

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

PRESENT:-

Thiru.S.Kabilan ... **Chairman**
and

Thiru.K.Venugopal **Member**

M.P. Nos. 6 of 2010, 9 of 2010 and 17 of 2010 and D.R.P. No.9 of 2010

I.A. Nos. 1 and 2 of 2010 in M.P. No. 9 of 2010

M/s. Southern India Mills Association
Rep. by its Secretary General
41, Race Course Road
Coimbatore – 18.

.... **Petitioner**
(Thiru.N.L. Rajah, Advocate for Petitioner)

Vs.

The Tamil Nadu Electricity Board
Rep. by its Chairman
Anna Salai
Chennai

.... **Respondent**
(Thiru.Mohammed Rafi, Advocate for Respondent)

M.P. No. 6 of 2010

M/s. Biomass Power Producers Association
Rep. by its Authorised Representative
III Floor, Mookambika Complex
No. 4, Lady Desika Road
Mylapore
Chennai – 600 004.

.... **Petitioner**
(Thiru.Rahul Balaji, Advocate for Petitioner)

Vs.

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

2. The Member (Generation)
Tamil Nadu Electricity Board
Chennai.

.... Respondents
(Thiru.Mohammed Rafi, Advocate for Respondents)

M.P. No. 17 of 2010

M/s. Lucas TVS Ltd.,
No. 11, Patulas Road
Chennai – 600 002.

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

Vs.

The Tamil Nadu Electricity Board
Rep. by its Chairman
144, Anna Salai, Chennai

.... Respondent
(Thiru.Mohammed Rafi, Advocate for Respondent)

D.R.P. No. 9 of 2010

M/s. OPG Power Generation Pvt. Ltd.,
No. 117, P.S. Singarasamy Salai
Mylapore
Chennai – 600 004.

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

Vs.

The Tamil Nadu Electricity Board
Rep. by its Chairman
800, Anna Salai
Chennai – 600 002

.... Respondent
(Thiru.Mohammed Rafi, Advocate for Respondent)

Date of hearing 17-08-2010
Date of Order 07-09-2010

1. I.A. Nos 1 and 2 of 2010 in M.P. No. 9 of 2010, M.P. No.6 of 2010, M.P. No. 17 of 2010 and D.R.P. No. 9 of 2010 were listed for hearing on 17-08-2010 as the issues involved in the above are same. The point in issue in all the above petitions is whether the supply of electricity to a consumer from captive power plant or wind power or third party purchases has to be subtracted from the Tamil Nadu Electricity Board quota as per the R & C measures introduced in the Order of the Commission dated 28-11-2008 in M.P. No. 42 of 2008.

2. **Contention of the Petitioners**

- (a) The reliability power recently supplied as per Tamil Nadu Electricity Regulatory Commission Order dated 05-01-2010 is treated as additional power permitted upto base demand and base energy.
- (b) The present circular of Tamil Nadu Electricity Board is gradually reducing the Electricity Board quota when the consumer is buying third party power to bridge the gap between the base demand and sanctioned demand.
- (c) The orders of R & C measures obtained from Tamil Nadu Electricity Regulatory Commission must not have any manner of impact on the supply of power from CPP, Wind power and third party

purchasers. If it does so, it will have the effect of distorting competition which is prohibited under the Act.

- (d) The working instructions issued by Tamil Nadu Electricity Board on 25-11-2009 pursuant to Suo Motu Proceedings of the Commission specifying the required procedure for fixing demand and energy quota do not appear to be in line with the earlier approvals of the Commission.
- (e) Since the infrastructure facilities has already been created based on the sanctioned demand by Tamil Nadu Electricity Board, it is but logical to allow purchase of power from third parties upto the sanctioned demand instead of restricting the same to the base demand.
- (f) The R & C measures which were solely applicable to the power supplied by the Tamil Nadu Electricity Board are sought to be arbitrarily extended to third party purchases by the Tamil Nadu Electricity Board.
- (g) The imposition of penalty by the Tamil Nadu Electricity Board against the purchase of power from the members of the petitioners' association is contrary to the order of Commission in orders passed in M.P. No.42 of 2008 and Suo Motu Proceedings under S.M.P. No. 1 of 2009.
- (h) The power obtained from other sources are an additionality where the consumers are entitled to enjoy without the application of the

R & C measures as stipulated in the orders of the Commission issued under M.P. No. 42 of 2008.

3. **Contention of the Respondent**

- (a) The generating companies are not coming under the R & C net of the Tamil Nadu Electricity Board.
- (b) As per the orders of the Commission in S.M.P. No. 1 of 2009 dated 28-10-2009, for every month the consumers have to declare the quantum of other sources of power they propose to wheel within the base demand / energy and then the same is deducted from the base demand / energy and then the quota is fixed based on the percentage of power cut in force. Tamil Nadu Electricity Board portion of quota has to be arrived at. As per the existing orders in S.M.P. No.1 of 2009, the Tamil Nadu Electricity Board portion of quota varies month to month based on the consumer's declaration.
- (c) There is a difference in fixing of quota as per the instruction dated 17-11-2008 of Tamil Nadu Electricity Board and as per the Commission's Order in S.M.P. No. 1 of 2009 dated 28-10-2009.
- (d) If Open Access power is to be allowed over and above the quota fixed upto base demand in the existing procedure of S.M.P. No. 1 of 2009 dated 28-10-2009, the consumer would circumvent the provisions. The consumer will purposely leave undeclared the portion of power he is supposed to wheel and avail 70% Tamil Nadu Electricity Board quota for the entire base, thereby the

consumer will bring down the power to be wheeled over and above under third party arrangement.

- (e) By filing the above petitions, the petitioners are trying to seek review of S.M.P. No. 1 of 2009 dated 28-10-2009 instead of filing of review petition.

4. Findings of the Commission

- 4.1. The present batch of petitions have drawn the attention of the Commission to certain distortions in the application of the Order of the Commission in SMP No.1 of 2009. This batch consists of both consumers and generators. The issues pertain to consumers. That order provided for subtraction of the demand and energy supplied through captive or third party sources from the base demand and base energy. Power cut was applied on the remaining portion. This method effectively reduces the power available to the consumer from third party sources. The present order is aimed at redressing the imbalance.
- 4.2. The TNEB has expressed a concern that whereas the share of the TNEB in the base demand is a constant figure, the Order of the Commission in SMP No.1 of 2009 renders the TNEB component of the base demand a variable figure depending on the declaration of the captive consumer. There is merit in the contention of the TNEB, which needs to be addressed

- 4.3. This can be addressed by fixing the burden on TNEB at a constant figure. The TNEB component of the base demand and base energy are fixed. Power cut is applied on this component.
- 4.4. The consumer is at present permitted to utilise power from captive sources. The present order would enable a consumer to purchase power from third party sources as well. Procurement of power by a consumer through Open Access is protected by the Electricity Act, 2003. The role of the licensee is limited to that of a carrier. Procurement through Open Access will be treated as an additionality. The ceiling, upto which a consumer can utilise power including the TNEB quota demand, captive power and third party purchase would be the sanctioned demand. In such a situation, there would be no need for advance declaration by the consumer of procurement of captive power as stipulated in SMP No.1 of 2009 or procurement of third party power as stipulated in the Interim Order dated 17-8-2010. As the TNEB had allowed procurement of power upto the sanctioned demand in their communication dated 17-7-2009 “procedure for allowing third party sale / purchase under intra state open access”, there should be no difficulty in allowing the consumer to procure power upto the sanctioned demand.

- 4.5. The equivalent demand brought in by the consumer from captive and third party sources should be subtracted from the maximum demand recorded by the meter of the consumer. Balance would be the demand actually supplied by the TNEB. If this figure exceeds the quota demand of the TNEB, the consumer would be liable to pay excess demand charges at the rates stipulated in the order of the Commission in M.P.No.42 of 2008. Similarly, the energy purchased from captive and third party sources would be subtracted from the total energy consumed by the consumer. The balance would be deemed to be the energy actually supplied by the TNEB. If this quantum exceeds the energy quota of the TNEB, the consumer would be liable to pay excess energy charges at the rates stipulated in the order of the Commission in M.P.No.42 of 2008.
- 4.6. To summarise, the present order enables a consumer to consume power upto sanctioned demand including TNEB quota demand and procurement of power from captive sources and third party sources. The need for advance declaration of the consumer for procurement of power through open access is dispensed with for the purpose of this order.
- 4.7. This order shall come into force from 17-8-2010.
5. **Merger of Interim Order dated 17-08-2010:-**
- The interim order dated 17-08-2010 is merged with this order.

6. **Appeal:-**

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

With the above directions, M.P. Nos. 6 of 2010, 9 of 2010 and 17 of 2010 and D.R.P. No.9 of 2010 are finally disposed of without any costs.

Sd/-
(K. Venugopal)
Member - I

Sd/-
(S.Kabilan)
Chairman