

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

PRESENT:-

ThiruS.Akshayakumar **Chairman**

and

Thiru.G.Rajagopal **Member**

M.P.No.38 of 2012

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

Vs.

1. Tamil Nadu Spinning Mills Association (TASMA)
No.2, Karur Road, Near Beschi College
Modern Nagar, Dindigul – 624 001
Represented by its Chief Advisor
Dr.K.Venkatachalam
(Petitioner in W.P.(MD) No.12650 of 2012)
2. Madras Cements Ltd.
Ramamandiram
Rajapalayam, Virudhunagar District
Represented by its General Manager (Administration)
Dr.R.Venkataraman
(Petitioner in W.P.(MD) No.12749 of 2012)
3. Indian Wind Power Association (IWPA)
Branch Office, 3rd Floor, 17 & 18, North Veli Street
Madurai – 625 001
Represented by its Secretary General
Dr.Rishi Muni Dwivedi
(Petitioner in W.P.(MD) No.12750 of 2012)
4. Southern India Mills' Association (SIMA)
Rep. by its Authorised Signatory
N.Selvaraj
Regional Office at Door No.1066
Tenkasi Road, Rajapalayam – 626 117.
(Petitioner in W.P.(MD) No.12885 of 2012)

...Respondents

Counsel for Parties: ThiruS.P.Parthasarathy, Advocate for TASMA
Thiru Rahul Balaji, Advocate for IWPA
ThiruN.L.Raja, Advocate for SISMA

Dates of hearing: 16-11-2012, 17-03-2014, 09-04-2014
14-07-2014, 17-04-2015, 13-11-2015
30-12-2015 and 11-02-2016

Date of Order: 09-12-2016

ORDER

1. The Tamil Nadu Generation and Distribution Corporation (TANGEDCO) filed the above Miscellaneous Petition with the prayers as stated below without impleading any Respondents. Since the petition has been filed pursuant to certain oral observations made by the Madras High Court (Madurai Bench) on 08-10-2012 in W.Ps. No.12650 of 2012, 12749 of 2012, 12750 of 2012 and 12885 of 2012 filed by the Respondents herein, TANGEDCO was directed by the Commission on 17-03-2014 to implead the above Writ Petitioners as party Respondents to the proceeding in M.P.No.38 of 2012. Accordingly, the TANGEDCO impleaded Tamil Nadu Spinning Mills Association (TASMA), Madras Cements Limited, Indian Wind Power Association (IWPA) and Southern India Mills Association (SIMA) as Respondents and filed the M.P. afresh on 09-04-2014. The above petition has been heard on 14-07-2014, 17-04-2015, 13-11-2015 and 30-12-2015. The above M.P.No.38 of 2012 came up for final hearing on 11-02-2016. The Commission after perusing the above petition and connected records and after hearing the submissions of the Petitioner and Respondents hereby makes the following :

ORDER

2. Prayer of the Petitioner in M.P.No.38 of 2012:-

The prayer of the Petitioner in M.P.No.38 of 2012 is -

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

3. Contentions of the Petitioner in M.P.No.38 of 2012:-

3.1. The Madurai Bench of the Madras High Court has, on 08-10-2012 in the course of hearing a batch of Writ Petitions No.12650/2012, 12750/2012, 12885/2012 filed by various Associations of Wind Energy Generators and W.P.No.12749 of 2012 filed by M/s.Madras Cements Ltd., orally directed to obtain certain clarifications regarding Commission's Order No.6, dated 31.07.2012.

3.2 The background of the present petition:-

The Commission in supersession of the Order No.1, dated 20.03.2009 issued Comprehensive Tariff Order on wind energy in Order No.6, dated 31.07.2012. In the said order, the Commission ordered to collect charges on cash basis. In order to implement the above order, the TANGEDCO issued a Circular Memo, dated 01.09.2012 containing the instructions and procedures to be followed by the Superintending Engineer/Electricity Distribution Circles.

3.3. In the said circular memorandum, among other things, the following were ordered:-

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

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

(iii) For adequate security for the transmission charges, scheduling & system operation charges, it was instructed to collect the amount equivalent

to three months average billing as Security Deposit. It was further instructed to collect this Security Deposit at the generating end either in cash or in the form of irrevocable Letter of Credit.

3.4. The TASMA, M/s.Madras Cements Limited, IWPA and the SIMA have filed Writ Petitions No.12650/2012, 12749/2012, 12750/2012 & 12885/2012, respectively, at Madurai Bench of Madras High Court challenging the said Circular Memo dated 01.09.2012, among other things, on the following reasons:-

- (i) Instead of collecting transmission charges at pro rata basis based on the capacity of the (WEG), TANGEDCO is collecting the charges per day per MW or part thereof, even though the Commission has not instructed to do so in Order No.6, dated 31.07.2012.
- (ii) TANGEDCO is collecting Security Deposit of charges equivalent to 3 (three) months for transmission charges scheduling & system operation charges even though the Commission has not instructed to do so in Order No.6, dated 31-07-2012.
- (iii) Instead of collecting all the charges at wheeling end circles as instructed by the Commission in Order No.6, dated 31.07.2012, the TANGEDCO is collecting such charges at generating end circles.

3.5. On 26-09-2012, the High Court granted interim stay of operation of the Circular Memo, dated 01.09.2012 upto 08.10.2012. TANGEDCO filed its Counter Affidavit on 08.10.2012 and argued that, Order No.6, dated 31.07.2012 was implemented without any deviation. In Order No.3, dated 15-05-2006 and Order No.1 dated 20-03-2009, the transmission charges, wheeling charges and line losses were fixed as 5% in kind. In Order No.6 dated 31-07-2012, except line losses, all other charges have become payable in cash.

3.6. Each and every issue was explained in detail, and as per TANGEDCO's understanding of the said order, TANGEDCO issued the instructions to collect the transmission charges at per day per MW or part thereof. As to the collection of charges at generating end EDC the TANGEDCO argued before the Court that since the TNEB has been unbundled as TNEB Ltd, TANGEDCO and TANTRANSCO, to have a proper accounting to the concerned departments, it was instructed to collect certain charges at generating end EDC and certain charges at wheeling end EDC. For collection of Security Deposit for transmission charges and scheduling & system operation charges, TANGEDCO argued that based on the Commission's Intra State Open Access Regulation, 2005 the Security Deposit was collected. But, the Petitioner Associations contented that, for wheeling of wind energy, the Commission's Intra-State Open Access Regulation, 2005 would not apply and that the Order No.6, dated 31.07.2012 alone would apply for all the transactions inasmuch as in the Order No.6 of 2012, the Commission has not deliberated the action of TANGEDCO even though Para 8.8 of Order No.6 of 2012 was brought to the notice of the High Court.

3.7. During the course of hearing on 08-10-2012, the High Court orally directed the TANGEDCO to file a clarificatory petition before the Commission and file a copy of the petition along with the affidavit to the Court on the next hearing on 17.10.2012. Based on the direction of the High Court, the present clarification petition was filed before the Commission.

3.8. Based on the bona fide understanding of Order No.6 of 2012, the Circular Memo, dated 01-09-2012 was issued by the TANGEDCO in respect of the following:-
Transmission Charges:-

- (i) In Order No.2 of 2012, dated 30-03-2012, the Commission has fixed transmission charges of Rs.6483/MW/day for conventional power.
- (ii) As a promotional measure under section 86 (1) (e) of the Electricity Act, 2003, the Commission has decided to fix 40% of the conventional power to the wind power in Order No.6 of 2012 dated 31-07-2012.
- (iii) In the said order, it has not been clearly specified about the charges collectable for part capacity / fractional capacity.
- (iv) In Order No 2, dated 15-05-2006, the Commission fixed transmission charges of Rs.2781 per day per MW for the conventional power.
- (v) Subsequently, in amendment Order No.2-1, dated 29-11-2007, the Commission issued the amendment to Order No.2, dated 15-5-2006. In the amendment, the Commission fixed the transmission charges at Rs.2781/- per day per MW or part thereof.
- (vi) On the same analogy, the TANGEDCO issued the instruction, dated 01.09.2012 to the field officials to collect the transmission charges at Rs.2593.20 per day/per MW or part thereof from the wind energy generators.
- (vii) However, in clause 8.9 of the order (scheduling & system operation charges), the Commission fixed RS.600 per day for 2 MW capacity and that if the capacity is less than 2 MW, the charges should be in proportion.
- (viii) For recovery of scheduling & system operation charges, the Commission specifically mentioned that it should be in proportion to the capacity.
- (ix) Based on the analogy of the previous order of the Commission including Order No.2 of 2006, dated 15.05.2006, it was instructed to

levy the transmission charges at Rs 2593.20/- per day per MW or part thereof.

3.9. Security Deposit:

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

3.10. Collection of charges at generation end and wheeling end:

- (i) Till 31-07-2012, the transmission and wheeling charges were paid only in kind and not in cash and hence the place of recovery does not raise.
- (ii) Para 8.11.2 of Order No.6, dated 31-07-2012 specified that if a WEG utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the month for the net energy supplied.

- (iii) Accordingly, TANGEDCO advised to collect the current consumption charges for the net energy supplied by the distribution licensee after adjusting the energy supplied by the generators from current month generation and banking at the wheeling end.
- (iv) As provided in para 8.12.2 of the order No.6, dated 31-07-2012, the security deposit for energy bill (current consumption charges) is equivalent to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year .
- (v) Regulation 18 of the Commission's Intra-State Open Access Regulations, 2005 permitted the licensee to recover three months' average of the billing of transmission charges, wheeling charges, scheduling & system operation charges as security deposit by the respective agency.
- (vi) The security deposit for transmission charges and wheeling charges have to be made to the respective agency within 30 days from the date of commencement of availing of open access.
- (vii) The above provisions clearly say that the billing treatment should be different for energy charges covered by the Tamil Nadu Electricity Supply Code for the energy supplied by the Distribution Licensee and the open access charges under the Intra State Open Access Regulations, 2005 read with the order on wind energy passed by the Commission including Order No.6 of 2012.
- (viii) The net energy charges of the consumer is collected from the consumer after adjusting the energy allocated by the WEGs to the consumer at the wheeling end.
- (ix) The Electricity Act, 2003 and the Intra State Open Access Regulations, 2005 permit the generator to adjust the generation in more than one service connections. Most of the generators adjust their generation in more than one

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

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

3.11 The Petitioner's Associations and M/s.Madras Cements Ltd. contended before the High Court that the Commission's Open Access Regulation, 2005 do not apply to WEG for captive use. Already lot of representations from various Generators and Associations were received by TANGEDCO, for treating WEG as Captive Generating Plant as per section 9 of Electricity Act, 2003 and the Electricity Rules, 2005 for wheeling of wind energy for captive use. In order to avoid litigations and to have a clear cut explanation to treat the wind energy generators as Captive Generating Plant, the TANGEDCO has submitted the following as suggestions/views for revision of Order No.1 dated 20-03-2009 and requested the Commission to

address the issue in the order to be issued on Comprehensive Tariff Order on Wind Energy.

3.12. Regarding adjustment of generated energy, the Commission after elaborately hearing the stakeholders, ordered in Para 8.8. of Order No.6 dated 31-07-2012, that section 9 (2) of the Electricity Act, 2003 confers on the captive generator the right to open access for the purpose of carrying electricity from the captive plant to the destination of his use. Adjustment of generated energy shall be done as per the Commission's open access regulation in force. Therefore, it is evident that WEG is to be treated as Captive Generating Plant and as such the Intra-State Open Access Regulations, 2005 are applicable to the Wind Energy Generators also.

3.13. Even assuming but not admitting that the Intra State Open Access Regulations, 2005 are not applicable to WEGs then the Licensee / TANGEDCO has no obligation to permit wheeling of wind energy by the respective WEG and consequently TANGEDCO may be relieved off the said obligation. Order No.6, dated 31.07.2012 is effective from 01.08 2012 and as such any clarification issued by the Commission in this regard may also be made effective with effect from 01.08.2012.

4. The Contentions of the Respondents on the prayers of the Petitioner:-

Prayer 1:

"To clarify whether the transmission charges to be collected by TANGEOCO may be per day per MW or part thereof basis (or) in proportion to the capacity of the WEG."

Contentions of the TASMA, IWPA and SIMA on the above prayer:-

4.1. The Commission has made specific provision on this aspect in para 8.3.3. of its Comprehensive Order dated 31.07.2012.

Much contrary to the above orders of the Commission, the petitioner TANGEDCO, by issuance of the Impugned Memo, instructed the Superintending Engineers to collect Transmission Charge on a part thereof (i.e) at 40% of Rs.6483 for all the machines up to 1 MW without proportion or pro rata basis depending on the capacities of the WEG. Hence, even a 225 KW machine has to pay at 1 MW rate and not at 225 KW rate in proportion to its capacity. The Commission has specifically ordered to collect at pro-rata basis and therefore, it has ordered the rates to be collected at the 40% rate of Rs.6483 per MW per day. Therefore, the calculation of the Petitioner TANGEDCO in a flat rate basis irrespective of the capacity is erroneous. Hence, even a 225 KW machine has to pay at 1 MW rate only and not at 225 KW rate in proportion to its capacity. The Commission has specifically ordered to collect at pro-rata basis and therefore, it has ordered the rates to be collected at 40% of Rs.6483/-. The order of the Commission was therefore, greatly violated by the Petitioner TANGEDCO by issuing the Impugned Memo.

4.2. In the amendment Order No. 2-1 dated 29/11/2007 the Commission has fixed the transmission charges at Rs.2781 per day per MW or part thereof. Even in the earlier Order No.2 dated 15/5/2006, it was mentioned as per MW or part thereof. Now, the Commission in their Order No.6 of 2012 dated 31/7/2012 under para 8.3.3 have mentioned transmission charges at 40% of the charges for conventional energy and in respect of wheeling also it is 40% of conventional power charges.

4.3. The Commission has arrived at the transmission charges based upon the total transmission charges divided by the total available transmission capacity by adding all the individual wind mills capacity in their ratio and the same has not been rounded off to the MW basis. Hence the Petitioner TANGEDCO cannot take a stand that they will charge full amount even for the machine with lesser capacity below 1 MW especially when the transmission charges have been arrived by adding all the wind generator capacity together.

4.4. In Order No.6 of 2012 the Commission has deliberately omitted the word "or part thereof" implying that the transmission charges has to be collected proportionate to the capacity only. The Petitioner TANGEDCO has issued the Impugned Memo contrary to the above orders of the Commission and has instructed the Superintending Engineers to collect Transmission Charge on a flat rate basis (i.e.) at 40% of Rs.6483 for all the machines up to 1 MW without proportion or pro rata basis depending on the capacities of the WEG. In the Order No.6 of 2012, the Commission indicated the transmission charges mentioned in the Order No.2 dated 29.11.2007 and in respect of wind, it has been mentioned as 40% of the charges of conventional energy. No order has been passed to charge even for the lesser capacity wind turbines of 250 KVA, 650 KVA etc to be treated as per MW.

5. Prayer 2:

"To confirm that the TNERC Intra State Open Access Regulations, 2005 is squarely applicable to the wind energy generators who wheeled their power for captive use or for third party sale."

5.1. Contentions of TASMA, IWPA and SIMA on the above prayer:-

The Comprehensive Tariff Order dated 31.07.2012 is exclusively on matters relating to wind energy and only because of that it is called as a Comprehensive Tariff Order. As such, all the charges are to be regulated only as per the said order dated 31.07.2012. Since wheeling and all other matters relating to wind energy are being dealt with exclusively the Tariff Orders issued so far on 15.05.2006 and 20.03.2009 and the order dated 31.07.2012 need to be implemented in the same manner as was implemented when other orders on the subjected matter are issued by the Commission. Hence, any other orderlike Commission's Intra State Open Access Regulations, 2005 are to be read independently and not clubbed together. So far, the petitioner TANGEDCO was implementing all the orders dated 15.05.2006 and 20.03.2009 only in the above manner, even though Commission's Intra State Open Access Regulations, 2005 are being enforced separately from 2005 onwards. Hence, TANGEDCO is unnecessarily complicating the issue by seeking this clarification and therefore, it should be made clear that collection of any other charge with the strength of any other order is not required when a specific and comprehensive order is available for the wind energy sector separately.

5.2. Had the Commission felt that Intra State Open Access Regulation, 2005 would be applicable even for the wind energy, the Commission would have clearly mentioned the same in the tariff order 6 of 2012. As the Commission has not mentioned of the Intra State Open Access Regulation, 2005 for the wind generators in the Tariff Order, the wind tariff order is the exclusive order and the Petitioner TANGEDCO should not make an attempt to club this.

6. Prayer 3:

" To clarify whether collection of security deposit equivalent to three months average billing of transmission charges, wheeling charges scheduling & system operation charges from the wind energy generator who wheeled their energy for captive/third party use by TANGEDCO is in order."

Contentions of TASMA, IWPA and SIMA on the above prayer:-

Demand to pay deposit of 3 months average charges is also not supported by the Comprehensive Order 31.07.2012 issued by the Commission. In fact, for the wind energy generators, being administered by the petitioner TANGEDCO, it has to provide the security deposit as per the National Tariff Policy. But, however the Commission was kind enough to make a favour to TANGEDCO in the said matter and accordingly, waived the system of payment of security deposit by TANGEDCO to the wind energy generators in Para 8.12.1 of the Comprehensive Tariff Order dated 31.07.2012.

The consumers are already paying the charges in advance in their respective circles and therefore a security deposit of three months should not be insisted from the consumers. Para 8.12.1 of the Comprehensive Tariff Order dated 31.07.2012 is as below:-

"8.12 Payment security and security deposit

8.12.1 The National Tariff Policy calls for adequate and bankable security arrangements to the generating companies. There are large numbers of WEGs and the monolith distribution licensee cannot offer security for such a large number of WEGs. Delayed payments shall be dealt with as per para 8.11.1 of this order. "

Hence, the impugned Memo to the extent of demanding deposit of 3 months average charges needs to be quashed to that extent, that it is without authority of law and without the approval of the Commission.

7. Prayer 4:

"To declare that open access charges such as transmission charges, wheeling charges, scheduling system operation charges and reactive power charges ordered to be collected at generating end EDC itself is in order, so as to have a

proper and effective collection mechanism and for proper allocations/appropriation of the amount so collected to the respective agencies such as TANTRANSCO, SLDC and TANGEDCO."

7.1. Contentions of the TASMA, IWPA and SIMA on the above prayer:-

As per the requirements of the Electricity Act, 2003, the erstwhile TNEB was split in to various entities like TANGEOCO, TANTRANSCO, SLDCetc.. Each agency has a function of its own as enumerated in the law. The argument of the petitioner TANGEOCO is not a valid one. Whether charges are collected at the generation end or at the consumption end, the collections are going to be enforced by the TANGEDCO only as there is no other agency at the generation end. Further,the request of the TANGEDCO in the manner as support to the clarified amounts to modifying the order dated 31.07.2012 of the Commission and does not amount to seeking any clarification. Seeking a clarification is a different matter and praying for a modification is a different matter. Hence, to pray for a modification of the order dated 31.07.2012, requires to be handled and processed by a separate miscellaneous petition and not through this clarification petition.

The Commission has already made it very clear that all the charges are to be collected only at the consumption end and not at the generation end. The charges now proposed to be collected are,

(i) Transmission Charges;(ii) Transmission Loss Compensation Charges;(iii) Scheduling and System Operation Charges;(iv) Wheeling Charges; and(v) Banking Charges.

7.2. The attempt to collect all the above charges upfront is not valid by law. This is an attempt to collect the amounts as charges even before the required services are rendered. Such a position is not approved by the Canons of Law. So far, the charges

of wheeling and banking were enforced in kind by units and not by cash. However, the practice and collection of these charges are at the consumption end only. Even the Scheduling & System Operation Charges which were paid in cash were being collected so far only at the consumption end.

7.3. Hence, only after the event of transmission, transmission losses and wheeling occurs, the event of collecting in the respective charge should happen. Further, only after the banking of units, banking charges are to be collected. In such circumstances, the order dated 31.07.2012 is perfectly correct as far as the point of collection of charge and accordingly, only at the consumption end, they all need to be collected. If the TANGEDCO feels to collect it at the generation end, it has to file a separate MP with a separate prayer.

7.4 The following is the relevant portion of the order dated 31-07-2012:-

"8.11.4. Excess consumption will be charged at the tariff applicable to consumer subject to the terms and conditions of supply. Transmission and wheeling charges, scheduling and system operation charges and cross subsidy surcharge as applicable, shall be recovered from the open access customer. T&D loss shall be adjusted in kind as per Para 8.3 Thenet amount recoverable from the consumer shall be raised in the bill."

The term bill, as noted above refers to CC bill issued every month and therefore, there is no provision available to collect it upfront at the generation end.

Therefore, all the charges have to be collected only from the consumer and not from the generator. Accordingly, collection of charges at the generation end is not possible and it is possible only at the consumption end.

7.5. The petitioner TANGEDCO is not having any reverence to the Commission. First it started interpreting the Comprehensive Tariff Order on Wind Energy dated

31.07.2012 in its own way and fashion without even caring or bothering whether such an interpretation is correct as per the contents of the tariff order. However, it has given its own working instruction in the impugned Memo dated 01.09.2012. When things were pointed out by the 1st Respondent, the TANGEDCO has never cared to give any reply. It neither attempted to file any clarification petition before the Commission to know whether it is a right in issuing such working instructions at that point of time itself.

7.6. The Respondents having no other alternative remedy approached the High Court by the Writ Jurisdiction. Then only the TANGEDCO came forward to provide an undertaking before the High Court that it would get the matter clarified with the Commission.

7.7. Even in the present petition, under the guise of seeking clarifications, the TANGEDCO is attempting to modify the Tariff Order itself which is an act needs to be taken very seriously.

7.8. By way of letter No.SEM/DFC/AOR/AS/HT/F.99 Tr.Cha/R.083/14 dated 09.06.2014, the Superintending Engineer has demanded payment of BPSC also on the payment of arrears of transmission charges which was held not claimed by TANGEDCO for the months from 01.08.2012 to 31.08.2013.

The relevant extract from the TN Electricity Supply Code 2004, namely,

5.4 (vii) & (viii) is as follows:

"(vii) In the case of short assessment included in a subsequent bill, surcharge shall accrue in the case of HT consumers, after the due date for the payment of the subsequent bill wherein the short assessment is included and in the case of LT consumers, it shall accrue from the day following the last day of the notice period.

(viii) In the case of short assessment permitted to be payable in installments, the surcharge shall accrue only when there is default in the payment schedule and the surcharge shall be worked out from the day following the day on which the installment fell due and shall be payable along with the amount of installment due.”

Thus BPSC becomes leviable only in case of default in the payment of installment. Due to the pendency of this matter, in the High Court and in view of the issue of interim orders of the high court and transfer of the matter to the Commission, the Superintending Engineers were advised not to collect transmission charges even on pro-rata basis for almost 13 months. Thereafter, the CFC Revenue has issued instruction to collect and on the request made by TASMA, 6 instalments were also granted. However, it was agreed in principle not to levy BPSC for the period from 01-08-2012 to 31-08-2013 during which period, the TANGEDCO was silent. Therefore, the demand for BPSC is not sustainable. The delay in claiming the transmission charges is not attributable to the consumer. Hence, having not claimed the transmission charges in the CC bill and having kept the same pending and even after there being no default in the payment of the amount thereafter in instalments, there is no ground available to TANGEDCO to collect BPSC.

7.9. In the absence of specific provision with regard to point of collection of charges whether at generation end or at wheeling end, TANGEDCO should not assume and presume and arrive at some conclusions to collect the charges both from the generation end and consumption end. In today's IT revolution day, TANGEDCO has got all facilities in the system so that they can understand and take the figures in respect of wind mill generation, consumption, banking etc. wherever the wind mills are located or from consumers. Currently the wheeling charges for other generators, scheduling & system operating charges and cross subsidy surcharges for generators including wind generators are collected from the

consumption end only. The transmission and distribution loss are adjusted in kind. The net amount recoverable from the consumer is raised in bills and the same is remitted at the consumption end only.

7.10. In line with the contents already available in the Comprehensive Tariff Order on Wind Energy dated 31.07.2012, it needs to be clarified to the extent that-

- (i) The Transmission Charge is only per MW and therefore, it cannot be on a part thereof basis, and it shall always be in proportion to the capacity.
- (ii) The Comprehensive Tariff Order shall be read with in its letter and spirit and therefore, it need not be clubbed together with Intra State Open Access Regulations, 2005 as was being done all these years.
- (iii) Security deposit is not specifically ordered in the Comprehensive Tariff Order on Wind Energy and therefore, seeking to claim the same is not authorized by the order specifically. If at all such an arrangement is required, the Petitioner should represent the matter during the future tariff revision exercise.
- (iv) All the charges are to be collected only at the consumption end and not at the generation end upfront even before the services are rendered.

8. Findings of the Commission:-

8.1. This petition filed by TANGEDCO is pursuant to the submission made before the Madurai Bench of Madras High Court in the Writ petitions(MD) No.12650,12749,12750, and 12885 of 2012 that the Commission would be approached to obtain clarifications on the issues challenged by the respondents with reference to the petitioner's memo. dt.1.9.2012. The above stated writ petitions

have been disposed on 17.10.2012 in terms of the undertaking provided by TANGEDCO to approach the Commission for clarification on the related issues with the interim order on stay of the memo. dt.1.9.2012 to continue until passing of the orders by TNERC ensuring that all persons concerned are heard.

8.2. The circular memo. dt.1.9.2012 issued by the petitioner contained instructions and procedures to be followed by their officers for implementing the Order No.6 of 2012 dt.31.7.2012 on wind energy. The respondents, inter alia, challenged the instructions issued by the petitioner on collection of transmission charges per MW/day or part thereof basis instead of pro-rata basis and on the collection of security deposit for transmission and wheeling charges, scheduling and system operation charges equivalent to three months . However, the petitioner has sought clarifications on the following issues:

- (i) To clarify whether transmission charges to be collected may be per day per MW or part thereof - basis or in proportion to the capacity of the wind energy Generator.
- (ii) To confirm that the TNERC Intra State Open Access Regulations,2005 are squarely applicable to the wind energy generators who wheel their power for captive use or for third party sale.
- (iii) To clarify whether collection of security deposit equivalent to three months average billing of transmission charges, wheeling charges and scheduling and system operation charges from the wind energy generators who wheel their energy for captive/third party use is in order.
- (iv) To declare that open access charges such as transmission charges, wheeling charges, scheduling and system operation charges, reactive energy charges ordered to be collected at generating end Electricity Distribution circle is in order.

8.3. TANGEDCO was directed to implead all the writ petitioners as respondents in this Miscellaneous petition. Accordingly, the writ petitioners were impleaded as

respondents in this miscellaneous petition as directed and they have filed their counter statements. The Commission has heard their arguments and has perused their written submissions. The analysis and decision of the Commission with reference to submissions of the petitioner, the respondents and the provisions in the Act/Regulations/Orders on the issues sought to be clarified are as follows:

8.4. Issue No.1 -

8.4.1. The petitioner has contended that the Order No.6 of 2012 dt.31.7.2012 on wind energy does not clearly specify the transmission charges to be collected for fractional generating capacities. In the Order No.2 dt.15.5.2006, this Commission fixed transmission charges of Rs.2781 per day per MW for conventional power. Subsequently, by an amendment to the said order No.2, Commission fixed transmission charges at Rs.2781 per day per MW or part thereof. Drawing an analogy from the said amendment, the petitioner has issued instructions in memo.dt.1.9.2012 to collect transmission charges at Rs.2593.20 per day per MW or part thereof from wind energy generators.

8.4.2. The respondents have contended that para 8.3.3 of the Order No.6 of 2012 clearly states that 40% of the charges applicable for conventional power, i.e 40% of Rs.6483/- needs to be collected per day per MW and this would mean that the charges to be collected should be in proportion to the capacity of the wind generator. Collection of charges by TANGEDCO on a flat rate basis irrespective of capacity is totally wrong.

8.4.3. In this context, it is necessary to examine the relevant regulations/orders issued by the Commission:

(i) The Commission issued Order No.2 of 2012 dt.30.3.2012 on Intra State Transmission tariff and other related issues wherein the transmission charges for conventional power was fixed at Rs.6483/MW/day. In the Order No.6 of 2012 dt.31.7.2012 on wind energy, as a promotional measure under section 86 (1) (e) of the Act, 2003, Commission fixed 40% of the transmission charges as applicable for conventional power for the wind energy generators.

(ii) Regulation 59 of TNERC's Terms and Conditions for the Determination of Tariff Regulations, 2005, provides that the monthly transmission charges payable by the distribution licensee and other Long Term Intra State Open Access Consumers shall be based on the Transmission Capacity allocated to each of the beneficiaries. That is to say, the transmission charges payable by an open access customer shall be calculated by dividing the aggregate transmission charges by the sum of allotted transmission capacity to all the long-term open access customers of the intra-state transmission system and multiplied by the capacity allotted to that long-term open access customer. Further, Regulation 20 of the MYT Regulations, 2009, notified by the Commission lay down that the transmission charges payable by the long term intra state open access customers like the distribution licensees and other beneficiaries for each year shall be arrived as per Regulation 59 of the Tariff Regulations and the charges for usage of transmission facilities by long term beneficiaries shall be on the capacity allotted and on MW/Day basis.

(iii) This has been reiterated by the Hon'ble Appellate Tribunal of Electricity in the judgment in Appeal No.91 of 2012 dt.23.11.2012 preferred by M/s.Sai Regency Power Corporation Pvt. Ltd. where the Tribunal has held that the allotted

transmission capacity in the case of wind energy generators should be their respective installed capacity. The extract of the judgment is reproduced below:

“38. In our opinion, the allotted transmission capacity for TANGEDCO should be the summation of its own net generation capacity connected to TANTRANSCO’s transmission system, share in central sector stations, other long term contracted capacity from IPPs connected to the TANTRANSCO’s system, etc. Similarly the allotted transmission capacity for the Appellant and other wind energy generators should be their respective installed capacity.”

iv) Referring to the above findings, the APTEL has also passed orders on 4.2.2013 in the Appeal No.102 of 2012 preferred by M/s.Beta Wind Farm against the Order No.2 of 2012 dt.30.3.2012 on Determination of Intra State Transmission Tariff for TANTRANSCO, for re-determination of transmission charges, which is reproduced below:

“....Similar issue had been dealt with by this Tribunal in Appeal no. 91 of 2012 in the matter of Sai Regency Power Corporation Pvt. Ltd. vs. Tamil Nadu Electricity Regulatory Commission & Ors. wherein the Tribunal gave certain directions for determination of transmission charges payable by the users of the intra-state transmission system. The findings of the Tribunal in the above judgment will also be applicable to this case also. Accordingly, we remand the matter to the State Commission to re-determine the transmission charges payable by all the long term open access customers.”

8.4.4. The provisions in the regulations of the Commission and the judgment of APTEL referred above make it distinct that the determination of transmission charges should be on the basis of allotted transmission capacity in MW, and for the wind energy generators, the allotted transmission capacity is their respective installed capacity, and therefore the transmission charges for the wind energy generators are to be collected in proportion to their installed capacity only and not ‘on part thereof’ basis. TANGEDCO has based its instructions in the impugned memo dt.1.9.2012 on levy of transmission charges on per day per MW or part thereof basis adopting the analogy in the order No.2-1, Dt.29.11.2007 regardless of the provisions in the order No.6 of 2012 and the Commission’s regulations. This

approach of the petitioner is not correct since on and from the first of August,2012, the orders issued in the Order No.6 of 2012dt.31.7.2012 alone will apply to the issue on hand.

8.4.5. The Commission therefore directs the petitioner to collect the transmission charges in proportion to the installed capacity of the wind energy generator.

8.5. Issue No.2 -

8.5.1. The issue of applicability of the Commission's Intra State Open Access Regulations,2005 has been raised by the petitioner in the wake of arguments made by the respondents that the Commission's Open Access Regulations are not applicable for captive users of wind energy. The respondents in their submissions before this Commission have contended that the wind tariff order is a comprehensive order and any other order like the Commission's Intra State Open Access Regulations,2005 are to be read independently.

8.5.2. Firstly, Commission would like to clarify that the regulations made under the provisions of the Electricity Act,2003 are subordinate legislations and have their own sanctity and will prevail over the orders of the Commission.. The regulation cannot be termed as an 'order' as putforth by the respondents.

8.5.3. The primacy of the regulations have been dealt with by the Hon'ble Appellate Tribunal of Electricity in the Appeal No.103 of 2012 dt.24.3.2015. The relevant paragraph is reproduced below:

"43. P.T.C. India Ltd. leads us to conclude that Regulations framed under Sections 178 and 181 of the said Act have a primacy. Being subordinate legislation they rank above orders issued by the Regulatory Commissions in discharge of their functions

under Section 61 read with Sections 62, 79 and 86. They will have to be followed unless struck down by a Court in judicial review proceedings. Regulations made under Sections 178 and 181 have to be consistent with the said Act. Tariff Policy and National Electricity Policy are mentioned in Sections 61, 79 & 86 merely as guiding factors. They do not control or limit the jurisdiction of the Appropriate Commission.”

8.5.4. To answer to the query of the petitioner on the applicability of Open Access Regulations on wind energy generators who wheel power for captive use or third party sale, it is necessary to refer to the provisions in the Commission’s Open Access Regulations and the Electricity Act,2003.

(i) The definition of open access customer in the Commission’s Intra State Open Access Regulations, 2005 is as follows;

“(j)“ ‘Open access customer” means a consumer permitted by the State Commission to receive supply of electricity from a person other than distribution Licensee of his area of supply, or a generating company (including captive generating plant), or a Licensee, who has availed of or intends to avail of open access.”

(ii)The extent of application of the open access regulations have been spelt out in Regulation (3) of the said Open Access regulations, which is extracted below:

“3. Extent of Application

These regulations shall apply to open access for use of intra-state transmission system and/or distribution systems of Licensees in the State, including when such system is used in conjunction with inter-state transmission system.”

(iii) The extract of Note 2 of regulation 6 on ‘categorization of intra state open access customers’ of the intra State Open Access Regulations,2005,is reproduced below:

“Note 2

A generator of electricity through non conventional energy sources shall be treated as long term intra state open access customer and shall be eligible for open access irrespective of the generating capacity.”

(iv) Section 9(2) of the Electricity Act,2003 confers the right to open access to the captive generating plants subject to availability of transmission facility and section 42 of the Act on open access does away with the payment of surcharge in the case of captive generating plant.

8.5.5. A cogent reading of the above provisions in the regulations and Act affirms the fact that the wind energy generators who either wheel their energy for captive use or for third party sale are open access customers and hence are bound by the open access regulations.

8.6.Issue No.3-

8.6.1. The petitioner has contended that prior to the issue of the Order No.6 of 2012 on 31.7.2012, the transmission charges and wheeling charges were collected in kind and it is after the issue of the order No.6 of 2012 that the transmission and wheeling charges had to be collected on cash basis. They have relied on regulation 18 of the Intra state Open Access Regulations,2005 for making a demand on payment security for a period of three months for transmission, wheeling and scheduling and system operation charges from the wind energy generators. Regulation 18 of Intra State Open Access Regulations, 2005 is extracted herein:

“18. Payment Security

(a) As a payment security towards transmission charges, a deposit equal to three months of the average billing on the basis of agreed contract demand or scheduled drawal shall be maintained with the State Transmission Utility.

(b) As a payment security towards SLDC charges, a deposit equal to three months of the SLDC charges shall be maintained with the State Load Dispatch Centre.

(c) As a payment security towards wheeling charges, surcharge and additional surcharge, a deposit equal to three months of average billing for these charges shall be maintained with the distribution Licensee of the area of supply.

(d) Such security may be in the form of cash deposit,irrevocable letter of credit from a local branch of a nationalized bank.

(e) The Open Access customer shall furnish the above payment security within thirty days from the date of commencement of availing open access.”

8.6.2. The respondents have argued that as per the provisions of the National Tariff Policy, the petitioner has to pay security deposit to the wind energy generators who sell their power to TANGEDCO and the Commission was kind enough to make a favour to TANGEDCO and waived the payment of security to the wind energy generators. The consumers are paying the charges in advance, and hence the impugned memo to the extent of demanding deposit for a period of three months average charges needs to be quashed.

8.6.3. The respondents have tried to equate the waiver of payment security to the wind energy generators provided in the Order No.6 of 2012 dt.31.7.2012 with that of the demand made by the petitioner for payment of security deposit in accordance to the open access regulations. The provisions in the Tariff Policy serve as a guidance in the tariff structuring process whereas the regulations of the Commission are binding in nature. The Tariff Order for wind energy i.e Order No.6 of 2012 was issued after a consultative process and with due consideration of the regulatory provisions. Commission waived the payment security in the Order No.6 observing that there are large number of WEGs and the monolith distribution licensee cannot offer security for such a large number of WEGs. Hence, the waiver of payment security made to the distribution licensee cannot be compared with the payment of security deposit for the open access charges by the wind energy generators.

8.6.4. The ruling in Issue No.2 of this order validates the stance taken by the petitioner in demanding payment security on the strength of the provisions in the regulations. The Commission, accordingly holds that the demand of security deposit by the petitioner is in accordance to the provisions in the regulations and is in order.

8.6.5. The issue of the consumer paying charges in advance is dealt in subsequent paragraph of this order.

8.7. Issue No.4 –

8.7.1. Commission's Open Access Regulations,2005 clearly defines the term 'open access customer' which has been extracted in para 8.5.4 of this order. By the definition of Open Access Customer in the said regulations, both the consumer and the generator who avail open access are open access customers.

8.7.2. The provisions in the Commissions' Intra State Open Access Regulations,2005 Regulation 19 & 19A, that deal with the collection and disbursement of open access charges are as below :

“19. Collection and Disbursement of charges

Unless notified otherwise by the Commission, the collection and disbursement of various charges as specified in Regulation 9 shall be governed as follows:

(a) The application registration and agreement fee shall be paid to the respective nodal agency.

(b) The transmission charges for the intra state transmission and wheeling charges in respect of open access customer shall be payable by the open access customer directly to respective Licensees;

(c) The scheduling and system operation charges in respect of open access customers shall be paid to the State Load Dispatch Centre.

(d) The surcharge and additional surcharge shall be paid by the open access customer directly to the distribution Licensee in his area of supply.

(e) The grid support charges shall be paid by the open access customer, directly to the concerned Distribution Licensee.

19-A. Billing and Payment

(1) The licensee / SLDC shall raise bills and the Open Access customers shall pay the charges as below:

(a) Transmission Charges

(i) The STU / Transmission licensee shall raise the bill for transmission charges on the Open Access customers before the 5th day of the succeeding calendar month.

(ii) The open access customer shall pay the charges within seven days from the date of the bill.

(b) Wheeling Charges

(i) *The Distribution licensee shall raise bill towards wheeling charges on the open access customer within five days from the date of meter reading.*
(ii) *The open access customer shall pay the charges within seven days from the date of bill.*

(c) *Scheduling and system operating charges*

(i) *The SLDC shall raise bills before the 5th day of the succeeding calendar month.*
(ii) *The open access customer shall pay the charges within seven days from the date of the bill.*

(d) *Surcharge and Additional Surcharge*

(i) *The Distribution Licensee shall raise bills on the open access customers within five days from the date of meter reading.*
(ii) *The open access customer shall pay the charges within seven days from the date of bill.*

(e) *Grid support charges*

(i) *The distribution licensee shall raise bills on the open access customer for the drawal of power from the grid by the consumer as back up supply under the conditions specified in clause (a) of sub-regulation (7) of regulation 9, within five days from the date of meter reading.*
(ii) *The open access customer shall pay the charges within seven days from the date of the bill.”*

The above regulations provide that the open access customer has to make payment of the relevant charges to the concerned licensee.

8.7.3. Now a reference to the relevant provisions in the Order No.6 of 2012 dt.31.7.2012, brings to light the following:

Extract of Para 8on Reactive power charges and Billing and Payment of Order No.6 dt.31.7.2012 :

“8.6 Reactive power charges:

..... Thus, 25 paise per kVARh will be levied on wind energy generators, who draw reactive power up to 10% of the net active energy generated.”

“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....”

“8.11.4 Excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply. Transmission and wheeling charges, scheduling and system operation charges and cross subsidy surcharge as applicable, shall be recovered from the open access customer. T&D loss shall be adjusted in kind as per Para 8.3. The net amount recoverable from the consumer shall be raised in the bill.”

8.7.4. It is evident from the regulations and the Commission's order that the transmission charges, wheeling charges, scheduling and system operation charges are to be collected from the open access customer, who can be either a consumer or a generator, and the reactive energy charges have to be collected from the wind energy generator.

8.7.5. It would be appropriate that the petitioner collects the open access charges from the applicant seeking open access be it a generator or a consumer.

Issue No.4 stands clarified accordingly.

8.8. The respondents have raised the issue of the attempt made by the petitioner to collect the monthly open access charges upfront. The Commission wishes to draw the attention of the petitioner to regulation 19A of the Intra State Open Access Regulations,2005 which specifies that the bills for the transmission charges, scheduling and system operation charges shall be raised by the licensee/SLDC before the 5th of the succeeding month and for the wheeling charges, surcharge etc. within five days from the date of meter reading. The Commission directs the petitioner to desist from collecting the open access charges contrary to the provisions of the regulations.

8.9. In addition to the above, the respondents also drew attention to a case of demand of belated payment surcharge made by the petitioner's officers on the arrears of transmission charges which were not claimed by TANGEDCO for the months from August, 2012 to August, 2013, in view of the issue of the interim orders of the impugned memo. dt.1.9.2012 by the High Court. Citing the provisions in the regulations 5(4) (vii) and (viii) of Tamil Nadu Electricity Supply Code,2004, the respondents have contended that levy of belated payment surcharge is not

sustainable. Clauses (vii) and (viii) of sub-regulation 4 of regulation 5 in the Tamil Nadu Electricity Supply code are extracted below for easy reference:

“ (vii) In the case of short assessment included in a subsequent bill, surcharge shall accrue in the case of HT consumers, after the due date for the payment of the subsequent bill wherein the short assessment is included and in the case of LT consumers, it shall accrue from the day following the last day of the notice period.

(viii) In the case of short assessment permitted to be payable in installments, the surcharge shall accrue only when there is default in the payment schedule and the surcharge shall be worked out from the day following the day on which the installment fell due and shall be payable along with the amount of installment due.”

The Commission directs the petitioner to act in conformity with the regulations in this regard.

With the above directions, this petition is disposed of.

9. Appeal:-

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

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

(Sd.....)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission