



## **ORDER**

### **1. Prayer of the Petitioner in M.P.No.15 of 2020:-**

The Commission may be pleased to issue the following reliefs and orders, by suspending the relevant portions of the orders of the Commission in Order on Generic Tariff for Solar Power and Related Issues in Order No.5 of 2018 dated 28.03.2018 and also in the Order on Generic Tariff for Wind Power and Related Issues dated 13.04.2018 in Order No.6 of 2018, to protect the interest of the Renewable Energy Industry, in line with the Policy Advisory of the Ministry of New and Renewable Energy dated 16.04.2020, till the continuance of the Covid-19 Lockdown restrictions.

The unutilized units available at the Banking Account of the Wind Energy Captive Generators as on 31.03.2020 (FY 2019–20), may be ordered to be allowed for adjustment during next 6 months viz., April, May, June, July, August & September 2020 (FY 2020 -21), on the reason of the Covid –19 Lockdown still continuing and the normal industrial activity has not yet been normalized so far and order to continue the arrangement till normalcy is achieved, more specifically and specially during the Covid-19 restriction period, considering the force majeure nature of the situation.

That the wind energy generated during every month commencing from April 2020 could not be utilized within the month itself and heavy quantum of wind energy is moving to banking account for no fault of the wind energy captive generators. It is also prayed to order that such unutilized units on each month be carried over to banking account, without collecting banking charges of 14%, as ordered in the Order No. 6 of 2018 on Generic Tariff for Wind Power and Related Issues dated 13.04.2018 of the Commission and the banking

charges of 14% may be totally waived off during the Covid-19 restriction period, till normalcy is achieved, more specifically and specially during the Covid-19 restriction period, considering the force majeure nature of the situation.

It is further prayed to order to Roll Over such units for consumption during the Financial Year 2020-21, without them being lapsed at the end of each month, till normalcy is achieved, more specifically and during the Covid-19 restriction period, considering the force majeure nature of the situation.

## **2. Facts of the case:-**

2.1. This petition has been filed for allowing to Rollover the Banked Wind Energy found unutilized as on 31.03.2020 to FY 2020-21, without making it to go for encashment and not to levy Banking Charges @ 14% over the Wind Energy Units moving to Banking every month due to Covid-19 Lockdown and restrictions enforced and to allow the Rollover of Solar Energy found unutilized during the every month from March 2020, till the end of Financial Year 2020-21 and to follow the same procedure for Financial Year 2021-22 also as per the Policy Advisory of MNRE issued in its Office Memorandum in F. No.283/25/2020-GRID SOLAR dated 16.04.2020.

## **3. Contentions of the Petitioner:-**

3.1. The Petitioner is a Registered Society, registered under the Tamil Nadu Societies' Registration Act 1975 and its Registration No. is 330/1997. The Petitioner is an Association of Spinning Mills and other industries having other

value added operations in Textile Value Chain and as on today, the Association is having 580 members on its roll. The Petitioner is espousing the interest of the member mills of the Association at various Forums including this Commission.

3.2. The members of the Petitioner are all HT industries and they have set up their own Wind Energy Generators (WEGs) at feasible locations and are drawing the wind energy from them for their captive use. Some of the members are also having Rooftop Solar Plants on the Rooftops of their industry sheds and some of them have ground mounted Solar Power Plants, either in the same vicinity or at feasible locations and such generated solar power is also being used for their captive consumption. Because of the same, the members of the Petitioner are having substantial interest in the matter, covered by the instant Miscellaneous Petition.

3.3. The present Miscellaneous Petition has been necessitated, for filing before this Commission, due to the reason of ordering for a complete Lockdown, as announced by both the Government of Tamil Nadu, as well as, by the Government of India from 24.03.2020 onwards, due to the spread of Covid-19 Pandemic Virus which is still continuing. Before the same, due to the Janta Lockdown announced by the Government of India also, the entire industries in the whole of the Country, were ordered to be closed for one full day on 22.03.2020. Due to these Lockdowns and closures, the industries of the members of the Petitioner Association, are not able to function, as normal as they have been functioning earlier and due to the

same, they were unable to make use of their own wind energy available for consumption at their manufacturing units, both from their banking account and also from the current generation, during the month of March 2020 fully and effectively and this has created large No. of units gone as unutilized as on 31.03.2020. This is the same case with their solar energy also.

3.4. In normal circumstances, such unutilized banked wind energy units, are allowed for encashment at 75% of the value of the Feed-in-Tariff, as ordered in the respective Comprehensive Tariff Orders on Wind Energy, issued from time to time by the Commission. The same arrangement was followed lastly, by the Commission, in its order dated 13.04.2018 in Order No. 6 of 2018 on Generic Tariff for Wind Power and Related Issues also.

3.5. But however, the situation witnessed as on 31.03.2020, is totally different and the high accumulation of unutilized wind energy, is only due to the Covid-19 Lockdown and closures announced, for industries all over the Country, both by the Union and State Governments. But for the Lockdowns and closures announced by both the Governments, when the industries were allowed to function as normal as before, the industries would have adjusted the wind energy and solar energy both at their credit for completely exhausting it as on 31.03.2020 and made the banking account fully closed for wind energy and their solar energy would not be allowed for lapsing as on 31.03.2020.

3.6. On such a similar situation, when R&C measures were enforced strongly

during the year 2007-08 in the State of Tamilnadu, this Commission has provided extension of the banking period, to various Companies owning WEGs, through its orders dated 22.05.2008 in M.P. Nos, 6, 11, 12 and 16 of 2008 and M.P. No. 15 in 12 of 2008 and Batch, by extending the Banking period beyond 31.03.2008, for next three months, for adjustment against the consumption during months of April, May & June 2008. The extract and Operative Portion of the order of the Commission dated 22.05.2008 is as below.

*"7. It is hereby directed that the unutilized banked wind energy at the close of 2007-08 of all generators of wind mills whether commissioned prior to 15-5-2006, or after that, **shall be permitted to be adjusted in the consumption of April, May and June 2008**, With the above directions M.P. Nos. 6 of 2008, 11 of 2008, 12 of 2008, 15 of 2008 and 16 of 2008 are finally disposed of without costs."*

3.7. The situation prevailing at present is not much lesser to the situation, what the consumers have experienced during 2007-08 and however with a very high velocity and the issue of coming to normalcy, appears to be very remote in the recent years. During those periods in 2007-08, there were strong restrictions and control measures enforced by the TANGEDCO, which prevented consumers to consume their own wind energy and on that reason there was enormous wind energy accumulated at the banking account of the WEG captive consumers as on 31.03.2008 and therefore, the Commission, in all its fairness, has considered the circumstances of the matter and based on the petitions filed by various WEG captive users, was pleased to order to extend the banking period for three more months beyond 31.03.2008 and allowed to consume the

energy available as on 31.03.2008, against the consumptions during the months of April, May & June 2008, by extending the banking period for three more months from FY 2007-08 to FY 2008-09.

3.8. The situation prevailing now is still more grave than the situation prevailed during the year 2008. In the year 2008, there was no external force compelling the industries either to Lockdown completely or to slow down their processes. The TANGEDCO alone was not able to allow the wind energy captive users to consume their own energy, due to the strong restriction and control measures enforced during those occasions. Surprisingly, the TANGEDCO itself has agreed for a fair solution to the issue and concurred with the proposals of the wind energy captive users and on the consent provided by the TANGEDCO, the Commission was able to pass a fair order for the satisfaction of everyone involved in the matter.

3.9. Considering the precarious situation now prevailing, due to the continuous Lockdowns and closures enforced from 24.03.2020 onwards, by both the Governments, the Ministry of New and Renewable Energy (MNRE) has already come forward to issue the Policy Advisory in its Office Memorandum dated 16.04.2020 in File No.283/25/2020-GRID SOLAR, to consider permitting Rollover of banked electricity (from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale) of FY 2019 -20 and FY 2020 -21 to FY 2021 – 22.

3.10. In the interest of fairness, equity and Justice, it becomes necessary that the Commission may be pleased to pass orders based on the said Policy Advisory of MNRE, by ordering the following measures for the Renewable Energy Industry in Tamilnadu.

#### **4. COUNTER AFFIDAVIT FILED BY THE FIRST RESPONDENT**

4.1. The banking facility as envisaged by the Tariff Order No. 6 of 2018, dt:13.04.2018 of this Commission is extended to the WEG commissioned before 01.04.2018 with the banking period of 12 months from 1<sup>st</sup> April to 31<sup>st</sup> March of next year.

4.2. The banking period for the Year 2019-2020 started from 01.04.2019 and ended on 31.03.2020 and the WEG has utilized the banked energy upto 24.03.2020 since the lockdown started only on 25.03.2020.

4.3. The impact of Covid-19 for rollover of Banking for the year 2019-20 is only for 6 or 7 days which is negligible and might even "NIL" in certain cases and so the prayer of the Petitioner to rollover the Banking facility for the Financial Year 2019-20 to FY 2020-21 has no grounds for their claim and is to be rejected.

4.4. The unutilized energy is to be paid at 75% of the applicable tariff as per the Tariff Order and so no loss as claimed by the Petitioner exists which warrants Commission's intervention.



4.5. With regard to the claim of the Petitioner to rollover the Banking facility for the Financial Year 2020-21 which starts only from 1<sup>st</sup> April 2020 and has the time limit upto 31<sup>st</sup> March 2021 for consumption, that it is premature to pray for rollover and also considering that except negligible area, the lockdown in respect of all other areas are over, the prayer is devoid of merits.

4.6. The Banking facility extended to the WEGs commissioned before 01.04.2018 vide Wind Tariff Order No.6 of 2018 is under challenge before the Hon'ble APTEL both by TANGEDCO as well as the Petitioner vide Appeal No.406/2019 and 215/2018. Hence any order extending the Banking facility is to be considered taking into account the Appeals pending at Hon'ble APTEL. In fact, the petitioner is stopped to raise this issue before this Commission. On this short ground, the petition is liable to be dismissed.

4.7. The TNERC has conducted the State Advisory Committee meeting for the Renewable Energy Generic Tariff Order for the controlling period from 01.04.2020, and the Orders are reserved. In the SAC meeting also, the TANGEDCO has opposed for unconditional extension of Banking facility to the RE generators as done in the previous Tariff Orders citing the financial loss to TANGEDCO on account of Banking and as such Rollover of Banking facility at this juncture will further seriously jeopardize the financial viability of TANGEDCO at the cost of general public but to the unjust enrichment of RE generators.

4.8. As stated by the Petitioner the issue in M.P. No.6,11, 12 and 16 of 2008 is not to be related to this prevailing scenario and irrelevant to compare since

the R&C measures was enforced by TANGEDCO and so extending the Banking period is considered by TNERC, whereas now there is no ban imposed by TANGEDCO for consuming their generated/banked units. Rather, the TANGEDCO has evacuated maximum RE generation keeping our own low cost generation idle with heavy financial cost. Hence, further extending the banking facility will seriously hamper the financial condition of TANGEDCO. It is also relevant to consider that the public at large cannot continue to be burdened for the unjust claims of the petitioners by inventing reason after reason to get over the approved scheme of this Commission.

4.9. In respect of solar energy, all the tariff orders issued by the Commission, right from beginning, "Banking Facility" is not allowed. The prayer of rollover of energy which is not under the ambit of tariff order is not admissible.

4.10. For 2019-20, lockdown period was for only 7 days against the billing period of 30 days in March and 365 days in the year. Hence, most of the generations might be adjusted. Hence, rollover of energy to next financial year is absolutely not necessary in solar.

4.11. The claiming of the "Banking Facility" for solar energy citing 'COVID-19' is 'unjustifiable. The pandemic has equally crippled TANGEDCO also. Due to lockdown TANGEDCO's revenues also dwindled.

4.12. By honouring MNRE's instruction for "Must Run" status, TANGEDCO has procured solar power and also incurred "Fixed Cost" by backing down our thermal stations. However, due to 'COVID-19' TANGEDCO's Revenue has been only through "Subsidized Sector" in "Domestic Consumers" alone.

4.13. The prayer for the rollover of Banking for the FY 2019-20 has no grounds since lockdown started only on 24.03.2020 barely 6 or 7 days left for the FY 2019-20 and is to be rejected. The prayer for rollover for the FY 2020-21 is premature at this stage and so is to be not admitted. In any case, the Petition is not maintainable before this commission.

Commission may dismiss M.P. No.15 of 2020 as not maintainable and pass such further or other orders.

## **5. IMPEADING PETITION IN MISCELLENEOUS PETITION15/2020**

### **Thiru S. Gandhi, PESOT:-**

5.1 The petition filed by the petitioner (i.e. the respondent 1) in the impleading petition is misplaced in this forum. Lock down was not ordered by the second respondent here. The relief sought by the respondent 1, consequent of lock down ordered by the Governments of Union and State cannot come from utility of discom, a corporation in the competitive market. It is equally true that the same discom , namely, TANGEDCO, is also seriously affected by loss of business by the same lock down.

5.2. Notwithstanding to the fact as above, the claim of respondent 1, for roll over of banked energy beyond 31/03/2020, is in violation of the generic tariff order for wind energy issued by Commission in force. The respondent 1, in M.P.24/2016, opposed amendment sought by the respondent 2, to change the banking period that has been recorded in the tariff order no.6 dated 13/04/2018 under para 10.1.6 as follows:

*“During the hearing in M.P No.24 of 2016 before this Commission for changing of banking period, the wind energy generators vehemently opposed the claim on the ground that a petition with such a prayer cannot be entertained by the Commission in the Miscellaneous Petition and it should be filed only as a tariff petition. Further, it was the contention of the wind energy generators that banking forms part of the wind energy tariff order and any amendment to the same can be made only by following the procedure which was followed while issuing the wind tariff order.”*

Now the respondent has a different footing to their own standing within the same tariff period. The respondent 1, has no "locus standi" to raise this Petition.

5.3. The bone of the claim for roll over of banked energy beyond 31/03/2020, is the lock down announced from 25/03/2020 to 31/03/2020 and consequent closure of their industries. The period is one in fifty two of a year. Surprisingly the State Government in its order G.O.(MS)152 DATED 23/03/2020 did not enforce lock down to these industries. They were allowed to run their industries

as found in the above order under para 4 (D) IV. If they locked down their industries , then it is self- inflicted injury for which, the common public cannot be asked to compensate.

5.4. The respondent 1, had not placed the quantum of banked energy as on the last week of its expiry. If it is high accumulation, then it is logical that the industries are more interested in encashment

5.5. The pandemic and lock down has destroyed the earning opportunities of crores of poor and marginalized and left to suffer without any compensation. Contrary to that, the opportunity to function under GO 152, is given to the member industries of the respondent 1, but they voluntarily closed the industries and yet protected by the compensation of encashment of banked energy. Now this claim is to elongate the concessions is not fair''

5.6. The restriction and control (R&C) promulgated during 2008 cannot be equated to locked own. R&C was short of generation over demand. The banked energy could not be drawn. Lock down is excessive generation and demand' was far below and there is good opportunity to utilize the energy because of exemption in lock down. As such there is no steam in the argument comparing the R&C to lockdown. The petition lacks real grievance. -

5.7. The memorandum of MNRE dated 16/04/2020 is an advisory in nature only to three states of the country on representations from generators. It is neither an order nor at least a guide line but simple disposal to consider the representations . It has

no effect on statutory tariff order.

5.8. The captive status of the wind generators still to be verified as ordered by the Hon'ble High Court of Madras in WA 930 & 931. Without ensuring their eligibility to have banking of energy, extending further concessions may further complicate the issue which has been settled after long legal battle. The petition may be dismissed with cost.

**6. Preliminary objection filed by the Petitioner on the Maintainability of the Implead Petition filed by Power Engineers Society of Tamil Nadu (PESOT):**

6.1. The impleading petitioner PESOT has not anyway demonstrated, as how PESOT is interested in the instant matters, for getting impleaded. In the absence of necessary stake, demonstrating the interest of PESOT, the instant implead petition filed before this Commission, lacks complete *locus standi* at the very first instance. Neither in the implead petition filed by the PESOT, nor in the affidavit filed by the PESOT, in support of the implead petition, the PESOT has not clearly demonstrated, as how PESOT is interested in the matter in any manner. While the *locus standi* of PESOT, when not demonstrated properly, such a deficiency alone and itself would straightaway make the entire petition completely devoid of merits and therefore, primarily, the implead petition is found totally defective at the face of the very record itself and not makes it eligible, for impleading in the instant matter.

6.2. The impleading petitioner, namely PESOT, has nowhere explained about the status of its constitution, either as a Society or as a Company or otherwise. It has

also not even provided the Registration No. In the absence of the such vital information, as to the status of the PESOT, the proof of status of the legal entity and eligibility of PESOT, is under serious disqualification, whether it could file such petitions before Judicial or Quasi-Judicial Forums, like the Hon'ble State Commission. Unless PESOT is Registered either as a Society under Tamilnadu Societies Registration Act 1975 or otherwise and the Registration No. and the other details such as, who are all constituting members in PESOT are provided, the implead petition *per se* is not maintainable to law, on the very grounds of not being a legal entity. In the absence of the same, it could only be considered that PESOT has failed to demonstrate its status as a legal entity, in filing the implead petition. Without the complete *locus standi* of PESOT to file the instant implead petition, permitting PESOT to file the instant implead petition before this Commission, is no way maintainable to law.

6.3. The Registry of the Commission ought to have verified all such of the primary details, like Registration No., Registration Certificate, List of Members constituting PESOT and all other relevant details, to make the PESOT to qualify itself to file the instant implead petition.

6.4. The implead petitioner PESOT, is in the habit of filing such petitions, without sufficient *locus standi* and one such case was already detected by the Hon'ble APTEL, New Delhi and reported by the Hon'ble APTEL in IA No. 112 of 2008 in Appeal No.84 of 2008, which was decided on 06.11.2008 itself. In the said judgment and order the Hon'ble APTEL has inter-alia observed as below.

*“There are certain issues involving locus standi of the appellants as well as of maintainability of their*

*complaint before the Commission. The question of merit is only whether the shareholding under section 187 (C) of the Companies Act, 1956 can be excluded for assessing whether the shareholding captive users in a captive power plant is 26%. As per the Chartered Accountant's report, the shareholding of all the captive users was in excess of mandatory cut off limit of 26% which conforms to the stipulated minimum under rule 3(1)(a)(i) of the Electricity Rules, 2005 if the shareholding under Section 187 (C) of the Companies Act of 1956 is excluded. This report of Chartered Accountant is based on the facts and taking into consideration the details filed in form no. 2 as valid. Mr. Gandhi appearing for the appellants, Power Engineers Society, disputes the findings of the Chartered Accountant. He, however, does not dispute that shareholding under Section 187 (C) of the Companies Act, 1956 should be excluded for the purpose of calculating the 26% he however alleges that the data given by the company in question is wrong. Mr. Gandhi has no data on the basis of which he can dispute the findings of the Chartered Accountant. As such, his claim that the power plant of Arkay Energy (Rameswaram) Limited does not fulfil the requirements of the Rule 3(1)(a)(i) of the Electricity Rules, 2005, is only bald allegations. The impugned order cannot be interfered with on the basis of such bald assertions.*

*The appeal is dismissed."*



6.5. When the present implead petitioner namely PESOT, when filed a petition before this Commission in M.P. No. 35 of 2008, the Commission has dismissed the petition, by observing as below, in its order dated 12.01.2009.

*"4.7. The present one is a public interest petition which questions the proceedings before the Commission in a dispute between a generator and a distribution licensee. The Electricity Act 2003 does not envisage participation of third parties in a dispute between a generator and a distribution licensee under Section 86 of the Act. In view of the above facts, the present petition is liable to be dismissed as not maintainable and accordingly the above MP 35 of 2008 is dismissed without costs."*

6.6. Against the system of banking granted to WEGs, when the implead petitioner namely PESOT filed a Writ Petition before the Hon'ble High Court of Judicature at Madras in WP No. 311 of 2010, the same was dismissed by the Hon'ble Court by observing as below.

*"5. In view of the above, this writ petition is not maintainable. The order under challenge has been appealed by the official respondent and therefore, the petitioner has to seek appropriate relief as per law. The writ petition is dismissed. No costs."*

6.7. the implead petitioner, namely PESOT has also filed a petition before

this Commission a Petition in M.P. No. 5 of 2019 and on the objections raised by the petitioner (TASMA), the petition in M.P. No. 5 of 2019 has not yet been disposed off finally yet. However, the petition has now become infructuous, due to the order passed by this Commission in Tariff Order No. 8 of 2020 dated 07.10.2020 on *Order on Procurement of Wind Power and Related Issues* and therefore, the petition in M.P. No. 5 of 2019 needs to be dismissed.

6.8. The Implead Petitioner namely PESOT, in its instant implead petition states in Para. 2 that it is *a political, non-profit, social organization of engineers, with an objective to protect the rights of poor and marginalized, in the electricity sector*. Therefore, within the scope and objectives of PESOT, the implead petitioner has not explained anywhere, whether it is a registered society, registered under the Tamil Nadu Societies Registration Act 1975 or otherwise. In the absence of any registration under any of the Registering Authorities, it cannot become a legal entity and therefore, on that very score, it cannot file the instant petition for want of legal sanctity. Further to the same, the implead petitioner PESOT has not correlated the reasons for filing the implead petition, as how it satisfies the scope and objectives of PESOT as enumerated in Para. 2 of the Implead Petition.

6.9 While the Miscellaneous Petition in M.P. No. 15 of 2020 filed by the petitioner and others in M.P. No. 16 of 2020 and M.P. No. 17 of 2020, are not a public documents, how the implead petitioner makes inferences of the petitions, is a serious matter, completely surprising everyone

connected to the matters. Therefore, the petitioner apprehends that the implead petitioner namely PESOT, would have been engaged by some other interested party and the copies of all the documents filed by the present petitioner in M.P. No. 15 of 2020, as well as other petitioners in M.P. No. 16 of 2020 & M.P. No. 17 of 2020, would have been supplied to the implead petitioner, to indirectly make it to raise objections, what the interested parties could not make it directly.

6.10. The contents and tone of the implead petition, does not qualify itself to be treated as an implead petition and it is looking almost a counter, as if the implead petitioner namely PESOT has already got impleaded in the matter. This is highly objectionable at a stage, when the implead petition itself is suffering out of maintainability. Therefore, raising stances like a counter against the petitions is not permitted by law until the implead petitioner gets orders of this Commission to get impleaded allowed in the matter.

6.11. When the legal status of the impleading petitioner is not first demonstrated, filing counter on the implead petition, is superfluous and is opposed to all canons of law, as the implead petition itself is devoid of merits and not maintainable to law.

6.12. The petitioner has already obtained information under Right to Information Act 2005, as how the PESOT has paid the fee, much contrary to the provisions of the Fees and Fines Regulations 2004 of this Commission. If it is an Association, it ought to have paid a

sum of Rs.2,00,000.00 for filing the petition in M.P. No. 5 of 2019 and however, it is understood from the reply received from the Public Information Officer of the Commission that the petition was taken on the files of the Commission, by getting a fee of Rs.10000.00 only, which is highly in short of the prescribed fee payable by Associations. Therefore, PESOT has been allowed and permitted to pay a highly lesser fee, for no rhymes or reasons and the Registry of this Commission should justify the short payment made by PESOT.

6.13. Under all the above narrated facts and circumstances and also on the past conduct of the impleading petitioner PESOT, the Commission may be pleased to direct a roving enquiry on the implead petitioner, to demonstrate its legal status first and then the *locus standi*, to file the instant petition and on satisfying on both the same, the Commission may direct the implead petitioner to file a detailed counter on allowing the implead petition, both on merits as well as on law. As the very admissibility and maintainability of the implead petition itself is under challenge before this Commission, making the petitioners to file replies on the implead petition as it stood now, may not be a correct approach at this stage. '

6.14. The implead petitioner may be directed to first demonstrate its legal status, as well as the *locus standi* and the interest involved to file the present implead petition under the scopes and objectives of the PESOT, for the complete satisfaction of the Commission. On satisfying of all the same, if Commission allows the implead petition and

directs the implead petitioner to file separate counter, the petitioner will provide suitable replies on such a counter going to be filed by the implead petitioner who would then become a Respondent at that time.

6.15. Unless the *prima-face* condition of the implead petitioner is fully satisfied, filing of reply by the petitioner on the present implead petition in the manner as it stands now, would not be required and therefore, the petitioner reserves its rights to file necessary counter suitably, once the implead petition gets allowed by the Commission and when the implead petitioner / respondent files a counter thereafter.

6.16. It becomes just and necessary, both on the fact as well as on law, to preliminarily verify the complete maintainability of the implead petition filed by the implead petitioner namely PESOT, on the grounds of verifying the status of the legal entity of the implead petitioner and whether the versions of the implead petition are going with the scopes and objectives of the PESOT.

## **7. WRITTEN ARGUMENTS SUBMITTED IN M.P.15/2020 BY THE IMPLEADING PETITIONER**

7.1. PESOT has fifteen years of history of representing consumers interests before this forum on various points including the status of captive generators and against the concept of banking on line with Government of Tamilnadu and TANGEDCO as it injure the consumers interests

7.2. PESOT had filed M.P 5 /2019 before this forum and the contents of our pleadings therein was largely reflected in the concept paper of the commission to decide tariff for wind generation though the final tariff order dated 07/10/2020 did not carry forward any of its concepts placed for opinion. In continuation we take this opportunity to implead in this petition also.

7.3. The only arguments the petitioner placed against our pleadings was confined to locus standi. Starting from the demand for certificate of registration and when it is complied importing fees and fines regulations applicable of our petition of M.P 5 /2019 which was heard already twice and finally concluded their arguments by calling our organization is only a group of consumers of engineers and thus no locus standi.

7.4. The engineers have no separate tariff interest as the petitioner has as a group of generators. PESOT is a society of engineers with objectives of consumers interests. The objectives of PESOT are as follows:

**சங்கத்தின் நோக்கங்கள்**

- அ. இந்த அமைப்பு எந்த அரசியல் கட்சி சார்புடையதாகவும் இருக்காது.
- ஆ. பொது மக்களை அறிவுப் பூர்வமாக சிந்தனை செய்யவும், மின்துறை பற்றிய செய்திகள் அறியச் செய்யவும் முயலும்.
- இ. பொதுமக்களுக்கு மின்சாரசேமிப்பு பற்றிய கருத்துக்களை எடுத்துக் கூறும்
- ஈ. மின்துறைப் பற்றிய கொள்கைகளைக் குறித்து மத்திய மாநில அரசுகளுக்கு ஆலோசனை கூறும்
- உ. பயனீட்டாளர்களுக்கும், மின் விநியோக உரிமம் பெற்றவர்களுக்கும் இடையே சுமுக உறவுகள் நிலவ உழைக்கும்.
- ஊ. பயனீட்டாளர்களின் நலன்களை நுகர்வோர் பாதுகாப்பு சட்டத்தின் கீழ்

பாதுகாக்க பாடுபடும்.

- எ. மின்கட்டணம் விதிக்கும் முறை குறித்து பொதுமக்களுக்கு விளக்கம் அளிக்கும்.
- ஏ. மின்சக்தியை சிக்கனமாய் பயன்படுத்துவது குறித்த விழிப்புணர்வை பொதுமக்களிடையே உண்டாக்கும்.
- ஐ. மின்துறை பற்றிய விளக்கக் கூட்டங்கள், பொருட்காட்சிகள், மாநாடுகள், கருத்தரங்கங்கள் நடத்தும்.
- ஓ. மின்துறை பற்றிய செய்திகளை அறிந்துகொள்ளவும், கருத்துப் பரிமாற்றம் செய்துகொள்ளவும் வெளியீடு ஒன்று வெளியிடப்படும்.
- ஔ. இந்த அமைப்பு தன்னுடைய நடவடிக்கைகளுக்கு உதவுவதற்காக மற்ற அமைப்புகளின் உதவியையும், தனிநபர்களின் உதவியையும் கோரிப் பெறும்.
- ஐ. மின்சக்தி வாங்குவது, மின்கட்டண விகிதம் மற்றும் மின்துறை சம்மந்தமான விஷயங்கள் குறித்து விளக்கம் அறிந்துகொள்ள குழுக்கள் அமைக்கும். மத்திய, மாநில மின்சார ஒழுங்குமுறை ஆணையங்களிடம் கருத்துக்களைச் சமர்ப்பிக்கும்.

7.5. The functions of PESOT hitherto are in confirmatory to the principle it stands for. PESOT requested the permission of the Commission to implead in these petitions of M.P 15, 16, 17/ 2020 and it was permitted vide daily orders dated 29/09/2020. This amounts to exercise of power by the commission under sec.94(3) of EA 2003. The petitioner has no locus standi to question the powers of the Commission.

7.6. PESOT number of cases before various forum on consumers interest and would prefer to refer two cases, though not all, to explain its focus of interest on consumers interests as hereunder:

7.7. After the public hearing on 05/03/2009 to decide generic tariff on wind

generation, the commission amended the regulation of "power procurement from new and renewable sources of energy regulation 2008", to delete the provision of public hearing under regulation 4. 1. (c) on 27/04/2009. PESOT's challenge of the amendment as violation of principle of natural justice through W.P 312/2010 , filed along with W.P 311/2010 challenging banking, is still pending before the Honorable High Court of Madras, though W.P 311/2010 was decided as early as 2012.

7.8. After the decision of posting judicial member to tribunals where adjudicating powers are vested with by the Honorable Supreme Court of India PESOT filed W.P 22312/2010 to post judicial member to SERC in the same line as adjudication under 86 1(f) needs judicial persons. After three consecutive hearing, the case bundle went missing till date though the case proceeded during 2014 by Madras Bar Association had been decided by the Honorable Supreme Court of India on 18/04/2018. The decision of Commission on M P 35 /2008, as referred by the petitioner in the counter, was the driving force for us to resort to file WP22312/2010. The prayer of MP 35/2008 was about High Court stay order to hear any dispute over PPA of IPPs which was dismissed on imported opinion of PIL.

7.9. Consumer interest is prime statutory provision of the EA 2003 and there is no case outside the ambit of consumer interest, since every decision result upon consumer as cost of power. It is short of sight to reduce consumer interest as PIL for a convenience of decision as "no locus standi



7.10. The decision of hon'ble APTEL order between Energy Watch Dog versus TNERC and others in IA. no:118, 173, 174, 179, and 190 of 2016 in DFR 2565/2015 ordered on 09/09/2016 is relevant.

7.11. PESOT's objective and our actions during the past fifteen years would stand to prove our consumer interest and nothing can alter our social interest. It is the emptiness of the petitioner to prove the cause of their grievances in against of our counter, but hang upon locus standi. The claim of locus standi by the petitioner has no merit.

## **8. Findings of the Commission:-**

8.1. The prayer of the petitioner is to direct the respondent to allow the unutilized units available at the banking account of the wind energy captive generator as on 31-03-2020 (FY 2019-20) for adjustment during next six months namely, April, May, June, July, August and September 2020 (FY 2020-21) on the reason of Covid -19 lockdown and the wind energy generated during every month commencing from April 2020 may be carried over to banking account without collecting banking charges of 14% and waive the banking charges of 14% totally till normalcy is achieved and also to allow rollover such units for the consumption during FY 2020-21 without being lapsed at the end of each year till normalcy is achieved.

8.2. The petitioner is an association with member consumers and generators owning Wind mills and solar power plants wheeling power to their captive units. The crux of the issue is due to the lockdown of offices and other establishments announced by the Central Government from 24.3.2020 that was followed by the

announcement of the State Government of the closure of operations of offices, establishments in G.O (Ms) No.152 Health and Family Welfare (P1) Department dt.23.3.2020, the power generated from their plants could not be utilized due to the non-functioning of industries in the lockdown phase. The Ministry of New and Renewable Energy issued a clarification through its office memorandum dt.1.4.2020 that 'Must Run' status of Renewable Energy (RE) remains unchanged during COVID-19 lockdown period and that RE should not be curtailed but for grid security reasons.

**8.3.** In the case of wind energy, normally, the consumers utilize the power generated from their captive power plants and bank the unutilised energy every month which is carried over till the end of March of a financial year(FY), and at the end of the financial year the unutilized banked energy is sold to the Distribution licensee at the rate fixed by the Commission in the tariff orders which is 75% of applicable tariff / 75% of Average Pooled Cost of power(APPC) for non REC and REC generators as the case maybe. In the case of solar power, the unutilised energy at the end of every billing cycle is encashed at 75% of the applicable tariff by the Solar Power Generator(SPG).

**8.4** Reliance is placed on Ministry of New and Renewable Energy(MNRE)'s Office Memorandum(OM) dt. 1.4.2020 and 16.4.2020 by the petitioners. The OM dt.1.4.2020 of MNRE clarified that 'MUST RUN' status of the RE power generating plants remains unchanged during Covid 19 lockdown period and the OM dt.16.4.2020 requested the Power/Energy Departments and DISCOMs of Andhra Pradesh, Karnataka and Tamil Nadu to consider permitting roll over of banked

energy of FY 2019-20 and FY 2020-21 to FY 2021-22. MNRE's Office Memorandum dt. 16.4.2020 read as follows;

*“ F. No. 283/25/2020-GRID SOLAR/  
Government of India  
Ministry of New & Renewable Energy (MNRE)  
Block No. 14, C.G.O. Complex,  
Lodi Road, New Delhi –110003  
Dated: 16<sup>th</sup>April, 2020*

**OFFICE MEMORANDUM**

*Sub: Rollover of banked electricity (from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third Party Sale) of FY 2019-20 and FY 2020-21 to FY 2021-22-reg.*

- 1. Please refer to this office's O.M. No. 283/20/2020-GRID SOLAR (ii) dated 4<sup>th</sup> April, 2020 (copy enclosed), clarifying that 'Must Run' status of Renewable Energy (RE) remains unchanged during COVID-19 lockdown period and that RE should not be curtailed but for grid security reasons.*
- 2. Due to nationwide lock-down in the wake of COVID-19, industries and commercial establishments using electricity generated directly as well as through banking, from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale, are running their operations at their lowest and consequently their demand of electricity has reduced to minimum since mid March '20. Due to this, the generated and banked units in previous months could not be utilized by such consumers. The lapse of such banked units or purchase thereof at APPC rate would severely affect the profitability of both the developers and consumers associated with such Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations. This situation is likely to continue for another few months (FY 20-21) till the pandemic is controlled and the industrial production and commercial footfalls return to normal.*
- 3. Representations have been received in this Ministry for issuing an advisory to States of Andhra Pradesh, Karnataka and Tamil Nadu allowing rollover of banked electricity from such projects.*
- 4. Accordingly, the undersigned is directed to convey to Power/Energy Departments and DISCOMs of Andhra Pradesh, Karnataka and Tamil Nadu that they may consider permitting Rollover of banked electricity (from Solar PV Rooftop Projects and Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale) of FY 2019-20 and FY 2020-21 to FY 2021-22*
- 5. This issues with the approval of Secretary, MNRE*

*(Sanjay G. Karndhar)  
Scientist-D*

To  
1.....  
2. ...

*3.Pr. Secretary, Energy Department, Government of Tamil Nadu, Secretariat, Chennai 600 009, Tel: 044-25671496, Fax: 25672923, Email: enersec@tn.gov.in, enerps@tn.gov.in*

*Copy to :*

*....*

*8. Chairman-cum-Managing Director, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), 10th Floor, NPKRR Maaligai, 144, Anna Salai, Chennai - 600 002”*

**8.5.** The Distribution Licensee, TANGEDCO, has questioned the maintainability of the petition for the simple reason that both TANGEDCO and the petitioner face similar effects of revenue loss due to the pandemic. Heeding to the claims of the petitioner would mean hampering their financial condition at the cost of general public. Having evacuated RE power, keeping their own low cost generation idle, TANGEDCO seeks dismissal of the petition. Further, it is their contention that despite their own losses, the RE generators are paid at 75% of applicable tariff for the unutilized energy at the end of the banking period or billing cycle, as the case maybe. The public at large cannot be burdened. TANGEDCO also states that the petitioner has duration until the end of FY for adjustment.

**8.6** The impleading petitioner, Thiru.S.Gandhi, President, PESOT, also asks for dismissal of the petition on the ground that losses due to the pandemic is endured by all stakeholders, and any concession given to the petitioner would ultimately burden the consumers. Banking is a concession at a cost to TANGEDCO that is transferred to the common public. Many of the industries remained shut only for few days.

**8.7** The petitioner has questioned the credentials and interests of PESOT as an impleading petitioner emphasizing that PESOT has not demonstrated its stakes and therefore the petition lacks locus standi.

8.8 During the course of argument, the Counsel for the Petitioner has objected to the impleadment of Thiru S. Gandhi and vehemently argued that he has *no locus standi* in this case. In this connection, it may be pointed out that Hon'ble APTEL in its order dated 09-0-9-2016 in D.F.R. No.2566 of 2015 wherein a preliminary objection was raised by the respondent in that case that Energy Watchdog was not an aggrieved person over the orders passed by the Commission in the extension of control period for solar tariff, has held as follows:-

*“Any order which is likely to affect its members, cause legal injury to them can be challenged by Energy Watchdog as a representative body. It is not necessary to say in the appeal memo that Mr. Rama Suganthan made a grievance to Energy Watchdog. We do not feel that a busybody or a meddling interloper has filed this appeal. We therefore reject the submission that this appeal is a public interest litigation.”*

8.9. From the above, it is clear that any order which is likely to affect the members of an association can interfere and implead as a party to a proceeding. In this case, the impleading petitioner PESOT has submitted proof of a registered entity 'Power Engineers Society of Tamil Nadu' under the 'The Tamil Nadu Societies Registration Act 1975' (Tamil Nadu Act 27 of 1975). PESOT has represented the case on behalf of consumers at stake who may have to bear the extra burden of roll over of banked energy to the next Financial year which in PESOT's opinion would deem to occur due to the financial stress of TANGEDCO. Though PESOT is an association

of the Electricity Engineers, still their members are ultimate consumers and any order passed in this case in favour of the petitioner will have a pecuniary impact on them also. Hence, we hold the impleadment of PESOT does not suffer from any legal infirmity. However, we confine ourselves to the implementation of the orders issued by MNRE and therefore we refrain from examining the issues raised by the impleading petitioner in depth.

8.10 Let us first look at the relevant provisions of banking and energy accounting in the case of wind and solar power, the latest orders - Order No.6 of 2018 for wind and Order No.5 of 2019 for solar power at the time of filing of the petition. Relevant provisions in Order No.6 of 2018 for wind energy:

#### **“Para 10.0 Banking**

*10.1.13 .....the Commission decides not to disturb the current position in this order and decides to continue with the present banking period of 12 months from the 1st of April to 31st of March of the succeeding year for the WEG machines commissioned on or before 31.3.2018 under captive wheeling in the case of normal and REC scheme (for REC as provided in Order No.3 of 2016 and R.A No.6 of 2013) with increase in the banking charges from 12% to 14% as proposed in the consultative paper.*

.....  
*10.1.15 The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the banking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.*

*10.1.16 Unutilized energy as on 31st March every year may be encashed at the rate of 75% of the applicable wind energy tariff rate fixed by the Commission for existing normal wind energy captive users and 75% of Pooled cost of power purchase as notified in the orders of the Commission from time to time for existing captive generators under REC scheme. The banking charges shall be 14% in kind.*

*10.1.17 ..... The Commission decides to extend banking facility of one month to the new WEG machines commissioned on or after 01.04.2018 both under normal and REC category, from 01.04.2018.*

*10.1.18 Any new WEG machines commissioned from the date of applicability of this order in the normal category or REC scheme shall have facility of banking of energy for a period of one month. There shall be no banking charges. The purchase of excess generation/unutilized banked energy shall be at 75% of respective wind energy tariff for normal wind energy captive users and 75% of Pooled cost of power purchase as notified in the orders of*

*the Commission from time to time for captive generators under REC scheme at the end of the month.*

*10.1.19 There shall be no facility of banking of energy for third party power purchase.”*

#### **“10.6 Energy Accounting and Billing Procedure**

*10.6.1 The energy accounting shall be regulated by the Commission’s Regulations/ Order on open access, Deviation Settlement Mechanism (DSM). Till such time the DSM is implemented in the State, if a renewable energy generator utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the billing period for the net energy supplied. The licensee shall record the slot wise generation and consumption during the billing period. Slot-wise adjustment shall be made for the billing period. However, peak hour generation can be adjusted to normal hour or off peak hour consumption of billing period. Normal hour generation can be adjusted to off peak hour consumption of the billing period. Excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply.*

*10.6.3 After the banking period, the balance energy may be sold at the rate of 75% of respective wind energy tariffs for normal wind energy captive users and 75% of Pooled cost of power purchase as notified in the orders of the Commission from time to time for captive generators under REC scheme, at the end of the month/as on 31st of March of every year as may be applicable.”*

#### **11. Relevant provisions in order No.5 of 2019 for solar power:**

##### **“11.5 Energy Accounting and Billing Procedure**

*11.5.4 ..... if a solar power generator utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the billing period for the net energy supplied. The licensee shall record the slot wise generation and consumption during the billing period. Slot wise adjustment shall be for the billing period. Peak hour generation can be adjusted to normal hour or off peak hour consumption of the billing period and normal hour generation can be adjusted to off peak hour consumption of the billing period. Excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply.*

*11.5.6 After the billing period, the balance energy may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators”.*

**8.11.** From the extracts provided above, it may be seen that in the case of wind power for the WEGs, both REC and non REC schemes, commissioned prior to 1.4.2018, the date of effect of order No.6 of 2018, the generators have 12 months banking and at the end of the FY the unutilized energy can be sold at 75% of

applicable tariff/APPC. In the case of solar power, the unutilized energy is sold at 75% of applicable tariff at the end of each billing period.

**8.12.** For the FY 2019-20, since the lockdown was from 24.3.2020, the generated energy that remained unutilized in the bank is for a period of seven days. This period falls in the lean windy season where generation is very meagre.

**8.13.** For the FY 2020-21, it is seen from the G.Os issued by the Government of Tamil Nadu that during the first phase of lockdown many essential industries were permitted to function. From 4.5.2020, GoTN has issued instructions relaxing lockdown in terms of industrial activities in steps. The wind generators whose commissioning is prior to 1.4.2018 have banking provision for 12 months from March to next April in a FY and therefore have duration until March 2021 to utilize the banked energy. For the wind energy generators commissioned from 01.4.2018, banking is for a period of one month. Similar is the case for the solar generators commissioned, that have an inherent banking equal to the billing period which is one month. The unutilized banked energy is paid at 75% of applicable tariff/APPC at the end of the Financial year for those generators with 12 month banking facility and at the end of the month for the generators with one month's banking.

**8.14** The petitioner has compared the directions issued in the common order in M.P Nos.6,11,12 and 16 of 2008 dt.22.5.2008 where the Commission permitted utilization of banked energy of 2007-2008 to be adjusted in the consumption of April, May, and June 2008. The said order was issued during the period when there was shortage of



power in TANGEDCO and due to its inability to supply power un-intermittently and for reasons discussed in the order.

**8.15.** In the case in question, both the petitioner and the respondents are affected parties. TANGEDCO has the obligation to pay their generators for the fixed cost of power contracted for supply. To compensate the claimed loss by RE generators would mean devolving the expenses on the consumers who were also affected parties during Covid-19.

**8.16** The case itself has been filed prematurely as it is only at the end of the financial year would one know the actual status of energy banked and unutilized for the wind energy generators. As to the solar generators, they are seeking an arrangement not mentioned in the tariff order for solar power.

**8.17** MNRE's memo is an advisory issued to the States of Karnataka, Andhra Pradesh and Tamil Nadu. Karnataka ERC in the order dt.25.6.2020, in the matter of carry forward of excess banked energy on account of Covid-19, has not permitted carry forward of banked energy in the case of RE generators under REC and non REC schemes.

**8.18** The petitioner has requested to treat the spread of Covid 19 as a Force majeure nature condition and permit carry forward of unutilized energy generated during the period of closure of the industries..

(a) Extract of the Force Majeure clause in the agreements for wind :

*"1. Definitions:*

*(1)...*

.....

(3) "Force Majeure" events means any event which is beyond the control of the agencies involved which they could not foresee or with a reasonable amount of diligence could not have foreseen or which could not be prevented and which substantially affect the performance by either agency such as but not limited to :-

(a) Acts of natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;

(b) Acts of any Government domestic or foreign, including but not limited to war declared or undeclared, hostilities, priorities, quarantines, embargoes;

(c) Riot or Civil Commotion

(d) Grid / distribution system's failure not attributable to agencies involved"

"10. Force Majeure: (1) Both the parties shall ensure compliance of the terms of this agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this agreement to the extent that such failure is due to force majeure events as defined in this agreement. But any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event(s)."

(b) Extract of the Force Majeure clause in the agreements for solar :

12. Force Majeure:-

Both the parties shall ensure compliance of the terms of this agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this agreement to the extent that such failure is due to force majeure events as defined here under. Any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event(s) by giving notice to the other party in writing within 15 days from the occurrence of such Force majeure.

"Force Majeure" events means any event which is beyond the control of the parties involved which they could not foresee or with a reasonable amount of diligence could not have been foreseen or which could not be prevented and which substantially affect the performance by either party such as but not limited to:-

(i) Acts of natural phenomena, including but not limited to floods, droughts, earthquakes, lightning and epidemics;

(ii) Acts of any Government domestic or foreign, including but not limited to war declared or undeclared, hostilities, priorities, quarantines, embargoes;

(iii) Riot or Civil Commotion; and

(iv) Grid / Distribution System's failure not attributable to parties to this agreement.

**8.19.** A Force Majeure clause in the contract exempts both parties from their contractual liability or obligation when prevented by such an unforeseeable event from fulfilling their obligations. What is sought here by the petitioner is a concession

to allow extended period of banking. The Energy Purchase Agreement (EPA) and Energy Wheeling Agreements (EWA) are between the generator and the Distribution Licensee, where both are the affected parties due to the pandemic. Commission taking suo motu cognizance of the pandemic has already passed an order in SMP No.2 of 2020 for payment of minimum 20% demand charges from the affected HT consumers.

**8.20** In view of the foregoing discussions and in as much as the Distribution Licensee's revenues also have been affected by the pandemic, Commission decides that there shall be no carry forward of banked energy in the case of WEGs and Solar generators under REC/ non REC scheme to the subsequent financial years/months, as the case maybe. Banking charges as notified in the tariff orders for wind energy shall be applicable.

**8.21.** The excess generation/unutilized energy may be encashed at 75% of applicable tariff at the end of the financial year/billing period as per the provisions of respective tariff orders applicable.

**8.22** The petitioner has mentioned of carryover of unutilized energy from rooftop plants that have been installed for captive consumption. If the rooftop is in parallel operation with the grid, it is expected that the industry takes all precautions not to inject energy into the grid, to be put in other words to switch off the plant when the industry is not functioning. Therefore, off grid and rooftop solars in parallel operation is of no consequence to this case. If any petitioner is under net metering, Commission's order on net metering will be applicable. During the course of argument Thiru Rahul Balaji, learned counsel for the petitioner in M.P. No. 16 of

2020 fairly submitted that the MNRE letter is only in the nature of advisory to the implementing agency and not mandatory and it is for the Commission to allow the roll over as prayed for by taking into account the pandemic situation. In this connection, we are constrained to point out that when the whole country has been suffering economically, particularly weaker section of the society and every citizen is sharing the economic distress of the nation proportionate to their standard of living, it is not only unreasonable but unconscionable and unethical on the part of the petitioner to claim such benefits involving public exchequer as in the prayer especially when the Commission has already allowed them to pay 20% M.D. charges during the pandemic period.

In the result, the petition is dismissed.

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

(Sd.....)  
**(Dr.T.Prabhakara Rao)**  
**Member**

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

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission