

**BEFORE THE TAMILNADU ELECTRICITY REGULATORY
COMMISSION, CHENNAI**

Filing No.

Case No.

M.P.No. 24 of 2021

IN THE MATTER OF:

The Tamil Nadu Electricity Regulatory Commission may be pleased to fix the adjustment priority among various sources of open Access energy against HT consumption.

AND

In the matter of:

Tamil Nadu Generation and Distribution Corporation Limited, 144, Anna Salai,
Chennai - 600 002.
Represented by its Chief Financial Controller/Revenue/
TANGEDCO

... Petitioner

-/Versus/-

- Nil -

... Respondents

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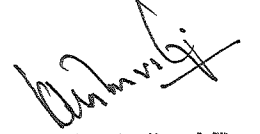
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All are true copies best of my knowledge and belief.

Dated at Chennai on this the 11th day of August' 2021.



Chief Financial Controller / Revenue
TANJAVUR CO. LTD.
PETITIONER
144, Anna Salai, Chennai - 600 002.

①

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TANGEDCO

... Petitioner

-/Versus/-

- Nil -

... Respondents

AFFIDAVIT FILED BY THE PETITIONER

I, K.Malarvizhi, wife of M.Ayyappan, Hindu, aged about 53 years, working as Chief Financial Controller/Revenue, Tamil Nadu Generation and Distribution Corporation Ltd., (A subsidiary of TNEB Ltd), having office at No.144, Anna Salai, Chennai -2 do hereby solemnly affirm and sincerely states as follows.

1. I respectfully submit that the petitioner filed Miscellaneous Petition seeking order of adjustment among various sources of open Access energy against HT consumption vide M.P.No.24 of 2021. The same has been admitted on 29.06.2021 and it has been ordered to TANGEDCO to webhost the said petition and to obtain the stakeholders comments. Pursuant to the above, TANGEDCO webhosted the said petition on 03.07.2021 requesting the stakeholders to furnish their comments on or before 03.08.2021. Based on the above, the following stakeholders have furnished their comments.

Chief Financial Controller / Revenue
TANGEDCO Ltd.,
144, Anna Salai, Chennai - 600 002.

Page No.1


No. of Corrn. "Nil"

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SL.No.	Name of the Stakeholder	Received on
1.	Tamil Nadu Spinning Mills Association.	23.07.2021
2.	Tamil Nadu Electricity Consumers' Association	24.07.2021
3.	The Southern India Mills' Association	28.07.2021
4.	Tamil Nadu Power Producers Association	29.07.2021
5.	Thiru S.Narayanaswamy-Former Member (Generation).	29.07.2021
6.	M/s. Tulsyan NEC Ltd	30.07.2021
7.	IEX-Indian Energy Exchange	03.08.2021
8.	M/s. OPG Energy Pvt Ltd.	03.08.2021
9.	M/s. OPG Power Generation Pvt Ltd.	03.08.2021
10.	Thiru A.D. Thirumoorthy- Member State Working Group on RE	03.08.2021
11.	Indian Wind Power Association	03.08.2021
12.	M/s. Watsun Infrabuild Private Limited.	03.08.2021


The above comments are annexed herewith for kind reference. In this connection, it is stated that the stakeholders mentioned in Sl.No.1 and 2 have stated that the matter of Priority of Adjustment is already sub-judice before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 filed by TASMA. With respect to the above comment, it is submitted that the impugned circular issued vide Circular Memo No. CE/GO/SE/Comml.Opn/EE/OA/F. Exchange/D102/20, dt.17.07.2020 is only relevant to approval and accounting of IEX power purchased by the HT consumers under inter-state open access. In said circular, the sequence of adjustment of energy among various sources of open access power was not mentioned. Hence, the contention of the stakeholders is not correct. Further, it is submitted that with regard to other issues (viz. Civil Appeal No.15618 of 2017, M P No.14 of 2017, etc.) raised by the stakeholders in their comments, most of the issues were already covered in the original petition filed by the petitioner/TANGEDCO.

Page No.2
No. of Corrnns. "Nil"


Chief Financial Controller / Revenue
TANGEDCO Ltd.,
144, Anna Salai, Chennai - 600 002.


-: 3 :-

For the reasons stated above, the Hon'ble Tamil Nadu Electricity Regulatory Commission may be pleased to fix the order of adjustment of the Open Access energy against HT consumption as stated above or pass any other order or orders as this Hon'ble Tamil Nadu Electricity Regulatory Commission may deem fit and proper in the facts of the case and thus render justice.


Chief Financial Controller / Revenue
DEPONENT,
144, Anna Salai, Chennai - 600 002.

VERIFICATION

I, K.Malarvizhi, the Deponent above named, do hereby at Chennai on this the 11th day of August '2021 that the contents of my foregoing Affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed there from.


Chief Financial Controller / Revenue
DEPONENT
144, Anna Salai, Chennai - 600 002.

Last page & Page No.3
No. of Corrn. "Nil"

BEFORE THE HON'BLE TNERC
CHENNAI
M.P.No.24 of 2021

MISCELLANEOUS PETITION

COUNSEL FOR PETITIONER



Tamilnadu Spinning Mills Association

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Society Regn. No. 330/97, TU Regn. No. 356/10

By E-Mail / RPAD

To
The Chief Financial Controller-Revenue,
TANGEDCO,
7th Floor,
144, Anna Salai,
Chennai - 600 002.
E-mail Id: cfcrev@tnebnnet.org ,
fcrev@tnebnnet.org

Date: 23.07.2021

Madam,

Sub: **M.P. No. 24 of 2021**- In the matter of fixing of Priority of Adjustment of OA power consumed from various sources by an OA consumer-Filing of comments-Regarding.

- Ref: 1. Your Petition in M.P. No. 24 of 2021 dated 11.06.2021 filed before the Hon'ble Commission.
2. The Daily Order of the Hon'ble Commission in M.P. No. 24 of 2021 dated 29.06.2021.
3. The webhosted matter of the Hon'ble Commission along with its Notice dated 08.07.2021 in M.P. No. 24 of 2021.

A. Preface:

1. We invite your kind reference to the petition filed by you, in M.P. No. 24 of 2021 on 11.06.2021, before the Hon'ble Commission. Accordingly, on hearing the matter on 29.06.2021, the Hon'ble Commission has made the following order.

"Thiru.M.Gopinathan, Standing Counsel appeared for TANGEDCO. Brief arguments heard. Thiru.S.P.Parthasarathy, Advocate also informed that the circular issued by TANGEDCO has been stayed by High Court of Madras. Petition is admitted. As prayed by Thiru.Rahul Balaji, Advocate, Commission directed both TANGEDCO and Registry of the Commission to webhost the petition in their respective websites for seeking comments from the stakeholders. It is also further directed that the Registry of the Commission shall arrange to

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formulate Regulations on the subject. The case is adjourned to 27.07.2021 for filing affidavit."

2. Accordingly, both the CFC-Revenue, as well as the Hon'ble Commission, have webhosted the matter covered by M.P. No. 24 of 2021, both in the website of the TANGEDCO, as well as of the Hon'ble Commission. While the Hon'ble Commission webhosted the petition, has also webhosted a notice dated 08.07.2021, to invite the comments from the stakeholders on the matter covered by M.P. No. 24 of 2021 for submission before 03.08.2021.
3. A copy of the Daily Order dated 29.06.2021 (**Annexure-A**) of the Hon'ble Commission and the Notice of the Hon'ble Commission dated 08.07.2021 (**Annexure-B**) are sent herewith for instant reference.
4. Accordingly, on behalf of **Tamilnadu Spinning Mills Association** (herein after called as **TASMA**), which has a member strength of 687 spinning mills and other industries falling in the Textile Value Chain, we are filing our comments as below.

B. The matter of Priority of Adjustment is already sub-judice before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 filed by TASMA.

5. The subject of "Priority of Adjustment of OA Power" was one among the few tasks allotted to TANGEDCO by the TANTRANSCO vide its communication dated 17.07.2020 in Circular Memo No. CE/GO/SE/Comml. Opn/EE/OA/F. Exchange/D102/20 (**Annexure-C**) and accordingly, the assignment was provided as below.
6. The following are the Operative Portions of the above Circular Memo dated 17.07.2020 issued by the TANTRANSCO.

"a) The Superintending Engineer/Commercial Operation (3rd Respondent) is instructed to dispense the process of issuance of "In principal Approval" by SLDC, for the Inter-State Collective and Bilateral Power Purchase Transaction. Issuing for Standing Clearance as in vogue, shall be continued with NOCs from EDCs.

b) The Superintending Engineers/ EDCs are instructed to dispense the execution of Agreement including the existing agreement for the Inter-State collective and bilateral power purchase transactions.

c) TANGEDCO-Finance Wing (5th Respondent) shall initiate necessary action for additional surcharge claim, since the monthly applications for collective / bilateral transactions shall be treated as new application hereafter.

d) *The Superintending Engineers/ EDCs are instructed to adhere the following at the time of issuing consent/ NOCs:*

(i) An Undertaking/Declaration (Format-I enclosed) shall be obtained from the open access consumers, who intend to purchase power through Inter-State Open Access that the maximum power made available at any time exceeds 1 MW to maintain grid discipline and also cannot exceed the actual approved quantum (maximum limit). For those who are not opting these terms and conditions, NOC should not be issued by the EDCs.

ii) In accordance with TNERC's Order in MP No. 34 of 2014 dated 31.03.2016, provision of ABT Meters and metering Set (CT&PT) with 0.2S Class Accuracy, shall be made mandatory, for the consumers who intend to purchase power through Inter-State Open Access. It shall be ensured before issuing consent/NOC by concerned EDCs for Open Access or otherwise NOC should not be issued by the Distribution Licensee.

e) *The Superintending Engineer / Commercial Operation (3rd Respondent) is instructed to adhere that the application for the standing clearance from SLDC is in the prescribed format (Format-II enclosed) named as "Application for the Standing Clearance" along with the enclosures mentioned therein*

f) *The Superintending Engineer / Commercial Operation is instructed to ensure through Superintending Engineer / LD&GO that the Corridor availability (N-1) is verified with Inter- State Transmission System / Intra-State Transmission System Line Clear (LC) Program as in practice*

g) *The Superintending Engineer / LD&GO is instructed that in case of any forced constraints in the State Transmission Network, at any point of time SLDC to give priority for the Distribution Licensee to avail power through exchange and to restrict the consumers. For any constraints in the Distribution Network STOA transactions have to give least priority.*

h) The Chief engineer/ Commercial/ TANGEDCO and Chief Financial Controller/ Regulatory Cell/ TANGEDCO (functioning under 5th Respondent) are instructed to frame the commercial Mechanism for imposing penalty for the excess demand availed from TANGEDCO than the demand that has been proposed to be availed from TANGEDCO after deduction of approved quantum of demand proposed to be purchased from Power Exchanges/ Bilateral Transactions. Necessary regulatory Approval wherever required shall be obtained.

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i) The Superintending Engineer/ Commercial Operation (3rd Respondent) is instructed to share the 15 minute time block energy purchase from Power Exchanges/ Bilateral Transactions to IT wing to avoid gaming.

j) The Chief Engineer / IT and the Chief Financial Controller/ Revenue / TANGEDCO (officials of the 5th Respondent) are instructed to initiate block wise energy adjustment of the power exchange/ bilateral power purchase transaction.

k) The above order supersedes the previous order.

7. Inter-alia, for other reasons, the said communication dated 17.07.2020 was challenged by **TASMA** before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 and on an order issued in the said Writ Petition on 03.08.2020, the Hon'ble High Court has stayed the entire operation of the communication dated 17.07.2020 issued by the TANTRANSCO. The operative portion of the order dated 03.08.2020 in WP No. 10069 of 2020 is reproduced below and the order copy of the Hon'ble High Court in WP No. 10069 of 2020 is annexed to the comments as **(Annexure-D)**

"4.This Court is satisfied that a prima facie case has been made out for grant of interim orders and consequently, there shall be an order of interim stay of the operation of the impugned memo and there shall be a further direction to the respondents to follow the existing Regulation insofar as open access inter-State transmission is concerned, pending disposal of this writ petition.

8. Therefore, the Circular Memo dated 17.07.2020 issued by the TANTRANSCO, inter-alia, dealing with the matter of priority of adjustment, was ordered to be on Interim Stay and therefore, it has lost its operation as of now. Accordingly, the subject matter of priority of adjustment is already sub-judice before the Hon'ble High Court in WP No. 10069 of 2020, as the total Circular Memo was already stayed by the order dated 03.08.2020 of the Hon'ble High Court.
9. When the instant matter covered by M.P. No. 24 of 2021, came to be heard on 29.06.2021 before the Hon'ble Commission, the Counsel of **TASMA** appeared, has brought this fact for the information of Hon'ble Commission, which was also found recorded in the Daily Order dated 29.06.2021 issued by the Hon'ble Commission.
10. Without pre-judice to the same, we are filing our comments as below further.

C. TANGEDCO has not demonstrated the cause of action or prima facie for filing the petition on the grounds of alleged losses:

- 11. As per the existing procedure, the Priority of Adjustment, was being followed historically, as per the list provided below which was admitted by the Chief Financial Controller-Revenue in Para 8 of the Petition in M.P. No. 24 of 2021.
 - i. IEX Power
 - ii. 3rd Party Power
 - iii. Captive Thermal Energy
 - iv. Captive Solar Power
 - v. Captive Wind Energy without Banking
 - vi. Wind Energy with Banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the pay out for the unutilized quantum of energy)

12. While things are flowing smoothly, during all these years, suddenly the Petition in M.P. No. 24 of 2021, was filed to disturb the peaceful system of priority of adjustment, alleging that there is revenue loss to the TANGEDCO. The alleged revenue loss to the TANGEDCO, was explained by the Petitioner CFC-Revenue, in Para No. 9 & 10 of the Petition and for the brevity of reference, Para No. 10 of the Petition alone is reproduced below.

"I respectfully submit that, due to the existence of banking facility, the above HT consumer is purchasing power from the IEX/3rd party and fossil fuel sources even during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season. Moreover, the wind generation is having must run status and the Hon'ble Commission has generously extended banking facility and concession in OA charges to the wind energy generators to promote the RE generation in the State. In all ways benefits are extended to the Wind Generators. Further, the Hon'ble Commission has issued guidelines on the procedure of banking of wind energy in every order issued on wind energy that;

"..... 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."

As per the above guidelines, the HT consumer has to exhaust the wind energy generated during any month against the industrial consumption. But as shown in the table, the HT consumer is purchasing power from the IEX/3rd party and fossil fuel sources even

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during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season."

13. It is stated by **TASMA** that by having alleged in the above manner, the Petitioner CFC-Revenue, has not correctly understood the scopes and functions of the State Commissions as provided under the Electricity Act 2003, for the promotion of energy from Non-Conventional Sources, more particularly under Section 86(1)(e) of the Electricity Act 2003, besides to the very preamble of the Act. The banking allowed to WEGs is therefore no more remains to be a concession nor a benefit or favour to the wind energy generators. Accordingly, the Hon'ble Commission after understanding the letter and spirit of the Electricity Act 2003, in line with the mandatory scope and functions provided under the Act, has correctly acted up on them and accordingly, extended the scheme of banking to WEGs through its various Tariff Orders relating to Wind Energy up to 31.03.2018. Hence, the extension of banking to WEG is not an act of favour or concession to WEGs as assumed by the petitioner CFC-Revenue. **TASMA** wants to deal the matter separately under another heading, with reference to the withdrawal of scheme of banking for WEGs commissioned after 01.04.2018. Therefore, the Petitioner has to understand that the scheme of banking to WEGs is no more a favour nor a concession.
14. Further to the same, **TASMA** states that the Petitioner CFC-Revenue, has not correctly demonstrated, as how the TANGEDCO is incurring losses, while in following the present system of Priority of Adjustment. In contra, it is stated that the Petitioner has not at all considered and factored the following effortless revenues flowing to TANGEDCO, while the TANGEDCO is following the present system of Priority of Adjustments.
15. They are tabulated below:

Table

Sl. No.	Source of Power	Nature of Revenue	Revenue earned by TANGEDCO with no efforts/Unit
1.	IEX / Exchange Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
2.	Third Party Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
3.	Bilateral Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
4.	Due to Banking of Wind Power	Banking Charges @ 14% of the units banked	0.97
5.	Total revenue to TANGEDCO while the WEG captive user banks the wind energy and goes for IEX / Third Party/ Bilateral Power.		Rs. 1.67 + 0.70 + 0.36 + 0.97 = Rs.3.70

16. The split up for the revenues of TANGEDCO / SLDC, when consumers trade through IEX platform or Third Party Power or Bilateral Power are provided below in the below Table for quick understanding.

STU & SLDC Charges Excluding OA Losses	
Transmission Charges(Rs. 126.55 / MWHr)	0.13
SLDC System Operating Charges (Rs.1.41/MW/Hr)	0.02
SLDC Scheduling Charges (Rs. 160/Day)	
Wheeling Charges (Rs. 21.05/kWh)	0.21
CSS (Rs. 1.67/kWh)	1.67
Additional Surcharge	0.70
Total	2.73

17. Therefore, from the above Tables, it could be seen that in no way, the TANGEDCO is incurring any losses, because of the reason of a wind energy captive user, banks his wind energy and opts to go for sourcing power from IEX / Third Party / Bilateral Power. Such an option is always to the benefit of the TANGEDCO only and the Petitioner has failed to factor such revenues flowing to TANGEDCO as tabulated above. With no efforts or with no investments, the TANGEDCO is earning out of the present scheme of Priority of Adjustment to the extent of Rs.3.70/Unit. If the TANGEDCO is provided with the approval to change the Priority of Adjustment as prayed for, the TANGEDCO would completely deprive of the monetary benefits to the extent of Rs.3.70/Unit. To the contrary, the TANGEDCO and even the SLDC are getting benefitted out of the OA charges and Cross Subsidy Surcharge and also by way of the Additional Surcharge, to the extent tabulated above in Para 15 & 16, to the extent of Rs.3.70 / Unit, with no single paise extra investment. If the Priority of Adjustment is revised, as sought for by the Petitioner, then it would be detrimental to the financial interests of the TANGEDCO only, as long as when the captive user of wind energy is paying the banking charges and also other OA charges to the extent explained above. Being the HOD functioning for adding revenues to the TANGEDCO, it is quite unfortunate that the CFC-Revenue has not factored all these matters correctly before filing the petition.

D. How the instant petition filed by the CFC-Revenue in M.P. No. 24 of 2021 has not correctly considered the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by TASMA:

18. Without prejudice to the above stands, it is also stated that the Petitioner, CFC-Revenue is seeking for an approval to revise the Priority of Adjustment in the below manner, as extracted from Para 11 of the Petition in M.P. No. 24 of 2021 filed before this Hon'ble Commission.

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Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd Party from Thermal Generator
 - b. 3rd Party from Solar Generator
 - c. 3rd Party from Wind Energy Generator
 - d. 3rd Party from Bagasse Generator
 - e. 3rd Party from Biomass Generator

Captive Category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher Cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
- d. Solar power (higher cost first lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. Thermal energy (surplus units lapsed)

19. From the above narrations of the CFC-Revenue, it is highly surprising to **TASMA** that the CFC-Revenue has failed to appreciate the order of the Hon'ble APTEL dated 28.01.2021 delivered in Appeal No. 191 of 2018 filed by **TASMA**. By the above order of the Hon'ble APTEL, the Hon'ble APTEL has set aside the entire order of the Hon'ble Commission issued on 13.04.2018 in Order No. 6 of 2018. Accordingly, **TASMA** states that there are no windmills in the State of Tamilnadu, without the scheme of banking, after the issuance of the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by **TASMA**. Accordingly, the facility of banking withdrawn for the new WEGs with effect from 01.04.2018, by the order of the Hon'ble Commission in Order No. 6 of 2018, dated 13.04.2018 is totally set aside. Accordingly, the following are the operative portions of the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018.

Operative Portions of the order of APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by TASMA & Others (Batch).

"For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable.

We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated

(a) withdrawal of banking facility

(i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and

(ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning;

- (b) increase in banking charges from 12% to 14%:
- (c) increase in cross subsidy surcharge from 50% to 60%:
- (d) determination of the capacity utilisation factor at high level of 29.15%:
- (e) increase in open access charges from 40% of the normative charges for conventional sources of power to 50% of transmission and wheeling charges and the basis of levy on the installed capacity instead of generated units and imposing 100% scheduling and system operation charges for REC WEGs:
- (f) fixed feed-in-tariff at Rs.2.86 without accelerated depreciation (AD) and Rs.2.80 with AD without considering relevant parameters: and
- (g) reduction in liability for delay in Invoice payment on sale to DISCOMS category to 1% interest. In the result, the orders on the above subjects, as prevailing prior to impugned order, shall stand restored and revived for the control period covered by the impugned order.

The State Commission shall ensure all necessary consequential orders are passed and these directions are scrupulously complied with by all concerned.

96. We would not allow further ad hoc approach on the subject. We, thus, also direct that the State Commission shall not bring about changes in the rules for power banking (of the kind attempted through the non-speaking impugned decision) by any further order without undertaking a study based on requisite data properly gathered and analysed so as to draw informed conclusions about financial impact on various stakeholders. We are given to understand that there is sufficient time available for such study before the time for issuing fresh order on the subject for the next control period arrives. The work in this regard, thus, must begin forthwith and in right earnest. All stakeholders shall be duty-bound to cooperate for making the endeavour meaningful.

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97. The appeals, and pending applications, are decided in above terms. Besides making available copies of this judgment for the parties, we direct that the Registry shall send a copy also to the Secretary, Ministry of Power in the Central Government for necessary action with reference to the observations recorded above.

20. Therefore, it is stated that as the order of the Hon'ble APTEL is final as of now, there will not be any windmill in the State of Tamilnadu without having scheme of banking. On that score, the Petitioner CFC-Revenue having split up the Priority of Adjustment, one for the WEGs with banking facility and the other for the WEGs without banking facility, is totally erroneous and therefore, it completely violates the very order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018. To that extent, the Petitioner has to withdraw the Petition, as the petition as presented and filed before the Hon'ble Commission, now directly violates the order of the Hon'ble APTEL and therefore, it leads to contempting of the order of the Hon'ble APTEL, in having made split up narration for WEGs with banking and WEGs without banking. On this score alone, the Petition in M.P. No. 24 of 2021, needs to be either withdrawn by the Petitioner or to be dismissed by the Hon'ble Commission.

E. The Petition in M.P. No. 24 of 2021 directly violates the principles laid down under Section 2(47) read with Section 9 of the Electricity Act 2003:

21. Without pre-judice to the above, it is stated that if the scheme of Priority of Adjustment is modified or altered in the manner as prayed for by the Petitioner CFC-Revenue, it would take away the accrued rights of the captive users of the OA power and would make the whole arrangement made in the Electricity Act 2003, completely discriminatory. When the OA power has to be allowed for Open Access, without any discrimination as provided under Section 2(47) read with Section 9 of the Electricity Act 2003, attempting to bring discrimination in availing of the OA power, directly violates the principles set down in the Electricity Act 2003 also. For the purpose of brief understanding, Section 2(47) and Section 9 of the Electricity Act 2003 are reproduced below.

"Section 2(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;"

Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission."

22. Therefore, by attempting to introduce a system as prayed for, the Petitioner CFC-Revenue is taking a completely discriminatory view in the matter of allowing the Open Access in its own fashion, without any rhyme or reason. On the allegation of the TANGEDCO incurring losses due to following the present system of Priority of Adjustment, **TASMA** has clearly demonstrated, as how the present system is benefitting the TANGEDCO to the extent of Rs.3.70/Unit even without any single paise extra investment. Therefore, the allegation of losses to the TANGEDCO is completely found to be not true and devoid of merits. Except to trouble the Open Access Consumers, from continuing to avail the present system of Priority of Adjustment, there is no motive found demonstrated in the petition in any manner. Therefore, the petition fails to demonstrate sufficient cause of action and the whole petition is filed to prejudicially affect the interest of the OA consumers in the State.

F. If the proposed system of Priority of Adjustment , if approved by the Hon'ble Commission, would prejudicially and financially affect the interest of all captive users:

23. By the prayer made in Para 11 of the Petition filed by the CFC-Revenue, the Petitioner wants to get approval to enforce the following Priority of Adjustment.

Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd Party from Thermal Generator
 - b. 3rd Party from Solar Generator
 - c. 3rd Party from Wind Energy Generator
 - d. 3rd Party from Bagasse Generator
 - e. 3rd Party from Biomass Generator

Captive Category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher Cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
- d. Solar power (higher cost first lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. Thermal energy (surplus units lapsed)

24. As far as the Priority of Adjustment is concern in respect of the Non-Captive Category (i.e) Third Party, **TASMA** has no difference of opinion, as TANGEDCO would be greatly benefitted by way of collection of Open Access and other Cross Subsidy and Additional Surcharges and therefore, **TASMA** expresses its consent to go with the Non-Captive Category as prayed for by the Petitioner.

25. However, only with reference to the Captive Category, the changes proposed are not acceptable to **TASMA**. The first of it, the split up of wind energy generators, based on banking and without banking, should be merged together as wind energy alone and there is no need to sub-categorize it with banking and without banking, in view of the express orders provided by the Hon'ble APTEL in Appeal No. 191 of 2018 dated 28.01.2021 as explained supra. Therefore, the Sub-Categories of b & c need to be merged together and should be placed in the last of the Priority of Adjustment, as it has banking scheme available and ensured by the Hon'ble APTEL also.

26. Accordingly, the Thermal Energy (Surplus Units lapsed), now found in the last under Sub-Category No. f, should be placed at Sub-Category No. a under the main Category of Captive Category. Accordingly, **TASMA** proposes to keep the Captive Category in the following order of Priority of Adjustment.

Captive Category:

- a. Thermal energy (surplus units lapsed)
- b. Biomass (75% payment for surplus units)
- c. Solar power (higher cost first lower cost 75% payment for surplus units)
- d. Bagasse co-gen (surplus units lapsed)
- e. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
- f. Wind energy with banking (Higher Cost first and lower cost later)

27. Even though, **TASMA** suggested not to split up the wind energy with or without banking, for the sake of convenience of reference, it is notified with split ups under e & f Sub-Category.

28. The Hon'ble Commission has also mentioned in the Daily Order dated 29.06.2021 that the Hon'ble Commission would be webhosting a Draft Regulation for the comments and accordingly, the comments filed by **TASMA** by this letter, would not anyway be prejudiced for making comments on the Draft Regulations if proposed to be webhosted by Hon'ble Commission in this regard. However, it is left to the purview of the Hon'ble Commission, whether such matters of Priority of Adjustment have to be regulated in the form of a Regulation.

G. The Priority of Adjustment now proposed by the CFC-Revenue in the Petition also violates the Regulations under Grid Connectivity and Intra-State Open Access Regulations 2014:

29. Each energy, sourced from each Category is falling either under the following three main Categories.

- i. Short Term Open Access (STOA)
- ii. Medium Term Open Access (MTOA)
- iii. Long Term Open Access (LTOA)

30. The energy from the Renewable Sources most instantly from the WEGs is classified as LTOA Power. Normally, the Thermal Captive Power, comes under the Category of MTOA Power. Therefore, even by the order of Priority, Long Term Open Access Power, covered by the banking scheme, has to be pushed to the last of the Priority and therefore, on the letter and spirit of the ISOA Regulations 2014 also, the Priority of Adjustment has to be regulated in a manner without affecting the interest of any stakeholder involved in the process.

H. Above all, the Petition in M.P. No. 24 of 2021 completely violates the order of the Hon'ble APTEL in Appeal No. 366 of 2017 dated 28.11.2018.

31. The matter of Priority of Adjustment was already analysed critically by the Hon'ble APTEL in Appeal No. 366 of 2017 and an order was passed on 28.11.2018, which made the matter of Priority of Adjustment fully settled. This order was based on an Appeal filed by the Maharashtra State Electricity Distribution Company Limited against the order of Hon'ble Maharashtra State Electricity Regulatory Commission in Order in Case No.139 of 2016. Therefore, it has become already a settled matter.

32. The Hon'ble APTEL has already observed that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources. The Operative Portions of the order in Appeal No. 366 of 2017 dated 28.11.2018 is reproduced below.

*"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. **However,***

irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensees is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant.

O R D E R

For the foregoing reasons, as stated supra, the instant Appeal, being Appeal No. 366 of 2017, filed by the Appellants, is dismissed as devoid of merits.

The impugned Order dated 11.08.2017 passed in Case No. 139 of 2016 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai is hereby confirmed."

33. Therefore, on a matter already settled by the Hon'ble APTEL on 28.11.2018 itself in Appeal No.366 of 2017, the present Petition filed by the Petitioner CFC-Revenue has become totally infructuous and therefore, the Petition requires no further adjudication at all accordingly, the Petition in M.P. No. 24 of 2021 may be closed as such by levying heavy cost on the Petitioner for having wasted the time of the Hon'ble Commission.

34. The Petitioner has not made out any prima facie case and the balance of convenience is also not in favour of the Petitioner. Therefore, the Petition is liable to be dismissed under all the above scores, more particularly on the ground of filing a Petition on a completely settled matter. The alleged losses happening to TANGEDCO, is only a myth and is no way demonstrated in detail in the Petition. In the absence of the same also, either the Petitioner should be directed to withdraw the Petition or the Petition should be dismissed by the Hon'ble Commission, for the reason that the Petitioner has failed to demonstrate the cause of action and the prima facie and the balance of convenience, to proceed with the Petition for issuing any order by the Hon'ble Commission. On the contrary **TASMA** has demonstrated both on legal grounds as well as on factual matrix, as how the petition is not maintainable both on law as well as on merits and accordingly, **TASMA** has demonstrated that the existing system of Priority of Adjustment requires no intervention in any manner on any reason.
35. **TASMA** submits that the instant Petition in M.P. No. 24 of 2021 is listed for hearing on 27.07.2021 under Item No. 19, as per the Cause List notified by the Hon'ble Commission and accordingly, the Hon'ble Commission may be pleased to direct the Petitioner to withdraw the Petition on hearing the matter on 27.07.2021 itself.

I. Conclusion:

36. For all the reasons and grounds as explained above in the comments as filed by **Tamilnadu Spinning Mills Association (TASMA)**, TASMA prays that the Hon'ble Commission may be pleased to direct the Petitioner to withdraw the petition and in the case of failure to withdraw the petition, the Hon'ble Commission may be pleased to dismiss the same, by imposing heavy cost on the petitioner, for having wasted the time of the Hon'ble Commission in bringing such untenable petition, seeking for the orders of the Hon'ble Commission which is already a settled matter and which is no way supported either by law or on facts and accordingly, for the reasons stated above, the petition filed by the CFC-Revenue in M.P. No. 24 of 2021 may be dismissed or allowed to be withdrawn and thus render justice.

Thanking You,

Yours Truly,



Dr.K.Venkatachalam
Chief Advisor

Copy to: The Secretary,
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**TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION**

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TECA:2021-22/TANGEDCO/45

24-Jul-21

To

The Chief Financial Controller-Revenue,

TANGEDCO,

7th Floor, 144, Anna Salai,

Chennai – 600 002.

E-mail Id: cfcrev@tnebnnet.org ,fcrev@tnebnnet.org

Madam,

Sub: TECA Comments on **M.P. No. 24 of 2021**- In the matter of fixing of Priority of Adjustment of OA power consumed from various sources by an OA consumer.

Ref: 1. Your Petition in M.P. No. 24 of 2021 dated 11.06.2021 filed before the Hon'ble Commission.

2. The Daily Order of the Hon'ble Commission in M.P. No. 24 of 2021 dated 29.06.2021.

3. The webhosted matter of the Hon'ble Commission along with its Notice dated 08.07.2021 in M.P. No. 24 of 2021.

A. Preface:

1. We invite your kind reference to the petition filed by you, in M.P. No. 24 of 2021 on 11.06.2021, before the Hon'ble Commission. Accordingly, on hearing the matter on 29.06.2021, the Hon'ble Commission has made the following order.

"Thiru.M.Gopinathan, Standing Counsel appeared for TANGEDCO. Brief arguments heard. Thiru. S.P. Parthasarathy, Advocate also informed that the circular issued by TANGEDCO has been stayed by High Court of Madras. Petition is admitted. As prayed by Thiru.Rahul Balaji, Advocate, Commission directed both TANGEDCO and Registry of the Commission to webhost the petition in their respective websites for seeking comments from the stakeholders. It is also further directed that the Registry of the Commission shall arrange to formulate Regulations on the subject. The case is adjourned to 27.07.2021 for filing affidavit."



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2. Accordingly, both the CFC-Revenue, as well as the Hon'ble Commission, have webhosted the matter covered by M.P. No. 24 of 2021, both in the website of the TANGEDCO, as well as of the Hon'ble Commission. While the Hon'ble Commission webhosted the petition, has also webhosted a notice dated 08.07.2021, to invite the comments from the stakeholders on the matter covered by M.P. No. 24 of 2021 for submission before 03.08.2021.
3. A copy of the Daily Order dated 29.06.2021 (**Annexure-A**) of the Hon'ble Commission and the Notice of the Hon'ble Commission dated 08.07.2021 (**Annexure-B**) are sent herewith for instant reference.
4. Accordingly, on behalf of Tamil Nadu Electricity Consumers' Association (TECA), having strength of 680 industrial members, is filing our comments as below.

B. The matter of Priority of Adjustment is already sub-judice before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 filed by an Association namely Tamilnadu Spinning Mills Association.

5. The subject of "Priority of Adjustment of OA Power" was one among the few tasks allotted to TANGEDCO by the TANTRANSCO vide its communication dated 17.07.2020 in Circular Memo No. CE/GO/SE/Comml. Opn/EE/OA/F. Exchange/D102/20 and accordingly, the assignment was provided as below.
6. The following are the Operative Portions of the above Circular Memo dated 17.07.2020 issued by the TANTRANSCO.

"a) The Superintending Engineer/Commercial Operation (3rd Respondent) is instructed to dispense the process of issuance of "In principal Approval" by SLDC, for the Inter-State Collective and Bilateral Power Purchase Transaction. Issuing for Standing Clearance as in vogue, shall be continued with NOCs from EDCs.

b) The Superintending Engineers/ EDCs are instructed to dispense the execution of Agreement including the existing agreement for the Inter-State collective and bilateral power purchase transactions.



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c) *TANGEDCO-Finance Wing (5th Respondent) shall initiate necessary action for additional surcharge claim, since the monthly applications for collective / bilateral transactions shall be treated as new application hereafter.*

d) *The Superintending Engineers/ EDCs are instructed to adhere the following at the time of issuing consent/ NOCs:*

(i) An Undertaking/Declaration (Format-I enclosed) shall be obtained from the open access consumers, who intend to purchase power through Inter-State Open Access that the maximum power made available at any time exceeds 1 MW to maintain grid discipline and also cannot exceed the actual approved quantum (maximum limit). For those who are not opting these terms and conditions, NOC should not be issued by the EDCs.

ii) In accordance with TNERC's Order in MP No. 34 of 2014 dated 31.03.2016, provision of ABT Meters and metering Set (CT&PT) with 0.2S Class Accuracy, shall be made mandatory, for the consumers who intend to purchase power through Inter-State Open Access. It shall be ensured before issuing consent/NOC by concerned EDCs for Open Access or otherwise NOC should not be issued by the Distribution Licensee.

e) *The Superintending Engineer / Commercial Operation (3rd Respondent) is instructed to adhere that the application for the standing clearance from SLDC is in the prescribed format (Format-II enclosed) named as "Application for the Standing Clearance" along with the enclosures mentioned therein*

f) *The Superintending Engineer / Commercial Operation is instructed to ensure through Superintending Engineer / LD&GO that the Corridor availability (N-1) is verified with Inter- State Transmission System / Intra-State Transmission System Line Clear (LC) Program as in practice*

g) The Superintending Engineer / LD&GO is instructed that in case of any forced constraints in the State Transmission



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Network, at any point of time SLDC to give priority for the Distribution Licensee to avail power through exchange and to restrict the consumers. For any constraints in the Distribution Network STOA transactions have to give least priority.

h) The Chief engineer/ Commercial/ TANGEDCO and Chief Financial Controller/ Regulatory Cell/ TANGEDCO (functioning under 5th Respondent) are instructed to frame the commercial Mechanism for imposing penalty for the excess demand availed from TANGEDCO than the demand that has been proposed to be availed from TANGEDCO after deduction of approved quantum of demand proposed to be purchased from Power Exchanges/ Bilateral Transactions. Necessary regulatory Approval wherever required shall be obtained.

i) The Superintending Engineer/ Commercial Operation (3rd Respondent) is instructed to share the 15 minute time block energy purchase from Power Exchanges/ Bilateral Transactions to IT wing to avoid gaming.

j) The Chief Engineer / IT and the Chief Financial Controller/ Revenue / TANGEDCO (officials of the 5th Respondent) are instructed to initiate block wise energy adjustment of the power exchange/ bilateral power purchase transaction.

k) The above order supersedes the previous order.

7. Inter-alia, for other reasons, the said communication dated 17.07.2020 was challenged by one of the association namely Tamilnadu Spinning Mills Association (**TASMA**) before the Hon'ble High Court of Judicature at Madras in WP No. 10069 of 2020 and on an order issued in the said Writ Petition on 03.08.2020, the Hon'ble High Court has stayed the entire operation of the communication dated 17.07.2020 issued by the TANTRANSOCO. The operative portion of the order dated 03.08.2020 in WP No. 10069 of 2020 is reproduced below.

*"4. This Court is satisfied that a prima facie case has been made out for grant of interim orders **and consequently, there shall be an order of interim stay of the operation of the impugned memo** and there shall be a further direction to the respondents to follow the existing Regulation insofar as open access inter-State transmission is concerned, pending disposal of this writ petition.*

8. Therefore, the Circular Memo dated 17.07.2020 issued by the TANTRANSOCO, inter-alia, dealing with the matter of priority of adjustment, was ordered to be on Interim Stay and therefore, it has lost its operation as of now. Accordingly, the subject matter of priority of adjustment is already sub-judice before the Hon'ble High Court in WP No. 10069 of



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2020, as the total Circular Memo was already stayed by the order dated 03.08.2020 of the Hon'ble High Court.

9. When the instant matter covered by M.P. No. 24 of 2021, came to be heard on 29.06.2021 before the Hon'ble Commission, the Counsel of **TASMA** appeared, has brought this fact for the information of Hon'ble Commission, which was also found recorded in the Daily Order dated 29.06.2021 issued by the Hon'ble Commission.
10. Without pre-judice to the same, we are filing our comments as below further.

C. TANGEDCO has not demonstrated the cause of action or prima facie for filing the petition on the grounds of alleged losses:

11. As per the existing procedure, the Priority of Adjustment, was being followed historically, as per the list provided below which was admitted by the Chief Financial Controller-Revenue in Para 8 of the Petition in M.P. No. 24 of 2021.
 - i. IEX Power
 - ii. 3rd Party Power
 - iii. Captive Thermal Energy
 - iv. Captive Solar Power
 - v. Captive Wind Energy without Banking
 - vi. Wind Energy with Banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the pay out for the unutilized quantum of energy)
12. While things are flowing smoothly, during all these years, suddenly the Petition in M.P. No. 24 of 2021, was filed to disturb the peaceful system of priority of adjustment, alleging that there is revenue loss to the TANGEDCO. The alleged revenue loss to the TANGEDCO, was explained by the Petitioner CFC-Revenue, in Para No. 9 & 10 of the Petition and for the brevity of reference, Para No. 10 of the Petition alone is reproduced below.

"I respectfully submit that, due to the existence of banking facility, the above HT consumer is purchasing power from the IEX/3rd party and fossil fuel sources even during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season. Moreover, the wind generation is having must run status and the Hon'ble Commission has generously extended banking facility and concession in OA charges to the wind energy generators to



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promote the RE generation in the State. In all ways benefits are extended to the Wind Generators. Further, the Hon'ble Commission has issued guidelines on the procedure of banking of wind energy in every order issued on wind energy that;

"..... 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."

As per the above guidelines, the HT consumer has to exhaust the wind energy generated during any month against the industrial consumption. But as shown in the table, the HT consumer is purchasing power from the IEX/3rd party and fossil fuel sources even during the wind peak season and keep the surplus energy in banking account for future adjustment obviously during off-season."

13. It is stated by TECA that by having alleged in the above manner, the Petitioner CFC-Revenue, has not correctly understood the scopes and functions of the State Commissions as provided under the Electricity Act 2003, for the promotion of energy from Non-Conventional Sources, more particularly under Section 86(1)(e) of the Electricity Act 2003, besides to the very preamble of the Act. The banking allowed to WEGs is therefore no more remains to be a concession nor a benefit or favour to the wind energy generators. Accordingly, the Hon'ble Commission after understanding the letter and spirit of the Electricity Act 2003, in line with the mandatory scope and functions provided under the Act, has correctly acted up on them and accordingly, extended the scheme of banking to WEGs through its various Tariff Orders relating to Wind Energy up to 31.03.2018. Hence, the extension of banking to WEG is not an act of favour or concession to WEGs as assumed by the petitioner CFC-Revenue. Therefore, the Petitioner has to understand that the scheme of banking to WEGs is no more a favour nor a concession.
14. Further to the same, TECA states that the Petitioner CFC-Revenue, has not correctly demonstrated, as how the TANGEDCO is incurring losses, while in following the present system of Priority of Adjustment. In contra, it is stated that the Petitioner has not at all considered and factored the



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following effortless revenues flowing to TANGEDCO, while the TANGEDCO is following the present system of Priority of Adjustments.

15. They are tabulated below:

Table

Sl. No.	Source of Power	Nature of Revenue	Revenue earned by TANGEDCO with no efforts/Unit
1.	IEX / Exchange Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
2.	Third Party Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
3.	Bilateral Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
4.	Due to Banking of Wind Power	Banking Charges @ 14% of the units banked	0.97
5.	Total revenue to TANGEDCO while the WEG captive user banks the wind energy and goes for IEX / Third Party/ Bilateral Power.		Rs. 1.67 + 0.70 + 0.36 + 0.97 = Rs.3.70

16. The split up for the revenues of TANGEDCO / SLDC, when consumers trade through IEX platform or Third Party Power or Bilateral Power are provided below in the below Table for quick understanding.

STU & SLDC Charges Excluding OA Losses	
Transmission Charges(Rs. 126.55 / MWhr)	0.13
SLDC System Operating Charges (Rs.1.41/MW/Hr)	0.02
SLDC Scheduling Charges (Rs. 160/Day)	
Wheeling Charges (Rs. 21.05/kWh)	0.21
CSS (Rs. 1.67/kWh)	1.67
Additional Surcharge	0.70
Total	2.73

17. Therefore, from the above Tables, it could be seen that in no way, the TANGEDCO is incurring any losses, because of the reason of a wind energy captive user, banks his wind energy and opts to go for sourcing

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power from IEX / Third Party / Bilateral Power. Such an option is always to the benefit of the TANGEDCO only and the Petitioner has failed to factor such revenues flowing to TANGEDCO as tabulated above. With no efforts or with no investments, the TANGEDCO is earning out of the present scheme of Priority of Adjustment to the extent of Rs.3.70/Unit. If the TANGEDCO is provided with the approval to change the Priority of Adjustment as prayed for, the TANGEDCO would completely deprive of the monetary benefits to the extent of Rs.3.70/Unit. To the contrary, the TANGEDCO and even the SLDC are getting benefitted out of the OA charges and Cross Subsidy Surcharge and also by way of the Additional Surcharge, to the extent tabulated above in Para 15 & 16, to the extent of Rs.3.70 / Unit, with no single paise extra investment. If the Priority of Adjustment is revised, as sought for by the Petitioner, then it would be detrimental to the financial interests of the TANGEDCO only, as long as when the captive user of wind energy is paying the banking charges and also other OA charges to the extent explained above. Being the HOD functioning for adding revenues to the TANGEDCO, it is quite unfortunate that the CFC-Revenue has not factored all these matters correctly before filing the petition.

D. How the instant petition filed by the CFC-Revenue in M.P. No. 24 of 2021 has not correctly considered the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by TASMA:

18. Without prejudice to the above stands, it is also stated that the Petitioner, CFC-Revenue is seeking for an approval to revise the Priority of Adjustment in the below manner, as extracted from Para 11 of the Petition in M.P. No. 24 of 2021 filed before this Hon'ble Commission.

Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd Party from Thermal Generator
 - b. 3rd Party from Solar Generator
 - c. 3rd Party from Wind Energy Generator
 - d. 3rd Party from Bagasse Generator
 - e. 3rd Party from Biomass Generator

Captive Category:

- a. Biomass (75% payment for surplus units)



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- b. Wind energy with banking (Higher Cost first and lower cost later)
 - c. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
 - d. Solar power (higher cost first lower cost 75% payment for surplus units)
 - e. Bagasse co-gen (surplus units lapsed)
 - f. Thermal energy (surplus units lapsed)
19. From the above narrations of the CFC-Revenue, it is highly surprising to TECA that the CFC-Revenue has failed to appreciate the order of the Hon'ble APTEL dated 28.01.2021 delivered in Appeal No. 191 of 2018 filed by **TASMA**. By the above order of the Hon'ble APTEL, the Hon'ble APTEL has set aside the entire order of the Hon'ble Commission issued on 13.04.2018 in Order No. 6 of 2018. Accordingly, TECA states that there are no windmills in the State of Tamil Nadu, without the scheme of banking, after the issuance of the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by **TASMA**. Accordingly, the facility of banking withdrawn for the new WEGs with effect from 01.04.2018, by the order of the Hon'ble Commission in Order No. 6 of 2018, dated 13.04.2018 is totally set aside. Accordingly, the following are the operative portions of the order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018.

Operative Portions of the order of APTEL dated 28.01.2021 in Appeal No. 191 of 2018 filed by TASMA & Others (Batch).

"For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable.

We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated

(a) withdrawal of banking facility

(i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and

(ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning;



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- (b) *increase in banking charges from 12% to 14%:*
- (c) *increase in cross subsidy surcharge from 50% to 60%:*
- (d) *determination of the capacity utilisation factor at high level of 29.15%:*
- (e) *increase in open access charges from 40% of the normative charges for conventional sources of power to 50% of transmission and wheeling charges and the basis of levy on the installed capacity instead of generated units and imposing 100% scheduling and system operation charges for REC WEGs:*
- (f) *fixed feed-in-tariff at Rs.2.86 without accelerated depreciation (AD) and Rs.2.80 with AD without considering relevant parameters: and*
- (g) *reduction in liability for delay in Invoice payment on sale to DISCOMS category to 1% interest. In the result, the orders on the above subjects, as prevailing prior to impugned order, shall stand restored and revived for the control period covered by the impugned order.*

The State Commission shall ensure all necessary consequential orders are passed and these directions are scrupulously complied with by all concerned.

96. We would not allow further ad hoc approach on the subject. We, thus, also direct that the State Commission shall not bring about changes in the rules for power banking (of the kind attempted through the non-speaking impugned decision) by any further order without undertaking a study based on requisite data properly gathered and analysed so as to draw informed conclusions about financial impact on various stakeholders. We are given to understand that there is sufficient time available for such study before the time for issuing fresh order on the subject for the next control period arrives. The work in this regard, thus, must begin forthwith and in right earnest. All stakeholders shall be duty-bound to cooperate for making the endeavour meaningful.

97. The appeals, and pending applications, are decided in above terms. Besides making available copies of this judgment for the parties, we direct that the Registry shall send a copy also to the



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Secretary, Ministry of Power in the Central Government for necessary action with reference to the observations recorded above.

20. Therefore, it is stated that as the order of the Hon'ble APTEL is final as of now, there will not be any windmill in the State of Tamil Nadu without having scheme of banking. On that score, the Petitioner CFC-Revenue having split up the Priority of Adjustment, one for the WEGs with banking facility and the other for the WEGs without banking facility, is totally erroneous and therefore, it completely violates the very order of the Hon'ble APTEL dated 28.01.2021 in Appeal No. 191 of 2018. To that extent, the Petitioner has to withdraw the Petition, as the petition as presented and filed before the Hon'ble Commission, now directly violates the order of the Hon'ble APTEL and therefore, it leads to contempting of the order of the Hon'ble APTEL, in having made split up narration for WEGs with banking and WEGs without banking. On this score alone, the Petition in M.P. No. 24 of 2021, needs to be either withdrawn by the Petitioner or to be dismissed by the Hon'ble Commission.

E. The Petition in M.P. No. 24 of 2021 directly violates the principles laid down under Section 2(47) read with Section 9 of the Electricity Act 2003:

21. Without pre-judice to the above, it is stated that if the scheme of Priority of Adjustment is modified or altered in the manner as prayed for by the Petitioner CFC-Revenue, it would take away the accrued rights of the captive users of the OA power and would make the whole arrangement made in the Electricity Act 2003, completely discriminatory. When the OA power has to be allowed for Open Access, without any discrimination as provided under Section 2(47) read with Section 9 of the Electricity Act 2003, attempting to bring discrimination in availing of the OA power, directly violates the principles set down in the Electricity Act 2003 also. For the purpose of brief understanding, Section 2(47) and Section 9 of the Electricity Act 2003 are reproduced below.

"Section 2(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;"

Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:



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Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission."

22. Therefore, by attempting to introduce a system as prayed for, the Petitioner CFC-Revenue is taking a completely discriminatory view in the matter of allowing the Open Access in its own fashion, without any rhyme or reason. On the allegation of the TANGEDCO incurring losses due to following the present system of Priority of Adjustment, TECA has clearly demonstrated, as how the present system is benefitting the TANGEDCO to the extent of Rs.3.70/Unit even without any single paise extra investment. Therefore, the allegation of losses to the TANGEDCO is completely found to be not true and devoid of merits. Except to trouble the Open Access Consumers, from continuing to avail the present system of Priority of Adjustment, there is no motive found demonstrated in the petition in any manner. Therefore, the petition fails to demonstrate sufficient cause of action and the whole petition is filed to prejudicially affect the interest of the OA consumers in the State.

F. If the proposed system of Priority of Adjustment , if approved by the Hon'ble Commission, would prejudicially and financially affect the interest of all captive users:

23. By the prayer made in Para 11 of the Petition filed by the CFC-Revenue, the Petitioner wants to get approval to enforce the following Priority of Adjustment.



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Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd Party from Thermal Generator
 - b. 3rd Party from Solar Generator
 - c. 3rd Party from Wind Energy Generator
 - d. 3rd Party from Bagasse Generator
 - e. 3rd Party from Biomass Generator

Captive Category:

- a. Biomass (75% payment for surplus units)
 - b. Wind energy with banking (Higher Cost first and lower cost later)
 - c. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
 - d. Solar power (higher cost first lower cost 75% payment for surplus units)
 - e. Bagasse co-gen (surplus units lapsed)
 - f. Thermal energy (surplus units lapsed)
24. As far as the Priority of Adjustment is concern in respect of the Non-Captive Category (i.e) Third Party, TECA has no difference of opinion, as TANGEDCO would be greatly benefitted by way of collection of Open Access and other Cross Subsidy and Additional Surcharges and therefore, TECA expresses its consent to go with the Non-Captive Category as prayed for by the Petitioner.
25. However, only with reference to the Captive Category, the changes proposed are not acceptable to TECA. The first of it, the split up of wind energy generators, based on banking and without banking, should be merged together as wind energy alone and there is no need to sub-categorize it with banking and without banking, in view of the express orders provided by the Hon'ble APTEL in Appeal No. 191 of 2018 dated 28.01.2021 as explained supra. Therefore, the Sub-Categories of b & c need to be merged together and should be placed in the last of the Priority of Adjustment, as it has banking scheme available and ensured by the Hon'ble APTEL also.
26. Accordingly, the Thermal Energy (Surplus Units lapsed), now found in the last under Sub-Category No. f, should be placed at Sub-Category No. a under the main Category of Captive Category. Accordingly, TECA proposes

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to keep the Captive Category in the following order of Priority of Adjustment.

Captive Category:

- a. Thermal energy (surplus units lapsed)
- b. Biomass (75% payment for surplus units)
- c. Solar power (higher cost first lower cost 75% payment for surplus units)
- d. Bagasse co-gen (surplus units lapsed)
- e. Wind energy without banking (Higher cost first and lower cost later) 75% payment for surplus units)
- f. Wind energy with banking (Higher Cost first and lower cost later)

27. Even though, TECA suggested not to split up the wind energy with or without banking, for the sake of convenience of reference, it is notified with split ups under e & f Sub-Category.

28. The Hon'ble Commission has also mentioned in the Daily Order dated 29.06.2021 that the Hon'ble Commission would be webhosting a Draft Regulation for the comments and accordingly, the comments filed by TECA by this letter, would not anyway be prejudiced for making comments on the Draft Regulations if proposed to be webhosted by Hon'ble Commission in this regard. However, it is left to the purview of the Hon'ble Commission, whether such matters of Priority of Adjustment have to be regulated in the form of a Regulation.

G. The Priority of Adjustment now proposed by the CFC-Revenue in the Petition also violates the Regulations under Grid Connectivity and Intra-State Open Access Regulations 2014:

29. Each energy, sourced from each Category is falling either under the following three main Categories.

- i. Short Term Open Access (STOA)
- ii. Medium Term Open Access (MTOA)
- iii. Long Term Open Access (LTOA)

30. The energy from the Renewable Sources most instantly from the WEGs is classified as LTOA Power. Normally, the Thermal Captive Power, comes under the Category of MTOA Power. Therefore, even by the order of Priority, Long Term Open Access Power, covered by the banking scheme, has to be pushed to the last of the Priority and therefore, on the letter and spirit of the ISOA Regulations 2014 also, the Priority of Adjustment has to



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be regulated in a manner without affecting the interest of any stakeholder involved in the process.

H. Above all, the Petition in M.P. No. 24 of 2021 completely violates the order of the Hon'ble APTEL in Appeal No. 366 of 2017 dated 28.11.2018.

- 31. The matter of Priority of Adjustment was already analysed critically by the Hon'ble APTEL in Appeal No. 366 of 2017 and an order was passed on 28.11.2018, which made the matter of Priority of Adjustment fully settled. This order was based on an Appeal filed by the Maharashtra State Electricity Distribution Company Limited against the order of Hon'ble Maharashtra State Electricity Regulatory Commission in Order in Case No.139 of 2016. Therefore, it has become already a settled matter.
- 32. The Hon'ble APTEL has already observed that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources. The Operative Portions of the order in Appeal No. 366 of 2017 dated 28.11.2018 is reproduced below.

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensees is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources

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from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant.

ORDER

For the foregoing reasons, as stated supra, the instant Appeal, being Appeal No. 366 of 2017, filed by the Appellants, is dismissed as devoid of merits.

The impugned Order dated 11.08.2017 passed in Case No. 139 of 2016 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai is hereby confirmed."

33. Therefore, on a matter already settled by the Hon'ble APTEL on 28.11.2018 itself in Appeal No.366 of 2017, the present Petition filed by the Petitioner CFC-Revenue has become totally infructuous and therefore, the Petition requires no further adjudication at all accordingly, the Petition in M.P. No. 24 of 2021 may be closed as such by levying heavy cost on the Petitioner for having wasted the time of the Hon'ble Commission.
34. The Petitioner has not made out any prima facie case and the balance of convenience is also not in favour of the Petitioner. Therefore, the Petition is liable to be dismissed under all the above scores, more particularly on the ground of filing a Petition on a completely settled matter. The alleged losses happening to TANGEDCO, is only a myth and is no way demonstrated in detail in the Petition. In the absence of the same also, either the Petitioner should be directed to withdraw the Petition or the Petition should be dismissed by the Hon'ble Commission, for the reason that the Petitioner has failed to demonstrate the cause of action and the prima facie and the balance of convenience, to proceed with the Petition for issuing any order by the Hon'ble Commission. On the contrary TECA



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has demonstrated both on legal grounds as well as on factual matrix, as how the petition is not maintainable both on law as well as on merits and accordingly, TECA has demonstrated that the existing system of Priority of Adjustment requires no intervention in any manner on any reason.

- 35. We submits that the instant Petition in M.P. No. 24 of 2021 is listed for hearing on 27.07.2021 under Item No. 19, as per the Cause List notified by the Hon'ble Commission and accordingly, the Hon'ble Commission may be pleased to direct the Petitioner to withdraw the Petition on hearing the matter on 27.07.2021 itself.

I. Conclusion:

- 36. For all the reasons and grounds as explained above in the comments as filed by **Tamil Nadu Electricity Consumers' Association** , We pray that the Hon'ble Commission may be pleased to direct the Petitioner to withdraw the petition and in the case of failure to withdraw the petition, the Hon'ble Commission may be pleased to dismiss the same, by imposing heavy cost on the petitioner, for having wasted the time of the Hon'ble Commission in bringing such untenable petition, seeking for the orders of the Hon'ble Commission which is already a settled matter and which is no way supported either by law or on facts and accordingly, for the reasons stated above, the petition filed by the CFC-Revenue in M.P. No. 24 of 2021 may be dismissed or allowed to be withdrawn and thus render justice.

With Warm Regards

Dr. CB Senthilkumar
Secretary

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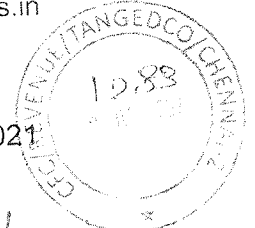
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28th July, 2021

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Madam,

CFC / Revenue	
FC / Rev	✓
FC (uld) CGP	
FC / Cost	.
SO / LB	

135/2

JB/10

Sub: MP No.24 of 2021 – Fixing priority of adjustment in respect of
OA Consumers – Filing of our comments – reg

- Ref: 1) Hon'ble TNERC webhosting a notice dt.08.07.2021 in MP No.24/2021
2) Daily Order of TNERC in MP No.24/2021 dated 29.6.2021

14/21
29/7/21

31/07/2021
Dsd/aw

As/15

With reference to the petition filed by TANGEDCO to fix the priority of adjustment among various sources of power purchase under open access against HT consumption under MP No.24/2021, we submit our remarks as follows:-

On perusing the petition filed under MP. No. 24 of 2021, we found that there were so many litigations in respect of priority of adjustment namely REC machines and Non-REC machines; wind mill banking facilities and without banking facilities; wind machines fetching higher tariff and lower tariff etc. All the litigations took place due to non-approach of TANGEDCO before the Commission. However, the commonality in all these orders was that the consumer should not suffer.

We would like to bring your kind attention that the Hon'ble Commission vide its Order in DRP No.19/2013 dated 19.1.2015 had struck down the TANGEDCO's letter dated 14.9.2012 in respect of priority of adjustment made by TANGEDCO. The Commission held that the decision of TANGEDCO issuing such a letter is not legally valid and against the provisions of Section 45 of the Electricity Act, 2003. Further, the Commission also held that the licensee is to approach the Commission for any such issue particularly with reference to instructions for fixing the priority of adjustment. However, the TANGEDCO having failed for the last five years, now alone have moved before the Commission for the priority of adjustment.

THE SOUTHERN INDIA MILLS' ASSOCIATION, COIMBATORE

It is pertinent to note that in the present petition of TANGEDCO, under S.No.10, had mentioned that the Hon'ble Commission has issued guidelines on the procedure of banking of wind energy in every order issue on wind energy that;

"--- 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 the May, the energy available in the banking shall be drawn to the required extent. If the consumption during the May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month".

This portion of the TNERC order clearly explains how the wind energy generation of every month is to be adjusted for current consumption and how the excess generation would be taken into the banking. If the Commission thought of restricting the other source of power purchase by the wind generators during the wind season the Commission would have dealt with it specifically. An indiscriminate OA is allowed under the Electricity Act, 2003 and even there is no restriction in the wind tariff order on the purchase of power from other source during the wind season. Hence, the present petition is not on merits and to be dismissed.

Further, in the current petition, TANGEDCO had also mentioned that the captive wind generators are purchasing IEX power during the wind season for their current consumption and taking the wind generation units under banking for future use probably in the months of January, February and March every year. To adjust the banked units for the captive users in the said months, the TANGEDCO has to purchase power at higher cost and due to which TANGEDCO incurring loss. To avoid this, now, the TANGEDCO had filed a petition to change the priority of adjustment particularly with reference to captive consumer.

We humbly submit that, since 2012 the TANGEDCO was not in a position to substantiate its position with the factual figures incurring loss on account of allowing bank facility. On the other hand, we have already submitted to the Commission during the wind tariff determination process that the TANGEDCO is always making profit on account of allowing banking facilities. (A copy of the financial statement had already been furnished by us

before the Commission and the same is enclosed for immediate reference). The Commission in its Order of Wind Tariff during 2016 had pointed out as follows: -

" 10.1.14 As can be seen from para 10.1.9, both the parties ie the WEGs and the distribution licensee have taken extreme positions. There is also a difference in the data furnished by the WEGs and the distribution licensee. In the absence of any robust data, commission is unable to verify the correctness or otherwise of the claims and counter claims made by them".

Therefore, the claim of TANGEDCO that by allowing of banking facility TANGEDCO will incur loss is not correct. During the power cut period up to June 2015, the TANGEDCO was purchasing power at higher cost. However, subsequent to the relaxation of power cut, there was no such high cost power purchase by the TANGEDCO and on the contrary based on the merit order, the TANGEDCO is purchasing through competitive bid and also from the exchange at the competitive price. Therefore, loss to TANGEDCO on account of redemption of banked unit is not correct and there is no factual figure in TANGEDCO petition establishing loss due to banking.

We also submit that under the present petition, the priority of adjustment in respect of sourcing various powers for HT consumers cannot be a question rather TANGEDCO appealing to the Commission to restrict the wind captive consumers not to source the IEX power purchase or third party power purchase during the wind season. It will be a known fact that this stand of TANGEDCO will amount to detrimental for allowing indiscriminate open access under the Electricity Act 2003. Therefore, the TANGEDCO is filing the petition in an indirect way, which is against the law and cannot be entertained.

We would like to bring to the notice of the Commission's retail tariff order TP No.1/2017 dated 11.8.2017. Accordingly, for the year 2017-18, the average cost of purchase for TANGEDCO was Rs.4.92 per unit whereas the average cost of supply / realization was Rs. 5.85 per unit. Therefore, TANGEDCO cannot make a claim that they are incurring huge loss on account of giving back the banked energy to the wind captive consumers.

Besides the above, we would like to bring to the attention the Order of the Hon'ble APTEL in appeal No.366/2017 dated 28.11.2018 in which the APTEL has already analyzed the issues of priority of adjustment and passed an order. The relevant portion under para 43 of the said Order is as follows:-

SAY NO TO CHILD LABOUR

THE SOUTHERN INDIA MILLS' ASSOCIATION, COIMBATORE

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, 14 irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant.

Hence, it is a settled position of law that in respect of priority of adjustment as held by APTEL and it cannot be reopened before the Commission under the present petition. Hence, the current petition in MP. 24 of 2021 are devoid of merits.

Further, we would like to submit that the Hon'ble TNERC in their wind tariff order No. 06 of 13/04/2018 have removed the banking facilities for the wind mills commissioning after 01/04/2018 and also revised upward of various charges relating to the wind energy generation and consumption. This order of the TNERC was challenged before the APTEL (AP. No. 191 of 2018) and the APTEL on 28.01.2021 held that

- The approach of the Commission is half-baked and wholly devoid of any logic, legislative scheme and public policy.
- The banking facility should continue and at the same time the benefit of banking should not cost heavily on the TANGEDCO.
- Need to evolve formula so that each stakeholder to gain from non-renewable resources and create a win-win scenario both for the generator and the distribution licensee.
- Request the Central Government to call upon the Central Electricity Authority to undertake necessary study and recommend fair and equitable solution for this wind mill banking, balancing the competing interest, legislative scheme and public policy of the State.
- The TNERC should ensure all necessary consequential orders to be passed and these directions are to be scrupulously complied with by all concerned.
- The APTEL has also held that it would not allow further adhoc approach on the subject and importantly, TNERC should not bring about changes in the Rules of banking facilities by any further order without undertaking a study based on the requisite data properly gathered and analyzed.
- As the control period is upto March end of 2022, there is a sufficient time available for such a study and directed the Commission accordingly. As a result, the TNERC should ensure by revising its Order in respect of banking and other charges.

While so, the TANGEDCO without implementing the APTEL order and now coming forward for filing the present petition is not justifiable. As per the TANGEDCO version there are so many orders of APTEL is under challenge before the Supreme Court. While so, without resolving all those issues

THE SOUTHERN INDIA MILLS' ASSOCIATION, COIMBATORE

relevant to wind pending at Supreme Court. bringing such a kind of petition before the Commission would again lead to further litigation and complicate the issue.

Further, we also submit that every wind captive consumers have entered into energy wheeling agreement with TANGEDCO for the duration of 20 / 25 years from the date of commission of the wind mills. In this wheeling agreement, there is no such restriction by way of priority of adjustment and on the other hand it is an obligation of the licensee to permit the banking on taking banking charges as fixed by the Commission. Even in the EWA, there is no restriction clause that during the wind season, the captive consumers should not purchase and use the open source of power. Therefore, the wind captive consumers cannot be put under coercive method whereby curtailing the purchase of IEX power or using IEX power during the wind season. So long as the existing priority of adjustment is adaptable and no issue among all the consumers, it need not be disturbed under the pretext of the TANGEDCO incurring loss and seeking to change in the priority of adjustment.

Therefore, we appeal to the Commission to dismiss the petition of TANGEDCO and permit to continue the existing pattern of priority of adjustment as follows:-

1. IEX Power
2. Third Party Power
3. Captive Thermal Energy
4. Captive Solar Power
5. Captive Wind Energy without Banking
6. Wind Energy with Banking

Thanking you,

Yours faithfully,



(Dr.K.SELVARAJU)
Secretary General

Encl:

Wind Banking Facility no loss to TNEB, in fact it is profitable to TNEB

As per Details in TNERC TP no. 1 of 2017 dt. 11.08.2017		2016 - 17			
	Details		Million units	Rate Rs	Rs. Crores
A.	TANGEDCO EXPENDITURE:				
a)	TANGEDCO - Purchase from Nov to Mar for supply to wind mills banked users		2388	4.28	1022
b)	TANGEDCO - Additional Purchase to be made for supply to wind mills banked users	17.8%	425	4.28	182
c)	TANGEDCO - Payment for the lapsed units after Mar to Wind Generators		136	3.08	42
	Total expenses to TANGEDCO on Banked units				1246
B.	TANGEDCO INCOME: (Based on units Sold and Realised)				
a)	On selling banked units available for adjustment		2388	5.70	1361
b)	On selling units adjusted as banking charges	12%	287	5.70	163
c)	On selling lapsed wind units		136	5.70	78
d)	Total income to TANGEDCO on Banked Units		2388		1602
	Net Profit to TANGEDCO on account of banking facility				356

Generation Details		2016 - 2017	
		in Million Units	
1	April to October Generation		10903
2	November - March Generation		1386
3	Total Generation Including Sale to the Board		12289
4	Direct purchase by TANGEDCO from Sale to board WM	44%	5466
5	Units Generated for Captive Consumption	58%	6823
6	Captive Consumption from current month generation - April to October		3412
7	Captive Consumption from current month generation - Nov to March		751
8	Banking Balance As On 31st of October		2811
9	Banking Units Used in Nov - March		2388
10	Units accounted as banking charges		287
11	Lapsed units As On 31 st March		136

Note : Refer - TP order no. 1 of 2017 dt. 11.08.2017

a Page no. 244 - Power Purchase Cost - Rs. 4.28

b Page no. 243 - Wind Power Purchase Cost - Rs. 3.08

c Page no.192 - Energy balance (To sell - 69752 + 4057 = 73809 Mus, TANGEDCO to buy 89834 M.units - 17.8%)

d Page no. 189 - Energy sales 73809 M.units, Page no. - 251 - Total revenue - 42107 Crores

e Sale Realisation per unit - 42107/ 73809 =Rs. 5.70 per unit

f Banking units for sale is available after applying Transmission losses as applicable only

**TAMIL NADU POWER PRODUCERS ASSOCIATION**No. 6 Sardar Patel Road, Guindy, Chennai-600032, Ph: 044-42108852, E: Mail: tnppa2004@gmail.com

Through: E-Mail

Ref No.: TNPPA/MP24 of 2021/COMMENTS**Date: 29.07.2021**

To,

**The Financial Controller/Revenue
TANGEDCO, NKKKR Maligai,
144, Anna Salai, Chennai-600 002****Subject: Comments on behalf of TamilNadu Power Producers Association (TNPPA) to the Public Notice dated 08-07-2021 inviting suggestions/ objections on the Petition filed by TANGEDCO being Petition No. 24 of 2021 before the Ld. Tamil Nadu Electricity Regulatory Commission ("TNERC") seeking fixation of adjustment priority among various sources of Open Access energy against HT consumption****Ref: Hon'ble TNERC Notice Dt.08-07-2021 webhosted petition to invite public comments on the M.P.No. 24 of 2021**

Dear Sir,

This is with reference to the above subject, wherein the Ld. Tamil Nadu Electricity Regulatory Commission, by way of web-hosting the Petition filed by TANGEDCO being Petition M.P. No. 24 of 2021 on 08-07-2021 invited suggestions/ objections of the stakeholder on the priority list proposed by TANGEDCO for adjustment of energy drawal by Open Access consumers in the State of Tamil Nadu.

Therefore, in terms of the foregoing, TNPPA being a Stakeholder on account of being a Captive Generating Company/ Association submits its comments to the Petition M.P. No. 24 of 2021, for the consideration of the Ld. TNERC. As enclosed in **ANNEXURE-1**

This is submitted for your kind consideration. Yours faithfully,

For TamilNadu Power Producers Association

Tamil Nadu Power Producers Association


Authorised Signatory

Authorised Signatory



TAMIL NADU POWER PRODUCERS ASSOCIATION

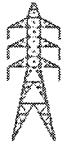
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ANNEXURE-1

1. That, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) has filed a Miscellaneous Petition being MP No. 24 of 2021 before this Hon'ble Commission urging it to fix the adjustment priority amongst various sources of Open Access energy against HT consumption. The said petition is placed in public domain by way of web-hosting, seeking objections/ suggestions/ comments from the stakeholders at large. The undersigned is therefore filing its objections/ suggestions/ comments for consideration by this Hon'ble Commission.
2. In this regard, it is submitted that TANGEDCO has prayed for issuance of requisite guidelines on sequence of adjustment, to be adhered amongst various open access sources, while taking into consideration, various financial aspects viz. open access charges, Cross Subsidy Charges (CSS), etc., leviable for these adjustments.

TANGEDCO has in fact contended that this Hon'ble Commission has generously granted concessions to Renewable Energy (RE) generators qua Open Access charges, as well as CSS and also extended banking facility for the Wind Energy Generators (WEGs). As a result of these concessions, TANGEDCO is facing a negative impact on its financials.

3. In view of the above, TANGEDCO has sought a clear order of adjustment, so as to streamline the adjustment of energy wheeled/ purchased from different sources by the HT Consumers under Open Access. For this, TANGEDCO has provided a sequence of adjustment before this Hon'ble Commission, wherein the order of priority proposed by it, is formulated on the basis of the Open Access charges and CSS



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leviable qua the Open Access sources, which defeats the scheme and intent of the Electricity Act, 2003.

- 4. In terms of the foregoing, it is submitted that the said priority list proposed by TANGEDCO is divided into two categories viz. captive and non-captive and the same is reproduced hereinbelow for ready reference of this Hon'ble Commission (*however, the undersigned is only concerned with the proposed category of captive power*):

Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd party from thermal generator
 - b. 3rd party from solar generator
 - c. 3rd Party from wind energy generator
 - d. 3rd party from bagasse generator
 - e. 3rd party from biomass generator

Captive Category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)
- d. Solar power (Higher cost first and lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. **Thermal energy** (surplus units lapsed)



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As such, if the aforesaid proposal of TANGEDCO, prioritizing the order of adjustment (in the State of Tamil Nadu) is accepted by this Hon'ble Commission, then the same would contravene and violate the legislative framework of the Electricity Act, 2003 (*readwith various statutory policy documents, issued thereunder from time to time*) which categorically emphasizes on impetus and thrust to be accorded to the captive sector in the country. In fact, such proposal would be detrimental to the sacrosanct object envisioned under the Electricity Act, 2003 qua promotion of the captive sector, and, therefore, it would lead to stagnation and rot in the captive industry, in the State of Tamil Nadu (enumerated in detail hereinafter).

Current Allotment Method for Adjustment of Energy Credit:

5. In aide to the above, it is pertinent to note the present method of allotment followed by TANGEDCO, as provided in the petition at paragraph no. 08 , wherein the adjustment of energy credit by the HT Users, having Open Access and procuring power from multiple sources is done in the following order:
 - i. IEX Power
 - ii. 3rd Party power
 - iii. **Captive Thermal Energy**
 - iv. Captive Solar power
 - v. Captive Wind energy without banking
 - vi. Wind energy with banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the payout for the unutilized quantum of energy)



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If there is any remaining consumption, then it will be adjusted in TANGEDCO tariff

Captive Generating Plants are to be promoted under the scheme of the Electricity Act, 2003 and Statutory Policies framed under it:

6. In the wholesome submissions made on behalf of the undersigned in the present stakeholder comments, detailed emphasis is placed on the scheme of the Electricity Act, 2003 and the statutory policies framed thereunder which expressly call for the promotion of the concept of "Captives".

• **SOR of the Electricity Act, 2003 and various statutory policy initiatives of the Government:**

7. In furtherance to aforesaid, reference is drawn to the Statement of Objects and Reasons (SOR) of the Electricity Act, 2003 wherein, one of the main features of the Act is to delicense the generation of power and to freely permit captive generation. The relevant extract of the SOR is reproduced hereinbelow:

"4. The main features of the Bill are as follows: -

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro Projects would, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources."

(Underline supplied)

8. Further, reference may also be made to the National Electricity Policy, 2005 (NEP), National Tariff Policy, 2006 (NTP) and revised NTP, 2016. The relevant extract of the NEP, 2005 is reproduced hereinbelow:



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National Electricity Policy, 2005

5.2 GENERATION

5.2.2 The Government of India has initiated several reform measures to create a favourable environment for addition of new generating capacity in the country. The Electricity Act 2003 has put in place a highly liberal framework for generation. There is no requirement of licensing for generation. The requirement of techno-economic clearance of CEA for thermal generation project is no longer there. For hydroelectric generation also, the limit of capital expenditure, above which concurrence of CEA is required, would be raised suitably from the present level. Captive generation has been freed from all controls.

Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost-effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost-effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have



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access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non- conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant."

(Underline supplied)

National Tariff Policy, 2006:

"6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.



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Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access."

(Underline supplied)

Revised National Tariff Policy, 2016:

"5.0 GENERAL APPROACH TO TARIFF

...

5.12 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost-effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level."

...

6.3 Harnessing captive generation



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Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005."

(Underline supplied)

9. It is imperative to note that the aforesaid policies issued by the Central Government are statutory in nature. The said principle is laid down by the Hon'ble Supreme Court in the judgment of *Energy Watchdog v. CERC* reported in (2017) 14 SCC 80 (*Please refer to Para 57*). Further, from the perusal of above provisions of the Statutory Policies issued under the Act, it is quite evident that the intention of the legislature has been to promote Captive Generation, and has stressed upon the



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Regulatory Commissions to bring out the necessary promotional parameters which incentivize Captive Generation in the country. As such, the proposal of TANGEDCO to place all sort of CGPs at the end of the priority list qua adjustment of drawl of power by Open Access Consumer, would explicitly defeat the intent and mandate of the abovementioned statutory Policies issued under the Electricity Act, 2003.

10. From the above, it is evident that one of the primary objects towards the enactment of the Electricity Act, 2003 and the statutory policies framed thereunder, is to promote captive generation of power. However, the aforesaid proposal of TANGEDCO diluting the priority qua various CGPs in their order of adjustment of energy drawal by Open Access consumer, vanquishes the foregoing discussed intent under the statutory policy framework. In fact, the same would render the concept of captives as unviable, which would do violence to the various provisions of the Electricity Act (discussed hereinafter).

- **Statutory provisions under the Electricity Act envisaging promotion of the captive sector:**

11. That, the intent of the Legislature envisioning promotion of the captive sector can be evidenced from a perusal of the following provisions under the Electricity Act, 2003 viz. fourth proviso to Section 38 (2) (d), fourth proviso to Section 39 (2) (d), fourth proviso to Section 40 (c) and fourth proviso to Section 42 (2), which categorically provide for exemption from levy of CSS upon the CGPs. The relevant extract of the said provisions are reproduced hereinbelow:



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"Section 38. (Central Transmission Utility and functions): ----

...

(2) The functions of the Central Transmission Utility shall be

-

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Central Commission:

2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 39. (State Transmission Utility and functions):

...

(2) The functions of the State Transmission Utility shall be

-

...

(d) to provide non-discriminatory open access to its transmission system for use by-

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(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the State Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 40. (Duties of transmission licensees):

It shall be the duty of a transmission licensee –

...

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:



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Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Appropriate Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 42. (Duties of distribution licensee and open access): ---

...

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:

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Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

..."

12. In terms of the foregoing, it is evidently clear that the Parliament while enacting the Electricity Act, 2003 consciously provided concession to CGPs/ Captive Users, who have established a captive generating plant for carrying the electricity to the destination of his own use, by exempting them from payment of any CSS. The aforesaid provisions of law are starkly clear in this regard.

• **Implication of the proposal of TANGEDCO:**

13. It is submitted that, if the proposal of TANGEDCO is accepted the following implications shall envelop the captive industry in the State:
- a. TANGEDCO has proposed to dis-incentivise all species of CGPs existing in the State of Tamil Nadu by relegating them to the bottom of the order of adjustment of power drawal by Open Access consumers;
 - b. As discussed hereinbefore, the unwarranted consequence of such proposal would be that the entire jurisprudence envisaging promotion of the captive sector would stand extinguished and vitiated;
 - c. Such a consequence would also be in contravention of various statutory policies of the Government, as well as the numerous specific provisions under the Electricity Act, 2003, mandating and providing such promotion and thrust;
-



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- d. The proposal shall also lead to an anomaly, whereby in case, an Open Access consumer drawing power from various sources including CGPs, draws lesser power than its schedule, then the CGPs being proposed to be placed at the bottom of the order of adjustment list and given last priority for setting-off such power drawn by the said Open Access consumer, would disincentivize an Open Access Consumer from availing captive power, as the setoff would result in adjustment of non-captive power thereby leaving out the benefits of captive power at cheaper rates for the consumer and exemption from CSS would stand nullified and diluted;
- e. The aforesaid situation is inevitable, as an Open Access Consumer availing power from various sources including captive power would never be in a position to accurately cater to its power schedule in a time block, as there would always be a situation of under drawal (apart from over drawal);
- f. In such a scenario, an Open Access Consumer would be discouraged to avail captive power all together in view of the proposed priority list of TANGEDCO, which would also severely hamper the growth and prejudice the captive industry in the State; and
- g. Accepting the proposal of TANGEDCO would also lead to a situation where the State of Tamil Nadu would be swimming against the currents, not being in line with the priority protocol adopted by other States in the Country, wherein the captive sector



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has been given weightage and priority in their order of adjustment list.

Proposal for preferred Energy Adjustment Method by the Undersigned:

14. In the view of the foregoing detailed submissions, it is the case of the Undersigned that in order to preserve and fulfill the benevolent object under the Electricity Act, 2003 and the Statutory Policies framed under it, towards promotion of the captive sector especially in the State of Tamil Nadu, that this Hon'ble Commission ought to consider the following priority list qua the order of adjustment, thereby, proposing the adjustment of energy drawl by an open access consumer from different sources in the sequence of priority and be implemented for each time block, upon adjustment of applicable losses:

- (a) Captive Thermal Generating Plant
- (b) Captive Renewable Generating Plant
- (c) Renewable Energy Generators
- (d) Banked Energy
- (e) Long term third party
- (f) Medium term third party
- (g) Short term inter-State open access including power exchange transactions
- (g) Short term intra – State third party.

15. In addition to the above, it is also submitted that TANGEDCO while attempting to introduce a completely new system for adjustment of energy drawal by the Open Access Consumers under the present Petition, it is taking a discriminatory view in the matter of allowing Open



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Access as per its whims and fancies, without any substantial or cogent reasoning.

The only purported reason on the basis of which TANGEDCO has proposed to present the aforesaid adjustment priority is that it is suffering alleged losses as per the current priority list.

16. In this regard, reference is made to the table provided hereinbelow demonstrating the fact that TANGEDCO at present is not incurring any losses at all:

Sl. No.	Source of Power	Nature of Revenue	Revenue earned by TANGEDCO with no efforts/Unit
1.	I EX / Exchange Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
2.	Third Party Power	Cross Subsidy Surcharge /	Rs. 1.67 + 0.70 + 0.36

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		Additional Surcharge / Intra State OA Charges	= Rs.2.73
3.	Bilateral Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
4.	Due to Banking of Wind Power	Banking Charges @ 14% of the units banked	0.97
5.	Total revenue to TANGEDCO while the WEG captive user banks the wind energy and goes for IEX / Third Party/ Bilateral Power.		Rs. 1.67 + 0.70 + 0.36 +0.97 = Rs.3.70

In view of the details enumerated hereinbefore, it is clearly evident that the present system of adjustment being followed in the State of Tamil Nadu is benefitting TANGEDCO to the extent of Rs.3.70/ Unit even without infusion of any extra investment on its part. Therefore, the allegation of losses raised by TANGEDCO in the present Petition, is baseless, bereft of any merits and deserves rejection at the outset. In



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fact, the very foundation of the proceedings initiated by TANGEDCO falls face-first in view of the above data.

17. In furtherance, the intention of TANGDCO behind proposing such cryptic and flawed methodology qua adjustment of energy drawal by open access consumers is only to create unnecessary hindrance and trouble to the Open Access Consumers, from continuing to avail the present system of Priority of Adjustment. In fact, it is apparent that TANGEDCO is leaving no stone unturned to discourage the growth and operations of the captive sector in the State of Tamil Nadu. Therefore, the petition fails to demonstrate sufficient cause of action and instead reveals the ulterior motive of the State DISCOM, wherein the purpose of preferring the same is to prejudicially affect the interest of the open access consumers and the captive thermal generators plants in the State of Tamil Nadu.
18. In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.11.2018 passed in Appeal No. 366 of 2015, whereby the Hon'ble APTEL categorically settled the law with regard to Priority of Adjustment by holding that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources. The relevant extract of the said order is reproduced hereinbelow:

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all

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consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant."

(Underline supplied)



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19. In view of the above settled position of law, it is evident that the issue pertaining to priority list for adjustment of energy drawal by open access consumers is already crystallised to the effect that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources and this legal mandate cannot be deviated from by this Hon'ble Commission in the manner being proposed by TANGEDCO in its priority list for adjustment of energy drawal by open access consumers. Therefore, the present Petition lacks merits and deserves to be rejected.

Wrongful Prioritization of Power Exchange:

20. It is submitted that TANGEDCO by proposing before this Hon'ble Commission that the power procured by Open Access Consumers from Power Exchange should be accorded the top priority in the order of adjustment, has completely failed to consider the following points:
- a) That, power being traded at the power exchange is procured at cheaper rates on short-term basis;
 - b) The entire framework of power exchange is opportunistic in nature when compared with other sources of power;
 - c) The settlement order qua power procured from exchange can never be equated and it would always be at a lower pedestal, when compared to crystallised bi-lateral contracts executed for sourcing of power like done in a captive arrangement;
 - d) The monthly energy adjustment being made to the HT Users should be prioritised based on their type of Open Access availed. The interstate collective / bilateral transactions should be adjusted
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in 15 minutes block wise instead of being adjusted in a slot wise monthly cumulative manner;

- e) That, it is pertinent to note that DSM Regulations are not implemented in the State of Tamil Nadu for Intrastate OA transactions. As such, for interstate transactions, 15 minutes block wise adjustments ought to be carried out in accordance with the aforesaid CERC Regulations. As the collective transaction at the power exchange are always carried out under short-term Open Access, therefore, the energy transacted and purchased from such Exchange ought to be adjusted in least priority; and
- f) The consideration of IEX power must be on least priority basis while calculating adjustments for the purpose of energy adjustment

Methodology formulated by other States qua adjustment of Energy Drawal by Open Access Consumers, which ought to act as a guiding beacon in the present case:

21. At the outset, it is submitted that at present, there are no requisite Regulations promulgated by this Hon'ble Commission or orders issued therein, governing the facets of adjustment order qua energy drawal mandated to be followed by the Open Access Consumer in the State of Tamil Nadu. In fact, there is no clarity on this aspect, and the practice followed by TANGEDCO for allocating priority to such adjustment order is completely done as per its own accord, volition and desire.
22. In this context, the Undersigned places reference to the extant regulations prevailing in the State of Maharashtra viz. MERC (Distribution Open Access) (First Amendment) Regulations, 2019. Under
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the said Regulations, the promotional mandate of the Electricity Act, 2003 and the Statutory Policies framed under it qua CGPs has been amply provided for by giving them the requisite priority. The relevant extract is reproduced hereinbelow:

"14.10. Priority for adjustment of energy credit:

The priority for adjustment of energy drawl by an open access consumer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block, upon adjustment of applicable losses.

- (a) Renewable Energy Generators
- (b) **Captive Generating Plant**
- (c) Banked Energy
- (d) Long term Bilateral purchase
- (e) Medium term open access
- (f) Short term inter-State open access including power exchange transactions
- (g) Short term intra – State Open access
- (h) Distribution Licensee

Provided that in case of energy credit from more than one source from the similar category shall be adjusted on pro-rata basis of the contracted generation capacity from such source."

23. In addition to the above, it is also relevant to note that other State Commissions have also enacted similar provisions under their open access regulations whereby, the renewable energy generators along with CGPs are given priority qua the energy adjustment. In this regard, reference be made to the following regulations:

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a) **Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2016**

"25. Adjustment of Energy

(1) The priority of adjustment of energy drawal by an open access consumer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block:

- (i) Renewable power generation;
- (ii) **CPP**;
- (iii) Banked Energy to be settled in 15 min time block = Banked energy available at the end of previous month in kWh / (96-time blocks* Actual no. of days in current month);
- (iv) Long Term Bilateral purchase;
- (v) Medium Term Open Access;
- (vi) Short term inter-State open access including Power Exchange Transaction;
- (vii) Short term intra-State open access;
- (viii) Distribution Licensee."

b) **Assam Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2018**

"32. Adjustment of Energy

32.1 The priority of adjustment of energy drawal by an open access customer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block:

- (i) Renewable power generation;
 - (ii) **CPP**;
-



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- (iii) Banked Energy to be settled in defined time block;
- (iv) Long Term Bilateral purchase;
- (v) Medium Term Open Access;
- (vi) Short term inter-State open access including Power Exchange Transaction;
- (vii) Short term intra-State open access;
- (viii) Distribution Licensee."

24. In view of the above detailed submissions, it is urged before this Hon'ble Commission that the proposal put forth by TANGEDCO be rejected, as the same attempts to undermine the legislative mandate of the Electricity Act, 2003 and the importance the Act places on the aspect of generation of electricity being delicensed and CGPs bringing in a more competitive environment to the sector. Most importantly, the thrust given by the said Act to the CGPs cannot be diluted by the state DISCOM in such a manner.
25. Therefore, the suggestions forwarded by the undersigned in Para 14 above by way of the present comments be considered and accepted by this Hon'ble Commission and suitable orders be passed in this regard.

**S. Narayanaswamy,
Former Member (Generation),
Ramana Shree,
Old 12, New 10/1, Anandan Street,
T. Nagar, Chennai – 600 017.**

Ph.098400 97512.

**The Chief Financial Controller (Revenue),
Tamil Nadu Electricity Generation and Distribution Corporation
7th Floor, NPKRR Maligai,
144, Anna Salai,
Chennai – 600 002**

Date 29nd July 2021.

Dear Sir,

Sub:- - Notification on TANGEDCO petition MP 24 of 2021 08-06-2021, calling for comments on order on the Petition Calling for Comments on "Adjustment among various sources of open access energy against HT Consumption" – comments and suggestions- submitted.

Ref:- TNERC Notification dated 08-07-2021.

As notified by Honorable Tamil Nadu Electricity Regulatory Commission in its order dated 08-07-2021, I enclose herewith my comments and suggestions on the notification of TNERC calling for comments on "**Adjustment among various sources of open access energy against HT Consumption**" for the kind consideration of the Honorable Commission.

I kindly request Honorable Commission to consider the suggestions please.

Yours truly,

S. Narayanaswamy.

Encl: Comments in duplicate with a soft copy by e mail.

**COMMENTS ON THE CONSULTATIVE PAPER OF THE HONORABLE TAMIL
NADU ELECTRICITY REGULATORY COMMISSION ORDER ON PETITION MP 24
OF 2021 DATED 08-07-2021 CALLING FOR COMMENTS ON "ADJUSTMENT
AMONG VARIOUS SOURCES OF OPEN ACCESS ENERGY AGAINST HT
CONSUMPTION"**

By S. Narayanaswamy.

I kindly submit my para-war comments on the consultative paper of the Honorable Tamil Nadu Electricity Regulatory Commission order on the paper MP 24/2021 dated 08-07-2021 calling for comments on "Adjustment among various sources of open access energy against HT Consumers" and pray for the kind consideration of the Honorable Tamil Nadu Electricity Regulatory Commission.

1. Preamble.

Before going into the minor point of adjustment of open access energy against HT Consumers, I would like to touch upon the major point of reformation in Tariff of TANGEDCO to address this minor point. TNEB was formed in July 1957 and from that date onwards, one simple question asked by several economists is "Is the Board a Commercial Organization or Social Service organization". This question is still to be answered.

Clause 42 (1) of Electricity Act 2003 stipulates that "It shall be the duty of the Licenseean efficient, coordinated and economical distribution system in his area of supply..."

Clause 42(2) stipulates about conditions on which open access shall be granted, but Surcharge and Cross Subsidy are eliminated in due course.

Clause 61 (C) ask for encourage competition, efficiency, economical use of resources, **(g) the tariff progressively reflects the cost of supply of electricity and also reduces and eliminates cross subsidies.**

Clause 86. 2. (i) states that Commission shall advise promotion of competition, efficiency and economy in activities of the electrical industry.

It is time that Board takes action to address these clauses of the ACT.

The average cost of generation including power purchase in 2016-17 works out to Rs. 5.85 per unit (Tariff order 1 of 2017 Page 292). What right Board has got to sell energy below this cost to consumers. In my opinion, considering the directions given in the Electricity Act 2003, Board has no right to sell energy below this average cost of its energy and say that Board is running into loss is meaningless. Please read para 5.7.24 of the Tariff order on Page 301 in this regard. I suggest to immediately submit tariff revision proposal in which none of the tariff shall be below the cost of generation and

distribution. If Tamil Nadu Government wants reduced tariff to poor people, let it subsidise to that extent. First Board shall prove to be a commercial organization.

The Tariff was revised in TO No. 1 of 2017 dated 11-08-2017 with the condition in para 1.8.1 that the Generation and Retail Tariff contain in this order will be valid until issue of next Order. This is itself is against the Act. As per clause 64.1. (6) of the Act, "a tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order. The phrase "untill issue of next order " is not a "period as specified in the tariff order". I humbly suggest to submit proposal for revision of tariff immediately to reflect the current situation and take remedial measures to avoid loss to Board. On a review, all other states have submitted proposal for the year 2021-22 and got approved by their Commission.

The HT tariff to Industries in Tamil nadu and other nearby states is as below.

S. No	State	Demand Charge in Rs. per KVA	Unit Cost of energy in Rs.	Remarks
1.	Tamil Nadu	350	6.35	
2.	Maharashtra	411	7.02	
3.	Karnataka	250	7.75	
4.	Madhya Pradesh	350	7.55	
5.	Kerala	350	4.10	
6.	Andhra Pradesh	475	7.30	
7.	Telangana	390	6.65	

It may please be seen that the industrial tariff is low in Tamil Nadu compared to other states around us. Then why HT industries go in for other sources of power than from Board. Any industry will go in for cheaper energy to survive in the market than making profit. I suggest to TANGEDCO to immediately submit Tariff Revision proposal raising the Demand Charge by Rs.150/- to Rs.500 per KVA and reduce the unit charge by Rs. one to Rs.5.35/-. This will prevent industries to go in for private power. In my opinion, there will nor be any loss to board in this regard by this increase in Demand Charge and reduction in Unit charge.

2. Fixing priority.

Regarding fixing priority among various private and captive power, I humbly suggest to Commission that the priority may be fixed in the order as below:

- a) Captive wind Generation,
- b) Captive Solar generation
- c) Captive Thermal Generation.
- d) 3rd Party Power
- e) IEX.

As industries are owning Captive Power units, that should have the top priority as it is their own generation and should have the first option. Anything over and its own generation can be bought from various sources including TANGEDCO. With a view to encourage renewable energy sources, I suggest that let wind and solar have top priority. Further wind energy is having Must Run status. However, they have to satisfy 51% consumption of Captive Generation and hence let Captive Generation have the first priority. Normally Industries go in for long term purchase agreement for 3rd party power and hence that can have the next priority. IEX Power purchase power is an opportunistic purchase based on the price and shall have the last priority.

Regarding adjustment of wind energy between Banking and non-banking units, non-banking units shall have the priority. This is suggested to avoid lapsing of the units. All adjustments can be on slot basis only.

But I am to bring it to the kind knowledge of the Commission and TANGEDCO that "Open Access" was discussed in Para 5.9.1, 5.10.2 and 5.12.1 of the Tariff order TO-1 of 2017 and fixing priority of open access energy by any addition, correction or amendment will be treated as amendment to Tariff Order and violative of Tariff Fixing Principle.

I would humbly suggest to have this implimented in the next tariff revision rather than issueing a separate order by immediately submirrtting Tariff Petition to the Commission.

3. Conclusion.

I kindly request to consider the above suggestions for implimentation and orders.

S. Narayanaswamy.

TULSYAN NEC LTD



No.TULSYAN/MP24 of 2021/COMMENTS

30.7.2021

To

The Financial Controller/Revenue
TANGEDCO, NPKKR Maligai,
144, Anna Salai, Chennai-600 002

Subject: Comments on behalf of Tulsy NEC Ltd. to the Public Notice dated 08-07-2021 inviting suggestions/ objections on the Petition filed by TANGEDCO being Petition No. 24 of 2021 before the Ld. Tamil Nadu Electricity Regulatory Commission ("TNERC") seeking fixation of adjustment priority among various sources of Open Access energy against HT consumption

Ref: Hon'ble TNERC Notice Dt.08-07-2021 webhosted petition to invite public comments on the M.P.No. 24 of 2021

Dear Sir,

This is with reference to the above subject, wherein the Ld. Tamil Nadu Electricity Regulatory Commission, by way of web-hosting the Petition filed by TANGEDCO being Petition M.P. No. 24 of 2021 on 08-07-2021 invited suggestions/ objections of the stakeholder on the priority list proposed by TANGEDCO for adjustment of energy drawal by Open Access consumers in the State of Tamil Nadu.

Therefore, in terms of the foregoing, Tulsy being a Stakeholder on account of being a Captive Generating Company submits its comments to the Petition M.P. No. 24 of 2021, for the consideration of the Ld. TNERC. as enclosed in **ANNEXURE-1**

This is submitted for your kind consideration.

Yours faithfully,
For Tulsy NEC Ltd.,

(D. Eswaramoorthy)
General Manager



Encl.: as above.

Registered Office: Apex Plaza, 1st Floor, No.3, Nungambakkam High Road, Chennai - 600 034. Tamil Nadu.

Ph : +91 44 6199 1060 / 6199 1045, Fax : +91 44 6199 1066 | Email : info@tulsyanec.in | www.tulsyanec.in

GSTIN 33AABCT3720E1ZW | CIN L28920TN1947PLC007437





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ANNEXURE-1

1. That, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) has filed a Miscellaneous Petition being MP No. 24 of 2021 before this Hon'ble Commission urging it to fix the adjustment priority amongst various sources of Open Access energy against HT consumption. The said petition is placed in public domain by way of web-hosting, seeking objections/ suggestions/ comments from the stakeholders at large. The undersigned is therefore filing its objections/ suggestions/ comments for consideration by this Hon'ble Commission.
2. In this regard, it is submitted that TANGEDCO has prayed for issuance of requisite guidelines on sequence of adjustment, to be adhered amongst various open access sources, while taking into consideration, various financial aspects viz. open access charges, Cross Subsidy Charges (CSS), etc., leviable for these adjustments.

TANGEDCO has in fact contended that this Hon'ble Commission has generously granted concessions to Renewable Energy (RE) generators qua Open Access charges, as well as CSS and also extended banking facility for the Wind Energy Generators (WEGs). As a result of these concessions, TANGEDCO is facing a negative impact on its financials.

In view of the above, TANGEDCO has sought a clear order of adjustment, so as to streamline the adjustment of energy wheeled/ purchased from different sources by the HT Consumers under Open Access. For this, TANGEDCO has provided a sequence of adjustment before this Hon'ble Commission, wherein the order of priority proposed by it, is formulated on the basis of the Open Access charges and CSS

D. R. 


- 3. leivable qua the Open Access sources, which defeats the scheme and intent of the Electricity Act, 2003.
- 4. In terms of the foregoing, it is submitted that the said priority list proposed by TANGEDCO is divided into two categories viz. captive and non-captive and the same is reproduced hereinbelow for ready reference of this Hon'ble Commission (*however, the undersigned is only concerned with the proposed category of captive power*):

Non-Captive Category:

- i. IEX Power
- ii. TPP
 - a. 3rd party from thermal generator
 - b. 3rd party from solar generator
 - c. 3rd Party from wind energy generator
 - d. 3rd party from bagasse generator
 - e. 3rd party from biomass generator

Captive Category:

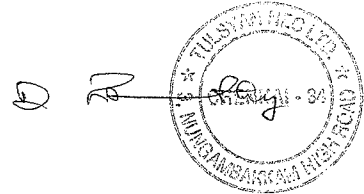
- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)
- d. Solar power (Higher cost first and lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. **Thermal energy** (surplus units lapsed)

D. R. Ray

As such, if the aforesaid proposal of TANGEDCO, prioritizing the order of adjustment (in the State of Tamil Nadu) is accepted by this Hon'ble Commission, then the same would contravene and violate the legislative framework of the Electricity Act, 2003 (*readwith various statutory policy documents, issued thereunder from time to time*) which categorically emphasizes on impetus and thrust to be accorded to the captive sector in the country. In fact, such proposal would be detrimental to the sacrosanct object envisioned under the Electricity Act, 2003 qua promotion of the captive sector, and, therefore, it would lead to stagnation and rot in the captive industry, in the State of Tamil Nadu (enumerated in detail hereinafter).

Current Allotment Method for Adjustment of Energy Credit:

5. In aide to the above, it is pertinent to note the present method of allotment followed by TANGEDCO, as provided in the petition at paragraph no. 08 , wherein the adjustment of energy credit by the HT Users, having Open Access and procuring power from multiple sources is done in the following order:
 - i. IEX Power
 - ii. 3rd Party power
 - iii. **Captive Thermal Energy**
 - iv. Captive Solar power
 - v. Captive Wind energy without banking
 - vi. Wind energy with banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the payout for the unutilized quantum of energy)



If there is any remaining consumption, then it will be adjusted in TANGEDCO tariff

Captive Generating Plants are to be promoted under the scheme of the Electricity Act, 2003 and Statutory Policies framed under it:

6. In the wholesome submissions made on behalf of the undersigned in the present stakeholder comments, detailed emphasis is placed on the scheme of the Electricity Act, 2003 and the statutory policies framed thereunder which expressly call for the promotion of the concept of "Captives".

• **SOR of the Electricity Act, 2003 and various statutory policy initiatives of the Government:**

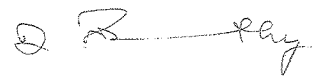
7. In furtherance to aforesaid, reference is drawn to the Statement of Objects and Reasons (SOR) of the Electricity Act, 2003 wherein, one of the main features of the Act is to delicense the generation of power and to freely permit captive generation. The relevant extract of the SOR is reproduced hereinbelow:

"4. The main features of the Bill are as follows: -

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro Projects would, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources."

(Underline supplied)

8. Further, reference may also be made to the National Electricity Policy, 2005 (NEP), National Tariff Policy, 2006 (NTP) and revised NTP, 2016. The relevant extract of the NEP, 2005 is reproduced hereinbelow:



National Electricity Policy, 2005

"5.2 GENERATION


...
5.2.2 The Government of India has initiated several reform measures to create a favourable environment for addition of new generating capacity in the country. The Electricity Act 2003 has put in place a highly liberal framework for generation. There is no requirement of licensing for generation. The requirement of techno-economic clearance of CEA for thermal generation project is no longer there. For hydroelectric generation also, the limit of capital expenditure, above which concurrence of CEA is required, would be raised suitably from the present level. Captive generation has been freed from all controls.
...

Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost- effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost-effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting

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demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non- conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant."

(Underline supplied)

National Tariff Policy, 2006:

"6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

D. R. Ray

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access."

(Underline supplied)

Revised National Tariff Policy, 2016:

"5.0 GENERAL APPROACH TO TARIFF

...
5.12 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost-effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level."

...

Handwritten initials and a circular official stamp of the Ministry of Power, Government of India.

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6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005."

(Underline supplied)

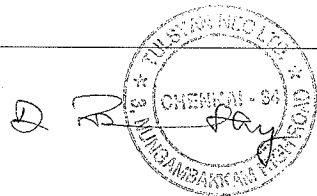
It is imperative to note that the aforesaid policies issued by the Central Government are statutory in nature. The said principle is laid down by the Hon'ble Supreme Court in the judgment of *Energy Watchdog v. CERC* reported in (2017) 14 SCC 80 (*Please refer to Para 57*). Further, from the perusal of above provisions of the Statutory Policies issued

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9. under the Act, it is quite evident that the intention of the legislature has been to promote Captive Generation, and has stressed upon the Regulatory Commissions to bring out the necessary promotional parameters which incentivize Captive Generation in the country. As such, the proposal of TANGEDCO to place all sort of CGPs at the end of the priority list qua adjustment of drawl of power by Open Access Consumer, would explicitly defeat the intent and mandate of the abovementioned statutory Policies issued under the Electricity Act, 2003.
10. From the above, it is evident that one of the primary objects towards the enactment of the Electricity Act, 2003 and the statutory policies framed thereunder, is to promote captive generation of power. However, the aforesaid proposal of TANGEDCO diluting the priority qua various CGPs in their order of adjustment of energy drawl by Open Access consumer, vanquishes the foregoing discussed intent under the statutory policy framework. In fact, the same would render the concept of captives as unviable, which would do violence to the various provisions of the Electricity Act (discussed hereinafter).
- **Statutory provisions under the Electricity Act envisaging promotion of the captive sector:**

That, the intent of the Legislature envisioning promotion of the captive sector can be evidenced from a perusal of the following provisions under the Electricity Act, 2003 viz. fourth proviso to Section 38 (2) (d), fourth proviso to Section 39 (2) (d), fourth proviso to Section 40 (c) and fourth proviso to Section 42 (2), which categorically provide



11. for exemption from levy of CSS upon the CGPs. The relevant extract of the said provisions is reproduced hereinbelow:

"Section 38. (Central Transmission Utility and functions): ----

...

(2) The functions of the Central Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Central Commission:

2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 39. (State Transmission Utility and functions):

...

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(2) The functions of the State Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the State Commission: 2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

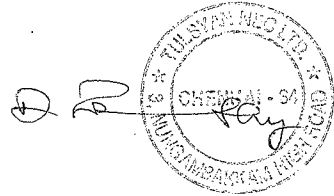
Section 40. (Duties of transmission licensees):

It shall be the duty of a transmission licensee -

...

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or



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(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Appropriate Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 42. (Duties of distribution licensee and open access): ---

...

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

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Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

..."


12. In terms of the foregoing, it is evidently clear that the Parliament while enacting the Electricity Act, 2003 consciously provided concession to CGPs/ Captive Users, who have established a captive generating plant for carrying the electricity to the destination of his own use, by exempting them from payment of any CSS. The aforesaid provisions of law are starkly clear in this regard.

• **Implication of the proposal of TANGEDCO:**

13. It is submitted that, if the proposal of TANGEDCO is accepted the following implications shall envelop the captive industry in the State:
- a. TANGEDCO has proposed to dis-incentivise all species of CGPs existing in the State of Tamil Nadu by relegating them to the bottom of the order of adjustment of power drawal by Open Access consumers;

As discussed hereinbefore, the unwarranted consequence of such proposal would be that the entire jurisprudence envisaging

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- a. promotion of the captive sector would stand extinguished and vitiated;
- b. Such a consequence would also be in contravention of various statutory policies of the Government, as well as the numerous specific provisions under the Electricity Act, 2003, mandating and providing such promotion and thrust;
- c. The proposal shall also lead to an anomaly, whereby in case, an Open Access consumer drawing power from various sources including CGPs, draws lesser power than its schedule, then the CGPs being proposed to be placed at the bottom of the order of adjustment list and given last priority for setting-off such power drawn by the said Open Access consumer, would disincentivize an Open Access Consumer from availing captive power, as the setoff would result in adjustment of non-captive power thereby leaving out the benefits of captive power at cheaper rates for the consumer and exemption from CSS would stand nullified and diluted;
- d. The aforesaid situation is inevitable, as an Open Access Consumer availing power from various sources including captive power would never be in a position to accurately cater to its power schedule in a time block, as there would always be a situation of under drawal (apart from over drawal);

In such a scenario, an Open Access Consumer would be discouraged to avail captive power all together in view of the proposed priority list of TANGEDCO, which would also severely


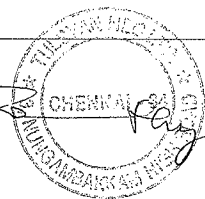
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- b. hamper the growth and prejudice the captive industry in the State; and
- c. Accepting the proposal of TANGEDCO would also lead to a situation where the State of Tamil Nadu would be swimming against the currents, not being in line with the priority protocol adopted by other States in the Country, wherein the captive sector has been given weightage and priority in their order of adjustment list.

Proposal for preferred Energy Adjustment Method by the Undersigned:

14. In the view of the foregoing detailed submissions, it is the case of the Undersigned that in order to preserve and fulfill the benevolent object under the Electricity Act, 2003 and the Statutory Policies framed under it, towards promotion of the captive sector especially in the State of Tamil Nadu, that this Hon'ble Commission ought to consider the following priority list qua the order of adjustment, thereby, proposing the adjustment of energy drawl by an open access consumer from different sources in the sequence of priority and be implemented for each time block, upon adjustment of applicable losses:

- (a) Captive Thermal Generating Plant
- (b) Captive Renewable Generating Plant
- (c) Renewable Energy Generators
- (d) Banked Energy
- (e) Long term third party
- (f) Medium term third party

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- (g) Short term inter-State open access including power exchange transactions
- (g) Short term intra - State third party.

15. In addition to the above, it is also submitted that TANGEDCO while attempting to introduce a completely new system for adjustment of energy drawal by the Open Access Consumers under the present Petition, it is taking a discriminatory view in the matter of allowing Open Access as per its whims and fancies, without any substantial or cogent reasoning.

The only purported reason on the basis of which TANGEDCO has proposed to present the aforesaid adjustment priority is that it is suffering alleged losses as per the current priority list.

16. In this regard, reference is made to the table provided hereinbelow demonstrating the fact that TANGEDCO at present is not incurring any losses at all:

Sl. No.	Source of Power	Nature of Revenue	Revenue earned by TANGEDCO with no efforts/Unit
1.	I EX / Exchange Power	Cross Subsidy Surcharge / Additional Surcharge / Intra	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73

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		State OA Charges	
2.	Third Party Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
3.	Bilateral Power	Cross Subsidy Surcharge / Additional Surcharge / Intra State OA Charges	Rs. 1.67 + 0.70 + 0.36 = Rs.2.73
4.	Due to Banking of Wind Power	Banking Charges @ 14% of the units banked	0.97
5.	Total revenue to TANGEDCO while the WEG captive user banks the wind energy and	Rs. 1.67 + 0.70 + 0.36 + 0.97 = Rs.3.70	

goes for IEX	
/ Third	
Party/	
Bilateral	
Power.	

In view of the details enumerated hereinbefore, it is clearly evident that the present system of adjustment being followed in the State of Tamil Nadu is benefitting TANGEDCO to the extent of Rs.3.70/ Unit even without infusion of any extra investment on its part. Therefore, the allegation of losses raised by TANGEDCO in the present Petition, is baseless, bereft of any merits and deserves rejection at the outset. In fact, the very foundation of the proceedings initiated by TANGEDCO falls face-first in view of the above data.

17. In furtherance, the intention of TANGDCO behind proposing such cryptic and flawed methodology qua adjustment of energy drawal by open access consumers is only to create unnecessary hindrance and trouble to the Open Access Consumers, from continuing to avail the present system of Priority of Adjustment. In fact, it is apparent that TANGEDCO is leaving no stone unturned to discourage the growth and operations of the captive sector in the State of Tamil Nadu. Therefore, the petition fails to demonstrate sufficient cause of action and instead reveals the ulterior motive of the State DISCOM, wherein the purpose of preferring the same is to prejudicially affect the interest of the open access consumers and the captive thermal generators plants in the State of Tamil Nadu.

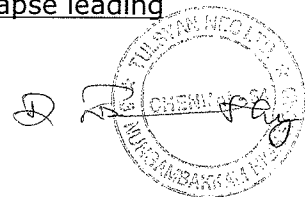
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In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.11.2018 passed in Appeal No. 366 of 2015, whereby the Hon'ble APTEL categorically settled the law

18. with regard to Priority of Adjustment by holding that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources. The relevant extract of the said order is reproduced herein below:

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading



to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant."

(Underline supplied)

19. In view of the above settled position of law, it is evident that the issue pertaining to priority list for adjustment of energy drawal by open access consumers is already crystallised to the effect that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources and this legal mandate cannot be deviated from by this Hon'ble Commission in the manner being proposed by TANGEDCO in its priority list for adjustment of energy drawal by open access consumers. Therefore, the present Petition lacks merits and deserves to be rejected.

Wrongful Prioritization of Power Exchange:

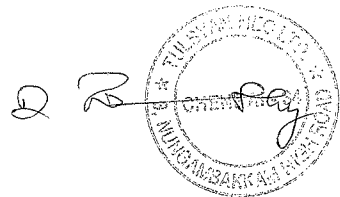
20. It is submitted that TANGEDCO by proposing before this Hon'ble Commission that the power procured by Open Access Consumers from Power Exchange should be accorded the top priority in the order of adjustment, has completely failed to consider the following points:

- a) That, power being traded at the power exchange is procured at cheaper rates on short-term basis;

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- b) The entire framework of power exchange is opportunistic in nature when compared with other sources of power;
- c) The settlement order qua power procured from exchange can never be equated and it would always be at a lower pedestal, when compared to crystallised bi-lateral contracts executed for sourcing of power like done in a captive arrangement;
- d) The monthly energy adjustment being made to the HT Users should be prioritised based on their type of Open Access availed. The interstate collective / bilateral transactions should be adjusted in 15 minutes block wise instead of being adjusted in a slot wise monthly cumulative manner;
- e) That, it is pertinent to note that DSM Regulations are not implemented in the State of Tamil Nadu for Intrastate OA transactions. As such, for interstate transactions, 15 minutes block wise adjustments ought to be carried out in accordance with the aforesaid CERC Regulations. As the collective transaction at the power exchange are always carried out under short-term Open Access, therefore, the energy transacted and purchased from such Exchange ought to be adjusted in least priority; and
- f) The consideration of IEX power must be on least priority basis while calculating adjustments for the purpose of energy adjustment.



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No. IEX/RA/038/21-22

2nd August, 2021

To,

The Chief Financial Controller/ Revenue

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

Eastern Wing, N.P.K.R.R. Maalaigai,

144, Anna Salai, Chennai-600002,

Email: fcrev@tnebnet.org

Sub: Comments on Petition MP No. 24 of 2021 filed by TANGEDCO seeking fixation of the adjustment priority among various sources of open Access energy against HT consumption

Dear Sir,

This has reference to the above cited Petition bearing MP No. 24 of 2021 filed by the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and the comments invited from the stakeholders. Our comments in this regard are submitted hereinafter.

- A. The present Petition has been filed for seeking fixation of the adjustment priority among various sources of open access energy against HT consumption.
- B. The Petition states that the procedure being followed presently for adjustment of energy when a HT consumer wheels/ purchases from various source of energy under open access, is leading to significant losses to it because the HT consumers having captive wind energy generation are also availing power through IEX/3rd party, captive thermal power during the wind peak generation period so as to bank the excess wind energy and utilize banked energy during the wind off-season period at the cost of TANGEDCO.
- C. An example is also provided in the Petition through a sample energy statement of a consumer.

----- Corporate office -----

Indian Energy Exchange Limited

Plot No. C-001/A/1, 9th Floor Max Towers, Sector 16B Noida, Gautam Buddha Nagar, Uttar Pradesh - 201301

Phone: 0120 - 4648100 | | www.iexindia.com

CIN: L74999DL2007PLC277039

D. Accordingly, following priority of adjustment in open access energy from different sources has been proposed in the Petition-

Present priority order	Proposed revised priority order	
	Non-captive category	Captive category
1. IEX power	1. IEX power	1. Biomass (75% payment for surplus units)
2. 3rd party power	2. TPP	2. Wind energy with banking (Higher Cost first and lower cost later)
3. Captive Thermal energy	a. 3rd party from thermal generator	3. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)
4. Captive Solar power	b. 3rd party from solar generator	4. Solar power (higher cost first lower cost 75% payment for surplus units)
5. Captive Wind energy without banking	c. 3rd Party from wind energy generator	5. Bagasse co-gen (surplus units lapsed)
	d. 3rd party from bagasse generator	6. Thermal energy (surplus units lapsed)
	e. 3rd Party from biomass generator	

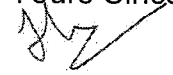
We submit the following in this regard:

- a) The above priority proposed in the Petition under the "Captive category" **does not include procurement through Power Exchanges**. The said omission appears to be an inadvertent error and may be rectified since the Power Exchange-based transactions cannot be revised once they have been scheduled (collective transactions). There is no banking attribute attached to such power procured by the consumers. Further, the guidelines extracted in para 10 of the Petition does not debar Exchange procurement, it only provides for that the HT consumer has to exhaust the wind energy generated during any month against the industrial consumption of the same month.
- b) The thermal energy at S.N 6 above, is anyways at par with such power scheduled through Power Exchanges. Notably, in the sample example illustrated in the Petition, it is the captive thermal from which a larger share of power is being drawn than through Power Exchanges.

- c) It is observed that the issue pertains more to the structure/period of the banking facility extended to the projects rather than priority of adjustment therefore it is suggested that such conditions may be examined.

It is requested that the above suggestions may be considered while finalizing the case.

Yours Sincerely,

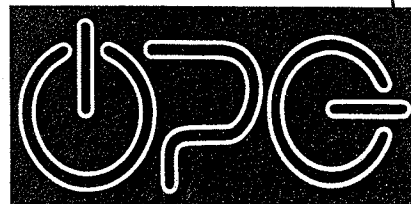


Jogendra Behera
Vice President- Market Design & Economics

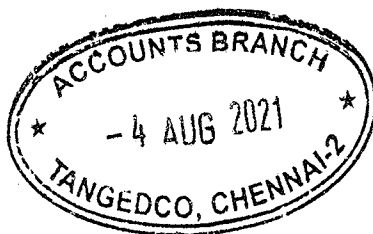
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Copy To:

1. The Secretary, Tamil Nadu Electricity Regulatory Commission, 4th Floor, SIDCO Corporate Office Building, Thiru Vi Ka Industrial Estate, Guindy, Chennai-600032, tnerc@nic.in



OPG ENERGY PVT. LTD.
An ISO 14001 Certified Company
CIN : U40101TN2000PTC045702

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016079

Ref No.: OPGE/MP24 of 2021/COMMENTS

Date: 03.08.21

To,
The Financial Controller/Revenue
TANGEDCO, NKKKR Maligai,
144, Anna Salai, Chennai-600 002

Subject: Comments on behalf of OPG Energy Pvt. Ltd. to the Public Notice dated 08-07-2021 inviting suggestions/ objections on the Petition filed by TANGEDCO being Petition No. 24 of 2021 before the Ld. Tamil Nadu Electricity Regulatory Commission ("TNERC") seeking fixation of adjustment priority among various sources of Open Access energy against HT consumption

Ref: Hon'ble TNERC Notice Dt.08-07-2021 webhosted petition to invite public comments on the M.P.No. 24 of 2021

Dear Sir,

This is with reference to the above subject, wherein the Ld. Tamil Nadu Electricity Regulatory Commission, by way of web-hosting the Petition filed by TANGEDCO being Petition M.P. No. 24 of 2021 on 08-07-2021 invited suggestions/ objections of the stakeholder on the priority list proposed by TANGEDCO for adjustment of energy drawal by Open Access consumers in the State of Tamil Nadu.

Therefore, in terms of the foregoing, OPGE being a Stakeholder on account of being a Captive Generating Company submits its comments to the Petition M.P. No. 24 of 2021, for the consideration of the Ld. TNERC. As enclosed in **ANNEXURE-1**

This is submitted for your kind consideration.

Yours faithfully,

For OPG Energy Pvt. Ltd.

For OPG Energy Private Limited

Authorised Signatory

Authorised Signatory

Regd office : No.8, Komal Road, Maruthur Village, Therizandur - 609 808,
Kuttalam Taluk, (via) Mayiladuthurai. Ph : 04364 237099. Fax No.04364-237099

Administrative office : 5th Floor, No.6, Balaji Nagar Third Street, Royapettah ,Chennai – 600 014
Ph : 044-42911220

Website : www.opgpower.com

ANNEXURE-1

1. That, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) has filed a Miscellaneous Petition being MP No. 24 of 2021 before this Hon'ble Commission urging it to fix the adjustment priority amongst various sources of Open Access energy against HT consumption. The said petition is placed in public domain by way of web-hosting, seeking objections/ suggestions/ comments from the stakeholders at large. The undersigned is therefore filing its objections/ suggestions/ comments for consideration by this Hon'ble Commission.
2. In this regard, it is submitted that TANGEDCO has prayed for issuance of requisite guidelines on sequence of adjustment, to be adhered amongst various open access sources, while taking into consideration, various financial aspects viz. open access charges, Cross Subsidy Charges (CSS), etc., leviable for these adjustments.

TANGEDCO has in fact contended that this Hon'ble Commission has generously granted concessions to Renewable Energy (RE) generators qua Open Access charges, as well as CSS and also extended banking facility for the Wind Energy Generators (WEGs). As a result of these concessions, TANGEDCO is facing a negative impact on its financials.

3. In view of the above, TANGEDCO has sought a clear order of adjustment, so as to streamline the adjustment of energy wheeled/ purchased from different sources by the HT Consumers under Open Access. For this, TANGEDCO has provided a sequence of adjustment

before this Hon'ble Commission, wherein the order of priority proposed by it, is formulated on the basis of the Open Access charges and CSS leviable qua the Open Access sources, which defeats the scheme and intent of the Electricity Act, 2003.

In terms of the foregoing, it is submitted that the said priority list proposed by TANGEDCO is divided into two categories viz. captive and non-captive and the same is reproduced hereinbelow for ready reference of this Hon'ble Commission. However, the undersigned wants to put up a grave concern after reading the priority list below that, whether differentiation of captive and non-captive category for adjustment by TANGEDCO is acceptable under the scheme of Act and Rules?

4. **Non-Captive Category:**

- i. IEX Power
- ii. TPP
 - a. 3rd party from thermal generator
 - b. 3rd party from solar generator
 - c. 3rd Party from wind energy generator
 - d. 3rd party from bagasse generator
 - e. 3rd party from biomass generator

Captive Category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)

- d. Solar power (Higher cost first and lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. **Thermal energy** (surplus units lapsed)

As such, if the aforesaid proposal of TANGEDCO, prioritizing the order of adjustment (in the State of Tamil Nadu) is accepted by this Hon'ble Commission, then the same would contravene and violate the legislative framework of the Electricity Act, 2003 (*readwith various statutory policy documents, issued thereunder from time to time*) which categorically emphasizes on impetus and thrust to be accorded to the captive sector in the country. In fact, such proposal would be detrimental to the sacrosanct object envisioned under the Electricity Act, 2003 qua promotion of the captive sector, and, therefore, it would lead to stagnation and rot in the captive industry, in the State of Tamil Nadu (enumerated in detail hereinafter).

Current Allotment Method for Adjustment of Energy Credit:

- 5. In aide to the above, it is pertinent to note the present method of allotment followed by TANGEDCO, as provided in the petition at paragraph no. 08, wherein the adjustment of energy credit by the HT Users, having Open Access and procuring power from multiple sources is done in the following order:
 - i. IEX Power
 - ii. 3rd Party power
 - iii. **Captive Thermal Energy**
 - iv. Captive Solar power
 - v. Captive Wind energy without banking

- vi. Wind energy with banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the payout for the unutilized quantum of energy)

If there is any remaining consumption, then it will be adjusted in TANGEDCO tariff

Captive Generating Plants are to be promoted under the scheme of the Electricity Act, 2003 and Statutory Policies framed under it:

6. In the wholesome submissions made on behalf of the undersigned in the present stakeholder comments, detailed emphasis is placed on the scheme of the Electricity Act, 2003 and the statutory policies framed thereunder which expressly call for the promotion of the concept of "Captives".

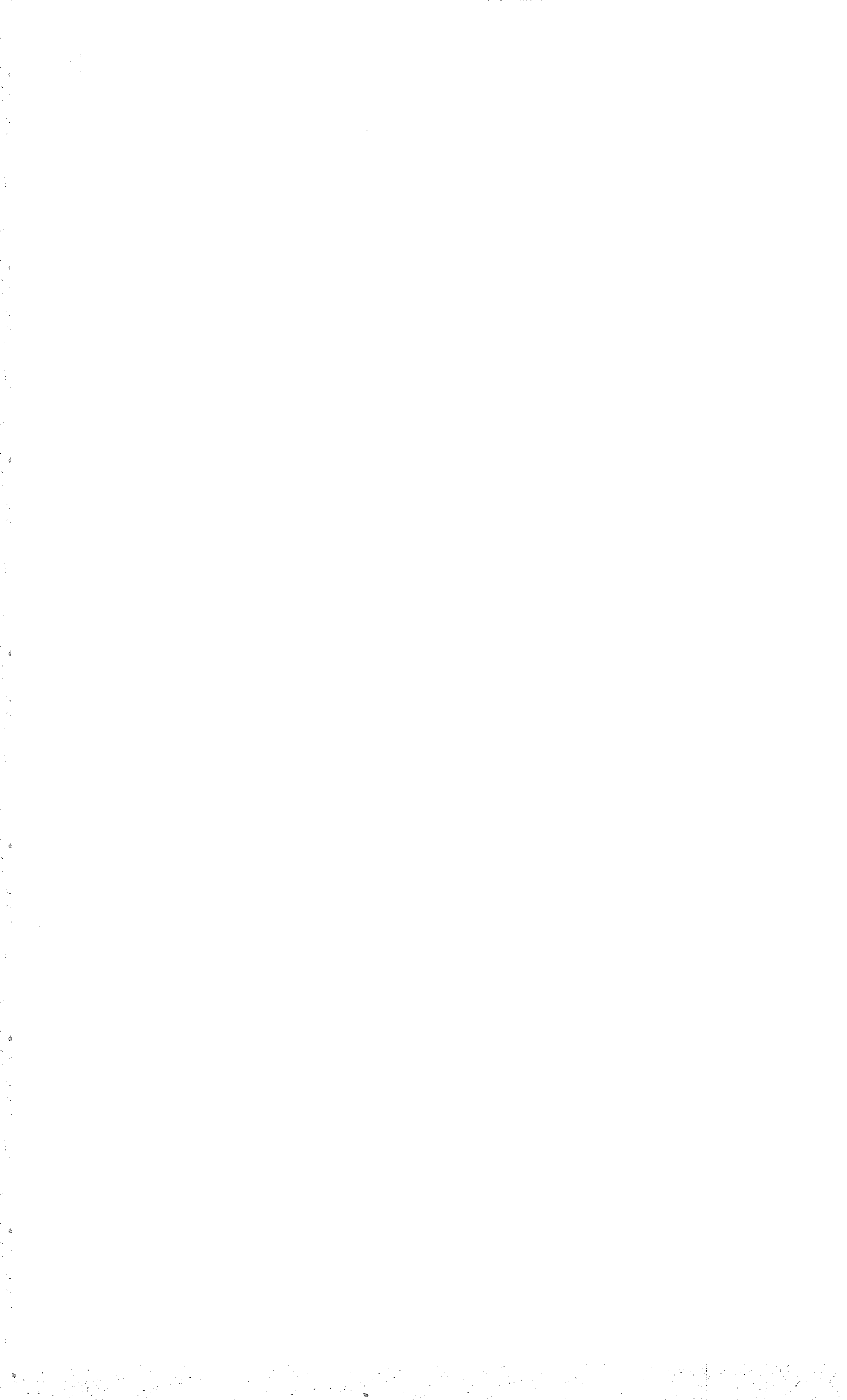
- **SOR of the Electricity Act, 2003 and various statutory policy initiatives of the Government:**

7. In furtherance to aforesaid, reference is drawn to the Statement of Objects and Reasons (SOR) of the Electricity Act, 2003 wherein, one of the main features of the Act is to delicense the generation of power and to freely permit captive generation. The relevant extract of the SOR is reproduced hereinbelow:

"4. The main features of the Bill are as follows: -

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro Projects would, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources."

(Underline supplied)



- 8. Further, reference may also be made to the National Electricity Policy, 2005 (NEP), National Tariff Policy, 2006 (NTP) and revised NTP, 2016. The relevant extract of the NEP, 2005 is reproduced hereinbelow:

National Electricity Policy, 2005

"5.2 GENERATION

...

5.2.2 The Government of India has initiated several reform measures to create a favourable environment for addition of new generating capacity in the country. The Electricity Act 2003 has put in place a highly liberal framework for generation. There is no requirement of licensing for generation. The requirement of techno-economic clearance of CEA for thermal generation project is no longer there. For hydroelectric generation also, the limit of capital expenditure, above which concurrence of CEA is required, would be raised suitably from the present level. Captive generation has been freed from all controls.

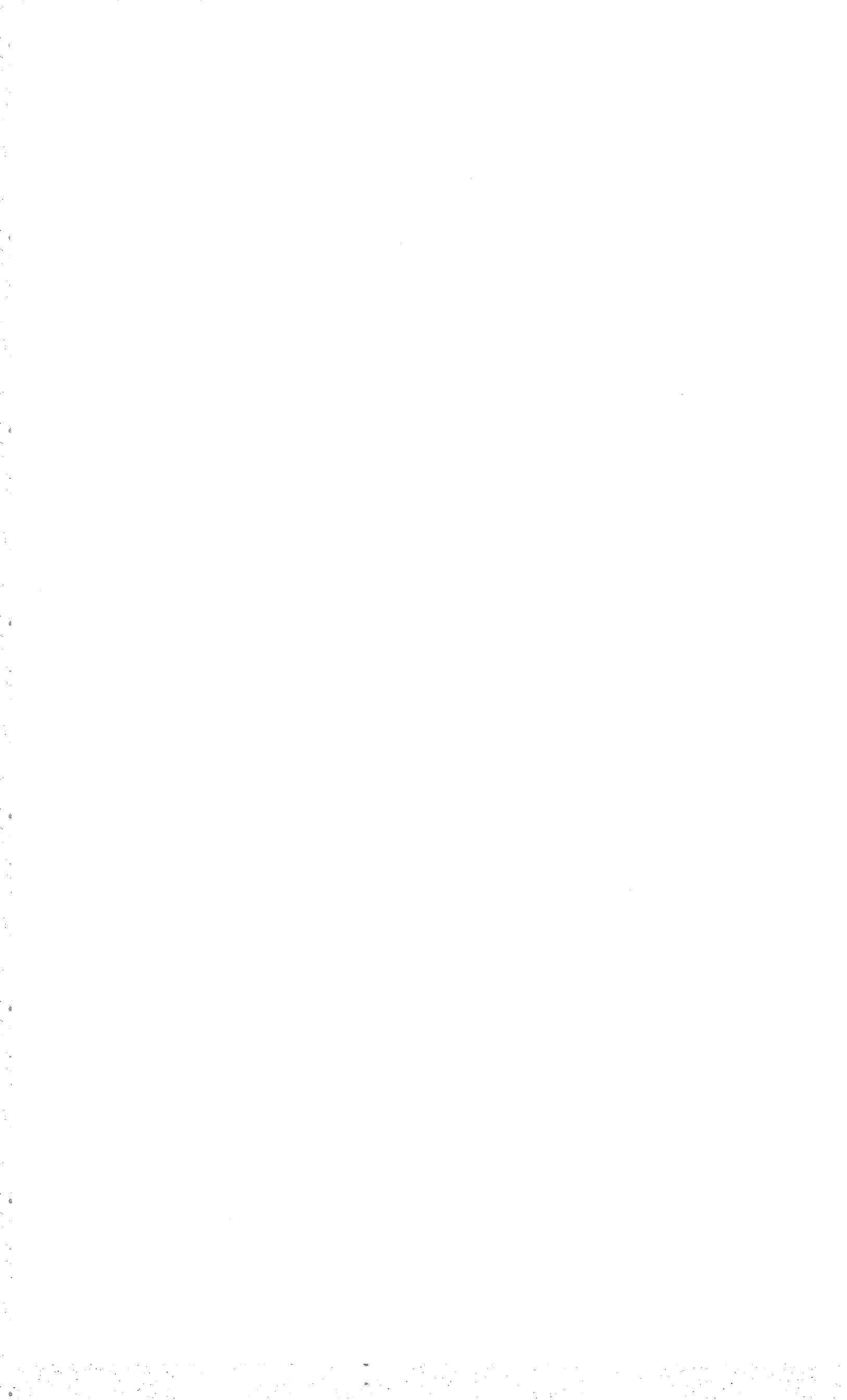
...

Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost-effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost-effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be



supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non-conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant."

(Underline supplied)

National Tariff Policy, 2006:

"6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access."

(Underline supplied)

Revised National Tariff Policy, 2016:

"5.0 GENERAL APPROACH TO TARIFF

...
5.12 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost-effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level."

6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005."

(Underline supplied)

9. It is imperative to note that the aforesaid policies issued by the Central Government are statutory in nature. The said principle is laid down by the Hon'ble Supreme Court in the judgment of *Energy Watchdog v. CERC* reported in (2017) 14 SCC 80 (*Please refer to Para 57*). Further, from the perusal of above provisions of the Statutory Policies issued

under the Act, it is quite evident that the intention of the legislature has been to promote Captive Generation, and has stressed upon the Regulatory Commissions to bring out the necessary promotional parameters which incentivize Captive Generation in the country. As such, the proposal of TANGEDCO to place all sort of CGPs at the end of the priority list qua adjustment of drawl of power by Open Access Consumer, would explicitly defeat the intent and mandate of the abovementioned statutory Policies issued under the Electricity Act, 2003.

10. From the above, it is evident that one of the primary objects towards the enactment of the Electricity Act, 2003 and the statutory policies framed thereunder, is to promote captive generation of power. However, the aforesaid proposal of TANGEDCO diluting the priority qua various CGPs in their order of adjustment of energy drawal by Open Access consumer, vanquishes the foregoing discussed intent under the statutory policy framework. In fact, the same would render the concept of captives as unviable, which would do violence to the various provisions of the Electricity Act (discussed hereinafter).

- **Statutory provisions under the Electricity Act envisaging promotion of the captive sector:**

11. That, the intent of the Legislature envisioning promotion of the captive sector can be evidenced from a perusal of the following provisions under the Electricity Act, 2003 viz. fourth proviso to Section 38 (2) (d), fourth proviso to Section 39 (2) (d), fourth proviso to Section 40 (c) and fourth proviso to Section 42 (2), which categorically provide for exemption from levy of CSS upon the CGPs. The relevant extract of the said provisions is reproduced hereinbelow:

"Section 38. (Central Transmission Utility and functions): -----

...

(2) The functions of the Central Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Central Commission:

2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 39. (State Transmission Utility and functions):

...

(2) The functions of the State Transmission Utility shall be -

-

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the State Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 40. (Duties of transmission licensees):

It shall be the duty of a transmission licensee –

...

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:



Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Appropriate Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 42. (Duties of distribution licensee and open access): ---

...

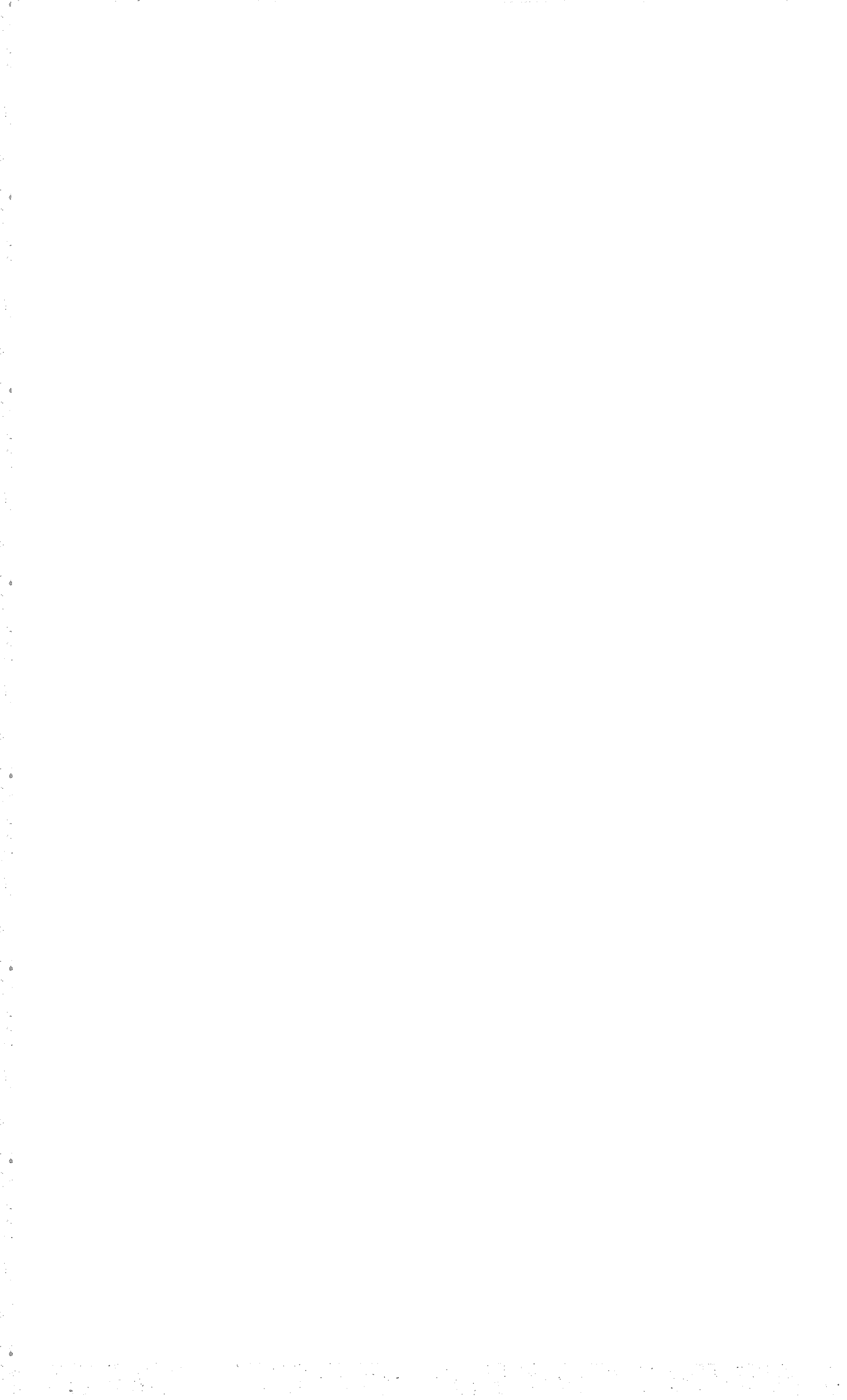
(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has



established a captive generating plant for carrying the electricity to the destination of his own use:

..."

12. In terms of the foregoing, it is evidently clear that the Parliament while enacting the Electricity Act, 2003 consciously provided concession to CGPs/ Captive Users, who have established a captive generating plant for carrying the electricity to the destination of his own use, by exempting them from payment of any CSS. The aforesaid provisions of law are starkly clear in this regard.

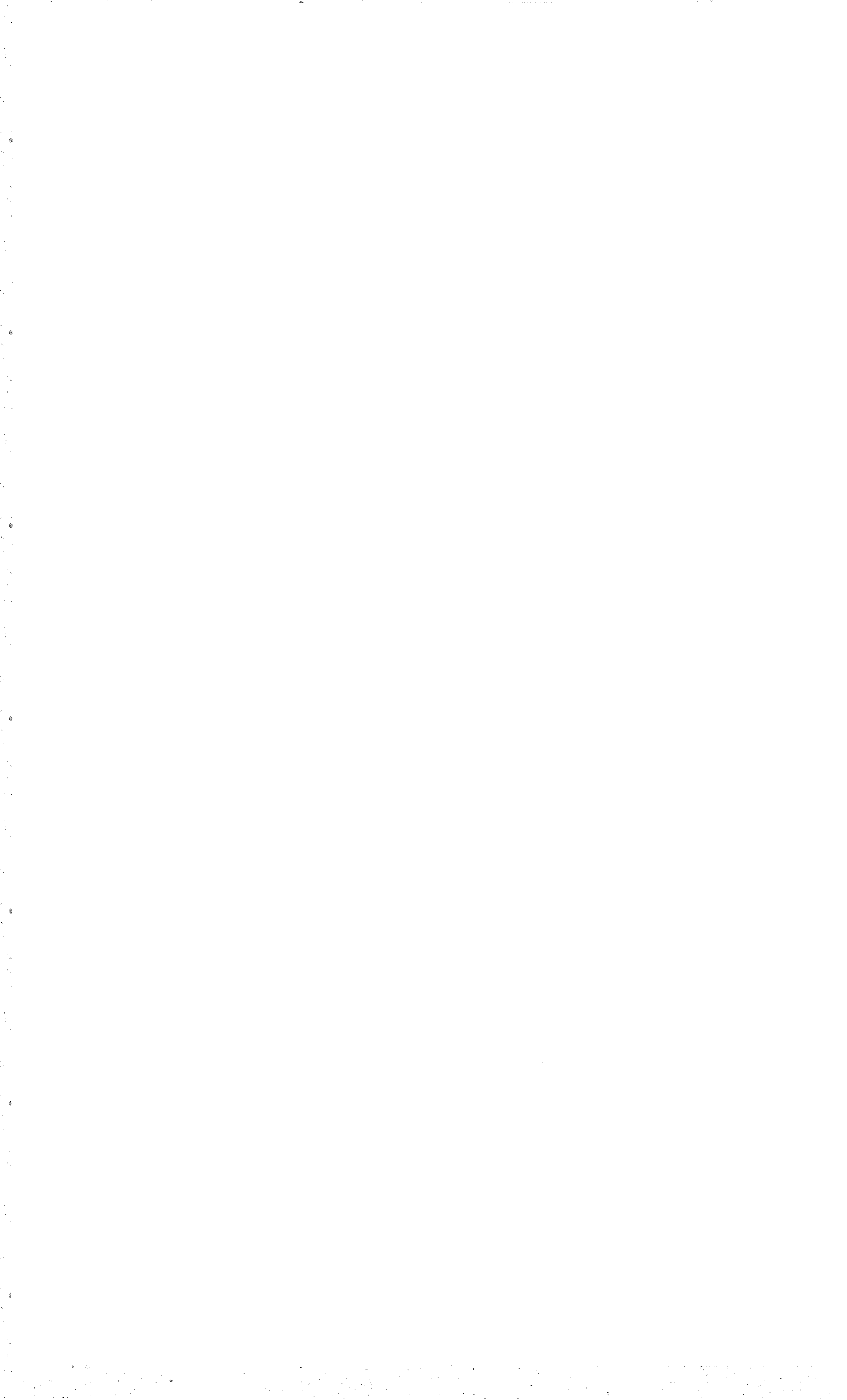
• **Implication of the proposal of TANGEDCO:**

13. It is submitted that, if the proposal of TANGEDCO is accepted the following implications shall envelop the captive industry in the State:

- a. TANGEDCO has proposed to dis-incentivise all species of CGPs existing in the State of Tamil Nadu by relegating them to the bottom of the order of adjustment of power drawal by Open Access consumers;
- b. As discussed hereinbefore, the unwarranted consequence of such proposal would be that the entire jurisprudence envisaging promotion of the captive sector would stand extinguished and vitiated;
- c. Such a consequence would also be in contravention of various statutory policies of the Government, as well as the numerous specific provisions under the Electricity Act, 2003, mandating and providing such promotion and thrust;
- d. The proposal shall also lead to an anomaly, whereby in case, an Open Access consumer drawing power from various sources

including CGPs, draws lesser power than its schedule, then the CGPs being proposed to be placed at the bottom of the order of adjustment list and given last priority for setting-off such power drawn by the said Open Access consumer, would disincentivize an Open Access Consumer from availing captive power, as the setoff would result in adjustment of non-captive power thereby leaving out the benefits of captive power at cheaper rates for the consumer and exemption from CSS would stand nullified and diluted;

- e. The aforesaid situation is inevitable, as an Open Access Consumer availing power from various sources including captive power would never be in a position to accurately cater to its power schedule in a time block, as there would always be a situation of under drawal (apart from over drawal);
- f. In such a scenario, an Open Access Consumer would be discouraged to avail captive power all together in view of the proposed priority list of TANGEDCO, which would also severely hamper the growth and prejudice the captive industry in the State; and
- g. Accepting the proposal of TANGEDCO would also lead to a situation where the State of Tamil Nadu would be swimming against the currents, not being in line with the priority protocol adopted by other States in the Country, wherein the captive sector has been given weightage and priority in their order of adjustment list.
- h. If least priority is given to captive power then it will violate the sole purpose of Electricity Rules'2005 wherein captives have to



fulfil not less than 51% consumption criteria and due to minimum scheduling of captive power, the corresponding captive users will be forced to consume less power and attain default status.

- i. If Renewable Energy is given highest priority, then it will defeat the purpose of banking and vehemently ignore the regulations for banking of RE Power.

Proposal for preferred Energy Adjustment Method by the Undersigned:

14. In the view of the foregoing detailed submissions, it is the case of the Undersigned that in order to preserve and fulfill the benevolent object under the Electricity Act, 2003 and the Statutory Policies framed under it, towards promotion of the captive sector especially in the State of Tamil Nadu, that this Hon'ble Commission ought to consider the following priority list qua the order of adjustment, thereby, proposing the adjustment of energy drawl by an open access consumer from different sources in the sequence of priority and be implemented for each time block, upon adjustment of applicable losses:

- (a) Captive Thermal Generating Plant
- (b) Captive Renewable Generating Plant
- (c) Renewable Energy Generators
- (d) Banked Energy
- (e) Long term third party
- (f) Medium term third party
- (g) Short term inter-State open access including power exchange transactions

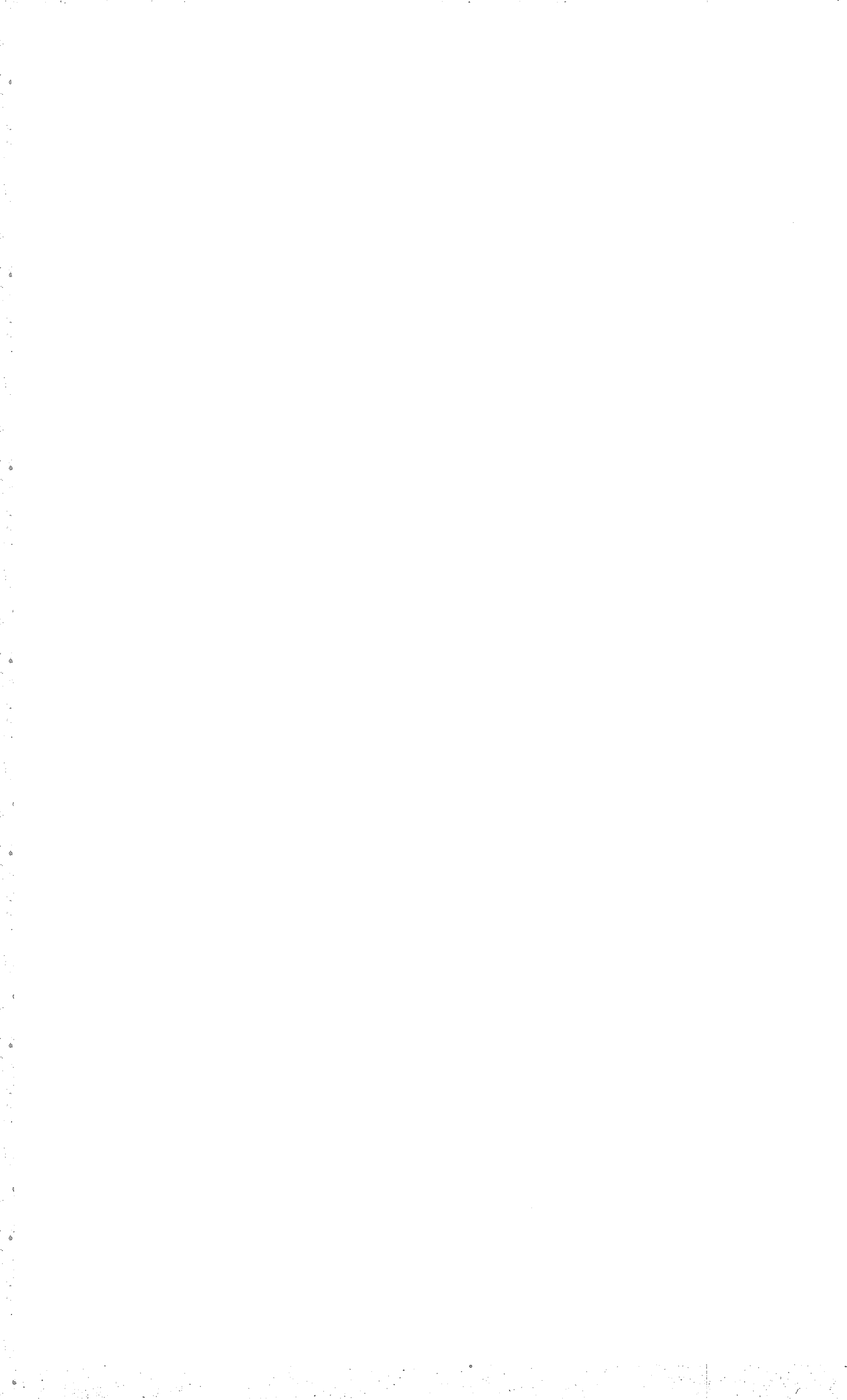
(g) Short term intra – State third party.

15. In addition to the above, it is also submitted that TANGEDCO while attempting to introduce a completely new system for adjustment of energy drawal by the Open Access Consumers under the present Petition, it is taking a discriminatory view in the matter of allowing Open Access as per its whims and fancies, without any substantial or cogent reasoning.

The only purported reason on the basis of which TANGEDCO has proposed to present the aforesaid adjustment priority is that it is suffering alleged losses as per the current priority list.

16. In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.11.2018 passed in Appeal No. 366 of 2017, whereby the Hon'ble APTEL categorically settled the law with regard to Priority of Adjustment by holding that **any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources**. The relevant extract of the said order is reproduced hereinbelow:

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the



power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant."

(Underline supplied)

In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.01.21 passed in Appeal No. 191 of 2018, whereby the Hon'ble APTEL categorically settled the law with regard to RE/Wind Energy Generators by holding that banking facility should be allowed for all existing and new WEGs selling under

third party open access sale scheme, irrespective of date of commissioning. The relevant extract of the said order is reproduced hereinbelow:

"95. For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable. We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated (a) withdrawal of banking facility (i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and (ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning....."

(Underline supplied)

- 17. In view of the above settled position of law, it is evident that the issue pertaining to priority list for adjustment of energy drawal by open access consumers is already crystallised to the effect that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources and this legal mandate cannot be deviated from by this Hon'ble Commission in the manner being proposed by TANGEDCO in its priority list for adjustment of energy drawl by open access consumers. Therefore, the present Petition lacks merits and deserves to be rejected.

Wrongful Prioritization of Power Exchange:

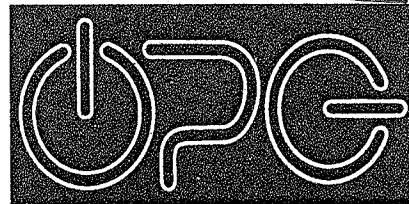
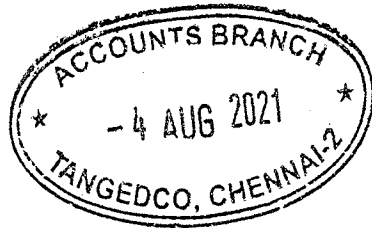
- 18. It is submitted that TANGEDCO by proposing before this Hon'ble Commission that the power procured by Open Access Consumers from Power Exchange should be accorded the top priority in the order of adjustment, has completely failed to consider the following points:

- a) That, power being traded at the power exchange is procured at cheaper rates on short-term basis;
- b) The entire framework of power exchange is opportunistic in nature when compared with other sources of power;
- c) The settlement order qua power procured from exchange can never be equated and it would always be at a lower pedestal, when compared to crystallised bi-lateral contracts executed for sourcing of power like done in a captive arrangement;
- d) The monthly energy adjustment being made to the HT Users should be prioritised based on their type of Open Access availed. The interstate collective / bilateral transactions should be adjusted in 15 minutes block wise instead of being adjusted in a slot wise monthly cumulative manner;
- e) That, it is pertinent to note that DSM Regulations are not implemented in the State of Tamil Nadu for Intrastate OA transactions. As such, for interstate transactions, 15 minutes block wise adjustments ought to be carried out in accordance with the aforesaid CERC Regulations. As the collective transaction at the power exchange are always carried out under short-term Open Access, therefore, the energy transacted and purchased from such Exchange ought to be adjusted in least priority; and
- f) The consideration of IEX power must be on least priority basis while calculating adjustments for the purpose of energy adjustment.

g) The proposed priority of adjustment is contrary to the provisions of Intra-state OA regulations 2014, whereby the hon'ble TNERC has notified that the least priority is given to short term power and the same would be curtailed first as per grid requirements. Whereas the proposed priority list is contradictory when giving adjustment to IEX/short term power at high priority.

19. In view of the above detailed submissions, it is urged before this Hon'ble Commission that the proposal put forth by TANGEDCO be rejected, as the same attempts to undermine the legislative mandate of the Electricity Act, 2003 and the importance the Act places on the aspect of generation of electricity being delicensed and CGPs bringing in a more competitive environment to the sector. Most importantly, the thrust given by the said Act to the CGPs cannot be diluted by the state DISCOM in such a manner.

20. Therefore, the suggestions forwarded by the undersigned in Para 14 above by way of the present comments be considered and accepted by this Hon'ble Commission and suitable orders be passed in this regard.



OPG POWER GENERATION PVT. LTD.
CIN : U40109TN2005PTC055442

016078

Ref No.: OPGPG/MP24 of 2021/COMMENTS

Date: 03.08.21

To,
The Financial Controller/Revenue
TANGEDCO, NKKKR Maligai,
144, Anna Salai, Chennai-600 002

Subject: Comments on behalf of OPG Power Generation Pvt. Ltd. to the Public Notice dated 08-07-2021 inviting suggestions/ objections on the Petition filed by TANGEDCO being Petition No. 24 of 2021 before the Ld. Tamil Nadu Electricity Regulatory Commission ("TNERC") seeking fixation of adjustment priority among various sources of Open Access energy against HT consumption

Ref: Hon'ble TNERC Notice Dt.08-07-2021 webhosted petition to invite public comments on the M.P.No. 24 of 2021

Dear Sir,

This is with reference to the above subject, wherein the Ld. Tamil Nadu Electricity Regulatory Commission, by way of web-hosting the Petition filed by TANGEDCO being Petition M.P. No. 24 of 2021 on 08-07-2021 invited suggestions/ objections of the stakeholder on the priority list proposed by TANGEDCO for adjustment of energy drawal by Open Access consumers in the State of Tamil Nadu.

Therefore, in terms of the foregoing, OPGPG being a Stakeholder on account of being a Captive Generating Company submits its comments to the Petition M.P. No. 24 of 2021, for the consideration of the Ld. TNERC. As enclosed in

ANNEXURE-1

This is submitted for your kind consideration.

Yours faithfully,

For OPG Power Generation Pvt. Ltd.

For OPG POWER GENERATION PVT. LTD.

Authorised Signatory

Reg. Off.: OPG Nagar, Periya Obulapuram Village, Nagaraja Kandigai,
Madharappakkam Road, Gummidipoondi, Thiruvallur, TamilNadu, India-601201.

E-mail : admin@opgpower.com Website : www.opgpower.com

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ANNEXURE-1

1. That, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) has filed a Miscellaneous Petition being MP No. 24 of 2021 before this Hon'ble Commission urging it to fix the adjustment priority amongst various sources of Open Access energy against HT consumption. The said petition is placed in public domain by way of web-hosting, seeking objections/ suggestions/ comments from the stakeholders at large. The undersigned is therefore filing its objections/ suggestions/ comments for consideration by this Hon'ble Commission.
2. In this regard, it is submitted that TANGEDCO has prayed for issuance of requisite guidelines on sequence of adjustment, to be adhered amongst various open access sources, while taking into consideration, various financial aspects viz. open access charges, Cross Subsidy Charges (CSS), etc., leviable for these adjustments.

TANGEDCO has in fact contended that this Hon'ble Commission has generously granted concessions to Renewable Energy (RE) generators qua Open Access charges, as well as CSS and also extended banking facility for the Wind Energy Generators (WEGs). As a result of these concessions, TANGEDCO is facing a negative impact on its financials.

3. In view of the above, TANGEDCO has sought a clear order of adjustment, so as to streamline the adjustment of energy wheeled/ purchased from different sources by the HT Consumers under Open Access. For this, TANGEDCO has provided a sequence of adjustment before this Hon'ble Commission, wherein the order of priority proposed by it, is formulated on the basis of the Open Access charges and CSS leviable qua the Open Access sources, which defeats the scheme and intent of the Electricity Act, 2003.

In terms of the foregoing, it is submitted that the said priority list proposed by TANGEDCO is divided into two categories viz. captive and non-captive and the same is reproduced hereinbelow for ready reference of this Hon'ble Commission. However, the undersigned wants to put up a grave concern after reading the priority list below that, whether differentiation of captive and non-captive category for adjustment by TANGEDCO is acceptable under the scheme of Act and Rules?

4. **Non-Captive Category:**

- i. IEX Power
- ii. TPP
 - a. 3rd party from thermal generator
 - b. 3rd party from solar generator
 - c. 3rd Party from wind energy generator
 - d. 3rd party from bagasse generator
 - e. 3rd party from biomass generator

Captive Category:

- a. Biomass (75% payment for surplus units)
- b. Wind energy with banking (Higher cost first and lower cost later)
- c. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)
- d. Solar power (Higher cost first and lower cost 75% payment for surplus units)
- e. Bagasse co-gen (surplus units lapsed)
- f. **Thermal energy** (surplus units lapsed)

As such, if the aforesaid proposal of TANGEDCO, prioritizing the order of adjustment (in the State of Tamil Nadu) is accepted by this Hon'ble Commission, then the same would contravene and violate the legislative

framework of the Electricity Act, 2003 (*read with various statutory policy documents, issued thereunder from time to time*) which categorically emphasizes on impetus and thrust to be accorded to the captive sector in the country. In fact, such proposal would be detrimental to the sacrosanct object envisioned under the Electricity Act, 2003 qua promotion of the captive sector, and, therefore, it would lead to stagnation and rot in the captive industry, in the State of Tamil Nadu (enumerated in detail hereinafter).

Current Allotment Method for Adjustment of Energy Credit:

5. In aid to the above, it is pertinent to note the present method of allotment followed by TANGEDCO, as provided in the petition at paragraph no. 08, wherein the adjustment of energy credit by the HT Users, having Open Access and procuring power from multiple sources is done in the following order:

- i. IEX Power
- ii. 3rd Party power
- iii. **Captive Thermal Energy**
- iv. Captive Solar power
- v. Captive Wind energy without banking
- vi. Wind energy with banking (due to the principle that Higher cost energy first and lower cost energy later so as to minimum the payout for the unutilized quantum of energy)

If there is any remaining consumption, then it will be adjusted in TANGEDCO tariff

Captive Generating Plants are to be promoted under the scheme of the Electricity Act, 2003 and Statutory Policies framed under it:

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6. In the wholesome submissions made on behalf of the undersigned in the present stakeholder comments, detailed emphasis is placed on the scheme of the Electricity Act, 2003 and the statutory policies framed thereunder which expressly call for the promotion of the concept of "Captives".

• **SOR of the Electricity Act, 2003 and various statutory policy initiatives of the Government:**

7. In furtherance to aforesaid, reference is drawn to the Statement of Objects and Reasons (SOR) of the Electricity Act, 2003 wherein, one of the main features of the Act is to delicense the generation of power and to freely permit captive generation. The relevant extract of the SOR is reproduced hereinbelow:

"4. The main features of the Bill are as follows: -

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro Projects would, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources."

(Underline supplied)

8. Further, reference may also be made to the National Electricity Policy, 2005 (NEP), National Tariff Policy, 2006 (NTP) and revised NTP, 2016.

The relevant extract of the NEP, 2005 is reproduced hereinbelow:

National Electricity Policy, 2005

"5.2 GENERATION

...
5.2.2 The Government of India has initiated several reform measures to create a favourable environment for addition of new generating capacity in the country. The Electricity Act 2003 has put in place a highly liberal framework for generation. There is no requirement of licensing for

generation. The requirement of techno-economic clearance of CEA for thermal generation project is no longer there. For hydroelectric generation also, the limit of capital expenditure, above which concurrence of CEA is required, would be raised suitably from the present level. Captive generation has been freed from all controls.

...

Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost-effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost-effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non- conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall

exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant."

(Underline supplied)

National Tariff Policy, 2006:

"6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access."

(Underline supplied)

Revised National Tariff Policy, 2016:

5.0 GENERAL APPROACH TO TARIFF

...
5.12 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost-effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level.”

...

6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of

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generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005."

(Underline supplied)

9. It is imperative to note that the aforesaid policies issued by the Central Government are statutory in nature. The said principle is laid down by the Hon'ble Supreme Court in the judgment of *Energy Watchdog v. CERC* reported in (2017) 14 SCC 80 (*Please refer to Para 57*). Further, from the perusal of above provisions of the Statutory Policies issued under the Act, it is quite evident that the intention of the legislature has been to promote Captive Generation, and has stressed upon the Regulatory Commissions to bring out the necessary promotional parameters which incentivize Captive Generation in the country. As such, the proposal of TANGEDCO to place all sort of CGPs at the end of the priority list qua adjustment of drawl of power by Open Access Consumer, would explicitly defeat the intent and mandate of the abovementioned statutory Policies issued under the Electricity Act, 2003.
10. From the above, it is evident that one of the primary objects towards the enactment of the Electricity Act, 2003 and the statutory policies framed thereunder, is to promote captive generation of power.

However, the aforesaid proposal of TANGEDCO diluting the priority qua various CGPs in their order of adjustment of energy drawal by Open Access consumer, vanquishes the foregoing discussed intent under the statutory policy framework. In fact, the same would render the concept of captives as unviable, which would do violence to the various provisions of the Electricity Act (discussed hereinafter).

• **Statutory provisions under the Electricity Act envisaging promotion of the captive sector:**

11. That, the intent of the Legislature envisioning promotion of the captive sector can be evidenced from a perusal of the following provisions under the Electricity Act, 2003 viz. fourth proviso to Section 38 (2) (d), fourth proviso to Section 39 (2) (d), fourth proviso to Section 40 (c) and fourth proviso to Section 42 (2), which categorically provide for exemption from levy of CSS upon the CGPs. The relevant extract of the said provisions is reproduced hereinbelow:

"Section 38. (Central Transmission Utility and functions): ----

...
(2) The functions of the Central Transmission Utility shall be -

...
(d) to provide non-discriminatory open access to its transmission system for use by-
(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

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Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Central Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 39. (State Transmission Utility and functions):

...

(2) The functions of the State Transmission Utility shall be -

-

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the State Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 40. (Duties of transmission licensees):

It shall be the duty of a transmission licensee -

...
(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced 1[***] in the manner as may be specified by the Appropriate Commission:
2[***]

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 42. (Duties of distribution licensee and open access): ---

...
(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

..."

12. In terms of the foregoing, it is evidently clear that the Parliament while enacting the Electricity Act, 2003 consciously provided concession to CGPs/ Captive Users, who have established a captive generating plant for carrying the electricity to the destination of his own use, by exempting them from payment of any CSS. The aforesaid provisions of law are starkly clear in this regard.

• **Implication of the proposal of TANGEDCO:**

13. It is submitted that, if the proposal of TANGEDCO is accepted the following implications shall envelop the captive industry in the State:

- a. TANGEDCO has proposed to dis-incentivise all species of CGPs existing in the State of Tamil Nadu by relegating them to the bottom of the order of adjustment of power drawal by Open Access consumers;
- b. As discussed hereinbefore, the unwarranted consequence of such proposal would be that the entire jurisprudence envisaging promotion of the captive sector would stand extinguished and vitiated;
- c. Such a consequence would also be in contravention of various statutory policies of the Government, as well as the numerous specific provisions under the Electricity Act, 2003, mandating and providing such promotion and thrust;
- d. The proposal shall also lead to an anomaly, whereby in case, an Open Access consumer drawing power from various sources including CGPs, draws lesser power than its schedule, then the CGPs being proposed to be placed at the bottom of the order of adjustment list and given last priority for setting-off such power drawn by the said Open Access consumer, would disincentivize an Open Access Consumer from availing captive power, as the setoff would result in adjustment of non-captive power thereby leaving out the benefits of captive power at cheaper rates for the consumer and exemption from CSS would stand nullified and diluted;
- e. The aforesaid situation is inevitable, as an Open Access Consumer availing power from various sources including captive power would never be in a position to accurately cater to its power

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schedule in a time block, as there would always be a situation of under drawal (apart from over drawal);

- f. In such a scenario, an Open Access Consumer would be discouraged to avail captive power all together in view of the proposed priority list of TANGEDCO, which would also severely hamper the growth and prejudice the captive industry in the State; and
- g. Accepting the proposal of TANGEDCO would also lead to a situation where the State of Tamil Nadu would be swimming against the currents, not being in line with the priority protocol adopted by other States in the Country, wherein the captive sector has been given weightage and priority in their order of adjustment list.
- h. If least priority is given to captive power then it will violate the sole purpose of Electricity Rules'2005 wherein captives have to fulfil not less than 51% consumption criteria and due to minimum scheduling of captive power, the corresponding captive users will be forced to consume less power and attain default status.
- i. If Renewable Energy is given highest priority, then it will defeat the purpose of banking and vehemently ignore the regulations for banking of RE Power.

Proposal for preferred Energy Adjustment Method by the Undersigned:

14. In the view of the foregoing detailed submissions, it is the case of the Undersigned that in order to preserve and fulfill the benevolent object under the Electricity Act, 2003 and the Statutory Policies framed under it, towards promotion of the captive sector especially in the State of Tamil Nadu, that this Hon'ble Commission ought to consider the following priority list qua the order of adjustment, thereby, proposing the adjustment of energy drawl by an open access consumer from different sources in the sequence of priority and be implemented for each time block, upon adjustment of applicable losses:

- (a) Captive Thermal Generating Plant
- (b) Captive Renewable Generating Plant
- (c) Renewable Energy Generators
- (d) Banked Energy
- (e) Long term third party
- (f) Medium term third party
- (g) Short term inter-State open access including power exchange transactions
- (g) Short term intra - State third party.

15. In addition to the above, it is also submitted that TANGEDCO while attempting to introduce a completely new system for adjustment of energy drawal by the Open Access Consumers under the present Petition, it is taking a discriminatory view in the matter of allowing Open Access as per its whims and fancies, without any substantial or cogent reasoning.

The only purported reason on the basis of which TANGEDCO has proposed to present the aforesaid adjustment priority is that it is suffering alleged losses as per the current priority list.

16. In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.11.2018 passed in Appeal No. 366 of 2017, whereby the Hon'ble APTEL categorically settled the law with regard to Priority of Adjustment by holding that **any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources**. The relevant extract of the said order is reproduced hereinbelow:

"43. It is significant to note that, the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, irrespective of whether the set target is achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Reliance Infrastructure Limited have their procedure in line with the Open Access Regulations, 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations, 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides,

the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant."

(Underline supplied)

In furtherance to the above, a profitable reference is made to the judgment of the Hon'ble APTEL dated 28.01.21 passed in Appeal No. 191 of 2018, whereby the Hon'ble APTEL categorically settled the law with regard to RE/Wind Energy Generators by holding that banking facility should be allowed for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning. The relevant extract of the said order is reproduced hereinbelow:

"95. For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable. We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated (a) withdrawal of banking facility (i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and (ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning....."

(Underline supplied)

17. In view of the above settled position of law, it is evident that the issue pertaining to priority list for adjustment of energy drawl by open access consumers is already crystallised to the effect that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources and this legal mandate cannot be deviated from by this Hon'ble Commission in the manner being proposed by TANGEDCO in its priority list for adjustment of energy drawl by open access consumers. Therefore, the present Petition lacks merits and deserves to be rejected.

Wrongful Prioritization of Power Exchange:

18. It is submitted that TANGEDCO by proposing before this Hon'ble Commission that the power procured by Open Access Consumers from Power Exchange should be accorded the top priority in the order of adjustment, has completely failed to consider the following points:
- a) That, power being traded at the power exchange is procured at cheaper rates on short-term basis;
 - b) The entire framework of power exchange is opportunistic in nature when compared with other sources of power;
 - c) The settlement order qua power procured from exchange can never be equated and it would always be at a lower pedestal, when compared to crystallised bi-lateral contracts executed for sourcing of power like done in a captive arrangement;
 - d) The monthly energy adjustment being made to the HT Users should be prioritised based on their type of Open Access availed. The interstate collective / bilateral transactions should be adjusted

in 15 minutes block wise instead of being adjusted in a slot wise monthly cumulative manner;

- e) That, it is pertinent to note that DSM Regulations are not implemented in the State of Tamil Nadu for Intrastate OA transactions. As such, for interstate transactions, 15 minutes block wise adjustments ought to be carried out in accordance with the aforesaid CERC Regulations. As the collective transaction at the power exchange are always carried out under short-term Open Access, therefore, the energy transacted and purchased from such Exchange ought to be adjusted in least priority; and
 - f) The consideration of IEX power must be on least priority basis while calculating adjustments for the purpose of energy adjustment.
 - g) The proposed priority of adjustment is contrary to the provisions of Intra-state OA regulations 2014, whereby the hon'ble TNERC has notified that the least priority is given to short term power and the same would be curtailed first as per grid requirements. Whereas the proposed priority list is contradictory when giving adjustment to IEX/short term power at high priority.
19. In view of the above detailed submissions, it is urged before this Hon'ble Commission that the proposal put forth by TANGEDCO be rejected, as the same attempts to undermine the legislative mandate of the Electricity Act, 2003 and the importance the Act places on the aspect of generation of electricity being delicensed and CGPs bringing in a more competitive environment to the sector. Most importantly, the thrust

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given by the said Act to the CGPs cannot be diluted by the state DISCOM in such a manner.

20. Therefore, the suggestions forwarded by the undersigned in Para 14 above by way of the present comments be considered and accepted by this Hon'ble Commission and suitable orders be passed in this regard.

A.D. Thirumoorthy
Member State Working Group on RE

B.64, Sreevatsa Gardens,
Thudiyalur,
Coimbatore-641 034
adtmoorthy@gmail.com
03/08/2021

To,
FC Revenue,
Tamil Nadu Generation Company Ltd.
No 19-A, Rukmini Lakshmiipathy Salai
Marshalls road, Egmore, Chennai - 600 008

SUB: COMMENTS AND SUGGESTIONS –ADJUSTMENT PRIORITY AMONG VARIOUS SOURCES OF OPEN ACCESS ENERGY AGAINST HT CONSUMPTION – MP 24 of 2021

Hereby present comments/observations on the adjustment priority among various sources of Open Access energy against HT Consumption.

Primary objective of this petition is promoting and safeguarding green power. Promoting and safeguarding renewable energy is global, agenda and National agenda for countering the climate change. TANGEDCO attitude on this activity is welcome.

Number consumers especially Industrial houses are trying to promote renewable energy on their own without any specific obligation.

But while suggesting the order of priority it seems the order suggested by TANGEDCO will defeat the very purpose of the petition in promoting Renewable Energy. For example, if wind energy is allowed to be adjusted first, during high wind season entire solar energy will get lapsed. In that case if solar energy gets lapsed for 5 to 6 months solar investment will not be viable and renewable energy promotion will get affected. Instead of that solar can get adjusted first and wind get adjusted second. In this arrangement all wind and solar energy will get adjusted. To make good the revenue for TANGEDCO all realistic charges for transmitting RE energy can be charged to the consumer. Hence, I suggest the following order of adjustment for promoting renewable energy

1. Solar Energy
2. Wind Energy without banking
3. Wind Energy with banking
4. Biomass Energy
5. Thermal Power from IEX
6. Captive Thermal Power
7. Third party Thermal Power

We request Hon'ble Commission to consider and evaluate the comments above on the grounds of merit and applicability and the ensuing adjustment philosophy be released with necessary amendments appropriately.

Thanking You.

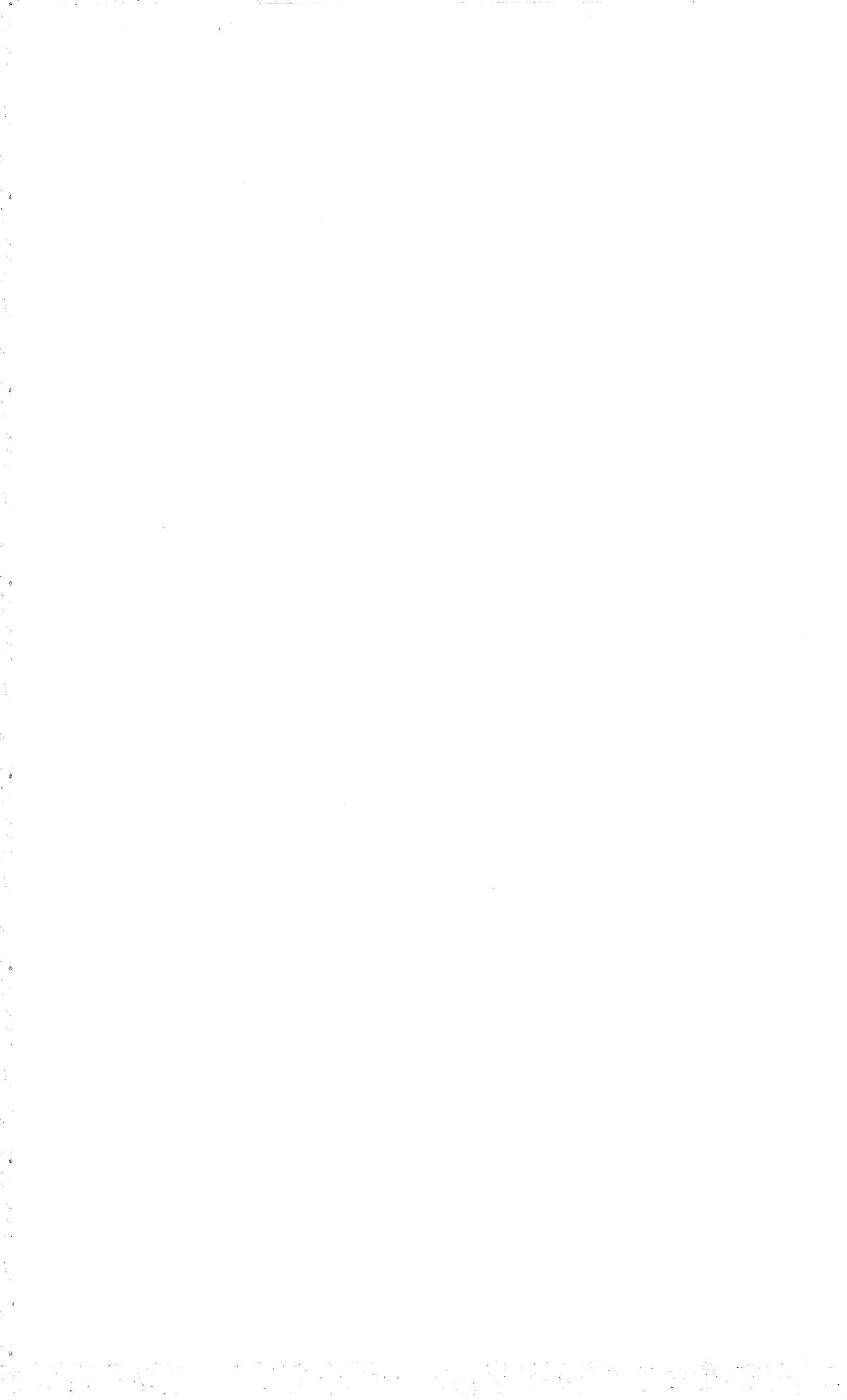
Yours faithfully



Thirumoorthy)

(A.D.

Cc: The Secretary, Tamil Nadu Electricity Regulatory Commission (TNERC)





IWPA

helping mankind with energy from nature

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IWPA/TANGEDCO/2021-22/026

August 3, 2021

By E-Mail / RPAD

To

The Chief Financial Controller-Revenue,
TANGEDCO,
7th Floor,
144, Anna Salai,
Chennai – 600 002.
E-mail Id: cfcrev@tnebnnet.org , fcrev@tnebnnet.org

Dear Madam,

Sub: M.P. No. 24 of 2021- In the matter of Priority of Adjustment of OA power consumed from various sources-Furnishing of comments-Reg.

Ref: 1. Your M.P. No. 24 of 2021 dated 11.06.2021

2. Daily Order of the Hon'ble Commission in M.P. No. 24 of 2021.

1. In the Miscellaneous Petition No.24 of 2021 filed by TANGEDCO, Commission in the hearing held on 29.6.2021 directed both TANGEDCO and Registry of the Commission to webhost the petition in their respective websites for seeking comments from the stakeholders. In compliance to the said directions of the Commission, the comments of IWPA are submitted as below.
2. In as much as certain facilities / promotional measures such as **non-discriminatory open access, banking provision to wind power, promotional measures for renewable power** are legally provided by the Electricity Act 2003 and the Regulations & orders made thereon, the generators and the open access consumers shall be permitted to avail such facilities freely as per their own options. The Distribution licensee has no role to interfere into the legally provided facilities to the generators / open access consumers. Further, it is not necessary that all such generators / open access consumers shall follow the same set of priorities in adjustment of power from different sources. **Hence, IWPA suggests that the priorities of adjustment of different open access power shall be left to the individual generators / open access consumers.**
3. If at all, any rationalisation has to be done in priority of adjustment, the IWPA suggests the following order of priorities. Without prejudice, **even though Banking is available for all WEGs**, we have assumed a scenario without Banking. The order of priorities and the reason for proposing such priorities are tabulated as below.

Indian Wind Power Association

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Door No. E, 6th Floor, Tower -1, Shakti Towers, No. 766, Anna Salai, Chennai 600 002.

Regional Council: New Delhi

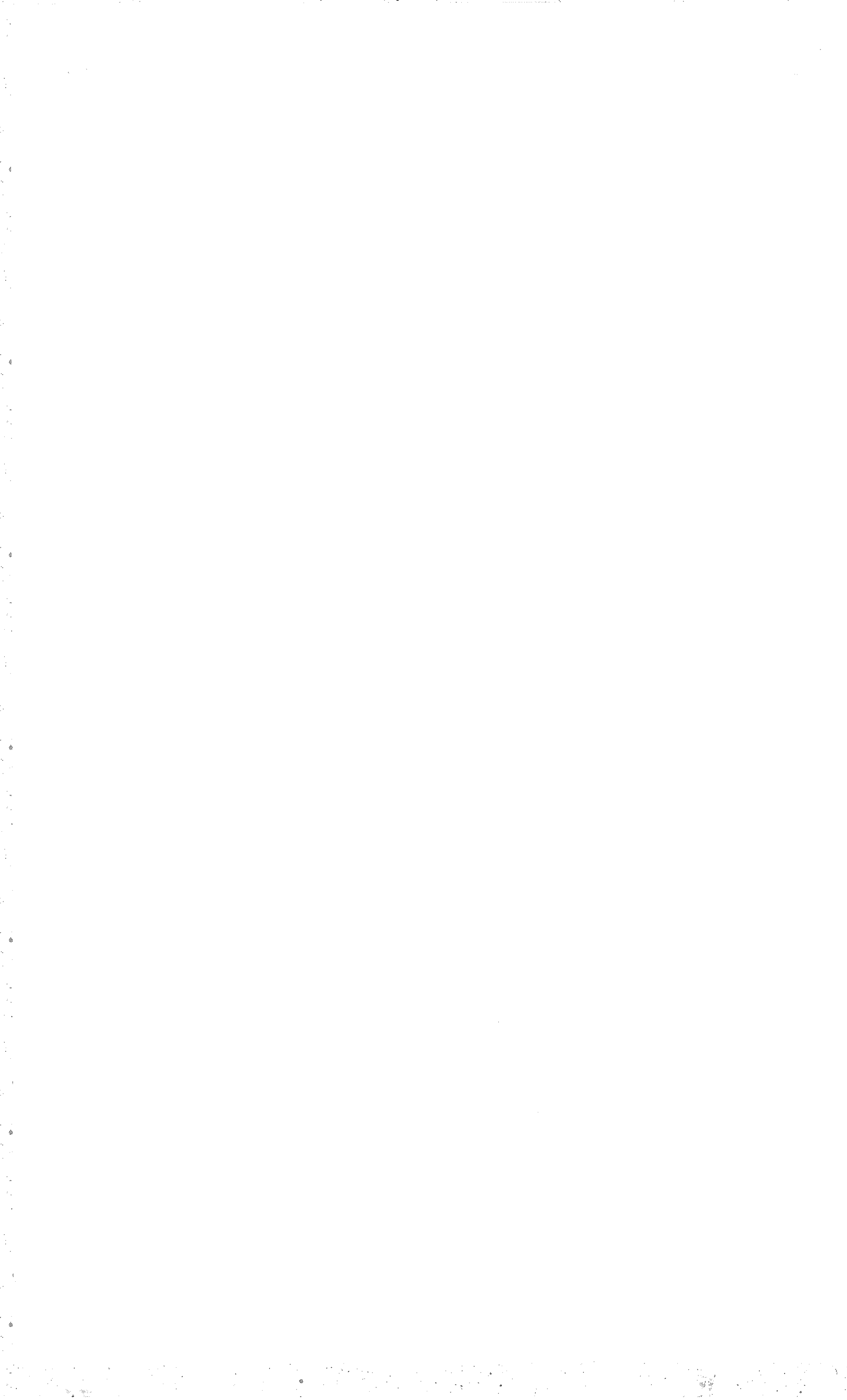
State Councils: Ahmedabad, Bengaluru, Hyderabad, Indore, Jaipur, Mumbai

Phone : 044 4550 4036, 4550 4281

E-mail : iwpa@windpro.org

secretary.general@windpro.org

Website : www.windpro.org



Proposed by TANGEDCO in its Petition	Suggested by IWPA	Reason for the suggestion
<p>Non-captive category:</p> <p>i IEX power</p> <p>ii. Third Party Power</p> <p>a. 3rd party from thermal generator</p> <p>b. 3rd party from solar generator</p> <p>c. 3rd Party from wind energy generator</p> <p>d. 3rd party from bagasse generator</p> <p>e. 3rd Party from biomass generator</p> <p>Captive category:</p> <p>a. Biomass (75% payment for surplus units)</p> <p>b. Wind energy with banking (Higher Cost first and lower cost later)</p> <p>c. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)</p> <p>d. Solar power (higher cost first lower cost 75% payment for surplus units)</p> <p>e. Bagasse co-gen (surplus units lapsed)</p> <p>f. Thermal energy_(surplus units lapsed)</p>	<p>Non-captive category:</p> <p>i IEX power</p> <p>ii. Third Party Power</p> <p>a. 3rd party from wind energy generator without banking</p> <p>b. 3rd Party from solar power generator</p> <p>c. 3rd party from bagasse-based generator</p> <p>d. 3rd party from biomass power generator</p> <p>e. 3rd party from thermal generator</p> <p>f. 3rd party from wind energy generator with banking</p> <p>Captive category:</p> <p>a. Wind energy without banking (Higher cost first and lower cost later) (75% payment for surplus units)</p> <p>b. Solar power (higher cost first lower cost later. 75% payment for surplus units)</p> <p>c. Bagasse co-gen power (surplus units lapsed)</p> <p>d. Biomass power (surplus units lapsed)</p> <p>e. Thermal energy (surplus units lapsed)</p> <p>f. Wind energy with banking (Higher Cost first and lower cost later)</p>	<p>(1) The Hon'ble TNERC in its order on D.R.P.No.19 of 2013 Dated 19-01-2015 has introduced the criteria of "shelf life" of energy for adjustment priority. Lesser the shelf life, quicker the priority of adjustment.</p> <p>(2) Further, the wind power is much more seasonal than solar power which is available throughout the year.</p> <p>(3) Similarly comparing with the biomass power, the bagasse-based power is more seasonal.</p> <p>(4) RE power shall be given priorities over thermal power as per the Electricity Act 2003.</p> <p>(5) The Commission vide its order in M.P.No.14 of 2017 has specified that "the priority of adjustment shall be in descending order of applicable tariffs".</p> <p>(6) Taking into account all the above criteria, the IWPA has suggested the priorities of adjustment of power from different sources.</p>

For Indian Wind Power Association

Ajay Devaraj
Secretary General

Indian Wind Power Association

NATIONAL OFFICE

Door No. E. 6th Floor, Tower -1, Shakti Towers, No. 766, Anna Salai, Chennai 600 002.

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Website : www.windpro.org



Date: 03.08.2021

To

The Chief Financial Controller – Revenue,
TANGEDCO, 7th Floor,
144, Anna Salai,
Chennai – 600 002

The Secretary,

Tamil Nadu Electricity Regulatory Commission
4th Floor, SIDCO Corporate Office Building,
Thiruvalluvar Industrial Estate,
Guindy, Chennai – 600 032

Dear Madam/Sir,

Subject: In the matter of fixing of Priority of Adjustment of OA Power consumed from various sources by an OA Consumer - Filing of Comments on MP No.24 of 2021 - Regarding

We express our gratitude for web hosting the miscellaneous petition MP No.24 of 2021 and inviting comments from the stakeholders. We are pleased to provide our comments on the petition as below

1. The current procedure for adjustment of firm/schedulable conventional energy prior to bankable/unfirm renewable sources is a well settled case and it has been culmination of various binding orders of Honorable TNERC and Honorable APTEL as has been already cited in the petition. We therefore opine that there is no prima facie for revisiting or revising the well-established mechanism of settlement of conventional energy prior to renewable sources like wind and solar power.
2. Honorable APTEL has ordered in Appeal No.365 of 2017 in the case MSEDCL versus MERC & Ultratech Cement Limited dated 28.11.2018 that any firm thermal power needs to be first adjusted over the in-firm power from Renewable Sources.

13. It is significant to note that the concept of banking has been introduced for the sole purpose to encourage generation of electricity through renewable sources available in the state and utilize it when needed. Since, renewable sources of energy are not available at all hours of the time and in order to maintain efficient supply of power, the consumers are supplied electricity generated from conventional sources of energy. It is mandatory for all consumers to consume a percentage of their total consumption as fixed by the Appropriate Commission from renewable sources of energy. However, 14 irrespective of whether the set



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targets achieved or not the distribution licensee cannot force the consumers to continue to use the power generated through renewable sources of energy first. It is at this point of time when the banking provision becomes operative and the distribution licensee is required to bank the energy and supply it in the time of need. It is the case of the second Respondent that other distribution licensee such as TATA Power Co. Ltd. and Feliance Infrastructure Limited have their procedure in line with the Open Access Regulations 2016, wherein the scheduled power (Firm) is credited before the non-scheduled power. This is for the sole reason that scheduled firm power cannot be stored. It is pertinent to note that, since Regulation 20 of the Open Access Regulations 2016 only deals with banking of renewable energy and not conventional energy it is implied that conventional energy needs to be adjusted first. Since, the second Respondent, being a captive consumer, the captive supply needs to be adjusted prior to the rest of the sources from the total consumption. Besides, the captive power in the present case is schedulable and firm conventional power while the renewable energy is non-firm and must run. Therefore, if conventional power is not consumed first the same may lapse leading to great financial losses. Taking a balanced approach keeping in view the object and reasons of the Electricity Act and relevant Regulations which are applicable to the facts and circumstances of the case, the first Respondent/State Regulatory Commission has rightly justified in passing the impugned Order. Therefore, we are of the considered view that the learned counsel for the Appellant/MSEDCL has utterly failed to make out any case to point out any error, illegality or legal infirmity or perversity in the impugned Order passed by the first Respondent/State Regulatory Commission, Mumbai. Hence, we hold that the instant Appeal filed by the Appellants, is liable to be dismissed as devoid of merits. Accordingly, we answered the issue against the Appellant.

ORDER

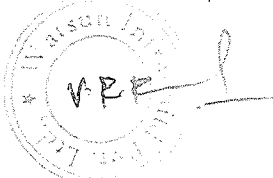
For the foregoing reasons, as stated supra, the instant Appeal, being Appeal No. 366 of 2017, filed by the Appellants is dismissed as devoid of merits. The impugned Order dated 11.08.2017 passed in Case No. 139 of 2016 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai is hereby confirmed.

3. The current petition is trying to discriminate the open access, captive consumer from their choice of procurement with unsubstantiated claim that TANGEDCO is incurring revenue loss. This approach directly violates the non-discriminatory open access under section 2 (47) read with section 9 of the Electricity Act 2003.

"Section 2(47) 'open access' means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;"

"Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines. Provided that the



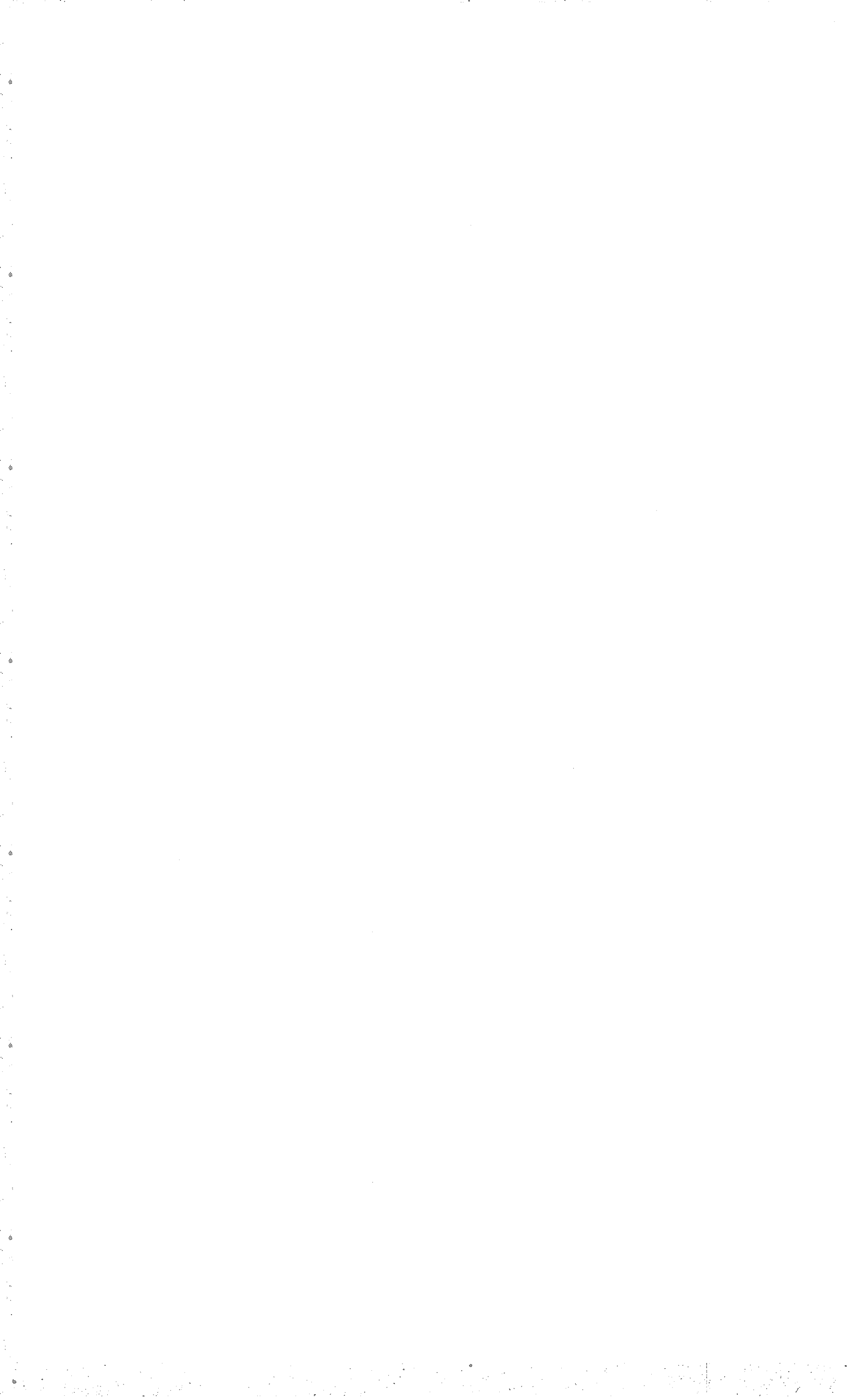
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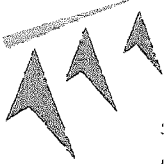
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supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use.

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be.

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

4. As per TNERC's Grid Connectivity & Intra State Open Access Regulation 2014, Long term open access has higher priority for allotment over Medium Term which in turn has priority over the Short Term Open Access. Accordingly, the energy from renewable generating stations which are under Long Term Open Access shall be pushed to last priority in adjustment.

"19. Allotment Priority. –

(b) The long-term open access applicants shall have the priority next to the distribution licensee;

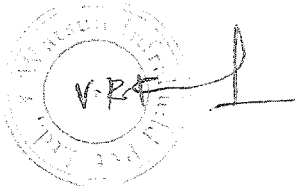
(c) The medium-term open access applicants shall have the priority next to the long term open access applicants;"

5. We concur with the suggestion of TANGEDCO that IEX power shall be provided first priority for adjustment under non captive category and for the Third party power the order of adjustment may be revised as below:

Third party power(TPP):

- a. 3rd party from thermal generator
- b. 3rd party from wind generator
- c. 3rd party from solar generator
- d. 3rd party from bagasse generator
- e. 3rd party from biomass generator

We respectfully submit that the above priority shall ensure TANGEDCO shall incur lower cost towards settlement of surplus energy, if any. Tariff discovered for solar power under SECI tenders are lower compared to wind energy and hence wind can be provided higher priority. Also, wind energy is infirm in nature compared to solar power whose prognosis is relatively earlier.



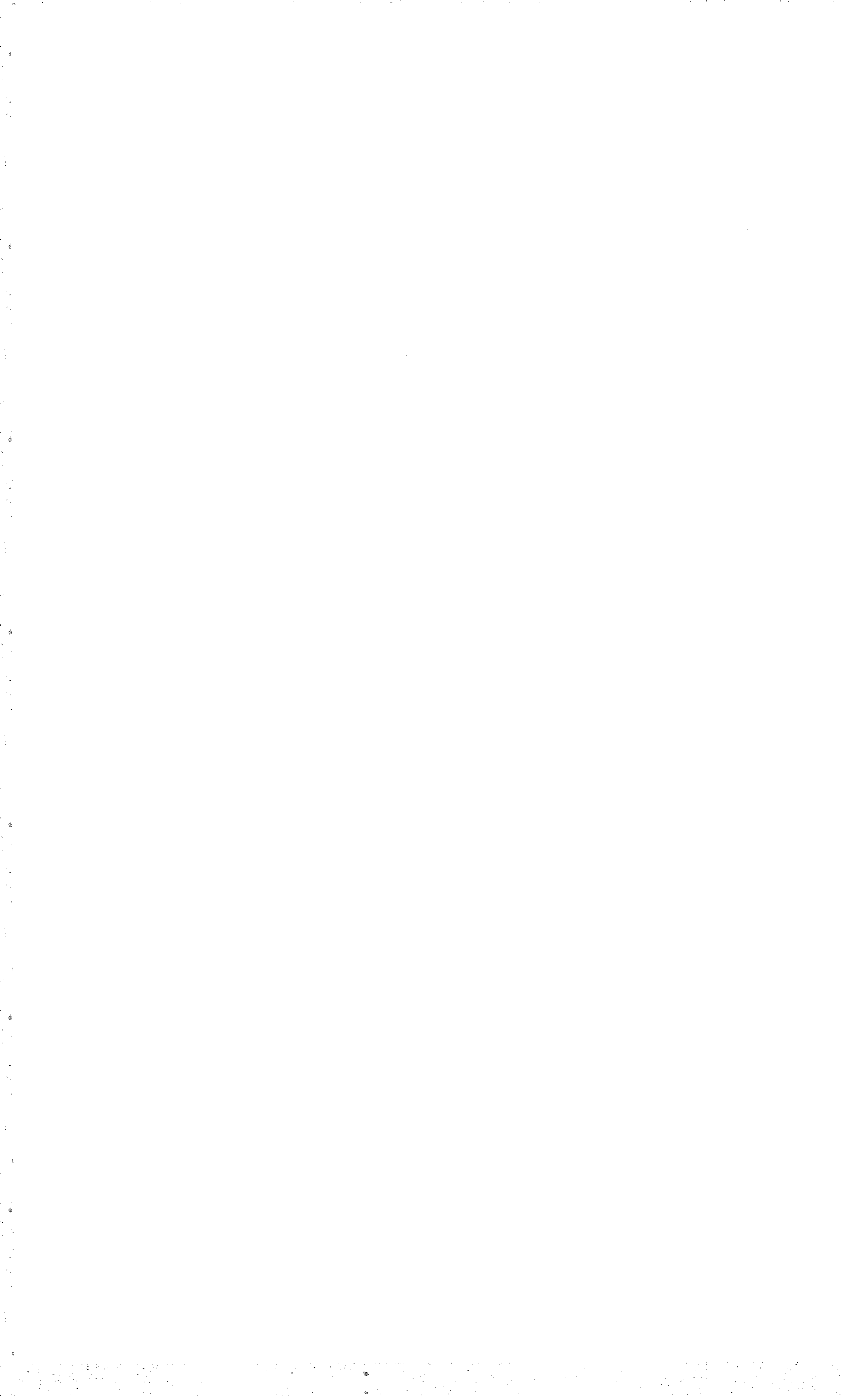
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The above priority also will ensure that TANGEDCO's revenue shall be maximized by the way of collecting higher OA charges including wheeling charges, cross subsidy surcharge and additional surcharge compared to solar as generation per MW shall be higher.

5. Basis the binding TNERC and APTEL orders, wind energy with 1 month banking shall have priority over the wind energy with banking period of 1 year on adjustment. M/s. Century Floor Mills had filed Dispute Resolution Petition before the Hon'ble TNERC vide DRP No. 19 of 2013 and the Hon'ble TNERC has passed the order on 19.01.2015.

"7. It must be remembered that a contract is a commercial document between the parties, and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract entered into between two lay parties to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation....". Applying the above principle in this case, we order that the TANGEDCO shall first adjust the wheeled energy generated from the petitioner's WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive/ third party generators which have a banking period of one year. The TANGEDCO is directed to revise the bill of the petitioner based on the energy adjustment priority specified in this order and settle the account within a period of three months from the date of this order".

Following the same principle, we respectfully submit that the order of adjustment for captive power may be as follows:

- a. Thermal energy
- b. Bagasse Cogen
- c. Biomass
- d. Wind Energy without banking (Higher cost first and lower cost later)
- e. Solar Energy without banking (Higher cost first and lower cost later)
- f. Wind Energy with banking of 1 month
- g. Solar Energy with banking of 1 month
- h. Wind Energy with banking of longer period
- i. Solar energy with banking of longer period, if any

We humbly request Honorable Commission to kindly take the above points into consideration while finalizing the orders on the adjustment priorities of Open Access energy.

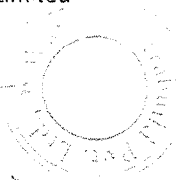
Regards,

For Watson Infrabuild Pvt Limited

V.R.P.

Authorized Signatory

(V.R.PAMESH)



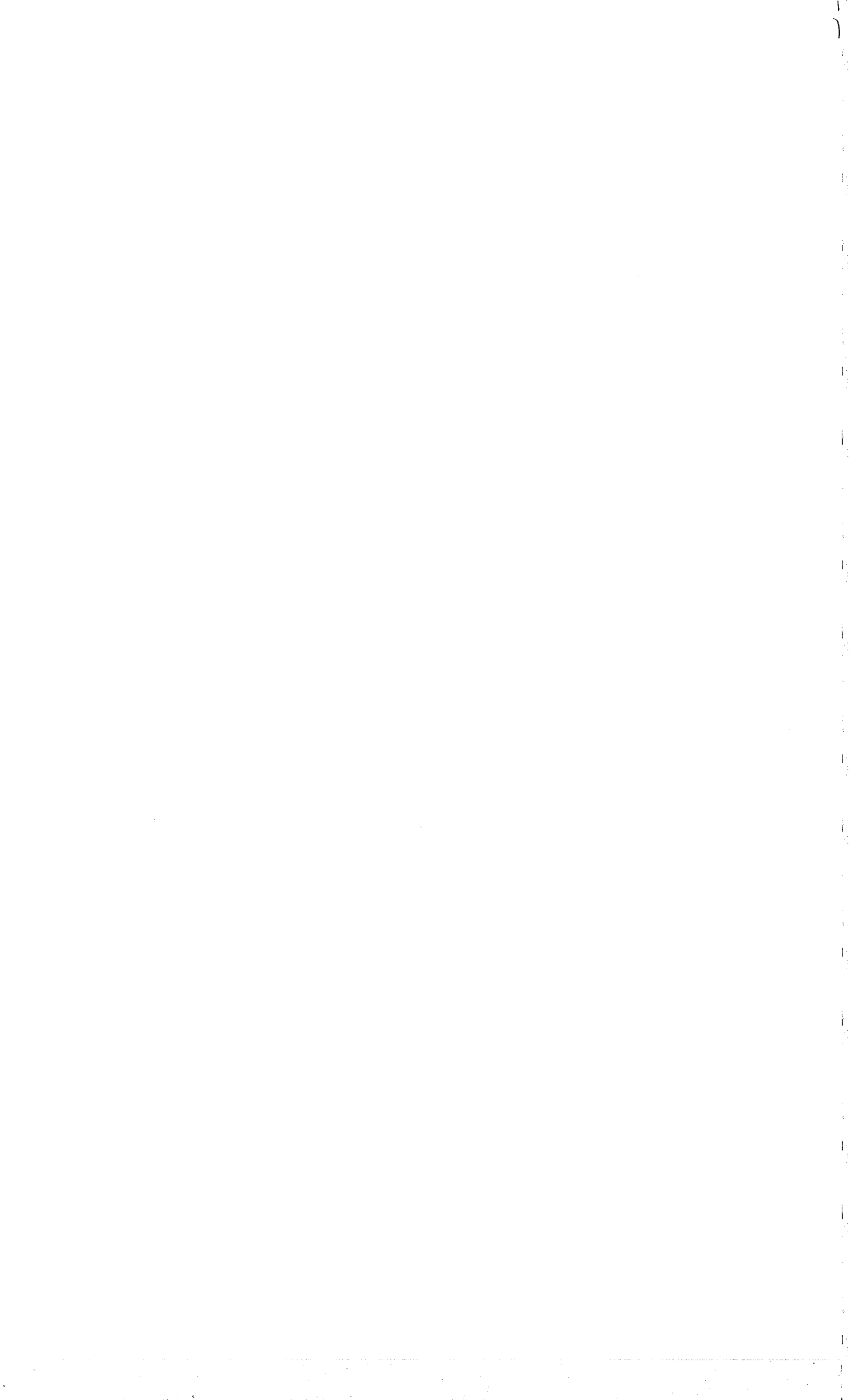
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BEFORE THE HON'BLE TNERC

CHENNAI

M.P.No.24 of 2021

MISCELLANEOUS PETITION WITH

ANNEXURES

COUNSEL FOR PETITIONER