

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

M.P.No.10 of 2018

Tamil Nadu Electricity Generation and
Distribution Company (TANGEDCO)
Rep. by its Chief Financial Controller / Revenue
No.144, Anna Salai
Chennai – 600 002.

... Petitioner
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

Vs

1. M/s.E.I.D. Parry (India) Limited
with its Registered office at Dare House
Parrys Corner, Chennai – 600 001
and one of its sugar factory
located at Pugalur, Karur – 639 113
Rep. by its Sr.AVP – Legal, Biswa Mohan Rath
2. M/s.Seshasayee Paper & Boards
Rep. by Deputy Managing Director and Secretary
Cauvery R.S.(Post)
Pallipalayam – 638 007.
3. Sree Rengaraj Ispat Industries (P) Ltd.
SIPCOT Industrial Growth Centre
Perundurai
Erode.
4. Kamachi Industries Limited
ABC Trade Centre, 3rd Floor
(inside Devi Theatre Complex)
Old No.50, New No.39, Anna Salai
Chennai – 2.

5. The Ramco Cements Ltd.
Rep. by its Sr.Deputy General Manager Legal
Govindapuram
Village Ariyalur Taluk & District
6. The Ramco Cements Ltd.
Rep. by its Sr. Deputy General Manager Legal
Alathiyur works
Perambalur District.
7. Dalmia Cement (Bharat) Limited
Dalmiapuram, Ariyalur Unit
Rep. by its Senior General Manager (Legal)
Mr.TA.Srinivasan
8. M/s.Dalmia Cement (Bharat) Limited
Trichy-Chidambaram Salai
Dalimiapuram, Lalgudi (T.K.)
Trichy – Dt.,
Tamil Nadu – 621 651.
9. M/s.Chettinad Cement Corporation Ltd.
Rep. by its Company Secretary Mr.S.Hariharan
Keelapalur Village,
Ariyalur.
10. M/s.Chettinad Cement Corporation Ltd.
Rep. by its Company Secretary Mr.S.Hariharan
Puliyur Cement Factory
Karur – 639 114.
11. Tamil Nadu Power Producers Association
Temple Steps, 3rd Floor, Block No.A
Unit “B”, Anna Salai
Little Mount,
Chennai – 600 015.
12. The South India Sugar Mills Association
Karumuthu Centre (2nd Floor)
No.634, Anna Salai
Nandanam,
Chennai – 600 035.
13. Biomass Power Producers Association Tamil Nadu
Represented by its President, Mr.G.Suresh
Registration No.186 of 2006
Sigapi Achi Building, 4th Floor
No.18/3, Rukmani Lakshmipathi Salai
Egmore, Chennai – 600 008.

14. Suryadev Alloys and Power Ltd.
No.497 & 498, ISANA Building
8th Floor, Poonamallee High Road
Arumbakkam, Chennai – 600 106.

... Respondents
(Thiru Rahul Balaji R1, R2, R5, R6, R7, R8 and R12
(Thiru R.S.Pandiyaraj, Advocate for R3;
Thiru K.Seshadri, Advocate for R4 and R 14;
Tvl. T.Balaji and M. Praveen Kumar for R9 and R10
Counsel for the Respondents)

Dates of hearing : 14-08-2018; 18-09-2018 and 16-11-2018

Date of Order : 04-01-2019

The M.P.No.10 of 2018 came up for final hearing on 16-11-2018. After hearing the learned Counsel for both parties and after perusing the records, the Commission passes the following:-

ORDER

1. Prayer of the Petitioner in M.P.No.10 of 2018:-

The prayer of the Petitioner in the above M.P.No.10 of 2018 is to confirm the methodology adopted by the Petitioner to levy the Parallel Operation Charges by the generator on the net capacity from 07-05-2014 when they run their generator in parallel with the grid and use the industrial load. The Petitioner is praying the Commission to approve and confirm the orders issued by the Petitioner by adopting the above methodology and thus render justice.

2. Facts of the Case:-

The petition has been filed to confirm the methodology adopted by Tamil Nadu Generation and Distribution Corporation Limited on collection of Parallel Operation Charges in accordance with the Grid Connectivity Intra State Open Access Regulations, 2014 and as per the tariff order dated 11-08-2017.

3. Contentions of the Petitioner:-

3.1. The Hon'ble High Court of Madras by an order dated 22-03-2017 in W.P.No.2128 of 2017 etc. batch, directed the Respondents to refer the issues pertaining to Parallel Operation Charges and the Circular dated 03-12-2016 to the Tamil Nadu Electricity Regulation Commission within a period of two weeks from the date of receipt of a copy of this order.

3.2. In accordance with the above order, the present Miscellaneous Petition is filed for confirming the methodology adopted by the Petitioner herein on collection of Parallel Operation Charges from the Captive Generating Plants under Tamil Nadu Electricity Regulatory Commission's Intra-State Grid Connectivity Open Access Regulations, 2014 and Tariff Order dated 11-08-2017.

3.3. It is submitted that there are three modes of Parallel Operation as specified below:-

(i) Island mode of generator operation:-

In this method, the generator installed in the factory is used to feed the industrial loads of the factory. The factory / industry may be a "consumer" of a Distribution Licensee but the generator will not have any connection with the Licensee's Grid / Network. The generator will be operated and controlled independently for supplying to industrial loads.

(ii) Grid Parallel Operation Mode:-

In this method, the generator will be connected to the Licensee's grid / network, and power will be evacuated through the grid for, various purposes such as sale, wheeling to captive consumer, third party consumer etc. through open access.

There may be industry where the generator is located and the company may also be a “consumer” of the Distribution Licensee and receive supply from the Licensee. The grid will be primarily used to evacuate power from the generator after self-use of industry and own consumption.

(iii) Mere Parallel operation mode:

In this method the generator, co-located with the industry will be connected with licensee's grid/network, but there will not be any power evacuation. Certain industry needs power to their specific industrial loads without interruption, and further their industrial loads may require stable operation, and for these purpose they require generator. But if the generator is run in isolated mode they may not have proper control of the generator for voltage, frequency, stability etc. In such cases the generator will be connected to the grid and will be run continuously with the support of grid, where the grid will act as cushion for the generator. Such operation will be called Mere Parallel Operation of generator, and there will be no evacuation in this case. If there is a breakdown of the generator, there is no interruption of the power supply.

3.4. As per sections 7, 9 of the Electricity Act, 2003, any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity. Further as per section 9 of the Electricity Act, a person may construct, operate or maintain Captive Generating Plant and dedicated transmission lines and they have right to open access.

3.5. Further section 62(1) of the Electricity Act, 2003 provides that the Tamil Nadu Electricity Regulatory Commission shall determine the tariff in accordance with the provisions of this Act for supply of electricity by a generating company to a Distribution Licensee. Section 86 (l) (b) of the act mandates that the Commission regulate electricity purchase and procurement process of Distribution Licensees including the price at which electricity shall be procured from the generating companies. Further, as per Section 181 of Electricity Act, 2003, the Commission is empowered to make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. Taking into consideration of the above provisions in the act the Commission duly notified the "Grid Connectivity and Intra state Open access Regulations 2014.

3.6. Regulations 26 (Parallel Operation Charges) of the said Regulations states as follows:-

"If the Captive Generating Plants (CGPs) opt for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load, the CGPs shall pay a parallel operation charges of Rs.30,000/- per month for each MW capacity (or part thereof) of the generator. This charge is applicable to the generators availing only parallel operation with the grid without availing open access. The application fees and procedure for parallel operation of generators with grid shall be same as that of grid connectivity of generators".

3.7. From the above, it is submitted that the Parallel Operation Charges is applicable to the generators those who are availing only Parallel Operation with the grid without availing open access i.e. the generators those who are not executed Energy Wheeling Agreement. The same has been communicated to all EDCs vide Circular. Memo No.CFC/REV/FC/REV/AS3/D.No.269/16, dated 02-05-2016.

Further, it is most relevant to mention that the Parallel Operations charges is collected from the generator those who are situated along with the industry.

3.8. In the case of M/s.Seshasayee Paper and Boards Limited, HT SC No. 17, they are availing Sanctioned demand of 15850 KVA and also they are having captive generating plant with the capacity of 20 MW steam turbo generating plant and 16 MW Bio mass power plant. Further, they had obtained an approval to wheel (Open Access) 5 MW power from the 20 MW steam turbo generating plant, to their HT service located in Tirunelveli EDC. From the above, it is observed that the wheeling agreement is executed with the generating plant with the capacity of 20 MW steam turbo generating plant and no wheeling agreement is executed with respect to the generating plant with the capacity 16 MW Bio mass power plant. The parallel operation charges has to be collected for generating plant with the capacity 16 MW Bio mass power only and not to collect 15 MW (balance of 20 MW) due to reasons that the parallel operation charges is collected from the Captive Generating Plants (CGPs) opt for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load, even though the parallel operation of the both generators with the licensee's grid without availing open access.

3.9. Furthermore, it is relevant to mention that even though the point of the parallel operation of the both generators is common, the parallel operation charges has to be paid by the generators those who are not availing open access i.e the generator those who have not executed Energy Wheeling Agreement and also the generator those have executed energy wheeling agreement but not injected any energy.

Further, it is stated that the parallel operation charges is collected from the generator those who are situated along with the industry. At this juncture, it is stated that if the HT consumer is availing open access by way of adjustment of energy from captive and third party etc. and the same time the generator has not availed open access but opted for parallel operation with the grid i.e. the generator who are not executed Energy Wheeling Agreement, in such cases, the generator has to pay the parallel operation charges due to reasons that the generator has opted for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load. Moreover, in this connection, it is stated that the rationale and relevance of Demand Charges is well established in electricity industry. It is to be recognized that when a consumer is connected to a system, the utility has to provide or keep in readiness certain capacity of the system to serve the consumer. Machine capacity, transmission system, certain work force and supervisory staff is kept on the job of monitoring the system, attending to emergency, restoring the supply in the event of outage, routine and periodic maintenance, meter reading, billing, bill delivery, defraying administrative expenses not directly related to the consumption of energy etc., which are the elements of the fixed charges, as an accepted practice, is recovered through the mechanism of Demand charges. These charges reflect the cost of generation and transmission requirement of consumer and are well justified. Hence, the demand charges are levied to recover the fixed charges of the licensee's facilities that are made available for effecting service to the consumer. Furthermore, it is stated that section 45(3) (a) of the Electricity Act, 2003, provides for collection of fixed charges in addition to the charge for the actual electricity supplied. Accordingly, the demand charges are levied as fixed charges. Further, the HT consumer and the generator have executed

separate agreement for availing sanctioned demand and parallel operation. Therefore, the contention of the consumer that if the consumer is availed sanctioned demand, the generator need not to pay the parallel operation charges is not acceptable one due to reasons that the generator has opted for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load.

3.10. Under said circumstances, the M/ s. Seshasayee Paper and Boards Limited, Pallipalayam, HT.SC.No.17, pertaining Mettur EDC has to pay the parallel operation charges for generating plant with the capacity 16 MW Bio mass power plant.

3.11. As regards, M/s. Basudha Udyog Private Limited, it may be stated that approval has been accorded for grid connectivity of 1 x 10 MW waste heat recovery based co-generation power plant at 33 KV level. Further to the above for a period of 3 years has been accorded for a sale of 07 MW firm power to TANGEDCO. Further, they have signed Energy Purchase Agreement with Superintending Engineer/ CEDC/North on 20.03.2012 and the same expired on 19.03.2015 and then they had participated in Tender No.6, STOA and approval has been accorded for scheduling the tendered quantum of 6 MW from 21.03.2015 to 31.10.2015. In this connection, it is relevant to mention that their plant was closed on 31.10.2015 due to making losses and also for such closure of their plant, necessary document such as Tamil Nadu Pollution Control Board's letter dated.17.06.2015, Deputy Director, Regional Office, Employee's State Insurance Corporation's letter and no production certificate of Central Board of Excise and Customs had been furnished towards proof for closure of Industry.

3.12. Regulation 26 which came into force from 07-05-2014 dealt with the Parallel Operation charges and hence Parallel Operation charges has to be collected from the date of 07-05-2014 in connection with the Captive Generating Plants (CGPs) opt for Parallel Operation with the Licensee's Grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load.

3.13. The parallel operation charges is also collected from the generator which situated along with the industry. The Captive Generating Plant, M/s. Kamachi Sponge and Power Corporation Limited, HT.SC.No.1989 is situated along with the industry. In this connection, it is relevant to mention that the demand of the industry had been surrendered, but industry not closed and also operates its own generation. The CGP has stated in its letter dated.14.06.2016 that the two Conditions to be fulfilled for levy of parallel operation charges, (1) the Captive Generating Plant (CGP) opt for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load, and (2) the generator availing only parallel operation with the grid without availing open access. The above two ingredients are not demonstrable/detectable in their subject power plant and they are entirely different from the above category for levy of parallel operation charges for the following reasons:

(a) They are not depending on grid even for startup power requirement and they are not depending on the grid for safe and secure operation of their generators and to provide quality, reliable power supply to their for in-house consumption load, they are self-contained with all facilities to operate the power plant without grid support. For the past more than three years, they have not drawn any power from the grid.

(b) They are having Energy Wheeling Agreement (EWA) under Long Term Open Access valid up to 25.02.2017 for five years calculated from the date 26.02.2013, they have executed agreement with us to this effect.

3.14. From the above clarification, it is evident that they are not falling under the preview of the above two conditions to attract levy of : parallel operation charges, further they state that they are paying the start-up power charges regularly and hence when start-up charges is paid the levy of parallel operation charges will not be applicable. Finally, they submit that they are neither connected with the grid for parallel operation nor mere parallel operation. All their power requirements are met out by them from their own source / generation for start-up power as well as for their in-house consumption.

3.15. However, it is seen that 33 KV supply line switch was kept opened at consumer side. In this regard, it is stated that the CGP is not depending on grid even for start-up power requirement and they are not depending on the grid for safe and secure operation of their generators and to provide quality, reliable power supply for their in-house consumption load, they are self-contained with all facilities to operate the power plant without grid support. For the past more than three years they have not drawn any power from the grid.

3.16. In above circumstances, if the generating plant does not want grid connectivity at all they have option to opt out from grid connectivity, but they have executed Energy Wheeling Agreement for captive use on 26.02.2012 for 5 years, wherein the relevant portion which reads as follows:

"Xxx this agreement is for the parallel operation of the CGP holder's Captive Generating Plant (Waste Heat Recovery Based Co-gen Plant) and wheeling of energy (power) from such Captive Generating Plant to the destination of his user through the Transmission/Distribution network of the STU/ Distribution Licensee."

3.17. The above agreement is still force and the generating plant has not requested for withdrawal of grid connectivity or parallel operation with grid. From the above, it could be concluded that the above Captive Generating Plant (CGP) opt for parallel operation with the licensee's grid for safe and secure operation of their generators and to provide quality, reliable power supply to their load. Further, they had executed Energy Wheeling Agreement, but not injected any power and they are not wheeling power to captive users. Besides, they have an industry within premises of the CGP and the same is operation and hence the above CGP has to pay parallel operation charges from the month of May 2014 onwards till expiry of EWA or till request for termination of grid connectivity / parallel operation.

3.18. Further, it is seen that eventhough it has been stated that in the SE / EDC's report that the 33 KV isolator at the generator end has been kept opened, it is noticed that TANGEDCO's supply is always available up to their premises. The company may close their isolator at any time without informing TANGEDCO and run the generator in parallel with the grid for industrial use. Further, it is noticed that the company has not informed/sought permission from TANGEDCO to keep their isolator open, but still keep the EWA executed on long term basis in-force which includes grid connectivity. As there is no wheeling taking place and industry in

operation, POC is liable to be paid till the date of expiry of EWA or till the company opt for termination of agreement from the office concerned at Head Quarters within the provisions of EWA & TNERC's orders/ Regulations.

3.19. Further, the following instructions have been issued based on the Tariff Order dated 11.08.2017 vide circular dated 24.08.2017 in connection with collection of Parallel Operation Charges, the relevant portion which held as follows:

" xxx

2.3.4. The Parallel Operation Charges shall be collected only from the captive generators on the net capacity, i.e. the capacity being utilized for self-consumption, for extending the facility of grid support. [Example: The installed capacity is 50 MW. The auxiliary and industrial consumption is 35 MW and open access availed is 15 MW then parallel operation charges is to be levied for 35 MW only. In case of no open access, parallel operation charges shall be levied for the entire installed capacity of the generator. "

3.20. In this regard, on collection of Parallel Operation Charges, many Captive Generating Plants have filed writ petitions and obtained the order as stated above and some Captive Generating Plants have represented to the petitioner herein. The main contentions of the petition and representations are furnished as follows:-

(i) The issue of Parallel Operation Charges does not apply to the Captive Generating Plant, when the Captive Generating Plant is availing Open Access and is in any event paying demand charges as well. Parallel Operation Charges by its very terms apply to consumers who avail only parallel operation without incurring Demand charges or Open Access.

(ii) When only the CGP opts for Parallel Operation, Parallel Operation Charges can be claimed. Therefore, without an option by the CGP, demanding and collection

of Parallel Operation Charges is not an automatic process. Their connectivity to the grid is to avail two facilities:

- a. For availing start-up power.
- b. For sending the OA power for wheeling by their OA consumers

For availing start-up power, they are paying the charges accordingly. For sending OA power by wheeling to their OA consumers, Parallel Operation Charges are exempted. In such scenario, when they have not opted for parallel operation with the TANGEDCO grid for any of their operations on captive consumption area, demand to pay Parallel Operation Charges would not be legally correct, as such an arrangement of Parallel Operation is not going on as far as their consumption is concerned.

(iii) Parallel Operation means, parallelly operating in-house facility, and captive generating plant and commonly connected with the grid with suitable switching arrangements/ common coupling and drawal of power from the grid for the use of safe secure operation of the power generator and provide quality and reliable power supply for in house connection load. These criteria must be complied for levy of Parallel Operation Charges. Further, for levy of POC common coupling of equipments must be established.

3.21. The collection of demand charges from the consumer has nothing to do with collection of Parallel Operation Charges. Demand charges are payable as a consumer towards the fixed cost incurred by the licensee whereas the charges payable by the generator for connection with grid for maintaining stability and hence both are different. The Regulation 26 of the Commission's Intra-State Grid

Connectivity Open Access Regulations, 2014 does not state Parallel Operation Charges should not be collected for Parallel Operation of the generator if demand charges are collected from the consumer.

3.22. In case of generators who have industry in the same premises and connected to the grid in the same interfacing lines from which they are availing power supply as consumer are falling within the provisions of the Regulation 26 of the Intra-State Open Access Regulations, 2014. In this regard, it is to be mentioned that in absence of any industrial loads i.e. when there exists only a generator which is a Special Purpose Vehicle (SPV), Parallel Operation Charges is not levied by the licensee.

3.23. By saying that they have not specifically opted for Parallel Operation, the Respondents conveniently evade from the fact that there exists an industry and the generator is connected to the network and synchronized and run in parallel with the grid. This amounts of violation of Regulation 26 of Intra State Open Access Regulations, 2014.

3.24. The generators and the industrial loads are connected to the interfacing point of the Licensee grid. The generator may be synchronized at various voltages either at LT side or HT side inside the premises of the industry and then the generator is deemed electrically to have been connected to interfacing point/interfacing line of the Licensee. The load and the generator operate in parallel licensee's network and utilize all the facilities and the parameters extended by the grid further beneficial use. Therefore, the Parallel Operation Charges shall be collected only from the captive generators on the net capacity with effect from 07.05.2014 i.e. the capacity being utilized for self-consumption, for extending the facility of grid support.

4. Contentions of the 1st Respondent:-

4.1. It is submitted that the Petitioner's own Circular dated Memo No.CFC/REV/FC/REV/AS 3/d.No.269/16, dated 02-05-2016 clarifies that Parallel Operation Charges are applicable to the generators who are availing only parallel generation with the grid without availing open access.

4.2. The Parallel Operation Charges are not applicable since the Respondent is availing open access, and, is in any event paying Demand Charges on a monthly basis.

4.3. Under Regulation 26 of the Tamil Nadu Electricity Regulatory Commission Grid Connectivity and Intra-State Open Access Regulations, 2014 which were notified on 07.05.2014, the Parallel Operation Charges are to be levied only for Captive Consumption.

4.4. It is pertinent to note that Parallel Operation Charges are levied only with respect to persons who are exclusively operating generators for Captive Consumption without having open access for sale or procurement of electricity and after executing a Specific Parallel Operation Arrangement. Furthermore, Regulation 26 of the Tamil Nadu Electricity Regulatory Commission Grid Connectivity and Intra-State Open Access Regulations, 2014 shall be applicable only for generators opting for parallel operation for safe and secure operation of the generator and the safe and secure operation shall be provided by TANGEDCO by way of providing adequate load balancing and voltage supply.

4.5. The Respondent is operating, as per the Open Access approvals, which have been granted by the Petitioner and is in fact paying demand charges on a monthly basis for its HT SC No. 76.

4.6. It is further submitted that the Respondent has been exporting power to TANGEDCO's grid and the parallel operation charges are liable to be paid only by the consumers running generating plants without availing sanctioned demand for their HT services and availing electricity supply only from their power plant.

4.7. The Respondent further states that the Commission in its latest Tariff Order on Determination of Tariff for Generation and Distribution bearing T.P.No.1 of 2017 dated 11-08-2017 has clearly held that Parallel Operation Charges shall be collected in a specified manner alone.

4.8. It is submitted that the Commission has already held in T.P No.1 of 2017 dated 11.08.2017 that the Parallel Operation Charges shall be collected only from Captive Generators on the net capacity. It is only applicable to Captive Generators from the date of passing of the Tariff Order and not retrospectively. Therefore, the clarification sought by the Petitioner in the present petition seeking for levy of Parallel Operation Charges on the net capacity from 07.05.2014 is erroneous and contrary to law.

4.9. Till the 1990's, Sugar Mills operated with Low Pressure Boilers and Turbines with LT alternator, which can cater to the internal load of the sugar plant, for purposes of sugar processing. It is pertinent to note that import power drawal from the Petitioner was used only for start-up activities and maintenance requirements,

during the non-crushing period. Therefore, for years together, the LT Generator of the Respondent was operated in Island Mode successfully.

4.10. After 1990, due to the advantages of co-generation for generation of power and utilization of the available renewable sources of energy, the configuration of the plants in the Sugar Mills were scaled up substantially to include High Pressure Boilers, Turbines, technological sophistication, power evacuation facilities and associated facilities with a far higher capital cost. This was also a part of the Governmental initiative to promote non-conventional energy sources.

4.11. It is submitted that the Sugar Mills are synchronized and operated in parallel mode with the grid and started exporting surplus power available with it in the grid. This resulted in bridging of the demand supply gap of the Petitioner to a certain period of time.

4.12. It is pertinent to note that the Respondent does not operate its generator merely on Parallel Operation Mode. Even in the event of boiler break down, boiler trials closure during the crushing season, the Respondent exports around 10% of its installed capacity to grid. It is further submitted that the Respondent has taken all steps to ensure that the Generator has been designed for safe Parallel Operation with the Petitioner's Grid and ensures transmission system of the Petitioner does not suffer any disturbances on account of the answering respondent's Generating Unit by taking certain protective measures.

4.13. It is respectfully submitted that the purpose of grid synchronization and parallel operation with the grid in the sugar plant is the basic requirement of scaling up of cogeneration system and promotion of NCES based cogeneration by the Government. Further, this bridges the gap between demand and supply, Therefore, there is no question of using the Petitioner's grid for generator stability in the present case. Adding up sugar mill cogeneration plants is somehow bridging the gap between demand and supply. Hence there is no question of using the grid for our generator stability in this case.

4.14. The Respondent states that Sugar Mill Cogeneration Plants are connected to the grid of the Distribution Licensee's grid during the disputed period, for anyone of the following reasons:-

- (i) For drawl of import power for start-up purpose and for maintenance activities. This is the pre-requisite on part of the distribution licensee to extend this facility to sugar mill cogeneration plant as per the tariff orders. For availing this facility the sugar mill cogeneration plants are remitting energy charges and maximum demand charges as per the tariff order.
- ii. When the sugar plant is in operation they generate and export the surplus power to licensee's grid under STOA to TANGEDCO grid and there was no sale to third party and energy wheeling agreement.

4.15. It is further submitted that in terms of the Open Access Regulations, 2014, the Respondent is an open access consumer, which draws the import power when its generator is not in operation and exports power under STOA and in both cases is paying the applicable charges for using the Petitioner's facilities.

4.16. The Respondent was constrained to file a Writ Petition bearing W.P.No.24677 of 2017 before the Hon'ble High Court of Madras challenging the notices issued by the Petitioner and inclusion of Parallel Operation Charges in the CC Bill. The Hon'ble High Court of Madras vide order dated 14-09-2017 directed the Petitioner to make payment of the CC bill, excluding the Parallel Operation Charges, which were levied. The Hon'ble High Court further directed the Petitioner to approach the Commission. However, thereafter the Petitioner included the charges in the CC Bill for the month of October, 2017 and the Respondent has in the letter dated 7th November, 2017 to the Petitioner directed it to adjust against the amount payable to Respondent towards export of energy to Grid and the Petitioner is continuing to raise the Parallel operating charges in the CC Bill and the same is being paid by the Respondent herein under protest.

4.17. It is submitted that the Respondent has never run the generator without export of power to the grid under the agreement. The applicability of Parallel Operation does not arise in the present case. Further, Regulation 26 of the Grid connectivity and Intra-State Open Access Regulations, 2014 clearly stipulate that Parallel Operation Charges are applicable only to the generators, which are connected to the grid to ensure safe and secure operation of the generator. It is therefore clear that the levy of charges is directly linked to the operation of the generator.

4.18. It is relevant to note that sugar mills operate only on the basis of availability of fuel and can operate upto 55% normative PLF. Therefore, sugar mills do not run for a minimum of 6 months in a year. In fact, in the present case, due to the continuous drought in the Respondent's cane command area, its plant has not been in

operation, since 2016. The Respondent notifies the Petitioner regarding the start-up and shut down of the plant and the non-operation has been recorded on a monthly basis by the Petitioner, while taking the meter readings. Therefore, the charges are not applicable for the Respondent. Moreover, clause 5.12.8 of the T.P. No.1 of 2017 dated 11-08-2017 clearly states that 'the parallel operation charges shall be collected only from the captive generators on net capacity i.e., capacity being for self-consumption for extending the facility of grid support. However, in the present case, the charges have been levied for the entire installed capacity during the off season period, when in fact the generator has been shut down and not in operation, since 2016. In fact, the Respondent is drawing import power from the Petitioner for its maintenance work.

4.19. It is submitted that the present issue is one, which is relatable to a Tariff Order and is therefore not maintainable as a Miscellaneous Petition. It is submitted that an application has to be made by the generating company or licensee for the determination of tariff. Section 64 of the Electricity Act, 2003 stipulates that the generating company or licensee shall make an application for determination of tariff under Section 62 in such manner as determined by the regulations. Regulation 6 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 sets out the procedure for making application for determination of tariff. In the present case, no such application has been filed by TANGEDCO, when in fact the provisions of the Electricity Act, 2003 expressly state that an application has to be filed as Tariff Application.

4.20. The submission for applicability of Parallel Operation Charges payable by the generator on the net capacity from 07.05.2014 is erroneous and contrary to law. In this regard, it is submitted that clause 5.12.8 nowhere states that the Parallel Operation Charges are applicable for the period from 05-07-2014. Clause 1,8 of the Tariff Order specifically states that the T.P No.1 of 2017 dated 11-08-2017 is only applicable from 11-08-2017.

5. Contentions of the Counter Affidavit filed by the 3rd Respondent dated 01-11-2018:-

5.1. It is submitted that the Petitioner's own Circular dated Memo No.CFC/REV/FC/REV/AS 3/D.No.269/16 dated 02.05.2016 clarifies that Parallel Operation Charges are applicable to the generators who have opted and based on the option so provided, are availing parallel generation with the grid without availing open access. In fact, under the annexure to this circular, the list of industries liable to the payment of parallel operation charges has been enumerated. This Respondent is not one of the industries, which have been set out under this Circular.

5.2. This Respondent has not opted for parallel operation at any point of time. Parallel Operation charges by its very terms apply only to consumers who avail only parallel operation by an option.

5.3. Under Clause 26 of the Tamil Nadu Electricity Regulatory Commission-Grid Connectivity and Intra-State Open Access Regulations, 2014, which were notified on 07.05.2014, the Parallel Operation Charges are liable to be paid only to such Entities which have opted for such parallel operation arrangement.

5.4. The clarifications sought for by the Petitioner ought to have impleaded only those industries listed in the Annexure to the Circular dated 02.05.2016 and having not impleaded them as Respondents in the present matter in M.P.No.10 of 2018 amounts to non-joinder of necessary parties and thereby also, the petition is liable to be dismissed.

5.5. Hence, the clarifications to be sought for by the Petitioner in the matter of applicability of demanding and levying of parallel operation charges needs to be covered only with those industries, which have opted for such parallel operation after the coming into force of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014. Having impleaded or added as a Respondents of such Entities like those of the Petitioner who have not actually opted for the parallel operation as found categorically notified in clause 26 of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014, makes the entire M.P.No.10 of 2018 totally infructuous.

5.6. It is further submitted that the Respondent is exporting its excess power to other shareholders of the company under the Open Access arrangement as approved by the TANGEDCO and SLDC from time to time through the Grid of TANGEDCO. From the above position, it is seen that the CGP of the Respondent is already under the Open Access permission. As such, a CGP availing the Open Access permission is already stand exempted from the payment of parallel operation charges as narrated in Clause 26 of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014.

5.7. The Respondent further states that the Commission in its latest Tariff Order on Determination of Tariff for Generation and Distribution bearing in T.P.No.1 of 2017 dated 11.08.2017, has clearly held that Parallel Operation Charges shall be collected in a specified manner alone.

5.8. The Commission has already held in T.P.No.1 of 2017 dated 11-08-2017 that the Parallel Operation Charges shall be collected only from Captive Generators on the net capacity. It is only applicable to Captive Generators from the date of passing of the Tariff Order and not retrospectively. Therefore, the clarification sought for by the Petitioner in the present petition seeking for levy of Parallel Operation Charges on the net capacity from 07.05.2014 is erroneous and contrary to law. Further, when the Regulation itself has exempted the levy and collection of parallel operation charges from those CGPs making supply of Open Access and not opted for it, seeking a clarification in respect of the CGP of the Respondent which is already a CGP availing Open Access and not opted for parallel operation at any time, would be totally invalid to law.

5.9. This Respondent does not operate its generator on Parallel Operation Mode. Even in the event of any break down or outage, the Respondent is entitled to avail start up power by paying the appropriate charges as enumerated in the relevant Tariff Orders issued by the Commission from time to time. Therefore, the Respondent does not availing parallel operation with the grid at any point of time and it has not opted for it at any point of time. When there is no option available from the Respondent and the CGP of the Respondent is itself is on Open Access Mode,

demanding and levying parallel operation charges is not maintainable to law both by way of the Regulation as well as by the above quoted Tariff Order.

5.10. The Respondent provides OA power to other shareholders of the Company and CGP, to the extent of around 22.19 MW from out of its 38 MW power plants. The balance of energy is being consumed by the Respondent Company itself. It is further submitted that the Respondent has taken all steps to ensure that the Generator has been so designed for a self and safe Parallel Operation with the Petitioner's Grid and ensures transmission system of the Petitioner does not suffer any disturbances on account of the Respondent's Generating Unit. The Respondent is setting forth below the steps taken by it for safe and secure Parallel Operation on its own.

- (i) Exclusive circuit breakers of appropriate voltage and rating at the co-generation plant end have been provided for interconnecting the plant with the Petitioner's Grid.
- (ii) The protection schemes are in line with the provisions in the Tamil Nadu Electricity Grid Code and the orders of the Central Electricity Authority and the Commission.
- (iii) The distance protection relay settings have been done as guided by the Petitioner to ensure that the generator will be isolated from the grid in case of fluctuations, disturbances and fault in the generating system.
- (iv) Every care has been taken while designing the equipment of the answering Respondent for the mitigation of harmonics and negative phase sequence current.

- (v) The contract demand for start-up power is only to start the plant and the Respondent cannot run the generator by drawing power from the Utility's Grid.
- (vi) The generator can produce surplus power than its own requirement and is exporting the surplus power to the shareholders of the Company under the CGP Mode through Utility's Grid.

5.11. It is respectfully submitted that the purpose of grid synchronization and safe parallel operation with the grid in the plant is to export the surplus power to other Captive Users of the CGP and therefore, this bridges the gap between demand and supply. Therefore, there is no question of using the Petitioner's grid for generator stability in the present case. Hence, there is no question of using the grid for the generator of the Respondent to its stability in this case.

5.12. It is further submitted that in term of the Open Access Regulations, 2014, "Open Access" has been defined as follows:-

"Open Access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with these Regulations and includes long term open access, medium-term open access and short-term open access".

5.13. It is clear from the aforesaid Regulation that the Respondent is a CGP, which draws the import power for its start-up purposes and pays the tariff fixed for it, when the generator is to be restarted after some outage or breakdown. Therefore, when the generator is not in operation, it cannot export any power and only after restarting

the generator by consuming start-up power it could export power to the captive users and for its own captive needs. Until otherwise, the generator is put into generation, the power of the grid is not used either for exports to open access consumers or for the captive consumption of the Respondent. Only for the purpose of restarting of the generator, the Respondent pays the start-up power charges as and when required and the same also is being regulated as per the Tariff Orders issued by the Commission from time to time.

5.14. Few of the Respondents and others and not the Respondent, were constrained to file Writ Petitions before the Hon'ble High Court of Judicature at Madras; challenging the notices issued by the Petitioner and on seeing the inclusion of the Parallel Operation Charges in the respective CC Bills. The Hon'ble High Court of Judicature at Madras vide its order dated 14.09.2017 has directed the Petitioner to receive the payment of the CC bill, excluding the Parallel Operation Charges, which were levied in the concerned CC bills. The Hon'ble High Court, further directed the Petitioner to approach the Commission. However, even after such an order, the Petitioner was including the parallel operation charges in the CC Bills for the month of October, 2017 also and on the representations provided by the Writ Petitioners, the Petitioner has issued instructions not to levy parallel operation charges from those of the generators by obtaining an undertaking through its letter dated 23-01-2018 in Memo No.CFC/FC/REV/DFC/REV/AS/D.No.405/2017 and accordingly, the Respondent is paying the CC bills without the levy of the parallel operation charges so far.

5.15. It is respectfully submitted that the Respondent has never run the generator without export of power to the grid under the agreement. The applicability of Parallel Operation does not arise in the present case. Further, as extracted above, clause 26 of the TNERC-Grid Connectivity and Intra-State Open Access Regulations, 2014 clearly stipulates that Parallel Operation Charges are applicable only to those generators who opt for it and which are connected to the grid to ensure safe and secure operation of the generator. It is therefore clear that the levy of parallel operation charges in respect of the generator like that of the Respondent is totally incorrect and invalid to law.

5.16. The Respondent therefore states that the present petition is not maintainable either on facts or on law. It is submitted that the present issue is one, which is relatable to a Tariff Order and is therefore not maintainable as a Miscellaneous Petition. It is respectfully submitted that an application has to be made by the Generating Company or the Licensee for the Determination of Tariff. Section 64 of the Electricity Act, 2003 stipulates that the Generating Company or the Licensee shall make an application for Determination of Tariff under Section 62 in such manner as determined by the Regulations.

5.17. Regulation 6 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 sets out the procedure for making application for Determination of Tariff. The relevant extract is set out below:

"6. Procedure for making application for Determination of Tariff

1. *The licensee may file the application for determination of tariff in Form 1 in Annexure 1 to the TNERC conduct of Business Regulations.*

The tariff changes should normally be applied to take effect from the 1st day of ensuing financial year and hence the application shall be filed before 30th November of Current Year along with Aggregate Revenue Requirement (ARR)."

5.18. The Petitioner states that in the present case, no such application has been filed by TANGEDCO, when in fact the provisions of the Electricity Act, 2003 expressly states that an application has to be filed as Tariff Application.

5.19. The submission for applicability of Parallel Operation Charges payable by the generator on the net capacity from 07.05.2014 is erroneous and contrary to law. In this regard, it is submitted that clause 5.12.8 nowhere states that the Parallel Operation Charges are applicable for the period from 05.07.2014. Clause 1.8 of the Tariff Order specifically states that the T.P No.1 of 2017 dated 11.08.2017 is only applicable from 11.08.2017. The relevant extract is as follows:

"1.8 Applicability of the Order

1.8.1 This Order will come into effect from August 11, 2017. The Generation and Retail Tariff contained in this order will be valid until issue of the next order. "

Therefore, on such ground also, the present petition is liable to be rejected.

6. Contentions of Counter Affidavit filed by Kamachi Industries Ltd:-

6.1. It is submitted that the Petitioner's own Circular dated Memo No.CFC/REV/FC/REV/AS 3/D.No.269/16 dated 02.05.2016 clarifies that Parallel Operation Charges are applicable to the generators who have opted and based on

the option so provided, are availing parallel generation with the grid without availing open access.

6.2. The Parallel Operation Charges are not applicable to this Respondent, since this Respondent has not opted for parallel operation at any point of time. Parallel Operation charges by its very terms apply only to consumers who avail only parallel operation by an option.

6.3. Under Regulation 26 of the Tamil Nadu Electricity Regulatory Commission- Grid Connectivity and Intra-State Open Access Regulations, 2014, which was notified on 07.05.2014, the Parallel Operation Charges are to be paid only by such Entities which have opted for such parallel operation arrangement with their industrial load.

6.4. It is undoubtedly clear that Parallel Operation Charges are to be levied only with respect to CGPs who have exclusively opted to go with parallel operation with the grid and therefore, in the absence of exercising any such option, demanding and collecting parallel operation charges would be totally illegal and against the Regulation referred to above.

6.5. The Petitioner has misconceived the provision that all power plants who are availing start up power during outages of their plant are using power even after resumption of their power plant and start generating power to their industry.

6.5. It is submitted that the confirmation sought for by the Petitioner in the matter of applicability of demanding and collecting of parallel operation charges needs to be restricted only to those industries, which have opted for such parallel operation after the coming into force of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014.

6.6. This Respondent is exporting its excess power to other shareholders/captive consumers under the Open Access arrangement as approved by the TANGEDCO and SLDC from time to time through the Grid of TANGEDCO. From the above position, this Respondent is already under the Open Access Permission. As such, a CGP availing the Open Access permission is already stand exempted from the payment of parallel operation charges as stated in Regulation 26 of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014.

6.7. The Respondent further states that the Commission in its latest Tariff Order on Determination of Tariff for Generation and Distribution bearing in T.P.No.1 of 2017 dated 11-08-2017, has clearly held that Parallel Operation Charges shall be collected in a specified manner alone and has also stated that the prevailing position may be followed until then.

6.8. It is submitted that as per Para 5.12.8 of the Tariff Order, the Parallel Operation Charges shall be collected only from the Captive Generators on the net capacity i.e. the capacity being utilised for self-consumption for extending the facility of Grid support. Further, when the Regulation itself has exempted the levy and collection of parallel operation charges from those CGPs who transmits power

supply through Open Access and not opted for it, seeking confirmation in respect of the CGP, this Respondent which is already a CGP availing Open Access and not opted for parallel operation at any time, would be totally invalid to law.

6.9. It is pertinent to note that this Respondent cannot operate its generator Parallely. Even in the event of any break down or outage, the Respondent is entitled to avail start up power by paying the appropriate charges as fixed in the relevant Tariff Orders issued by the Commission from time to time. Therefore this Respondent did not operate for parallel operation of his generator with the grid at any point of time nor opted for it. When there is no option available from this respondent and this respondent itself is in Open Access Mode, demanding and levying parallel operation charges is not maintainable to law and against the tariff order dated 11.08.2017.

6.10. This respondent provides wheeling of Power to other Captive users/shareholders of this respondent. The balance energy is being used for captive consumption. It is further submitted that this Respondent has taken all steps to ensure that the Generator has been so designed for a self and safe Parallel Operation with the petitioner's Grid and ensures transmission system of the Petitioner does not suffer any disturbances on account of this Respondent's Generator Unit and separate transmission lines are laid for captive consumption in his industry.

6.11. It is respectfully submitted that the purpose of grid synchronization and safe operation with the grid in the plant is to export the surplus power to other Captive

Users of the CGP and therefore, this bridges the gap between demand and supply. Therefore, there is no question of using the petitioner's grid for stability of the Respondent's power plant. Hence, there is no question of using the grid by the generator for its stability in this case.

6.12. This Respondent is a CGP, who draws the import power for its start-up purposes during outage of generator and pays the tariff fixed for it by the Commission. Therefore, when the generator is not in operation, it cannot export any power and only after restarting the generator by importing power to generator. Until otherwise, the generator is put into generation, the power of the grid is not used either for exports to open access consumers or for the captive consumption of this Respondent. Only for the purpose of restarting of the generator, this Respondent pays the start-up power charges as and when required and the same also is being regulated to 42 days in a year subject to maximum of 120 days as per the Tariff Orders issued by the Commission from time to time.

6.13. It is submitted that this Respondent has never run the generator with the support of the Petitioner's grid. The applicability of Parallel Operation does not arise in the present case. Further, Regulation 26 of the TNERC-Grid Connectivity and Intra-State Open Access Regulations, 2014 clearly stipulates that Parallel Operation Charges are applicable only to those generators who opt for it and which are connected to the grid to ensure safe and secure operation of the generator. It is therefore clear that the levy of parallel operation charges in respect of the generator who does not avail grid support is totally incorrect and invalid to law.

6.14. This respondent therefore state that the present petition for confirmation on methodology in collecting Parallel Operation Charges is totally presumptive and far from truth.

6.15. It is submitted that Regulation 26 of the Tamil Nadu Electricity Regulatory Commission. Grid Connectivity and Intra-State Open Accession Regulations, 2014 specifically mentions about (i) option to be exercised by the Captive Generator for Parallel operation with the licensee's grid (ii) the Generator availing only Parallel Operation with the Grid without availing Open access. As far as this Respondent is concerned, the energy generated is being utilised partly for Captive Consumption without linkage with the grid, on satisfying legal formalities and safety certificate obtained from CEIG. Such Captive Consumption will not in any way disturb the grid stability or safety nor such captive consumption will effect the supply to the other Consumers of the petitioner also. The excess energy remained after captive consumption by this Respondent, either supply to the TANGEDCO or to its Captive Consumers through TANGEDCO Grid under wheeling agreement with TANGEDCO and under Open Access Regulations. This apart, this respondent avails grid power only whenever there is outage of generator, on payment of Start-up Power charges under tariff order issued by the Commission. Wheeling of Power to the Captive Consumers who are under Open access and drawing power during the outage of generator, this respondent is not using its generator with the grid. It is also submitted that at the time of Captive Consumption of Power from the Captive Generator, the TANGEDCO has not raised any objection about grid safety. This Respondent submit that they are not consuming power availed for starting the outage generator in their industry. As soon as their generator starts generating power the switch provided for

import of power Opens and no power from Grid is coming inside the plant nor to the industrial premises. This respondent further submits that the concept of collection of POC is neither in accordance with Regulations of 2014 nor satisfying the para 5.12.8 of the Tariff order dated 11-08-2017.

6.16. The Parallel Operation Charges is applicable for the units which are solely depending on the grid for their plant operations and without the support of the grid they cannot either operate their power plant or operate their in-house facilities. As and when they require the support of the grid, they will draw power either demand or power or both for the self-consumption.

7. Contentions of the Respondent, M/s.Suryadev Alloys and Power Pvt. Ltd. dated 16-11-2018:-

7.1. This respondent submits that the above petition is not maintainable either in law or on facts and ought to be dismissed in limine, as the petitioner has failed to explain how they are aggrieved by the 14th Respondent's generating Plant. In any event, it is submitted that the Petitioner's own Circular dated Memo No.CFC/REV/FC/REV/AS 3/D.No.269/16 dated 02.05.2016 clarifies that Parallel Operation Charges are applicable to the generators who have opted and based on the option so provided, are availing parallel generation with the grid without availing open access.

7.2. The Parallel Operation Charges are not applicable to this Respondent, since this Respondent has not opted for parallel operation at any point of time. Parallel Operation charges by its very terms apply only to consumers who avail only parallel operation by an option.

7.3. This Respondent states that under Regulation 26 of the Tamil Nadu Electricity Regulatory Commission-Grid Connectivity and Intra-State Open Access Regulations, 2014, which was notified on 07.05.2014, the Parallel Operation Charges are to be paid only by such Entities which have opted for such parallel operation arrangement with their industrial load.

7.4. It is undoubtedly clear that Parallel Operation Charges are to be levied only with respect to CGPs who have exclusively opted to go with parallel operation with the grid and therefore, in the absence of exercising any option, demanding and collecting parallel operation charges would be totally illegal and against the Regulation referred to above.

7.5. It is submitted that by extracting the circular Memo No.CFC/REV/FC/REV/AS3/D.No.269 /16 dated 02.05.2016, the petitioner has instructed the Field Officers to collect parallel operation charges only from the industries generators found in the Annexure to the Circular.

7.6. It is submitted that the petitioner has failed to understand the true spirit of the provision made by the Commission to collect the Parallel Operation Charges. The petitioner has misconceived the provision that all power plants who are availing start-up power during outages of their plant are using power even after resumption of their power Plant and start generating power to their industry. Hence, M.P.No.10 of 2018 had been filed under mistake of facts and law. .

7.7. It is submitted that the Confirmation sought for by the petitioner in the matter of applicability of demanding and collecting of parallel operation charges needs to be restricted only to those industries, which have opted for such parallel operation after the coming into force of the TNERC-Grid Connectivity and Intra State Open Access Regulations, 2014. Having impleaded or added as a Respondent of such Entities like those of the Petitioner who have not actually opted for the parallel operation. Regulation 26 of the TNERC-Grid connectivity and Intra State Open Access Regulations 2014, makes the entire M.P. No.10 of 2018 untenable in law.

7.8. It is further submitted that this Respondent is exporting its excess power to other consumers under the Open Access arrangement as approved by the TANGEDCO and SLDC from time to time through the Grid of TANGEDCO. From the above position, this Respondent is already under the Open Access Permission is already stand exempted from the payment of parallel operation charges as stated in Regulation 26 of the TNERC Grid Connectivity and Intra State Open Access Regulations, 2014.

7.9. This Respondent further states that the Commission in its latest Tariff Order on Determination of Tariff for Generation and Distribution bearing in T.P.No.1 of 2017 dated 11-08-2017, has clearly held that Parallel Operation Charges shall be collected in a specified manner alone and has also stated that the prevailing position may be followed until then.

7.10. It is submitted that as per para 5.12.8 of the Tariff Order, the Parallel Operation Charges shall be collected only from the Captive Generators on the net

capacity i.e. the capacity being utilised for self-consumption for extending the facility of Grid support. Further, when the Regulation itself has exempted the levy and collection of parallel operation charges from those CGPs who transmits power supply through Open Access and not opted for it, seeking confirmation in respect of the CGP, this Respondent which is already a CGP availing Open Access and not opted for parallel operation at any time, would be totally invalid to law.

7.11. It is pertinent to note that this Respondent cannot operate its generator Parallely. Even in the event of any break down or outage, the Respondent is entitled to avail start up power by paying the appropriate charges as fixed in the relevant Tariff Orders issued by the Commission from time to time. Therefore, this Respondent did not operate for parallel operation of his generator with the grid at any point of time nor opted for it. When there is no option available from this respondent and this respondent itself is in Open Access, Mode, demanding and levying parallel operation charges is not maintainable to law and against the tariff order dated 11.08.2017.

7.12. This respondent provides wheeling of Power to other Captive users/shareholders of this respondent. The balance energy is being used for captive consumption. It is further submitted that this Respondent has taken all steps to ensure that the Generator has been so designed for a self and safe Parallel Operation with the petitioner's Grid and enquires transmission system of the Petitioner does not suffer any disturbances on account of this Respondent's Generator Unit and separate transmission lines are laid for captive consumption in

his industry. This Respondent is setting forth below the steps taken by it for safe and secure operation of their Power plant.

- (i) Exclusive circuit breakers of appropriate voltage and rating at the Co-generation plant end have been provided for interconnecting the plant with the Petitioner's Grid.
- (ii) The protection schemes are in line with the provisions in the Tamil Nadu Electricity Grid Code and the orders of the Central Electricity Authority and the Commission.
- (iii) The distance protection relay settings have been done as guided by the Petitioner to ensure that the generator will be isolated from the grid in case of fluctuations, disturbances and fault in the generating system.
- (iv) Every care has been taken while designing the equipment of this Respondent for the mitigation of harmonics and negative phase sequence current.
- (v) The contracted demand for start-up power is only to start the plant and the Respondent cannot run the generator by drawing power from the Utility's Grid.
- (vi) The generator can produce surplus power to the required for captive consumption and is exporting the surplus power than to the shareholders of the Company under the CGP Mode through Utility's Grid, under wheeling agreement entered into with the TANGEDCO.

7.13. It is respectfully submitted that the purpose of grid synchronization and safe operation with the grid in the plant is to export the surplus power to other Captive Users of the CGP and therefore, this bridges the gap between demand and supply. Therefore, there is no question of using the petitioner's grid for stability of the

Respondent's power plant. Hence, there is no question of using the grid by the generator for its stability in this case.

7.14. It is further submitted that in terms of the Open Access Regulations, 2014, "Open Access" has been defined as follows:

"Open Access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with these Regulations and includes long term open access, medium-term open access and short-term open access".

7.15. It is clear from the aforesaid Regulation that this Respondent is a CGP, who draws the import power for its start-up purposes during outage of generator and pays the tariff fixed for it by the Commission. Therefore, when the generator is not in operation, it cannot export any power and only after restarting the generator by importing power to generator. Until otherwise, the generator is put into generation, the power of the grid is not used either for exports to open access consumers or for the captive consumption of this Respondent. Only for the purpose of restarting of the generator, this Respondent pays the start-up power charges as and when required and the same also is being regulated to 42 days in a year subject to maximum of 120 days as per the Tariff orders issued by the Commission from time to time.

7.16. It is submitted that few of the Respondents were constrained to file Writ Petitions before the Hon'ble High Court of Judicature of Madras, challenging the notices issued by the Officers of the Petitioner and on seeing the inclusion of the

Parallel Operation Charges is in the respective CC Bills. The Hon'ble High Court of Judicature at Madras vide its order dated 14.09.2017 has directed the petitioner to receive the payment of the CC Bill, excluding the Parallel Operation Charges, which were levied in the concerned CC Bills. The Hon'ble High Court, further directed the petitioner to approach the Commission. However, even after such an order, the petitioner was including the parallel operation charges in the CC Bills for the month of October, 2017 also and on the representations provided by the Writ Petitioners, the Petitioner has issued instructions not to levy parallel operation charges from those of the generators by obtaining an undertaking through its letter dated 23.01.2018 in Memo No.CFC/FC/REV/DFC/REV/AS/3/D.No405/2017 and accordingly this Respondent is paying the CC bills without the levy of the parallel operation charges so far.

7.17. It is submitted that this Respondent has never run the generator with the support of the Petitioner's grid. The applicability of Parallel Operation does not arise in the present case. Further, as extracted above, Regulation 26 of the TNERC-Grid Connectivity and Intra-State Open Access Regulations, 2014 clearly stipulates that Parallel Operation Charges are applicable only to those generators who opt for it and which are connected to the grid to ensure safe and secure operation of the generator. It is therefore clear that the levy of parallel operation charges in respect of the generator who does not avail grid support is totally incorrect and invalid to law.

7.18. This respondent therefore state, that the present petition for confirmation on methodology in collecting Parallel Operation Charges is totally presumptive and for

from truth. Therefore, the petition is liable to be rejected in limine and is not maintainable either on facts or on law.

7.19. It is submitted that Regulation 26 of the Tamil Nadu Electricity Regulatory Commission. Grid Connectivity and Intra-State Open Accession Regulations, 2014 specifically mentions about (1) option to be exercised by the Captive Generator for Parallel operation with the licensee's grid (2) the Generator availing only Parallel Operation with the Grid without availing Open access. As far as this Respondent is concerned, the energy generated is being utilised partly for Captive Consumption without, linkage with the grid, on satisfying legal formalities and safety certificate obtained from CEIG. Such Captive Consumption will not in any way disturb the grid stability or safety nor such captive consumption will effect the supply to the other Consumers of the petitioner also. The excess energy remained after captive consumption by this Respondent, either supply to the TANGEDCO or to its Captive Consumers through TANGEDCO Grid under wheeling agreement with TANGEDCO and Open Access Regulations. This apart, this Respondent avails grid power only whenever there is outage of generator, on payment of Start-up Power charges under tariff order issued by the Commission. Except on two occasions (i.e.) Wheeling of Power to the Captive Consumers who are under Open access and drawing power during the outage of generator, this respondent is not using its generator with the grid. It is also submitted that at the time of Captive Consumption of Power from the Captive Generator, the TANGEDCO has not raised any objection about grid safety. This Respondent submit that they are not consuming power availed for starting the outage generator in their industry. As soon as their generator starts generating power the switch provided for import of power opens and no power

from Grid is coming inside the plant nor to the industrial premises. This respondent further submits that the concept of collection of POC is neither in accordance with Regulations of 2014 nor satisfying the para 5.12.8 of the Tariff order dated 11-08-2017.

8. Contentions of the Respondent, M/s. The South Indian Sugar Mills Association dated 16-11-2018:-

8.1. The respondent represents private sector sugar mills having Cogeneration units in the State of Tamil Nadu located in various places with significant share of business in the co-generation of power. The list of cogeneration units of the Members of the respondent is filed in the typed set of papers.

8.2. The present petition is not maintainable either in law or on facts and ought to be dismissed at the threshold, insofar as the Petitioner has failed to showcase the basic tenets under which the present clarification has been sought by it. In any event, it is submitted that the Petitioner's own Circular dated Memo No. CFC/REV/FC/REV/AS3/D.No.269/16 dated 02.05.2016 clarifies that Parallel Operation Charges are applicable to the generators who are availing only parallel generation with the grid without availing open access. In fact, under the annexure to this circular, the list of industries liable to payment of parallel operation charges has been enumerated. It is pertinent to note that the member of the Respondent are not one of the industries, which have been set out under this circular.

8.3. However, thereafter, after 1990, due to the advantages of co-generation for generation of power and utilization of the available renewable sources of energy, the

configuration of the plants in the Sugar Mills were scaled up substantially to include High Pressure Boilers, Turbines, technological sophistication, power evacuation facilities and associated facilities with a far higher capital cost. This was also a part of the Governmental initiative to promote non-conventional energy sources.

8.4. It is submitted that technology aids in producing more power from the same amount of fuel. Therefore, the cogeneration power plants of sugar mills are synchronized and operated in parallel mode with the grid and sugar mills started exporting surplus power available with them to the grid. This resulted in bridging of the demand supply gap of the Petitioner. Further, the quantum of surplus power exported is on the basis of various parameters like capacity utilization of sugar plant, availability of fuel etc.

8.5. The respondent states that its member Mills are operating, as per the Synchronization approvals, which have been granted by the Petitioner and are in fact paying demand charges on a monthly basis.

8.6. It is further submitted that the member mills of the respondent has taken all steps to ensure that the Generator has been designed for safe Parallel Operation with the Petitioner's Grid and ensures transmission system of the Petitioner does not suffer any disturbances on account of the Generating Unit of the members of respondent. The respondent is setting forth below the steps taken by its members for safe and secure Parallel Operation:

- (i) Exclusive circuit breakers of appropriate voltage and rating at the co-generation plant end have been provided for interconnecting the plant with the Petitioner's Grid.
- (ii) The protection schemes are in line with the provisions in the Tamil Nadu Electricity Grid Code and the orders of the Central Electricity Authority and the Commission.
- (iii) The distance protection relay settings have been done as guided by the Petitioner to ensure that the generator will be isolated from the grid in case of fluctuations, disturbances and fault in the generating system.
- (iv) Every care has been taken while designing the sugar mill equipment for the mitigation of harmonics and negative phase sequence current.
- (v) The contract demand for start-up power is only to start the plant and the Respondent cannot run the generator by drawing power from the Utility's Grid.
- (vi) The generator can produce surplus power than its own requirement and is exporting the surplus power to the Utility Grid.

8.7. It is respectfully submitted that the purpose of grid synchronization and parallel operation with the grid by the cogeneration plants of members of Respondent is basically to export power to the grid by scaling up of cogeneration system and to respond to the call of the Government to promote NCES based cogeneration. Further, this bridges the gap between demand and supply. Therefore, there is no question of using the Petitioner's grid for stability of operations by the members of the Respondent in the present case.

8.8. The respondent states that Sugar Mill Cogeneration Plants are connected to the Distribution Licensee's grid, for anyone of the following reasons: .

- i. For exporting surplus power to the grid.
- ii. For wheeling of power to Third party consumers under open access.
- iii. For drawl of import power for start-up purpose and for maintenance activities. This is the prerequisite on part of the distribution licensee to extend this facility to sugar mill, cogeneration plant as per the tariff orders. For availing this facility the sugar mill cogeneration plants are remitting energy charges and maximum demand charges as per the tariff order. .

8.9. When the sugar plant is in operation, the members of the respondent generate and export the surplus power to the distribution licensee under PPA.

8.10. It is submitted that the member mills of the Respondent have never run their generators without export of power to the grid under the agreement. The applicability of Parallel Operation charges does not arise in the present case of the member mills of the respondent. Further, as extracted above, Regulation 26 of the Grid connectivity and Intra-State Open access Regulations, 2014 clearly stipulates that Parallel Operation Charges are applicable only to the generators, which are connected to the grid without export of power but to ensure safe and secure operation of the generator. It is therefore clear that the levy of charges is directly linked to the drawing power for stability of operations of the generator.

8.11. The Respondent therefore states that the present petition is not maintainable on facts or law. It is submitted that the present issue is one, which is relatable to a Tariff Order and is therefore not maintainable as a Miscellaneous Petition. It is

respectfully submitted that an application has to be made by the Generating Company or the Licensee for the Determination of Tariff. Section 64 of the Electricity Act, 2003 stipulates that the Generating Company or the Licensee shall make an application for Determination of Tariff under Section 62 in such manner as determined by the Regulations. Regulation 6 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 sets out the procedure for making application for Determination of Tariff. The relevant extract is set out below:

"6. Procedure for making application for Determination of Tariff

1. *The licensee may file the application for determination of tariff in Form 1 in Annexure 1 to the TNERC conduct of Business Regulations. The tariff changes should normally be applied to take effect from the 1st day of ensuing financial year and hence the application shall be filed before 30th November of Current Year along with Aggregate Revenue Requirement (ARR)."*

8.12. In the concept paper for determination of tariff for bagasse based cogeneration plants put in the public domain by the Commission on 02-03-2018, inviting views of stakeholders, clause 14.16 pertains to parallel operation charges.

An extract of clause No.14.16 is reproduced below:-

"4.16. Parallel Operation Charges

"14.16.1. Commission proposes that in respect of Bagasse based power generators who consumes power on captive basis in the same location but wish to avail Renewable Energy Certificate (REC) may opt for paralleling of their generators with the grid without actually wheeling their power. Such generators shall have to pay 50% of applicable parallel operation charges to the respective distribution licensee as specified in the relevant regulations".

8.13. Further in the Tariff Order No.4 of 2018 dated 28.03.2018, the Commission has specified that

"14.15. Parallel Operation Charges

14.15.1. Commission proposes that in respect of Bagasse based power generators who consumes power on captive basis in the same location may opt for paralleling of their generators with the grid without actually wheeling their power. Such generators shall have to pay 50%

of applicable parallel operation charges to the respective distribution licensee as specified in the relevant regulations”.

14.15.2. TANGEDCO has stated that as REC plants are to be treated on par with conventional plants, it is suggested that 100% of applicable parallel operation charges may be leveled.

14.15.3. As TANGEDCO has suggested for 100% of applicable parallel operation charges like conventional power plants and since it was newly included in the consultative paper, as requested by TANGEDCO, the levy of applicable parallel operation charges may be collected as done previously”.

8.14. It is respectfully submitted that the above order along with the concept paper clearly indicate that parallel operation charges are payable by generators who have opted for paralleling with the Grid with the sole intent to avail Renewable Energy Certificate (REC) and without actually exporting the power. Since most of the members of the petitioner are exporting power to TANGEDCO, they will not fall under this category. Since the tariff is determined on the basis of 'cost plus' principle, such charges have to be either included in the cost and tariff should be appropriately determined or waived as members of the petitioner remain as simple pass through as far as such charges are concerned.

8.15. Further, Hon'ble Appellate Tribunal for Electricity in its order dated 30.06.2014 in R.P 13 of 2013 in Appeal No 199 of 2012 filed by the respondent has held that such charges listed in clause No 8.2 as related issues in Commission's order No 7 of 2012 (It is clause No.14 in Commission's Order No.4 of 2018 dated 28.03.2018) will not be applicable to the sugar mills who sell their energy to distribution licensee.

9. Findings of the Commission:-

9.1. The present Miscellaneous petition has been filed by the petitioner, TANGEDCO pursuant to the directions of the Hon'ble High Court of Madras in the

order dated 22.03.2017 to refer the issues pertaining to Parallel Operation Charges (POC) to the TamilNadu Electricity Regulatory Commission.

9.2. The prayer of the petitioner herein before the Commission is to confirm the methodology adopted by it on collection of Parallel Operation Charges from the Captive Generating Plants (CGPs) under the provisions of Tamil Nadu Electricity Regulatory Commission's Intra-State Grid Connectivity and Open Access Regulations, 2014 and Tariff Order dated 11.08.2017.

9.3. Of the 14 respondents, counter affidavits have been filed by 5 of them namely M/s.EID Parry (India) Ltd, M/s.Sree Rengaraj Ispat Industries, Perundurai, M/s.South Indian Sugar Mills Association/TamilNadu, M/s.Kamachi Industries Ltd. and M/s.Suryadev Alloys and Power Pvt. Ltd. The main contention of these respondents is that the concept of collection of POC by TANGEDCO is neither in accordance with Regulations of 2014 nor satisfying the para 5.12.8 of the Tariff Order dated 11.08.2017 and hence prayed to reject the claim of the petitioner for confirmation or collection of POC from CGPs and issue appropriate directions to the petitioner without detrimental to the interest of the CGPs.

9.4. The request of the petitioner is to confirm the following methodologies adopted by them for levy of Parallel Operation Charges:

- a) When the generator has an industrial use and utilize part of the generation for industry and wheel some quantum through open access, technically it amounts to mere parallel operation of generator and falls within the provision of Regulation 26 of Grid Connectivity and Intra-State Open Access

Regulations, 2014. Such generators utilize the network and are so bound to pay Parallel Operation Charges.

- b) In the case of generators who have industry in the same premises and connected to the grid in the same interfacing lines from which they are availing power supply as consumer, they too fall within the provisions of the Regulation 26 of Grid Connectivity and Intra-State Open Access Regulations, 2014 and are liable to POC.
- c) The generators and the industrial loads are connected to the interfacing point of the Licensee grid. The generators may be synchronized at various voltages either at LT or HT inside the premises of the industry. In such cases the generator is deemed to be electrically connected to interfacing point/ interfacing line of the Licensee's grid and therefore parallel operation charges shall be collected.
- d) In respect of cases where the generator has an industrial use and has also executed Energy Wheeling Agreement to wheel some quantum through open access but has not injected any power and therefore not wheeling power to their captive users, then the Captive Generators has to pay parallel operation charges for the entire installed capacity of the generator till expiry of Energy Wheeling Agreement (EWA) or till request for termination of grid connectivity/ parallel operation.
- e) In all the above cases as the load and the generator operate in parallel with licensee's network and utilize all the facilities of the grid for their beneficial use, parallel operation charges shall be collected from the captive generators on the net capacity with effect from 07.05.2014 (the Date of notification of TNERC's Grid Connectivity and Open Access Regulations) i.e the capacity

utilized for self-consumption for extending the facility of grid support. There is no need for any option to be submitted by the generator as the permission granted for grid connectivity of the generators is based on the application of the generators for synchronization with the grid. In case of no open access, parallel operation charges shall be levied for the entire installed capacity of the generator.

- f) When the generator installed is in a factory/industry and the industry is a consumer of the distribution licensee but the generator is not synchronized with the licensee's grid /network, the generator runs on standalone mode and so parallel operation charges are not applicable in such cases.
- g) In the absence of any industrial loads i.e. when there exists only a generator, Parallel Operation Charges is not levied.

9.5. On the other hand, the respondents' contentions are as follows:-

- a) The issue of Parallel Operation Charges does not apply to the Captive Generating Plant, when they avail open access and in any event they are paying demand charges as well. Parallel Operation charges apply only to consumers who avail only parallel operation without incurring Demand Charges or Open access charges.
- b) Only when CGP opts for Parallel Operation, Parallel operation charges can be claimed. Demanding and collecting Parallel operation charges is not an automatic process.
- c) CGPs connectivity to grid is only to avail two facilities viz,
 - (i) For availing Start-up power
 - (ii) To wheel the power to their OA consumers

For availing start up power, they pay the related charges. Wheeling OA power is exempted from Parallel Operation Charges. When CGPs have not opted for parallel operation with TANGEDCO Grid for any of their operation on captive consumption area, demanding Parallel operation charges would not be legally correct.

- d) Parallel Operation means, operating in-house facility and captive generating plant parallel by connecting with the grid with suitable switching arrangements/ common coupling and draw power from the grid for the safe and secure operation of the power generator and provide quality and reliable power supply for in-house connected load. For levy of POC, common coupling must be established.

9.6. Now, before going into the question of the issue of levy of parallel operation charges, the Commission in the first instance, would like to see the Regulatory provisions and other relevant instructions of the Commission.

9.6.1. TNERC notified the Grid Connectivity and Intra-State Open Access Regulations, 2014 on 07.05.2014 wherein Regulation 26 hold as follows:

“ 26. Parallel Operation Charges:-

If the captive Generating Plants (CGPs) opt for parallel operation with the licensee’s grid for safe and secure operation of the generators and to provide quality, reliable power supply to their load, the CGPs shall pay a parallel operation charges of Rs.30,000/- per month for each MW capacity (or part thereof) of the generator. This charge is applicable to the generators availing only parallel operation with the grid without availing open access. The application fees and procedure for parallel operation of generators with grid shall be same as that of grid connectivity of generators.”

9.6.2 Stakeholders during the tariff determination process for Generation and Distribution functions of TANGEDCO in Tariff Petition No. 1 of 2017, raised that

there existed certain ambiguity in the method of levy of Parallel operation charges by TANGEDCO and that Parallel Operation Charges and Open Access Charges are separate and the Commission should direct TANGEDCO not to levy and collect parallel operation charges from Open Access consumers. To this count, TANGEDCO explained that the Parallel Operation Charges are being collected from the generator on the net capacity after deducting the Open Access quantum, for extending the facility of grid support and that these charges are not being collected from open access consumers. The Commission on its part, clarified that the Parallel operation charges are to be collected from the captive generators on the net capacity i.e the capacity being utilized for self-consumption for extending the facility of grid support. (Paras 2.19.10, 2.19.28 and 2.19.32 of the Order in T.P No.1 of 2017 dated 11.08.2017)

Accordingly, the Commission made clear the following in the said Tariff Order dated 11.08.2017:-

“5.12.8 The Parallel Operation Charges shall be collected only from the Captive generators on the net capacity being utilized for self-consumption, for extending the facility of grid support.”

In other words, this obviously mean that Parallel operation charges are applicable to the captive generators with in house loads for the installed capacity of the generator less the Open access quantum agreed upon by the generator with the Distribution Licensee through Energy wheeling agreement.

Here, the Commission would like to bring in the contention made by the respondents stating that the present issue is relatable to Tariff Order and therefore not maintainable. The Commission notified the Grid Connectivity and

Intra-State Open Access Regulations, 2014 with provision for levy of Parallel Operation Charges after adopting due procedures. The para 5.12.8 in the Tariff order 2017 of the Commission as extracted above is a mere clarificatory statement to sort out the vagueness that existed between TANGEDCO and the stakeholders. It does not alter the established principles of parallel operation warranting an amendment to the regulation. Further there is no tariff determination process involved in the present issue. Hence, the question of maintainability does not arise.

9.7. Proceeding further with regard to the present issue, though the regulatory provisions and the subsequent clarification of the Commission are quite clear, the Commission finds from the contentions of the petitioner and the respondents in the present Miscellaneous Petition that ambiguity still persists among them. Clarity on the principles of Parallel Operation is lacking. There seems to be confusion and mix up over levy and payment of different charges viz OA charges (Transmission, wheeling, scheduling and system operation charges etc), demand charges for the sanctioned demand etc. So to bring out clarity, the Commission on its part feels that a bit of explanation is required to be given on the various charges and associated aspects applicable to the captive generators and open access consumers as per the terms of TNERC's Grid connectivity and Intra-state OA Regulations, 2014.

9.8. Any generator situated within the State and desirable of connecting with the intra-state grid of the State Licensee shall first make an application for Grid connectivity along with a prescribed fee. The applicable fee payable for grid connectivity for injection into Intra-State Transmission and/or for connectivity to Distribution system by a generating station is the grid connectivity charges. This fee

includes load flow/system studies to be conducted by the STU/ Distribution Licensee respectively. In case of co-generation and generation from RE sources, the application fee shall be 50% of the normal fee. On receipt of application, the STU/Dist. Licensee with STU shall carry out interconnection study and the applicant shall sign a connectivity agreement with STU/ Dist. Licensee accordingly. For parallel operation of the generators with grid, the application fee and procedure shall be same as that of grid connectivity of generators.

9.9. The following charges are payable each month by a **Generator** situated in the State and connected to the intra-state grid directly or indirectly are:

Parallel Operation Charges for parallel operation of the generators (with co-existing loads) with the grid to ensure safe and secure operation of the generators and quality reliable power supply to their load.

Start up Charges for the power supplied by the Distribution Licensee to the generator connected with the State grid for start up purpose.

Open Access Charges in case of injection of power into the State grid for its captive consumer or any third party sale at a different location and this includes transmission charges for using the transmission system, wheeling charges for wheeling power to the consumer utilizing the distribution network, scheduling and system operation charges for the SLDC function.

Deviation Charges when the scheduled generation is not maintained by the generator.

On the same line, certain charges are payable by an **open access consumer**. These include –

Demand charges for the HT power demand contracted with the Licensee.

Excess demand charges are payable if the recorded demand exceeds the total sum of the demand contracted with the licensee and demand contracted with other generators including captive generators.

Open Access Charges in case of drawal of power contracted with its captive generator, third party source, power exchange through Licensee's grid. This includes transmission charges for using the transmission system, wheeling charges for wheeling power to the consumer utilizing the distribution network, scheduling and system operation charges for the SLDC function.

Grid availability charges for providing standby arrangements by the distribution licensee in case of **Outage of generator** and **Deviation charges** when the drawal by the open access consumer is in excess of the schedule.

9.10. From the above, it is to be seen that the various charges discussed above are for a specific purpose.

In this context, one of the respondents, M/s.South India Sugar Mills Association has referred to the Hon'ble APTEL order dated 30.06.2014 in R.P. 13 of 2013 in Appeal No.199 of 2012 on the petition filed by them wherein Hon'ble APTEL has held that charges listed in clause No.8.2 as related issues in the Commission's Order No.7 of 2012 and clause No.12 in TNERC Order No. 4 of 2018 dated 28.03.2018 (Comprehensive Tariff Order for Bagasse based Co-generation plants) would not be applicable to the sugar mills who sell their energy to distribution licensee. The related issues dealt in the said comprehensive tariff orders for energy generation from bagasse based co-generation plants with general issues viz, OA charges, CDM benefits, application fees, payments issues, metering and connectivity and Energy

Purchase and wheeling agreement. Parallel Operation charges is not a part of these issues and so the Commission proceeds further in respect of POC.

9.11. Coming back to Parallel operation charges, it is to be levied on the captive generator having grid connectivity for operating the generating plant inter connected with grid to provide supply to their in-house consumption. This connectivity enables the generator to operate safely and securely and the captive load also is supplied with quality and reliable power. So it is not to be mingled with other charges discussed above.

9.12. In this context, the Commission wishes to extract the provisions available in Tamil Nadu Electricity Grid Code with respect to the Boundaries between Transmission/Distribution Licensee and Captive Generators, co-generators and HV Consumers which is as follows:

“(12) (iv) Boundaries between Transmission/Distribution Licensee and Captive Generators, Co-generators and HV consumers

The boundary between the transmission / distribution licensee and captive generators, co-generators and HV consumers is the Isolator in the consumer’s or captive generator’s or Co-generator’s system which is also the point of commencement or injection of supply.”

On the contention of the respondents that common coupling must be established for levy of POC, it is to state that the grid synchronization established as above is point of common coupling by which the CGPs/Co-generators derive the benefits of the Licensee’s grid.

9.13. Under this background, as pointed out by the petitioner, there are many ways of establishing grid connectivity between the captive generator and their co-existing load which are discussed below:-

9.13.1 When a generator has an industrial load in-house and utilises part of the generation for the industry and wheel some quantum through open access, in such cases the generator get connected and synchronized with the Licensee's grid for export of power. They start to utilize the Licensee's network by which the captive generator and its in-house load derive the benefits of parallel operation with the grid.

9.13.2 Similarly there are cases where the captive generator along with co-existing industry having a sanctioned demand as a HT consumer either for generation needs of start up purpose or for any other specific purpose for its industrial needs or both. In such cases they have grid connectivity for availing power as consumer. Even though they are electrically connected to the grid for different purpose, this category of CGP also get the benefits of safe and secure operation of the generator and quality and reliable power for the in-house loads.

9.13.3 Also in cases where the Captive generator and the industrial loads are connected to the interfacing point of licensee grid, at different voltage levels, the captive generator and the in-house load utilize all the facilities extended by the grid for their beneficial use as the captive generator and the load is deemed to be electrically connected.

9.14. In this connection, the respondents like M/s.South Indian Sugar Mills Association, M/s.EID Parry who are CGPs of cogeneration nature contend that as a part of Government initiative to promote co-generation and with advancement in

technology of the generating plants, they are able to generate higher quantum of power thereby having surplus feeding into the grid resulting in bridging of the demand supply gap of the petitioner and they may not be levied with POC.

The Commission observes that the nature of power generation of co-generating plants may differ. This however would not make it outside the Grid support through parallel operation as explained in the preceding paras. In this context, the Commission would like to refer to the Hon'ble APTEL in Order dated 29.09.2015 in Appeal No. 39 of 2014 in the matter of M/s.Shree Renuka Sugars Limited, Belgaum versus Gujarat Energy Transmission Corp. Ltd, GERC and others wherein it has upheld orders of the GERC stating that the cogeneration plant though different from CPP so far as the operation is concerned but no different on the aspect of operation in parallel with grid.

So POC are applicable to Co-generating plants also. Only if the co-generating plant runs on its own and supplies without grid connectivity either directly or indirectly no POC would be applicable.

9.15. Before confirming the methodology of levying the POC, the Commission would also like to refer to the judgments made by Hon'ble APTEL in this regard based on Appeals preferred by CPPs on the Orders of respective Commissions. The judgment of Hon'ble APTEL in order dated 29.09.2015 in Appeal No. 39 of 2014 stated above covers the judgments in most of the appeals which is reproduced below:

"15) a) Parallel Operation Charges (POC) for Cogeneration Plant

(i) In so far as the levy of Parallel Operation Charges for Cogeneration plant is concerned, the order dated 01.06.2011 passed by the GERC had decided as under:-

“23.13 In view of the above observations, we decide that the consumers having CPPs and connected with the grid shall have to pay POC. At present the consumers and open access users connected to the grid, consisting of interconnected transmission lines, S/S generating system, bear the transmission charges. The CPPs with connected load also enjoy the benefits of services of system operation from transmission licensees and distribution licensees. Hence, CPPs should pay POC, which would be shared by the STU and the distribution licensee concerned.

23.14 Now we deal with the issue of applicability of parallel operation charges. The load connected with CPPs is situated in the following manner.

(1) CPPs are situated at different places and part load of the consumer is connected at the place of CPP and part load receiving power through open access from it is situated at a different place.

(2) CPPs and load connected with it are situated at the same place and connected with grid.

(3) CPPs and load connected with it are having reverse flow relay provided at their end and power flow is possible only from CPP to grid.

23.15 In case of the first situation, the part load which is situated at the CPP premises is only eligible for levy of parallel operation charges as they receive services from the grid as stated in earlier para No. 23.13 above. While the load which is situated at another place and getting power generated from CPP by wheeling/transmission through open access is equated with a consumer without CPP. Hence, for such quantity of power wheeled from CPP, no POC is leviable.

23.16 In case of the second situation, the load of the consumer connected with CPP at the same premises is fully receiving support from the grid as stated in para 23.13, shall have to pay POC as decided in this order.

23.17 In case of the third situation, whenever the load of the consumer connected with CPP falls instantaneously due to failure of equipment of the consumer's machine etc. In such a situation, the excess generation of CPP will affect CPP adversely. It might lead to tripping of the CPP, and a transient effect on it. In such eventuality, the excess power of the CPP will be injected to the grid and avoid tripping and other adverse effect on the CPP. Moreover, they are benefited by way of injecting harmonics into the grid, increase in fault level etc. Hence, for the load of the

consumer of CPP with reverse flow relay, it is desirable to apply POC as decided in this order.”

- ii) Thus, in terms of the order dated 01.06.2011 of the GERC, there is no applicability of Parallel Operation Charges in case of the captive power unit and the consumption unit are not co-located and it applies only when both are at the same premises integrated to one another.
- iii) The GERC order dated 01.06.2011 was challenged before this Tribunal in Appeal no. 65 of 2012 and the decision of the GERC was upheld in Shah Alloys Ltd. case by Tribunal's order dated 05.11.2012.
- iv) A Full Bench of the Tribunal in Appeal no. 120 of 2009 relating to Parallel Operation Charges in Chattisgarh by order dated 18.02.2011 has held as under:-

“17. The parallel operation is a facility in the nature of a Grid support to the Captive Power Plant. The Captive Power Plant gets the following advantages owing to the parallel operation with the Grid:

(i) The fluctuations in the load of CPP are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipments. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.

(ii) Absorption of harmonics.

(iii) Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generators and other equipment of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.

(iv) Captive Power Plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.

(v) The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.

(vi) The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the grid supply acts as an infinite bus. The active and

reactive power demand due to sudden and fluctuating load is not recorded in the meter.

(vii) The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.

(viii) The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient surges. Hence, grid enhances the life of CPP equipment.

18. In short, the gain to the Captive Power Plant is quite substantial in case there is grid support. Owing to the above said substantial gains to the Captive Power Plant by operating in parallel with the grid, the parallel operation charges are levied from the Captive Power Plant.

19. Therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not. This aspect has been dealt with by this Tribunal in judgment dated 12.9.2006 in Appeal No.99 of 2006. In the said judgment, this Tribunal upheld the levy of parallel operation charges by the State Commission. The relevant observations of the Tribunal are as follows:

.....”

v) Earlier to above, the levy of Parallel Operation Charges was held to be valid in two decisions of the Tribunal; in the decision dated 12.09.2006 in Appeal no. 99 of 2006 -Urla Industries Association Vs CSERC and dated 24.04.2009 in Appeal no. 86 of 2008 - Indian Acrylics Ltd vs. PSERC & Ors. And the relevant portions are reproduced below:

.....”

9.16. The Hon'ble APTEL through its various judgments cited above has established that POCs is applicable to CPPs. The Commission therefore also wishes to confirm that when, a captive generator with co-existing load or a co-generator is synchronized with the Licensee's grid for any purpose be it for start up purpose, export or import power under open access, or consume power as a consumer, or supply the excess power to the grid as in the case of co-generators, it is the point of common coupling where they are electrically connected to the grid and hence utilize all the benefits of absorption of harmonics, negative phase sequence current, improvement in power

factor, metering fluctuations and providing reactive power support and hence liable to pay the parallel operation charges.

9.17. Having explained the various possibilities under which parallel operation charges are leviable, Commission wishes to now go into the quantum on which the POC is leviable. As provided for in the Commission's Grid connectivity and Open Access Regulation and clarified in the Tariff Order 2017, this charge is applicable to the generators on the net capacity being utilized for self-consumption after deducting the open access quantum. But the petitioner would raise that in cases wherein open access has been availed by the CGP but have not injected power, Parallel operation charges is leviable for the entire installed capacity. The Commission is not agreeable to this. A CGP executes an Energy wheeling agreement with the distribution licensee for the OA quantum to be wheeled to its consumers outside the premises. It is then liable to pay Transmission charges, scheduling and system operation charges etc., even in case no power is injected. Hence POC cannot be applied on the OA quantum even in case no energy is injected.

Some respondents on their part would raise that POC is not leviable for sanctioned demand quantum obtained by them from the Distribution Licensee with respect to either Generator or the in-house captive consumer. It is to be clarified that contracted demand with the Utility and the associated demand charges payable are related to the consumer. Whereas the Parallel Operation charges are payable by the generator. If the respondents feel that no grid support is required, it is open to the respondents to isolate its facilities both generator as well as the load from grid to avoid parallel operation charges. The respondents also have the option to reduce their contracted demand with the distribution licensee if they desire so.

Thus the Commission concludes that the parallel operation charges are payable on the installed capacity of the Captive generating plant/ Co-generating plants reduced by the extent to which Open Access has been availed.

9.18. Now coming to procedure of levying POC, the regulatory provision of the Commission's Grid Connectivity and Intra-state Open Access Regulations, 2014 notified on 07.05.2014 stipulate that for the CGPs who opt for parallel operation with grid, the application fee and the procedure for availing parallel operation of generators with grid shall be same as that of the grid connectivity of generators. However, the petitioner would contend that there is no need for any option to be submitted by the generator, because the permission granted for grid connectivity of the generators would suffice as it is also based on the application made by generators. In this connection, the Commission observed from the submissions of a few respondents (M/s.Sree Rengaraj Ispat Industries (P) Ltd., M/s.Kamachi Industries Ltd., Ms/.Suryadev Alloys and Power Ltd.) that POC had been included in their respective bills. However based on the directions of the Hon'ble High Court of Madras in order dated 14.09.2017 on the writ petitions filed by a few respondents, the petitioner has issued instructions not to levy parallel operation charges from those of the generators by obtaining an undertaking through its letter dated 23.01.2018 in Memo No. CFC/FC/REV/DFC/DEV/AS 3/D No. 405/2017 and accordingly they are paying the CC bills without the levy of the parallel operation charges so far. The respondent like M/s.EID Parry (India) Ltd. state that the petitioner continue to raise the Parallel Operation Charges in the CC bill and the same is being paid by the respondent under protest.

As contended by the petitioner, the Commission also views that synchronization of the Captive generator/Co-generator with the Licensee's grid enable them derive the benefits of the parallel operation with Licensee's grid. Hence Parallel operation charges are applicable for generators electrically connected to the State grid directly or indirectly. These charges are applicable from 07.05.2014, the date of notification of the Regulation. The Commission hereby directs the petitioner, to regularize the parallel operation by obtaining an application along with the prescribed fee for all generators including captive and co-generating units. The respondents on their part would submit the application along with the prescribed fee to the distribution licensee seeking approval for parallel operation with the grid specifying the quantum. The respondents are free to reduce their contracted demand with the Distribution Licensee if needed so. Due regulatory procedure may be followed by the petitioner for fresh cases. If no such application is received from CGPs, the Distribution licensee is at liberty to levy POC as per the directions given above.

9.19. Summarising, the Commission wish to clarify that levy of demand charges, open access charges and parallel operation charges are different from one another. Demand charges are to be levied on the consumers for the quantum of contracted demand with the distribution licensee. Open Access charges are levied on the quantum of power agreed upon as per Energy wheeling Agreement between open access customer (generator or consumer) and the Distribution Licensee for injection by a generator/ drawal by a consumer as the case may be. Parallel operation charges are payable on the installed capacity of the Captive generating plant/ Co-generating

plants less the Open access quantum (whether injected or not) agreed upon with the distribution licensee as per the EWA.

With the above orders, the petition is finally disposed of.

10. 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