

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

PRESENT:

ThiruM.Chandrasekar

.... Chairman

and

ThiruK.Venkatasamy

.... Member (Legal)

M.P. No.20 of 2021

Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor
Shakti Towers-II
766, Anna Salai
Chennai – 600 002.

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

Vs.

1. Tamil Nadu Generation and Distribution
Corporation Limited
Represented by its Chief Engineer – NCES
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 – 110 003.
India.

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

Dates of hearing : 15-06-2021; 29-06-2021; 13-07-2021;
27-07-2021; 10-08-2021; 24-08-2021;
07-09-2021; 21-09-2021; 05-10-2021;
12-10-2021; 16-11-2021; 23-11-2021;
30-11-2021 and 07-12-2021

Date of Order : 28-12-2021

1. Prayer of the Petitioner in M.P. No. 20 of 2021:-

The prayer of the petitioner in M.P. No. 20 of 2021 is to pass an interim direction directing TANGEDCO to file the details for the year 2019-20 and the year 2020-21 with regard to Units that were banked and remained unutilised in the State of Tamil Nadu in a month-wise manner for the year 2020-2021 and to exercise its regulatory powers in furtherance of the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 195 of 2018 dated 28.1.2021 with regard to banking and the recommendations made by the 2nd Respondent vide Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 and direct Rollover of banked electricity from Open Access Renewable Wind Energy Generating Stations under Captive and Third-Party Sale Category of FY 2020-21 and set out the manner and methodology for its implementation.

2. Facts of the Case:-

This petition has been filed to exercise its regulatory powers in furtherance of the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 195 of 2018 dated 28.1.2021 with regard to banking and 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 2020-21 and set out the manner and methodology for its implementation

3. Contentions of the Petitioner:-

3.1. The first respondent is Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), an electrical power generation and distribution public sector undertaking that is owned by the Government of Tamil Nadu. It was formed under Section 131 of the Electricity Act of 2003, and is the successor to the erstwhile Tamil Nadu Electricity Board. The electricity board's generation and distribution wings are its nucleus. TANGEDCO is a subsidiary of TNEB Limited.

3.2. The 2nd Respondent is the nodal Ministry of the Government of India for all matters relating to new and renewable energy. The broad aim of the Ministry is to develop and deploy new and renewable energy for supplementing the energy requirements of the country.

3.3. The Petitioner is filing 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 2020-21 to FY 2021-22.

3.4. The petitioner is a Registered Association consisting of members who have invested in the putting up of Windmills in India. The Association has on its roll as on date more than 1500 members spread across the country. The petitioner is an Association comprising of owners of Wind Energy Generators (WEGs) otherwise known as wind mills all over India and also in the State of Tamil Nadu. The petitioner is an Association which actively espouses the cause of wind power producers in the State of Tamil Nadu and representing their case before various fora and is also an industry body that interacts with the TNERC, Governments as also with TANGEDCO and TANTRANSCO, the subsidiaries of Tamil Nadu Electricity Board.

3.5. The members of the Petitioner have made a large investments in wind power plants in the State of Tamil Nadu and are providing Green power to State and also supporting them to fulfil the wind Power Purchase Obligation and consequently, the Renewable Power Obligation of the DISCOM.

3.6. The petitioner is aware of the earlier petition filed before the Commission filed by the NSEFI on the issue of rollover which came to be dismissed. However the present petition is being filed in view of the following:-

- (a) While dismissing the petition in MP No.17 of 2020 by order dated 8.12.2020 the Commission held as follows:-

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.

- (b) Thus it is clear that the petition was dismissed on the grounds that
- (i) The TANGEDCO has the obligation to pay fixed charges for power contracted.
 - (ii) The case was filed prematurely before the end of the year in 2021 when lockdown was effected.
 - (iii) Solar power generators do not have the right of banking under Tariff orders.
- (c) While so, the issue of banking and the costs involved therein and the requirement to consider data and arrive at such costs has been authoritatively pronounced by the Hon'ble APTEL in Appeal No. 195 of

2018 dated 28.1.2021. On an examination of the information available, it is clear that TANGEDCO would suffer no loss by the Rollover and if at all will only benefit. The petition is no longer premature as it is being filed after the conclusion of the entire year when the data will become available and unlike solar generators, wind generators have the specific right of banking.

(d) Thus the earlier ruling of the Commission on rollover couple with the subsequent determinative ruling by the Hon'ble APTEL on the issue of banking has necessitated filing of the present petition.

3.7. The nationwide lockdown imposed by the Govt. of India caused by the pandemic due to the Coronavirus, the Industry as a whole, including the members of the Petitioner have been severely affected. In fact, most of the industries and commercial establishments were in a complete shutdown. Even despite the lifting of certain restrictions, the issues plaguing the sector continued and only after around 6 months of the imposition of the lockdown in March 2020 did industries limp back to normalcy. During this entire period, in view of the Must Run status granted to Wind Power, the electricity continued to be generated and fed into the grid. It is pertinent to state that at no point in time was any directive issued by the Commission, TANTRANSCO or TANGEDCO to shut down generation by reliance upon any of the statutory or regulatory provisions. In fact, the petitioner submits that the continued generation and absorption of wind power was entirely in consonance with the statutory and regulatory framework.

The issue that therefore arises is the manner in which the electricity generated and that remains banked is to be utilised.

3.8. The members of Petitioner in the above petition are owning Wind Power Plants,inter-alia, in the State of Tamil Nadu under captive and 3rd party sale schemethrough Intra State Open Access System in Tamil Nadu. The WEGs are established under either Renewable Energy Certificate (REC) Scheme or Non-REC Scheme. Because of the lockdown, the Renewable Energy Generating stations under Captive and 3rd Party Sale model through Intra State Open Access System in Tamil Nadu are unable to captively consume or sell the generated wind power to designated consumers (captive users / third party users) completely.

3.9. The WEGs due to their very nature are Must Run under the Grid Code and apart from that have to be operated continuously since they generate power through a renewable source and cannot be shut down. Further no backdowninstructions on grounds of any grid issues were issued by the SLDC, which monitors and regulates the entire power generation and injection in the State thus allowing for the wind power generated to be fed into the grid in a manner permitted under law and the Regulations.

3.10. The Petitioner states that 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 Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020. The 2nd Respondent clarified that the pre-existing Office Memorandum No. 283/20/2020-GRID SOLAR dated 4th April, 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 but for energy security reasons.

3.11. Further, the Office Memorandum stated as follows, namely that:

"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. "

3.12. 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 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. Hence the present petition.

3.13. 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 and payment at 75% for unutilised units after collection of banking charges would lead to unjust enrichment for the TANGEDCO and severe loss for the members of the petitioner.

3.14. The issue highlighted and foreseen by the 2nd Respondent indeed happened. Due to outbreak of Covid-19 in March 2020, Government of India and Tamil Nadu have imposed lot of restrictions in the movement of Men, Material and supply of Goods and Services. It is also ordered for Complete shutdown of all Industrial activities for about two months. These restrictions are lifted in Phased manner and still furthermore restrictions are continuing for free

movement of men and materials. Supply of material and services are got disturbed due to these restrictions and the Industry is not yet recovered fully.

3.15. The details of the restrictions are documented in the Government Orders themselves. As a matter of example it would be pertinent to state that

- a. General Lock down started & stopped industrial production from 25.3.2020. Thereafter consequent to 3 modifications the Government permitted only on 31.05.20 resumption of 100% operations. However, in the meantime workers has already left to their hometown and it took more than 2 or 3 months to get back the required work force to run the industry. This aspect has been welldocumented in newspaper reports.
- b. G.O.(Ms.) No.172 - 25.03.2020- Industrial establishment closure with exception to Production units, which require continuous process, after obtaining required permission from the State Government, Revenue and Disaster ManagementDepartment.
- c. Letter No. 5/Prl.Secy-Inds-COVID/2020 dated 07-04-2020 whereunder State Government gave permission to commence production during lock down subject to conditions based on GO 172 - 25.03.20 , Dept of Industries and Commerce, Government of Tamil Nadu.
- d. Letter No: 5/Prl. Secy-Inds-COVID/2020 dated 07.04.2020 - State Govt withdrew the permission issued on 07.04.2020 ,Dept of Industries and Commerce, Govt. of Tamil Nadu

- e. G.O.(Ms.) No.202 - 22.04.2020, Clarification on the industries classification as continuous process. Revenue and Disaster Management Industries Department Listed 10 Industries and excluded Textiles Industries)
- f. G.O.(Ms.) No.262 Revenue and Disaster Management Department-dated 31.05.2020 provided Permission to work 100% for all industries
- g. Thereafter various restrictions were imposed from time to time in various areas and on movement of goods, men and materials which continued to disrupt and delay the resumption of industries and when industries were able to start, they could not do so fully.
- h. Generation was specifically exempted from restrictions. This together with the fact that there was no directive of any nature to stop generation as electricity generation, specifically using renewable energy is a national asset which cannot be wasted, allowed for generation which could be utilised by the TANGEDCO during a difficult period. The generators in the State thus came to their rescue.
- i. While so the continuous challenges through the 2nd and potential 3rd waves of Covid, continue to wreak havoc on the industry in the State and the industry is faced with more and more challenges. During such time, a just and equitable approach protecting interest of all stake holders is essential.

3.16. With the continuous operation of captive windmills, the energy generated for the windmills for which wind banking is provided are got accumulated and maximum possible consumption is made during lean wind season. However, due to reduced consumption during the months of May to October, the wind units generated are accumulated in banking. Even though, partial recovery is happened in most of the Industries, lot of energy consuming Industries are not yet reached to their normal level of operation. Especially, industries like textiles, foundries, steel and hospitality are not yet able to consume their own generated power due to various restrictions. The labour bound industries like Foundries, Steel and textiles are not yet reached its full capacity operation due to shortage of work force. With the restrictions on travel and non-availability of proper public transports, most of the labour force not yet turned to the work. In addition, restrictions on operation of AC and restriction on persons to assemble in public places, etc. resulted very lesser energy consumption in the Hospitality industries too. This unforeseen situation resulted excess wind units getting lapsed on 31st March 2021.

3.17. Regarding the quantum of the lapsed units accumulated due to Pandemic as on 31st March 2021 for the reasons explained hereinbefore, the following table gives the clear picture and is easily verifiable.

| |
|--|
| Details of Excess Banked units as on 31 st March for the FY 2019, 2020 and 2021 |
|--|

| Name of CGP / Special Purpose Vehicles | FY 2019 | FY 2020 | FY 2021 |
|--|------------------|-------------|---------------|
| | (Units in Lakhs) | | |
| Clover Energy Pvt. Ltd | 0.17 | 0.02 | 32.04 |
| Maple Renewable Power Pvt. Ltd. | 0.29 | 0.08 | 0.54 |
| Lotus Clean Power Venture Pvt. Ltd. | 0.14 | 0.00 | 3.21 |
| Olive EcopowerPvt. Ltd | 0.14 | 0.07 | 24.25 |
| Tulip Renewable PowertechPvt. Ltd. | 0 | 0.01 | 19.47 |
| Iris Ecopower Venture Pvt.Ltd. | 0.13 | 0.02 | 24.32 |
| Citron EcopowerPvt. Ltd. | 0 | 0.00 | 9.96 |
| Premier Mills P. Ltd. | 15.81 | 0.00 | 52.98 |
| Premier Cotton Textiles | 16.30 | 0 | 15.97 |
| Sri Narashimma Textiles P Ltd. | 14.43 | 0 | 17.20 |
| Lakshmi Narashimma Textiles P Ltd. | 0 | 0 | 3.21 |
| RajeswariRenewresourcesPvt. Ltd. | 0 | 0 | 0.92 |
| Anugraha Valve Casting | 0 | 0 | 3.42 |
| Amirtha Green Infra | 0 | 0 | 4.09 |
| Livia Polymer Bottle | 0.87 | 1.26 | 12.6 |
| Total | 48.28 | 1.46 | 224.18 |

3.18. The details given in the following table are actually gathered from the Members of the Petitioner's Association who are also the Captive generators/Special purpose vehicles. The table also clearly shows that the unused banked units in large quantities are accumulated as on 31st March 2021 to the tune of two crore and fourteen lakhs units for the sample list of CGPs, due to the Pandemic, whereas it was almost nil as on 31st March 2020 and very negligible as on 31st March 2019. These details are submitted to the Commission in support of the following observation made by the Commission in its order on M.P. No. 17 of 2020 dated 08-12-2020.

"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."

3.19. 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".

3.20. 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.

3.21. Further, 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".

3.22. Similarly, The Central Electricity Regulatory Commission has also stipulated in clause 5.2 (u) of the CERC (Indian Electricity Grid Code), (Regulations), 2010 that Solar Generators should be treated as "Must Run" plants. It directs System Operator (RLDC / SLDC) to make all efforts to evacuate all available solar 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"

3.23. It is also pertinent to state that the TANGEDCO has benefited from utilising the power generated by such sources during the lockdown.

3.24. Furthermore, such rollover has been done even in the past by the Commission. As a matter of example, when consumers were disabled from utilising the renewable wind power during R&C measures that were in force in Tamil Nadu during 2008 onwards, the 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. Force Majeure is a principle specifically recognized in this regard. The Commission had in the earlier order considered the Pandemic effects on the "Distribution Licensee" and the "WEGs". No doubt both the parties including the consumers are affected. The WEGs are however not claiming the energy they have lost or rejected by the SLDC due to the poor demand of the grid during the Pandemic. The WEGs are only seeking for directives to the Distribution Licensee with regard to the energy actually supplied by the WEGs and consumed (sold) by the Distribution Licensee at the average sales revenue of Rs.5.80 per unit (2017-18) as per the 2017 tariff orders of the Commission. The TANGEDCO is only a gainer and it may be directed to provide the average sales revenue for the relevant period which would only show that it is much higher than the unit cost of wind generators which they are entitled to consume and not be paid a miniscule portion for such

generation that too after collection of banking charges and reduction of 25%. Due to the Pandemic, the Distribution Licensee has lost its revenue due to poor demand and the WEGs lost their generation due to poor intake of the grid and both the parties have been affected/suffered in that aspect. But the WEGs are not claiming the energy which they have lost due to poor demand of the grid. The WEGs are claiming only the energy which was actually absorbed by the Distribution Licensee during the Pandemic and already sold to the consumers at the average billing rate of Rs.5.80 per unit. The only relief sought by the WEGs is the extension of recovery period or the Banking period and it is for the units already sold by the Distribution Licensee received from the WEGs.

3.25. As would be evident from the ruling of the Hon'ble APTEL where there has been a clear rejection of the stand on banking being impacted by the paying of fixed cost by Distribution Licensee to its thermal power suppliers. Fixed cost to thermal generators is as per their PPA and whether they absorbed power from its thermal power suppliers or not, the Distribution Licensee has to pay the fixed cost to them in any event. WEGs are no way responsible for this loss. It is independent of wind power and it cannot be related to wind power.

3.26. Further, it is the express stand of the petitioner that there is no regulatory or factual basis in view of the developments of 2020-2021 that there would be devolving of the expenses on the consumers since the WEGs are claiming the

energy which they have actually supplied to the Distribution Licensee. WEGs are not asking any compensation/money from the Distribution Licensee for their purported loss. While returning the unit to WEGs/its user, the loss to TANGEDCO can occur only if their cost of purchase of energy from the other supplier is more during Pandemic. The WEGs are already paying the banking Charges for such difference in cost. In case of any increase of power purchase of Distribution Licensee during the extension of Banking Period, the same can be examined on the basis of verifiable data to be submitted by the TANGEDCO. The data of the past years shows that there is in fact no additional cost that will be incurred.

3.27. In regard to the above, the Hon'ble APTEL in Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission. Appeal No. 59 of 2013 dated 01.08.2014; 2014 SCC Online APTEL 166 has succinctly described as under:

"Banking of wind energy is an essential feature to enable commercial viability of a wind energy generator supplying power to a consumer, captive or otherwise, through open access. The quantum of generation at the wind energy generator varies during the time of the day and season to season from nil to full capacity and does not match with the load profile of the consumer. The generation of wind energy generator in excess of the load of the open access consumer in a metering time block is fed into the

grid and consumed by the Distribution Licensee. Various State Commissions have provided different type banking facilities to the wind energy generators to discharge their function of promotion of renewable sources of energy under the Electricity Act, 2003 under which the surplus energy injected by the wind energy generator and utilized by the Distribution Licensee is considered as banked energy which is supplied back to the consumer during the period when the wind energy generation is less than the demand of the open access consumer in the same Financial Year. Different models for levy of banking charges and payment for the unutilized energy by the open access consumer at the end of the Financial Year by the Distribution Licensee exist in various States."

3.28. In terms of the above, the banking facility availed by the Wind Power Projects have to be considered with reference to (a) when the generated units injected by the project are not fully consumed; and (b) when the non-consumed units as per (a) above are repatriated for consumption at the later period.

3.29. In the above, at stage (a) the units of electricity not consumed by the captive user or the third-party purchaser are retained and used by TANGEDCO for its purposes of maintaining supply to its consumers without the necessity to pay any amount to the wind power developer. There are therefore, no adverse financial implications at this stage to TANGEDCO. In fact, at this stage

TANGEDCO will save on variable or energy charge as it can back down conventional generation and avoid payment of energy or variable charges, to the extent of the banked energy from the Wind Power Project. Therefore, there is a financial gain to TANGEDCO. There are however, no implications to TANGEDCO on account of fixed charges payable to conventional generators as per the long-term contracts with them, whose generation is backed down as the fixed charges are payable whether or not the electricity is scheduled from such generator. Therefore, there will be nil implications on account of allowing banking of units generated by wind power projects. Further it is to be seen if for the relevant period there was any substantial costs involved. It is now clear from data for the balance period that the TANGEDCO had in subsequent months scheduled substantial power from thermal generators to whom it pays fixed charges. Fixed charges, in any event are calculated on an annualized basis and when the data in that regard would be seen, it would clearly demonstrate that there was no additional costs by way of fixed charges payable to thermal generators.

3.30 Further, at stage (b) the banked units are repatriated. The TANGEDCO will therefore, requisite or schedule more power from the conventional generator whose units were otherwise not fully scheduled. The implication on account of such scheduling is again only on variable or energy charge payment. As mentioned in stage (a) there is again no implications to TANGEDCO on account

of fixed charges payable to conventional generators whose generation is scheduled, as such fixed charges are payable whether or not the electricity is scheduled from such generator. Thus, there will be nil implications in regard to the fixed charges on account of allowing banking of units generated by wind power projects and subsequent utilization by rollover. The only implication to be considered is the difference between the energy or variable charges saved in the stage (a) and energy or variable charges paid in stage (b).

3.31 The saving in variable charges on account of banking resulting in backing down of thermal power generation, due to availability of wind power and incurring of additional variable charges on account of the need to repatriate banked energy is logically determined with reference to the above, multiplied by the quantum of energy banked. The net financial implication to TANGEDCO is also required to be determined by factoring the banking charges. The banking charges is being collected by TANGEDCO at 12% and this would translate to Rs.0.63 per unit, based on average power purchase cost of TANGEDCO. This is a gain to TANGEDCO which is much more adequate than any possible loss in providing banking.

3.32. The Hon'ble APTEL in the appeal concerning the Tariff order withdrawing banking had clearly held that any decision with regard to banking and such aspects ought to be done in a scientific manner. The TANGEDCO consistently

puts forth plea of alleged difficulties or costs being incurred by it and also incorrectly claims that there is an impact on consumer interest, without providing any details. It is therefore only appropriate that claim of the TANGEDCO is verified on the basis of hard data rather than conjectures and surmises and the actual data is directed to be produced. The data would also enable the Commission to arrive at an appropriate decision on the merits. In order to facilitate the same, the petitioner is also seeking for appropriate interim directions to direct TANGEDCO to produce the records. Such data is in any event required to be produced before a Regulator and is already part of the directions of the Hon'ble APTEL.

3.33. It is therefore clear, that 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 of increasing wind capacity in the State. Moreover, the State is wasting its natural resource. Therefore, the Commission may be pleased to direct the 1st Respondent to Rollover of banked electricity from Open Access Renewable Wind Energy Generating Stations under Captive and Third-Party Sale Category of FY 2020-21 to FY 2021-22.

4. Contentions of the Respondent:-

4.1. To file this Counter Affidavit raising preliminary objection on the maintainability of the Petition in view of Civil Appeal No.2202-2205 of 2021 filed before the Supreme Court and reserves the right to file a detailed Counter Affidavit on merits, if need be, at the appropriate stage.

4.2. The Commission in its Tariff order No.6 of 2018, dated 13.04.2018 clearly mentioned the banking of unutilized energy in rule 10.1.15 as follows:

"The energy generated during April shall be adjust 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."

4.3. The unutilized energy is to be paid at 75% of the applicable tariff in respect of REC and non-REC open access consumers mentioned in the Commission's Tariff Order No.6 of 2018, dated 13.04.2018 as follows:

"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 the Pooled cost of power purchase as notified in the orders of the Commission from time to time for existing captive generators under REC scheme."

4.4. From the above, the Commission rule clearly stated how to handling the unutilized energy pending as on 31st March every year. TANGEDCO followed the above procedure mentioned by the Commission and no violation made by us.

4.5. TANGEDCO facilitates open access approvals to the developers for the establishment of utility scale wind power plants under REC scheme as well as under non-REC scheme i.e. as per the preferential tariff order issued by the Commission with the following options as detailed below:

| | |
|------------|---|
| REC Scheme | : a) Sale to Board and b) Third party sale c) Captive use |
|------------|---|

| | |
|----------------|---|
| Non REC Scheme | : a) Captive use or self consumption and b) Third party sale |
|----------------|---|

4.6. In third party sale, the balance energy if any after their consumption shall get lapsed under REC scheme and Non-REC scheme.

4.7. There is no banking facility in respect of wind energy for Third party sale for both REC and Non-REC scheme and the open access (captive use) wind developers shall sell their un-utilized generated energy within the billing period as detailed above, Hence there is no loss of energy- and no loss to petitioner 12 members. Under this ground alone, the petition is liable to be rejected.

4.8. The impact of Covid-19 for rollover of Banking for the year 2019 is only for 6 days which is negligible and so the prayer of the Petitioner to rollover the Banking facility for the Financial Year 2019-20 has no grounds for their claim and is to be rejected.

4.9. The prayer for the rollover of banking for the FY 2019-20 has no grounds since lockdown started only on 24.03.2020 barely 6 days left for the FY 2019-20 and is to be rejected. Also, as there is no banking facility for Third party sale in respect of wind- energy. Total units generated by the captive user & third party sale for the FY 2020-21 is 9436.556707 MU. The Generating units adjusted their captive consumption and third party consumption, balance unit if any 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 the Pooled cost of power purchase as notified in the orders of the Commission from time to time for existing captive generators under REC scheme. For third party sale unutilized energy shall get lapsed under REC scheme and Non-REC

scheme. Hence prayer for rollover of banking wind energy for FY 2020-2021 is not acceptable & FY 2021-22 is premature at this stage and so is to be not admitted.

4.10. The unutilized energy is to be paid at 75% of the applicable tariff in respect of non-REC and REC open access consumers and hence no loss as claimed by the Petitioner exist which warrants the Commission's intervention.

4.11. The Energy Wheeling Agreement executed between the Petitioners and Superintending Engineer/EDCs regarding the banking is as follows:

"(2) No carry over is allowed beyond the banking period unutilized energy at end of the financial year may be encashed at the rate of 75% the relevant purchase Tariff."

4.12. The petitioner has concealed all the above facts in his petition and his prayer is false claiming in nature and it is truly violating the agreement already executed by the Petitioner.

4.13. In any case that TANGEDCO has filed Civil Appeal No..2202-2205 of 2021 in the Hon'ble Supreme Court of India against the judgment of Hon'ble Appellate Tribunal for Electricity in Appeal No.195 of 2018, dt.28.01.2021 regard to banking. It may come up for admission before the Hon'bte Supreme Court of

India on 30.07.2021 for admission. Hence, petitioner's prayer for implementation of Hon'ble Appellate Tribunal for Electricity order is to be not admitted.

4.14. Not only the petitioner affected due to nationwide lockdown imposed by the Government of India caused by the pandemic due to Corona virus but also the DISCOM's are facing heavy revenue loss during this pandemic period. The TANGEDCO has evacuated maximum RE generation keeping our own generation idle at heavy financial loss. Hence, further considering the rollover of wind energy from open access renewable energy generators under captive and third party sale for the FY 2019-20, 2020-21 & 2021-22 to all categories of wind energy generators will further hamper the financial condition of TANGEDCO. Under these circumstances, the TANGEDCO humbly prays that the Commission may be pleased to dismiss M.P. No.20 of 2021 as not maintainable.

5. Additional Counter Affidavit filed on behalf of the 1st Respondent:-

5.1. TANGEDCO has filed a counter affidavit for the petition in M.P.No.20 of 2021. During the hearing held on 10.08.2021, the Commission passed a daily order and directed TANGEDCO to file details of unutilized banked energy as on 31.03.2021 and also as that of the previous year for comparison.

5.2. The unutilized banked energy details for the year 2019-20 and that of 2020-21 is furnished follows:-

WIND GENERATION DETAILS FOR 2019-2020

| Sl. No. | Month | Year | Captive Generation | Quantum of Energy allotted from WEG for captive consumption including banked units in MU | Wind Energy banked in MU | Wind Energy banked in MU after banking charges | Surplus returned from HT | Total Banking | cumulative banking | Withdrawn from banking | Cumulative withdrawal | Banking balance |
|---------|-------|------|--------------------|--|--------------------------|--|--------------------------|---------------|--------------------|------------------------|-----------------------|-----------------|
| 1 | April | 2019 | 243.68 | 238.23 | 5.45 | 4.69 | 33.85 | 38.54 | 38.537 | 0 | 0.00 | 38.537 |
| 2 | May | 2019 | 1131.35 | 964.18 | 167.17 | 143.77 | 71.34 | 215.11 | 253.6432 | 0.6 | 0.60 | 253.043 |
| 3 | June | 2019 | 1689.72 | 1295.67 | 394.05 | 338.88 | 150.39 | 489.27 | 742.9162 | 33.98 | 34.58 | 708.336 |
| 4 | July | 2019 | 1724.11 | 1341.47 | 382.64 | 329.07 | 171.17 | 500.24 | 1243.1566 | 50 | 84.58 | 1158.58 |
| 5 | Aug | 2019 | 1679.53 | 1265.98 | 413.55 | 355.65 | 139.13 | 494.78 | 1737.9396 | 42.13 | 126.71 | 1611.23 |
| 6 | Sep | 2019 | 1046.28 | 1109.44 | 0.00 | 0.00 | 47.78 | 47.78 | 1785.7196 | 142.08 | 268.79 | 1516.93 |
| 7 | Oct | 2019 | 161.97 | 715.24 | 0.00 | 0.00 | 31.8 | 31.80 | 1817.5196 | 555.84 | 824.63 | 992.89 |
| 8 | Nov | 2019 | 202.63 | 616.49 | 0.00 | 0.00 | 25.02 | 25.02 | 1842.5396 | 418.22 | 1242.85 | 599.69 |
| 9 | Dec | 2019 | 362.15 | 551.63 | 0.00 | 0.00 | 12.72 | 12.72 | 1855.2596 | 206.52 | 1449.37 | 405.89 |
| 10 | Jan | 2020 | 349.60 | 500.18 | 0.00 | 0.00 | 16.75 | 16.75 | 1872.0096 | 163.8 | 1613.17 | 258.84 |
| 11 | Feb | 2020 | 414.29 | 543.20 | 0.00 | 0.00 | 98.46 | 98.46 | 1970.4696 | 125.35 | 1738.52 | 231.95 |
| 12 | Mar | 2020 | 181.66 | 348.04 | 0.00 | 0.00 | 47.42 | 47.42 | 2017.8896 | 161.82 | 1900.34 | 117.55 |

WIND GENERATION DETAILS FOR 2020-2021

| Sl. No. | Month | Year | WEG Captive Generation | Quantum of Energy allotted from WEG for captive consumption including banked units in MU | Wind Energy banked in MU | Wind Energy banked in MU after banking charges | Surplus returned from HT | Total Banking in MU | cumulative banking in MU | Withdrawn from banking in MU | Cumulative withdrawal in MU | Banking balance in MU |
|---------|-------|------|------------------------|--|--------------------------|--|--------------------------|---------------------|--------------------------|------------------------------|-----------------------------|-----------------------|
| 1 | April | 2020 | 186.33 | 129.35 | 44.98 | 38.68 | 19.17 | 57.85 | 57.85 | 0 | 0 | 57.85 |
| 2 | May | 2020 | 741.77 | 583.22 | 160.12 | 137.7 | 43.93 | 181.63 | 239.48 | 14.5 | 14.5 | 224.98 |
| 3 | June | 2020 | 1634.22 | 1013.73 | 613.53 | 527.64 | 112.87 | 640.51 | 879.99 | 12.2 | 26.7 | 853.29 |
| 4 | July | 2020 | 1309.24 | 1022.91 | 328.66 | 282.65 | 75.06 | 357.71 | 1237.7 | 47.11 | 73.81 | 1163.89 |
| 5 | Aug | 2020 | 1594.21 | 1105.55 | 516.48 | 444.17 | 101.56 | 545.73 | 1783.43 | 33.57 | 107.38 | 1676.05 |
| 6 | Sep | 2020 | 1335.64 | 1095.83 | 298.27 | 256.51 | 72.32 | 328.83 | 2112.26 | 63.01 | 170.39 | 1941.87 |

| | | | | | | | | | | | | |
|----|-----|------|---------|--------|--------|--------|-------|--------|---------|--------|---------|---------|
| 7 | Oct | 2020 | 1104.87 | 1060.1 | 151.91 | 130.64 | 50.68 | 181.32 | 2293.58 | 104.21 | 274.6 | 2018.98 |
| 8 | Nov | 2020 | 176.46 | 745.74 | 4.06 | 3.49 | 18.93 | 22.42 | 2316 | 572.9 | 847.5 | 1468.5 |
| 9 | Dec | 2020 | 255.64 | 732.47 | 12.32 | 10.6 | 12.61 | 23.21 | 2339.21 | 488.03 | 1335.53 | 1003.68 |
| 10 | Jan | 2021 | 286.98 | 620.12 | 8.87 | 7.63 | 15.32 | 22.95 | 2362.16 | 340.39 | 1675.92 | 686.24 |
| 11 | Feb | 2021 | 285.79 | 541.79 | 5.38 | 4.62 | 9.05 | 13.67 | 2375.83 | 261.05 | 1936.97 | 438.86 |
| 12 | Mar | 2021 | 220.65 | 480.2 | 1.08 | 0.93 | 11.43 | 12.36 | 2388.19 | 262.34 | 2199.31 | 188.88 |

5.3. Not only the petitioner affected due to nationwide lockdown imposed by the Government of India caused by the pandemic due to Corona virus but also the DISCOM's are facing heavy revenue loss during this pandemic period. The TANGEDCO has evacuated maximum RE generation keeping our own generation idle at heavy financial loss. Hence, further considering the rollover of wind energy from open access renewable energy generators under captive and third party sale for the FY 2019-20, 2020-21 and 2021-22 to all categories of wind energy generators will further hamper the financial condition of TANGEDCO.

5.4. Under these circumstances, the TANGEDCO prays that the Commission may dismiss M.P. No. 20 of 2021 as not maintainable.

6. Written Submissions filed on behalf of the Petitioner:-

6.1. The present petition is filed 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 2020-21 to FY 2021-22.

6.2. At the outset, it is stated that the Petitioner is aware of the dismissal of the earlier petition filed by NSEFI on the issue of rollover. The petition in MP 17 of 2020 by Order dated 08.12.2020 came to be dismissed by the Commission with the following observations:

- (a) The TANGEDCO has the obligation to pay fixed charges for power contracted.
- (b) The case was filed prematurely before the end of the year in 2021 when lockdown was effected.
- (c) Solar power generators do not have the right of banking under Tariff orders.

6.3. The Petitioner states that the instant petition is no longer premature as it is being filed after the conclusion of the entire year when the data has become available and unlike Solar generators, wind generators have the specific right of banking.

6.4. Before setting out the contentions of the Petitioner, the key dates and events in respect of the present dispute are set out herein below:

| S. No. | Date | Particulars of Event |
|--------|------|----------------------|
|--------|------|----------------------|

| | | |
|---|------------|---|
| 1 | 25-03-2020 | Lockdown imposed by the Government of India due to the Covid-19 pandemic |
| 2 | 16-04-2020 | The Ministry of New and Renewable Energy vide its Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 clarified that the pre-existing Office Memorandum No. 283/20/2020-GRID SOLAR dated 4th April, 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 but for energy security reasons. |
| 3 | 22-04-2020 | G.O. issued by the Government of Tamil Nadu clarifying the industries classification as continuous process. Revenue and Disaster Management Industries Department Listed 10 Industries and excluded Textiles Industries |
| 4 | 31-05-2020 | G.O.(Ms.) NO.262Revenue and Disaster Management Department provided Permission to work 100% for all industries |
| 5 | 08-12-2020 | Order of the Commission in NSEFI v. TANGEDCO MP 17 of 2020 dismissing the petition filed by NSEFI on the issue of rollover on the following grounds: <ul style="list-style-type: none"> i. The TANGEDCO has the obligation to pay fixed charges for power contracted ii. The case was filed prematurely before the end of the year 2021 when lockdown was effected iii. Solar power generators do not have the right of banking under Tariff Orders. |

6.5. The Ministry of New and Renewable Energy (MNRE) in India has issued Office Memoranda dated 1.4.2020 & 4.4.2020 to stress the fact that, must run status for renewable energy in the country remains unchanged during the

COVID-19 lockdown period. The MNRE has advised the rollover of banked electricity for the financial year 2019-20 and 2020-21, to the next FY 2021-22. Banked energy is settled each year, but given the unprecedented situation caused by the pandemic, the Ministry has now said that it can be carried forward to the next financial year.

6.6. A further Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 by the Ministry of New and Renewable Energy (MNRE) was issued 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 but for energy security reasons. The Office Memorandum stated as follows:

"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 midMarch2020. 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."

6.7. The Memorandum further recommended 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.

6.8. The Status of lock down in Tamil Nadu while the petition was filed is set forth below. The lockdowns with varying changes were extended from time to time.

| G.O. No. / Letter Ref. | Date of G.O. / Letter dated | Lock down period / Remarks | |
|--|-----------------------------|--|------------|
| | | From | To |
| G.O. (Ms) No. 172 | 25-03-2020 | 25-03-2020 | 14-04-2020 |
| G.O. (Ms) No. 190 | 13-04-2020 | 14-04-2020 | 30-04-2020 |
| G.O. (Ms) No. 193* | 15-04-2020 | 14-04-2020 | 03-05-2020 |
| Letter issued by Chief Secretary to GoTN | 30-04-2020 | Restriction was imposed in movement of persons in the jurisdiction of the State in Tamil Nadu mandating requirement of e-PASS for intra-state movement. | |
| G.O. (Ms) No. 217 | 03-05-2020 | 04-05-2020 | 17-05-2020 |
| | | Following the notifications issued by Govt. of India, during the lock down due to COVID19, the working strength of all Govt. Offices was kept at a bare minimum as per orders issued by GO No. 172 dated 25/03/2020, with each department putting in place a roster system for ensuring necessary work. Subsequently, the working strength of the Govt. Officials was kept at a maximum of 33% as per GO. No.217 dated 03-05-2020. | |
| G.O. (Ms) No. 239 | 15-05-2020 | The working strength of the Government officials was kept at a maximum of 50% | |
| G.O. (Ms) No. 244 | 17-05-2020 | 18-05-2020 | 31-05-2020 |

| | | | |
|-------------------|------------|------------|------------|
| G.O. (Ms) No. 262 | 31-05-2020 | 01-05-2020 | 30-06-2020 |
|-------------------|------------|------------|------------|

Sources of GOs: [https://www.tn.gov.in/go view/dept/26](https://www.tn.gov.in/go_view/dept/26)

6.9. The following table demonstrates the impact of Covid 19 restrictions in the State:-

| S. No. | Description | 2019-20 | 2020-21 | Remarks |
|--------|--|---------------------|--------------------|--|
| 1 | Units generated by Wind Captive Generators | 918.70 Crore Units | 913.18 Crore Units | FY 2020-21 is having 5.5 Crore Units Lesser Generation when compared to FY 2019 - 20 |
| 2 | Units Banked | 201.79 Crore Units | 238.82 Crore Units | 37 Crore Units are banked extra in 2020-21 even though the Generation is low. This clearly indicates, due to Covid restrictions REgenerators are forced to bank more units. |
| 3 | Banked units adjusted within FY | 190.03 Crores Units | 219.9 Crore Units | Extra 29.87 Crore Units adjusted within FY of 2020-21 when compared to FY 2019 – 20. This clearly indicates wind captive consumers used the wind generated units to the utmost consumption |
| 4 | Unutilized banked units as on 31 st March | 11.75 Crore Units | 18.89 Crore Units | 7.14 Crore Units banked extra in FY 2020-21 even after adjusting to the maximum extend as described in Sl. No.3 |
| 5 | Actual Extra unutilized units if the generation is same like 2019-20 | | 12.64 Crore Units | 5.5 Crore units due to shortage in Generation Plus 7.14 Crore units extra unutilised |

| | | | | |
|---|---|--|-------|---|
| | | | | |
| 6 | % of extra unutilized units in FY 2020-21 | | 66.9% | 12.64 Crore Units divided by 18.89 Crore units (Sl. No.5 divided by Sl. No.4) |

6.10. Even on an earlier occasion during R&C Measures, the Commission provided two types of relief to the Renewable Energy sector first was by allowing rollover and extended time period for utilisation of banked energy and the second was by payment at full rate instead of 75% for the unutilised energy. Therefore, where the lack of consumption has been due to reasons beyond the control of the RE Generator and the consumer, the Commission has always structured its policies to protect them.

6.11. For utility scale REpower plants implemented under REC Scheme, the un-utilized energy available after adjustment against captive use and third party use is lapsed completely. For utility scale RE power plants implemented under Non-REC Scheme, the un-utilized energy shall be paid at 75% of applicable tariff issued by the Commission in its order from time to time. Similarly, for Wind energy, the lockdown was during peak wind season when typically consumption is also high. However, for the period atleast between March 2020 to October 2020, proper consumption could not be done despite best efforts due to Government imposed restrictions. Under both the schemes, the impact of COVID 19 and the resultant imposition laid by Central and State Government has resulted in huge revenue loss to the Wind Energy Generators. More specifically,

the energy generated during the months of April 2020 and May 2020 were unutilized, and the energy was injected into the Grid on deemed basis. It is requested in the petition under subject that the banking and rollover provision shall be extended which will enable Generators to recover the huge energy generation loss incurred during the unprecedented pandemic situation. The proposal is in line with the MNRE office Memorandum dated 16.04.2020.

6.12. Moreover, it is evident from the various Government Orders announced by Govt. of Tamil Nadu that, except for continuous process industries all other industrial establishments were remain closed from 25/03/2020 until 03/05/2020, vide GO. (Ms) No. 172 dated 25/03/2020 and GO. (Ms) No. 217 dated 03/05/2020. Further, the condition on lockdown was relaxed subsequently, however, the industries all across the State located outside the Corporations/Municipal Limits (including Textile Industries) were allowed to operate only with 50% workers (minimum 20 persons) after obtaining prior permission from the District Collectors. Thereafter, the condition imposed on industrial establishments was completely relaxed from 01.06.2020 onwards, vide GO. (Ms) No. 262 dated 21/05/2020, wherein all industries were allowed to operate with 100% of employees.

6.13. Under such unprecedented pandemic situation, it is evident that most of the industrial and commercial establishments (except continuous process

industries)were under complete shutdown from 25.03.2020 to 03.05.2020 and their operation was resumed partially only from 01.06.2020 onwards in the State of Tamil Nadu.The Automobile, Textile and Commercial Establishment were all drastically affected.

6.14. From the RE Generator'sstandpoint, the evident situation is that most of the quantum of RE,remained unutilized and injected in to grid which was duly utilised. The quantum of unutilized energy will clearly represent the huge revenue loss incurred by the Renewable Energy Generators during April 2020. Under such unprecedented situations due to COVID-19 and the resultant impact caused on Renewable Energy Generators, the same is to be adequately addressed. It is to be noted that TANGEDCO is already benefited by utilizing the unutilized energy, which we're injected in to the grid during lock down period in view of the must run status.

6.15. From the details submitted by the Respondent TANGEDCO in its Additional Counter Affidavit dated 31-08-2021, the unutilized banked units as on March 2020 is only 117.55MUs whereas the unutilised banked units as on March 2021 is 188.88 MUs. There is a huge difference of 71.33 MUs between the March 2021 and March 2020 unutilised banked units. Hence, it is clear that the pandemic has affected the consumption of the Captive users and there is a valid reason for their claim of rollover of Banking for the unutilised units remaining at

the end of March 2021. It is for this very reason, the MNRE issued the Office Memorandum F.No.283/25/2020-GRID SOLAR dated 16.04.2020 and Memo No.283/20/2020-GRID SOLAR dated 4th April, 2020 to alleviate the difficulties experienced by the Wind and Solar Captive generators.

6.16. By way of a sample, the following table demonstrates the quantum of lapsed units accumulated due to the pandemic as on 31st March 2021 and the same is easily verifiable:

| Name of CGP / Special Purpose Vehicles | FY 2020 | FY 2021 |
|--|------------------|---------------|
| | (Units in Lakhs) | |
| Clover Energy Pvt. Ltd | 0.02 | 32.04 |
| Maple Renewable Power Pvt. Ltd. | 0.08 | 0.54 |
| Lotus Clean Power Venture Pvt. Ltd. | 0.00 | 3.21 |
| Olive EcopowerPvt. Ltd | 0.07 | 24.25 |
| Tulip Renewable PowertechPvt. Ltd. | 0.01 | 19.47 |
| Iris Ecopower Venture Pvt.Ltd. | 0.02 | 24.32 |
| Citron EcopowerPvt. Ltd. | 0.00 | 9.96 |
| Premier Mills P. Ltd. | 0.00 | 52.98 |
| Premier Cotton Textiles | 0 | 15.97 |
| Sri Narashimma Textiles P Ltd. | 0 | 17.20 |
| Lakshmi Narashimma Textiles P Ltd. | 0 | 3.21 |
| Rajeswari Renewresources Pvt. Ltd. | 0 | 0.92 |
| Anugraha Valve Casting | 0 | 3.42 |
| Amirtha Green Infra | 0 | 4.09 |
| Livia Polymer Bottle | 1.26 | 12.6 |
| Total | 1.46 | 224.18 |

6.17. The details given in the above table have actually been gathered from the Members of the Petitioner's Association who are the Captive generators/Special purpose vehicles. The table also clearly shows that the unused banked units in large quantities are accumulated as on 31st March 2021 for the sample list of

CGPs. due to the Pandemic, whereas it was almost nil as on 31st March 2020 and very negligible as on 31st March 2019. This shows that general directive in exercise of regulatory powers is to be given.

6.18. The 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".

6.19. 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.

6.20. Further, 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".

6.21. Similarly, The Central Electricity Regulatory Commission has also stipulated in clause 5.2 (u) of the CERC (Indian Electricity Grid Code), (Regulations), 2010 that Wind Energy Generators should be treated as "MUST RUN" plants. It directs System Operator(RLDC/SLDC) to make all efforts to evacuate all available wind energy 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"

6.22. The TANGEDCO has benefited from utilising the power generated by such sources during the lockdown.

6.23. Such rollover has been done even in the past by the Commission vide Order dated 29.03.2010 in M.P. Nos. 10, 11 & 12 of 2010 and therefore there is clear precedence. When consumers were disabled from utilising the renewable

wind power during R&C measures that were in force in Tamil Nadu during 2008 onwards, the 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. Force Majeure is a principle specifically recognized in this regard.

6.24. The Commission had in the earlier order considered the Pandemic effects on the "Distribution Licensee" and the "WEGs". No doubt both the parties including the consumers are affected due to poor demand of the grid due to Pandemic. The WEGs are however not claiming the energy they have lost or rejected by the SLDC due to "the poor demand of the grid during the Pandemic". The Commission may appreciate that the units banked with the TANGEDCO is not actually banked but sold to simultaneously at the average realization of the TANGEDCO. The WEGs are only seeking for directives to the Distribution Licensee with regard to the energy actually supplied by the WEGs and consumed (sold) by the Distribution Licensee at the average sales revenue of Rs.5.80 per unit (2017-18) as per the 2017 tariff orders of the Commission.

6.25. The TANGEDCO is only a gainer and the average sales revenue for the relevant period would only show that it is much higher than the unit cost of wind generators which they are entitled to consume and not be paid a miniscule

portion for such generation that too after collection of banking charges and reduction of 25%. The WEGs are claiming only the energy which was actually absorbed by the Distribution Licensee during the pandemic and already sold to the consumers at the average billing rate of Rs.5.80 per unit. The only relief sought by the WEGs is the extension of recovery period or the Banking period and it is for the units already sold by the Distribution Licensee received from the WEGs.

6.26. The basis of 75% compensation on lapsed units is because in a normal situation, the non-utilisation is due to lack of planning and proper capacity utilisation of available banked energy by the generator. Therefore, the generator is still compensated but at a discount. This is on the principle that Discom cannot get free benefit even in such circumstances as it gains substantially by recovery which is pegged at Average realisation.

6.27. The benefit in such circumstances to the Discom is due to following:

- (a) It gets the full value of charges paid by Open access consumer for all the capacity and generation;
- (b) It recovers the average realisation rate for such energy it ends up using;
- (c) For the unutilised energy it has to pay only a small amount, i.e., 75% of applicable preferential tariff rate;

- (d) It gains by the difference between the Average cost of realisation for the entire 100% and what it pays;
- (e) The generator/consumer loses substantially since it has paid the full charges by way of open access for generation and also as a consumer by way of MD charges at full rates (except full closure month);
- (f) The entire purpose of the petition is thus to ensure that one party does not make substantial gains and another party makes substantial losses. The purpose is to ensure that while TANGEDCO is not on the losing side financially at the same time the Generator/Consumer is reducing the substantial loss;
- (g) The general loss being made by TANGEDCO due to lockdown by reduction in demand is not a relevant factor since that was a force majeure event for which REGenerators are not responsible. Similarly, RE Generators/consumers have made business losses which is again irrelevant. The present issue is only one of balancing and reducing the impact on RE Generators/Consumers who are required to be encouraged under statute and ought not to be imposed with additional burden of providing free power.
- (h) RE Generators unlike conventional energy cannot shut down generation and additionally, the statute requires them to always be scheduled and as a matter of fact this entire is for what was actually

accepted and used by the Grid-none of the units of RE generation
subject matter of a claim for rollover is part of any unauthorised
injection

6.28. The Hon'ble Karnataka High Court in its Order dated 23.09.2021 in W.P. No. 147674/2020 has set aside the order of the KERC disallowing rollover and has recognised the impact of the covid-19 lockdown in the energy sector while remanding the issue for fresh consideration. The order reads,

"6. Though several contentions have been urged by both sides in support of their respective claims in relation to the impugned order, a perusal of the impugned order will indicate that the subject matter before the KERG was with regard to carry forward of banked energy remaining unutilized on account of the Covid-19 pandemic in respect of which the Ministry of New and Renewable Energy (MNRE), Union of India has issued circulars and directions. While considering the matter, the KERC took into account that various types of projects including projects relating to mini hydel generators, renewable projects under REC route, renewable projects under non-REC route other than mini hydel projects etc., had been affected and impacted by the Covid-19 pandemic and accordingly, appropriate orders in this regard required to be passed. Accordingly, the KERG proceeded to pass the impugned order allowing carry forward of banked energy only in respect of mini hydel project under non-REC route while declining to allow carry forward of banked energy to renewable projects under REC route and renewable projects under non-REC route other than mini hydel projects referred to supra.

7. As rightly contended by the learned counsel for the petitioner, having regard to the undisputed fact that the impugned order would impact all types of projects including the projects in respect of which carry forward banked energy has been disallowed / refused in the impugned order, it was absolutely essential and imperative for the KERC to comply with the mandatory procedure and requirements as contemplated in the KERC regulations and notify and hear all affected parties/stakeholders including the petitioner and similarly situated persons by conducting public hearing as required under the rules. "

6.29. 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 of increasing wind capacity in the State. Moreover, the State is wasting its natural resource. Further, the pendency and hearing of the case which was filed well within time should not act to detriment of the generators and the Commission, should it deem fit can always mould its relief by allowing for adjustment over the months of January 2022 to May 2022 of all the banked units.

6.30. A plea was sought to be belatedly made that an Association cannot maintain a petition for the Wind Energy Generators and captive consumers. It is humbly submitted that such a stand is wholly without merit and is in any event such argument is contrary to both the settled law with regard to proceedings under the Electricity Act, 2003 and the judgments of the Hon'ble APTEL. The Hon'ble APTEL has specifically held in the context of Associations espousing the cause of its members in Appeal No. 148 of 2010 dated 5.4.2011 as follows

“24. The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the cogeneration units attached to those factories is itself not maintainable in view of the fact that the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued. As we find from Annexure B, C and D

of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this appeal. The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, not are the members obscure and uncertain. The objection is thus repelled”

6.31. This principle has been consistently followed by the Commission and the IWPA and several Associations has espoused the cause of the members and the issues were considered and relief granted right upto the Hon'ble Supreme Court. Even on many recent issues finally determined, be it the CGP issue or the challenge to Tariff Orders or even issues such as Must Run which were upheld by the APTEL in the NSEFI case, all proceedings were only at the behest of an Association. In fact the TNERC Conduct of Business Regulations under Regulation 16(1) specifically provides that petition can be filed by any 'interested' person rather than only an affected person. Therefore the issue of *locus standi* is very broad under the regulations to initiate proceedings. Further Regulation 24(5) and Regulation 45 as well as the Fees & Fines Regulations specifically provide for Associations to file petitions and be heard in matters. This has been the consistent practise for the last 18 years ever since the Electricity Act, 2003 came into effect. Therefore, the stand and objection sought to be raised during oral arguments, is completely without merit and ought to be dismissed.

6.32. Therefore, the Commission may direct the 1st Respondent to Rollover of banked electricity from Open Access Renewable Wind Energy Generating Stations under Captive and Third-Party Sale Category of FY 2020-21 to FY 2021-22.

7. Findings of the Commission:-

7.1 The petition has been filed praying for roll over of banked energy for the wind energy generating stations under captive and third party sale category for FY 2020-21 and to set out the manner and methodology for its implementation and pass such further orders as deemed fit.

7.2. In earlier petitions filed in M.P No.16 of 2020 and M.P No.17 of 2020 seeking roll over of banked energy, Commission dismissed the petition observing that both the petitioners and TANGEDCO are affected parties due to the pandemic caused by Covid 19, and that 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.

7.3. The petitioners have contended that on examination of information available, TANGEDCO would not suffer loss by roll over of banked energy. The petitioner relies on the Office memoranda issued by the Ministry of New and Renewable Energy dt.1.4.2020, 16.4.2020 that stressed on no change in the 'MUST RUN' status of wind and solar power plants during the period of lockdown and the advisory to the States of Andhra Pradesh, Karnataka and Tamil Nadu to

consider permitting roll over of banked electricity from Renewable Energy generating stations for FY 2019-20 and FY 2020-21 to FY 2021-22. Though the State Government permitted 100% operation of industries on 31.5.2020, it took 2 to 3 months to get the entire workforce to run the industry.

7.4. TANGEDCO contends that in FY 2019-20, there were barely six days left from the date the lockdown was pronounced and hence no roll over is required.. Also, there is no banking facility for third party. After adjustment of energy, the balance unutilised energy is paid at 75% of applicable tariff to the petitioner and hence the petitioner is not at loss. The Energy Wheeling Agreement has a clause to the effect that 'no carry over is allowed beyond the banking period' and unutilized banked energy has to be encashed at 75% of the tariff. During the pandemic, TANGEDCO too has faced severe losses and hence the petition is not maintainable.

7.5. Since a question has arisen on the maintainability of the petition, it is dealt with in the first instance.

7.6. Banking for a period of twelve months and encashment of unutilized banked energy has been in vogue from the date of the first tariff order for wind power issued by the Commission on 15.5.2006. The petitioners have contended that when the consumers were disabled from utilising banked energy during the enforcement of Restriction & Control measures, Commission allowed roll over of banked energy to the next 5 months. The petitioners have further stated that the situation is a Force Majeure condition and the WEGs are only seeking a

direction for adjustment of the energy generated by them into TANGEDCO's grid which has been sold by TANGEDCO. This is a case where banked energy could not be consumed due to the circumstances beyond the control of the petitioner. Therefore, contest on maintainability of the petition by TANGEDCO fails.

7.7. The petitioners have prayed for roll over of banked energy of 2020-21 in consideration of the judgement in A.No.195 of 2018 dt.28.1.2021 wherein the withdrawal of banking facility for new WEGs, third party open access consumers ordered in the tariff order for wind power dt.13.4.2018 was set aside. Huge stakes being involved, the above said judgement of Hon'ble APTEL has been contested by the TANGEDCO and by the Commission before the Hon'ble Supreme Court of India. Status quo is maintained on the provisions in the wind tariff order No.6 of 2018.

7.8. Banking of 12 months is available to all WEGs commissioned prior to 1.4.2018. Roll over of banked energy arises only in the case of WEGs commissioned prior to 1.4.2018.

7.9. Regarding roll over of banked energy for FY 2019-20, it is noted that the period of lockdown during the FY 2019-20 was only for 7 days which was the lean period of wind generation and therefore Commission decides that there is no sufficient ground for roll over of banked energy of FY 2019-20.

7.10. For the FY 2020-21, the Government of Tamil Nadu permitted working of industries with 100% workforce in the G.O Ms.262 (Revenue and Disaster Management(DM-II) Department) dt.31.5.2020. The petitioner contends that

though GoTN permitted 100% work force, the industries could not function to their full capacity as most of the work force had left the place.

7.11. A sample of excess banked units provided for a batch of 15 Nos.CGPs/SPVs for FY 2019,FY 2020 and FY 2021 by the petitioner shows the following status:

| Financial year | Excess banked units as on 31 st March of each FY |
|----------------|---|
| FY 2019 | 48.28 Lakh units |
| FY 2020 | 1.46 Lakh units |
| FY 2021 | 224.18 Lakh units |

The statement furnished by TANGEDCO on wind generation and banking data for FY 2019-20 and FY 2020-21 are as follows:

Data of FY 2019-20

| Sl. No. | Month | Year | Captive generation in MU | Quantum of energy allotted from WEG for captive consumption including banked units in MU | Wind energy banked in MU | Wind energy banked in MU after banking charges | Surplus returned from HT in MU | Total banking in MU | Cumulative banking in MU | Withdrawal from banking In MU | Cumulative withdrawal in MU | Banking balance in MU |
|---------|-------|------|--------------------------|--|--------------------------|--|--------------------------------|---------------------|--------------------------|-------------------------------|-----------------------------|-----------------------|
| 1 | April | 2019 | 243.68 | 238.23 | 5.45 | 4.69 | 33.85 | 38.54 | 38.537 | 0 | 0.00 | 38.537 |
| 2 | May | 2019 | 1131.35 | 964.18 | 167.17 | 143.77 | 71.34 | 215.11 | 253.6432 | 0.6 | 0.60 | 253.043 |
| 3 | June | 2019 | 1689.72 | 1295.67 | 394.05 | 338.88 | 150.39 | 489.27 | 742.9162 | 33.98 | 34.58 | 708.336 |
| 4 | July | 2019 | 1724.11 | 1341.47 | 382.64 | 329.07 | 171.17 | 500.24 | 1243.1566 | 50 | 84.58 | 1158.58 |

| | | | | | | | | | | | | |
|----|--------|------|---------|---------|--------|--------|--------|--------|---------|--------|---------|---------|
| 5 | August | 2019 | 1679.53 | 1265.98 | 413.55 | 355.65 | 139.13 | 494.78 | 1737.93 | 42.13 | 126.71 | 1611.23 |
| 6 | Sept | 2019 | 1046.28 | 1109.44 | 0.00 | 0.00 | 47.78 | 47.78 | 1785.71 | 142.08 | 268.79 | 1516.93 |
| 7 | Oct | 2019 | 161.97 | 715.24 | 0.00 | 0.00 | 31.8 | 31.80 | 1817.51 | 555.84 | 824.63 | 992.89 |
| 8 | Nov | 2019 | 202.63 | 616.49 | 0.00 | 0.00 | 25.02 | 25.02 | 1842.53 | 418.22 | 1242.85 | 599.69 |
| 9 | Dec | 2019 | 362.15 | 551.63 | 0.00 | 0.00 | 12.72 | 12.72 | 1855.25 | 206.52 | 1449.37 | 405.89 |
| 10 | Jan | 2020 | 349.6 | 500.18 | 0.00 | 0.00 | 16.75 | 16.75 | 1872.00 | 163.8 | 1613.17 | 258.84 |
| 11 | Feb | 2020 | 414.29 | 543.20 | 0.00 | 0.00 | 98.46 | 98.46 | 1970.46 | 125.35 | 1738.52 | 231.95 |
| 12 | March | 2020 | 348.04 | 348.04 | 0.00 | 0.00 | 47.42 | 47.42 | 2017.88 | 161.82 | 1900.34 | 117.55 |

Data of FY 2020-21

| Sl. No. | Month | Year | Captive generation in MU | Quantum of energy allotted from WEG for captive consumption including banked units in MU | Wind energy banked in MU | Wind energy banked in MU after banking charges | Surplus returned from HT in MU | Total banking in MU | Cumulative banking in MU | Withdrawn from banking In MU | Cumulative withdrawal in MU | Banking balance in MU |
|---------|--------|------|--------------------------|--|--------------------------|--|--------------------------------|---------------------|--------------------------|------------------------------|-----------------------------|-----------------------|
| 1 | April | 2020 | 186.33 | 129.35 | 44.98 | 38.68 | 19.17 | 57.85 | 57.85 | 0 | 0 | 57.85 |
| 2 | May | 2020 | 741.77 | 583.22 | 160.12 | 137.7 | 43.93 | 181.63 | 239.48 | 14.5 | 14.5 | 224.98 |
| 3 | June | 2020 | 1634.22 | 1013.73 | 613.53 | 527.64 | 112.87 | 640.51 | 879.99 | 12.2 | 26.7 | 853.29 |
| 4 | July | 2020 | 1309.24 | 1022.91 | 328.66 | 282.65 | 75.06 | 357.71 | 1237.7 | 47.11 | 73.81 | 1163.89 |
| 5 | August | 2020 | 1594.21 | 1105.55 | 516.48 | 444.17 | 101.56 | 545.73 | 1783.43 | 33.57 | 107.38 | 1676.05 |
| 6 | Sept | 2020 | 1335.64 | 1095.83 | 298.27 | 256.51 | 72.32 | 328.83 | 2112.26 | 63.01 | 170.39 | 1941.87 |

| | | | | | | | | | | | | |
|----|-------|------|---------|--------|--------|--------|-------|--------|---------|--------|---------|---------|
| 7 | Oct | 2020 | 1104.87 | 1060.1 | 151.91 | 130.64 | 50.68 | 181.32 | 2293.58 | 104.21 | 274.6 | 2018.98 |
| 8 | Nov | 2020 | 176.46 | 745.74 | 4.06 | 3.49 | 18.93 | 22.42 | 2316 | 572.9 | 847.5 | 1468.5 |
| 9 | Dec | 2020 | 255.64 | 732.47 | 12.32 | 10.6 | 12.61 | 23.21 | 2339.21 | 488.03 | 1335.53 | 1003.68 |
| 10 | Jan | 2021 | 286.98 | 620.12 | 8.87 | 7.63 | 15.32 | 22.95 | 2362.16 | 340.39 | 1675.92 | 686.24 |
| 11 | Feb | 2021 | 285.79 | 541.79 | 5.38 | 4.62 | 9.05 | 13.67 | 2375.83 | 261.05 | 1936.97 | 438.86 |
| 12 | March | 2021 | 220.65 | 480.2 | 1.08 | 0.93 | 11.43 | 12.36 | 2388.19 | 262.34 | 2199.31 | 188.88 |

7.12. Both the petitioner and TANGEDCO's statements on unutilised banked energy show higher retention of unutilized energy at the end of the FY 2021. The quantum of banking balance shown against March 2020 and March 2021 in the tables above is the unutilized banked energy for FY 2020 and FY2021. Also, there is not much difference in the energy generated in FY 2019-20 and FY 2020-21. However, the fact that both TANGEDCO and the petitioners had to face losses during the pandemic cannot be overlooked. While the industries had to face the brunt of non-availability of sufficient work force and fluctuations in production, TANGEDCO had to deal with integration of RE generation to the grid keeping their own generation idle. Further TANGEDCO has forgone the maximum demand charges to the extent of 70 to 80% by collecting only 20% of the Demand charges during the Covid 19 pandemic.

7.13. After detailed examination of the data of banked energy and unutilized energy, Commission decides as follows:

The unutilised banked energy as on 31.3.2020 of each consumer may be compared with the unutilised banked energy as on 31.3.2021. If the unutilized banked energy as on 31.3.2021 is higher than the quantity banked in FY 2019-20, roll over of banked energy to the extent of the difference in the quantum of FY 20 and FY 21 may be permitted for adjustment excluding peak hours i.e adjustment of energy may be permitted during normal and off-peak hours, for the period from the date of this order to 31.3.2022.

The order is disposed of accordingly.

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

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

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**