

**IN THE HON'BLE TAMIL NADU ELECTRICITY
REGULATORY COMMISSION
CHENNAI**

WEDNESDAY THE 21st DAY OF JULY 2004

PRESENT:

The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson

and

The Hon'ble Member Mr. S. Thangarathnam - Member

M.P. Nos. 17 to 40, 42 to 69 / 2003, 1 / 2004 and 2 / 2004

Petitioners:

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| M/s. Dindigul Spineers Association, Dindigul | Petitioner in MP No. 17/2003 |
| M/s. Vishnuvardhan Paper Mills Pvt. Ltd. Madathukulam | Petitioner in MP No. 18/2003 |
| M/s. Amaravathy Sri Venkatesa Paper Mills Ltd. Madhathukulam | Petitioner in MP No. 19/2003 |
| M/s. Amarjothi Spinning Mills Ltd. Nambiyur | Petitioner in MP No. 20/2003 |
| M/s. Everwin Textile Mill (P) Ltd. Achipatti Post | Petitioner in MP No. 21/2003 |
| M/s. Salona Cotspin Limited, Pungampalli, Vallipalayam Post. | Petitioner in MP No. 22/2003 |
| M/s. Pandian Chemicals Ltd. Madurai | Petitioner in MP No. 23/2003 |
| M/s. Subburaj Cotton Mills (P) Ltd., Rajapalayam | Petitioner in MP No. 24/2003 |
| M/s. Emerald Textiles (P) Ltd., Maniparaipatti, Naduvapatti Post | Petitioner in MP No. 25/2003 |
| M/s. Amarjothi Spinning Mills Ltd. Nambiyur | Petitioner in MP No. 26/2003 |
| M/s. S.S.D. Spinning Mills Ltd. Muthulapuram, Vilathikulam Taluk | Petitioner in MP No. 27/2003 |
| M/s. Sri Jagathguru Textile Mills (P) Ltd. Vellakoil | Petitioner in MP No. 28/2003 |
| M/s. Pioneer Miyagi Chemicals (P) Ltd. Cuddalore | Petitioner in MP No. 29/2003 |
| M/s. Rajalakshmi Paper Mills Ltd. Madathukulam | Petitioner in MP No. 30/2003 |

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| M/s. Sri Karthikeya Spinning & Weaving Mills Pvt. Ltd. Coimbatore | Petitioner in MP No. 31/2003 |
| M/s. Armstrong Spinning Mills (P) Ltd., Meenakarampalayam Village, Gobi Tk. | Petitioner in MP No. 32/2003 |
| M/s. Amaravathi Sri Venkatesa Paper Mills Ltd., Madathukulam 642 113 | Petitioner in MP No. 33/2003 |
| M/s. Sri Karthikeya Spinning & Weaving Mills Ltd. Oodathurai P.O., Gobichettipalayam | Petitioner in MP No. 34/2003 |
| M/s. V.G. Paper & Boards Ltd. Madathukulam Palani Tk. | Petitioner in MP No. 35/2003 |
| M/s. Vishnuvardhan Paper Mills (P) Ltd. Madathukulam, Palani Taluk | Petitioner in MP No. 36/2003 |
| M/s. V.G. Paper & Boards Ltd., Kolumam, Udumalpet Tk. | Petitioner in MP No. 37/2003 |
| M/s. SVISS LABSS Limited, Ranipet | Petitioner in MP No. 38/2003 |
| M/s. Rogini Mills, Idiyampalayam, Arasur Post | Petitioner in MP No. 39/2003 |
| M/s. Tamil Nadu Electricity Consumers Association, Coimbatore | Petitioner in MP No. 40/2003 |
| M/s. KICL Textiles Limited, K.Vadamadurai Mettupalayam Road, Coimbatore | Petitioner in MP No. 42/2003 |
| M/s. SPIC Pharmaceuticals Division, Cuddalore | Petitioner in MP No. 43/2003 |
| M/s. Subburaj Cotton Mills (P) Ltd. Rajapalayam | Petitioner in MP No. 44/2003 |
| M/s. Chinnappah Spinning Mills (P) Ltd., Veppadai, Elanthakottai Post, Erode | Petitioner in MP No. 45/2003 |
| M/s. Naga Limited, Detergent – Vedasandur, Dindigul | Petitioner in MP No. 46/2003 |
| M/s. BAPL Industries Limited, Coimbatore | Petitioner in MP No. 47/2003 |
| M/s. Naga Limited Foods, Dindigul | Petitioner in MP No. 48/2003 |
| M/s. Supreme Yarn Spinners Limited, Veeranam Salem | Petitioner in MP No. 49/2003 |
| M/s. Naga Limited, Chemicals, Dindigul | Petitioner in MP No. 50/2003 |
| M/s. Naga Limited Foods, Trichy | Petitioner in MP No. 51/2003 |
| M/s. TVS Srichakra Limited, Vellaripatti Village, Melur Taluk, Madurai District | Petitioner in MP No. 52/2003 |

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| M/s. Sri Nachammai Cotton Mills Ltd. 'B' Unit, Chettinad | Petitioner in MP No. 53/2003 |
| M/s. National Engineering College, Kovilpatti | Petitioner in MP No. 54/2003 |
| M/s. Veejay Lakshmi Engineering Wroks Limited, Sengalipalayam, NGGO Colony Post, Coimbatore | Petitioner in MP No. 55/2003 |
| M/s. Naga Limited, Detergents, Dindigul | Petitioner in MP No. 56/2003 |
| M/s. Tuticorin Spinning Mills Limited Tuticorin | Petitioner in MP No. 57/2003 |
| M/s. Kayaar Exports (P) Ltd., Kovilpatti | Petitioner in MP No. 58/2003 |
| M/s. Mothi Spinners Limited, Athikatoor Privu, Anangur Post, Thiruchencode Tk. | Petitioner in MP No. 59/2003 |
| M/s. Indra Cotton Mills Limited, Chrompet, Chennai. | Petitioner in MP No. 60/2003 |
| M/s. Mepco Industries Limited, Chokkikulam, Madurai | Petitioner in MP No. 61/2003 |
| M/s. Sulochana Cotton Mills (P) Ltd. Tirupur | Petitioner in MP No. 62/2003 |
| M/s. Sun Paper Mills Limited, Cheranmahadevi | Petitioner in MP No. 63/2003 |
| M/s. J.K. Pharmachem Limited, Cuddalore | Petitioner in MP No. 64/2003 |
| M/s. Sri Nachammai Cotton Mills Ltd. Chettinad | Petitioner in MP No. 65/2003 |
| M/s.Sri Vinayaka Alloys (P) Ltd. Akkamapet Post, Sankari Taluk | Petitioner in MP No. 66/2003 |
| M/s. N.G.A. Steels (P) Ltd. Pappankadu, Karukkampalayam Village | Petitioner in M.P.No.67/2003 |
| M/s. Sri Krishna Alloys, Akkamapet Post, Sankari Taluk | Petitioner in M.P.No.68/2003 |
| M/s. Sri Vigneswara Steels Pvt. Ltd. Akkamapet Post, Sankari Taluk | Petitioner in M.P.No.69/2003 |
| M/s. Shambhu Vengu Spinning Mills pvt. Ltd. Chinnapanaickenpalayam, Komarapalayam. | Petitioner In M.P. No.1/2004 |
| M/s. Sri Garudari Spinning Mills Pvt. Ltd. Valapady, Salem District | Petitioner in M.P. No.2/2004 |

VERSUS

The Chairman,
Tamil Nadu Electricity Board,
800 Anna Salai, Chennai 600 002.

Respondent

Preamble

During the hearing held on 21st April 2004, Thiru Sivanandam, Advocate for certain batch of Petitioners pointed out that this Commission has passed an Order dated 11.2.2004 fixing interest for the Security Deposit held by TNEB the Respondent. He read the relevant portion of the Order and thanked the Commission for the issue of the Order and he pleaded for the payment of interest at the bank rate. The Commission has clarified that the rate of interest now specified by the Commission in the said Order viz. 6% is the prevailing bank rate obtained from RBI. No argument was made on either side. As regulation 32 of the Tamil Nadu Electricity Regulatory Commission Conduct of Business Regulations 2004 enables this Commission to pass Interim Orders as considered appropriate at any stage of the proceedings, this Commission has pronounced a Common Interim Order in all the above M.Ps. dated 21.4.2004. In that Common Interim Order this Commission has stated that a detailed order will be passed in due course. Accordingly, this Commission after perusing the records relating to all the above M.Ps., affidavits of the Petitioners in all the M.Ps. referred to above and also the Common Counter Affidavit filed by the Respondents in all the Petitions referred to above, pronounces the following **COMMON FINAL ORDER**.

COMMON FINAL ORDER

1. Prayer by the Petitioners

The prayer in M.P. Nos. 17 to 39 of 2003 and 42 to 65 of 2003 is that the Commission may be pleased to fix the rate of interest towards the Current Consumption Deposit (CCD) and consequently issue direction to the Respondents to pay the interest as specified by the Commission with retrospective effect from 12.6.2003. The prayer in M.P. No. 40 of 2003 is to direct the Respondent to fix the rate of interest at the prevailing bank rate or more on the CCD and to pay the said interest on **CCD on a monthly basis**. The

prayer in M.P. Nos. 66 to 69 of 2003 and M.P. Nos. 1 and 2 of 2004 is that the Commission may be pleased to fix **16.34** or such other rate the Electricity Finance Corporation is paying for the deposits recovered from the public per annum on the CCD and other Deposits deposited by the Petitioners in the above Petitions and direct the Respondent to pay the interest to the Petitioners in the above Petitions with effect from 10.6.2003.

2. Facts of the case as set out in the Petitions and Common Counter Affidavit filed by the Respondent

(i) The Petitioners in M.P. Nos. 17 to 39 of 2003 and 42 to 65 of 2003 have stated as follows:

(a) The Petitioners are paying such huge deposits as demanded by the Respondent as Security Deposit to get their power supply connected from the Respondent namely the TNEB.

(b) The Respondent Board has unilaterally issued BP (FB) No. 167 dated 11.10.2000 withdrawing the payment of even the bare minimum of 5% interest on the Security Deposit (CCD) with retrospective effect from 1.10.2000 which had been paid for several years even without giving any notice to the consumers in general and without giving an opportunity to the Petitioners in particular.

(c) If the Petitioners are allowed to convert their CCD into Deposit in the Tamil Nadu Power Finance Corporation Ltd. run by the Respondent Board, then, they would be able to earn enormous return by way of increased interest on the deposits made by them.

(d) Aggrieved by the Proceedings of the Respondent, a batch of Writ Petitions were filed by many industries, including the members of the Petitioners Association. Since those Writ Petitions were disallowed, by a Learned Single Judge of the Hon'ble High Court, Writ Appeals were filed by them and the same are pending before the Division Bench of the Hon'ble High Court.

- (e) The neighbouring State of Pondicherry is paying interest on the CCD at the rate of 11.5% and likewise many States in India are paying interest on the Security Deposits made by the consumers.
- (f) While reproducing the provisions of Section 47 (1) and (4) of the Electricity Act, 2003, the Petitioners have stated that under the new Act, it is made mandatory for the Respondent to pay interest equivalent to bank rate or more as may be specified by the Commission on the CCD made by the Petitioners.
- (ii) The Petitioner in M.P. No. 40 of 2003 has stated that payment of interest on the CCD by the Respondent is mandatory under Section 47 (4) of the Electricity Act, 2003 and till date no rate of interest has been fixed pursuant to the said Section 47 (4) of the said Act.
- (iii) The facts of the case of the Petitioners in M.P. Nos. 66 to 69 of 2003 and M.P. Nos. 1 and 2 of 2004 are more or less the same as set out in M.P. Nos. 17 to 39 of 2003 etc. as referred to in sub-para (i) above.
- (iv) The Respondent namely TNEB has filed a common Counter Affidavit to all the above M.Ps. The contentions put forth by the Respondent Board in its common Counter are summarised as follows:
- (a) By virtue of B.P. 167 dated 11.10.2000 interest was not given to the consumers and the said B.P. was challenged by way of batch of Writ Petitions and the action of the TNEB was held to be valid and not arbitrary by the Hon'ble Justice E. Padmanabhan in a batch of cases in W.P.Nos. 20970/2000 etc. dated 25.9.2001. In fact Writ Appeals were filed by few consumers and Writ Appeals were admitted and it is pending consideration of the Division Bench of the Hon'ble High Court.
- (b) Deposit collected is only in the nature of advance Current Consumption Charges and it is available at the credit of the consumer to adjust against the outstanding unsettled bills in the event of default in payment by

consumer and it cannot be equated with any Bank deposit where it is made with the intention of earning interest on investment.

- (c) The averments made by the Petitioners have been already dealt with by the Hon'ble High Court and Supreme Court in various circumstances, wherein the action of Electricity Board in revising tariff rates, collecting CCD from consumers and non payment of interest on such deposits have been held as reasonable and lawful.
- (d) The Board is empowered to make any changes in the Terms and Conditions of Supply of Electricity as per clause 36.01 and 36.02 of the Terms and Conditions of Supply of Electricity, which have been framed under Section 49 of the Electricity (Supply) Act, 1948 prior to the enactment of Electricity Act, 2003.
- (e) The Government of Tamil Nadu in G.O. Ms. No. 93 Energy (C3) Department dated 3.12.2003, have declared that the provisions contained in sub-section (4) of section 47 of the Electricity Act 2003 shall not apply in the State of Tamil Nadu for a period of six months from the appointed date, namely the 10th June 2003 and as such the Board is not liable to pay interest on deposit from 10.6.2003 i.e. the date of the Electricity Act, 2003, coming into force as contended by the Petitioner.
- (f) In section 47(4) of Electricity Act, 2003, it is stated that the distribution licensee shall pay interest equivalent to the bank rate or more as may be specified by the concerned State Commission and as such respondent Board will be liable to pay interest on security deposit only at the rates specified by the State Electricity Regulatory Commission and only from the date specified by it.

3. Points at issue

From the pleadings of the cases referred to in para 2 above, the following issues arise for consideration of this Commission, viz:-

- (i) Whether the Respondent Board or this Commission has to fix the rate of interest on the CCD made by the Petitioners;
- (ii) What is the rate of interest to be fixed?
- (iii) From what date the interest is payable?

4. Point at issue No. (i) in paragraph 3 above viz. whether the Respondent Board or the Commission has to fix the rate of interest on the CCD made by the Petitioners.

The Respondent Board in its Counter Affidavit in para 8 has stated as follows:

“In Section 47(4) of Electricity Act, 2003, it is stated that the distribution licensee shall pay interest equivalent to the bank rate or more as may be specified by the concerned State Commission and as such respondent Board will be liable to pay interest on security only at the rates specified by the State Electricity Regulatory Commission **and only from the date** specified by it.”

Findings of the Commission

As rightly contended by the Respondent Board, it is only this Commission, which has to fix the rate of interest on the CCD made by the consumers. In pursuance of the statutory duty cast upon the Commission under Section 47 (4) of the Electricity Act 2003, this Commission has issued Order No. TNERC/TC/Act/2003/SD/13/dated 11.2.2004. For the sake of easy reference and clarity, the full text of the said order is reproduced below:-

“Order

1. At present, interest is not payable on the security deposits held by TNEB
2. As per section 47 (4) of the Electricity Act 2003, “ The distribution Licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security “
3. The Commission has to specify the rate of interest payable through a regulation as noted in sub section (2)(w) of section 181 and the

Commission is in the process of issuing the Distribution Code and Supply Code which have to include the above provisions under the security deposit

4. The Act came into force on 10th of June 2003. Under the transitional provisions in section 172 (d), “ the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification” In line with this provision, GoTN , in gazette notification dated 3-12-2003, notified that section 47(4) shall not apply in the State of Tamil Nadu for six months. Accordingly, the payment of interest by TNEB, as per the Act shall come into effect only from 10-12-2003.
5. Pending finalization of the Distribution Code and the Supply Code, and notifying the same in the Gazette, Commission orders TNEB to pay the interest on security deposit with effect from 10-12-2003 at the rate of 6 % for the current financial year ending 31-3-2004. Thereafter, they shall pay interest at the bank rate that prevails at the beginning of every financial year. TNEB shall credit the interest due to the consumers from 10-12-2003 to 31-3-2004 at the above rate, to the available security deposit and inform all the consumers of the total credit available including the interest before the end of June 2004.”

5. Point at issue No. (ii) in paragraph 2 above viz. what is the rate of interest to be fixed

Findings of the Commission

In paragraph 5 of the order of this Commission extracted above, the Respondent Board is directed to pay interest on security deposit with effect from 10.12.2003 at the rate of 6% for the current financial year ending 31.3.2004 and thereafter, they shall pay interest at the bank rate that prevails

at the beginning of every financial year. In the above paragraph 5 of the order of this Commission, the Respondent Board shall credit the interest due to the available security deposit and inform all the consumers of the total credit available including the interest before the end of June 2004.

6. Point at issue no. (iii) in paragraph 2 above viz. From what date the interest is payable.

Findings of the Commission

As per paragraph 4 of the orders of the Commission extracted above the interest is payable only from 10.12.2003 as the Government of Tamil Nadu in their Gazette notification dated 3.12.2003 notified that Section 47 (4) of the Act shall not apply in the State of Tamil Nadu for six months from the appointed dated namely the 10th June 2003.

7. Conclusion

All the M.P.s referred to above relate to the discharge of statutory duty of this Commission under section 47 (4) of the Electricity Act 2003. During the pendency of the above M.P.s., this Commission has already issued a Common Interim Order dated 21.4.2004 specifying the rate of interest under Section 47 (4) of the Act and the date from which it is payable. The first part of the prayers in all the above M.P.s namely, specifying interest under Section 47 (4) of the Act, for the Security Deposits made by Petitioners is allowed and the Common Interim Order dated 21.4.2004 referred to above shall be deemed to be the orders of this Commission passed with reference to the first part of the prayers in all the M.Ps. referred to above.

The other part of the prayers:-

(i) in M.P.Nos. 17 to 39 of 2003 and 42 to 65 of 2003 which is payment of interest as specified by this Commission with effect from 12th June 2003;

(ii) in M.P. No. 40 of 2003 which is to pay interest on a monthly basis; and

(iii) in M.P.Nos. 66 to 69 of 2003, 1 of 2004 and 2 of 2004, which is to pay interest at 16.34% w.e.f. 10.6.2003 are disallowed.

The rate of interest and the date from which it is payable shall be as per the directions given in paragraph 5 of the Order extracted above.

All the above M.P.s are finally disposed off with the above observations.
No costs.

Pronounced in the Open Court by this Commission on this the 21st day of July 2004

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

List of Witnesses examined

NIL

List of Documents

NIL

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

/Certified Copy/

Secretary