

**Before the Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 91 of 2012**

**Dated: 23<sup>rd</sup> November, 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**1. M/s. Sai Regency Power Corporation Pvt. Ltd.**  
**Office No. 3, IInd Floor, Crown Court**  
**128, Cathedral Road**  
**Chennai – 600 084** **....Appellant (s)**

**Vs**

**1. Tamil Nadu Electricity Regulatory**  
**Commission**  
**No. 19 A, Rukmini Lakshmiipathy Salai**  
**Egmore**  
**Chennai – 600 008**

**2. The Chairman**  
**TNEB, No. 144, Anna Salai**  
**Chennai – 600 002**

**3. TANTRANSCO**  
**No. 144, Anna Salai**  
**Chennai – 600 002**

**4. TANGEDCO**  
**No. 144, Anna Salai**  
**Chennai – 600 002** **...Respondent(s)**

**Counsel for the Appellant (s):** Mr. Sanjay Sen  
Mr. Hemant Singh  
Mr. Anurag Sharma  
Ms. Shikha Ohri

**Counsel for the Respondents (s):** Mr. G. Umapathy  
Mrs. G. Umapathy  
Mr. S. Vallinayagam  
Mrs. Mekhala  
Mr. Ram Subramanian

## **JUDGMENT**

**HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. M/s. Sai Regency Power Corporation Pvt. Ltd is the Appellant. Challenging the impugned order dated 28.12.2011 passed by the Tamil Nadu Regulatory Commission (State Commission), the Appellant has filed this Appeal.
2. The short facts are as follows.
3. The Appellant is engaged in the business of setting up power plants through renewable and other energy sources. In 2011, the Appellant has installed wind turbines aggregating to 18.90 MW in Tirunelveli District of Tamil Nadu. These plants were commissioned on 27.3.2011. The generated power is

- wheeled to group companies under the group captive purposes. The Tamil Nadu State Commission is the 1<sup>st</sup> Respondent. The other 2 to 4 are the Electricity Board, the Transmission Company and the Generation & Distribution Company respectively.
4. The State Commission on 15.5.2006 passed an order being order no. 2. By this order, the State Commission determined various charges payable by an open access customer. On the issue of transmission charges, the State Commission fixed Rs. 2781/- per MW per day as the transmission charges for the year 2005-06 for long term open access customers.
  5. On the very same date i.e. on 15.5.2006, the State Commission passed another order for power purchase and allied issues in respect of non-conventional energy sources based on generating plants and non-conventional energy sources based co-generation plants. This order passed on 15.5.2006 is the order no. 3 reiterating that the transmission charges @ 5% of energy wheeled would be applicable to wind power projects.

6. The State Commission passed second Tariff Order on wind energy on 20.3.2009 which is order no. 1 of 2009. In this order also the State Commission held that the transmission and wheeling charges @ 5% shall be applicable to wind energy projects.
7. Though the State Commission confirmed 5% as transmission and wheeling charges for wind energy sources, the said order did not clarify whether the said rate was normative or concessional. In 2010, the Central Commission has framed Regulations regarding the Renewable Energy Certificate for renewable energy generation, namely “Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010”. Under these Regulations a captive power plant shall not be eligible for Renewable Energy Certificate if it is availing any benefit in the form of concessional or promotional transmission or wheeling charges.
8. Neither order No.3 dated 15.5.2006 passed by the State Commission nor order No.1 the wind Tariff Order No.1 of 2009 clarified whether the 5% transmission and

wheeling charges are normative or concessional. In fact the Appellant wrote two letters to the Electricity Board, 2<sup>nd</sup> Respondent that it will not be availing any benefit for transmission/wheeling/banking. There was no response from the Board. Therefore in April, 2011, the Appellant approached the State Commission and filed petition before the State Commission seeking clarification as to whether the rate of @ 5 % wheeling and transmission charges was normative or concessional. The Appellant further prayed for grant of interim relief to pay the transmission and wheeling charges in accordance with the wind Tariff Order dated 20.3.2009 i.e. order no.1 of 2009. The second Tariff Order was passed without prejudice to its right to claim the Renewable Energy Certificate in terms of Regulations of the State Commission.

9. By the order dated 20.4.2011, the State Commission passed interim order permitting the Appellant to pay provisional transmission and wheeling charges @ 5% from the date of commissioning and as and when the State Commission indicates the normative transmission and wheeling charges, the Appellant should pay difference to the licensee. Accordingly, the provisional

- transmission and wheeling charges were being paid by the Appellant in obedience to the State Commission's interim order.
10. Then both the parties were heard and both of them were permitted to file the written submissions.
  11. Ultimately the State Commission passed the impugned order on 28.12.2011 holding that the wind energy projects shall pay @ Rs.2781/- per MW per day on the basis of the installed capacity of the Appellant's wind energy project. The State Commission further held that banking charges shall be as stipulated in the respective Tariff Order. However, the State Commission did not intend to pass a separate order for wind generators as claimed by the Appellant. Challenging these findings the Appellant has presented this Appeal.
  12. The issues raised by the Learned Counsel for the Appellant assailing impugned order decided by the State Commission are two fold namely (1) Transmission charges (2) Banking.
  13. The first issue relates to the Transmission charges applicable to wind energy projects in the State of Tamil

Nadu. Let us refer to the arguments on this issue, advanced by the Appellant.

## **A Transmission Charges**

(A) By the impugned order, the State Commission has interpreted its earlier order being order no.2 dated 15.5.2006 under which the State Commission had fixed transmission charges @ Rs. 2781/- per MW per day for all generators (except non-conventional energy generator) using the transmission network. While interpreting its earlier order dated 15.5.2006, the State Commission wrongly proceeded to apply Rs. 2781/- per MW per day on the installed capacity of the Appellant's wind energy projects and it has failed to apply the rate on the available transmission capacity for the generator arrived for multiplying the installed capacity by the plant load factor which is 25.84% of the installed capacity. While passing order no.2 of 2006 dated 15.5.2006, the State Commission itself has given detailed reasons as to why the transmission charges should be adjusted on the PLF and not on the installed capacity.

(B) The State Commission in the impugned order has observed that Rs. 2781/- per MW per day will be

applied on the installed capacity of the Appellant's wind energy project. This is wrong for the reason that Rs.2781/- per MW per day has to be applied to the available transmission capacity of the generator and as such this application is wrong because the transmission charges are payable for utilization of transmission capacity, and the wind energy generator cannot use the transmission capacity beyond the Plant Load Factor of 25.84% of installed capacity. Having taken into account such high Plant Load Factor for the purpose of arriving at the figure of Rs.2781/- per MW per day being transmission charges, there is no scope for the State Commission to apply the charges on the installed capacity.

(C) In order no.2 of 2006, the State Commission took into account the annual transmission charges of Rs. 730.62 crores for the year 2005-06. After having arrived at this figure, the State Commission proceeded to determine the available net transmission capacity. In that order, the State Commission took into account the net transmission capacity of each generating station reckoning by multiplying installed generation capacity by a normative plant load factor. Since the transmission

charges have been determined based on the available transmission capacity as denominator, the actual payment made by the generator should also be based on the available transmission capacity for that class of generator. The practice of recovery of transmission charges based on installed capacity would result in over recovery of transmission charges.

(D) Before passing of the impugned order, the wind energy generators were liable for payment of transmission and wheeling charges at fixed rate of 5% as specified by Tariff Order no. 1 dated 23.3.2009. This should be applicable even after passing of the impugned order.

14. The following grounds are raised by the Appellant in respect of 2<sup>nd</sup> issue namely banking:

**B. Banking**

15. The second issue decided by the Commission relates to the banking of electrical energy by wind energy generators. The arguments on this issue are as follows:-

(A) The question before the State Commission was whether wind plants are using banking in a manner that

disentitles them to the benefits to the Renewable Energy Certificates as envisaged under the Central Commission Regulations. On the basis of these Regulations, the Appellant sought a clarification from the State Commission that since Tamil Nadu does not allow utilization of banked energy at any time, when such energy is injected into grid during off peak hours, whether a project in Tamil Nadu availing facilities provided by the generation companies would fall foul of the Central Commission definition. In Tamil Nadu wind energy projects are not entitled to draw banked power across all the time slots and banked power can be drawn only in the respective slots at which it has been injected. Hence, the facility provided in Tamil Nadu does not fall within the definition of “banking facility benefit” as provided by the Central Commission Regulations. Hence the projects which avail a limited banking facility benefits in Tamil Nadu cannot be denied issuance of Renewable Energy Certificate, in view of the explanation of the banking facility benefit given by the Central Commission.

(B) There is no State Regulation on the definition of “banking facility benefit”. Therefore the State

Commission cannot take a position different from the definition given by the Central Commission. At present the Appellant is not availing bank facility in any form and as such the Appellant is fully entitled to Renewable Energy Certificate benefits.

16. On these grounds the impugned order passed by the State Commission on these two issues are sought to be set aside by the learned Counsel for the Appellant.
17. The Learned Counsel for the Respondents have argued at length by way of reply to the above submissions made by the Appellant in justification of the impugned order.
18. In the light of the rival submissions made by the parties the following two questions would arise for consideration:
  - (i) Whether the State Commission erroneously determined transmission charges while ignoring the implication of the same on the basis of the order no.2 dated 15.5.2006?
  - (ii) Whether the State Commission erred in interpreting banking facility benefit, in

contravention of the Central Commission's REC Regulations as amended on 29.9.2010.

19. We have carefully considered the contentions urged by the Learned Counsel for the parties and we have given our anxious consideration to the points raised by them.
20. Before dealing with these questions let us refer to the findings of the State Commission on these issues:

*“The petitioners have stated that the PLF of wind generators has been considered as 10% for the 19.36 MW of wind energy generation capacity owned by the TANGEDCO and normative PLF of 25.84% for the private wind mill generation capacity of 2020.87 MWs. It was further contended that if Rs.2781 per MW per day is to be adopted with reference to the installed capacity of all generators, it would lead to a figure which would be substantially higher than the annual transmission charges determined by Order No. 2 of 2006 which would amount to unjust enrichment and also treating unequals as equals. The written submissions also compare various provisions of the Regulation issued by CERC and TNERC in this regard. In these submissions the petitioners prayed that the Commission may issue direction regarding transmission charges payable by the wind generators based on their normative PLF and also to hold that the banking facility availed on slot to slot basis would not disentitle them to claim REC benefits. The Commission has examined the*

*submissions of the petitioners at this late stage after conclusion of the hearing. Raising of new points after conclusion of hearing is not normally accepted. Since some new issues have been raised, the Commission would like to deal with these issues as well. The contention of the petitioner that PLF has been considered for fixing the transmission charges at Rs.2781 per MW per day is not well founded. The PLFs considered by this Commission in its Order No.2 dated 15-5-2006 was for the purpose of arriving at the available transmission capacity. Design of power system does not depend upon the PLF at which the plants operate. In this connection, the Commission would like to refer to the transmission planning philosophy draft document issued by the CEA as a part of National Electricity Plan. Para 3.8.7 of the document is reproduced below:-*

*“The adequacy of the transmission system should be tested for different load generation scenarios corresponding to one or more of the following so as to test the scenario of maximum burden on the transmission system:*

- Summer Peak Load;*
- Summer Off-peak Load;*
- Winter Peak Load;*
- Winter Off-peak Load;*
- Monsoon Peak Load;*
- Monsoon Off-peak Load;”*

*14.7. If the PLF is considered for various generating capacity and the transmission system designed based on the average generating*

*capacity, it will not be possible to evacuate the entire generation. The PLF in case of thermal projects is to provide for the planned shut down for maintenance, planned short term outage and to cater to forced outage such that 80 – 85% availability is considered for thermal power plants. As regards hydro power plants, generation from hydro stations depend upon the hydrological parameters like monsoon and also the type of the project such as storage type power project, power projects with limited storage and run of the river power project. In case of wind, the wind generation is confined to the wind season wherein the maximum generation would be available and during non-wind season the wind generation almost comes to nil. Even during the wind season there are daily variations in generating capacity. If the transmission system is designed taking into account the capacity utilization factor of wind at 27%, it will not be possible to evacuate the entire wind generation when it is generating at its best.*

*14.8. It is also necessary to examine the method of sharing of annual transmission charges. Since the petitioners have raised this issue we would like to examine this issue as well. Both in the TNERC Regulation and in the CERC Regulation, the sharing of transmission charges by various long term transmission customers is based on the ratio of allotted capacity to long term customers to the sum of the allotted transmission capacity to all the long term open access customers. By and large, the same methodology has been continued even under the point of connection charges prescribed by the CERC. In view of this, the arguments of the*

*petitioners in their submission dated 31-10-2011 is not logical. The transmission system should be designed in such a manner that it is able to evacuate all the generation available and it does not lead to backing down of generation or shedding of load, as the case may be. In view of this, the prayer of the petitioners for considering the PLF of wind energy generators at 25.84% for arriving at the open access charges cannot be accepted. Further, undue enrichment to the licensee will not arise since the entire transmission charges are shared in the ratio of MWs allocated to each of the users. What the petitioners are seeking is to levy a lower charge for them thereby shifting the burden on to other consumers which also cannot be agreed to. Since the capacity is allotted based on the MW usage by various generators, the Commission does not agree with the argument of treating unequals as equals.*

*14.9. In fact, all the generators are treated alike as far as the utilization of transmission facility goes. In the light of the above discussions, the Commission concludes that there are only two charges prescribed by the Commission, one is the concessional charges as provided in Order No. 1 of 2009 for wind energy dated 20-3-2009 and other is the charges prescribed in Order No. 2 dated 15-5-2006 which is under revision. In view of this, the wind energy generators will have to make a choice between the concessional charges available to wind energy generators or the normal charges for transmission stipulated in Order No. 2 dated 15-5-2006. The other benefits like REC, etc will depend upon the choice they make. When the*

*users of transmission system shares the transmission charges based on allotted capacity there is an equitable treatment for all users. If a concessional charge is provided, the burden of the transmission charge gets shifted to other users. Thus, if the concessional treatment is to be granted for providing REC benefits, there is undue loading of other users of transmission system which cannot be agreed to.*

*14.10. The Commission therefore orders that if a wind energy generator is to become eligible for the benefit of REC, he shall pay the normal transmission charges as ordered by the Commission from time to time. The Commission further clarifies that on a particular issue if there is a specific provision in the TNERC Regulation the same would apply, notwithstanding different provision made in the CERC Regulation. This is in view of the fact that CERC Regulation acts as a guideline for all other Commissions in formulating their respective Regulations. The Commission also clarifies that the banking charges shall be as stipulated in the respective tariff order and does not intend giving a separate judgement for one generator, as sought for in one of the petitions Viz., M/s. Sai Regency Power Corporation Ltd.”*

21. Keeping in mind these reasonings for the findings given in the impugned order passed by the State Commission let us now discuss each of these issues. Let us first deal with the issue of Transmission charges.

22. According to the Appellant, the transmission charges can be collected annually with reference to the plant load factor adjusted capacity of open access customers and not with reference to the installed capacity. The Appellant has raised grievances about the conclusion of the State Commission in the impugned order to the effect that the Appellant and other wind power generators are required to pay transmission and wheeling charges of Rs.2781/- per MW per day in terms of Tariff Order no.2 dated 15.5.2006. It is the case of the Appellant that the wind energy generators should not be required to pay transmission charge of Rs.2781 per MW per day and on the other hand they should be permitted to pay transmission charges on the basis of 25.84% PLF considered by the State Commission in arriving at the transmission capacity referred to in the order no. 2 of 2006 dated 15.5.2006.

23. The Appellant approached the State Commission on the basis that it intended to obtain Renewable Energy Certificate and that the CREC REC Regulations 2010 as amended by notification dated 29.9.2010 specifies that the captive power plant should seek to get REC

benefits have to satisfy important condition namely that the captive power plants should not propose to avail any benefit in the form of concessional/promotional transmission/wheeling charges. It is a specific case before the State Commission that wind energy generators have been paying transmission and wheeling charges of 5% uniformly for captive use and third party sale of the wind energy based on the Tariff Order no.1 of 2009 dated 20.3.2009. The Appellant specifically stated in the petition filed before the State Commission that it wishes to get Renewable Energy Certificate and as such it does not intend to avail any benefit as concessional, promotional, wheeling charges, etc. The contents of the petition filed before the State Commission by the Appellant would show that it approached the State Commission with the clarificatory petition with an undertaking to pay the normative transmission charges, if the payment of transmission charges at 5% under Tariff Order no.1 of 2009 was held to be promotional.

24. The Appellant has contended that the revenue requirement of the transmission licensee as per Tariff Order no.2 of 2006 dated 15.5.2006 is Rs.730.62

- crores but the total transmission charges have been worked out at Rs.2781/- per MW per day on the basis of the revenue requirement and on the basis of the plant load factor adjusted capacity of 7198 MW.
25. In this context, it is pointed out by the TAN TANSCO, Respondent No.3 that the 3<sup>rd</sup> Respondent does not collect transmission charges from each generator at Rs. 2781 per MW per day but it collects transmission charges only from long term open access customers at the rate of Rs.2781/- per MW per day and not from all generators.
26. As pointed out by the Learned Counsel for the Respondent, up to October 2010 the generation, distribution and transmission of electricity was being carried on by a single entity i.e. Tamil Nadu Electricity Board. The manner of functioning of the Board was such that no separate transmission charges were being levied since all these activities were carried out by a single entity. The transmission charges collected from open access customers were deducted from the total transmission charges as fixed under the Tariff Order and the remaining transmission charges were passed

on to the consumers as retail tariff. In view of the above there is no levy of transmission charges on various generators as sought to be contended by the Appellant. As far as the present position is concerned, after October, 2010, consequent upon division of the generation/distribution activities and transmission activity by entrusting the same to two separate corporations namely TANTRANSCO, the third Respondent and TANGEDCO, the 4<sup>th</sup> Respondent respectively, the transmission charges as determined by the relevant Tariff Order are being collected by the transmission company and the generation and distribution company in twelve equal monthly instalments. This is as per the Tariff Order for generation and distribution passed on 30.3.2012 in order no.1 of 2012. This would show that there is no question of collection of transmission charges over and above the projected revenue requirement of the transmission licensee in terms of the Tariff Order. The transmission charges collected in excess, if any, will get adjusted in the calculation of future transmission charges to be determined by the State Commission by

- truing up estimated and actual transmission charges at the end of each control period.
27. According to the State Commission, the transmission charges are fixed on the basis of the principles set out in the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005.
  28. It is further stated that the State Commission on determining the transmission tariff by applying the above Regulation it has followed clause no. 5.9.1. of the Regulations. The Electricity Board have arrived at a available transmission capacity of transmission system as on 1.4.2005, as 6654 MW based on the normative plant load factor of generating system including contracted supply connected to the grid.
  29. When users of transmission system share the transmission charges based upon the allotted capacity, then so there is equitable treatment of distribution. That apart, the transmission system is required to be designed in such a manner that it is able to evacuate all the generated power available. The PLF is calculated on annual basis. During wind season, generation may be equivalent to 100% of installed capacity. Therefore

considering the plant load factor of wind energy generators at 25.84% it cannot be appropriate to arrive at transmission charge by multiplying the installed capacity by the plant load factor.

30. We find that the State Commission by order no.3 dated 15.5.2006 relating to power purchase and allied issues in respect of Non-Conventional Energy Sources based generating plants **“to give encouragement for promotion of renewable energy”** decided transmission charges and wheeling charges in kind at the rate of 5% of energy for wind energy generators. By the order dated 20.3.2009 the State Commission decided to retain the transmission charges and wheeling charges at 5%, even though the Electricity Board had sought to revise the same to 15%. It is clear from the order dated 15.5.2006 that transmission and wheeling charges of 5% for wind energy generator were promotional rates and the same were not determined based on the transmission and wheeling expenses and return on investment on the transmission and distribution network.

31. The State Commission by order no.2 dated 15.5.2006 *inter alia* determined the transmission charges payable by open access customers based on the return on capital and other expenses which are the normal transmission charges for use of the intra state transmission network.
32. The State Commission in the above order no. 2 dated 15.5.2006 determined the Annual Transmission charges of 730.62 crores taking into account the Return on Equity on capital base of transmission network of the Electricity Board, interest on loan, depreciation, operation and maintenance expenses, interest on working capital, etc.
33. We notice that the State Commission adopted the following methodology for calculating the rate of transmission charges for long term open access user in terms of Rs. per MW per day:
  - i) The installed capacities of each of the Electricity Board's own generating stations, IPPs, share of the Electricity Board in Central Sector Generating Stations, Captive Power Projects (CPPs) and Private Wind Mills were recorded.

- ii) Available Transmission Capacity was calculated as 7198 MW summing the Plant Load Factor adjusted capacity for each of the Boards' own generating station, IPPs, share of the Electricity Board in Central Sector Stations, CPPs and Private Wind Mills. For example the PLF adjusted capacity of Private Wind Mills with installed capacity of 2020.87 MW was considered as 522.19 MW at normative PLF of 25.84%.
- iii) By dividing Annual Transmission charges of Rs.7,306,200000/- by the product of Available Transmission Capacity of 7198 MW and 365 days, the transmission charges of Rs. 2781/- per MW per day were calculated.
34. As correctly emphasized by the Respondents, the Tariff Regulations provide that the transmission charges payable by an intra-state open access customer shall be calculated by dividing the total transmission charges by the sum of allotted transmission capacity to all long term open access customers of the intra-state transmission system and multiplied by the capacity allotted to that long term open access customer. However, in computing the rate of transmission

charges, the State Commission divided the total transmission charges by Available Transmission Capacity i.e. the PLF adjusted installed capacity instead of net capacity (Installed Capacity less auxiliary consumptions) contrary to the Regulation. Available transmission capacity has not been defined in the Regulations and is not required to be used for computation of rate of transmission charges as the Regulations provide for apportioning of total Annual Transmission charges to the ratio of allotted transmission capacity to long term open access customer and sum of allotted transmission capacity to all long term open access customers of intra state transmission system. If the rate of transmission charges of Rs.2781 per MW per day as computed in the order no. 2 dated 15.5.2006 based on PLF adjusted capacity is to be adopted, then the transmission charge payable by the Appellant has to be based on its PLF adjusted capacity. However, the Tariff Regulations provide for determination of transmission charges for open access customer by apportioning the transmission charges to transmission capacity allotted to open access customer and not PLF adjusted capacity.

35. It is true that the order no.2 dated 15.5.2006 has since attained finality. Thus, the total transmission charges or Annual Transmission charges of Rs. 730.62 crores determined by the order dated 15.5.2006 cannot be challenged by the Appellant. However, if the transmission charges of Rs. 2781 per MW per day computed on the basis of PLF based capacity of 7198 MW in the order no.2 dated 15.5.2006 is to be applied then the normal transmission charge payable by the Appellant has to be computed on its PLF adjusted capacity only. However, this will be contrary to the Regulations which provide for transmission charges to be computed on the allotted transmission capacity of the open access customer which in the case of Appellant is its installed capacity. As the normal transmission charges are being made applicable to the Appellant for the first time in order to obtain Renewable Energy Certificate, we need to give an order which is in consonance with the Regulations without disturbing the Annual Transmission charges determined by order no. 2 dated 15.5.2006.
36. Learned Counsel for the Respondent No. 3 has pointed out that no transmission charges were being billed to the

Electricity Board upto October, 2010 as the Board was working as an integrated and unbundled entity. However, other open access customers were being billed at the rate of transmission charges computed by the State Commission in order no. 2 dated 15.5.2006. The annual transmission charges after deducting the recovery of transmission charges from open access customers was considered in the ARR of the distribution business of the Board After the reorganisation of the Electricity Board in October, 2010, the activity of transmission has been entrusted to TANTRANSCO, the Respondent no. 3 and generation and distribution activities have been entrusted to TANGEDCO, the Respondent no. 4. However after the reorganisation of the Board in October, 2010, the TANTRANSCO after the recovery of transmission charges from other open access costumers at the rate determined as per order no. 2 dated 15.5.2006 was billing and recovering the remaining transmission charges from TANGEDCO. TANGEDCO was not billed at the rate of Rs.2781 per MW per day as determined by the State Commission in its order dated 15.5.2006.

37. We are of the view that after unbundling of the Electricity Board, the annual transmission charges as of TANTRANSCO as determined by the State Commission have to be billed and recovered from TANGEDCO (R-4) and other open access customers as per the Regulations. We feel that the total Annual Transmission Charges for TANTRANSCO (R-3) as determined by the order dated 15.5.2006 have to be apportioned to TANGEDCO (R-4) and other long term open access customers including the Appellant in proportion to their respective allotted transmission capacities as per the Regulations. In our opinion after the reorganisation of the Electricity Board, the rate of transmission charges payable by TANGEDCO and other long term open access customers should have been determined. However, this was not done and as pointed by the Respondents after the reorganisation of the Electricity Board, TANTRANSCO has been billing and recovering from TANGEDCO the total Annual Transmission Charges less the amount recovered from other open access customers at the rate determined in order No.2 dated 15.5.2006 on the allotted transmission capacity. This is not correct as the rate of transmission

charges have to be determined as per the Regulations and apportioned to the allotted transmission capacity to the distribution licensee and other long term open access customers. This is also against the principle of non-discriminatory open access as emphasized in the Electricity Act, 2003 as it is resulting in different rate of transmission charges being recovered by the transmission licensee from TANGEDCO and other long term open access customers of the intra state transmission system. According to Section 40 (C) of the Electricity Act, 2003, the transmission licensee has to provide for non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges. Accordingly, same rate of transmission charges is to be recovered from the licensee and other open access customers.

38. In our opinion, the allotted transmission capacity for TANGEDCO should be the summation of its own net generation capacity connected to TANTRANSCO's transmission system, share in central sector stations, other long term contracted capacity from IPPs connected to the TANTRANSCO's system, etc.

Similarly the allotted transmission capacity for the Appellant and other wind energy generators should be their respective installed capacity.

39. Therefore, on this issue we remand the matter to the State Commission with the direction to determine the transmission charges per MW per day charged by TANTRANSCO for use of its transmission network by TANGEDCO and other long term open access customers after the reorganisation of the Board on the basis of summation of transmission capacity allotted to long term open access customers including TANGEDCO. For the wind energy generators, the allotted capacity shall be the installed capacity of the respective generators. On the other hand the transmission capacity allotted to TANGEDCO would be on the basis of sum of net capacity (Installed Capacity less auxiliary consumption) of own generating stations connected to the transmission system, capacity contracted from IPPs, share in Central Sector Stations, etc. However, the Annual Transmission Charges determined by order No. 2 dated 15.5.2006 will not be reopened.

40. Let us now take the second issue which is relating to banking of electrical energy of wind energy generators. The question before the State Commission was whether the wind plants are using the banking in a manner that entitles them to the benefits of Renewable Energy Certificate as envisaged under Central Commission's Regulations as amended on 29.9.2010. In view of the Regulations and the explanation given in the amendment dated 29.9.2010, as to what constitute "Banking Facility Benefit", the Appellant sought a clarification from the State Commission that since Tamil Nadu does not allow utilisation of banked energy during peak hours when such energy is injected into the grid during off peak hours whether the wind energy projects in Tamil Nadu availing banking facilities provided by the TANGEDCO (R-4) would fall foul of the definition of the CERC Regulations. According to the Appellant, when the wind energy project is not entitled to draw banked energy generated during off peak hours during peak and normal hours, the projects which avail a limited banking facility cannot be denied issuance of Renewable Energy Certificate in view of the explanation of 'Banking Facility Benefit' given by the Central

Commission. As indicated above, the Appellant specifically stated in the petition before the State Commission that it wished to get Renewable Energy Certificate and, therefore, did not intend to avail any concessional banking benefit.

41. Let us now examine the banking facility provided to the wind energy generators in Tamil Nadu. The State Commission by its order no. 3 dated 15.5.2006 decided maintenance of slot to slot banking account and adjust in the same way as for other renewable generators against peak/off peak/normal consumption and beyond the banking period, the unutilised portion of the banked energy as on 31<sup>st</sup> March will be treated as sold to distribution licensee at the rate fixed by the Commission. The State Commission allowed banking for wind energy generators at banking charges of 5%. For the unutilized energy at the end of the year, it was decided that the distribution licensee would pay at a rate of 75% of normal purchase rate.
42. Thus, the wind energy generator cannot utilise the banked energy generated during off peak hours during the peak hours or normal hours.

43. Now let us examine the Renewable Energy Certificate Regulation, 2010 of the Central Commission. Regulation 5 as amended on 29.9.2010 provides as follows:

***“5. Eligibility and Registration for Certificates:***

*Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.*

...

*Explanation:- For the purpose of this Regulation, the expression ‘banking facility benefit’ shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”*

44. According to above Regulation, CPP cannot avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility and

- waiver of electricity duty for being entitled to get Renewable Energy Certificate. It has been explained that banking facility benefit shall mean only such banking facility where the CPP can utilise the banked energy at any time (including peak hours) even when it has injected into grid during off peak hours.
45. As indicated above, the banking scheme prevailing in Tamil Nadu for wind energy generators does not allow utilisation of banked energy generated during the off peak hours during peak or normal hours. Thus, the Appellant satisfies the condition laid down in the Central Commission's Regulations regarding use of banked energy. However, the banking benefit available to the wind energy generator for use of slot-wise banked energy and purchase of unutilised banked energy by the distribution licensee is on payment of banking charges at a rate of 5%. These banking charges have to be determined by the State Commission for which the State Commission has decided in the impugned order that the banking charges would be stipulated in the respective tariff order. Thus, the Appellant is entitled to REC on payment of banking charges which are prevailing at present. As and when these are

redetermined by the State Commission, the same will be applicable to the Appellant.

46. Let us now examine the relevant extract of the impugned order which is reproduced below.

***“The Commission also clarifies that the banking charges shall be as stipulated in the respective tariff order and does not intend giving a separate judgment for one generator, as sought for in one of the petitions viz. M/s. Sai Regency Power Corporation Ltd.”***

Thus the State Commission has decided that the Appellant is liable to pay the banking charges as stipulated in the respective tariff order. However, the State Commission has not decided the banking charges. There is no infirmity in the above order as the State Commission is empowered to determine the banking charges.

47. Thus the Appellant is entitled to avail REC on payment of banking charges prevailing at present as per the orders of the State Commission. As and when the banking charges are revised by the State Commission, the Appellant will be liable to pay the same.

**48. Summary of findings.**

**i) The Tariff Regulations provide that the transmission charges payable by an intra-state open access customer shall be calculated by dividing the total transmission charges by the sum of allotted transmission capacity to all long term open access customers and multiplied by the capacity allotted to that long term open access customer. However, in computing the rate of transmission charges per MW per day, the State Commission in its order no. 2 dated 15.5.2006 computed the rate of transmission charges by dividing the total Annual Transmission Charges by Available Transmission Capacity i.e. the PLF adjusted installed capacity. If the rate of transmission charges of Rs. 2781 per MW per day as computed in the order no. 2 dated 15.5.2006 is to be adopted for the Appellant then the transmission charges payable by the Appellant has to be based on its PLF adjusted capacity. However, the Tariff Regulation provide for the determination of transmission charges for open access customer**

**by apportioning the total transmission charges to the ratio of capacity allotted to long term open access customer and sum of open access capacity allotted to all long term open access customers of intra-state transmission system. Therefore, computing the transmission charges on PLF adjusted capacity will be contrary to the Regulations.**

**ii) Prior to reorganisation of the Electricity Board i.e. before October, 2010 no transmission charges were being billed to the Electricity Board as the Board was working as an integrated and unbundled entity. However, after the reorganisation of the Electricity Board in October, 2010, TANTRANSCO (R-3) is required to bill and recover the transmission charges for use of intra-state transmission system by TANGEDCO (R-4) as per the Regulations. We feel that the rate of transmission charges payable to TANTRANSCO by TANGEDCO and other open access customers should have been determined by the State Commission after the reorganisation of the Electricity Board. However, this was not**

done and the TANTRANSCO has been billing and recovering from TANGEDCO the balance Transmission charges after recovering the transmission charges from other open access customers at the rate computed by the State Commission by order no. 2 dated 15.5.2006. This is not correct and is contrary to the principle of non-discriminatory open access and the Tariff Regulations. TANGEDCO and other long term open access customers have to be billed at the same rate to be determined on the basis of summation of allotted transmission capacity to all open access customers including TANGEDCO.

- iii) Therefore, we remand the matter to the State Commission with the direction to determine the transmission charges per MW per day applicable after the reorganisation of the Electricity Board on the basis of the summation of the capacity allotted to all long term open access customers including utilisation by TANGEDCO. However, the Annual Transmission Charges as determined by the State Commission in the order no. 2 dated

**15.5.2006 will remain unchanged. For the wind energy generators allotted capacity shall be the installed capacity of the respective generator. For TENGEDCO, the allotted capacity shall be calculated on the basis of sum of net capacity of own generation connected to the intra-state transmission system, long term contracted capacity from IPPs, share in Central Sector Stations, etc.**

- iv) The banking facility provided to the wind energy generator by the State Commission in its order no. 3 dated 15.5.2006 requires maintenance of slot to slot banking account and adjustment in the same way as for other the renewable generator against peak/off peak/normal consumption and the unutilised portion of the banked energy as on 31<sup>st</sup> March to be treated as sold to the distribution licensee at the rate of 75% of normal of purchase rate. The banking charges have been decided as 5%. Thus, the wind energy generator cannot utilize banked energy generated during off peak hours during the peak hours or normal hours. According to the**

**explanation to Regulation 5 of the Central Commission Regulations for Renewable Energy Certificate, the CPP cannot avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility, etc. for being entitled to get REC. The banking facility benefit has been explained to mean only such banking facility where CPP can utilise banked energy at any time even when it is injected into grid during off peak hours. Thus, the Appellant satisfies the condition laid down in the Central Commission Regulations regarding banked facility benefit. However, the State Commission has correctly decided that the banking charges as determined by the State Commission in the respective tariff order will be payable by the Appellant. Thus, the Appellant is entitled to REC benefit on payment of banking charges at the prevailing rate. As and when the banking charges are revised by the State Commission the same will be applicable to the Appellant.**

**49.** The Appeal is allowed to the extent indicated above. The State Commission shall pass the consequential order as per the direction given in this judgment at the earliest. No order as to costs.

50. Pronounced in the open court on this 23<sup>rd</sup> day of November, 2012.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 23<sup>rd</sup> Nov, 2012

✓REPORTABLE/~~NON-REPORTABLE~~