

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

**APPEAL NO. 176 OF 2016,
APPEAL NO. 177 OF 2016,
APPEAL NO. 52 OF 2017 & IA NO. 145 OF 2017,
APPEAL NO. 102 OF 2017 & IA NO. 149 OF 2017,
APPEAL NO. 380 OF 2017
&
APPEAL NO. 381 OF 2017**

Dated: 16.06.2025

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

APPEAL NO. 176 OF 2016

IN THE MATTER OF:

Tamil Nadu Spinning Mills Association,
#2, Karur Road,
Modern Nagar, Dindigul – 624 001
Tamilnadu,

- **Appellant**

Vs.

1. Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary,
No. 19A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008, Tamil Nadu.
2. Tamil Nadu Generation And Distribution
Corporation Ltd (TANGEDCO)
Represented by its Chairman and Managing Director,

144, Anna Salai,
Chennai – 600 002.

3. Tamil Nadu Transmission Corporation Ltd (TANTRASCO)
Represented by its Chairman and Managing Director,
144, Anna Salai,
Chennai – 600 002.

- **Respondents**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Kumar Mihir
Mr. Avinash Menon

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

Ms. Anusha Nagarajan for R-2

Mr. S. Vallinayagam for R-3

APPEAL NO. 177 OF 2016

IN THE MATTER OF:

Tamil Nadu Spinning Mills Association,
#2, Karur Road,
Modern Nagar, Dindigul – 624 001
Tamilnadu,

- **Appellant**

Vs.

1. Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary,
No. 19A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008, Tamil Nadu.
2. Tamil Nadu Generation And Distribution

Corporation Ltd (TANGEDCO)
Represented by its Chairman and Managing Director,
144, Anna Salai,
Chennai – 600 002.

3. Tamil Nadu Transmission Corporation Ltd (TANTRASCO)
Represented by its Chairman and Managing Director,
144, Anna Salai,
Chennai – 600 002.

- **Respondents**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Kumar Mihir
Mr. Avinash Menon

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

Ms. Anusha Nagarajan for R-2

Mr. S. Vallinayagam for R-3

APPEAL NO. 52 OF 2017 & IA NO. 145 OF 2017

IN THE MATTER OF:

Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor,
Shakti Towers – II, 766, Anna Salai,
Chennai – 600 002.

- **Appellant**

Vs.

1. Tamil Nadu Generation And Distribution
Corporation Ltd (TANGEDCO)
Represented by its Chairman and Managing Director,
144, Anna Salai,

Chennai – 600 002.

2. TANTRASCO/SLDC,
Represented by its Director,
144, Anna Salai,
Chennai – 600 002.

3. The Secretary
Tamil Nadu Electricity Regulatory Commission,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls, Egmore, Chennai-600 008,

- **Respondents**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Ms. Sonakshi Malhan

Counsel for the Respondent(s) : Ms. Anusha Nagarajan for R-1
Mr. S. Vallinayagam for R-2
Mr. Sethu Ramalingam for R-3

APPEAL NO. 102 OF 2017 & IA NO. 149 OF 2017

IN THE MATTER OF:

Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor,
Shakti Towers – II, 766, Anna Salai,
Chennai – 600 002.

- **Appellant**

Vs.

1. Tamil Nadu Generation And Distribution
Corporation Ltd (TANGEDCO)
Represented by its Chairman and Managing Director,

144, Anna Salai,
Chennai – 600 002.

2. TANTRASCO/SLDC,
Represented by its Director,
144, Anna Salai,
Chennai – 600 002.

3. The Secretary
Tamil Nadu Electricity Regulatory Commission,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls, Egmore, Chennai-600 008,

- **Respondents**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Ms. Sonakshi Malhan

Counsel for the Respondent(s) : Ms. Anusha Nagarajan for R-1
Mr. S. Vallinayagam for R-2
Mr. Sethu Ramalingam for R-3

APPEAL NO. 380 OF 2017

IN THE MATTER OF:

TANGEDCO
Rep. by the Chief Engineer/NCES,
NPKRR Maaligai,
144, Anna Salai, Chennai – 600 002.

- **Appellant**

Vs.

1. The Secretary
Tamil Nadu Electricity Regulatory Commission,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls, Egmore, Chennai-600 008

Tamil Nadu.

2. Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor,
Shakti Towers – II, 766, Anna Salai,
Chennai – 600 002, Tamil Nadu.
2. Tamil Nadu Spinning Mills Association
#2, Karur Road,
Modern Nagar, Dindigul,
Tamil Nadu – 624 001.

- **Respondents**

Counsel for the Appellant(s) : Ms. Anusha Nagarajan

Counsel for the Respondent(s) : Mr. M. G. Ramachandran, Sr. Adv.

Ms. Sonakshi Malhan for R-2

Mr. M. G. Ramachandran, Sr. Adv.
Mr. Kumar Mihir
Mr. Avinash Menon for R-3

APPEAL NO. 381 OF 2017

IN THE MATTER OF:

TANGEDCO
Rep. by the Chief Engineer/NCES,
NPKRR Maaligai,
144, Anna Salai, Chennai – 600 002.

- **Appellant**

Vs.

1. The Secretary
Tamil Nadu Electricity Regulatory Commission,
No. 19-A, Rukmani Lakshmipathy Salai,

Marshalls, Egmore, Chennai-600 008
Tamil Nadu.

2. Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor,
Shakti Towers – II, 766, Anna Salai,
Chennai – 600 002, Tamil Nadu.
2. Tamil Nadu Spinning Mills Association
#2, Karur Road,
Modern Nagar, Dindigul,
Tamil Nadu – 624 001.

- **Respondents**

Counsel for the Appellant(s) : Ms. Anusha Nagarajan

Counsel for the Respondent(s) : Mr. M. G. Ramachandran, Sr. Adv.
Ms. Sonakshi Malhan for R-2

Mr. M. G. Ramachandran, Sr. Adv.
Mr. Kumar Mihir
Mr. Avinash Menon for R-3

ORDER

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

1. This batch of appeals has been filed challenging the Orders dated 31.03.2016 and 09.12.2016, passed by the Tamil Nadu Electricity Regulatory Commission, the details are as under:

Sr. No.	Appeal Number Details	Impugned Order Details
1.	APL No. 176 of 2016 (Filed by Tamil Nadu Spinning Mills Association)	Impugned Order dated 31.03.2016 passed by TNERC in Remand Proceeding wherein this Tribunal remanded the Wind Tariff Order 2012 vide Order dated 24.05.2013 in Appeal No. 208 of 2012. (Issues pertain to Wind Tariff Order 2012)
2.	APL No. 177 of 2016 (Filed by Tamil Nadu Spinning Mills Association)	Impugned Order dated 31.03.2016 passed by TNERC in the 2016 Wind Tariff Order. (Issues pertain to Wind Tariff Order 2016)
3.	APL No. 52 of 2017	Impugned Order dated 09.12.2016 passed by TNERC in Review Petition filed against 2016 Wind Tariff Order dated 31.03.2016.

	(Filed by Indian Wind Power Association)	
4.	APL No. 102 of 2017 (Filed by Indian Wind Power Association)	Impugned Order dated 31.03.2016 passed by TNERC in the 2016 Wind Tariff Order.
5.	APL No. 380 of 2017 (Filed by TANGEDCO)	Impugned Order dated 31.03.2016 passed by TNERC in Remand Proceeding wherein this Tribunal remanded the Wind Tariff Order 2012 vide Order dated 24.05.2013 in Appeal No. 208 of 2012. (Issues pertain to 2012 Wind Tariff Order)
6.	APL No. 381 of 2017 (Filed by TANGEDCO)	Impugned Order dated 31.03.2016 passed by TNERC in Tariff Order of 2016. (Issues pertain to 2016 Wind Tariff Order)

Description of Parties

2. The contesting parties in this batch of appeals are as under:

Appeal No.	Appellant	Respondents

176	Tamil Nadu Spinning Mills Association	TNERC- State Commission TANGEDCO- Distribution Licensee TANTRASCO- Transmission Licensee
177	Tamil Nadu Spinning Mills Association	TNERC- State Commission TANGEDCO- Distribution Licensee TANTRASCO- Transmission Licensee
52	Indian Wind Power Association	TANGEDCO- Distribution Licensee TANTRASCO- Transmission Licensee TNERC- State Commission
102	Indian Wind Power Association	TANGEDCO- Distribution Licensee TANTRASCO- Transmission Licensee TNERC- State Commission
380	TANGEDCO	TNERC- State Commission Indian Wind Power Association Tamil Nadu Spinning Mills Association
381	TANGEDCO	TNERC- State Commission Indian Wind Power Association Tamil Nadu Spinning Mills Association

3. Tamil Nadu Spinning Mills Association (in short “TNSMA”) and Indian Wind Power Association (in short “IWPA”) are Registered Associations exclusively to represent and address the problems and grievances of the Spinning Mills and Wind Generators situated in the State of Tamil Nadu.

4. Tamil Nadu Electricity Regulatory Commission (In short “State Commission” or “TNERC”) constituted under Section 82 of the Electricity Act, 2003, for regulating the tariff and other charges being charged by the Licensees of the State.

5. Tamil Nadu Generation and Distribution Corporation Ltd. (in short “TANGEDCO” or “Discom”) is the Distribution Licensee in the State of Tamil Nadu, and Tamil Nadu Transmission Corporation Ltd (in short “TANTRASCO”) is the State Transmission Utility.

Factual Matrix

6. The factual Matrix is noted in brief in the succeeding paragraphs.

7. These appeals have been filed under Section 111 of the Electricity Act, 2003, challenging the order of the Tamil Nadu Electricity Regulatory Commission (TNERC) dated 31.03.2016 in Remand Proceedings (R.A. No. 6 of 2013) and the Order dated 09.12.2016 in Review Petition filed against 2016 Wind Tariff Order dated 31.03.2016, determining various charges and conditions applicable to wind energy generators in the State of Tamil Nadu.

8. The issues for adjudication before this Tribunal are:

- (1) Whether TNERC was justified in directing that transmission and wheeling charges be levied based on installed capacity rather than on the actual units generated.

- (2) Whether TNERC was right in increasing the banking charges to 10% of the energy without providing cogent reasons or justification.
- (3) Whether TNERC erred in law and on facts by withdrawing the Deemed Demand Charges without any justification.
- (4) Whether there is a violation of natural justice.
- (5) Transmission, Wheeling Scheduling, and System Operation Charges & Line Loss
- (6) Applicability of Impugned Order on already commissioned Wind Project
- (7) Eliminate the banking facility for wind energy generators, given the fact that the banking facility resulted in substantial financial loss to the distribution licensee.

9. After hearing the learned advocates on either side, we noted that the State Commission under the remand proceedings has preferred to ignore the directions passed by this Tribunal and acted contrary to the observation made therein. Accordingly, vide Order dated 04.10.2024, this Tribunal decided as under:

“Heard Mr. M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Appellant, Mr. Sethu Ramalingam, Learned Counsel for the Respondent Commission and Ms. Anusha Nagarajan, Learned Counsel for TANGEDCO for sometime.

We find it appropriate to pass an interim order in these batch of appeals along with a direction to carry out system studies for the purpose of various issues raised herein.

Order is Reserved. *Written Submission, if any, shall be filed within two weeks with advance copy to the other side.”*

10. Therefore, the main issue before us is whether the State Commission has complied with the directions issued by this Tribunal through the Remand Order.

11. The TNSMA contended that the State Commission has passed the Impugned Order, ignoring the directions issued by this Tribunal, and also without basing on any substantiated study.

12. Accordingly, we find it appropriate first to examine the main issue of non-compliance with the issued directions.

Observations and Conclusion

13. The arguments put forth by the TANGEDCO are noted as under:

- i. TANGEDCO submitted that during the hearings dated 13.09.2024 and 04.10.2024, arguments were advanced by the parties only on the issue of banking charges. The issue of banking is the subject matter of APL No. 176 of 2016, APL No. 177 of 2016 filed by TASMA, and cross-appeals bearing APL No.380 of 2017 and APL No. 381 of 2017 filed by TANGEDCO. The

issue of banking charges has not been raised in APL No. 52 of 2017 and APL No. 102 of 2017 filed by IWPA.

- ii. It is submitted that the banking charges were fixed at 2% in 1986 and raised to 5% in 2001. The figure remained at 5% in the 2006 Tariff Order. Further, TNERC retained the figure of 5% in Tariff Order 2009 and continued the said charge till 2012. In the 2012 Wind Tariff Order, TNERC sought to adopt a different methodology for computation of banking charges on the basis of difference between average power purchase cost of INR 4.45 per unit and maximum preferential tariff for wind energy in 2012 Wind Tariff Order i.e., Rs. 3.51 per unit. The computation so arrived at led to banking charges of INR 0.94 per unit.
- iii. The aforesaid change in the methodology was challenged by TASMA, the Appellant, in APL No. 208 of 2012 and batch before this Hon'ble Tribunal. This Hon'ble Tribunal vide Order dated 24.05.2013, **remanded** the matter to the TNERC to reconsider the computation of the banking charges after hearing the stakeholders and decide the issue afresh, keeping in view the observations made by this Hon'ble Tribunal in Appeal No. 98 of 2010.
- iv. It is pertinent that the aforesaid issue was remanded by this Tribunal for redetermination of banking charges. No directions were issued requiring the TNERC to conduct any study or to determine the banking charges in any particular manner. It is important to mention that Civil Appeal No. 9677-

9682 of 2013 before the Hon'ble Supreme Court was filed by TANGEDCO against the Order dated 24.05.2013, which is pending adjudication.

- v. In the absence of any stay granted by the Hon'ble Supreme in Civil Appeal No. 9677-9682/2013, TNERC proceeded to determine the banking charges for the period 2012 to 2016 at the rate of 10% vide Order passed in remand, i.e., Order under challenge in APL No. 176 of 2016. Subsequently, TNERC passed the 2016 Wind Tariff Order increasing the banking charges to 12%, and such increase is subject matter of challenge in APL No. 177 of 2016. Further, the banking charges were increased from 12% to 14% by way of the 2018 Wind Tariff Order. The increase in banking charges from 12% to 14% by way of the 2018 Wind Tariff Order was set aside by this Tribunal by way of judgment dated 28.01.2021 passed in APL No. 191 of 2018 and batch.
- vi. It is pertinent that while setting aside the 2018 Tariff order to the extent of the increase in banking charges, this Tribunal did not interfere with the prevailing rate of banking charges at the rate of 12%.
- vii. It is pertinent that the Order dated 28.01.2021 passed by this Tribunal in APL No. 191 of 2018 and batch in relation to 2018 Tariff Order has been challenged by TANGEDCO vide Civil Appeal No. 2202-2205 of 2021 before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed an interim order on 01.10.2021 stating that “**recovery, if any, on the basis of impugned order shall not be effected from the appellant**”. The Civil

Appeals are pending for adjudication before the Hon'ble Supreme Court.
The Order dated 01.10.2021 extracted hereinbelow:

“Issue notice in the application(s) for stay.

Ms. Arunima Dwivedi, learned Advocate-on-Record, accepts notice on behalf of Respondent No. 1 – Tamil Nadu Spinning Mills Association and Mr. Samiron Borkataky, learned Advocate-on-Record, accepts notice on behalf of Watsun Infrabuild Pvt. Ltd.

In the meantime, recovery, if any, on the basis of impugned order shall not be effected from the appellant.

List on 24.11.2021.

In the meantime, the learned counsel for the parties shall submit short written submissions for the assistance of the Court.”

- viii. It is pertinent that the TNERC has also filed a Civil Appeal No. 2882-2884/2021 before the Hon'ble Supreme Court challenging the Order dated 28.01.2021 passed by this Tribunal in APL No. 191 of 2018 and batch. The Civil Appeals are pending for adjudication before the Hon'ble Supreme Court.
- ix. It is submitted that the captioned batch of Appeals was listed for hearing on 13.09.2024 before this Tribunal, and during the hearing, this Tribunal heard the parties on the issue of banking charges. During the hearing, TASMA, the Appellant herein, relied upon the Order dated 28.01.2021 passed by this Tribunal in APL No. 191 of 2018 and batch challenging the 2018 Wind

Tariff Order, wherein this Tribunal noted that no serious study based on scientific data has been initiated or undertaken by various State Commissions, including TNERC, to evolve a fair package on power banking for renewable sources of energy. This Tribunal had also made clear that the State Commission shall not bring about changes in the rules for power banking by any further order without undertaking a study based on requisite data properly gathered and analysed so as to draw informed conclusions about financial impact on various stakeholders.

“91. It appears that despite being cajoled, no serious study based on scientific data has been initiated or undertaken by various State Commissions, including TNERC, to evolve a fair package on power banking for renewable sources of energy. We do not know the reasons for such default seemingly across the board. The reasons may be myriad: lack of sufficient persuasion; lack of understanding; want of resources; apathy et al. The Regulatory Commission are expert bodies manned by persons with requisite knowledge and experience. They are equipped with all necessary powers and wherewithal and such studies should have by now evinced interest. In view of the decision we intend to render on this batch of appeals, we wish to remind the State Commission that under Section 86 of Electricity Act, it is also expected to exercise its powers such that they lead to not only “promote cogeneration and generation of electricity from renewable sources of energy” but also “promotion of competition,

efficiency and economy” as indeed “promotion of investment” and “reorganisation and restructuring” of electricity industry. It is vested with power and authority to frame regulations which have the force of law. There can be no doubt that in order to carry out its functions and discharge its responsibility, the Commission should be eager to undertake studies to help evolve equitable, fair and reasonable uniform principles that would have continuity and certainty rather than rest content with policies that remain ad hoc.

...

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

- x. It is pertinent that the aforesaid observation of this Hon'ble Tribunal pertains to the period subsequent to the Tariff Orders in question in the present batch of Appeals. It is submitted that any study that the TENERC may conduct at this stage ought not to prejudice the rights of TANGEDCO or impose any burden upon TANGEDCO with respect to the past period.
- xi. Further, TANGEDCO reserves all rights to make submissions in support of the Impugned Order as well as Study, if any, that is conducted by the TNERC in this context. It is specifically submitted that no recovery may be directed against TANGEDCO based on any such *post facto* study, or otherwise.
- xii. It is submitted that the issue of "*Transmission and Wheeling Charges & Line Loss*" has not yet been argued by parties. It is submitted that the issue of "*Transmission and Wheeling Charges & Line Loss*" as decided by the TNERC in 2012 Wind Tariff Order was upheld and was **not remanded** by this Tribunal in its Order dated 24.05.2013 passed in APL No. 208 of 2013 ad batch. In Order dated 24.05.2013, the Appellant in APL No. 176 of 2016 and APL No. 177 of 2016, raised a similar ground of challenge to the levy of *Transmission and Wheeling Charges & Line Loss* for the wind generators. This Tribunal vide Order dated 24.05.2013 while dismissing the challenge, noted that TNERC has actually given concession to the wind energy generator by charging only ***40% of the normal transmission and wheeling charges applicable to the conventional source of energy.***

- xiii. Similarly, in APL No. 177 of 2016, the Appellant herein once again challenged the issue of *Transmission and Wheeling Charges & Line Loss* as determined under 2016 Wind Tariff Order. In this regard, it is submitted that the TNERC adopted the same methodology as approved and upheld by this Hon'ble Tribunal in APL No. 208 of 2012 vide its Order dated 24.05.2013.
- xiv. Therefore, the grounds raised by the Appellant have no merit, as an issue already covered by the aforesaid judgment of this Tribunal.
- xv. It is submitted that the TNERC in 2006 has introduced the concept of Deemed Demand Charges as a promotional measure with a view to reduce the demand charges for all the non-conventional sources of energy. Considering the difficulties faced by the distribution licensee in recovering the full demand charges for providing all infrastructure facilities, as well as tying up of the generation capacity, the TNERC has done away with the concept of Deemed Demand Charges.
- xvi. In this regard, it is submitted that no such concept of deemed demand charges is prevailing in other states. The deemed demand charge was introduced as a promotional measure. It is well settled that no person has a vested right in the continuation of promotional measures in perpetuity. It is well within the prerogative of the TNERC while exercising its regulatory power to bring about changes in the regime after considering the views of

all stakeholders. It is pertinent that while remanding the matter, this Hon'ble Tribunal only directed the TENRC to consider the view of all stakeholders and did not direct that the deemed demand charges ought to be continued. As noted in the impugned order dated 31.03.2016, the deemed demand charges as a concept, which was introduced in respect of all the non-conventional sources of energy, has been discontinued for all such sources, and hence, there is no reason to retain it for wind energy generators alone.

- xvii. In respect of wind energy generators, the TNERC has determined the transmission, wheeling, and scheduling, and system operation charges at 40% of the respective rates applicable for conventional sources of energy. The applicability of Scheduling and System Operation Charges as payable by the generators was upheld by this Tribunal in APL No. 208 of 2012 and batch as decided by this Tribunal on 24.05.2013 in relation to the 2012 Wind Tariff Order. As observed by this Tribunal therein, Scheduling and System Operation Charges are payable to SLDC and not to TANGEDCO.
- xviii. There is no provision under the Electricity Act, 2003, to fix a separate or concessional rate of transmission charges, wheeling charges, scheduling and system operation charges for Renewable Energy Generators.
- xix. TNERC determined the rate of Scheduling and System Operation Charges at a concessional rate ranging between 30-60% of conventional energy in relation to Solar Plant, Biomass plant, bagasse-based power plant, and

other non-conventional sources of energy under the respective Tariff Orders from time to time. Importantly, no appeals have been preferred against such a levy.

- xx. TANGEDCO reserved the liberty to elaborate upon the aforesaid brief submission after conclusion of the final oral arguments in the present batch of Appeals.

14. At this stage, we are examining whether the State Commission should have decided the matter after carrying out a detailed technical and commercial study or can decide on its own wisdom and/ or arbitrary approach.

15. We, therefore, take a note of the judgment of this Tribunal remanding the matter to the State Commission. The relevant extract of the Remand Order dated 24.05.2013 passed in appeal no. 208 of 2012 and batch, regarding an increase in Banking Charges, is quoted as under:

“170. Summary of Our Findings

- i) **Circulation of Consultative Paper prior to issuing the tariff order:** No prejudice has been caused by non-circulation of Consultative Paper regarding determination of tariff of wind energy generators for procurement of power by the distribution licensee as the base for this proceeding was the last tariff order. All the stake-holders had given their suggestions for either retaining or modifying the various norms decided in the earlier*

*tariff order and the State Commission after giving them an opportunity of hearing and after considering their suggestions and objections on the various components of tariff has finally determined the tariff. However, regarding the some issues relating to the transmission and wheeling of energy from wind generators for captive use and third party sale, the State Commission has introduced new method for determination of charges as well as the mode for recovery of charges and revised the charges substantially, Hence, we feel that the State Commission should have circulated a Consultative Paper on these issues. All these issues have been specifically challenged by the Appellants in these Appeals. At this stage, when the State Commission has already given its findings and given its own reasons for the same, Circulation of a Consultative Paper by the State Commission and de-novo hearing of the case would not be necessary. **However, after considering the submissions of the parties on some specific issues, we have given our findings and remanded the matter to the State Commission for reconsideration of those issues where we felt that the Appellants have to be heard by the State Commission.***

*ix)**Abnormal Rise of Banking Charges:** The findings of the State Commission on this issue are set aside. **The State Commission is directed to reconsider the computation of the charges after hearing the stake-holdings and decide the issue afresh***

keeping in view the observations made by this Tribunal in Appeal No.98 of 2010.”

16. From the above, it is noted that this Tribunal has directed the State Commission:

- a) To reconsider specific issues where it was felt that the Appellants should be heard afresh, and
- b) To reconsider the computation of banking charges after hearing the stakeholders afresh, keeping in view the observations made by this Tribunal in Appeal No. 98 of 2010.

17. Some of the issues where this Tribunal has either remanded the matter or set aside the Order of the State Commission challenged in Appeal No. 208 of 2012 are Plant Load Factor/Capacity Utilisation Factor, Time Value of Money, Abnormal Rise of Banking Charges, Deemed Demand Charges, Encashment or lapsed Units by REC Captive users etc.

18. It is stated that appeals against the above decision are pending before the Hon'ble Supreme Court. In the remand proceedings, however, TNERC by order dated 31.03.2016 (in R.A No.6 of 2013) fixed the banking charges at 10% in kind.

19. It is also brought to our notice that in the tariff order (No. 3 of 2016), twelve (12) months' banking was retained and the banking charges fixed at 12% in kind,

as also noted in the judgment dated 28.01.2021 in Appeal No. 195 of 2018 and batch.

20. Considering para 170(ix) above, it is also important to note the relevant observations made by this Tribunal in Appeal No. 98 of 2010, the extract is placed as under:

*“16. The **next** issue related to banking of Wind Energy.*

17. According to the Appellant, it claimed before the State Commission that banking charges should be enhanced from 5% to 15% and banking period should be curtailed to one month instead of one financial year but none of these requests has been considered by the State Commission in the impugned Order. Appellant Board further contended that State Commission’s direction to pay full value of unutilised energy during enforcement of restriction mechanism would result in heavy financial burden upon it.

18. Before getting into the merits of Appellant Board’s arguments, on this issue let us understand the very concept of Banking of Electrical Energy. -----

19. The State Commission is empowered to make provisions for banking of energy generated by Renewable Sources of Energy under the Power Procurement from New and Renewable Sources of Energy Regulations, 2008. The Said Regulation is as follows:-

“3. Promotion of new and renewable sources of energy

(4) The Commission may consider appropriate banking mechanism for generation of power from a particular kind of renewable source depending upon the inherent characteristics of such source.”

20. *The relevant portion of the findings given on this issue by the State Commission is as follows:*

“8.2.1. Banking as a concept was introduced by the Tamil Nadu Electricity Board in 1986 to encourage generation of wind energy. The banking charge was fixed at 2% in 1986 and raised to 5% in 2001. The figure remained at 5% when the Commission issued order No.3 dated 15.5.2006. The banking period was fixed at one month in March 2001 by the TNEB and doubled in September, 2001. It was further raised by TNEB to one year in March, 2002 commencing from 1st April and ending on 31st March of the following year.

8.2.2 The banking charges shall be realised every month for the quantum of units generated during the billing month less the consumption of the captive users/third party sale. Slot-wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate/extra charges. No carry over is allowed beyond the banking period. Unutilised energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff. The Commission proposes to retain the same features with some modifications based on the

suggestions made by the stakeholders. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification the plea that the unutilized energy at the end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee. The plea of the TNEB to raise the banking charge from 5% to 15% and curtail the banking period from one year to one month are too radical to be accepted by the Commission.

8.2.3. Therefore, the Commission decides to retain banking charges at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month. The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy for April. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy banked in April shall be drawn to the required extend. If the consumption during May is less than the generation during May, the balance shall be reckoned as the banked energy for May and banking charges for May will be leviable only for this component. This procedure shall be repeated every month”.

*From the above observations, it is clear that concept of banking has been introduced by Appellant Board itself in 1986 to encourage generation of electricity from abundant wind power potential available in the state. Banking charges were fixed at 2% in 1986 which were enhanced to 5% in 2001. The figure remained at 5% till 2009 when the impugned order was delivered by State Commission. Thus, there was no reason for State Commission to enhance the same to 15%. **State Commission has rightly observed that the plea of TNEB (Appellant) to raise the banking charge from 5% to 15% were too radical.** As regards Appellant Board's demand for reduction of banking period from one year to one month, it is pointed out banking period was fixed at one month in March 2001, doubled to two months in September 2001 and then further increased to one year in March 2002 by Appellant Board itself. Thus Appellant Board has increased it from one month to one year within a span of one year. **There should have been some rationale on the part of Appellant Board to do so. Appellant Board has not assigned any new development, which was not present in 2001-02 and which has warranted the curtailment of banking period from one year to one month now. The State Commission has rightly rejected it as otherwise it would have rendered banking mechanism as meaningless.***

21. *Appellant Board has contended that the State Commission's direction to encash the unutilised banked energy at full value in the event of enforcement of restriction control measures would put additional financial burden on the Board. The State Commission in para 8.2.2 of the impugned order has provided that:*

" ... as and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification in the plea that the unutilised energy at the end of financial year may be encashed at full value of the relevant tariff for sale to the licensee."

22. *From the above, it is clear that this provision would come in to operation only when distribution licensee restricts the consumption of wind energy generators. We feel that the observation of State Commission is logical and just. Distribution Licensee cannot be allowed to get unduly benefitted of its own restriction imposed on consumption of energy and wind energy generators were restricted to consume their own energy banked with the Board.*

23. *Therefore, there is no justification for the Appellant to pray for the increase of Banking charges from 5% to 15% and curtailment of banking period from one year to one month. Therefore, this point is also answered accordingly.*

21. Let us examine the observation and decision of the State Commission vide the Impugned Order passed in the Remand Proceedings on the issue of Abnormal rise in Banking Charges. The relevant extract quoted from the Impugned Order as under:

“ix) Abnormal Rise of Banking Charges: *The findings of the State Commission on this issue are set aside. The State Commission is directed to reconsider the computation of the-charges after hearing the stake-holdings and decide the issue afresh keeping in view - the observations made' by this Tribunal in Appeal No.98 of 2010.*

8. Findings of the Commission:

1. *The Hon'ble Appellate Tribunal for Electricity (APTEL) in its Order dated 24.05.2013 based on the Appeal Nos. 197, 198, 200, 201, 208 of 2012 and 6 of 2013 remanded to the State Commission the following issues in the comprehensive tariff order No. 6 of 2012 on Wind Energy dated 31.07.12 for reconsideration:*

- (i) Annual Maintenance Charges & Insurance Charges*
- (ii) Plant Load factor/Capacity Utilisation Factor*
- (iii) Time Value for Money*
- (iv) Abnormal rise of banking charges*
- (v) Transmission and wheeling charges and line losses*
- (vi) Deemed Demand charges*

(vii) Encashment of lapsed units by REC Captive Users

2. Pursuant to the above, the R.A.No.6 of 2013 has been initiated by the Commission and written submissions were made by the parties to the R.A. Let us now go into the remanded issues one by one.

(iv) Abnormal rise of Banking:

With regard to banking, Hon'ble APTEL's ruling is given below:

'The findings of the State Commission on this issue are set aside. The State Commission is directed to reconsider the computation of the charges after hearing the stake-holders and decide the issue afresh keeping in view the observations made by this Tribunal in Appeal No. 98 of 2010.'

Decision of the Commission:

-----These issue have been analysed and discussed elaborately in the Wind Tariff order of 2012 and finally fixing of banking charges was decided by the Commission keeping in view that the two periods relating to banking of energy and drawl of energy from the banking should be equitable to both generators/consumers on one hand and the licensee/consumers on the other hand.

In the appeal No. 98 of 2010 filed by TANGEDCO against the previous wind energy order dated 20.03.09 passed by this Commission, the Hon'ble APTEL held that there is no justification for the Appellant to pray for the increase of banking charges from 5% to 15% and curtailment of banking period from one year to one month and observed that the State Commission has rightly decided that the prayer of the TNEB was too radical.

-----Hence, so far as the state of TamilNadu is concerned, the wind sector has been more than adequately promoted to an extent that utility is finding it difficult to handle the energy generated from the wind energy generators and facing complaints of rampant back down. It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited.

Instead of withdrawing the concession abruptly the Commission decided to compensate the losses that would be sustained by the utility in the process of extending this facility. However both the remand

applicant as well as the respondent TANGEDCO have vehemently contested the adoption of all India average purchase cost through bilateral trading.

Finally the extra power can be sold in the market. If the licensee can foresee the quantum of excess energy that may be available, in advance, it has the option of selling the same through the exchanges. As the quantum that could be banked on the given day is pretty difficult to predict in advance and initiate sale of the same through the exchange. Again the rate that can be realized from selling through exchanges depends on the demand vs supply equation. As additional energy is tended to be sold in the exchange the final derived rate would tend to go down from what it would be in the absence of such energy.

The liability to the licensee, that is the cost of banking, would be difference in cost of supplying the banked energy and realization from utilization of the same at the time of its injection.

It can be looked at in another angle also. We may try to understand what would be the gain that would be derived by the consumers of captive energy from wind energy generators due to extension of the benefit of banking. In the absence of banking facility the additional units generated would have been encashed by them at 75% of the applicable wind tariff. Let us see what happens when they

are allowed to bank that units for adjusting against their future consumption. This enable them to avoid payment of electricity consumption charges in the following months to the extent of units available at banking. In the process, the gain accruing to them on account of extension of banking is nothing but the difference between the applicable electricity consumption rate, that is to say Industrial tariff or commercial tariff as the case may be and the 75% of the wind tariff. This is the opportunity cost lost by the licensee due to the extension of banking facility. This is exactly what they want to get compensated.

The calculation of the actual cost of banking is complex as seen above especially in the absence of data and dynamic in nature. Therefore, the Commission desists from fixing finite charge in terms of paise for banking in this order.

However, the Commission fully appreciates that such concessions are not to be continued for ever beyond the point of its utility and have to be gradually withdrawn by adopting such measures which would discourage the practice.

In light of the above analysis, the Commission decides that bringing back the old practice of levying banking charges in terms of percentage of energy banked and to progressively increase it over time is the best option left to it at the present juncture. To begin with it is decided to fix the banking charges at 10% of the energy banked. While fixing so, the Commission does not want to touch the banking period of one year from 1st April to 31st March in this order.”

22. We find the justification given by the State Commission is without any justifiable reason, and is perverse and arbitrary. We find the same as contrary to its earlier decision dated 20.3.2009, relating to the Comprehensive Tariff Order for Power Procurement from Wind Energy Generators, wherein the State Commission has held as under:

"8.2.2 -----The plea of the TNEB to raise the banking charge from 5% to 15% and curtail the banking period from one year to one month are too radical to be accepted by the Commission.

8.2.3. Therefore, the Commission decides to retain banking charges at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month.---"

23. The said decision was upheld by this Tribunal vide judgment dated 18.03.2011 passed in Appeal No. 98 of 2010. Further, the State Commission has observed that *"so far as the state of Tamil Nadu is concerned, the wind sector has been more than adequately promoted to an extent that utility is finding it difficult to handle the energy generated from the wind energy generators and facing complaints of rampant back down. It is therefore time that the promotional concessions are gradually withdrawn."*, which is not contrary to the provisions of the Electricity Act, 2003, but also to various statutory policies notified by the Government of India.

24. The State Commission is bound to act in compliance with the existing laws and cannot go beyond the provisions of the Electricity Act, 2003 (refer to section 86(1)(f)). In fact, the State Commission in its Order dated 31.07.2012 has held as under:

“8.2.11 ... The Electricity Act 2003 does not have a specific provision regarding banking but at the same time Section 86 (1) (e) of the Act as well as Section 61 of the Electricity Act mandates the Appropriate Commission to promote cogeneration and generation of electricity from renewable sources of energy. The Commission has also issued the Regulation for Renewable energy, providing for banking ... the Commission could continue the banking in pursuant to section 86(1) (e) of the Electricity Act 2003 to promote the renewable energy in the state, subject to the adjustment of energy rates between the two periods relating to banking of energy and drawal of energy from the banking.”

25. Also, the State Commission, after observing that “**The calculation of the actual cost of banking is complex as seen above especially in the absence of data and dynamic in nature.**”, has increased the banking charges from 5% to 10% without conducting any substantial study.

26. This Tribunal in the Remand Order has directed the State Commission to hear the parties afresh and decide based on a rationale.

27. Undisputedly, the State Commission has failed in complying with the directions given by this Tribunal in the Remand Order.

28. It is also important that the decision of the State Commission on the identical grounds has been challenged before this Tribunal for a subsequent period, which has been set aside in Appeal No. 191 of 2018 (inter se party), after considering all earlier orders of this Tribunal as referred herein.

29. It is therefore important to note that in the identical Appeal No. 191 of 2018 and batch, this Tribunal vide judgment dated 28.01.2021 has decided that Banking is a critical incentive for wind energy and its arbitrary increase threatens financial viability of renewable projects inter alia the Order passed by the State Commission for increasing the banking charges from 12% to 14% lacks transparency and absence of data-backed analysis.

30. However, TNERC justified the increase because banking creates financial losses for TANGEDCO, as the distribution company has to purchase high-cost power to supply banked energy during non-wind seasons, supported by TANGEDCO, arguing that it is one of the few states still providing year-long banking and that wind energy generators are already receiving preferential benefits.

31. However, this Tribunal's judgment dated 28.01.2021, rendered before, ruled that arbitrary increases in banking charges violate principles of reasonableness, and TNERC failed to conduct a detailed study to substantiate the increase,

violating this Tribunal's directive that all banking charge revisions be backed by empirical data. The relevant decision of this Tribunal dated 28.01.2021 is quoted as under:

“THE RESULT

94. While deciding these appeals to direct what is deemed necessary and proper for the parties to do, we request the Central Government to call upon the Central Electricity Authority to undertake the necessary study and recommend fair and equitable solutions balancing the competing interests bearing in mind the legislative scheme and public policy of the State such that all State Commissions are properly guided.

95. For the foregoing reasons, we find the impugned order, to the extent challenged, to be suffering from the vices of being shorn of reasons, arbitrary, capricious, unjust and inequitable. We, therefore, set aside and vacate the directions of the State Commission in the impugned order to the extent it stipulated (a) withdrawal of banking facility (i) for 12 months to Wind Power Projects commissioned after 31.03.2018 and (ii) altogether for all existing and new WEGs selling under third party open access sale scheme, irrespective of date of commissioning; (b) increase in banking charges from 12% to 14%; (c) increase in cross subsidy surcharge from 50% to 60%; (d) determination of the capacity utilisation factor at high level of 29.15%; (e) increase in open access charges from 40% of the normative charges for

conventional sources of power to 50% of transmission and wheeling charges and the basis of levy on the installed capacity instead of generated units and imposing 100% scheduling and system operation charges for REC WEGs: (f) fixed feed-in-tariff at Rs.2.86 without accelerated depreciation (AD) and Rs.2.80 with AD without considering relevant parameters: and (g) reduction in liability for delay in Invoice payment on sale to Discoms category to 1% interest. **In the result, the orders on the above subjects, as prevailing prior to impugned order, shall stand restored and revived for the control period covered by the impugned order.** The State Commission shall ensure all necessary consequential orders are passed and these directions are scrupulously complied with by all concerned.

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

97. The appeals, and pending applications, are decided in above terms.

98. Besides making available copies of this judgment for the parties, we direct that the Registry shall send a copy also to the Secretary, Ministry of Power in the Central Government for necessary action with reference to the observations recorded above.”

32. It cannot be argued that the above principle holds good in the instant case, even where the instant case pertains to earlier tariff orders, however, the contesting parties are the same.

33. We are inclined to agree with the findings and decision made therein; accordingly, the captioned appeals have to be disposed of in the above terms.

34. The existing provisions prior to the passing of the Impugned Orders shall continue to be in force on the issues challenged herein.

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 176 of 2016 and the batch have merits and are allowed.

The Impugned Orders dated 31.03.2016 and 09.12.2016 passed by the State Commission are set aside to the extent as challenged herein, inter alia, direct

that the State Commission shall conduct a detailed study and, based on the study report, decide the matter afresh after publishing the study report and obtaining the comments of the stakeholders.

Accordingly, the matter is remanded to the State Commission.

The Appeal is partly allowed to the extent indicated above.

PRONOUNCED IN THE OPEN COURT ON THIS 16TH DAY OF JUNE, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks