

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**

**Order of the Commission dated this the 20<sup>th</sup> Day of July 2023**

**PRESENT:**

ThiruM.Chandrasekar .... Chairman  
ThiruK.Venkatesan .... Member  
and  
ThiruB.Mohan .... Member (Legal)

**M.P. No.37 of 2021**

M/s. Kamuthi Renewable Energy Ltd.  
Adani House  
Nr. Mithakhali Six Roads  
Ahmedabad – 380 009  
Gujarat, India.

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

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited  
Represented by its Chairman  
144, Anna Salai  
Chennai – 600 002.
2. Chief Engineer / Non Conventional Energy Sources (NCES)  
2<sup>nd</sup> Floor, NPKRR Maligai  
144, Anna Salai  
Chennai – 600 002.
3. The Superintending Engineer  
Protection & Communication  
TANTRANSCO  
P.P. Colony  
Madurai – 625 004.

4. The Superintending Engineer  
Non-Conventional Energy Sources  
TANGEDCO  
Tirunelveli – 627 011.

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

This Miscellaneous Petition stands preferred by the Petitioner M/s.Kamuthi Renewable Energy Ltd., Gujarat with a prayer to declare that consequent upon the Commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram, dated 15.04.2016 to the Petitioner certifying that the 72 MW Solar Power Plant of the petitioner was Commissioned on 31.03.2016, the entire 72 MW Solar Power Plant stood commissioned and entitled to the Tariff fixed under the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No 4 of 2014 and consequently set aside the action of the 2nd Respondent in its internal communication in Memo No.CE/NCES/SE/Sol/EE/SCB/AIIF.ID.1248/16 dated 20.9.2016 as acted upon by the 4th Respondent in its communication dated 30.9.2016 in Lr.No.SE/NCES/TIN/Tech/F.KRELID.517/2016 to segregate the 72 MW Solar Power Plant erected by the Petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different Tariff rates as illegal and without jurisdiction

This petition coming up for hearing on 28-09-2021, 26-10-2021, 16-11-2021, 30-11-2021, 15-12-2021, 11-01-2022, 08-02-2022, 01-03-2022, 08-03-2022, 29-03-2022, 12-04-2022, 24-01-2023, 09-02-2023, 14-02-2023, 02-03-2023 and 23-03-2023 in the presence of ThiruRahul Balaji, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and

on consideration of the submission made by the Counsel for the Petitioner and Respondent, this Commission passes the following:

### **ORDER**

#### **1. Contention of the Petitioner:-**

1.1. The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is primarily engaged in the business of setting up of power plants and generation of electricity. The Petitioner has entered into an Energy Purchase Agreement ("EPA") with the Tamil Nadu Generation and Distribution Company ("TANGEDCO"), the 1<sup>st</sup> Respondent herein on 4th July, 2015 for selling solar energy generated from its solar PV power plant of 72 MW capacity.

1.2. The present Petition is being filed, being aggrieved by the action of the Respondents in seeking to act contrary to the Regulations of the Commission, the Tariff Order, the terms of the PPA entered into between the parties and the Commissioning Certificate issued by the 1<sup>st</sup> Respondent TANGEDCO which records the Commissioning of the entire 72MW Solar Power Plant of the petitioner on March 31, 2016 by issuing the impugned communication which seeks to ex post facto arbitrarily split the 72MW Commissioned project.

1.3. One of the main reasons for executing the PPAs with TANGEDCO was the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No 4 of 2014 ("Tariff Order") by which the Commission has determined the tariff payable to solar power plants commissioned during the control period of the said order at the rate of Rs.7.01 per unit. By an order dated 01-04-2015, the Commission extended the control period of solar power tariff till March 31,

2016. By virtue of this Order, all solar power projects commissioned on or before March 31,2016 became entitled to a tariff ofRs.7.01 per unit.

1.4. In 2012, the State Government came out with a Solar Energy Policy with a vision to lead the country by generating 3000 MW of Solar Power by 2015 through a policy conducive to promoting solar energy in the State. The Petitioner, which is a part of the Adani group of companies, had in 2015 proposed to set up plants of varied capacity using solar photovoltaic (PV) technology in the State in consonance with the new solar initiative by the State. One of the aspects of this policy was to encourage setting up of solar plants and fixation of tariff at a nominal rate with respect to solar power, wherein solar PV Technology was used. Therefore, as stated above, the Commission issued a Comprehensive Tariff Order on Solar Power dated 12.09.2014 vide Order No.4 of 2014, and the tariff was fixed at Rs.7.01 per unit. Furthermore, in terms of the TNERC Power Procurement from New and Renewable Sources of Energy Regulations, 2008, the control period of the tariff was fixed as two years and the format for the Energy Purchase Agreement ("EPA") was to be determined by the Commission after discussions with the generators and the distribution licensees.

1.5. Consequent upon such Tariff Order, the Respondent issued proceedings contained in CMD TANGEDCO Proceedings No. 454 dated 7.10.2014, laying down instructions for the processing of applications for establishment of solar power plants under the Preferential Tariff Scheme. A perusal of the said proceedings establish that the initial documents to be furnished include:

- (a) a request letter mentioning the project capacity, apart from the duly filled application and a copy of the land document, being either the registered sale deed or lease deed;
- b) a request letter of the developer mentioning the project capacity, location viz. survey number of the land, Village Taluk, District and option (sale to board/captive/third party sale);
- c) Duly filled application format;
- d) Copy of land document- registered sale deed or lease deed if available;
- e) Registration fees- Rs.10,000/- per application;
- f) Load flow study consultation charges: up to project capacity of 15 MW - Rs.2,00,000/- + service tax (For project capacity up to 15 MW and if the transmission feasibility is at 110KV voltage level, then the developer has to pay an amount of Rs.5,00,000/- + service tax). For project capacity greater than 15 MW (Rs.5,00,000/- + service tax)
- g) 50% of the applicable security deposit.

1.6. In response to the above, the Petitioner company, issued an expression of interest for the establishment of a 72 MW solar PV power plant at O.Karisalkulam village, Kamuthi Taluk, Ramnad District, vide its application dated 26.05.2015. TANGEDCO vide its letter dated 04.07.2015 proposed to interface the above referred power plant with the TANTRANSCO grid at the sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 K V line for a distance of 7 KM, by connecting the proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS at Kamuthi, Ramnad District.

1.7. The security deposit of Rs.425.50 Lakhs was paid by the Petitioner vide P.R. No. 209352 dated 02.05.2015 and P.R.No.210596 dated 17.06.2015 for establishment of the 72 MW solar PV power plant at O. Karisalkulam village, Kamuthi Talak, Ramnad District.

1.8. Pursuant to the Tariff Order dated 12.09.2014, the energy purchase agreement was approved only on 21.01.2015, and the Commission suomotu extended the control period from 01.04.2015 as provided for under the Tariff to 31.03.2016.

1.9. The Petitioner's proposal was accepted by the 1<sup>st</sup> Respondent as per its Letter of Approval dated 04.07.2015 and consequently, an Energy Purchase Agreement was entered into between the Petitioner and the 1<sup>st</sup> Respondent dated 04.07.2015. Though the Respondent had stated in its 'Noted for Record' letter dated 04.07.2015 that the grid connectivity for the project shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS and that no deemed generation will be claimed in the event of delay in commissioning and that the tariff would be fixed by the Commission at the commissioning of the 400 Kv SS. Such clauses were not part of the Energy Purchase Agreement. In an EPA regulated by a Tariff Order and which is governed by a regulatory approved EPA, parties cannot enter into terms outside such binding Statutory orders. In any event, in the present case, as would transpire, the commissioning in fact took place and there is no claim for any deemed generation. Similarly, the letter of Undertaking issued by the petitioner dated 16.6.2015 was also restricted to making no claim for deemed generation and no claim for deemed generation has been made.

1.10. Subsequent to the execution of the PPA, the Petitioner commenced construction of its 72 MW project in right earnest, fully aware that it had to commission its project on or before 31.03.2016, i.e., the expiry of the control period, in order to avail the preferential tariff declared by the Commission under its Tariff Order.

1.11. On its part, the Petitioner proceeded with great alacrity in completing construction of its 72 MW project. In this regard, the Petitioner immediately after execution of the Power Purchase Agreement started acquiring land in respect of the project and appointed an Engineering, Procurement and Construction ("EPC") contractor. The Petitioner got the requisite permissions and approvals from the local bodies including consent from the Tamil Nadu Pollution Control Board for the commencement of the project. The Petitioner also made arrangements for financial assistance from banks and financial institutions for the project. 70% of the funding was provided by banks and financial institutions and the entire financial projections and estimates were computed on the basis of the Tariff Order dated 12.09.2014.

1.12. In the month of November, 2015, as a result of a cyclone that hit the State of Tamil Nadu and as a result of unprecedented rainfall recorded in Kamuthi Taluk, Ramnad District, there was a stoppage of construction work. In fact, such a situation continued for over a month and flooding of the construction site continued even after stoppage of rain. The Petitioner took all steps and measures to continue the construction work. However, despite the Petitioner's best efforts, the entire project was delayed due to the flooding, which was entirely beyond the Petitioner's control.

The Petitioner informed the 1<sup>st</sup> Respondent that the stalling of the construction was on account of force majeure, and was beyond the petitioner's control.

1.13. Despite the rampant rain and flooding, the Petitioner took all steps possible for completion of construction and commissioning of the plant within the control period as fixed by the Commission in its order dated 12.09.2014. On completion of the construction work, the Tamil Nadu Pollution Control Board, after carrying out the necessary inspections, on 10.02.2016 granted permission to the Petitioner for operation of the plant.

1.14. By its letter dated 17.06.2015, TANGEDCO approved the Petitioner's proposed project by interfacing it with the TANTRANSCO grid at proposed sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV evacuation line for a distance of 7 KM by connecting the proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 kV SS with necessary breaker and protection arrangement as per the TANGEDCO norms. The Respondents were entirely responsible for the commissioning of the sub-station and as per the extant regulations, the evacuation facilities for evacuating power from the solar power plant were to be provided by the Respondents. However, TANGEDCO was not acting with the same vigour and speed to enable the completion of the construction of the evacuation facilities.

1.15. As per the Energy Purchase Agreement dated 04.07.2015, TANGEDCO was to provide the evacuation facility from the point of generation to the interconnection



point which the Petitioner had duly put in place from the point of generation to the interconnection point.

1.16. The solar power project of the petitioner was in the last phase of commissioning and without any assurance from Respondent on the evacuation line, it would be difficult to commission the project. Therefore, the petitioner issued a letter to Respondent on 09.02.2016 and submitted that solar power plant is on the verge of completion in all respects and shall be ready for commissioning by 20.02.2016.

1.17. The petitioner requested to the Respondent that in order to enable to achieve the COD for solar power project that to provide grid interference arrangement on existing 110 kV Kamuthi Substation and suggested that to interface the outgoing SIC 110 kV feeder of 72 MW KREL's Power Project with one circuit of 110 kV D/C existing Kamuthi Substation to 400 kV new Kamuthi Substation line at 400 kV Kamuthi end.

1.18. The Petitioner issued a letter dated 21.03.2016 to the Superintending Engineer, Solar Energy / NCES and the 2<sup>nd</sup> Respondent herein stating that the Petitioner had completed the evacuation facilities as required under the EPA and that the 72 MW project was ready in all respects for commissioning from 20.02.2016. The plant was ready in all aspects for commissioning the 72 MW power plant and commence supply of power to the 1<sup>st</sup> Respondent herein during the control period ending 31.03.2016, subject to TANGEDCO making available the required evacuation facilities.

1.19. While so, the Chief Electrical Inspector issued a letter dated 04.03.2016 and granted approval for the commissioning of the Petitioner's 72 MW project, in terms of Regulation 43 (2) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Similar consents for operation of the power plant was issued by the Tamil Nadu Pollution Control Board in accordance with Sections 21 and 25 of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 respectively. The petitioner was submitting project status on regular basis to Respondent and requested in the letter dated 09.02.2016 to consider the alternate grid interface arrangement for evacuating power with one circuit of 110 kV D/c existing Kamuthi sub-station.

1.20. Significantly the 2nd Respondent own tie-up approval order of 29.03.2016 in Memo. No. CE/NCES/Sol/EE/SCB/AIIF.KREUD.293/16 which was clearly recorded in para 9.0 that tariff for the entire plant would be paid at Rs.7.01/kWh upon the commissioning with the temporary connectivity and para 16 only recorded limiting of power flow. Thus, clearly even at this stage of final approval, the entire plant was looked at as one unit and upon commissioning it was assured that the tariff rate would be paid.

1.21. The Superintending Engineer, NCES issued a letter to the Petitioner dated 30.03.2016 requesting payment of necessary charges and requested for the details of the payments. Thereafter, the Petitioner furnished the particulars of payments to the Superintending Engineer, NCES vide letter dated 31.03.2016.

1.22. The Respondent pursuant to the various requests and after verification granted connectivity to the petitioners 72 MW Solar Power Plant at Kamuthi 110 kV SS at 110 kV level on 31.3.2016. The Respondent certified that the solar power is commissioned as on 31.03.2016 and also provided Commissioning Certificate for the capacity of 72 MW on 15.04.2016 confirming such Commissioning on 31.3.2016. Thus, the petitioner fully complied with the requirement of the applicable Tariff Order becoming entitled to the full tariff in terms of the order applicability which allowed the Tariff for all Power Plants Commissioned within the prescribed control period. There was no other requirement for the Tariff entitlement under the Tariff Order.

1.23. The 2<sup>nd</sup> Respondent requested the Petitioner to inject only up to 25 MW of generated power out of 72 MW from the solar power project due to upstream evacuation constraint at Kamuthi 110 kV S/s at 110 kV level till the Respondent provides a permanent connectivity at New Kamuthi 400/230-110 kV Substation. Accordingly, petitioner was injecting the solar power generated up to 25 MW into the grid and facing the loss of remaining 47 MW. However, this was only an issue of power flow from the entire capacity of the 72 MW Solar Power Plant that stood commissioned. It was only the power flow which was restricted, and the entire plant continued to remain commissioned and generating.

1.24. The Petitioner informed the 2<sup>nd</sup> Respondent vide letter dated 02.08.2016 that the 110 kV bus of 400/230-110 kV New Kamuthi Sub station had been charged on 31.07.2016 and further all the remaining work of the 110 kV Bay at 400kV/230-110 kV New Kamuthi Sub station, had been completed. The Petitioner also requested the

Respondent to accord approval for interfacing of 72 MW solar power project directly with 400kV/230-110 kV New Kamuthi Sub-station.

1.25. The petitioner issued another letter dated 06.08.2016 to the 3<sup>rd</sup> Respondent herein stating that the 110 kV bus was charged on 31.07.2016 and pre-commissioning & testing activities at Kamuthi 400kV 230-110 kV SS were in an advanced stage and full Substation was likely to be commissioned on or before 20.08.2016. The Petitioner further requested to carry out the pre-commissioning & testing of petitioner's 110 kV bay as well, which will enable the petitioner to regularize Grid interface directly with Kamuthi 400kV/230 -110 kV SS by 20.08.2016.

1.26. The petitioner further informed the 1<sup>st</sup> Respondent vide letter dated 19.09.2016 that the plant was disconnected from the interim connectivity with the old Kamuthi substation from 17.09.2016 and the plant was in an idle condition, and therefore the petitioner was facing huge financial losses and generation.

1.27. The petitioner again requested the 1<sup>st</sup> Respondent for grant of permanent connectivity at New Kamuthi 400/230-110 kV Substation as the petitioner was continuously facing a loss of 47 MW from 31.03.2016 as it was only connected with temporary connectivity at Kamuthi 110 kV Sis at 110 kV till the commission of New Kamuthi 400/230-110 kV Sub-station.

1.28. The petitioner having not received any response from the 1<sup>st</sup> Respondent for getting the permanent connectivity at New Kamuthi 400/230-110 kV Substation for injecting the generated energy from the solar power plant and hence, facing huge

losses. Therefore, the Petitioner was forced to issue another reminder dated 30.09.2016 to the 2<sup>nd</sup> Respondent herein for the grant of permanent connectivity to the Petitioner's 72 MW Solar Power Plant at Ramanathapuram District.

1.29. The 4<sup>th</sup> Respondent has issued a letter to the petitioner on 30.09.2016 and agreed to grant permanent connectivity at New Kamuthi 400/230 - 110 kV Substation at 110 kV, subject to the condition that the petitioner has to install two separate meters for 25 MW & 47 MW and the energy exported by the solar power plant of petitioner to the grid of Respondent No.2 in proportionate to 25 MW shall be purchased at the rate of Rs.7.01 per unit as fixed in the TNERC Order No. 7 of 2014 and the balance energy exported to the grid shall be purchased at the tariff of Rs.5.10 per unit as fixed by the TNERC Order No.2 dated 28.03.2016. This was evidently issued at the instance of the 2<sup>nd</sup> Respondent's instruction of 20.9.2016 which the petitioner got a copy of it only subsequently on 12<sup>th</sup> March 2019 since it had all along been under the impression that the 4<sup>th</sup> Respondent was acting unilaterally after grant of tie-up approval and the petitioner was never served with the decision taken by the 2<sup>nd</sup> Respondent. Only after constantly following up for payment, it was made aware of this internal order which was directly contrary to the 2<sup>nd</sup> Respondent's own initial order of 29.3.2016 which was the original tie-up approval which clearly recorded in para 9.0 that tariff for the entire plant would be paid at Rs.7.01. Thus during this entire period, the petitioner was under the impression that the officials at the lower level were acting contrary to the express directions of the 2<sup>nd</sup> Respondent who had clearly recorded the entitlement for full tariff in the tie-up approval granted in March, 2016. It was only much later in 2019 when it became evident that the actions were pursuant to the 2<sup>nd</sup> Respondent itself changing its

position and issuing directions behind the back of the petitioner and after discovering that such a unilateral action had been passed behind the back of the petitioner and it was not even put on notice that it sought a legal remedy by approaching the Hon'ble High Court through a writ petition. The petitioner pursued such relief bonafide since it believed that the Respondent cannot seek to change its stance and act contrary to its own certification of commissioning and issuance of communication confirming entitlement to the tariff of Rs.7.01 for the entire plant.

1.30. While so, without being aware of the order which was not communicated to it, since the petitioner has already faced significant losses due to disconnection of the power plant from the grid and has not been able to inject any power. In this regard, the petitioner issued a letter dated 03.10.2016 to the 4<sup>th</sup> Respondent herein regarding the revised tie up approval accorded for change in the grid connectivity and change in tariff. In this letter, the Petitioner had requested by the 1<sup>st</sup> Respondent to limit load for grid safety continuously. Therefore, there was no dispute insofar as commissioning of the 72 MW project on 31.03.2016 was concerned and it was only for the reason of grid security and upon verbal instructions issued by the 1<sup>st</sup> Respondent, the load was limited. There cannot be any basis for post-facto segregation of contracted capacity. As mentioned in the commissioning certificate and subsequent letters, the Petitioner's plant was commissioned before 31.03.2016 and in line with the Tariff Order.

1.31. The impugned action of splitting the power plant was given effect to for the first time by the Respondent when it made payments in the month of 27.06.2017

when it made payment for part of the project at Rs.7.01/kWh and part of the project at Rs.5.10 /kWh.

1.32. It was its position that there was no dispute since the Respondent had itself issued a commissioning certificate and could not go back on it.

1.33. Aggrieved by the 1<sup>st</sup> Respondent's failure on not recognizing that the Petitioner's entire 72 MW project was commissioned before 31<sup>st</sup> March, 2016 and imposition of the tariff of Rs.5.01 per unit as per the "Comprehensive Tariff Order on Solar Power" dated 28.03.2016 for the remaining 47 Mw power injected, the Petitioner was constrained to file a writ before the honourable Madras High Court, numbered as W.P.No. 8644 of 2019. The said writ petition came to be disposed of vide order dated 07.08.2019. The Hon'ble Madras High Court has directed the Petitioner to approach the Commission as differences and disputes under the contract are to be decided by the Commission. The Hon'ble High Court also directed that the present proceedings would be proceeded without being influenced with or affected by the observations made while disposing off the Writ Petition. In any event, since the Hon'ble High Court had determined that it would not exercise writ jurisdiction in view of availability of alternative remedy, the issues raised have to be determined afresh.

1.34. First and foremost, the Respondent TANGEDCO has failed to take note of Clause 5 of the EPA, which deals with the "Tariff and Other Charges", was accepted by Respondent No.1 and it is crystal clear that the applicable tariff is not linked with the tariff as may fixed by the TNERC at the time of commissioning of 400 KV sub-

station. The tariff entitlement is solely dependent upon the power plants Commissioned during the Control Period of Order No.7 of 2014, dated 12<sup>th</sup> September, 2014 as subsequently extended.

1.35. The Respondent TANGEDCO erred in not taking into consideration the fact that Petitioner had commissioned its 72 MW solar power project on 31<sup>st</sup> March, 2016. The Commissioning Certificate has also been issued for the capacity of 72 MW on 15<sup>th</sup> April, 2016. It was only because the Respondent had asked the Petitioner to inject only upto 25 MW of generated power out of 72 MW due to upstream evacuation constraint at 110 kV level of the 110 kV Kamuthi sub-station, till the permanent connectivity provided at New Kamuthi 400/230 - 110 kV sub-station that the Petitioner was injecting the solar power generated upto 25 MW into the grid and facing the loss of remaining 47 MW. In fact the Respondent's letter requiring limiting of the injection itself records that the petitioner is entitled to Tariff at the rate of Rs.7.01 per unit. Petitioner submits that entire 72 MW project commissioned before 31<sup>st</sup> March 2016 and entire 72 MW modules and inverters were kept in operation and by changing the settings of the inverters outflow was maintained at 25 MW as directed.

1.36. TANGEDCO cannot be permitted to take advantage of their own wrong in delaying the commissioning of the Petitioner's project by failing to provide the required infrastructural facilities despite the Petitioner having kept up its obligations solely because the 400 KV sub-station at Kamuthi, Ramnad to which the Petitioner's project is required to inter-connect is not ready yet. Therefore, the instructions issued by the 1<sup>st</sup> Respondent vide its letter dated 30-09-2016, directing the Petitioner to



segregate the Solar Power Plant for 25 MW and 47 MW separately with separate energy meters and to purchase the balance energy of 47 MW at the tariff of Rs.5.10 per unit as fixed by the Commission in its order on "Comprehensive Tariff Order on Solar Power" dated 28.03.2016 is arbitrary, illegal and liable to be set aside. Furthermore, in terms of the New and Renewable Sources of Energy Regulations, 2008, the evacuation facility for evacuating power from a solar power plant is to be provided by TANGEDCO. The inaction of TANGEDCO is therefore contrary to the regulations. In any event, having recorded commissioning of the Plant, there arises no basis to deny the Tariff in terms of the Tariff order for the entire plant capacity.

1.37. The Petitioner has invested over Rs.450 crores in constructing its 72 MW solar power plant based on the State government's solar power policy and on the basis of a tariff of Rs.7.01 per unit. The Petitioner executed its PPA with TANGEDCO only after the control period was extended from September 11, 2015 to March 31, 2016 by the Commission's Order dated April 1, 2015. The Petitioner had a legal right which was reasonable under the circumstances that TANGEDCO, a public authority, would act in a rational and prudent manner in carrying out its obligations and constructs the sub-station in time for the Petitioner to evacuate power from its plant on or before March 31, 2016. Further, the Petitioner was instructed by TANGEDCO to limit load for grid safety continuously and the Petitioner was ready to commission its 72 MW project in entirety on 31.03.2016. Therefore, there cannot be any direction from TANGEDCO to segregate the contracted capacity and purchase the power at the tariff as specified under the Tariff Order passed by the Commission dated 28.03.2016.

1.38 TANGEDCO's actions have the potential to seriously and detrimentally affect the very viability of the Petitioner's Project. The Petitioner's project is predicated upon the applicability of the Tariff Order dated 12.09.2014, which was subsequently amended by Order No.4 of 2015 dated 01.04.2015. The financial closure, cash flows, investment and debt commitments are all on the basis of the applicability of such tariff. The Petitioner, having complied with all of its obligations, has a vested right that has already accrued in its favour and it becomes entitled, in law and in fact, to the benefit of the Tariff Order. Significantly, the Tariff Order applicable from April 1, 2016 for solar projects in the State has been a reduction of tariff and if made applicable to the Petitioner's project wherein the entire investment was made on the basis of the position prevailing during the relevant time, the Petitioner would be put to grave and irreparable hardship. The Petitioner has incurred over Rs.450 Crores on the project and has set up the plant with the funding from banks and financial institutions. The entire financial planning and projection of the petitioner with regard to the project is based on the tariff rate at Rs.7.01 as determined by the Commission. Therefore, if this Tariff is not applicable for the remaining 47 MW, the Petitioner will suffer huge losses. Thus on grounds of promissory estoppel as well, the Petitioner is entitled to a tariff of Rs.7.01 a unit.

1.39 The extension of the applicability of the Tariff of Rs.7.01 to the Petitioner's project is also essential to satisfy the statutory mandate and policy applicable. It is universally acknowledged that conventional source of energy, in particular coal and hydrocarbon, result in significant environmental degradation and an adverse impact. The last few decades have seen a global recognition of the adverse environmental impact (externality) of conventional energy (particularly coal and hydrocarbons) and

the need to promote gradual but steady development of renewable energy sources to substitute conventional power. These stated legislative and policy objectives of environment protection and sustainable development are now well established in our jurisprudence in context of Articles 48-A, 51, 51-A (g) and 21 of the Constitution of India. India is a party to the global move on climate change - committed to sustainable development, viz. The United Nation's Framework Convention on Climate Change ('UNFCCC') signed by India on 10.06.1992 and ratified on 01.11.1993. Adoption of Protocol to the UNFCCC adopted in Kyoto, Japan on 11.12.1997 ('Kyoto Protocol') acceded to by India on 26.08.2002. The Electricity Act, 2003, the National Electricity Policy and Tariff Policy mandate encouragement to be provided to non-conventional energy sources. The consequence of TANGEDCO's default would have a direct effect of negating such mandate and therefore on this ground also, the Petitioner's project is entitled to the relief sought for.

1.40 Further, the Petitioner had commissioned the plant within the cut-off date of 31<sup>st</sup> March, 2016. The entire financial planning and projection of the Petitioner with regard to the project is based on the tariff rate at Rs.7.01 per unit as determined by the TNERC, which was fixed in accordance with the objectives under section 86 (1) (e) of the Electricity Act, 2003, the National Electricity Policy, Tariff Policy, Energy Policy 2012 issued by the State of Tamil Nadu, as also the objectives enshrined in the international convention, United Nations Framework Convention on Climate Change. Since the Petitioner's project is predicated upon the applicability of the Tariff Order, the financial closure, cash flows, investment and debt commitments are all on the basis of the applicability of such tariff. The Petitioner, having complied with all of its obligations, has a vested right that has already accrued in its favour and it

becomes entitled, in law and infact, to the benefit of the Solar Tariff Order on entire 72 MW project. Significantly, the Tariff Order applicable from 1<sup>st</sup>April, 2016 for solar projects in the State has seen a reduction of tariff, which if made applicable to the Petitioner's 47 MW out of 72 MW project, the Petitioner would be put to grave and irreparable hardship. The Petitioner has a prima facie case and balance of convenience also lies entirely in its favour for allowing tariff of Rs.7.01 per unit on entire 72 MW project as prayed for.

1.41. The cause of action for the present petition arose on 31.03.2016 when the Petitioner's 72 MW Solar power plant was commissioned, and on 30.9.2016 when the 4<sup>th</sup> Respondent communicated the order for segregation and directed separate payments at different Tariff rates for the petitioner's solar power plant, thereafter on a monthly basis from 31.03.2016 until 27.06.2017 when for the first time the Respondent sought to make payments on a differential basis by making payment for portion of the power generated at Rs.7.01 as per TNERC Order No.7 of 2014 and TNERC Order No.2 dated 28.3.2016 whereby it gave effect to its direction of segregation of the 72 MW Solar generating plant of the petitioner thus completing its impugned action of segregation and thus giving rise to the cause of action, on various dates from 03.10.2016 when the petitioner wrote objecting to the segregation, on 15.3.2019 when the petitioner filed a Writ Petition bearing WP No.8644 of 2019 before the Hon'ble Madras High Court, on 07.08.2019 when the Hon'ble High Court disposed the Writ Petition with liberty to approach the Commission holding that a dispute had arisen and subsequently de-die-in-diem. The period between 12.3.2019 to 7.8.2019 and until receipt of the copy of the order is to be excluded for the purposes of calculation of time period since cause of action

arose as the proceedings were being proceeded with bona fide manner and with due diligence and only upon disposal of the same and the Hon'ble Court determining that the issue had to be determined by the Commission, the present petition is being filed.

1.42. Furthermore, pursuant to the initial interim orders of the Hon'ble Madras High Court in 2015 and culminating in the judgment of the Hon'ble Supreme Court in State of Gujarat Vs. Utility Users' Welfare Assn. the Commission had been disabled from hearing issues that involved disputes until appointment of a judicial member on 02.07.2019 only thereafter disputes can be taken up for hearing. In any event, the present claim is not for recovery of money but a claim for declaration of applicability of Tariff Order to a project which has been commissioned within the control period and for consequentially setting aside the impugned communications of the Respondents. Since the issue is one that essentially relates to the exercise of the Regulatory powers, the petition is not barred by limitation, delay or laches. In any event, the cause of action wherein the Tariff denial by giving effect to the order of 30.09.2016 was done by payment/communication effected on 27.06.2017 the present petition has been filed within time.

1.43. The present Petition is being filed since any difference between parties under the EPA is capable of being resolved by the Commission. The Commission has powers and functions in addition to the one set out in S.86(l)(f) which is exclusive to resolving disputes, such as the power under S.86(1)(b) on price of procurement as also its regulatory power derived from the Tariff fixed under S.61 & S.62 of the Act. The present petition in effect and substance seeks for exercise of Regulatory power

as to the declaration for the applicability of the Tariff Order when a project is Commissioned within the control period specified under a Tariff Order and seeks for consequentially quashing of letters issued by officials of the TANGEDCO which are contrary to their own earlier communications. The present claim is not a dispute that is a money claim simpliciter. The TNERC Fees & Fines Regulations prescribes under Regulation 7-A that that 1 % of the amount in dispute subject to a minimum of Rs.20,000 is payable for disputes and in respect of Miscellaneous Petitions under Regulation 7(a) it is subject to a court fee of Rs.10,000. The Hon'ble APTEL has held in several judgments arising from the Commission held that the nature of the relief is to be seen for the purposes of determining the nature of the power being exercised and the court fee levied. The relief is incapable of being valued since it seeks for declaratory relief which seeks enforcement of the regulatory and tariff fixing powers of the Commission and for consequential quashing of the impugned actions of the Respondent, the present claim is not capable of monetary valuation as a money claim.

## **2. Contention of the Respondents:-**

2.1. The petitioner has filed the above miscellaneous petition to declare that consequent upon the commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram dated 15.04.2016 to the Petitioner certifying that the 72MW Solar Power Plant of the Petitioner was commissioned on 31.03.2016, the entire 72MW Solar Power plant stood commissioned and entitled to the tariff fixed under the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No.4 of 2014 and consequently set aside the action of the 2nd Respondent in

its internal communication in Memo.No.CE/NCES/SE/Sol/EE/SCB/A1/F./D 1248/16 dated 20.9.2016 as acted upon by the 4<sup>th</sup> Respondent in its communication dated 30.9.2016 in Lr.No.SE/NCES/TIN/Tech/F.KREL/D.517/2016 to segregate the 72 MW solar power plant erected by the Petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different tariff rates as illegal and without jurisdiction.

2.2. The consequent to issue of the Solar policy 2012 by the Government of Tamil Nadu to promote green energy and particularly solar power in the State of Tamil Nadu, in exercise of power conferred under Section 62 of Electricity Act, 2003, Tamil Nadu Electricity Regulatory Commission (TNERC) has issued "Comprehensive Tariff Order on Solar Power" vide Order no.7 of 2014 dated 12.09.2014 for procurement of solar power by the Distribution Licensee fixing "Generic/Preferential tariffs" of Rs.7.01 per unit without Accelerated Depreciation (AD) benefit and Rs.6.28 per unit with AD benefit for Solar Photovoltaic plants. The Tamil Nadu Electricity Regulatory Commission (TNERC) has been issuing Tariff Order periodically for procurement of solar power by the Distribution Licensee.

2.3. Accordingly, the "Preferential tariff" as determined in TNERC's Order is applicable for the respective solar PV power plants commissioned during the control period of that particular Tariff Order in force, irrespective of date of execution of Power Purchase Agreement. Hence, any solar power plant developer is eligible to avail the tariff rate specified in the said TNERC order, i.e. Rs.7.01 per unit without Accelerated Depreciation (AD) benefit and Rs.6.28 per unit with AD benefit for Solar

Photovoltaic plants if they commissioned the proposed solar power plants on or before 31.03.2016.

2.4. As per the TNERCs Tariff Order, developers can establish solar power plants not only to sell the generated power to the Distribution Licensee (TANGEDCO), and also have two more options, viz., wheeling the generated power for captive consumption or wheeling the generated power for third party sale.

2.5. Based on the Tamil Nadu Solar Policy 2012, TANGEDCO have implemented the tariff Order issued by the Commission, in the State, for the procurement of solar power. Under the above Preferential Tariff Order, 86 developers with a combined capacity of 1484 MW have executed Power Purchase Agreement with TANGEDCO, including the petitioner company, as per terms and conditions of TNERC Order No.7 of 2014 dated 12.09.2014. TANGEDCO is procuring solar power from them at a tariff rate as specified in the relevant order of Commission.

2.6. M/s Adani Green Energy (Tamil Nadu) Limited had given applications and requested approval for establishment of following 5 solar power plants of combined capacity of 648 MW.

(a) 216 MW solar power plant in Kamuthi Taluk, Ramanathapuram.

(b) 216 MW solar power plant in Kamuthi Taluk, Ramanathapuram.

(c) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram.

(d) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram.

(e) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram



2.7. The petitioner was requested to pay applicable registration fee, load flow study charges and 50% of the applicable refundable S.D as per Board's Proceedings No. 454 dated 07.10.2014 for all the above five applications. In respect of the 72 MW Solar power plant ,for which the petitioner has raised certain disputes, on receipt of the applicable fees, load flow study of conducted and the study results were communicated to the petitioner vide CE/NCES/SE/Sol/EE/SCB/A1/FKamuthi Renewable /D760/15 dated 17.06.2015.

2.8. The petitioner was duly informed by the above letter that "The above referred power plant can be interfaced with the TANTRANSCO grid at proposed sanctioned Kamuthi 400/230-110 KV SS at 230 KV level by erecting 110 KV evacuation line for a distance of 7 km connecting your proposed 72 MW solar PV power plant and theproposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker andprotection arrangement as per the TANGEDCO norms. The above grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS". It was also informed that further action would be taken by TANGEDCO, subject to fulfilment of the above said terms.

2.9. M/s Adani Green Energy (Tamil Nadu )Ltd., in their letter dated 29.06.2015 informed that they would be doing the 72 MW (Phase V) project through its subsidiary company namely M/s Kamuthi Renewable Energy Ltd and requested for name change. The request was considered, and the balance 50% of the Security deposit was remitted by M/s Kamuthi Renewable Energy Ltd.,

2.10. M/s Kamuthi Renewable Energy Ltd., on submission of relevant documents, were issued "Noted for Record Letter "vide Lr.No.CE/NCE5/5E/Solar/EE/5CB/AI/F M/s. Kamuthi Renewable/D 873/15 dated04.07.2015. As per clause (4) of this letter, the petitioner was informed that that "its proposed 72 MW solar power plant can be interfaced with the TANTRANSCO grid at proposed sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV evacuation line for a distance of 7 Km connecting its proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker and protection arrangement as per the TANGEDCO norms. The above grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS and should not claim any deemed generation in the event of delay in commissioning of the 400 KV SS and the applicable tariff will be fixed by the Commission at the time of commissioning of 400 KV SS. In this regard, the petitioner was requested to furnish anundertaking".

2.11. M/s Kamuthi Renewable Energy Limited has given an undertaking dated 16.06.2015 that they will not claim any deemed generation or any other benefits whatsoever, from TANGEDCO, in case the TANTRANSCO could not commission the proposed 400 KV Substation at Kamuthi, Ramnad District even though the petitioner complete solar PV power plant well in advance.

2.12. TANGEDCO in the letter dated 21.11.15 while intimating the petitioner to pay tentative cost towards establishment & supervision charges and testing and commissioning charges have once informed the petitioner that TANGEDCO /TANTRANSCO will not be responsible for any delay in commissioning of their solar

plant in connection with connectivity and establishment of 400/230-110 KV Kamuthi Substation.

2.13. While the project activities of the petitioner were going on, TANGEDCO /TANTRANSCO was carrying out all activities for the erection of Kamuthi 400/230-110 KV SS. The erection of a 400 KV SS involves works of various wings of TANGEDCO / TANTRANSCO such land procurement, land survey, land levelling, procurement of various power transformers, current transformers, potential transformers, breakers, switches, construction of control room, laying of 230 and 110 KV link lines to nearby stations, construction of communication lines etc.

2.14. The petitioner in spite of very well knowing of the fact that grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS in their letter dated 09.02.2016 that their 72 MW plant will be ready by 20.2.2016 and requested to consider them to evacuate power through 110 KV Kamuthi Substation as they planned to set a record of commissioning this project in the shortest span of 6 months.

2.15. TNEB / TANGEDCO from its very existence for the past seventy years, had extended its full support for its customers/industrialists/ entrepreneurs. The Commission would appreciate the efforts/role of TANGEDCO in the uplift of Tamil Nadu and Tamil Nadu is considered one of the well developed States in India.

2.16. TANGEDCO had no obligation to consider the request of the petitioner in their letter dated 09.02.2016 to consider interim arrangement through Kamuthi 110 KV

SS, while the works for commissioning of Kamuthi 400 KV SS were under full swing. However, in order to implement the vision of the Government of Tamil Nadu and based on the Solar Policy, 2012 , to promote green power in the State of Tamil Nadu, the technical possibilities of accommodating the petitioner's Solar power plant through Kamuthi 110 KV SS, through a temporary arrangement was explored.

2.17. Taking into considerations the grid security and transformers loading aspects, it was found that only 25 MW could be accommodated at Kamuthi 110 KV SS.

2.18. With good will gesture to promote solar power in the State of Tamil Nadu, M/s.Kamuthi Renewable Energy Limited was issued Grid tie-up approval on 09.03.2016 for parallel operation of 72 MW solar PV power plant of M/s.Kamuthi Renewable Energy Limited interfacing with TANTRANSCO grid at 110 KV bus of existing Kamuthi 110 KV SS through 110 KV feeder till commissioning of Kamuthi 400 KV SS such that the power flow from 72 MW solar PV power plant of M/s.Kamuthi Renewable Energy Limited into TANTRANSCO grid at Kamuthi 110 KV SS shall be limited upto 25 MW.

2.19. The petitioner has accepted the proposal of TANGEDCO for interim arrangement for restricting the capacity to 25 MW without any protest and has not raised any clarification regarding the applicability of tariff. If the petitioner's only intention was to commission the plant well before the commissioning of Kamuthi 400 KV SS and to claim the tariff of Rs.7.01, TANGEDCO could not have extended temporary arrangement as it is not bound to do so.

2.20. TANGEDCO took all steps on war footing basis and the Kamuthi 400 KV SS was commissioned on 7.9.2016. Consequent to the commissioning of Kamuthi 400 KV SS, revised tie-up approval was accorded on 20.9.2016 for parallel operation of 72 MW solar PV power plant interfacing with TANTRANSCO grid at new Kamuthi400/230-110 KV SS at 110 KV level.

2.21. M/s.Kamuthi Renewable Energy Limited has furnished an undertaking that it would not claim deemed generation until the commissioning of Kamuthi 400 KV SS, TANGEDCO could have decided that the entire 72 MW Solar power plant commissioning date as the date on which permanent tie up approval was accorded. However, TANGEDCO decided that based on technical feasibility under interim arrangement 25 MW could be interfaced until permanent connectivity is established as agreed by the petitioners.

2.22. M/s.Kamuthi Renewable Energy Limited is paid the applicable tariff of 25 MW @ Rs.7.01 per unit and 47 MW @ Rs.5.10 per unit on regular basis and their claim to be paid at the rate of Rs.7.01 per unit for the 47 MW is totally not justifiable based on the facts stated above.

2.23. Two other subsidiary firms of M/s.Adani group, namely M/s Kamuthi solar Power Limited and M/s Ramnad Renewable Energy Limited of the petitioner have commissioned the solar plant after the due date and had filed a petition before Hon'ble APTEL vide Appeal No.31 and 32 of 2017 with the following prayer:

a) Grant the petitioner a project specific extension of the Control Period from March 31<sup>st</sup> 2016 to the date of inter-connection of the Petitioner's 72 MW (216 MW)

project to the grid, in order for the Respondent to pay the Petitioner the tariff of Rs.7.01 a unit.

b) Declare that the Petitioner has successfully commissioned its 72 MW (216 MW) solar power project on or before March 31<sup>st</sup>2016

c) Declare that the Petitioner's solar power project is entitled to a tariff of Rs.7.01 a unit

The above Appeal No.31 & 32 was set aside and however, with an intend to Forum Shopping, approached the Commission in MP No. 25 & 26 of 2020 and the miscellaneous petitions were dismissed and the decision of TANGEDCO to consider the date of commissioning of the petitioner's plant in the next control period was upheld by the Commission in its order dated 20.07.2021.

2.24. The petitioner had already filed a writ petition WP No. 8644 of 2019 in High Court of Madras to issue an a writ of Certiorarified mandamus or any other writ or order or direction in the nature of writ of certiorarified mandamus calling for records comprised in its order dated 20.9.2016 in Memo.No.CE/NCES/SE/Sol/EE/SCB/A1/F/D.1248/16 and the consequential order dated 30.9.2016 in Lr.No.5E/NCES/TIN/Tech/FKREL/D517/2016 directing the petitioner to segregate its 72 MW solar power plant into 25 MW and 47 MW with separate energy meters and seeking to make payment for 47 MW at the tariff of Rs.5.10 per unit and quash the same as arbitrary, illegal.

The above writ petition was dismissed vide order dated 07.08.2019 and ordered that the petitioner's claim is unsustainable for the following reasons:

(i) TANGEDCO vide its letter dated 04.07.2015 has approved the project only on certain conditions. One such condition is that

“Your proposed 72MW Solar PV Power Plant can be interfaced with the TANTRANSCO grid at sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV level by erecting 110 KV Line for a distance of 7KM connecting your proposed 72MW Solar PV Plant and the sanctioned new Kamuthi 400/230-110 KV SS. The above grid connectivity will be effected only after commissioning of sanctioned new Kamuthi 400/230-110 KV SS and should not claim any deemed generation in the event of delay in commissioning of the 400KV SS and the applicable tariff will be fixed by the TNERC at the time of commissioning of 400KV SS. In this regard, you are requested to furnish an undertaking”.

(ii) On receiving the undertaking from the petitioner, the respondent has entered into the power purchase agreement with the petitioner.

(iii) From the letter of the petitioner dated 09.02.2015 which is extracted above and the counter of the respondents, it could be seen that the respondent has acceded to the request of the petitioner to give temporary interface through 110 KV SS to achieve the date of commercial operation (COD) in record time (within the span of 6 months from the date of signing of EPA). This accommodation was made by the respondent on the undertaking that the petitioner will not claim any benefit out of it. Contrary to the undertaking, the petitioner was trying to take advantage of the concession given by the respondent.

The petitioner, therefore, should have approached, at the earliest point of time, and this miscellaneous petition is filed after a lapse of about two years as an afterthought and as such the petition is not maintainable by law.

2.25. The matter is purely a tariff dispute between the petitioner and the respondent. The fact that there exists in dispute as to the date of commissioning of the project is evident from the document on record of the case. And the fact that an undertaking was given by the petitioner to the respondent that it will not claim any deemed generation or any other benefits whatsoever, from TANGEDCO, in case TANTRANSCO could not commission the proposed 400 KV substation at Kamuthi, Ramnad District even though the generators completes 72 MW power plant well in advance makes the petition before the Commission not maintainable.

2.26. It is clear that the petitioner contends that it's 72 MW solar project was commissioned before 31 of March 2016 and is entitled to a tariff of Rs.7.01 per unit and objecting to segregate 72MW Solar Power plant as 25MW and 47MW separately with separate energy meters; whereas the contention of the respondents in the reply correspondences is to the contrary.

2.27. The monetary claim of the petitioner herein before the Commission with disputed question of facts cannot be adjudicated without resorting to appropriate dispute resolution mechanism under the Electricity Act,2003. Any proceeding without following the required procedure mandated under section 86(1)(f) of the Act, 2003 would not be in consonance of the provisions of the Act, 2003.

### **3. Rejoinder filed on behalf of the Petitioner:-**

3.1. During the hearing conducted on 15.12.2021, the 3<sup>rd</sup> Respondent TANTRANSCO submitted that they are adopting the contents of the Counter Affidavit filed by the 1st Respondent TANGEDCO. Therefore, the instant Rejoinder



Affidavit may be treated as a composite Rejoinder in response to TANGEDCO and TANTRANSCO. The petitioner for reasons of brevity is not responding to each one of the claims and averments and has broadly set out the principal grounds raised by the Respondent and the petitioner's response thereto. Most of the issues are already covered in the petition and are subsequently covered by a binding judgment in law by the Hon'ble High Court. Therefore any averment not specifically dealt with is not to be deemed as admitted or accepted and all the claims and contents are denied in their entirety unless specifically admitted to hereunder.

3.2. The instant petition has been filed for the following principal relief:

"To declare that consequent upon the Commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram, dated 15.04.2016 to the Petitioner certifying that the 72 MW Solar Power Plant of the petitioner was Commissioned on 31.03.2016, the entire 72 MW Solar Power Plant stood commissioned and entitled to the Tariff fixed under the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No.4 of 2014 and consequently, set aside the action of the 2<sup>nd</sup> Respondent in its internal communication in Memo No.CE/NCES/SE/Sol/EE/SCB/A1/F./D.1248/16 dated 20.09.2019 as acted upon by the 4<sup>th</sup> Respondent in its communication dated 30.09.2019 in Lr.No.SE/NCES/TIN/Tech/F.KREL/D.517/2016 to segregate the 72 MW Solar Power Plant erected by the Petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different Tariff rates as illegal and without jurisdiction and pass such further orders as the Commission may deem fit."

3.3. The principal issue in the instant petition is whether the Petitioner can be denied the terms of the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No. 4 of 2014 ("Preferential Tariff Order") in respect of its entire 72MW solar power plant, which stood commissioned well within the cut-off date. In the instant case, Petitioner received its Commissioning Certificate on 31.03.2016 for the entire capacity of 72MW. This issue is covered in favour of the petitioner by a recent judgment of the Hon'ble Madras High Court.

3.4. Before providing a paragraph wise response to the contentions raised in the Counter Affidavit, Petitioner seeks to set forth the law with respect to "Commissioning of a solar power plant and its relevance in tariff determination" as has been recently decided by the Hon'ble Madras High Court in W.P.Nos. 19703 of 2017 & Batch dated 20.10.2021. The said judgment in fact only sets out and analyses the various Regulations of the Commission and the terms of the Tariff Order and as such is a restatement of the settled position.

3.5. In this batch of cases, the principal issue was whether the Petitioners therein comprising of small scale solar power plant owners were entitled to the preferential tariff of Rs.7.10/- per unit per the same Preferential Tariff Order which is under consideration in the present case. The Hon'ble High Court scrutinised the terms and conditions of the Preferential Tariff Order in order to arrive at what amounts to a sine qua non for availing the preferential tariff under the Tariff Orders as well the Regulations issued by the Commission. Following are the relevant extracts:

*"6. The only issue that requires an answer of this Court is as to whether the petitioners are entitled for tariff at the rate of Rs.7.01 per unit as per Tariff Order No.7 of 2014 on the basis of the commissioning certificate issued by*

*TANGEDCO effective from 31.03.2016 or whether the petitioners are entitled only for Rs.5.10 per unit as per the Tariff Order No.2 of 2016 based on COD.*

13. *When the 2008 Regulations were notified on 08.02.2008, this regulation was consciously issued under Section 61 (h) of the Act. These regulations were made applicable to all new and renewable source based generating plants. Solar power plants will fall under these regulations as per the definition found under Regulations 2(1)(g). Insofar as the determination of tariff is concerned, Regulation 4 gives an exhaustive list of items to be taken into consideration. The regulation also speaks about a model energy purchase agreement under Regulation 7 which requires the approval of the commission. As observed by this Court supra the term COD is completely absent in the 2008 Regulations and that gives a clear indication that COD may not be a determining factor for availing tariff fixed in the tariff order for a particular control period.*

14. *When the comprehensive tariff order was issued in Tariff Order No.7 of 2014, Clause 6 of the order deals with the applicability of the proposed order and the same is extracted hereunder:*

*“6. Applicability of the proposed order*

*6.1. The Order shall come into force from the date of its issue. The tariff fixed in this order shall be applicable to all solar power plants commissioned during the control period of this Order. The tariff is applicable for purchase of solar power by Distribution Licensee from Solar Power Generators conforming to this order.*

*The open access charges and other terms and conditions specified in this Order shall be applicable to all the Solar energy generators, irrespective of their date of commissioning.*

15. *The above clause in no uncertain terms states that the order shall be applicable to all solar power plants "commissioned" during the control period of this order. Therefore, the applicability of the tariff order is based on commissioning and the above Clause does not mandate COD.*

25. *The step-by-step process that was undertaken by the TANGEDCO till the commissioning certificate was issued to the petitioners clearly demonstrate the fact that everyone had understood till that point of time that commissioning of the plant duly certified within the control period will entitle the petitioners to charge Rs.7.01 per unit as per Tariff Order No.7 of 2014. The attempt made by the learned Additional Advocate General to explain that the minimum meter reading that was recorded during this time pertains to the TANGEDCO energising the solar plant, has absolutely no significance since COD was not the determining factor to claim the tariff rate at Rs.7.01 per unit.*

32. *The respondents are trying to create a myth and thereby want to deprive the petitioners the tariff that was fixed by the TNERC in Tariff Order No.7 of 2014. The attempt made by TANGEDCO to introduce COD as a criteria for claiming the tariff gets defeated since even in the 2016 tariff order, the fixation of tariff is clearly relatable to the commissioning date alone. In fact, the 2016 tariff order clearly exposes the arbitrariness on the part of TANGEDCO in issuing the impugned communication to the petitioners.*

33. *At the risk of repetition, this Court wants to once again emphasize that the concept of COD cannot be made applicable to a solar power plant.*

34. *The COD, as understood in conventional energy, will not apply in case of renewable energy since it is subject to the vicissitudes of nature which is not within the control of a human being. It will depend upon wind or upon the sun light or it may also depend upon water in cases of hydro projects. That is why in renewable sources of energy, commissioning of plant is the determining factor. Once the plant is ready and nature cooperates, energy is generated. This was perfectly understood by TANGEDCO till the beginning of the year 2017 and all of a sudden, they have turned around and applied the concept of*

*COD for solar power plants. The stand taken by TANGEDCO is illegal, arbitrary and it cannot stand the test of law."*

3.6. A perusal of the above extracted portions of the order dated 20.10.2021, makes it amply clear that the Hon'ble Madras High Court has confirmed that the test for availing tariff under a particular Tariff order is only the date of commissioning and no other factor should be taken into consideration while making such a determination. The Hon'ble Madras High Court has arrived at the above finding after undertaking a thorough analysis of the terms and conditions of the Tariff Orders issued by this Commission and has also analysed the 2008 Procurement of Power from New & Renewable Sources of Energy Regulations. ("2008 Regulations")

3.7. The above order dated 20.10.2021 is squarely applicable to the facts of the instant case and Petitioner contends that the said order dated 20.10.2021 binds the Respondent TANGEDCO and TANTRANSCO in as much as the findings contained in the judgment are *in rem* as they were not restricted to the case of the Petitioners therein.

3.8. The case of the Respondents as set out in the counter and the petitioner's brief response can be summarised as follows:

- a. That the Petitioner was informed beforehand that power can be injected into the grid only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS;

The injection of power is not a determinant factor for tariff entitlement. Tariff entitlement, by express terms of the Tariff Orders and the Regulations, is dependent only upon commissioning. The petitioner's entire 72MW

capacity stood commissioned and is therefore entitled to the same tariff for the entire capacity.

b. That the Noted for Record letter issued to the Petitioner contains a clause that grid connectivity will be effected only after erection of "110 KV evacuation line for a distance of 7 Km connecting the proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker and protection arrangement as per the TANGEDCO norms";

Once again as stated above, the issue of connectivity for evacuation and any delay is irrelevant and further as an added measure in the present case, the actual readiness of the petitioner's 72MW plant was demonstrated by the fact that it could supply power right upon commissioning. The temporary connectivity proved this and the power flow alone was moderated to 25MW to accommodate the evacuation infrastructure that was available on such date.

c. That therefore, in essence, that grid connectivity for the entire capacity is necessary for claiming preferential tariff under the relevant Tariff Order;

This stand is wholly erroneous and contrary to express terms of the Tariff Order which make no mention of grid connectivity being the relevant factor.

d. That Petitioner has given an undertaking not to claim deemed generation and therefore can't maintain the petition;

The present petition nowhere claims any payment towards deemed generation. Only a right with regard to payment for actual generation and the rate applicable is being made.

e. That similar petitions filed by sister entities of the Petitioner stand dismissed by the Commission as well as the Hon'ble Madras High Court.

This stand is completely erroneous. The facts of the present case are in fact covered entirely in favour of the petitioner by a binding judgment of the Hon'ble Madras High Court.

3.9. Each one of the above grounds lack merits and are completely untenable. It is stated that Respondents are introducing wholly irrelevant and extraneous considerations for the entitlement to a particular tariff which are contrary to the express terms of the Tariff Order as also the Agreement between the parties which are in consonance with the approved draft, with the sole intention of profiteering.

3.10. The Respondent seeks to contend that Petitioner's entitlement to preferential tariff is incumbent upon the SPG's grid connectivity in as much as such a stipulation is not present in the Preferential Tariff Order or the 2008 Regulations. The Tariff Order and Regulations would allow for a particular Tariff to be paid so long as the plant stands commissioned and in the present case, there remains no doubt as to the commissioning of the plant as the Respondents have themselves issued a Commissioning certificate.

3.11. There can be no reliance on the Noted For Record letter to state that Petitioner's entitlement to preferential tariff is based on the contents of the Noted For Record letter, this is for the reason that the Noted for Record letter cannot override a Tariff Order or the 2008 Regulations. Further, there is nothing in the Noted for Record letter which would disentitle the petitioner from claiming a Tariff of Rs.7.01 per unit. The Noted for Record letter sets out the issues with respect to evacuation infrastructure and also if there is any delay with regard to Commissioning. In this case, as regards the commissioning there is no doubt and since the petitioner is not claiming any deemed generation, the question of any violation of the Noted for Record letter or the Undertaking does not even arise. The petitioner is only claiming tariff for actual energy generated and there is no claim for deemed generation. Further no compensation is being claimed for any delays by the Respondent. It is therefore clear that the Noted for Record letter of the subsequent Undertaking have no relevance for the present claim.

3.12. Any reliance on the Undertaking Letter furnished by Petitioner is wholly erroneous in law and in facts because:

- a. Deemed Generation is a different concept and is not applicable to facts of the instant case and the letter of Undertaking only records that. As a matter of fact no deemed generation is being claimed, even though in law the petitioner may have been entitled to claim the same since by an undertaking or a bipartite agreement a term of a Tariff Order consequences under a Regulation or legal position cannot be contracted out of;
- b. Arguendo, a letter of undertaking between Petitioner and Respondent cannot override the terms of the Preferential Tariff Order itself, which has been



issued by the Commission in exercise of its statutory powers and after a through fact finding exercise.

3.13. Neither the Preferential Tariff Order nor the 2008 Regulations stipulate nature of connectivity, restriction in injection etc. to be a determinative factor for receiving the tariff of Rs.7.01 per unit.

3.14. The Respondents cannot state that the entitlement of preferential tariff is a measure extended to Petitioner in good will as much as Petitioner is entitled to the same per the extant law and the terms of the Preferential Tariff Orders. The case of the Respondents that grid connectivity could be effected only in respect of 25MW has no relevance for the tariff entitlement. Merely because the evacuation infrastructure could accommodate only 25 MW initially does not mean that the entire plant was not commissioned. In fact the very letters which call upon 25 MW power flow to be maintained recognise that the entire plant is ready and commissioned and the reduced power flow is only due to evacuation constraints which would not adversely affect the petitioner. The Respondents cannot take advantage of their own failings. Further, it is now settled law that a project proponent cannot be mulcted with heavy charges or deprived the benefit of a preferential tariff order for the failure of the distribution entity of the transmission entity in completing works that solely fall under their domain. (BTN Solitaire v TANCEDCO Appeal No. 67 of 2021, order dated 05.07.2021)

3.15. The tariff is not a benefit that is extended to SPGs but is a contractual consideration paid by Respondent for the purchase of power from SPGs and the

same is fixed by the Commission in exercise of its powers under section 61 (h) of the Act.

3.16. Furthermore, in the instant case, Petitioner has commissioned its SPG with the cutoff date, i.e. 31.03.2016. Further, the reliance placed on the order of the Hon'ble Madras High Court is erroneous in as much as the dismissal was not made on merits but was on the ground that an alternative remedy was available to the Petitioner to approach the Commission under section 86 (1) (f) of the Act and all issues were expressly left open. Therefore, the said *prima facie* findings have no relevance or binding effect.

3.17. When the order of the Hon'ble Madras High Court in W.P.No. 18118 of 2020 contains a clear direction to the Commission to treat the instant petition as a Miscellaneous Petition, the instant petition is not a tariff fixation issue and is limited to the declaration that Petitioner is indeed covered by the Preferential Tariff Order. In fact, by stating so, the Respondents have made their intentions of denying the Petitioner of the tariff very clear, which shows their lack of bona fides and their intentions to profiteer by inventing stipulations such as "grid connectivity" which are hitherto not mentioned in any tariff orders issued by the Commission or the 2008 Regulations.

#### **4. Written Submission filed on behalf of the Petitioner:-**

4.1. The instant written submissions is being filed on behalf of the Petitioner, M/s. Kamuthi Renewable Energy Ltd ("KREL"). The instant petition has been filed by the Petitioner herein seeking for the declaration that the Petitioner herein has, indeed,

successfully commissioned its 72 MW solar power plant on or before 31.03.2016 pursuant to the Commission's Comprehensive Tariff Order on Solar Power dated 12.09.2014 and is entitled for a tariff of Rs.7.01 per unit for entire 72MW project as provided therein.

4.2. The present Petition was filed being aggrieved by the action of the Respondents in issuing the impugned communication which seeks to ex post facto arbitrarily split the 72 MW project commissioned on 31.03.2016 into 25MW and 47MW respectively. The principal issue in the instant petition is whether the Petitioner can be denied the terms of the Commission's Order dated 12.09.2014 in respect of its entire 72 MW solar power plant, which stood commissioned well within the cut-off date and was ready in all aspects for commissioning with Kamuthi Substation ("Kamuthi SS"), as certified by Chief Electrical Inspector's certificate dated 04.03.2016 ("CEIG Certificate").

4.3. The State of Tamil Nadu issued a Solar Energy Policy in the year 2012 expressing its intention to lead India commitment to renewable energy utilization, by committing to generate 3000MW of solar power by 2015. To this end, the said policy of the state expressed several directives to be followed by the executive to attract investment in the sector and ensure ease of doing business.

4.4. Accordingly, the Commission issued the Comprehensive Tariff Order on Solar Power - Order No.4 of 2014 (Tariff Order') on 12.09.2014. The said tariff order was to be in force till 11.09.2015 and all solar Projects commissioned within the said deadline were to be paid a tariff of Rs.7.01/- per unit.

4.5. Due to delay in the approval of the Energy Purchase Agreements ('EPA'), the Commission in right endeavor, extended the control period of the Tariff Order to 31.03.2016.

4.6. Encouraged by the fillip given to renewable energy projects by the State of Tamil Nadu, the Petitioner proceeded to commission a 72 MW solar power plant in Kamuthi Taluk, Ramnad District. The Petitioner submitted its letter of intention on 26.05.2015 and the same was accepted by the Respondent TANGEDCO on 17.06.2015, stating therein that the Petitioner's solar power plant will be interfaced with the new Kamuthi 400/230-110KV sub station at 110KV level.

4.7. It is apposite to note that as early as on 09.02.2016, the Petitioner issued a letter to the TANGEDCO stating that the Petitioner is on the verge of completion in all respects and shall be ready for commissioning by 20.02.2016. The petitioner requested the Respondent that in order to enable to achieve the COD for solar power project that to provide grid interference arrangement on existing 110 kV Kamuthi Substation and suggested that to interface the outgoing SIC 110 kV feeder of 72 MW KREL's Power Project with one circuit of 110 kV D/C existing Kamuthi Substation to 400 kV new Kamuthi Substation line at 400 kV Kamuthi end. Further letters were sent on 21.03.2016 and 30.03.2016 respectively.

4.8. However, to the Petitioner's utter shock, the 4<sup>th</sup> Respondent has issued a letter to the petitioner on 30.09.2016 stating that the energy exported by the solar power plant of petitioner to the grid of Respondent No.2 proportionate to 25 MW shall be purchased at the rate of Rs.7.01 per unit as fixed in the TNERC Order no. 7

of 2014 and the balance energy of 47 MW exported to the grid shall be purchased at the tariff of Rs.5.10 per unit as fixed by the TNERC Order No. 2 dated 28.03.2016. Subsequently, the Petitioner came to know that the 2<sup>nd</sup> Respondent issued an instruction of which the Petitioner got a copy only on 12.03.2019, based on which the 4<sup>th</sup> Respondent issued the letter dated 30.09.2016. The 2<sup>nd</sup> Respondent's instruction dated 20.09.2016 relies on an undertaking dated 16.06.2015 given by the Petitioner stating that it would not claim 'any deemed generation or any other benefits.'

4.9. The Tariff Order dated 12.09.2014 has used the word 'Commissioning' as the threshold to be achieved by intending investors to avail themselves of the tariff enshrined in the Tariff Order. The relevant portion of the Tariff Order is extracted below:

*'6. Applicability of the proposed order*

*6.1. The Order shall come into force from the date of its issue. The tariff fixed in this order shall be applicable to all solar power plants commissioned during the control period of this Order."*

4.10. In view of the same, the Petitioner was ready for commissioning as on 20.02.2016 and has also obtained a certificate for commissioning from the Chief Electrical Inspector on 04.03.2016. The said letter records as follows:

*'Approval is hereby accorded temporarily for a period of 3 months (up to 03.06.2016) under Regulation 43 (2) Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 to commission the Electrical Installations inspected on 27.02.2016 at above premises"*

“The equipment's permitted should be commissioned within three months from the date of issue of this letter failing which fresh permission should be obtained.”

4.11. It is now a settled position of law that a certificate issued by the Chief Electrical Inspector is conclusive proof of the project having been duly commissioned. The Hon'ble Appellate Tribunal for Electricity has rendered a clear finding on this issue in its judgement dated 24.09.2019 in Appeal No. 31 & 32 of 2019. Relying on the judgement of the Hon'ble Supreme Court in GUVNL vs. ACME Solar Technologies (Gujarat) P Ltd. (2017) 11 SCC 801, the Hon'ble APTEL has held as follows:

*“The commissioning certificates were issued by the Chief Electrical Inspector under Regulation 43 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, and the same are conclusive proof that the Appellants' projects were ready for commissioning on 22.03.2016. These certificates have never been challenged by TANGEDCO. In this regard, reliance is placed on GUVNL vs. Acme Solar Technologies (Gujarat) Private Limited (2017) 11 SCC 801, wherein Hon'ble Supreme Court concluded that the switch yard was ready to be energized by solely relying on the report of the Electrical Inspector. The relevant extract has been reproduced hereinunder: -*

*“7. However, in this regard, we have taken note of the communication / certificate issued by the Office of the Chief Electrical Inspector dated 31-12-2011 (a mandatory requirement under Clause 3 Schedule 2 extracted above) to the first respondent which goes on to recite that upon inspection of the electrical installation and associated equipments at switch yard of the first respondent at the new Site, permission is granted to energize the above electrical installations along with associated equipments. This would indicate that the switch yard of the first respondent was ready for being energized on 31-12-2011.”*

4.12. Therefore, it is wholly erroneous to claim that the Petitioner's project was not ready for Commissioning, both in law and in facts. The Respondent is conflating two distinct concepts in law, i.e. Commissioning and Commercial Operation Date to deny the Petitioner's right to fall within the Tariff Order dated 12.09.2014 as subsequently extended on 01.04.2015.

4.13. While 'Commercial Operation Date' is relevant for purposes of Invoice payment, it is only 'Commissioning' that is relevant for entitlement to tariff.

4.14. As is evident from the above, the reckoning date for applicability of the Tariff Order is only the date of Commissioning. This has been adhered to by the Petitioner as on 20.02.2016.

4.15. Commercial Operation Date ('COD') has been defined in the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 as 'the date declared by the generator after demonstrating the Minimum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run, after notice to the beneficiaries, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit of the generating station. This has no bearing to the facts of the instant case since such a terminology has not been used anywhere in the Tariff Order and the petitioner too is not seeking for any relief on the basis of COD.

4.16. It is now a well settled canon of statutory interpretation that technical words ought to be interpreted and construed in a manner in which everybody conversant with the said industry understands them. In the case of *Unwinvs Hanson* (1891) 2 QB 115 (CA), Lord Esher M.R. held as follows:

*“If the Act is one passed with reference to a particular trade, business, or transactions and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.”*

*The position of law, has been relied by the Hon'ble Supreme Court of India in a catena of decisions such as UOI v Garware Nylons Ltd AIR 1996 SC 3509; Chemicals and Fibers of India v. UOI AIR 1997 SC 558.*

4.17. The phrase COD has not been used anywhere in the Tariff Order or the EPA to be the reckoning date. Since the word commissioning has been used, the same must be considered and no other meaning can be imported and this is precisely why the Hon'ble APTEL too has determined that the petitioner had completed its project within the control period and was entitled to the Tariff of Rs.7.01/unit in terms of Tariff Order dated 12.09.2014 since the Petitioner's project was duly commissioned and was ready in all respects/ The petitioner cannot be denied a Tariff for reasons of delays by the Respondents in establishing the evacuation facilities which is their exclusive responsibility and duty.

4.18. The Undertaking sought to be relied on by the TANGEDCO is dated 16.06.2015 and the principal portion of the Undertaking is as follows:

*"1. That we will not claim any deemed generation or any other benefits whatsoever, from TANGEDCO in case the TANTRANSCO could not*



*commission the proposed 400KV Sub-station at Kamuthi, Ramnad District even though we complete 72 MW PV power plant well in advance. "*

4.19. The above Undertaking was signed by the Petitioner, much prior to the date of execution of the EPA. The EPA was executed by the parties on 04.07.2015 and is the only legally binding contract between the parties.

4.20. In electricity law, all energy/power purchase agreements are regulated contracts which are approved by State Electricity Commissions such as the Commission. Should either party want any specific interest or understanding captured, the same has to be duly approved by the Commission. Therefore, in a strict interpretation of law, no undertaking can modify or override the terms of the EPA unless the same is specifically referred to or incorporated in the EPA and receives the regulatory nod of the Commission. This is even more the case when the undertaking was given even prior to the execution of the EPA.

4.21. While the Undertaking relied on by the Respondent was executed prior to the EPA itself, the same has not been incorporated into the EPA either specifically or through a reference. In the absence of the same the undertaking would have no legal enforceability.

4.22. Without prejudice to the aforesaid, in any event, assuming for the sake of argument that such undertaking can be relied upon, it would have no applicability to the relief sought since the undertaking only states that the petitioner would not seek for any 'deemed generation or other benefits' in the event of delay in the

establishment of the evacuation facilities by TANGEDCO and as a matter of fact, no relief of deemed generation is being sought for. The petitioner is not seeking for any deemed generation or any other benefit but is only seeking for its tariff entitlement and rights having commissioned its plant within the control period by establishing it and the delay in the evacuation from the plant taking place only due to the delay by the Respondents in establishing the evacuation facilities.

4.23. The Petitioner had commissioned its 72 MW solar power project on 31.03.2016. The Commissioning Certificate has also been issued for the capacity of 72 MW on 15.04.2016. It was only because the Respondent had asked the Petitioner to inject only upto 25 MW of generated power out of 72 MW due to upstream evacuation constraint at 110 kV level of the 110 kV Kamuthi sub-station, till the permanent connectivity provided at New Kamuthi 400/230-110 kV sub-station, that the Petitioner was injecting the solar power generated upto 25 MW into the grid and facing the loss of remaining 47 MW. In fact, the Respondent's letter dated 29.03.2016 requiring limiting of the injection itself records that the petitioner is entitled to Tariff at the rate of Rs.7.01 per unit. The entire 72 MW project was commissioned before 31.03.2016 and the entire 72 MW Solar PV modules and inverters were kept in operation and by changing the settings of the inverters outflow was maintained at 25 MW as directed.

4.24. The prayer of the Petitioner is to treat its entire project to have been commissioned within the control period of the Tariff Order and to be entitled to tariff at Rs.7.01/- per unit for 72 MW. The entitlement to tariff is not a 'benefit' as wrongly contended by the Respondent. Payment of tariff is a statutory right conferred upon

the generator for the power supplied by it. Therefore, its wholly erroneous in law to disallow the Petitioner's right to claim tariff in view of the Undertaking dated 16.06.2015.

4.25. The arguments of the Respondents are fashioned in such a manner that the Petitioner has indeed given an Undertaking submitting itself therein, that the tariff payable to it will depend upon the date of commissioning of the new Kamuthi 110KV sub station. In other words, the Respondents contend that the entire EPA was contingent upon the erection of the new sub station at Kamuthi and that the Petitioner has submitted itself to the same through an Undertaking.

4.26. Such an argument is patently wrong in as much as the Petitioner never gave an undertaking to that effect. The only undertaking furnished by the Petitioner is one dated 16.06.2015, in which the Petitioner was not permitted to claim 'deemed generation or other benefits'.

4.27. In fact, the TANGEDCO knowing this position in fact and law, sought a subsequent undertaking on 04.07.20215 to make the petitioner's tariff entitlement subject to the date of commissioning of the respondent's evacuation facility and such undertaking was consciously never provided. Thus, the Respondent cannot seek to claim contrary to such position which it was fully aware of. The TANGEDCO's defence is predicated upon an Undertaking that was never furnished by the Petitioner and therefore fails.

4.28. The two other plants of Adani Group which the Petitioner is also a part of filed appeals before the Hon'ble APTEL in regard to the very same issue as in the present case. The Hon'ble APTEL in its judgement dated 07.10.2022 in Appeal Nos. 287 & 288 of 2021 held that the undertaking is only for "other benefits" and not consideration as provided in the EPA:

*"70. After considering the impugned order and submissions made by the parties, we find merit in the contention of the Appellants that their decision to forgo the deemed generation on account of delay in commissioning of the transmission system cannot be construed to have included Tariff as well. The undertaking to forgo deemed generation would only relieve the procurer from the responsibility of making payment for energy that could not be generated on account of delay in commissioning of the transmission system. There is no reference to waiver of tariff in the aforesaid undertaking. Evidently, there has been no claim of the Appellants with regards to deemed generation till 18.09.2016 either in the Petition before the Commission or in the present Appeals....*

*71. As regards waiver of 'any other benefit', the Commission has considered the expression to have broad meaning which would include 'Tariff' as well. However, the Appellants have contended that the said phrase cannot be interpreted to construe a meaning including 'tariff'. The Appellants have relief on *Fitch v. Bates*, 11 Barb. (N.Y.) 473 and *Ferrigino v. Keasbey*, 93 Conn. 445, 106 A. 445,447, wherein the word 'benefit' is defined as "Advantage; profit; fruit; privilege". Hon'ble Supreme Court in *State of Gujarat v. Essar Oil Ltd.*, (2012) 3 SCC 522 has held that "the word "benefit" therefore denotes any form of advantage".*

*73. The Respondents have not contested the capital investment incurred by the Appellants. Thus, we have no reason to believe that tariff of Rs.7.01 per unit as determined by the commission for the control period ending 31.03.2016 could result in any undue benefit or unjust enrichment over and*

*above the tariff determined by the Commission. Consequently, tariff would not fall within the scope of "any other benefit" in the present matter.*

*74. Further, the Hon'ble Supreme Court in All India Power Engineers Federation &Ors. v. Sasan Power Limited &Ors. (2017) 1 SCC 487 has held that waiver of any right must be explicit. The relevant extract of the order is as under:*

*"Waiver is, as has been pointed out above, an intentional relinquishment of a known right. Waiver must be spelled out with crystal clarity for there must be a clear intention to give up a known right. There is no such clear intention that can be spelled out on a reading of the two emails. "*

*75. In view of the above, in the absence of explicit relinquishment of 'tariff' in the undertaking provided by the generators, it cannot be alleged that the generators have waived off their right to receive tariff of Rs.7.01 per unit."*

4.29. Thus, it is clear that the undertaking dated 16.06.2015 relied on by the Respondent was executed prior to the EPA itself and the same has not been incorporated into the EPA either specifically or through a reference. In the absence of the same, the undertaking cannot be taken to mean that the Petitioner waived its contractual rights under the EPA.

4.30. The Petitioner has commissioned its power project as early as 20.02.2016, well within the control period of the Tariff Order dated 12.09.2014 as subsequently extended on 01.04.2015. The same is evident from the Commissioning Certificate issued for the capacity of 72 MW on 15.04.2016 certifying that the commissioning has taken place on 31.03.2016.

4.31. After getting the project ready, the Petitioner informed the Respondents of the same through several letters. It will be apposite to refer to the communications of the Petitioner in this regard. On 21.03.2016, after obtaining the Commissioning certificate from the CEIG on 04.03.2016, the Petitioner wrote to the Respondents as follows:

*"It is stated that KREL has completed the evacuation facilities as required under the EPA as well as has kept the 72 MW power project ready in all respects for commissioning from 20.2.2016 ...*

*You will appreciate that KREL has from time to time brought to the notice of TANGEDCO regarding the progress of the project and the expected commissioning schedule. KREL vide letter dated 9.2.2016 has also requested to consider the alternate grid interface arrangement for evacuating KREL's power with one circuit of 11 OkV o/c existing Kamuthi sub-station. However, there has been no response/communication from TANGEDCO so far to our letter dated 9.2.2016"*

4.32. The duty to establish and commission necessary transmission facilities for evacuation of power falls within the domain of the Respondent TANGEDCO and the Tamil Nadu Transmission Corporation ('TANTRANSCO').

4.33. The two other plants of Adani Group which the Petitioner is also a part of filed appeals before the Hon'ble APTEL in regard to the very same issue as in the present case. The Hon'ble APTEL in its judgement dated 07.10.2022 in Appeal Nos. 287 & 288 of 2021 held that"

*" 57. In our opinion it was TANDEGCO's failure to provide the evacuation facility in time (before 31.03.2016) which now seeks to take advantage of its own wrong, a fact which is not attributable to Appellant which has commissioned its project before 31.03.2016."*

4.34. The Hon'ble APTEL has also rendered its finding on the instant issue in its judgement dated 04.07.2018 in Taxus Infrastructure and Power Projects P Ltd v Gujarat Electricity Regulatory Commission and 5 Ors Appeal No. 131 of 2015 in the following manner:

"(i) It is also observed that the State Commission in the Impugned Order at para 10.29 has emphasised that in Petition No. 1126 of 2011 and allied matter, GUVNL admitted that in case of the plant is ready for commissioning but if the transmission system is not available in that eventuality, it is deemed that the plant is commissioned and the plant developer is eligible to receive the tariff prevailing on the respective date. Making evacuation system available was the responsibility of GETCO. This is also evident from the schedule 3 of the PPA and observations of the State Commission in the Impugned Order. The relevant para from Impugned Order and PPA is reproduced below:

*"10.28. The Commission passed the Order No. 2 of 2010 dated 29.01.2010 in which the Commission has decided that it is the duty of the Power Procurer and GETCO to create the necessary transmission network from the Power Producer i. e. Solar Power Project to the GETCO's Sub-Station for evacuation of power. Thus, the duty has been cast upon the GETCO to create necessary infrastructure of transmission line for evacuation of power generated from the power plant. Any delay in providing necessary transmission system for evacuation of power can, therefore, be not allowed to adversely affect the interests of the power producer. In the present case, we note that the petitioner's plant was ready for commissioning / energization as per the CEI inspection, however, the same was not energized for commission on 31.03.2013 due to non-availability of transmission system."*

4.35. Relevant extract from PPA is reproduced below:

*SCHEDULE 3 APPROVALS*

*Consent from the GETCO for the evacuation scheme for evacuation of the power generated by the 5 MW Solar Photovoltaic Grid Interactive Power Projects.*

*(j) In view of our discussions as above, we are of the considered opinion that there is no legal infirmity in the decision of the State Commission in considering 31.3.2013 as the deemed date of commissioning for the Solar Project."*

4.36. Therefore, in the instant case, the reckoning date for commissioning ought to be construed as 20.02.2016 since the Petitioner had completed its installations by the said date and the Chief Electrical Inspector had also given his permission on 04.03.2016 to commission the project.

4.37. Due to the failure of the TANGEDCO to ensure proper evacuation facilities, the Petitioner was unable to energise its entire 72 MW project. The Respondent TANGEDCO cannot be allowed to benefit out of its own wrongs in a manner that would prejudicially affect the interests of the Petitioner. Therefore, the instructions issued by the 1<sup>st</sup> Respondent vide its letter dated 30.09.2016, directing the Petitioner to segregate the Solar Power Plant for 25 MW and 47 MW separately with separate energy meters and to purchase the balance energy of 47 MW at the tariff of Rs.5.10 per unit as fixed by the Commission in its order on "Comprehensive Tariff Order on Solar Power" dated 28.03.2016 is arbitrary, illegal and liable to be set aside. Furthermore, in terms of the New and Renewable Sources of Energy Regulations, 2008, the evacuation facilities for evacuating power from a solar power plant is to be provided by TANGEDCO. The inaction of TANGEDCO is therefore contrary to the



regulations. Since Commissioning Certificate has also been issued for the capacity of 72 MW on 15.04.2016, there arises no basis to deny the Tariff in terms of the Tariff order for the entire plant capacity.

4.38. The Petitioner has made the entire investment prior to 31.03.2016 on the legitimate expectation that the Petitioner will be entitled to a tariff of Rs.7.01/- per unit if the Project is commissioned within the control period ending on 31.03.2016.

4.39. The Petitioner has invested over Rs.450 crores in constructing its 72 MW solar power plant based on the state government's solar power policy and on the basis of a tariff of Rs.7.01 per unit. The Petitioner executed its EPA with TANGEDCO only after the control period was extended from 11.09.2015 to 31.03.2016 by the Commission's Order dated 01.04.2015.

4.40. The Petitioner had a legal right which was reasonable under the circumstances that TANGEDCO, a public authority, would act in a rational and prudent manner in carrying out its obligations and constructs the sub-station in time for the Petitioner to evacuate power from its plant on or before 31.03.2016. Further, the Petitioner was instructed by TANGEDCO to limit load up to 25MW only for grid safety continuously and the Petitioner was ready to commission its 72 MW project in entirety on 31.03.2016. Therefore, there cannot be any direction from TANGEDCO to segregate the contracted capacity and purchase the balance 47MW power at the reduced tariff as specified under the Tariff Order passed by the Commission dated 28.03.2016.

4.41. Projects such as that of the Petitioner have a 1: 3 financial framework, in which 25% of the project cost is raised through equity while the remaining 75% cost is incurred by raising loans from public financing institutions. Therefore, in effect, a substantial portion of the sums invested in the project is public funds which will be severely affected if the Respondent TANGEDCO refuses to grant tariff at Rs.7.01/- per unit.

4.42. The Petitioner has invested such substantial sums based on the contents of the Tariff Order dated 12.09.2014 and Tamil Nadu's Solar energy Policy. Any deviation from the same without having any legal basis amounts to promissory estoppel. Even the Hon'ble APTEL in its judgement dated 24.09.2019, has rendered a finding to this effect in the following manner:

*"4.14 In this context, it is submitted that the Tamil Nadu government had made express promises to promote solar power in the state and the TNERC had itself fixed a tariff of Rs.7.01/unit for the projects commissioned by 31.03.2016. However, due to TANGEDCO's failure to provide the appropriate evacuation facility, the commissioning of the Appellants' projects was delayed and consequently, the lower tariff of Rs.5.10 has been made applicable to the Appellants' projects. And, in such a case doctrine of legitimate expectation is squarely applicable to the Appellants' case, and the Appellants' are entitled to the tariff of Rs.7.01/unit, as the delay in commissioning of Appellants' projects was beyond the control of the Appellants. "*

4.43. It is now a settled position of law that whenever an investment is made in setting up a power plant, the intending investor is in effect, investing in the Tariff Order that is in vogue. The financial framework drawn up by the intending investor is based on the findings in the specific tariff order which is passed taking into consideration the fixed costs, variable costs and profit margin. The same has been

recognised by the APTEL in its judgement dated 07.10.2022 in Appeal Nos. 287 & 288 of 2021 (referred supra):

*"72. As per Para 8.3 of the "Comprehensive Tariff Order on Solar Power" dated 12.09.2014, the Commission adopted Cost Plus Tariff Determination methodology considering the following tariff components:*

- (1) Capital investment*
- (2) Capacity Utilization Factor*
- (3) Operation and maintenance expenses*
- (4) Insurance cost*
- (5) Debt-equity ratio*
- (6) Rate of Interest and Term of Loan*
- (7) Life of plant and machinery*
- (8) Interest and components of Working Capital*
- (9) Return on equity*
- (10) Depreciation rate applicable*
- (11) Auxiliary consumption*

*73. In view of the tariff structure being considered for cost plus methodology, tariff can be construed as benefit in case of solar generation only if, the actual capital investment made by the generator is much lower than the capital investment considered for tariff determination by the Commission for the said control period. Since the capital cost of solar projects have seen a declining trend in the last decade, a generator would unduly benefit if it received tariff determined for a control period that is prior to the control period in which it has made capital investment for the project. In the present case, TANGEDCO's plea to consider tariff for the next control period is premised only on the commissioning date of the projects completing ignoring the most critical part of Tariff i.e. capital investment. KSPL vide letter dated 30.03.2016 and RREL vide letter dated 25.03.2016 had informed TANGEDCO that they had incurred Rs.1524 crore and 508 crore respectively on the project. The Respondents have not contested the capital investment incurred by the Appellants. Thus, we have no reason to believe that tariff of Rs.7.01 per unit as determined by the commission for the control period ending 31.03.2016 could result in any*

*undue benefit or unjust enrichment over and above the tariff determined by the Commission. Consequently, tariff would not fall within the scope of "any other benefit" in the present matter. "*

4.44. The Hon'ble APTEL in its judgement dated 07.12.2018 in the case of Shalivahana Green Energy Limited v Madhya Pradesh Electricity Regulatory Commission Appeal No. 229 of 2018, has upheld the principle that in a regulatory regime, tariff is determined on the basis of 'when the investment' is made. The relevant extract is hereunder:

*"On the other hand, in the case of Viyyat Power this Tribunal opined that subsequent tariff order cannot be made applicable for projects which were ready for commissioning in a previous control period.*

*21. It is not in dispute that the tariff is always determined based on the capital cost, fixed cost and variable cost subject to prudent check by appropriate commission. This is very clear from Regulation 12 of the CERC Renewable Energy Regulations of 2012. This methodology has been adopted and applied by the State Commission in the impugned order. The Respondents placed reliance on Punjab Biomass case, wherein this Tribunal observed that the capital cost (fixed tariff) of the Biomass based Power Plant has to be determined based on plant to plant with reference to tariff applicable at the time of commissioning of the project as agreed under Implementation Agreement and not as per the tariff applicable during the actual date of commissioning of the plant."*

4.45. It is now well settled, both in fact and in law, that the Petitioner has indeed commissioned its entire 72 MW power plant within the control period of the Tariff Order. The Petitioner invested in the project after being assured of a tariff of Rs.7.01/- per unit as stated in the Tariff Order. Being so, the Petitioner cannot be denied the same.

4.46. In this regard, it must also be borne in mind that every tariff order passed by the Commission under section 62 of the Electricity Act, 2003 are guided by the principles set out by the Commission in its TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 and the principles set out in section 61 of the Act. One of the guiding principles enshrined in section 61(h) is that the tariff ought to promote co-generation and generation of electricity from renewable sources of energy. The Tariff Order dated 12.09.2014 was passed following the 'Cost Plus Tariff Determination' method. The relevant extract from the Tariff Order is as follows: "Cost-plus tariff determination is a more practical method and it can be easily designed to provide adequate returns to the investor and a surety of returns will lead to larger investment in solar power plants"

4.47. That being so, the Petitioner has invested in the instant Tariff Order in view of the specific declarations made therein and cannot be denied the same for reasons outside the scope of the Petitioner's control.

## **5. Written Submission of the Second Respondent:-**

5.1. The petitioner has filed the above miscellaneous petition to declare that consequent upon the commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram dated 15.04.2016 to the Petitioner certifying that the 72MW Solar Power Plant of the Petitioner was commissioned on 31.03.2016, the entire 72MW Solar Power plant stood commissioned and entitled to the tariff fixed under the Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No.4 of 2014 and consequently set aside the action of the 2nd Respondent in

its internal communication in Memo.No.CE/NCES/SE/Sol/EE/SCB/A1/F./D 1248/16 dated 20.9.2016 as acted upon by the Respondent in its communication dated 30.9.2016 in Lr.No.SE/NCES/TIN/Tech/F.KREL/D.517/2016 to segregate the 72 MW solar power plant erected by the Petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different tariff rates as illegal and without jurisdiction and pass orders as the Commission may deem fit.

5.2. The consequent to issue of the Solar policy 2012 by the Government of Tamil Nadu to promote green energy and particularly solar power in the State of Tamil Nadu, in exercise of power conferred under Section 62 of Electricity Act, 2003, Tamil Nadu Electricity Regulatory Commission (TNERC) has issued "Comprehensive Tariff Order on Solar Power" vide Order nO.7 of 2014 dated 12.09.2011 for procurement of solar power by the Distribution Licensee fixing "Generic/Preferential tariffs" of Rs.7.01 per unit without Accelerated Depreciation (AD) benefit and RS.6.28 per unit with AD benefit for Solar Photovoltaic plants. The Tamil Nadu Electricity Regulatory Commission (TNERC) has been issuing Tariff Order periodically for procurement of solar power by the Distribution Licensee.

5.3. Accordingly, the "Preferential tariff" as determined in TNERC's Order is applicable for the respective solar PV power plants commissioned during the control period of that particular Tariff Order in force, irrespective of date of execution of Power Purchase Agreement. Hence, any solar power plant developer is eligible to avail the tariff rate specified in the said TNERC order, i.e., Rs.7.01 per unit without Accelerated Depreciation (AD) benefit and RS.6.28 per unit with AD benefit for Solar

Photovoltaic plants if they commissioned the proposed solar power plants on or before 31.03.2016.

5.4. As per the TNERCs Tariff Order, developers can establish solar power plants not only to sell the generated power to the Distribution Licensee (TANGEDCO), and also have two more options, viz., wheeling the generated power for captive consumption or wheeling the generated power for third party sale.

5.5. Based on the Tamil Nadu Solar Policy 2012, TANGEDCO have implemented the tariff Order issued by the Commission, in the State, for the procurement of solar power. Under the above Preferential Tariff Order, 86 developers with a combined capacity of 1484 MW have executed Power Purchase Agreement with TANGEDCO, including the petitioner company, as per terms and conditions of Commission's Order No.7 of 2014 dated 12.9.2014. TANGEDCO is procuring solar power from them at a tariff rate as specified in the relevant order of Commission.

5.6. M/s Adani Green Energy (Tamil Nadu) Limited had given applications and requested approval for establishment of following 5 solar power plants of combined capacity of 648 MW.

- (a) 216 MW solar power plant in Kamuthi Taluk, Ramanathapuram.
- (b) 216 MW solar power plant in Kamuthi Taluk, Ramanathapuram.
- (c) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram.
- (d) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram.
- (e) 72 MW solar power plant in Kamuthi Taluk, Ramanathapuram

5.7. The petitioner was requested to pay applicable registration fee, load flow study charges and 50% of the applicable refundable S.D as per Board's Proceedings No. 454 dated 07.10.2014 for all the above five applications. In respect of the 72 MW Solar power plant ,for which the petitioner has raised certain disputes, on receipt of the applicable fees, load flow study was conducted and the study results were communicated to the petitioner vide CE/NCES/SE/Sol/EE/SCB/AI/F Kamuthi Renewable /0760/15 dated 17.06.15.

5.8. The petitioner was duly informed by the above letter that "The above referred power plant can be interfaced with the TANTRANSO grid at proposed sanctioned Kamuthi 400/230-110 KV SS at 230 KV level by erecting 110 KV evacuation line for a distance of 7 km connecting your proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker and protection arrangement as per the TANGEDCO norms. The above grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV S.S". It was also informed that further action will be taken by TANGEDCO, subject to fulfilment of the above said terms.

5.9. M/s Adani Green Energy (Tamil Nadu )Ltd., in their letter dated 29.6.2015 informed that they would be doing the 72 MW (Phase V) project through its subsidiary company namely M/s Kamuthi Renewable Energy Ltd and requested for name change. The request was considered, and the balance 50% of the Security deposit was remitted by M/s Kamuthi Renewable Energy Ltd.,



5.10. M/s Kamuthi Renewable Energy Ltd., on submission of relevant documents, were issued "Noted for Record Letter "vide Lr.No.CE/NCES/SE/Solar/EE/SCB/A1/F M/s. Kamuthi Renewable/D 873/15 dated 04.07.2015. As per clause (4) of this letter, the petitioner was informed that that "Your proposed 72 MW solar power plant can be interfaced with the TANTRANSCO grid at proposed sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV evacuation line for a distance of 7 Km connecting your proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker and protection arrangement as per the TANGEDCO norms. The above grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS. You should not claim any deemed generation in the event of delay in commissioning of the 400 KV SS and the applicable tariff will be fixed by the TNERC at the time of commissioning of 400 KV SS. In this regard, you are requested to furnish an undertaking".

5.11. M/s Kamuthi Renewable Energy Limited has given an undertaking dated 16.06.2015 that they will not claim any deemed generation or any other benefits from TANGEDCO, in case the TANTRANSCO could not commission the proposed 400 KV Substation at Kamuthi, Ramnad District even though we complete solar PV power plant well in advance.

5.12. TANGEDCO in the letter dated 21.11.2015 while intimating the petitioner to pay tentative cost towards establishment & supervision charges and testing and commissioning charges have once informed the petitioner that TANGEDCO/TANTRANSCO will not be responsible for any delay in commissioning

of their solar plant in connection with connectivity and establishment of 400/230-110 KV Kamuthi Substation.

5.13. While the project activities of the petitioner were going on, TANGEDCO/TANTRANSCO was carrying out all activities for the erection of Kamuthi 400/230-110 KV SS. The erection of a 400 KV SS involves works of various wings of TANGEDCO/TANTRANSCO such land procurement, land survey, land levelling, procurement of various power transformers, current transformers, potential transformers, breakers, switches, construction of control room, laying of 230 and 110 KV link lines to nearby stations, construction of communication lines etc.

5.14. The petitioner in spite of very well knowing of the fact that grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS in their letter dated 09.02.2016 that their 72 MW plant will be ready by 20.02.2016 and requested to consider them to evacuate power through 110 KV Kamuthi Substation as they planned to set a record of commissioning this project in the shortest span of 6 months.

5.15. TNEB/TANGEDCO from its very existence for the past seventy years, had extended its full support for its customers/industrialists/ entrepreneurs. The Commission would appreciate the efforts/role of TANGEDCO in the uplift of Tamil Nadu and Tamil Nadu is considered one of the well developed states in India.

5.16. TANGEDCO had no obligation to consider the request of the petitioner in their letter dated 09.02.2016 to consider interim arrangement through Kamuthi 110 KV

SS, while the works for commissioning of Kamuthi 400 KV SS were under full swing. However, in order to implement the vision of the Government of Tamil Nadu and based on the Solar Policy 2012, to promote green power in the State of Tamil Nadu, the technical possibilities of accommodating the petitioner's Solar power plant through Kamuthi 110 KV SS, through a temporary arrangement was explored.

5.17. Taking into considerations the grid security and transformers loading aspects, it was found that only 25 MW could be accommodated at Kamuthi 110 KV SS.

5.18. With Good will gesture to promote solar power in the State of Tamil Nadu, M/s Kamuthi Renewable Energy Limited was issued Grid tie-up approval on 29.03.16 for parallel operation of 72 MW solar PV power plant of M/s Kamuthi Renewable Energy Limited interfacing with TANTRANSCO grid at 110 KV bus of existing Kamuthi 110 KV SS through 110 KV feeder till commissioning of Kamuthi 400 KV SS such that the power flow from 72 MW solar PV power plant of M/s Kamuthi Renewable Energy Limited into TANTRANSCO grid at Kamuthi 110 KV 55 shall be limited upto 25 MW.

5.19. The petitioner has accepted the proposal of TANGEDCO for interim arrangement for restricting the capacity to 25 MW without any protest and has not raised any clarification regarding the applicability of tariff. If the petitioner's only intension was to commission the plant well before the commissioning of Kamuthi 400 KV SS and to claim the tariff of Rs.7.01, TANGEDCO could not have extended temporary arrangement as it is not bound to do so.

5.20. Meeting with Adani official at Director/Generation's Chamber on 28.03.2016 along with MD/TANTRANSCO, Director .I Generation & Director/Operation and discussed the issue raised by M/s Kamuthi Renewable Energy Limited. TANGEDCO has giving some options to M/s Kamuthi Renewable Energy Limited for evacuate the power from the Solar Power Plant. M/s Kamuthi Renewable Energy Limited vide letter dated 22.09.2015 has decided to connect 25MW in the existing Kamuthi 110 KV SS instead of Proposed Kamuthi 400/230-110 KV SS.

5.21. Note approval by MD/TANTRANSCO on 29.03.2016 for Interim grid connectivity to restricting the capacity to 25 MW Solar Power. Note approval by Director/Generation on 29.03.2016 for Interim grid connectivity to restricting the capacity to 25 MW Solar Power and also issue the grid connectivity memo on 29.03.2016.

5.22. The Field report from the Superintending Engineer/NCES/Tirunelveli on 29.03.2016. Service Number was allotted requested by M/s. Kamuthi Renewable Energy Limited letter dated 30.03.2016 to the Executive Engineer/ Distribution/ Paramakudi. Details of payment was given to M/s Kamuthi Renewable Energy Limited by the Superintending Engineer/NCES/Tirunelveli on 30.03.2016 and also M/s. Kamuthi Renewable Energy Limited was submitted the payment details on 30.03.2016.

5.23. All the corresponding letters were communicated in the particulars dates are 29.03.2016 to 31.03.2016.

5.24. TANGEDCO took all steps on war footing basis and the Kamuthi 400 KV SS was commissioned on 7.9.2016. Consequent to the commissioning of Kamuthi 400 KV SS, revised tie-up approval was accorded on 20.9.2016 for parallel operation of 72 MW solar PV power plant interfacing with TANTRANSCO grid at new Kamuthi 400/230-110 KV SS at 110 KV level.

5.25. M/s Kamuthi Renewable Energy Limited has furnished an undertaking that it would not claim deemed generation until the commissioning of Kamuthi 400 KV SS, TANGEDCO could have decided that the entire 72 MW Solar power plant commissioning date as the date on which permanent tie up approval was accorded. However, TANGEDCO decided that based on technical feasibility under interim arrangement 25 MW could be interfaced until permanent connectivity is established as agreed by the petitioners.

5.26. M/s.Kamuthi Renewable Energy Limited is paid the applicable tariff of 25 MW @ Rs.7.01 per unit and 47 MW @ Rs.5.10 per unit on regular basis and their claim to be paid at the rate of Rs.7.01 per unit for the 47 MW is totally not justifiable based on the facts stated above.

5.27. Two other subsidiary firms of M/s.Adani group, namely M/s.Kamuthi solar Power Limited and M/s.Ramnad Renewable Energy Limited of the petitioner have commissioned the solar plant after the due date and had filed a petition before Hon'ble APTEL vide Appeal No.31 and 32 of 2017 with the following prayer:

- (a) Grant the petitioner a project specific extension of the Control Period from March 31 2016 to the date of inter-connection of the Petitioner's 72 MW (216 MW) project to the grid, in order for the Respondent to pay the Petitioner the tariff of Rs.7.01 a unit.
- (b) Declare that the Petitioner has successfully commissioned its 12 MW (216 MW) solar power project on or before March 31,2016
- (c) Declare that the Petitioner's solar power project is entitled to a tariff of Rs.7.01 a unit

The above appeal No.31 & 32 was set aside and However, with an intend to Forum Shopping, approached the Commission in M.P. No. 25 & 26 of 2020 and the miscellaneous petitions are dismissed and the decision of TANGEDCO to consider the date of commissioning of the petitioner's plant in the next control period was upheld by the Commission in its order dated 20.07.2021.

5.28. The petitioner had already filed a writ petition WP No. 8644 of 2019 in High Court of Madras to issue an a writ of Certiorarified mandamus or any other writ or order or direction in the nature of writ of certiorarified mandamus calling for records comprised in its order dated 20.9.2016 in Memo.No.CE/NCES/SE/Sol/EE/SCB/A1/F/D.1248/16 and the consequential order dated 30.9.2016 in Lr.No.SE/NCES/TIN/Tech/FKREL/D517/2016 directing the petitioner to segregate its 72 MW solar power plant into 25 MW and 47 MW with separate energy meters and seeking to make payment for 47 MW at the tariff of Rs.5.10 per unit and quash the same as arbitrary, illegal.

The above writ petition was dismissed in its order dated 07.08.2019 and ordered that the petitioner's claim is unsustainable for the following reasons:

- (i) TANGEDCO vide its letter dated 04.07.2015 has approved the project only on certain conditions. One such condition is that " Your proposed 72MW Solar PV Power Plant can be interfaced with the TANTRANSCO grid at sanctioned Kamuthi 400/230-110KV SS at 110KV level by erecting 110KV level by erecting 110KV Line for a distance of 7KM connecting your proposed 72MW Solar PV Plant and the sanctioned new Kamuthi 400/230-110KV SS. The above grid connectivity will be effected only after commissioning of sanctioned new Kamuthi 400/230-110KV SS. You should not claim any deemed generation in the event of delay in commissioning of the 400KV SS and the applicable tariff will be fixed by the TNERC at the time of commissioning of 400KV SS. In this regard, you are requested to furnish an undertaking".
- (ii) On receiving the undertaking from the petitioner, the respondent has entered into the power purchase agreement with the petitioner.
- (iii) From the letter of the petitioner dated 09.02.2015 which is extracted above and the counter of the respondents, it could be seen that the respondent has acceded to the request of the petitioner to give temporary interface through 110KV SS to achieve the date of commercial operation (COD) in record time (within the span of 6 months from the date of signing of EPA). This accommodation was made by the respondent that the petitioner will not claim any benefit out of it. Contrary to the undertaking, the petitioner was trying to take advantage of the concession given by the respondent.

The petitioner, therefore, should have approached, at the earliest point of time, and this miscellaneous petition is filed after a lapse of about two years as an afterthought and as such the petition is not maintainable by law.

5.29. The matter is purely a tariff dispute between the petitioner and the respondent. The fact that there exists in dispute as to the date of commissioning of the project is evident from the document on record of the case. And the fact that an undertaking was given by the petitioner to the respondent that it will not claim any deemed generation or any other benefits whatsoever, from TANGEDCO, in case TANTRANSCO could not commission the proposed 400 KV substation at Kamuthi, Ramnad District even though the generators completes 72 MW power plant well in advance makes the petition before the Commission not maintainable.

5.30. It is clear that the petitioner contents that it's 72 MW solar project was commissioned before 31 of March 2016 and is entitled to a tariff of Rs.7.01 per unit and objecting to segregate 72MW Solar Power plant as 25MW and 47MW separately with separate energy meters; whereas the contention of the respondents in the reply correspondences is to the contrary.

5.31. The monetary claim of the petitioner herein before the Commission with disputed question of facts cannot be adjudicated without resorting to appropriate dispute resolution mechanism under the Electricity Act,2003. Any proceeding without following the required procedure mandated under section 86(1)(f) of the Act, 2003 would not be in consonance of the provisions of the Act, 2003.



## **6. Findings of the Commission:-**

6.1. From the rival contentions it is pellucid that the seminal points that arise for consideration in the present case are:

- (i) Whether the contention of the petitioner that the 72 MW Solar Power Plant of the petitioner stand commissioned on 31.03.2016 consequent upon the commissioning and the issuance of commissioning certificate by the Superintending Engineer, Ramanathapuram dated 15.04.2016 is factually and legally sustainable?
- (ii) Whether the petitioner is entitled to the Tariff fixed by TNERC in the comprehensive Tariff Order on Solar Power dated 12.09.2014 under Order No. 4 of 2014?
- (iii) Whether the action of the 4<sup>th</sup> Respondent segregating the 72 MW Solar Power Plant erected by the petitioner as 25 MW and 47 MW separately with separate meters and paid at different Tariff rates on the basis of the internal communication of the 2<sup>nd</sup> Respondent dated 20.09.2016 is legally valid?
- (iv) Whether the petitioner is entitled to the relief of declaration as prayed for?
- (v) Whether the internal communication of the 2<sup>nd</sup> Respondent dated 20.09.2016 and the follow-up communication dated 30.09.2016 issued by the 4<sup>th</sup> Respondent are liable to be set aside?
- (vi) To what other relief?

6.2. The indisputed facts which are necessary and germane for deciding all the contentious issues involved in the case are summarized as follows:-

6.3. Consequent to the Solar Energy Policy rolled out by the Tamil Nadu State Government, the Tamil Nadu Electricity Regulatory Commission vide Order No.4 of 2014 dated 12.09.2014 issued a Comprehensive Tariff Order on Solar Power and the Tariff was fixed at Rs.7.01 per unit. The control period was fixed as two years and the format of the Energy Purchase Agreement was to be determined by the TNERC after discussion with the concerned stakeholders. Consequent upon the Tariff Order, through Proceedings No.454 dated 07.10.2014, CMD, TANGEDCO instructions were laid down for processing of applications for establishment of Solar Power Plants under the Preferential Tariff Scheme.

6.4. Vide application dated 26.05.2015, the petitioner M/s. Kamuthi Renewable Energy Ltd. expressed its interest for establishment of a 72 MW Solar Power Plant at O.Karisakulam Village, Kamuthi Taluk, Ramnad District. In response, the 1<sup>st</sup> Respondent TANGEDCO vide its letter dated 04.07.2015 proposed to interface the above referred power plant with the TANTRANSCO grid at the sanctioned Kamuthi 400 / 230-110 KV SS at 110 KV level by erecting 110 KV line for a distance of 7 km by connecting the proposed 72 MW Solar Power Plant and the proposed sanctioned Kamuthi 400/230-110 KV SS at Kamuthi.

6.5. In furtherance of the letter issued by TANTRANSCO dated 04.07.2015, the petitioner deposited the total security deposit of Rs.425.50 lakhs and an Energy Purchase Agreement (herein after referred to as EPA) was entered between the petitioner and the 1<sup>st</sup> respondent TANGEDCO on 04.07.2015. Subsequent to the agreement, the petitioner commenced construction of its 72 MW project but could not complete the same as desired due to inclement weather occasioned by cyclone. Then, the control period was suo motu extended by TNERC upto 31.03.2016.

6.6. As per the terms of EPA dated 04.07.2015, the petitioner was to be provided the evacuation facility from the point of generation to the inter connection point. The 1<sup>st</sup> Respondent TANGEDCO was not able to complete the construction for the evacuation facilities within time. On 09.02.2016, the petitioner intimated the 1<sup>st</sup> respondent that the 72 MW Solar Power Project is in the phase of commissioning and will be ready by 20.02.2016 and requested the 1<sup>st</sup> respondent to consider the alternate grid interface arrangement for evacuating power with one circuit of 110 KV D/C in the existing Kamuthi sub-station.

6.7. On completion of the construction work, the Tamil Nadu Pollution Control Board carried out necessary inspections and issued consent to operate on 10.02.2016. Subsequently, after due inspection, on 04.03.2016, the Chief Electrical Inspector granted approval for the commissioning of the petitioner's 72 KW project. Later through letter dated 21.03.2016, the petitioner requested all the respondents to provide necessary connectivity and evacuation facility on regular basis as the plant is ready for commission from 20.02.2016. Thereafter, as directed by the 1<sup>st</sup> respondent TANGEDCO, the petitioner submitted all the required documents on 30.03.2016. On 31.03.2016, the 2<sup>nd</sup> respondent granted temporary connectivity to the petitioner's 72 MW power plant at 110 KV Kamuthi sub-station at 110 KV level.

6.8. The Superintending Engineer, Ramanathapuram issued commissioning certificate for the capacity of 72 MW on 15.04.2016 certifying that the Solar Power Plant of the petitioner was commissioned on 31-03-2016. TANTRANSCO requested the petitioner to inject only up to 25 MW of the generated power out of the 72 MW from the Solar Power Project due to upstream evacuation constraint at Kamuthi 110 KV sub-station at 110 KV level till the petitioner is provided with permanent connectivity at new Kamuthi 400/230-110 KV sub-station. Conceding to the said

request the petitioner was injecting Solar Power generated upto 25 MW in to the grid.

6.9. After several letter correspondence by the petitioner, the Superintending Engineer NCES, TANGEDCO, Tirunelveli issued a letter dated 30.09.2016 agreeing to grant permanent connectivity to the petitioner at New Kamuthi 400/230-110 KV sub-station at 110 KV level subject to condition that the petitioner has to install two separate meters for 25 MW and 47 MW and energy exported by the Solar Power Plant of the petitioner to the grid of Chief Engineer / NCES in proportionate to 25 MW shall be purchased at the rate of Rs.7.01 per unit as fixed in the TNERC Order No.7 of 2014 and the balance energy exported to the grid shall be purchased at the Tariff of Rs.5.10 per unit fixed by TNERC in Order No.2 dated 28.03.2016. The above said letter was issued based on the 2<sup>nd</sup> respondent's internal communication dated 20.09.2016. The action of splitting the power plant of the petitioner was given effect to for the first time by TANGEDCO when it made payment on 27.06.2017 by segregating a part of the project at Rs.7.01 kwh and the remaining part at Rs.5.10 / kwh.

6.10. The petitioner challenged the said action of the respondents by preferring writ petition 8644 of 2019 before the Hon'ble High Court, Madras. The writ petition was disposed of vide Order dated 07.08.2019 directing the petitioner to ventilate his grievance by approaching TNERC.

**Point No.1:**

6.11. The specific case of the petitioner that the Chief Electrical Inspector vide letter dated 04.03.2016 had accorded approval temporarily for a period of three months (upto 03.06.2016) to commission the Electrical Installations inspected in the

premises of the petitioner on 27.02.2016 had not been specifically denied by the respondents. The further case of the petitioner that vide Memo dated 15.04.2016 the Superintending Engineer, Ramnad Electricity Distribution Circle, Ramanathapuram had issued commissioning certificate in respect of the 72 MW Solar Power Plant put up by the petitioner M/s. Kamuthi Renewable Energy Limited is also not put to any challenge by the respondents. Neither the genuineness of both the aforementioned documents nor the authority of the officials concerned to issue the letter and certificate is being questioned by the respondents on any ground. In the commissioning certificate issued by the Superintending Engineer, Ramnad EDC it is specifically mentioned that the date of commissioning of the petitioner's 72 MW Solar Power Plant is 31.03.2016.

6.12. The question as to whether the certificate of the Chief Electrical Inspector is a conclusive proof of the commissioning of a power plant within the control period to the exclusion of any other factors came to be decided by the Hon'ble APTEL in the Appeals No. 287 of 2021 and 288 of 2022 which arose from the orders passed by this Commission in M.P.No.25 of 2020 and 26 of 2020.

6.13. The relevant portion of the order passed by APTEL in the above referred Appeals, which had not been so far set aside by approaching the Supreme Court is reproduced below:

*"42. We accept the contention of the Appellant that the project was ready to commence supply within the said control period with end date as 31.03.2016, considering that CEIG issued the letter dated 12.03.2016 under Regulation 43(4) of the CEA Amendment Regulations, it is the acceptance conveyed by the CEIG, as also recorded by CEIG as under:*

*“Approval is hereby accorded temporarily for a period of 3 months (up to 21.06.2016) under Regulation 43 (4) Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 to commission the Electrical Installations inspected on 12.03.2016 at the above premises as detailed in the Annexure subject to the rectification of defects item No. 1(xiv), 1(xix) and 1(xx) communicated in the letter under 3<sup>rd</sup> cited---”*

*43. As already clarified, the letter issued by the CEIG is nothing but the acceptance letter stating that the project is ready for commissioning, and recommended certain defects to be rectified.*

6.14. If the principle of law laid down by the Hon'ble APTEL in the above referred appeals is applied to the facts of the present case, the inescapable or irresistible conclusion that can be arrived at is that for all intent and purposes the petitioner's 72 MW Solar Power Plant shall have to be treated as commissioned on 31-03-2016 as contended by the petitioner. The commissioning certificate issued by the Superintending Engineer dated 15.04.2016 also cements the case of the petitioner.

6.15. Hence on a conspectus evaluation materials placed on record by both parties, this Commission decides that the contention of the petitioner that the 72 MW Solar Power Plant of the petitioner stand commissioned on 31.03.2016 consequent upon the commissioning and the issuance of commissioning certificate by the Superintending Engineer, Ramnad EDC, Ramnad is factually and legally sustainable.

Accordingly this point is determined in favour of the petitioner.

**Point No.2:-**

6.16. The bone of contention of the petitioner is that even though the petitioner's Solar Power Plant stood commissioned on 31.03.2016, as the 2<sup>nd</sup> respondent

requested the petitioner to inject only upto 25 MW of the generated power out of the 72 MW from the Solar Power Project due to upstream evacuation constraint at Kamuthi 110 KV SS at 110 KV level till the respondents provide permanent connectivity at New Kamuthi 400/230-110 KV sub station, the petitioner was injecting the solar power generated upto 25 MW in to the grid facing the loss of remaining 47 MW and as such the action of the 4<sup>th</sup> respondent splitting up the power plant of the petitioner into two and payment for the energy exported at the rate of Rs.7.01 per unit for 25 MW and Rs.5.10 per unit for the remaining 47 MW is arbitrary and unsustainable under law. Stating so, the petitioner claims that as its 72 MW Solar Power Plant was commissioned before the control period (i.e.) 31.03.2016 and as the same came to be acknowledged by the respondents, the respondents are liable to pay Rs.7.01 per unit for the entire generation of 72 MW honouring Clause 5 of the EPA dated 07.04.2015 entered into between the parties.

6.17. The case of the respondent is that even though the petitioner knew very well that grid connectivity shall be effected only after commissioning of the proposed sanctioned Kamuthi 400/230-110 KV SS, the petitioner requested for permission to evacuate power through 110 KV sub-station to set record of commissioning the project at the shortest span of six months. Even though the 1<sup>st</sup> respondent TANGEDCO was under no legal obligation to concede to the request of the petitioner, in order to carry forward the vision of Government's Solar Policy to promote Green Energy in the State, by exploring the technical possibilities of permitting the petitioner to evacuate through the existing 110 KV SS, as temporary arrangement, the respondents accorded grid tie-up approval on 29.03.2016 for parallel operation of 72 MW Solar Power Plant of the petitioner interfacing with

TANTRANSCO grid at 110 bus of existing 110 KV SS through 110 KV Feeder till commissioning of Kamuthi 400 KV SS, limiting the feed upto 25 MW.

6.18. The further case of the respondents is that the petitioner who readily accepted the said proposal of restricting the capacity to 25 MW agreed not to claim any deemed generation charges or any other benefit whatsoever. After the commissioning of Kamuthi 400 KV SS on 07.09.2016, revised tie-up approval was accorded on 20.09.2016 for parallel operation of 72 MW Solar Power interfacing with TANTRANSCO grid at new Kamuthi 400/230-110 KV level. As per the agreement, the tariff applicable is only as on the date of commissioning of Kamuthi 400/230-110 KV level. However, since as temporary measure the petitioner was permitted to feed 25 MW interfaced through Kamuthi 110 KV, the TANGEDCO agreed to pay higher tariff of Rs.7.01 per unit as far as the evacuation commenced prior to the control period of 31.03.2016 and the revised rate of Rs.5.10 per unit for the evacuation commenced thereafter. The action of the 4<sup>th</sup> respondent in segregating the 72 MW Solar Power Plant erected by the petitioner as 25 Mw and 47 MW and payment ordered on different Tariffs thus stand vindicated.

6.19. For appreciating and evaluating the merit of the rival contentions the communications dated 17.06.2015, 04.07.2015 and undertaking executed by the petitioner on 16.06.2015 assumes significance. The proposal of the petitioner to establish 72 MW Solar Power Plant was considered by the 1<sup>st</sup> respondent TANGEDCO and after finalising the transmission scheme a communication in this regard was sent to the petitioner. One of the terms found in the said communication is as follows:"



'the above referred power plant can be interfaced with the TANTRANSCO grid at proposed sanctioned Kanuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV evacuation line for a distance of 7 km. connecting your proposed 72 MW solar PV power plant and the proposed sanctioned Kamuthi 400/230-110 KV SS with necessary breaker and protection arrangement as per the TANGEDCO norms. The above grid connectivity shall be effected only after commissioning of proposed sanctioned Kamuthi 400/230-110 KV SS."

6.20. In the above said communication, it is also stated that, (TNERC Order No. 7 dated 12.9.2014) "Comprehensive tariff order on solar power" shall be applicable for the solar projects commissioned within the control period of this order. The proposal was subsequently approved by TANGEDCO vide letter dated 04.07.2015. In this letter, the TANGEDCO has made it clear to the petitioner that, they should not claim any deemed generation in the event of delay in commissioning of the 400 KV SS and the applicable tariff will be fixed by the TNERC at the time of commissioning of 400 KV SS. In this regard, the petitioner has to furnish an undertaking.

6.21.

Pursuant to this communication, the petitioner has executed an undertaking on 16.06.2015, in which, it has been stated as follows:-

*"Whereas the TANGEDCO, after having conducted the load flow study, informed the Solar Generator that the proposed 72 MW Solar PV Power Plant can be connected to the sanctioned 400 KV Sub-Station at Kamuthi, Ramnad District, subject to commissioning of*

400/230/110                      KV                      Kamuthi                      SS  
and accordingly issued connectivity approval.

*Whereas we, M/s. Kamuthi Renewable Energy Ltd., have requested TANGEDCO to enter into Power Purchase Agreement for the power to be generated and to be sold to TANGEDCO from the said proposed 72 MW solar PV Power Plant. We hereby agree to give the following undertaking:*

*1. That we will not claim any deemed generation or any other benefits whatsoever, from TANGEDCO, in case the TANTRANSCO could not commission the proposed 400 KV Sub-station at Kamuthi, Ramnad District even though we complete 72 MW PV Power Plant well in advance.”*

6.22.

On the same day, the petitioner and the first respondent had entered into the power purchase agreement, in which, the parties have agreed the price of Rs.7.01 per unit for the solar power generated during the control period of order number 7 of 2014 dated 12.09.2014.

6.23. As per the terms of the EPA dated 04.07.2015, the 72 MW power generated by the petitioner has to be evacuated by interfacing the petitioner's power plant with TANTRANSCO grid at the proposed sanctioned Kamuthi 400/230-100 KV SS at 23-level by erecting 110 KV evacuation line from a distance of 7 km.

6.24. Subsequently, in deviation to the agreed terms regarding evacuation of power generated from the petitioner's Solar Power Plant, the petitioner through letter dated 09.02.2016 made a request to the 2<sup>nd</sup> respondent for evacuation of power through

110 KV SS at Kamuthi before the commission of 400/230-110 Kv sub-station at Kamuthi. The extract of the relevant portion of the letter is as hereunder:-

*“In furtherance of our letter cited under reference 2 above, we are pleased to intimate you that substantial progress has been achieved in establishment of KREL's 72 MW Solar Power Project at Kamuthi Taluka, District Ramanathapuram and is on the verge of completion in all respects and shall be ready for commissioning by 20.02.2016. We also wish to inform you that this project is being commissioned in a shortest period of 6 months from the date of signing of EPA.*

*Since, there is a system constraint for evacuation of power to be generated from KREL's solar power plant, we request your good office to consider the grid interface arrangement proposed vide our letter cited above favorably by permitting to evacuate KREL's power through existing 110KV Kamuthi substation. Through this arrangement, it is proposed to interface the outgoing S/C 110KV feeder of 72MW KREL's Solar Power project with the circuit of 110KV D/C existing Kamuthi substation to 400 KV new Kamuthi Substation Transmission line at 400KV Kamuthi substation end. A brief sketch is attached herewith for ready reference.*

*We request you to kindly consider our grid interface proposal for KREL's 72MW Solar Power Plant evacuation and convey your concurrence on the above at the earliest which will enable us to achieve the COD for KREL's 72MW Solar Power Project and also to set a record of commissioning of this project in short span of 6 months from the date of signing of EPA.”*

From the above referred documents it is crystal clear that only on the request of the petitioner, the power generated from the petitioner's Solar Power

Plant, that too, restricted to 25 MW, was permitted to be evacuated by the respondents through the existing 110 KV Kamuthi sub-station on temporary basis.

6.25. The vital point that arises for consideration in the present petition is as to whether the term “other benefits” mentioned in the undertaking letter dated 16.06.2015 executed by the petitioner would include the tariff mentioned in the EPA dated 04.07.2015 executed by the petitioner and the respondents. This is not the first occasion that this Commission is called upon to decide such an issue. In fact the questions of law raised and the fact of the present case are identical to the question of law and facts of the two previous cases dealt by this Commission (i.e.) M.P. No.25 of 2020 (M/s. Ramnad Renewable Energy Ltd. vs. Tamil Nadu Generation and Distribution Corporation Ltd. and others) and M.P.No.26 of 2020 (M/s. Kamuthi Solar Power Ltd. vs. Tamil Nadu Generation and Distribution Corporation Ltd. and others).

6.26. In the above referred Miscellaneous Petitions, the petitioners therein prayed for declaratory reliefs that their 72 MW Solar Power Plant stood commissioned successfully on or before the control period of 31-03-2016 and that the petitioners power project is entitled to the Tariff of Rs.7.01 per unit fixed by the Commission in Comprehensive Tariff Order dated 19.09.2014 passed under Order No.4 of 2014. Both the petitions were resisted by TANGEDCO and other respondents primarily on the ground that in view of the undertaking letter dated 16.06.2015 the petitioner is not entitled to the Tariff of Rs.7.01 per unit fixed by the Commission as the petitioner could not evacuate energy within the control period of 31.03.2016. Pertinent to point out that undertaking letter dated 16.06.2015 projected in the above referred two cases is identical to the undertaking letter dated 16.06.2015 involved in the present case.

6.27. After full fledged enquiry, the two petitions M.P.No.25 of 2020 and 26 of 2020, came to be dismissed as the Chairman of TNERC, who headed the quorum of two, by casting his casting vote upheld the decision of the respondents considering the date of commissioning of the petitioner's plant in the next control period and that the petitioners are not entitled to the Tariff of Rs.7.01 per unit fixed in the Tariff Order No.4 of 2014 dated 12.09.2014.

6.28. Aggrieved by the said order, the petitioners in M.P.No.25 of 2020 and 26 of 2020, preferred Appeals being Appeal No. 287 of 2021 and 288 of 2021 before the Hon'ble APTEL. Both the appeals came to be disposed of by the Hon'ble APTEL vide Common Order dated 07.10.2022. The Hon'ble APTEL allowed the Appeals in question on coming to the conclusion that the certificate of commissioning issued by the Electrical Inspector as to the date of commissioning of a power plant is the conclusive proof and that the date of commissioning mentioned in the certificate so issued shall be taken as a date of commissioning of the power plant for all intents and purposes of the Electricity Act 2003 and other relevant Regulations.

6.29. Yet another vital point decided by the Hon'ble APTEL is with regard to the binding nature of the undertaking letter given by the respective Generators and about the entitlement of the Generators to the Tariff fixed by the Commission in the Tariff Order dated 12.09.2014 under Order No.4 of 2014. The Hon'ble APTEL has given a categorical finding that the undertaking given by the Generator in the letter dated 16.06.2015 that in case of delay in the commissioning of the proposed new sub-station at Kamuthi by the respondents, deemed energy and other benefits will not be claimed by the Generator, would not include Tariff agreed and mentioned in the EPA dated 04.07.2015 executed between the Distribution Licensee (TANGEDCO) and the Generator (petitioners in M.P.No.25 of 2020 and 26 of 2020).

6.30. The Hon'ble APTEL in the backdrop of the above referred crucial findings, allowed the Appeals 287 of 2021 and 288 of 2021 and declared that the Appellants are entitled to the tariff of Rs.7.01 per unit from 18.09.2019, the date on which the actual flow of the firms power started, as per the notification issued by TNERC vide Tariff Order dated 12.09.2014 for the Solar PV projects commissioned on or before 31.03.2016.

6.31. As the question of law and facts involved in the Appeals dealt by the Hon'ble APTEL are not only identical in all vital aspects but also not distinguishable in any manner, as a judicial discipline, this Commission is obliged to decide the instant case in line with the findings rendered by the Hon'ble APTEL in the above referred two Appeals. Situated thus, this Commission decides that the contention of the respondents that pursuance to the undertaking letter dated 16.06.2015 executed by the petitioner, the petitioner shall be deemed to have waived the Tariff rate of Rs.7.01 per unit mentioned in the Tariff Order passed by this Commission vide Order No.4 of 2014 dated 12.09.2014 is not legally and factually sustainable.

6.32. In point No.1 this Commission has given a finding that the petitioners 72 MW Solar Power Plant stood commissioned as on 31.03.2016 as per the certificate issued by the Electrical Inspector and confirmed by the Superintending Engineer, Ramanathapuram by issuing Commissioning Certificate dated 15.04.2016. As the petitioners power plant stood commissioned within the control period of 31.03.2016 mentioned in the Tariff Order dated 12.09.2014 and as both the parties executed the EPA dated 04.07.2015 conscious of the Tariff of Rs.7.01 per unit to be paid to the petitioner by the respondents for the power supplied, this Commission decides that under law and equity the petitioner is entitled to the Tariff fixed by TNERC in the

Comprehensive Tariff Order on Solar Power dated 12.09.2014 under Order No.4 of 2014.

Accordingly this point is decided in favour of the petitioner.

**Point No.3 to 5:**

6.33. The impugned internal communication dated 20.09.2016 came to be issued by the 2<sup>nd</sup> respondent the Chief Engineer / NCES, Chennai to the 4<sup>th</sup> Respondent, the Superintending Engineer / NCES / Tirunelveli according tie-up approval for the parallel operation of the 72 MW solar power plant of the petitioner interfacing with TANTRANSCO grid at new Kamuthi 400 / 230-110 KV SS at 110 KV level primarily on the premise that for the energy exported by the petitioner to TANTRANSCO grid in proportionate to 25 MW shall be purchased at the rate of Rs.7.01 per unit as fixed in TNERC Order No.7 of 2014 and the balance energy (47 MW) exported to TANTRANSCO shall be purchased at the Tariff of Rs.5.10 per unit without accelerated depreciation benefit as fixed by TNERC in the Comprehensive Tariff Order on Solar Power issued vide Order No.2 dated 28.03.2016 as the petitioner did not commission its 72 MW power plant within the control period of 31.03.2016 and that only 25 MW power was injected by the petitioner within the control period interfacing with TANTRANSCO grid at 110 KV bus of existing 110 KV SS through 110 KV feeder till the commissioning of new Kamuthi 400/230-110 KV SS.

6.34. The 4<sup>th</sup> respondent has issued the impugned letter dated 30.09.2016 to the petitioner agreeing to grant permanent connectivity at New Kamuthi 400/230-110 KV sub-station at 110 KV subject to the condition that the petitioner has to install two separate meters for 25 MW and 47 MW and that the energy exported by the petitioner shall be purchased at the rate of Rs.7.01 and Rs.5.10 per unit respectively.

6.35. This Commission has rendered a categorical finding to point No.1 and 2 holding that the petitioner's 72 MW Solar Power Plant stood commissioned on 31.03.2016 as per the certificate issued by the Electrical Inspector and the commissioning certificate issued by the Superintending Engineer, Ramanathapuram dated 15.04.2016. In view of the above referred findings it is apparent that action of the 4<sup>th</sup> respondent segregating the 72 MW Solar Power Plant established by the petitioner as 25 MW and 47 MW and directing the petitioner to install two separate meters and that the petitioner shall be paid at different rates on the basis of the internal communication of the 2<sup>nd</sup> respondent dated 20.09.2016 is not legally valid. As a corollary this Commission decides that the petitioner is entitled to the relief of declaration as prayed for in the petition.

6.36. One of the relief claimed by the petitioner is for setting aside the internal communication of the 2<sup>nd</sup> respondent dated 20.09.2016 and the follow-up communication dated 30.05.2016 issued by the 4<sup>th</sup> respondent to the petitioner. As points 3 and 4 have been decided in favour of the petitioner it necessarily follows that the petitioner is entitled to this particular relief also.

Accordingly points 3 to 5 are decided in favour of the petitioner.

**Point No.6:**

6.37. Considering the nature of question of law involved in the case, bonafides of the defense taken by the respondents and peculiar facts and circumstances of the case, this Commission decides that the petitioner is not entitled to any other relief which includes costs.

Accordingly this point is decided.

In the result,



- (a) it is hereby declared that consequent upon the Commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram, dated 15.04.2016 to the Petitioner certifying that the 72 MW Solar Power Plant of the petitioner was commissioned on 31.03.2016, the entire 72 MW Solar Power Plant stood commissioned on 31.03.2016 as claimed by the petitioner.
- (b) It is hereby declared that the petitioner is entitled to the Tariff fixed under the Commission's Comprehensive Tariff Order on Solar Power dated 12.09.2014 under Order No.4 of 2014.
- (c) The action of the 2<sup>nd</sup> respondent in his internal communication in Memo No. CE/NCES/SE/Sol/EE/SCB/A1/F/D1248/16 dated 20.09.2016 as acted upon by the 4<sup>th</sup> respondent in its communication dated 30.09.2016 in Lr.No.SE/NCES/TN/Tech/F.KREL/d.517/2016 to segregate 72 MW Solar Power Plant erected by the petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different Tariff rates is set aside as illegal and without jurisdiction.
- (d) No order as to cost.

Petition ordered accordingly.

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

(Sd.....)  
Member

(Sd.....)  
Chairman

/True Copy /

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**