

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
Order of the Commission dated this the 12th day of March 2024

PRESENT:

Thin M. Chandrasekar	...	Chairman
Thiru K.Venkatesan	...	Member
Thiru B. Mohan	...	Member (Legal)

D.R.P. No.8 of 2023

M/s. OPG Power Generation Pvt. Ltd.
Represented by its Authorised Signatory,
Mr. T.Venkateswaran
having its registered office at OPG Nagar,
Periya Obulapuram village, Nagaraja Kandigai,
Madharapakkam road, Thiruvallur
Tamil Nadu 601 201.

....Petitioner
Thiru Rahul Balaji,
Advocate for the Petitioner

Versus

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Chairman and Managing Director, NPKRR Maaligai,
144, Anna Salai, Chennai 600 002.
2. Tamil Nadu Transmission Corporation (TANTRANSCO)
Chairman and Managing Director,
NPKRR Maaligai, 144, Anna Salai,
Chennai 600 002.

3. The Superintending Engineer,
Commercial Operation,
TANTRANSCO
144, Anna Salai, Chennai 600 002.

..... **Respondents**
Thiru N.Kumanan and
Thiru AP.Venkatachalapathy,
Standing Counsel for the Respondents

This Petition coming up for final hearing on 31.10.2023 in the presence of Thiru Rahul Balaji, Advocate for the Petitioner and Thiru N.Kumanan and Thiru A.P. Venkatachalapathy, Standing Counsel for the Respondents upon hearing the arguments on both sides and on perusal of relevant material records and the matter having stood over for consideration till this date this Commission passes the following

ORDER

- 1) The petitioner has preferred the present petition seeking a direction to the respondents to refund the transmission charges aggregating a sum of Rs.1,71,19,692/- (Rupees one crore seventy one lakhs six hundred and ninety two only) paid by the petitioner in respect of its units covered under MTOA 1 and 2 together with interest amount of Rs.80,31,286/- and subsequent interest at the rate of 1% per month.

2) The case of the petitioner in a nutshell is as hereunder:-

2.1.) Out of the four units of thermal power plant established by the petitioner at Gumidipoondi, Chennai aggregating a capacity of 432 MW, Unit No.1, 2 and 4 having a capacity of 81 MW, 81 MW and 80 MW respectively, are Captive Generating Plants (for brevity CGP), while Unit No.3 having a capacity of 180 MW is an Independent Power Plant (for brevity IPP). The petitioner entered into a Medium Term Open Access Agreement (hereinafter referred as MTOA1) with respondent No.1 TANGEDCO, a Distribution licensee and the respondent No.2 TANTRANSCO, a Transmission licensee, on 10.06.2021 for 56 number of users for parallel operation of the CGP and wheeling of energy upto 76.778 MW from unit 1 to the destination of its use through the Transmission Distribution Network of the STU / Distribution Licensee. As per the terms of MTOA 1, the petitioner was permitted to use the transmission system capacity upto 66.062 MW for supplying 48 numbers of users from 01.09.2021 to 30.09.2021 and upto 76.778 MW for supplying to 56 number of users from 01.10.2021 to 31.03.2024. The petitioner agreed to pay

transmission charges for using the transmission system at the rate of Rs.3037.3/MW /per day on transmission capacity at the injection point upon receipt of monthly demand.

2.2) Subsequently the petitioner in regard to its units 2 and 4 entered into a Medium Term Open Access Agreement (hereinafter referred to MTOA 2) dated 12.07.2021 with the respondents for parallel operation of CGP and wheeling of energy upto 246.348 MW from units 2 and 4. As per the terms of MTOA 2, the petitioner was allowed to use the transmission capacity upto 222.200 MW for supplying 119 number of users from 01.09.2021 to 31.10.2021 and upto 246.348 MW for supplying 137 numbers of users from 01.11.2021 to 31.03.2024. The petitioner has to pay transmission charges at the rate of Rs.3037.3/MW/per day on receipt of monthly demand.

2.3) From October 2021 onwards, the petitioners CGP could not generate electricity to the full desired capacity. This prompted the petitioner to file DRP No.3 of 2022 before TNERC for suspending recovery of

open access charges during the period when no supply is made to captive users from Unit No.1, 2 and 4 of the petitioner. By invoking Regulation 40 (2) of the TNERC (Grid connectivity and Intra State Open Access) Regulations 2014, the petitioner applied for relinquishment of MTOA used for supplying electricity to its consumers and partial relinquishment of MTOA pertaining to MTOA 1 and MTOA 2 was applied at various instances.

- 2.4) In regard to MTOA 1, the petitioner paid a sum of Rs.69,97,134/- towards relinquishment charges as detailed in the petition. With regard to MTOA 2 the petitioner paid transmission charges aggregating a sum of Rs.1,35,19,610/- as set out in the petition. Despite above payments having been made by the petitioner, the Respondent No.1 again raised invoices for payment of OA charges in regard to MTOA 1 and MTOA 2 to pay a sum of Rs.4,68,38.240/- and Rs.14,26,18,505/- respectively as detailed in the petition. The petitioner made payments as claimed by the Respondent No.1.

2.5) The proper demand of monthly transmission charges excluding the 30 days transmission charges for relinquished transmission capacity quantum in respect of MTOA 1 and MTOA 2 are Rs.4,15,72,862/- and Rs.13,07,64,191/- respectively. Calculation in this regard is setout in detail in the petition. The petitioner has been charged excess transmission charges of Rs.52,65,378 and Rs.1,18,54,314/- in regard to MTOA 1 and MTOA 2 aggregating a sum of Rs.1,71,19,692/- for the relinquished quantum or transmission capacity.

2.6) The excess amount collected from the petitioner is in flagrant violation of Regulation 10 and 40 (2) of TNERC (Grid Connectivity and Intra-State Open Access) Regulations 2014. Despite submission of applications dated 01.09.2021 and 17.09.2021 by the petitioner to the respondents along with receipt for payment of 30 days transmission charges seeking approval for cancellation of MTOA 1 and MTOA 2, the monthly Open Access bill issued by the 1st respondent for the period from September 2021 to April 2022 included the transmission charges for the relinquished capacity. Two

letters dated 21.09.2021 issued on behalf of the petitioner to the 2nd respondent in this regard requesting the 2nd respondent to instruct the concerned EDC's not to raise transmission charges for the relinquished period proved futile. Hence as a last resort the petitioner is constrained to approach the Commission seeking redressal. The Commission may be pleased to pass an order directing the respondents to refund the excessive transmission charges of Rs.1,71,19,692/- paid by the petitioner in respect of its units covered under MTOA 1 and MTOA 2 together with interest amount of Rs.80,31,286/- calculated at the rate 1% per month; directing the respondents not to levy transmission charges for the relinquished capacity in respect of MTOA 1 and MTOA 2 and directing the respondents to pay the costs of instant petition to the petitioner and thus render justice.

- 3) The pith and marrow of the defence projected by the respondents as discerned from the counter statement filed on behalf of the respondents 2 and 3 is as hereunder:-

- 3.1) The Dispute Resolution Petition is not maintainable neither under law nor on facts. SLDC is the Nodal Agency empowered to accord permission for Intra-State Open Access transactions. As requested by the petitioner, MTOA approval has been accorded to the petitioner to wheel power from unit 1 to the quantum of 76.778 MW and 246.88 MW to its 56 numbers and 137 numbers Captive Consumers respectively for the period from 01.09.2021 to 31;.03.2024. Similarly, MTOA approval has been accorded to wheel power from unit 2 and 4 for a quantum of 246.348 MW. On the basis of the MTOA approvals necessary agreement has been entered by the petitioner with the Distribution Licensee TANGEDCO.
- 3.2) As per the clause 40 of the TNERC (Grid Connectivity and Intra-State Open Access) Regulations 2014 (hereinafter referred to as ISOA Regulations 2014) relinquishment charges are levied with a view to recover the transmission charges as approved by the Commission vide its Tariff Order towards cost of the transmission assets built by the Transmission Licensee, TANTRANSCO. The levy

of relinquishment charges would be legitimate when the transmission licensee stands to suffer loss due to the stranding of transmission capacity occasioned due to MTOA customer relinquishing its right, fully or partly, as there is a possibility of under recovery of MTOA charges in such circumstances.

- 3.3) MTOA approvals have been granted to the petitioner by collecting applicable open access transmission charges. Further as and when the petitioner preferred application for relinquishment of MTOA used for supplying electricity to its captive consumers, the same was accorded by collecting relinquishment charges based on ISOA Regulations 2014. The relinquishment date for captive consumers of unit No.2 was effect from 01.10.2021 only and from 01.09.2021 to 30.09.2021, the existing MTOA approval is valid and the petitioner has to pay the transmission charges irrespective of injection based on tariff fixed by the Commission as per clause 20 (2) of ISOA Regulation 2014. Further the word “**shall**” occurring in clause 40 indicate that the payment of relinquishment charges are mandatory in

nature and thus necessarily has to be complied with. Relinquishment of MTOA entails a quantified charge, namely, applicable transmission charges for the period of relinquishment or 30 days whichever is lesser. Situated thus, the contention of the petitioner that collection of relinquishment charges as well as transmission charges from the petitioner has resulted in double billing is legally untenable.

- 3.4) There is clear distinction between the Relinquishment charges, which is compensatory in nature and normal transmission charges. The petitioner is well aware that the relinquishment would take place only after 30 days and upto the date of Relinquishment MTOA approval is valid for which the petitioner shall pay the transmission charges. It is therefore submitted that the transmission charges collected from the petitioner are correct based on the provision of law. Hence it is pellucid that the contention of the petitioner that as the respondents have already recovered the transmission charges along with the relinquishment application preferred by the petitioner, the respondents cannot raise a demand again for such transmission

charges in the monthly invoice for Open Access pertaining to MTOA 1 and MTOA 2 has no legal foundation. Contending so, the respondents pray for the dismissal of application with costs.

- 4) Heard both side counsel. Records perused. Relevant provisions of law traversed. Written arguments submitted on behalf of the petitioner considered.
- 5) The points for determination that crops up for adjudicating the core issue involved in the case by the Commission are as follows:-
 - 1) Whether the contention of the petitioner that since the petitioner had already paid the requisite transmission charges for the quantum of power relinquished vide relinquishment notices dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2021, and 17.02.2022 as required under Sub-Regulation 2 of Regulation 40 of TNERC (Grid Connectivity and Open Access) Regulations 2014, the conduct of 2nd respondent raising invoices and collecting transmission charges for the relinquished capacity once again tantamount to double billing and as such unlawful is sustainable on law and facts?

- 2) Whether the petitioner is entitled to the refund of Rs.1,71,19,692/- and interest amount of Rs.80,31,286/- accrued thereon?
- 3) Whether the petitioner is entitled to the directions prayed for in the petition?

6) Point No.1:-

- 6.1) The learned counsel for the petitioner argued with aplomb that the so called "Relinquishment Charges" aggregating a sum of Rs.2.05,16,744/- morefully tabulated in para 9 and 13 of the main petition, which was paid by the petitioner along with notices of relinquishment dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2021 and 17.03.2022 issued by the petitioner to the 2nd respondent TANTRANSCO intimating relinquishment of different quantum of power are in relaity transmission charges payable by the petitioner for the period of relinquishment or for 30 days prescribed under Regulation 40 (2) of the TNERC (Grid Connectivity and Intra-State Open Access) Regulations, 2014 and as such the Open Access charges once again raised and collected by the 3rd respondent from the petitioner for the same 30 days through

subsequent invoices tantamount to double billing. Contending so, the learned counsel assiduously argued that the respondents are liable to refund the excess transmission charges of Rs.1,71,19,692/- collected from the petitioner together with the accrued interest amount of Rs.80,31,286/- calculated at the rate of one per cent per month and costs of the litigation.

- 6.2) The above argument so industrially submitted by the counsel for the petitioner is sought to be jettisoned by the counsel for the respondents by contending that there is clear distinction between “Relinquishment Charges” and Transmission Charges and as such the allegation of the petitioner that there is double billing in regard to units 1, 2 and 4 of the Coal based Captive Generating Power Plant of the petitioner for the period in question cannot be countenanced even for a moment. The learned counsel submitted with vigour that “Relinquishment Charges” are compensatory in nature whereas “Transmission Charges” are normal charges payable as per relevant Regulation and Tariff Order and as such the question of double

billing does not arise at all in the present case. In total the counsel for the respondents prayed for the dismissal of the petition with exemplary costs.

6.3) The undisputed facts which are necessary and germane for deciding the merit of the competing contentions, as culled out from the pleadings submitted on either side, are as hereunder:-

The petitioner OPG Power Plant Pvt. Ltd. has established a coal based thermal power plant consisting of 4 units at Gummidipoondi, Chennai out of which unit No.1, 2 and 4 are Captive Generating Plant, while Unit No.3 is an Independent Power Plant. The 1st respondent is a State owned Distribution Licensee. The 2nd respondent is a State owned Transmission Licensee. The 3rd respondent is the Nodal authority from whom an intending captive power generator has to obtain clearance to avail open access.

6.3.1) The petitioner entered into two Medium Term Open Access Agreement (viz) MTOA 1 and MTOA 2, with the 2nd and 3rd respondents on 10.06.2021 and 12.07.2021 respectively to wheel

76.778 MW of power from unit No.1 to 56 captive consumers and 246.348 MW of power from units 2 and 4 to 137 captive consumers. The transmission charges were fixed at Rs.3037.3/per MW / per day. The petitioner used to remit the necessary open access charges promptly from time to time. Few months after entering into the above referred MTOA's, since the petitioner was not able to generate electricity to its desired full capacity from October 2021, the petitioner proceeded to issue notices of relinquishment dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2021 and 17.03.2022 to the 2nd respondent intimating its disinclination to use its wheeling facility pertaining to different quantum of power mentioned in the notice that the petitioner sought to relinquish. The petitioner remitted the required transmission charges as prescribed in Regulation 40 (2) of the TNERC (Grid Connectivity and Intra-State Open Access) Regulations 2014 and submitted the receipts along with the applications for relinquishment. A tabulation in this regard is made in para 9 and para 13 of the main petition. The aggregate amount of

transmission charges paid by the petitioner on that score is Rs.2,05,16,744/-

6.3.2) Subsequently for the months covering the period September 2021 to April 2022, the respondents raised invoices which included the transmission charges for the relinquished capacity. For the above referred period the petitioner has paid an aggregate sum of Rs.4,68,38,240/- in regard to unit 1 and an aggregate sum of Rs.14,26,18,505/- in regard to units 2 and 4. All the above referred payments are not disputed either explicitly or impliedly in the counter affidavit filed on behalf of the respondents 2 and 3. The petitioner had issued two letters dated 21.09.2021 to the 2nd respondent TANTRANSCO pertaining to MTOA 1 and MTOA 2 requesting the 2nd respondent to instruct the concerned EDC's not to raise transmission charges for the relinquished capacity. The 2nd respondent did not respond to the same.

7) To ensure proper appreciation of the merit of the contentions raised by the competing parties, this Commission begin by first reproducing the relevant

provisions of the TNERC (Grid Connectivity and Intra State Open Access) Regulations, 2014. Chapter 10 captioned as “Miscellaneous” deal with under utilization or non-utilization of open access capacity in intra-state transmission system; computation of capacity availability for open access; curtailment priority; etc. Regulation 40 is reproduced hereunder:-

“40. Under-utilization or non-utilization of open access capacity in Intra-State transmission system:

(1) Long-term open access – A long-term open access customer may relinquish the long-term open access rights fully or party before the expiry of the full term by making payment of compensation for stranded capacity as follows:-

(a) Long-term open access customer who has availed access rights for a period of and exceeding 12 years..

(i) Notice of one (1) year if such a customer submits an application to Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges:

(ii) Notice of less than one (1) year - If such a customer submits an application to the State Transmission Utility at any time lesser than a period of 1 (one) year

prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the transmission charges for the stranded transmission capacity for the period falling short of a notice period of one (1) year

(b) Long-term open access customer who has availed access rights for less than 12 (twelve) years, - such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the State Transmission Utility at least 1 (one) year prior to the date from which such customer relinquish the access rights:

Provided further that in case a customer submits an application for relinquishment of long-term open access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 60% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated

transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(c) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Central Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power, Government of India from time to time.

(d) The compensation paid by the long-term open access customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term open access customers and medium-term open access customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term and medium-term open access customers.

(2) Medium-term Open Access customers:- A medium-term open access customer may relinquish rights, fully or partly, by giving at least 30 days prior notice to the Nodal agency:

Provided that the medium-term open access customer relinquishing its rights shall pay applicable transmission charges for the period of relinquishment or for 30 days whichever is less.

- 8) A cursory reading of Regulation 40 make it abundantly clear that there is no such charge as Relinquishment Charges at all in the said Regulation. A comparison of the provisions relating to Long Term Open Access (for short LTOA) and Medium Term Open Access (for short MTOA) make it abundantly clear that only in respect of LTOA compensation is payable in case of early termination by the open access customer, that too for the stranded capacity. Methodology for computing the compensation that is payable by the open access consumer to the State Transmission Utility is delineated in Sub-Regulation 1. As per sub-regulation 1 in regard to LTOA, even when the open access customer do not use the transmission capacity, compensation has to be paid by the open access customer to the State Utility (viz) TANTRANSCO.

- 9) Sub-Regulation (2) of Regulation 40 which deal with MTOA do not allow any such compensation in case of under-utilization or non-utilization of open access system by the open access customer. As per sub-regulation 2, a medium term open access customer can terminate the open access agreement with the licensee by giving atleast 30 days notice. Further in such cases, as per sub-regulation 2, the open access customer is saddled with liability to pay the licensee applicable transmission charges for the period of relinquishment or for 30 days whichever is less. Thus it is made explicit that the open access customer is not under liability to pay any other charges other than the one mentioned in sub-regulation 2.
- 10) In view of the above discussion there remains no shadow of doubt that in respect of the period of relinquishment covered under the notices dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2022 and 17.03.2022 in respect of specific transmission capacity quantum relinquished that relate to MTOA 1 and MTOA 2, the petitioner is legally bound to pay only the applicable transmission charges for the period of relinquishment or for 30 days whichever is less. The transmission charges so paid by the petitioner to the 2nd respondent in respect

of MTOA 1 and MTOA 2 is tabulated in detail in para 9 and 13 of the main petition preferred by the petitioner and the same aggregate to Rs.2,05,16,844/- as already quoted in the earlier part of this order. The receipt of such transmission charges is not disputed by the respondents either in their counter-affidavit or during the course of enquiry conducted by this Commission in the main petition.

- 11) The fact that in the invoices raised in regard to MTOA 1 and MTOA 2, for the months covering the period September 2021 to April 2022, the transmission charges already paid by the petitioner for 30 days in compliance with sub-regulation 2 of Regulation 40 were included and were duly collected from the petitioner is not under challenge by the respondents. The specific case of the petitioner is that the excess amounts claimed by the respondents in the respective invoices were paid under protest and apprehension of disconnection.

- 12) Apposite to point out that the respondents are not able to point out any of the Regulations found in TNERC (Grid Connectivity and Intra-State Open Access) Regulations 2014, which entitle the respondents to collect any other charges

other than the one prescribed under Sub-Regulation 2 of Regulation 40 in case MTOA customer relinquishes the rights, fully or partially. Without recourse to any specific Regulation, the respondents are precluded to claim any other charges from the petitioner other than the one postulated in Sub-Regulation 2 of Regulation 40.

- 13) Based on the preceding elaborate discussion and afore mentioned findings, this Commission decides that since the petitioner had already paid the requisite transmission charges for the quantum of power relinquished for the period covered in the relinquishment notices dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2021 and 17.03.2022 as required under Sub-Regulation 2 of Regulation 40 of TNERC (Grid Connectivity and Open Access) Regulations, 2014, the contention of the petitioner that the conduct of the 2nd respondent raising invoices and collecting transmission charges for the relinquished period once again tantamount to double billing and as such unsustainable under law and on facts has legal force.

Accordingly this point is answered in favour of the petitioner.

14) **Point No.2:-**

The primary relief claimed by the petitioner in the main petition is for an order directing the respondents to refund the excess transmission charges of Rs.1,71,19,692/- collected from the petitioner together with interest amount of Rs.80,31,286/-

15) This Commission has rendered a categorical finding to Point No.1 that the conduct of the respondents once again collecting the transmission charges which were already paid by the petitioner for relinquishing the rights for the period covered under the relinquishment notices sent by the petitioner to the 2nd respondent in this regard by raising monthly invoices covering the period from September 2021 to April 2022 is unsustainable under law being in violation of the express provision of Sub-Regulation 2 of Regulation 40. Hence the corollary finding that the petitioner is entitled for refund of the excessive transmission charges collected by the respondents is imperative.

16) The excessive transmission charges collected by the respondents from the petitioner stand quantified by the petitioner at Rs.1,71,19,692/- In fact in the

main petition details are set out by way of tabulation. Neither in the counter-statement, nor during the course of enquiry, the excessive amount quantified by the petitioner was put to challenge by the respondents. The tables furnished in the petition which contains particulars of payment made by the petitioner and the actual transmission charges payable by the petitioner for the relevant period vouch the claim of the petitioner. Hence there is no inhibition upon this Commission in arriving at the conclusion that the petitioner is entitled for a direction to the respondents to refund the excess transmission charges of Rs.1,71,19,692/- collected from the petitioner.

- 17) The next point that crops up for consideration is as to whether the petitioner is entitled for a direction in regard to the interest amount of Rs.80,31,286/- as prayed for in the petition. Even though the petitioner has not furnished any details in the petition as to how the interest amount came to be calculated, as per the direction of the Registry dated 13.03.2023, vide Memo dated 15.05.2023, the petitioner has furnished a tabulation wherein the details about calculation of interest is elaborately setout. In fact the requisite fee on the

interest amount came to be collected based upon the calculation furnished by the petitioner. The Memo dated 15.03.2023 forms part of the material records.

- 18) The learned counsel for the petitioner argued with intensity that since a sum of Rs.1,71,19,692/- came to be collected by the respondents in flagrant violation of Sub-Regulation 2 of Regulation 40 of TNERC (Grid Connectivity and Open Access) Regulations, 2014, the petitioner has been deprived of the use of the said money prudently and as such a right has ensued to the petitioner to be compensated by way of interest. To buttress his argument the learned counsel banked reliance on the following judgments rendered by our Hon'ble Supreme Court and the Hon'ble APTEL.

(a) Secretary, Irrigation Department, Government of Orissa

Vs.

G.C. Roy

1992 vol.1 SCC 508.

(b) The Chairman, TNEB (Now TANGEDCO) and another

Vs.

M/s. Indian Wind Power Association and others

APTEL judgment rendered in Appeal No.11 of 2012 dated 17.04.2012.

(c) CFC

Vs.

Narasingha Das Agarwal

**Order dated 16.08.2018 passed by the Hon'ble High Court in Review
Petition (Civil) No.1606 of 2018.**

- 19) The principle of law laid down in the above referred cases is that when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made thereafter the said period would be subject to the payment of interest. It was uniformly held in the above referred cases that for the delayed payments, the Distribution Licensee is liable to pay interest / penalty at the rate of 1% per month. It was further held that even though there is no express stipulation with regard to the interest, in the Power Purchase Agreement, the Commission has powers, as provided in the relevant sections of the Civil Procedure Code, to order payment of interest on the admitted delayed payment.

20) The seminal point that arises, in the considered opinion of this Commission, is as to whether the principle of law laid down in the above referred cases can be applied to the facts of the present case. The trite law is that before venturing to apply a principle of law laid down by our Apex Court or Hon'ble High Court in a particular case, the court has to ascertain as to whether the facts involved in the cases dealt by the Supreme Court or the Hon'ble High Court are identical to the facts of the case dealt by it. If it comes to light that the facts involved are not identical, the court, as a prudence, shall not apply the principle of law to decide the case.

21) In all the cases cited supra and dealt by the Hon'ble Supreme Court and Hon'ble APTEL, there was stipulation of the period in which payment has to be made by the Distribution Licensee to the Generator for the energy supplied by the Generator and admittedly the Distribution Licensee made delayed payments. But in the case in hand, absolutely there is no time stipulation for the payment of the amount claimed by the petitioner. The specific case of the petitioner is that as the respondents have collected Relinquishment Charges (in reality Transmission Charges) for the quantum of power relinquished in regard

to the period covered under the notices dated 01.09.2021; 17.09.2021; 27.12.2021; 28.02.2021; and 17.03.2021 as required under Sub-Regulation 2 of Regulation 40, the conduct of the 2nd respondent raising invoices and collecting transmission charges for the relinquished period once again tantamount to double billing and as such the respondents are liable to refund the excess transmission charges aggregating a sum of Rs.1,71,19,692/- collected from the petitioner together with interest at the rate of one percent per month.

- 22) The claim of the petitioner is resisted by the respondents contending that there is subtle distinction between “Relinquishment Charges” and “Transmission Charges” and that as the Relinquishment Charges collected from the petitioner is compensatory in nature, the conduct of the 2nd respondent in collecting transmission charges in the subsequent invoices for the relinquished period cannot be construed as “double billing”. From the rival pleadings it is manifest that the facts involved in the cases dealt by the Hon’ble Supreme Court and Hon’ble APTEL are entirely different as no period of time was stipulated for the payment of amount claimed by the petitioner in the present petition and as such the case is not one of delayed payment.

23) The 2nd respondent had raised invoices and collected the disputed amount from the petitioner purely on the misconception that “Relinquishment Charges” and “Transmission Charges” are altogether different phenomenon. Hence the question of the respondents making delayed payment with regard to amount due to the petitioner does not arise at all in this case. This being so, the question of mulcting the respondents to pay interest on the excess amount collected by them from the petitioner do not crop up at all. On the basis of the preceding discussion and conclusion arrived at, this Commission decides that the petitioner is not entitled to claim the interest amount of Rs.80,31,286/- from the respondents. However, it is hereby made clear that if the refund amount directed to be paid by the respondents to the petitioner is not paid within the stipulated period the same shall carry interest at the rate of 12% per annum. Accordingly, this point is answered.

24) **Point No.3:-**

This Commission has answered Pont No.1 and 2 holding that the respondents are not entitled to collect both Relinquished Charges and Transmission Charges for the relinquished capacity in regard to period covered under the

Relinquishment Notices sent by the petitioner to the 2nd respondent as the same would tantamount to double billing as contended by the petitioner. Hence it is apparent that the petitioner is entitled for the directions sought for by the petitioner which pertain to the refund of the transmission charges of Rs.1,71,19,692/- paid by the petitioner to the respondents and not to levy transmission charges for the relinquished capacity in respect of the petitioner's units under MTOA 1 and MTOA 2.

Accordingly this issue is answered in favour of the petitioner.

- 25) In the result this Commission pass the following directions and order:-
- (i) The respondents shall refund the transmission charges of Rs.1,71,19,692/- (Rupees one crore seventy one lakhs nineteen thousand six hundred and ninety two only) paid by the petitioner in respect of its units under MTOA 1 and MTOA 2 within 30 days from the date of this order. If the respondents fails to make payment within the stipulated period, the respondents shall pay interest on the amount ordered at the rate of 12% per annum from the date of default till the date of actual payment;

- (ii) The respondents shall not levy transmission charges for the relinquished capacity in respect of the petitioner's units under MTOA 1 and MTOA 2;
- (iii) The petitioners claim for payment of interest amount of Rs.80,31,286/- shall stand dismissed;

Both parties shall bear their respective costs.

Petition ordered accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**