

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 330 OF 2023**

**AND**

**APPEAL NO. 331 OF 2023**

**Dated: 09.01.2025**

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**APPEAL No. 330 OF 2023**

**IN THE MATTER OF:**

**NVR Energy Private Limited**

Through Authorized Signatory,  
91A/1, Park Street, Avani Signature,  
6<sup>th</sup> Floor, Kolkata- 700016.

**...Appellant**

**VERSUS**

1. **Tamil Nadu Electricity Regulatory Commission**  
Through its secretary,  
SIDCO Corporate Office Building, Guindy, 4<sup>th</sup> Floor,  
Chennai- 600032.
2. **Tamil Nadu Generation and Distribution Corporation Limited**  
Through its Chairman and Managing Director,  
10<sup>th</sup> Floor, 144, Anna Salai, Chennai- 600002.
3. **The Chief Financial Controller/ Revenue, TANGEDCO**  
Eastern Wing, 7<sup>th</sup> Floor, NPKRR Maaligai,  
144, Anna Salai, Chennai- 600002.
4. **The Superintending Engineer**  
Tuticorin Electricity Distribution Circle,  
TANGEDCO, 131,132, E. Road,  
Tuticorin- 608002

5. **State Load Despatch Centre (SLDC)**  
Tamil Nadu Transmission Corporation Limited  
(TANTRANSCO), No. 144, Anna Salai,  
Chennai- 600002.

...Respondents

Counsel for the Appellant(s) : Mr. Buddy A. Ranganathan, Sr. Adv.  
Mr. Mahesh Agarwal  
Ms. Rishi Agarwala  
Ms. Madhavi Agarwal  
Mr. Victor Das  
Ms. Anwasha Padhi  
Mr. Vipul Singh

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R- 1  
  
Ms. Anusha Nagarajan  
Ms. Akanksha Bhola for R- 2-4

**APPEAL No. 331 OF 2023**

**M/s. Narbheram Solar TN Private Limited**  
Through Authorized Signatory,  
91A/1, Park Street, Avani Signature,  
6<sup>th</sup> Floor, Kolkata- 700016.

...Appellant

**VERSUS**

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Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R- 1  
  
Ms. Anusha Nagarajan  
Ms. Aakanksha Bhola for R- 2-4

**JUDGEMENT**

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The Appeal Nos. 330 and 331 of 2023 have been filed by the Appellants NVR Energy Private Limited (in short "NEPL"), and Narbheram Solar TN Private Limited (in short "NSTPL) respectively challenging the order dated 05.04.2022 (in short "Impugned Order") in DRP No. 8 of 2021 and DRP No. 9 of 2021 passed by the Tamil Nadu Electricity Regulatory Commission (in short "TNERC" or "Commission").

2. The captioned appeals are identical and filed against a common judgment, therefore, Appeal No. 330 of 2023 is considered the leading appeal for adjudicating the issue.

**Description of the Parties:**

3. The Appellant in the first captioned appeal, NVR Energy Private Limited, a company incorporated under the provisions of the Companies Act, 2013 is in the business of generation of renewable energy and has been operating a 100 MW solar power project located in the State of Tamil Nadu.

4. The Appellant in the second captioned appeal, Narbheram Solar TN Private Limited, a company incorporated under the provisions of the Companies Act, 2013 is also in the business of generation of renewable energy and has been operating a 100 MW solar power project located in the State of Tamil Nadu.

5. The Respondent No. 1 is the Tamil Nadu Electricity Regulatory Commission established under Section 82 of the Electricity Act, 2003 inter-alia is the appropriate Commission to adjudicate the issue.

6. Respondent No. 2 is the Tamil Nadu Electricity Distribution Company (in short TANGEDCO) which acts as a Distribution Licensee in the State of Tamil Nadu.

7. The Respondent No. 3 is the Chief Financial Controller (Revenue) of TANGEDCO.

8. Respondent No. 4 is the Superintending Engineer of TANGEDCO and the Respondent No. 5 is the State Load Despatch Centre (in short SLDC).

**Factual Matrix of the Case**

9. The Appellant emerged as the successful bidder under the Tender Specification No: CE/NCES/OT No. 1/2017-18, issued by Respondent No. 2. Consequently, the Appellant was awarded a Letter of Intent (LOI) for the establishment of a 100 MW solar power project, as detailed in LOI Reference No: CE/NCES/SE/SOLAR/EE/SCB/AEE3/F.M/s. NVR Energy Pvt. Ltd./D.773/17.

10. Post the issuance of the LOI, the Appellant entered into a Power Purchase Agreement (PPA) with Respondent No. 2 on 26.09.2017. According to the terms of the PPA, Respondent No. 2 agreed to purchase power from the Appellant at a rate of Rs. 3.47 per unit for 25 years, commencing from the Commercial Operation Date, which was 24.09.2019.

11. The Net Metering charges, Reactive Power Charges, and Meter Reading Charges were remitted to Respondent No. 2 through adjustments against the amount receivable from TANGEDCO for the power exported from the Appellant's 100 MW Solar Project.

12. However, the Appellant received charges for excess energy consumption from Respondent No. 2 via the Joint Meter Reading (JMR) Statement, without proper adjustment against the energy exported by the Appellant on a monthly basis as stipulated in the PPA and due to this incorrect

computation/adjustment, the Appellant notified Respondent No. 4, the Superintending Engineer of Tuticorin, about the erroneous calculation through letters dated 31.03.2020 and 02.05.2020.

13. Respondent No. 4, explicitly rejecting the Appellant's request without providing any valid reason or explanation, returned the supplementary invoices submitted by the Appellant for the period from October 2019 to April 2020.

14. Thereafter, the Appellant subsequently sent several additional letters to Respondent No. 4, outlining the erroneous calculation of negative energy charges and submitting supplementary invoices for the months from August 2020 to May 2022, totaling Rs. 37,05,033/-.

15. As of 30.06.2022, the amount owed to the Appellant for power exports was Rs. 26,41,42,212/-, and the excess negative energy charges imposed on the Appellant amounted to Rs. 47,16,539/- for the invoices raised up to May 2022.

16. The Appellant filed the Petition bearing No. D.R.P No. 8 of 2021 on 17.06.2021, seeking adjustment of energy consumed by the Appellant against the energy injected into the grid by the Appellant from its 100MW solar power plant.

17. The Respondent No. 1 vide its order dated 05.04.2022 partially dismissed the Appellant's Petition by ruling that the energy adjustment methodology outlined in the Comprehensive Tariff Order on Solar Power Order No. 5 of 2019 dated 29.03.2019 (in short 2019 Tariff Order), as read with the Comprehensive Tariff Order on Solar Power Order No. 9 of 2020 dated

16.10.2020 (in short 2020 Tariff Order), apply to the present matter, rather than Clause 1(a) and 5(c) of the PPA dated 26.09.2017.

18. Aggrieved by the impugned order in DRP No. 8 of 2021 passed on 05.04.2022 by Respondent No. 1, the Appellant has preferred the present appeal.

### **Submissions of the Appellant**

19. The Appellant submitted that the clause 5 of the Tariff Order 2020 is not applicable to them. The Appellant is exempted from Clause 5.4.1.1 of the Tariff Order dated 16.10.2020 because they do not fall under the category of captive wheeling/open access. The Appellant is generating and supplying energy exclusively to the distribution licensee (Respondent No. 2), and thus, wheeling is not applicable. Further, the Appellant supplies electricity directly to the respondents' substation, making Clause 5 irrelevant. This position is supported by the case of **Star Wire (India) Vidyut Pvt. Ltd. v. HERC, 2016 SCC Online APTEL 21**.

20. Furthermore, chapter headings/marginal note can be used as interpretative tools and serve as preambles to their respective sections, which is applicable in cases of ambiguity as established in **Tata Power v. Reliance Power, (2009) 16 SCC 659**. The marginal note of Clause 5 takes precedence when interpreting Subclause 5.4.1.1. Therefore, when Clause 5.4.1.1 of the Tariff Order dated 16.10.2020 is read together with the marginal note of Clause 5, it is clear that the Appellant is excluded from the specified category.

21. It is submitted by the Appellant that the adjustment done complies with Clause 1(a) and Clause 5(c) of the Power Purchase Agreement (PPA) dated 26.09.2017, which outline the methodology for calculating dues.

*“1. Definitions*

*(a) “Billing Period” means the time period between the date of meter reading in a particular month and the corresponding reading in the immediately succeeding month and month shall mean a month reckoned in a British Calendar.*

.....

*5. Tariff and Other charges:*

*(c) Start up Power Charges: The drawal of energy by the SPG from the distribution Licensee shall be adjusted against the exported energy for every billing period. In case, drawal of power is in excess over the exported power in a billing month, such excess drawal shall be billed, as per Commission’s Tariff Order in force.”*

22. By conjoint reading of both the clauses together, it is evident that the energy used by the Appellant during a billing period, defined as a calendar month per Clause 1 of the PPA, must be fully offset against the energy supplied to the grid by the Appellant’s 100 MW solar power plant within that same billing period. The Appellant can only be charged by Respondent No. 2 / TANGEDCO according to the Commission’s current tariff order if the energy consumed by the Appellant exceeds the total energy injected into the grid by their 100 MW solar power plant during that billing period. The Appellant's total energy consumption during any billing period has never surpassed the total energy supplied to the grid.

MONTH	ENERGY INJECTED (kWh)	ENERGY DRAWN (kWh)
October 2019	32,79,000	42,300
November 2019	41,64,300	37,800
December 2019	40,85,700	38,100
January 2020	62,00,400	36,300
February 2020	65,94,600	38,400
March 2020	1,02,57,000	51,300
April 2020	94,26,000	57,300
May 2020	94,00,500	57,300
June 2020	1,09,88,700	51,300
July 2020	1,23,60,600	56,100
August 2020	1,28,03,400	58,800
September 2020	54,35,400	40,200
October 2020	86,53,800	53,700
November 2020	74,15,400	45,900
December 2020	65,72,100	62,700
January 2021	95,00,700	75,600
February 2021	1,31,07,000	61,200
March 2021	1,39,50,900	66,900
April 2021	1,19,42,700	61,200
May 2021	1,16,99,400	63,600
June 2021	1,30,74,300	56,100
July 2021	1,33,84,800	62,100
August 2021	1,39,11,900	62,700

September 2021	1,45,92,300	61,500
October 2021	1,15,81,500	64,500
November 2021	87,71,700	62,700
December 2021	1,29,48,000	60,000
January 2022	1,25,90,700	65,400
February 2022	1,20,81,000	58,500
March 2022	1,50,35,100	62,700
April 2022	1,22,18,400	58,500
May 2022	1,39,12,500	60,000

23. The criteria established in the PPA set a threshold for energy consumption during the billing period. The Commission's Tariff Order becomes applicable only if the energy consumed exceeds the energy injected into the grid.

24. Upon receiving the incorrect computation/adjustment, the Appellant notified Respondent No. 4, the Superintending Engineer of Tuticorin, of the error through letters dated 31.03.2020 and an email sent on 22.04.2020. The Appellant also submitted supplementary invoices for excess negative energy charges for the period from October 2019 to March 2020, amounting to Rs. 6,17,027/-, via the same email dated 22.04.2020.

25. Further, it submitted that clause 10 of the PPA, which implements provisions of the Electricity Act 2003, may only be invoked if the PPA does not specify the mode and manner of computation.

26. The Appellant's tariff was established only through a transparent competitive bidding process, and the PPA was created following the procedure

outlined in Section 63 of the Electricity Act 2003. According to Section 63, regardless of the provisions in Section 62 of the Act, the terms of the PPA are applicable.

27. It was further submitted that the Respondent's use of a time slot basis for calculation was never contemplated in the PPA, which does not mention any slot-wise adjustment of imported and exported energy. If Respondent No. 2's interpretation is applied, the project's commercial viability would be severely compromised, violating Section 68 of the Electricity Act, 2003.

28. The Appellant placed reliance on the following judgements;

- a.) Punjab State Power Corporation Limited v. Enterprise Business Solutions Pvt. Ltd., 2015 SCC Online APTEL 12 {Para 8 (h)};
- b.) Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508 (Para 49);
- c.) Satya Jain v. Anis Ahmed Rushdie, (2013) 8 SCC 131 (Para 33);

#### **Submissions of Respondent Nos. 2 to 4**

29. It is the submission of Respondent Nos. 2 to 4 that as per clauses 5 and 7 of the PPA, the energy consumed by the Appellant shall be adjusted against the energy exported by the Appellant when the drawl is more than the exported power and the excess drawl of power will be billed as per TNERC's tariff order. Therefore, the charges levied upon the Appellant are in terms of the Joint Meter Readings (in short JMR) for the excess energy drawn by the Appellant.

30. Articles 5(c) and 7(c) of the PPA specify that billing for excess energy drawn must occur monthly, as outlined in the current Tariff Order. These articles

dictate that the methodology for calculating excess energy drawn is detailed in the applicable Tariff Order.

31. Article 5(c) states that excess energy be billed according to the Commission's current Tariff Order. Therefore, billing and payment will be conducted at the end of each monthly billing period, determined by net energy exported and imported calculations outlined in the Tariff Order. The relevant provisions of the PPA are extracted below:

***“5. Tariff and Other charges:***

...

***(c) Start up Power Charges:***

*The drawal of energy by the SPG from the distribution Licensee shall be adjusted against the exported energy for every billing period. In case, drawal of power is in excess over the exported power in a billing month, such excess drawal shall be billed, as per Commission's Tariff Order in force.*

...

*7... (c) The Distribution Licensee wherever necessary, shall raise a bill at the end of a billing period of one month for the power drawn by the SPG in excess over the exported power and the SPG shall make payment to the Distribution Licensee at HT Temporary Supply Tariff within the time stipulated to the HT Consumers in the Commission's Supply Code 2004 as amended from time to time”*

32. The Articles 5(c) and 7(c) have to be read along with Article 10 of the PPA, which provides as follows:

***“10. Applicability the Electricity Laws:***

*Both parties shall be bound by the provisions contained in the Electricity Act, 2003, (C4 36 of 2003) and the Regulations, Rules, Codes, Notifications, orders, etc., made there under, as amended from time to time.”*

33. Therefore, the PPA has to be read with the Tariff Order in force, in order to ascertain the methodology to be determined while calculating the charges for the excess energy drawn by the Appellant.

34. It is submitted that the Tariff Orders require solar power generators to account for energy exported and imported in time blocks when calculating net energy for a billing period, typically monthly.

35. The relevant provisions in the 2019 Tariff Order and 2020 Tariff Order in this regard, are as under;

2020 Tariff Order

**“5.4 Grid Availability Charges**

*5.4.1 Charges for the start-up power supplied by the distribution licensee 5.4.1.1 The question of startup power does not arise for Solar PV generators. Any Power drawn during the non-generating period of solar power i.e. beyond 7.00 AM to 6.00 PM shall be charged at HT industrial tariff. Power drawn during the solar generating period of 7.00 AM to 6.00 PM in excess of generation shall also be charged at HT industrial tariff.”*

2019 Tariff Order

*11.5.4 Till such time the DSM is implemented in the State, if a solar power generator utilizes power for captive use or if he sells it to a*

*third party, the distribution licensee shall raise the bill at the end of the billing period for the net energy supplied. The licensee shall record the slot wise generation and consumption during the billing period. Slot wise adjustment shall be for the billing period. Peak hour generation can be adjusted to normal hour or off peak hour consumption of the billing period and normal hour generation can be adjusted to off peak hour consumption of the billing period. Excess consumption will be charged at the tariff applicable to the consumer subject to the terms and conditions of supply.*

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

36. The above clauses contemplate that the billing of net energy is to be done on a slot-wise basis.

37. The Learned Counsel for Respondent Nos. 2 to 4 further submitted that the Appellant had argued that the provisions in both the 2019 Tariff Order and the 2020 Tariff Order pertain to open access and thus do not apply to sales to the distribution licensee. However, it is contended that these provisions establish the principle for adjusting energy injections and withdrawals by solar power generators. The Power Purchase Agreement (PPA) does not specify the method for making adjustments to determine net energy, instead referencing applicable orders and regulations. Therefore, the regulatory framework outlined in these Tariff Orders governs how adjustments are made and net energy is calculated.

38. The issue of the applicability of the Tariff Orders was clarified by Respondent No. 1 through its order dated 13.07.2021, as referenced in paragraph 6.10.7 of the impugned order. Accordingly, Respondent No. 2 correctly applied charges only when the Appellant drew more power than it generated during specific time slots. Respondent No. 2's actions align with the directives of the TNERC orders dated 29.03.2019, 16.10.2020, and 13.07.2021. These orders have not been contested by the Appellant and are now considered as final.

39. Thereafter, it is important to contemplate that solar power plants generate energy during daylight hours but are inactive at night, still consuming energy throughout the day. Therefore, adjusting energy on a time slot basis ensures accurate reflection of power supplied from solar plants, benefiting consumers and maintaining grid stability.

40. The above contention can also be weighted upon based on the TNERC (Forecasting, Scheduling and Deviation Settlement and related matters for Wind and Solar Generation) Regulations, 2019 (**in short “TNERC DSM Regulations”**) wherein the time block-wise adjustment of injected/ drawn energy is mentioned:

*“16 Energy Accounting*

*16.5 The SLDC/Distribution licensee as mutually agreed shall prepare the statement of accounting of energy in each time block for the wind and solar energy generators and the procurers on monthly basis for the purpose of billing. The billing centre of the distribution licensee shall be responsible for energy accounting, raising and settlement of bills with the procurers.”*

41. The objective of all DSM Regulations is to establish a framework that ensures grid stability through penalties and incentives for deviations from scheduled energy injections or withdrawals. This goal relies on adjusting energy on a time block basis to accurately account for the actual power supplied by solar power plants, thereby benefiting consumers and maintaining grid stability.

42. Further, Respondent Nos. 2 to 4 argued that the Appellant's argument that Tariff Orders do not apply because the tariff under the current PPA was discovered under Section 63 of the Electricity Act, 2003, is incorrect and it is so because of the following reasons:

a.) The PPA itself, particularly under Article 10 and Article 5(c), binds the parties to comply with the applicable orders of the Commission. Article 5(c) specifically mandates that any excess power drawn over exportation in a billing month must be billed according to the Commission's Tariff Order in force. Therefore, the Respondent's reliance on Tariff Orders for calculating excess energy consumption falls within the scope of the PPA.

b.) The Commission's authority under Section 63 of the Electricity Act, 2003 is limited to approving tariffs discovered through the bidding process and does not extend to fixing tariffs for such PPAs. By adhering to the Commission's Tariff Order as outlined in the PPA, the tariff discovered through the bidding process remains intact, preserving the integrity of the Section 63 PPA.

c.) Moreover, the PPA stipulates that billing for excess energy consumption must occur monthly. The methodology for billing is governed by Tariff Orders, allowing the Commission to exercise its

jurisdiction in the interest of consumers and the public, as established in the case of All India Power Engineer Federation v. Sasan Power Ltd. (2017) 1 SCC 487;

*“31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.”*

43. Furthermore, the Power Purchase Agreement (PPA) states that the Tariff Orders issued by the Commission apply when calculating excess energy consumption. The Appellant cannot argue for an interpretation of the PPA based on achieving supposed business efficacy if it contradicts these express terms. It is a settled law that contract interpretation, even for commercial purposes or to enhance business effectiveness, must not contravene the express terms of the agreement, as affirmed in the case of Nabha Power Ltd. v. Punjab SPCL (2018) 11 SCC 508;

*“47. In Union of India v. D.N. Revri & Co. [Union of India v. D.N. Revri & Co., (1976) 4 SCC 147] , P.N. Bhagwati, J. (as he then*

*was), speaking for the Bench of two Judges said in para 7 as under: (SCC p. 151) “7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation. ...”*

44. It was further argued that Respondent No. 1 has correctly determined that slot-to-slot adjustment applies uniformly to all solar power generators, including the Appellant. The 2020 Tariff Order does not specify an alternative adjustment method for solar generators supplying power to TANGEDCO.

45. Respondent No. 2 to 4 further submitted that the Appellant has argued that the heading of Clause 5 in the 2020 Tariff Order, titled "Other related issues for projects under captive wheeling/open access," should interpret Clause 5.4.1, which mandates slot-to-slot adjustment for energy drawn and exported by solar generators. The Appellant has cited *Tata Power v. Reliance Power* (2009) 16 SCC 659 to support this stance.

46. Per Contra, the 2020 Tariff Order, issued by the Respondent No. 1 under its regulatory authority, is not a statute but a regulatory order. Furthermore, under legal principles established in *Tata Power*, headings or marginal notes aid interpretation only when the language of the provision itself is ambiguous,

which is not the case with Clause 5.4.1 of the 2020 Tariff Order upon plain reading.

### **Analysis and Conclusion**

47. Having heard all parties in detail, the core question for determination in this appeal is as follows:

*"Whether the Commission, by disallowing the Appellant to set off energy charges consumed against the energy injected into the grid and by dismissing the Petition while ordering the levy of negative energy charges, has acted in contravention of the terms of the Power Purchase Agreement (PPA) and the principles of law?"*

48. The Appellant herein has prayed for the following:

*"a) Allow the appeal and set aside Impugned Order dated 05.04.2022 passed by the Hon'ble Tamil Nadu Electricity Regulatory Commission in DRP No. 09 of 2021 to the extent challenged before this Hon'ble Tribunal;*

*b) Declare that the Appellant being the net exporter of energy, the energy consumed is to be adjusted with the energy exported during the respective billing month and hold that the methodology adopted of imposing excess negative energy charge upon the Appellant's Solar Power Plant is erroneous and not in compliance with Clause 1(a) and 5(c) of the PPA;*

*c) Direct the Respondent No. 2 and 4 to modify the JMR Statements for the period October 2019 till May 2022 and such further periods until disposal of the petition such that the calculation of negative energy charges is made therein on monthly billing period basis as per the PPA*

*instead of time slot basis and refund any sums collected from the petitioner by adopting such methodology including payments against the supplementary bills aggregating to Rs. 42,09,230/-, that have been collected by the Respondents till date;*

*d) Pass such other or further order or orders as to this Hon'ble Tribunal may deem fit & proper in the interest of justice.”*

49. Respondent Commission has upheld the applicability of the energy adjustment methodology outlined in the Comprehensive Tariff Order on Solar Power, Order No. 5 of 2019, dated 29.03.2019 as further clarified in the Comprehensive Tariff Order on Solar Power, Order No. 9 of 2020, and dated 16.10.2020.

50. Articles 5(c) and 7(c) of the PPA explicitly provide for billing of excess energy drawn by the Solar Power Generator (SPG) in respect of the billing period, which is monthly.

***“5. Tariff and Other charges:***

*...*

***(c) Start up Power Charges:***

*The drawal of energy by the SPG from the distribution Licensee shall be adjusted against the exported energy for every billing period. In case, drawal of power is in excess over the exported power in a billing month, such excess drawal shall be billed, as per Commission's Tariff Order in force.*

*...*

*7... (c) The Distribution Licensee wherever necessary, shall raise a bill at the end of a billing period of one month for the power drawn by the SPG in excess over the exported power and the SPG shall make*

*payment to the Distribution Licensee at HT Temporary Supply Tariff within the time stipulated to the HT Consumers in the Commission's Supply Code 2004 as amended from time to time”*

51. These provisions stipulate that the excess energy drawn must be billed at the end of every billing period/month, based on the net energy exported and imported. However, the Tariff Order in force governs the methodology for determining the excess energy. Specifically, Article 5(c) states that any excess energy drawn beyond the exported energy in a billing month shall be billed as per the applicable Tariff Order issued by the Commission. Similarly, Article 7(c) requires the Distribution Licensee to raise bills for excess energy drawn and mandates payment by the SPG under the HT Temporary Supply Tariff, following the Commission's Supply Code, 2004, as amended.

52. Articles 5(c) and 7(c) must be read in conjunction with Article 10 of the PPA, which binds the parties to the provisions of the Electricity Act, 2003, and the regulations, rules, codes, notifications, and orders issued thereunder.

***“10. Applicability the Electricity Laws:***

***Both parties shall be bound by the provisions contained in the Electricity Act, 2003, (C4 36 of 2003) and the Regulations, Rules, Codes, Notifications, orders, etc., made there under, as amended from time to time.”***

53. This reinforces the requirement to read the PPA in alignment with the Tariff Order in force to ascertain the methodology for calculating excess energy drawn. Therefore, TNERC rightly recognized the need for such a harmonious interpretation, integrating the PPA terms with the applicable legal framework.

54. The applicable Tariff Orders mandate a slot-wise or time block-wise methodology for adjusting energy drawn against energy exported by solar power generators (SPGs). This approach is critical for calculating the net energy for a billing period, i.e., each month.

55. The relevant Tariff Orders are reproduced as under:

a) **2020 Tariff Order**

***“5.4 Grid Availability Charges***

*5.4.1 Charges for the start-up power supplied by the distribution licensee*

*5.4.1.1 The question of startup power does not arise for Solar PV generators. Any Power drawn during the non-generating period of solar power i.e beyond 7.00 AM to 6.00 PM shall be charged at HT industrial tariff. Power drawn during the solar generating period of 7.00 AM to 6.00 PM in excess of generation shall also be charged at HT industrial tariff.”*

b) **2019 Tariff Order**

*11.5.4 Till such time the DSM is implemented in the State, if a solar power generator utilizes power for captive use or if he sells it to a third party, the distribution licensee shall raise the bill at the end of the billing period for the net energy supplied. The licensee shall record the slot wise generation and consumption during the billing period. Slot wise adjustment shall be for the billing period. Peak hour generation can be adjusted to normal hour or off peak hour consumption of the billing period and normal hour generation can be adjusted to off peak hour consumption of the billing period.*

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

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

56. On the contrary, the PPA does not explicitly specify the methodology for energy adjustment but incorporates the applicable regulatory framework, including Tariff Orders, reference Article 10 of the PPA. The slot-wise adjustment methodology in these Tariff Orders applies universally to situations where SPGs inject and draw power for either captive use or sale to a third party.

57. The Appellant contends that the title of Article 5 reads as “Other related issues for projects under captive wheeling/open access”, and therefore, must be used for interpretation of Clause 5.4.1, in support of its contention, the Appellant has relied upon ***Tata Power v. Reliance Power, (2009) 16 SCC 659.***

58. On the contrary the Respondents submitted that firstly, the 2020 Tariff Order is not a statute, but an order passed by the TNERC in the exercise of its regulatory jurisdiction, and secondly, even while interpreting statutes, headings and/ or marginal notes are used as an aid only when the language of the provision itself is ambiguous, as has been held in the above-referred judgment [para 93].

59. From the bare reading of the clause, it is noted that there is no ambiguity in the language of Clause 5.4.1 of the 2020 Tariff Order.

60. Further, as contended by the appellant with reference to the title, there is no such mention in the clause thereunder. It cannot be argued that irrespective of whether the power is sold to the distribution licensee or used for open access, the principle ensures accurate calculation of net energy while upholding grid stability.

61. Undisputedly, the said provision specifies the methodology for adjusting energy injection versus the energy drawl where the SPD injects and draws energy. The PPA does not specify the manner of adjustment to arrive at net energy, therefore, the regulatory framework contained in the said Tariff Orders would define the manner of adjustment and computation of net energy.

62. The TNERC's Order dated 13.07.2021 in DRP No. 4 of 2014 reaffirmed the applicability of the Tariff Orders in defining energy adjustment mechanisms. The Commission has also correctly relied on this precedent in its analysis in paragraph 6.10.7 of the impugned order.

63. Respondent No. 2 submitted that it has imposed charges only when the Appellant has drawn more power than its generation during a particular time slot and, accordingly, acted in terms of the orders of the TNERC dated 29.03.2019, 16.10.2020 & 13.07.2021. Further, submitted that these orders have not been challenged by the Appellant and thus, have attained finality.

64. Additionally, the TNERC DSM Regulations, 2019, specifically mandate time block-wise energy accounting for wind and solar energy generators to promote grid stability and ensure balanced energy scheduling and deviations.

65. It is argued by Respondent No. 2 to 4 that solar plants generate energy only during daylight hours but consume energy throughout the day, therefore, slot-wise adjustments accurately reflect energy utilization patterns. This approach prevents disproportionate charges and supports the stability of the grid by aligning energy accounting with actual generation and consumption dynamics.

66. Therefore, we find it appropriate to uphold that the Respondent distribution licensee correctly imposed charges based on the methodology outlined in the 2019 and 2020 Tariff Orders, as well as the 13.07.2021 TNERC Order. Slot-wise adjustments remain an integral aspect of ensuring precise energy accounting and maintaining grid integrity.

67. We also find that the Respondents have not deviated from the terms of the PPA while calculating energy charges, as the Tariff Orders are explicitly incorporated within the scope of the PPA, Article 10 of the PPA binds the parties to the applicable orders of the Commission, including Tariff Orders. Article 5(c) specifically mandates that any excess power drawn beyond the exported power in a billing month shall be billed in accordance with the Commission's Tariff Orders. Thus, reliance on the Tariff Orders for calculating excess energy consumption is expressly authorized under the PPA.

68. Further, the Commission's role under Section 63 is limited to approving tariffs discovered through competitive bidding. It does not extend to fixing tariffs for such PPAs. In this case, the Respondents' adherence to the Tariff Orders for billing methodology has not altered the approved tariff. The sanctity of the Section 63 PPA remains intact, ensuring compliance with statutory and contractual frameworks.

69. Additionally, the PPA provides that the bills for excess energy consumption be raised monthly, without prescribing the specific methodology for calculating such charges, whereas, the billing methodology has to be as per the Tariff Orders, which are binding under the PPA. The Commission's jurisdiction extends to regulating such methodologies in the interest of consumers and public welfare., as upheld in *All India Power Engineer Federation v. Sasan Power Ltd.*, (2017) 1 SCC 487 (para 31), as under:

*“31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.”*

70. The Respondents vehemently countered the Appellant's attempt to deviate from the express terms of the PPA under the guise of achieving business efficacy, the Hon'ble Supreme Court in Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508 (para 47), has held that contractual interpretation must not contradict the express terms of an agreement. The explicit provisions of the PPA prioritize adherence to the Commission's orders, precluding any alternative interpretations.

71. We agree that the Respondents' reliance on the Tariff Orders for calculating excess energy consumption charges is aligned with the express terms of the PPA, thus, the Respondents have upheld both the regulatory framework and the contractual obligations under Section 63 PPA, ensuring compliance without deviation by following the prescribed methodology.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal Nos. 330 and 331 of 2023 do not have merit and therefore stand dismissed.

The Captioned Appeal and IAs, if any, are disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 9<sup>th</sup> DAY OF JANUARY, 2025.**

**(Virender Bhat)  
Judicial Member**

**(Sandesh Kumar Sharma)  
Technical Member**

pr/mkj/k