized portion of energy banked by the NCES based wind electric generators.

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 for the 75% rate.

4.4. Pursuant to the above, the Member / Generation had issued detailed working instructions in order to implement the Commission's Order No.3 dated 15-05-2006 vide circular dated 11-12-2007 wherein it has been stated as follows:-

"(1)5. If the wind energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and Wind Electric Generators were commissioned before 15-05-2006 and after 15-05-2006, the higher tariff units have to be adjusted first. For the payment of unutilized banked energy, the lower tariff rate has to be paid to the Generator at Generating end. –"

Therefore, while wheeling the power from more than one Wind Electric Generator towards the adjustment in one HT service, the adjustment has to be done in the descending order of the wind tariff (i.e.), the higher tariff units have to be adjusted first. The same procedure was followed even for the subsequent Order No.1 dated 20-03-2009 and there was no dispute by the generators.

4.5. The Commission has issued comprehensive Tariff Order No.1 of 2009, dated 20-03-2009 on wind energy by classification of the WEG and tariff for wind energy as follows:-

Classification of WEG:

- a. *Group I Projects: Wind power projects commissioned and to be commissioned based on agreements executed prior to the date of this order i.e. 15-05-2006.*
- b. *Group II Projects: The wind mills commissioned between 15-05-2006 and 19-03-2009.*
- c. *Group III Projects: The wind mills commissioned on or after 20-03-2009.*

Tariff Computation:-

- a. *The wind mills commissioned prior to 15-05-2006 shall be eligible for a tariff of Rs.2.75 per unit.*
- b. *The wind mills commissioned between 15-05-2006 and 18-09-2008 shall be eligible for a tariff of Rs.2.90 per unit.*
- c. *The wind mills commissioned between 19-09-2008 and 19-03-2009 shall be eligible for a tariff of Rs.2.90 per unit. These wind mills shall be eligible for Rs.3.24 per unit from 20-03-2009 to 31-03-2009 and Rs.3.39 per unit from 01-04-2009.*
- d. *The wind mills commissioned on or before 20-03-2009 shall be eligible for tariff of Rs.3.24 per unit upto 31-03-2009 and the tariff of Rs.3.39 per unit from 01-04-2009.*

4.6. To implement the above order, the Director / Generation / TANGEDCO had issued instruction vide Circular Memo No.CE/NCES/EE/WPP/AEE-2/F.TNERC Order No.1/D /11, dated 01-07-2011 as follows:-

“As per the Hon’ble ATE Judgment dated 18-03-2011 and approval of CMD/TANGEDCO dated 29-06-2011....., it is hereby instructed to implement the TNERC comprehensive Tariff Order on wind energy Order No.1 dated 20-03-2009 in full with retrospective effect.

Hence, all the Superintending Engineer / EDCs are requested to adhere all the provisions of the TNERC Comprehensive Tariff Order on Wind Order No.1 dated 20-03-2009 in toto with retrospective effect”.

With regard to adjustment of wind energy for captive use is same for Order No.3 dated 15-05-2006 and Order No.1 dated 20-03-2009 and the detailed working instructions already issued vide Circular dated 11-12-2007 for Order No.3 dated 15-05-2006 is followed by Order No.1 of 2009 also.

4.7. The CERC has notified the Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation Regulations, 2010 on 14-01-2010, wherein the REC benefit was extended only to the sale to TANGEDCO category. Subsequently vide its notification dated 29-09-2010, the REC benefit was extended by CERC for captive generator also. Clause 5 (amended) of the said Regulations prescribes the eligibility criteria for issuance of REC as under:-

- i) It sells electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.
- ii) provided that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self-consumption for participating in the REC scheme subject to the condition that such CPP 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.

4.8. Therefore, the REC generator can sell the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

4.9. With regard to wheeling and adjustment of wind energy is concerned, as there is no major change in the Tariff Order No.3 dated 15-05-2006 and Order No.1, dated 20-03-2009, the detailed working procedure already issued on 11-12-2007 for the said Order No.3 is utilized for the said Order No.1 also. As such for Order No.3 dated 15-05-2006 there are two tariff rate i.e. Rs.2.75 and Rs.2.90 per unit and for Order No.1, dated 20-03-2009 one rate Rs.3.39 per unit. If a captive generator having the above 3 types of WEGs and Wheels for his HT service, the instruction was the higher tariff rate i.e. Rs.3.39 per unit to be adjusted first, Rs.2.90 per unit to be adjusted second and Rs.2.75 per unit is the last. At the end of the banking period, for the unutilized banked energy, the 75% (or) 100% payment is being made with lower tariff rate of Rs.2.75 per unit. This was the procedure adopted for Order No.3 dated 15-05-2006 and Order No.1 dated 20-03-2009.

4.10. The Petitioner is having 7 Nos. WF HT services with 4 Nos. WEGs are Group I and 1 No. WEG is Group II under Order No.3, dated 15-05-2006 and 1 No. WEG is under Order No.1, dated 20-03-2009 and finally the disputed 1 No. WEG is under REC under Order No.6 dated 31-07-2012. The Petitioner entered into EWA and is adjusting the energy in their HT service No.2140 of Chennai Central EDC. For the 5 Nos. WEGs under Order No.3, dated 15-05-2006 and 1 No. WEG under Order No.1, dated 20-03-2009, the adjustment was carried out as per instructions dated

11-12-2007 i.e. the higher tariff rate units to be adjusted first and the balance to be banked. For the unutilized banked energy the lower tariff rate was paid. The Petitioner had accepted the payments from 2007 onwards without any dispute whatsoever.

4.11. The Commission issued Tariff Order No.6 dated 31-07-2012. The TANGEDCO vide its circular dated 01-09-2012 issued instructions and implemented the above order. With regard to adjustment of wind energy from more than one wind mill with different tariff rate is concerned, the instructions issued are that if a consumer wheeled energy for adjustment from more than one wind mill, which is commissioned in different dates, the priority for first adjustment shall be given to the wind mill commissioned in later date and that the energy generated from the wind mill commissioned in earlier date shall be adjusted in later. The TANGEDCO has not deviated its procedure from one order to other.

4.12. In the Commission Tariff Order on Wind Energy i.e. Order No.6 of 2012, dated 31-07-2012, it has been stated with regard to banking facility in respect of WEGs availing REC as under:-

“8.2.15 With regard to WEGs availing REC, one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in case of conventional power”.

From the above, it is clear that the WEGs availing REC does not avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty in order to avail the benefits of REC.

If the banking facility has been extended to the WEGs availing REC as in the case of WEGs not availing REC, the Petitioner might not request to adjust the REC power in the first instance.

4.13. The background of issuance of banking facility is furnished in this regard to establish the position of TANGEDCO. The TANGEDCO has requested the Commission to dispense with the banking facility, and the Commission in the Tariff Order No.6 dated 31-07-2012 held as follows:-

“ XXX

8.2.4. In response to the public notice dated 27-04-2011, the TANGEDCO in its letter dated 13-06-2011 has stated the following:-

“Extending the concessional promotional benefit of banking will hinder the financial position of the TANGEDCO and hence the concessional / promotional benefit of banking facility may be dispensed with. The surplus energy after adjustment on every month may be paid at 75% of the applicable power purchase cost. Further, the Electricity Act, 2003 does not speak about banking. However, if at all, the Commission think fit the provision of banking facility, the banking period may be fixed from 1st January to 31st December of every year instead of 1st April to 31st March. The TANGEDCO may settle the unutilized energy at the end of the banking period (31st December) at 75% of the normal purchase rate with increased banking charges of 20%”.

8.2.5. In their letter dated 07-12-2011, the TANGEDCO have stated that the cash outflow for payment of unutilized banked units is increasing every year and the full Board of TANGEDCO is in favour of dispensing with the banking provision and requested the Commission to dispense with the banking provision not only to future projects but also to the existing projects commissioned before and after 15-05-2006.

8.2.6. In the additional comments furnished in letter dated 02-06-2012, the TANGEDCO has stated the following on banking:-

(1) As stated already, the WEGs are allowed to supply power to captive user and third party consumers in addition to sale to TANGEDCO, as has been allowed to conventional generators. Hence, there is no need to continue banking facility to wind sector. In fact, provision of banking is alien to the Electricity Act, 2003 and on this ground alone banking of wind energy need to be dispensed with.

(2) As has been stated already, wind energy generators by virtue of natural consequences and, fortunately, for the WEG's the wind blow during summer season, in TANGEDCO's experience, it is seen that the WEG generates energy,

during May to September, without putting any effort but encashes by adjustment at a later time by virtue of banking that too when the Distribution Licensee is experiencing power deficit due to high demand. It is an open secret that the power deficit is prevailing in most of the States in India and of late, experiencing shortage of coal and gas, difficulties in transportation of coal for various reasons etc. Therefore, it is a right time to dispense with the banking facility. In fact, while the Wind Energy Generators withdrawing the banked energy, the Distribution Licensee is forced to make purchase of power from open market at much higher cost. Thereby also, the Distribution Licensee is made to suffer financially.

(3) In addition to dispensing with the banking system, the existing requirement on the part of Distribution Licensee to make payment for any excess energy left over after adjustment also requires to be dispensed with, in view of the position that WEG have been provided with all adequate options of distributing their energy through captive use and third party consumer in addition to sale to TANGEDCO.

(4) Further provision of encashment of unutilized banked energy, leads to additional financial burden to TANGEDCO. The quantum of unutilized banked energy increasing every year exponentially.

In 10/2008, it was 315 MU, in 31-03-2009 it was 251.3 MU and in 31-03-2010 it was 350.658 MU. Hence cash outflow for payment of unutilized banked units is high every year. Such dispensing with may be made applicable to the existing WEGs and to prospective WEGs from the date of such tariff order irrespective of the category to which it belongs.

(5) Further, as per CERC and TNERC REC Regulations, for wheeling of wind energy for captive consumption under REC scheme, they have to forego banking. Since TANGEDCO proposed to purchase the future wind power from REC projects only, the banking may be dispensed with. Further based on the recommendation of the TANGEDCO full Board meeting held on 15-11-2011, a petition M.P.No.1 of 2012 filed at TNERC to dispense the banking. However, TNERC on 16-02-2012 directed the TANGEDCO to file a fresh petition by impleading the affected parties. Filing fresh petition is in the process.

Under the circumstances, it is suggested that the banking provision for wind energy shall be dispensed with not only to the future projects but also to the existing projects commissioned before and after 15-05-2006 irrespective of the tariff order to which WEG is covered and for which necessary amendments may be effected in the existing Energy Wheeling Agreement.

8.2.7. The Principal Secretary, Energy Department, Government of Tamil Nadu vide Letter No.10369/C2/2011-3, dated 28-03-2012 addressed to the Commission has stated that the banking provision of wind energy shall be dispensed with not only to the future projects, but also to the existing projects commissioned before and after 15-05-2006.

However, the Commission could continue the banking in pursuant to section 86 (1) (e) of the Electricity Act, 2003 to promote the renewable energy in the State, subject to the adjustment of energy rates between the two periods relating to banking of energy and drawal of energy from the banking.”

4.14. The banking facility has to be dispensed since in view of the position that WEGs have been provided with all adequate options of distributing their energy through captive use and third party consumer in addition to sale to TANGEDCO. In fact, while the Wind Energy Generators withdrawing the banked energy the Distribution Licensee is forced to make purchase of power from open market at much higher cost. Thereby also, the Distribution Licensee is made to suffer financially. Hence, TANGEDCO is being adopted the adjustment of priority as follows:-

“If the Wind Energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and Wind Electric Generators were commissioned before 15-05-2006 and after 15-05-2006, the higher tariff units have to be adjusted first. For the surplus energy sale after adjustment, the lower tariff rate has to be paid to the Generator at Generating end. ----“

While factual position being so, the petition is not sustainable one. If the above petition is allowed, serious prejudice will be caused to the Respondent.

4.15. Subsequently the Commission vide its RPO amendment regulations dated 29-07-2011 extended the REC benefits to captive generators also with the condition to forego the concessional transmission charges, wheeling charges and banking facility. Further, the TNERC on 28-12-2011 in M.P. No.3,9, 11 of 2011 vide its order held that the transmission charges, wheeling charges and banking in Order No.1, dated 20-03-2009 are concessional one. Hence after adjustment in the month, the surplus energy was paid at Rs.2.37 per unit at APPC rate. While issuing NOC to the Petitioner, the same condition was imposed. Upto 31-07-2012, the surplus units paid with the Average Pool Power Cost.

4.16. The Petitioner commissioned 1 x 850 KW WEG on 20-03-2012 with WF HT SC No.UGA99 under REC scheme and wheeling the wind energy to HT SC No.2140 of Chennai Central EDC. As per the TNERC RPO amendment Regulation, dated 29-07-2011, the banking facility is not extended to REC captive generator. Hence as per the agreement for the surplus energy after adjustment, payment was made to the generator at APPC rate of Rs.2.54 per unit upto 31-07-2012. With regard to REC project is concerned, the project under sale to Board is governed by CERC's REC Regulation, 2010 and TNERC RPO Regulation, 2010 and TNERC order on APPC rate. With regard to REC captive generation is concerned upto 31-07-2012, it was governed by TNERC RPO Regulation 2010 only. Now only it is covered under Order No.6, dated 31-07-2012.

4.17. With regard to WEGs availing REC, one month adjustment is allowed as permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power.

4.18. Even in the earlier instructions dated 11-12-2007 issued by the Respondent, the adjustment of energy was ordered to be carried out in the same manner ordered in the Circular No. CFC/REV/FC/AAO/HT/D.606/12, dated 14-09-2012 (viz) higher tariff rate units are to be adjusted first and the balance to be banked. The banking of energy in respect of REC scheme has since been withdrawn. The Petitioner has now questioned the manner of adjustment of energy. On the other hand, this Respondent never changed the manner of adjustment right from 2007. Hence, the above clarification is not contrary (or) deviations from the procedure already followed from 2007 vide the instruction dated 11-12-2007 and the recent instruction dated 01-09-2012 for Order No.6, dated 31-07-2012. To have a demarcation between

project under preferential tariff and project under REC scheme, the TNERC issued direction in Order No.6, dated 31-07-2012 to treat the surplus energy as lapsed without giving banking facility. Hence, to give banking facility to the non-REC WEGs, the energy generated by the non-REC WEGs adjusted first, with higher tariff rate at first and lower tariff rate at later. In order to give effect, direction of TNERC for REC WEGs to treat surplus energy as lapsed, the REC units adjusted last. Eventhough the TANGEDCO has not deviated from the procedure followed for adjustment from one order to other. Since the REC rate is less than preferential tariff, in the descending order it is adjusted last.

4.19. For implementing Order No.6 dated 31-07-2012, TANGEDCO issued order on 01-09-2012, wherein from more than one wind mills commissioned in different date, adjustment is made, it was instructed that the following to be adhered:-

“If a consumer wheeled energy for adjustment from more than one wind mill, which is commissioned in different dates, the priority for first adjustment shall be given to the wind mill commissioned in later date. The energy generated from the wind mill commissioned in earlier date shall be adjusted in later.”

4.20. The procedure adopted for implementation of TNERC Order No.3 dated 15-05-2006 and Order No.1 dated 20-03-2009 is the same as per instructions issued on 11-12-2007 as below:-.

“If the wind energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and the Wind Electric Generators were commissioned before 15-05-2006 and after 15-05-2006, the higher tariff units have to be adjusted first. For the surplus energy sale after adjustment, the lower tariff rate has to be paid to the Generator at generating end. Similarly for the lapsed banked unit the lower tariff rate only to be paid to the generators”.

There was no dispute as to the instructions dated 11-12-2007 and no objection was there from the generators including the Petitioner and they received the payment without any objection.

4.21. But for the instruction dated 01-09-2012 issued for Order No.6 dated 31-07-2012, Tamil Nadu Spinning Mills Association (TASMA), M/s.Madras Cements Limited, Indian Wind Power Association (IWPA) and The Southern India Mills Association (SIMA) have filed Writ Petitions No.12650/2012, 12749/2012, 12750/2012 and 12883/2012, respectively, at Madurai Bench of the Madras High Court and prayed to stay the circular instruction, dated 01-09-2012. The High Court issued interim stay order on 26-09-2012. On 08-10-2012 the High Court directed the TANGEDCO to file a clarifactory petition before the Commission and on 17-10-2012 extended the stay order until disposal of the petition by the Commission. As per the direction of the High Court, a clarificatory petition was filed by TANGEDCO before the Commission in M.P.No.38 of 2012. On 26-03-2013, the Commission has issued interim order in the said M.P. as follows:-

“Petition admitted. TANGEDCO is directed to host the petition in its website. It may also be hosted in the Commission’s website. Any interested persons may give their comments on or before 26-04-2013”.

As per the direction of the Commission, the TANGEDCO hosted the petition at TANGEDCO website. The case is pending to be disposed of by the Commission. In the above Writ Petitions (MD) No.12650/2012 etc. the Wind Power Association have not raised objection for the above said adjustment procedure including the Petitioner.

4.22. As per the provisions of the CERC (REC) Regulations, wind power projects installed for captive use are allowed to avail RECs on total generation including

self-consumption, provided such projects forego the concessional transmission and wheeling charges / losses and other benefits offered by the State Government / SERCs. Hence, contention of the Petitioner that wind energy generated from WEGs avail REC shall be adjusted first is not legitimate and sustainable.

5. Findings of the Commission:-

5.1. The prayer of the Petitioner is to –

(a) set aside the communication of the Chief Financial Controller/Revenue, TANGEDCO bearing Ref. No.CEC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012 as arbitrary and illegal and consequently direct the Respondents to first effect adjustment of the wind energy generated from Gamesa Make 850 kW WEG at Sankarandampalayam, Tirupur District, operating under the Renewable Energy Wheeling Agreement under the REC scheme dated 20-03-2012, against the Petitioner's HTSC No.2140 and thereafter adjust the energy generated by wind mills with banking facility.

ALTERNATIVELY

(c) direct payment of a sum of Rs.25,04,461/- being the sum due and payable being the payments due and payable for the units that were treated as sold to the Board under clause 6 (iv) of the Renewable Energy Wheeling Agreement under the REC scheme dated 20-03-2012 and also direct payment in respect of the further months after the filing of this petition and to pass such further or other orders as the Commission may deem fit and proper.

5.2. The petitioner has reported that all the wind mills set up by him prior to April 2011 are for captive consumption with adjustment through wheeling agreement

except the 1.65 MW wind energy generator (WEG) with HT Service Connection No: 1723. The petitioner commissioned another 850 kW wind energy generator on 20-03-2012 and entered into renewable energy wheeling agreement under Renewable Energy Certificate (REC) scheme with TANGEDCO on 20-03-2012. The crux of the issue is the priority of adjustment of energy at the user end between the energy generated by the wind energy generator (WEG) under REC scheme and the wind energy generator under normal captive consumption scheme. In this connection, the Chief Financial Controller / Revenue of TANGEDCO issued a clarification regarding the adjustment of such energy vide his Letter No.CEC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012. The operating portion of the letter is reproduced below:

- a. *The TNERC order on wind energy and order on REC does not have any provision in regard to adjustment priority of banked energy and REC power.*
- b. *The TANGEDCO in principle adopting the procedure of adjusting the high cost power first and lesser cost power on later date i.e. the first priority given for power generator from the later date agreement and vice versa.*
- c. *In clause 8.2.15 of TNERC Order No.6 dated 31-07-2012 on Wind Energy issued by the Hon'ble TNERC specified that Wind Energy Generators availing REC one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power.*
- d. *As long as the banking facilities are not extended to the WEG availing REC, this power will become cheaper than the power generated from the WEG availing banking facilities.*
- e. *The Wind Energy Generator who avail banking facilities can utilize their banked energy during the period of power scarcity and TANGEDCO is liable to supply power to them by procuring in the open market at higher cost and hence this power is costlier than power generated from Wind Energy Generator availing REC.*
- f. *In line with the above, the higher cost power has to be adjusted first (i.e.) Wind Energy generated from wind mills with banking facilities and lesser cost power shall be adjusted later i.e. Wind Energy generated from wind mills under REC.*
Hence, it is clarified that the wind energy generated by wind mills with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later.

5.3. Now the mute question is whether the letter of the CFC/Revenue, TANGEDCO is legally valid and the adjustment priority done by the TANGEDCO is in Order? Energy Wheeling Agreement under Renewable Energy Certificate (REC) scheme was signed by the parties on 20-03-2012. The relevant laws / agreements and documents applicable to the question are reproduced below:

- (i) Clause 6 of the wheeling agreement signed by the parties on 20-03-2012.

“6. Billing

- (1) *The Distribution Licensee shall raise bills at the end of the month for the net energy consumed by the captive user after adjusting the wheeled energy at the rate applicable to that category of consumer where the consumption by the captive user is more than the generation of the REG.*
- (2) *The distribution licensee shall raise bills on the REG or the captive consumer, as the case may be, for the charges payable towards startup power and power drawn for other purpose, wheeling charges, excess demands and excess energy charges, cross subsidy surcharges wherever applicable etc. as per the order / regulations of the Commission for the time being in force.*
- (3) *The STU shall raise bills on the REG holder for the charges payable towards transmission charges, scheduling and system operation charges etc. as per the order / regulations of the Commission for the time being in force.*
- (4) *Wherever the renewable energy generation in a billing month is in excess of the consumption in that month, the balance energy shall be sold to the distribution licensee at a price not exceeding the pooled cost of power purchase as defined in Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 and amendments issued from time to time”.*

- (ii) The relevant portion of Director (Generation) Letter No.CE/ NCES/ SE/ EE/WBP/AEE2/F.M/s.Century Flour Mills Limited.,/WEG.No:REC 169(U)/R.002778/D.648/2012, dt.16-03-2012.

“1. Since this approval considered based on the CERC REC Amendment Regulation and TNERC RPO Amendment Regulation vide reference (13) & (14) and TNERC Order dated 28-12-2011 in M.P.No.3,9,11& 12 of 2011 and TNERC approved Renewable Energy Wheeling Agreement under REC scheme, and based on your undertaking for REC Scheme,

d) As of now you are requested to pay the normative transmission charges and wheeling charges as per TNERC Order No.2 dated

15-05-2006 and which is under revision. As and when TNERC issued orders for revision, the same has to be paid.

- e) The banking provision is not permitted. Every month after adjustment of the generated wind energy in your / your group captive companies, the surplus energy shall be sold to TANGEDCO at the rate of pooled cost of energy @ Rs.2.37 per unit.*
- f) You are requested to pay the Government duty, if any, as and when announced by the Government”.*

(iii) Clause 8.2.15 of the Comprehensive Tariff Order on Wind Energy issued by the Commission on 31-07-2012.

“8.2.15 With regard to WEGs availing REC, one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in case of conventional power”.

5.4. In light of the above facts, there are two issues to be clarified in this Order.

Whether the adjustment priority assigned by the TANGEDCO vide its Letter dated 14-09-2012 is legally valid? If not what should be the priority of adjustment of energy between wheeling of wind power under REC scheme and wheeling under normal scheme.

5.5. Throughout their argument the respondent contended that their priority for adjustment communicated vide their letter dated 14-09-2012 is based on their circular issued on 11-12-2007 wherein it has been stated as follows:

“II).5. If the Wind Energy wheeled for one (or) more than one HT service at wheeling end from more than one Wind Electric Generator and Wind Electric Generators were commissioned before 15.05.2006 and after 15.05.2006, the higher tariff units have to be adjusted first. For the payment of unutilized banked energy, the lower tariff rate has to be paid to the Generator at Generating end.”

From the above, it could be clearly observed that while wheeling the power from more than one Wind Electric Generator towards the adjustment in one HT service, the adjustment has to be done in the descending order of the wind tariff (i.e.), the higher tariff units have to be adjusted first. It is to be noted that the same procedure was followed even for the subsequent Order No.1 dated 20.03.2009 and there was no dispute by the generators.

But the respondent's submission in the counter has not supported this argument without any ambiguity. Their circular dated 11-12-2007 compares the preferential tariffs approved by the Commission for Wind Energy Generators (WEGs) commissioned during different timings for fixing the priority for adjustment of energy generated from such WEGs. On the other hand, the respondent's letter dated 14-09-2012 compares notional cost of energy to be adjusted under REC scheme with the preferential tariff of other WEGs for fixing the priority for adjustment of energy generated by the WEGs under different schemes. However both the TANGEDCO's circular dated 11-12-2007 and the letter dated 14-09-2012 have not been approved by the Commission.

5.6. The Commission has not issued any specific instruction for fixing the priority of adjustment at the user end for the energy generated from WEGs under REC scheme and WEG's under normal captive / third party scheme. The priority imposed by the TANGEDCO vide its letter dated 14-09-2012 for adjustment of energy in this case is arbitrary. Since such decision of the TANGEDCO affects the electricity charges to be paid by the consumers / open access consumers, the TANGEDCO's letter dated 14-09-2012 is not legally valid as mandated by Section 45 of the Electricity Act 2003. In the absence of expressed law, the best option for the TANGEDCO should have been approaching the Commission for issue of such orders. This has not been done by the TANGEDCO. Therefore we have no hesitation to declare that the TANGEDCO's letter No.CEC/FC/REV/AAO/HT/D.606/2012, dated 14-09-2012 is arbitrary and not legally valid.

5.7. Having declared that the TANGEDCO's letter dated 14-09-2012 is arbitrary and not legally valid, let us now devise a prudent method for fixing the priority for adjustment of energy generated by WEGs in this case. The wheeling agreement signed by the parties as well as the Commission's Order on Wind Energy recognize only one month energy adjustment period for wheeling of power by WEG under REC scheme. However, the other captive generators which are not availing Renewable Energy Certificate (REC) are eligible for banking of energy for a period of one year from April to March next year as specified in the comprehensive orders on wind energy issued by the Commission from time to time. Therefore, the energy to be adjusted under REC scheme has a shelf period of one month whereas the energy to be adjusted under normal scheme has a shelf period of one year. In such circumstances, it is prudent to follow the doctrine of efficacy to decide on the priority. In one such case, the Hon'ble APTEL on Appeal No.38 of 2010, has referred the following observation of the Hon'ble Supreme Court in the matter of *Union of India vs D.N.Revri & Company* reported in (1976) 4 SCC 147.

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

Applying the above principle in this case, we Order that the TANGEDCO shall first adjust the wheeled energy generated from the petitioner's WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive / third party generators which have a banking period of one year. The TANGEDCO is directed to revise the bill of the petitioner based on

the energy adjustment priority specified in this order and settle the account within a period of three months from the date of issue of this order.

6. Appeal:-

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(G.Rajagopal)
Member

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission