TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 15th Day of April 2025

PRESENT:

Thiru.K.Venkatesan …. Member

and

Thiru.B.Mohan …. Member (Legal)

M.P. No. 25 of 2023

M/s.Vijay Velavan Spinning Mills Pvt. Ltd.
Represented by its Authorised Signatory Mr. A.Selvakumar
SF No.1651/1A, Trichy Road,
South Avinashipalayam, Pongalur – 638 660,
Tiruppur District. ... Petitioner

(Thiru.R.S.Pandiyaraj,
Advocate for the Petitioner)

Versus

1. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Represented by its Chief Engineer - NCES,
2nd Floor, 144 Anna Salai,
Chennai – 600 002.

2. The Superintending Engineer,
TANGEDCO,
Palladam Electricity Distribution Circle,
Palladam. … Respondents

(Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy
Standing Counsel for TANGEDCO)

M.P. No. 26 of 2023

M/s.Naveen Cotton Mill Pvt. Ltd.
Represented by its Authorised Signatory
Mr.K.Kondavenkatasubramani
D.No.8/1456 R.S.Puram 1st Street,
Near Pandian Nagar Bus Stop,
P.N. Road, Tirupur – 641 602. ... Petitioner

(Thiru.R.S.Pandiyaraj,
Advocate for the Petitioner)

Versus

1. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Represented by its Chief Engineer - NCES,
2nd Floor, 144 Anna Salai,
Chennai – 600 002.

2. The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

3. The Superintending Engineer,
TANGEDCO,
Gobi Electricity Distribution Circle,
Gobichettipalaiyam. … Respondents

(Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy
Standing Counsel for TANGEDCO)

D.R.P. No.6 of 2024

M/s. Shri Harikrishna Cotton Mills Pvt. Ltd.
HTSC No.039094390211,
SF.No.536, Dgarapuram,
Karur Main Road, Kannivadi Post,
Malanur – 639202, Tirupur District,
Represented by its Director
Mr.S.Chandrakumar ....Petitioner

M/s.R.S.Pandiyaraj
Advocate for the Petitioner

Vs

1. Tamilnadu Generation and Distribution
Corporation Ltd, (TANGEDCO),
2nd Floor, 144, Anna Salai,
Chennai – 600 002.
Represented by its Chief Engineer-NCES

2. The Superintending Engineer,
TANGEDCO,
Dindigul Electricity Distribution Circle,
Dindigul.

3. The Superintending Engineer,
TANGEDCO,
Palladam Electricity Distribution Circle,
Palladam. ..... Respondents

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

1. Prayer of the petitioner in M.P.No.25 of 2023 :-

This Miscellaneous Petition stands preferred by the Petitioner M/s.Vijay Velavan Spinning Mills Pvt. Ltd., with a prayer to revise the Energy Wheeling Agreement, by ordering to expunge the inconsistent portions of the Energy Wheeling Agreement as contained in Page No.3 and Page No. 10 in Para 24 IV and further direct the Respondents, to execute a fresh Energy Wheeling Agreement in terms of Para 5.5.8 of the Order of the Commission, as contained in Order No.9 of 2020 dated 16.10.2020 and further direct the Respondents to accept the invoices of the petitioner whenever raised for the encashment of the unutilized Solar Energy available at the account of the

Petitioner at the end of each month, for its 75% of the value and to effect the payment, within the due dates, as provided in the Order NO.9 of 2020 dated 16.10.2020.

2. Prayer of the petitioner in M.P.No.26 of 2023 :-

This Miscellaneous Petition stands preferred by the Petitioner M/s.Naveen Cotton Mill Pvt. Ltd., with a prayer to revise the Energy Wheeling Agreement, by ordering to expunge the inconsistent portions of the Energy Wheeling Agreement as contained in Page No.6 Clause 21 and further direct the Respondents, to execute a fresh Energy Wheeling Agreement in terms of Para 5.5.8 of the Order of the Commission, as contained in Order NO.9 of 2020 dated 16.10.2020 and further direct the Respondents to accept the invoices of the petitioner whenever raised for the encashment of the unutilized Solar Energy available at the account of the Petitioner at the end of each month, for its 75% of the value and to effect the payment, within the due dates, as provided in the Order NO.9 of 2020 dated 16.10.2020.

3. Prayer of the petitioner in D.R.P.No.6 of 2024 :-

This Dispute Resolution Petition stands preferred by the Petitioner M/s. Shri Harikrishna Cotton Mills Pvt. Ltd., with a prayer to order and direct the Respondents, to revise the Energy Wheeling Agreement, by ordering to expunge the inconsistent portions of the Energy Wheeling Agreement as contained in in Page No.2, as well as at Clause 5(e) at Page No.6 & Clause 6(2) at Page No.7and further direct the Respondents, to execute a fresh Energy Wheeling Agreement in terms of Para 5.5.8 of the Order of the Commission, as contained in Order No. 9 of 2020 dated 16.10.2020 and further direct

the Respondents to accept the invoices of the petitioner whenever raised for the encashment of the unutilized Solar Energy available at the account of the Petitioner at the end of each month, for its 75% of the value and to effect the payment, within the due dates, as provided in the Order No. 9 of 2020 dated 16.10.2020.

These petitions coming up for final hearing on 02-01-2025 in the presence of Thiru.S.P.Parthasarathy, Advocate for the Petitioner and Tvl.N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submissions made by the Counsel for the Petitioner and the Respondents and the matter having stood over for consideration till this date and since the pivotal issue involved in all the three cases are one and the same this Commission deem it just and proper to dispose of all the three matters through the following.

COMMON ORDER

4. Common contentions of the petitioners :-

The essence of the common material averments set out in all the three petitions are as hereunder :-

4.1. The Petitioners are Companies incorporated under the Repealed Companies Act 1956 and are now falling under the Companies Act 2013. The petitioners are Private Limited Companies and the mills of the Petitioners are producing quality yarn, both for domestic and export markets.

4.2. The Petitioners are having yarn spinning mills coming under the respective jurisdiction of the respondents and are providing employment to workers, who are mostly attending to their works from the rural vicinity. The mills of the Petitioners are HT industries are coming under the purview of the 2nd respondent, the Superintending Engineer of the respective Distribution Circle.

4.3. The Petitioners, with a view to poise to support the Green Power and thereby to control Global Warming, have also set up their own Solar Power Generators at variable feasible locations and are wheeling the solar energy generated from them, for their captive use at their spinning mills, by paying all the open access charges and other connected charges as fixed by the Commission, from time to time, through the respective Tariff Orders.

4.4. Accordingly, the petitioners approached the 1st Respondent, Chief Engineer-NCES with appropriate applications. The Respondent directed each of the Petitioners to pay applicable charges such as Registration Fee, Load Flow Study Charges and refundable security deposit etc. Based on the above the Petitioners have paid security deposit. The 1st Respondent issued the noted for record letter dated 29.08.2020 to the Petitioners directing the solar plant to be commissioned and synchronised with the Respondents grid within 12 months from the date of the letter. In the Noted for Record letter the 1st respondent has specifically stated that the surplus energy if, any available at the end of the billing period will be considered for payment at the rate of 75% of the respective solar tariff as fixed by the Commission.

4.5. The Petitioners satisfactorily commissioned their Solar Plant and the same has been certified by the 1st Respondent. For Solar Power Generators (SPGs) coming under their jurisdiction of the respective Superintending Engineers, under the instructions of the 1st Respondent, the Chief Engineer-NCES, have sent letters enclosing the Energy Wheeling Agreement executed between concerned Respondents and the Petitioners.

4.6. The Energy Wheeling Agreement, so executed inter-alia, is containing the following discriminatory contents, both at the preamble in Page No.3, as well as at Clause 24 IV at Page No.l0, which are much contrary to the orders of the Commission as found in Order No.9 of 2020 dated 16.10.2020.

Discriminatory Portions of the EWA:

"As TANGEDCO power position is generally surplus, it is not obligated to procure and pay for the excess energy injected into the grid after adjustment. "

4.7. By providing the above discriminatory Clauses in the Energy Wheeling Agreement, on its own by the Respondents, both at Page No.3 and Page No. 10 (Clause 24 IV), the respondents have restricted the right of the Petitioners to raise invoices for the 75% of the value of the unutilized excess solar energy, whenever available excessively during any month, after consumption during the month.

4.8. Executing a discriminatory Energy Wheeling Agreement contrary to the orders of the Commission dated 16.10.2020 in Order No.9 of 2020, captioned as "Order on Procurement of Solar Power and Related Issues" is arbitrary and ultravires. The relevant portion of the order is as hereunder :-

"5.5.8 After the billing period, the excess energy generated but not consumed, may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding. If there are more than one tariffs discovered through bidding process, the weighted average tariff shall be considered for payment. "

4.9. By having executed the Energy Wheeling Agreement, and completely defeating the very letter and spirit of the Order No. 9 of 2020 dated 16.10.2020 of the Commission, in its own fashion, the Respondents have made themselves for suitable action under Section 142 of the Electricity Act 2003 which read as follows :-

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):
In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction. "

4.10. Accordingly, quoting all the deviations found in the matter of executing the Energy Wheeling Agreement by the Respondents, the Petitioners have sent representations to the TANGEDCO expressing the losses faced by the similarly placed generators. However, the representation made by the Petitioners with the authorities in TANGEDCO including the Respondents has evoked absolutely no response and the grievances of not permitting the excess solar energy unutilized during a month for the encashment to its

75% value, as specifically provided in Order No. 9 of 2020 dated 16.10.2020 more particularly in Para 5.5.8, is continuing as such without any alteration.

4.11. Therefore, the Petitioners are approaching the Commission seeking the following reliefs.

A. To set aside the existing Energy Wheeling Agreement, more particularly the discriminatory contents contained in Page No.3 and Page No. 10 (Para 24 IV), as extracted below, declaring it as contrary to the express direction of the Hon'ble Commission, as contained in Para 5.5.8 of the Order No.9 of 2020 dated 16.10.2020.

"As TANGEDCO power position is generally surplus, it is not obligated to procure and pay for the excess energy injected into the grid after adjustment. "

B. To direct the Respondents, to execute an Energy Wheeling Agreement afresh, completely in line and consistence with the terms of the order of the Commission, as contained in Para 5.5.8 of the Order No.9 of 2020 dated 16.10.2020, by allowing the facility of encashment at the 75% of its value, when any energy is found in excess of consumption in any month.

5. Substratum of the Counter Affidavit filed on behalf of the Respondents :-

5.1. The petitioners have established SPV plants for captive use under Preferential Tariff Scheme as per TNERC Order No 9 of 2020 dated 16.10.2020.

5.2. The primary issue that arises in the present petitions is whether respondents are obligated to purchase excess energy generated beyond the petitioner's captive need/utilized energy by the solar generators at the end of the billing period.

5.3. In exercise of powers conferred under section 62 of the EA 2003 (herein after referred as "Electricity Act 2003") the Commission issued Comprehensive Tariff Orders on Solar Powers vide Order No.7 of 2014, dt.12.09.2014 ("Tariff Order of 2014") for the procurement of solar power by the distribution Licensee and fixed" Generic/ Preferential Tariff" of Rs.7.01 per unit without Accelerated Depreciation benefit and Rs.6.28 per unit with Accelerated Depreciation benefit for Solar Photovoltaic plant.

5.4. The Commission issued further Tariff Order being Tariff Order No:2 of 2016 dated 28.03.2016 ("Tariff Order of 2016"), Tariff Order No.2 of 2017 dated 28.03.2017 ("Tariff Order of 2017"),Tariff Order No.5 of 2018 dated 28.03.2018 ("Tariff Order of 2018"), Tariff Order No.5 of 2019 dated 29.03.2019 ("Tariff Order of 2019) fixing Preferential Tariff of Rs.5.10/Rs.4.56 per unit without Accelerated Depreciation benefit/with Accelerated Depreciation benefit and Rs.4.50/-Rs.4.41 per unit without Accelerated Depreciation benefit/with Accelerated Depreciation benefit, Rs.3.11/Rs.3.05 per unit without Accelerated Depreciation benefit/with Accelerated Depreciation benefit and Rs.3.04/Rs.2.80 per unit without Accelerated Depreciation benefit/With Accelerated Depreciation benefit for the respective control periods for Solar Photovoltaic Plants("Solar Photovoltaic Plants").

5.5. Accordingly, "Preferential Tariffs" as determined in each such Tariff Order is

applicable for the respective Solar Photovoltaic (Preferential) Power Plants commissioned during the control period of respective Tariff Order in force irrespective of date of execution of Power Purchase Agreement.

5.6. As per the Tariff Order, the developer can establish Solar Power Plants only up to the requirement of their captive consumption need of their respective user end services.

5.7. Most of the solar generators erected their solar PV plants more than their requirements and exported to the TANGEDCO grid and demanded to pay for their excess unscheduled power, misusing their Must Run Status "which badly affects the energy planning of TANGEDCO at large.

5.8. The companies must furnish every year documents in proof of ownership for generating Company in compliance with the captive norms of the Electricity Rules 2005 at the commencement of each financial year. As per Electricity Rules 2005, the captive generators should fulfill the following conditions:

(a) Not less than 26% of the ownership (on the Generator Company) is to be held by the captive user.

(b) Not less than 51% at the aggregate Electricity Generated in such plant determined on an annual basis is consumed for captive use.

But the petitioners have not furnished the Captive norms for the year 2021-2022 and 2022-2023. Hence the claim is not maintainable.

5.9. The above referred generators expect 75% of Rs.7.01/ Rs.6.28 which is Rs.5.26/ Rs.4.71; 75% of Rs.5.10/ Rs.4.50 which is Rs.3.83/Rs.3.38; 75% of Rs.4.50/ Rs.4 41

which is Rs.3.38/ Rs.3.30 etc to the unplanned excess injection by them even when the scheduled solar energy is available at the rate of Rs.2.45 to TANGEDCO which results In undue enrichment to the solar generators at the cost of TANGEDCO and general public.

5.10. The Tariff order No.9 of 2020 dated 16.10.2020 clause 5.5.8 which is reproduced herein states.

> *5.5.8: "After the billing period, the excess energy generated but not consumed may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding. If there are more than one tariffs discovered through bidding process, the weighted average tariff shall be considered for payment" which the petitioner has relied for claiming 75% for their excess energy injected*.

5.11. On the plain reading of the above provision in the Tariff order, it may be well understood that, the payment of 75% of the respective solar Tariff for the excess energy generated over their need for captive consumption, is not made mandatory by the Commission consciously leaving the decision to the concerned parties of the agreement and remarked that such payment "Shall be considered for payment".

5.12. Since the power position of the TANGEDCO is generally surplus TANGEDCO is facing much hardship and difficulty in integrating the infirm RE capacities of around 15735 MW capacity into the grid by shutting down their own generation and also paying fixed charges to the contracted unutilized thermal capacities. Further, considering the economic need to integrate their own cheap solar power sourced from SECI of the rate of Rs.2.78 and Rs.2.61, TANGEDCO has decided not to purchase the excess energy

from the solar captive generators and so after due intimation vide their NFR approval to the generators incorporated the condition in the agreements, and the petitioners have also accepted and signed.

5.13. There is no discrimination or violation of Tariff order and regulation as claimed by the petitioners. It is an ill motivated claim for hiding their unplanned installation of solar capacity more than their requirements at the cost of TANGEDCO and general public.

5.14. The clause 5.5.6 and 5.5.7 which is reproduced herein states as hereunder :-

5.5.6:

"Commission has notified the Regulations on Deviation Settlement Mechanism(DSM) For RE Wind and Solar, and all Other Sources on 20.3.2019. The commercial mechanism will come into effect from a date to be notified by the Commission. Till Such time the DSM is implemented in the state, if a solar power generator utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the billing period for the net energy supplied. The licensee shall record the slot wise generation and consumption during the billing period. Slot wise adjustment shall be for the billing period. Peak hour generation can be adjusted to normal hour or off Peak hour consumption of the billing period.

Excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply

5.5.7:

When DSM is implemented, the licensee shall record the time block wise generation and consumption during the biting period. Time block wise adjustment shall be made for the billing period. Excess Consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply. "

5.15. As per the above clause, the adjustment is to be made only block wise as per the distribution requirement notified. Clause 5.5.8 is only the interim suggestion by the Commission till such time the commercial mechanism will come into effect and the solar generators are stalling the commercial implementation of the DSM regulation by all means.

5.16. There can be no cavil about the fact that if a generator connected to the grid injects power into the grid without any contract or agreement with the Distribution Licensee, the same will be consumed in the grid without the knowledge or consent of the Distribution Licensees. Such injection of power is to be discouraged in the interest of secure and economic operation of the grid. The unwanted generation and consequent unauthorized injection of power into the grid by a generator has the potential of jeopardizing the security of the grid. If the unauthorized injection of power by a generator gets the stamp of approval by a judicial or quasi-judicial forum, the same will have a cascading disastrous result encouraging the generators to adopt a devious method of injecting unwanted surplus power into the grid without any contract or agreement or without knowledge of the Distribution Licensee and then claim compensation for the same as observed by the Commission in the order passed in D.R.P .No.5 of 2022 dated.05.11.2023.

5.17. The solar generators erected their solar PV plants more than their requirements and export to the TANGEDCO grid excess energy. The unplanned energy so exported may overload the grid. In fact the 11 KV M/s.Vijay Velavan Solar feeder has tripped for 28 times in the period from 01.03.2023 to 27.03.2024 due to injection of excess energy .Hence the claim of petitioner has to be denied.

5.18. After accepting the conditions in the 'Noted For Record' letter and signing the bilateral agreements the prayer of the petitioners are not legally maintainable and deserve to be dismissed.

6. Gist of the averments in the Rejoinder filed on behalf of the petitioner in M.P.No.25 of 2023 :-

6.1. The 2nd Respondent has alleged that the Petitioners have erected their solar plant more than their requirement, and the excess/unplanned energy injected into the grid may result in overload leading to tripping of the feeder. Such a stand of the 2nd Respondent is illegal, arbitrary and contrary to the Tariff Order No.9 of 2020 dated 16.10.2020, which has been passed under Section 86(1)(e) of the Electricity Act, 2003, which aims to promote the generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity from such sources.

6.2. Based on the Petitioner's application for establishing their Solar Plants, the 1st Respondent vide notice dated 04.11.2019 has directed the Petitioners to pay several charges, such as Registration Fee, Load Flow Study Charges, and a refundable security deposit. The load flow study charges paid by the Petitioner amount to Rs.1,00,000/-. Subsequently the officers of the 1st and 2nd Respondent conducted a load flow study based on the 2020-21 grid conditions to determine the transmission system for connectivity for the Petitioner's 4MW SPV and vide load flow study result dated 13.04.2020 directed the Petitioner to connect their 4MW SPV to the existing Sivanmalai 33/11KV SS through the new proposed 11Kv feeder with the erection of 11KV Bay and Breaker. Further in the load flow study result, the 1st Respondent, under Sec.10 of the Electricity Act, 2003, has directed the

Petitioner to establish, operate and maintain the dedicated transmission line from their power plant to TANGEDCQ's grid and consequently directed the Petitioner to provide the new proposed line at the Petitioner's cost. The Petitioner paid the estimated charges for the establishment of the new Solar Feeder for the purpose of exporting the solar power generated from the Petitioner's SPV to be fed into the existing Sivanmalai 33/11KV SS substation.

6.3. Once the Petitioners SPV were ready for commissioning, the officers of the 1st and 2nd Respondent issued grid tie-up approval to synchronize the Petitioner's SPV to new Feeder which was established at the Petitioner's cost. From the above it is clear that the 1st and 2nd Respondents conducted the load flow study based on the grid conditions during the relevant time and consequently directed the Petitioner to connect their proposed SPV by bearing the cost for the new Solar Feeder. At the Petitioner's cost, the new Solar Feeder was erected to export the solar power generated from the Petitioner's SPV to be fed into the existing substation. However, Respondents statement in the counter alleging that the Petitioner has erected the solar plant more than the requirement and the excess energy injected into the grid may overload the Solar Feeder, resulting in tripping of the feeder has to be considered illegal, baseless, without application of mind and is liable to be rejected.

6.4. No power plant can be connected to TANGEDCO's grid without a load flow study conducted by the officers of TANGEDCO to determine the transmission system for connectivity of such power plants to TANGEDCO's grid. Further, no

power plant can be connected without grid tie-up approval issued by the officers of TANGEDCO. Hence, it is unfair on the part of the Respondent to allege that the generators are overloading their grid by injecting unplanned excess power. Such a stand of the Respondent is highly detrimental to the growth of renewable power in the State.

6.5. The Respondent has once again proved that TANGEDCO as always never minds implementing the orders of the Hon'ble Commission in their letter and spirit. The instant case is one of the same type of disobeying the order of the Hon'ble Commission, which attitude has to be dealt with very firmly under Section 142 of the Electricity Act 2003.

6.6. In an identical issue, in M.P.No.47 of 2021 dated 11.05.2023, this Hon'ble Commission has held as follows:-

> *"6. Finding of the Commission on the first issue :*
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> *In view of the findings rendered by this Commission on issue no. 2 to 5, the only irresistible conclusion that can be arrived at on this issue is that clause 24(IV) of the Energy Wheeling Agreement dated 03.03.2021 is inconsistent with clause 5.5.8 of the Tariff Order dated 16.10.2020 passed in T.A.No.9 of 2020 and also Regulation 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 as contended by the petitioner. Accordingly this issue is decided in favour of the petitioner.*
>
> *In fine, this Commission doth order as follows:-*
>
> *a) The petitioner is entitled to 75% of the tariff fixed by the Commission or in cases where no tariff fixed, 75% of the tariff discovered in the competitive bidding shall be adopted for payment for the energy supplied over and above the limit sanctioned.*

b) In case any injection has been made by the generator against the direction of SLDC or at any point of time such injection had imperilled the grid security, such cases shall be dealt with separately by the respondent for the purpose of denial of claim.

c) Even in such cases, it is only after giving due notice and fair hearing, that payment can be denied.

d) In all other cases, payment shall be made at 75% tariff fixed by the Commission.

e) Parties shall bear their respective cost. Petition Ordered accordingly"

6.7. The TANGEDCO has not filed any appeal to Hon'ble APTEL against the order passed by the Commission in M.P.No.47 of 2021 dated 11.05.2023 to date, and it has become final and binding on the Respondent TANGEDCO.

7. Memo filed by the respondents of TNPDCL on 07.01.2025 :-

The respondents sought adoption of the same arguments made in M.P.No.25 of 2023 and M.P.No.26 of 2023 to D.R.P.No.6 of 2024 as well.

8. Heard the counsel for the petitioner and the respondents. Petition averments and memo filed on behalf of the respondents traversed. Records perused. Legal precedents pressed into service considered.

9. Having had reference to the above provisions and rival submissions, it is to be stated that the issues raised by the petitioner are squarely covered by the decision of the Commission in M.P.No.47 of 2021 dated 11.05.2023 in M/s.TRK Textile India Private Ltd., Vs TANGEDCO. Let us now proceed to examine the following issues which arise for consideration.

1) Whether the clause 24(IV) of the Energy Wheeling Agreement is inconsistent with clause 5.5.8 of Tariff Order 9 of 2020 and Regulation 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 as contended by the petitioner?.
2) Whether the stand of the respondent that the provision in clause 5.5.8 enabling the sale of excess power by the generators to the licensee is not mandatory but only an enabling one can be accepted?.
3) Whether the reason cited by the respondent that the excess power transported by the petitioner to grid cannot be paid for in view of the availability of cheaper solar power from SECI can be said to be valid?.
4) Whether the stand of the respondent that clause 5.5.8 of Tariff Order No. 9 of 2020 is a mere suggestion and the said clause would come into effect only after the commercial mechanism under the Deviation Settlement Mechanism Regulations come into effect can be accepted?
5) Whether the petitioner is entitled to any relief, if so, to what extent?

10. Findings of the Commission on the first issue :-

10.1. The present petitions have been filed seeking to remove clause 24(IV) of the Energy Wheeling Agreement dated.03.03.2021 entered into between the Petitioner and the Respondent. The crux of the issue raised by each one of the petitioner is that such clause has been introduced by the licensee without the approval of the Commission and

is much against the spirit of Regulations 4 & 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008.

10.2. Thus the first issue relates to the very legality of the clause 24(IV) in the EPA. In view of the fact that the Commission, on an earlier occasion, in M.P. No. 15 of 2021 in TASMA and another Vs TANGEDCO and two others directed the licensee to amend clause 11(a) of the EPA which was found to be at variance with the standard format. It may appear at the first blush as if the above clause is patently against the model format prescribed by the Commission requiring prima facie rejection. It may also be equally tempting to draw a conclusion that the said clause having not got the imprimatur of the Commission is to be set aside summarily and does not require any long drawn discussion much less setting aside. However, we have to resist such temptation to set aside the same at the threshold itself for the reason that the said clause is not appendage *per se* without a foundation. Elaborate discussion and the findings rendered on issues 2 to 4 would ultimately propel the Commission to decide this issue effectively and completely and as such the Commission decides to relegate discussion and decision on issue No.1.

11. Findings of the Commission on the second issue :

11.1. Before proceeding to discuss the second issue elaborately, let us first look into the Clause 24 (IV) of the EWA, the focal point of the present controversy, which reads as follows:

Clause 24(IV)

"As TANGEDCO power position is generally surplus, it is not obligated to procure and pay for the excess energy injected into the grid after adjustment".

11.2. It is understood that in view of the above clause inserted by TANGEDCO to the effect that it is not obligated to buy power for the excess energy injected into the grid, the petitioner has been denied the benefit of encashment of unutilized solar energy to the extent of its value on a month to month basis whenever there is a surplus of energy.

11.3. Assailing the order of rejection of the benefits passed by the respondent, the petitioner is before us seeking to remove / delete the said clause as being discriminatory and contrary to the express directions of this Commission in para 5.5.8 of the Order No. 9 of 2020 which reads as follows:

"5.5.8 After the billing period, the excess energy generated but not consumed, may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding. If there are more than one tariffs discovered through bidding process, the weighted average tariff shall be considered for payment."

11.4. It is the contention of the petitioner that the clause 24 (IV) is in direct conflict with clause 5.5.8 of Tariff Order No.9 which enables a Solar generator to sell excess energy at 75% of the solar tariff fixed by the Commission and where no tariff has been fixed, at 75 % of the tariff discovered in the competitive bidding. Thus, the petitioner seeks either 75% of the tariff fixed by the Commission or 75 % of the rates discovered in the competitive bidding for sale of excess energy and for this purpose the present petition has been filed seeking to remove clause 24(IV), which according to the petitioner, is

discriminatory. Apart from placing reliance on clause 5.5.8, the petitioner has also referred to Regulations 4 & 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 and clause 5.6 of the Energy Wheeling Agreement and Sections 61(h) and 86(1)(e) of the Electricity Act 2003.

11.5. Per contra, the TANGEDCO has relied on Noted for Agreement letter which was the basis for signing the Energy Wheeling Agreement, thereby suggesting the consensus ad idem which is present in the case. The Respondent has contended that as per the Tariff Order, a developer can establish Solar Power Plants only upto its requirement of captive generation at the user end and most of the solar generators have erected their Solar PV plants more than their requirements and export the excess energy into the grid and further demand payment for excess and scheduled power. It is further the contention of the respondent that a plain reading of clause 5.5.8 of Tariff Order 9 of 2020 would make it clear that the payment of 75% of the tariff fixed by the Commission for the excess energy is not mandatory. The respondent has drawn our attention to the expressions “may be sold” and “shall be considered” and argued that the Commission, by employing such expression in the clause 5.5.8, consciously left decision on the payment for excess energy to the parties to the agreement. In addition to the same, the TANGEDCO has also cited the financial issue arising out of such payment for excess energy by pointing out the difficulties in integrating the RE Power which necessitates the shutting down of its generating stations resulting in payment of fixed charges for unutilized thermal capacities.

11.6. For the purpose of resolution of the above issue, the other relevant provisions in the Regulations and EPA are re-produced for easy reference.

Clause 24(IV) of EPA

"As TANGEDCO power position is generally surplus, it is not obligated to procure and pay for the excess energy injected into the grid after adjustment".

Clause 5.5.8 of Tariff Order 9 of 2020

"5.5.8 After the billing period, the excess energy generated but not consumed, may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding. If there are more than one tariffs discovered through bidding process, the weighted average tariff shall be considered for payment."

The Regulation 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008

"7. Energy Purchases Agreement (EPA) and Energy Wheeling Agreement (EWA):-
[The distribution licensee shall file a model Energy Purchase Agreement for approval of the Commission within a period to be specified by the Commission]. Before 10th of succeeding month, the licensee/generator shall furnish the list of PPA executed during the preceding month and pay applicable fees as stipulated in the Tamil Nadu Electricity Regulatory Commission's Fees and Fines Regulations, 2004. The distribution licensee/STU shall sign an Energy Wheeling Agreement taking cognizance of the energy wheeling principles elaborated in the general or special tariff order.

Clause 8 (c) of the EPA entered into between the Petitioner and Respondent.

8(c) The parties to the agreement are at liberty at any time to renegotiate the existing agreement mutually in accordance with the Commission's order in force.

11.7. The petitioner has placed heavy reliance on clause 5.5.8 of the Tariff Order No. 9 of 2020 in support of its claim for allowing the facility of encashment in excess of

consumption in any month and argued that the clause 24 (IV) is in direct conflict with Regulations and Tariff Orders of the Commission. However, the respondent has submitted that the said provision is not mandatory but only an enabling one. The Respondent has relied on the expressions “may be sold” and “shall be considered” to buttress its contention.

11.8. Now a question arises whether these expression are merely enabling in nature with no mandatory attribute. Let us first examine the contours of the first expression. Having regard to the first expression “may be sold”, it is to be observed that said expression is to be construed in such a manner that it is optional on the part of the generator to either sell the surplus energy to the licensee or to third party. The first expression is meant only to give liberty to the generators to sell the excess power to the licensee or not and by no stretch of imagination can it be concluded that it is an option vested on the licensee to accept or reject such power. There are good enough reasons for the same. When the Union Government is embarking on ambitious targets of capacity additions in regard to New and Renewable Power from time to time and the State Governments to follow suit by evolving policies to push for aggressive growth of New and Renewable Power, the Clause 5.5.8 cannot be given a narrow and pedantic meaning and is to be given a broader meaning.

11.9. In view of the same, we have to hold that the excess power fed into the grid has to be necessarily absorbed. Any other interpretation would result in violation to the stated policies and objectives issued by the Union and State Governments from time to time.

Further the very purpose of setting targets at National and State Levels will become defeated. In order to meet the ever increasing demand of the State grid and at the same time to protect the environment, it has become necessary to observe that every unit of renewable power should be utilised. Failure to do to so would result in sheer national wastage of renewable power and scuttle the efforts made by the Union and State Governments.

11.10. As regards the second expression “shall be considered”, it is to be observed that only when such excess power is to be procured by licensee from two different processes of competitive bidding, the question of weighted average tariff would arise and not in the present case where the power itself is not inclined to be received by the licensee and forced on it. For all practical purposes, if at all the payment is to be allowed for excess power, it should be allowed only at 75% of the value. Having said that we are of the view that considering the targets fixed by the Union and State Governments from time to time, the excess power generated by a solar generator cannot be rejected or refused to be paid for except on the ground of Grid Security. It is not the case of the respondent that the power was refused on the ground of Grid Security and the defence of the respondent centres around availability of economical power from other renewable sources and the very necessity to procure the same. In view of the decision of the APTEL 197 of 2019, we have to observe that such contention is unsustainable and no unit of power, except for reason of grid security, can be refused integration into the Grid. Having concluded so, this Commission decides that the provision in clause 5.5.8. of the Tariff order No.9 of

2020 dated 16.10.2020 enabling the sale of excess power by the generators to the licensee is mandatory in nature.

According this issue is decided in favour of the petitioner.

12. Findings of the Commission on the third issue:

The respondent contends that power sourced from SECI is available at Rs.2.78 & Rs.2.61 and hence, it was decided not to purchase the excess energy from the solar captive generators at a relatively higher rate. We find this argument totally unacceptable. The only reason for which renewable power can be curtailed is grid security and nothing else. Going by the judgments of Hon'ble APTEL, the renewable power cannot be subjected to Merit Order Despatch. The present argument, if accepted, would amount to subjecting the renewable power to MoD to which we do not subscribe. Having observed so, this Commission decides that the reason assigned by the respondent that the excess power injected by the petitioner into the Grid cannot be paid in view of the availability of cheaper solar power from Solar Power from SECI cannot be held to be a valid one.

Accordingly this issue is decided against the respondent.

13. Findings of the Commission on the fourth issue :

The argument of the licensee that clause 5.5.8 is only a suggestion by the Commission is a misconception. The clause 5.5.8 is a statutory provision providing for the growth of renewable power and hence the stand taken by the TANGEDCO that clause 5.5.8 would come into effect only after the Commercial implementation of DSM Regulations cannot be accepted. In this connection it is to be observed clearly that there

is no interlink between clause 5.5.8 which deals with the payment for excess energy fed into the Grid and clause 5.5.6 & 5.5.7 which deal with Deviation Mechanism Settlement.

Accordingly this issue is also decided against the respondent.

14. Findings of the Commission on the fifth issue:

On a conspectus of the above submissions and the findings of the Commission, it is crystal clear that a clause in the Energy Purchase Agreement has been added on its own by TANGEDCO which is at variance with the format approved by the Commission. Though, the respondent is at liberty to do it, it can do so only after approval from the Commission or when such clause is in sync with the Grid Security related aspects as subject of integration of renewable power has been dealt with elaborately in the judgment of the Hon'ble APTEL and the renewable power cannot be curtailed without any plausible grid security reason. The overall scheme of the Electricity Act and the Regulations made thereunder also makes it imperative that Must-Run-Status be accorded to the New and Renewable power and such power cannot be subjected to merit order despatch.

15. Though the respondent has taken a stand that any injection over and above the threshold limit without the knowledge of the licensee is to be discouraged and may have the potential to jeopardize the Grid security, such stand has to fall foul for the reason that no evidence of threat or prejudice to Grid Security has been let in. On the contrary other considerations such as availability of economic power from other sources only impelled the respondent not to make payment for the excess energy injected by the petitioner is

evident from the counter affidavit filed on behalf of the respondent. Hence, it cannot be said that the refusal to pay for the energy rests entirely on Grid Security alone and there is every possibility that the availability of power from other sources such as SECI may have been the reason for such rejection of power. Such macro-economic decision on the part of the licensee cannot be ruled out altogether. The larger vision of the policy makers for rapid capacity addition strengthens the case of integration of renewable power without wastage. That being so, the present act of the respondent which is nothing but subjecting the renewable power to merit order despatch cannot be agreed to. Though there is a stray reference in the counter affidavit to tripping of 11KV M/s.Vijiay Velavan Solar Feeder having taken place 28 times from 01.03.2023 to 27.03.2024 in support of Grid security, the same is not supported by any material evidence. Even assuming it to be so, the respondent ought to have requested SLDC to issue show cause notice to the petitioner clearly explaining the threat to the Grid arising out of the petitioner's act and placed all proceedings before the Commission but the same has not been done in the instant case. The contention on acceptance of "Noted For Record" and the bilateral agreements does not come to the rescue of the respondent and it is not a legal ground to justify the introduction of the impugned clause by the respondent on its own. In all fairness, the impugned clause ought to have had the imprimatur of the Commission even if there was a real danger to the Grid Security or any prejudice or hindrance to the real time operation of Grid. But it is patently evident on record, that no approval was obtained from the Commission beforehand for incorporating the impugned clause. For all these

reasons, this Commission decides that there is substance in the contention of the petitioner that if impugned clause is retained in the agreement the same will cause prejudice to the petitioner.

Accordingly this issue is decided.

16. Hence in view of the preceding elaborate discussions and findings rendered thereon this Commission decides that the prayer of the petitioners in each one of the petitions to have the inconsistent portions of the relevant Energy Wheeling Agreements expunged and to have a fresh Energy Wheeling Agreement executed by the respondents is very much sustainable on law and facts and as such has to be granted in the interest of justice. As a corollary the petitioners are also entitled for an order directing the respondents to accept and honour the invoices presented by each one of the petitioners for encashment of the unutilized solar energy available at their account at the end of each month for its 75% value and to effect payment within the due dates as contemplated in the order dated 16.10.2020 passed by this Commission in Order No. 9 of 2020.

17. Finding of the Commission on the first issue:

In view of the findings rendered by this Commission on issue no. 2 to 5, the only irresistible conclusion that can be arrived at on this issue is that clause 24(IV) of the Energy Wheeling Agreement dated 03.03.2021 is inconsistent with clause 5.5.8 of the Tariff Order dated 16.10.2020 passed in T.A.No.9 of 2020 and also Regulation 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 as

contended by the petitioner. Accordingly this vital issue is also decided in favour of the petitioner.

18. During the course of enquiry conducted in M.P. No.25 of 2023 and M.P. No.26 of 2023 it transpired that the proceedings are in the nature of Dispute Resolution and as such classification of the above said petitions as "Miscellaneous Petition" is not proper. Pertinent to point out that only on account of the directions issued by this Commission in PRC No.2 of 2021, the above referred petitions came to be taken on file by the Registry under the category of Miscellaneous Petition. The core issue involved in DRP No. 6 of 2024 and M.P. No.25 of 2023 and M.P. No.26 of 2024 are one and the same. The petitioner in DRP No.6 of 2024 has classified the petition as DRP even at the inception and had paid appropriate court fees by quantifying his claim. Hence it is nothing but appropriate for the Commission to direct the petitioners in M.P. No.25 of 2023 and M.P. No.26 of 2023 to file a memo quantifying the claim and to remit the requisite court fee due on the claim fixing time line to avoid discrimination among similar placed petitioners.

19. In the result the following order is passed in favour of the petitioners in M.P. No: 25 of 2023; M.P. No: 26 of 2023 and D.R.P. No: 6 of 2024

a) The discriminatory portion of the Energy Wheeling Agreement (viz.,) "As TANGEDCO power position is generally surplus, it is not obligated to procure and pay for the excess energy injected into the grid after adjustment" is hereby

ordered to be expunged the same being in derogation of para 5.5.8 of the order dated 16.10.2020 passed by this Commission vide Order No.9 of 2020.

b) The respondents are hereby directed to execute a fresh Wheeling Agreement in accordance with the terms set out in para 5.5.8 of the order of this Commission dated 16.10.2020 passed through Order No.9 of 2020 revising the existing agreement within 30 days from the date of this Order.

c) The Commission declares that the petitioners are entitled to 75% of the tariff fixed by the Commission in regard to payment for energy supplied over and above the limit sanctioned. In cases, where no tariff is fixed, 75% of the tariff discovered in the competitive bidding shall be adopted for making such payment.

d) The petitioners in M.P. No:25 of 2023 and M.P. No.26 of 2023 shall quantify their claim and remit the requisite fee as their petition should have been classified as Dispute Resolution Petition and not as Miscellaneous Petition. 15 days time is granted for payment of court fees.

e) In respect of the petitioners in M.P. No. 25 of 2023 and M.P.No.26 of 2023 this order shall take effect only on payment of the court fees due.

f) Parties directed to bear their respective cost.

All the petitions disposed of accordingly.

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

(Sd.....)
Member

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission