

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

**PRESENT:**

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

**D.R.P. No.26 of 2013**

M/s.Sai Regency Power Corporation Pvt. Ltd.  
Rep. by its Authorised Signatory  
No.3, II Floor, Crown Court  
128, Cathedral Road  
Chennai – 600 086.

... Petitioner  
(ThiruAnand K Ganesan  
Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Corporation Ltd.  
(TANGEDCO)  
Rep. by its Chairman  
144, Anna Salai  
Chennai.
2. Tamil Nadu Transmission Corporation Ltd.  
(TANTRANSCO)  
Rep. by its Chairman  
144, Anna Salai  
Chennai – 600 002.
3. State Load Dispatch Centre (SLDC)  
(TANTRANSCO)  
SLDC Block  
144, Anna Salai  
Chennai – 600 002.

....Respondents  
(ThiruM.Gopinathan  
Standing Counsel for the Respondents)

**Dates of hearing :04-02-2014; 26-02-2014; 23-04-2014;  
23-06-2014; 30-07-2019; 20-08-2019;  
17-09-2019; 29-10-2019; 10-12-2019;  
28-01-2020 and 25-02-2020**

**Date of order : 10-11-2020**

The D.R.P.No.26 of 2013 came up for final hearing before the Commission on 25-02-2020 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

**ORDER**

**1. Prayer in D.R.P. No.26of 2013:-**

The prayer of the petitioner in this D.R.P.No.26of 2013 is to-

- (i) call for the records of the 1<sup>st</sup> Respondent dated 11-02-2013 in Lr.No.SE/REDC/RMD/DFC/HT/AS/F.SRPCL/DNo.72/2012 and Lr.No.SE/RED/C/RMD/DFC/HT/AS/F.SRPCL/DNo.470/2013dated 25-03-2013 and the records of the 2<sup>nd</sup> Respondent in ProceedingsLr.No.SE/LD&GO/EE/ABT/F.Sai Regency/D 1810/13, dated 15-03-2013 and Proceedings Lr.No.SE/LD&GO/EE/ABT/F.Sai Regency/D 1840/13, dated 22-03-2013 and quash the same;
- (ii) direct the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to levy all future billing towards the scheduling and system operation charges in accordance with the Tariff Order No.2 dated 30-03-2012 for the petitioner alone at Rs.2000 per day; and
- (iii) direct the respondents to release the sum of Rs.2,35,76,000/- withheld from the sums payable to the petitioner for supply of energy;

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

This petition has been filed to set aside the letter of the Respondent dated 11-02-2013 and to direct the Respondent to levy Scheduling and System Operation charges from the petitioner alone and not to all the captive consumers and also direct the Respondent to refund a sum of Rs.2,35,76,000/- withheld from the petitioner for the supply of energy.

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

The petitioner has submitted as follows:-

3.1. The Tamil Nadu Electricity Grid Code, which among other, facilitates intra state transmission and wheeling of electricity with focus on operation, maintenance, development and planning of the Tamil Nadu State Electricity Grid. The latter Code is structured with focus on various aspects involved with the Transmission System/Grid such as Scheduling etc. Scheduling includes a systematic process or plan drawn by the 3<sup>rd</sup> Respondent along with parties such as the Petitioner, to enable the 3<sup>rd</sup> Respondent to facilitate injection of power into the Grid by Generation Companies and the simultaneous drawal of power from the Grid by beneficiaries and licensees, whilst maintaining the Grid integrity. Under the Code the 3<sup>rd</sup> Respondent is totally responsible for all matters pertaining to scheduling the generation of all agencies connected to the Grid.

3.2. As per Section 32 of the Electricity Act, the 3<sup>rd</sup> Respondent is responsible for optimum scheduling within the State, monitoring of Grid operations, supervision and control over Intra-State transmission System and for levy and collection of such

fee and charges from generating companies and licensees engaged in Intra-State Transmission of electricity as may be prescribed by the Commission.

3.3. The Tamil Nadu Electricity Regulatory Commission in accordance with the powers granted under section 62 & 86 of the Electricity Act read along with the Intra-State Regulations and Policies in force, issues Tariff Orders for matters regarding generation, transmission and wheeling and sale of electricity regarding generation, transmission and wheeling and sale of electricity etc. Accordingly, the Commission has issued Tariff Order No: 2 dated 30.03.2012 for the Determination of Intra-State Transmission Tariff and other related charges. In the latter Tariff Order, under Clause 4.4, the Commission has dealt with the Scheduling and System Operating Charges payable by long term and short term open access consumers such as the Petitioner to the 3rd Respondent, for scheduled injection of power and usage of transmission system. The charge levied under the latter heading is more so towards meeting the cost incurred by the 3rd Respondent of the infrastructure and operating expense.

3.4. Originally the rate was fixed at Rs.1000/- per day or part of the day for long term open access customers like the Petitioner and Rs.500/- for short term open access customers. During the hearing held in relation to the determination of the abovementioned Tariff Order, based on the request by the 2nd Respondent, the charge was increased to Rs.2000/- per day or part of the day for both open access and short term access customers. Accordingly the Petitioner Power Plant has been paying the said charges duly since April 2012 till date.

3.5. The 1<sup>st</sup> Respondent vide letter dated 11.02.2013 in proceedings Lr.No.SE/REDC/RMD/DFC/HT/AS/F.SRPCL/D.NO.72/2012 issued a demand notice directing the Petitioner to remit a sum of Rs.2,35,76,000/- towards alleged short levy of scheduling and system operation charges. The alleged levy was imposed on the reasoning that the charges, determined by the Commission, were collected only from one customer i.e., the Petitioner and as such the 1st Respondent sought to re-interpret the TNERC order to include the Captive and Third Party Consumers (accounting each HT service connection separately) of the Petitioner Plant also for the purpose of imposing the impugned levy.

3.6. The petitioner addressed a reply dated 13-02-2013 drawing the attention of the 1<sup>st</sup> Respondent to the Commission's order and its applicability and sought withdrawal of the said impugned levy.

3.7. Subsequently the 2nd Respondent addressed a letter dated 15.03.2013 vide proceedings Lr.No.SE/LD&GO/EE/ABT/F.Sai Regency/D1810/13 informing that the request of the Petitioner is not feasible for compliance.

3.8. The 1<sup>st</sup> Respondent again vide letter dated 25.03.2013 vide proceedings Letter No.SE/REDC/RMD/DFC/HT/AS/F.SRPCL/DNO.470/2013 rejected the contention of the Petitioner, as not feasible for compliance. The 1st Respondent also directed the Petitioner to pay the impugned levy alongwith 18% towards belated payment surcharge. The Petitioner again addressed a reply to the

Respondent bringing to light the facts and sought withdrawal of the arbitrary and impugned levy.

3.9. The Respondents are trying to interpret the Tariff Order passed by the TNERC in an arbitrary and unreasonable manner in order to bring forth the current impugned levy/charge. The Tariff Order of the Commission has as such contemplated all the applicable charges payable by the Petitioner and the same are being duly paid by the Petitioner to the Respondent. The impugned order has been issued in an unilateral manner without proper approval and also the payments due to the Petitioner for energy generated and supplied to the Respondent Board were being unduly and illegally withheld by the Respondent in order to coerce the Petitioner to pay the impugned charge.

3.10. The petitioner approached the Hon'ble High Court by filing W.P. No.10490/2013 seeking to set aside the abovementioned impugned proceedings of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. The Hon'ble High Court was pleased to hear the matter and grant stay of the impugned proceedings of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It is submitted that subsequently the Hon'ble High Court heard the matter and on 22.04.2013 passed orders directing the parties to approach the Commission and raise their contentions therein. In the meanwhile the Hon'ble High Court directed to keep the sum of Rs.2,35,76,000/- alleged to be due from the Petitioner and to release balance out of Rs.7, 29,000,00/- to the Petitioner within a period of two weeks. It is under these circumstances that this Commission is approved under Section 86(1)(f) of the Electricity Act, to clarify that the System and Scheduling

charges prescribed in the Tariff Order of the Commission is only Rs.2000/- per day or part of the day for both open access Long Term and short term customers and also hold that the interpretation and the subsequent demand raised by the Respondent Board is in violation of the Tariff Order and accordingly set aside the same.

3.11. The raising the alleged demand is bereft of proper reasoning/facts and as such the same was sought to be explained vide the Counter Affidavit filed by the Respondent Board in the abovementioned WP, which in itself is contrary to the principles laid down by the Hon'ble High Court. The action of the Respondent in not following proper procedure and failing to provide adequate reasoning is arbitrary, illegal and liable to be set aside.

3.12. The Commission had merely adopted the rates prescribed by the Central Electricity Regulatory Commission and as such a literal adoption of the corresponding provision in the latter issued guidelines is practically inappropriate. The CERC Inter State Regulations pertain and discuss mainly about the operating charges applicable between the Load Despatch Centres of different States. A mere reading of the CERC Inter State regulations clearly shows that the same cannot be imposed on Intra State Transmission involved between the Petitioner and Respondent only.

3.13. Clause 4.4.4 of TNERC order provides as follows:-

*"Accordingly the Commission has considered the Composite Scheduling and System Operating Charges of Rs. 2000/- per day ....."*

The term "COMPOSITE" implies all clubbed together i.e. the total power exported to Grid. The total exported power only is continuously monitored viz-a- viz total scheduled at LDC and not consumer wise much less HT service connection wise.

3.14. As per section 32 of the Electricity Act and the TN Grid Code, the 3<sup>rd</sup> Respondent is sole authority responsible for maintenance of the transmission system and the collection of all charges levied/determined by this Commission. The impugned levy has been issued by the 1<sup>st</sup> Respondent through SE-Ramnad who lacks the authority to do the same.

3.15. The power to determine the charges leviable towards Scheduling and System Operations lies with the Commission, with the same expressed through the Tariff Orders. The Commission has, as such issued Tariff Order No.2 dated 30-03-2012 for the Determination of Intra-State Transmission Tariff and other related charges and accordingly the 3<sup>rd</sup> Respondent is bound by the same.

3.16. The petitioner is separately paying to the 2<sup>nd</sup> Respondent for the wheeling of power to its respective captive consumers. In fact, all the relevant charges applicable for the Petitioner insofar as to generation, supply, transmission and wheeling have been prescribed by the relevant authority and the same is being paid by the Petitioner duly. In fact it is submitted that it is Petitioner's plant that has a

Wheeling Agreement with the 2<sup>nd</sup> Respondent and not its captive consumers. The charges contemplated by the TNERC was only towards maintenance whereas the Respondent vide the impugned proceedings are seeking to unjustly enrich themselves by levying such unwarranted and exorbitant demand.

3.17. The respondents are as such illegally withholding payments that are legally due to the petitioner for energy supplied. In an effort to coerce the petitioner to accept the impugned demand, the Respondents Board is withholding sums to a tune of Rs.2,35,76,000/- based on their interpretation of the Scheduling and System Charges.

#### **4. Contentions of the Respondents:-**

In the counter filed on 18-07-2014, the Respondents herein countered as follows:-

4.1. Sec. 32 of Electricity Act, 2003 provides as follows:-

*"(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

*(2) The State Load Despatch Centre shall-*

*(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the Generating companies operating in that State /*

*(b) monitor grid operations/*

- (c) *keep accounts of the quantity of electricity transmitted through the State Grid:*
  - (d) *exercise supervision and control over the intra-State transmission system/ and*
  - (e) *be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid standards and the State Grid Code.*
- (3) *The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”*

4.2. In order to effectively implement the above functions, the Central Electricity Regulatory Commission and Tamil Nadu Electricity Regulatory Commission have fixed the Scheduling and system operation charges for every transaction per day or part thereof payable by the generating companies and licensees engaged in Intra-State Transmission of Electricity.

4.3. Till 31.03.12, the scheduling and system operation charges was as mentioned below as fixed by the Commission vide Order No. 2 dated 15.05.2006:

- i. Long term open access customers - Rs.1000 per day or part of the day
- ii Short term open access customer – Rs.500 per day/per transaction.

4.4. The Commission vide its Order No. 2 of 2012 dated 30.03.2012, revised the scheduling and system operation charges with effect from 01.04.2012 under Clauses 4.4.3 & 4.4.4 which read as below:-

*“4.4.3 Section-17 of CERC (Open Access in Inter-state Transmission) Regulations, 2008 states as under:*

*“Operating Charges*

*17 (1) Operating charges at the rate of Rs.2,000/- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centre involved and at the rate of Rs.2,000/- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant ....”*

*4.4.4. Accordingly the Commission has considered the composite Scheduling and System Operating Charges of Rs.2000 per day for long term as well as short term open access customers.”*

4.5. M/s.Sai Regency Power Corporation Private Ltd is having a Gas based Group Captive Power Plant with installed capacity of 58 MW at Kalugoorani, Ramnad Electricity Distribution Circle. The third respondent, State Load Despatch Centre (SLDC) is a Nodal agency for approving open access transactions. As per Tamil Nadu Electricity Regulatory Commissions (TNERC) Intra State Open Access Regulations/Orders, open access approval has been accorded to the petitioner's plant to wheel power to its captive users (58 No. HT consumers), third party sale to the HT consumers (19 No. HT consumers) and supplying power to TANGEDCO.

4.6. In line with the earlier tariff order, initially the petitioner was charged Rs.1000/- day towards the Scheduling and System Operation Charges since the petitioner was long term open access customer. Further in tune with the Commission's Tariff Order effective from 01-04-2012 in which the scheduling and system operation charges was increased to Rs.2000/- per day, the petitioner had been charged at the rate of Rs.2000/- per day from April 2012 to January 2013.

4.7. Clauses 4.4.3 & 4.4.4 of TNERC Order No.2 of 2012 dated 30.03.2012 clearly stipulate that the Scheduling and System Operation Charges are applicable for each of open access customers and for each bilateral transaction. The petitioner is supplying power not only to TANGEDCO but more than one customer that is its captive users (58 Nos. HT consumers) and to customer under third party sale (19 Nos.HT Consumers). Hence, the Scheduling and System Operation Charges is payable by each open access customer for each bilateral transaction. The Superintending Engineer/Ramnad Electricity Distribution Circle has issued a revised demand notice to the petitioner for the short levy amount of Rs.2,35,76,000/- towards Scheduling and System Operation Charges for each of the actual number of bilateral transactions vide Lr No. SE/REDC/RMD/DFC/HT/AS/F.SRPCL/DNO.721/2013,dated 11.02.2013.

4.8. The petitioner by wrongly interpreting the provisions of clauses 4.4.3 &4.4.4 of Tariff Order No.2 of 2012 dated 30.03.2012, denied to pay the short levy amount and addressed SLDC to levy single Scheduling and System Operating Charges for all the bilateral transactions from the petitioner plant. The petitioner had been

replied that its request is not feasible of compliance vide Lr.No.SE/LD&GO/EE/ABT/ F.SaiRegency/D 1810/13, dated 15.03.13 based on this Commission's Order.

4.9. The Intra State Open Access Regulations, 2005, Clause 9(4) reads as below:

- (a) The scheduling and system operation charges payable to State Load Dispatch Centre by open access customer shall be such as determined by the Commission under section 32 of the Act.
- (b) The Scheduling and System Operation Charges collected by the State Load Dispatch Centre in accordance with clause (i) above shall be in addition to the other fees and charges approved by the Commission under this Regulations;
- (c) The Scheduling and system operation charges shall be payable even when the open access customer happens to be a generating company or trading Licensee/ availing open access under these Regulations.

The averment of the petitioner regarding the payment of Scheduling and System Operation Charges that it is only applicable for the generating companies or a Licensee is totally unacceptable since the HT consumers are also Open Access customers as per the definition of Clause 2 (j) of Open Access Regulations, 2005, which reads as follows:

"Open Access Customer means a consumer permitted by the State Commission to receive supply of electricity from a person other than

*distribution licensee of his area of supply, or a generating company (including Captive Generating Plant), or a licensee, who has availed of or intends to avail of open access"*

4.10. A conjoint reading of clauses 4.4.3 and 4.4.4 of TNERC Tariff Order No.2 of 2012, would clearly reveal that the TNERC has revised the said charges only in accordance with the said CERC Regulations thereby revising the charges per transaction irrespective of long term or short term of open access category. Accordingly, the Scheduling and System Operating Charges of Rs.2000/- per day for each bilateral transaction is being collected from all the open access customers in Tamil Nadu. It is also submitted that "Bilateral Transaction" has been defined in Clause 2 (b) of the CERC Notification dated 25.01.2008 which reads as follows:-

*"Bilateral Transaction" means a transaction for exchange of energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee/ from a specified point of injection to a specified point of drawal for a fixed or varying quantum of power (MW) for any time period during a month".*

4.11. Even though, the sending point is single, the drawal points of HT consumers are in various circles and involve separate energy wheeling accounting by the respective EDC of HT consumers and hence Rs.2000/- for each bilateral transaction has to be paid by the petitioner. The petitioner by conveniently omitting the word "each bilateral transaction" and wrongly interpreting the above clause, has stated that only Rs.2000/- per day or part of the day for all transaction is applicable.

4.12. The scheduling and system operation charges of Rs.2000/- for each bilateral transaction is being collected as per the Commission's Order with effect from 01.04.2012 from all the generators who are doing electricity transaction through open access and the petitioner has only read the above clause wrongly for unjust enrichment and to deny the respondents the legitimate dues flowing from the Commission's Tariff Order. In furtherance of the same, the petitioner is objecting to pay for each bilateral transaction. In the Inter-State Open Access transactions the scheduling and system operation charges of Rs.2000/- per day for each of bilateral transaction is being collected based on the actual transaction even though the injecting entity is the same generator. Large number of consumers are also being allowed to purchase power from Power Exchanges and are paying the Scheduling and System Operating Charges on individual basis only.

4.13. Since the petitioner has not paid the short levy amount, the 1<sup>st</sup> respondent withheld the payment to the petitioner for the power supplied to TANGEDCO. Meanwhile the petitioner approached Hon'ble High Court of Madras to resolve the issue. The Hon'ble High Court vide final order dated 22.04.13 directed as follows:-

- (1) The writ petition is disposed of with a direction to the petitioner to approach the TNERC seeking the relief which has been prayed in this writ petition raising all the contentions raised in this writ petition as well as other contentions available to the petitioner;

- (2) The respondent shall keep a sum of Rs.2,35,76,000/- said to be due to the petitioner and pay the balance out of Rs.7,29,00,000/-. The said amount shall be payable by the respondent within a period of two weeks from this date. The writ petition is ordered accordingly. No costs. The connected miscellaneous petitions are closed.

4.14. The averment of the petitioner in para 4 of the petition regarding the inclusion of captive consumers, the TNERC order deals with each bilateral transaction only and not discussed anything about the type of open access transactions i.e. captive consumers or third party consumers etc.

4.15. With reference to the Ground B of the petition, it is to be stated that Commission has adopted the rates of Scheduling and System Operation Charges as per CERC Regulations clause 17 and it is no way connected with the volume and magnitude of power. As per this order, scheduling and system operation charges should be collected for each bilateral transaction only.

4.16. With reference to the Ground C of the petition, the contention of the petitioner is totally unacceptable since the separate accounting system of TANTRANSCO and TANGEDCO are yet to be implemented. All the open access charges are being collected in different account heads only and the account head is common to all Electricity Distribution Circles. Further the petitioner also paid all the open access charges at Superintending Engineer/Ramnad Electricity Distribution Circle so far and hence the action of Superintending Engineer/Ramnad Electricity

Distribution Circle is within the jurisdiction only. In fact, the Superintending Engineer/Ramnad Electricity Distribution Circle has only acted based on the instructions of the third respondent as could be seen from the Superintending Engineer/SLDC's letters dated 15-03-2013 and 22-03-2013.

4.17. With reference to the ground D of the petition that for implementing the order of the Commission regarding collection of Scheduling and System Operation Charges for each bilateral transaction with effect from 01.04.2012, a separate approval of the Commission is not necessary and as such there is no violation of any of the provisions of the Electricity Act.

4.18. As regards Ground "B", a plain reading of the Tariff Order clearly reveals that Rs.2000/- per day or part of the day for each bilateral transaction has to be collected. However the petitioner has only mis-interpreted the clause and filed the instant petition.

4.19. The petitioner's averment vide Ground F of the petition is totally unacceptable since the Scheduling and System Operating Charges is for each bilateral transaction only and not for any maintenance of the system. Even though the captive consumers have not entered into any agreement with the respective Electricity Distribution Circles, they are included in the agreement with the petitioner itself and accordingly energy allocation will be done and they are covered by this agreement. A single agreement does not mean that it is a single transaction and the same is based on the number of captive HT consumers. Hence, non-availability

of the individual agreements for the captive consumers does not prevent TANTRANSCO/TANGEDCO from collecting the scheduling and system operation charges based on the number of transactions by following the TNERC/CERC regulations/ order.

4.20. With reference to the Ground G of the petition for implementing the order of the Commission regarding collection of scheduling and system operation charges for each bilateral transaction with effect from 01.04.2012, a separate approval of the Commission is not necessary and as such there is no violation of any of the provisions of the Act and the averment of the petitioner is unacceptable. In fact, the petitioner has been paying various charges based on the said Tariff Order for which no separate approval is sought for. The purport and object of issuing a Tariff Order after due process is to avoid passing orders in the case of each and every consumer/generator.

4.21. With reference to the para 7 of the petition, TANGEDCO is releasing the payment to all the generators in a periodical manner according to the fund availability based on their invoice date. Even otherwise, the same has got nothing to do with the prayer sought for in this writ petition.

4.22. It is also not the case of the petitioner that he has made a representation to the Chairman of the TANGEDCO/TANTRANSCO and it was not considered, so as to array the first and second respondents in the above writ petitions. Therefore, the above petition is hit by mis-joinder of proper parties.

4.23. The revised demand notice has been issued by the Superintending Engineer/Ramnad Electricity Distribution Circle strictly based on the provisions of the Commission Tariff Order No.2, dated 30.03.2012 effective from 01.04.2012. The petitioner has been indulging in mis-interpreting the provisions of the said Tariff Order.

4.24. The Superintending Engineer / Ramnad Electricity Distribution Circle so also the deponent herein have correctly read the provisions of the clauses 4.4.3 and 4.4.4 of the Tariff Order of the Commission dated 30.03.2012 and properly applied in the case of the petitioner. A combined reading of those provisions of the Tariff Order and also Regulation 17(1) of the Central Electricity Regulatory Commission (CERC) Open Access Regulations, 2008 which was the basis for fixation of the charges as at clause 4.4.4 would clearly reveal that the charges are per transaction basis only and not otherwise as interpreted by the petitioner. The petition is liable to be dismissed in limine inasmuch as the claim is against the provisions of the Tariff Order and rules of construction of statutory provisions.

4.25. The generators in Tamil Nadu as also the open access consumers of various States in India are paying such charges as per the provisions of CERC/SERC regulations/orders which may throw light that such charges are payable in terms of bilateral transaction, i.e. taking into account the specified seller and each buyer of such seller. This Commission, being the expert body, would consider the provisions of the Tariff Order issued by it and the prevailing

norms/practice by the CERC and other State Regulatory Commissions functioning in India and arrive at a just and proper decision and to dismiss the writ petition.

4.26. The petitioner, for their misinterpretation of clause 4.4.4 of the present Tariff Order, relies on the provisions contained in the earlier Tariff Order No.2, dated 15.05.2006. However, the CERC Open Access Regulations, 2008 came into force from the year 2008. This Commission has rightly relied on regulation 17(1) of the CERC Open Access Regulations, 2008 while issuing the present Tariff Order. The impugned orders were passed based on the said provisions only. Therefore, the impugned orders cannot be said to be illegal or irregular or perverse, etc. Therefore, in the interest of justice, the impugned orders have to be sustained.

4.27. The above petition is neither maintainable in law nor on facts. In as much as the Dispute Resolution petition itself is not maintainable, the petition has to be dismissed. By dismissing the same, no prejudice will be caused to the petitioner. The balance of convenience is clearly in favour of the respondents. In fact, such dismissals would uphold the law of the land.

## **5. Written Submissions filed on behalf of the Respondents 2 and 3:-**

5.1. The petitioner is having a Gas based Group Captive Power Plant with installed capacity of 58 MW at Kalugoorani, Ramnad EDC and open access approval has been accorded to the petitioner to wheel power to their captive users (58 Nos. HT Consumers) and third party sale (19 Nos. HT Consumers) and supplying surplus power to TANGEDCO.

5.2. The scheduling and system operation charge of Rs.2000/- per day or part of the day for each bilateral transaction is being collected from all the open access customers (generators/HT consumers) as per the prevailing TNERC Intra State Open Access Regulations and Tariff Orders.

5.3 The relevant regulations which are pertinent to this case are reproduced as below:

a. Clause 2 (j) of the TNERC Intra State Open Access Regulations, 2005:

"Open access customer" means a consumer permitted by the State Commission to receive supply of electricity from a person other than distribution Licensee of his area of supply, or a generating company (including captive generating plant), or a Licensee, who has availed of or intends to avail of open access.

b. Clause 2 (b) of the Central Electricity Regulatory Commission (CERC) notification dated 25.01.2008:-

"Bilateral Transaction" means a transaction for exchange of energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee, from a specified point of injection to a specified point of drawal for a fixed or varying quantum of power (MW) for any time period during a month."

5.4. The Commission has fixed the scheduling and system operation charges in the Tariff Order No.2 dated 15-05-2006 as re-produced below:-

- (i) Long term open access customers – Rs.1000/- per day or part of the day.
- (ii) Short-term open access customers – Rs.500 per day / per transaction

5.5 Subsequently, this Commission vide its Tariff Order No. 2 of 2012, dated 30.03.2012 has revised the charges with effect from 01.04.2012 vide Clauses 4.4.3 & 4.4.4 which read as below:-

4.4.3 Section-17 of CERC (Open Access in Inter-StateTransmission) Regulation~ 2008 states as under:

"Operating Charges

17 (1) Operating charges at the rate of Rs.2000/- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centres involved and at the rate of Rs.2000/- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant ....”

4.4.4 Accordingly he Commission has considered the composite Scheduling and System Operating Charges of Rs.2000 per day for long term as well as short term open access customers.

5.6. While fixing the Scheduling and System Operating Charges, this Commission considered the above said provisions of CERC and the Scheduling and System Operating Charges fixed as Rs.2000/- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centre involved for long term as well as short term open access customers.

5.7. The conjoint reading of clauses 4.4.3 and 4.4.4 above would clearly reveal that the Scheduling and System Operating Charges are applicable on per transaction basis irrespective of long term or short term of open access category. Accordingly, the Scheduling and System Operating Charge of Rs.2000/- for each bilateral transaction is being collected from all the open access customers in Tamil Nadu with effect from 01.04.2012.

5.8. The petitioner is conveniently reading only the Clauses 4.4.4 of the TNERC Tariff order No.2 of 2012, dated 30.03.2012 and misinterpreting the same for unjust enrichment and to deny the respondent's legitimate dues flowing from the TNERC's Tariff Order. In furtherance of the same, the petitioner is interpreting the above clause to its convenience, and refusing to pay for each bilateral transaction. The petitioner is conveniently overlooking the word "each bilateral transaction" in the petition and misinterpreting the above clause and alleges that only Rs.2000/- per day or part of the day is payable for all transactions. Hence, a demand notice was issued calling upon the petitioner to remit a sum of Rs.2,35,76,000/- towards short levy of Scheduling and System Operation Charges.

5.9. The Commission has adopted the rates of Scheduling and System Operation Charges as per Regulations 17 of the CERC (Open Access in Inter-state Transmission) Regulations, 2008 and it is no way connected with the volume and magnitude of power. Accordingly, the Scheduling and System Operation Charges should be collected for each bilateral transaction only.

5.10. The operating charge includes fee for Scheduling, System Operation, energy accounting and collection and disbursement of charges. Accordingly, even though the power injection falls in one distribution circle with single point, the drawal points of the open access consumers are located in various Distribution Circles which involve separate energy accounting and energy adjustment at the respective Electricity Distribution Circles.

5.11. For all the Intra-State and Inter-State (both bilateral and collective) open access transactions, the Scheduling and System Operation Charge of Rs.2000/- per day for each bilateral transaction is being collected though the injecting entity is the same generator. Hence, the claim to the tune of Rs.2,35,76,000/- is in accordance with the prevailing Tariff Order and Rules of construction of statutory provisions.

5.12. All the open access customers (both intra and inter-state) of various States in India are paying such charges as per the provisions of CERC/SERC Regulations/Orders in terms of each bilateral transaction, i.e., taking into account the specified seller and each buyer of such seller, but the same is being misinterpreted by the petitioner.

5.13. In view of the Tariff order laid down by this Commission, the Scheduling and System Operation Charges are to be levied @ of Rs.2,000/- per day for each bilateral transactions and in view of the submissions set out herein above, the D.R.P.No. 26 of 2013 deserves to be dismissed with exemplary costs.

**6. Hearing held on 23-06-2014:-**

During the hearing held on 23-06-2014, the Counsel for the Petitioner has submitted that the petitioner company is a captive generator / open access customer. The respondents withheld sums due to the petitioner company on account of composite scheduling charges. The respondents did this though the scheduling is controlled by SLDC. The petitioner's counsel contended that the first two respondents namely TANGEDCO and TANTRANSCO have no jurisdiction in the matter and the charges are withheld due to misinterpretation of the certain provisions need to be refunded. After hearing, the petition is admitted and the respondents directed to file the counter within 4 weeks.

**7. Hearing held on 25-02-2020:-**

During the hearing held on 25-02-2020, the Commission directed the petitioner and respondents i.e. TANGEDCO, TANTRANSCO and SLDC to file Written Submission within 10 days.

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

8.1. The Petitioner prayed to levy all future billing towards the Scheduling and System operation charges in accordance with the Tariff Order No.2 dated 30-03-2012 for the Petitioner alone at Rs.2000 per day; and further prayed to direct the respondents to release the sum of Rs.2,35,76,000/- withheld from the Petitioner for supply of energy.

8.2. The petitioner has challenged the notice issued by the Respondent demanding to pay Rs.2,35,76,000/- in Lr.no.SE/REDC/RMD/DFC/HT/AS/F.SRPCL/D.No.721 /2012, dated 11.02.2013 towards short levy of Scheduling and System operation charges for the period from 4/2012 to 1/2013 and the levy of Scheduling and System operation charges Rs.2000 per day for every transaction. As the Petitioner has not come forward to pay the Respondent's demand of Rs.2,35,76,000/-, 1<sup>st</sup> Respondent withheld the payment towards the power supplied by the Petitioner to TANGEDCO. In this connection, Petitioner under a Writ Petition No. 10490 of 2013 approached the Hon'ble High Court of Madras to resolve the issue. The Hon'ble High Court in its Order dated 22-04-2013 directed as follows:-

*“(1) The writ petition is disposed of with a direction to the petitioner to approach the TNERC seeking the relief which has been prayed in this writ petition raising all the contentions raised in this writ petition as well as other contentions available to the petitioner;*

*(2) The respondent shall keep a sum of Rs.2,35,76,000/- said to be due by the petitioner and pay the balance out of Rs.7,29,00,000/-. The said amount shall be payable by the Respondents within a period of two weeks from this date. The writ petition is ordered accordingly. No costs. The connected miscellaneous petitions are closed.”*

8.3. Accordingly, the petitioner has filed this DRP before this Commission as directed by the Hon'ble High court, with a prayer to quash the demand notice issued by the 1<sup>st</sup> Respondent without convincing on the reply of the 3<sup>rd</sup> Respondent State Load Despatch Centre.

8.4. The Petitioner contended that the impugned demand was imposed on the reasoning that the charges determined by the Commission, were collected only from one customer i.e., the Petitioner and as such the 1<sup>st</sup> Respondent sought to re-interpret the Commission's Order to include the Captive and Third party Consumers (accounting each HT service connection separately) of the Petitioner plant also for the purpose of imposing the impugned levy and the Respondents are trying to interpret the Tariff order passed by the TNERC in an arbitrary and unreasonable manner in order to bring forth the current impugned levy/charge.

8.5. The Respondent states that the petitioner by wrongly interpreting the provision of clauses 4.4.3 & 4.4.4 of the Tariff Order no.2 of 2012 dated 30-03-2012, denied to pay the short levy amount; and further states that a conjoint reading of clauses 4.4.3 and 4.4.4 of Tariff order No.2 of 2012 would clearly reveal that the Scheduling and system operation charges, which is based in accordance with the said CERC Regulations, is being collected from all the open access customers in Tamil Nadu at Rs.2000 per day for each bilateral transaction.

8.6. TNERC's Tariff Order No.2 of 2012 dated 30-03-2012 under para 4.4 provides as follows:-

***“4.4 SCHEDULING AND SYSTEM OPERATION CHARGES***

*4.4.1 TANTRANSCO has submitted that Scheduling and System Operating Charges should be Rs.2000 per day or part of the day for long*

*term as well as short term open access customers, as approved by Central Electricity Regulatory Commission (CERC).*

*4.4.2 The Commission in its Order No. 2 dated May 15, 2006 fixed composite Scheduling and System Operation Charges on the basis of charges specified by CERC and Other Commissions which are as under:*

- a. Long Term Open Access Consumers-Rs.1000 per day or part thereof*
- b. Short Term Open Access Consumers- Rs.500 per day per transaction.*

*4.4.3 Section-17 of CERC (Open Access in Inter-state Transmission) Regulations, 2008 states as under:*

***“Operating Charges***

***17 (1) Operating charges at the rate of Rs.2,000 /- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centres involved and at the rate of Rs.2,000/- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant. ...”***

*4.4.4 Accordingly, the Commission has considered the composite Scheduling and System Operating Charges of Rs.2000 per day for long term as well as short term open access customers.”*

The Petitioner believes that the CERC's Open Access Inter State Regulations pertain mainly to the operating charges applicable between the Load Despatch Centre of different States and further stated that mere reading of the CERC Open Access Inter State Regulations clearly shows that the same cannot be imposed on Intra State Transmission involved between the Petitioner and Respondent only; the

Respondents by no stretch of imagination can include the customers of the Petitioner as a reading of Clause 4.4.3 “Section 17 of CERC (Open access in Inter State Transmission) Regulation 2008 ....” And 4.4.4 of the TNERC Tariff Order implies the transaction between the Petitioner and the 3<sup>rd</sup> Respondent only; in fact the operative portion of the TNERC order is only Clause 4.4.4., which does not contain anything like “bi-lateral transaction”, thereby clarifying that the billing is only between the Petitioner and the 3<sup>rd</sup> Respondent and will not include the captive consumers of the Petitioner; in the sentence “Composite Scheduling and System operation charges of Rs.2000 per day ...” the term “composite” implies all clubbed together i.e., the total power exported to Grid and total exported power only is continuously monitored not consumer wise.”

The State Load Despatch centre, in its contentions stated that under Regulation 9(4) of the Intra State Open Access Regulations, 2005, the scheduling and system operation charges payable to State Load Dispatch Centre by Open access customer shall be such as determined by the Commission under Section 32 of the Act. Therefore, the averment of the petitioner regarding the payment of scheduling and system operation charges that it is only applicable for the generating companies or a Licensee is totally unacceptable since under Clause 2(j) of the Regulations, “Open Access customer” means a consumer permitted by the State Commission to receive supply of electricity from a person other than distribution licensee of his area of supply, or a generating company (including captive generating plant), or a licensee, who has availed of or intends to avail of open access”. A conjoint reading of clauses 4.4.3 and 4.4.4 of Tariff Order No.2 of 2012

with the CERC's Regulations clearly reveals that the charges refixed by the Commission is Rs.2000 per day for each bilateral transaction, and it is being collected from all the open access customers in Tamil Nadu.

8.7. The Commission has thoroughly gone through the submissions made by the Petitioner and the Respondents and would like to state as follows:-

- (i) Under the provisions of the Electricity Act, 2003, it is the function of the State Load Despatch Centre to monitor the grid operations, schedule and dispatch of Electricity according to contracts, controlling of intra-state Transmission system, supervision and control of real time operations and grid control and other functions as provided in the Electricity Act 2003; and necessary charges are collected as fixed by the Commission from time to time.
- (ii) Only in the Tariff order in T.P.No.3 of 2017 dated 11-08-2017, the Commission has segregated and computed the Scheduling charges and System operation charges separately. Before that the composite Scheduling and System operation charges was prevailing as fixed in the Tariff order No.2 of 2012, dated 30-03-2012. The Commission, in the Tariff order dated 30-03-2012, nowhere discriminated the charges based on the power export or drawal basis. Moreover, the Commission has not proposed the levy based on the quantum of power under open access.
- (iii) The Commission in its earlier Tariff Order No.2 dated 15-05-2006 also fixed the composite Scheduling and System Operation Charges on the basis of charges specified by CERC and other Commissions as below:
  - (a) Long term open access consumers – Rs.1000/day or part thereof

- (b) Short term open access consumers – Rs.500/day per transaction

In the maiden Tariff Order on “Intra state transmission charges and other related issues” issued after re-organisation of TNEB into two Corporations viz., TANGEDCO and TANTRANSCO in Order No.2 of 2012, in which major segregation of Capital accounts and Ring fencing of SLDC was in progress and hence the Commission accepted the reference of CERC as sought for by the Licensee. In the Tariff Order No.2 of 2012, the Commission fixed the composite Scheduling and System Operation Charges for both LTOA as well as STOA customers.

In the Tariff Order no.2 of 2012, dt.30-03-2012, the provisions of CERC (Open Access in Inter-state Transmission) Regulations, 2008 have been explicitly reproduced. The ‘operative portion’ of CERC order was reproduced by the Commission for adopting to go accordingly for applicability of tariff as fixed by CERC:-

**“Operating Charges:**

*17. (1) Operating charges at the rate of Rs.2,000/- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centre involved and at the rate of Rs.2,000/- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant.*

*(2) In case of the collective transaction, operating charges shall be payable by the power exchange @ Rs.5000/- per day to the National*

*Load Despatch Centre for each State involved and Rs.2,000/- per day for the State Load Despatch Centre involved for each point of transaction.*

*(3) National Load Despatch Centre shall share the operating charges with the Regional Load Despatch Centres in such manner, as may be decided, by the Central Transmission Utility.*

*(4) All buyers within a State shall be clubbed together and all sellers within a State shall be clubbed together by the power exchange (with necessary coordination with the State Load Despatch Centre) and each of the groups shall be counted as a single entity by National Load Despatch Centre for levy of operating charges and for scheduling:*

*Provided that for levy of operating charges for State Load Despatch Centre and levy of the intra-State transmission charges, each point of injection or drawal in the State network shall be counted separately.”*

Therefore the Scheduling and system operation charges fixed under Para 4.4 of the Tariff order dated 30-03-2012 shall be read in such a way as explained above. The charges determined under relevant para was upheld by the APTEL while disposing the Appeal Nos.197,198,200,201 & 208 of 2012 dated 24<sup>th</sup> May 2013, as below.

***“xi)Scheduling & System Operation Charges: We do not find any infirmity in the order of the State Commission in deciding the Scheduling & System Operation Charges payable by the Appellants.”***

(iv) The Petitioner believes that the intra state transaction involves the petitioner and Respondent only and at no stretch, customers can be included in the transaction. But,

“bilateral transaction” has been defined by the CERC under clause (b) in sub-regulation (1) of Regulation (2) as –

*“bilateral transaction” means a transaction for exchange of energy (MWh between) a specified buyer and a specified seller, directly or through a trading licensee, from a specified point of injection to a specified point of drawal for a fixed or varying quantum of power (MW) for any time period during a month”*

In view of the Commission’s said stand in under Para (iii) which is in line with the Regulations of the CERC, the Scheduling and System operation charges are undoubtedly to be levied for every transaction between a specified buyer and a specified seller as defined above. Though, the petitioner is a single generator i.e., specified seller at point of injection, the consumer (HT user end service) i.e., specified buyer who draws power at different drawal points cannot be clubbed together since destinations are scattered here and there in the State. Though, the transaction is in the nature of intra-state, each transaction with the open access customer involves separate Energy accounting, scheduling, system operation and collection/disbursement of charges, etc. Looking only on the Seller side and closing the eyes of the user end, the energy accounting cannot be thought of. The petitioner’s contention is accepted would lead to even hundreds/thousands of consumers getting their energy allotted by a Seller but be treated as single transaction which may not be correct. Moreover, the 3<sup>rd</sup> Respondent (SLDC) has

stated that the Scheduling and System Operation Charges @ Rs.2000 per day for each bilateral transaction is collected from all other intra-state and inter-state open access transaction customers. The petitioner failed to prove his contention with the legal provisions, therefore it is not maintainable. Therefore the prayer of the petitioner to consider the total scheduled power at LDC, as a single transaction though it is for different open access customers is not acceptable by this Commission.

In view of the above findings, we are unable to accept the pleadings of the Petitioner and the petition is dismissed.

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

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

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

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission