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

P.P.A.P. No.9 of 2013

Kamachi Sponge & Power Corporation Ltd.
Rep. by its Director
ABC Trade Centre, 3rd Floor
39 (Old No.50), Anna Salai
Chennai – 600 002.

… Petitioner
(Thiru N.L. Rajah,
Advocate for Petitioner)

Vs.

TANGEDCO
Represented by its Chief Engineer / PPP
144, Anna Salai, Chennai – 600 002. …. Respondent

Dates of hearing : 11-02-2014, 25-02-2014, 19-03-2014 and 19-09-2014

Date of order : 23-02-2016

The P.P.A.P.No.9 of 2013 filed by M/s.Kamachi Sponge & Power Corporation Ltd. came up for final hearing on 19-09-2014. The Commission upon perusing the above petition and the connected records and after hearing the arguments of both sides passes the following order:-

ORDER

1 Prayer of the Petitioner in P.P.A.P.No.9 of 2013:-

The Prayer of the Petitioner in P.P.A.P.No.9 of 2013 is to direct the Respondents to pay the Petitioner at the applicable rates per unit for the surplus

units pumped into the grid from the Petitioner's first 1x 35 MW power plant for the periods mentioned below:-

(a) from 21-10-2011 to 00.00 hrs. on 16-11-2011, the surplus power pumped into the Grid after Petitioner's in-house consumption as per the ABT meter installed by TANGEDCO is 11,60,707 units.

(b) from 00.00 hrs. on 16-11-2011 to 22-11-2011, the surplus infirm power pumped into the Grid after Petitioner's in house consumption as per the ABT meter installed by TANGEDCO is 7,77,826 units.

(c) from 23-11-2011 to 27-11-2011 till meter reading, the surplus power pumped into the grid after adjustment to the third party sale and in house consumption was 364,475 units and thus render justice.

2. Contentions of the Petitioner:-

2.1. The Petitioner is a Grid Connected Captive Generating Plant at 230 KV level connected with Gummidipoondi 230 KV SS. The Petitioner had synchronized its first 1 x 35 MW generator with the grid on 21-10-2011. The commercial operation date was declared at 00.00 hrs. on 16-11-2011, Short Term Open Access approval and wheeling for third party sale was permitted by TANTRANSCO on 18-11-2011.

2.2. The second 1 x 35 MW power plant grid connectivity was approved by TANTRANSCO on 28-11-2011, the same was synchronized with the grid on 27-01-2012 and the COD was declared on 30-01-2012 and the open access quantum was increased on 04-02-2012. There was three days gap between the grid connectivity and COD. However, the Petitioner have not claimed any surplus units pumped into the grid during these days as the Petitioner were able to consume the

generation for their in house consumption and also by managing the first 1 x 35 MW generation unit.

2.3. The Petitioner had submitted its requisition to the Respondent to purchase power generated during the period between the synchronization date and declaration of COD of their first 1 x 35 MW. During the period from the date of synchronization to declaration of COD, the Petitioner was able to generate and maintain the PLF more than 70% and was maintaining a very healthy frequency. Eventhough the Petitioner was generating the firm power by way of maintaining required frequency at generation side, the Petitioner was requesting the Board, to consider to purchase the surplus power pumped into the grid during the testing of equipments to the full load capacity as "trial run" at infirm power rate only.

2.4. The Commission's Order No.4 dated 15-05-2006 vide para 2 states that "FIRM Power means quantity of power in units committed by the owner of the Captive Generation to be sold to the Tamil Nadu Electricity Board annually and INFIRM Power means quantity of power sold in units to TNEB without any commitment or the entire quality of power in units sold to TNEB, in case the commitment is not fulfilled". In the instant case of the Petitioner, the non-fulfillment of commitment does not arise, as it is a grid connected CGP unit pumped power during the period of testing of equipment to full load capacity as "trial run".

2.5. Under clause 2 (x) of the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 "Infirm Power" means electricity generated prior to commercial operation of the unit of a Generating

Station. As per clause 2 (m) of the said Regulations, *"Date of Commercial Operation" or "COD" in relation to a unit means the date declared by the generator after demonstrating the Maximum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run, after notice to the beneficiaries, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit of the generating station"*.

2.6. Thus, the infirm power will be generated by a new generating station and the surplus power will be pumped into the grid after auxiliary consumption and in-house consumption in the case CGP unit and the grid has to absorb such surplus power, for which the Petitioner has obtained the grid connectivity from the Licensee. The infirm power pumped into the grid was utilized by the Licensee, for which the Petitioner is eligible to claim the rate, which may be fixed by the Commission under UI mechanism.

2.7. Order No.4 dated 15-05-2006 of the Commission clearly specifies as below:-

Pricing of power sold to TNEB:-

- The pricing for the captive power generation is only single part, i.e. rate for units alone.
- The rate for Firm power is at normal rate and the rate for Infirm power is at 75% of the normal rate.
- Firm power means quantity of power in units committed by the owner of the captive generation to be sold to Tamil Nadu Electricity Board annually.

- Infirm power means quantity of power in units sold to TNEB, without any commitment or the entire quantity of power in units sold to TNEB, in case the commitment not fulfilled.

2.8. The Petitioner could have declared COD on the same day of synchronization, but due to wrong understanding / interpretation of the order and understanding from the Board, the Petitioner took longer time to declare the COD. The declaration of COD after reaching the full load capacity of generation will be applicable only to the SPV units and IPP units and not to the grid connected CPP units like the Petitioner.

2.9. The SPV and IPP units alone are having the commitment to the Board or others and hence have to pump the committed quantum of power to the grid, as the licensee has to schedule distribution system and has to manage grid on the basis of the commitments given by SPV and IPP units. Hence, these SPV and IPP units have to necessarily test their generating station to their full load capacity, so as to make sure that their generation shall not normally interrupt any point of time once their commitment starts to the Licensee or others. Hence, it is must for declaration of COD for SPV and IPP units. The Petitioner is only CGP grid connected unit. The power generated from their CGP unit was primarily consumed by their in house units such as melting division and rolling and balance quantum is sold to their CPP units, which are all connected into the Licensee's grid. Accordingly there is no power sold to Licensee and the Licensee also need not depend on the CGP generating units power, as it will not any how affect the Licensee's grid and scheduling as the scheduling is done by the CGP units for their CPP units by submitting the details to SLDC.

2.10. Moreover, even if the CGP unit stops generation, the same shall be informed by the CGP unit to their CPP units connected with Licensee's grid to stop the drawal of power from the grid on account of the Petitioner. Even the CGP unit stops the generation, the impact to the Licensee or grid will be minimum. So it is not necessary to test the full load capacity to declare COD and accordingly pump out the surplus units to the grid will not arise. If the COD is given when the synchronization has taken place, i.e. when the grid connectivity approval is issued, the Petitioner is given the Open Access approval simultaneously, the Petitioner would have managed to sell out the surplus power to the open access customers and there would not be any necessity to pump the surplus power to grid as infirm power.

2.11. Without any mistake or flaw on the side of the Petitioner, but just to comply the formalities framed by the Board, the Petitioner was forced to pump the surplus power to grid as infirm power for want of COD and thereby to get the Open Access approval to sell power to open access customers. This can have no impact on the Petitioner's entitlement to be reimbursed for units let into the grid by the Petitioner.

2.12. The Commission has made out clearly in several codes that the infirm power generated till declaration of COD has to be absorbed by the licensee and the payment for such infirm power should be paid under UI mechanism. The Petitioner have synchronized the generation with the grid on the basis of the Grid Connectivity approval given by the Director/Operation vide letter No.Dir/Operation. Lr.No.Dir/Opn/SE/ LD&GO/EE/OA/AEE2/F Kamachi/D1298/11, dated 04-10-2011 and from the date of synchronization till declaration of the COD the Board has absorbed the surplus power pumped into the grid, after the Petitioner's in house

consumption. The surplus power was pumped into the grid as the Petitioner have to test and ascertain the maximum installed capacity of generator and the Petitioner were unable to consume the total generated power, as two divisions of the Petitioner's factory are yet to commence production and they are under erection and commissioning stage. Under the circumstances, the Petitioner was left with no option except to pump the surplus power into the grid as a grid connected captive generating plant. These facts were already informed to the Respondent on specific query raised by the Petitioner in this regard. The Respondent has not refused to accept the surplus power pumped into the Grid. For the above reasons, the Petitioners are entitled for payment for the surplus power pumped into the grid.

2.13. The surplus power pumped into the grid during the period from 21-10-2011 to 00.00 hours on 16-11-2011 was 11,60,707 units. The Petitioners have been accorded in principal approval for Short Term Open Access and wheeling to third party sale by the TANTRANSCO vide Letter No.Dir/Operation Lr.No.Dir/O/SE/LD & GO/ABT/F.Kamachi/D5030/11, dated 18-11-2011 for 10.848 MW. The Petitioners are entitled for Open Access from 18-11-2011 onwards. The Petitioners have identified the Open Access consumers on 20-11-2011. The Open Access transactions are on monthly billing basis. Though the Petitioners are eligible for Short Term Open Access from 18-11-2011 onwards, they started supply through Open Access from 23-11-2011 onwards since the identified consumer meters were reset on 23-11-2011. The Petitioners requested the Respondent to take into account the consumption with the Open Access Consumer's Consumption from 00.00 hours on 23-11-2011 onwards.

2.14. From 00.00 hours on 16-11-2011 to 22-11-2011, the surplus energy pumped into the grid after the Petitioner's own consumption was absorbed by the Respondent. The Petitioners are therefore eligible for the energy thus pumped into the Grid. The Petitioner had sent several letters to the Respondent requesting them to pay the cost of the power utilized by the Respondent. The surplus infirm power pumped into grid during the period from 16-11-2011 to 22-11-2011 was 7,77,826 units and the Respondent was duty bound to make payments for the same.

2.15. The power generated and supplied by the Petitioner from 23-11-2011 to 27-11-2011 till the date of meter reading taken by the official of TANGEDCO shall be treated as two parts, one part being the units wheeled to third party sale as per the Open Access approval given by TANTRANSCO vide letter dated 22-11-2011; and the other part being the surplus infirm power pumped into the Grid after the in house consumption and third party sale. As far as the first part is concerned, the Petitioners raised the consumption bill on the Open Access third parties consumers directly and for the other part, the Petitioner requested the Respondent to make the payment for surplus infirm power pumped into the grid as per the ABT meter reading (i.e. total export recorded in the ABT meter minus the contractual quantity to third party is the surplus units pumped into the grid as firm power). The surplus power pumped into the grid during the period from 23-11-2011 to 27-11-2011 after third party sale is 364475 units.

2.16. The Petitioner's entitlement to payment from the Respondent is as follows:-

(a) 21-10-2011 to 00.00 hours on 16-11-2011, the surplus power pumped into the grid after Petitioner's in-house consumption as per the ABT meter installed by the TANGEDCO is 11,60,707 units.

(b) From 00.00 hours on 16-11-2011 to 22-11-2011, the surplus infirm power pumped into the grid after our in house consumption as per the ABT meter installed by the TANGEDCO is 7,77,826 units.

(c) From 23-11-2011 to 27-11-2011 till meter reading, the surplus power pumped into the grid after adjustment to the third party sale and in house consumption is 3,64,475 units.

The Petitioner has entered into detailed correspondence with the Respondents with regard to this issue. However, in spite of repeated requests, the Petitioner has not been paid for the units let into the grid.

3. Counter Affidavit dated 14-03-2014 filed on behalf of the Respondent:-

3.1. The Petitioner M/s.Kamachi Sponge & Power Corporation Ltd. are having coal based Captive Generating Plant with installed capacity of 2x35 MW at Gummidipoondi with 230 KV level grid connectivity. The Petitioner is engaged in manufacturing of sponge iron and steel and has a sanctioned demand of 40 MVA. The generators are located in their industrial premises. The Petitioner had set up first 1 x 35 MW generators and obtained grid connectivity approval from Director / Operation / TANTRANSCO on 04-10-2011, since the connectivity involved voltage at 110 KV level.

3.2. In the grid connectivity approval, the following were clearly mentioned:-

Clause No.23: This approval is for grid connectivity of 1 x 35 MW generator alone the company shall not inject any power into the grid.

Clause No.25: Any excess energy pumped into grid without valid contractual agreement and open access approval will not be accounted for any payment.

The Petitioner had signed the agreement for grid connectivity on 04-10-2011 and is fully aware of all conditions of the Grid Connectivity approval dated 04-10-2011.

3.3. The Petitioner vide letter dated 07-10-2011 represented that they can reach the full capacity of generation and declare the COD on 31-10-2011 and hence intend to sell “infirm” power to Board and requested TANGEDCO the Respondent herein to purchase the “Infirm power” from their generator till the Commercial Operation Date (COD). The Petitioner company further stated that they shall be accepting the rate for sale of infirm power to the Respondent as per the rate fixed by TANGEDCO.

3.4. After detailed examination of the Petitioner’s request, since the details furnished by the Petitioner in the letter dated 07-10-2011 were inadequate, the Petitioner was specifically asked vide Respondent’s letter dated 21-10-2011 to furnish details such as probable date of synchronization of 1 x 35 MW generator, quantum of power proposed to be sold to TANGEDCO as infirm power, period of injecting infirm power into the grid, industrial consumption of generated power etc. in order to ascertain the readiness of the generator and to take further course of action. The Petitioner vide letter dated 05-11-2011 informed that the generator was synchronized on 21-10-2011 and the probable date of COD was on 20-11-2011. The quantum of infirm power was indicated as 30 MW. Since the company had started pumping power into the grid on 21-10-2011 itself without the approval of the TANGEDCO for purchase of infirm power and fixation of tariff by the Commission and reported the matter to the TANGEDCO belatedly on 05-11-2011, the

Respondent was not liable for issuing any approval immediately. In another letter dated 17-11-2011, the Petitioner reported that they were able to utilize only a maximum of 18 MW for their industrial purposes from the total generation, since two of their industrial divisions of the factory were still under erection stage and that the rest of the power had to be pumped into the grid to test their power plant to full capacity and requested to purchase the "infirm power" generated during the period of testing. Thus, even though the Petitioner initially indicated the quantum of sale of power as 30 MW, subsequently revised the quantum taking into account their industrial consumption and the quantum left was 12 MW.

3.5. In the meanwhile the Superintending Engineer/CEDC/North vide letter dated 17-11-2011 reported that the company has declared COD on 16-11-2011 at 00.00 hours. But the Petitioner has not mentioned the attaining of COD in their letter dated 17-11-2011. These vital information would not have been ascertained from the Petitioner unless otherwise the details were called for by the Respondent. As the company declared COD before the issue of concurrence by the Respondent for purchase of infirm power and before fixation of tariff by the Commission, the Petitioner was informed vide letter dated 03-12-2011as below:-

"As you already attained the status of commercial operation before arriving the contractual agreement, there is no question of sale of infirm power to TANGEDCO from your 1 x 35 MW generator. In the above circumstances, the proposal of accepting infirm power does not arise".

Further conditions 23 & 25 of the grid connectivity approval dated 04-10-2011, was also cited in the above mentioned letter.

3.6. Subsequently the Petitioner in letter dated 19-12-2011 had represented that during the period from the date of synchronization to the declaration of COD they were generating and supplying only firm power and not infirm power as un knowingly informed earlier and they are fulfilling the criteria for firm power as defined in Commission's Order No.4 dated 15-05-2006. Further, the Petitioner mentioned that they could have declared COD the same day of synchronization but due to wrong understanding / interpretation of the order and also as advised by the Board they took longer time to declare COD. The Petitioner had stated that declaration of COD is applicable for SPV and IPP generating plants and not to captive generating plants. The Petitioner has also represented to make payment by applying UI rate mechanism and also prayed to make payment for the total "firm power" supplied during the following periods and for the quantum mentioned at the appropriate rate fixed by TANGEDCO itself as per the available norms.

Sl. No.	Period	Energy claimed to have been pumped
(a)	21-10-2011 to 00.00 hrs. on 16-11-2011	11,60,707 units.
(b)	00.00 hrs. on 16-11-2011 (COD Date) to 22-11-2011	7,77,826 units
(c)	23-11-2011 to 27-11-2011 till meter reading	3,64,475 units

3.7. The Respondent after detailed examination of the Petitioner's representation informed the Petitioner, vide letter dated 23-01-2012 as follows:-

"TANGEDCO has never consented or authorized you to inject either infirm or firm power into the grid and as such any power injected into the grid without the specific approval of TANGEDCO is neither accountable nor TANGEDCO is liable to pay any payment for such unauthorized pumping.

As per the Condition No.23 and 25 of the grid connectivity approval issued by Director / Operation dated 04-10-2011, you cannot inject any power into the grid without an approval and also it was categorically made clear that any excess energy pumped into the grid without valid contractual agreement and Open Access approval will not be accounted for any payment.

As per the provisions of the Act, Regulations and clauses made thereunder, including TNERC's Grid Code, no injection of power can be made by generator without any contract or scheduling.

For injecting energy firm / infirm, prior approval of licensee is necessary. A generator cannot just make a letter to the Licensee and start injecting power into the grid. It is a settled position that, non-issue of approval for purchase of power cannot be construed to the confirmation of requirement of power of your company by the Distribution Licensee and authority to inject power into the grid.

Prior approval plays a significant role. Only on approval, accounting and other statutory formalities can be done by the Distribution Licensee.

Further, pumping of energy from 16-11-2011 to 22-11-2011 is also unauthorized since approval has been issued only for third party sale on 18-11-2011. In addition to the above, between 23-11-2011 to 28-11-2011, you have again pumped energy unauthorizedly after allotment to third party sale. This clearly indicates that you have pumped energy without any scheduling or notice and according to your own convenience, violating Sl.No.23 and Sl.No.25 of the order of Director / Operation dated 04-10-2011 which prohibit any injection of power into the grid (before issue of third party sale) and clearly states that any excess energy pumped into the grid without contractual agreement and Open Access approval will not be accounted for any payment.

From the above, it is very clear that the action of you, in injecting power for the periods refer to para No.2 above are unauthorized and illegal. Besides, it is a threat to the grid security and safe and economic operation of the grid, which is in addition to the violation of statutory provisions.

Therefore, payment for your illegal action is not acceptable to TANGEDCO and hence your claim for payment for the alleged injection of power is not feasible of compliance.

You are also advised to explore all the avenues provided for in law to evacuate your energy including the surplus energy if any in accordance with the law and in the manner known to law instead of indulging in such actions and illegal acts and claiming payment for these acts".

3.8. The above reply to the Petitioner was based on the following facts:-

(a) Order No.4 dated 15-05-2006 (order on the fossil fuel based captive generating plants of co-generation) of the Commission specifies UI rates as power purchase rates from CPPs / Co-gen plants. The rate varies from Rs.2.10 per unit to Rs.4.08 per unit (with effect from 10-06-2009) based on frequency, for the firm power purchase and the infirm power rates is 90% of firm power rates for captive

generating plant. The UI rates are applicable for regular power purchase (firm / infirm) from the CPPs / Co-gen plants, and there is no specific provision in the said order enabling to purchase power at UI rates during “trial” / “testing” period of the captive generating plant. The intent of the order was also for regular power purchase for longer term i.e. for a minimum period of three years and maximum period of five years.

(b) The intention of the order is to enable the CGP holder to sell surplus power to the Distribution Licensee. The surplus in CGP can be categorized as-

(i) surplus a priori which is the maximum firm commitment (referred as firm supply in the policies / guidelines etc.) a CGP holder can offer at the best;

(ii) surplus resulting from reduced captive usage due to various factors such as factory closure, reduction in production level etc. which is dynamic and an infirm offer (referred as infirm supply);

The above sale of power is subject to approval of the Licensee and entering into EPA between parties i.e. committed and contracted agreement between the parties. Further as per Clause 12 (1) of the said order the Licensee has the option to buy or not the infirm power supply offered by the Captive Generating Plant holder.

3.9. The Petitioner vide letter dated 11-01-2012 reported that they have pumped 8,33,820 units into the grid after third party sale from 28-11-2011 to 27-12-2011. The Petitioner specifically mentioned that they had pumped surplus power into the grid after in-house consumption and third party sale and requested payment for the same. As the Petitioner pumped surplus energy after declaration of COD without any approval of the Respondent Licensee the Respondent vide letters dated 30-01-2012 (for 1 x 35 MW generator) was once again informed that the Petitioner

was pumping energy into the grid at their will and pleasure without any business plan and proper agreements and violating the conditions in the approval for grid connectivity, Commission's Grid Code, specific directions of the Respondent.

3.10. The Petitioner is governed by grid code and the Petitioner cannot pump any power according to their wishes and convenience and claim any compensation / payment from the Licensee. Any power injected into the grid without the Respondent concurrence or SLDC clearance amounts to unauthorized one and cannot be accounted and paid for. Before issue of any approval / consent by TANGEDCO and fixation of tariff by the Commission for purchase of infirm power during trial run, the Petitioner pumped energy into the grid and claim payment for the same.

3.11. The Respondent had not entered into any contractual agreement with the Petitioner for purchase of either firm or infirm power. The Petitioner had not given any schedule for sale of power to the Distribution Licensee, SLDC and no such schedule was accepted by the concerned agencies, but the Petitioner injected the surplus energy continuously without approval. Even after declaration of COD and issue of approval for third party sale thereafter, the Petitioner had continued to pump surplus energy into the grid over and above third party sale, without any approval / concurrence of TANGEDCO for purchase of such power. By the said illegal actions, the generator had blatantly violated the Conditions No.23 and 25 of the Grid Connectivity approval dated 04-10-2011 and hence it is a clear violation of the terms of approval issued by TANTRANSCO.

3.12. As per para 8(3)(a) of the Commission's Grid Code, the SLDC will issue dispatch instructions required to regulate all generation and imports from SSGs, IPPs, CPPs and Generators based on Renewable Sources of Energy according to the hourly day ahead generation schedule, unless rescheduling is required due to unforeseen circumstances. Hence, pumping of energy without any contract and scheduling is a violation of grid code.

3.13. The Petitioner also requested the Respondent to purchase infirm power from their 2nd 35 MW Captive Generating Plant vide letter dated 23-12-2011 which was received only on 24-01-2012 i.e. after lapse of one month. The Petitioner reported that they could declare COD on 27-01-2012. The Respondent in another letter dated 30-01-2012 (for 2 x 35 MW generator) directed the Petitioner not to pump any energy into the grid without specific approval and it was also informed that no payment will be made for any unauthorized pumping of energy. The Respondent further in the letter dated 08-02-2012 had also informed that they had not sought approval for purchase of infirm power (for 2nd 35 MW generator) well in advance and the Respondent can purchase infirm power till COD only after the power purchase rate is fixed by the Commission. The Respondent also informed that no payment is payable under any circumstances for unauthorized / unscheduled pumping of energy.

3.14. The Petitioner also represented vide letter dated 04-04-2012 to purchase the power pumped into the grid till the declaration of COD referring the Respondent's letter dated 23-01-2012 in respect of 1 x 35 MW generator. The Petitioner represented that the rate shall be fixed by the Commission on a separate application

filed to this effect by either of the parties (Petitioner / Respondent) for the surplus energy pumped by them. The Respondent vide letter dated 08-06-2012 informed that the Respondent had not refused to purchase infirm power till COD but reiterated that power purchase can be made only as per the provisions laid out in the electricity laws and observing due procedures. But the Petitioner had declared COD before issuance of acceptance for purchase of infirm power by the Respondent and fixation of tariff by the Commission. It was also informed that even after declaration of COD, the Petitioner had pumped energy into the grid which amounts to clear violation of various provisions of Electricity Act, 2003, Grid Code and Regulations issued by the Commission and hence payment was not feasible such unauthorized pumping of energy.

3.15. The averments made by the Petitioner adverting to Order No.4 dated 15-05-2006 are not applicable for purchase of infirm power till COD i.e. during testing run. It is only applicable for purchase of surplus power from captive generating plant on regular basis.

3.16. The Petitioner cannot start injecting power into the grid as a matter of right only with approval meant only for grid connectivity of the generator. The Petitioner had signed an agreement on 04-10-2011 fully aware of all conditions of the Grid Connectivity approval. Injection of energy into the grid is prohibited till such time wheeling / sale is requested and approved by the appropriate agency and the Petitioner is not entitled to be compensated for such energy injected into the grid. Hence, the Petitioner's contention that they will pump surplus power after auxiliary consumption and in-house consumption into the grid and the grid has to absorb

surplus power is against the provisions of Electricity Act, 2003, and Commission's Open Access Regulations & Grid Code.

3.17. The Petitioner cannot pump any energy without approval / contract and clearance from SLDC. The Petitioner's contention that rate for such power may be fixed by the Commission under UI mechanisms is also not correct, since UI rates are not applicable for purchase of infirm power during the period of trial run of the generator. The paragraphs quoted by the Petitioner from the Commission Order No.4, dated 15-05-2006 and the definitions mentioned by the Petitioner are misquoted since the then Tamil Nadu Government's policy on captive power plant as notified in G.O.Ms.No.48, dated 22-04-1998 was forming the preamble on various issues dealt with in the Commission's Order No.4 dated 15-05-2006. The Respondent's argument is that the Petitioner is willfully violating various rules and regulations prevailing now on the issue of power purchase and simply wants to enrich themselves without following due procedures is strengthened by the said Order No.4.

3.18. Declaration of COD is a pre-requisite for every generator to start commercial operation and for obtaining open access and it is primarily the responsibility of the generator, licensee having no role in that. Only when there is specific contract between parties for purchase of power from IPPs etc. where capital cost and tariff fixation are involved. COD will become significant to the Licensee. Hence, the Petitioner is at liberty to declare COD taking into account of their generating plants technical feasibilities. The Petitioner was not prevented by the Respondent from declaring COD at any point of time. This stand stands proved from the fact that the

Petitioner had declared COD of the 2nd 35 MW generator within three days of synchronization of the generator. Thus, the main object of the Petitioner in filing this case is to derive benefit for their lapses, which were perse unauthorized, at the cost of the Respondent and general public. A captive generating plant is also a generator except for the purpose for which the power supplied or used and hence all the common laws / rules / regulations applicable for a generating plant are equally applicable for captive generating plant unless specifically excluded. Till declaration of COD the plant is only a generating plant, and during trial period, any power injected into the grid is infirm power only.

3.19. The Respondent has not formulated on its own any Rules and Regulations as stated by the Petitioner but follows only the provisions of Electricity Act, 2003, TNERC's grid codes, OA Regulations etc. The Petitioner was not forced by the Respondent to pump surplus power. The Petitioner itself had pumped surplus power into the grid unauthorizedly without following the provisions of Act and Regulations and now try to thrust upon the Respondent an obligation to pay.

3.20. There is no code or provisions of Regulations issued by the Commission that infirm power generated till declaration of COD need to be paid under UI mechanism. Order No.4 dated 15-05-2006 and the UI rates notified therein and subsequent amendments are applicable for purchase of surplus power from captive generating plant on a regular basis and not for purchase of infirm power till COD. In this case, the Petitioner had pumped energy into the grid after synchronization even without obtaining approval which amounts to clear violation of various provisions of

Electricity Act, 2003, Grid Code and Regulations of the Commission and hence no payment was feasible for such unauthorizedly pumped energy.

3.21. The Respondent's contention that since they are captive generating plant, it will not any how affect the grid is not correct. Similarly sudden loss of generation due to tripping of generation or excess generation will definitely affect the grid stability. If the generators are not tested for Maximum Continuous Rating (MCR) or Installed Capacity (IC) and declared COD, it will not be possible to indicate declared capacity and avail open access since there will be huge variations in the generation which will affect the grid and allotment to the captive consumers.

3.22. In the Grid Connectivity approval, it has been clearly mentioned that the Petitioner shall not inject any power into the grid and in the Open Access approval dated 18-11-2011 also it has been clearly mentioned that the power injected by the generator over and above the committed power will not be accounted. Further in all the correspondences, the Respondent had directed the Petitioner not to pump power without approval and also informed that no payment will be made for unauthorized pumping of energy.

3.23. The Petitioner has accepted the fact that they had to test and ascertain the maximum installed capacity of the generator and that since they were unable to consume entire power in the factory itself, they were left with no other option except to pump surplus power. This will further indicate that the generator has to be tested to its maximum capacity in order fully utilize its capacity and for availing open access

to evacuate power for various usages which is nothing but an act of declaration of COD.

3.24. The date of synchronization of 1 x 35 MW generator was on 21-10-2011 and COD was declared on 00.00 hrs. on 16-11-2011. In absence of any specific approval by the Respondent and tariff fixation by the Commission, the entire energy claimed to have been pumped (11,60,707 units) is unauthorized. In principle approval for open access to third party for 10.868 MW was granted by the Director (Operation) on 18-11-2011. In the in principle Open Access approval, it has been clearly mentioned that "M/s.Kamachi Sponge & Power Corporation Ltd. (Petitioner) is permitted to carry out 3rd party sales through Intra-State Open Access to HT consumers within Tamil Nadu after getting necessary approval for the actual transaction for which M/s.Kamachi Sponge & Power Corporation Ltd. shall submit the application to SLDC in Format I & II with the complete details of their sanctioned load, restricted load, required power on Open Access, connectivity details, metering arrangement agreement between the buyer and seller, NOC / Concurrence from SE/EDC concerned along with initial registration fees of Rs.1000/- for each HT consumer and generator."

3.25. The Petitioner then submitted application on 19-11-2011 for availing Open Access to two HT consumers for maximum quantum of 6.990 MW and approval was issued by SLDC for Short Term Open Access (STOA) on 22-11-2011. In the said application Open Access was sought for in respect of two HT consumers only from 23-11-2011. For one consumer with HTSC No.1612, it was requested from 23-11-2011 to 25-11-2011 and for another consumer with HTSC No.1751, it was

requested from 23-11-2011 to 27-11-2011. Accordingly, Open Access was operationalized on 23-11-2011, for both the HT consumers. Thus eventhough in principle approval was issued for 10.868 MW for STOA on 18-11-2011, the company has availed STOA for maximum of 6.990 MW that too from 23-11-2011. Hence, the surplus energy of 7,77,826 units pumped by the Petitioner from 16-11-2011 to 22-11-2011 and 3,64,475 units from 23-11-2011 to 27-11-2011 amounts to unauthorized pumping and the Respondent is not duty bound to make payment and therefore cannot be held liable for payment for the unauthorized and unscheduled infirm power injected by the Petitioner on his own which is patently illegal.

3.26. In the In Principle Open Access approval dated 18-11-2011, the following conditions are specifically mentioned at Sl.No.10 and 18:-

"*10 The generation over and above the committed power by M/s.Kamachi Sponge & Power Corporation Ltd. (petitioner) will not be accounted.*

18 If the HT consumer does not draw the committed power, the generator will not be compensated by TANGEDCO."

Even after declaration of COD on 16-11-2011 and after issuance of approval for third party customers, the Petitioner pumped surplus energy into the grid from 16-11-2011 to 22-11-2011 and from 23-11-2-11 to 27-11-2011. The entire quantum of surplus power pumped during the period from 21-10-2011 to 27-11-2011 (i.e. 23,03,008 units) is to be treated as unauthorized, since it was in total violation of the above mentioned Clauses in the order dated 18-11-2011 and undertaking executed by the Petitioner in this regard.

3.27. As per the existing Regulations, TANGEDCO is not under obligation to make payment for unauthorizedly pumped energy whether it is firm or infirm power. If the

Petitioner's claim is allowed, then all other generators will follow suit and pump energy into the grid and claim payment for the same. The Respondent Licensee will incur not only heavy loss if payment is to be made, but it will also affect the grid security to the great extent and ultimately it will affect the public at large. Nine PPAP petitions have been filed by various generators / Captive Generating Plant before the Commission for fixation of tariff for infirm power from the date of synchronization of generator to declaration of COD. In all these cases, this Respondent has accepted to purchase the infirm power and allowed the generators to pump power only after the specific directions of the Commission for such pumping pending fixation of tariff by the Commission after admitting their petition. TANGEDCO had filed counter affidavit in all the cases and the cases are pending before the Commission for final disposal.

3.28. The Commission in the order dated 11-07-2011 in P.P.A.P.No.5 of 2011 (TANGEDCO Vs. M/s.Ind Barath Power Gencom Ltd.), held that "unauthorized injection of power into the grid is dangerous to the grid operation, and further observed that the Commission is empowered to order that no payment is admissible for injection of power into the grid without scheduling and without any contracts." The APTEL in the judgment dated 16-05-2011 in Appeal No.123 of 2010 (M/s.Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission) also held that energy pumped into the grid without agreement and schedule, need not be compensated. The Tribunal also held that as the Distribution Licensee have not disputed the compensation granted by the State Commission (State Commission has allowed compensation at the lowest variable cost of the State owned generating stations for the relevant time with the condition that their order shall not be quoted as

any kind of precedent), the Tribunal did not want to interfere with the findings of the State Commission in this regard.

3.29. During the arguments on 25-12-2014, the counsel for Petitioner argued that the APTEL's judgment in Appeal No.170 of 2012 is applicable for this case and the judgment in Appeal No.123 of 2010 is not applicable for the present case. As far as the Respondent is concerned, the Tribunal's judgment in Appeal No. 123 of 2010 is alone applicable to this case and the judgment in Appeal No.170 of 2012 is not applicable for the following reasons:-

(1) The circumstance and the decision in Appeal No.170 of 2012 (M/s.Bangalore Electricity Supply Company Vs. Reliance Infrastructure Ltd) is clearly distinguishable, compared with the circumstances of the case in Appeal No.123 of 2010 (M/s. Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission).

(2) In the case of Appeal No.170 of 2012, there existed an agreement between M/s.Reliance Infrastructure Limited and the Bangalore Electricity Supply Company for the purchase of the power from the 7.59 MW Wind Energy generated for the period from 05-04-2002 to 29-09-2009. M/s. Reliance Infrastructure Limited sought for approval for wheeling and banking after expiry of PPA. Finally on 11-01-2010, the Appellant signed wheeling and banking agreement with Reliance Infrastructure Limited and hence Reliance Infrastructure Limited claimed compensation for the energy pumped between 30-09-2009 to 10-01-2010. The Karnataka Electricity Regulatory Commission has fixed 3.40 per unit as compensation.

(3) The APTEL in Appeal No.170 of 2012 held that, in case of the Indorama (Appeal No.123 of 2010), the generator did not have any PPA either during the disputed period or prior to that with distribution licensee and SLDC had no knowledge of injection of power by the generator. But in case of Reliance Infrastructure, SLDC has issued No Objection Certificate (NOC) for execution of Wheeling and Banking Agreement on 22-08-2009, i.e. prior to the expiry of EPA i.e. on 29-09-2009 and hence there was prior approval issued by an agency.

(4) Further the Tribunal held that the Wind Energy is a renewable source of energy and it cannot be stored. The generation from wind energy is also not scheduled by the SLDC. Shutting down the wind energy generator when wind is blowing would mean wastage of green energy. Thus, RInfra had no option but to inject energy from its wind generator into the grid of the State Transmission Corporation and ultimately the energy was utilized by BESCOM i.e. Distribution Licensee.

(5) The facts of the present case are different. The Petitioner M/s.Kamachi Sponge & Power Corporation Ltd., are having coal based Captive Generating Plant. But RInfra is a small wind generator of 7.59 MW. The wind generation cannot be regulated as generation depends on wind which will not be constant. It is entirely dependent upon the weather. There can be no control over the wind generation. But the generation by a thermal power plant using oil or gas can be regulated and controlled.

(6) The findings of the Tribunal in Reliance Case (170 of 2012) will not be applicable to the present petition in view of the circumstances of the case, since there was no approval given by the Distribution Licensee for purchase of power and

SLDC also had not given clearance for such pumping and hence the surplus energy pumped by the Petitioner is unauthorized.

3.30. The Commission in order dated 7-10-2011 in D.R.P.No.12 of 2011 (M/s.OPG Power Generation Ltd. Vs. TNEB) held that no compensation is payable for the energy injected into the grid in the absence of approval of Open Access. Further it was held that no compensation is payable to the Petitioner therein 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.

3.31. While disposing off the petition for determining the appropriate tariff for purchase of power in P.P.A.P.No.5 of 2009, dated 25-02-2010 (TNEB Vs. M/s.Arkay Energy (Rameswaram) Ltd.), the Commission observed as below:-

"6.2. It is pertinent to note that the Commission derives its powers of tariff determination from section 62 of the Electricity Act, 2003. The procedure for determination of tariff is laid down in section 64 of the Act, which entails prior publication and consultation. This mandatory requirement would be reduced to nullity if the Commission is called upon to determine the tariff ex-post facto."

x x x x x

6.3. The Commission while disposing a similar petition for ratification of tariff in P.P.A.P.No.1 of 2009 dated 22nd May 2009 filed by the same Petitioner had occasion to observe as follows:-

"5.10. Yet another point which came up for discussion is whether the Commission is clothed with powers to approve tariff retrospectively. The TNEB filed the petition on 02-02-2009 and the procurement of power by TNEB also commenced on 02-02-2009. The additional affidavit was filed on 21-04-2009. The learned Advocate General appearing for the TNEB cited section 37 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land Act) 1961 to argue that the Commission has inherent powers to approve tariff retrospectively. In our view, retrospective approval of tariff, except under section 63 of the Act would go against the grain of the procedure prescribed in section 64 of the Act which stipulates prior publication and public hearing. Retrospective approval of tariff would render the consultative process of inviting objections and suggestions from the public superfluous."

x x x x x

"7. Directions

As retrospective tariff determination runs counter to the provisions of the Electricity Act, 2003, the Commission is constrained to merely note and record the rate of Rs.6.70 per unit for the purchase of energy from the Respondent between 25-11-2008 to 01-02-2009".

3.32. The Commission cannot entertain petition to fix tariff retrospectively. In this case, the Petitioner filed the petition on 16-12-2013 for fixing the tariff for the unauthorized power supplied during the period from 10/11 to 11/11 i.e. after a lapse of two years and hence the Commission cannot fix the tariff now. The Petitioner is also inconsistent with his demand for payment. Initially, the Petitioner represented to the Respondent to pay for the infirm power pumped at the rate fixed by the Respondent i.e. TANGEDCO (letter dated 07-10-2011), then represented to consider payment at UI rate (letter dated 19-12-2011). Subsequently the Petitioner took a different stand and represented to treat the entire power as firm and prayed the Respondent (letter dated 19-12-2011) for payment. Again in this petition also, the Petitioner has prayed to fix tariff under UI mechanism. Further it has mentioned that eventhough they were generating firm power, they have requested the Respondent to consider to purchase surplus power as infirm power only. Further, there are two representations, one is to consider payment for surplus power at infirm power rate and another for consideration of payment at firm power rate and ultimately in the prayer for direction, the Petitioner has prayed the Commission for payment at "applicable rate" without mentioning any specific rate eventhough it is a P.P.A.P. petition for fixation of tariff.

3.33. The Petitioner is not in a position to differentiate between firm power and infirm power and right from the beginning, pestering the Respondent to settle payment with their vague claims for the unauthorized energy pumped into the grid,

which was rightly rejected by the Respondent. The Respondent had also replied to all the representations made by the Petitioner. It has been the practice of many generators who have pumped energy unauthorizsedly to take shelter under the pretext that the Distribution Licensee has enjoyed the benefit of energy that has gone into the system. Such a prayer is fundamentally erroneous, because it tries to justify the illegality committed by the generator.

3.34. The State grid is a large network which handles more than 12,000 MW. The State network is connected to National grid and power flow takes place in both directions (import / export). The grid is operated based on the demand and supply. The frequency of the grid is maintained between 49.70 Hz and 50.20 Hz with effect from 05-03-2012 and the frequency was changed to 49.9 Hz to 50.5 Hz with effect from 17-01-2014 as per CERC's directions. When illegal pumping by various generators takes place, it will have serious effects on the frequency and the grid. During such time, the Licensee may have to shut down or reduce their generations. The Petitioner has not mentioned anything about the time duration of pumping of surplus power. There is every possibility that the power pumped could have flown outside the State depends on the power flow in the grid at the time of injection of unauthorized power by the Petitioner and there may be drawal under UI by various people connected to the grid based on the demand on that day and time. Hence the Petitioner cannot claim that the Respondent has actually enjoyed the power. Further as there are more than two crore consumers of different category serviced at various tariffs by the Respondent including Agriculture and Hut services, it cannot be said that the Respondent has specifically supplied the unauthorizedly pumped energy to a particular consumer at a particular tariff and enriched themselves. The Petitioner

has not proved that the Respondent has actually the consumed energy pumped by them unauthorisedly. The Respondent is not bound to make payment for the unauthorized pumping of energy into the grid claimed by the Petitioner.

4. Contentions in the Written Submissions dated 09-10-2014 filed on behalf of the Respondent:-

4.1. The grid connectivity for the Petitioner's generator was issued by TANTRANSCO on 04-10-2011, with specific conditions that the Petitioner shall not inject power into the grid without valid contractual agreement and the same will not be accounted for any payment. If the infirm power from the date of synchronization till COD is to be purchased by TANGEDCO specific approval of TANGEDCO is required.

4.2. The Petitioner has an industrial service in the premises in which the 2x35 MW generators are located with a sanctioned demand of 40 MVA. The Petitioner requested the Respondent on 07-10-2011 to purchase 30 MW infirm power. As industrial load was available which could be used for testing the generators, additional details were called for by the Respondent on 21-10-2011 to ascertain the load details, probable date of synchronization etc. to take appropriate decision. The Petitioner replied vide letter dated 05-11-2011 stated that the 1 x 35 MW generator was synchronized on 21-10-2011. The Petitioner has started pumping energy defying specific clauses in the grid connectivity approval.

4.3. Subsequently on 17-11-2011, the Petitioner represented that the quantum of infirm power proposed for sale was only 12 MW. The Petitioner company has not

mentioned anything about COD of the 1 x 35 MW generator in the above letter dated 17-11-2011 eventhough COD was declared on 16-11-2011. Neither the date of synchronization nor the declaration of COD was informed to the Respondent by the Petitioner. As the company has started pumping energy without specific approval of the Respondent without mentioning the COD and without tariff determination by the Commission, the Respondent in letter dated 03-12-2011 addressed to the Petitioner informed that the question of accepting infirm power did not arise at all.

4.4. When instructions issued by one agency is in force which bar the generator from pumping energy without proper approval / agreement, the Respondent is not duty bound to instruct or advice the Petitioner time and again that it should not pump any energy without specific approval of the Respondent. The Petitioner has not obtained clearance from SLDC for pumping of infirm power which is a clear violation of TNERC's Grid Code. The Respondent is in no way responsible for making payment for such unauthorized pumping.

4.5. The Petitioner has filed the petition for fixation of tariff for infirm power, after lapse of nearly two years. The Petitioner should have approached the Commission for determination of tariff before synchronization, as being done by the other generators, in which instances the Commission was pleased to permit the generator to pump infirm power from the date of synchronization to COD, pending fixation of tariff by the Commission. The Commission has also held that retrospective determination of tariff runs counter to the provision of the Electricity Act, 2003. The Respondent had not violated any of the provisions of regulations / orders of the

Commission while rejecting the Petitioner's request for payment for unauthorized pumping.

4.6. The Petitioner has brought out issues corresponding to the following three instances as below:-

21-10-2011to 16-11-2011	Infirm power pumped into the grid unauthorisedly from the date of Synchronization to COD.
16-11-2011 to 22-11-2011	Unauthorisedly pumped power with no intended receiver during the period from COD to 22-11-2011.
23-11-2011 to 27-11-2011	Petitioner was granted STOA for 6.990 MW to 3rd party customers but pumped excess energy more than the above quantum and such excess energy was with no specific takers which clearly shows that the company on its freewill pumped energy unauthorisedly.

In sum and substances, all the three instances are unauthorized pumping of energy. The statement of the Petitioner that they are not pressing for payment in respect of third instance is intended to side tract the issue of unauthorized pumping and to show as if the first and second instances are legitimate.

4.7. The APTEL's order dated 16-05-2011 in Appeal No.123 of 2010 (M/s.Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regualtory Commission) is squarely applicable to this case and Appeal No.170 of 2012 dated 24-01-2013 (M/s. Bangalore Electricity Supply Company Limited Vs. M/s.Reliance Infrastructure Ltd.) is not applicable to the Petitioner's case, as the facts of the Petitioner's case are different.

4.8. The Commission in its order dated 15-09-2014 made in P.P.A.P.No.1 of 2013 (M/s.Cauvery Power Generation Chennai Pvt. Ltd. Vs. TANGEDCO and others) observed as follows:-

> *"6.13 While TANTRANSCO is the authority concerned with transmission of electricity, TANGEDCO is concerned with the purchase of electricity from the generators" ..... "Mere request on the part of the Petitioner to sell the infirm power generated during the period of testing and commissioning to the Respondents will not create an obligation on the part of the Respondent to pay.*
>
> *6.14. The Commission concludes that the Petitioner is not entitled to claim payment for whatever infirm power injected into the grid by the Petitioner Generator from 17-10-2012 to 25-10-2012 without getting express approval from the TANGEDCO".*

Therefore in the present case, the entire energy pumped during the periods 21-10-2011 to 00.00 hours on 16-11-2011, 00.00 hours on 16-11-2011 to 22-11-2011 and 23-11-2011 to 27-11-2011 till meter reading are unauthorized.

5. Findings of the Commission:-

We have heard the arguments of both sides and gone through the written submission filed on behalf of the Petitioner and the Respondents. The issues are discussed hereunder:

5.1. The Petitioner is a coal based Captive Generating Plant with 2 x 35 MW at Gummipoondi. The Petitioner is engaged in the manufacture of sponge iron and steel with a sanctioned demand of 40 MVA. The generators are located in their industrial premises. The Petitioner had set up first 1 x 35 MW generator and obtained grid connectivity approval from Director / Operation / TANTRANSCO on 04-10-2011.

5.2. The Petitioner in their letter dated 07-10-2011 informed the Respondent TANGEDCO that they can reach the full capacity of generation and declare the COD on 31-10-2011 and requested TANGEDCO to purchase the “Infirm power” till the COD at the rate fixed by TANGEDCO. As this application was not a complete one, the TANGEDCO in their letter dated 21-10-2011 has called for certain details such as probable date of synchronization of 1 x 35 MW generator, quantum of power proposed to be sold to TANGEDCO as infirm power, period of injection of infirm power into the grid, industrial consumption of generated power etc. for taking further course of action. The Petitioner in letter dated 05-11-2011 informed TANGEDCO that the generator was synchronized on 21-10-2011 and the probable date of COD would be on 20-11-2011 and the quantum of infirm power would be 30 MW for sale of Infirm Power to TANGEDCO.

5.3. The company had started pumping power into the grid on 21-10-2011 itself without the approval of the TANGEDCO for purchase of infirm power and subsequently declared COD on 16-11-2011. Normally Parties have to enter into a EPA setting out the terms such as delivery Point, Tariff, Metering arrangement etc., Atleast there must be some approval from the Licensee for the injection of infirm power. Further as per Sl.No.23 and Sl.No.25 of the order of Director / Operation dated 04-10-2011 issued to the Petitioner M/s.Kamatchi Sponge, any injection of power into the grid (before issue of third party sale) is prohibited and any excess energy pumped into the grid without contractual agreement and Open Access approval will not be accounted for any payment. Moreover, the Petitioner filed the petition on 16-12-2013 for fixing the tariff for the unauthorized power supplied during the period as stated supra i.e. after a lapse of two years The Petitioner should have

approached the Commission for determination of tariff before synchronization. Therefore, injection of infirm power from 21-10-2011 to 16-11-2011 is unauthorized and hence, not entitled for payment.

5.4. Further, pumping of energy from 16-11-2011 to 22-11-2011 is also unauthorized since the In-principle approval was issued only for third party sale on 18-11-2011 and STOA approval was given by SLDC on 22-1-2011 and the Petitioner availed the STOA with effect from 23-11-2011. In addition to the above, between 23-11-2011 to 28-11-2011, the petitioner has again pumped energy unauthorizedly after allotment to third party sale. In view of the fact that Clause 10 and 18 of Open Access application dated 18-11-2011 prohibits excess injection over committed power this is also unauthorized injection of power. These clauses are extracted hereunder:

"*10 The generation over and above the committed power by M/s.Kamachi Sponge & Power Corporation Ltd. (petitioner) will not be accounted.*

18 If the HT consumer does not draw the committed power, the generator will not be compensated by TANGEDCO."

5.5. Subsequently the Petitioner in letter dated 19-12-2011 had represented that during the period from the date of synchronization to the declaration of COD they were generating and supplying only firm power and not infirm power as unknowingly informed earlier and they are fulfilling the criteria for firm power as defined in the Commission's Order No.4 dated 15-05-2006, stating that declaration of COD is applicable for SPV and IPP generating plants and not to captive generating plants and requested to make payment by applying UI rate mechanism and also prayed to make payment for the total "firm power" supplied during the following periods and for

the quantum mentioned at the appropriate rate fixed by TANGEDCO itself as per the available norms.

Sl. No.	Period	Energy claimed to have been pumped
(a)	21-10-2011 to 00.00 hrs. on 16-11-2011	11,60,707 units.
(b)	00.00 hrs. on 16-11-2011 (COD Date) to 22-11-2011	7,77,826 units
(c)	23-11-2011 to 27-11-2011 till meter reading	3,64,475 units

5.6. Order No.4 dated 15-05-2006 (order on the fossil fuel based captive generating plants of co-generation) of the Commission specifies UI rates as power purchase rates from CPPs / Co-gen plants.

5.7. The provisions in Order No.4 dated 15-05-2006 are not applicable for purchase of infirm power till COD i.e. during trial and test run. It is only applicable for purchase of surplus power from captive generating plant on regular basis which are covered by Agreements.

From the above, it is very clear that the action of the petitioner in injecting power for the periods supra are unauthorized and it is a threat to the grid security and safe and economic operation of the grid, which is in addition to the violation of statutory provisions.

5.8. The Commission in order dated 7-10-2011 in D.R.P.No.12 of 2011 (M/s.OPG Power Generation Ltd. Vs. TNEB) held that no compensation is payable for the energy injected into the grid in the absence of approval of Open Access. Further it was held that no compensation is payable to the Petitioner therein 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.

5.9. The Petitioner is not in a position to differentiate between firm power and infirm power and seeks to settle payment with their vague claims for the unauthorized energy pumped into the grid, which was rightly rejected by the Respondent. The Respondent had also replied to all the representations made by the Petitioner. It has been the practice of many generators who have pumped energy unauthorizsedly to take shelter under the pretext that the Distribution Licensee has enjoyed the benefit of energy that has gone into the system. Such a prayer is fundamentally erroneous, because it tries to justify the illegality committed by the generator.

5.10. The State grid is a large network which handles more than 12,000 MW. The State network is connected to National grid and power flow takes place in both directions (import / export). The grid is operated based on the demand and supply. The frequency of the grid is maintained between 49.70 Hz and 50.20 Hz with effect from 05-03-2012 and the frequency band width was changed to 49.9 Hz to 50.5 Hz with effect from 17-01-2014 as per CERC's directions. Any unauthorized injection or withdrawal of power into or from the grid would impact the safe and economic operation of the grid. Hence such practices are to be curtailed.

5.11. The APTEL's order dated 16-05-2011 in Appeal No.123 of 2010 (M/s.Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission) is squarely applicable to this case and the order in the Appeal No.170 of 2012 dated 24-01-2013 (M/s. Bangalore Electricity Supply Company Limited Vs. M/s.Reliance Infrastructure Ltd.) is not applicable to the Petitioner's case, as the facts of the Petitioner's case are different.

5.12. The Commission in its order dated 15-09-2014 made in P.P.A.P.No.1 of 2013 (M/s.Cauvery Power Generation Chennai Pvt. Ltd. Vs. TANGEDCO and others) observed as follows:-

> *"6.13 While TANTRANSCO is the authority concerned with transmission of electricity, TANGEDCO is concerned with the purchase of electricity from the generators" ..... "Mere request on the part of the Petitioner to sell the infirm power generated during the period of testing and commissioning to the Respondents will not create an obligation on the part of the Respondent to pay.*
> *6.14. The Commission concludes that the Petitioner is not entitled to claim payment for whatever infirm power injected into the grid by the Petitioner Generator from 17-10-2012 to 25-10-2012 without getting express approval from the TANGEDCO".*

5.13. Therefore in the present case, the entire energy pumped by the petitioner during the periods 21-10-2011 to 00.00 hours on16-11-2011, 00.00 hours on 16-11-2011 to 22-11-2011 and 23-11-2011 to 27-11-2011 till meter reading is unauthorized and therefore Commission is not inclined to direct the Respondent to make payment for the unauthorized injection of power by the Petitioner.

6. Appeal:-

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

(Sd…….)
(**G.Rajagopal)**
Member

(Sd…….)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission