

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

(Central Act 36 of 2003)

Suo-motu Proceedings No.1 of 2009

Date of Order: 28th October 2009

PRESENT

Thiru S.Kabilan	-	Chairman
Thiru R. Rajupandi	-	Member
Thiru. K. Venugopal	-	Member

In the matter of Re-fixing of energy quota and demand quota in respect of Wind Energy Generators as directed by Hon'ble High Court of Madras in W.P.Nos. 12448, 17738 to 17740, 18079 & 18080, 18722, 18726 to 18728, 18041, 17467 to 17471 and 17521 to 17524 and 17239 to 17243 and 17330 to 17333 and 17338 to 17342 and 16479, 16480, 16524 and 16803 to 16805 and 19169 to 19176, 19784 to 19787, 18239 to 18243, 19901 and 19902, 19550 to 19552, 19370, 19371 and 20149 to 20151 of 2009.

1. Indian Wind Power Association
No.40, (Ground Floor)
Besant Avenue, Adyar, Chennai. ... Petitioner in W.P.No.12448 of 2009
2. Eveready Spinning Mills Private Ltd.,
16, Jothi Theatre Road, Tirupur. ... Petitioner in W.P.No.17738 of 2009
3. Mani Spinning Mills Private Ltd., Unit I
12, Jothi Theatre Road, Tirupur. ... Petitioner in W.P.No.17739 of 2009
4. Mani Spinning Mills Private Ltd., Unit II
12, Jothi Theatre Road, Tirupur. ... Petitioner in W.P.No.17740 of 2009
5. Shri Ganesha Textiles
21, Pollachi Road, Palladam. ... Petitioner in W.P.No.18079 of 2009

6. Hemalatha Mills Pvt., Ltd.,
68/3H, Arumuthampalayam
Naranapuram Post, Palladam. ... Petitioner in W.P.No.18080 of 2009
7. Sri Lakshmi Venkateswara Spinning
Mills Pvt., Ltd., ... Petitioner in W.P.No.18722 of 2009
8. V.S.M. Wears India Ltd.,
Pallipalayam ... Petitioner in W.P.No.18726 of 2009
9. Pallava Textiles Ltd.,
Pallipalayam ... Petitioner in W.P.No.18727 of 2009
10. Arunachala Gounder Textiles Mills Ltd.,
Pallipalayam ... Petitioner in W.P.No.18728 of 2009
11. Leeds Spinning Mills Pvt., Ltd.,
S.F.No.233, Elango Layout
II Street, Kangayam Cross Road
Tirupur. ... Petitioner in W.P.No.18041 of 2009
12. Hindustan Spinners
No.223, Mettupalayam Road
Narasimhasaicken Palayam
Coimbatore. ... Petitioner in W.P.No.17467 of 2009
13. Hindustan Textiles
Coimbatore. ... Petitioner in W.P.No.17468 of 2009
14. Jeyare Spinning Mills ... Petitioner in W.P.No.17469 of 2009
15. Hindustan Spinners 'B' Unit. ... Petitioner in W.P.No.17470 of 2009
16. Hindustan Cotton Spinning Mills ... Petitioner in W.P.No.17471 of 2009
17. Spintex Cotton Mills (P) Ltd.,
Tirupur. ... Petitioner in W.P.No.17521 of 2009
18. Senthil Nathan Spinning Mills
Dharmapuri. ... Petitioner in W.P.No.17522 of 2009
19. Hindustan Textiles 'B' Unit. ... Petitioner in W.P.No.17523 of 2009
20. Karur K.C.P. Packagings Ltd., ... Petitioner in W.P.No.17524 of 2009
21. Arun Textiles (P) Ltd., Petitioner in W.P.No.17239 of 2009

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| 22. K.S.R. Textile Mills (P) Ltd., | Petitioner in W.P.No.17240 of 2009 |
| 23. Thakadoor Spinning Mills Pvt., Ltd., | Petitioner in W.P.No.17241 of 2009 |
| 24. Nilgiri Textiles Pvt., Ltd., | ... Petitioner in W.P.No.17242,43 of 2009 |
| 25. Shree Bharani Spinnings (India) Ltd., | Petitioner in W.P.No.17330 of 2009 |
| 26. R.R.D. Tex (Unit of Best Corp. Ltd.,) | ...Petitioner in W.P.No.17331 of 2009 |
| 27. Best Cotton Mills (Unit of Best Corp. Ltd.,) | ...Petitioner in W.P.No.17332 of 2009 |
| 28. Karikali Amman Spinnings Mills (P) Ltd., | ...Petitioner in W.P.No.17333 of 2009 |
| 29. Armstrong Spinning Mills (P) Ltd., | ...Petitioner in W.P.No.17338 of 2009 |
| 30. Raghav Industries Ltd., | Petitioner in W.P.No.17339,342 of 2009 |
| 31. Armstrong Knitting Mills. | ...Petitioner in W.P.No.17340 of 2009 |
| 32. Armstrong Process | ...Petitioner in W.P.No.17341 of 2009 |
| 33. Viking Textiles (P) Ltd., | ...Petitioner in W.P.No.16479 of 2009 |
| 34. Anand Textiles | ...Petitioner in W.P.No.16480 of 2009 |
| 35. Rohini Textile Industry Pvt., Ltd., | ...Petitioner in W.P.No.16524 of 2009 |
| 36. Vasu Yarn Mills India (P) Ltd., | ...Petitioner in W.P.No.16803 of 2009 |
| 37. Sri. Karvembu Textiles Pvt., Ltd., | ...Petitioner in W.P.No.16804 of 2009 |
| 38. Sri Palani Murugan Spinning Mills. | ...Petitioner in W.P.No.16805 of 2009 |
| 39. Shakti Murugan Textiles
Mathakadi Thottam, SF. No.141/2
Pallapalayam P.O. Irugur (Via)
Coimbatore. |Petitioner in W.P.No.19169 of 2009 |
| 40. Angalakshmi Spinning Mill
Mathakadi Thottam
SF. No.154/1, Pallapalayam P.O.
Coimbatore. |Petitioner in W.P.No.19170 of 2009 |

41. Prospun Textile India (P) Ltd.,
SF. No.234/1&2
Pooranandamapalayam Road
Mettubavi Village, Coimbatore.Petitioner in W.P.No.19171 of 2009
42. Selvi Spinning Mill
27/5, T.P. Road, Kumarapalayam
Annur, Coimbatore District. Petitioner in W.P.No.19172 of 2009
43. Sri Karpagam Mills India (P) Ltd.,
3, Samian Thottam, Udayampalayam
Chinnavadeedampatti, Coimbatore. ...Petitioner in W.P.No.19173 of 2009
44. Speedline Spinning India (P) Ltd.,
2/12, C.M. Thottam
Pallapalayam P.O. Irugur (Via)
Coimbatore. ...Petitioner in W.P.No.19174 of 2009
45. V.K.S.M. Cotton Mills Ltd.,
2/2, Pappampatti Main Road
Madupalayam, Pedampalli Post
Ondipudur, Coimbatore.Petitioner in W.P.No.19175 of 2009
46. Sree Kailati Spinners Pvt., Ltd.,
SF No.126, Vellakkinar, Coimbatore. ...Petitioner in W.P.No.19176 of 2009
47. P.K.P.N. Spinning Mills Pvt., Ltd., ...Petitioner in W.P.No.19784 of 2009
48. S.J.L.T. Spinning Mills ...Petitioner in W.P.No.19785 of 2009
49. Mallur Siddeswaran Spinning Mills ...Petitioner in W.P.No.19786 of 2009
50. J.P.P. Mills (P) Ltd., ...Petitioner in W.P.No.19787 of 2009
51. Aswin Textiles (P) Ltd.,
Theripatti Pirivu, Palani Road
Dharapuram. ...Petitioner in W.P.No.18239 of 2009
52. Saravana Spinning Mills
Covent Road, Thokkampatty (PO)
Dharmapuri. ...Petitioner in W.P.No.18240 of 2009
53. Sri Karunambika Mills (P) Ltd.,
Post Box No.2, Somanur (PO)
Coimbatore. ...Petitioner in W.P.No.18242, 43 of 2009

54. Kumargiri Textiles Ltd.,
P.M.P.Nagar, Thokkampatty Post
Dharmapuri. Petitioner in W.P.No.18241 of 2009
55. Lawn Textiles (P) Ltd., Petitioner in W.P.No.19901 of 2009
56. Vijayalakshmi Spinning Mills Petitioner in W.P.No.19902 of 2009
57. K.P.Textiles
4/237, Caltonpet Post
Near Sulur, Coimbatore District. Petitioner in W.P.No.19550 & 52 of 2009
58. Santhi Castings Works
Kumarapuram
Narasimnaickenpalayam Post
P.B.NO.5506, Coimbatore District. Petitioner in W.P.No.19551 of 2009
59. S.S.Spinning Mills
No.443/4, Kamaraj Road
Tirupur District. Petitioner in W.P.No.19370 of 2009
60. Sri Vignesh Yarns Pvt., Ltd.,
Avinashi to Annur Road
Nambiyampalayam Village
Avinashi. Petitioner in W.P.No.19371 of 2009
61. Pongalur Pioneer Textiles (P) Ltd.,
No.8, Sundaram Apartments
83, Race Course Road
Coimbatore District.Petitioner in W.P.No.20149 of 2009
62. Mothi Spinners Ltd.,
Anangur Main Road, Athikattoor
Anangur Post, Thiruchengode.Petitioner in W.P.No.20150 of 2009
63. Sri Visaka Textiles (P) Ltd.,
SF No.253 and 254,
Moopripalayam Village
Annur Road, Palladam Taluk
Coimbatore District.Petitioner in W.P.No.20151 of 2009
- 64.Surya Dev Alloys & Power (P) Ltd., Petitioners in W.P.No.16194 of 2009

Versus

1. The Secretary, Energy Dept.,
Government of TN.
2. The Chairman, TNEB, Chennai.
3. CE, Commercial, TNEB, Chennai.
4. SE, Tirunelveli Electricity Distribution Circle
Tirunelveli.
5. SE, Dindigul Electricity Distribution Circle
Dindigul.
6. SE, Gobi Electricity Distribution Circle
Gobi.
7. SE, Coimbatore Electricity Distribution Circle
Coimbatore.
8. SE, Udumalpet Electricity Distribution Circle
Udumalpet.
9. SE, Dharmapuri Electricity Distribution Circle
Dharmapuri.
10. SE, Mettur Electricity Distribution Circle
Mettur.
11. SE, Erode Electricity Distribution Circle
Erode.
12. SE, Namakkal Electricity Distribution Circle
Namakkal.
13. SE, Tirupur Electricity Distribution Circle
Tirupur.

..... Respondents

Counsel for the petitioners No.8 to 10 & 12 to 63	Thiru. R.S.Pandiyaraj
Counsel for the petitioner No.1	Thiru. Rahul Balaji
Counsel for the petitioners no.2 to 7 & 11	Thiru. Ravee Kumar
Counsel for the petitioner No.64	Thiru. K. Seshadri.
Standing Counsel for the respondents	Thiru. H.S. Mohamed Rafi

The above cases came up for hearing before the Commission on 14-10-2009 and 23-10-2009 and after giving reasonable opportunities to both parties to present their cases and after perusing the connected records and after hearing the arguments of both the parties, the Commission passes the following

ORDER DATED: 28th OCTOBER 2009

The Order dated 28-11-2008 of the Commission in M.P. No.42 of 2008 was challenged by the TNEB in the High Court of Madras in Writ Petition No.30890 of 2008. It was disposed of by the High Court with the following order on 30-3-2009.

"The petitioner has come forward with the present writ petition calling for the records relating to the order dated 28-11-2008 made in M.P.No.42 of 2008 and the consequential order dated 24-12-2008 in R.:P.No.2 of 2008 on the file of respondent Commission, challenging the said proceedings in so far as it relates to banking of wind energy and the enhancement of the demand of energy quota in favour of the wind mill captive consumer.

2. Admittedly, the petitioner has got a remedy of filing an Appeal before the Appellate Tribunal for Electricity as contemplated under Section 111 of the Electricity Act, 2003. It is also been reiterated by the Hon'ble Apex Court in the case of HP Electricity Regulatory Commission vs. HP State Electricity Board reported in (2006) 9 SCC Page 233.

3. In view of the same, the petitioner is directed to approach the Appellate Tribunal for Electricity against the order of the respondent under challenge in this writ petition. It would be therefore suffice to pass the following order by consent.

(a) The petitioner has to approach the Appellate Tribunal for Electricity challenging the order of the respondent dated 28-11-2008 made in M.:P.No.42 of 2008 and the consequential order dated 24-12-2008 in M.P.No.2 of 2008 within a period of two weeks from the date of receipt of this order.

(b) The unutilized bank units shall not lapse as on 31-3-2009 but it is subject to the outcome of an Appeal.

(c) The stay that has been granted by this court would be in operation for a period of four weeks.

(d) The petitioner is at liberty to approach the Appellate Tribunal seeking interim orders.

With the above observations and directions, the writ petition and miscellaneous petitions are disposed of. No costs."

2. The TNEB did not choose to file an appeal before the Appellate Tribunal for Electricity within the time period stipulated by the High Court and therefore the order of the Commission has become final and binding on all parties including the TNEB and the wind energy generators.

3. Thereafter, in W.P.No.8366 of 2009, the High Court passed the following order on 19-5-2009.

“This writ petition is filed for a issue of writ of Mandamus directing the respondents to forthwith comply with the order of the Tamil Nadu Electricity Regulatory Commission in its order dated 28-11-2008 in M.P.No.42/2008 as contained in para 24 of the order.

2. On notice, the learned Additional Advocate General has submitted that even Board is also consenting to treat the petitioner’s association on par with any other captive power users and their quota will be refixed basing on the respondent Board power supply and captive power supply. He has also submitted that this is subject to the Board’s other proceedings with regard to imposing penalty and other things.

3. Recording the above submission, the writ petition is closed. No costs. Consequently, connected M.P .Nos. 1 and 2 are closed.”

4. The High Court of Madras disposed of the Writ Petition Nos.17467, to 17471 and 17521 to 17524 and 17239 to 17243 and 17330 to 17333 and 17338 to 17342 and 16479, 16480, 16524 and 16803 to 16805 of 2009 with the following Common Order on 29-8-2009.

“The writ petitions have been filed challenging fixation of quota as well as penalty imposed by the respondents.

2. After some deliberations consensus have been arrived by the learned counsel appearing for the petitioner as well as the learned Advocate General appearing for the Board. As per the consensus the following order is passed by consent of all.

2.1. The Board refixing energy quota and demand quota in respect of wind energy generators has filed 2 memos dated 4-8-2009 and 21-8-2009 before the Tamil Nadu Electricity Regulatory Commission, Chennai.

2.2. The Commission referred to above shall decide about the same after hearing the parties concerned.

2.3. Till such time the respondent Board shall not enforce the penalty for the past claim as ell as the future claim.

3. *These writ petitions are ordered accordingly. Consequently, connected miscellaneous petitions are closed. No order as to costs.*

5. Further, while disposing of the Writ Petition Nos. 17738, 17739 and 17740 of 2009, the High Court passed the following order on 1-9-2009.

“The petitioners have come forward with the present the writ petitions challenging the fixation of quota made by the respondents.

2. After some deliberations consensus have been arrived at by the learned counsel appearing for the petitioners as well as the learned Advocate General appearing for the Board. As per the said consensus the following order is passed by consent of all.

2.1. The Board refixing energy quota and demand quota in respect of wind energy generators has filed 2 memos dated 4-8-2009 and 21-8-2009 before the Tamil Nadu Electricity Regulatory Commission, Chennai.

2.2. The Commission referred to above shall decide about the same after hearing the parties concerned.

2.3. Till such time the respondent Board shall not enforce the penalty for the past claim as well as the future claim

3. These writ petitions are ordered accordingly. Subsequently, the connected M.P.s are closed. No order as to costs.”

6. The High Court has directed the Commission to decide the energy quota and demand quota in respect of wind energy generators taking into account the memos dated 4-8-2009 and 21-8-2009 filed by the TNEB with the TNERC.

7. It is necessary to trace the background of the order of the Commission dated 28-11-2008. The TNEB filed a Miscellaneous Petition 42/2008 on 6-11-2008 before the TNERC seeking approval for the restriction and control measures and for the levy of excess demand charges and excess energy charges. The restriction and control measures were enforced by the distribution licensee, the TNEB, in exercise of the powers conferred under clause 38 of the Tamil Nadu Electricity Distribution Code 2004 notified by the TNERC.

8. Section 23 of the Electricity Act 2003,

which governs restrictions and controls on electricity distribution, is reproduced below:-

“Section 23: Direction to the 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.”

9. The Commission directed the TNEB on 10-11-2008 to publish their proposals in two Tamil and two English dailies, which have wide circulation in the State. The Commission supplemented the efforts of TNEB with a press note on 12-11-2008 advertising the date of public hearing. The proposals of TNEB were published in Dina Thanthi, Dina Malar, The New Indian Express and Deccan Chronicle on 15-11-2008. The proposal was considered by the State Advisory Committee on 18-11-2008 in terms of Section 88 of the Electricity Act, 2003. A public hearing was held on 21-11-2008 at Kalaivanar Arangam, Chepauk, Chennai in terms of Section 64 (3) of the Electricity Act, 2003. There was wide and enthusiastic participation. A total of 185 persons and organizations registered themselves for the public hearing, out of which 63 chose to present their views on the stage. The speakers included eminent public persons, leading industrial and trade organizations such as the Confederation of Indian Industries, Indian Wind Power Association, Tamil Nadu Spinning Mills Association, South India Mills Association, Madras Chamber of Commerce and Industry, South India Small Spinners Association, Tamil Nadu Small and Tiny Industries Association, Tamil Nadu Electricity Consumers Association, Tamil Nadu Plastic Manufacturers and Merchants Association, Indian Chamber of Commerce, CITU, NASSCOM (National Institute of Software and Services Companies), Indian Institute of Foundry Men, South India Hotels and Restaurants Association, . Ice Manufacturers Federation, MEPZ Manufacturers Association, TNEB Accounts and Executive Staff Union, Ambattur Industrial Estate Manufacturers Association, Power Engineers Society of Tamil Nadu, etc.

10. Thereafter, the Commission passed an order on 28-11-2008. The salient features of the order relating to demand quota and energy quota for wind energy generators are reproduced:-

“Para 24. Therefore, we direct that the for determination of demand and energy quota for wind energy captive users shall be the same as that of other captive users. It has, further, been reported by the TNEB that 315 million units of wind energy generated between 1-4-2008 to 31-10-2008 have been banked with TNEB. This wind energy so banked by the generators during the difficult months of May, June, July, August, September and October 2008 enabled the TNEB to ward off load shedding and power cut effectively. They came to the rescue of TNEB in difficult times. The statistics of load shedding and the wind energy generated during these months as been analyzed by the Commission before reaching the above conclusion. the Commission feels that it is incumbent upon the TNEB to come to the rescue of the wind energy captive users, if they choose to utilise their banked energy now.

Para 25. By all accounts, there is a strong case for a preferential treatment of the banked wind energy captive users. The Commission estimated that utilization of banked energy of 315 million units between 1-12-2008 and 30-4-2009 would raise the consumption level of 170 million units by additional 2 million units daily. The incremental demand required for the utilization of this banked energy is estimated to be 100 MW, after considering the peak house restriction, out of the total availability of 7500 MW.

Para 26. We, therefore, direct the TNEB to permit the utilization of banked wind energy between 1-12-2008 to 30-4-2009 in five monthly equal instalments, wherever necessary by enhancing the demand and energy quota as done in the case of other captive consumers subject to the evening peak hour restrictions.

Para 43. As the base for computation of maximum demand charges would undergo a change, this is being notified with prospective effect. Excess energy consumption charges, which is introduced for the first time, will have prospective effect from the date of the Order. Similarly, the computation of the demand and energy quota shall be revised for wind captive users with immediate effect in accordance with the formula prescribed by the Commission. As regards the Restriction and Control measures, which have been enforced from 01-11-2008, the date of effect shall be 01-11-2008.”

11. The Commission, as detailed in the above paragraphs, directed the TNEB to re-work the demand and energy quota of wind captive users with immediate effect. The method of determination of demand and energy quota for wind energy captive users was to be same as that of other captive users. The TNEB was, further, directed to permit utilization of wind energy banked as on 1-11-2008 in five equal monthly instalments between 1-12-2008 and 30-4-2008, wherever necessary by enhancing the demand and energy quota as in the case of other captive users. The method for determination of

demand energy quota for captive users was outlined by the TNEB in Memo CE/ Comml. /EE/ DSM/ PMM/ F.Powercut/ D.28/2008 dated 17-11-2008.

12. The Commission in its Order dated 28-11-2008 arrived at the basis of computation of demand and energy quota for wind energy generators on the basis of material available on record at that point of time, that is, the formula contained in the memo of the TNEB dated 17-11-2008. We are surprised to find that the TNEB has tampered with the formula on its own on 19-12-2008 in Memo No. CE/ Genl/ EE/ DSM/ AEE/ PMM/ F.Power Cut/ D.87/08 dated 19-12-2008. This was further altered by the TNEB on 4-8-2009 and 21-8-2009.

13. We are constrained to observe that these alterations would amount to changing the rules of the game behind the back of the Commission and thus amount to wilful violation of the orders of the Commission, punishable under Sections 142 and 146 of the Electricity Act, 2003 with imprisonment upto 3 months or with fine upto Rupees one lakh or both. These modified formulae contained in the memos dated 19-12-2008, 4-8-2009 and 21-8-2009 were never brought to the notice of the Commission, let alone being submitted for the approval of the Commission. Therefore, we have no hesitation in striking down these three memos as violative of the Order of the Commission dated 28-11-2008. The Commission reserves its right to initiate appropriate proceedings under Sections 142 and 146 of the Electricity Act, 2003. It is the formula contained in the memo of TNEB dated 17-11-2008 alone, which is recognized and approved by the Commission.

14. The petitioners pleaded that the wind power capacity earmarked for wheeling and captive use should not be construed by the TNEB as belonging to them. The petitioners submitted that it is only the capacity, which is earmarked for sale to the TNEB, should be counted as the capacity belonging to the TNEB. The TNEB in their additional affidavit submitted on 23-10-2009 stated that of the total installed capacity of windmills of 4535 MW as on 30-9-2009, a capacity of 2413 MW was earmarked for sale to the Board and a capacity of 2122 MW had sought wheeling facility. The TNEB further has affirmed that the banked energy as on 31-3-2009 stood at 224 MU. The banked energy for the period from 1-4-2009 to 30-9-2009 is 943 MU. That the banked energy has further swelled by 943 MU between 1-4-2009 and 30-9-2009 is indicative of the severe restrictions on power consumption during this period. They further submitted that the generation of energy by wind mills between 1-4-2009 to 30-9-2009 was 5876 MU. These figures were accepted by the petitioners. The wind energy generators submitted that they being both captive consumers as well as captive generators, deserve a special treatment as compared to ordinary consumers. Captive consumers draw power from their own source unlike the ordinary consumer who depend on the distribution licensee for supply of power. The petitioners submitted that as in the case of thermal captive generators, the wind generators should be permitted to avail the full demand and energy quota of captive wind generation and the peak hour utilization as provided in the memo of the TNEB dated 17-11-2008. The petitioners further demanded a price of Rs.3.50 per unit, which is the tariff for industrial consumers, for the unutilized banked energy on the ground that despite Commission's Order dated 28-11-2008, the wind generators were prevented from utilizing the banked energy between 1-12-2008 and 30-4-2009. Out of the 315 MU banked energy as on 1-11-2008 the TNEB has reported that 224 MUs remained in the bank as on 31-3-2009, which supports the contention of the petitioners that a significant portion of the banked energy as on 1-12-2008 was prevented from being utilized. The petitioners complained that they have been prevented from utilizing the wind energy at par with the thermal captive consumers during the

current year (2009-10) too, as a result of which there is heavy accumulation of banked energy. They should be permitted to encash the accumulated wind energy remaining in the bank at the end of 2009-10 at the rate of Rs.3.50 per unit, which is the tariff applicable for HT industrial consumers. They justified it on the ground that a vast majority of the captive users of wind energy is industrial consumers. The petitioners further pleaded that peak hour generation should be available for peak hour consumption, whether drawn from current generation or from the bank.

15. The learned counsel for the TNEB in response to the arguments of the petitioners conceded that their memo dated 17-11-2008 permits adjustment of peak hour generation of captive power against peak hour consumption and therefore they have no objection to the plea of the petitioners in this regard. TNEB has, further, no objection to the utilization of current generation during the evening peak hours at par with thermal captive consumers.

16. After taking into account the submissions made by both the parties, the Commission directs as follows:-

(1) The base energy consumption and base demand shall be computed for all captive users including the wind energy captive users on the basis of the formula contained in the TNEB Memo No.CE/ Comm/EE/DSM/AEE/PMM/F. Power Cut/D.001/08 dated 1-11-2008;

(2) For any demand sanctioned after 1-10-2008, the additional energy quota and demand energy quota shall be as per the formula prescribed by the TNEB in Memo No.CE/Comm/EE/DSM/F.Powercut/D.001/2008 dated 1-11-2008;

(3) The demand and energy quota for the wind energy supplied after 1-11-2008 shall be fixed in accordance with the memo dated 17-11-2008 of TNEB;

(4) As already directed by the Commission, wind energy banked as on 1-11-2008 shall be adjusted in five equal monthly instalments between 1-12-2008 and 30-4-2009 and equivalent additional demand and additional energy quota should be allotted to them;

(5) Demand quota and energy quota after being redrawn in accordance with the above directions shall be set off against the actual demand and energy consumed between 1-11-2008 and 30-4-2009;

(6) Excess demand charges and excess energy charges for the period from 1-11-2008 to 30-4-2009 shall be computed with reference to the redrawn demand and energy quota;

(7) The High Court has directed that the banked energy to the credit of the wind energy generators as on 31-3-2009 shall not lapse. Accordingly, we direct that any surplus banked energy remaining unadjusted on 30-4-2009 would be eligible for encashment at the rate of Rs.3.50 per unit, which is the current tariff for industrial consumers. This is because the captive consumers were prevented from utilizing the banked energy adequately between 1-12-2008 and 30-4-2009;

(8) For the period from 1-5-2009 to 31-10-2009, the formula for computation of energy quota and demand quota contained in the circular of TNEB dated 17-11-2008 shall apply, that is, with effect from 1-5-2009 the petitioners are entitled to demand quota for current generation in accordance with the formula of 17-11-2008; if the energy quota and demand quota during this period has been exceeded by the captive user, he will be entitled to draw from the energy banked during this period to the extent of adjusting the excess demand and excess energy consumption;

(9) The excess demand charges and excess energy charges for the period from 1-5-2009 to 31-10-2009 shall be determined with reference to the demand and energy quota calculated in accordance with para (8) above;

(10) For the future, from 1-11-2009 the base demand and base energy may continue to be fixed with reference to the formula laid down by TNEB in their memo dated 1-11-2008;

(11) Unutilised banked energy available as on 1-11-2009 may be utilized by the wind captive users in five equal monthly instalments from 1-11-2009 upto 31-3-2010 in addition to current generation of that month;

(12) The energy which remains in the bank of wind energy generators as on 1-11-2009 after adjustment in accordance with para (8) above, shall be available for consumption of the wind energy captive user between 1-11-2009 and 31-3-2010 in five equal monthly instalments. In addition, current generation would also be eligible for additional energy and additional demand quota; both current generation as well as the energy drawn from the bank would count for computation of equivalent demand;

(13) From 1-11-2009, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the memo of TNEB dated 17-11-2008; the energy so declared shall roughly be the monthly average generation;

(14) From 1-11-2009, peak hour current generation as well as peak hour banked energy shall be eligible for peak hour utilization every month subject to the limit of one-twelfth of annual peak hour generation;

(15) Energy which remains unutilized as on 31-3-2010 shall be eligible for encashment at the rate prescribed in para 8.2.2 of Order No.1 of 2009 dated 20-3-2009 of TNERC;

(16) If a consumer opts out of wheeling agreement and becomes an ordinary consumer, A and E referred in the memo dated 17-11-2008 shall be deemed to be the base energy and base demand.

(17) Demand side management (DSM) is an effective tool to handle power shortage. This is the cheapest option and least time consuming compared to capacity addition. Accordingly, the Commission directs the TNEB to initiate appropriate action towards demand side management vigorously to bring down the demand; this would reduce either load shedding or the power purchase burden. An action plan on demand side management may be submitted to the Commission by 31-12-2009.

17. **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 45 days.

Delivered by this Commission on the 28th day of October 2009.

sd/-

(K. VENUGOPAL)
Member

sd/-

(R. RAJUPANDI)
Member

sd/-

(S. KABILAN)
Chairman