

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**

**Order of the Commission dated this the 13<sup>th</sup> Day of March 2025**

**PRESENT:**

**Thiru.K.Venkatesan**

.... **Member**

**and**

**Thiru.B.Mohan**

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

**M.P. No. 6 of 2024**

Karma Energy Ltd  
(Greenweiz Projects Ltd.)  
Empire House  
No.214, Dr.D.N.Road,  
Ent A K NayakMargFort,  
Mumbai 400 001.

... Petitioner  
(Thiru.RahulBalaji  
Advocate for the Petitioner)

Versus

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),  
Represented by its Chairman and Managing Director,  
144 AnnaSalai,  
Chennai – 600 002.
2. The Chief Engineer,  
Non Conventional Energy Sources  
TANGEDCO  
144 AnnaSalai,  
Chennai – 600 002.
3. The Superintending Engineer,  
Tuticorin Electricity Distribution Circle,  
TANGEDCO  
131-132, EttayapuramRpad  
Tuticorin – 628 001.

4. The Superintending Engineer  
Chennai EDC / North  
TANGEDCO,  
144, Anna Salai,  
Chennai – 600 002.

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

**M.P. No. 7 of 2024**

Karma Energy Ltd  
(Mitra Fidelity Ltd.)  
Empire House  
No.214, Dr.D.N.Road,  
Ent A K Nayak Marg Fort,  
Mumbai 400 001.

... Petitioner  
(Thiru.Rahul Balaji  
Advocate for the Petitioner)

Versus

1. Tamil Nadu Generation and Distribution  
Corporation Limited (TANGEDCO),  
Represented by its Chairman and Managing Director,  
144 Anna Salai,  
Chennai – 600 002.

2. The Chief Engineer,  
Non Conventional Energy Sources  
TANGEDCO  
144 Anna Salai,  
Chennai – 600 002.

3. The Superintending Engineer,  
Tuticorin Electricity Distribution Circle,  
TANGEDCO  
131-132, Ettayapuram Rpad  
Tuticorin – 628 001.

4. The Superintending Engineer  
Chennai EDC / North  
TANGEDCO,  
144, Anna Salai,  
Chennai – 600 002.

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

**M.P. No. 8 of 2024**

Karma Energy Ltd  
(Tapi Energy Projects Ltd.)  
Empire House  
No.214, Dr.D.N.Road,  
Ent A K Nayak Marg Fort,  
Mumbai 400 001.

... Petitioner  
(Thiru.Rahul Balaji  
Advocate for the Petitioner)

Versus

1. Tamil Nadu Generation and Distribution  
Corporation Limited (TANGEDCO),  
Represented by its Chairman and Managing Director,  
144 Anna Salai,  
Chennai – 600 002.

2. The Chief Engineer,  
Non Conventional Energy Sources  
TANGEDCO  
144 Anna Salai,  
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Tuticorin Electricity Distribution Circle,  
TANGEDCO  
131-132, Ettayapuram Rpad  
Tuticorin – 628 001.

4. The Superintending Engineer  
Chennai EDC / North  
TANGEDCO,  
144, Anna Salai,  
Chennai – 600 002.

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

These Miscellaneous Petitions stands preferred by the Petitioners M/s.Karma Energy Ltd.,(Greenweiz Projects Ltd.), (Mitra Fidelity Ltd.), and (Tapi Energy Projects Ltd.) with a prayer to impose penalty upon the Respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the Order of the Commission dated 28.12.2021 in D.R.P.No.3, 4 & 5 of 2016 and consequently direct the respondents to make payments of the entire sum as directed in the order and thus render justice.

These petitions coming up for final hearing on 15-10-2024 in the presence of Thiru.Rahul Balaji, Advocate for the Petitioner and Tvl.N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submissions made by the Counsel for the Petitioner and the Respondents, and since the pivotal issue involved in all the three cases are one and the same this Commission deem it just and proper to dispose of all the three matters through the following.

## COMMON ORDER

### 1. Contentions of the Petitioner in M.P.No.6 of 2024:-

1.1. Consequent to the non-compliance of the order dated 28.12.2021 passed by the Commission in D.R.P.No.4 of 2016, the petitioner therein has preferred the petition u/s142 of the Electricity Act 2003 for imposing penalty and compliance of the order forthwith through payment.

1.2. The Petitioner is an independent power producer who is involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is operating wind power generation projects to the tune of 500 KW each in Tuticorin EDC, in the State of Tamil Nadu with service connection numbers HTSC WEG No. 62 and 63.

1.3. Petitioner has been generating energy from 2006 onwards wheeling the same to its group concern M/s.D.S Metals Private under wheeling and banking arrangement. Since the said company went on strike from 01.04.2013 and failed to make payment of the CC charges, the TANGEDCO disconnected its service connection on 30<sup>th</sup> April 2013. Owing to this, the 4<sup>th</sup> Respondent has issued a communication dated 30.09.2013 to the 3<sup>rd</sup> Respondent informing that wind energy units have not been adjusted from May 2013.

1.4. Shortly thereafter, the Petitioner had procured WEG(s) from one Greenweiz projects Limited, which was merged with the petitioner through NCLT order dated 15.07.2021 and the name transfer approval was accorded on 08.08.2013. After this

transfer, the entity Karma Energy Limited changed the energy usage and executed an agreement on 08.08.2013 for sale of the power generated to TANGEDCO. Hence the DRP 4 of 2016 was only concerned with the unutilized units wind energy generated from the Petitioner's WEG(s) between April and July 2013.

1.5. Since the wheeling end company i.e., M/s.D.S.MetalsPvt. Ltd. was disconnected in April 2013, the energy generated from the WEG(s) of the Petitioner between the months of April and July, 2013 have not been adjusted and kept under a suspense account by the 4<sup>th</sup> Respondent herein. In light of the subsequent developments, the Petitioner addressed a letter dated 03.10.2013 to the 3<sup>rd</sup> Respondent to treat the energy as sale to board and release payments to it.

1.6. Subsequent to this letter, the 3<sup>rd</sup> Respondent appears to have issued a correspondence to the Chief Engineer, NCES with a query regarding the feasibility of considering the Petitioner's request for treating the unadjusted units as sale to Board. In the said letter the SE, TEDC has confirmed to CE, NCES that wind energy from the Petitioner's windmills had not been adjusted in HTSC No 1601 upto July 2013. In this letter the fact of the name transfer with respect to wind mills was also intimated.

1.7. Since there was no reply to this correspondence, the petitioner addressed further letter dated 21.10.2013 and 25.04.2014 requesting payment by treating unadjusted units as sale to Board. Subsequently, the Petitioner set out another detailed letter dated 26.05.2014 whereby it has addressed in detail the legality of its claim by placing reliance upon orders of the Commission on the same issues which also met with no response.

Subsequently, follow up letter dated 20.08.2014 was sent. On 12.11.2014, the CE, NCES has issued a reply stating that the unutilized banked energy at the end of banking period 31.03.2014 is treated as lapsed as per the Supplementary Agreement and that payment was not feasible. The Petitioner once again represented and pleaded with Respondent TANGEDCO vide its letter dated 03.12.2014, however, the Respondent TANGEDCO once again rejected the representation on 29.01.2015 stating "the unutilized bank energy at the end of banking period 31.03.2014 is treated as lapsed, as per the Supplemental Agreement, the petitioner's request for payment is not feasible of compliance".

1.8. The Petitioner's unutilized units at the end of the banking period being treated as lapsed is contrary to the provisions of the Tariff Order No.3 and even in the event of the original agreement containing such a clause, to that extent the clause stood overridden by the terms of the Tariff Order which would govern the treatment of the lapsed units as the supplemental agreement having been entered into on 06.09.2006 subsequent to the date of the Tariff Order, the relationship between the parties would be covered by TNERC Order No.3 of 15.05.2006.

1.9. In D.R.P.No.6 of 2008, Fenner (India) Limited v Chairman, TNEB &Ors, the Commission has considered the issue of applicability of Order No 3 of 2006 to agreements entered into after 15.05.2006 and has held as follows:

*"... The proposal of the petitioner which involves a change of utility is a substantial change. As such a fresh agreement has to be executed. Even if a supplemental agreement has to be executed, Order No.3 will be applicable as the date of*

*execution of the new agreement or supplemental agreement is subsequent to 15.05.2006 and as such Order No.3 dated 15.05.2006 would apply to the new agreement supplemental agreement. The last sentence in clause 4 of Order No.3 dated 15.5.2006 which relates to Applicability of Order reads as follows: "Any renewal of the said contracts / agreements, new contracts / agreements shall be in line with this Order, "*

*In view of the above clause 4, all new agreements or supplemental agreements executed after 15.05.2006 would be covered by the said Order No.3"*

1.10. In case of D.R.P.No.8 of 2009, the Commission has held that Clause 4 of the Order No.3 dated 15.05.2006 stipulates that any agreement executed after 15.05.2006 shall be in conformity with the said Order. Specifically considering a clause which provided that the unutilised banked energy shall lapse, the Commission has categorically held that such a clause is contrary to the Order No.3 of 2006 and therefore is liable to be set aside.

1.11. In light of the specific provision contained in Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion of interest payment. Para 8.11.1 of the Tariff Order deals with billing and payment and is extracted hereunder:

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

The same is applicable to the petitioner herein and the petitioner is entitled to interest on delayed payments on the WEGs for which EPA has been entered into by the Petitioner with the Respondent.



1.12. Accordingly, when the Petitioner raised invoices for the period from April 2013 to July 2013 for power banked/supplied from its WEGs on a monthly basis as per the terms of the EPC, the petitioner received payments from TANGEDCO with substantial delay of years. As such, TANGEDCO is due and liable to pay the Petitioner a sum of Rs.28,39,305/- (Rupees Twenty-Eight Lakh, Thirty- Nine Thousand Three Hundred and Five only) towards unitised banked units and interest at 12% pa on delayed payments till 20.03.2016.

1.13. The petitioner sent letters dated 03.10.2013, 21.10.2013, 25.04.2014, 26.05.2014 and 20.08.2014 to the first respondent bringing to its notice the details of various outstanding amounts due and payable by TANGEDCO to the petitioner requesting interest on delayed payments, however, to no avail. The petitioner has not received any response in this regard. The petitioner did not receive any part payment against invoices till date.

1.14. As such, the Petitioner herein, was constrained to file a petition before the Commission in D.R.P. No. 4 of 2016 for payments to the tune of Rs.28,39,305/- (Rupees Twenty-Eight Lakh, Thirty- Nine Thousand Three Hundred and Five only) towards unitised banked units and interest at 12% p.a. on delayed payments till 20.03.20216 and make payments within 30 days of the Order as per applicable Tariff Orders after deduction payments, if any already made failing which further interest at 1% pm till all payments beyond 30 days of the said Order.

1.15. The Commission, after hearing the petition filed by the petitioner directed the TANGEDCO to pay the petitioner a sum of Rs.28,39,305/- (Rupees Twenty – Eight Lakhs, Thirty-Nine Thousand Three Hundred and Five Only) towards unutilised banked units and interest on delayed payments till 20.03.2016 and make payments within 30 days of the Order as per applicable Tariff Orders after deducting payments, if any already made failing which further interest at 1% pm for all payments beyond 30 days of the said order.

1.16. Till date, the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 28.12.2021 in D.R.P. No.4 of 2016. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its financial obligations towards banks and financial institutions. The interest on delayed payments is much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The delay in payments by TANGEDCO has further hampered the petitioner's capacity to carry on its business. The Petitioner is being constrained to seek the Commission's indulgence to enforce its rights under the EPA and Tariff Order. Further, the Petitioner sent invoice dated 21.03.2022 and letters dated 20.07.2022, 11.11.2022, 15.12.2022 to the Respondents, along with a copy of the Order dated 28.12.2021 urging the Respondents to comply with the order, but to no avail.

1.17. On 30.01.2023 the respondents issued a letter seeking for present ownership details which the petitioners had duly responded through a letter dated 03.02.2023.

1.18. On the reason of the continuing non-compliance of this Commission's Order dated 28.12.2021, the Respondents have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 reproduced hereunder for ready reference:

**“Section 142 (Punishment for non-compliance of directions by appropriate Commission):**

***In case any complaint is filed before the Appropriate Commission by any person or if the Commission is satisfied that any person has contravened any of the provisions of this act or the rules or regulations made thereunder, or any direction issued by the commission, the appropriate commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Rs.6000 for every day during which the failure continues after contravention of the first such direction.”***

1.19. In light of the fact that the Respondents have not made any payments to the Petitioner till date much less within 30 days of Order of the Commission, the Petitioner is constrained to approach the Commission for enforcement of the Order. Moreover, since the Respondents have failed to comply with the Order of the Commission dated 28.12.2021, they have rendered themselves for punishment under Section 142 of the Electricity Act, 2003 and are liable to make payment of the entire sums that are due and payable to the petitioner at the full contractual rate i.e., at 1 % per month.

**2. Contentions of the Petitioner in M.P.No.7 of 2024 :-**

2.1. Consequent to the non-compliance of order dated 28.12.2021 passed by the Commission in D.R.P.No.3 of 2016 the petitioner therein has preferred the petition u/s

142 of Electricity Act, 2003 for imposing penalty and compliance of the order forthwith through payment.

2.2. The Petitioner is an independent power producer who is involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is operating wind power generation projects to the tune of 500 KW each in Tuticorin EDC, in the State of Tamil Nadu with service connection numbers HTSC WEG No. 58, 59, 60 and 61.

2.3. Petitioner has been generating the energy from 2006 onwards wheeling the same to its group concern M/s.D.S Metals Private under wheeling and banking arrangement. Since the said company went on strike from 01.04.2013, and failed to make payment of the CC charges, the TANGEDCO disconnected its service connection on 30<sup>th</sup> April 2013. Owing to this, the 4<sup>th</sup> Respondent has issued a communication dated 30.09.2013 to the 3<sup>rd</sup> Respondent informing that wind energy units have not been adjusted from May 2023.

2.4. Shortly thereafter, the Petitioner had procured WEG(s) from one Mitra Fidelity Limited, which was merged with the petitioner through NCLT order dated 15.07.2021 and the name transfer approval was accorded on 08.08.2013. After this transfer, the entity Karma Energy Limited changed the energy usage and has executed an agreement on 08.08.2013 for sale of the power generated to TANGEDCO. Hence the D.R.P.No. 3 of 2016 was only concerned with the unutilized units wind energy generated from the Petitioner's WEG(s) between April and July 2013.

2.5. Since the wheeling end company i.e., M/s.D.S.Metals Pvt. Ltd., was disconnected in April 2013, the energy generated from the WEG(s) of the Petitioner between the months of April and July, 2013 have not been adjusted and kept under a suspense account by the 4<sup>th</sup> Respondent herein. In light of the subsequent developments, the Petitioner addressed a letter dated 03.10.2013 to the 3<sup>rd</sup> Respondent to treat the energy as sale to board and release payments to it.

2.6. Subsequent to this letter, the 3<sup>rd</sup> Respondent appears to have issued a correspondence to the Chief Engineer, NCES with a query regarding the feasibility of considering the Petitioner's request for treating the unadjusted units as sale to Board. In the said letter the SE, TEDC has confirmed to CE, NCES that wind energy from the Petitioner's windmills had not been adjusted in HTSC No 1601 upto July 2013. In this letter the fact of the name transfer with respect to wind mills was also intimated.

2.7. Since there was no reply to this correspondence, the petitioner addressed further letter dated 21.10.2013 and 25.04.2014 requesting payment by treating unadjusted units as sale to Board. Subsequently, the Petitioner set out another detailed letter dated 26.05.2014 whereby it has addressed in detail the legality of its claim by placing reliance upon orders of the Commission on the exact same issues which was also met with no response. Subsequently, follow up letter dated 20.08.2014 was sent. On 12.11.2014, the CE, NCES has issued a reply stating that the unutilized banked energy at the end of banking period 31.03.2014 is treated as lapsed as per the Supplementary Agreement and that payment was not feasible. The Petitioner once again represented and pleaded

with Respondent TANGEDCO vide its letter dated 03.12.2014, however, the Respondent TANGEDCO once again rejected the representation on 29.01.2015 stating "the unutilized bank energy at the end of banking period 31.03.2014 is treated as lapsed, as per the Supplemental Agreement, the petitioner's request for payment is not feasible of compliance".

2.8. The Petitioner's unutilized units at the end of the banking period e g treated as lapsed is contrary to the provisions of the Tariff Order No.3 and even in the event of the original agreement containing such a clause, to that extent the clause stood overridden by the terms of the Tariff Order which would govern the treatment of the lapsed units as the supplemental agreement having been entered into on 06.09.2006 subsequent to the date of the Tariff Order, the relationship between the parties would be covered by TNERC Order No.3 of 15.05.2006.

2.9. In D.R.P.No.6 of 2008, Fenner (India) Limited v Chairman, TNEB &Ors, the Commission has considered the issue of applicability of Order No 3 of 2006 to agreements entered into after 15.05.2006 and has held as follows:

*"... The proposal of the petitioner which involves a change of utility is a substantial change. As such a fresh agreement has to be executed. Even if a supplemental agreement has to be executed, Order No.3 will be applicable as the date of execution of the new agreement or supplemental agreement is subsequent to 15.05.2006 and as such Order No.3 dated 15.05.2006 would apply to the new agreement supplemental agreement. The last sentence in clause 4 of Order No.3 dated 15.5.2006 which relates to Applicability of Order reads as follows: 11 Any renewal of the said contracts / agreements, new contracts / agreements shall be in line with this Order, "*

*In view of the above clause 4, all new agreements or supplemental agreements executed after 15.05.2006 would be covered by the said Order No.3"*

2.10. In case of D.R.P.No. 8 of 2009, the Commission has held that Clause 4 of the Order No.3 dated 15.05.2006 stipulates that any agreement executed after 15.05.2006 shall be in conformity with the said Order. Specifically considering a clause which provided that the unutilised banked energy shall lapse, the Commission has categorically held that such a clause is contrary to the Order No.3 of 2006 and therefore is liable to be set aside.

2.11. In light of the specific provision contained in Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion of interest payment. Para 8.11.1 of the Tariff Order deals with billing and payment and is extracted hereunder:

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

The same is applicable to the petitioner herein and the petitioner is entitled to interest on delayed payments on the WEGs for which EPA has been entered into by the Petitioner with the Respondent.

2.12. Accordingly, when the Petitioner raised invoices for the period from April 2013 to July 2013 for power banked/supplied from its WEGs on a monthly basis as per the terms of the EPC, the petitioner has to receive payments from TANGEDCO with substantial delay of years. As such, TANGEDCO is due and liable to pay the Petitioner a sum of Rs.66,22,879/- (Rupees Sixty-Six Lakh, Twenty-Two Thousand, Eight Hundred and

Seventy-Nine only) towards unitised banked units and interest at 12% pa on delayed payments till 20.03.2016.

2.13. Had sent letters dated 03.10.2013, 21.10.2013, 25.04.2014, 26.05.2014 and 20.08.2014 to the first respondent bringing to its notice the details of various outstanding amounts due and payable by TANGEDCO to the petitioner requesting interest on delayed payments, however, to no avail. The petitioner as not received any response in this regard. The Petitioner submits that they had not even received any part payment against invoices till date.

2.14. The Petitioner herein, was constrained to file a petition before the Commission in D.R.P. No. 3 of 2016 for payments to the tune of Rs.66,22,879/- (Rupees Sixty-Six Lakhs Twenty Two Thousand Eight Hundred and Seventy Nine Only) towards unitised banked units and interest at 12% pa on delayed payments till 20.03.20216 and for a further direction that the Respondents pay interest @ 1% per month for any delay in settlement of invoices.

2.15. The Commission after hearing the petition filed by loner, directed the TANGEDCO to pay the petitioner a sum of Rs.66,22,879/- (Rupees Sixty-Six Lakh, Twenty Two Thousand Eight Hundred and Seventy Nine Only) towards unitised banked units and interest on delayed payments till 20.03.2016 and make payments within 30 days of the Order as per applicable Tariff Orders after deducting payments, if any already made failing which further interest at 1% pm till all payments beyond 30 days of he said Order.



2.16. Till date the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 28.12.2021 in D.R.P. No.3 of 2016. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its financial obligations towards banks and financial institutions. The interest on delayed payments is much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The delay in payments by TANGEDCO has further hampered the petitioner's capacity to carry on its business. The Petitioner is being constrained to seek the Commission's indulgence to enforce its rights under the EPA and Tariff Order. Further, the Petitioner sent invoice dated 21.03.2022 and letters dated 20.07.2022, 11.11.2022, 15.12.2022 to the Respondents, along with a copy of the Order dated 28.12.2021 urging the Respondents to comply with the Order, but to no avail.

2.17. On 30.01.2023 the respondents issued a letter seeking for present ownership details which the petitioners had duly responded through a letter dated 03.02.2023.

2.18. On the reason of the continuing non-compliance of this Commission's Order dated 28.12.2021, the Respondents have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 reproduced hereunder for ready reference:

***“Section 142 (Punishment for non-compliance of directions by appropriate Commission):***

***In case any complaint is filed before the Appropriate Commission by any person or if the Commission is satisfied that any person has contravened any of***

***the provisions of this act or the rules or regulations made thereunder, or any direction issued by the commission, the appropriate commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Rs.6000 for every day during which the failure continues after contravention of the first such direction."***

2.19. In light of the fact that the Respondents have not made any payments to the Petitioner till date much less within 30 days of Order of the Commission, the Petitioner is constrained to approach the Commission for enforcement of the Order. Moreover, since the Respondent have failed to comply with the Order of the Commission dated 28.12.2021, they have rendered themselves for punishment under Section 142 of the Electricity Act, 2003 and are liable to make payment of the entire sums that are due and payable to the petitioner at the full contractual rate i.e., at 1 % per month.

### **3. Contentions of the Petitioner in M.P.No.8 of 2024 :-**

3.1. Consequent to the non-compliance of order dated 28.12.2021 passed by the Commission in D.R.P.No.5, the petitioner therein has preferred the petition u/s 142 of the Electricity Act, 2003 for imposing penalty and compliance of the order forthwith through payment.

3.2. The Petitioner is an independent power producer who is involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is operating wind power generation projects to the tune of 500

KW each in Tuticorin EDC, in the State of Tamil Nadu with service connection numbers HTSC WEG No. 52.

3.3. Petitioner has been generating the energy from 2006 onwards wheeling the same to its group concern M/s.D.S Metals Private Limited under wheeling and banking arrangement. Since the said company went on strike from 01.04.2013, and failed to make payment of the CC charges, the TANGEDCO disconnected its service connection on 30<sup>th</sup> April 2013. Owing to this, the 4<sup>th</sup> Respondent has issued a communication dated 30.09.2013 to the 3<sup>rd</sup> Respondent informing that wind energy units have not been adjusted from May 2013.

3.4. Shortly thereafter, the Petitioner had procured WEG(s) from one M/s.Greenweiz Projects Limited which was merged with the petitioner through NCLT order dated 15.07.2021 and the name transfer approval was accorded on 08.08.2013. After this transfer, the entity Karma Energy Limited changed the energy usage and executed an agreement on 08.08.2013 for sale of the power generated to TANGEDCO. Hence the D.R.P.No. 5 of 2016 was only concerned with the unutilized units wind energy generated from the Petitioner's WEG(s) between April and July 2013.

3.5. Since the wheeling end company i.e., M/s.D.S.Metals Private Limited was disconnected in April 2013, the energy generated from the WEG(s) of the Petitioner between the months of April and July, 2013 have not been adjusted and kept under a suspense account by the 4<sup>th</sup> Respondent herein. In light of the subsequent

developments, the Petitioner addressed a letter dated 03.10.2013 to the 3<sup>rd</sup> Respondent to treat the energy as sale to board and release payments to it.

3.6. Subsequent to this letter, the 3<sup>rd</sup> Respondent appears to have issued a correspondence to the Chief Engineer, NCES with a query regarding the feasibility of considering the Petitioner's request for treating the unadjusted units as sale to Board. In the said letter the SE, TEDC has confirmed to CE, NCES that wind energy from the Petitioner's windmills had not been adjusted in HTSC No 1601 upto July 2013. In this letter the fact of the name transfer with respect to wind mills was also intimated.

3.7. Since there was no reply to this correspondence, the petitioner addressed further letter dated 21.10.2013 and 25.04.2014 requesting payment by treating unadjusted units as sale to Board. Subsequently, the Petitioner set out another detailed letter dated 26.05.2014 whereby it has addressed in detail the legality of its claim by placing reliance upon orders of the Commission on the exact same issues which was also met with no response. Subsequently, follow up letter dated 20.08.2014 was sent. On 12.11.2014, the CE, NCES has issued a reply stating that the unutilized banked energy at the end of banking period 31.03.2014 is treated as lapsed as per the Supplementary Agreement and that payment was not feasible. The Petitioner once again represented and pleaded with Respondent TANGEDCO vide its letter dated 03.12.2014, however, the Respondent TANGEDCO once again rejected the representation on 29.01.2015 stating "the unutilized bank energy at the end of banking period 31.03.2014 is treated as lapsed, as

per your Supplemental Agreement, the petitioner's request for payment is not feasible of compliance".

3.8. The Petitioner's unutilized units at the end of the banking period e.g treated as lapsed is contrary to the provisions of the Tariff Order No.3 and even in the event of the original agreement containing such a clause, to that extent the clause stood overridden by the terms of the Tariff Order which would govern the treatment of the lapsed units as the supplemental agreement having been entered into on 06.09.2006 subsequent to the date of the Tariff Order, the relationship between the parties would be covered by TNERC Order No.3 of 15.05.2006.

3.9. In D.R.P.No.6 of 2008, Fenner (India) Limited v Chairman, TNEB &Ors, the Commission has considered the issue of applicability of Order No 3 of 2006 to agreements entered into after 15.05.2006 and has held as follows:

*"... The proposal of the petitioner which involves a change of utility is a substantial change. As such a fresh agreement has to be executed. Even if a supplemental agreement has to be executed, Order No.3 will be applicable as the date of execution of the new agreement or supplemental agreement is subsequent to 15.05.2006 and as such Order No.3 dated 15.05.2006 would apply to the new agreement supplemental agreement. The last sentence in clause 4 of Order No.3 dated 15.5.2006 which relates to Applicability of Order reads as follows:*

*11 Any renewal of the said contracts / agreements, new contracts / agreements shall be in line with this Order, "*

*In view of the above clause 4, all new agreements or supplemental agreements executed after 15.05.2006 would be covered by the said Order No.3"*

3.10. In case of D.R.P.No. 8 of 2009, the Commission has held that Clause 4 of the Order No.3 dated 15.05.2006 stipulates that any agreement executed after 15.05.2006

shall be in conformity with the said Order. Specifically considering a clause which provided that the unutilised banked energy shall lapse, the Commission has categorically held that such a clause is contrary to the Order No.3 of 2006 and therefore is liable to be set aside.

3.11. In light of the specific provision contained in Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion of interest payment. Para 8.11.1 of the Tariff Order deals with billing and payment and is extracted hereunder:

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

The same is applicable to the petitioner herein and the petitioner is entitled to interest on delayed payments on the WEGs for which EPA has been entered into by the Petitioner with the Respondent.

3.12. Accordingly, when the Petitioner raised invoices for the period from April 2013 to July 2013 for power banked/supplied from its WEGs on a monthly basis as per the terms of the EPC, the petitioner has to receive payments from TANGEDCO with substantial delay of years. As such, TANGEDCO is due and liable to pay the Petitioner a sum of Rs.13,04,402/- (Rupees thirteen lakh four thousand for hundred and two only) towards unutilised banked units and interest at 12% pa on delayed payments till 20.03.2016.

3.13. Had sent letters dated 03.10.2013, 21.10.2013, 25.04.2014, 26.05.2014 and 20.08.2014 to the first respondent bringing to its notice the details of various outstanding

amounts due and payable by TANGEDCO to the petitioner requesting interest on delayed payments, however, to no avail, but the petitioner has not received any response in this regard. They had not even received any part payment against invoices till date.

3.14. As such, the Petitioner herein, was constrained to file a petition before the Commission in D.R.P. No. 5 of 2016 for payments to the tune of Rs.13,04,402/- (Rupees Thirteen lakh, four thousand four hundred and two only ) towards utilised banked units and interest on delayed payments till 20.03.2021 and make payments within 30 days of the Order as per applicable Tariff Orders after deduction payments, if any already made failing which further interest at 1% pm till all payments beyond 30 days of the said Order. Accordingly, the Commission was pleased to dispose of the petition.

3.15. The Commission, after hearing the petition filed by the petitioner directed the TANGEDCO to pay the petitioner a sum of Rs.13,04,402/- (Rupees Thirteen Lakh, Four Thousand Four Hundred and Two Only) towards unutilised banked units and interest on delayed payments till 20.03.2021 and make payments within 30 days of the Order as per applicable Tariff Orders after deducting payments, if any already made failing which further interest at 1% pm till all payments beyond 30 days of the said Order.

3.16. Till date the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 28.12.2021 in D.R.P. No.5 of 2016. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its financial obligations towards banks and financial institutions. The

interest on delayed payments is much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The delay in payments by TANGEDCO has further hampered the petitioner's capacity to carry on its business. The Petitioner is being constrained to seek the Commission's indulgence to enforce its rights under the EPA and Tariff Order. Further, the Petitioner sent invoice dated 21.03.2022 and letters dated 20.07.2022, 11.11.2022, 15.12.2022 to the Respondents, along with a copy of the Order dated 28.12.2021 urging the Respondents to comply with the Order, but to no avail.

3.17. On 30.01.2023 the respondents issued a letter seeking for present ownership details which the petitioners had duly responded through a letter dated 03.02.2023.

3.18. On the reason of the continuing non-compliance of this Commission's Order dated 28.12.2021, the Respondents have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 reproduced hereunder for ready reference:

***“Section 142 (Punishment for non-compliance of directions by appropriate Commission):***

***In case any complaint is filed before the Appropriate Commission by any person or if the Commission is satisfied that any person has contravened any of the provisions of this act or the rules or regulations made thereunder, or any direction issued by the commission, the appropriate commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Rs.6000 for every day during which the failure continues after contravention of the first such direction.”***



3.19. In light of the fact that the Respondents have not made any payments to the Petitioner till date much less within 30 days of Order of the Commission, the Petitioner is constrained to approach the Commission for enforcement of the Order. Moreover, since the Respondent have failed to comply with the Order of the Commission dated 28.12.2021, they have rendered themselves for punishment under Section 142 of the Electricity Act, 2003 and are liable to make payment of the entire sums that are due and payable to the petitioner at the full contractual rate i.e., at 1 % per month.

4. No counter has been filed by the respondents in M.P.No.6, 7 and 8 of 2024 and only memos have been filed from time to time.

**5. Memo filed by the Second Respondent on 02.07.2024 in M.P.No.6 of 2024 :-**

5.1. The Petitioner herewith has filed the present Miscellaneous petition under Section 142 of the Electricity Act, 2003 for non-compliance of the Orders of the Commission dated 28.12.2021 in D.R.P No.4 of 2016.

5.2. The Commission vide order dt.28.12.2021 in D.R.P.No.4 of 2016 has passed the final order allowing the Dispute Resolution Petition with the following directions:

*"The petitioner is eligible for payment of unutilised banked energy at the rate of 100% of normal purchase rate as provided under Commissions Order No.6 of 2012 dated 31.07.2012 during the period as the restriction and control measures were in force then.*

*The payment is to be made within 30 days of this Order along with applicable interest."*

5.3. The 3<sup>rd</sup> Respondent in the letter dated 28.04.2022 had furnished the outstanding details for the WF HT SC.No.079204700062 and 079204700063 of Tuticorin EDC as below:

Sl. No.	Generator Name	WEG HTSC No./ EDC	Net Generated Units	Tariff rate Rs.	100% Bill Amount Rs.	12% Interest Rs.	Total Amount Claimed Rs.
1	M/s.Karma Energy Ltd (Formerly M/s.Greenweiz Project Ltd)	079204700062 & 079204700063 of Tuticorin EDC	7,85,364	2.75/ Unit	21,59,751/-	6,79,554/-	28,39,305/-
	Total		7,85,364		Rs.21,59,751/-	Rs.6,79,554/-	Rs.28,39,305/-

5.4. As per the orders issued by the Commission, TANGEDCO had made payment of Rs.28,39,305/- for the period from 04/2013 to 07/2013 to the petitioner vide UTR Transaction No.CNRBR52024070183582766 dated 01.07.2024

**6. Memo filed by the Second Respondent on 02.07.2024 in M.P.No.7 of 2024 :-**

6.1. The Petitioner herewith has filed the present Miscellaneous petition under Section 142 of the Electricity Act, 2003 for non-compliance of the Orders of the Commission dated 28.12.2021 in D.R.P No.3 of 2016.

5.2. The Commission vide order dt.28.12.2021 in D.R.P.No.3 of 2016 has passed the final order allowing the Dispute Resolution Petition with the following directions:

*"The petitioner is eligible for payment of unutilised banked energy at the rate of 100% of normal purchase rate as provided under Commissions Order No.6 of 2012 dated 31.07.2012 during the period as the restriction and control measures were in force then.*

*The payment is to be made within 30 days of this Order along with applicable interest."*

6.3. The 3<sup>rd</sup> Respondent in the letter dated 28.04.2022 had furnished the outstanding details for the WF HT SC.No.079204700058 and 079204700059, 079204700060 & 079204700061 of Tuticorin EDC as below:

Sl. No.	Generator Name	WEG HTSC No./ EDC	Net Generated Units	Tariff rate Rs.	100% Bill Amount Rs.	12% Interest Rs.	Total Amount Claimed Rs.
1	M/s.Karma Energy Ltd (Formerly M/s.Mithra Fidelity Ltd)	079204700058, 079204700059, 079204700060 & 079204700061 of Tuticorin EDC	18,30,167	2.75/ Unit	50,32,959/-	15,81,761/-	66,14,720/-
	Total		18,30,167		Rs.50,32,959/-	Rs.15,81,761/-	Rs.66,14,720/-

6.4. As per the orders issued by the Commission, TANGEDCO had made payment of Rs.66,14,720/- for the period from 04/2013 to 07/2013 to the petitioner vide UTR Transaction No.CNRBR52024070183582766 dated 01.07.2024

**7. Memo filed by the Second Respondent on 02.07.2024 in M.P.No.8 of 2024 :-**

7.1. The Petitioner herewith has filed the present Miscellaneous petition under Section 142 of the Electricity Act, 2003 for non-compliance of the Orders of the Commission dated 28.12.2021 in D.R.P No.5 of 2016.

7.2. The Commission vide order dt.28.12.2021 in D.R.P.No.5 of 2016 has passed the final order allowing the Dispute Resolution Petition with the following directions:

*"The petitioner is eligible for payment of unutilised banked energy at the rate of 100% of normal purchase rate as provided under Commissions Order No.6 of 2012 dated 31.07.2012 during the period as the restriction and control measures were in force then.*

*The payment is to be made within 30 days of this Order along with applicable interest."*

7.3. The 3<sup>rd</sup> Respondent in the letter dated 28.04.2022 had furnished the outstanding details for the WF HT SC.No.079204700052 of Tuticorin EDC as below:

Sl. No.	Generator Name	WEG HTSC No./ EDC	Net Generated Units	Tariff rate Rs.	100% Bill Amount Rs.	12% Interest Rs.	Total Amount Claimed Rs.
1	M/s.Karma Energy Ltd (Formerly M/s.Tapi Energy Projects Ltd)	079204700052 of Tuticorin EDC	3,60,996	2.75/ Unit	9,92,739/-	3,11,663/-	13,04,402/-
	Total		3,60,996		Rs.9,92,739/-	Rs.3,11,663/-	Rs.13,04,402/-

7.4. As per the orders issued by the Commission, TANGEDCO had made payment of Rs.13,04,402/- for the period from 04/2013 to 07/2013 to the petitioner vide UTR Transaction No.CNRBR52024070183582766 dated 01.07.2024

**8. Common Counter dated 18.07.2024 to the Memo filed by the 2<sup>nd</sup> Respondent on 02.07.2024 :-**

8.1. The Petitioners herein filed D.R.P. Nos. 3, 4, and 5 of 2016, seeking directions for payment of unutilized .banked energy from April 2012 to July 2013, along with interest. The Commission, vide orders dated 28.12.2021, held that the Petitioner is entitled to payment of unutilized banked energy at 100% of the normal purchase rate as provided under Commission's Order No. 6 of 2012 dated 31.07.2012, considering the restriction and control measures in force. Further, it was held that the payment is to be made within

30 days of the Order dated 28.12.2021 along with applicable interest. Relevant extract of the Or-der is reproduced below:

*"In view of the same, the petitioner is eligible for payment of unutilised banked energy at the rate of 100% of the normal purchase rate as provided under Commission's Order No.6 of 2012 dated 31.07.2012 during the period when the Restriction and Control measures were in force.*

*The payment is to be made within 30 days of this order along with applicable interest."*

8.2. From the above, the Petitioner is entitled to encashment of the banked units at 100% of the value and payment .

8.3. The Respondent has only made partial payment of Rs.1,07,58,427/- (Rupees One Crore Seven Lakhs Fifty Eight Thousand and Four Hundred and Twenty Seven Only), for generation dues from April 2013 to July 2013, with interest calculated only until 20.03.2016. The calculation of the payment made by the Respondent is as follows:

<b>Company Name</b>	<b>Generation Dues (Apr 2013 – Jul 2013) (Rs.)</b>	<b>Interest Till 20.03.2016 (Rs.)</b>	<b>Total (Rs.)</b>
MITRA (D.R.P.No.3 of 2016)	50,32,959.25	15,81,761.00	66,14,720.00
GREENWEIZ (D.R.P.No.4 of 2016)	21,59,751.00	6,79,554.00	28,39,305.00
TAPI(D.R.P.No.5 of 2016)	9,92,739.00	3,11,663.00	13,04,402.00
<b>Total</b>	<b>81,85,449.25</b>	<b>25,72,978.00</b>	<b>1,07,58,427.00</b>

8.4. The law is settled that interest is payable on delayed payments, and the Respondent must pay interest as per the contractual rate or the orders of the

Commission, as applicable. The Petitioner is entitled to interest on delayed payments at 1% per month as per the Tariff Order in force, on the balance amount that remains unpaid. However, The Respondent has failed to account for interest from 21.03.2016 to the date of actual payment. The petitioner has calculated the interest from 21.03.2016 to 30.06.2024, amounting to Rs.81,43,326/- (Rupees Eighty One Lakh Forty Three Thousand Three Hundred and Twenty Six Only), as detailed below:

<b>Company Name</b>	<b>Generation Dues + Interest Till 20.03.2016 (Rs.)</b>	<b>Interest from 21.03.2016 to 30.06.2024 (Rs.)</b>
MITRA (D.R.P.No.3 of 2016)	66,14,720.00	50,10,182.00
GREENWEIZ (D.R.P.No.4 of 2016)	28,39,305.00	21,46,497.00
TAPI (D.R.P.No.5 of 2016)	13,04,402.00	9,86,647.00
<b>Total</b>	<b>1,07,58,427.00</b>	<b>81,43,326.00</b>

8.5. In view of the above facts and circumstances, the Commission may direct the Respondents to effect payment of interest on delayed payments amounting to Rs.81,43,326/-, calculated up to June 2024 and interest for further period in the event of settlement of balance interest is delayed, in execution of its earlier orders.

## **9. Common memo filed by the Second Respondent on 10.09.2024:**

9.1. The Petitioner herewith has filed the present Miscellaneous petition under Section 142 of the Electricity Act, 2003 for non-compliance of the Orders of the Commission dated 28.12.2021 in D.R.P No.3,4 & 5 of 2016.

9.2. In order to comply the above orders the TANGEDCO had paid the outstanding energy charges for an amount of Rs.81,85,449/- for the period from 04/2013 to 07/2013 along with applicable interest amount of Rs.25,72,978/- for the delayed period from 23.05.2022 (61<sup>st</sup>of invoice date) to 30.06.2024 Vide UTR No.CNRBR52024070183582766, Dt.01.07.2024. Due to calculation error, the excess Energy Charges for an amount of Rs.6,47,225/- and the excess interest amount of Rs.6,67,150/- has been incorrectly calculated and paid to the generator. This is to be reconciled with the particulars available with petitioner with that of the TANGEDCO records and if excess payment is found offer reconciliation, then TANGEDCO shall make recovery of excess payment/or adjustment in future bills to be payable to the Petitioner.

9.3. The Petitioner had filed the rejoinder with a prayer to calculate the interest portion from the cause of action to till date of payment without disputing the energy charges and requested to pay the difference interest amount of Rs.81,43,326/-.

9.4. With regard to payment of interest, the Commission in the order dated 28.12.2021 had clearly mentioned to pay "applicable interest" only. In the Commission Wind Tariff Order issued from time to time and in the Tariff Order No.3 of 2016, at clause 9.3.1 (Annexure -1) it has been clearly mentioned that

*"The distribution licensee shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1 % per month"*

9.5. Based on the above order, the interest portion has been calculated based on the invoice bill date submitted by the petitioner and paid.

9.6. TANGEDCO had made payment to the Petitioner as per the orders of the Commission and hence the petition may be closed along with a prayer to make recovery of excessive Energy Charges and Interest amount from Petitioner subject to reconciliation of accounts.

**10. Common memo filed by the Second Respondent on 15.10.2024:**

Apart from reiterating the averments in the memo dated 10.09.2024, the respondent made the following averments in this memo dated 15.10.2024.

10.1. The petitioner vide letter dated 27.09.2024 was requested to coordinate with the Superintending Engineer / Tuticorin EDC for reconciliation of outstanding dues where the accounts have been maintained and payment made to the petitioner.

10.2. The 3<sup>rd</sup> respondent Superintending Engineer/ Tuticorin EDC submitted a report to the effect that the petitioner was requested to attend the reconciliation of accounts with available records with the Office of Superintending Engineer / Tuticorin EDC, but the petitioner had not come forwarded to attend the reconciliation of the outstanding dues based on the records available at Superintending Engineer / Tuticorin EDC office. Hence, a detailed working sheet was prepared after deduction of recovery and calculation of interest as per the procedure in vogue.

10.3. TANGEDCO had made payment to the petitioner as per the orders of the Commission and hence the petition may be closed along with the prayer to make



recovery of excessive Energy Charges and Interest amount from the petitioner based on the reconciliation of accounts carried out by the 3<sup>rd</sup> Respondent.

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

**12. Issue for consideration :-**

The sole issue which arises for consideration is whether there exists any case of non-compliance of the order under reference on the part of the respondents warranting invocation of Section 142 of Electricity Act 2003 and imposition of penalty ?

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

13.1. Let us first examine the facts relating to the original proceedings in DRPs filed by the petitioners herein, the non-compliance of which has given rise to the present proceedings in M.P.No.6, 7 and 8 of 2024. The common prayer of the petitioner in M.P.No.6, 7 and 8 of 2024 is to impose penalty upon the respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 28.12.2021 in D.R.P.No.3, 4 & 5 of 2016 and consequently direct the respondents to make payments of the entire sum as directed in the said order.

13.2. The D.R.P.No.3 of 2016 was initially filed seeking a relief to declare the letter issued by the 2<sup>nd</sup> respondent in Lr. No.CE/NCES/SE/EE/WPP/AEE2/F.M/s.Mitra/

D.1205/14 dated 12.11.2014 and reiterated on representation, in Lr.No.CE/NCES/SE/EE/WPP/AEE2/ F.M/s.Mithra/D.103/15 dated 29.01.2015 as arbitrary and illegal and quash the same and consequently direct the 1<sup>st</sup> Respondent to pay the sum of Rs.50,41,119/- calculated at the rate of Rs.2.75 per unit for 18,30,167 units, along with interest at the rate of 12% from the due date of payment until 20.03.2016 Rs.15,81,761/- amounting to a total of Rs.66,22,879/- and future interest at 12% from such date till the date of payment and to direct the Respondents to pay the costs of the claim including the sums paid towards court fee by the petitioner.

13.3. The D.R.P.No.4 of 2016 was initially filed seeking a relief to declare the letter issued by the 2<sup>nd</sup> respondent in Lr.No.CE/NCES/SE/EE/WPP/AEE2/F.Greenweiz/ D.No.1203/14 dated 12.11.2014 and reiterated, in Lr.No.CE/NCES/SEE/EE/WPP/AEE2/ F.Greenweiz/ D.104/15 dated 29.01.2015 as arbitrary and illegal and quash the same and consequently direct the 1<sup>st</sup> Respondent to pay the sum of Rs.21,59,751/- calculated at the rate of Rs.2.75 per unit for 7,85,364 units, along with interest at the rate of 12% from the due date of payment until 20.03.2016 Rs.6,79,554/- amounting to a total of Rs.28,39,305/- and future interest at 12% from such date till the date of payment and to direct the Respondents to pay the costs of the claim including the sums paid towards court fee by the petitioner.

13.4. The D.R.P.No.5 of 2016 was initially filed seeking a relief to declare the letter issued by the 2<sup>nd</sup> respondent in Lr.No.CE/NCES/SE/EE/WPP/AEE2/ F.TAPI/D.1204/14 dated 12.11.2014 and reiterated, on representation, in Lr.No.CE/NCES/SE/EE/WPP/

AEE2/F.TAPI/D.102/15 dated 29.01.2015 as arbitrary and illegal and quash the same and consequently direct the 1<sup>st</sup> Respondent to pay the sum of Rs.9,92,739/- calculated at the rate of Rs.2.75 per unit for 3,60,996 units, along with interest at the rate of 12% from the due date of payment until 20.03.2016 Rs.3,11,663/- amounting to a total of Rs.13,04,402/- and future interest at 12% from such date till the date of payment and to direct the Respondents to pay the costs of the claim including the sums paid towards court fee by the petitioner.

13.5. In so far as present cases are concerned, it is the case of the petitioners that the respondent failed to pay interest from 21.03.2016 to 30.06.2024 and paid interest only upto the 20.03.2016, the cut-off date in the proceedings in the DRP for seeking relief. In view of the same, the petitioner has calculated the interest from 21.03.2016 to 30.06.2024 amounting to Rs.81,43,326/- (Rupees Eighty One Lakh Forty Three Thousand Three Hundred and Twenty Six Only), as detailed below in respect all the three cases and prayed for directions to recover the same.

<b>Company Name</b>	<b>Generation Dues + Interest Till 20.03.2016 (Rs.)</b>	<b>Interest from 21.03.2016 to 30.06.2024 (Rs.)</b>
MITRA (D.R.P.No.3 of 2016)	66,14,720.00	50,10,182.00
GREENWEIZ (D.R.P.No.4 of 2016)	28,39,305.00	21,46,497.00
TAPI (D.R.P.No.5 of 2016)	13,04,402.00	9,86,647.00
<b>Total</b>	<b>1,07,58,427.00</b>	<b>81,43,326.00</b>

13.6. It may be seen from the above table that the entire claim of 1,07,58,427/- in the earlier round of litigation pertaining to D.R.P.No.3, 4 & 5 of 2016 have been fully settled except for the future interest claim for the period from 21.03.2016 until 30.06.2024. The petitioner has worked out future interest in all three cases to extent of Rs.81,43,326/- from 21.03.2016 upto 30.06.2024 and sought recovery of the same in the present Miscellaneous Petitions.

13.7. The common counter dated 18.07.2024 filed by the petitioner to the memo dated 02.07.2024 filed by the 2<sup>nd</sup> respondent discloses that a sum of Rs.81,85,449/- towards generation dues and a sum of Rs.25,72,978/- towards interest till 20.03.2016 totalling, in all Rs.1,07,58,427/- had been paid by the respondents on 01.07.2024. Even though the respondents in their memo dated 10.09.2024 had taken a specific stand that excess amount of Rs.6,47,225/- towards energy charges and excess interest amount to the tune of Rs.6,67,150/- had been paid to the petitioner on account of error in calculation, during enquiry the respondents have not placed any evidence to substantiate the same. Hence this Commission cannot decide this issue in favour of the respondents for want of legal evidence. This effectively means that there is no dispute with regard to Rs.1,07,58,427/- which constitutes generation dues plus interest upto the period 20.03.2016.

13.8. Therefore, the only question which arises now for consideration is whether the petitioner is entitled to the interest claim of Rs.81,43,326/- for the period from 21.03.2016 to 30.06.2024 @ 12% per annum as calculated by the petitioner.

13.9. The Commission, in the orders passed in the original proceedings in the DRPs has clearly stated that the dues shall be settled alongwith “applicable interest” There is no denying the fact that applicable interest would mean the interest as stipulated in the Tariff Orders issued by the Commission from time to time and hence interest shall become payable @1% p.m. The respondent, curiously has taken a stand that compliance has already been made by virtue of payment of Rs.1,07,58,427/- in respect of all the three generating units ignoring the vital fact that the order passed in the DRPs makes it clear that applicable interest shall be payable.

13.10. Going by the same, the respondent ought to have settled the entire dues including interest within 30 days from the date of order in DRPs i.e., 28.12.2021. However, we find that such compliance has not been made and hence it does not lie in the mouth of the respondent now to contend that by effecting settlement of Rs.1,07,58,427 at a very distant point of time on 01.07.2024, that the compliance has been made. It is to be concluded in all fairness that the compliance made by the respondent is not in true spirit of the orders passed in DRPs but rather it is a partial compliance at its own convenience.

13.11. It is a well settled position of law that interest shall be payable on delayed payment on the principal dues, and such interest is payable on the ground of equity even if there is no provision for the same in the PPAs. Hence, there is no difficulty in holding that a sum Rs.81,43,326/-towards interest for the period from 21.03.2016 to 30.06.2024

is payable to the petitioner in respect of all these three units and the same has not been paid by the respondents. Hence this Commission has to necessarily come to the logical conclusion that the respondents have made only partial compliance of the orders passed in D.R.P.No.3, 4 & 5 of 2016.

13.12. The next point that crops up for consideration is as to whether penalty has to be imposed upon the respondents for non-compliance of the order passed by this Commission in D.R.P.No.3, 4 and 5 of 2016?

13.13. Facts emanating from the material records unequivocally point out that since there was difference of opinion between the petitioner and the respondents in regard to the period for which interest has to be paid on account of delayed payment, the respondents did not comply with the orders which are the subject matter in all the three Miscellaneous Petitions. Situated thus it is hard to comprehend that non-compliance of the orders in question by the respondents is deliberate and wanton as contended by the petitioner more so when payment of Rs.1,07,58,427/- made by the respondents on 01.07.2024 has not been disputed by the petitioner.

13.14. In the backdrop of the above vital undisputed fact, this Commission decides that passing an order directing the respondents to pay the balance interest amount prescribing a timeline rather than imposing penalty upon the respondents would meet the ends of justice.

Accordingly this issue is decided.

14. In the result the respondents are directed to make payment of Rs.50,10,182/-, Rs.21,46,497/- and Rs.9,86,647/- respectively to the petitioner in M.P.No.7 of 2024; M.P.No.6 of 2024 and M.P.No.8 of 2024 respectively towards interest for the period covering 21.03.2016 to 30.06.2024 within 30 days from the date of this order. Further if this order is not complied within the stipulated period, the respondents shall be liable to pay interest on the respective principal dues at the rate of one percent per month from 01.07.2024 till the date of actual payment.

Parties directed to bear their respective costs.

Petitions ordered accordingly.

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

(Sd.....)  
Member

/True Copy /

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**