



## **TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION**

**Regd. No.** 181-8524/1998 – **CIN.No.** U37102TZ1998GAP008524  
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TECA:2023-24:CIR/080  
February 19, 2024

To All Members

### **CIRCULAR**

Sub: TANGEDCO executing EWAs in contrary to the Tariff Order of TNERC in respect of Solar Power Generators (SPGs) and refusing to grant monthly encashment of unutilized energy-TNERC ordered the EWAs to that extent illegal-High Court also confirms the same opinion-Regarding.

Ref: 1. The Order of the TNERC in MP No. 47 of 2021 dated 11.05.2023 in the matter of M/s. TRK Textile India (P) Ltd.  
2. The Order of the Hon'ble High Court in WP No.3829 of 2024 dated 16.02.2024 in respect of M/s. Jai Sakthi Mills.

Please find enclosed the soft copy of the order of the Hon'ble High Court 2nd cited above, for the information of all members, who have established Solar Power Generators (SPGs) during the past 3½ years, mostly from 01.01.2021 onwards.

You are aware that the TNERC was regularly permitting the unutilized solar energy, on a month-on-month basis, for encashment to its 75% value, through various Tariff Orders, from time to time. Accordingly, the last Tariff Order on Solar Energy was issued by the TNERC in Order No. 9 of 2020 dated 16.10.2020, which is currently operating. Inter alia, in the said Tariff Order, to facilitate the encashment of unutilized units, on a month-on-month basis, to its 75% value, the order goes as below.

"5.5.8 After the billing period, the excess energy generated but not consumed, may be sold at the rate of 75% of the respective solar tariff fixed by the Commission in the respective orders to the generators and where no tariff is fixed at 75% of latest tariff discovered in the competitive bidding. If there are more than one tariffs discovered through bidding process, the weighted average tariff shall be considered for payment."

The Tariff Order of the TNERC dated 16.10.2020 is the last one and thereafter, no Tariff Order was issued for the Grid Connected Solar Power so far. This order is being extended, with the same terms and conditions from time to time and is valid till now.

Even though, Para 5.8.8 of the said order stipulates, an obligation to the TANGEDCO for allowing encashment of unutilized solar energy on a month-on-month basis to its 75% value, the TANGEDCO has started imposing unilateral



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conditions, while executing the EWAs, stating that the TANGEDCO is surplus in power and therefore, the TANGEDCO will not entertain encashment. Such modified EWAs are framed by the TANGEDCO itself on its own, without any approval from the TNERC. Such kinds of EWAs could be seen only for some of the SPGs commissioned after 01.01.2021 mostly.

Accordingly, one of the SPG namely M/s. TRK Textile India (P) Ltd., has filed a Petition before TNERC, for suitable directions to change the EWA, in consonance with the Tariff Order of TNERC dated 16.10.2020, by allowing the facility of encashment of unutilized solar energy on a month-on-month basis. In this petition, the Commission passed an order on 11.05.2023 after 2 ½ years. The important aspects of the order is;

### **"6. Finding of the Commission on the first issue:**

*In view of the findings rendered by this Commission on issue no. 2 to 5, the only irresistible conclusion that can be arrived at on this issue is that clause 24(IV) of the Energy Wheeling Agreement dated 03.03.2021 is inconsistent with clause 5.5.8 of the Tariff Order dated 16.10.2020 passed in T.A.No.9 of 2020 and also Regulation 7 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 as contended by the petitioner. Accordingly this issue is decided in favour of the petitioner.*

*In fine, this Commission doth order as follows:-*

- a) The petitioner is entitled to 75% of the tariff fixed by the Commission or in cases where no tariff fixed, 75% of the tariff discovered in the competitive bidding shall be adopted for payment for the energy supplied over and above the limit sanctioned.*
- b) b) In case any injection has been made by the generator against the direction of SLDC or at any point of time such injection had imperilled the grid security, such cases shall be dealt with separately by the respondent for the purpose of denial of claim.*
- c) Even in such cases, it is only after giving due notice and fair hearing, that payment can be denied*
- d) In all other cases, payment shall be made at 75% tariff fixed by the Commission."*

Accordingly, the TANGEDCO has to revise the Energy Wheeling Agreements, by incorporating the facility of 75% encashment for all SPGs, for which they have



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executed the EWA in a different manner and also contrary to the Tariff Order No. 9 of 2020 dated 16.10.2020.

Based on the above lines, M/s. Jai Sakthi Mills filed a Writ Petition before the Hon'ble High Court and accordingly, the Hon'ble High Court has made the following order on 16.02.2024 in WP No. 3829 of 2024.

*"4. Further more, it is the submission of the petitioner that the excess power that has been produced has, in fact, been utilised by the respondents and sold and thus, the respondents have profited from the excess power*

*5. Pending writ petition, R2 is granted liberty to hear the petitioner and dispose representation dated 12.10.2023. If that representation is decided in favour of the petitioner, this writ petition will be rendered infructuous.*

*6. List on 18.03.2024. Written instructions/counter by then with an advance copy served upon the petitioner.*

*7. The unutilised surplus energy, which is the subject matter of the Writ Petition, will not, in the meanwhile, lapse. Its fate will be decided at the time of disposal of this Writ Petition."*

Accordingly, as per the above directions of the Hon'ble High Court the TANGEDCO has to hear the versions of M/s. Jai Sakthi Mills and can dispose of their request to amend the EWA by incorporating suitable Clauses to permit the SPG to encash the unutilized energy on a month-on-month basis. If the TANGEDCO has a different view, it has to file a counter in the above WP before 18.03.2024 and based on the merits of the matter, the Hon'ble High Court will pass a suitable order on the issue.

Hence, those members, who do not have a Clause, in their Energy Wheeling Agreements in respect of their Solar Power Plants, permitting them to make encashment of unutilized energy for its 75% value, on a month-on-month basis, can write letters to the Superintending Engineers of the Generation Ends and they can attempt to amend the EWAs suitably, ensuring the encashment facility for the unutilized units on a month-on-month basis.

With Warm Regards

N. Pradeep  
President