

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

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and	
Thiru.K.Venkatasamy Member (Legal)

I.A. No.1 of 2019
in
D.R.P. No.12 of 2019
and
D.R.P. No.12 of 2019

OPG Power Generation Pvt. Ltd.
OPG Power Plant, OPG Nagar,
PeriyaObulapuram Village NagarajaKandigai,
Madharapakkam Road, Gummidipoondi,
Thiruvallur – 601 201.

.....Petitioner
(ThiruVinod Kumar
Advocate for the Petitioner)

Versus

1. Tamil Nadu Transmission Corpn. Ltd.
Represented by its Chairman,
144, Anna Salai,
Chennai 600 002.
2. The Superintending Engineer,
Chennai EDC North,
TANGEDCO
144, Anna Salai,
Chennai 600 002.
3. Tamil Nadu Generation and Distribution Corpn. Ltd
Represented by its Chairman,
144, Anna Salai,
Chennai 600 002

.....Respondents
(Thiru V.Anil Kumar for
TANTRANSCO and Thiru M.Gopinathan,
Standing Counsel for TANGEDCO)

Dates of hearing : 17-12-2019; 11-02-2020; 20-09-2020;
20-10-2020; 10-11-2020; and 19-11-2020

Date of Order : 15-12-2020

The I.A. No. 1 of 2019 in DRP No. 12 of 2019 came up for final hearing on 19-11-2020. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent, written submission filed by the respondent and all other connected records and after hearing both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in DRP No.12 of 2019:-

The prayer of the petitioner in D.R.P. No. 12 of 2019 is to declare that the Respondents are not entitled to collect annual operation and maintenance charges from the Petitioner for the maintenance of the bays and associated equipments at the 110 KV Gunmidipoondi sub-station-2 and 400 KV Alamathy Sub-station and to direct the Respondent to refund the sum of Rs.1,00,05,211/-.

2. Facts of the case:-

2.1. The present petition is being filed for a declaration that the Respondents are not entitled to collect annual operation and maintenance charges from the Petitioner for the maintenance of the Respondents' bays and its associated equipment and a consequential direction to the Respondents to refund the sum of Rs.93,62,328/- collected from the Petitioner and along with interest at 18%, the Respondents are liable to refund Rs.1,00,0530/- as on the date of this Petition.

3. Contentions of the Petitioner:-

3.1. The Petitioner has set up its 414 MW coal based thermal power plant at Gummidipoondi. Unit-1 of the Petitioner's plant was commissioned on 22.04.2010 and is connected to the Respondents' 110 KV sub-station-2 at Gummidipoondi. Unit II, Unit III with a capacity of 80 MW and Unit IV with a capacity of 180 MW were commissioned on 10.10.2012, 05.06.2013 and 06.07.2015 respectively. Units II, III and IV are connected to the Respondents' 400 KV sub-station at Alamathy. The Petitioner is a captive power plant and has been supplying electricity from its plant. It is submitted that the Petitioner has obtained open access from the 1st Respondent for the supply of energy from its plant to its captive consumers. The Petitioner has been duly remitting all payments due to the Respondents under the applicable regulations of the Commission and in consonance with the Electricity Act, 2003 read with the Electricity Rules, 2005.

3.2. The Petitioner herein has paid the Respondents the cost of the transmission infrastructure, including the dedicated transmission lines from the Petitioner's plant to the 110 KV sub-station-2 at Gummidipoondi and the 400 KV Alamathysub-station by remitting a sum of Rs.4.97 Crores and 31.81 Crores respectively.

3.3. The petitioner has entered into Energy Wheeling Agreements with the Respondents for utilizing the transmission system of the Respondent to transmit the electricity generated by it to its consumers. The Petitioner has been evacuating the electricity generated by it its Unit-I (through the transmission line owned by the Respondents) to the 110 KV sub-station-2 at Gummidipoondi, owned by the

Respondents for further transmission to the end consumers, through the Respondents grid. Similarly, with respect to Units II, III and IV of the Petitioner, the electricity generated has been evacuated (through the transmission line owned by the Respondents) to the 400 KV sub-station at Alamathy for further transmission to end consumers, through the Respondents grid. The Petitioner, in this instance, has been paying the full transmission and distribution charges and losses for the utilization of the transmission systems of the Respondent, as determined by the Commission in its tariff orders from time to time.

3.4. The EWA sets out the obligations of the Petitioner and Respondents with respect to operation and maintenance. In terms of the aforesaid EWA, the Petitioner is obligated to maintain only the Generator and equipment including the transformer, switchgear protection equipment and other allied equipment at the Petitioner's bus bar (on the Petitioner's premises) at the Petitioner's cost. In consonance with the aforesaid requirement, the Petitioner has been duly bearing the cost for such maintenance of the aforesaid equipment at its premises as specified in the EWA.

3.5. The Petitioner has been remitting all payments as due to the Respondents, including full transmission and distribution charges and losses without demur. In such circumstances, the Petitioner was shocked to receive the 2nd Respondent's letter dated 22.03.2019 whereby a demand was made for payment of alleged operation and maintenance charges of the bays maintained and owned by the Respondents at the Alamathy 400 KV substation for the years 2012-2013 to 2018-2019. A similar demand was made by letter dated 31.05.2019 in respect of

operation and maintenance expenses for the bays at 110KV sub-station-2 at Gummidipoondi.

3.6. In terms of the Tamil Nadu Electricity Regulatory Commission (Grid Connectivity and Intra-State Open Access) Regulations, 2014 when a generating station applies for connectivity to the distribution system of the Respondents, in the event there is any augmentation of the distribution licensee's sub-station, the generating station is obligated to bear the cost of bay-extension, data communication system and initial testing and commissioning.

3.7. The Petitioner by its letter dated 09.04.2019, brought to the attention of the 2nd Respondent the fact that the Petitioner had previously paid the Respondent's a sum of Rs.31.81 Crores on 30.03.2011 towards the cost of transmission infrastructure, including the cost of the bays at the 400 KV Alamathy sub-station. In respect of the demand letter dated 31.05.2019, the Petitioner issued a reply dated 28.06.2019 pointing out that it had remitted a sum of Rs.4.97 Crores towards the cost of transmission infrastructure, including the cost of the bays at the 110 KV Gummidipoondi sub-station-2.

3.8. The Petitioner further informed the 2nd Respondent that the bays at the sub-stations belong to the Respondents and that the responsibility of maintaining the bays is that of the Respondents and not the Petitioner. As the transmission charges levied on the Petitioner by the Respondents includes the charges towards operation and maintenance of the transmission systems, which includes the bays at the Respondents' substations at Alamathy and Gummidipoondi, the levy of

additional charges, as sought for in the letters dated 22.03.2019 and 31.05.2019 towards operation and maintenance of the bays, would amount to a double levy of charges on the Petitioner.

3.9. Furthermore, the expenses incurred by the Respondents in operating and maintaining all the bays at all substations owned by them are recovered by the Respondents as part the ARR and tariff approved by the Commission. The current demand letters will constitute double recovery of these charges, once through the transmission tariff (as the transmission ARR includes the expenses made on O&M on these bays by the Respondent) and once again through these demand letters. The said demand of the 2nd Respondent is based on a purported misinterpretation of the order dated 4.01.2019 of the Commission in DRP No. 2 of 2014. The Respondents have deliberately sought to misinterpret the order of this Commission to unjustly levy additional charges on the Petitioner in contravention of the Electricity Act, 2003 and the rules and regulations thereunder.

3.10. The factual considerations placed before the Commission in the aforesaid petition was entirely different from the instant dispute. It is relevant to state that in the said DRP No. 2 of 2014 filed by another Generator, the charges sought to be levied arose with respect to the payment of charges for the staff of the Respondent for operation and maintenance of the sub-station until permanent connectivity was granted. Further the charges sought to be levied were agreed to be borne by the generator at the time of grant of temporary connectivity. In any event the Petitioner herein is operating and maintaining the switchyard which is within its premises and is bearing the costs towards the same.

3.11. The Commission in the aforesaid petition has held that once permanent connectivity is obtained, to the sub-station established by the Petitioner therein, it would become the duty of the Petitioner therein to operate and maintain the same in accordance with the provisions of the Electricity Act, 2003, or the rules or regulations made thereunder. In this instance such a requirement does not arise as the Commission while fixing the transmission tariff has also taken into consideration the operation and maintenance costs.

3.12. The Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 ("Tariff Regulations") as amended from time to time stipulate the manner in which the transmission tariff is to be determined in its tariff orders. Regulation 59 of the Tariff Regulation stipulates that the tariff for transmission of electricity by a transmission system shall comprise of recovery of annual transmission charges consisting of (i) interest on loan capital, (ii) depreciation, (iii) operation and maintenance expenses, (iv) interest on working capital at normative availability and (v) return on equity.

3.13. The Commission, has in its Tariff Regulations, specifically provided for inclusion of operation and maintenance expenses while calculating the transmission systems of the Respondent. As such, the purported expenses incurred by the Respondents towards the operation and maintenance of the bays which are part of the transmission systems, is to be borne out of the transmission tariff paid by those utilizing the transmission system of the Respondents.

3.14. Without prejudice to the aforesaid submissions, the demand of the 2nd

Respondent vide its letter dated 22.03.2019 is for the period from 03.09.2012 to 31.03.2019 towards 230KV connected with 400KV substation at Alamathy. The separate demand in the letter dated 31.5.2019 is for the period 2010 to 2019 towards 110kv connected with 110 KV substation-2 at Gummidipoondi. The 2nd Respondent cannot seek retrospectively levy charges towards operation and maintenance when no demand has been raised by the 2nd Respondent during the relevant period. Further, in any event the demand is barred by limitation.

3.15. The Petitioner, herein despite not being liable to remit payment of charges demanded, has, by letter dated 26.04.2019, remitted the amount demanded in letter dated 22.03.2019 under protest. The Petitioner has further by letter dated 06.09.2019 remitted payment for the amounts demanded in the letter dated 31.05.2019 under protest. The Petitioner has received another letter dated 09.11.2019 wherein the second respondent has demanded a sum of Rs. 6,79,781/- towards annual O&M charges for bay maintenance in respect of Unit I and II connected with 400 KV substation at Alamathy. This demand is again based on the based misinterpretation of the order Commission in DRP No. 2 of 2014.

3.16. The levy and demand of operation and maintenance charges is clearly contrary to law and opposed to the Regulations and tariff orders and charges determined by the Commission, includes the operation and maintenance charges. Respondents have sought to usurp powers of the Commission by demanding payment of these double operation and maintenance charges without the permission of the Commission.

3.17. The Petitioner will suffer irreparable hardship if the Commission does not declare that operation and maintenance charges cannot be levied by the Respondents on the Petitioner for the maintenance of the Respondents' bays and its associated equipment. The Petitioner's tariff for supply of electricity to its consumers is computed based on varied factors including all the charges payable by the petitioner to the Respondent's for utilization of its transmission and distribution system. The Petitioner having already raised invoice and having been paid by its customers for the tariff calculated taking into account, *inter alia*, the charges payable to the Respondents, the levy of operation and maintenance charges retrospectively is barred by estoppel. The Petitioner having acted upon the charges as payable to the Respondent during the relevant period, cannot now be subjected to an additional charge as this would gravely prejudice the Petitioner.

3.18. It is just and necessary that the Commission declare that that the Respondents are not entitled to collect annual operation and maintenance charges from the Petitioner for the maintenance of the Respondents bays and its associated equipment the same being the assets of the Respondents. The total amount paid by the Petitioner under protest adds up to Rs.93,62,328/- along with interest at 18%, calculated till the date of the Petition. The Respondents are liable to refund a sum of Rs.1,00,05,300.

4. I.A. No.1 of 2019 filed by the Petitioner in D.R.P.No. 12 of 2019 on 28-11-2019:-

4.1. The Petitioner has reiterated almost all the contentions raised in the DRP in this IA also. However, the following additional reliefs have been sought in this I.A.

The actions of the Respondents are clearly contrary to law. The Respondents are not entitled to collect the O&M charges. The Petitioner has a good case on merits. The Petitioner apprehends that the Respondents will take coercive actions to recover the amounts demanded from the Petitioner. The balance of convenience is in favour of the Petitioner. Grave prejudice and irreparable injury will be caused to the Petitioner, if pending the D.R.P., the Respondents take any coercive actions against the Petitioner. In such circumstances it is just and necessary that pending adjudication of the dispute raised in the present Petition, the Respondents are restrained from taking any coercive action against the Petitioner.

4.2. The Commission may grant an order of interim injunction restraining the Respondents from taking any coercive action against the Petitioner towards the purported recovery of O&M charges, pending disposal of the dispute resolution petition.

5. Counter Affidavit filed on behalf of the 1st Respondent on 11-02-2020:-

5.1. The Petitioner is having coal based powerplant with total installed capacity of 422 MW (2x81 MW+1x80 MW+1x180 MW) at PeriyaObulapuram Village, Gummidipoondi, ThiruvallurDistrict. Among the four units of M/s OPG Power generation Pvt. Ltd, Unit-1 of capacity 1x81 MW is connected with Gummidipoondi SIPCOT Substation II through 110KV SC line. Remaining units (Unit-2, 3 and 4) of capacity 1x81 MW + 1x80 MW + 1x180 MW are connected with Alamathy 400KV SS through 230KV DC line.

5.2. The unit of M/s OPG Power generation Pvt. Ltd was commissioned on 22.4.2010 and remaining units Unit-2, 3 and 4 were commissioned on 10.10.2012, 5.6.2013 and 6.7.2015 respectively. The Petitioner is supplying 74 MW power to TANGEDCO through LTOA, wheeling around 303 MW to their captive users and carrying out 15 MW Interstate sales through IIEX.

5.3. The Petitioner was requested to make payment of Operation & Maintenance (O& M) charges towards maintenance of 1 No. 110 KV bay provided at Gummidipoondi SIPCOT Substation-II and 2 Nos. 230 KV bays provided at Alamathy 400KV SS based on the B.P. (Per) CH TANTRANSCO Proceedings No.305, dt.23.12.2017. As per above TANTRANSCO Proceedings, the annual operation and maintenance charges from the private generators towards maintenance of bay and its associated equipments provided for connecting their generating units with TANTRANSCO grid may be collected at the rate of 1% of the capital cost of the bay in the year of commissioning with an escalation of 4% per annum in the subsequent years up to 08.04.2014 and with an annual escalation of 5.72% per annum from 09.04.2014.

5.4. The TANTRANSCO is paying annual O&M charges @ 1.5% of the capital cost as mutually agreed for the bays provided and maintained by Power Grid Corporation of India Ltd. (PGCIL), the CTU for interfacing 230 KV/ 400 KV/ 765 KV substations of TANTRANSCO at PGCIL substations. PGCIL, in vice versa is also paying annual O&M charges for the bays provided maintained by TANTRANSCO. In line with the above, TANTRANSCO is collecting annual O&M charges @ 1% of the capital cost as per TNERC's Tariff Regulations 2005 for the bays provided to

the intrastate private generators for interfacing their generating units with TANTRANSCO grid.

5.5. Clause 25.8 of the TNERC Tariff Regulations 2005 read as follows:

"In respect of the transmission system declared under commercial operation on or after notification of these regulations the base operation and maintenance expenses shall be fixed at 1 % of the capital cost (as admitted by the Commission), in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years."

5.6. The annual escalation of 4% per annum has been amended to 5.72% vide the Commission's notification No. TNERC/TR/5/2-11 dated 13-03-2014 which has come into force from the date of publication in the Tamil Nadu Government Gazette i.e. from April 9, 2014.

5.7. Based on the above TANTRANSCO proceedings, M/s OPG Power generation Pvt. Ltd. was requested to pay an amount of Rs.37,28,425/- towards annual O&M charges for the maintenance of 2 nos. 230 KV bays provided at Alamathy 400KV substation for the period from 2012-13 to 2018-19 and an amount of Rs.56,33,903/- towards annual O&M charges for the maintenance of 1 no. 110 KV bay provided at Gummidipoondi SIPCOT Substation-TI for the period from 2010-11 to 2018-19.

5.8. TANGEDCO is raising the demand for the payment of O&M charges and after collecting, transferring the same to TANTRANSCO account till such time TANTRANSCO becomes full-fledged separate entity. The O&M charges for maintenance of bays provided to some of the private generators are being paid by the respective generators.

5.9. This Respondent's officials have carried out the O&M activities as detailed in the annexure of the typed set. The charges collected towards annual Operation and Maintenance of bays provided to the private generators were deducted under the heads of Other Income while calculating the net ARR in the tariff petition filed by TANTRANSCO. Hence, the O&M charges collected from the generators cannot be considered as double recovery as stated by the petitioner.

5.10. The O&M charges are being collected for maintenance of bays provided to a generator for connectivity to the transmission system whereas transmission charges are being collected while availing open access for usage of transmission system. Hence, levy of O&M charges for the bay maintenance will not be a double levy of charges on the petitioner.

5.11. The Hon'ble CERC has passed an order dt.27.6.2007 in petition No.146/2006 that those who are seeking connectivity to transmission system must agree to pay O&M expenses for maintenance of bays. Annual O&M charges for the bays provided to the private generators, being collected from the date of commissioning of the respective generating units and as the O&M expenses is of recurring in nature, the same is collected till the generating units are connected with the grid. The limitation criteria as stated by the petitioner cannot be considered as the same is applicable to the consumers alone as per Electricity Act 2003.

6. Counter Affidavit filed on behalf of the 2nd and 3rd Respondent on 11-02-2020:-

6.1. The Petitioner is having coal based power plant with total installed capacity of 422 MW (2x81 MW+1x80 MW+1x180 MW) at PeriyaObulapuram Village,

Gummidipoondi, Thiruvallur District.

Among the four units of M/s OPG Power generation Pvt. Ltd, Unit-1 of capacity 1 x 81 MW is connected with Gummidipoondi SIPCOT Substation-II through 110KV SC line. Remaining units (Unit-2, 3 and 4) of capacity 1 x 81 MW + 1 x 80 MW + 1x180 MW are connected with Alamathy 400KV SS through 230 KV DC line.

6.2. The Unit 1 of M/s OPG Power generation Pvt. Ltd was commissioned on 22.4.2010 and remaining units Unit-2, 3 and 4 were commissioned on 10.10.2012, 5.6.2013 and 6.7.2015 respectively. The Petitioner is supplying 74 MW power to TANGEDCO through LTOA, wheeling around 303 MW to their captive users and carrying out 15 MW Interstate sales through IEX.

6.3. The Petitioner was requested to make payment of Operation & Maintenance (O&M) charges towards maintenance of 1 No. 110 KV bay provided at Gummidipoondi SIPCOT Substation-II and 2 Nos. 230 KV bays provided at Alamathy 400KV SS based on the B.P.(Per) CH TANTRANSCO Proceedings No.305, dt.23.12.2017. As per above TANTRANSCO Proceedings, the annual operation and maintenance charges from the private generators towards maintenance of bay and its associated equipments provided for connecting their generating units with TANTRANSCO grid may be collected at the rate of 1% of the capital cost of the bay in the year of commissioning with an escalation of 4% per annum in the subsequent years up to 08.04.2014 and with an annual escalation of 5.72% per annum from 09.04.2014.

6.4. The 1st Respondent TANTRANSCO is paying annual O&M charges @ 1.5%

of the capital cost as mutually agreed for the bays provided and maintained by Power Grid Corporation of India Ltd. (PGCIL), the CTU for interfacing 230 KV / 400 KV/ 765 KV substations of TANTRANSCO at PGCIL substations. PGCIL, in vice versa, is also paying annual O&M charges for the bays provided and maintained by TANTRANSCO in the substations of TANTRANSCO.

6.5. In line with the above, TANTRANSCO is collecting annual O&M charges @ 1% of the capital cost as admitted by the Commission in TNERC Tariff Regulations 2005 for the bays provided to the intrastate private generators for interfacing their generating units with TANTRANSCO grid.

6.6. Clause 25.8 of the TNERC Tariff Regulations 2005 reads as follows.

"In respect of the transmission system declared under commercial operation on or after notification of these regulations the base operation and maintenance expenses shall be fixed at 1% of the capital cost (as admitted by the Commission), in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years."

6.7. The annual escalation of 4% per annum has been amended to 5.72% vide the TNERC notification No. TNERC/TR/5/2-11 dated 13-03-2014 which has come into force from the date of publication in the Tamil Nadu Government Gazette i.e. from April 9, 2014.

6.8. Based on the above TANTRANSCO proceedings, M/s OPG Power generation Pvt. Ltd. was requested to pay an amount of Rs.37,28,425/- towards annual O&M charges for the maintenance of 2 nos. 230 KV bays provided at Alamathy 400KV substation for the period from 2012-13 to 2018-19 and an amount of Rs.56,33,903/- towards annual O&M charges for the maintenance of 1 no. 110

KV bay provided at Gummidipoondi SIPCOT Substation-II for the period from 2010-11 to 2018-19.

6.9. As TANTARNSCO has not become full-fledged entity till such time TANGEDCO was raising the demand for the payment of O&M charges, collecting and transferring the same to TANTRANSCO account. The O&M charges for maintenance of bays provided to some of the private generators are being paid by the respective generators. TANTRANSCO officials have carried out the O&M activities. The charges collected towards Annual Operation and Maintenance of bays provided to the private generators were deducted under the heads of Other Income while calculating the net ARR in the tariff petition filed by TANTRANSCO. Hence, the O&M charges collected from the generators cannot be considered as double recovery as stated by the petitioner.

6.10. The O&M charges are collected for maintenance of bays provided to a generator for connectivity to the transmission system whereas transmission charges are collected while availing open access for usage of transmission system. Hence levy of O&M charges for the bay maintenance will not be a double levy of charges on the petitioner.

6.11. The Hon'ble CERC has passed an order dt.27.6.2007 in Petition No.146/2006 that those who are seeking connectivity to transmission system must agree to pay O&M expenses for maintenance of bays. The 1st Respondent has approved Grid Connectivity of the generating units of the petitioner and petitioner executed the Agreement on 29.12.2010 (Unit-1), 01.09.2012 (Unit-2), 24.05.2013

(Unit-3) & 18.11.2015 (Unit-4) for Parallel Operation & Open Access wherein the relevant Clause reads as follows:

"Maintenance Charges if any for the lines/equipments maintained by TANTRANSCO or any other charges if approved by TNERC have to be paid by the company."

6.12. From the above, it is clear that the petitioner has to pay O&M charges as approved by the Commission from time to time. Therefore, the contention of the petitioner that in terms of EWA, the petitioner is obligated to maintain the Generator and equipment including transformers, switch gear protection equipment and other allied equipment at petitioner's bus bar at the petitioner's cost is not acceptable one.

6.13. The D.R.P.NO.2 of 2014 is applicable to the extent the payment has to be made for O&M charges alone by the petitioner. Therefore the contention of the petitioner is not acceptable one.

6.14. The annual O&M charges for the bays provided to the private generators being collected from the date of commissioning of the respective generating units and as the O&M expense is recurring nature the same is collected till the generating units are connected with the grid. It is now a settled position of law that the Limitation Act does not apply to the proceedings before the State Commission under the Electricity Act, 2003 as held in the Tamil Nadu Generation & Distribution Corpn. Ltd. vs PPN Power Generation Co. Ltd. (2014) 11 SCC 53 and Lafarge India Pvt. Ltd. V Chhattisgarh State Electricity Regulatory Commission in Appeal No. 127 of 2013 dated 13.03.2015 (Full Bench). That by a judgment, the

Hon'ble Appellate Tribunal in the case of M/s Aditya Industries v. Himachal Pradesh Electricity Regulatory Commission in Appeal No. 73 of 2014 dated 09.09.2015, allowed the claim of a consumer in regard to line losses for the period from 2005 when the petition was filed only in 2012. Therefore that the demand raised is not barred by limitation.

6.15. In view of the facts and circumstances of the case on hand and position of law as stated above, the petitioner has no prima facie case to further pursue the above Petition. Therefore, the petitioner is not entitled to any relief as prayed for in the above petition. The balance of convenience is clearly in favour of the respondents herein. Hence, the above petition is liable to be dismissed. By dismissing the same, no prejudice will be caused to the petitioner as O&M charges are levied in accordance with law and in the manner known to law.

7. REJOINDER FILED BY THE PETITIONER on 23-09-2020:-

7.1. As regards averments in paragraph 6 of the 1st Respondent's Counter Affidavit, assuming but not conceding that charges leviable, the 1st Respondent cannot levy it on the entire installed capacity of OPGPG. As regards paragraph 7 of the 1st Respondent's Counter Affidavit, the proceedings dated 23.12.2017 of TANTRANSCO, which has been relied upon in the Counter Affidavit, is not valid and is contrary to the applicable regulations and Tariff Order passed by the Commission.

7.2. As regards paragraph 8 of the 1st Respondent's Counter Affidavit, the *inter se* agreement between PGCIL and TANTRANSCO is a matter between them and it

cannot be the basis for levying and collecting O&M charges from the Petitioner. The respective bays are owned and maintained by PGCIL and TANTRANSCO. Hence, they may have mutually agreed to payment of O&M Charges. That, however, cannot entitle TANTRANSCO to collect O&M charges from the Petitioner. The Petitioner supplies power to TANGEDCO and some captive consumers. The supply to the captive consumers is through TANGEDCO. Therefore, even assuming that TANTRANSCO is entitled to O&M charges, the same will have to be collected from TANGEDCO.

7.3. As regards paragraph 9 of the 1st Respondent's Counter Affidavit, it is denied that the levy and collection of annual O & M charges at 1% of capital cost, for the bays provided to interstate private generators, is as per the TNERC's Tariff Regulations, 2005. The reliance placed on Regulation 25.8 of the TNERC Tariff Regulations, 2005 and the notification of the Commission increasing the annual escalation from 4% to 5.72%, in paragraphs 10 and 11 of the 1st Respondent's Counter Affidavit, are completely misplaced. The TANTRANSCO is not entitled to collect O&M charges for the bays based on the said regulations and/or the notification issued by the Commission. No amounts were levied and collected towards O&M charges for the bays until 2019, as the Respondents are well aware that they are not entitled to collect such charges. In any event, TANTRANSCO cannot collect such charges from 2010 onwards.

7.4. As regards paragraph 12 of the 1st Respondent's Counter Affidavit, the proceedings of TANTRANSCO is not valid and is contrary to the applicable regulations and tariff order passed by the Commission. Hence, the demands made

vide letters dated 22.3.2019 and 31.5.2019 are untenable. In any event and without prejudice, the demands are barred by limitation.

7.5. As regards paragraph 13 of the 1st Respondent's Counter Affidavit, the basis of levy and collection of O & M charges being invalid, demand made by TANGEDCO purportedly for and on behalf of TANTRANSCO cannot be justified. The Petitioner was never informed that TANGEDCO is making the demand on behalf of TANTRANSCO. Legally TANGEDCO cannot make such demand for and on behalf of TANTRANSCO.

7.6. As regards paragraph 14 of the 1st Respondent's Counter Affidavit any payment made by generators will not justify the wrong levy and collection of the O & M charges. The Respondents not being entitled to collect such charges cannot validate their actions based on payments made by generators.

7.7. As regards paragraph 15 of the 1st Respondent's Counter Affidavit, it is denied that TANTRANSCO officials have carried out O&M activities. In any event, any activity carried out towards maintenance of bays owned by TANTRANSCO is part and parcel of owning the bays and hence no amounts can be collected from the Petitioner towards O&M charges.

7.8. As regards paragraphs 16 and 17 of the 1st Respondent's Counter Affidavit the collection of O&M charges from the generators amounts to double recovery. O&M charges collected from generators cannot be considered as "other income" for the purpose of net ARR. TANTRANSCO being the transmission licensee, its duty

bound to maintain and operate the transmission system. The bay and associated equipment are part of the transmission system and it is the main business of TANTRANSCO to build, operate and maintain the transmission system. Operation and maintenance of the transmission system being the main function of the transmission licensee, the costs towards it is one of the main components in tariff calculations. Therefore, any amounts collected towards O &M charges cannot be shown under the head of "other income". The Respondents cannot justify its action based on such wrong accounting. The amounts collected from the generators towards transmission charges as approved by the Commission includes O&M charges and hence, it cannot be once again collected under the guise of it being towards the maintenance of the bays provided for connectivity to the transmission system. The Respondents' contention to the contrary is denied.

7.9. As regards paragraph 18 of the 1st Respondent's Counter Affidavit the order dated 27.6.2007 of the CERC in Petition No.146 of 2006 does not justify the levy of O&M charges for the bays maintained by TANTRANSCO. In the said order, the CERC has differentiated between providing connectivity to the transmission system and allowing usage of system through open access and O&M charges for inter-connection bay is required to be paid only in cases where connectivity to transmission system is sought for obtaining open access interconnection. Hence, the said order of the CERC supports the Petitioner's stand that since it has been granted open access and it pays all necessary open access charges, the Respondents cannot collect O&M charges towards the bay.

7.10. The averments in paragraph 19 of the 1st Respondent's Counter Affidavit are

denied. The Respondents are not entitled to collect O&M Charges for the reasons stated in the Petition and in this Rejoinder. In any event, the demand made by the Respondents is barred by limitation and the stand of the 1st Respondent that limitation is applicable only in the case of consumers is untenable.

7.11. As regards paragraph 19 of the 2nd and 3rd Respondents Counter Affidavit, the clause in the Agreement for parallel operation and open access does not entitle the Respondents to levy and collect O&M charges towards the bays.

7.12. As regards paragraph 20 of the 2nd and 3rd Respondents Counter Affidavit, the order in D.R.P. 2 of 2014 is applicable to the instant case. The averments in paragraph 12 and 13 of the Petition are reiterated.

7.13. As regards paragraph 20 of the 2nd and 3rd Respondents Counter Affidavit, it is denied that Limitation Act, 1963 does not apply to proceedings before the State Commissions. The orders which have been cited by the 2nd and 3rd Respondents are contrary to the judgment of the Hon'ble Supreme Court, which has categorically held that Limitation Act, 1963 is applicable to proceedings before the State Commission.

7.14. The Petitioner has a good case on merits and the demand of O&M charges for the bays is contrary to the regulations and the Petition deserves to be allowed.

8. Written Submission of the Petitioner filed on 06-11-2020:-

8.1. The Petitioner operates a coal based captive power plant, which has four

units. Unit I of the plant was commissioned on 22.4.2010 and is connected to Gummidipoondi substation. Units II, III and IV are connected to the Alamathy substation and were commissioned on 10.10.2012, 5.6.2013 and 6.7.2015 respectively.

8.2. The bays in respect of which the impugned demand have been made by the Respondents are located within the aforementioned substations. The Petitioner has borne the cost of transmission infrastructure in respect of the aforesaid connectivity to the substations.

8.3. The Petitioner has been availing open access for transmitting the power from its plant to the end consumers. For this all necessary charges including the transmission charges as determined by the Commission in its various Tariff Orders are being promptly paid by the petitioner. In terms of the Energy Wheeling Agreement, executed between the Petitioner and the Respondents, the Petitioner is required to maintain only the generator, the transformer, switch gear protection equipment and other allied equipments.

8.4. On 22.3.2019, the 2nd Respondent made a demand for Rs.37,28,425/- purportedly towards operation and maintenance charges in respect of the bays owned by the Respondents located within the Alamathy substation. The said demand was for the period since 2012. On 31.5.2019, another demand was made on the Petitioner for Rs.56,33,903/- purportedly towards operation and maintenance charges in respect of the bays owned by the Respondents located within the Gummidipoondi substation. The said demand was for the period since

2010.

8.5. The Petitioner objected to the demand and made the payment under protest. Thereafter the Respondents have demanded operation and maintenance charges, for the subsequent period.

8.6. Under the scheme of the Act, the Respondents cannot collect any charges from the power plants in connection with the use of the transmission system unless the same is sanctioned or determined by the Commission. The Respondent, by unilaterally levying operation and maintenance charges for the bays, has clearly tried to usurp the jurisdiction and powers of the Commission.

8.7. The TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 have been framed for the purpose of determining tariff by the Commission. Regulation 1 (5) of the said regulations makes it clear that the said regulations are applicable for determination of tariff by the Commission in accordance with section 62. It is an admitted position that the Commission has not determined any charges towards operation and maintenance of the bays within the substations. Hence, in the absence of any such charges, the Respondents cannot collect these charges from the Petitioner.

8.8. The transmission charges fixed by the Commission includes operation and maintenance charges. This is evident from Regulation 59(iii) of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, which makes it clear that transmission charges include operation and maintenance charges. It cannot be disputed that the bays are part of the transmission system. Regulation 62 of the

aforesaid Regulations requires the transmission licensee to maintain separate function wise accounts for the transmission system and furnish the revenue requirement line wise and bay wise. This being the case, the Respondents are already collecting operation and maintenance charges for the bays from the Petitioner, as part of the transmission charges. The demand made by the Respondents amounts to double levy of operation and maintenance charges. This is not sanctioned by the Act or any of the orders passed by the Commission and hence cannot be allowed.

8.9. Chapter III of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, comprising of Regulations 18 to 34, deals with general principles of computing cost and return, and are to guide the Commission. Regulation 25 (8) provides that in respect of transmission system declared under commercial operation, the base operation and maintenance expenses shall be fixed at 1% of the capital cost subject to annual escalation of 5.72%. The Respondents have relied on the said regulation to justify the levy of operation and maintenance charges. Hence, the Respondents have admitted that bays are part of the transmission system.

8.10. However, the Respondents have also taken a contradictory stand that operation and maintenance charges for the bays is different from transmission charges collected for use of the transmission system. It is an admitted position that the Respondents are collecting transmission charges from the Petitioner. The base operation and maintenance expenses at 1% of the capital cost subject to annual escalation of 5.72%, has already been factored by the Commission while fixing the

charges. Hence, the Respondents cannot separately charge operation and maintenance charge for the bays.

8.11. The stand taken by the Respondents that operation and maintenance charges of bays provided to private generators were deducted under the head other income while calculating ARR is contrary to Regulation 62 of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, which requires revenue requirement to be furnished bay wise. The Respondents cannot, therefore, contend that these were deducted from "other income" while calculating ARR. Further, the Respondent's stand that the levy of these charges is based on the TANTRANSCO's Board proceedings dated 23.12.2017, belies the stand now taken by the Respondents in these proceedings. If the amounts now levied as operation and maintenance charges for the bays is sanctioned by the Commission as contended by the Respondents, there would have been no need for a board proceeding.

8.12. The D.R.P. 2 of 2014 decided by the Commission is not in any manner applicable to the present case. The D.R.P. 2 of 2014 did not deal with levy of operation and maintenance charges for bays within the substation. The Respondent's entitlement to levy operation and maintenance charges based on TANTRANSCO Board proceedings dated 23.12.2017, was not the issue involved in that case. That was a case, where the generator had agreed to pay charges to TANGEDCO for maintaining the switching station within its own plant premises, till the time, the generator availed temporary connection.

8.13. Taking note of the facts and circumstances of that case, the Commission concluded that the generator is liable to make the payment. The conclusion of the Commission in that case was based on the fact that the temporary connectivity was established based on the request of the generator and the generator had agreed to bear the expenses of the maintenance staff. There are no such circumstances in the present case. Hence, the stand of the Respondents that based on the order dated 4.1.2019, passed in D.R.P. 2 of 2014 it is entitled to levy and collect operation and maintenance charges for the bays is completely baseless.

8.14. The demand made on 22.3 .2019, for Rs.37,28,425/-, in respect of the bays within the Alamathy sub station, is for the period since 3.9.2012. The demand made on 31.5.2019, for Rs.56,33,903/- in respect of the bays within the Gummidipoondi substation is for the period since 1.12.2012. The demand has been made belatedly and significant part of the demand is barred by limitation.

8.15. The petitioner had by its letters dated 9.4.2019 and 28.6.2019 denied its liability and disputed the amounts claimed by the Respondents. However, to avoid any coercive steps by the Respondents, the Petitioner made the payments and vide its letters dated 26.4.2019 and 6.9.2019 informed the Respondents that the amounts were being paid under protest and without prejudice to its rights. Had the Respondents approached the Commission to recover the amounts, the claims relating to the period prior to three years from the filing of any such petition would have been clearly barred by limitation. It has been held by the Hon'ble Supreme Court in Andhra Pradesh Power Coordination Committee v. LancoKondapalli Power Ltd., reported in (2016) 3 SCC 468, that the Limitation Act, is applicable to

proceedings before the State Commissions. For this reason, also the demand made by the Respondents is liable to be set aside.

8.16. The Respondents are not entitled to levy and collect operation and maintenance charges for the bays owned by the Respondents which are located within the substations to which the Petitioner's power plant is connected.

8A Written Submission filed on behalf of the Respondents:-

8A.1. The Hon'ble CERE's Order dt.27.06.2007 on the O&M Charges for Bays in Petition No. 146/2006 has held as below:-

"Before parting with this case/ it would be worthwhile for us to differentiate between providing connectivity to the transmission system and allowing usage of the transmission system through short-term/long term open access. It is possible that during planning/execution stage/ a generating company/licensee may just seek connectivity in the first instance. This will help the generating company/licensee to plan/execute dedicated transmission system up to the grid. However; the generating company/licensee may be able to firm up its delivery/injection points at a later date/ and be able to apply for open access at that stage only. Thus, connectivity may be seen as a pre-cursor to the open access. The requirement of connectivity of this nature was not envisaged previously and therefore, the Commission's regulations on open access did not cater for these situations. The requests for connectivity from all such persons who are eligible to buy/sell as per the Electricity Act,2003 should normally be disposed of within one month of receipt of such requests. While granting permission to connect to the system/ reasonable broad design requirements may be intimated to the person seeking connection. It is needless to say that the person seeking connectivity must agree to:

(i) Comply with Indian Electricity Grid Code;

(ii) Reimburse the cost of inter-connection bay including bus extensions etc.

(iii) Pay O&M expenses for inter-connection bay; and

(iv) Apply for required "open access" in due course/ but in good time, and not take for granted its approval."

8A.2. TNERC Tariff Regulation - 2005 Clause 25.8 on the O&M Expenses for Bays read as follows:-

"In respect of the transmission system declared under commercial operation on or after notification of these regulations the base operation and maintenance expenses shall be fixed at 1% of the capital cost (as admitted by the Commission), in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years."

8A.3 The annual escalation of 4% per annum has been amended to 5.72% vide the TNERC notification No. TNERC/TR/5/2-11 dated 13-03-2014 which has come into force from the date of publication in the Tamil Nadu Government Gazette i.e. from April 9, 2014 read as follows:-

*(g) in regulation 2~ in sub-regulations (2/ (3)/ (4/ (5)/ (6)/ (7) and (8) /
for the expression "4% '~ the expression "5. 72% // shall be substituted;"*

8A.4 The bays provided for the generators for interfacing with Grid is part of the Transmission System. Hence based on the above CERC order and TNERC regulation and further amendment, B.P.(Per) CHTANTRANSCO Proceedings No.305, dt.23.12.2017 was issued by TANTRANSCO for collecting the annual operation and maintenance charges from the private generators towards maintenance of the bays and its associated equipments provided for connecting their generating units with TANTRANSCO Grid.

8A.5. As per above TANTRANSCO proceedings, the O&M Charges are collected at the rate of 10% of the capital cost of the bay in the year of commissioning with an escalation of 4% per annum in the subsequent years upto 08.04.2014 and with an annual escalation of 5.72% per annum from 09.04.2014 for the bays provided to

the Intrastate private generators for Interfacing their generating units with TANTRANSCO grid.

8A.6 Based on the above TANTRANSCO proceedings M/s.OPG Power generation Pvt. Ltd. was requested to pay an amount of Rs.37,28,425/- towards annual O&M charges for the maintenance of 2 Nos. 230 KV bays provided at Alamathy 400KV substation for the period from 2012-13 to 2018-19 and an amount of Rs.56,33,903/- towards annual O&M charges for the maintenance of 1 No. 110 KV bay provide at Gummidipoondi SIPCOT Substation-II for the period from 2010-11 to 2018-19.

8A.7. Operation and Maintenance Expenses is defined in clause 2.1 (bb) the TNERC (Terms and Conditions for the determination of Tariff) Regulations, 2005." as below:-

"Operation and Maintenance Expenses' or 'O and M Expenses' means the expenditure incurred in operation and maintenance of the generating station, or part thereof / transmission system / distribution system, including the expenditure on employee cost, repair and maintenance and administration and general expenses."

8A.8. Regulation 62 read with Regulation 66 of the TNERC Tariff Regulations, 2005 circumscribes that the transmission licensee / STU shall endeavour to maintain separate function wise accounts for transmission system and furnish the revenue requirement line wise, bay wise and for load dispatch centre wise. To this extent, the Respondent herein is justified for O&M charges are being collected for maintenance of bays provided to a generator for connectivity to the transmission system whereas transmission charges are being collected while availing open

access for usage of transmission system. Hence levy of O&M charges for the bay maintenance will not be a double levy of charges on the petitioner.

8A.9. Most of the private generators are paying the O&M charges towards the maintenance of bays provided to them for interfacing their generators with TANTRANSCO / TANGEDCO Grid. The charges collected towards annual Operation and Maintenance of bays provided to the private generators were deducted under the heads of Other Income while calculating the net ARR in the tariff petition filed by TANTRANSCO. Hence, it is submitted that the O&M charges collected from the generators cannot be considered as double recovery as stated by the petitioner.

8A.10. TNERC'S Terms and Conditions for determination of Tariff Regulations, 2005, regulation 59 deals with the Transmission Tariff Charges which is extracted below:-

“59. Transmission Tariff Charges:

The tariff for transmission of electricity by a transmission system shall comprise recovery of annual transmission charges consisting of the following computed as per the principles outlined in Chapter III of these Regulations.

- (i) Interest on loan capital;*
- (ii) Depreciation*
- (iii) Operation and Maintenance Expenses (O&M expenses)*
- (iv) Interest on working capital a normative availability; and*
- (v) Return on equity.*

The annual transmission charges computed as per the regulation shall be total aggregate revenue requirement of the STU / Transmission licensee. The following shall be deducted from the total revenue requirement.

- (a) Transmission charges collected from the short term intra state open access consumers, captive power plant and generating stations using Non-Conventional Energy Sources.*

(b) *Income from other business to the extent of portion to be passed on to the beneficiaries.*

(c) *Reactive Energy Charges and Transmission Charges received from CTU for use of facilities of the licensee /STU.*

Till such time a common transmission tariff is evolved to maintain consistency in transmission pricing frame work in interstate and in the state transmission system/ the monthly transmission charges payable by the distribution licensees and other long term intrastate open access consumers shall be based on the capacity allocated to each beneficiaries as detailed below.

$$\left\{ \frac{TC - (a + b + c)}{12} \times \frac{CL}{SCL} \right\}$$

Where TC = Annual Transmission Charges

a= Total transmission charges by the short term open access consumers

b= Income from other business to the extent of portion to be passed on to the beneficiaries

c= Reactive Energy Charges and Transmission charges received from CTU for use of facilities of the licensee / STU

CL= Allotted capacity to the long-term transmission customers

SCL= Sum of allotted Transmission capacity to all the long term open access Customers of the Intra state transmission system"

The transmission charges shall be determined after following the procedure outlined in Chapter II."

8A.11. The Aggregate Revenue Requirement of TANTRANSCO for the MYT period FY 2016-17 to FY 2018-19 have been approved by the Commission in its Order in T.P. No.2 of 2017, dated 11-08-2017. Wherein the Commission has calculated the Operation and Maintenance Expenses of TANTRANSCO as follows:

Extracts from 4.4.8 of the above order is submitted below for kind perusal by the Commission:-

"4.4.8 Regulation 25 of the Tariff Regulation species as under:

25 Operation and Maintenance Expenses:

1. *The Operation and Maintenance Expenses shall be derived on the basis of actual operation and maintenance expenses for the past five years previous to current year based on the audited Annual Accounts excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission. The Commission may from, if considered necessary*

engage Consultant/Auditors in the process of prudence check for correctness.

2. The average of such normative operation and maintenance expenses after prudence check shall be escalated at the rate of 5.72% per annum to arrive at Operation and Maintenance Expenses for current year i.e. base year and ensuing year.

3. The base Operation and Maintenance Expenses so determine shall be escalated further at the rate of 5.72% per annum to arrive a permissible operation and maintenance expenses for the relevant years of tariff period "

4.4.9. Accordingly, the O& M Expenses have been projected based on the average of the actual O& M Expenses approved in this order, for the past five years, i.e. FY2011-12 to FY2015-16 and escalated at the rate of 5.72% per annum. The component-wise projection of O & M Expenses is detailed below:

“4.4.10 to 4.4.14 deals with how the O&M Charges have been approved by the Commission.”

8A.13 The TANTRANSCO calculates the O&M Expenses as per the above regulation of the Terms and Conditions for determination of Tariff Regulations, 2005 only and the Commission also approves the O&M expenses as per the regulations only. The Tariff Orders issued by the Commission for TANGEDCO, TANTRANSCO and SLDC will be the best example. Whenever the Commission issues a Tariff Order relating to TANGEDCO/TANTRANSCO, considers the Regulations and calculates the ARR as per the Tariff Regulations in force. The Commission considers the Projections based on the Tariff Regulations and while Turing up considers the Actual revenue realized and other income, other actual expenses based on the Annual Reports of the TANTRANSCO or TANGEDCO respectively. TANGEDCO too have sale of power as principle income and other miscellaneous charges as other income.

8A.14. For any nature of Business, the entity will generate "main (principal) Income (Revenue)" as well as "other income" associated with the nature of the business in which it is dealt with. The receipts of other income will vary from entity to entity based on the nature of business it undertakes. The other income of TATRANSCO consists of the following viz. Interest on staff loans and advances, Income from Investments. Delayed payment surcharge collected from the consumers, Income from staff welfare activities, Income from sale of scrap, Rebate on Power Purchase bills and Miscellaneous Receipts including Liquidated damages recovered, foreign exchange gain etc.

8A.15. In the Annual Report of TANTRANSCO, Collection of annual O & M Charges from fossil fuel based private generators for the Bay maintenance is accounted in the account code 62.992. The O & M Charges for Wind Energy Generators are being booked under the Account code 62.968. Certain other Account codes are also being operated for income viz. Collection of load flow study - 62.984, collection of rental charges from PGCIL for the rack space and DC supply provided to power of 230 KV SS etc. by P&C circles- 62.988, Collection of amount towards JLDC connection charges from the private power producers - 62.981, etc. are being collectively segregated under Miscellaneous receipts in the Accounts of TANTRANSCO. The above charges collected from the consumers are considered under "other income" while arriving Net ARR for the respective year.

8A.16. While submitting the Tariff Petition and ARR Formats to the Commission for approval and determination of Transmission Charges, Scheduling Charges, System

Operation Charges and other charges, the Annual Report of TANTRANSCO is also submitted to the Commission.

8A.17. The annual O&M charges from the fossil fuel based private generators for the Bay maintenance are considered under the Miscellaneous Receipts in the Accounts i.e. in Annual Report of TANTRANSCO and the same is deducted while determining the Net Aggregate Revenue Requirement (ARR) of the financial year.

8A.17. TANTRANSCO is raising invoices for PGCIL Bays at Aamathy 400 KV SS-4 Nos. Bays, Siruseri 230 KV SS – 2 Nos. Bays and Arani 230 KV SS – 2 Nos. Bays. PGCIL also prays the O&M charges to TANTRANSCO. PGCIL is also maintaining Bays for TANTRANSCO and raises invoices for O & M charges for such Bay maintenance at 1.5% of the capital cost and escalates year-on-year. PGCIL raises invoices for the Bays maintained in the following SS Karikudi 400 KV SS – 4 Nos., Kalivanthapattu 230 KV SS – 1 No., Tirunelveli 400 KV SS – 1 No., Tirunelveli 230 KV SS – 2 Nos., Karur 400 KV SS – 4 Nos., Kalivanthapattu 400 KV SS – 4 Nos. and Arasur 400 KV SS – 2 Nos.

8A.18. The collection of Operation and Maintenance Charges for Bay Maintenance is a revenue (miscellaneous income) received by the TANTRANSCO whereas the O&M expenses were claimed by TANTRANSCO as a part of fixed expenses and approved by the Commission in the Tariff Order is one of the components of fixed expenses and it is related to the employee cost, administration and general expenses and repairs and maintenance expenses are considered under expenditure.

8A.19. TANTRANSCO claims the Operation and Maintenance Expenses based on the projections and after preparation of Annual Report of that year claims, the actual O&M expenses of that year based on actuals. The Commission also allows such O&M expenses in the ARR after prudence check.

8A.20. The following table is extracted from the Tariff Order in T.P. No.2 of 2017, dated 11-08-2017:-

Table No. 4.14.1: The approved ARR for FY 2016-17 to FY 2018-19

(Rs. in Crore)

Sl. No.	Particulars	Petition			Approved by the Commission		
		FY 2016-17	FY 2017-18	FY 2018-19	FY 2016-17	FY 2017-18	FY 2018-19
1	O&M Expenses	770.67	799.35	829.68	857.42	927.39	1000.67
1.1	Employee Expenses	823.94	853.94	885.66	916.52	992.21	1071.47
1.2	R&M Expenses	11.13	11.76	12.43	12.43	13.15	13.90
1.3	A&G Expenses	26.74	28.27	29.88	29.89	31.59	33.40
1.4	Less: O&M expenses capitalised	(91.14)	(94.62)	(98.30)	(101.42)	(109.57)	(118.11)
2.	Depreciation	598.18	718.10	868.93	873.08	947.74	1,111.92
3	Interest and Finance charges	1263.01	1397.38	1552.34	1180.26	1207.46	1206.09
4	Interest Expenses capitalised	(311.79)	(339.94)	(366.68)	(550.02)	(593.39)	(561.48)
5	Interest on Working Capital	79.00	98.70	111.96	87.27	102.80	115.64
6	Return on Equity	323.51	358.88	406.67	311.44	369.90	445.18
7	Less: Other Income	309.66	304.41	364.48	309.66	139.88	179.96
8	Aggregate Revenue Requirement	2412.92	2728.07	3038.42	249.78	2822.03	3138.04

The revenue to be recovered in FY 2017-18 as approved by the Commission in the above order is as follows:-

Table No.5.2.3: Revenue to be recovered in FY 2017-18 as approved by the Commission

(Rs.in crore)

Sl. No.	Particulars	TANTRANSCO	Approved by the Commission
1	Stand-alone ARR for FY 2017-18	2728.07	2822.03
2	Less: ARR for SLDC for FY 2017-18 approved by the Commission in order in T.P. No.3 of 2017, dated August 11, 2017	-----	39.21
3	Add: Past Revenue Gap / (Surplus)	(555.07)	(311.93)
4	Less: Revenue from Scheduling and Operating Charges	146.93	-----
5	Less: Revenue from Reactive Energy Charges	17.60	-----
6	Revenue to be recovered from Transmission Charges in FY 2017-18	2008.47	2470.88 ***

In the above Tariff Order, the LTOA Transmission Charges determined by the Commission is as follows:-

Table 5.3.4.: Approved LTOA Transmission Charges for FY 2017-18

Sl. No.	Particulars	UoM	Formula	FY 2017-18
1	Net Revenue Requirement	Rs.Crore	A	2,470.88 ***
	Allotted Capacity			
2	Wind (Non-REC)	MW	B	7319
3	Bio-mass (Non-REC)	MW	C	218
4	Co-generation (Non-REC)	MW	D	659
5	Solar (Non-REC)	MW	E	1529
6	Other Sources	MW	F	18,398
7	Grand Total	MW	G	28,122
8	Number of Days	No.	H	365
9	Transmission Charges	Rs./MW/Day	$I-(A \times 10^7)/(40\% \times B + 50\% \times C + 60\% \times D + 30\% \times E + F) \times H)$	3,037.30

8A. 21 While determining the final price of transmission charges, the Commission considers all the expenses that has to be recovered from the customers and reduces the “other income” from such expenses and finally calculates the transmission charges to be recovered from the end customers by dividing the Annual Revenue Requirement by the Allotted transmission capacity in the system by duly considering the promotional measures to encourage the (Non-REC) wind, solar, Biomass and Co-gen Energy in the State of Tamil Nadu.

8A.22. sThe Transmission Charges above determined by the Commission is for using the transmission system network. The transmission charges so derived by the Commission is applicable to all LTOA/MTOA and STOA customers of the State.

8A.23. From the above order of the Commission, it is clearly proved that the Respondent TANTRANSCO is not claiming O&M Charges twice as TANTRANSCO claims its Operation and Maintenance Expenses as one of the Component of the Fixed Expenses and the Operation and Maintenance Charges collected for Maintenance of Bay from the Petitioner is claimed as a charge for rendering the Service i.e. Maintenance of the Bay related to the Petitioner alone. The additional service which it renders specially to this Petitioner attracts additional charges for that exclusive service. Further, this charge is not collected from all the consumers who use the transmission system rather it is collected from the Generator to whom a dedicated Bay is maintained in the 110 KV SS, 230 KV SS or in 400 KV SS. The Cost associated with the above maintenance and the other aspects were already submitted in the Written Submission of the Respondent.

8A.24. It is requested not to consider the plea of the Petitioner on the grounds discussed in the above submissions as the transmission charges collected from the LTOA and MTOA customers are different from the O&M charges for maintenance of the Bays exclusively constructed for the Private Generators. It is an additional service provided to the Petitioner. This charge is not related to the Open Access (OA) charges. The OA charges are payable by the Petitioner for injection of power into the State Grid for its captive consumption at a different location and this includes transmission charges for using the transmission system, wheeling charges for wheeling power to the consumers utilizing the distribution network, scheduling and system operation charges for the SLDC function. Hence, it is for different purpose and not to be linked with the Maintenance Charges claimed by TANTRANSCO.

8A.25. The Commission may consider the submissions made by the respondent TANTRANSCO and allow TANTRANSCO to continue collection of the O&M Charges for maintenance of petitioner's bay (exclusive bay) by the respondent TANTRANSCO from the private generators.

8A.26. The payment of Operation & Maintenance (O&M) charges towards maintenance of 1 No. 110 KV bay provided at Gummidipoondi SIPCOT Substation-II and 2 Nos. 230 KV bays provided at Alarnathy 400KV SS based on the B.P. (Per) CH TANTRANSCO Proceedings No..305, dt.23.12.2017 which is passed on the basis of the TNERC Tariff Regulations, 2005 and is in lines with order passed in T.P. No.2 of 2017 dated 11.08.2017

8A.27. The claims for the periods from 2009 to 2017 are not barred by limitation, as contended by the Petitioner herein. The judgement relied by the petitioner will ensure to the benefit of the respondent as the findings of the Hon'ble Supreme Court in M.P Steel Corpn. V. CCE, reported in (2015) 7 SCC 58 the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003 as the Commission is not a Court in strict sensu. That the Hon'ble Supreme Court in Andhra Pradesh Power Co-ordination Committee and Others V. Lanco Kondapalli Power Limited and Others, reported in (2016) 3 SCC 468, in Para 31 held that statutory provisions like Section 5 or Section 14 of the Limitation Act applies to the Commission only in respect of its judicial power under Clause (f) of sub-section (1) of section 86 and the same is extracted below:-

“(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration,”

8A.28. The petition filed under Section 86(1)(f), does not seek for determination of the O&M charges for the bays, instead calls upon the Commission to adjudicate whether the O&M charges levied as per the B.P. (Per) CH TANTRANSCO Proceedings No.305, dt.23.12.2017 is in compliance with the Electricity Act, 2003 and the TNERC Tariff Regulations, 2005 and that the same are included and part of Transmission Tariff. This clearly falls within the meaning of other powers or functions of the Commission which is squarely regulatory in nature.

8A 29. Moreover, the annual O&M charges for the bays provided to the generators being collected from the date of commissioning of the respective generating units and as the O&M expenses is of recurring in nature the same is collected till the

generating units are connected with the grid. To this extent, there is no time limit in demand for clearance of outstanding O&M charges for maintenance of the bays.

8A 29. TANTRANSCO is paying annual O&M charges @ 1.5% of the capital cost as mutually agreed for the bays provided and maintained by Power Grid Corporation of India Ltd. (PGCIL) the CTU for interfacing 230 KV/ 400 KV/765 KV substations of TANTRANSCO at PGCIL substations. It is submitted that PGCIL in vice versa is also paying annual O&M charges for the bays provided and maintained by TANTRANSCO.

8A. 30. The petitioner by way of filing this petition, has intended, on one hand, to deny the TANTRANSCO the legitimate demand towards annual maintenance of the Bay erected exclusively for its use (but for this, the TANTRANSCO would not have put in place the bay and as such consequential maintenance would not have arisen) and, on the other hand, to Mulk the responsibility to share the cost towards maintenance of such exclusive bay on all other OA consumers. The respondent submits that both are impermissible, either in law or on equitable consideration. The petitioner having requested TANTRANSCO to put in place the bay for its exclusively; and having accepted and paid the cost towards it under Deposit Contributory Work basis, is estopped to state that it will not pay the consequential annual maintenance charges.

9. Findings of the Commission:-

9.1. We have heard the submissions of learned Counsel appearing for the Petitioner and the Respondents. The Petitioner has filed this petition

in D.R.P.No.12 of 2019 to declare that the Respondents are not entitled to collect annual operation and maintenance charges from the Petitioner for the maintenance of the bays and associated equipments at the 110 KV Gummidipoondi Sub-station-2 and 400 KV Alamathy Sub-station and to direct the Respondent to refund the sum of Rs.93,62,328/- alongwith interest @ 18%.

The Petitioner has also filed an Interim Application in I.A. No.1 of 2019 in the said D.R.P.No.12 of 2019 to grant an Order of interim injunction restraining the respondent from taking any coercive action against the Petitioner towards purported recovery of O&M charges pending disposal of this DRP.

9.2. The petitioner has set up 422 MW consisting of four Units (2x81 MW + 1X80 MW + 1X180 MW) of coal based thermal power plant at PeriyaObulapuram Village, Gummidipoondi, Thiruvallur District.

9.3. Of the above, Unit-1 (1x81 MW) is connected with Gummidipoondi SIPCOT Sub-station-II through 110 KV SC line and the remaining Units (Unit-2 i.e. 1x81 MW, Unit-3 i.e. 1x80 MW and Unit-4 i.e. 1x180 MW) are connected with Alamathy 400 KV Sub-station through 230 KV DC line.

9.4. The Petitioner is a captive power plant and has been supplying electricity from its plant through open access to its captive consumers.

For this all necessary charges including the transmission charges as determined by the Commission in its various tariff orders are being promptly paid by the Petitioner.

9.5. The Petitioner has entered into an Energy Wheeling Agreement ("EWA") dated 31-12-2013 with the Respondents for utilizing the transmission system of the Respondents in order to transmit electricity to the Petitioner's destination of their use.

9.6. The EWA sets out the obligations of the Petitioner and Respondents with respect to operation and maintenance. In terms of the aforesaid EWA, the Petitioner is obligated to maintain only the Generator and equipment including the transformer, switchgear protection equipment and other allied equipment at the Petitioner's bus bar (on the Petitioner's premises) at the Petitioner's cost. In consonance with the aforesaid requirement, the Petitioner has been duly bearing the cost for such maintenance of the aforesaid equipment at its premises as specified in the EWA.

9.7. When the plant was operational, it has been paying the full transmission and distribution charges and losses for the utilization of the transmission and distribution systems of the Respondents as per TNERC Tariff Orders on the same.

9.8. It is seen that the demand notice in this case has been issued on 22-03-2019 for a sum of Rs.37,28,425/- towards O&M charges payable by the petitioner for the period from 03-09-2012 to 31-03-2019. Further, another notice dated 31-05-2019 for a sum of Rs.56,33,903/- towards O&M charges payable by the petitioner for the period from 01-12-2010 to 31-03-2019 has been raised. While raising the said demand notices, it is mentioned that the Commission in D.R.P. No.2 of 2014 dated 04-01-2019 has clarified the collection of O&M charges and therefore the above said sums are payable by the petitioner for the year. It may be pointed out that the said orders of this Commission cited by the respondent relates to another generator namely M/s. Suryadev Alloys Pvt. Ltd. and the said decision has only clarified the provisions of the relevant regulations and the cause of action for levy of O&M charges arose from the date of issue of the regulations of the Commission and not from the date of Order of the Commission in the said D.R.P. No.2 of 2014.

9.9. The Petitioner objected to the demand and made the payment under protest. Thereafter, the Respondents have demanded operation and maintenance charges for the subsequent period also.

9.10. The Respondents have submitted that the Operation and Maintenance Charges are levied and collected based on TANTRANSKO's Board Proceedings dated 23-12-2017.

9.11. In this connection, it is pertinent to mention that any monetary claim should be made within a period of three years from the date on which cause of action arose. In view of the above position, the claims for O&M charges for the period of three years prior to the date of issue of such notices of demand mentioned above (i.e. 22-03-2019 and 31-05-2019) clearly barred by limitation.

9.12. The Respondents have submitted that the levy of Operation and Maintenance Charges at 1% of capital cost with an annual escalation of 5.72% is in line with Sub-Regulation (8) of Regulation 25 of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005.

9.13. The Respondents have submitted that in the tariff petition filed before the Commission, charges towards operation and maintenance of bays provided to private generators were deducted under the head other income while calculating the Annual Revenue Requirement.

9.14. The Respondents have further submitted that the Commission in its Order in D.R.P. No.2 of 2014 dated 04-01-2019 has stated that the Respondents are entitled to levy and collect operation and maintenance charges for the bays.

Also, the Respondents have submitted that the Operation and Maintenance charges for the bays is different from transmission charges collected for use of the transmission system.

9.15. It is the contention of the Petitioner that O&M Charges for the maintenance of transmission lines by TANTRANSCO is factored (included) in the Transmission Charges and as such collection of O&M Charges separately from the generators like the Petitioner would not arise.

9.16. In this connection, the Commission would like to refer sub-regulation (8) of regulation 25 of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, which provides as follows:

"8) In respect of the transmission system declared under commercial operation on or after notification of these regulations the base operation and maintenance expenses shall be fixed at 1% of the capital cost (as admitted by the Commission), in the year of commissioning and shall be subject to an annual escalation of 5.72% per annum for the subsequent years".

9.17. As regards the contention of the Petitioner that when O&M expenses are factored while computing the Transmission Charges payable by the generators using Transmission lines, collection of O&M Charges separately does not arise, it is clarified that the O&M Charges collected from the generator as per the said regulation 25(8) is deducted from the Annual Revenue Requirement (ARR) of the Transmission Licensee under the head "Less: OTHER INCOME" as shown in the Table in para 9.18 below, so that the Transmission Charges get reduced

uniformly to all generators. In other words, the Transmission Charges payable by each generator is calculated by dividing the Annual Revenue Requirement by the Transmission Capacity available. The O&M Charges collected from the individual generators using transmission lines is subtracted from the ARR and Transmission Charges is so arrived. Therefore, the Petitioner cannot contend that O&M Charges are levied twice.

9.18. The format prescribed in Tariff Order in T.P. No.2 of 2017 dated 11-08-2017, for the calculation of ARR is provided as below:-

"Table 4.14-1 Approved ARR for FY 2016-17 to FY 2018-19 (Rs. Crore)

Sr. No.	Particulars	Petition			Approved by the Commission		
		FY 2016-17	FY 2017-18	FY 2018-19	FY 2016-17	FY 2017-18	FY 2018-19
1.	O&M Expenses						
1.1	Employee Expenses						
1.2	R&M Expenses						
1.3	A&G Expenses						
1.4	Less: O&M Expenses capitalised	-	-	-	-	-	-
2.	Depreciation						
3.	Interest & Finance Charges						
4.	Interest Expenses capitalised	-	-	-	-	-	-
5.	Interest on Working Capital						
6.	Return on Equity						

7.	Less : Other Income						
8.	Aggregate Revenue Requirement						

9.19. It may be stated that the collection of O&M Expenses for bay maintenance is a revenue (miscellaneous income) received by the TANTRANSCO and deducted from its Annual Revenue Requirement in Sl.No.7 in the above Table, whereas the O&M Expenses claimed by TANTRANSCO and approved by the Commission in the Tariff Order is a component of Fixed Charges and it is related to the Employee Cost, Administration and General Expenses and Repairs and Maintenance Expenses.

9.20. Further, the Commission would also like to refer to regulation 59 of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, which provides as follows:

"59. Transmission Tariff Charges

The tariff for transmission of electricity by a transmission system shall comprise recovery of annual transmission charges consisting of the following computed as per the principles outlined in Chapter III of these Regulations.

- (i) Interest on Loan Capital;
- (ii) Depreciation
- (iii) Operation and Maintenance Expenses;
- (iv) Interest on Working Capital at normative availability; and:
- (v) Return on equity:

The annual transmission charges computed as per this regulation shall be total aggregate revenue requirement of the STU / Transmission licensee. The following shall be deducted from the total revenue requirement.

Transmission charges collected from the short term intra state open access consumers, captive power plant and generating stations using Non Conventional Energy Sources.

Income from other business to the extent of portion to be passed on to the beneficiaries.

Reactive Energy Charges and Transmission charges received from CTU for use of facilities of the licensee / STU.

Till such time a common transmission tariff is evolved to maintain consistency in transmission pricing framework in inter state and in the state transmission system the monthly transmission charges payable by the Distribution licensees and other long term intra state open access consumers shall be based on the capacity allocated to each beneficiaries as detailed below:

$$\left\{ \frac{TC - (a + b + c) \times CL}{12 \times SCL} \right\}$$

Where TC = Annual Transmission Charges

A = Total transmission charges by the short term openaccess consumers

b= *Income from other business to the extent of portion to be passed on to the beneficiaries.*

c= *Reactive Energy Charges and Transmission charges received from CTU for use of facilities of the licensee / STU*

CL= *Allotted capacity to the long term transmission customers*

SCL= *Sum of allotted Transmission capacity to all the long term open access customers of the intra-state transmission system.*

The transmission charges shall be determined after following the procedure outlined in chapter II.

9.21. From the above, it is clear that the collection of O&M Expenses for bay maintenance is a revenue (miscellaneous income) received by the TANTRANSCO whereas the O&M Expenses claimed by TANTRANSCO and approved by the Commission in the Tariff Order is a component of Fixed Charges and it is related to the Employee Cost, Administration and General Expenses and Repairs and Maintenance Expenses.

9.22. Had there been no O&M Expenses collected from the bay users for bay maintenance, then the ARR for TANTRANSCO will be more and the Open Access Charges will be more. The non-bay users like the Open Access consumers have to pay more.

9.23. In view of the above findings, the collection of O&M Expenses @ 1% collected for the bay maintenance is as per the Regulation of the Commission.

9.24. TANTRANSCO is directed to file necessary petition for clarification of the Commission regarding the levy of O&M charges for Bay maintenance and supervision charges etc. in order to avoid any ambiguity in the matter.

9.25. Therefore, the O&M charges demanded by the second respondent for the period prior to 22-03-2016 in respect of the notice dated 22-03-2019 and the demand of O&M charges for the period prior to 31-05-2016 as demanded in the second notice dated 31-05-2019 are time barred and it is not payable by the petitioner.

9.26. However, we notice that the second respondent has issued a notice of demand for Rs.37,28,425/- on 22-03-2019 covering various periods and as the limitation period for money claim is three years from the date on which cause of action arose, the demand for the period prior to 22-03-2016 is time barred and cannot be recovered. Similarly, in the

second notice dated 31-05-2019, the demand for Rs.56,33,903/- the period prior to 31-05-2016 is time barred and cannot be recovered. The remaining amounts which are within the limitation period can be recovered from the Petitioner by following due process. As the Petitioner has paid the amount of Rs.37,28,425/- as per the demand notice on 22-03-2019 and Rs.56,33,903/- on 31-05-2019 under protest, the amount which are time barred as specified above, shall be refunded to the Petitioner with interest at the rate as the Respondent is charging from its consumers for belated payment, within a period of 30 days from the date of this Order.

With the result, the petition is partly allowed and the connected I.A. is closed. There is no Order as to costs.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission