

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 11th Day of July 2024

PRESENT:

Thiru M.Chandrasekar Chairman
Thiru K.Venkatesan Member
and
Thiru B.Mohan Member (Legal)
D.R.P. No. 1 of 2024

M/s. Southern Energy Development Corporation Ltd.
Represented by its Director, Mr.Bhaskharan Kannun
"Parry House". 43, Moore Street,
Chennai – 600 001.

... Petitioner
Thiru.Rahul Balaji, Advocate

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO),
Through Chairman cum Managing Director
144, Anna Salai, Chennai – 600 002.
2. State Load Despatch Centre,
(TANTRANSCO)
144, Anna Salai, Chennai – 600 002.
3. Chief Financial Controller (General),
TANGEDCO
144, Anna Salai, Chennai – 600 002.
4. The Superintending Engineer
Nagapattinam Electricity Distribution Circle
No.25, East Sattaiyappar Keela Street,
Nagapattinam – 611 001.

.... Respondents
Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO

This Miscellaneous Petition stands preferred by the Petitioner The Southern Energy Development Corporation Limited, with a prayer to :-

a. Set aside the action of the Respondents in seeking to levy Scheduling and System Operation Charges vide letter dated 29.08.2013 from the 3rd Respondent, the Chief Financial Controller (General), TANGEDCO, with Reference no. Lr.No.CFC/FC/DFCI AAO-HT 1 AS.3 ID.No.124 113 in which it fixed the scheduling and system charges at Rs.2000/- per day per transaction and the Lt.No.SE/NEDC/NGT / AO /RCS/ As/ AI/F. SEDCO /D.524 /13, dated 13.09.2013, made by the 4th Respondent, wherein the 4th Respondent had retrospectively worked out scheduling and system operation charges for the period from 01.04.2012 and culminating in the letter dated 24.05.2023, bearing Lr. No. SE/TEDC/ Thiruvarur/AO/AS/HT/F.SEDCO/D. No. 50/2023, issued by the 4th Respondent, levying an amount of Rs. 6,74,04,862/- (Rupees Six Crore Seventy Four Lakhs Four Thousand Eight Hundred Sixty Two Only) on the Petitioner for scheduling and system operating charges;

b. Consequently direct refund of charges paid pursuant to such demand and Hold and declare that the scheduling and system operation charges are payable by the Petitioner at Rs.2000/ - per day and not for each bilateral transaction for the relevant period;

c. bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the Petitioner; and pass such further or other

orders as the Commission may deem fit and proper in light of the facts and circumstances of the case and thus render justice.

This matter coming up for final hearing before the Commission on 25-06-2024 in the presence of Advocates from Thiru.Rahul Balaji, Advocate for the Petitioner and Thiru.N.Kumanan and A.P.Venkatachalapathy, Standing counsel for the Respondents and upon hearing the submission made by the counsel for the petitioner and the respondents, on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. Contentions of the Petitioner :-

1.1. The present petition is filed challenging the action of the 4th Respondent in making a demand for a sum of Rs. 6,74,04,8621- for scheduling and system operation charges, calculated at the rate of Rs. 2,000/- per day per transaction, retrospectively from 2014 onward. The said demand is based on an erroneous interpretation of the tariff order issued by this Ld. Commission in T.P. No.2 of 2013 dated 20.06.2013 and the order rendered by the Commission in D.R.P No. 26 of 2013, dated 10.11.2020, in which, the Petitioner submits this Ld. Commission erroneously made the following findings:

a. Scheduling and System operation charges are to be levied for every transaction between a specified buyer and a specified seller.

b. Though, the petitioner is a single generator i.e., specified seller at point of injection, the consumer (HT user end service) i.e., specified buyer who draws power at different drawal points cannot be clubbed together since destinations are scattered here and there in the State.

c. Though, the transaction is in the nature of intra-state, each transaction with the open access customer involves separate energy accounting, scheduling, system operation and collection of disbursement of charges, etc. The energy accounting cannot be thought of looking only on the Seller side and closing the eyes of the user end. dealing with the determination of intra state transmission tariff and other related charges.

Consequently, the Petitioner has been compelled to make payments under protest in response to the erroneous demands issued by the 4th Respondent in letter dated 14.06.2023.

1.2. It is a Natural Gas based captive generating plant having its generating plant at Nallur Village, Mannargudi Taluk with a wheeling approval for 6 MW.

1.3. The Petitioner received a letter dated 29.08.2013 from the 3rd Respondent, the Chief Financial Controller (General), TANGEDCO, with Reference no. Lr.No.CFC / FC/DFCI AAO-HT I AS.3/ D.No.124 113 in which it fixed the scheduling and system charges at Rs. 2000/- per day per transaction.

1.4. Subsequently, the Petitioner received a letter bearing Reference No.Lt.No.SE/ NEDC/NGT I AO IRCSI Asl AI IF. SEDCO/D.524/13, dated 13.09.2013, made by the 4th

Respondent, wherein the 4th Respondent had retrospectively worked out scheduling and system operation charges for the period from 01.04.2012 and raised a demand for Rs.1,45,04,0001-.

1.5. Challenging the rate of applicable charges and the consequent retrospective demand for scheduling and system operating charges, the Petitioner filed a writ petition vide W.P. No. 27315 of 2013 before the Hon'ble Madras High Court. The Hon 'ble Court, relying on its directions in a similar challenge before it in W.P. 10490 of 2013, observed the following:

"In view of the above submission made by the learned Senior Counsel appearing for the petitioner and the learned Advocate General appearing for the Respondents, by consent, the following order is passed:- (1) The writ petition is disposed of with a direction to the petitioner to approach the TNERC seeking the relief which has been prayed in this writ petition raising all the contentions raised in this writ petition as well as other contentions available to the petitioner"

1.6. The W.P. No. 27315 of 2013 came to be disposed of by the Hon'ble Madras High Court on 08.07.2022, based on the Order of the Hon'ble Madras High Court in W.P. No. 10490 of 2013 filed by Sai Regency Power Corporation Pvt. Ltd. directing the Petitioner therein to approach the Commission for relief. As such, the Petitioner therein approached the Commission in D.R.P. No. 26 of 2013, which the Commission dismissed vide order dated 10.11.2020.

1.7. However, the Petitioner therein, Sai Regency Power Corporation Ltd., entered into liquidation proceedings soon thereafter and a liquidator was appointed by the Hon'ble National Company Law Tribunal, Chennai vide order dated 27.04.2021.

1.8. The Petitioner therein, Sai Regency Power Corporation, has not filed any appeal to such dismissal by the Commission and the Hon 'ble Madras High Court disposed of a similar challenge filed by the Petitioner herein in W.P. No. 10490 of 2013 with liberty to approach this Commission.

1.9. While the Petitioner herein was not a party to the order in D.R.P. No.26 of 2013, the present Petitioner has suffered adversely since the said order is the basis of the subsequent demand Letter No. SE/TEDC/Thiruvarur/AO/AS/HT/F.SEDCO/D. No. 50/2023, dated 24.05.2023 issued by the 4th Respondent demanding Rs. 6,74,04,862/- as System and Scheduling Charges calculated retrospectively from 2014 onward.

1.10. The Petitioner submits that insofar as the regulations governing the open access, is concerned the Inter-State Open Access is regulated by the Central Electricity Regulatory Commission and the Intra State Open Access is governed by the respective State Commissions i.e., the Commission in the present case. This Ld. Commission has by virtue of powers conferred under section 42 of the Act issued the Intra State Open Access Regulations, 2005 which came into force on 03.08.2005. The 2005 Regulations define the word 'consumer' as follows:

'The word 'consumer' in this regulation shall carry the same meaning as in the Act, but shall be restricted to such consumers within the State of Tamil Nadu to whom these regulations will apply'.

Open Access Customer is defined as under in Regulation 2(m) of the 2005 Regulations:

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

1.11. The 2005 regulations further provide for procedures applicable to Short Term Open Access Customer and Long Term Open Access Customer such that any customer availing intra-state open access for a period of five years or more will be categorized as a long term intra-state open access customer, under Regulation 6(ii). Regulation 9 also provides the charges for open access under the following heads:

- a) Transmission charge or wheeling charge
- b) Surcharge
- c) Additional Surcharge
- d) Scheduling and system operation charges
- e) Unscheduled interchange (UI) pricing
- f) Reactive Energy Charges
- g) Grid availability charges
- h) Restoration charges

1.12. The charges in this regard are notified from time to time under tariff orders that are issued by this Ld. Commission. The Petitioner states that the present impugned action relates to the imposition of scheduling and system operation charges which are governed by Regulation 9(4) as follows:

“9(4) Scheduling and system operation charges:

(a) The scheduling and system operation charges payable to State Load Dispatch Center by open access customer shall be such as determined by the Commission under section 32 of the Act.

(b) The scheduling and system operation charges collected by the State Load Dispatch Centre in accordance with clause (1) above shall be in addition to the other fees and charges approved by the Commission under this regulations.

(c) The Scheduling and system operation charges shall be payable even when the open access customer happens to be a generating company or trading Licensee, availing open access under these regulations.”

1.13. The regulations, therefore, clearly provide that the scheduling and system operation charges payable to the SLDC by the open access customer shall be as determined by this Ld. Commission under section 32 of the Act. It is further pertinent to state that the scheduling and system operation charges under Regulation 4(c) are payable when the open access customer is a generating company or trading licensee availing open access under the regulations. The scheduling and system operation charges are essential charges that are payable pursuant to provisions of section 32 of the Act which sets forth the role and functions of the State Load Dispatch Center and under Section 32(2)(a) of the Act. The State Load Dispatch Center is responsible for the optimum scheduling and dispatch of electricity within a State. In addition thereto, it is significant to point out that section 32(3) specifically provides that the State Load Dispatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-state transmission of electricity, as may be specified by the State Commission. It is, therefore, clear that the charges relatable to

scheduling and system operation charges are payable only by the Generating Company or a licensee to the State Load Dispatch Centre at rates as specified by the State Commission from time to time.

1.14. In pursuance of the extant regulation, the petitioner had entered into a Power Purchase Agreement for captive use originally at the time of its commissioning on 09.12.1999. Thereafter, the Petitioner had executed a further Energy Wheeling Agreement on 24.12.2008 in the format approved by the Commission for wheeling to captive users. Thereafter, when it was found necessary to enter into a long term open access arrangement, it had made such a request, pursuant to the letter dated 17.11.2011 and 16.12.2011 and sought for renewal of the Energy Wheeling Agreement for a further period of 5 years as a long term open access customer and pursuant thereto and consequent upon necessary approvals, Energy Wheeling Renewal Agreement for captive use was entered into on 30.6.2012 between the Petitioner and the 1st Respondent, TANGEDCO, in the Commission approved format for a period of 5 years.

1.15. The Energy Wheeling Agreement for captive use was originally for wheeling of 5 MW of energy generated by the CCP, wheeling to 15 captive users, as set forth in the Annexure to the Energy Wheeling Agreement dated 30.06.2012 and consequent upon an amendment to the Agreement dated 04.07.2013, the said capacity was changed to 6 MW under long term open access to 15 Nos. of same captive users covered under the Energy wheeling Agreement.

1.16. The long term open access customer under the regulations is the Petitioner. The consumers as set forth in the Annexure are the Petitioner's consumers and it is in the exercise of the right of open access guaranteed in the Electricity Act, 2003 that the Petitioner is supplying power to such captive consumers. Insofar as the charges payable are concerned, the Petitioner states that it has been regular in making payments strictly in accordance with the terms of the applicable tariff orders.

1.17. Insofar as the impugned demand relating to scheduling and system operation charges is concerned, it is submitted that the Ld. TNERC in accordance with the powers granted under section 62 & 86 of the . Electricity Act read along with the Intra-State Regulations and Policies in force, issues Tariff Orders for matters regarding generation, transmission and wheeling and sale of electricity regarding generation, transmission and wheeling and sale of electricity etc. For the first time, subsequent to the framing of the regulation in 2005, this Ld. Commission issued tariff order dated 15.05.2006 being Tariff Order No.2 of 2006 - Order on "Determination of Transmission Charges, Wheeling Charges, Cross Subsidy surcharge and Additional Surcharge", inter alia, notifying the schedule and system operation charges as follows:

"5.20 SCHEDULING AND SYSTEM OPERATION CHARGES 5.20.1 TNEB in their petition have not included scheduling and system operation charges and reactive energy charges on the grounds that their accounting system does not have spilt up details to claim such charges. They have requested the Commission to fix appropriate charges for these activities.

5.20.2 The Commission in this regard has taken note of the charges specified by the Central Electricity Regulatory Commission and other Commissions and arrived at the rate.

5.20.3 The Commission fixes composite scheduling and system operating charges as below;

- i. Long-term open access customers - Rs.1000 per day or part of the day.
- ii. Short-term open access customers - Rs.500 per day / per transaction.
- iii. The above charges are payable to State Load Dispatch Centre.”

1.18. Subsequent thereto, the charges were further revised in 2012 in Tariff Order No. 2/2012 dated 30.03.2012 and the relevant portion in that regard reads as follows:

"4.4 SCHEDULING AND SYSTEM OPERATION CHARGES

4.4.1 TANTRANSCO has submitted that Scheduling and System Operating Charges should be Rs. 2000 per day or part of the day for long term as well as short term open access customers} as approved by Central Electricity Regulatory Commission (CERC).

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

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

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

“Operating Charges

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

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

1.19. Finally, a further tariff order in T.P. No.2 of 2013 dated 20.06.2013 for the determination of intra state transmission tariff and other related charges was issued by the Ld. TNERC. The relevant portion in that regard is extracted herein below:

"Scheduling and System Operation Charges Stakeholder Comments

2.1.142

SLDC has still not been ring fenced and the TANTRANSCO is performing functions of SLDC. This is despite TNERC directive to TRANSCO to submit the status of ring fencing of SLDC within 90 days and that SLDC should submit its ARR for regulatory approval. In case of continued non-compliance that the Commission should exercise its considerable powers and secure compliance.

2.1.143

Considering that TANTRANSCO itself is claiming all costs including those of SLDC, it is hard to understand the logic behind demand for separate system and scheduling charges. The Commission may consider setting transmission charges and scheduling and system operation charges separately provided ARR of SLDC is filed separately and such cost is reduced from cost claimed by TRANSCO.

Commission's View

2.1.144

The revenue from Scheduling and System Operation Charges has been deducted from the Annual Revenue Requirement of TANTRANSCO. The same methodology will continue to be applied until separate orders with regard to ARR and Charges for SLDC are approved by the Commission.

2.1.145

In this Order, Commission has also directed TANTRANSCO for ring fencing of SLDC and filing a separate tariff Petition from next year.

Scheduling and System Operation Charges

5.23

In its last tariff order, Commission has approved Scheduling and System Operating Charges of Rs. 2000 per day for long term as well as short term open access customers.

5.24

TANTRANSCO in its Petition has prayed the Commission to approve Rs.2500/- per day or part of the day} as Scheduling and System Operating Charges for Long Term and Short Term open access customers. TANTRANSCO has submitted that 25% hike in the charges is proposed because TANTRANSCO will incur major cost during the second control period for streamlining the process of scheduling and energy accounting and also to obtain the operational efficiency.

5.25

Commission has directed to submit the status of ring fencing of SLDC and submit a separate Petition for approval of its ARR. Pursuant to this direction SLDC has filed a Petition on 23rd April 2013. However, Commission has not admitted this Petition as it was filed late and the expenses were already included in the TANTRANSCO Petition filed on 19th February 2013.

5.26

Since sufficient data for justifying the hike of scheduling and system operation charges has not been provided by TANTRANSCO, Commission is maintaining status quo and is approving scheduling and system operation charges of Rs.2000/ day or part of day.

5.27

Commission again directs TANTRANSCO to file separately the Petition for SLDC charges along with transmission Petition from next year onwards in the time frame specified in the regulation. "

1.20. It is evident on a comparison between the tariff order of 2012 and 2013, that the terminology used is identical. The charges that are payable towards the Scheduling and System operation charges for a long term open access customer is clearly fixed on Rs.2,000/- per day as a composite charge and the said position, as set out in 2012 tariff order, has been continued exactly upon the same terms and the language in the 2013 tariff order. Thus, it is clear that the charges of Rs. 2,000/- per day are collectable only from the open access customer i.e., the Petitioner herein as a composite portion of Rs.2,000/- per day. This interpretation is further buttressed by the fact that subsequently

when bilateral transactions became the basis for calculation, the scheduling and system operation charges were reduced to about 10% of the charges under the relevant tariff orders, which shows that for the period in question, the charges were only a composite charge. The term "composite" implies all clubbed together i.e., the total power exported to the grid. The total exported power only is continuously monitored vis-a-vis total scheduled at LDC and not consumer wise much less HT service connection wise.

1.21. The charges in that regard have been regularly raised to it, consequent to the coming into force of 2012 tariff order and the Petitioner has been regularly paying the same. Even after the coming into force of 2013 order, the same manner of calculation and methodology has been adopted and the charges were being paid at Rs.2000/ per day by the Petitioner. It is evident that even the Respondents have clearly understood the intent and provisions of the Tariff order and had only been levying charges at the rate of Rs.2,000 / - per day. Having done so, there exists no basis or ground for changing the methodology of collection.

1.22. While so, the BOAB Audit had issued an audit slip and pursuant thereto, the CFC, Revenue, 3rd Respondent herein had issued the impugned communication dated 29.08.2013 wherein he has, with respect to scheduling and system operation charges, wrongly cited the applicable charges as Rs.2,000/ - per day per transaction claiming the same to be what is provided for under the tariff orders.

1.23. The tariff order clearly demonstrates that the said interpretation is entirely incorrect. On the basis of such incorrect interpretation, the 4th Respondent,

Superintending Engineer, vide communication dated 13.09.2013, worked out the scheduling and system operation charges for the period retrospectively from 01.04.2012, resulting in a significant demand of Rs.1,45,04,000/-. Further compounding this error, the 4th Respondent has subsequently issued another demand letter dated 24.05.2023, seeking Rs.6,74,04,862/- as System and Scheduling Charges calculated retrospectively from 2014 onward.

1.24. It is clear that the 4th Respondent charged the applicable rates upon the Petitioner but has made the charges applicable in respect of each of its consumers and therefore multiplied the daily charge artificially by multiplying it 15 times over, which is wholly impermissible. The reading of the tariff order has been done on an erroneous basis and even the tariff order of the CERC which is referred to by this Ld. Commission clearly distinguishes between the applicable charges that the long term open access consumer paying a fixed sum for a day or part thereof and the short term open access consumer paying a lesser amount on a transaction basis.

1.25. In any event, the said charge cannot be levied by artificially trading the consumer and the Petitioner as the regulations themselves provide that the scheduling and system operation charges can be levied and collected only from the long term open access customer which in this case, is only the Petitioner.

1.26. It would be pertinent to state that the Respondents themselves had in the past taken a position that the charges are per day and not per transaction. They are therefore estopped from changing their stance. There was a similar instance in October, 2012

wherein the jurisdictional officer had raised charges on the basis of each customer. In that instance, the 1st Respondent, TANGEDCO, first raised their Bill No.12/2012 -13 dated 18.10.2012 on the basis of Rs.2000/Day, thereafter the 1st Respondent, TANGEDCO, raised another Bill No.13/2012 -13 dated 22.10.2012 on the basis of Rs.2000/Day/Customer. The Petitioner objected to such revision by relying upon the applicable Orders and Regulations vide its letter dated 25.10.2012. Thereafter to avoid payment default, the Petitioner made the payment under protest vide its letter dated 27.10.2012. The 2nd Respondent TANGEDCO, after examining the issue reversed the excess payment in the month of January, 2013 in their Bill No.18/2012-13 dated 18.01.2013. These actions clearly demonstrate that the Respondent itself had previously correctly interpreted and applied the charges.

1.27. As per Section 32 of the Electricity Act and the TN Grid Code, the 2nd Respondent is the sole authority responsible for maintenance of the transmission system and the collection of all charges levied/ determined by the Ld. Commission. However, the levy was issued by the 1st Respondent, TANGEDCO through the 4th Respondent who lacks authority to do the same.

1.28. The Petitioner is constrained to file this petition, and it is legally entitled to do so. The Petitioner company has faced severe financial difficulties due to the ONGC's gas price increase, resulting in power generation falling below normal levels, and an unprecedented hike in natural gas prices to US\$8.5/MMBTU has significantly increased the Petitioner company's operational costs, resulting in a net loss of Rs.3.52 per unit

generated and consumed, thereby forcing the Petitioner company to cease their operations. Exacerbating these circumstances, the Respondents have inexplicably and baselessly altered the methodology for calculating scheduling and system operating charges, leading to unjustifiably high demands in letter dated 25.05.2023. Consequently, the Petitioner has been compelled to make payments under protest in response to the erroneous demands issued by the 4th Respondent in letter dated 14.06.2023. The ought to be awarded the costs of the petition including court fees and the legal expenses incurred thereunder.

1.29. The Petitioner is making payment of the sums demanded under protest and therefore craves leave to waive the paying of the Court Fee of Rs.6,74,049/- (Rupees Six Lakhs Seventy Four Thousand and Forty Nine only) being 1 % of the 'amount in dispute' as required to be paid under the Regulations. This is for the reason that the Commission has already made a determination on the issue and this demand may be viewed in the context of such demand and considered for maintainability. The minimum fixed court fee for DRP is therefore being paid.

1.30. The present petition has been filed within the period of limitation. All demands relate to sums due which are well within the 3 year period from arising of the cause of action.

2. Counter Affidavit filed on behalf of the Respondents :

2.1. The present petition is filed challenging the action of the 4th Respondent in making a demand for a sum of Rs.6,74,04,862/-for scheduling and system operation charges, calculated at the rate of Rs.2,000/- per day per transaction, retrospectively from 2014 onward alleging that the said demand is based on an erroneous interpretation of the tariff order issued by this Ld Commission in T.P. No.2 of 2013 dated 20.06.2013 and the order rendered by the Commission in D.R.P. No. 26 of 2013, dated 10.11.2020, in which, the petitioner alleges that Ld Commission erroneously arrived the findings.

2.2. The petitioner pursuant to the orders passed by the Hon'ble High court of Madras in W.P. No. 27315 of 2013 dated 08.07.2022 directing the petitioner to approach the Commission. Extract of the order is submitted hereunder:

(1) Mr.Rahul Bajaj, learned counsel for the petitioner that the present writ petition has been filed challenging the billing towards Scheduling and System Operation Charges

(2) This Court in W.P. No. 10490 of 2013 had while dealing with similar challenge directed the petitioner therein to approach the Tamil Nadu Electricity Regulatory Commission (TNERC) as could be seen from the following extract:

"In view of the above submission made by the learned Senior Counsel appearing for the petitioner and the learned Advocate General appearing for the Respondents, by consent; the following is passed:-

(1) The Writ petition is disposed of with direction to the petitioner to approach the TNERC seeking the relief which has been prayed in this writ petition raising all the contentions raised in this writ petition as well as other contentions available for the petitioner 08.07.2022

(3) The counsel for the petitioner that the TNERC has now decided the issue against the consumers rejecting the contentions raised by the consumers.

(4) In view of the above submissions / development, the writ petition is dismissed. No Costs. Consequently the connected miscellaneous petitions are closed. However the, petitioner is granted liberty to work out the remedy in accordance with law.

2.3. Subsequent to the dismissal of the Writ Petition, demand to pay the Scheduling and System Operation charges was issued by Lr. No.5E/TEDC/ Thiruvarur/ AO/ AS/ HT / F.SEDCO/ D. No. 50/2023 dated 24.05.2023. The petitioner in and by letter dated 14.06.2023 came forward to pay the amount "under Protest" and also requested for 12(twelve) instalments to remit the dues.

2.4. Considering the financial hardships explained by the petitioner and also adhering the instructions issued in Memo No. CE/CommI/EE3/AEE2/F. Billing/2005 (Tech. Br) dated 18.01.2005 as also on the strength of the undertaking executed by the Petitioner 12 (Twelve) equal monthly installments are permitted to pay the demand along with the Belated Payment Surcharge due therein. The installments commenced from August 2023 and to end on July 2024. The Petitioner has paid 8 (Eight) installments so far up to March 2024.

2.5. Now, that the petitioner had filed the above DRP No.1 of 2024 and this written submission is filed before the Commission by the respondents 2nd, 3rd, and 4th. Previously the petitioner company was under the jurisdiction of Nagapattanam EDC and on bifurcation of the Nagapattinam EDC into Nagai and Tiruvarur EDCs, the petitioner company is now under the jurisdiction of Tiruvarur EDC with effect from 07.03.2011

B. The Brief Submissions that are germane are as follows:

a. The Petitioner is M/s. Southern Energy Development Corporation Ltd having a Natural Gas based Group Captive Power Plant with installed capacity of 7.98 MW at Nallur Village, Mannargudi Taluk, Tiruvarur District. The power plant is under the Jurisdiction of Tiruvarur EDC. Open access approval has been accorded to the petitioner to wheel power to their captive users (15 Nos. HT Consumers) and surplus power supplied to TANGEDCO.

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

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

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

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

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

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

2.7. The Commission has fixed the Scheduling and System Operation Charges in the Tariff Order No. 2, dated 15.05.2006 as reproduced below:

i. Long term open access customers - Rs.1000 per day or part of the day

ii. Short-term open. access customers - Rs. 500 per day / per transaction

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

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

"Operating Charges

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

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

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

2.10. Conjoint reading of clauses 4.4.3 and 4.4.4 above, would clearly reveal that the Scheduling and System Operating Charges are applicable on per transaction basis

irrespective of long term or short term of open access category. Accordingly, the Scheduling and System Operating Charges of Rs.2000/- for each bilateral transaction is being collected from all the open access customers in Tamil Nadu with effect from 01.04.2012.

2.11. It is respectfully submitted that, by misinterpreting the Clauses 4.4.3 and 4.4.4 of the TNERC Tariff order No. 2 of 2012, dated 30.03.2012, the petitioner had tried for unjust enrichment and to deny the respondent's legitimate dues flowing from the TNERC's Tariff Order. In furtherance of the same, the petitioner is interpreting the above clause to its convenience, and refused to pay for each bilateral transaction. The petitioner is conveniently overlooking the word "each bilateral transaction" in the petition and misinterpreting the above clause and alleges that only Rs.2000/- per day or part of the day for all transactions. Hence a demand notice was issued calling upon the petitioner to remit a sum of Rs.6,74,04,862/- towards short levy of Scheduling and System Operation Charges.

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

2.13. The operating charge includes fee for Scheduling, System Operation, energy accounting and collection and disbursement of charges. Accordingly, even though the

power injection falls in one distribution circle with single point, the drawal points of the open access consumers are located in various distribution circles which involve separate energy accounting and energy adjustment at the respective Electricity Distribution Circles.

2.14. For all the intra-state and inter-state (both bilateral and collective) open access transactions, the Scheduling and System Operation Charges of Rs.2000/- per day for each bilateral transaction is being collected though the injecting entity is the same generator. Hence the claim to the tune of Rs.6,74,04,862/- is in accordance with the prevailing Tariff Order and rules of construction of statutory provisions.

2.15. All the open access customers (both intra and inter-state) of various States in India are paying such charges as per the provisions of CERC/SERC regulations/orders in terms of each bilateral transaction, Le., taking into account the specified seller and each buyer of such seller, the same is being mis- interpreted by the petitioner.

2.16. As regards to the petitioner's allegation that the demand has been issued on the wrong interpretation of Tariff order No. T.P. No.2 of 2013 dated 20.06.2013 and the order of the Commission in D.R.P. No. 26 of 2013 dated 10.11.2020 is based on erroneous findings, the Commission in exercise of power conferred by clause (b) of sub section (1) of Section 62 and clause (a) of subsection(I) of Section 86 (1) (a) of the Electricity Act 2003, (Central Act 36 of 2003), and after taking into account the stipulations in the National Electricity Policy and the Tariff Policy, TNERC (Terms and conditions for determination of Tariff Regulations 2005, TNERC (Terms and Conditions

for Determination of Tariff for Intra state Transmission / Distribution of Electricity under MYT Framework) Regulations, 2009, and all other powers here unto enabling in that behalf and after considering the views of the State Advisory Committee meetings in accordance with section 88, after examining the comments received from the stakeholders and after considering suggestions and objections received from the public during the public hearings as per section 64, the Tamil Nadu Electricity Regulatory Commission, passed order on intra-state transmission tariff and other related charges. Therefore the contention of the petitioner that the orders are based on erroneous findings of the Commission is untenable.

2.17. As per orders of the Commission Scheduling and System operation charges are being collected from each of the captive consumers (viz., HT consumers) through their High tension bills and credited to TANTRANSCO. The High Tension bills are being issued by TANGEDCO and therefore the short levy in billing of Scheduling and System Operation charges are also demanded by TANGEDCO. As such there is no lack of authority as alleged by the petitioner.

2.18. As per Regulation 12(1) of the Tamil Nadu Electricity Supply Code, *"in the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of over charges"*. In the case of the petitioner herein the Scheduling and System operation charges were short billed to the individual High tension captive

consumers of the petitioner. On finding that the charges were being undercharged, the undercharges are demanded as per the above said Regulation. The demand is lawful as per Tariff order of the Commission and the Respondents are entitled to collect the undercharges. The Petitioner being the captive generator, having agreed to the terms of Energy Wheeling Agreement with TANGEDCO, is therefore liable to pay the undercharges billed on Scheduling and System Operation charges.

2.19. In view of the Commission's Tariff Order clearly laid down that the Scheduling and System Operation Charges are to be levied at Rs.2,000/- per day or part of the day for each bilateral transaction and in view of the submissions set out herein above, the D.R.P. No.1 of 2024 deserves to be dismissed with exemplary costs.

3. Findings of the Commission:-

3.1. The present petition has been filed to set aside the action of the Respondents in seeking to levy Scheduling and System Operation Charges vide letter dated 29.08.2013 from the 3rd Respondent, the Chief Financial Controller (General), TANGEDCO, with Reference no. Lr. No.CFC/FC/DFCI AAO-HT 1 AS.3 ID.No.124 113 which fixed the scheduling and System Operation Charges at Rs.2000/- per day per transaction. The petitioner has also challenged subsequent communications dated 13.09.2013 and 24.05.2013 of the 4th Respondent culminating in levy of Rs.6,74,04,862/-.

3.2. It is the contention of the petitioner that the Scheduling and System Operation Charges have to be levied on per day basis and not on per transaction basis. In this connection, it is noted that in the same subject matter this Commission has passed a

detailed order dated 10.11.2020 in D.R.P.No.26 of 2013 which, in our view, squarely covers the present matter. The relevant portions of the said order are reproduced for ease of reference

“In view of the Commission’s said stand in under Para (iii) which is in line with the Regulations of the CERC, the Scheduling and System operation charges are undoubtedly to be levied for every transaction between a specified buyer and a specified seller as defined above. Though, the petitioner is a single generator i.e., specified seller at point of injection, the consumer (HT user end service) i.e., specified buyer who draws power at different drawal points cannot be clubbed together since destinations are scattered here and there in the State. Though, the transaction is in the nature of intra-state, each transaction with the open access customer involves separate Energy accounting, scheduling, system operation and collection/disbursement of charges, etc. Looking only on the Seller side and closing the eyes of the user end, the energy accounting cannot be thought of. The petitioner’s contention if accepted would lead to even hundreds/thousands of consumers getting their energy allotted by a Seller but be treated as single transaction which may not be correct. Moreover, the 3rd Respondent (SLDC) has stated that the Scheduling and System Operation Charges @ Rs.2000 per day for each bilateral transaction is collected from all other intra-state and inter-state open access transaction customers. The petitioner failed to prove his contention with the legal provisions, therefore it is not maintainable. Therefore the prayer of the petitioner to consider the total scheduled power at LDC, as a single transaction though it is for different open access customers is not acceptable by this Commission.”

3.3. In view of the above categorical finding rendered by this Commission in D.R.P.No.26 of 2013 that Scheduling and System Operation Charges are to be levied on the basis of per transaction and not on per day basis, it is pellucid that the challenge made by the petitioner to the impugned letters dated 29.08.2013, 13.09.2013 and 24.05.2023 is not sustainable under law. As a corollary, this Commission has to arrive at the ultimate conclusion that the petitioner is not entitled to any of the relief claimed in the petition .

3.4. In fine, this Commission decides that there is no merit in the petition.

In the result, the petition is dismissed. Parties are directed to bear their respective cost.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**