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.17 of 2011

Kaveri Gas Power Ltd.,
5,Ranganathan Garden, Anna Nagar,
Chennai-600040 … Petitioner
(Thiru Vinod Kumar,
Advocate for the Petitioner)

Vs.

1. The Tamil Nadu Transmission Corpn.Ltd.,
   Represented by its Director,
   144, Anna Salai,
   Chennai-600002.

2. The Tamil Nadu Generation and Distribution Corpn.Ltd.,
   Represented by its Director,
   800, Anna Salai,
   Chennai-600002.

3. The Superintending Engineer,
   Nagapattinam Electricity Distribution Circle,
   The Tamil Nadu Generation and Distribution Corpn.Ltd.,
   Nagapattinam.

4. The Tamil Nadu Electricity Board,
   Represented by its Chairman,
   800, Anna Salai,
   Chennai-600002.

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

Dates of hearing: 12-09-2011; 16-11-2011; 18-12-2012; 08-01-2013; 07-02-2013 and 04-02-2014

Date of Order: 01-07-2015

The D.R.P. No.17 of 2011 filed by Kaveri Gas Power Ltd., came up for final hearing on 04-02-2014. The Commission upon perusal of the Petition, Counter affidavit filed by the Respondents and all other connected records and after hearing the arguments of both sides hereby make the following:

ORDER

1. Prayer of the Petitioner:

The prayer of the Petitioner in this above DRP is to-

(a) determine the amount payable by the Respondent to the petitioner for the 5,09,340 units of power generated by the Petitioner's additional 2x1.1 MW engines and exported into the grid during 04.01.2011 and 20.01.2011 and consequently direct the Respondent to pay the amount so determined.

(b) direct the Respondent to pay interest at 18% on the amount payable to the Petitioner in respect of the 5,09,340 units of power generated by the Petitioner's additional 2x1.1 MW engines and exported into the grid during 04.01.2011 and 20.01.2011;

(c) pass such other orders ad deemed fit in the circumstances of the case;

(d) direct the Respondents to pay costs of the present proceedings to the Petitioner.

2. Facts of the case:-

The Petitioner Kaveri Gas Power Ltd., is a gas based power plant located at Maruthur Village in Mayiladuthurai Taluk. The power plant was originally having a capacity of 17.5 MW which was subsequently got reduced to 6.79 MW in the year 2007. Thereafter in the year 2009 the Petitioner got approval from the Respondents

to sell 5 MW power to Third parties as per Intra State Open Access Regulations for the period from 06-03-2009 to 18-05-2009. Since the Petitioner proposed to add 4x1.1 MW capacity for a short period the Respondent was requested on 22-9-2010 to grant Open Access for 5 MW for a period of six months. The Respondents accorded on 12-10-2010 a revised approval to sell power to H.T. consumers to the tune of 9.5 MW. In November 2010 the Petitioner sought permission from the Respondent for parallel operation of additional 5x1.1 (5.5 MW) capacity under short term open access for which permission was granted on 04-01-2011. However, the petitioner could add up only 2x1.1 MW in the place of 5x1.1 MW proposed and necessary modification in the approval was sought for by the Petitioner. During the process the petitioner claims to have exported 5,09,340 units in the grid between 04-01-2011 to 20-01-2011 and claim the money value of the energy from the Respondents which the Respondents deny. Hence the present D.R.P. has been filed by the Petitioner.

3. Contentions of the Petitioner in the petition dt. 20-07-2011:-

3.1 The petitioner has set up a 6.79 MW natural gas based captive power plant at Maruthur Village, Mayiladuthurai Taluk. The natural gas for the plant is supplied by the GAIL (India) Ltd., under a contract with the Petitioner. The Petitioner's plant was accorded wheeling approval by the Tamil Nadu Transmission Corporation Ltd., (TANTRANSCO) on 24-05-2006 for 17.5 MW. This was subsequently reduced to installed capacity of 6.79 MW with effect from 19-10-2007. An Energy Wheeling Agreement dated 4-10-2008 for a term of three years was entered into between the Petitioner and the Board setting out the terms of the open access entitlement of the Petitioner in respect of 6.79 MW.

3.2 The Petitioner is entitled to 35000 Standard Cubic Meters of natural gas Per Day from the gas wells of Kuttalam based on its contract with GAIL (India)Ltd., The TANGEDCO operates a 110 MW natural gas based power plant at Kuttalam, which is also supplied gas from the same source of GAIL (India) Limited from wells of Kuttalam. The contracted quantity supplied to the TNEB is 4,50,000 SCMD. The TANGEDCO's plant has been shut down for maintenance purpose since July 2010. On account of the shutdown, the natural gas contracted to be supplied to the said plant of the Respondent was available in excess and hence the gas consumers of the region were permitted by GAIL to draw gas in excess of their respective contracted quantity.

3.3 The Petitioner had been granted approval to sell 5 MW to third parties vide letter dated 11-3-2009. To utilize the excess gas being supplied, the Petitioner decided to temporarily add 4 engines of 1.1 MW for a short duration. The Petitioner intended to sell the power generated using the proposed additional engines to either its captive consumers or third party consumers and for this purpose the Petitioner applied to the TANTRANSCO on 22-9-2010 for grant of short term open access. By letter dated 12-10-2010, the TANTRANSCO revised the approval granted to the Petitioner to sell power to third parties from 5 MW to 9.5 MW.

3.4 Since the Petitioner's project was originally granted wheeling approval for 17.5 MW which was subsequently reduced to 6.79 M.W., the available open access capacity of the sub-station was sufficient to accommodate the request of the Petitioner without any further system strengthening. After the amendment of the Petitioner's capacity from 17.5 MW to 6.79 MW, the open access capacity of the sub-station was not allotted to any other generator. In terms of Regulation 13 (c) of

the Intra State Open Access Regulations, the feasibility of short term open access is to be informed within fifteen days. However, in the case of the Palayur sub-station to which the Petitioner's plant is synchronized, there was no requirement for any feasibility study since the open access capacity was designed with 17.5 MW as the Petitioner's plant capacity.

3.5 Despite the TANTRANSCO granting the revised approval for sale of power to third party by enhancing the limit to 9.5 MW, the petitioner's request for grant of short term open access was not considered. The additional engines purposed by the Petitioner arrived at the plant on 19-10-2010 and were installed on 4-11-2010. The TANTRANSCO vide letter dt. 21-10-2010 sought certain details from the Petitioner to further process the Petitioner's request. The Petitioner by its letter dated 21-10-2010 submitted the necessary details and further followed it up by letter dated 26-10-2010.

3.6 The TANTRANSCO vide letter dated 12-11-2010 granted the Petitioner approval to evacuate 4.4 MW of power under Short Term Open Access for wheeling power to third parties for a period of six months from the date of signing the agreement or until the commissioning of the Board's Kuttalam Gas Plant. The TNEB vide letter dated 16-11-2011 called upon the Petitioner to pay the applicable fees which was paid on the same day and the Energy wheeling agreement came to be executed on 16-11-2011 between the Petitioner and the TNEB.

3.7 There was considerable delay in issuance of the approval for short term open access and on account of this, despite having installed the additional engines at their plant on 4-11-2010 the Petitioner could not utilize the excess gas being made

available by GAIL. Owing to the delay on the part of the Respondents, the wheeling agreement came to be executed only on 16-11-2010.

3.8 The TNEB's Kuttalam Plant took considerable time to become operational and hence GAIL informed the Petitioner that the excess gas available will continue for few more months. Since there was a possibility of utilizing the additional gas for a short duration, the Petitioner decided to rent in another 5 x 1.1 MW engines and vide its letter dated 30-11-2010 requested for grant of short term open access for additional 5.5 MW followed by another letter dated 7-12-2010. Even for the said capacity enhancement, no feasibility study was required to be carried out as it was within the open access capacity of the substation. The Petitioner's request was not considered expeditiously despite regular follow up by the Petitioner.

3.9 By letter dated 04-1-2011 the TANTRANSCO accorded the approval to the Petitioner to operate their additional 5 x 1.1 MW gas engines in addition to the existing capacity of 11.19 MW (6.79 MW + 4.4 MW) and to evacuate the power under short term open access for a period of six months for third party sale or until commissioning of the Respondent's Kuttalam Gas Plant whichever is earlier.

3.10 Although the Petitioner had placed order for renting 5x1.1 MW engines, the petitioner could obtain only 2x1.1 engines. The said two engines were installed at the plant and after issuance of the approval on 4-1-2011 the Petitioner approached the Third Respondent with a request to synchronizing the 2 engines. However, the Third Respondent insisted that the Petitioner will have to first get the approval issued by TANTRANSCO amended to correspond to 2x1.1 MW instead of 5x1.1 MW. The Petitioner approached the TANTRANSCO on 11-1-2011 for an amendment and the

amendment was issued to the Petitioner only on 19-1-2011. The Energy wheeling agreement in respect of the additional capacity of 2.2 MW came to be executed on 20-1-2011.

3.11 The Petitioner having incurred huge expenditure in renting the additional engines was forced to test and operate the additional 2x1.1 MW engines and thereby commenced to export the units generated from the said additional engines into the grid, with effect from 4-1-2011, the date on which the permission for open access for 5.5 MW was granted to the Petitioner. This was done on the understanding that since the open access approval for 5 x 1.1 MW was granted on 4-1-2011, any amendment to the same is only a procedural requirement which would not substantially affect the rights conferred under the approval dated 4-1-2011.

3.12 The Petitioner exported a total of 5,09,340 units between 4-1-2011 and 20-1-2011 using the additional 2x1.1 engines. The Petitioner by its letter dated 27-1-2011 requested the Third Respondent Superintending Engineer, Nagappattinam EDC to allot the aforesaid units to the Captive consumers and Third party buyers of the Petitioner. This request of the Petitioner was negated by the Third Respondent on the ground that the Petitioner was not entitled to commence generating and exporting the units from 4-1-2011 and the same could have only been done from 20-1-2011.

3.13 The Petitioner by its letter dated 31-1-2011 addressed to the TANGEDCO set out the facts leading to the generation and export of 5,09,340 units into the grid and requested to permit either to transfer the units to its captive consumers or alternatively to make direct payment for the units. The TANTRANSCO by its reply

dated 28-2-2011 denied the Petitioner's request. In the said letter the said respondent has falsely stated that the Petitioner has exported additional units since 21-12-2010. In any event, the claim of the petitioner is confined to the units supplied between 4-1-2011 to 20-1-2011.

3.14 The Petitioner addressed its letter dated 9-3-2011 to the TANTRANSCO pointing out inter alia the delay on the part of the Respondents to grant short term open access on both the occasions despite there being severe power shortage in the State and the loss occasioned to the Petitioner. The Petitioner also pointed out that despite the short term open access being accorded to the Petitioner under Section 9 of the Act, the Petitioner was prevented from allotting the power generated from the additional engines to its captive consumers overlooking the fact that as a captive plant, the Petitioner has absolute discretion in deciding its end consumers. The Petitioner therefore requested the First Respondent to pay the Petitioner for the 5,09,340 units at the rate of Rs.4.89 per unit which was the price at which the Board was purchasing power from traders during the month of January 2011.

3.15 The TANTRANSCO vide its letter dated 28-3-2011 alleged that the delay in granting the short term open access was attributable to the Petitioner and negated the request of the Petitioner for payment for the 5,09,340 units stating that since the Petitioner does not have a power purchase agreement with the Respondent the 5,09,340 units cannot be treated as sale to the Respondent TANGEDCO.

3.16 On account of the shutdown of the Respondent's Kuttalam Plant there was a shortage of 110 MW per month. The Petitioner by installing the additional engines was only utilizing the gas meant for use by the Respondent's plant and was to supply

to the consumers in the State and thereby reduced the burden of the Respondents to that extent. Hence, the Respondent ought to have encouraged such a step of the Petitioner and accorded the necessary approvals without any delay.

3.17 In terms of G.O.Ms.No.10, Energy, dated 27-2-2009, sale of electricity outside the State of Tamil Nadu has been banned and all generators have been directed to optimize their generation and deliver into the grid the entire generation irrespective of there being any arrangement with the Respondent or not. The Petitioner by installing the additional engines and exporting the unit generated by it has only adhered to the said mandate of the State Government. The refusal to make payment for the units which were exported to the grid by the Petitioner between 4-1-2011 and 20-1-2011 which has also been utilized by the Respondent in meeting its supply obligations is without any justification and amounts to unjust enrichment on the part of the Respondent.

3.18 The installed capacity 2x1.1 MW being less than the capacity for which open access was granted to the Petitioner on 4-1-2011 was in no way prejudicial to the interest of the Respondent as the petitioner was willing to pay the charges applicable in respect of the capacity of 5x1.1 MW. Hence the approval for open access having been granted to the Petitioner on 4-1-2011, the units exported by the Petitioner from the said date ought to have been permitted to be allotted to its consumers.

3.19 The Respondents' action of refusing to make payment for the units injected into the grid by the Petitioner which has been utilized by the Respondent Board, is erroneous, arbitrary, and contrary to law. The Petitioner has been grossly prejudiced on account of the Respondent refusing to make payment for the units which it is

otherwise entitled to be paid for. The withholding of the amount by the Respondent being totally unjustified, the Respondent is liable to pay interest to the Petitioner for the delayed payments.

4. Contentions of the Respondents in their Counter Affidavit dated 10-10-2011:-

4.1 The petitioner simply made a letter for parallel operation of additional 4x1.1 MW capacity gas engines for a period of six months vide letter dated. 18-10-2010 instead of making an application in the prescribed format. Therefore, vide respondent's letter dated 21-10-2011 the petitioner was requested to submit in the prescribed application along with necessary documents and also to confirm whether capacity addition will be under the category of CPP. The petitioner furnished necessary documents along with application in the prescribed format on 21-10-2010 and also paid STOA Registration fees of Rs.1000/- on 22-10-2010. The application was in complete shape only on 26-10-2010. On considering the same approval was accorded on 12-11-2010 for parallel operation and open access for 4 x 1.1 MW gas engines on short term basis for a period of six month or until the synchronization of TNEB's Kuthalam Gas Plant whichever is earlier and the petitioner has executed an agreement with the SE/Nagapattinam on 16-11-2010 and synchronized the above engines on 16-11-2010.

4.2 The petitioner has submitted another application vide letter dated 30-11-2010 requesting for parallel operation of additional 5x1.1 MW gas engines on short term basis for a period of six months for third party sales. The petitioner was asked to clarify the CPP status during the year and the same was clarified by the company vide letter dated 7-12-2010. Thereafter, approval was accorded on 4-1-2011 for

parallel operation and open access for 5x1.1 MW gas engines and short term basis for a period of six months or until the synchronization of TNEB's Kuthalam Gas Plant whichever is earlier which was accepted by the Generator without any demur. In their letter dated 11-1-2011 the Petitioner stated that due to non-availability of gas engines, which are hired from M/s.Aggreko Energy, they have installed only 2 x 1.1 MW at present and requested to amend the approval dated 4-1-2011 which was accordingly granted for parallel operation and short term open access to 5 x 1.1 MW to 2x 1.1 MW and within four working days an amendment to the approval dated 4-1-2011 was issued on 19-1-2011 for the capacity of 2x1.1 MW. The petitioner has executed an agreement with the SE/Nagapattinam on 20-1-2011. The object of the petitioner is to get money for the illegal act of injecting power by illegal synchronization without any valid agreement.

4.3 As per data downloaded from the ABT Main meter at the Petitioner's Plant end, it is noticed that the additional 2x1.1 MW gas engines were illegally connected with TNEB grid from 21-12-2010 at 21.15 hrs. by the petitioner without any approval or agreement with the respondents. The petitioner's understanding that since the open access approval for 5x1.1 MW was granted on 4-1-2011 any amendment to the same is only a procedural requirement which would not substantially affect the rights conferred under the approval dated 4-1-2011 is not tenable. The agreement was entered with TNEB for the 2x1.1 MW engines only on 20-1-2011.

4.4 The claim of the Petitioner that it generated and exported energy of 5,09,340 units to TNEB grid between 4-1-2011 to 20-1-2011 was rightly negatived as no power purchase agreement was executed by the Petitioner with TANGEDCO during that period. The excess exported units will not be accounted for in any manner.

4.5 The conditions in clauses 22 and 23 of the Agreement entered with TNEB dated 16-11-2011 read as follows:

> "(22) Any excess energy injected into the Grid over and above the permitted *open access capacity of 2.2 M.W. will not be accounted and paid for by TNEB under any circumstances; and*
> *(23) This approval for short term open access is only for sale of power to third party and not for direct sale to TANGEDCO."*
>
> Having availed approval on many earlier occasions and executed agreements, with the condition that any excess energy injected to TNEB grid will not be accounted for and paid, the petitioner is estopped from contenting otherwise.

4.6.1 The alleged delay in issuing the order dated 19-1-2011 has nothing to do with the illegal act of the Petitioner. As such, the request for payment for the 509340 units is not feasible as there was no power purchase agreement or wheeling agreement executed by the petitioner with TANGEDCO.

4.6.2 Government of Tamil Nadu in its wisdom notified the following directions in public interest:

i) All power generation units operating in Tamil Nadu shall operate and maintain generating stations to maximum capacity and plant load factor (PLF); and

ii) All generating stations shall supply all exportable electricity generators to the State grid for supply to either Tamil Nadu Electricity Board, or to any other HT consumers within the State as per the regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission.

The aforesaid notification provides for two options (i.e.) supply of exportable energy to the State grid for supply either to TNEB or to the HT consumers within State with a clear stipulation that the generator has to conduct themselves in accordance with regulations of the TNERC. The expression “to the State Grid” is very much important in as much as in order to have connectivity and to inject power, an agreement as prescribed by the TNERC is to be mandatorily executed. In the case of the Petitioner admittedly the agreement was signed only on 20-1-2011 and petitioner in order to cover up his illegal act has relied on G.O.Ms.No.10, dated 27-2-2009 which was made in public interest.

4.7 The petitioner had sought approval for 5 x 1.1 MW, which was granted on 4-1-2001. The Petitioner should have entered into agreement for 5x1.1 MW and could have validity commenced synchronization for 5 x 1.1 MW or for any other lesser capacity. The petitioner having chosen not to execute any agreement in terms of the said approval dated 4.1.2011 and having sought for amendment for a lesser capacity, is estopped from contending that it has validly or purported to have validly synchronized and injected the power during the period in question.

5. <u>Contention of the Petitioner in the additional affidavit dated 02-01-2012</u>

5.1 The Petitioner’s 6.79 MW captive power plant which was commissioned in the year 2006 is a single engine plant. The optimum engine capacity is 7 MW for which the wheeling permission was initially accorded to the Petitioner. However, since it is a single engine plant, the Petitioner to avoid any risk of breakdown of the engine, as a matter of prudence was never running its engine at 100 percent capacity. Further, the gas availability was also never constant. Although the Petitioner was allotted 35000 SCMD gas by GAIL (India) Ltd., the actual availability and supply was

monitored by GAIL on a daily basis on account of overall reduced availability of gas in the region. On this count also the petitioner was never able to run its single engine at optimum capacity. The Petitioner consistently used to run the engine only at 90 percent load. However, after the commissioning of the 4 x 1.1 MW additional engines during November 2011, since there were multiple engines, the Petitioner was able to run all its engines at optimum capacity based on the availability and supply of gas. From 21-12-2012 the plant was operating at its full capacity during almost all the hours. On account of this the generation from all the engines was at the optimum and as a result the generation from the Petitioner's plant at times used to reach upto 12 MW.

5.2 The additional 2x 1.1 MW engines were synchronized with the grid on 4-1-2011 after issuance of the approval for 5.5 MW capacities. The third Respondent insisted that the Petitioner will have to get the capacity of 5.5 MW mentioned in the approval dated 4-1-2011 amended to the actual installed capacity of 2.2 MW.

5.3 The Additional engines were imported to avail of the additional gas which was available on account of the shut-down of the TANGEDCO's 110 MW Kuttalam power plant. The additional engines were imported on the condition that the Petitioner must pay Rs.5 Lakhs per engine or Rs.1.95 Kwhr, whichever is higher, for its usage.

5.4 The cost of the excess gas being supplied to the Petitioner by GAIL at the relevant period was Rs.10.50 per SCM. After taking into account transmission losses at 0.7%, the total generation corresponding to 5,09,340 units works out to 512905 units (509340*100.7% Transformer Loss). For each SCM of gas with suitable calorific value, 3.6 units of power is generated. Hence, 1,42,473 SCM of

gas was utilized for generating 5,12,905 units. At Rs.10.50 per SCM of gas, the total cost for 1,42,473 SCM of gas works out to Rs.14,95,966/-. The cost of renting each of the engines was Rs.5 lakhs or 1.95 / kwhr, whichever is higher. For 509340 units at Rs.1.95/kwhr, the cost of Rs.9,93,213/- was incurred. Hence the total cost of generation works out to Rs.4.88/kwhr.

6. Contentions of the Respondents in the Additional Reply Affidavit dated 05-02-2013

6.1 The petitioner's plea to direct the respondents to pay the petitioner for the 5,09,340 units of power illegally injected into the Grid between 4-1-2011 to 20-1-2011 without any valid agreement with the TANGEDCO is guilty and irrelevant.

6.2 The contention of the petitioner that the petitioner has initially commissioned a single engine with 6.79 MW during 2006 and added the plant capacity with additional 4x1.1 MW engines during November 2010 which added to a total of 11.19 MW and operated the plant at its full capacity almost all the hours from 21-12-2010 and reached upto 12 MW at times is utter false and contrary to the demand recorded in the energy meter during monthly readings.

6.3 The The petitioner has synchronized the additional engines in to the grid even before the approval dated 4-1-2011 and amended on 19-1-2011 without valid approval and execution of agreement with TANGEDCO. The generation of the Petitioner's plants reached and recorded as 12.63 MW which is over and above the installed capacity of the petitioner's plants i.e. 11.19 MW. This act of the petitioner is an offence and it is to be condemned and penalized appropriately. The petitioner has specifically agreed vide clause 22 of the EWA for Third party sale executed on

16-11-2010, that ***"Any excess energy injected into the grid over and above the permitted open access capacity of 4.4 MW will not be accounted and paid for by TNEB under any circumstances."***

6.4 The additional 2x1.1 MW engines were synchronized with the grid on 4-1`-2011 after the issuance of the approval for 5.5 MW capacity is also not true as per the reading recorded in the energy meter, during the disputed period (4-1-2011 to 21-1-2011) and fact is that the engines were brought into synchronization into the grid even before the period under dispute without prior or valid approval and agreement.

6.5 TANGEDCO has its own calculations for its system stability and safe and secure operations of the grid. By the illegal activity of the petitioner, in having injected the unscheduled interchange of power which may collapse the grid the petitioner is to be severely condemned and to be debarred from availing the Short term open access in the interest of grid safety.

6.6 The fact is that, the petitioner has synchronized the engines even prior to 4-1-2011 i.e. (from 21-12-2010 itself) and evidently has exceeded the generation beyond the plant capacity of 11.19 MW as on 20-1-2011 as recorded by the export meter provided at the petitioner's plant end.

6.7. The APTEL in its order dated 16-5-2011 in Appeal No.123 of 2010 in the matter of M/s.Indo Rama Synthetics (I) Ltd., Nagpur Vs. MERC and others has held as below:

"13. Thus, we do not find any substance in the claim of the Appellant for compensation for the power injected into the grid without any schedule and agreement"

Further the Commission by order, dated 7-10-2011 in DRP No.12 of 2011 directed as follows:

"no compensation is payable to the petitioner for the energy injected into the grid in the absence of approval of open access. Further no compensation is payable to the petitioner for the energy injected into the grid in the absence of any agreement for sale of power and scheduling of energy for injection into the grid based on such agreement."

7. Additional information submitted by the Respondents in Affidavit dated 20-02-2013:-

7.1 As per the readings recorded prior to 4-1-2011 in the export meter provided at the petitioner's plant end the maximum demand recorded in the 3rd block between 12.45 hrs. and 13.00 hrs. on 21-12-2010 is beyond the plant capacity of the petitioner. That is, on the date and time the above demand was found recorded in the export meter, the petitioner's plant capacity was 11.19 MW.

The auxiliary consumption 1% if deducted from the optimum capacity of the plant, the petitioner is permitted to inject into the Grid-

11.19 MW x 1000 x 0.99 x 1 hour = 11,078 Units/Hr.

(or) 11078/4 = 2,769.52 units/block of 15 minutes.

Whereas the petitioner has injected 2800 units in the 3rd block between 12.00 hours and 1300 hours on 21-12-2010.

7.2 As such the petitioner has injected into the grid the excess of 9,79,739 units without valid approval and agreement with the TANGEDCO. Apart from the 5,09,340 units excessively injected into grid between 4.1.2011 and 21.1.2011 and for which the petitioner's claim is under dispute, the petitioner is hiding the facts to the

TANGEDCO, the addition of 2x1.1 MW capacity machines which were brought into synchronization to the grid on 21-12-2010 between 12.30 hrs. and 12.45 hrs. itself, has realized the money from the third parties for the excess units (9,79,739 – 5,09,340 = 4,70,399 units) injected into the grid by suitably allocating the energy to the Third parties.

7.3. The quantum of excess units injected by the Petitioner into the grid without valid approval and agreement and the amount to be recovered from the petitioner are arrived as below:

Excess units injected into the grid without valid approval and agreement (which the petitioner has to forego to the TANGEDCO as per STOA agreement for the period from 21-12-2010, 12.45 Hrs. to 20-01-2011, 17.0-0 Hrs. 9,79,739 Units.	-	
In which, allocation not permitted and the units withheld already (for which claim is being made by the petitioner and the case is pending before the Commission 5,09,340 Units.	-	

Balance units for which the petitioner has got allocation to the petitioner's third parties and 4,70,399 Units.	-	
money fetched out of it (which belongs to the TANGEDCO as per STOA)		---
Therefore, amount to be recovered from the Petitioner is 4,70,399 Units x Rs.4.00	=	- Rs.18,81,596/-
Interest @ 18% from 02/2011 to 01/2013 for 24 months	-	Rs. 6,77,375/-
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		- Rs.25,58,971/-

(Rupees twenty five lakh fifty eight thousand nine hundred and seventy one only)

8. Findings of the Commission:-

8.1. The specific prayer of the petitioner is to direct the respondents to pay for 5,09,340 units of energy injected into the grid during the period from 04-01-2011 to 20-01-2011 by their additional 2X1.1 MW generators.

8.2. Originally, the Director/Operation, TANTRANSCO gave approval for the parallel operation of petitioner's additional 5X1.1 MW generators and short term open access for 5.5 MW on 04-01-2011. The petitioner sought for amendment to the above approval on 11-01-2011 to revise the number of units and capacity from 5X1.1 MW to 2X1.1 MW. The Respondent, Director/Operation/TANTRANSCO, gave approval for the said reduction in units and capacity on 19-01-2011. The Energy Wheeling Agreement (EWA) for short term open access for the additional units of 2X1.1 MW was executed by the parties on 20-01-2011.

8.3. The petitioner argued that since they had incurred huge expenditure in renting the additional engines of 2x1.1 MW and the GAIL had announced that the excess gas would be available only till 31-01-2011, they were forced to test and operate the additional 2X1.1 MW engines and export the energy generated into the grid with effect from 04-01-2011. They further contended that this was done on the understanding that since the open access approval for 5 x 1.1 MW was granted on 4-1-2011, any amendment to the same is only a procedural requirement which would not substantially affect the rights conferred under the approval dated 4-1-2011.

8.4. The main contention of the respondent is that the agreement for open access was executed only on 20-01-2011 and therefore, the energy injection made by the

petitioner before the execution of the agreement i.e. between 04-01-2011 and 20-01-2011 is illegal.

8.5. The moot question to be resolved in this case is whether the energy injected by the petitioner into the grid from their 2x1.1 MW is legally valid and if so what should be the tariff/compensation to be paid by the Respondent for such injection. As reported by the petitioner himself, it is the fact that the EWA in respect of the additional capacity of 2 x 1.1 MW was signed by the parties only on 20-01-2011. However, the petitioner argued that for the reason discussed supra, they were forced to test and operate the additional 2X1.1 MW engines and export the energy generated into the grid with effect from 04-01-2011. Contrary to this submission, the petitioner, in their letter dated 11-01-2011 addressed to the Director/Operation/TANTRANSCO, seeking amendment to reduce the 5X1.1 MW units to 2X1.1 MW units, has stated that they have installed only 2X1.1 MW engines and they are **ready to commence operation.** As per this statement, the petitioner could not have injected energy into the grid from their 2x1.1MW generators before 11-01-2011. Further, the Executive Engineer/O&M/Mayiladudurai in his letter dated 24-01-2011 has reported that the petitioner's 2X1.1 MW units were tied up to the grid on 20-01-2011. If the units are tied up only on 20-01-2011, then the petitioner could not have injected the power from 04-01-2011.

8.6. Be that as it may, now let us discuss the legal requirements to inject power into the grid by the petitioner. The petitioner can inject power into the grid from their 2x1.1MW units either for selling the power to the Respondents or to carry their power to their destination of use by availing open access. On that basis only, they have

claimed a tariff/compensation of Rs.4.88/4.89 per unit in their submissions. In that case, they should have executed either Energy Purchase Agreement (EPA) or EWA respectively on or before 04-01-2011 with the concerned entities. The petitioner had neither EPA nor EWA for the period from 04-01-2011 to 19-01-2011 for the injection of the power in question. They have signed EWA only on 20-01-2011 for the power injection from their additional 2x1.1MW units. The Director/Operation/TANTRANSCO in his original approval given for 5x1.1MW units on 04-01-2011 had clearly stated that the paralleling and open access for 2X1.1 MW units would be permitted only after the execution of agreement. He has reiterated the same in his revised approval given for 2x1.1MW on 19-01-2011. Therefore, the petitioner cannot inject power into the grid on 04-01-2011 for the reasons as contended by them without the valid EWA/EPA. Just because the petitioner had some constraints/urgency, they could not violate the rules and procedures. The other important requirement for injection of power into the grid by a generator is the daily injection schedule given by the SLDC which has not taken place. The above facts clearly shows that the petitioner have not followed the legal requirements for injection of power into the grid for the period from 04-01-2011 to 19-01-2011.

8.7. Regarding the payment claimed by the petitioner for such injection, the Commission in its Order dated 07-10-2011 in D.R.P.No.12 of 2011 had ordered as follows:

> *"No compensation is payable to the petitioner for the energy injected into the grid in the absence of approval of open access. Further no compensation is payable to the petitioner for the energy injected into the grid in the absence of any agreement for sale of power and scheduling of energy for injection into the grid based on such agreement"*

In a similar case, the APTEL in its Order dated 16-05-2011 in Appeal No.123 of 2010 had observed the following in Para 13 of the order:

> *"Thus, we do not find any substance in the claim of the Appellant for compensation for the power injected into the grid without any schedule and agreement".*

Therefore, we have no hesitation to declare that the petitioner's reported energy injection of 5,09,340 units into the grid from their additional 2X1.1 MW generators during the period from 04-01-2011 to 20-01-2011 is not legal and they cannot claim any tariff or compensation from the Respondents.

8.8. But our concern in this case is not about the mere violations of the petitioner in injecting power into the grid. We are consternated by the impact of such violations by the generators in the state. The Respondents have reported in their submissions that the generators in question i.e. 2X1.1 MW machines were connected to the grid on 22-12-2010 itself illegally and injected power without the approval of the TANTRANSCO. They substantiated their claim by furnishing the maximum demand readings recorded by the main ABT meter. The critical question is what will happen to the grid if every generator started injecting into the grid to their convenience, violating the daily schedule issued by the SLDC? It may not merely affect the UI charges to be paid by this state or penalty imposed on the SLDC but may affect the very stability of the grid, especially if the generators capacities are more. Since this act of the petitioner may affect the very stability of the grid, such indiscipline has to be dealt with severely.

8.9. Another observation made by the Commission is that though the Electricity Act 2003 confers enormous powers to the SLDC to deal with such indiscipline of the

entities connected to the grid, the Commission is constrained to note the absence of any report by SLDC in support of having taken such enforcement measures in this case. Though the violations discussed supra by the petitioner and the apparent inaction by the SLDC are of great concern, the Commission doesn't want to deal with such violations in this order but restrict to the prayer of this case. However, considering the grave violations and its likely impact on the grid, the Commission reserves its right to conduct further proceedings on the violations of the petitioner under Section 142 of the Electricity Act 2003.

8.10. In light of the decisions made supra, the petition DRP 17 of 2011 is dismissed with the following observations and follow-up actions.

i. From the written submissions made by both the petitioner and the respondents and the findings arrived at by the Commission, it is clear that there is a prima facie case to take action against the petitioner for the violation of the Electricity Act 2003 and Regulation/orders made thereon under Section 142 of the Electricity Act 2003. Therefore, the Secretary of the Commission is directed to initiate action under Section 142 of the Act against the petitioner.

ii. The Commission feels that the SLDC has not exercised their special powers conferred by the Act under Sections 32 and 33 in disciplining the erring generator in the interest of grid safety. The Act and the Tamil Nadu Electricity Grid Code mandates SLDC to issue daily schedule, supervise and monitor the activities of the

entities connected to the grid. The SLDC is directed to submit a report within one month of the issue of this order on the actions taken by the SLDC to issue daily schedules to the entities connected to the grid, monitor and supervise the entities for any violations, action taken if any on such violators and on the preventive measure taken to avoid such violations by the entities connected to the grid in the future.

9. 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