

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

PRESENT:-

Thiru.S.Akshayakumar Chairman

and

Thiru.G.Rajagopal Member

S.M.P. No.1 of 2014

M/s.Ambika Cotton Mills Ltd.
Natham Road, Kanniyapuram Post
Dindigul – 624 308
Represented by its Director
Dr.K.Vemlatachalam and others

... Petitioner
(Thiru S.P.Parthasarathy,
Advocate for the Petitioner)

Vs.

Tamil Nadu Generation and Distribution Corporation Ltd.
(TANGEDCO)
No.144, Annasalai, Chennai – 600 002.

... Respondent.
(Tmt.Varalakshmi
Standing Counsel for TANGEDCO)

**Dates of hearing: 18-03-2014, 30-06-2014, 11-07-2014, 22-09-2014
29-12-2014, 30-04-2015, 05-10-2015, 29-12-2015
and 30-12-2015.**

Date of Order: 31-03-2016

The S.M.P.No.1 of 2014 filed by TANGEDCO came up for final hearing on 30-12-2015. The Commission upon perusing the above petition and the connected records and after hearing the submissions of the Petitioners and Respondent, passes the following order:-

ORDER

1. Prayer of the Petitioner in S.M.P.No.1 of 2014:-

The prayer of the Petitioner in the above S.M.P.No.1 of 2014 is as follows:-

- (i) To set aside the clarification letter of Public Information Officer, TANGEDCO No. FC/Rev/AO/East/Asst/Rev/D.No.120/11, dt. 22-02-2012 and to allow the adjustment of higher slot units for lower slot consumption as found ordered in Order No.3 dated 15-05-2006;
- (ii) Considering the concept of “first come first served” suitable orders may be issued to adjust the energy from the first commissioned machines first and then commissioned machines then and so on and pass suitable orders on the issues, namely, whether it is available only for current generation or is available even for the units in banking; and how the units need to be adjusted when group of machines are available with different commissioning dates;
- (iii) Since the matter of adjustment of higher slot units for lower slot consumption is highly coupled with the said two issues a comprehensive solution may be provided on the entire matter by considering the above matters in a comprehensive way, as they are matters connected and incidental to the main matter.

2. Facts of the case:-

2.1. The impugned letter in FC/Rev/AO/East/Asst/ Rev/D.No.120/11, dated 22-02-2012 of the TANGEDCO Head Quarters was issued as a reply for a query raised under the Right to Information Act, 2005 by the Public Information Officer of the TANGEDCO HQ, in the matter allowing of available wind energy units in the

higher slots for adjustment for consumption in the lower slots, came to be challenged before the High Court in W.P.No.7200 of 2012 by M/s.Ambika Cotton Mills Ltd and others and a batch of Writ Petitions.

2.2. The facility of allowing adjustment of higher slot units for consumption in the lower slots has been approved and ordered in the Order No.3 of the Commission dated 15-05-2006. Contrary to the said orders, the impugned clarification letter restricted the benefit only to those who have executed a revised EWA in pursuance of Order No.1 of 2009 dated 20-03-2009. Hence, the matter was sought to be challenged before the Hon'ble High Court and the matter was referred by the High Court to the Commission for suitable orders and accordingly, the Commission under Suo-Motu Proceedings No.1 of 2014.

3. Contentions of the Petitioner in the Written Submissions dated 09-04-2014, 27-03-2014 and 02-01-2016:-

3.1. The Commission while issuing the "Order on Power Purchase and allied issues in respect of Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants" in Order No.3 of 2006 dated 15-05-2006, has made it as follows:-

"Commission's views / decisions

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and bagasse based Cogeneration.

- (i) peak hour generation with peak hour consumption*
- (ii) off-peak hour generation with off-peak hour consumption and*
- (iii) the normal hour generation with normal hour consumption.*

It should be noted that units generated during a higher tariff ToD-slot could be consumed in a lower tariff ToD slot at the option of generators / users, but the reverse would not be allowed (i.e. units generated during a lower tariff ToD-slot cannot be drawn by the CGP Holder during a higher tariff ToD-slot). No carry over is allowed for the next month.

Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak / off peak / normal consumptions. Beyond the banking period, the unutilized portion of the banked energy as on 31st March will be treated as sold to distribution licensee at the rate fixed by the Commission and slot to slot adjustment will not be applicable for such unutilized portion. Excess drawal at any point of time will be charged under respective tariff applicable to the user.

The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting captive generation during the respective period.”

3.2. As seen above, the Commission has already permitted for the arrangement of adjustment of higher slot units for lower slot consumption. Accordingly, when all the consumers switched over to EWA regime from PPA regime, were automatically made eligible for the facility of adjustment of higher slot units for lower slot consumption. However, due to the comfortable power position existed during those years, there was no enforcement of R & C measures and no contingency occurred to windmill captive consumers in making use of the benefit, even though such a benefit was made available by the order of the Commission from 15-05-2006 onwards.

3.3. When the power position started worsening in the State from later months of 2008 onwards, R & C measures have been ordered to be enforced and accordingly, from 01-11-2008 onwards, by the order of the Commission in M.P.No.42 of 2008 dated 28-11-2008, various measures to regulate the power supply and consumption were approved and started to be enforced by TANGEDCO. Due to overall load shedding, both scheduled and unscheduled, started to be enforced at various hours, the wind energy generated during such load shedding periods, has started

accumulating in such higher slots and therefore, the necessity to consume the same in lower slots has occurred. Accordingly such of the wind power captive consumers like those of the Petitioner, started consuming power available at higher slots for consumption at lower slots based on the benefits extended in Order No.3 dated 15-05-2006 of the Commission without any problem. At this scenario only, the problem has started coming from TANGEDCO HQ by way of the impugned clarification letter issued on 22-02-2012 as a reply to a consumer made under RTI Act, 2005.

3.4. While things are so, the matter was totally got confused by the impugned clarification letter issued by the TANGEDCO HQ as it wrongly clarified the orders of the Commission as far as the matter of adjustment of higher slot units for lower slot consumption is concerned. The impugned clarification letter reads as follows:-

“The consumer who have executed Energy Wheeling Agreement as per the wind energy tariff Order No.1 of 2009 dated 20-03-2009, are eligible for adjustment of higher slot wind energy generation in their lower slot consumption (i.e.) peak and normal generation may be adjusted against lower slot consumption. Besides, the wind energy generators commissioned on or after 19-09-2008 shall become eligible for the benefit of the Order No.1 of 2009 dated 20-03-2009, on wind energy.”

3.5. Based on the above clarification letter which was marked to all Circles, the Circle level SEs started refusing to allow the benefit of the adjustment of higher slot units for consumption during lower slots to all the windmill captive consumers who have executed EWAs in pursuance of Order No.3 dated 15-05-2006. All such consumers were denied with the benefit of the said adjustment quoting the impugned clarification letter and saying that only those of the WEGs executed an EWA in pursuance of Order No.1 of 2009 dated 20-03-2009 are eligible for the benefit of adjustment of higher slot units for lower slot consumption. Hence, all the consumers

executed suitable EWA in pursuance of the Order No.3 dated 15-05-2006, when troubled by the refusal of the benefit, have approached the High Court by filing Writ Petitions and accordingly, challenged the impugned clarification letter dated 22-02-2012.

3.6. While circulating the draft consultative paper before the issuance of Comprehensive Tariff Order relating to Order No.1 of 2009 dated 20-03-2009, the Commission has confirmed the position of availability of the benefit of adjustment of higher slot units for lower slot consumption even from 15-05-2006 onwards and accordingly, it has made it as follows under the heading “Issues related to captive use and third party sale” in the consultative paper itself:-

“9.8 Adjustment of Peak / off Peak power

Order No.3 dated 15-05-2006 specifies the following.

Since all the generators and tied up users shall be provided with ToD meters, the adjustment of energy shall be done on slot to slot basis within the banking period as follows:-

- i. peak hour generation with peak hour consumption*
- ii. off-peak hour generation with off-peak hour consumption and*
- iii. the normal hour generation with normal hour consumption.*

Units generated during a higher tariff ToD-slot could be consumed in a lower tariff ToD slot at the option of generators / users, but the reverse would not be allowed. The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting generation during the respective peak hour block and off peak hour block. It is proposed to adopt the same procedure in the next tariff order.”

3.7. It could be ascertained from the above that the Commission has already made arrangements and issued clear orders for the adjustment of units generated during a higher tariff ToD slot for consumption in a lower tariff ToD slot at the option of the generators/users. Accordingly, it has also ordered to continue the same arrangement in the next Tariff Order with culminated into Comprehensive Tariff

Order on Wind Energy in Order No.1 of 2009 dated 20-03-2009, which goes as follows:

"8. 7.3 - Energy Charges:

When the Generator is synchronized with the Grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot-wise. That is peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower slot consumption".

3.8. Also under the Heading of "Billing and Payment" in Clause 8.11.2 of the said Order No.1 dated 20.03.2009, it is also reiterated that this procedure of adjustment, viz., adjustment of higher slot units against a lower slot consumption wherever surplus energy is available for adjustment in the higher slot. The Operative portion of the relevant clause is reproduced below:

"8.11.2 If a wind energy generator utilizes the power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the month for the net energy supplied. The licensee should record the generation and consumption simultaneously. While preparing the bill, peak hour generation shall be adjusted against peak hour consumption. Off peak generation shall be adjusted against off peak consumption. Normal generation shall be adjusted against normal consumption. Peak hour generation and normal hour generation can be adjusted against lower slot consumption....."

3.9. The Commission has already declared its decision in the matter of adjustment of higher slot units for lower slot consumption very well in its Order No.3 of 2006 dated 15.05.2006 itself and continued the same in the subsequent Wind Tariff Order dated 20.03.2009. Hence, any wind mill captive consumer, who executed an EWA in pursuance of order dated 15.05.2006, has the eligibility of making the adjustment from higher slot units for lower slot consumption. This position was neatly confirmed by the consultative paper circulated before the issuance of Order No.1 of 2009 dated 20-3-2009.

3.10. Beyond all these grounds, whenever the said matter was clarified by the TANGEDCO HQ, it continued to confirm the availability of this facility by various communications. One of such communications was issued by the Chief Financial Controller-Revenue, TANGEDCO in letter No.CFC/Rev/FC/RD/2010.dated 30-03-2010 which has confirmed that the units available in the higher slot may be allowed for adjustment for consumption in the lower slots and accordingly, all the field level officials of the TANGEDCO were allowing the above facility for all consumers who opted for the same without any objection. Another circular was issued by the Director-Generation of TANGEDCO, in Memo No.CE/NCES/EEIWPP/AEE-2/F.TNERC Order No.1/D.611/11 dated 01-07-2011 ordering to allow the Order No. 1 dated 20-03-2009 for implementation in full and toto with retrospective effect.

3.11. Based on the strength of Commission's Order No. 3 dated 15-05-2006, confirmed by the circulated consultative paper and supported by both the communications issued by the Chief Financial Controller and the Director-Generation, all the wind energy captive consumers who opted for the facility of adjusting the higher slot units for consumption at lower slots were allowed for the facility during all these years after 15-05-2006 on execution of EWA and accordingly, no issue was raised till the impugned clarification letter was issued on 22-02-2012.

3.12. By all the above arrangements, when everything was going smoothly, to the utter shock and surprise of all wind energy captive consumers, the Financial Controller/Purchase-I, in the capacity of Public Information Officer, has issued the impugned clarification letter to a consumer when a query was raised under the Right to Information Act, 2005 on the facility of allowing adjustment from higher slot units to lower slot consumption. The impugned letter clarified that the adjustment from higher

slot units for lower slot consumption is available only for those consumers who have executed energy wheeling agreement in pursuance of Comprehensive Tariff Order on Wind Energy as per Tariff Order No.1 of 2009 dated 20-03-2009 and also the wind energy generators who commissioned the WEGs on or after 19-09-2008 from which date the said order is made applicable

3.13. Since the impugned clarification letter was sent to the field level officials of the Respondent Corporation, the field level officials without giving any letter or order in writing have started refusing to allow the total facility of adjustment of higher slot units for lower slot consumption from the month of February 2012 onwards to all wind captive consumers. The clarification issued in the impugned letter indirectly states that the WEGs set up before 19-09-2008 are not eligible for the facility of adjustment of higher slot units for lower slot consumption unless a new energy wheeling agreement was entered, in between the WEG owner and TANGEDCO in pursuance of Order No.1 of 2009 dated 20-03-2009.

3.14. Before issuing the clarification the TANGEDCO HQ has not consulted the Commission in any manner and accordingly, it started interpreting the orders of the Commission in its own language and understanding. In view of the issuance of the impugned clarification letter, the entire arrangement of adjustment of higher slot units against lower slot consumption was fully stalled by the TANGEDCO. The letter is highly arbitrary, unlawful and against the orders already issued by the Commission in Order No.3 of 2006 dated 15-05-2006 and confirmed by the consultative paper circulated, which culminated in to an order in Order No.1 of 2009 dated 20-03-2009. Further, the impugned communication is creating an anomaly against the Circular Memo dated 30-03-2010 issued by the Chief Financial Controller-Revenue and

Circular Memo dated 01-07-2011 issued by the Director-Generation and therefore, it is liable to be set aside.

3.15. When the Chief Financial Controller-Revenue and the Director-Generation have issued standing instructions to allow the benefit of adjustment of higher slot units against lower slot consumption, without considering and applying mind over such instructions, issuing a totally contra instruction is not sustainable. All Superintending Engineers have started refusing to allow the benefit of adjustment of higher slot units against lower slot consumption from the month of February, 2012 onwards without quoting any reason and without giving any letter to the wind energy captive consumers. They have been informing only orally that due to the impediment of the impugned letter dated 22-02-2012 of TANGEDCO HQ, the facility of adjustment of higher slot units for lower slot consumption is not extended to windmill captive consumers.

3.16. One of the conditions prescribed in the text of the Energy Wheeling Agreement goes as follows:

"9. Applicability of the Acts and Regulations:

Both the parties shall be bound by the provisions contained in the Electricity Act, 2003, Regulations, Notifications, orders and subsequent amendments, if any, made from time to time."

3.17. The above provision of the EWA confers a contractual right / obligation and both the parties are bound by any subsequent amendment issued by way of an order and as such, even assuming that the facility is applicable only from 19.09.2008, mutatis-mutandis, by virtue of the above agreed terms of contract, the parties to the existing EWA made even prior to 19-09-2008 / 20-03-2009 are eligible to the benefit

of adjustment of higher slot units for consumption in lower slots and therefore, such a right cannot be refused even when no agreement is executed in pursuance of Order No.1 of 2009 dated 20-03-2009.

3.18. On the above analogy, all the subsequent Tariff orders on wind energy are being implemented without a new Energy Wheeling Agreement being executed between the parties. Further, by Order No.6 dated 31.07.2012, the matter was settled in consumers' favour and accordingly, the benefit of adjustment of higher slot unit for lower slot consumption is fully regulated in favour of consumers. Hence, the impugned clarification letter issued in No.FC/Rev./AO/Esst.IAsst/Rev/D.120/11, dated 22.02.2012 by the Public Information Officer of TANGEDCO HQ is liable to be set aside. The Commission may order that whoever have executed an EWA in pursuance of Order No.3 dated 15.05.2006 be eligible for the facility of adjustment of higher slot units for lower slot consumption. There are certain connected incidental issues on the same matter. Since these incidental issues are connected to the same matter, the Commission may consider these matters to find out a comprehensive solution on the related issues and the problems faced by the wind power captive consumers.

3.19. While suitable instructions were already there to allow the facility of adjustment of higher slot units for consumption in lower slots, in certain Circles, it is being informed that this facility is applicable only to current generation and not on banked units. In support of their claim, the SEs state that the Commission has mentioned the words "Generation" alone in the concerned orders and therefore, units in banking do not qualify for such a facility. Thus, they allow the units currently generated during higher slots for adjustment in the lower slots. Hence, considering

the spirit of the entire matter, suitable orders need to be issued by making eligible the banked units available in higher slots for the purpose of consumption in lower slots in line with the current generation. This problem is being faced even with the new Tariff order dated 31.07.2012.

3.20. Whenever wind energy captive consumers are having windmills which were started in 3 different periods namely before 15.05.2006, after 15.05.2006 and before 19.09.2008 and after 19.09.2008, the method of adjustment is not being followed in a right manner. The CE NCES by his Circular Memo No.CE/NCES/SE/EEIWPP/AEE-2/F. TNERC order NO.3/D.1134/07 dated 11.12.07, has instructed the field officers inter alia 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 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 has to be paid to the Generator at Generating end. Similarly for the lapsed banked unit the lower tariff rate only has to be paid to the Generators. Necessary clauses have to be added to the Energy Wheeling Agreement".

3.21. Such a proposition was neither declared by the Commission in Order No.3 dated 15.05.2006 nor in any other orders. Following a natural corollary, the dictum of "first come - first served" is valid always according to the principles of natural Justice. Contrary to the same, the Chief Engineer, NCES has instructed to first adjust from the last commissioned machine leaving the first commissioned machine for adjustment later. This is not correct because the last commissioned machine came as a capacity addition to the first commissioned machine, when the first commissioned machine was not found sufficient for the captive requirement. When such being the case, the judicial way of adjustment should be from the first

commissioned machine first and the second commissioned machine second and so on. The Commission may also pass an Order prescribing the correct method of adjustments when there are several machines with the same consumers with different commissioning dates. As advised by the Chief Engineer, NCES, there was no such clause made available in the Energy Wheeling Agreement and however, the system as prescribed by him is being enforced without the approval of the Commission.

3.22. The same kind of instruction has been found issued even while providing instructions in the matter of implementation of the current Tariff Order No.6 of 2012 dated 31.07.2012 of the Commission. The Chief Engineer, NCES issued working instructions vide his Memo dated 01.09.2012, he has provided as follows:

"(xiii) (b) If a consumer wheeled energy for adjustment from more than one windmill, which is commissioned in different dates, the priority for first adjustment shall be given to the windmill commissioned in later date. The energy generated from the windmill commissioned in earlier date shall be adjusted in last".

4. Written Submission filed on behalf of the TANGEDCO dated 22-05-2014:-

4.1. The Hon'ble High Court of Madras by an order dated 23-07-2012 in W.P.No.7200 of 2012 and others filed by M/s.Ambika Cotton Mills Ltd. and others had among other things ordered as under:-

"6. The specific case of the Petitioners is that the Department is allowing the benefit of adjustment of higher slots wind energy generated against the lower slots consumption right from 2006 onwards pursuant to the Order No.3 dated 15-05-2006. This is sought to be denied based on a wrong interpretation of the Commission's Order No.1 of 2009 dated 20-03-2009. In paragraph 14 of the counter affidavit, it has been stated as follows:-

"I respectfully submit that while fact being so, the averments contained in para 7 and 14 of the petition, is misinterpreting one. The Petitioners have not executed the Energy Wheeling Agreement as per the Order No.1 of 2009, dated 20-03-2009

on Wind Energy issued by the first respondent and availed the benefit of adjustment of the higher slot generation against lower slot consumption. The Superintending Engineers concerned have also allowed wrongly the benefit of the adjustment of the higher slot consumption against lower slot consumption”.

It is therefore, clear that the Department realizing the mistake, is now insisting on a new agreement for adjustment of slots for the existing wind energy generators. The petitioners, however, deny such an interpretation stating that the pre-existing right continues even as per the order of the Commission.

7. Prima facie, it appears that paragraph 4 of the Order 1 of 2009 grants the benefits to wind energy generators which are commissioned on or after 19-09-2008. It also holds that the existing agreement between Wind Energy Generators and the Tamil Nadu Electricity Board will continue to be valid. This order of the Commission was accepted by the Chief Financial Controller in letter on 13-03-2010 and allowed the benefit of adjustment of higher slots wind energy generated in lower slots consumption. On the contrary, consequent to the letter No.22.2.2012, the Respondents / Senior Engineer and Chief Engineer of the Board are now denying the Petitioners the benefit of adjustment of peak and normal generation against lower slots consumption stating that the Petitioners’ wind energy generators were commissioned prior to 19-09-2008 and there is no fresh agreement. The letter or proceedings, however, does not state so clearly. This can be inferred only from the counter affidavit.

8. In view of the contradiction in the proceedings of the respondents 3 and 5 in implementing the Commission's order No. 1 of 2009/ the petitioners are aggrieved and their plea is justified in view of the inconsistent and differing interpretation given by the respondents 3 and 5. In this case/ the grey area that requires clarification among other issues that may arise, is on account of direction of the Commission, which is as follows:

“The existing agreements between the wind energy generators and the distribution licensee shall continue to be valid. The parties to the agreement are at liberty at any time to renegotiate the existing agreement mutually in accordance with this order.”

9. The commission therefore will have to clarify as to how the order will be made applicable to the wind energy generators commissioned and established prior to 19.9.2008 with regard to adjustment of slots and what is the purport of the order giving liberty to renegotiate the existing agreement.

10. In such view of the matter, the Tamil Nadu Electricity Regulatory Commission is directed to take up the issue for consideration and pass appropriate order clarifying the issue. An opportunity of personal hearing to the petitioners and the respondents, shall be given. If any third party files an application, the same may be considered if permissible as per law and procedure. It is desirable that the Commission decides the issue expeditiously. Till such time, the Commission decides the issue, all the petitioners are entitled to adjust the wind energy generated in terms of paragraph 8.73 of the Commission’s Order No. 1 of 2009 dated 20.03.2009.”

4.2. Contention of the petitioner M/s. Ambika Cotton Mills Ltd. as put forth in the Writ Petition:

The Commission has already permitted for the arrangement of adjustment of higher slot units for lower slot consumption as seen from the Commission's views / decisions in the "Order on Power purchase and allied issues in respect of Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants" (Order No.3 of 2006 dated 15-05-2006). Accordingly, when all the consumers switched over to EWA regime from PPA regime, were automatically made eligible for the facility of adjustment of higher slot units for lower slot consumption. However, due to the comfortable power position then existed during those years, there was no enforcement of R&C measures and no contingency occurred to windmill captive consumers in making use of the benefit, even though such a benefit was made available by the order of the Commission from 15.05.2006 onwards.

4.3. Contention of the TANGEDCO as put forth in its counter for the W.P.No.7200 of 2012 etc.:

4.3.1. Neither in Order No.3, dt.15.05.2006 of the Commission nor in the EWA executed between the WEG and TANGEDCO, there was provision to adjust the energy generated in the higher slot against the lower slot consumption.

4.3.2. The Commission issued the Comprehensive Tariff Order on Wind Energy namely, Order No.1 of 2009 on 20.03.2009. In the above said order, in clauses 4 ,8.7.3 & 8.11, it is stipulated that the net energy consumption shall be slot wise. That is, peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off-peak generation shall

be adjusted against off-peak consumption. Peak and normal generation may be adjusted against lower slot consumption.

4.3.3. The provision for adjustment of units generated during a higher tariff ToD slot in a lower tariff ToD slot at the request of Wind Energy Generators, is applicable only for the Wind Energy Generators who have executed Energy wheeling Agreement as per the Wind Energy Tariff Order No. 1 of 2009 dt.20.03.2009.

4.3.4. The HT consumers including the writ petitioners who have not executed the revised Energy Wheeling Agreement as per Order No.1 of 2009, dt.20.03.2009 on Wind Energy issued by Tamil Nadu Electricity Regulatory Commission are not eligible to get the benefits of Order No.1 of 2009, dt.20.03.2009.

4.3.5. A consumer, namely M/s. Arasan Syntex Ltd in their letter, dt.10.02.2012 had requested under the Right to Information Act, 2005 that "whether the higher slot wind energy adjustment in lower slot consumption is eligible for those covered under TNERC Order No.3 dated 15.05.2006."

4.3.6. The said consumer was replied under the RTI Act, 2005 by the PIO/Accounts Branch vide Letter No. FC/REV/AO/Esst/Asst/Rev/D.120/11, dated.22.02.2012 and a copy of which was marked to all the Superintending Engineers of Distribution Circles:

"The consumer who have executed Energy wheeling Agreement as per the wind energy Tariff order 1 of 2009 dt.20.03.2009/ are eligible for adjustment of higher slot wind energy generation in their lower slot consumption (ie) peak and normal generation may be adjusted against lower slot consumption. Besides, the wind energy generators commissioned on or after 19-9-2008 shall become eligible for the benefit of the order No. 1 of 2009 dt.20.3.2009, on wind Energy."

4.3.7. In continuation to the above, M/s,Ambika Cotton Mills, Limited, M/s, Premier Mills Pvt Ltd , M/s. Bannari Amman Spinning Mills Ltd and M/s. Premier Cotton Textiles, some other consumers have filed writ petitions and obtained orders of interim stay. Due to above order of stay, TANGEDCO could not realize revenue of about Rs.50 Crs (approximately) which is actually due for TANGEDCO for the years (2009-10, 2010-11, 2011-12 and 2012-13 upto July 2012).

4.4. Basis for the reply under the RTI Act, 2005 as submitted by TANGEDCO:-

4.4.1. The Commission issued its first order (ie), Order.No.3 of 2006, dt.15.05.2006 on NCES based power plants vide "Order on Purchase of Power from NCES Based 'Generating Plants" with effect from 15.05.2006. This Order, inter-alia, covered various ruling on tariff and related issues. In the said Order No.3, the Commission had ordered to provide two set of agreements one for the persons selling the energy to TANGEDCO as Energy Purchase Agreement (EPA) and another for the persons who are captive users as Energy Wheeling Agreement (EWA) .These agreements have also been got approved by the Commission.

4.4.2. In this connection, Clause 4 of Order No.3 dt.15.05.2006 read as follows:

"4.0 Applicability of Order:

This order shall come into force from the date of its issue. This order shall be' applicable to all future and renewal of existing contracts/agreements for the Non-Conventional Energy Sources (NCES) based Generating Plants and Non-Conventional Energy Sources based co-generation plants located within the State of Tamil Nadu. It should be noted that the existing contracts and agreements between NCES based generators and the distribution Licensee signed prior to the date of issue of this order would continue to remain in force. However, the NCES based generators and the distribution licensees shall have the option to mutually renegotiate the existing agreements/contracts, if any, in line with this order even before the expiry of the contracts. Any renewal of the said contracts/agreements, new contracts/agreements shall be in line with this order".

4.4.3. In view of the above Provision, all wind energy generators commissioned on or after 15.05.2006 (Wind Group -II) have come under Order No.3 dated 15.05.2006, whereas, the wind energy generators commissioned before 15.05.2006 (Wind Group- I) are not automatically eligible for the benefits of Order No.3 dated 15.05.2006. In order to come under Order No.3, dated 15.05.2006, they ought to have re-negotiated and executed the Energy Wheeling Agreement in accordance with Order No.3 dt.15.05.2006 and then to be treated as Group -II generators and in that case, they are also eligible for the benefits of Order No.3 of 2006.

4.4.4. In the said Order No.3 under “Commission's views/decisions” Issue No.12, the Commission had viewed as follows:

"Commission's views/decisions:

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and bagasse based Cogeneration.

- (i). peak hour generation with peak hour consumption,*
- (ii). off -peak hour generation with off - peak hour consumption ,and*
- (iii). the normal hour generation with normal hour consumption.*

It should be noted that units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators /users, but the reverse would not be allowed (I.e.units generated during a lower tariff Tod-slot cannot be drawn by the CGP Holder during a higher tariff ToD-slot. No carry over is allowed for the next month.

Regarding the WEG since banking is permitted it is necessary to maintain a slot to slot banking account and adjust the same way as above against peak/off peak/normal consumptions. ---- .

4.4.5 At SI.No.10.8 under the heading “OTHER GENERAL ISSUES’, the Commission had ordered as follows:

“10.8. Adjustment of Peak/off Peak power:

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy for biomass and bagasse based co-gen-generators

shall be done on slot to slot basis within monthly billing cycle as follows. For WEGs it shall be done within the banking period.

- I. peak hour generation with peak hour consumption*
- II. off -peak hour generation with off - peak hour consumption and*
- III. the normal hour generation with normal hour consumption.*

The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting captive generation during the respective peak hour block and off peak hour block.”

4.4.6. Moreover, at page No.98 at Sl.No.10.15, Order No.3 dated 15-05-2006 under the heading "Billing and payment to NCES generator by Distribution licensee" it has been reiterated by the Commission that the adjustment will be done on slot-to-slot basis.

4.4.7. Further, clause 4 of the Energy Wheeling Agreement executed by the wind energy generators [(ie) as per bilateral contract between WEG & TANGEDCO] as per Order No.3 dt.15.05.2006 issued by the Commission read as follows:

*“Adjustment of Energy Generated and wheeled:
(a). The Wind Energy Generator shall adjust the energy in the above mentioned HT services on unit-to-unit basis.*

(b). The energy generated in the windmills shall be adjusted for captive use in the above services of the Wind Energy Generator as below:

- i peak hour generation with peak hour consumption*
- ii. off -peak hour generation with off - peak hour consumption and*
- iii. the normal hour generation with normal hour consumption.*

This adjustment shall be done within the banking period (wherever the Wind Energy Generator has opted for banking)”.

4.4.8. In view of above, it is clear that no provision to adjust the energy generated in the higher slot against the lower slot consumption is available either in Order No.3

dt.15.05.2006, of the Tamil Nadu Electricity Regulatory Commission or in the EWA executed between the WEG and TANGEDCO.

4.4.9. Subsequently, the Commission had issued the Comprehensive Tariff Order on Wind Energy vide Order No.1 of 2009, dt.20.03.2009. In the above said order, in page No.9&26, under relevant clauses 4,8.7.3&8.11 thereof, the following were stated:

"4. Applicability of this order:-

Order No.3 dated 15.05.2006 of the Commission lays down a control period of three years for that order and therefore normally the next order should have taken effect from 15.05.2009. The Commission in the Common Order in M.P.Nos .9,14 and 23 of 2008 dated 19.09.2008 has ruled that the control period of three years specified in Order No.3 dated 15.05.2006 is waived from the date of issue of that order. The control period of three years, thus, stands terminated on 19.09.2008. Therefore, the Commission holds that all the wind energy generators commissioned on or after 19.09.2008 shall become eligible for the benefits of the present order (subject to the condition that the monetary benefits shall accrue from the date of this order. The existing agreements between the Wind energy generators and the distribution licensee shall continue to be valid. The parties to the agreement are at liberty at any time to renegotiate the existing agreement mutually in accordance with this order. The agreements between the wind generators and the distribution licensee in relation to all machines commissioned on or after 19.09.2008 shall be in conformity with this order.

8.7.3 . Energy charges:

When the generator is synchronized with the grid; the captive/third party consumer shall be liable. to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is, peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off-peak generation shall be adjusted against off-peak consumption. Peak and normal generation may be adjusted against lower slot consumption.

B.11 Billing and payment:

"8.11.1 x x x

8.11.2.....*While preparing the bill, peak hour generation shall be adjusted against peak hour consumption. Off peak generation shall be adjusted against off peak consumption. Normal generation shall be adjusted against normal consumption. Peak hour generation and normal hour generation can be adjusted against lower slot consumption.*

4.4.10. Further, Clause 5 of the Energy Wheeling Agreement of Order No.1 of 2009 dt.20.03.2009 approved by the Commission read as follows:

“ 5. Adjustment of Energy Generated and. Wheeled:

(1).....the captive/third party consumer shall be liable to pay to the Distribution Licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise as detailed below:

- (a) That is, peak generation shall be adjusted against peak consumption. .*
- (b) Normal generation shall be adjusted against normal consumption.*
- (c) Off peak generation shall be adjusted against off peak consumption.*
- (d) Peak and normal generation may be adjusted against lower slot consumption at the request of WEG.”*

4.4.11. The HT consumers including the writ petitioners who have not executed the revised Energy Wheeling Agreement as per Order.No.1 of 2009, dt.20.03.2009 on Wind Energy issued by Hon'ble Tamil Nadu Electricity Regulatory Commission are not eligible to get the benefits of Order No.1 of 2009, dt.20.03.2009.

4.4.12. In Commission's order, dated.22.05.2008 made in M.P.Nos. 6, 11, 12 and 16 of 2008 and M.P.No.15 and 12 of 2008, the Commission held as follows:-

“3. The generators whose wind mills were commissioned prior to 15.05.2006 ought to have utilized this period between November 2007 and March 2008 to execute a fresh agreement with the Licensee in order to avail of the benefits of the Order No. 3 dated. 15.05.2006, particularly the one relating to encashment of unutilized wind energy. But, the present petition of those generators tantamount to virtually seeking a benefit of Order No.3 without going through the formalities of executing a fresh agreement with TNEB. They want to have the cake and eat it too.”

4. x x x x x

5. The commission makes it clear that this is a one time relief necessitated by the uncertainties all around in regard to implementation of Order No.3 dated 15.05.2006 and also the acute power crisis between November 2007 and March 2008 . Now that the licensee has implemented the Orders 2/3 and 4 dated 15.05.2006 of the Commission in toto, the Commission would like to reiterate its direction that all those generators whose wind mills were commissioned prior to 15.05.2006 should execute fresh agreement in line with Order No. 3 with the licensee, if they wish to avail of such benefits in future. Similarly the Commission observes that all the

generators whose wind mills were commissioned after 15.05.2006 should execute Energy Wheeling Agreement and Energy Purchase Agreement forthwith failing which they will be deemed to have contravened the Orders of the Commission.”

4.4.13. For the reasons stated above, TANGEDCO had informed under RTI Act vide Letter No. FC/REV/AO/Esst/Asst/Rev/D.O.120/11, dated 22.02.2012 to M/s.Arasan Syntex Limited that only such of those WEGs who have executed Energy Wind Adjustment under Order.No.1 of 2009 dt.20.03.2009 are alone eligible for adjustment of higher slot generation against lower slot consumption.

4.4.14. However, based on the clarification requested by the Superintending Engineer/ Coimbatore/Metro, the Chief Financial Controller /Revenue / TANGEDCO had, inter-alia clarified vide letter dt.30.03.2010 as follows:

“..... The Hon’ble Tamil Nadu Electricity Regulatory Commission in its Order.No.3 dt.15.05.2006 (issue No.12 Peak & Off peak power, Unit to unit adjustment) have stated as, “it should be noted that units generated during a higher slot, could be consumed in a lower tariff TOD slot at the option of generators /users, but the reverse would not be allowed. Further the Commission in its Order No.1 of 2009 dt.20.03.2009 have stated in clause 8.11.2 as, “peak hour generation and normal hour generation can be adjusted against lower slot consumption”. Therefore, you are requested to prepare the bills on the above lines.

4.4.15. Subsequently, the Chief Financial Controller/Revenue had also informed all the Superintending Engineers of Distribution Circles vide letter dated, 08.04.2010 as follows:

“ for any representation seeking permission for adjustment of higher slot wind energy to lower slot consumption as per the TNERC Order No. 1 dt.20. 03.2009 is received, the same may be replied that TNEB has already filed an appeal petition before the Hon’ble ATE /New Delhi and only on the outcome of the appeal petition, the request of higher slot wind energy to lower slot consumption can be considered.....”

4.4.16. At this juncture, the Director/Generation/TANGEDCO had issued instruction vide Circular Memo. No. CE/NCES/EE/WPP/AEE-2/F.TNERC Order No.1/D. /11, dt. 01.07.2011 as follows:

“As per the Hon'ble ATE Judgment dated 18.03.2011 and approval of CMD/TANGEDCO dt.29.06.2011, it is hereby instructed to implement the TNERC Comprehensive Tariff Order on wind energy Order No.1, dt. 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 dt. 20.03.2009 in Toto with retrospective effect”.

4.4.17. In view of the submissions made above, particularly clauses 4.0,10.8 and 10.15 of Tariff Order No.3, dated 15.05.2006, Clauses 4, 8.7.3 and 8.11 of Tariff Order No.1, dated 20.03.2009, the Energy Wheeling Agreement approved by the Commission and the order, dated 22.05.2008 in MP Nos. 6,11,12 and 16 of 2008-

(i). The wind Energy Generators commissioned on or after 19-09-2008, who desires to wheel energy, have to execute an Energy Wheeling Agreement under Order No.1, dated 20-03-2009;

(ii). *The Wind Energy Generators commissioned prior to 19.09.2008 and having Energy Wheeling Agreement, who desires to avail the benefits, such as adjustment of energy generated in higher slot against the lower slot consumption, available under Order No.1, dated 20.03.2009, have to execute a revised Energy Wheeling Agreement under Order No.1 of 2009.*

4.4.18. In view of above TANGEDCO had informed under RTI vide Letter.No.FC/REV/AO/Esst./Asst/Rev/D.O.120/11dt. 22.02.2012 that only such of those WEGs who have executed EWA under Order. No.1 of 2009 dt.20.03.2009 are only eligible for adjustment of higher slot generation against lower slot consumption, which is lawful and sustainable.

5. Written Submissions of the TANGEDCO dated 28-01-2016:-

5.1. In the first instance a consumer, namely M/s.Arasan Syntex Ltd in his letter dated 10-02-2012 had requested under section 6q of Right Information Act, 2005 that "whether the higher slot wind energy adjustment in lower slot consumption is eligible for those covered under TNERC Order No.3 dated 15-05-2006." In this connection, the consumer had been informed vide Letter No.FC/REV/AO/Asst/Rev/D.120/11, dated 22.02.2012 under RTI as follows with copy to all the Superintending Engineers of Distribution Circles:

"The consumer who have executed Energy wheeling Agreement as per the wind energy Tariff order 1 of 2009 dt.20.03.2009, are eligible for adjustment of higher slot wind energy generation in their lower slot consumption (ie) peak and normal generation may be adjusted against lower slot consumption. Besides, the wind energy generators commissioned on or after 19.9.2008 shall become eligible for the benefit of the Order No.1 of 2009 dated 20-3-2009, on wind Energy."

5.2. The following are the basis based on which RTI reply was furnished:-

In the Order No.3 dt.15.05.2006 clause 4.0 Applicability of order, the following has been stated:-

4.0 Applicability of Order:

This order shall come into force from the date of its issue. This order shall be applicable to all future and renewal of existing contracts /agreements for the Non-Conventional Energy Sources (NCES) based Generating plants and Non-Conventional Energy Sources based Co-Generation Plants located within the State of Tamil Nadu. It should be noted that the existing contracts and agreements between NCES based generators and the distribution Licensee signed prior to the date of issue of this order would continue to remain in force. However, the NCES based generators and distribution licensees shall have the option to mutually re-negotiate the existing agreements/contracts, if any, in line with this order even before the expiry of the contracts. Any

renewal of the said contracts/agreements, new contracts / agreements shall be in line with this order.

5.3. Based on the above, all wind energy generators commissioned on or after 15.05.2006 shall become eligible for the benefits of Order No.3 dated 15.05.2006 and also assigned them as Wind Group-II. Similarly, the wind energy generators commissioned before 15-05-2006 shall not become eligible for the benefits of Order No.3 dated 15-05-2006 and also assigned them as Wind Group-I. However, the wind energy generators who commissioned before 15.05.2006, but they re-negotiate and execute the Energy Wheeling Agreement in accordance with the Order No.3 dated 15.05.2006 ,they are also eligible for the benefits of the aforesaid order. This practice has been followed as per the Commission's order from 15.05.2006.

5.4. In the Order No.3 dt.15.05.2006, under the head Commission's views/decisions issue No.12, the Commission had viewed as follows:

“Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for biomass and bagasse based Cogeneration.

- (i). peak hour generation with peak hour consumption*
- (ii). off -peak hour generation with off - peak hour consumption and*
- (iii). the normal hour generation with normal hour consumption*

It should be noted that units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators /users, but the reverse would not be allowed (ie. units generated during a lower tariff Tod -slot cannot be drawn by the CGP Holder during a higher tariff Tod -slot), No carry over is allowed for the next month.

Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off peak/ normal consumptions. Beyond the banking period, the unutilized portion of the banked energy as on 31st March will be treated as sold to distribution licensee at the rate fixed by the commission and slot to slot adjustment will not be applicable for such unutilized portion.....”.

5.5. In Commission's Order No.3 dated.15.05.2006 under "Commission's analysis and its ruling on tariff and related issues" the Commission had ordered as follows:

the adjustment of energy shall be done on slot-to-slot basis.

In addition, under Sl.No.10.15 "Billing and Payment to NCES generator by Distribution licensee," the adjustment will be done on slot-to-slot basis has been reiterated. So that the Commission had not prescribed in the Order No.3 dt.15.05.2006 under "Commission's Analysis and its Ruling on Tariff and Related issues" in clause 10.8 Adjustment of Peak/off peak power the adjustment of higher slot generation against lower slot consumption.

5.6. The Energy Wheeling Agreement executed by the petitioners as per the Order No.3 dt.15.05.2006 issued by the Commission under clause (4), the following is stated:

"Adjustment of Energy Generated and wheeled:

- a. The Wind Energy Generator shall adjust the energy in above mentioned HT services on unit-to-unit basis.
- b. The energy generated in the windmills shall be adjusted for captive use in the above services of the Wind Energy Generator as below:
 - i. peak hour generation with peak hour consumption
 - ii. off -peak hour generation with off - peak hour consumption and
 - iii. the normal hour generation with normal hour consumption.

This adjustment shall be done within the banking period (wherever the Wind Energy Generator has opted for banking)".

Thus, it is clear that, neither in Order No.3 dt.15.05.2006 of the Commission nor in the EWA executed between the petitioners generators and TANGEDCO, it has been stated to adjust the energy generated in the higher slot with the consumption in the lower slot.

5.7. The Commission had issued the Comprehensive Tariff Order on Wind Energy vide Order No.1 of 2009 dt.20.03.2009. In the above said order in page No. 9 & 26 under relevant clause 4 ,8.7.3 & 8.11 the followings are stated:

“4. Applicability of this order:-

Order No.3 dated 15.05.2006 of the Commission lays down a control period of three years for that order and therefore normally the next order should have taken effect from 15.05.2009. The Commission in the Common Order in M.P.Nos.9,14 and 23 of 2008, dated 19.09.2008 has ruled that the control period of three years specified in Order No.3 dated 15.05.2006 is waived from the date of issue of that order. The control period of three years, thus, stands terminated on 19-09-2008. Therefore, the Commission holds that all wind energy generators commissioned on or after 19.09.2008 shall become eligible for the benefits of the present order, subject to the condition that monetary benefits shall accrue from the date of this order. The existing agreements between the Wind energy generators and the distribution licensee shall continue to be valid. The parties to the agreement are at liberty at any time to renegotiate the existing agreement mutually in accordance with this order. The agreements between the wind generators and the distribution licensee in relation to all machines commissioned on or after 19.09.2008 shall be in conformity with this order.”

“8.7.3 .Energy charges:

When the generator is synchronized with the grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is, peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower slot consumption.”

“8.11 Billing and payment:

“While preparing the bill peak hour generation shall be adjusted against peak hour consumption. Off peak generation shall be adjusted against off peak generation .Normal generation shall be adjusted against normal consumption. Peak hour generation and normal hour generation can be adjusted against lower slot consumption.....”

5.8. In the Energy Wheeling Agreement as per Order No.1 of 2009 dated 20-03-2009 issued by the Commission under clause (5), the followings are stated:-

5. Adjustment of Energy Generated and Wheeled:

".....the captive/third party consumer shall be liable to pay to the Distribution Licensee for the energy consumed during the billing month at the applicable rate. Tenet energy consumption shall be slot wise as detailed below:

- (a) *That is, peak generation shall be adjusted against peak consumption.*
- (b) *Normal generation shall be adjusted against normal consumption.*
- (c) *Off peak generation shall be adjusted against off peak consumption.*
- (d) *Peak and normal generation may be adjusted against lower slot consumption at the request of WEG."*

5.9. It could therefore be concluded that the provision for adjustment of units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the request of Wind Energy Generators is applicable only Wind Energy Generators who have executed Energy wheeling Agreement as per the wind energy Tariff order 1 of 2009 dt.20.03.2009.

5.10. Based on the above, M/s.Arasan Syntex Ltd. was informed vide Letter. No. FC/REV/AO/Esst/Asst/Rev/D.O.120/11 dated.22.02.12 that-

"The consumer who have executed Energy wheeling Agreement as per the wind energy Tariff order 1 of 2009 dt.20.03.2009, are eligible for adjustment of higher slot wind energy generation in their lower slot consumption (ie) peak and normal generation may be adjusted against lower slot consumption. Besides, the wind energy generators commissioned on or after 19.9.2008 shall become eligible for the benefit of the order No.1 of 2009 dt.20.3.2009,on wind Energy."

5.11. The averments of M/s.Ambika Cotton Mills Ltd and others are misinterpreting one. The Petitioners have not executed the Energy Wheeling Agreement as per the Order No.1 of 2009 dated 20-03-2009 on Wind Energy issued by the Commission

and availed the benefit of adjustment of the higher slot generation against lower slot consumption. The TANGEDCO has not admitted the provision for adjustment of units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the request of Wind Energy Generators for them. Even in the consultative paper for finalizing Order No.3 dated 15-05-2006, TANGEDCO has not agreed for the adjustment of higher slot generation against lower slot consumption from the date of issuance of Order No.3 dated 15-05-2006. In this connection, relevant portion of the Order dt.22.05.2008 in the M.P.Nos.6,11,12 and 16 of 2008 and M.P.NO.15 in 12 of 2008 and M.P.NO.6 of 2008 is reproduced below.

"The generators whose wind mills were commissioned prior to 15.05.2006 ought to have utilized this period between November 2007 and March 2008 to execute a fresh agreement with the Licensee in Order to avail of the benefits of the Order No.3 dated 15.05.2006, particularly the one relating to encashment of unutilized wind energy. But, the present petition of those generators tantamount to virtually seeking a benefit of Order No.3 without going through the formalities of executing a fresh agreement with TNEB. They want to have the cake and eat it too."

5.12. The petitioners have not executed the Energy Wheeling Agreement as per the Order.No.1 of 2009 dt.20.03.2009 on Wind Energy issued by the Commission and availed the benefit of adjustment of the higher slot generation against lower slot consumption.

6. Written Submission of M/s.Ambika Cotton Mills Ltd dated 28-01-2016:-

6.1. The matter of allowing the facility of higher slot units for adjustment against the lower slot consumption was fully cleared and ordered to be followed with effect from 01.08.2012 by issuance of the Comprehensive Tariff Order on Wind Energy in T.P.No. 6 of 2012 dated 31.07.2012 by the Commission. Hence, there is no dispute

as far as the periods relating after 01.08.2012. The dispute is mainly between the period prior to 31.07.2012.

6.2. While issuing the Consultative Paper which culminated in to a Comprehensive Tariff Order on Wind Energy in T.P.No. 1 of 2009 dated 20.03.2009, the Commission has made it clear in Page No.65 which is extracted as follows:

"9.8 Adjustment of Peak / off Peak power

Order No.3 dated 15-5-2006 specifies the following.

Since all the generators and tied up users shall be provided with ToD meters, the adjustment of energy shall be done on slot to slot basis within the banking period as follows.

- i. Peak hour generation with peak hour consumption*
- ii. Off-peak hour generation with off-peak hour consumption and*
- iii. The normal hour generation with normal hour consumption.*

Units generated during a higher tariff Too-slot could be consumed in a lower tariff ToD slot at the option of generators/users, but the reverse would not be allowed.

The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting generation during the respective peak hour block and off peak hour block. It is proposed to adopt the same procedure in the next tariff order."

From the above extracted portion of the Tariff Order which contained the text of the Consultative Paper, it could be seen that the Commission is of the opinion that the benefit of adjustment of higher slot units against lower slot consumption is very much available in Order No.3 of 2006 dated 15.05.2006 and the Commission has intended to adopt the same procedure in the next Tariff Order and accordingly, it was continued while issuing the Order No.1 of 2009 dated 20.03.2009.

6.3. By hierarchy of powers and functions, an agreement will be superseded by a Tariff Order as the Tariff Order is issued on the performance of subordinate

legislative powers provided under Section 86 of the Electricity Act 2003, to the Commission. The Energy Wheeling Agreement already has a clause that any subsequent amendments or orders issued would be binding by both the parties and as such, the accommodation of adopting a subsequent Tariff Order is very much available in the already executed agreement itself without going for a fresh agreement for any reason. Considering the above Consultative Paper which subsequently culminated in to an order of the Commission on 20.03.2009, the intension of the Commission to allow the continuance of the benefit of adjustment of higher slot units against lower slot consumption is already there even before 31.07.2012 and as such, the Wind Energy Generators cannot be on any account denied with the benefit and then it would be an Act of violation of the Order of the Commission issued on 15.05.2006, continued on 20.03.2009 and further continued on 31.07.2012 by virtue of the orders dated 3 of 2003, 1 of 2009 and 6 of 2012 issued by the Commission.

7. Findings of the Commission:-

7.1. The Hon'ble High Court of Madras by an order dated 23.07.2012 in W.P.No.7200 of 2012 and others filed by Ambika Cotton Mills Ltd., and others on the subject matter had among other things ordered as hereunder:

“ 6. The specific case of the petitioners is that the Department is allowing the benefit of adjustment of higher slots wind energy generated against the lower slots consumption right from 2006 onwards pursuant to the Order No.3, dated 15.5.2006. This is sought to be denied based on a wrong interpretation of the Commission's Order No.1 of 2009 dated 20.3.2009. In paragraph 14 of the counter affidavit, it has been stated as follows:-

“I respectfully submit that while fact being so, the averments contained in para 7 and 14 of the petition, is misinterpreting one. The petitioners have not executed the Energy Wheeling Agreement as per the Order No.1 of 2009, dated 20.3.2009 on Wind Energy issued by the first respondent and availed the benefit of adjustment of the higher slot generation against lower slot consumption. The Superintending Engineers concerned have

also allowed wrongly the benefit of the adjustment of the higher slot consumption against lower slot consumption.”

It is, therefore, clear that the Department realizing the mistake, is now insisting on a new agreement for adjustment of slots for the existing wind energy generators. The petitioners, however, deny such an interpretation stating that the pre-existing right continues even as per the order of the Commission.

7. *Prima facie, it appears that paragraph 4 of the Order 1 of 2009 grants that benefits to wind energy generators which are commissioned on or after 19.9.2008. It also holds that the existing agreement between Wind Energy Generators and the Tamil Nadu Electricity Board will continue to be valid. This order of the Commission was accepted by the Chief Financial Controller in letter on 13.3.2010 and allowed the benefit of adjustment of higher slots wind energy generated in lower slots consumption. On the contrary, consequent to the letter No.22.2.2012, the respondents / Senior Engineer and Chief Engineer of the Board are now denying the petitioners the benefit of adjustment of peak and normal generation against lower slots consumption stating that the petitioners’ wind energy generators were commissioned prior to 19.9.2008 and there is no fresh agreement. The letter or proceedings, however, does not state so clearly. This can be inferred only from the counter affidavit.*

8. *In view of the contradiction in the proceedings of the respondents 3 and 5 in implementing the Commission’s Order No.1 of 2009, the petitioners are aggrieved and their plea is justified in view of the inconsistent and differing interpretation given by the respondents 3 and 5. In this case, the gray area that requires clarification among other issues that may arise, is on account of direction of the Commission, which is as follows:*

“The existing agreements between the wind energy generators and the distribution licensee shall continue to be valid. The parties to the agreement are at liberty at any time to renegotiate the existing agreement mutually in accordance with this order.”
(emphasis added)

9. *The Commission therefore will have to clarify as to how the order will be made applicable to the wind energy generators commissioned and established prior to 19.9.2008 with regard to adjustment of slots and what is the purport of the order giving liberty to renegotiate the existing agreement.*

10. *In such view of the matter, the Tamil Nadu Electricity Regulatory Commission is directed to take up the issue for consideration and pass appropriate order clarifying the issue. An opportunity of personal hearing to the petitioners and the respondents, shall be given. If any third party files an application, the same may be considered if permissible as per law and procedure. It is desirable that the Commission decides the*

issue expeditiously. Till such time, the Commission decides the issue, all the petitioners are entitled to adjust the wind energy generated in terms of paragraph 8.7.3 of the Commission's Order No.1 of 2009 dated 20.3.2009.

11. The parties are at liberty to file necessary papers before the Commission."

7.2. Pursuant to the above order of the Hon'ble High Court, this Commission under its suo motu proceedings in S.M.P.No.1 of 2014, directed both the parties during the hearing on 18.03.2014 to file their written submissions within four weeks. A common written submission was filed by the Petitioner. Written submission was also filed on behalf of TANGEDCO. Both side arguments were finally heard on 30.12.2015 and as directed during the hearing both parties filed their additional written submissions.

7.3. The prayer of the petitioner in their written submissions is to set aside the impugned clarification letter issued in No. FC/Rev/AO/Esst./Asst/Rev/D 120/11 dated 22.02.2012 by the Public Information Officer of TANGEDCO HQ declaring it as arbitrary and accordingly, suitable orders may be provided to allow the adjustment of higher slot units for lower slot consumption as found ordered in Order No.3 dated 15.05.2006 and as confirmed by the consultative paper circulated before the issuance of Order No. 1 of 2009 dated 20.03.2009. Accordingly, the Commission may order that whoever have executed an EWA in pursuance of the Order No. 3 dated 15.05.2006 be eligible for the facility of adjustment of higher slot units for lower slot consumption.

7.4 TANGEDCO in their written submissions, particularly with reference to Clauses 4.0, 10.8 and 10.15 of tariff Order No.3 dated 15.05.2006; clause 4, 8.73 and 8.11 of Tariff Order No. 1 dated 20.03.2009; the Energy Wheeling Agreement

approved by the Commission; and the order of the Commission dated 22.05.2008 in MP No. 6,11,12 and 16 of 2008, submit as follows:

- i) The Wind Energy Generators commissioned on or after 19.09.2008 who desire to wheel energy have to execute an Energy Wheeling Agreement under Order No. 1 dated 20.03.2009;
- ii) The Wind Energy Generators commissioned prior to 19.09.2008 and having Energy Wheeling Agreement, who desire to avail the benefits such as adjustment of energy generated in higher slot against the lower slot consumption, available under Order No.1 dated 20.03.2009 have to execute a revised Energy Wheeling Agreement under Order No.1 of 2009.
- iii) In view of the above circumstances, TANGEDCO had informed under RTI vide Letter No. FC/Rev/AO/Esst./Asst/Rev/D 120/11 dated 22.02.2012 that only such of those WEGs who have executed EWA under Order No.1 of 2009 dt.20.03.2009 are eligible for adjustment of higher slot generation against lower slot consumption.

7.5 The issue before the Commission is to clarify the applicability of the slot to slot adjustments of Wind Electric Generators covered under the Commission's Order No. 3 dated 15.05.2006. The contention of TANGEDCO is that while slot to slot adjustment has been available in both the orders dated 15.5.2006 and 20.3.2009, the benefit of adjusting the higher slot units with lower slot consumption is available in the later Order No.1 dated 20.3.2009 alone and if the Wind Electric Generators established prior to 19.9.2008 opt to avail this benefit they should have entered into the EWA as provided for in the Order No.1 dated 20.3.2009. Under this background let us examine the purports of the Order No.3 dated 15.5.2006 of the Commission.

7.6 The Order No. 3 dated 15.05.06 is for Purchase of Power from NCEs based on Generating Plants. The various NCE Sources for which the tariffs were determined in this order is as follows:

Sl. No.	NCE Source
1	WEG: Group I – Wind Power Projects commissioned and to be commissioned based on agreements executed prior to the date of this order
2	WEG: Group II – Wind Power Projects to be commissioned based on future agreements after the date of this order
3	Bio mass
4	Bagasse based Co-generation

The Order No.1 of 2009 dated 20.03.2009 is a Comprehensive Tariff order on Wind Energy.

7.7 Adjustment of Peak / off peak power has been specified under clause 10.8 in the Order No. 3 dt. 15.5.2006 which is reproduced below:-

“10.8 Adjustment of Peak/off peak power:

Since all the generators and tied up users shall be provided with ToD meters, the adjustment of energy for biomass and bagasse based co gen generators shall be done on slot to slot basis within monthly billing cycle as follows. For WEGs it shall be done within the banking period.

- (i) Peak hour generation with peak hour consumption*
- (ii) Off peak hour generation with off-peak hour consumption and*
- (iii) the normal hour generation with normal hour consumption.*

The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting generation during the respective peak hour block and off peak hour block.”

7.8 If we look into the comprehensive wind tariff Order No.1 dt.10.3.2009, it is seen that the method and adjustment of units is described in clause 8.7.3- Energy charges and 8.11- Billing and payment which are extracted below:-

“ 8.7.3 Energy Charges:

When the generator is synchronized with the grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is, peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower slot consumption.”

“8.11 Billing and payment

8.11.1 When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for start-up power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

8.11.2 If a wind energy generator utilizes the power for captive use or if he sell it to a third party, the distribution licensee shall raise the bill at the end of the month for the net energy supplied. The licensee should record the generation and consumption simultaneously. While preparing the bill, peak hour generation shall be adjusted against peak hour consumption. Off peak generation shall be adjusted against off peak consumption. Normal generation shall be adjusted against normal consumption. Peak and normal hour generation shall be adjusted against lower slot consumption.”

7.9 However, in order to understand the real intent of the Commission while making its Order No. 3 dt.15.5.2006 it is necessary to examine the views and analysis of the Commission with regard to the adjustment. Issue wise compilation of comments / suggestions and Commission's views and decisions are detailed under clause 8 of the Order. Under this clause, the issue No.12 dwells the unit to unit adjustment as below:-

“Issue 12 : Peak & Off peak Power, Unit to unit adjustment:

Commission's views/decisions

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and Bagasse based cogeneration:

(i) Peak hour generation with peak hour consumption

- (ii) Off peak hour generation with off-peak hour consumption and*
- (iii) the normal hour generation with normal hour consumption.*

It should be noted that units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users, but the reverse would not be allowed (i.e. units generated during a lower tariff ToD slot cannot be drawn by the CGP Holder during a higher tariff ToD slot. No carry over is allowed for the next month.

Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off-peak/normal consumptions. Beyond the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off peak/normal consumptions. Beyond the banking period, the unutilized portion of the banked energy as on 31st March will be treated as sold to distribution licensee at the rate fixed by the Commission and slot to slot adjustment will not be applicable for such unutilized portion. Excess drawal at any point of time will be charged under respective tariff applicable to the user.

7.10 In the said order, for Biomass and bagasse based cogeneration banking provision shall not apply. Regarding WEGs, the Commission retains the existing practice of one year (from April to March) banking period in TNEB and hence, slot to slot banking account is to be maintained within the banking period for unit to unit adjustment. While adjustment of energy for biomass and bagasse based co generation shall be done on slot to slot basis within the monthly billing cycle, for WEGs, it shall be done within the banking period. Hence, the salient portion of the Commission's Views/directions regarding unit to unit adjustment for WEGs in Order No. 3 dt.15.05.06 is reproduced below for clarity:

“Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off-peak/normal consumptions”

7.11 The Commission subsequently initiated the process of tariff revision for Wind energy and came out with a Consultative Paper on Power procurement by Distribution Licensees from Wind Energy Generators and allied open access issues initially.

The adjustment of Peak/off peak power stated in the Consultative paper is reproduced below:

“9.8 Adjustment of Peak/off peak power:

Order No. 3 dated 15.05.2006 specifies the following:

Since all the generators and tied up users shall be provided with ToD meters, the adjustment of energy shall be done on slot to slot basis within the banking period as follows:

- (i) Peak hour generation with peak hour consumption*
- (ii) off peak hour generation with off-peak hour consumption and*
- (iii) the normal hour generation with normal hour consumption.*

Units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users, but the reverse would not be allowed . The peak hour extra charges and off peak hour rebate shall be on net energy consumption after deducting generation during the respective peak hour block and off peak hour block. It is proposed to adopt the same procedure in the next tariff order.

7.12 The Commission’s Comprehensive Tariff Order on Wind Energy vide Order No.1 of 2009 dated 20.03.2009 subsequent to the Consultative paper also stipulates the following:

“ 8.7.3 Energy Charges:

When the generator is synchronized with the grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower slot consumption.”

7.13 It may be seen that the Commission made its intention clear that while adjusting the energy generated, the slot to slot basis shall be followed and that

the higher tariff slot units could be adjusted against lower tariff slots. In respect of Wind energy generators who also enjoy the facility of banking, the banked units shall also be adjusted as above. However, this aspect of adjustment of higher tariff slot units against lower tariff slot was not brought out in the Order No. 3 dt.15.5.06 and also in the EPA/EWA signed by parties under the Order No.3 dt.15.05.06. This has been the cause for the different interpretation by the TANGEDCO.

7.14 In the light of the above it is clarified that the Units generated by Wind Energy Generators during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users who have entered into EPA and EWA under the Commission's Order No. 3 dt.15.5.2006.

7.15 Let us now take up the purport of the orders giving liberty to renegotiate the existing agreements and applicability of the orders when it comes to the existing contracts and agreements between NCES based generators and distribution licensee signed prior to the date of issue of these orders.

7.16 In the Tariff order No. 3 dated 15.05.06, the Commission decided to categorise the Wind Electric generators in two groups as below and fixed the tariff accordingly:

1. Group I Projects : Wind power projects commissioned and to be commissioned based on agreements executed prior to the date of this order.
2. Group II Projects: Wind Power projects to be commissioned based on future agreements after the date of this order.

7.17 Hence, the above Tariff order (Order No. 3 dated 15.05.2006) stipulates the following in respect of the Applicability of Order:

“4.0 Applicability of Order:

This order shall come into force from the date of its issue. This order shall be applicable to all future and renewal of existing contracts/agreements for the Non-conventional Energy Sources (NCES) based Generating plants and Non-conventional Energy sources based Co-generation plants located within the State of Tamil Nadu. It should be noted that the existing contracts and agreements between NCES based generators and the distribution licensee signed prior to the date of issue of this order would continue to remain in force. However, the NCES based generators and the distribution licensees shall have the option to mutually renegotiate the existing agreements/contracts, if any, in line with this order even before the expiry of the contracts. Any renewal of the said contracts/agreements, new contracts/agreements shall be in line with this order.

7.18 The TNERC's Power Procurement from New and Renewable Source of Energy Regulations, 2008 relating to applicability is given below:

1. These regulations shall be deemed to have come into force on the 15th May 2006, the date on which the Commission's Order No. 3 dated the 15th May 2006 has been issued.
2. These regulations shall apply to all new and renewable source based generating plants including co-generation plants located within the State of Tamil Nadu for which power purchase agreements/contracts were signed on or after the 15th May 2006. The contracts and agreements between new and renewable source based generators and the distribution licensee signed prior to the 15th May 2006 would continue to remain in force. However, the generators and the distribution licensees shall have the option to mutually renegotiate the agreements/contracts signed prior to the 15th May 2006 in line with these regulations even before the expiry of the agreements/contracts. Any renewal of the said contracts/agreements shall be in line with these regulations.

7.19 This would mean that in case NCES Generators who had signed the Power Purchase Agreement prior to the date of commencement of the said order i.e.15.05.2006, the said Order No.3 cannot be invoked unless they opt to come under the said Order No.3 dated 15.05.2006. In case of the their exercising the option to come under the said Order No.3 dated 15.05.2006, they have to sign the new EPA and EWA. The Commission in its Order dated 22.05.2008 in M.P. Nos.6,11,12,15 and 16 of 2008 has also observed that all those generators whose wind mills were commissioned prior to15.05.2006 should execute fresh agreement in line with Order No.3 with the licensee, if they wish to avail of such benefits in future.

7.20 Accordingly, the petitioner has submitted that all the consumers executed suitable EWA in pursuance of the Order No.3 dated 15.05.06 and hence has the eligibility of making the adjustment from higher to lower slot consumption. The petitioner has also submitted that all the wind energy captive users who ever opted for the facility of adjusting the higher slot units for consumption at lower slots were allowed for the facility during all these years after 15.05.2006 on execution of EWA and accordingly no issue was raised till the impunged clarification letter was issued on 22.02.12.

7.21 The Hon'ble High Court in the subject matter in W.P 7200 and others, dated 23.07.12 has also ordered that till such time the Commission decides the issue, all the petitioners are entitled to adjust the wind energy generated in terms of paragraph 8.7.3 of the Commission's Order No. 1 of 2009 dated 20.03.09.

7.22 The petitioners were therefore availing the benefit of higher slot generation to lower slot consumption till the impugned clarification letter dated 22.02.12 and continue to avail since 23.07.12.

7.23 However, the written submission of TANGEDCO states that as per Clause 4 of the Energy wheeling Agreement executed by the wind energy generators (i.e. as per bilateral contract between WEG and TANGEDCO) as per Order No. 3 dt.15.05.06 reads as follows and no provision to adjust the energy generated in the higher slot against lower slot consumption is available:

“Adjustment of Energy Generated and Wheeled:

- a) The Wind Energy Generator shall adjust the energy in the above mentioned HT services on Unit to Unit basis.*

- b) The energy generated in the windmills shall be adjusted for captive use in the above services of the wind energy generator as below:*
 - (i) Peak hour generation with peak hour consumption*
 - (ii) off peak hour generation with off-peak hour consumption and*
 - (iii) the normal hour generation with normal hour consumption.*

This adjustment shall be done within the banking period (wherever the Wind Energy Generator has opted for banking).”

7.24. The Energy Wheeling Agreement has the following provision:

“9. Applicability of the Acts and Regulations:

Both the parties shall be bound by the provisions contained in the Electricity Act 2003, Regulations, notifications, orders and subsequent amendments, if any made from time to time”

7.25 As the petitioners has the eligibility of making the adjustment from higher to lower slot consumption, the discrepancy if any in the EWA regarding the higher slot

generation to lower slot consumption may be suitably amended by generator and the distribution licensees.

7.26 The petitioner further submits that there are certain connected incidental issues and request the Commission to also consider these matters to find out a comprehensive solution on the related issues and problems being faced by them even with the new Tariff Order No. 6 of 2012 dated 31.07.12 of the Commission.

The issues raised by the petitioner are:

- i) The facility of adjustment of higher slot units for consumption in lower slots is whether applicable only to current generation or is even for the units in banking.
- ii) To prescribe the correct method of adjustments when there are several machines with the same consumers with different commissioning dates namely before 15.05.2006, after 15.05.2006 and before 19.09.2008 and after 19.09.2008.

7.27 Regarding the first issue, the petitioner submits that in certain Circles alone, it is informed that the facility of adjustment of higher slot units for consumption in lower slots is applicable only for current generation and not on banked units. In support of their claim, the SEs state that the Commission has mentioned the words “generation” alone in the concerned order and therefore units in banking do not qualify for such a facility. Accordingly, they allow the units currently generated during higher slots for adjustment in the lower slots. However, they are not permitting this facility in respect of units accumulated in the banking accounts. Hence, the petitioner requests to issue suitable orders by making eligible the banked units also available in higher slots for consumption in lower slots in line with the current generation. This problem is being faced with the new Tariff order dated 31.07.12.

7.28 Let us once again examine the issue No. 12 of clause 8 of the Tariff Order No.3 dt.15.05.06 on Peak & Off peak power, Unit to unit adjustment and related clauses in the Order No.1 dt.20.3.2009

“Issue 12 : Peak & Off peak Power, Unit to unit adjustment:

Commission’s views/decisions

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and Bagasse based cogeneration:

- (i) Peak hour generation with peak hour consumption*
- (ii) Off peak hour generation with off-peak hour consumption and*
- (iii) the normal hour generation with normal hour consumption.*

It should be noted that units generated during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users, but the reverse would not be allowed (i.e. units generated during a lower tariff ToD slot cannot be drawn by the CGP Holder during a higher tariff ToD slot. No carry over is allowed for the next month.

Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off-peak/normal consumptions.

Here again we have to see the emphasis on the words ‘as above’ appearing in the last line above. It conveys that banking account of excess energy generated shall be maintained and such energy shall also be adjusted in the same way as prescribed for the energy adjustment with regard to Biomass and Bagasse based co-generation.

It therefore follows that the energy in the banking account shall also eligible for adjustment towards lower tariff slot consumption.

7.29. In the following orders issued on 20.3.2009, the Commission expressed its opinion to retain the provision made in the order dt.15.5.2006. As the banking facility is retained in the Order No.6 of 2012 dt 31.7.2012, it goes without saying that the same procedure for banked units adjustment shall be followed.

The Tariff Order No. 1 of 2009 dated 20.03.09 on Banking and Energy

Charges are reiterated below:

“8.2 Banking

8.2.3 Therefore, the Commission decides to retain the banking charge at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month. The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as banked energy for April. The generation in May shall be first adjusted against consumption in May. If consumption exceeds the generation during May, the energy banked in April shall be drawn to the required extent. If consumption during May is less than the generation during May, the balance shall be reckoned as the banked energy for May and banking charges for May will be leviable only for this component. This procedure shall be repeated every month.

8.7.3 Energy Charges

When the generator is synchronized with the grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower slot consumption.”

7.30 The Commission in the Tariff Order No. 1 of 2009 dated 20.03.09 have also come out with an illustration on methodology of adjustment of banked energy clarifying that if the consumption exceeds the generation the energy banked shall be drawn to the required extent. This would also include the energy banked during peak hour and normal generation for adjustment against lower slot consumption. The Commission directs that any clarification required regarding the Commission's order, the Licensee shall request for such clarifications before issuing any contrary circulars / instructions to the field which results in unnecessary litigations and causes inconvenience to the concerned.

7.31. Regarding the second issue of fixing the priority of adjustment at the user end for the energy generated from WEGs, the petitioner is directed to file a fresh petition by impleading the affected party as the issue raised by the petitioner is outside the remanded issues of the Hon'ble High Court.

8. 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.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission