

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
Thiru G.Rajagopal	Member
and		
Dr.T.Prabhakara Rao	Member

P.P.A.P.No.4 of 2014

IOT Mabagas Ltd.
Brooklyn Business Centre
3rd Floor, 103-105, Poonamallee High Road
Chennai – 600 084.

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

Vs.

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director
144, Anna Salai
Chennai – 600 002.

... Respondent
(Thiru M.Gopinathan
Standing Counsel for Respondent)

Date of hearing: 23-06-2014; 26-12-2014; 19-01-2015;
27-04-2015; 30-12-2015; 28-01-2016
28-04-2016; 28-06-2016 and 29-08-2016

Date of Order: 28-04-2017

The P.P.A.P. No.4 of 2014 came up for final hearing on 29-08-2016. Both parties have filed their Written Submissions as directed by the Commission. The Commission upon perusal of the Petition and other connected records and after hearing the submissions of both parties hereby makes the following:

ORDER

1. Prayer of the Petitioner:

The prayer of the Petitioner in the above P.P.A.P.No.4 of 2014 and I.A.No.1 of 2014 in P.P.A.P.No.4 of 2014 is -

- (i) to grant an interim direction to the Respondent TANGEDCO to immediately revise the tariff rate payable to the Petitioner in respect of its 2.40 MW anaerobic bio-gas power plant to the rates stipulated in the Commission's order in P.P.A.P.No.6 of 2010;
- (ii) to fix an appropriate revised project specific tariff in respect of the Petitioner's 2.4 MW Bio-gas Power Plant;
- (iii) to pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Facts of the Case:-

The Petitioner's Power Plant is a 100% Bio-Gas Plant with 2.40 MW capacity. The Petitioner has entered EPA with SE Namakkal EDC on 05-12-2012 for sale of power to TANGEDCO at the power purchase tariff approved by the Commission from time to time for a period of 20 years. The payment is being made by the Respondent at the power purchase tariff as fixed by the Commission for Bio-Mass Power Plant from time to time for the power injected into the grid by the Petitioner's plant. Since there is no separate tariff for Bio-Gas Power Plants, power purchase tariff applicable to Bio-Mass Power Plant is adopted for the Petitioner's plant. The present petition is filed seeking a specific tariff order in respect of the Petitioner's 2.40 MW 100% Bio-Gas Power Plant as tariff fixed by the Commission in Order No.8 of 2012 dated 31-07-2012 is not financially viable for the Petitioner's Plant.

3. Contentions of the Petitioner:-

3.1. The Petitioner Company focuses on waste such as cowdung, animal waste, agro residues, industrial organic wastes like spent wash, press mud, cane trash from sugar factories and distilleries, dairy wastes etc. for the generation of electricity.

3.2. The present tariff rate fixed by the Commission in the Order No. 8 of 2012 dated 31.07.2012 is financially not viable for the petitioner company. Further, in the Energy Purchase Agreement that has been entered into with the TANGEDCO, the petitioner's plant has been mentioned to be a "Bio-mass Energy Generator", which does not truly reflect the plant features and operations.

3.3. The Commission had pronounced an order dated 28.09.2012 in P.P.A.P 6 of 2010 and I.A. No.I of 2011 determining the tariff for Bio-mass based 100 % bio-gas Power Plants, after two public hearings that were held on 03-12-2010 and 20-04-2011.

3.4. In the above order, the Commission has stated that in allied issues relating to captive use and third party sale of generated power the issues approved by the Commission in Bio-mass Order No. 8 of 2012 dated 31-07-2012 are assumed applicable for bio-gas power plants also. In the matter of power procurement by Distribution Licensee from 100% Bio-gas (Bio-methanation) based Power generating plants, it has been proposed that the same shall be at preferential tariff as determined by the Commission as per para 6(4)(1) of the Tariff Policy.

3.5. The Commission issued its first Tariff Order No.3 on "Power Purchase and allied issues in respect of Non-conventional Energy Sources based Generating

Plants and Non-Conventional Energy Sources based Co-Generation Plants" on 15-05-2006. The said order stipulates tariff rates for power procurement by the Distribution Licensee from Wind Energy Generators (WEGs), Bio-mass based generators and Bagasse based co-generators. This was the first Order issued by the Commission on NCES based power plants and the Commission issued the following orders on renewable energy subsequently:

- Comprehensive tariff order on wind energy vide Order No. 1 of 2009 dated 20-03-2009
- Comprehensive tariff order on Bio-mass based power plants vide Order No. 2 of 2009 dated 27-04-2009
- Comprehensive tariff order for Bagasse based co-generation plants vide Order No. 3 of 2009 dated 06-05-2009
- Tariff Order for projects covered by Jawaharlal Nehru National Solar Mission vide Order No. 1 of 2010 dated 27-05-2010
- Tariff Order for Solar Thermal Projects covered by Jawaharlal Nehru National Solar Mission vide Order No. 2 of 2010 dated 08-07-2010
- Comprehensive tariff order on wind energy vide Order No. 6 of 2012 dated 31-07-2012
- Comprehensive tariff order for Bagasse based co-generation plants vide Order No. 7 of 2012 dated 31-07-2012
- Comprehensive tariff order on Bio-mass based power plants vide Order No. 8 of 2012 dated 31-07-2012

3.6. It is submitted that there is no mention of bio-mass based 100 % bio-gas power plants in all the above mentioned orders even though nearly 8.0 MW of 100% bio-gas power plants have been operating as pure bio-gas based plants and generating electricity at the time of the last tariff order. However, the Hon'ble CERC has, in its various Suo Motu petitions and orders thereof as early as February, 2012, indicated the principal conditions, principles and methodologies for determining the tariff for such plants.

3.7. The petitioner submits that the order of the Commission dated 31-07-2012 will not be applicable to the Petitioner's bio-methanation plant at

Namakkal which is getting ready to be operated by the petitioner. Moreover, the Commission has considered a similar matter for fixation of tariff - both fixed cost and the variable cost totaling Rs.4.69 per unit for the financial viability of the plant in respect of many issues in its order in P.P.A.P 6 of 2010 dated 28/09/2012. The petitioner has represented itself in deliberations and public hearing.

3.8. The petitioner submits that even though the order dated 28/09/2012 is a specific order on petition P.P.A.P No 6/2010 and I.A. No 1/2011 of Pallava Water and Power Ltd, which was passed after more than two years of deliberations, the petitioner submits that the said order does not make a mention of other operating or ready to operate 100 % bio-gas or bio-gasification power plants in the State to the tune about 8.0 MW.

3.9. The petitioner states that a meeting with the Expert Committee (constituted based on the hearing of the petition of M/s.Pallava Water and Power Limited on 03/12/2010) was held on 18/02/2011. The Consultative Paper specifically states in para 6.0 as follows:

"6.0 Applicability of proposed order: The order shall come into force from the date of its issue. The tariff fixed in the proposed order shall be applicable to all the bio-gas / bio-gasifier based power generation projects commissioned on or after the date of this order. It should be noted that the existing contracts and agreements between the bio-gas / bio-gasifier generators and the distribution licensee signed prior to this order would continue to remain in force. However, the bio-gas / bio-gasifier generators and the distribution licensee shall have the option to mutually renegotiate the existing agreements / contracts in line with this order before the expiry of the contracts/agreements. Any renewal of the said contracts/agreements, new contracts/agreements shall be in conformity with this order."

However, the final order of the Commission does not incorporate the said clause and has made the order specific only to the petitioner therein. This being the

case, it is the petitioner's submission that the said order in P.P.A.P No. 6 of 2010 does not become applicable to the petitioner.

3.10. Even though the petitioner is also similarly placed as M/s. Pallava Water and Power (P) Limited, in the light of the restrictive applicability of the order in P.P.A.P.No. 6 of 2010, TANGEDCO would not revise the tariff applicable to it, as the same would entail revising the Energy Purchase Agreement and seeking approval of the Commission. Consequently, the petitioner's bio-mass power plant has been receiving tariff at a very low rate, which is affecting the financial viability of the plant.

3.11. An extract from the Comprehensive Tariff Order for Bio-mass based Power Plants dated 31.07.2012 is as follows:-

"1.2.1 The Commission issued Order No. 3 of 2006 on "Power purchase and allied issues in respect of Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co- Generation Plants" on 15-05-2006. The said Order stipulates tariff rates for power procurement by the distribution licensee from Wind Energy Generators (WEGs), Bio-mass based generators and Bagasse based co-generators. This was the first Order issued by the Commission on non-conventional energy sources (NCES) based power plants.

1.2.2. Subsequently, the Commission issued Order No. 2 of 2009 dated 27-04-2009 on "Comprehensive Tariff Order for Bio-mass based Power Plants". This Order covered tariff rates for power procurement by the distribution licensee from Bio-mass based generators. In the said order, the Commission fixed validity of the order up to 31-03-2011. The said order was extended upto 31-12-2011 by Tariff Order No.2 of 2011 dated 12-04-2011. It was again extended for a further period of six months i.e. upto 30-06-2012 by Tariff Order No.5 of 2011 dated 21-12-2011. The validity of the order was further extended upto 31-07-2012 by Tariff Order No.5 of 2012 dated 30-06-2012."

It may be seen from the extract above that the same does not make a mention of bio-mass gasification or bio-methanation plants.

3.12. The above mentioned Tariff Order was issued effective from 01/08/2012 and inter-alia included power sale by Bio-mass Power Generators (henceforth BPG) to any power purchaser in the State of Tamil Nadu. However, in the said order, there is no mention of anaerobic digestion (bio-methanation) based bio-gas plant and moreover, para 5 of the Order on the applicability specifies "many stakeholders have requested for retrospective application of the tariff order, since the Commission has extended the validity of the previous tariff order beyond 31-03-2011. This issue was examined by the Commission." Besides, M/s Pallava Water and Power Ltd during the hearing on concept paper has informed the Commission as under:-

"The Bio-gas tariff under discussion is for co-digestion of multiple substrates. Hence, sentence 2 in the order in para 6.0 under the above heading may be amended as "The tariff fixed in the proposed Order shall be applicable for all Bio-gas power plants based on co-digestion of manure, agricultural residues and other bio-waste/bio-mass gasifier based power generation projects commissioned on or after the date of this order."

3.13. The comprehensive tariff order for Bio-mass based Power Plants, only specifies the terms and conditions for determination of tariff despite the significant comments from interested persons and stakeholders on the consultative paper on "Procurement of Power from Bio-gas and Bio-gasification based Power Plants" and the guidelines specified by the Central Electricity Regulatory Commission (henceforth CERC) in the matter of principles and methodologies for tariff determination, for power generation and transmission activities or the CERC's Suo Motu Order No.35/2012 of 28/02/2012. There has also not been cognizance of the typical anaerobic bio-gas plants under operation in the State or under installation then for grid tie up.

3.14. Since inception of tariff determination for 'renewable sources of energy' as far as bio-mass power plants are concerned, there has been a clubbing of all sources of

power generation utilizing bio-mass, as one single entity, without differentiating the applied plant technology, process, pros and cons and the Comprehensive Tariff Order for Bio-mass based Power Plants dated 31.07.2012 is a generic one, whereas the Hon'ble CERC has done the same for three different types of bio-mass plants as early as February, 2012.

3.15. As on the date of this petition, there are three types of bio-mass plants operating in the State of Tamil Nadu, one using bio-mass with 'Rankine Cycle', another using bio-mass to produce 'combined heat and power' and utilizing the same for power generation, and the third one using bio-mass through 'anaerobic digestion' (bio-methanation process) and producing bio-gas and generating power through appropriate 'internal combustion engines'.

3.16. In the light of the above, the petitioner submits that a comparison of the various parameters of the bio-mass plants will bring to light that each type is entirely unique and incomparable to the other types, even though they use bio-mass as a common input to generate electricity ultimately as the singular output, and have different technical features, capital cost, operational costs, efficiencies and site and logistic support services. For instance, the petitioner states that there must be an efficient dust or ash collector if the bio-mass is burnt - either completely or partially - and it calls for additional equipment for handling this slag or dust efficiently, besides complying with pollution standards. Similarly, while there are environmental costs and no benefits in a bio-mass combustible plant, another type—anaerobic bio-gas plant—produces bio-gas solid and liquid sludge, which can be used as good nutrient manure—an incidental benefit of enormous economic value to the farming community.

Anaerobic bio-gas plants need automatic, extensive and dynamic supervisory and instrumentation control systems to optimize production of bio-gas.

3.17. The above is the rationale behind the CERC's framing of a generic tariff for each one of the types of bio-mass plant with standards, some common to all types of plants and some specific to the plant type, after proper consultations with the prospective developers, reserving its option to go in for specific plant tariff on a case to case basis. This has evidently been necessitated due to the fact that on the basis of the technology and other parameters, tariff would have to be fixed. This would also ensure preferential treatment for a source of energy which is mandated under the Electricity Act, 2003. The relevant extracts of Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 dated 06.02.2012 in this regard is set out below:

"(f) – Bio-mass Gasifier based Power Project- The project shall qualify to be termed as a bio-mass gasifier based power project, if it is using new plant and machinery and having a grid connected system that either uses 100% producer gas engine or, coupled with gasifier technologies approved by MNRE; and or for (g) – Bio-gas based Power Project: uses 100% Bio-gas fired engine, coupled with Bio-gas technology for co-digesting agriculture residues, manure with technologies approved by MNRE" (Definition clause)

84. Deviation from norms Tariff for sale of electricity generated from a generating station based on renewable energy sources, may also be agreed between a generating company and a licensee, in deviation from the norms specified in these regulations subject to the conditions that the levelised tariff over the useful life of the project on the basis of the norms in deviation does not exceed the levelised tariff calculated on the basis of the norms specified in these Regulations.

85. Power to Relax: The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person."

3.18. The variable cost has been permitted to be escalable only by 5%, each year, as against 5.72% which has been ordered by the CERC. The petitioner submits that the Control Period of two years from 01/04/2011, stipulated in the order dated 31/07/2012 may probably be applied to the 100% Bio-gas plant Order dated 28/09/2012. This necessitates a review by the Commission in any case before the middle of 2014-15.

3.19. The tariff rate for the Petitioner's plant be considered on the basis of the actual investment and cost basis and also in line with the relevant norms of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, and its latest Generic Order for 2014-15 given in Suo Motu Petition No.SM/354/2013 dated 07-01-2014 in so far as it relates to anaerobic bio-gas based power projects.

3.20. There is an imperative need to fix the norms of the renewable energy regulations related to bio-mass based anaerobic bio-gas power plants, including its capital cost, as the same is necessary for the viability, survival and sustainability of such bio-mass Power plants. The order in P.P.A.P.No.6 of 2010 is nearly eighteen months old and hence, there is need for an examination of the same, as many of the normative costs incurred to operate the plant have steeply gone up and the plant operatives are not able to maintain the prescribed standards during the operations. This is mainly due to the pre-operative feed stock conditioning needs and post-operative care to conserve the nutrient value of the digestives and the dynamic reactions taking place during the anaerobic process. The aspects of the petitioner's plant operations during 2013-2014 may please be considered for determining the normative parameters of operation, before finalizing the tariff rate.

3.21. The inherent differential process features and consequent plant and machinery needs and costs for power generation, the usage of the terminology of "bio-mass power plants" is without any differentiation of the different technologies adaptable for generating power.

3.22. In its Order No.8 dated 31-07-2012, the Commission has fixed the capital cost of the bio-mass plant and the capital subsidy associated with it as approved by MNRE at Rs.44.50 millions and Rs.15.00 millions per MW respectively, for the bio-mass power plants. The Petitioner's plant of 2.40 MW is a 100% bio-gas plant which has been installed at a cost of Rs.311.59 million with a capital subsidy of Rs.32.38 millions. The Commission's Consultative Paper on "Procurement of Power from Bio-gas and Bio-gasification based Power Plants" has adopted Rs.63.7 million per MW after capital subsidy of Rs.15.0 million / MW, which has been incorporated in its final order on 28-09-2012. From the cost set out by the Petitioner above, it is thus clear that Rs.44.50 millions cannot be the capital cost of a MW bio-gas plant.

3.23. The tariff proposals are submitted to the consideration of the Commission in three different options based on-

- (a) Actual Investment and Costs basis +TNERC norms, wherever needed;
- (b) CERC's order dated 07-01-2014; and
- (c) TNERC's latest order or the order dated 28-09-2012.

4. Contentions of the Respondent:-

4.1. The Petitioner is stopped from claiming higher tariff rates, inasmuch as a Power Purchase Agreement is subsisting between the Petitioner and the Respondent herein.

4.2. The Tamil Nadu Energy Development Agency vide letter dated 16-08-2010 had recommended the proposal of M/s.IOT Mabagas Ltd. towards setting up of Poultry Litter / other organic waste based bio-methanation power plant of capacity 2 MW at Pudhuchathram Block in Namakkal District.

4.3. Based on the above, the Petitioner Company had entered Energy Purchase Agreement with the SE/Namakkal EDC on 09-02-2011 in the format approved by the Commission in line with TNERC Order No.2 of 2009 for selling power to TANGEDCO at the power purchase tariff fixed by the Commission from time to time.

4.4. The Tamil Nadu Energy Development Agency vide letter dated 14-11-2011 has recommended to the TANGEDCO, the proposal of the Petitioner company for enhancement of capacity from 2 MW to 2.4 MW of the Poultry Litter / Other organic waste based bio-gas power plant at Pudhuchathram Block in Namakkal District for issuance of consent and for execution of Energy Purchase Agreement with the TANGEDCO subject to fulfillment of the various conditions stipulated by the TANGEDCO in this regard.

4.5. The proposal of the Petitioner Company for enhancement of Bio-mass Power Plant capacity from 2 MW to 2.4 MW at Thathaiyangarpatti Village, Puduchatram Block, Namakkal Taluk and District had been issued "noted on record" vide Chief Engineer / NCES's letter dated 13-02-2012. Subsequently based on the request of the Petitioner and amendment vide letter dated 13-02-2012 with the deletion of "Under REC Scheme" had been issued.

4.6. The Petitioner company had entered Energy Purchase Agreement with the SE/Namakkal EDC on 05-12-2012 in the format approved by the Commission for selling power to TANGEDCO at the rate fixed by the Commission from time to time. The validity period of the above said Energy Purchase Agreement is 20 years from the date of agreement entered. Accordingly, the Energy Purchase Agreement will expire on 04-12-2032.

4.7. The above referred power plant has been interfaced with the TANGEDCO's grid at Pudansandai 110/22 KV sub-station at 22 KV level. The single line diagram comprising the protection and communication arrangements has been approved by the TANGEDCO vide CE / P&C's letter dated 14-11-2012. The tie up approval for parallel operation of the Petitioner's power plant has been accorded vide Director / Generation's letter dated 01-12-2012. The power plant was commissioned on 20-12-2012.

4.8. The power generated from the Petitioner's power plant is being purchased by the Respondent TANGEDCO at the power purchase tariff fixed by the Commission from time to time. The present tariff for the year 2014 is Rs.4.863 per unit. With regard to revision of power purchase tariff, the Commission has invited comments and suggestions on the Consultative Paper on Power Procurement by Distribution Licensee from Bio-mass based power plants and allied issues relating to captive use and third party sale. In the above said Consultative Paper, the Commission has arrived at the tariff of Rs.5.47 per unit for the year 2014-2015 and Rs.5.67 per unit for the year 2015-2016.

4.9. The payment is being made regularly by the Respondent TANGEDCO at the power purchase tariff as fixed by the Commission for Bio-mass power plants from time to time for the power injected into the grid from the Petitioner's power plant.

4.10. As of now eight Bio-gas power plant with a combined total installed capacity of 13.25 MW established by the private developers inclusive of Petitioner's power plant, are in service. Out of the above, six developers are selling power to TANGEDCO. Since there is no separate tariff for Bio-gas power plants, power purchase tariff applicable for Bio-mass power plant is being adopted for all the above referred power plants and none of the other power plant owners have raised any objection.

4.11. The Commission passed an order dated 28-09-2012 fixing a separate tariff of Rs.6.02 per unit for the year 2012-13 and Rs.6.21 per unit for the year 2013-14 for the various Bio-gas plants proposed to be established by M/s.Pallava Water and Power Pvt. Limited in P.P.A.P.No.6 of 2010 which is project specific. As per clause 8.23.3 "Other conditions" of the above said order, the tariff approved in the order is subject to the condition that these projects shall be commenced within a period spread over six to twelve months of the date of the said order and shall enter commercial operation within a period of two years of their commencement.

4.12. The TANGEDCO has filed an appeal before the Hon'ble APTEL in A.P.No.23 of 2013 against P.P.A.P.No.6 of 2010 on the ground of high cost tariff. The Hon'ble APTEL passed an order on 23-04-2013 in Appeal No.23 of 2013 with the following directions:-

“The Learned Counsel for the Appellant submits that the entire period of six months for commissioning the plant mentioned in the impugned order is already over”. In view of the above, the appeal becomes infructuous.”

In view of the above, the order dated 28-09-2012 fixing a separate tariff of Rs.6.02 per unit for the year 2012-13 and Rs.6.21 per unit for the year 2013-14 for the various Bio-gas plants proposed to be established by M/s.Pallava Water and Power Pvt. Limited in P.P.A.P.No.6 of 2010, has not been implemented by the Respondent, TANGEDCO.

4.13. The Petitioner Company has entered Energy Purchase Agreement on 05-12-2012. The period of agreement is 20 years. As per the above said agreement, the Petitioner Company is bound to supply power to the TANGEDCO at the tariff fixed / to be fixed by the Commission from time to time applicable for Bio-mass power plants. At the time of entering into Energy Purchase Agreement, the Petitioner Company has not raised any objection that the rate applicable for the Bio-mass power plant was not commercially viable for them. Hence, the contention of the Petitioner raised now in this petition that the tariff applicable for Bio-mass plant is not commercially viable for them, is not acceptable.

5. Rejoinder to the Counter by the Petitioner:-

5.1. In the rejoinder to the counter, the Petitioners have stated as follows:-

Each one of the grounds stated are entirely without merit or legal basis. The very purpose of filing the present petition is in order to seek for a determination of appropriate tariff for a bio-gas power plant, such as the petitioner in view of the established position that bio-mass and bio-gas power plants cannot be treated at par. The recognition of this principle is evident from the fact that the Commission had

itself determined a separate tariff for Pallava Water and Power Private Limited in P.P.A.P. No. 6/2010. Such an interpretation is also in consonance with the Power Procurement from New and Renewable Sources of Energy Regulation 2008 which specifically provides that while determining the tariff, the Commission may, to the extent possible, consider to permit an allowance / disincentive based on technology, fuel, market risk, environmental benefits and social impact etc, of each type of new and renewable source.

5.2. Each renewable source of fuel ought to be separately filled, considering the various tariff fixation parameters. The application for determination of tariff is also in consonance with the principle set out under sections 61 and 62 of the Electricity Act, 2003 as the Petitioner has demonstrated the unviability of generation by adoption of the tariff fixed for bio-mass plant for bio-gas plant. The Electricity Act, 2003 specifically requires tariff fixation to be on the basis of commercial principles and inasmuch as it is a, statutory mandate to encourage non-conventional energy sources by granting preferential treatment, it could, by no stretch of reasoning or argument, be stated that the Petitioner's bio-gas plant will not only not enjoy any preferential treatment but it would also be bound to operate in a manner that would make it financially unviable. Such an interpretation sought to be placed by the Respondent is to be rejected.

5.3. The agreement by its very terms permit re-fixation on the basis of orders to be passed by the Commission. The Respondent itself has admitted that it is bound by the tariff rates fixed by the Commission and has been paying the revised tariff that the Commission has been fixing from time to time, though under the tariff for Bio-mass plants. Such being the case, the petitioner's present petition seeks for

fixation of tariff and such fixation once it is done, would automatically apply to the petitioner's PPA. The petitioner is only seeking an exercise of regulatory power to fix the tariff. If the Commission allows such fixation, it would apply to the rates under the bilateral PPA. The only remedy that the petitioner is seeking is that considering the circumstances, it is not advisable to treat bio-mass and bio-gas plants under the same tariff category. Once bio-gas is determined to fall into an exclusive and distinct category, the tariff fixed for such plants would automatically apply to the Petitioner's plant as it is an accepted position between the parties that the petitioner's plant is a bio-gas plant.

5.4. Even at the time of executing the PPA, the Petitioner had specifically attached a condition that the tariff under the PPA would be subject to the TNERC fixing a specific tariff for bio-methanation plants. Therefore both under the PPA as also the communication by the petitioner the parties had clearly accepted the position that the tariff when fixed for bio-methanation plants would apply. The issue of difference in bio-mass and bio-gas plants are also clearly set forth by the various regulators in this regard. TEDA has rightly recommended a 'bio-methanation based power plant'. And the petitioner has built a bio-methanation plant, utilizing anaerobic fermentation process for a capacity of 2.4 MW.

5.5. The CERC has also defined the renewable energy, bio-mass, bio-mass gasification and bio-gas as follows in its Regulations:-

- a. Bio-mass means wastes produced during agricultural and forestry operations (for example straws and stalks) or produced as a by-product of processing operations of agricultural produce (e.g., husks, shells, de-oiled cakes, etc): wood produced in dedicated energy plantations or recovered from wild bushes / weeds; and the wood waste produced in some industrial operations;

- b. 'Bio-mass gasification' means a process of incomplete combustion of bio-mass resulting in production of combustible gases consisting of a mixture of Carbon monoxide (CO), Hydrogen (H₂) and traces of Methane (CH₄), which is called producer gas.
- c. "Bio-gas" means a gas created when organic matter like crop residues, swage and manure breaks down in an oxygen free environment (ferments) (mainly containing about 60 to 65% of methane). Anaerobic Digestion (AD) is a natural biological process where organic material is broken down by bacteria. It is similar to composting but differs in that it takes place in the absence of oxygen. AD is a 4-stage process of hydrolysis, acidification, aceto-genesis and methano-genesis.

5.6. The inputs to any bio-gas power plant will and can be same or similar bio-mass fuel, which undergoes anaerobic fermentation to produce substantial methane (around 65%) in the bio-methanation process, while the bio-mass can also be directly input in a combusting bed to produce what is known as "producer gas" with traces of methane or burnt completely or otherwise to produce power and steam and then generate electrical power.

5.7. The CERC has notified in its Regulation that development in usage of bio-mass is in the nascent stage and that must be recognized in future. The following extracts relevant for consideration at this stage is produced below: (From CERC's Regulations No.L-1/94/CERC/2011, dated: 06.02.2012 - Paragraphs 84 and 85):
"(f) – Bio-mass Gasifier based Power Project-The project shall qualify to be termed as a bio-mass gasifier based power project, if it is using new plant and machinery and having a Grid connected system that either uses 100% producer gas engine or, coupled with gasifier technologies approved by MNRE; and or for (g)- Bio-gas based Power Project uses 100% Bio-gas fired engine, coupled with Bio-gas technology for co-digesting agriculture residues, manure with technologies approved by MNRE."

5.8. The submission of the respondent that the order in Pallava Water and Power Private Limited would not apply is wholly without any basis. The order continues to apply in so far as the legal principles and tariff setting principles that have been set forth thereunder. Merely because a particular project has not come into existence, it does not mean that the order itself cannot be relied upon.

5.9. None of the grounds set forth by the Respondent have any merit.

6. Contentions of the Respondent in the Additional Affidavit:-

6.1. In the additional affidavit filed on 10-04-2016, the Respondent has submitted as follows:-

The Petitioner Company had entered into Energy Purchase Agreement with SE/Namakkal EDC on 05-12-2012 in the format approved by the Commission for selling power to TANGEDCO. The validity period of the above said Energy Purchase Agreement is 20 years from the date of agreement entered. Accordingly, the Energy Purchase Agreement will expire on 04-12-2032. The power plant has been commissioned on 20-12-2012.

6.2. The power purchase tariff applicable for the Petitioner's power plant is governed by the TNERC Order No.8 of 2012. The tariff as per the above order is as follows:-

Fixed costs (Amount in Rs./ Unit)

Year	FCC	Year	FCC
1	1.658	11	1.327
2	1.675	12	1.295
3	1.633	13	1.324
4	1.591	14	1.356
5	1.550	15	1.389
6	1.510	16	1.423

7	1.471	17	1.460
8	1.433	18	1.498
9	1.397	19	1.538
10	1.361	20	1.580

Variable Costs:-

Rs.3.036 per unit for the financial year 2012-13.

Rs.3.188 per unit for the financial year 2013-14.

Applicable tariff for the Petitioner's power plant as on 01-03-2016 is Rs.4.779 per unit.

6.3. The Commission has invited comments and suggestions on the Consultative Paper on Power Procurement by the Distribution Licensee from Bio-mass based power plants and allied issues relating to captive use and third party sale. In the above said Consultative Paper, the Commission has arrived at the tariff of Rs.5.47 per unit for the year 2014-15 and Rs.5.67 per unit for the year 2015-16.

6.4. The variable tariff fixed in the final tariff order to be issued by the Commission on the above said consultative paper, will be applicable for the Petitioner's power plant. At the time of entering into Energy Purchase Agreement dated 05-12-2012, the Petitioner was aware of the fact that the tariff as per Order No.8 of 2012 is applicable for their Bio-gas power plant. The Petitioner is bound to supply power to TANGEDCO at the rate as per the agreement throughout the agreement period. Fixing project specific tariff to the Petitioner's power plant leads other Bio-mass / Bio-gas generators to seek separate power purchase tariff.

7. Written Submission:-

7.1. Pursuant to the order of the Commission to file Written Submissions, both the Petitioner and Respondent have filed a Written Submission on 15-09-2016 and 29-08-2016 respectively.

7.2. Written Submission of the Petitioner:-

In the Written Submission, it has been contended by the Petitioner as follows:-

(a) The present petition has been filed seeking a specific tariff order in respect of the Petitioner's 2.40 MW 100% bio-gas power plant at Namakkal as the present tariff rate fixed by the Commission in the Order No.8 of 2012 dated 31-07-2012 is financially not viable.

(b) In the Energy Purchase Agreement that has been entered into with the TANGEDCO, the Petitioner's plant has been mentioned to be a "Bio-mass Energy Generator", which does not truly reflect the plant features and operations.

(c) The Petitioner had, even at the time of executing the EPA specifically attached a condition as set out in its letter dated 01-02-2011 to the Respondent that the tariff under the PPA would be subject to the TNERC fixing a specific tariff for bio-methanation plants. A copy of the letter dated 01-02-2011 has been filed before the Commission. The Commission has considered a similar matter for fixation of tariff – both fixed cost and the variable cost totaling Rs.4.69 per unit—for the financial viability of the plant in respect of many issues in its order in P.P.A.P.No.6 of 2010 dated 28-08-2012. The Petitioner has represented itself in deliberations and public hearing. At the time the PPA was executed after issuance of the letter of 2011, the issue was still under consideration. Thus even though the order dated 28-09-2012 is a specific order on petition P.P.A.P.No.6 of 2010 and I.A.No.1 of 2011 of Pallava Water and Power Ltd., which was passed after more than two years of deliberations.

(d) A meeting with the Expert Committee (constituted based on the hearing of the petition of M/s Pallava Water and Power Limited on 03-12-2010) was held on 18/02/2011. The Consultative Paper specifically states in para 6.0 as follows:

"6.0. Applicability of proposed order: The order shall come into force from the date of its issue. The tariff fixed in the proposed order shall be applicable to all the bio-gas / bio-gasifier based power generation projects commissioned on or after the date of this order. It should be noted that the existing contracts and agreements between the bio-gas / bio-gasifier generators and the distribution / licensee signed prior to this order would continue to remain in force. However, the bio-gas / bio-gasifier generators and the distribution licensee shall have the option to mutually renegotiate the existing agreements / contracts in line with this order before the expiry of the contracts / agreements. Any renewal of the said contracts / agreements, new contracts / agreements shall be in conformity with this order. "

However, the final order of the Commission does not incorporate the said clause and has made the order specific only to the petitioner therein. Thus the Petitioner herein was put in a peculiar position where it had executed the EPA when the Commission itself was considering a tariff order for plants such as this petitioner but subsequently passed a project -specific order. It was for this reason that the petitioner had to thereafter approach the Commission with this petition.

(e) The Commission issued its first Tariff Order No.3 on "Power purchase and allied issues in respect of Non-conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants" on 15-05-2006. The said order stipulates tariff rates for power procurement by the Distribution Licensee from Wind Energy Generators (WEGs), Bio-mass based generators and Bagasse based co-generators. This was the first order issued by the Commission on NCES based power plants and the Commission issued the following orders on renewable energy subsequently:

- Comprehensive tariff order on wind energy vide Order No. 1 of 2009 dated 20-03-2009.

- Comprehensive tariff order on Bio-mass based power plants vide Order No. 2 of 2009 dated 27-04-2009.
- Comprehensive tariff order for Bagasse based co-generation plants vide Order No. 3 of 2009 dated 06-05-2009
- Tariff Order for projects covered by Jawaharlal Nehru National Solar Mission vide Order No. 1 of 2010 dated 27-05-2010
- Tariff Order for Solar Thermal Projects covered by Jawaharlal Nehru National Solar Mission vide Order No. 2 of 2010 dated 08-07-2010
- Comprehensive tariff order on wind energy vide Order No. 6 of 2012 dated 31-07-2012
- Comprehensive tariff order for Bagasse based co-generation plants vide Order No. 7 of 2012 dated 31-07-2012
- Comprehensive tariff order on Bio-mass based power plants vide Order No.8 of 2012 dated 31-07-2012

(f) In all the above mentioned orders, there is no mention of bio-mass based 100% bio-gas power plants even though nearly 8.0 MW of 100% Bio-gas power plants have been operating as pure Bio-gas based plants and generating electricity at the time of the last tariff order. The Commission had pronounced an order dated 28-09-2012 in P.P.A.P.No.6 of 2010 and I.A.No.1 of 2011 determining the tariff for Bio-mass based 100% bio-gas power plants, after two public hearings that were held on 03-12-2010 and 20-04-2011. This order specifically mentions at para 8.5 that it is a specific order issued and that it is stated to be a 'Specific Order' and was in response to the petitions P.P.A.P. No.6 of 2010 and I.A.No.1 of 2011 filed by Pallava Water and Power Private Limited, Bangaluru-560 001. The Commission has stated that in allied issues relating to captive use and third party sale of generated power the issues approved by the Commission in Bio-mass Order No. 8 of 2012 dated 31-07-2012 are assumed applicable for bio-gas power plants also. In the matter of power procurement by Distribution Licensee from 100% Bio-gas (Bio-methanation) based Power generating plants, it has been proposed that the same shall be at preferential tariff as determined by the Commission as per para 6(4)(1) of the Tariff Policy.

(g) Para 8.5 of the said order, specifies the following relating to the applicability of the order:

"8.5 Applicability of proposed order:-

This is a specific order issued on the petition of M/s. Pallava Water and Power (P) Ltd and not a generic order. This is applicable for the life period of twenty years. "

(h) Furthermore, the Hon'ble CERC has, in its various Suo Motu petitions and orders thereof as early as February 2012, indicated the principal conditions, principles and methodologies for determining the tariff for such plants. Even though the petitioner is also similarly placed as M/s Pallava Water and Power (P) Limited, in the light of the restrictive applicability of the order in P.P.A.P 6 of 2010, TANGEDCO would not revise the tariff applicable to it, as the same would entail revising the Energy Purchase Agreement and seeking approval of the Commission. Consequently, the petitioner's bio-mass power plant has been receiving tariff at a very low rate, which is affecting the financial viability of the plant.

(i) This petition has been filed before the Commission to distinguish the Anaerobic Bio-gas Power Plant from the Bio-mass Power Plants and to fix an Appropriate Revised Project Specific Tariff for the Petitioner's 2.4 MW Bio-gas Power Plant in line with the Actual Investment and cost of the project as per the CERC/TNERC guidelines.

(j) Once a contract is entered into in terms of the Power Purchase Agreement, the Petitioner is entitled to redetermination of the Tariff for its project and under no circumstances can the modification of the contract be held to be incorrect and erroneous as borne out by the Hon'ble APTEL. The Petitioner is supported in this

regard by decisions of the Hon'ble APTEL in the case of Rana Sugars Limited, Chandigarh v. Punjab State Electricity Regulatory Commission & Ors. Reported in 2015 ELR (APTEL) 0164 and M/s. Junagadh Power Projects Private Limited V. Gujarat Urja Vikas Nigam Limited [Appeal Nos.132/2012 & 133/2012] which have upheld the principle that even where a PPA/EPA has been executed and it is later discovered that due to various factors the project is rendered unviable, it is always open for the State Regulatory Commission to issue a Tariff Order and re-fix the tariff even in a concluded PPA.

(k) The CERC has also defined the renewable energy, bio-mass, bio-mass gasification and bio-gas in its Regulations. Further, the CERC has notified in its regulations that development in usage of bio-mass is in the nascent stage and that must be recognized in the future. Under the CERC regulations, Bio-mass and Bio-Gas are treated as two separate categories.

7.3. Written Submission of the Respondent:-

In the Written Submission, it has been contended by the Respondent as follows:-

(a) The fixed cost component of power purchase tariff applicable for the Petitioner's power plant is governed by the TNERC Order No.8 of 2012 as mentioned below:-

Year	FCC	Year	FCC
1	1.658	11	1.327
2	1.675	12	1.295
3	1.633	13	1.324
4	1.591	14	1.356
5	1.550	15	1.389
6	1.510	16	1.423
7	1.471	17	1.460
8	1.433	18	1.498
9	1.397	19	1.538
10	1.361	20	1.580

(b) In P.P.A.P. No.9 of 2011 where M/s.Subashree Bio-Energies (P) Limited, one of the Respondents sought project specific tariff, the Commission has passed an order as follows:-

“..... If M/s.Subashree Bio-Energies (P) Limited had desired to have a project specific tariff, they must have approached the Commission for such tariff determination at that time itself As per clause 36.3 (i) & (ii) of Commission’s Tariff Regulations which prescribes operating norms in respect of various power plants, there is a provision that the terms as in the concluded contract shall prevail. From this it is clear that the provisions of the concluded contracts shall continue to have the force and it cannot be modified unilaterally. Therefore, the Commission is not inclined to interfere into this issue and hence a separate tariff cannot be fixed for them.”

(c) The Commission vide daily order dated 28-04-2016 passed in I.A.No.1 of 2014 in P.P.A.P.No.4 of 2014 has directed the Respondent TANGEDCO to respond to the request of the Petitioner company early.

(d) In compliance with the above directions of the Commission and in response to the Petitioner’s letter received on 28-04-2016, TANGEDCO has sent reply to the Petitioner. TANGEDCO has informed the following in the reply letter:-

“TANGEDCO is not agreeable for fixing project specific tariff for the Petitioner’s 2.4 MW Bio-gas power plant at Thathaiyangarpatti Village, Puduchatram Block, Namakkal Taluk and District as prayed in P.P.A.P.No.4 of 2014 filed before the Commission.

As per clause (5) of Energy Purchase Agreement dated 05-12-2012 executed with the Superintending Engineer/Namakkal EDC, the fixed cost component of tariff as fixed in TNERC Order No.8 of 2012 dated 31-07-2012 and variable cost component of tariff as fixed by TNERC through generic tariff order for Bio-mass power plants from time to time, is applicable for the Petitioner’s 2.4 MW Bio-gas power plant in Namakkal District.”

8. Findings of the Commission:-

8.1. We have carefully gone through written and oral submissions advanced by both sides. It is the contention of the petitioner that there is a distinction between the

bio-mass plants and bio-gas plants in terms of fuel and technology and therefore, there cannot be a parity in terms of tariff. The petitioner has prayed the Commission to distinguish anaerobic bio-gas power plants from bio-mass power plants and fix appropriate revised project specific tariff for petitioner's 2.4 MW bio-mass power plants based on actual investment cost as furnished by him and cost of the project as per the orders of this Commission in PPAP No.6 of 2010 in the matter of M/s.Pallava Water and Power Pvt Limited. Before proceeding to discuss the issue raised by the petitioner it is necessary to understand the legal position arising out of the judgments of the Supreme Court on the subject matter.

8.2. The crux of the issue raised by the petitioner pertains to the powers of the State Commission to modify a tariff fixed in the generic order and whether the petitioner can wriggle out of the commitment arising out of a power purchase agreement. We are conscious of the fact that the revisiting of the tariff fixed in the concluded contract or in the generic tariff order passed by a State Commission in respect of non-conventional sources is no longer anaethema. It is the contention of TANGEDCO that the PPA is sacrosanct and once it is signed it cannot be revisited by a State Commission. We are of the view that the stand taken by TANGEDCO is in line with the decisions of the Apex Court in Gujarat Urja Vikas Nigam Ltd Vs EMCO Ltd and Bangalore Electric Co. Ltd Vs Konark Power Project Ltd which set out the position of law that a power purchase agreement entered in accordance with the statutory provisions on the volition of the parties cannot be revisited. Para-29 of the judgment delivered in Gujarat Urja Vikas Nigam Ltd Vs EMCO Ltd is reproduced below for better understanding of the issue on hand.

“ 29. But the availability of such an option to the power producer for the purpose of the assessment of income under the IT Act does not relieve the power producer of the contractual obligations incurred under the PPA. No

doubt that the 1st respondent as a power producer has the freedom of contract either to accept the price offered by the appellant or not before the PPA was entered into. But such freedom is extinguished after the PPA is entered into.”

8.3. It may be seen that the inviolability and sacrosanct nature of PPAs came up for review before the Apex Court again in C.A.No.5875 of 2012 wherein, though the Apex Court slightly modified its decision and held that the PPA can be reviewed subject to force majeure events, the position in regard to the sacrosanct nature and inviolability of the PPAs has been left undisturbed by the Apex Court. The Apex Court has clearly distinguished the decisions rendered in Gujarat Urja Vikas Nigam Ltd Vs EMCO Ltd, Bangalore Electricity Co. Ltd Vs Konark Power Projects with reference to C.A.No.5875 of 2012 in the matter of GUVNL Vs Tarini Infrastructure. It held that the view that a power producer would not be relieved of contractual obligations was taken only in the context of the prayer of the power producer for availing the benefits of the second tariff order in GUVNL Vs EMCO Ltd case and the specific provision on the inviolability of PPA in the KERC's Regulations in the matter of Bangalore Electricity Supply Co Vs Konark Power Projects and on this score alone it modified its decision of C.A.5875 of 2012 in the matter of inviolability of PPA. Therefore, we are of the view that the PPA cannot be revisited without any supervening impossibility or force majeure still holds good and in the result we are inclined to examine the present prayer of the petitioner with reference to the said position alone. For this purpose, it is to be seen whether there was any force majeure in the nature of uncontrollable factor warranting the intervention of the Commission for modifying the terms of the PPA. We do not see any case for the appellant in this regard on perusal of the records produced before us. Moreover, the petitioner entered into the contract for supply of power from their poultry litter / other organic waste based power plant on his own volition by accepting the tariff

applicable to the bio-mass generators. It is also not the case of the generator that the PPA was entered into under duress or undue influence or fraud and therefore, the PPA entered into cannot be revisited except for a force majeure condition which does not seem to have happened in the instant case. The judgments of the Apex Court in GUVNL Vs EMCO Ltd, Konark Power Project case and also the Tarini Infrastructure cases principally enunciate the position of law that a power producer cannot relieve himself of the contractual obligation under PPA as he had the freedom of the contract either to accept or decline the price for the sale of energy before the PPA was entered and such freedom is extinguished after the PPA is entered. Though the decision of the Supreme Court in Tarini Infrastructure slightly differs from GUVNL Vs EMCO Ltd, Konark Power Project case, the fact remains the inviolability of PPA in the normal circumstances except for force majeure has not been overruled by the Apex Court and the said position remains still untouched.

8.4. In this connection, we are of the view that the decision of the Supreme Court in Mumbai International Airport Vs Golden Chariot Airport would throw more light on the rights of the appellant to seek revision of tariff. The said judgment which deals with the doctrine of election categorically holds that the common doctrine of law prohibiting approbation and reprobation is a facet of law of estoppel and a person cannot make a complete volte-face of his previous stand and choose another stand to suit his convenience. There is no second opinion on the point that the State Commission can revisit the tariff of a non-conventional source based generator even in the face of inviolability of a PPA due to force majeure reasons as held by the Apex Court in Tarini Infrastructure case. However, we are of the view that the petitioner's case stands on a different footing. Firstly we do not see any case of force majeure. Secondly, the contract namely PPA was signed with the full knowledge of the tariff

and other conditions of PPA. The provisions with regard to the promotion of non-conventional sources which cast an obligation on the Commission under the Electricity Act are general in nature and for the common good of the non-conventional sources as a whole and therefore individual cases such as the petitioner's prayer has to be examined on individual merits. To put it otherwise, for every individual grievance, recourse cannot be had to the mandate of promotion of non-conventional sources to unsettle the settled principle of sacrosanct nature and inviolability of contract or disturb the equation of the parties to a contract or frustrate the objects of the Act such as section 61(b) and section 61(d). The petitioner having fully known that the price for the sale of energy, which he is entitled, would be the price as applicable to the bio-mass, cannot turn around now and say that the contract is inequitable to him unless there is a clear case for force majeure. The petitioner having elected to accept the terms of the PPA in regard to the price of bio-mass power cannot now take a different stand unless there is a force majeure. It is seen from the petition that except for stating that the bio-mass power generation and bio-gas power generation are basically different, the petitioner has not come up with any plausible reason for modification of PPA on grounds of force majeure. The promotion of non-conventional sources, a general mandate under the Act, cannot be applied in a straight jacket manner without reference to the specifics of an individual case such as the present one where the petitioner is fettered by the doctrine of election and failed to point out any force majeure or supervening impossibility or any case of coercion, fraud or undue influence in the execution of the contract.

8.5. We would like to further observe that the case of Tarini Infrastructure was one of supervening impossibility, namely, there was an additional expenditure for infrastructure which was not envisaged in the agreement and there was mistake in

in identifying the point of evacuation, i.e., Rakholi and hence, Apex Court chose to modify its decision vis-à-vis GUVNL Vs EMCO Ltd. However, we do not see any supervening impossibility or mistake of fact, or case of coercion or undue influence so as to intervene in the present case. The decision rendered in Gujarat Urja Nigam Ltd Vs EMCO Ltd would apply to this case squarely, as the facts are similar except for a small difference. In case of EMCO Ltd, the Supreme Court upheld the inviolability of PPA for the reason that the petitioner sought the extension of the benefits of the second tariff, which according to Supreme Court would be impermissible during the subsistence of a PPA which defines the rights of the parties. In the present case also, the petitioner seeks the extension of benefits of a project specific tariff fixed in the case of M/s.Pallava Water and Power Pvt Limited in Order dated 28.09.2012 in P.P.A.P.No.6 of 2010 and I.A.No.1 of 2011 during the subsistence of PPA which defines the rights and liability of the parties. In both these cases, the petitioners have contractual commitments in the form of PPA and the only difference is, in the case of EMCO Ltd, the prayer was for extension of benefits of second Tariff Order during the subsistence of PPA and in the case on hand, the prayer is for extension of project specific tariff determination in another case i.e., Pallava case. Except for the slight difference, we are of the view that the circumstances are same and we have to render the decision with reference to the dictum of the Apex Court in EMCO's case. The petitioner also had all the option to seek project specific tariff but chose to accept the bio-mass tariff and hence cannot seek revision now. In the result, we are constrained to hold that the petitioner cannot avoid contractual obligation under PPA with TANGEDCO.

8.6. If the licensee chooses not to pass on to the consumers or create regulatory assets and absorbs all the additional expenditure in its own financials, it would lead to erosion of capital and it would go against Section 61(b). In any event, the

contract, namely PPA which does not suffer from any infirmity such as fraud, undue influence or duress cannot be varied to the advantage of one party for the reason of viability when the term of the agreement including the price of power was within the knowledge of the petitioner and it is not possible to vary rights of other stakeholders namely, the distribution licensee, consumers for the sake of the petitioner.

8.7. We are of the firm conviction that the case of the petitioner also squarely falls under the doctrine of election as propounded by the Hon'ble Supreme Court in Mumbai International Airport Vs Golden Chariot Airport which unequivocally holds that one cannot approbate and also reprobate which means that he who accepts a benefit under a deed must adopt whole content of the instrument or reject it and it is not for him to change his stand later by a complete volte-face. For these reasons, we are unable to be of help to the petitioner. The prayer of the petitioner for revisiting of tariff agreed upon in the PPA cannot be done in the circumstances as stated supra. In the result, the petition is dismissed. No costs.

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)
(Dr.T.Prabhakara Rao)
Member

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission