

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**

**Order of the Commission dated this the 02<sup>nd</sup> Day of January 2025**

**PRESENT:**

**Thiru K.Venkatesan**

.... **Member**

**and**

**Thiru B.Mohan**

.... **Member (Legal)**

**D.R.P. No.8 of 2024**

Mytrah Vayu (Manjira) Pvt. Ltd.

Through its Authorized Representative

Having its registered office at #8001, Q-City, S.No.109

Nanakramguda Gachibowli, Hyderabad – 500 032.

... Petitioner

(M/s.Khaitan & Co. LLP)

Versus

1. Tamil Nadu Generation and Distribution Corporation Limited  
Through its Chairman cum Managing Director  
NPKRR Maligai, 144, Anna Salai,  
Chennai - 600 002.
2. Tamil Nadu Generation and Distribution Corporation Ltd.  
Through its Director Finance  
NPKRR Maligai, 144 Anna Salai,  
Chennai – 600 002.
3. Tamil Nadu Generation and Distribution Corporation Ltd.  
Through its Superintending Engineer  
Dindigul Electricity Distribution Circle  
Meenakchinaickanpatti Post,  
Dindigul – 624 002.
4. Tamil Nadu Generation and Distribution Corporation Ltd.  
Through its Superintending Engineer  
Erode Electricity Distribution Circle  
949 E.V.N Road, Erode – 638 009.

5. Tamil Nadu Generation and Distribution Corporation Ltd.,  
Through its Superintending Engineer  
Coimbatore Electricity Distribution Circle  
Tatabad, Coimbatore – 641 012.
  
6. Tamil Nadu Generation and Distribution Corporation Ltd.  
Through its Superintending Engineer  
Tirupur Electricity Distribution Circle  
Door No.208-650 KRBS Tower, 3<sup>rd</sup> Floor  
Mettupalayam Bus Stop, P.N. Road,  
Tirupur – 641 602.

... Respondent  
Tvl.N.Kumanan & A.P.Venkatachalapathy  
Standing Counsel for TANGEDCO

This Dispute Resolution Petition stands preferred by the Petitioner Mytrah Vayu (Manjira) Pvt. Ltd., with a prayer to-

- a) Direct the Respondent to pay an amount of Rs.40,58,54,851/- (i.e., principal amount of Rs.22,00,57,921/- and interest at the rate of 1% i.e., Rs.18,57,96,930/-) as on 10.04.2024, towards the unutilized banked energy for FY 2014-2015, FY 2015-16 and FY 2016-17, within 30(thirty) days;
- b) Direct the Respondent to make payment of pendent lite interest on the amount as mentioned in prayer (a) above, till the date of actual payment by the Respondent;

This petition coming up for final hearing on 24-09-2024 in the presence of Mr.Amit Kapur, Mr.Srishti Rai, Ms.Divya Chaturvedi and Mr.Abhishek Nangia, M/s.Khaitan & Co. LLP Advocates from on behalf of the petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the TANGEDCO and on

consideration of the submissions made by the Counsel for the Petitioner and the Respondent, this Commission passes the following:

## **ORDER**

### **1. Contention of the Petitioner:-**

1.1. The present Petition is being filed by Mytrah Vayu (Manjira) Private Limited (“**Petitioner**”/“**Mytrah**”) under Section 86(1)(b) and Section 86(1)(f) of the Electricity Act, 2003 (“**Electricity Act**”) read with the provisions of the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 entered between the Petitioner and the Respondent, Tamil Nadu Generation and Distribution Corporation Limited (“**Respondent**”/“**TANGEDCO**”), seeking directions to be issued to the Respondent for making the payment to the tune of Rs.40,58,54,851/- (including interest @ 1% per month as on 10.04.2024) towards the unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17, in terms of:

- (a) Tariff Order No. 06 of 2012 dated 31.07.2012 [**Para 8.2.14**] and Tariff Order No. 03 of 2016 dated 31.03.2016 [**Para 10.11.7**] passed by the Commission, wherein the Commission has allowed encashment of unutilized banked energy as on 31<sup>st</sup> March every year at 75% of the applicable wind energy tariff;

- (b) Article 6 of the Wind Energy Wheeling Agreements dated 29.05.2014 entered into between the Petitioner and Respondent, for wheeling of power to its 16 (sixteen) captive consumers during FY 2014-15, which provides for encashment of the unutilized banked energy at 75% of the normal purchase rate;
- (c) Article 6 of the Wind Energy Wheeling Agreements dated 04.09.2015 entered into between the Petitioner and Respondent, for wheeling of power to its 19 (nineteen) captive consumers during FY 2015-16, which provides for encashment of the unutilized banked energy at 75% of the normal purchase rate;
- (d) Article 6 of the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the Renewable Energy Certificate mechanism (“**REC**”) dated 07.10.2016 [for wheeling of power to 30 (thirty) captive consumers] and 15.02.2017 [for wheeling of power to 42 (forty-two) captive consumers], during FY 2016-17, which provides for encashment of the unutilized banked energy at 75% of the relevant purchase tariff/APPC tariff; and
- (e) Letter dated 25.08.2023 issued by the Respondent certifying/confirming that the Petitioner’s wind plant/s have fulfilled the requirements under Rule 3 of the Electricity Rules, 2005 to be entitled to Captive Generating Plant (“**CGP**”)

status during FYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

1.2. The Respondent has never disputed/contested the Petitioner's claim(s) but proceeded to withhold an aggregated amount of Rs.22,00,57,921/-(excluding the applicable interest) due and payable to the Petitioner towards unutilised banked energy/units for FYs 2014-15, 2015-16 & 2016-17, despite *inter-alia*:

- (a) Repeated reminders/requests by the Petitioner vide its letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021, 15.05.2023 and 13.02.2024 for payment of the unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17; and
- (b) Inordinate and substantial delay in verification of the CGP status of the Petitioner for FYs 2014-15, 2015-16 and 2016-17 for the purposes of releasing the payments towards the unutilized banked energy/units, as communicated by the Respondent belatedly vide its letter dated 25.08.2023.

1.3. On account of the substantial and inordinate delay of over 8 (eight) years since the claim for FY 2014-15 was first made by the Petitioner on 16.08.2015, in verification of the Petitioner's CGP status by the Respondent and the consequent withholding of an amount to the tune of Rs.22,00,57,921/- (excluding the applicable interest), the Petitioner is undeservedly suffering significant financial distress and unable to *inter-alia* fulfil its

obligations under its Power Sale Agreement(s) with the captive consumers as well as to repay its loans and serve its debtors on time.

1.4. The Petitioner's claim in the present Petition is no longer *res-integra* since the Commission has previously by the following Order(s) directed the Respondent (*albeit in context of different wind energy generators and control period/Tariff Order*) to disburse the payments towards unutilized banked energy, along-with applicable interest:

- (i) **Order dated 22.09.2020 in DRP No. 67 of 2014: Arulmozhi Spinning Mills Pvt. Ltd. vs. Superintending Engineer, TANGEDCO & Ors. [FY 2011-12].**

*"2. This petition has been filed to direct the respondent to make payment of cash equivalent for unutilized banked energy refused by Superintending Engineer/Tirunelveli EDC on the grounds of not fulfilling 51% of energy generated and utilized in our own industry.*

...

*8.2.. We are of the view that the payment for the unutilized energy and collection of Cross Subsidy Surcharge are two different issues which cannot be interlinked as they operate on different spheres. The payment for the unutilized banked energy purely arises out of supply of energy by a generator to a distribution licensee and it is governed by the relevant Tariff Order. However, the collection of Cross Subsidy Surcharge arises out of failure to adhere to the Electricity Rules, 2005 and stands on a different footing. Hence, we find that there is no reason to interlink these two issues. Insofar as the present petition is concerned, the grievance of the petitioner is that the payments have not been made for the unutilized energy and hence the issue cannot travel beyond the same and it has to confine itself to the fact whether payments have been made by the licensee or not. On perusal of the records, we find that no such payment has been made for unutilized banked energy and the same is withheld on account of the issue of Cross Subsidy Surcharge.*

*We are to observe here that it is not appropriate to withhold the payment due on unutilized banked energy on such ground of non-payment of Cross Subsidy Surcharge. In such circumstances, we order that the payment for the unutilized banked energy in full as prayed for along with interest @ 1% per month to be released within 30 days time. With these observations and directions, the petition is allowed.”*

- (ii) **Order dated 05.10.2023 in DRP No. 06 of 2023: Vagarai Wind farm Ltd. vs. Superintending Engineer, TANGEDCO & Ors. [FY 2020-21 and FY 2021-22].**

*“1.1 The present petition has been filed by M/s. Vagarai Wind farm Limited (VWL/ Petitioner) because Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO / Respondent) has failed to duly pay the invoice of unutilized banked units for FY 2020-21 and FY 2021-22 of Rs.5.26 Crores despite the repeated reminders from VWL.*

*...*

*5.4. The Hon’ble APTEL, has also in its order dated 17-04-2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been upheld by the Hon’ble Supreme Court in CFC Vs. Narasinghadas Agarwal in Review Petition (Civil) No. 1606 of 2018 in Appeal No. 5465 of 2014 dated 16-08-2018.*

*5.5. In view of the above, this Commission conclude that the Respondent TANGEDCO is liable to pay 1% interest per month on delayed payment as per the Tariff Order in force on the balance amount that remains unpaid to the petitioner.*

*5.6. In the result, the respondents are directed to verify the claim made by the petitioner towards banking units settlement in terms of invoice dated 12-05-2022 as stated in prayer (a) of the main petition and settle the invoice amount together with interest at the rate of 12% per annum to the petitioner within 30 days from the date of receipt of this order as*

*per applicable Tariff Orders after deducting payments, if any already made. In the circumstances, there will be no order as to costs.*

*The D.R.P. No. 6 of 2023 is finally disposed of with the above direction.”*

1.5. The Petitioner is a wind energy generator/generating company in terms of Section 2(28) of the Electricity Act, 2003 (“**Electricity Act**”) having its registered office at #8001, Q-City, S. No. 109, Nanakramguda Gachibowli, Hyderabad-500032. The Petitioner has been incorporated under the Companies Act, 1956 and is in the business of setting up wind energy generators to meet the captive power requirements of its equity shareholders on an ongoing basis. The Petitioner has installed 100.5 MW of Wind Turbine Generators (WTG) i.e., 67 (sixty-seven) WTGs of 1.5 MW each (“**Project**”) in Tirupur District, Tamil Nadu, under the group captive business model. The said 67 (sixty-seven) WTG were commissioned between 01.06.2014 to 22.02.2015. The Petitioner has accordingly entered into the afore-mentioned Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 with the Respondent, to wheel the power generated from the wind energy turbines/generators to the captive users during FYs 2014-15, FY 2015-16 and FY 2016-17, as detailed in the succeeding paragraphs.

1.6. The Respondent is the successor entity of the erstwhile Tamil Nadu Electricity Board (“**TNEB**”), which was created pursuant to the unbundling of the erstwhile TNEB into the Respondent and Tamil Nadu Transmission Corporation Limited. Pursuant to the



unbundling, the Respondent carries on the distribution business of the erstwhile TNEB and is a distribution licensee in terms of Section 14 of the Electricity Act, having its registered office at 6<sup>th</sup> Floor, Eastern Wing, NPKRR Mailgai, 144, Anna Salai, Chennai 600002.

1.7. On 10.06.2003, the Electricity Act was enacted to *inter-alia* consolidate the laws relating to generation, distribution and use of electricity. Notably:

- (a) Section 3(1) mandates the Central Government to prepare the National Electricity Policy and Tariff Policy, in consultation with the State Government/Central Electricity Authority, for development of the power system based on optimal utilization of renewable sources of energy;
- (b) Section 61(h) mandates the Appropriate Commission to specify the terms and conditions for determination in tariff, by being guided by the promotion of generation of electricity from renewable sources of energy; and
- (c) Section 86(1)(e) mandates the State Commission to promote generation of electricity from renewable sources of energy.

In this regard, the relevant excerpts from the Electricity Act are set out below for the ease of reference:

*“Section 3. (National Electricity Policy and Plan) --- (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.*

...

*Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the*

*determination of tariff, and in doing so, shall be guided by the following, namely:-*

...

*(h) the promotion of co-generation and generation of electricity from renewable sources of energy;*

...

*Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

...

*(e) promote co-generation 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 specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;"*

1.8. On 12.02.2005, pursuant to Section 3 of the Electricity Act, the Central Government notified the National Electricity Policy. Clause 5.2.20 of the said Policy provides for exploitation of the feasible potential of wind energy sources to create additional power generation capacity. Further, Clause 5.12.2 of the Policy *inter-alia* envisages for promotion of generation of electricity through non-conventional sources and for progressive increase in the share of electricity from non-conventional sources. In this regard, the relevant excerpts from the National Electricity Policy are set out below:

*"5.2.20 Feasible potential of non-conventional energy resources, mainly...wind...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.*

...

*“5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the State Electricity Regulatory Commissions (SERCs) by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.”*

1.9. The National Tariff Policy, 2016 was notified by the Central Government amending the then existing National Tariff Policy, 2006 under Section 3 of the Electricity Act, which *inter-alia* provides as follows:

*“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:*

*(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*

*...*

*(iii) It is desirable that purchase of energy from renewable sources of energy takes place more or less in the same proportion in different States. To*

*achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be promoted. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations...*

*(iv) Appropriate Commission may also provide for a suitable regulatory framework for encouraging such other emerging renewable energy technologies by prescribing separate technology based REC multiplier (i.e granting higher or lower number of RECs to such emerging technologies for the same level of generation). Similarly, considering the change in prices of renewable energy technologies with passage of time, the Appropriate Commission may prescribe vintage based REC multiplier (i.e granting higher or lower number of RECs for the same level of generation based on year of commissioning of plant) ...”*

1.10. On 08.02.2008, in exercise of powers under Sections 181, 61(h) and 86(1)(e) of the Electricity Act, the Commission notified the TNERC (Power Procurement from New and Renewable Sources of Energy), Regulations, 2008 (“**RE Regulations**”). The RE Regulations were thereafter amended on 01.12.2008, 24.12.2008, 27.04.2009, 14.12.2009, 07.01.2010, 20.07.2010, 18.03.2011, 01.07.2011 and 19.01.2023 and *inter-alia* envisage that the Commission may:

- (i) Issue a general/specific Tariff Order for purchase of power from new and renewable sources based generators; and

- (ii) Consider appropriate banking mechanism for generation of power from a particular kind of renewable source depending upon the inherent characteristics of such source.

Further, the RE Regulations also provide that the distribution licensee/State Transmission Utility may sign an Energy Wheeling Agreement. In this regard, the relevant provisions from the RE Regulations (as amended) are set out below for the Commission's ease of reference:

*"3. Promotion of new and renewable sources of energy*

*...*

***(4) The Commission may consider appropriate banking mechanism for generation of power from a particular kind of renewable source depending upon the inherent characteristics of such source.***

*...*

*4. Determination of tariff*

*(1) The Commission shall follow the process mentioned below for the determination of tariff for the power from new and renewable sources based generators, namely:*

*...*

*(d) issuing general / specific tariff order for purchase of power from new and renewable sources based generators.*

*(2) While deciding the tariff for power purchase by distribution licensee from new and renewable sources based generators, the Commission shall, as far as possible, be guided by the principles and methodologies specified by:*

*...*

*(b) National Electricity Policy*

*(c) Tariff Policy issued by the Government of India*

*...*

*7. Energy Purchase Agreement (EPA) and Energy Wheeling Agreement (EWA)*

*The distribution licensees shall file a model Energy Purchase Agreement (EPA)/ Energy Wheeling Agreement (EWA) after discussion with the generators/Open Access Customers for the approval of the Commission within one month of the issuance of tariff order by the Commission...**The distribution licensees/STU shall sign an Energy Wheeling Agreement taking cognizance of the energy wheeling principles elaborated in the general or special tariff order.***

1.11. On 31.07.2012, in exercise of powers under Section 181, 61(h) and 86(1)(e) of the Electricity Act read with Regulation 3(4) of the RE Regulations, the Commission passed a comprehensive Tariff Order on Wind Energy i.e., Order No. 06 of 2012. The aforesaid Order No. 06 of 2012 came into effect from 01.08.2012 and was applicable to all the agreements in relation to the wind machines commissioned on or after 31.07.2012 and during the control period. Further:

- (a) Order No. 06 of 2012 was held to be valid for a period of 2 (two) years from 31.07.2012 and the tariff period was 20 (twenty) years. Subsequently, on account of the challenge to the said Order before the Hon'ble Appellate Tribunal for Electricity ("**Hon'ble Tribunal**") and remand to the Commission, the validity of the said Order was extended upto the date of issuance of the next Tariff Order on wind energy.
- (b) Wind energy tariff was fixed at Rs. 3.51 per unit for the control period, applicable to the wind-mills commissioned on/after date of issuance of the Order.
- (c) Banking period was for a period of 12 (twelve) months commencing from 1<sup>st</sup> April and ending on 31<sup>st</sup> March of the following year. The energy generated during April was to be adjusted against consumption in April and the balance

if any, was to be reckoned as the banked energy. The generation in May was to be first adjusted against the consumption in May. If the consumption exceeded the generation during May, the energy available in the banking was to be drawn to the required extent. If the consumption during May was less than the generation during May, the balance was to be added to the banked energy and this procedure was to be repeated every month.

- (d) Banking charges were fixed at Rs. 0.94/kWh i.e., as the difference between the average power purchase cost of Rs. 4.45/kWh and the maximum preferential tariff for wind energy contained in the Order i.e., Rs. 3.51/kWh.
- (e) Unutilized energy as on 31<sup>st</sup> March every year was to be encashed at 75% of the relevant purchase tariff. However, if the licensee enforced restriction/control measures which restricted the wind energy generators from consuming their power, the unutilized energy at the end of the banking period was to be encashed at full value, as sale to the licensee.
- (f) With regards wind energy generators availing REC, 1 (one) month adjustment period was allowed and the unutilized energy lapsed.

In this regard, the relevant excerpts from Order No. 06 of 2012 are set out below :-

*“8.2.12.3...The banking charges would be the difference between the average power purchase cost of Rs.4.45 per kWhr, as arrived above, and the maximum preferential tariff for wind energy as contained in this Order. As per this Order, this amount would work out to Rs.4.45 (-) Rs.3.51 which is equal to Rs.0.94 per kWhr. This banking charge would be levied on all the units drawn from the bank in the month in which it is drawn and would continue till 31st March 2013. For arriving at the average power purchase cost applicable for the financial year 1st April 2013 to 31st March 2014, the details pertaining to the period April 2011 to March 2013 shall be considered and the revised average power purchase cost through bilateral trading would be worked out based on the details available in the CERC’s market monitoring report for the relevant period. In this type of calculation there is no need for any prior*

approval of the Commission in deciding the banking charges. TANGEDCO shall work out these details and publish the same in its website for the period 1-4-2013 onwards. A copy of the same shall also be submitted to the Commission.

8.2.13 The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the banking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.

**8.2.14 Unutilized energy as on 31st March every year may be encashed at the rate of 75% of the relevant purchase tariff.** As and when the distribution licensee enforces restriction and control measures and such measures restrict the WEGs to consume their power in any manner, the unutilized energy at the end of the banking period may be encashed at full value of the relevant tariff as sale to the licensee.

8.2.15 With regard to WEGs availing REC, one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in the case of conventional power.

...

#### 8.11 Billing and payment

8.11.1 When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

...

#### 8.18. Control period / Tariff Review Period.

Clause 6 of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 of the Commission specifies that the tariff as



*determined by the Commission shall remain in force for such period as specified by the Commission in such tariff orders and the control period may ordinarily be two years. Hence, the Commission decides the control period of this order shall be for two years from 1.8.2012 and tariff period is 20 years.*

#### *9. Wind energy tariff*

*9.1 Wind energy tariff is computed with reference to the determinants listed in para (7) of this order. The tariff works out to Rs. 3.51 per unit for the period up to 31-07-2014. The wind mills commissioned on or after the date of issue of this order shall be eligible for this tariff. The wind mills commissioned prior to 15-5-2006 shall be eligible for a tariff of Rs.2.75 per unit. The wind mills commissioned between 15-5-2006 and 18-9-2008 shall be eligible for a tariff of Rs.2.90 per unit. The wind mills commissioned between 19-09-2008 to the date of this order shall be eligible for a tariff of Rs.3.39 per unit.*

*9.2 Other related charges and terms and conditions specified in the order shall be applicable to all the wind energy generators, irrespective of the date of commissioning.”*

1.12. On 01.09.2012, in compliance with the Commission's Order No. 06 of 2012, the Respondent issued its Circular Memo No. Dir/Gen/TANGEDCO/EA/F. Wind Tariff Order No. 6/D.252/12 and provided *inter-alia* the following instructions:

- (a) Banking account was to be maintained slot-wise at the wind energy adjustment circle.
- (b) Banking period was to commence from 1<sup>st</sup> April and to end on 31<sup>st</sup> March of the following year.
- (c) Banking charges were fixed at Rs. 0.94/kWh.
- (d) Wind energy generators were permitted to wheel their power for their captive use by entering into an Energy Wheeling Agreement with the Respondent on

fulfilment of the captive norms stipulated in the Electricity Rules, 2005.

- (e) Unutilized banked energy as on 31st March every year was to be encashed at the rate of 75% of the relevant purchase tariff. As and when the licensee enforced restriction/control measures which restricted the wind energy generators to consume their power, the unutilized energy at the end of the banking period was to be encashed at full value, as sale to the licensee.
- (f) With regards wind energy generators availing REC Scheme, surplus energy after adjustment in the billing month was deemed to be lapsed.

1.13. Order No. 06 of 2012 passed by the Commission was challenged before the Hon'ble Tribunal vide **Appeal No. 197 of 2012: Beta Wind Farm (P) Ltd. vs. TNERC & Ors. and batch matters**, *inter-alia* on the issue of (i) encashment of lapsed/unutilized units by REC captive users; and (ii) rise of banking charges from 28.46 paise per unit to 94 paise per unit. The Hon'ble Tribunal by its common Judgement dated 24.05.2013 disposed of the said Appeals and remanded the matter back to this Hon'ble Commission on certain issues, including the issue of encashment of lapsed/unutilized banked units by REC captive users.

1.14. In compliance with the Judgement dated 24.05.2013 passed by the Hon'ble Tribunal, the Commission initiated the proceedings by way of R.A. No. 06 of 2013. On 31.03.2016, the Commission passed its Order in R.A. No. 06 of 2013, wherein the Commission *inter-alia*:

- (a) Affirmed and upheld the banking period of 12 (twelve) months/1 (one) year i.e., from 1st April to 31st March of the following year.

- (b) Fixed the banking charges at 10% of the energy banked.
- (c) In view of the Hon'ble Tribunal's findings in Appeal Nos. 45 of 2012 and 91 of 2012, 1 (one) year banking facility was extended to REC captive users as well and the encashment of lapsed unit was to be made at 75% of the applicable rate for REC captive users.
- (d) Tariff for wind energy generators covered under Order No. 06 of 2012 was recomputed and found to be Rs. 3.96 per unit (without Accelerated Depreciation and Rs. 3.53 per unit in case of generators who avail the benefit of Accelerated Depreciation).

In this regard, the relevant excerpts from the Order dated 31.03.2016 passed in R.A. No. 06 of 2013 are set out below:

*“(iv) Abnormal rise of Banking:*

*Decision of the Commission:*

...

*In light of the above analysis, the Commission decides that bringing back the old practice of levying banking charges in terms of percentage of energy banked and to progressively increase it over time is the best option left to it at the present juncture. To begin with it is decided to fix the banking charges at 10% of the energy banked. While fixing so, the Commission does not want to touch the banking period of one year from 1st April to 31st March in this order.*

...

*(vii) Banking facility and encashment of lapsed units by REC Captive users:*

...

*Decision of the Commission:*

*Appeal Nos. 45 and 91 of 2012 before the Hon'ble APTEL was for determination of any concession availed by the WEGs for availing the REC with respect to Transmission charges and banking facility...*

...

*As promotional/concessional facility, banking of energy for one year was provided to the wind energy generators alone and was extended time and*

*again. Though the wind sector has been adequately promoted in the State, the concession provided is being continued with in spite of the considerable impact on the finances of the distribution utility of the State. The impact of banking is meager in other states in view of the much limited concessions of banking available there. Hence, this benefit/concession was not extended to REC captive users since REC Regulations of CERC and TNERC mandate that REC wind generators should not avail any concession.*

***However, now, as per directions of Hon'ble APTEL this one year banking facility benefit applicable to non REC captive users is extended to REC Captive Users as well and the encashment of lapsed unit may be made at 75% of the applicable rate for REC users.***

*(viii) Based on the above decisions, the Tariff for Wind Energy covered under Order No.6 of 2012 dated 31-7-2012 is recomputed and found to be Rs.3.96 per kwh without considering the Acceleration Depreciation (AD) benefit to be availed by the consumers and Rs.3.53 per KWh in case of generators who avail AD benefit. Detail Tariff workings are placed as annexure I & II respectively.*

*(ix) The wind mills commissioned on or after 01.08.2012 shall be eligible for this recomputed tariff. Other related charges specified in this order shall be applicable to all the wind energy generators, irrespective of the date of commissioning.”*

1.15. On the same date i.e., 31.03.2016, in exercise of powers under Sections 181, 61(h) and 86(1)(e) of the Electricity Act read with Regulation 3(4) of the RE Regulations, the Commission passed a comprehensive Tariff Order on Wind Energy i.e., Order No. 03 of 2016. The aforesaid Order No. 03 of 2016 came into effect from 01.04.2016 and was applicable to all the wind machines commissioned during the control period. Further:

- (a) Order No. 03 of 2016 was valid for a period of 2 (two) years from 31.03.2016 and the tariff period was 25 (twenty-five) years.

- (b) Tariff for the windmills commissioned from 01.08.2012 to 31.03.2016 was fixed at Rs. 3.96 per unit (without accelerated depreciation and Rs.3.53 per unit with accelerated depreciation) *(as redetermined in the Order dated 31.03.2016 in R.A. No. 06 of 2013)*
- (c) Banking charges were fixed at 12% of the energy banked in kind.
- (d) Banking period was for a period of 12 (twelve) months commencing from 1<sup>st</sup> April and ending on 31<sup>st</sup> March of the following year. The energy generated during April was to be adjusted against consumption in April and the balance if any, was to be reckoned as the banked energy. The generation in May was to be first adjusted against the consumption in May. If the consumption exceeded the generation during May, the energy available in the banking was to be drawn to the required extent. If the consumption during May was less than the generation during May, the balance was to be added to the banked energy. This procedure was to be repeated every month.
- (e) Unutilized banked energy as on 31<sup>st</sup> March every year was to encashed at 75% of the applicable wind energy tariff.
- (f) With regards to wind energy captive generators availing REC, 1 (one) year banking facility was extended to these generators as well and the unutilized energy was to be encashed at 75% of the applicable rates notified by this Hon'ble Commission in the Orders issued on pooled cost of power purchase under the Renewable Energy Power Purchase Obligations, 2010.

In this regard, the relevant excerpts from the Order No. 03 of 2016 dated 31.03.2016 are set out below:

*“9.3. Billing and payment*

*9.3.1 When a wind generator sells power to the distribution licensee, the generator shall raise the bill every month for the net energy sold after*

*deducting the charges for power drawn from distribution licensee, reactive power charges etc. The distribution licensee shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month.*

...

#### *10.11. Banking period and Charges*

...

*10.11.6 The Commission decides to continue with the provision of banking period in this order also. The banking period shall be for a period of twelve months commencing from the 1st of April and ending on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the banking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.*

***10.11.7 Unutilized energy as on 31st March every year may be encashed at the rate of 75% of the respective applicable wind energy tariff rate fixed by the Commission.***

*10.11.8 The charges for banking specified in the order of 2012 has been set aside by the ATE in the order dt.24.5.2013 with a direction to reconsider the computation of the charges after hearing the stakeholders and in consideration of the orders in Appeal No.98 of 2010 dt.18.3.2011. In the order issued by the Commission in the remanded case taken up in R.A No.6 of 2013, banking charges has been fixed as 10 % in kind. The Commission decides to fix the banking charges in this order at 12% in kind.*

*10.11.9 The WEGs have requested to consider purchase of unutilised energy for the generators under REC scheme at APPC rates and to permit banking of energy. This issue has also been dealt in R.A No.6 of 2013 and Commission has passed orders to extend one year banking facility to WEGs*

*under REC scheme and encashment of unutilized units at 75% of the applicable rate for REC users.*

*Therefore, the Commission extends one year banking period to the WEGs under REC scheme. The unutilized energy may be encashed at 75% of the applicable rates notified by the Commission in the orders issued on pooled cost of power purchase under Renewable Energy Power Purchase Obligations, 2010.*

...

#### *11. Wind energy tariff*

*11.1... The tariff applicable to wind mills commissioned from 01-08-2012 to 31-03-2016 shall be as per the tariff re-determined in the order issued in R.A No.6 of 2013 dt. 31-03-2016 i.e. Rs.3.96 per unit without accelerated depreciation and Rs.3.53 per unit with accelerated depreciation benefit.*

...

#### *12. Directions*

*12.1 TANGEDCO/TANTRANSCO shall furnish monthly report of generation of wind energy and units banked, unutilised units by WEGs under REC scheme, the quantum of energy wheeled from the WEGs for captive consumption and third party sale and the quantum of energy purchased from the WEGs every month to the Commission.”*

1.16. Pursuant to issuance of the Tariff Order No. 03 of 2016 dated 31.03.2016, the Petitioner understands that during the months of and/or around April, 2016 to July, 2016, the Respondent had issued several internal memo(s)/letters/circulars to *inter-alia*:

- (a) Direct for action to be taken to verify the CGP status of the wind energy generators as per the Electricity Rules, 2005; and
- (b) Provide detailed instruction(s) on the procedure to be followed for maintaining the banking account for adjustment of wind energy for captive use.

These internal memos, circulars and instructions are germane to adjudicate upon the present Petition and the Commission may direct the Respondent to produce and/or place on record such internal memo(s)/letters/circulars which have been issued by the Respondent during the months of April-July, 2016 *inter-alia* in context of verification of CGP status and payment towards unutilized banked energy by exercising its powers under Regulation 25 of TNERC (Conduct of Business) Regulations, 2004 (as amended) read with Order XI, Rule 14 of the Code of Civil Procedure, 1908. A separate Interlocutory Application is being filed in this respect.

1.17. On 18.08.2016, in compliance with Order No. 03 of 2016, the Respondent issued its Memo No. CE/NCES/SE/EE/WPP/AEE2/F. Order No. 3 dt: 31.03.2016/D.1553/2016 to *inter-alia* provide as follows:

- (a) Wind energy generators were permitted to bank their surplus energy available after adjustment against consumption in that month.
- (b) Banking period was 1 (one) year i.e., from 1st April to 31st March of the following year.
- (c) Banking account was to be maintained slot-wise at generator end EDC in case of group captive generation and wheeling end EDC in case of 100% ownership captive generation.
- (d) Wind energy generators were permitted to wheel their power for their captive use by entering into an Energy Wheeling Agreement with the Respondent on fulfilment of the captive norms stipulated in the Electricity Rules, 2005.



- (e) Banking charges were fixed at 12% in kind to be deducted every-time on the banked energy.
- (f) Unutilized banked energy as on 31<sup>st</sup> March every year was to be paid at the rate of 75% of the relevant purchase tariff or APPC rate notified by this Hon'ble Commission (in case of REC scheme), unless the generator was prevented from off-taking the power, in which case the rate for compensation is 100% of the applicable tariff.

1. The Petitioner understands that during and/or around the months of March, 2017 to October, 2017, the Respondent issued some internal memo(s)/letters/circulars *inter-alia* to:

- (a) Lay out guidelines for verification of the CGP norms, in accordance with Rule 3 of the Electricity Rules, 2005; and
- (b) Provide working instructions (along-with illustrations) for revision of bills in respect of the wind energy captive users under preferential tariff as well as under REC Scheme (for the period between 01.08.2012 to 31.03.2016).

These internal memos, circulars and instructions are germane to adjudicate upon the present Petition and , the Commission may direct the Respondent to produce and/or place on record such internal memo(s)/letters/circulars which have been issued by the Respondent during the months of March-October, 2017 *inter-alia* in context of verification of CGP status and payment towards unutilized banked energy by exercising its powers under Regulation 25 of TNERC (Conduct of Business) Regulations, 2004 (as amended)

read with Order XI, Rule 14 of the Code of Civil Procedure, 1908. A separate Interlocutory Application is being filed in this respect.

1.19. The Respondent issued its internal memo/circular *inter-alia* instructing for all the invoices seeking payment of unutilized energy/injected energy to be kept in abeyance in respect of all generators with wheeling under captive category, till the CGP status is ascertained, on the basis of:

- (a) Internal documentation exchanged between the officials of the Respondent on the protocol for releasing payments towards the unutilized banked energy i.e., for the payment to be released only upon verification of the CGP status; and
- (b) Subsequent Order dated 22.09.2020 passed by the Commission in DRP No. 67 of 2014: Arulmozhi Spinning Mills Pvt. Ltd. vs. Superintending Engineer, TANGEDCO & Ors.

1.20. As detailed in the preceding paragraphs, the Petitioner has entered into the following Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme with the Respondent, which provides for encashment of the unutilized banked energy at 75% of the applicable wind energy tariff:

**(a) During FY 2014-15**

On 29.05.2014, the Petitioner entered into 37 (thirty-seven) identical Wind Energy Wheeling Agreements and 30 (thirty) identical Renewable Energy Wheeling Agreements under the REC Scheme, with the Respondent, each for a period of 20 (twenty) years, for wheeling of power to its 16 (sixteen) captive consumers, during FY 2014-15.

For the purposes of the present Petition, reliance is however being placed only on the 37 (thirty-seven) Wind Energy Wheeling Agreements, which provide for encashment of the unutilized banked energy at 75% of the normal power purchase rate. In this regard, the relevant excerpts from 1 (one) of the aforesaid Wind Energy Wheeling Agreements dated 29.05.2014 (*the banking provision is pari-materia in the other 36 Agreements*) are set out below:

***“6. Banking***

- a. The Wind Energy Generator shall bank the energy generated in the wind mill and the banking period shall be one year from April to March.*
- b. The unutilized portion of banked energy if any shall be purchased by the licensee at the rate of 75 % of the normal purchase rate.***
- c. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the unutilized energy at the end of the financial year shall be encashed at full value of the relevant tariff for sale to the Distribution Licensee.*
- d. The banking shall be done slot wise to enable unit-to-unit adjustment.”*

The Wind Energy Wheeling Agreement dated 29.05.2014 for WF-HT.SC. No. DRA 002 executed between the Petitioner and the Respondent is annexed herewith and marked

as **Annexure P-7**. The Petitioner further undertakes to place on record the remaining Wind Energy Wheeling Agreements dated 29.05.2014, as and when directed by the Commission.

**(b) During FY 2015-16**

On 04.09.2015, the Petitioner entered into 37 (thirty-seven) identical Wind Energy Wheeling Agreements and 30 (thirty) identical Renewable Energy Wheeling Agreements under the REC Scheme, with the Respondent, each for a period of 20 (twenty) years, for wheeling of power to its 19 (nineteen) captive consumers, during FY 2015-16.

For the purposes of the present Petition, reliance is however being placed only on the 37 (thirty-seven) Wind Energy Wheeling Agreements, which provide for encashment of the unutilized banked energy at 75% of the normal power purchase rate. In this regard, the relevant excerpts from 1 (one) of the aforesaid Wind Energy Wheeling Agreement dated 04.09.2015 (*the banking provision is pari-materia in the other 36 Agreements*) are set out below:

***“6. Banking***

*a. The Wind Energy Generator shall bank the energy generated in the wind mill and the banking period shall be one year from April to March.*

***b. The unutilized portion of banked energy if any shall be purchased by the licensee at the rate of 75 % of the normal purchase rate.***

*c. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the unutilized energy at the end of the financial year shall be encashed at full value of the relevant tariff for sale to the Distribution Licensee.*

*d. The banking shall be done slot wise to enable unit-to-unit adjustment.”*

The Wind Energy Wheeling Agreement dated 04.09.2015 for WF-HT.SC. No. DRA 002 executed between the Petitioner and the Respondent is annexed herewith and marked as **Annexure P-8**. The Petitioner further undertakes to place on record the remaining Wind Energy Wheeling Agreements dated 04.09.2015, as and when directed by the Commission.

**(c) During FY 2016-17**

On 07.10.2016, the Petitioner entered into 37 (thirty-seven) identical Wind Energy Wheeling Agreements and 30 (thirty) identical Renewable Energy Wheeling Agreements under the REC Scheme, with the Respondent, for wheeling of power to its 30 (thirty) captive consumers, during FY 2016-17. While the Wind Energy Wheeling Agreements dated 07.10.2016 are valid for a minimum period of 5 (five) years, the Renewable Energy Wheeling Agreements under the REC Scheme are valid for a period of 20 (twenty) years.

Subsequently, on 15.02.2017, the Petitioner entered into 37 (thirty-seven) identical Wind Energy Wheeling Agreements and 30 (thirty) identical Renewable Energy Wheeling Agreements under the REC Scheme, with the Respondent, for wheeling of power to its 42 (forty-two) captive consumers, during FY 2016-17. While the Wind Energy Wheeling Agreements dated 15.02.2017 are valid for a minimum period of 5 (five) years, the Renewable

Energy Wheeling Agreements under the REC Scheme are valid for a period of 20 (twenty) years.

Further, since both, the Wind Energy Wheeling Agreement(s) as well as the Renewable Energy Wheeling Agreement(s) under the REC Scheme, dated 07.10.2016 and 15.02.2017 provide for encashment of the unutilized banked energy at 75% of the relevant purchase/APPC tariff, the relevant provisions from both the Agreement(s) are set out below:

**(i) Wind Energy Wheeling Agreement dated 07.10.2016** (*provisions are pari-materia in the remaining 36 Agreements dated 07.10.2016 as well as the 37 Wind Energy Wheeling Agreement dated 15.02.2017*)

*“6. Banking:*

*1) The banking charges shall be 12 % in kind to be deducted every time on the banked energy as per Honorable TNERC order No 3 Dt 31.03.2016.*

*2) Slot - wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate / extra charges. No carry over is allowed beyond the banking period. **Unutilized energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff.***

*3) The banking period commences on 1st April and ends on 31st March of the following year.”*

**(ii) Renewable Energy Wheeling Agreement under REC Scheme dated 15.02.2017** (*provisions are pari-materia in the remaining 36 Agreements dated 15.02.2017 as well as the 37 Renewable Energy Wheeling Agreement under REC Scheme dated 07.10.2016*)

*“6. Banking:*

*a. The Wind Energy generators are permitted to bank their surplus energy available after adjustment against consumption in that month.*

*b. Slot wise banking permitted to enable unit to unit adjustment for the respective slots towards rebate/extra charges. No carry over is allowed beyond the banking period. **Unutilized energy at the end of the financial year may be encashed at the rate of 75% of the APPC tariff.***

*c. The banking period commences on 1st April and ends on 31st March of the following year.*

*d. The Banking shall be maintained in slot wise at generation end.”*

The Wind Energy Wheeling Agreement dated 07.10.2016 for WF-HT.SC. No. DRA 002 and Renewable Energy Wheeling Agreement under the REC Scheme dated 15.02.2017 for WF.HT.SC. No. DRA 001 executed between the Petitioner and the Respondent are collectively. The Petitioner further undertakes to place on record the remaining Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 07.10.2016 and 15.02.2017, as and when directed by the Commission.

1.21. On 20.07.2015, Superintending Engineer, Tirupur Electricity Distribution Circle (“**Tirupur EDC**”), Respondent, vide its letter bearing Lr. No. SE/TEDC/ TPR/ DFC/ AAO/ HT/F. Banking Units/D./2015, wrote to the Petitioner indicating the details of the balance banked energy as on 31.03.2015 (i.e., 263077 units), in respect of HSTC No.31 M/S Sulochana Cotton Spinning Mills Pvt. Ltd. in Tirupur EDC. A copy of the letter dated 20.07.2015 issued by Tirupur ED, Respondent.

1.22. On 21.07.2015, the Petitioner wrote to the Distribution Circle (Generation Area) ("**Dindigul EDC**"), Respondent informing that it has a balance of 263077 units in its banking account as on 31.03.2015. The Petitioner enclosed a confirmation from the consumption end EDC, invoice dated 21.07.2015 (claiming an amount of Rs.9,13,923), statement of balance units and advance stamped receipt. The Petitioner further (i) stated that as per the Tariff Order No. 06 of 2012 dated 31.07.2012 passed by the Commission, the units found in the banking account have to be encashed for the applicable tariff value; and (ii) requested the Respondent to make the payment at the earliest. A copy of the letter dated 21.07.2015 issued by the Petitioner to the Respondent for its claims for FY 2014-15.

1.23. On 16.08.2015, the Petitioner wrote to the Superintending Engineer, Dindigul EDC, Respondent, reiterating that it has a balance of 260377 units in its banking account as on 31.03.2015. The Petitioner further requested for the payment of Rs. 10,31,092 towards the unutilized banked energy to be made, in accordance with Order No. 06 of 2012 passed by the Commission. A copy of the letter dated 16.08.2015 issued by the Petitioner to the Respondent for its claims for FY 2014-15.

1.24. On 28.05.2018, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 260377 units in its banking account as on 31.03.2015. The Petitioner further requested for the payment of Rs. 7,73,320 towards



the unutilized banked energy to be made as per Order No. 03 of 2016 dated 31.03.2016 and the subsequent circular/directions issued by the Respondent. A copy of the letter dated 28.05.2018 issued by the Petitioner to the Respondent for its claims for FY 2014-2015.

1.25. On 03.07.2019, the Petitioner followed-up and wrote to the Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 260377 units in its banking account as on 31.03.2015. The Petitioner accordingly requested for the payment for the unutilized banked energy along with the interest rate of 1% per month to be made, in accordance with Order No. 03 of 2016 dated 31.03.2016. A copy of the letter dated 03.07.2019 issued by the Petitioner to the Respondent for its claims for FY 2014-2015.

1.26. On 10.06.2020, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent, in furtherance of its earlier afore-mentioned letters dated 21.07.2015, 16.08.2015, 28.05.2018 and 03.07.2019, reiterating that it has a balance of 260377 units in its banking account as on 31.03.2015. The Petitioner further requested for the payment towards the unutilized banked energy along with the interest rate of 1% per month, in accordance with Order No. 03 of 2016 dated 31.03.2016. A copy of the letter dated 10.06.2020 issued by the Petitioner to the Respondent for its claims for FY 2014-2015.

1.27. On 11.01.2017, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent stating that it has a balance of 81801 units (including 26077 units of FY 2014-15) in its banking account as on 31.03.2016. In this regard, the Petitioner also enclosed a confirmation from the consumption end EDC, invoice dated 11.01.2017 (claiming an amount of Rs.3,23,932), statement of balance units and advance stamped receipt. As per the Order No. 06 of 2012 dated 31.07.2012 and Order No. 03 of 2016 dated 31.03.2016, the units found in the banking account have to be encashed for the applicable tariff value; and (ii) requested the Respondent to make the payment at the earliest. A copy of the letter dated 11.01.2017 issued by the Petitioner to the Respondent for its claims for FY 2015-16.

1.28. Thereafter, on 28.05.2018, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 81801 units (including 26077 units of FY 2014-15) in its banking account as on 31.03.2016. The payment of Rs.2,42,949 towards the unutilized banked energy, to be made as per Order No. 03 of 2016 dated 31.03.2016 and the subsequent circular/directions dated 03.10.2017 and 25.04.2018 issued by the Respondent. A dated 28.05.2018 issued by the Petitioner to the Respondent for its claims for FY 2015-16.

1.29. On 03.07.2019, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 81801 units (including 26077 units of FY 2014-15) in its banking account as on 31.03.2016. Accordingly, the Petitioner requested

for release of the payment towards the unutilized banked energy along-with the interest rate of 1% per month at the earliest. A copy of the letter dated 03.07.2019 issued by the Petitioner to the Respondent for its claims for FY 2015-16.

1.30. On 10.06.2020, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent in furtherance of its earlier letters dated 11.01.2017, 28.05.2018 and 03.07.2019 reiterating that it has a balance of 81801 units in its banking account as on 31.03.2016. Accordingly, the Petitioner requested for release of the payment towards the unutilized banked energy along-with the interest rate of 1% per month at the earliest. A copy of the letter dated 10.06.2020 issued by the Petitioner to the Respondent for its claims for FY 2015-16.

1.31. On 06.09.2017, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent, stating that it has a balance of 7,37,51,398 units in its banking account as on 31.03.2017. In this regard, the Petitioner also enclosed a confirmation from the consumption end EDC, invoice dated 06.09.2017 (claiming an amount of Rs.21,90,41,652), statement of balance units and advance stamped receipt. As per the Order No. 03 of 2016 dated 31.03.2016 and the Memo dated 14.06.2017, the units found in the banking account have to be encashed for the applicable tariff value; and (ii) requested the Respondent to make the payment at the earliest. A copy of the letter dated 06.09.2017 issued by the Petitioner to the Respondent for its claims for FY 2016-17 is annexed herewith and marked as **Annexure P-20**.

1.32. On 28.05.2018, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 7,37,51,398 units in its banking account as on 31.03.2017. The Petitioner further requested for the payment of Rs.21,90,41,652 towards the unutilized banked energy, to be made as per Order No. 03 of 2016 dated 31.03.2016 and the subsequent circular/directions dated 03.10.2017 and 25.04.2018 issued by the Respondent. A copy of the letter dated 28.05.2018 issued by the Petitioner to the Respondent for its claims for FY 2016-17 .

1.33. On 03.07.2019, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent reiterating that it has a balance of 7,37,51,398 units in its banking account as on 31.03.2017. Accordingly, the Petitioner requested for release of the payment towards the unutilized banked energy along-with the interest rate of 1% per month at the earliest. A copy of the letter dated 03.07.2019 issued by the Petitioner to the Respondent for its claims for FY 2016-17.

1.34. On 10.06.2020, the Petitioner wrote to Superintending Engineer, Dindigul EDC, Respondent in furtherance of its earlier letters dated 06.09.2017, 28.05.2018 and 03.07.2019 reiterating that it has a balance of 7,37,51,398 units in its banking account as on 31.03.2017. Accordingly, the Petitioner requested for release of the payment towards the unutilized banked energy along-with the interest rate of 1% per month at the earliest. A copy of the letter dated 10.06.2020 issued by the Petitioner to the Respondent for its claims for FY 2016-17.

1.35. In the absence of any response by the Respondent, the Petitioner on 22.12.2021 wrote to the Chairman & Managing Director, Respondent, in reference to its aforementioned earlier letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019 and 10.06.2020, stating as follows:

- (a) Petitioner has been continuously following up for its claim for the unutilized/balance units in its banking account for FYs 2014-15, 2015-16 and 2016-17 (amounting to Rs.22,00,57,921);
- (b) The Commission has in its Order No. 06 of 2012 held that unutilized energy as on 31<sup>st</sup> March of every year may be encashed at the rate of 75% of the relevant purchase tariff;
- (c) The Commission has in its subsequent Order No. 03 of 2016 reiterated that unutilized energy as on 31<sup>st</sup> March of every year may be encashed at 75% of the relevant wind energy tariff;
- (d) The Commission has in its Order dated 22.09.2020 in **D.R.P. No. 67 of 2014: Arulmozhi Spinning Mills Pvt. Ltd. vs. Superintending Engineer, TANGEDCO & Ors.**, observed that (a) it is not appropriate to withhold payment of unutilized banked energy; (b) not to interlink the payment with any issue; and (c) directed the Respondent to release the unutilized banked energy payment in entirety with 1% interest within 30 (thirty) days; and
- (e) Petitioner is facing significant hardship(s) on account of the abnormal delay in releasing the payment and the Petitioner is unable to serve its debtors, thereby facing penal interest charges.

In view of the above, the Petitioner requested for release of the payment towards the unutilized banked energy along with interest at the rate of 1% per month at the earliest. A

copy of the letter dated 22.12.2021 issued by the Petitioner to the Respondent for its claims for FYs 2014-15, 2015-16 and 2016-17.

1.36. Thereafter, *inter-alia* owing to (a) the outbreak of Covid-19 pandemic across the nation; and (b) pendency of CGP verification of the Petitioner's Project by the Respondent, the Petitioner legitimately awaited/expected payment towards the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17.

1.37. On 15.05.2023, Petitioner once again wrote to the Chairman & Managing Director, Respondent, in reference to its earlier letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020 and 22.12.2021, stating as follows:

- (a) 100% shares in the Petitioner owned by Mytrah Energy India Private Limited has been transferred to JSW Neo Energy Limited on 29.03.2023;
- (b) Petitioner has been continuously following up for its claim for the balance units in its banking account for FYs 2014-15, 2015-16 and 2016-17 [amounting to Rs. 37,87,14,375 (including interest of Rs. 15,86,56,454)];
- (c) The Commission has in its Order No. 06 of 2012 dated 31.07.2012 stated that unutilized energy as on 31st March of every year may be encashed at the rate of 75% of the relevant purchase tariff;
- (d) The Commission has in its Order No. 03 of 2016 dated 31.03.2016 reiterated that unutilized energy as on 31st March of every year may be encashed at 75% of the relevant wind energy;
- (e) The Commission has in its Order dated 22.09.2020 in DRP No. 67 of 2014, observed that (i) it is not appropriate to withhold payment of unutilized banked energy; (ii) not to interlink the payment with any issue; and (iii) directed the

Respondent to release the unutilized banked energy payment in entirety with 1% interest within 30 (thirty) days; and

- (f) Petitioner is facing significant hardship(s) on account of the abnormal delay in releasing the payment the Petitioner is unable to serve its debtors, thereby facing penal interest charges.

In view of the above, the Petitioner requested the Respondent to release the payment for the unutilized banked energy along-with the interest rate of 1% per month at the earliest. A copy of the letter dated 15.05.2023 issued by the Petitioner to the Respondent for its claims for FYs 2014-15, 2015-16 and 2016-17.

1.38. After several years, on 25.08.2023, the Superintending Engineer, Dindigul EDC, Respondent vide its letter bearing Lr. No. SE/DEDC/ DGL/DFC/ AO/R/AAO/ HT/F.DOC/ D.No. 502/ 2023 wrote to the Petitioner intimating that it has fulfilled the CGP status for the period between FY 2014-15 to FY 2021-22, as per Rule 3 of the Electricity Rules, 2005. A copy of the letter dated 25.08.2023 issued by the Respondent.

1.39. Despite the verification of the Petitioner's CGP status for FY 2014-15 to FY 2021-22, the Respondent did not disburse the payment(s) towards the unutilized banked energy for FY 2014-15, FY 2015-16 and FY 2016-17. Accordingly, the Petitioner once vide its letter dated 13.02.2024 wrote to the Superintending Engineer, Dindigul EDC, Respondent, in reference to its earlier letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021 and 15.05.2023 stating as follows:

- (a) Petitioner has been continuously following up for its claim for the balance units in its banking account for FYs 2014-15, 2015-16 and 2016-17 [amounting to Rs. 40,07,20,166/- (including interest of Rs. 18,06,62,246)];
- (b) The Commission has in its Order No. 06 of 2012 dated 31.07.2012 read with the Order No. 03 of 2016 dated 31.03.2016 laid down that unutilized energy as on 31<sup>st</sup> March of every year may be encashed at the rate of 75% of the relevant purchase tariff;
- (c) The Commission has in its Order dated 22.09.2020 in DRP No. 67 of 2014 read with the Order dated 05.10.2023 in DRP No. 06 of 2023, *inter-alia* observed that the Respondent ought to make full payment(s) towards the unutilized banked energy, along with the applicable interest, in a timely manner; and
- (d) Since the Petitioner has fulfilled the CGP status, as communicated vide letter dated 25.08.2023, the payments ought to be released at the earliest, along-with the interest rate of 1%.

A letter dated 13.02.2024 issued by the Petitioner to the Respondent for its claims for FYs 2014-15, 2015-16 and 2016-17

1.40. Before delving into the merits of the present Petition, a table setting out the details of the unutilized banked units for FYs 2014-15, 2015-16 and 2016-17 as well as the pending payments (as on 10.04.2024) is set out below:

Financial year	Unutilized units (kWh)	Amount (Rs.)	Delaying Months as on 10.04.2024	Interest @ 1% per month	Total Net amount (Rs)
2014-15	260377	₹ 773,320	108	₹ 837,763	₹ 1,611,083



<b>2015-16</b>	<b>81801</b>	<b>₹ 242,949</b>	<b>96</b>	<b>₹ 234,041</b>	<b>₹ 476,990</b>
<b>2016-17</b>	<b>73751398</b>	<b>₹ 219,041,652</b>	<b>84</b>	<b>₹ 184,725,127</b>	<b>₹ 403,766,779</b>
<b>Total</b>	<b>74093576</b>	<b>₹ 220,057,921</b>		<b>₹ 185,796,930</b>	<b>₹ 405,854,851</b>

1.41. In view of the afore-mentioned factual and legal/regulatory backdrop, it is submitted that the Respondent has neither responded to nor disputed/contested the Petitioner's claim(s) and withheld an amount to the tune of Rs.40,58,54,851/- (including interest as on 10.04.2024), due and payable to the Petitioner, in spite of:

- (a) Unambiguous directions of the Commission in its Tariff Order No. 06 of 2012 dated 31.07.2012 and Tariff Order No. 03 of 2016 dated 31.03.2016, to allow encashment of unutilized banked energy as on 31<sup>st</sup> March every year at 75% of the applicable wind energy tariff.
- (b) The Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017, which provide for encashment of unutilized banked energy as on 31<sup>st</sup> March every year at 75% of the applicable wind energy tariff.
- (c) Repeated reminders/requests by the Petitioner by letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021, 15.05.2023 and 13.02.2024 for payment of the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17.
- (d) Verification of the CGP status of the Petitioner's Project as communicated by the Respondent belatedly vide letter dated 25.08.2023.

1.42. Notably, as detailed in Paragraphs 11 and 15 above, the Commission had categorically by its Tariff Order No. 06 of 2012 dated 31.07.2012 and Tariff Order No. 03 of 2016 dated 31.03.2016 directed:

- (a) For the unutilized banked energy as on 31<sup>st</sup> March every year, to be encashed at 75% of the relevant purchase tariff; and
- (b) In the event that certain energy cannot be drawn by the generator due to the constraints imposed by the distribution licensee, the compensation would be at 100% applicable tariff.

1.43. Pursuant to issuance of the afore-mentioned Tariff Orders, the Respondent had implemented the said Tariff Orders and *inter-alia* issued its Circular Memos/instructions dated 01.09.2012 and 18.08.2016. Yet, the Respondent failed to disburse the payments towards the Petitioner's claim for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. The dilatory conduct/approach of the Respondent in not complying with the Tariff Orders dated 31.07.2012 and 31.03.2016 passed by the Commission is unlawful and deserves appropriate action in terms of the law.

1.44. The Petitioner all along had legitimate expectations that it would receive the payments towards its unutilized banked units in terms of:

- (a) The Tariff Orders dated 31.07.2012 and 31.03.2016; read with
- (b) Provisions for encashment of the unutilized banked energy under the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements

under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017.

1.45. In addition to the above, as detailed in Paragraph 20 above, Article 6 of the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 entered into between the Petitioner and the Respondent, specifically provide for encashment of unutilized banked energy as on 31<sup>st</sup> March every year at 75% of the applicable wind energy tariff. However, in violation of the express terms of the said contracts, the Respondent failed to discharge its contractual obligation of making the payment towards the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17.

1.46. In this regard, it is a well settled position of law that (i) contracts/agreements, including the power purchase agreements as well as the wheeling agreements, are sacrosanct and binding on the parties thereto; and (ii) the express terms of a contract ought to be given effect to. [**Refer GUVNL & Ors. vs. Renew Wind Energy (Rajkot) Pvt. Ltd. & Ors. (2023) SCC OnLine SC 411 [Para 65]; Mr. Arul Jothi & Anr. vs. Lajja Bal & Anr. (2000) 3 SCC 723 [Para 10]; LIC & Anr. vs. Dharamvir Anand (1998) 7 SCC 348 [Para 6]**]

1.47. Failing to make payments towards the Petitioner's claim for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17, the Respondent has:

- (a) Violated the unambiguous directions of the Commission in its Tariff Orders dated 31.07.2012 and 31.03.2016; and
- (b) Violated the express terms of the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017.

1.48. Pertinently, the Petitioner had repeatedly raised and/or followed up on its claims *inter-alia*, by letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021, 15.05.2023 and 13.02.2024, requesting the Respondent to pay for the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. The Respondent has neither disputed the Petitioner's claims nor responded to any of the aforesaid letters issued by the Petitioner. Infact, the Respondent has inordinately delayed its obligation of verifying the Petitioner's CGP status, consequently leading to delay in the payment towards the Petitioner's claims for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17.

1.49. The Respondent has conveniently chosen to stay silent with respect to the Petitioner's claims for FYs 2014-15, 2015-16 and 2016-17, despite:

- (a) Being aware of the directions contained in the Tariff Orders dated 31.07.2012 and 31.03.2016, regarding encashment of unutilized banked energy;
- (b) Having itself implemented the directions *inter-alia* vide its Circular Memos/instructions dated 01.09.2012 and 18.08.2016;

- (c) Being a party to the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017; and
- (d) Having verified/confirmed the CGP status of the Petitioner vide letter dated 25.08.2023.

1.50. The Petitioner's claims for payment towards unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17 ought to be allowed with the applicable interest, as the Petitioner has suffered significantly on account of the delayed verification of its CGP status and the consequent delay of over 8 (eight) years in payment of its legitimate dues. Further, the Respondent's silence *qua* the claims of the Petitioner, inspite of repeated reminders from the Petitioner, tantamount to dishonouring of its obligations under the Agreement(s).

1.51. The Respondent has misused its monopoly and/or dominant position to withhold the payment(s) owed to the Petitioner for over 8 (eight) years (*since the first claim by the Petitioner for FY 2014-15*), towards the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. Resultantly, the Petitioner is reeling under financial distress and is unable to *inter-alia* fulfil its (a) supply obligations under its Power Sale Agreement(s) with the captive consumers; and (b) service obligations towards the banks/creditors/financial institutions, thereby resulting in penal interest charges.

1.52. Further, it is a matter of common knowledge that distribution companies have been wielding their bargaining power(s) as dominant buyers/procurers. The practice of distribution companies indulging in withholding payments of legitimate claims of the

generators has been rampant and, the present case is one such instance. In this context, it is also noteworthy that the Hon'ble Supreme Court has time and again, including in its recent Judgement dated 20.04.2023 in **GMR Warora Energy Ltd. vs. CERC & Ors. (2023) 10 SCC 401**, (a) deprecated/ reprimanded the conduct of withholding of legitimate payments by the distribution licensee(s) by abusing their dominant position; and (b) observed that as a result of the delay in making the payment and the resultant late payment surcharge/carrying cost, the end-consumers suffer by paying higher charges.

1.53. A settled position of law that carrying cost is nothing but compensation towards the time value of money and restitution for the affected party. Hence, whenever arrears of payment are directed to be paid, it is imperative on equitable principles that carrying cost/interest on compounding basis is allowed on such arrears of payment/deferred recoveries. In this context, reliance is placed upon the following Judgments of the Hon'ble Supreme Court:

- (a) Judgment dated 24.08.2022 in Uttar Haryana Bijli Vitran Nigam vs. Adani Power (Mundra) Limited, Civil Appeal No. 7129 of 2021; [(2023) 2 SCC 624]: *Paras 22 to 24*
- (b) Judgment dated 08.10.2021 in MSEDCL vs. MERC & Ors, Civil Appeal No. 1843 of 2021; [(2022) 4 SCC 657]: *Para 176*

1.54. At this juncture, it is reiterated that the Commission has previously vide the following afore-mentioned Order(s) directed the Respondent (*albeit in context of different*

*wind energy generators and control period/Tariff Order*) to disburse the payments towards unutilized banked energy, along-with applicable interest:

- (i) Order dated 22.09.2020 in DRP No. 67 of 2014: Arulmozhi Spinning Mills Pvt. Ltd. vs. Superintending Engineer, TANGEDCO & Ors.; and
- (ii) Order dated 05.10.2023 in DRP No. 06 of 2023: Vagarai Windfarm Ltd. vs. Superintending Engineer, TANGEDCO & Ors.

1.55. The Petitioner is constrained to approach the Commission as:

- (a) The Petitioner had duly raised its claim(s) towards payment of the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17 promptly and/or in a timely manner;
- (b) The Petitioner has been consistently following-up for the payment towards the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17;
- (c) There has been an inordinate and/or significant delay on the Respondent's part in verification of the Petitioner's CGP status for releasing the payment towards the unutilized banked energy, which has now been issued on 25.08.2023; and
- (d) Even after verification of the Petitioner's CGP status for FY 2014-15 to FY 2021-22 by the Respondent on 25.08.2023, the Respondent has failed to disburse the payment towards the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17.

1.56. In view of the above, the Commission may be pleased to pass similar directions in the present Petition and direct the Respondent to make the payments towards the Petitioner's claims for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17,

along-with the applicable interest of 1% per month, in a time-bound manner. For the ease of reference of the Commission, a table setting out the details of the unutilized banked units for FYs 2014-15, 2015-16 and 2016-17 as well as the pending payments (as on 10.04.2024) is once again set out below:

<b>Financial year</b>	<b>Unutilized units (kWh)</b>	<b>Amount (Rs.)</b>	<b>Delaying Months as on 10.04.2024</b>	<b>Interest @ 1% per month</b>	<b>Total Net amount (Rs)</b>
<b>2014-15</b>	<b>260377</b>	<b>₹ 773,320</b>	<b>108</b>	<b>₹ 837,763</b>	<b>₹ 1,611,083</b>
<b>2015-16</b>	<b>81801</b>	<b>₹ 242,949</b>	<b>96</b>	<b>₹ 234,041</b>	<b>₹ 476,990</b>
<b>2016-17</b>	<b>73751398</b>	<b>₹ 219,041,652</b>	<b>84</b>	<b>₹ 184,725,127</b>	<b>₹ 403,766,779</b>
<b>Total</b>	<b>74093576</b>	<b>₹ 220,057,921</b>		<b>₹ 185,796,930</b>	<b>₹ 405,854,851</b>

1.57. The Commission has the jurisdiction to adjudicate upon the present Petition in terms of Section 86(1)(b) and Section 86(1)(f) of the Electricity Act. Further (i) Article 11 of the Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014 and 04.09.2015; (ii) Article 12 of the Wind Energy Wheeling Agreements 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017; and (iii) Article 12 of Renewable Energy Wheeling Agreements under the REC Scheme dated 07.10.2016 and 15.02.2017, also provide for adjudication of any dispute/difference under the said Agreements by the Commission under Section 86(1)(f) of the Electricity Act.

1.58. The Petitioner has not filed any other Application/Petition before any other Court, Tribunal or Commission in relation to the issues raised herein.



## **2. Gist of the Counter Affidavit filed on behalf of the Respondents :-**

2.1. The petitioner has filed the above petition praying the Commission to direct for the payment of principal amount from 2014-2015 to 2016 - 2017 of Rs.22,00,57,921/- with interest 1 % per month.

2.2. The petitioner has raised invoices for power supplied from its WEG on a monthly basis as per the terms of the Power Purchase agreement, and the petitioner not received payments against the Unutilized Banking Invoices from 2014 - 2015, 2015 - 2016 & 2016- 2017 .

2.3. The Prayer pertaining to the interest by the petitioner is 1 % per month. It is against the Energy Wheeling Agreement submitted by the petitioner. Hence the prayer pertaining to the interest is not maintainable under law or on facts.

2.4. The wind mill being WEG HT SC No. 05 930 450 0291 to 05 930 450 0357 (67 WEG. - Each 1500 KW ) installed at Koothampoondi Village / Oddanchatram Taluk in Dindigul District.

2.5. The petition is neither maintainable in law nor on facts and as such the same is liable to be dismissed in limini.

2.6. Billing & Payment Condition as per the Agreement Condition

i) The Banking charges shall be 14 % in kind to be deducted every time on the banked energy as per the Commission Order No.6 of 2018 Dated 13.04.2018.

ii) Slot - wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate / extra charges. No carry over is allowed beyond the banking period. Unutilized energy at the end of the financial year may be encashed at the rate of 75 % of the relevant purchase tariff.

iii) The banking period commences on 1st April and ends on 31st March of the following year. The wind Energy Generator shall raise a invoice every year.

v) Wherever the wind energy generation is in excess of the consumption the balance energy shall be banked at Generating End ( Group captive Consumer ).

2.7. Due to shortage of power exist in Tamil Nadu, TANGEDCO is in a position to purchase power at Higher rate from other sources, which leads to facing critical financial crises, further not able to make payment within the time limit prescribed.

2.8. The monthly fund inflow of TANGEDCO through revenue from sale of power to its consumers is around Rs.3200 Crores and tariff subsidy from Government of Tamil Nadu is around Rs.600 Crores per month. The monthly fund outflow towards the revenue expenditure is as below:-

- |    |   |                   |
|----|---|-------------------|
| 1. | Payment for procuring fuel                                  | - Rs.300 Crores   |
| 2. | Transportation of fuel                                      | - Rs.300 Crores   |
| 3. | Payment to power suppliers, both CGS and Private generators | - Rs.2000 Crores. |
| 4. | Payment to Central and State Transmission Utilities         | - Rs.300 Crores.  |

5. Employees cost including pension - Rs.650 Crores
6. Repairs, Maintenance and administrative expenses - Rs.100 Crores.
7. Interest and finance charges - Rs.1000 Crores.
8. Repayment of loan by TANGEDCO - Rs.500 Crores.

For all the above expenditures, the total outflow is around Rs.5150 Crores. There is an average shortfall of about Rs.1360 Crores. Some payments are postponed and made as and when loans are received from REC / PFC / IREDA and other financial institutions.

2.9. In the above circumstances, releasing of huge payments to wind generators will be difficult one, however efforts are being taken for releasing payments for one or two months. And moreover, paying or adjustment of Interest due every month will affect the cash inflow of TANGEDCO and payment of surcharge before payment of the dues will not be a correct one under accounting principles. During the month of March 2020, wind mill payments for the period upto March 2018 have been paid under 48 Instalments.

2.10. On receipt of the financial assistance the pending energy bills will be cleared as per seniority basis and interest on delayed payment is the additional burden to be faced by the TNEB.

2.11. This may lead to difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, make suppliers and power Generators similar to the petitioner.

2.12. TANGEDCO is a corporation company wholly owned by the Government of Tamil Nadu and catering the need of the general public at large would be put into irreparable

losses grave prejudice, undue hardship and financial losses. In fact such losses will be passing through in the future tariffs which have to be passed on the end-consumers and attracts public interest. In any case, for the sake of a company, public authorities under general public should not get suffered financially.

### **3. Gist of the Rejoinder on behalf of the petitioner :-**

3.1. The Respondent has vaguely and without any substantiation denied all the averments made in the Petition. Further, the Respondent has nowhere in its Counter-Affidavit disputed/contested the Petitioner's claim of Rs.40,58,54,851/- (including interest as on 10.04.2024), towards the unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17. Infact, the Respondent has categorically admitted in Paragraph 4 of its Counter-Affidavit that the Petitioner has not received payments against the unutilized banking invoices from FYs 2014-15, 2015-16 and 2016-17.

3.2. It is a well settled position of law that (i) a general/evasive denial is not sufficient and that there must be a specific denial of the grounds/facts alleged in the Petition/Plaint; and (ii) every allegation of a fact/ground in the Petition/Plaint, if not denied specifically or stated to be not admitted by the Respondent, ought to be taken to be admitted. [Refer **Thangam & Anr. vs. Navamani Ammal, (2024) 4 SCC 247** and **Jaspal Kaur Cheema & Anr. vs. Industrial Trade Links & Anr. (2017) 8 SCC 592**]

3.3. Thus, in the facts of the present case, since (i) the Respondent has nowhere in its Counter-Affidavit denied/disputed the Petitioner's claims; and (ii) the Respondent has in fact, in Paragraph 4 submitted that the Petitioner has not received payments against the unutilized banking invoices from FYs 2014-15, 2015-16 and 2016-17, the claim of the Petitioner stands admitted by the Respondent. Thus, the Commission ought to direct the Respondent to expeditiously release an amount to the tune of Rs.40,58,54,851/- (including interest as on 10.04.2024), wrongfully withheld by the Respondent towards the unutilized banked energy/units.

3.4. In this context, it is also noteworthy that the Petitioner had repeatedly followed up on its claims *inter-alia* by letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021, 15.05.2023 and 13.02.2024 [**Annex. P-12 to P-25 & Annex. P-27 @Pgs. 226-253 & 257-258**], requesting the Respondent to pay for the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. The Respondent has neither disputed the Petitioner's claims nor responded to any of the aforesaid letters issued by the Petitioner. The Respondent has inordinately delayed its obligation of verifying the Petitioner's CGP status, consequently leading to delay in the payment towards the Petitioner's claims for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17, which in fact was completed by the Respondent in the month of August, 2023. Therefore, the Respondent cannot take advantage of its own wrongs by citing financial crisis.

3.5. Further, the Respondent has conjecturally and without any substantiation in Paragraph 8 of its Counter-Affidavit contended that the present Petition is neither maintainable in law nor on facts and the same is liable to be dismissed. In this context, the Respondent has not provided any reasoning and/or justification *qua* the maintainability of the Petition and thus, the said contention ought to be outrightly rejected by the Commission. It is well settled that the Commission, being the original authority/court of law, has to decide all the questions of fact and law raised before it, however, an Order/Judgment cannot be passed merely on the basis of conjectures, surmises or speculation [**Refer Esthuri Aswathiah vs. Commissioner of Income Tax, Mysore, 1976 SCC OnLine SC 210**].

3.6. The present Petition is maintainable both, in law as well as on facts and the Commission has the jurisdiction to adjudicate upon the present Petition in terms of Section 86(1)(b) and Section 86(1)(f) of the Electricity Act, 2003 ("**Electricity Act**"). Further (i) Article 11 of the Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014 and 04.09.2015; (ii) Article 12 of the Wind Energy Wheeling Agreements 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017; and (iii) Article 12 of Renewable Energy Wheeling Agreements under the REC Scheme dated 07.10.2016 and 15.02.2017, also provide for adjudication of any dispute/difference under the said Agreements by the Commission under Section 86(1)(f) of the Electricity Act.

3.7. Further, the Respondent has unjustly enriched at the cost of the Petitioner by withholding the due and legitimate payment(s) towards the unutilized banked

energy/units. Resultantly, the Petitioner is reeling under financial distress and is unable to *inter-alia* fulfil its (a) supply obligations under its Power Sale Agreement(s) with the captive consumers; and (b) service obligations towards the banks/creditors/financial institutions, thereby resulting in penal interest charges.

3.8. It is trite law that no person can be allowed to enrich inequitably/unjustly at the expense of another. In this regard, reliance is placed upon the Judgment of the Hon'ble Supreme Court in **Indian Council for Enviro-Legal Action vs. Uoi, (2011) 8 SCC 161** wherein the Hon'ble Supreme Court has held that a right of recovery under the doctrine of unjust enrichment arises where there is a retention of benefit which is against the principles of equity and injustice. For the ease of reference, the relevant extracts of the Judgment are reproduced hereunder:

*"UNJUST ENRICHMENT*

*"151. Unjust enrichment.—A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense."*

*See Black's Law Dictionary, 8th Edn. (Bryan A. Garner) at p. 1573. A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience".*

*152. "Unjust enrichment" has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit,*

*and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.*

153. *Unjust enrichment is “the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience”. A defendant may be liable “even when the defendant retaining the benefit is not a wrongdoer” and “even though he may have received [it] honestly in the first instance”. (Schock v. Nash [732 A 2d 217 (Delaware 1999)] , A 2d, 232-33.)*

...

159. *Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.*

160. *While the term “restitution” was considered by the Supreme Court in South Eastern Coalfields [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648] and other cases excerpted later, the term “unjust enrichment” came to be considered in Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs [(2005) 3 SCC 738] . This Court said: (Sahakari Khand case [(2005) 3 SCC 738] , SCC p. 748, para 31)*

*“31. ... ‘unjust enrichment’ means retention of a benefit by a person that is unjust or inequitable. ‘Unjust enrichment’ occurs when a*



*person retains money or benefits which in justice, equity and good conscience, belong to someone else.”*

3.9. Furthermore, the Respondent is a ‘State’ within the ambit of Article 12 of the Constitution of India, 1950, being a wholly owned Government Company performing functions of a public utility. Consequently, the Respondent must be guided by principles of fairness and transparency and must not act in an arbitrary manner. The arbitrary withholding of the amount due and payable to the Petitioner towards the unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17, without any reasoning and/or justification, is arbitrary and hence violative of the well settled principles of natural justice. [**Refer Kumari Shrilekha Vidyarthi & Ors. vs. State of U.P. & Ors, (1991) 1 SCC 212]**

***Financial quagmire/difficulty of the Respondent cannot be a ground to wriggle out of its contractual obligations and avoid payment of dues of the Petitioner***

3.10. The Respondent has erroneously in its Counter-Affidavit, without disputing/contesting the Petitioner’s claim, submitted that it is facing critical financial crisis and there is an average shortfall of about Rs. 1360 Crores, as result of which, it is unable to make payment(s) to the wind energy generators within the time-limit prescribed.

3.11. The alleged financial difficulty/crisis of the Respondent cannot be a ground for the Respondent to wriggle out of its contractual obligation(s) of making payment towards the unutilized banked energy/units. Notably, Article 6 of the Wind Energy Wheeling

Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017, categorically mandates for encashment of unutilized banked energy as on 31<sup>st</sup> March every year at 75% of the applicable wind energy tariff. Further, the said fact has also been admitted by the Respondent in Paragraph 9(ii) of its Counter-Affidavit

3.12. This very contention of the Respondent was specifically dealt with, and rejected by the Commission in its Order dated 05.10.2023 passed in **D.R.P. No. 06 of 2023: M/s. Vagarai Windfarm Ltd. vs. TANGEDCO & Ors.** wherein the Commission held as follows:

*“5.3. The financial difficulty cannot be allowed as a valid ground to avoid payment of principal and interest dues and the law is well settled on the said point. Further, law is also settled on the point that interest is payable on delayed payment and the respondent has to pay interest as per the contractual rate or as per the orders of the Commission, as the case may be. In this connection, the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the Commission would be relevant: -*

...

*5.6. In the result, the respondents are directed to verify the claim made by the petitioner towards banking units settlement in terms of invoice dated 12-05-2022 as stated in prayer (a) of the main petition and settle the invoice amount together with interest at the rate of 12% per annum to the petitioner within 30 days from the date of receipt of this order as per applicable Tariff Orders after deducting payments, if any already made. In the circumstances, there will be no order as to costs.”*

3.13. Moreover, the Respondent's plea of financial difficulty also runs contrary to the principle laid down by the Hon'ble Supreme Court in the Judgment dated 11.04.2017 in **Energy Watchdog vs. CERC & Ors., (2017) 14 SCC 80**, wherein it has been

categorically held that merely because the performance of a contract has become onerous, the same cannot be a ground to resile from the contract. In this regard, the relevant extracts of the afore-mentioned Judgment are reproduced hereunder:

*“40. This view of the law has been echoed in Chitty on Contracts, 31st Edn. In Para 14-151 a rise in cost or expense has been stated not to frustrate a contract. Similarly, in Treitel on Frustration and Force Majeure, 3rd Edn., the learned author has opined, at Para 12-034, that the cases provide many illustrations of the principle that a force majeure clause will not normally be construed to apply where the contract provides for an alternative mode of performance. **It is clear that a more onerous method of performance by itself would not amount to a frustrating event. The same learned author also states that a mere rise in price rendering the contract more expensive to perform does not constitute frustration.** (See Para 15-158.)*

...

*42. It is clear from the above that the doctrine of frustration cannot apply to these cases as the fundamental basis of the PPAs remains unaltered. Nowhere do the PPAs state that coal is to be procured only from Indonesia at a particular price. In fact, it is clear on a reading of the PPA as a whole that the price payable for the supply of coal is entirely for the person who sets up the power plant to bear. The fact that the fuel supply agreement has to be appended to the PPA is only to indicate that the raw material for the working of the plant is there and is in order. **It is clear that an unexpected rise in the price of coal will not absolve the generating companies from performing their part of the contract for the very good reason that when they submitted their bids, this was a risk they knowingly took. We are of the view that the mere fact that the bid may be non-escalable does not mean that the respondents are precluded from raising the plea of frustration, if otherwise it is available in law and can be pleaded by them. But the fact that a non-escalable tariff has been paid for, for example, in the Adani case, is a factor which may be taken into account only to show that the risk of supplying electricity at the tariff indicated was upon the generating company.”***

3.14. In fact, it is a settled principle of law that inability or financial difficulty of distribution companies/licensees cannot be a ground to avoid payment of dues of generating companies. In this regard, the reliance is placed upon the following Judgments:

(a) Judgment dated 08.11.2021 passed by the Hon'ble Supreme Court in **Civil Appeal No. 1843 of 2021: Maharashtra State Electricity Distribution Company Ltd. vs. MERC & Ors.** wherein the Hon'ble Supreme Court held the following:

*“186. Admittedly, the Appellant has landed itself in its present predicament, due to delay in making timely payments to the Respondent Power Generating Companies. There was no pandemic at the time of filing of the petition before the MERC in 2017 and the Appeal before the APTEL in 2018. It, cannot, therefore be said that the Appellant defaulted in payment of bills by reason of its financial predicament as a result of the outbreak of COVID 19 in India, which was in March 2020.*

*187. Extensive submissions have been made by Mr. Singh. to impress upon the Court, that the Appellant committed default in payment of the bills raised by the Power Generating Companies on account of various circumstances. beyond its control. **The various circumstances mentioned by the Appellant. which allegedly impacted the financial position of the Appellant have no bearing on the merits of the Appeal.** Mr. Rohatgi, Mr. Singhvi, Mr. Mukerjee and Ms. Anand submitted in one voice that the delays in payment and/or non-payment of the invoices raised by the Power Generating Companies for the supply of power to the Appellant, had put the Respondent-Power Generating Companies under immense financial stress, as their source of revenue is from the sale and supply of power generated from their power plants. **The Respondent Power Generating Companies cannot be burdened with the consequences of the Appellant's defaults.**”*

- (a) Judgment dated 14.05.2015 passed by the Hon'ble Supreme Court in **Joshi Technologies International Inc. vs. UoI & Ors., (2015) 7 SCC 728** wherein the Hon'ble Supreme Court held that: -

***"70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.***

- (b) Judgement dated 08.06.2020 passed by the Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal) in **Appeal No. 56 of 2020: DB Power vs. TANGEDCO**, wherein the Hon'ble Tribunal held the following: -

***"We are not impressed with the only plea of financial crunch or the request for TANGEDCO to be given some time to raise loan for paying up to the Appellant. Given the huge arrears that have accumulated and the delay which has occurred causing distress, in turn, to the Appellant as well, we direct that the Respondent TANGEDCO shall presently pay 50% of the above mentioned liability towards late payment surcharge in two equal parts, first part to be paid. within a week of today and the second part to be paid within the week following that."***

3.15. Applying the aforesaid principle in the present case, the Respondent cannot resile from its obligations as envisaged under Article 6 of the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 and contend that the payment to the tune of Rs. 40,58,54,851/- (including interest @ 1% per month as on 10.04.2024)

towards the unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17, cannot be made on account of the financial crisis being faced by the Respondent.

3.16. In addition to the above, it is submitted that the conduct of the Respondent of withholding the legitimate claim of the Petitioner without any justified reason is contrary to the set principle/doctrine of legitimate expectation. The Petitioner all along had legitimate expectations that it would receive the payments towards its unutilized banked units in terms of:

- (c) The Tariff Orders dated 31.07.2012 and 31.03.2016; read with
- (d) Provisions for encashment of the unutilized banked energy under the Wind Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017.

3.17. In this regard, it is noteworthy that the Hon'ble Supreme Court has time and again held that when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with in its statutory duty. In this regard, reliance is placed upon the Judgment dated 28.08.1998 passed in **National Building Construction Corporation vs. S. Raghunathan, (1998) 7 SCC 66**, wherein the Hon'ble Supreme Court held as follows:

*“18. The doctrine of “legitimate expectation” has its genesis in the field of administrative law. **The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice.** It was in this context that the doctrine of “legitimate expectation” was evolved which has today become a source of substantive as well as procedural rights. But claims based on “legitimate expectation” have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”*

3.18. In light of the submissions made above, the contention raised by the Respondent is liable to be rejected and the Commission is requested to allow the prayer(s) of the Petitioner made in the Petition.

***Petitioner is lawfully entitled to the interest of 1% per month on account of the delay in the payment by the Respondent***

3.19. The Respondent has erroneously in its Counter-Affidavit contended that (i) the Petitioner’s prayer regarding payment of interest @ 1% per month is against the Wind Energy Wheeling Agreements; and (ii) payment of interest will affect the cash flow of the Respondent.

3.20. The Petitioner had after raising its claim for the unutilized banked energy/units originally vide letter dated (i) 21.07.2015 for FY 2014-15; (ii) 11.01.2017 for FY 2015-16; and (iii) 06.09.2017 for FY 2016-17, repeatedly followed up on its claims *inter-alia*, by letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020,

22.12.2021, 15.05.2023 and 13.02.2024, requesting the Respondent to pay for the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. However, the Respondent has failed to make the payment towards the invoices raised by the Petitioner *qua* unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17. Accordingly, in view of the significant delay caused by the Respondent, the Petitioner is entitled to interest @ 1% per month.

3.21. In this regard, it is noteworthy that the Hon'ble Supreme Court has time and again, including in its Judgement dated 18.10.2001 passed in **SLP (C) No. 2421 of 1993 & batch: Central Bank of India vs. Ravindra & Ors.**, held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation in the form of interest. The relevant extract of the aforesaid Judgment is reproduced hereunder:

*"37. Black's Law Dictionary (7th Edn.) defines "interest" inter alia as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words And Phrases (5th Edn.) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508] the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages ... this is the principle of Section 34 of the Civil Procedure Code. In Sham Lal Narula (Dr) v. CIT [AIR 1964 SC 1878: (1964) 7 SCR 668] this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank*



*Ltd. [(1947) 1 All ER 469 : 1947 AC 390 (HL)] All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...*

3.22. Further, the Hon'ble Supreme Court has in a catena of decisions, including **T.N. Generation & Distribution Corpn Ltd. vs. PPN Power Generating Co. (P) Ltd., (2014) 11 SCC 53**, held that late payment surcharge/carrying cost/interest is a form of compensation for the loss suffered by a party to an agreement on account of undue delay of the other in complying with the payment terms mutually agreed between them.

The relevant extract from the aforesaid Judgment is reproduced hereunder:

*“72. In fact, in our opinion, the appellant has illegally arrogated to itself the right to adjudicate by unilaterally assuming the jurisdiction not available to it. It was required to comply with Article 10 of the PPA which provides for compensation payment and billing. We are also not able to accept the submission of Mr Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5% for having made part-payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by the respondents. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices.*

**73.** *With regard to the issue raised about the interest on late payment, Aptel has considered the entire matter and come to the conclusion that interest is payable*

on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, Aptel has relied on a judgment of this Court in *Central Bank of India v. Ravindra* [(2002) 1 SCC 367]. In this judgment it has been held as follows: (SCC p. 394, para 37)

“37. ... The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd.* [1947 AC 390 : (1947) 1 All ER 469 (HL)] (AC at p. 400 : All ER at p. 472E-F) is that:

**‘... it is a payment which becomes due because the creditor *has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation;***’

*the money due to the creditor was not paid, or, in other words,*

*‘was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute’.*

A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in *CIT v. Sham Lal Narula* [AIR 1963 P&H 411] thus articulated the concept of interest: (AIR p. 414, para 8)

**‘8. The words “interest” and “compensation” are sometimes used interchangeably and on other occasions they have distinct connotation. “Interest” in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, “interest” is understood to mean the amount which one has contracted to pay for use of borrowed money. ...**

*In whatever category “interest” in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or*

*permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.”*

***75. The late payment clause only captures the principle that a person denied the benefit of money, that ought to have been paid on due dates should get compensated on the same basis as his bank would charge him for funds lent together with a deterrent of 0.5% in order to prevent delays. It is submitted by Mr Salve and Mr Bhushan that bankers of the respondents have applied quarterly compounding or monthly compounding for cash credits during different periods on the basis of RBI norms. Article 10.6 of the PPA has followed the norms of the bank. This cannot be said to be unfair as the same principle would also apply to the appellants.”***

3.23. Additionally, the Commission has itself vide its applicable Tariff Orders dated 31.07.2012 and 31.03.2016 (in line with which the Wheeling Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 have been entered into), categorically stated that any delayed payment is liable for interest at the rate of 1% per month. In this regard, the relevant excerpts from the Tariff Orders dated 31.07.2012 and 31.03.2016 are set out below:

(a) Tariff Order dated 31.07.2012:

*“8.11 Billing and payment*

*8.11.1 When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. **Any delayed***

***payment beyond 30 days is liable for interest at the rate of 1% per month.”***

(b) Tariff Order dated 31.03.2016:

*“9.3 Billing and Payment*

*9.3.1 When a wind generator sells power to the distribution licensee,*

*the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution licensee, reactive power charges etc. The distribution licensee shall make payment to the generator in 60 days of receipt of the bill. **Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month”***

3.24. In this context, it is also noteworthy that Article 10 of the Wheeling Energy Wheeling Agreements/Renewable Energy Wheeling Agreements under the REC Scheme dated 29.05.2014, 04.09.2015, 07.10.2016 and 15.02.2017 categorically provide that both the parties shall be bound *inter-alia* by the Orders issued by the Commission from time-to-time. Thus, it is submitted that the Respondent herein is bound by the directions of the Commission *inter-alia* regarding payment of interest at the rate of 1% per annum, as contained in the Tariff Orders dated 31.07.2012 and 31.03.2016.

3.25. Further, the Commission has also in the past vide its following Orders directed for interest to be paid at the rate of 1% per month on account of the delay in payment by the Respondent towards the unutilized banked energy/units:

- (a) Order dated 22.09.2020 passed in D.R.P. No. 67 of 2014: **Arulmozhi Spinning Mills Pvt. Ltd. vs. TANGEDCO & Ors.** wherein this Hon'ble Commission held the following [**Annex. P-1(Colly.) @ Pgs. 43-110**]:

***“8.2.... On perusal of the records, we find that no such payment has been made for unutilized banked energy and the same is withheld on account of the issue of Cross Subsidy Surcharge. We are to observe here that it is not appropriate to withhold the payment due on unutilized banked energy on such ground of non-payment of Cross Subsidy Surcharge. In such circumstances, we order that the payment for the unutilized banked energy in full as prayed for along with interest @ 1% per month to be released within 30 days time. With these observations and directions, the petition is allowed.”***

- (b) Order dated 05.10.2023 passed in D.R.P. No. 06 of 2023: **M/s Vagarai Windfarm Ltd. vs. TANGEDCO & Ors.** wherein this Hon'ble Commission held the following [**Annex. P-1(Colly.) @ Pgs. 43-110**]:

***“5.5. In view of the above, this Commission conclude that the Respondent TANGEDCO is liable to pay 1% interest per month on delayed payment as per the Tariff Order in force on the balance amount that remains unpaid to the petitioner.***

***5.6. In the result, the respondents are directed to verify the claim made by the petitioner towards banking units settlement in terms of invoice dated 12-05-2022 as stated in prayer (a) of the main petition and settle the invoice amount together with interest at the rate of 12% per annum to the petitioner within 30 days from the date of receipt of this order as per applicable Tariff Orders after deducting payments, if any already made. In the circumstances, there will be no order as to costs.”***

3.26. In view of the foregoing, it is thus abundantly clear that the Petitioner herein is entitled to payment of interest at the rate of 1% per annum on account of the delay in payment by the Respondent. The Petitioner is also entitled to *pendente lite* interest till the date of actual payment by the Respondent. Therefore, it is requested that the Commission may be pleased to pass similar directions in the present Petition and direct the Respondent to make the payments towards the Petitioner's claims for unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17, along-with the applicable interest of 1% per month, in a time-bound manner.

3.27. The Respondent has further erroneously contended that interest on delayed payment is an additional burden on it, which will eventually be passed on to the end-consumers. Had the Respondent timely disbursed the payment(s) towards the Petitioner's claim for unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17, the occasion for payment of interest would not have arisen. After having delayed the payment towards the same, the Respondent cannot at this stage take benefit of its own wrong to contend that the same will be an additional burden.

3.28. In this context, it is also noteworthy that the Hon'ble Supreme Court has time and again, including in its recent Judgement dated 20.04.2023 in **GMR Warora Energy Ltd. vs. CERC & Ors. (2023) 10 SCC 401**, (a) deprecated/ reprimanded the conduct of withholding of legitimate payments by the distribution licensee(s) by abusing their dominant position; and (b) observed that as a result of the delay in making the payment

and the resultant late payment surcharge/carrying cost, the end-consumers suffer by paying higher charges.

3.29. Even otherwise, the statutory scheme of the Electricity Act requires a balance between two competing interests to be struck. Catering to the former so as to deprive the latter of its legitimate claims is lopsided, and, therefore, violative of law. The legislative framework regulating the sector as envisaged under the National Electricity Policy dated 12.02.2005 requires that consumer interest should be protected while ensuring the financial viability and growth of the power sector. In this regard, it is noteworthy that the Hon'ble Supreme Court has vide its afore-mentioned Judgment dated 08.11.2021 in **Civil Appeal No. 1843 of 2021: Maharashtra State Electricity Distribution Company Ltd. vs. MERC & Ors.**, categorically held that consumer interest cannot be ground to resile from the contractual obligations. The relevant extracts of the aforesaid Judgment are reproduced hereunder:

*"176. LPS cannot be equated with carrying cost or actual cost incurred for the supply of power. The Appellant has a contractual obligation to make timely payment of the invoices raised by the Power Generating Companies, subject, of course, to scrutiny and verification of the same.*

*195. There being no dispute in the present case with regard to the principal sums due under the monthly bills, interest on delayed payment at 2% in excess of 5BI PLR cannot be said to be arbitrarily high. There is no reason for this Court to reduce the contractual rate of interest and thereby alter or modify the contract between the parties, in exercise of its powers Under Article 142 of the Constitution of India.*

*196. We need not go into the question whether or not the Appellant has funds to clear its interest liability. The Appellant cannot continue to get supply of electricity without having appropriate funds. Appellant would necessarily have to raise funds to clear its contractual obligations.*

*197. Even assuming that the burden of interest would have to be passed on to the consumers, that cannot be the ground for the Appellant to resile from its contractual commitment to the Power Generating Companies. The Appellant cannot pass on the burden for delay in making payment to the Power Generating Companies.”*

3.30. The contentions raised by the Respondent are baseless and liable to be rejected by the Commission.

3.31. The Respondent has categorically in Paragraph 4 of its Counter-Affidavit admitted without any demur that the Petitioner has not received payments against the unutilized banking invoices from sFYs 2014-15, 2015-16 and 2016-17. The prayer pertaining to interest at the rate of 1% per month is not maintainable under law or on facts. It is reiterated that the contention raised by the Respondent is without any basis and ought to be disregarded by the Commission. In this regard, the Petitioner had, after raising its claim for the unutilized banked energy/units originally vide letter dated (i) 21.07.2015 for FY 2014-15; (ii) 11.01.2017 for FY 2015-16; and (iii) 06.09.2017 for FY 2016-17, repeatedly followed up on its claims *inter-alia*, by letters dated 16.08.2015, 11.01.2017, 06.09.2017, 28.05.2018, 03.07.2019, 10.06.2020, 22.12.2021, 15.05.2023 and 13.02.2024, requesting the Respondent to pay for the unutilized banked energy for FYs 2014-15, 2015-16 and 2016-17. However, the Respondent has failed to make the



payment towards the invoices raised by the Petitioner *qua* unutilized banked energy/units for FYs 2014-15, 2015-16 and 2016-17. Accordingly, in view of the significant delay caused by the Respondent, the Petitioner is entitled to interest @ 1% per month.

4. Heard the counsel for the petitioner and the respondents. Pleading of both parties traversed. Records perused. Legal precedents pressed into service considered.

**5. Issues for consideration :-**

The sole issue which arises for consideration is whether the petitioner is entitled to the principal dues of Rs.22,00,57,921/- together with interest @1% in the light of the specific stand taken by the respondent that the claim made by the petitioner towards interest is against the EWA entered into between the petitioner and the respondent and that such claim for interest is not maintainable in law or on fact.

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

6.1. Having heard the contentions of both side and after perusing the material records adduced as evidence before us, we find that the issue framed herein is covered by the earlier decisions of the Commission and the ratios laid down by the Hon'ble APTEL and Hon'ble Supreme Court. Having said so, let us examine the facts of the case with reference to the prevailing case laws on the subject. The petitioner has sought direction to the respondent to pay a sum of Rs.40,58,54,851/- (principal of Rs.22,00,57,921/- + interest at Rs.18,57,96,930/-) as on 10.04.2024 being the value of unutilised banked energy for FY 2014-2015, FY 2015-2016 and FY 2016-2017 together with interest. The

petitioner relies upon the orders of the Commission in D.R.P.No.67 of 2014 in the matter of M/s.Arulmozhi Spinning Mills Pvt. Ltd. Vs. SE / TANGEDCO and D.R.P.No.6 of 2023 in the matter of M/s.Vagarai Wind Form Limited Vs. SE / TANGEDCO. Apart from this, the petitioner also relies upon the judgement of APTEL and Hon'ble Supreme Court on payment of interest for the delayed period.

6.2. It is seen from the Counter affidavit that the respondent has not denied the liability in regard to payment of unutilised banked energy but raised only two primary defences, namely, a) the prayer pertaining to payment of interest at 1% is not maintainable under law or facts and b) that the respondent is in a difficult financial situation and hence releasing huge payments will adversely affect its financial condition.

6.3. In our view, the second contention is liable to be rejected outrightly for the reason that financial difficulty cannot be a ground to deny payment to the generators as held by the Commission in its earlier orders which are referred to herein by the petitioner. With regard to the first question raised by the petitioner, the same falls foul for the reason that even if the PPA does not provide for interest, the same is still payable on the basis of equity as held by the Hon'ble Supreme Court. Hence, it is settled position of law that interest is payable to the generators by distribution licensee for delayed payment on equitable consideration even in the absence of any clause in the PPA.

6.4. Insofar as the present case is concerned, there is specific a provision in the Tariff Order itself for payment of interest on delayed payment and the same came to be upheld

by the Hon'ble APTEL and further by the Supreme Court. Hence the stand of the respondent that the claim for interest is not maintainable on law or fact is erroneous.

6.5. In the result, it is to be concluded that the petitioner is entitled to payment of principal dues sought for in the petition together with interest @ 1% p.m.

Accordingly this issue is decided.

In fine the following is ordered :-

- a) The respondent is directed to pay sum of Rs.40,58,54,851/- (i.e., Principal amount of Rs.22,00,57,921/- and interest at the rate of 1% p.m. i.e., Rs.18,57,96,930/-) as on 10.04.2024, towards the unutilized banked energy for FY 2014-2015, FY 2015-2016 and FY 2016-2017. The respondent shall also pay subsequent interest on the principal amount of Rs.22,00,57,921/- at the rate of 1% per month from 11.04.2024 till the date of actual payment. The respondent shall comply the aforesaid order within 30 days from the date of order.
- b) A compliance report shall be sent to the Commission within 15 days thereafter.
- c) Petition ordered accordingly. The parties shall bear their respective costs.

Sd/-....  
Member (Legal)

Sd/-....  
Member

//True copy//

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**