



**THE 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. B. Jeyaraman** - **Member**  
**and**  
**Thiru. R. Rajupandi** - **Member**

**RP No.2 of 2008**

**In the matter of:** for levy of excess demand charges for HT Consumers and implementation of Restriction and Control of power supply in TNERC Order for M.P.No.42 of 28-11-2008.

**Petitioner:** Tamil Nadu Electricity Board  
Represented by Secretary  
144, Anna Salai, Chennai 600 002.

The above R.P.No.2 of 2008 came up for final hearing on the 22<sup>nd</sup> December 2008. The Commission upon perusing the above petition and the connected records and upon hearing the Chairman, Executive Director and Member (Accounts) of the TNEB and the Learned Counsel for the TNEB passes the following detailed order in continuation of the oral order of dismissal pronounced on 22<sup>nd</sup> December 2008 in the open court.

## **DETAILED ORDER DATED 24<sup>th</sup> December 2008**

### **1. Prayer of the Petitioner**

The order dated 28-11-2008 issued by the Commission in M.P.No.42 of 2008 may be reviewed as follows:

- I. As a deterrent measure, the excess demand charges may be ordered at a rate five times the normal rate instead of three times the normal rate.
- II. Since the Government has proposed the Restriction and Control measures with effect from 01-11-2008, as per regulation 38 of the Tamil Nadu Electricity Distribution Code the proposed excess demand and energy charges may also be allowed from 01-11-2008 instead of 28-11-2008.
- III. The directions issued regarding the utilization of banked wind energy between 1-12-2008 and 30-04-2009 in five monthly equal installments may be withdrawn.

### **2. Contentions of the Petitioner**

- (a) In the absence of the provision of disconnection of the service in the event of violation of R&C measures, it is essential to levy charges for excess demand and excess energy in such a way to effectively dissuade the erring consumers from violating R&C measures.
- (b) Since the provision of excess demand and excess energy charges is to enforce the R&C measures and therefore it may not be proper to compare these charges with the cost of power generation through DG sets. The penalty for any violation by its very nature has to be fully adequate, deterrent and effective so that it acts as a disincentive.
- (c) The excess charges as approved by the Commission are grossly insufficient and may not help this petitioner Board in implementing R&C

measures defeating the very purpose of imposing restriction and control measures. As the Commission has not increased the demand charges, the violators in all likelihood would go scot free compelling the Tamil Nadu Electricity Board to resort to unscheduled load shedding, adversely affecting the common people of the State. Hence the Commission may consider the demand charge at 5 times at the normal rate in case of violation in which case equivalent cost/unit for HT Industrial consumers will be Rs.15 per unit and Rs.19.50 per unit (approximately) for HT commercial consumers which will dissuade these consumers from drawing power from the grid over and above the quota fixed.

- (d) In the event of the Hon'ble Commission being of the opinion that if it is not feasible to order the excess demand charges and the excess energy charges as prayed for by Tamil Nadu Electricity Board in M.P.42 of 2008, then the Commission may review its interim order dated 24-10-2008 and permit the Tamil Nadu Electricity Board to resort to disconnection of such of those service connections, who do not abide by the Restriction and Control measures to tide over the present critical power situation.
- (e) Since the Government has instructed to implement the Restriction and Control measures with effect from 1-11-2008, as per Clause 38 of the Tamil Nadu Electricity Distribution Code the proposed excess demand and energy charges may also be allowed from 1-11-2008 instead part of 28-11-2008 as they are integral part of the Restriction and Control measures.
- (f) Though the Electricity Act 2003 and National Tariff Policy does not provide for banking of wind energy, this petitioner Board has introduced banking to promote wind energy.

### **3. Findings of the Commission**

The Tamil Nadu Electricity Board has not quoted the authority under which the Review Petition No.2 of 2008 has been filed. The Commission had to inform the petitioner that the review petition would fall under clause 43 of the Tamil Nadu Electricity Regulatory Commission (Conduct of Business Regulations) 2004. Clause 43 is reproduced below:

*“43. Review of the decisions, directions and orders*

*(1) The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decision, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record.*

*(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations.”*

3.2. Clause 43 states that review petition is maintainable on the grounds that the relevant order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. The petition does not disclose any of the above three grounds, which would warrant a review of the order of the Commission. The arguments adduced by the petitioner are grounds for appeal – not a review. The petition does not refer to any mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Therefore, the Review Petition is liable to be dismissed on this ground alone. But, the Commission has thought it fit to rebut the arguments of the petitioner so that relevant issues are settled once and for all.

3.3. The petitioner has raised the following issues:

- (a) As the Commission has not permitted the petitioner to effect disconnection of electricity supply, deterrent penalty by way of excess demand charges at five times the normal rate instead of three times the normal rate is called for.
- (b) Excess demand charges and excess energy charges should be brought into force retrospectively from 1-11-2008.
- (c) The order of the Commission on utilization of banked wind energy in five monthly instalments should be withdrawn.

3.4. Section 56 of the Electricity Act 2003 authorizes the licensee or the generating company to cut off the supply of electricity in default of payment of electricity dues. Further, as per Clause 21 of the Tamil Nadu Electricity Supply Code 2004, a licensee shall be entitled to disconnect the supply of electricity for violation of certain provisions of the Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981 and Environment (Protection) Act 1986. This is in accordance with Section 175 of the Electricity Act 2003 which lays down that provisions of the Electricity Act 2003 are in addition to and not in derogation of any other law in force. In addition, disconnection of electricity supply can be effected on grounds of safety in accordance with Clauses 46, 49, 52 and 121 of the Indian Electricity Rules 1956. This is because the regulations to be framed by the Central Electricity Authority under Section 53 of the Act are not ready yet. Section 185 of the Electricity Act 2003 permits the Indian Electricity Rules 1956 to be in force till then.

3.5. Therefore, there is no scope within the framework of the Electricity Act 2003 to effect disconnection of electricity supply for

violation of restriction and control measures imposed by the petitioner Board. The petitioner Board argued that Section 23 of the Electricity Act 2003 may be invoked by the Commission to permit the petitioner Board to effect disconnection of electricity supply. Section 23 is reproduced below:-

*“23. Directions to licensees. – If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.”*

3.6. Even granting that interpretation of Section 23 could be stretched to facilitate an order for disconnection of electricity supply, such an order would run counter to Section 56. Issue of an order under Section 23 for disconnection would set at nought Section 56. One section of the Act should not be so interpreted as to nullify another section of the same Act. The entire Act must be harmoniously interpreted. Therefore, the Commission is of the view that disconnection of electricity supply for violation of restriction and control measures imposed by the distribution licensee is not tenable in law.

3.7. The petitioner submits that the excess demand charges and excess energy charges should be brought into force retrospectively from 1-11-2008 and not from 28-11-2008, which is the date of the order of the Commission. The petitioner admits that although the restriction control measures were notified on 1-11-2008, the precise figures for the excess demand charges and excess energy charges were notified in the newspapers on 15-11-2008. The excess demand charges form part of the non tariff charges. Billable demand has been defined in the Tariff Order 2003.

These charges were finalised in 2003 and 2004 after observing the procedure laid down in Sections 64 and 88 of the Electricity Act 2003.

3.8. Section 64 (2) mandates prior publication of tariff proposals. Section 88 mandates consultation with State Advisory Committee on matters of consumer interest. Section 64 (3) directs the Commission to consider all suggestions and objections from the public. There were forceful pleas in the Advisory Committee meeting held on 18-11-2008 as well as in the public hearing held on 21-11-2008 that the penal charges should be brought into force with prospective effect. The Commission deferred to these sentiments and decided to give prospective effect to the excess demand charges. There is no valid ground for reversing this decision of the Commission. The insistence of the petitioner that whatever has been published by them on 15-11-2008 should be brought into force with effect from 1-11-2008 is untenable. That plea would reduce the roles of the Advisory Committee and the public hearing to a mere rubber stamp. Consultation with the Advisory Committee must be effective and meaningful. Similarly, the valid suggestions, which emerge from public hearing should be given adequate weightage. Otherwise, the public hearing would be a farce.

3.9. The petitioner Board has reiterated the demand for excess demand charges at five times the normal rate as against the three times approved by the Commission. There was severe resistance from the advisory committee and the consumers for the levy of five times the normal charges. The Commission has balanced the interest of the consumers and the distribution licensee and moderated the charges to three times the normal rate. It must be borne in mind that excess demand charges and excess energy charges are leviable in addition to the penalty of drastic reduction of electricity supply to 5% (or 10%) during the following 48 hours, as the case may be, for violation of restriction and control measures. Raising the

excess demand charges to five times the normal rate, in such a context, would be draconian. The Commission does not see merit in this argument.

3.10. As regards the withdrawal of the orders on utilization of banked wind energy, the petitioner submits that they were not heard on this issue. The advisory committee, of which the Chairman TNEB is a Member, considered this issue and the Chairman, TNEB responded to the suggestions from the advisory committee. Similarly the issue figured during the public hearing as the records would show. The Chairman, TNEB responded to the issues at the end of the public hearing. Therefore, to say that the petitioner was not aware of this issue is not borne out by facts.

3.11. Now, coming to the merits of the case, perusal of the figures of load shedding and the wind energy generation during the period from April 2008 to October 2008, when the wind season was in full swing, would undisputedly establish the fact that but for wind energy, the State would have had to either face severe load shedding or the petitioner would have been compelled to buy costly power from other sources. The half-an-hour average frequency recorded by the TNEB grid between April 2008 and October 2008 never touched the ideal frequency of 50 hertz. The highest half-an-hour average frequency reached was 49.85 hertz in April 2008. It reached the ideal frequency of 50 hertz for a few moments only once in April 2008, thrice in June 2008, once in July 2008, six times in August 2008, once in September 2008 and once in October 2008. These facts clearly establish that wind energy came to the rescue of the Board during the peak wind season, thus averting a power crisis. Utilization of the wind energy of 315 million units banked as on 1-11-2008 would raise the burden of demand of the petitioner Board from an average of 7500 MW by additional 100 MW, which amounts to 1.33%. Similarly, utilization of banked wind energy in five equal monthly instalments would raise the electricity supply of the petitioner from an average 170 million units a day by an additional 2 million units a day,

which amounts to 1.17%. The Commission believes that it is a fair balance between the interests of the wind energy generators and the distribution licensee. The argument of the petitioner that they have to buy high cost power, if banked wind energy is utilized now, is fallacious because if surplus wind energy had not been generated between April 2008 and October 2008, the petitioner Board would have been compelled to buy power at high rates during that period. Therefore, the Commission do not find merit in the submission of the petitioner Board that utilization of banked wind energy should be disallowed.

**4. Conclusion**

Therefore, the Review Petition is dismissed.

**(R.RAJUPANDI)  
MEMBER II**

**(B.JEYARAMAN)  
MEMBER I**

**(S.KABILAN)  
CHAIRMAN**