

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:-**

Thiru M. Chandrasekar

.... Chairman

and

Thiru K.Venkatasamy

.... Member (Legal)

**D.R.P. No. 9 of 2021**

1. M/s. Narbheram Solar TN Private Limited,  
Represented by its Authorized Signatory  
Avani Signature, 6<sup>th</sup> Floor,  
91A/1, Park Street, Kolkata 700 016

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

**-Versus-**

1. Tamil Nadu Generation and Distribution  
Corporation Limited (TANGEDCO)  
Represented by its Chairman & Managing Director,  
10<sup>th</sup> Floor, 144, Anna Salai,  
Chennai - 600 002.
2. The Chief Financial Controller/Revenue,  
TANGEDCO,  
Eastern Wing, 7<sup>th</sup> Floor, NPKRR Maaligai,  
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer,  
Tuticorin Electricity Distribution Circle,  
TANGEDCO,  
131,132, E, Tuticorin.
4. The State Load Despatch Centre (SLDC)  
Tamil Nadu Transmission Corporation Limited (TANTRANSCO)  
No.144, Anna Salai,  
Chennai- 600 002

....Respondents  
(Thiru M.Gopinathan  
Standing Counsel for the Respondents)

**Dates of hearing : 24-08-2021; 28-09-2021; 12-10-2021;  
16-11-2021; 07-12-2021; 04-01-2022;  
25-01-2022; 08-02-2022; 01-03-2022;  
08-03-2022 and 15-03-2022**

**Date of order : 05-04-2022**

**ORDER**

The D.R.P.No.9 of 2021 came up for final hearing on 15.03.2022. The Commission, upon perusal of the petition and connected records and after hearing the submissions of the petitioner hereby makes the following order:-

**1. Prayer of the Petitioner in D.R.P no. 9 of 2021:-**

The prayer of the petitioner in this D.R.P. No.9 of 2021 is to -

- (i) set out the methodology and manner of implementing Clauses 5(c) and 7(c) of the PPA for the purposes of billing and accounting for energy drawal and further declare that the petitioner being the net exporter of energy the energy consumed is to be adjusted with the energy exported during the respective billing month and the methodology adopted of imposing excess negative energy charge upon the petitioner's Solar Power Plant is erroneous;
- (ii) Consequently direct the Respondent No. 1 and 3 to modify the JMR Statements for the period October 2019 till April 2021 and such further periods until disposal of the petition such that the calculation of negative energy charges is made therein on monthly billing period basis as per the PPA instead of time slot basis and refund any sums collected from the petitioner by adopting such methodology including payments against the supplementary bills aggregating to Rs. 27,08,933/-, that have been collected by the Respondents till date; and
- (iii) direct immediate issuance of a Letter of Credit in terms of Clause 7 of the PPA dated 26.9.2017;

**2. Facts of the case:-**

The petitioner, M/s. Narbheram Solar TN Private Limited, is awarded with Letter of Intent by the TANGEDCO under Tender No.1 / 2017-18 for the sale of power generated from the petitioner's Solar Power Plant located in Tuticorin District, Tamil Nadu. The PPA signed between the parties to supply 100 MW at the rate of

Rs.3.47 per unit. The petitioner is supplying power to the Respondent TANGEDCO from the date of COD i.e., on 24.09.2019. Though the petitioner is being paid for its export energy, the import energy of the plant is charged by the Respondent on slot to slot basis at the tariff specified under the Commission's Tariff Order No.9 of 2020 dated 16-10-2020; this negative energy charges levied by the 3<sup>rd</sup> Respondent SE/Tuticorin EDC for the period from October 2019 to April 2021 is challenged by the petitioner for a direction to refund the amount of Rs.27,08,933 deducted from the Power generation bills and to adjust the import energy as per the provisions stipulated under the Power Purchase Agreement.

### 3. Contentions of the petitioner:-

3.1. The Petitioner is engaged in the business of generation of renewable energy and has been operating a 100 MW solar power project located at Tuticorin District, in the State of Tamil Nadu. The details of the solar power project of the petitioner in the State of Tamil Nadu are as under:

Project Location	Capacity	Date of commissioning
Village – Govindapuram and Maruthanvalu Naraikinaru, Tehsil – Ottapidaram, Villages Therkumailodai & Kalappaipatti, Tehsil – Kayathar, District – Tuticorin	100 MW	24-09-2019

3.2. M/s.Narbheram Vishram, an affiliate of the petitioner is a successful bidder under Tender Specification No: CE/NCES/OT No.1/2017-18 issued by the 1st Respondent and has been awarded Letter of Intent (LOI) for setting up of 100 MW solar power project vide Lol Ref. No: CE/NCES/SE/SOLAR/EE/SCB/AEE3/F.M/s.Narbheram/ D.774 /17 dated 29-08-2017.

3.3. Pursuant to the issuance of LOI, the petitioner (substituted for M/s.Narbheram

Vishram by virtue of the addendum to the PPA was executed on 15-12-2017) had executed the Power Purchase Agreement ("PPA") with 1st Respondent TANGEDCO on 26.09.2017, wherein the 1st Respondent TANGEDCO had agreed to buy power from the Petitioner at Rs. 3.47 per unit, for a period of 25 years from the Commercial Operation Date i.e., from 24-09-2019.

3.4. The present petition filed by the petitioner seeking adjustment of energy consumed by the Petitioner at its HTSC No. 079494700402 / Non-REC against the energy injected into the grid by the Petitioner from its 100MW solar power plant located at Villages – Govindapuram and Maruthanvalvu Naraikinaru, Tehsil – Ottapidaram and Villages – Therkumailodai & Kalappaipatti, Tehsil – Kayathar, Tuticorin District, Tamil Nadu, pursuant to the aforesaid PPA.

3.5. The Petitioner submitted that it has been in due compliance of all the terms and conditions stipulated in the LOI and PPA dated 26.09.2017 including amendments thereto and that all charges such as Net Metering charges, Reactive Power Charges, Meter Reading Charges, etc have been duly remitted to TANGEDCO by way of adjustment against the amount receivable from TANGEDCO against export of power from the 100 MW Solar Project of the Petitioner, as mentioned in the monthly Joint Meter Reading ('JMR').

3.6. As per the terms of the PPA, the Respondent TANGEDCO is required to pay the energy charges due and payable to the Petitioner within 60 days from the date of receipt of the bill and to also provide LC. The same is provided for under clause 7 of the PPA as follows:

*7. Billing and Payment :*

*a. The due date for payment of energy bill will be 60 days from the date of receipt (excluding the date of receipt) of bill in complete from the generator. The Distribution Licensee shall provide unconditional revolving*

*and irrevocable LC which shall be drawn upon the SPGs.*

*b. The Distribution Licensees shall provide LC from public sector/scheduled commercial bank. The payment shall be made on 60<sup>th</sup> day from the date of receipt of passed bill (Invoice) at LC opener's bank. If the 60<sup>th</sup> day (due date) happens to be a holiday for Distribution Licensee and/or Banks, then payment will be made on the next working day. All expenses relating to LC viz. Opening Charges, Maintenance Charges, Negotiation Charges and renewal charges are to the account of SPGs. The revolving LC shall have a term of 12 months and validity of the LC shall be renewed year after year and remains valid upto expiry of the agreement and the amount shall also be renewed for an amount equal to 105% of the average of monthly billing of preceding 12 months.*

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

3.7. The Petitioner submits that, as stated above, the Respondent TANGEDCO is supposed to open a Letter of Credit ('LC') which has not been done as on date. The Petitioner has issued a letter and email dated 28.04.2021 to the Respondent No. 1, requesting for issuance of the LC, which was followed up with another email and letter both dated 18.05.2021. The Commission may therefore exercise its regulatory powers and direct compliance with such PPA term. The petitioner submits that the regular delay in receipt of payment from the Respondent No. 1 and non-opening of LC by the Respondent no. 1 results in adversely impacting the petitioner to service the loans, for which the petitioner continues to suffer financial loss, thus impacting the financial viability and sustainability of the project. The details of overdue invoices raised by the Petitioner against Net Energy Export Charges upon the Respondents is as under:-

Charges receivable against Export of Power for the billing period of November, 2020 to April, 2021, and which are due for payment to us as below:

Sl. No.	Billing Period	Supply Invoice No	Invoice Date	Due Date	Supply Invoice Value (INR)
1	November, 2020	NSTN/15/NOV 2020	04-12-2020	06-02-2021	3,91,96,075
2	December, 2020	NSTN/17/DEC 2020	04-01-2021	08-03-2021	3,88,22,841
3	January, 2021	NSTN/19/JAN20	03-02-2021	07-04-2021	3,28,87,097
4	February, 2021	NSTN/21/FEB 2021	03-03-2021	04-05-2021	4,33,48,645
5	March, 2021	NSTN/23/MAR2 021	05-04-2021	05-06-2021	4,67,42,233
6	April, 2021	NSTN/01/APR2 122	04-05-2021	04-07-2021	4,31,97,149
<b>Total</b>					<b>24,41,94,040</b>

**1. Another aspect of the PPA that is pertinent to the instant dispute is with reference to clause 1(a) and clause 5 (c) in the PPA, which reads as follows:**

**“1. Definitions**

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

**5. Tariff and Other charges:**

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

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

3.8. A joint reading of the above clauses makes it amply clear that the energy consumed by the Petitioner during a Billing Period i.e., a calendar month, shall be completely adjusted / set off against the energy injected into the Grid by the Petitioner's 100 MW Solar Power Plant during that Billing Period and the Petitioner can be charged by TANGEDCO for its energy consumption as per Commission's Tariff Order in force, only when the energy consumed by the Petitioner during a Billing Period exceeds the total energy injected into the grid by the Petitioner's 100 MW solar power plant during that Billing Period.

3.9. Further, the billing period in vogue is the monthly billing period, as specifically stated in clause 5(c) read with clause 7(c) of the PPA, which states that the TANGEDCO is to raise a bill for energy consumption at the end of every month, for the excess power drawn by the Petitioner in excess of the power injected by the Petitioner during a monthly billing cycle.

3.10. In spite of the clear language of the PPA as extracted above, the Petitioner has been denied the complete adjustment as contemplated in the PPA since October, 2019 onwards. The Petitioner has been in receipt of 'negative energy charges' meaning, charges for excess consumption of energy, from the Respondent No. 1 through Joint Meter Reading Statement ("JMR Statement"), without adjusting the same against the energy exported by the Petitioner on monthly basis in terms of the PPA. The Respondent No.3 issued monthly JMR Statements for the period from October 2019 to April 2021 wherein the negative energy charges has been calculated on time slot basis instead of monthly basis.

3.11. The Petitioner submitted that the energy consumed by the petitioner, in any given month / billing period, is much lesser than the energy exported by the petitioner to the Respondents and as such the question of excess energy consumed in a billing period does not arise at all in case of the petitioner. As such the calculation of negative energy charge on time slot basis and deduction of negative energy charges in the JMR statements of the Respondents is erroneous and the petitioner is entitled to the refund of the excess negative energy charges deducted so far by the Respondents. It is a fit case that the Respondents also be directed not to charge and/or adjust negative energy charges in any subsequent Billing, at a rate higher Rs. 3.47 per unit.

3.12. The Petitioner intimated the 3<sup>rd</sup> Respondent i.e. Superintending Engineer,

Tuticorin of its erroneous calculation *vide* its letters dated 31.03.2020 sent *vide* email dated 22.04.2020. The Petitioner submitted the supplementary invoices against excess negative energy charges for the period of October, 2019 to March, 2020 amounting to Rs. 6,07,552 /- *vide* said email dated 22.04.2020.

3.13. The Petitioner again *vide* its letter dated 02.05.2020 and email dated 08.05.2020 to the 3rd Respondent, emphasized on the adjustment of total consumption against energy exported by the Petitioner. The Petitioner *vide* its letter dated 02.05.2020 and *vide* email dated 08.05.2020 had submitted supplementary invoices for the month of April, 2020 amounting to Rs. 1,10,842 /- towards excess negative energy charges adjusted in the monthly generation statement, issued by Respondent no. 3. The 3rd Respondent responded to the same *vide* letter dated 02.07.2020, categorically denying the Petitioner's request without adducing any cogent reason for explanation for the same and thereby returned the supplementary invoices submitted by the Petitioner for the period of October, 2019 to April 2020.

3.14. The Petitioner reiterated its contention before the 3rd Respondent on 01.06.2020 and 03.07.2020 setting out its grievances along with submission of supplementary invoice for the month of May and June'2020 amounting to Rs.1,19,271/- and Rs.83,128/-, respectively. The 3<sup>rd</sup> Respondent responded to the letter dated 03.07.2020 *vide* letter dated 30.07.2020, once again categorically denying the Petitioner's request without any reason or explanation and thereby returned the supplementary invoices submitted by the Petitioner for the period of May 2020 to June 2020.

3.15. The Petitioner once again *vide* its letter dated 03.08.2020 to the 3<sup>rd</sup> Respondent, reiterated its grievances along with submission of supplementary invoice for the month of July, 2020 amounting to Rs.90,713 /-. The Petitioner *vide* its letter dated 31.08.2020

had resubmitted the supplementary invoices for the period of October'2019 to June'2020 to the 3<sup>rd</sup> Respondent along with a table setting out the energy charges due and payable to the Petitioner for export of solar power for the period of October'2019 to June'2020 amounting to Rs. 9,20,793/-. However, the Petitioner received no response for the same.

3.16. The Petitioner wrote several other letters to the 3<sup>rd</sup> Respondent setting out its faulty calculation of negative energy charges on 03.09.2020, 05.10.2020, 04.11.2020, 04.12.2020, 04.01.2021, 03.02.2021, 03.03.2021, 05.04.2021 and 04-05-2021 along with submission of supplementary invoices for the months of August'2020 to April'2021 aggregating to Rs.16,97,426/-. As on 30.04.2021, the payment to be made to the Petitioner for export of power was Rs.24,41,94,040/- and the excess negative energy charges raised on the Petitioner was Rs. 27,08,933/-. The Petitioner had also enclosed copy of its bill for power export as well as a table calculating the set off.

3.17. For all these letters of the Petitioner, the Petitioner only received two letters dated 02.07.2020 and 30.07.2020 in which the 3<sup>rd</sup> Respondent has categorically refused the Petitioner's request by simply stating that the calculation of negative energy charges is in compliance with the Tariff Order in force. It has thus become necessary for the Commission to exercise its Regulatory Power to issue appropriate clear directions as to the chargeability of negative energy charges upon the Petitioner when there is a net export in any billing month.

3.18. The petitioner submits that the billing and payment ought to be undertaken based on the net energy imported versus the net energy exported, at the end of the monthly billing period and based on the Joint Meter Reading ('JMR'), as stated in clause 5 and 7 of the PPA. In stark contrast to the same, the Respondent TANGEDCO is calculating negative energy charges based on time slots and tariff for

the time slots in which there is a net import which is resulting in imposition of additional negative energy charges. Such a manner of calculation is nowhere contemplated in the PPA and is resulting in undue financial burden on the Petitioner.

3.19. Further stated that even as per the said Tariff Order dated 12.09.2014, as referred to by the 3<sup>rd</sup> Respondent in its letters dated 02.07.2020, and 30.07.2020, the 3<sup>rd</sup> Respondent's calculation is erroneous in law. Clause 12.4 of the Tariff Order dated 12.09.2014 reads as follows:

*".....Therefore, the drawal of such energy by the solar power generator from the distribution licensee shall be adjusted against the generated energy for every billing period. This is applicable for the SPGs selling power to the distribution licensee and open access consumers...."*

3.20. The billing period in respect of the instant case is a monthly billing period. The same can be ascertained from a bare reading of the PPA and specifically, clause 1(a) and clause 7(c) of the PPA.

3.21. The Petitioner submitted that as on date, the Petitioner has been forced to pay a sum of Rs. 27,08,933/- as excess negative energy charges. A detailed statement tabulating the dues payable to the Petitioner for the negative energy charges levied by the 3<sup>rd</sup> Respondent –is given below:-

Amount refundable by Respondents to the petitioner against Negative Energy Charges deducted during the billing period of October, 2019 to April, 2021 from the energy export charges as below:

Sl. No	Month of Negative Energy Charges	Supplementary Invoice No	Invoice Date	Negative Energy Charges Claimed vide Supplementary invoice (INR)
1	October, 2019	NSTN/08/MAR 2020/S	31-03-2020	1,20,666
2	November, 2019	NSTN/09/MAR2020/S	31-03-2020	79,026
3	December, 2019	NSTN/10/MAR 2020/S	31-03-2020	1,25,397
4	January, 2020	NSTN/11/MAR 2020/S	31-03-2020	1,27,733

5	February, 2020	NSTN/12/MAR2020/S	31-03-2020	73,013
6	March, 2020	NSTN/13/MAR 2020/S	31-03-2020	81,717
7	April, 2020	NSTN/02/APR 20/S	02-05-2020	1,10,842
8	May, 2020	NSTN/09/MAY20/S	01-06-2020	1,19,271
9	June,2020	NSTN/06/JUN 20/S	03-07-2020	83,128
10	July 2020	NSTN/08/JULY20/S	03-08-2020	90,713
11	August, 2020	NSTN/10/AUG 20/S	03-09-2020	84,888
12	September, 2020	NSTN/12/SEP20/S	05-10-2020	1,52,316
13	October, 2020	NSTN/14/OCT20/S	04-11-2020	2,13,388
14	November, 2020	NSTN/16/NOV 20/S	04-12-2020	2,41,155
15	December, 2020	NSTN/18/DEC20/S	04-1-2021	4,04,322
16	January, 2021	NSTN/20/JAN2021/S	03-02-2021	1,86,056
17	February,2021	NSTN/22/FEB2021/S	03-03-2021	1,10,007
18	March, 2021	NSTN/24/MAR2021/S	05-04-2021	1,29,396
19	April, 2021	NSTN/02/APR2021/S	04-05-2021	1,75,898
<b>Total</b>				<b>27,08,933</b>

3.22. As stated above the Petitioner's tariff is discovered through a transparent process of competitive bidding and hence under Section 63 of the Act, notwithstanding anything contained in Section 62 of the Act, the terms of the underlying contract being the PPA are applicable more so since the PPA is also approved by the TNERC / Commission and any deviation there from is highly untenable, impermissible, and *ultra vires* the Act.

3.23. During the process of competitive bidding pursuant to the guidelines under Tender Specification No: CE/NCES/OT No.1/2017-18 issued by the 1<sup>st</sup> Respondent and the billing methodology adopted under the PPA executed between 1<sup>st</sup> Respondent and the Petitioner on 26.09.2017, the Petitioner, for development of 100 MW solar project, has considered project financials on the basis of billing methodology as defined under the PPA. It is stated that the tariff under the PPA, at which the petitioner shall export energy to the 1<sup>st</sup> Respondent is fixed for 25 years. At the time of bidding relying on the terms of the draft PPA, the petitioner had agreed for the fixed tariff and as such any deviation from the terms of the PPA

shall gravely prejudice the petitioner. Thus, the calculation of negative energy charges on time slot basis instead of monthly basis shall have significant impact on the commercial viability of the Petitioner's project.

3.24. The Petition has been preferred bonafide and is in the interest of justice. The balance of convenience lies in favour of the petitioner. If the prayers as prayed for herein are not allowed in favour of the petitioner, the petitioner shall suffer irreparable loss and injury.

#### **4. Contentions of the Respondent:-**

4.1. The petitioner praying for avoidance of the calculation of negative energy charges on time slot basis instead of monthly basis and to refund the amount of Rs.27,08,933/- which was collected by the respondent as negative charges for the period from October 2019 to April 2021, with respect to their HTSC No.079494700402/Non-REC, 100 MW solar power plant located at Govindapuram and Maruthanvalu Naraikinaru, Ottapidaram Tashil and Therkumailodai & Kalappaipatti, Kayathar Tashil, in Tuticorin District.

4.2. The petitioner executed the PPA with TANGEDCO on 26.9.2017, based on the LOI Ref No. CE/NCES/SE/SOLAR/EE /SCB/AEE3/F.M/s.Narbheram/D.774/17 Dated 29.8.2017. In this PPA it is clearly pointed out that the negative charges have to be collected by the Licensee only when the respondent has drawn more power than their generation during the particular slot time. As such the negative charges was collected by the respondent by way of adjusting the amount from their invoice bill for the power purchased from this petitioner for the period from October 2019 to April 2021.

4.3. The respective charges such as Net metering charges, Reactive power charges, Meter reading charges, etc., as prescribed by the TNERC have also been collected from the respondent by way of adjusted from the amount recoverable from TANGEDCO.

4.4. This petitioner is liable to pay the negative energy charges as raised by the TANGEDCO for the excess energy drawn from TANGEDCO during the particular slot time as start up power purpose, as per the TNERC's Solar tariff order No.9 of 2020 dated 16.10.2020.

4.5. The petitioner is praying for the refund of negative charges collected for more power drawn for start up power for their HTSC No.079494700402 for the period from October 2019 to April 2021. This petitioner has already known the real facts about the collection of negative charges for excess power drawn, as laid down in the TNERC orders and their Power Purchase Agreement with TANGEDCO. But this petitioner has hide the real facts and trying to escape from the collection of negative charges as per TNERC's order.

4.6. The TNERC has pointed out in its order No.9 of 2020 in section 5.4.1 under the head Charges for the start-up power supplied by the distribution licensee as follows;-

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

4.7. The negative charges is applicable for the period from October 2019 to April 2021 as claimed by the 3rd respondent. The petitioner requested for

refund of the negative charges which was already deducted from the receivable amount from TANGEDCO for the power purchased from this petitioner for the period from the October 2019 to April 2021, is not feasible of compliance as per the TNERC Order dt 16.10.2020.

4.8. The PPA made by this petitioner, clause 5(c) reads clearly as follows:

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

As such based on the Commission order in force (Tariff Order No.9 of 2020 dated 16.10.2020), the negative charges was deducted from their invoice bills for the period from October 2019 to April 2021.

4.9. The joint meter reading for the respective month is also to be calculated the excess energy during respective time slot. Respondent can be charged for their energy consumed by the petitioner as per the Commission's Tariff order in force.

4.10. TANGEDCO has raised the bill for the respective month for excess energy consumption during the month as per clause 7 (c) of the PPA made by this petitioner.

4.11. The petitioner misunderstood the adjustments of energy from one slot to another slot. This adjustments as narrated by this petitioner is only for the generated energy which is used for captive /sale to third party. The usage of JMR reading taken is only for calculating the actual power purchased from the respective solar plant for that respective month. Hence the levy of negative energy charge is as per TNERC's tariff Order.

4.12. The excess energy is arose only when this petitioner has used more power for start up their power plant than that of their generation during the particular time. This petitioner has availed more power during the time schedule for the period from October 2019 to April 2021, and hence this petitioner is liable to pay the negative energy charges as per TNERC's Tariff Order.

4.13. The petitioner has not come forward to accept the real fact in the TNERC's Tariff Order No.9 of 2020 dated 16.10.2020. This petitioner is deliberately remained the same matter to convince this office official and advised to refund the already deducted negative energy charges for the period October 2019 to April 2021.

4.14. The petitioner has stated that the petitioner has received the suitable reply about normal procedure which is adopted for calculating negative energy charges from joint meter reading of the respective month. However this petitioner has filed this petition for refund of the negative energy charges which was already deducted from their invoice bill for the energy purchased from them by TANGEDCO.

4.15. The net export of generated units may be calculated after deduction of import units in the particular slot only. It is also clearly furnished in the energy generating statement. It is further submitted the net energy generation is tabulated as furnished as below:

	C1	C2	C3	C4	C5
EXPORT(1)					
IMPORT(2)					
NETT GEN(1-2)					

If the import is more than export, negative energy charges will arise. But this petitioner is not understood this method of calculation and to calculate the total

generation of their solar power plant by simply deducting the total import from the total export. This is not in practice in TANGEDCO and not approved by the TNERC.

4.16. The petitioner has sent a repeated calculations as framed by the petitioner and trying to form a new method of calculation for them. The procedure which adopted by TANGEDCO is approved by TNERC and followed throughout Tamil Nadu for the petitioner like consumer cum solar energy generator and wind energy generators.

4.17. The petitioner has interpreted the clause 5 and 7 of their PPA which was executed by this petitioner on 26.09.2017, and trying to introduce the new procedure i.e., to deduct the total import from the total export during the respective month.

4.18. The calculation of net generated is calculated as per joint meter reading for the respective month and the excess import in the particular month may be taken as the negative energy for calculating negative energy charges as per TNERC's order No.9 of 2020 dated 16.10.2020. As such the collection of negative energy charges from this petitioner is well within the law. There is no such deviations as stated by this petitioner.

4.19. The negative energy charges has to be calculated based on the TNERC's order in force not as per the previous orders. Hence the levy of negative energy charges for excess energy imported by this petitioner in the particular month is in order.

4.20. The amount of Rs.27,08,933/- was levied from the petitioner only for the charges for negative energy consumed from TANGEDCO for the respective period as per TNERC's Tariff order dated 16.10.2020. This petitioner is trying to escape from the payment of negative energy charges by stating the controversies frequently. The petitioner is in the process of making false statements into correct statements.

4.21. The petitioner misinterpreted the PPA for the sake of themselves and state that the net total import units must be deducted from the total net export units during month. But the actual adopted method is the net import units may be deducted from the net export units in the respective slot. This procedure is also approved by TNERC and adopted for all the petitioners like solar power generators and wind energy generators. Based on the TNERC's Tariff order No.9 of 2020 dated 16.10.2020, the levy of negative energy charges from this petitioner is in order. There is no such deviation as stated by this petitioner.

4.22. The negative energy charges for the period from October 2019 to April 2021 was levied from this petitioner by the way of adjusted from the amount receivable from TANGEDCO for their Solar energy exported to Grid based on the TNERC's Tariff order dated 16.10.2020. As such the refund of such amount as claimed by this petitioner is not feasible of compliance.

4.23. The petitioner had also agreed in their agreement itself in Para (4), "To comply with requirements of Act and Terms and Conditions of Distribution code and Supply code as, "The consumer hereby undertakes to comply with all the requirements of the applicable Acts, Regulations,etc., and Grid Code, Distribution Code and Supply Code and of any amendments, modifications or re-enactment there of or any other enactment to be passed in relation to supply made under orders,etc., made there under from time to time,provisions of the Tariff scale of Miscellaneous and other charges and the terms and conditions supply prescribed from to time, and the petitioner hereby agrees to dispute their applicability to this agreement".

4.24. Therefore the writ petitioner is not entitled to any relief in the above Dispute Resolution petition, and this petition has to be dismissed and the balance of convenience is in favour of the respondents.

## **5. Contention of the petitioner in its Rejoinder:**

5.1. The Petitioner has stated that it has been in due compliance of all the terms and conditions stipulated in the LOI and PPA dated 26.09.2017 including amendments thereto and that all charges such as Net Metering charges, Reactive Power Charges, Meter Reading Charges, etc. have been duly remitted to TANGEDCO by way of adjustment against the amount receivable from TANGEDCO against export of power from the 100 MW Solar Project of the Petitioner, as mentioned in the monthly Joint Meter Reading ('JMR').

5.2. As per the terms of the PPA, the Respondent TANGEDCO is required to pay the energy charges due and payable to the Petitioner within 60 days from the date of receipt of the bill. The same is provided for under clause 7 of the PPA as follows:

### *7. Billing and Payment:*

- a. The due date for payment of energy bill will be 60 days from the date of receipt (excluding the date of receipt) of bill in complete from the generator. The Distribution Licensee shall provide unconditional revolving and irrevocable LC which shall be drawn upon the SPGs.*
- b. The Distribution Licensees shall provide LC from public sector/scheduled commercial bank. The payment shall be made on 60 day from the date of receipt of passed bill (Invoice) at LC opener's bank. If the <sup>60th</sup> day (due date) happens to be a holiday for Distribution Licensee and/or Banks, then payment will be made on the next working day. All expenses relating to LC viz. Opening Charges, Maintenance Charges, Negotiation Charges and renewal charges are to the account of SPGs. The revolving LC shall have a term of 12 months and validity of the LC shall be renewed year after year and remains valid upto expiry of the agreement and the amount shall also be renewed for an amount equal to 105% of the average of monthly billing of preceding 12 months.*
- c. The Distribution Licensee wherever necessary, shall raise a bill at the end of a billing period of one month for the power drawn by the SPG in*

*excess over the exported power and the SPG shall make payment to the Distribution Licensee at HT temporary supply tariff within the time stipulated to the HT consumers in the Commission's Supply Code, 2004 as amended from time to time.*

The term SPG used above is the Petitioner in the instant case.

5.3. The Petitioner submits that, as stated above, the Respondent TANGEDCO is supposed to open an LC which has not been done as on date. The Commission may therefore exercise its regulatory powers and direct the Respondent to comply with such PPA term. The petitioner submits that the regular delay in receipt of payment from the Respondent No. 1 and non-opening of LC by the Respondent no. 1 results in adversely impacting the petitioner to service the loans, for which the petitioner continues to suffer financial loss, thus impacting the financial viability and sustainability of the project. The details of overdue invoices raised by the Petitioner against Net Energy Export Charges upon the Respondents is as under:

**Charges overdue against Export of Power for the billing period July, 2021 to September, 2021 as below:**

<b>Sl. No</b>	<b>Month</b>	<b>Supply Invoice No</b>	<b>Invoice Date</b>	<b>Due Date</b>	<b>Supply Invoice Value</b>
1	July, 2021	NSTN/07/JULY2122	05-08-2021	05-10-2021	4,77,28,420
2	August, 2021	NSTN/09/AUG2122	04-09-2021	04-11-2021	4,92,81,171
3	September, 2021	NSTN/11/SEP2122	05-10-2021	05-12-2021	5,04,54,319
<b>Total</b>					<b>14,74,63,910</b>

Another aspect of the PPA that is pertinent to the instant dispute is with reference to clause 1(a) and clause 5(c) in the PPA, which reads as follows:

*1. Definitions*

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

5. *Tariff and Other charges:*

(c) *Start up Power Charges:*

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

5.4. A joint reading of the above clauses makes it amply clear that the energy consumed by the Petitioner during a Billing Period i.e., a calendar month, shall be completely adjusted/set off against the energy injected into the Grid by the Petitioner's 100 MW Solar Power Plant during that Billing Period and the Petitioner can be charged by TANGEDCO for its energy consumption as per Commission's Tariff Order in force, only when the energy consumed by the Petitioner during a Billing Period exceeds the total energy injected into the grid by the Petitioner's 100 MW solar power plant during that Billing Period.

5.5. Further, the billing period in vogue is the monthly billing period, as specifically stated in clause 5(c) read with clause 7(c) of the PPA which states that the TANGEDCO is to raise a bill for energy consumption at the end of every month, for the excess power drawn by the Petitioner in excess of the power injected by the Petitioner during a monthly billing cycle.

5.6. In spite of the clear language of the PPA as extracted above, the Petitioner has been denied the adjustment as contemplated in the PPA since October, 2019 onwards. The Petitioner has been in receipt of 'negative energy charges' meaning, charges for consumption of energy, from the Respondent No. 1 through Joint Meter Reading Statement ("JMR Statement"), without adjusting the

same against the energy exported by the Petitioner on monthly basis in terms of the PPA. The Respondent No. 1 issued monthly JMR Statements for the period October 2019 till March 2021 and further till November 2021, wherein the negative energy charges has been calculated on time slot basis instead of monthly basis.

5.7. Aggrieved by the same, the Petitioner intimated the 3rd Respondent Superintending Engineer, Tuticorin of its erroneous calculation vide its letters dated 31.03.2020 sent vide email dated 22.04.2020. The Petitioner submitted the supplementary invoices against negative energy charges for the period of October'2019 to March'2020 amounting to Rs. 6,07,552 vide said email dated 22.04.2020.

5.8. The Petitioner again vide its letter dated 02.05.2020 and email dated 08.05.2020 to the 3rd Respondent, emphasized on the adjustment of total consumption against energy exported by the Petitioner. The Petitioner vide its letter dated 02.05.2020 sent vide email dated 08.05.2020 had submitted supplementary invoices for the month of April'2020 amounting to Rs.1,10,842/- towards excess negative energy charges adjusted in the monthly generation statement, issued by Respondent no. 1. The 3rd Respondent vide letter dated 02.07.2020, categorically denied the Petitioner's request without adducing any reason or explanation for the same and thereby returned the supplementary invoices submitted by the Petitioner for the period of October'2019 to April'2020.

5.9. The Petitioner reiterated its contention before the 3rd Respondent on 01.06.2020 and 03.07.2020 setting out its grievances along with submission denying the Petitioner's request without any reason or explanation and thereby returned the supplementary invoices submitted by the Petitioner for the period of

May, 2020 to June, 2020 amounting to Rs.1,19,271/- and Rs.83,128/- respectively. The 3rd Respondent responded to the letter dated 03.07.2020 vide letter dated 30.07.2020, once again denying the petitioner's request without any reason or explanation and thereby returned the supplementary invoices submitted by the Petitioner for the period of May, 2020 to June, 2020.

5.10. The Petitioner once again vide its letter dated 03.08.2020 to the 3rd Respondent, reiterated its grievances along with submission of supplementary invoice for the month of July'2020 amounting to Rs.90,713/-. The Petitioner vide its letter dated 31.08.2020 had re-submitted the supplementary invoices for the period of October'2019 to June'2020 to the 3rd Respondent along with a table setting out the energy charges due and payable to the Petitioner for export of solar power for the period of October'2019 to June'2020 amounting to Rs.9,20,793/-. However, the Petitioner received no response for the same.

5.11. Aggrieved, the Petitioner wrote several other letters to the 3rd Respondent setting out its faulty calculation of negative energy charges on 03.09.2020, 05.10.2020, 04.11.2020, 04.12.2020, 04.01.2021, 03.02.2021, 03.03.2021 and 05.04.2021 along with submission of supplementary invoices for the months of August, 2020 to March'2021 aggregating to Rs.15,21,528/-. As on 31.03.2021, the payment to be made to the Petitioner for export of power was Rs. 20,09,96,891/- and the negative energy charges raised on the Petitioner was Rs. 25,33,034/-. The Petitioner had also enclosed copy of its bill for power export as well as a table calculating the set off.

5.12. For all these letters issued by the Petitioner, the Petitioner only received two letters dated 02.07.2020 and 30.07.2020 in which the 3rd Respondent refused the Petitioner's request by simply stating that the calculation of negative

energy charges is in compliance with the Tariff Order in force. It is pertinent to note that the 3rd Respondent has continued to take a similar stand in its counter affidavit filed before this Commission. It has thus necessary for the Commission to exercise its Regulatory Power to issue appropriate clear directions as to the manner in which such charges are to be calculated.

5.13. The Petitioner submits that the billing and payment ought to be undertaken based on the net energy imported versus the net energy exported by the end of the monthly billing period and based on the Joint Meter Reading (JMR'), as stated in clause 7 of the PPA. In stark contrast to the same, the Respondent TANGEDCO is calculating negative energy charges based on time slots and tariff for the time slots in which there is a net import which is resulting in imposition of additional negative energy charges. Such a manner of calculation is nowhere contemplated in the PPA and is resulting in undue financial burden on the Petitioner.

5.14. It is submitted that even as per the said Tariff Order dated 12.09.2014, the 3rd Respondent's calculation is erroneous in law. Clause 12.4 of the Tariff Order dated 12.09.2014 reads as follows:

*“Therefore, the drawal of such energy by the solar power generator from the distribution licensee shall be adjusted against the generated energy for every billing period. This is applicable for the SPGs selling power to the distribution licensee and open access consumers....”*

5.15. The billing period in respect of the instant case is a monthly billing period. The same can be ascertained from a bare reading of the PPA and specifically, clause 1(a) and clause 7 of the PPA.

5.16. The Petitioner submits that as on date, the Petitioner has been forced to

pay a sum of Rs.25,33,034/- till March 2021 and further Rs.12,74,036/- till November 2021 as excess negative energy charges. A detailed statement tabulating the negative energy charges levied by the 3<sup>rd</sup> Respondent is given below:-

**Amount receivable against Negative Energy Charges levied during the billing period of October, 2019 to November, 2021 as below:**

Sl. No	Month of Negative Energy Charges	Supplementary Invoice No	Invoice Date	Negative Energy Charges Claimed vide Supplementary Invoice (excl. TDS)
1	October,2019	NSTN/08/MAR2020/S	31-03-2020	1,20,666
2	November,2019	NSTN/09/MAR2020/S	31-03-2020	79,026
3	December, 2019	NSTN/10/MAR2020/S	31-03-2020	1,25,397
4	January, 2020	NSTN/11/MAR2020/S	31-03-2020	1,27,733
5	February, 2020	NSTN/12/MAR2020/S	31-03-2020	73,013
6	March, 2020	NSTN/13/MAR2020/S	31-03-2020	81,717
7	April, 2020	NSTN/02/APR20/S	02-05-2020	1,10,842
8	May, 2020	NSTN/04/MAY20/S	01-06-2020	1,19,271
9	June, 2020	NSTN/06/JUN20/S	03-07-2020	83,128
10	July,2020	NSTN/08/JULY20/S	03-08-2020	90,713
11	August, 2020	NSTN/10/AUG20/S	03-09-2020	84,888
12	September, 2020	NSTN/12/SEP20/S	05-10-2020	1,52,316
13	October, 2020	NSTN/14/OCT20/S	04-11-2020	2,13,388
14	November, 2020	NSTN/16/NOV20/S	04-12-2020	2,41,155
15	December, 2020	NSTN/18/DEC20/S	04-01-2021	4,04,322

16	January, 2021	NSTN/20/JAN2021/S	03-02-2021	1,86,056
17	February, 2021	NSTN/22/FEB2021/S	31-03-2021	1,10,007
18	March, 2021	NSTN/24/MAR2021/S	05-04-2021	1,29,396
19	April, 2021	NSTN/02/APR2122/S	04-05-2021	1,75,898
20	May, 2021	NSTN/04/MAY2122/S	04-06-2021	1,65,235
21	June, 2021	NSTN/06/JUNE2122/S	05-07-2021	1,18,838
22	July, 2021	NSTN/08/JULY2122/S	05-08-2021	1,23,348
23	August, 2021	NSTN/10/AUG2122/S	04-09-2021	1,24,981
24	September, 2021	NSTN/12/SEP2122/S	05-10-2021	1,74,698
25	October, 2021	NSTN/10/OCT2122/S	06-11-2021	1,96,719
26	November, 2021	NSTN/16/NOV2122/S	03-12-2021	1,94,319
<b>Total</b>				<b>38,07,070</b>

5.17. The Petitioner's tariff is discovered through a transparent process of competitive bidding under Section 63 of the Act. As per the scheme of the Act and under section 63 of the Act if the tariff is a result of competitive bidding process, then, notwithstanding anything contained in Section 62 of the Act, the Regulatory Commission adopts the tariff as determined through transparent process of bidding. The conditions and tariff as per PPA are effective and binding as it is also approved by the TNERC / Commission and any deviation therefrom is untenable, impermissible, and ultra vires the Act. The terms of the contract between the parties are clearly governed by the Contract that is entered into. By virtue of the language of S.63

5.18. During the process of competitive bidding pursuant to the guidelines under Tender Specification No: CE/NCES/OT No.1/2017-18 issued by the 1St Respondent and the billing methodology adopted under the PPA executed

between 1 Respondent and the Petitioner on 26.09.2017, the Petitioner, for development of 100 MW solar project, has considered project financials on the basis of billing methodology as defined under the PPA. It is stated that the tariff under the PPA, at which the petitioner shall export energy to the 1st Respondent is fixed for 25 years. At the time of bidding relying on the terms of the draft PPA, the petitioner had agreed for the fixed tariff and as such any deviation from the terms of the PPA shall gravely prejudice the petitioner. Thus, the calculation of negative energy charges on time slot basis instead of monthly basis shall have significant impact on the commercial viability of the Petitioner's project.

5.19. In this regard it is pertinent to state that the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80 at page 105 while interpreting the provisions of S.63 held as follows

*19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adopt/on" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been*

issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

*“20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it/s also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Sect/on 791)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) then be used.”*

It is thus clear that the interplay between S.63 which involves adoption of tariff and S.62 which is the general tariff fixation power places S.63 on a higher

pedestal due to the non-obstante clause and the terms of the contract under a S.63 Competitive Bid are sacrosanct and even the powers under S.62 are only subject to such adopted Tariff and terms of the agreement. Thus, when even the State Regulatory Commission's powers are circumscribed by 5.63, it is wholly incomprehensible that a licensee would be able to act in violation of the express terms as is being sought to be done by the Respondents.

5.20. The 3rd Respondent states that the negative charges was collected as per the particular slot time as start up power purchase and relies on this Commission's Solar Tariff Order No. 9 of 2020 dated 16.10.2020. The relevant clause as extracted in the counter affidavit at para 8 is as follows:

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

While the above Tariff Order fixes the charges for start-up power, the same has to be read with the terms of the PPA between the parties which are in accordance with the Central Government Guidelines. In this regard, it is relevant to state herein as per joint reading of Clause 1(a), 5(c) and 7(c) of the PPA (extracted hereinabove), energy consumed during a billing period (i.e., calendar month) should be completely set off against the energy injected into Grid from our 100 MW Solar Project, TANGEDCO should charge for energy consumption as per the TNERC tariff order, only when the energy consumed during a billing period exceeds the total energy injected during that Billing period. Pertinently, there is no mention of any slot wise adjustment of imported and exported energy in the PPA executed.

The interpretation of the provisions of PPA by the 3d Respondent that the energy

imports should be adjusted on time slot basis as per the Tariff Order in force is contrary to the provisions of the PPA, more specifically clauses 1(a), 5(c) and 7(c). The Petitioner submits that the Tariff Order fixes the rates to be charged and such rate will apply only in case where the total imports during a billing period is more than total exports during that billing period, i.e., over the course of a month. If the interpretation as sought to be given by the Licensee is taken, it would lead to the terms of the PPA being rendered a nullity which is impermissible as a S.63 PPA is sacrosanct.

The terms of the PPA cannot be diluted through incorrect application of the Tariff Orders contrary to the terms of the binding PPA.

5.21. The contents of para 10 is a reproduction of Clause 5(c) of the PPA and hence, merits no response.

5.22. It is denied that the Petitioner has misunderstood the method of adjustment of energy, when in fact it is the Respondent who has misinterpreted the terms of the PPA. It is also categorically denied that the Petitioner has availed more power during the time schedule for the period October'2019 to April'2021, and hence, this Petitioner liable to pay the negative energy charges as per TENRC's Tariff Order.

5.23. It is reiterated that the Respondents are miscalculating the negative energy charges to suit their stand and the same is contrary to express provisions of the PPA. It is further submitted that being a party to the PPA and the same being approved by this Commission, the Respondents are bound by it.

5.24. It is specifically denied that the petitioner has misinterpreted the terms of the PPA and further denied that the petitioner is inventing a new procedure, when the Petitioner is simply following the clauses and manner of charging as set

out in the PPA which continue to be in force and binding. It is impermissible to state that the Tariff Order would in any manner affect the statutorily protected rights under a S.63 PPA and further illogical to state that the negative energy charges for the period prior to the tariff order has to be calculated as per the tariff order. The interpretation of the Respondent is impermissible in law.

5.25. It is pertinent to note herein that the Respondents have consciously not responded on the issue of opening of Letter of Credit in favour of the petitioner and it is prayed that the Commission may pass directions to forthwith have it operationalised.

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

6.1. The petitioner has filed this petition seeking direction to set out the methodology and manner of billing and accounting for energy drawn (import) by its plant and sought to declare that the energy consumed is to be adjusted with the energy exported during the respective billing month as provided under Power Purchase Agreement, and further prayed for refund of the charges deducted by the Respondent for the energy imported during the period from October 2019 to April 2021 aggregating to Rs.22,96,755. The petitioner has also prayed for direction to issue Letter of Credit in terms of Clause 7 of the PPA by the Respondent.

6.2. The petitioner was a successful bidder under Tender No.1 / 2017-18 and awarded Lol for setting up of 100 MW Solar power project in Tuticorin. The petitioner executed the Power Purchase Agreement with the Respondent on 26-09-2017 for supply of power at Rs.3.47 per unit for the period of 25 years from the Commercial Operation Date i.e., from 24-09-2019.

6.3. As stipulated under the PPA, all charges such as Net Metering charges, Reactive Power Charges, meter Reading Charges, etc., is paid by the petitioner by

way of adjustment against the amount receivable from the TANGEDCO against the export of power from the 100 MW Solar plant.

6.4. The petitioner has stated that according to Clause 1(a) and 5(c) of the PPA, the energy consumed/drawn by the generator during a Billing period i.e., a calendar month, shall be completely adjusted / set off against the energy injected into the Grid by the Petitioner's 100 MW Solar Power Plant and the generator can be charged by TANGEDCO for its energy consumption as per Commission's Tariff Order in force, only when the energy consumed by the Petitioner during a Billing period exceeds the total energy injected into the grid by the generator during that particular Billing period.

6.5. The petitioner was charged with the so called 'Negative energy charges' for the import energy since October 2019 to till date, without adjusting the same against the energy exported by the Petitioner on monthly basis. The negative energy charge has been calculated on time slot basis instead of monthly basis. The petitioner is contemplating that this methodology is against the provisions of the Power Purchase Agreement. The petitioner has also stated that the energy consumed by the petitioner, in any given month / billing period, is much lesser than the energy exported, and as such the question of excess energy consumed in a billing period does not arise; and the calculation of negative energy charge on time slot basis by the Respondents is erroneous and eligible for refund of such charges deducted by the Respondents.

6.6. Though such imported power was billed by the SE/Tuticorin at the Tariff rate and deducted from the Generation bills of the petitioner, the petitioner was raising supplementary invoices against every deduction from the monthly bills raised for generation. The petitioner made many representations against these deductions vide its letter dated 31.03.2020, 22.04.2020, 02.05.2020, 02.07.2020, 31.08.2020, 03.09.2020, 05.10.2020, 04.11.2020, 04.12.2020, 04.01.2021, 03.02.2021,

03.03.2021, 05.04.2021 and 04.05.2021. But in this connection, the Respondent has replied in its letter dated 02.07.2020 that the drawal of power is in excess over the exported power in a billing month such excess drawal is billed as per the Commission's Tariff Order in force.

6.7. In support of the terms of the PPA under 5(c) & 7(c) the petitioner has raised the supplementary invoices towards Energy charges deducted for import of energy, thus the total amount of Rs.22,96,755 is claimed by the petitioner as refundable from the Respondent.

6.8. The Respondent has pointed out that the negative charges have been collected by the Licensee only when the petitioner has drawn more power than their generation during the particular slot time. As such the negative charges was deducted by this respondents in terms of tariff from the invoice raised for the power purchased from this petitioner during the said period from October 2019 to April 2021, and further stated that the liability to pay the negative energy charges arises for the excess energy drawn from TANGEDCO during the particular slot time under the provisions of TNERC's Solar Tariff Order No.9 of 2020 dated 16.10.2020.

6.9. Further, the Respondent has stated that the petitioner misunderstood the adjustments of energy from one slot to another slot. This method of adjustments as contemplated by the petitioner is only when the generated energy is used for Captive / Sale to 3<sup>rd</sup> party. Moreover, the excess energy arose only when the petitioner uses more power for starting up their power plant than their generation during the particular time. The Net export of generated units is calculated after deduction of import units in the particular slot (Viz., C1, C2, C3, C4, C5). If the import is more than export, negative energy charges will arise. As the petitioner has availed more power during the time schedule for the period from October 2019 to April 2021, the petitioner is

liable to pay the negative energy charges as stipulated under Commission's Tariff Order. But the petitioner misunderstood the method to calculate the net generation of their Solar power by simply deducting total import from the total export energy which is contended to be against the Solar Tariff Order by the Respondent.

6.10. From the submissions of the both the parties, we have the following observations.

6.10.1. The Power Purchase Agreement executed between the parties on 26.09.2017 consists of the following provision in respect of the tariff and Other charges payable.

*"5. Tariff and Other charges:*

*(a) Energy Charges:*

*The Solar Power Tariff of Rs.3.47 per Unit finalised through reverse bidding shall be applicable to the SPG for the agreement period of 25 years i.e., 25 years from the date of Commercial Operation of the Solar Power plant.*

*(b) Reactive Power Charges:*

*The reactive power charges shall be as specified in the Order on Open access issued by the Commission from time to time.*

*(c) Start up Power Charges:*

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

The parties have executed the PPA in accordance with the provisions of the Solar Tariff Order in vogue on that date.

6.10.2. Though the caption is given as 'Start up Power Charges', it is a fact that actually imported power is not required for start up of generating machines, whereas in the case of solar plants import power is required for routine Maintenance of power station, Security and lighting purposes, etc.,

6.10.3. The petitioner states that as per the provisions of Clause 7(c) of the PPA, *the Distribution Licensee wherever necessary, shall raise a bill at the end of a billing*

*period of one month for the power drawn by the SPG in excess over the exported power and the SPG shall make payment to the Distribution Licensee at HT Temporary supply tariff within the time stipulated to the HT consumers in the Commission's Supply code, 2004 as amended from time to time.*

The billing and payment ought to be undertaken based on the net energy imported versus the net energy exported, at the end of the monthly billing period; and the calculation of negative consumption based on time slot is not in order. Further, the petitioner has stated that Petitioner's tariff is discovered through a transparent process of competitive bidding and hence under Section 63 of the Act, notwithstanding anything contained in Section 62 of the Act, the terms of the contract being the PPA are applicable, and billing methodology shall be on the basis as defined under the PPA.

6.10.4. At this juncture, the Commission would like to observe that selective reading of clauses of the PPA will not serve the meaning of the agreement. Clause 5(c) and 7(c) shall have to be read along with the Clause 10 of the PPA agreed to by the parties, which reads as below -

***"10. Applicability of the Electricity Laws:***

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

According to the above clauses of the PPA, the parties are bound to adhere to the Commission's Orders issued from time to time.

6.10.5. As the petitioner's plant was commissioned on 24.09.2019, the provisions of the Commission's Solar Tariff Order No.5 of 2019 dated 29.03.2019 is applicable until the next Tariff Order issued by the Commission in Order No.9 of 2020 dated 16.10.2020. Under the provisions of Para 4.0 of the T.O.5 of 2019, the Open Access

charges and other Terms and Conditions is applicable to all the SPGs irrespective of their date of Commissioning.

**"4.0 Applicability of this order**

*4.1 This Order shall come into force from 01.04.2019. The tariff fixed in this order shall be applicable to all solar power plants commissioned during the control period of the Order. The tariff is applicable for purchase of solar power by Distribution Licensee from Solar Power Generators (SPGs). The open access charges and other terms and conditions specified shall be applicable to all the SPGs, irrespective of their date of commissioning."*

6.10.6. And the clause on "Charges for Start-up power supplied by the Distribution licensee" got modified as below with due consultation of stakeholders, which is applicable to all SPGs with effect from 16.10.2020 irrespective of its date of Commissioning.

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

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

6.10.7. Further, in this connection, it would be pertinent to refer the order of the Commission in the case D.R.P.4 of 2014 dated 13.07.2021, in which the Commission has clearly stated about the applicability of Start up power charges in respect of Solar Power Generators under various Tariff Orders of the Commission.

*"8.17. In light of the above findings, we admit the petition to the extent of the directions given below:*

*xxxx                      xxx                      xxx*

*(iv) In respect of start up power for the subsequent period, it is to be charged as mentioned hereunder -*

<b>Order No. &amp; Date</b>	<b>Applicability</b>
<i>Comprehensive Tariff Order on Solar power – Order no.4 of 2014, dt.12.9.2014</i>	<i>The drawal of energy by the Solar power generator from the distribution licensee shall</i>

<i>Comprehensive Tariff Order on Solar power – Order no.2 of 2016, dt.28.03.2016</i>	<i>be adjusted against the generated energy for every billing period.</i>
<i>Comprehensive Tariff Order on Solar power – Order no.2 of 2017, dt.28.03.2017</i>	
<i>Comprehensive Tariff Order on Solar power – Order no.5 of 2018, dt.28.03.2018</i>	
<i>Comprehensive Tariff Order on Solar power – Order no.5 of 2019, dt.29.03.2019</i>	
<i>Comprehensive Tariff Order on Solar power – Order no.9 of 2020, dt.16.10.2020</i>	<i>Any power drawn during the non generating period of Solar power i.e., beyond 7.00 am to 6.00 pm shall be charged at HT Industrial tariff. Power drawn during the solar generating period of 7.00 am to 6.00 pm in excess of generation shall also be charged at HT Industrial tariff.”</i>

The above findings is squarely applicable to all the SPGs and Start up charges is levied according to the above observations.

6.10.8. Therefore we are of the opinion that the petitioner shall not confine themselves within the clause 5(c) of the PPA, but has to be read along with the clause 10 of the PPA which clearly provides for the applicability of the Commission's Tariff Order issued from time to time. Further, the respective Tariff Order made provisions for applicability of charges for all the SPGs whether the plants commissioned during such control period or already commissioned.

6.10.9. As the period referred by the petitioner in this case relates from October 2019 to April 2021, the Respondent is directed to

(i) adopt the energy adjustment methodology for the period from October 2019 to 16.10.2020, and

(ii) adopt the HT industrial tariff as stipulated under clause 5.4.1. of T.O.9 of 2020 for the period from 16.10.2020 onwards.

6.10.10. The Respondent is directed to rework the Start up charges as contemplated under para 5.10.9 above and to refund the same to the petitioner within a period of 30 days.

6.10.11. Further, in respect of third prayer of the petitioner to direct the respondent to issue the Letter of Credit in terms of Clause 7 of the PPA dated 26.9.2017, the respondent has not put forth any point against this prayer. Hence we direct the respondent to arrange to make the prompt payment / to issue the Letter of Credit to the Petitioner as agreed by the parties under the PPA.

Ordered accordingly.

(Sd.....)  
(K.Venkatasamy)  
Member (Legal)

(Sd.....)  
(M.Chandrasekar)  
Chairman

/True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**