

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

PRESENT:

Thiru M.Chandrasekar Chairman
Dr.T.Prabhakara Rao Member
and
Thiru K.Venkatasamy Member (Legal)

M.P.No.16 of 2020

The Southern India Mills Association (SIMA)
Represented by its Secretary General
No.41, Race Course,
Coimbatore – 641 018..

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

Versus

1. Tamil Nadu Generation and Distribution
Corpn. Ltd. (TANGEDCO)
2nd Floor, 144, Anna Salai,
Chennai 600 002.
2. Ministry of New and Renewable Energy
Represented by its Secretary
Block-14, CGO Complex
Lodhi Road, New Delhi-110m 003.
3. State of Tamil Nadu
Represented by its Secretary to Government,
Energy Department,
Fort St. George,
Chennai 600 009.
4. Thiru.S.Gandhi, President,
Power Engineers' Society of Tamil Nadu
45, Balaguru Garden, Peelamedu
Coimbatore – 641 004.

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

... Impleading Respondent
(Party-in-Person)

Dates of hearings : 04-08-2020; 08-09-2020; 29-09-2020;
20-10-2020; 03-11-2020 and 10-11-2020

Date of order : 08-12-2020

The M.P.No.16 of 2020 came up for final hearing before the Commission on 10-11-2020 and the Commission upon perusing the petition, counter affidavit and connected records and after hearing the submissions of both sides passes the following:-

ORDER

1. Prayer of the Petitioner:-

The prayer of the Petitioner in M.P. No.16 of 2020 is to exercise its regulatory powers and accept the recommendations made by the 2nd Respondent vide Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 and allow Rollover of banked electricity from Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale Category of FY 2019-20 and FY 2020-21 FY 2021-22 and set out the manner and methodology for its implementation.

2. Facts of the case:-

The Petitioner has filed the present petition seeking for appropriate directions with respect to implementation of the recommendations made by the 2nd Respondent to the 1st Respondent with regards to Rollover of banked electricity from Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale Category of FY 2019-20 and FY 2020-21 to FY 2021-22.

3. Contentions of the Petitioner:-

3.1. The members of the Petitioner association have made *huge* investments in wind power plants and are also heavily relying on wind energy generators (WEGs) to meet their power requirements either through captive consumption or third party

purchase. However, due to the nationwide lockdown imposed by the Govt. of India caused by the pandemic due to the COVID- 19, the Industry as a whole, including the members of the Petitioner have been severely affected. In fact, most of the industries and commercial establishments are in a complete lockdown. Even despite the lifting of certain restrictions, the issues plaguing the sector continue.

3.2. While some members of Petitioner in the above petition are owning Wind Power Plants, *inter-alia*, in the State of Tamil Nadu for supplying power to TANGEDCO at the tariff determined by the Commission, other members are consuming power generated by WEGs for captive purpose or sell power to third parties by injecting the power generated into the grid for drawal at the consumption end and at the end of the billing period, if there is any excess power generated after adjusting for the consumption, then such excess power is accounted as "Banked units" for withdrawal during the subsequent months of the financial year. As a result of the lockdown, the Renewable Energy Generating stations implemented under Captive and 3rd Party Sale Scheme through Intra State Open Access System in Tamil Nadu are unable to consume / sell the generated wind power to designated consumers and the power is either banked or accounted as "deemed injection" / unutilised energy. Even though partial relaxations have been made barring a few zones, for the resumption of industrial activity, due to various reasons like shortage of manpower, disruption in supply chain and lack of demand etc., the industrial activity is highly subdued resulting in lower power consumption. industrial activity is expected to return to normal (pre-pandemic) levels only after the pandemic is controlled and the situation now is getting worse with a wider spread of the disease and in view of the same, return to normalcy in industrial activity and power consumption may take time.

3.3. Members of the Petitioner Association may not be able to consume the banked units before the end of the banking period i.e. March of every financial year and for such unconsumed energy, members are paid at 75% of Feed in Tariff. Some of the WEGs are not extended the Banking facility and when the power is not consumed in the same month, it is considered as excess generation from unutilized energy and paid at APPC rates. Members who opt for Captive Third party sales pay all the charges determined by the Commission.

3.4. In the event that the power is classified as 'excess generation or as unutilized energy at the end of the banking period, the members of the Petitioner's project's financial viability would be severely affected as such energy would get paid at APPC/75% of FIT/APPC . The OA charges paid by the generators itself is high and despite paying such high charges, if the units are allowed to remain unutilized and encashed at 75% of FIT/APPC, it would render the project economically unviable pushing them into a cash-flow crisis. Most of the members are exposed to a very high credit risk due to the fact that they will be unable to honour their financial commitments with banks and financial institutions. As a result of which, the long-term financial viability of the project has been severely affected, and the members of the Petitioner are suffering huge economic losses due to this unforeseen force majeure event.

3.5. The 2nd Respondent, aware of the widespread difficulties that would be faced by those in the Renewable Energy Sector, has sought to alleviate the concerns of the Petitioner vide its Memorandum F.No.28325/2020-GR1D SOLAR dated 16.4.2020 the second respondent clarified that the pre-existing office

Memorandum No.283/2020-GRID SOLAR, dated 04-04-2020, clarifying that the “Must Run” status of Renewable Energy (RE) remains unchanged during the COVID-19 Lockdown period and that the Renewable Energy must not be curtailed for energy security reasons.

The Office Memorandum stated as follows:

“Due to nationwide lock-down in the wake of COVI-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 2020. 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.”

3.6. The Memorandum further recommends to the various Power/Energy Departments including the 1st Respondent 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. However, despite the issuance of the Office Memorandum on 16.04.2020, till date, no steps have been taken by the 1st Respondent to implement the recommendations issued by the 2nd Respondent.

3.7. Prior to the issuance of the Office Memorandum dated 16.04.2020 issued by the MNRE, the Petitioner issued a letter dated 31.03.2020 to the Commission seeking roll over of banked units. The Petitioner states that immediately after the Office Memorandum dated 16.04.2020 was published, the Petitioner vide Letter dated

18.04.2020, wrote to the Commission appraising of the situation faced by the various Generating Stations and Consumers, and requested the 1st Respondent to do take cognizance of the notification issued by the MNRE and pass orders in a *suomotu* proceedings in respect of the same.

3.8. The individual Members of the Petitioner Organization have also written various representations to the 1st Respondent requesting Banking of Deemed Energy from April 2020 and rollover of banked energy from FY 2020-21 to FY 2021-22 in line with Office Memorandum F.No 283/25/2020-GRID SOLAR dated 16.4.2020 issued by the 2nd Respondent. Despite requesting Banking of Generated Energy from April 2020 and rollover of banked energy from FY 2020-21 to FY 2021-22 in line with Office Memorandum F.No.283/25/2020/GRID SOLAR dated 16.04.2020 issued by the 2nd Respondent, the 1st Respondent has not implemented the recommendations made by the 2nd Respondent, or taken any other action.

3.9. Due to the inaction of the 1st Respondent, the individual members of the Petitioner will be severely affected if they are unable to roll over the banked units, in so far as huge financial commitments to banks and financial institutions will be unable to be completed, since the units generated have either been lapsed or been deemed to be injected in the grid. If urgent actions, as recommended by the 2nd Respondent is not taken, the members of the Petitioner organization are under severe economic duress and may be forced to wind up. Such a situation will grossly affect the distribution of power within the state.

3.10. Compared to non-renewable sources such as coal, gas, oil, nuclear the advantages are pretty high as Wind is absolutely non-polluting. In this state of affairs, the WEGs would be continuously under serious hardship and the economic sustainability of Wind energy generation in the State of Tamil Nadu would be seriously jeopardized. Statutorily Renewable Energy must be actively encouraged and promoted.

Section 86 (1)(e) of the Electricity Act, 2003 provides as follows:

“86(1) The State Commission shall discharge the following functions, namely-

*.....
e) "Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also to specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”*

3.11. According to the above, the State Electricity Regulatory Commission (SERC) is mandated to promote the Renewable Energy (RE), issue the regulations for grid connectivity and sale of RE power to the distribution utility, CPP or open access consumer. Any instruction issued by SERC shall have to be followed by respective agencies for promoting the RE power in the State. As per Regulation 3(4) of the TNERC's Power Procurement from New and Renewable Energy Regulations 2008, the TNERC may provide appropriate banking provision to RE power. Under Regulation 9, the Commission is empowered to remove the difficulties in implementation of the provisions of this Regulation and Act. Covid-19 is like a Force majeure condition and hence the Commission may exercise its powers to implement the Rollover of banking.

3.12. The National Electricity Policy as extracted below provides that the renewable Energy potential should be exploited fully to create additional power capacity and

private participation should be encouraged by providing necessary promotional measures.

“5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures”

3.13. The Central Electricity Regulatory Commission has also stipulated in clause 5.2 (u) of the CERC (Indian Electricity Grid Code), Regulations, 2010 that Wind Generators should be treated as "MUST RUN" plants. It directs System Operator (RLDC/SLDC) to make all efforts to evacuate all available Wind power and treat them as "MUST RUN" plants. The scheduled generation can only be curtailed under circumstances of Grid security and in consideration to safety of any equipment or personnel. The relevant clause as mentioned in CERC (Indian Electricity Grid Code), Regulations, 2010 is as below:

"5.2 (u) Special requirements for Solar wind generators System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar / wind generator shall comply with the same. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC”.

3.14. TANGEDCO has benefitted from utilising the power generated by such sources during the lockdown. TNERC has done such rollover even in the past. As a matter of example, when consumers were disabled from utilising the renewable wind power during R&C measures that were in force in Tamilnadu during 2008 onwards, this Commission specifically allowed for rollover of the banked energy and allowed it to be utilised over 5 months in the next year. This situation is similar where

the consumption of the generated units is not capable of being done due to governmental directives.

3.15. The Renewable Energy potential must be exploited fully and that the only way to do so would require that the banked units are allowed to be rolled over for the next Financial Year. Further, if not permitted to do so, the existing developer would be losing the interest to invest in the state of Tamil Nadu as well as the State will not achieve its objective to project it as a Wind hub State. Moreover, the State is wasting its natural resource. In view of the utmost urgency as stated above the Commission may be pleased to direct the 1st Respondent to implement the recommendations made by the 2nd Respondent vide Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 and to consider Rollover of banked electricity from Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale Category of FY 20 19-20 and FY 2020-21 to FY 2021-22.

4. IMPLEADING PETITION FILED BY THIRU.S.GANDHI, PESOT:

4.1. The petition filed by the Petitioner (i.e. 1st respondent) in the impleading petition is largely relied upon the Ministry of New and Renewable Energy's Office Memorandum dated 16.4.2020. Lock down was not ordered by the second respondent here, namely TANGEDCO. 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 with the respondent 1. It is equally true that the same discom, namely, TANGEDCO, is also seriously affected by loss of business by the same lock down. The prayer is not in the right forum. The

relief, if at all any has to come from the Governments and more appropriately from the Ministry of New and Renewable Energy.

4.2. Notwithstanding the above, the claim of respondent 1, for roll over of banked energy beyond 31.3.2020, is in violation of the generic tariff order for wind energy issued by the Commission in force. The respondent 1, in M.P.24/2016, opposed the amendment sought by the respondent 2, to change the banking period that has been recorded in the Tariff Order No.6 dated 13.4.2020 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 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.”

4.3. Now the respondent has different footings to their own standing within the same tariff period. The respondent 1 has no "locus standi" to pray for rollover the banked energy in contra to the tariff order in force.

4.4. The bone of the claim for roll over of banked energy beyond 31/03/2020 is the lock down announced from 25.3.2020 to 31.3.2020 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 23.3.2020 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.

4.5. The Commission has complied all statutory provisions including under Sec.86(1)(e) and more liberal of allowing banking which find no place in the Electricity Act 2003. Banking is a concession at the cost of respondent 2 namely TANGEDCO, which is being transferred to common public. Elongating the non statutory concessions by one reason or other, will be unreasonable and will not ensure the reasonable cost to consumers as provided in the Electricity Act 2003.

4.6. 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 than any roll over.

4.7. The pandemic and lock down has destroyed the earning opportunities of crores of poor and marginalized and left them to suffer without any compensations. 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.

4.8. The restriction and control (R&C) promulgated during 2008 cannot be equated to lock down. R&C was short of generation over demand. The banked energy could not be drawn during R&C period. But 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.

4.9. The memorandum of MNRE dated 16.4.2020 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 guideline but simple disposal to consider the representations . It has no effect on statutory tariff order.

4.10. 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.

5. PRELIMINARY OBJECTIONS FILED ON BEHALF OF THE 1ST RESPONDENT (i.e., THE PETITIONER IN THE MAIN CASE) TO THE IMPLEADED APPLICATION FILED BY POWER ENGINEERS SOCIETY OF TAMIL NADU (PESOT):

5.1. The application seeking for impleadment is not maintainable and is an abuse of process of this Commission and liable to be dismissed with costs.

The Implead application lacks bonafides and is against the settled principles of law:

The instant implead application is bereft of details necessary to place on record the necessary interest and standing of the proposed impleading party to the present proceedings such as:

- a. The nature of the impleader, whether individual, company or association;
- b. The specific grievance of the impleader bearing nexus to the instant prayer sought for in the instant petition;
- c. Reasons as to why a decision in the instant petition will significantly impact / affect the impleader;
- d. A specific prayer to be impleaded in the instant petition with leave to file a counter on the merits of the case if the application to implead is allowed by the Commission.

5.2. Implead petitions cannot be entertained when the petitioner shows no direct interest in the matter. The principles circumscribing the power of a Court to implead third parties to a pending *lis* has been set out by the Hon'ble Madras High Court in the case of *C.M.V.Krishnamachari v. Dahanalakshmi ammal* 1966 2 MLJ 298. The said judgment stipulates that the interest that is necessary to make a person a party is legal interest including equitable interest, that is, an interest which law would recognize and uphold. Thus, the *sine qua non* for any person being impleaded to an already pending *lis* is that he or she should have a direct or tangible interest in the subject matter. A mere convenience or benefit which might possibly result to a party applicant by adding another party to the pending suit is not the test to be applied.

5.3. The Hon'ble Supreme Court in the case of *Razia Begum v Sahebzadi Anwar Begum and Ors* 1958 AIR 886 has also held that if the person who seeks

to be impleaded in a pending *lis* has an interest that is either indirectly or commercially affected, such a person is not a proper party requiring to be impleaded.

5.4. In the case of *Mahadeva Rice & Oil Mills Vs. chennimalai Gounder* AIR 1968 Mad. 287, the Hon'ble Madras High Court has laid down a set of four tests which serve as a guide to permit third parties to be impleaded:

- i) *"If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded;*
- ii) *It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject matter which could still have been decided in the pending suit itself;*
- iii) *The proposed party has a defined, subsisting direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law:*
- iv) *Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and;*
- v) *It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus*

to the subject-matter of the suit.”

5.5. The implead application made by PESOT demonstrates no case of any legal or equitable interest in the outcome of the instant petition. In fact, the implead application challenges the very legality of banking facility which is not the subject matter of the instant petition. The time for challenging banking is already past since Tariff orders in that regard have already been passed and as such the issue is no longer open to be re-agitated. If the proposed impleading petitioner has any grievance only an appeal to APTEL would lie against the Tariff Order. The instant application lacks all of the above and is liable to be dismissed *in limine*. The averments in the instant petition are in nature of a challenge to banking facility which is outside the scope of the instant petition. A bare reading of the implead application makes it clear that the application has been filed as a ruse to ventilate the PESOT's long standing grievance against banking facility a challenge which it has repeatedly failed in.

5.6. The prayer in the implead application is to dismiss the instant petition. Such a *prayer is impermissible in an implead application, the sole purpose of which is to enable this Commission to decide whether third parties can be heard in a pending lis based on whether or not they are a proper party. This requires for third parties to demonstrate how a decision in a pending lis, will have an impact on the third party. The instant application, titled as an 'implead petition' makes no such case, further still has not even prayed to be impleaded in the instant case.*

The implead application questions the legal sanctity of banking which is outside the scope of the instant petition:

5.7. The prayer of the instant petition as follows:

”Exercise its mandatory powers and accept the recommendations made by the 2 Respondent vide Office Memorandum F.No.283/251/2020-GRID-SOLAR dated 16.4.2020 and allow Rollover of banked electricity from Open Access Renewable Energy Generating Stations under Captive and Third-Party Sale Category of FY 2019-20 and FY 2020-21 to FY 2021-22 of all categories of Solar Generators and set out the manner and methodology for its implementation and pass such further or other orders as this Hon 'ble Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.”

5.8. The instant petition has been filed under section 86(1)(b) and 86(1)(e), seeking for the Commission to exercise its regulatory power and permit roll over of banked units FY 2019-20 and FY 2020-21 to FY 2021-22 in view of the recommendations made by the Ministry of New and Renewable energy. Therefore, the instant petition has been filed in view of the policy advisory and the view taken by several State Regulatory Commissions in this regard.

5.9. “Banking’ is recognised by this Commission in various tariff orders issued so far and continues to be in vogue. Banking facility has been extended to renewable energy generators in view of the specific mandate of the Electricity Act and the National Tariff Policy to promote electricity from renewable sources of energy. Any grievance against the same ought to be agitated through a tariff petition or an appeal against the existing Tariff Orders only.

5.10. The instant implead application raises contentions questioning the banking facility itself, which has now been given legal sanctity in view of the various tariff orders passed by the Commission, including the latest wind tariff order dated 7.10.2020, in which the Commission has decided to continue to extend banking facility; for the following among other reasons:

"In view of the above and the findings of Hon'ble APTEL in A. No. 42 of 2018 referred to by stakeholders, and on account of the unprecedented situation that arose due to the outbreak of the covid 19 pandemic where several restrictions were in place on the movement of public and opening of offices etc., and the gradual slowdown in economic activity, Commission decides not to disturb the current position in this order."

5.11. The Commission in its latest Solar Tariff Order dated 16.10.2020 has retained its position with respect to payment for unutilised excess energy in the following manner:

"5.5.8. After the billing period, the excess energy generated but not consumed, may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding."

5.12. Any contention questioning the legal sanctity of banking or payment for excess energy is irrelevant and outside the scope of the instant proceedings.

5.13. The instant application has been filed on the assumption that vide G.O.Ms.No. 152 dated 23.3.2020, not all industries were forced to shut down their operations. Such a statement is blatantly erroneous.

5.14. The lockdown was imposed on all activities save those that were specifically exempted in the said notification, i.e. essential services. Even in respect of factories and industries, only those that were engaged in the production of essential commodities and agricultural items were allowed to function. Therefore, during the

period of lockdown, only those essential activities vital for existence were allowed to function.

5.15. As unlock began, industries were allowed to open only in a phased manner and with several restrictions. As a natural corollary, there was a huge fall in demand of electricity since all the industries and large power consumers were forced to shut down their operations. In the absence of any demand, the electricity generated by generators were all injected into the grid and ultimately consumed by the TANGEDCO. It is for this reason the Petitioner is praying for roll over of banked units.

5.16. The Petitioner has drawn a parallel between the instant situation with the R & C time because in both situations, the generators were forced to sell all of the power generated to the TANGEDCO.

5.17. TASMA has filed a detailed counter to the implead petition setting out the lack of *locus standi* and the rejection of the attempts in the past by the impleading petitioner as also the failure to disclose the constitution of the implead petitioner, the issue as to payment of court fee and other grounds. The petitioner adopts the same and is not repeating the same.

6. WRITTEN ARGUMENTS SUBMITTED BY THIRU.S.GANDHI, PESOT:

6.1. 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.No.5 of 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.

6.2. The engineers have no separate tariff interest as the petitioner has as a group of generators. They are society of engineers with objectives of consumer's interests. The objectives of PESOT are as follows:

சங்கத்தின் நோக்கங்கள்:

- அ. இந்த அமைப்பு எந்த அரசியல் கட்சி சார்புடையதாகவும் இருக்காது.
- ஆ. பொது மக்களை அறிவுப்பூர்வமாக சிந்தனை செய்யவும், மின்துறை பற்றிய செய்திகள் அறியச் செய்யவும் முயலும்.
- இ. பொதுமக்களுக்கு மின்சார சேமிப்பு 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 சிக்கனமாக பயன்படுத்துவது குறித்த விழிப்புணர்வை பொதுமக்களிடையே உண்டாக்கும்.
- ஐ. மின்துறை பற்றிய விளக்கக் கூட்டங்கள், பொருட்காட்சிகள், மாநாடுகள், கருத்தரங்கங்கள் நடத்தும்.
- ஓ. மின்துறை பற்றிய செய்திகளை அறிந்து கொள்ளவும், கருத்துப் பரிமாற்றம் செய்து கொள்ளவும் வெறியீடு ஒன்று வெளியிடப்படும்.

ஓ. இந்த அமைப்பு தன்னுடைய நடவடிக்கைகளுக்கு உதவுவதற்காக மற்ற அமைப்புகளின் உதவியையும் தனி நபர்களின் உதவியையும் கோரிப் பெறும்.

ஓள. மின்சக்தி வாங்குவது, மின்கட்டண விகிதம் மற்றும் மின்துறை சம்மந்தமான விஷயங்கள் குறித்து விளக்கம் அறிந்து கொள்ள குழுக்கள் அமைக்கும். மத்திய, மாநில மின்சார ஒழுங்குமுறை ஆணையங்களிடம் கருத்துக்களைச் சமர்ப்பிக்கும்.

6.3. The impleader's functions are in confirmatory to the principle which are impleaded. The impleader requested the permission of the Commission to implead in these petitions of M.P 15, 16, 17/ 2020 and was permitted vide daily orders dated 29.9.2020. This amounts to exercise of power of the Commission under sec.94(3) of EA 2003. The petitioner has no locus standi to question the powers of the Commission.

6.4. After the public hearing on 5.3.2009 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 27.4.2009. The impleader'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.

6.5. After the decision of posting judicial member to tribunals where adjudicating powers are vested with by the Honorable Supreme Court Of India. The impleader has 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 Hon'ble Supreme Court of India on 18.4.2018. 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.

6.6. The 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* "

6.7. 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 9.9.2016 may be recalled.

6.8. The objective and our actions of a impleader 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.

6.9. The petitioner represents only 321 generators and whereas over 6000 such generators are in exercise under TANGEDCO. The petitioner has no *locus standi* to make claim of filed the details of quantum of banked energy available as on 31/03/2020 with every member wise and the cost impact of their prayer.

6.10. The Tariff order has its own control period. The Commission can not alter the basic rudiment which was decided after hearing all stake holders. The petitioner renegade their own stand in MP24/2016 and come before now aiming for wind fall profit of Rs.4/- per unit of the banked energy resulting heavy financial burden upon consumers.

6.11. There are no grievances for the petitioner. There are no legal sufferings. There are no legal grievances. The tariff order already provides enough relief and the members of the petitioner had more opportunity to effectively utilize the banked energy before 25.3.2020.

6.12. Knowing well, that banked energy will fetch 75% of cost they could have drawn the banked energy in advance and also during a weak long lock down with 50% work force The petitioner has no justification for rollover for 26 or 52 weeks just for a week long lock down

6.13. The Commission ought not to have taken up the case, since it falls against its own tariff order and the Commission ought to have reposed its faith on its order.

In the event of admitting the claim in any ground, the order may speak the quantum of financial losses to distribution licensee, consequent profit by the generators of Rs.4/- for every unit rolled over, and upon whom such cost be transferred to. Hearing upon such petitions will waste the time of the Commission and will injure the faith upon the Commission too.

7. Findings of the Commission:-

7.1. The prayer of the petitioner is to exercise its regulatory powers and accept the recommendations vide Ministry of New and Renewable Energy's Office Memorandum F.No.283/25/2020-GRID SOLAR dt.16.4.2020 and allow rollover of banked electricity from Open Access Renewable Energy Generating Stations under captive and third party sale category of FY 2019-20 and FY 2020-21 to FY 2021-22 and set out the manner and methodology for its implementation;

7.2. 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 24.03.2020 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.23.03.2020, 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.01.04.2020 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.

7.3. 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).

7.4 Reliance is placed on Ministry of New and Renewable Energy(MNRE)'s Office memorandum(OM) dt. 01.04.2020 and 16.04.2020 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 reads 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: 16thApril, 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 4th 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”

7.5. 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.

7.6 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.

7.7 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*.

7.8 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 meddlesome interloper has filed this appeal. We therefore reject the submission that this appeal is a public interest litigation.”

7.9. 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 guidelines issued by MNRE and therefore we refrain from examining the issues raised by the impleading petitioner in depth.

7.10 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

10.1.13the 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.

7.11. 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.

7.12. 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.

7.13. 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.

7.14 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.

7.15. 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.

7.16 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.

7.17 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.

7.18 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)...

.....

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(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.*

7.19. 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.

7.20. 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 may be. Banking charges as notified in the tariff orders for wind energy shall be applicable.

7.21. 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.

7.22 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 specially 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
/True Copy /

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

Secretary
Tamil Nadu Electricity
Regulatory Commission