

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
Thiru.K.Venugopal	Member
	and	
Thiru.S.Nagalsamy	Member

T.A. Nos. 1 to 9 of 2011

T.A. No. 1 of 2011

M/s.Sanathi Castings Works
HTSC No. 304
Kumarapuram
Narasimnaickenpalayam
Post Box No. 5506
Coimbatore District
Rep. by its Manager, M.Bakthavachalam

.... Writ Petitioner in W.P. No. 22738 of 2009

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore – 12.

..... Respondents W.P. No. 22738 of 2009

T.A. No. 2 of 2011

M/s.Sandhur Alloys Foundry
HTSC No. 252
7/19, Avinashi Road
Thottipalayam Privu
Coimbatore District
Rep. by its Partner, M.C.Kumar

.... Writ Petitioner in W.P. No. 23526 of 2009

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (Metro)
Tamil Nadu Electricity Board
Coimbatore – 12.

..... Respondents in W.P. No. 23526 of 2009

T.A. No. 3 of 2011

M/s.Ramprasad Tubes & Bars (P) Ltd.
H1B/1, Samanaickenpalayam
No.4, Veerapandi (PO)
Coimbatore District
Rep. by its Manager,R.Sridaran

.... Writ Petitioner in W.P. No. 23527 of 2009

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore – 12.

..... Respondents in W.P. No. 23527 of 2009

T.A. No. 4 of 2011

M/s.Sidhi Smelters (P) Ltd.
H.T.S.C. No. 1772
A-3, SIPCOT Industrial Complex
Cummidipoondi 601 201
Thiruvallur District
Rep. by its Business Executive
Tmt.Y. Malathy

.... Writ Petitioner in W.P. No.1368 of 2010

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Chennai Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
144, Anna Salai, Chennai – 600 002.

..... Respondents in W.P. No.1368 of 2010

T.A. No. 5 of 2011

Ferrolinks
354, Thandagam Road
GCT Post, Coimbatore – 641 013.

.... Writ Petitioner in W.P. No.1737of 2010

Vs.

1. Tamil Nadu Electricity Board
Represented by its Chairman
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.
3. The Accounts Officer / Revenue
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.

... Respondents in W.P. No.1737of 2010

T.A. No. 6 of 2011

M/s. Meenakshi Udyog (I) Pvt. Ltd.
H.T.SC. No. 302
SF. No. 291 & 292
Kappakkal Village Via
Uliveeranpalli
Hosur – Thally Road
Nagondapally Post 635 110
Rep. by its Director
Thiru. Jayash Agarwal

.... Writ Petitioner in W.P. No.1944 of 2010

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Dharmapuri Electricity Distribution Circle
Tamil Nadu Electricity Board
Dharmapuri - 5.

... Respondents in W.P. No.1944 of 2010

T.A. No. 7 of 2011

M/s.D.S. Metals (P) Ltd.
H.T. A/c. No. 1601
Block E, Rear Side
Old No. 808, New No.324
1st Floor, Kilpauk
Poonamallee High Road
Chennai – 600 010
Rep. by its Director
Vimal Kumar Agarwala

.... Writ Petitioner in W.P. No.1945 of 2010

Vs.

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

2. The Superintending Engineer
Chennai Electricity Distribution Circle / North
Tamil Nadu Electricity Board
144, Anna Salai
Chennai - 2.

... Respondents in W.P. No.1945 of 2010

T.A. No. 8 of 2011

M/s.Rajinikanth Foundation
603-C Block
Pioneer Complex
No.1075, Avinashi Road
Coimbatore

..... Petitioner in W.P.No.1228 of 2010

Vs.

1. Tamil Nadu Electricity Board
Represented by its Chairman
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.
3. The Accounts Officer / Revenue
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.

... Respondents in W.P.No.1228 of 2010

T.A. No. 9 of 2011

M/s.Rangamma Steels and Malleables
603-C-Block
Pioneer Complex
No.1075, Avinashi Road
Coimbatore

..... Petitioner in W.P.No.1229 of 2010

Vs.

1. Tamil Nadu Electricity Board
Represented by its Chairman
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.
3. The Accounts Officer / Revenue
Coimbatore Electricity Distribution Circle (N)
Tamil Nadu Electricity Board
Coimbatore.

... Respondents in W.P.No.1229 of 2010

Dates of hearing : 14-9-2011, 3-11-2011 and 15-11-2011

Date of Order : 28-12-2011

The Petitioners in the above T.A. Nos.1 to 9 of 2011 were the Writ Petitioners before the Hon'ble High Court who have filed Writ Petitions before the Hon'ble High Court of Madras with the prayer for permitting them to run their industries continuously in optimum demand with restricted power holidays without evening peak hour restriction.

The Hon'ble High Court has directed the Commission to pass suitable orders. Pursuant to the orders of the Hon'ble High Court, all the above T.A. Nos. 1 to 9 of 2011 were taken up jointly for final hearing on 15-11-2011. The Commission upon perusing the above petitions and connected records and after hearing both sides passes the following

COMMON ORDER

1. **Prayer in T.A. Nos. 1 to 9 of 2011:-**

The prayers of the Petitioners in all the T.A. Nos. 1 to 9 of 2011 are to permit them to run their industries continuously in optimum demand with restricted power holidays and without evening peak hour restriction.

2. **Judgment of the High Court of Madras:-**

The Hon'ble High Court of Madras in a batch of Writ Petitions filed by the above Petitioners has passed the common order dated 2-2-2010. The following portion of the common order would be relevant namely,

“4. In view of such submission being made, on behalf of the parties concerned, the Registry is directed to transfer all the connected writ petitions, along with the relevant records, to the Tamil Nadu Electricity Regulatory Commission, Chennai, forthwith. On such transfer being made, the Tamil Nadu Electricity Regulatory Commission, Chennai is directed to consider the issues raised in the writ petitions and to pass appropriate orders thereon, within a period of fifteen days thereafter, on merits and in accordance with law, after giving an opportunity of hearing to the petitioners, as well as to the respondent, Tamil Nadu Electricity Board. the petitioners shall cooperate in the proceedings to be conducted by the Tamil Nadu Electricity Regulatory Commission, Chennai.

5. The respondent Tamil Nadu Electricity Board undertakes to continue the Optimum Demand concept, in so far as the petitioners are

concerned, till the Tamil Nadu Electricity Regulatory Commission, Chennai, passed appropriate orders, as directed by this court, by this order”.

3. **Hearing on 14-9-2011:-**

The Commission after hearing both sides made the following observations:-

“All the above T.As. were taken up for consideration. These petitions basically challenge the discontinuation of the facility of optimum demand concept for wind mill generators communicated in Circular Memo dated 9-10-2011 of the TNEB. The learned Counsel for the Petitioners contended that the restriction and control measures of the TNEB approved by the Commission in M.P. No. 42 of 2008 contain a provision on the optimum demand for continuous process industries and therefore it is well within the jurisdiction of the Commission to entertain disputes on this issue. The Commission heard the learned Counsel for TNEB and also the officials from the TNEB.

The TNEB is directed to file counter within 4 weeks. The case will be posted for arguments thereafter”.

4. **Contentions of the Respondent in common counter:-**

4.1. Instructions have been issued in Memo No.CE/Comml./EE/DSM/AEE/F.Power Cut/D.394/09, dated 31-8-2009 that the optimum demand concept was to be made available only to those industries dependent on TNEB supply and then optimum demand once opted by the consumer is final and it cannot be varied. The communication was issued only to emphasise that the facility of

optimum demand was to be extended only to those consumers who were dependent on TNEB supply only as it was sought to be clarified on the extension of this facility of optimum demand to other consumers. Thus the contention that the facility was withdrawn suddenly is not true. This is also further substantiated by the fact that in communication dated 1-11-2008 it was not mentioned that optimum demand concept was available to all consumers and its withdrawal to all consumers was not mentioned in Memo dated 31-8-2009. All other services under continuous process throughout the State had availed the optimum demand facility and operated in the right perspective.

4.2. The optimum demand concept was introduced to facilitate consumers solely dependent on TNEB supply and who could not run the continuous process industry with the existing power cut. Therefore they were permitted to run those industries with the optimum demand with restricted holidays. Based on the orders of this Hon'ble Commission dated 28-10-2009, the wind energy consumers with wheeling arrangement are being permitted higher demand during normal hours and during peak hours. The consumers request for enjoying the provisions in both deemed demand concept and optimum demand concept is not justifiable.

4.3. The benefit of optimum demand with TNEB supply as well as additional demand from other sources would lead to disparity with consumers running with quota demand and wheeling arrangement. The optimum demand consumers

were permitted to run their industries with wheeling arrangement during restricted holidays up to the level of sanctioned demand. The optimum demand facility, if extended to all consumers would render fixation of quota demand during various levels of power cut meaningless and affect the stability of the grid.

5. **Arguments made before the Commission:-**

5.1. The learned Counsel Thiru.R.S.Pandiyaraj appearing for some of the Petitioners has contended that since the Petitioner industries have to be run continuously without any break, there is need for the Commission to fix the optimum demand with restricted power holidays without evening peak hour restriction. He has referred to the order of the Commission as well as the circular of the TNEB dated 31-8-2009. He pleaded that the optimum demand is the demand without which the industries cannot run and such a demand is very essential for running the industry.

5.2. The learned Counsel for TNEB has referred to paras 9 and 10 of the circular of the TNEB dated 31-8-2009.

5.3. It has been pointed out by the TNEB officials that since the CPPs are allowed to go up to the sanctioned demand, there may not be any need for the optimum demand. They further stated that optimum demand concept is applicable to the consumers who do not have any captive generation.

6. Finding of the Commission:-

6.1. The nine applications dealt with herein jointly are on account of the transfer of Writ Petitions filed by various parties before the Hon'ble High Court of Madras. The judgement of the High Court of Madras relates to Optimum Demand Concept. The parties before the High Court suggested that the issues arising for consideration of the High Court could be resolved by the Tamil Nadu Electricity Regulatory Commission. Accordingly, these Petitions have been transferred to the Commission for final disposal. The judgement of the High Court indicates that TNEB has undertaken to continue the Optimum Demand Concept, in so far as the Petitioners are concerned, till the Tamil Nadu Electricity Regulatory Commission passes appropriate orders. The parties were heard on 14-9-2011, 3-11-2011 and 15-11-2011. These Petitions basically challenge the discontinuation of the facility of Optimum Demand Concept for windmill generators as communicated in the TNEB Circular Memo dated 9-10-2009. The Learned Counsel for all the nine Petitioners contended that the Restriction and Control Measures of the TNEB as approved by the Commission in M.P. No.42 of 2008 contain the provision relating to Optimum Demand for continuous process industries and therefore the Commission is well within its jurisdiction to entertain disputes on this issue. The Commission has heard the learned counsel for TNEB as well the officials of TNEB. The TNEB was directed to file a counter.

6.2. During the hearing on 3-11-2011, the TNEB/TANGEDCO, the successor entity, filed its counter with copy to the other side. The matter was again listed

on 15-11-2011. The Learned Counsel for some of the Petitioners Thiru. R.S.Pandiyaraj contended that since the Petitioner industries have to be run continuously without any break, there is a need for fixing the Optimum Demand without any evening peak hour restriction but with power holidays on certain days. He also filed a type set of papers on the date of hearing. He relied on the TNEB Memo dated 1-11-2008, Commission's Order dated 28-11-2008 in M.P. No.42 of 2008 and Memo / Letters of TNEB relating to cancelling Optimum Demand for wind energy captive consumers, exempting the consumers for continuous running with restricted holidays and without peak hour restrictions and the order of the Hon'ble High Court of Madras dated 13-4-2010.

6.3. The Learned Counsel for TANGEDCO reiterated the contents of the counter affidavit emphasizing the following:-

1. Optimum Demand Concept was to be made available only to those industries dependant on TNEB supply and Optimum Demand once opted by the consumer is final and it cannot be varied.
2. In the Memo dated 1-11-2008 there was no mention that Optimum Demand Concept was available to all consumers and its withdrawal was not mentioned in the Memo dated 31-8-2009.
3. All other services under continuous process industries throughout the State had availed the Optimum Demand facility and operated in the right perspective. Only few industries in Coimbatore North EDC, two in Chennai North EDC and one in Dharmapuri EDC were permitted

operation with the Optimum Demand facility along with their sources of supply which is in deviation to the instructions issued which was due to misinterpretation of the instructions.

4. The Optimum Demand concept was introduced to facilitate consumers solely dependent on TNEB supply and who could not run the continuous process industry with the existing power cut. The request of consumers for enjoying the provisions in both Deemed Demand Concept and Optimum Demand Concept is not justifiable. The specific prayer was to permit only the continuous process industries who are solely dependent on TANGEDCO supply to avail optimum demand with restricted holidays as envisaged in Memo dated 1-11-2008.

6.4. The Commission would like to frame the following issues arising out of these transferred applications.

1. What is the provision relating to Optimum Demand Concept as provided for in Memo dated 1-11-2008?
2. Provisions relating to continuous process industries in Order in M.P. No.42 of 2008.
3. Circulars regarding exempting continuous process industries from peak hour restrictions.
4. Circulars issued by Chief Engineer (Commercial), TNEB cancelling the Optimum Demand for wind energy captive consumers.
5. Letters issued regarding withdrawing Optimum Demand.

6.5. We would like to deal with each of these issues.

6.6.1 Memo dated 1-11-2008

The provision regarding the continuous process industries in the above memo is as follows:-

“In the case of continuous process industries and those HT services which operate with the present level of cut, the Chief Engineer/Distribution concerned can fix such Optimum / Minimum Demand as may be required to operate the industry but this will be subject to the power supply being made available only for such restricted specified period dependent upon the nature of the process of the industry so as to keep with the overall capability of the grid.”

An example has also been included in this Memo with regard to calculation of the Optimum Demand and the number of days for which Optimum Demand can be availed and during the balance period of the month only lighting load for security and essential activities was envisaged to be provided.

The Commission observes that this particular Memo did not distinguish between those consumers who are solely dependent on the TNEB supply and other class of consumers who have their own captive generation and wind power for their consumption.

6.6.2. Order dated 28-11-2008 in M.P. No.42 of 2008

This order did not deal with the concept of Optimum Demand for continuous process industries. Essentially this order decided the Excess Demand Charges and Excess Energy Charges for violation of the quota.

6.6.3. Memo dated 9-10-2009

This Memo was by way of clarification to Circular Memo dated 31-8-2009. Paragraphs 5 and 6 of Memo dated 31-8-2009 are extracted below.

“Para 5 – Optimum Demand Concept is applicable for those consumers availing Board’s power only. Optimum Demand will not vary and once opted it is final.

Para 6 – Those continuous process industries notified by the Government (ie. list already communicated) and if opted for continuous running with Optimum Demand, peak hour restrictions need not be insisted. Industries other than continuous process industries notified by the Government and if opted for running with Optimum Demand, peak hour restriction shall be insisted.”

6.6.4. This Memo dated 31-8-2009 was further clarified in Memo dated 9-10-2009. Para 4 of this Memo dated 9-10-2009 further stipulates that those who are eligible under Deemed Demand Concept as per the Memos dated 19-12-2008, 4-8-2009 and 21-8-2009 for wind energy, CPP and third party power purchase are not eligible for Optimum Demand Concept. The Commission would like to observe here that these Memos were struck down by this Commission in its Order in S.M.P. No.1 of 2009 dated 28-10-2009. This issue was argued accordingly by the Petitioners. The Commission also would like to observe that the TANGEDCO did prefer an appeal on certain aspects of the Order in S.M.P. No.1 of 2009 but never contested the quashing of the three Memos referred above. It was the duty of TANGEDCO to have revisited the instructions

contained in Memo dated 9-10-2009 soon after the quashing of the three Memos. This was not done. In between, various consumers were exempted from evening peak hour restrictions. During the arguments, reference of the Commission was also invited to Order dated 13-4-2010 in Writ Appeal No.645 of 2010. This appeal was filed by TNEB. The Division Bench of the High Court of Madras upheld the judgement of the single judge, where liberty was granted to the Respondent consumer to make a representation to the appellant TNEB with regard to Optimum Demand of power supply without peak hour restrictions or power holidays and also directed the appellant to pass orders thereon.

6.6.5. From the above, it could be seen that the Circular Memo dated 1-11-2008 introduced Optimum Demand Concept for continuous process industries. What was sought to be done in this concept was to provide the eligible quota of KVA days over a continuous period, after adjusting for the lighting load for the security and essential activities as well as load permitted for peak hour for the balance days to be adjusted continuously over certain number of days, the balance days in the month being power holidays. There was absolutely no mention about the eligibility for such Optimum Demand Concept being restricted only to the consumers who are solely dependent upon the TNEB supply. Instructions contained in Memo dated 31-8-2009 clarified that the Optimum Demand Concept would be available to those consumers who avail Boards power supply. When Memos dated 19-12-2008, 4-8-2009 and 21-8-2009 were struck down by the Commission in order dated 28-10-2009 in SMP 1/2009,

Memo dated 9-10-2009 should have been reviewed but this was not done. Further these instructions run contrary to various provisions of the Act. Section 9(2) of the Electricity Act, 2003 provides that every person, who constructed a captive generating plant and maintains and operates such plant shall have the right to Open Access for the purposes of carrying electricity from his captive generating plant to the destination of his use subject to availability of adequate transmission facility. Once Open Access is provided, no restriction on such captive consumption is permissible. This is equally true for purchase of power from third parties through Open Access in view of the provisions in sub-section (2) of section 42 and the Regulations of this Commission for Open Access notified in the year 2005. This Commission has enabled all HT consumers to avail Open Access with effect from 17-2-2010, when an amendment to Open Access Regulations was notified. A harmonious construction of the provisions of the Act and Regulations as discussed above would clearly indicate that captive consumption of electricity and purchase of electricity through Open Access as mandated in the Act as well the Regulations cannot be given a go by. That being so, it will not be possible to discriminate between those consumers who are solely dependent on TNEB and other consumers who have their own captive power or third party power purchase with regard to Optimum Demand Concept. The Commission therefore does not endorse the argument of TNEB that Optimum Demand Concept for continuous process industries should be limited to those consumers, who are solely dependent on TANGEDCO supply only. We therefore direct that the Optimum Demand Concept should be made available to

all nine consumers covered by these transferred applications duly providing for the captive power /third party power brought in by them during the concerned periods.

7. Appeal:-

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for Electricity within a period of 45 days.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission