

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 R.Rajupandi	-	Member
Thiru K.Venugopal	-	Member

Date of hearing: 6-1-2010

Date of Order: 29-1-2010

SUO MOTU PROCEEDINGS 2 OF 2009

IN THE MATTER OF ISSUE OF SHOW CAUSE NOTICE DATED 6TH
NOVEMBER 2009 IN REGARD TO NON-IMPLEMENTATION OF ORDER NO.1
DATED 20-3-2009

In the above matter the Commission after giving reasonable opportunity to the Chief Engineer (NCES) passes the following:

ORDER

1. Issue of show cause notice dated 6-11-2009

1. In the show cause notice dated 6th November 2009 issued to CE, NCES, TNEB the Commission directed the Chief Engineer, NCES to show cause as to why he should not be penalised for not implementing Order No.1 of 2009 dated 20-3-2009 of the Commission.

2. Findings of the Commission

2.1 The CE (NCES) of TNEB issued a circular memo No.CE/NCES/SE/EE/WPP/AEE-2/F.TNERC order No.1/D.439/09 dated 2nd July 2009 on implementation of the comprehensive tariff order on Wind Energy Order No.1 of 2009 dated 20th March 2009 of the Commission. The last paragraph of the circular reads as follows:

“For any other issues other than the above in the TNERC order No.1 of 2009, dated 20-3-2009, will be considered only after the outcome of the Appeal petition at Hon’ble ATE.”

2.2 The Commission initiated suo motu proceedings No.2 of 2009 on 6th November 2009 directing the CE (NCES) of TNEB to show cause as to why he should not be punished for not implementing the Order of the Commission in full. He was given time upto 20th November 2009. The time was extended at the request of the officer upto 11th December 2009. He again sought extension of time but the Commission stipulated a deadline of 21st December 2009. He submitted the explanation on 19th December 2009. He defended the partial implementation of the Order No.1 of 2009 dated 20th March 2009 of the Commission in the following manner:

“Without prejudice to the above, I would humbly like to mention here that the pursuant to the said orders of this Honorable Commission the import of the order was deliberated in detail including the monetary aspects touching the exchequer of the Board. On such deliberations, discussions and, on legal advice, it was decided to make an appeal before the Honorable Appellate Tribunal for Electricity, New Delhi against the said Order No.1, dated 20-3-2009

and accordingly the appeal came to be filed and being numbered. Meanwhile, the impugned circular memo dated 2-7-2009 came to be issued. It may be relevant to state at this juncture that in the very second para of the said circular it has been clearly stated that the Board has proposed to file an appeal petition before the Honorable ATE against the above said order. A conjoint reading of the above said paragraph and the last paragraph of the said circular memo (relied on by this Honorable Commission) would reveal that the implementation of the Order was, admittedly, in part by making it clear our intention to endeavour our cause by exercising a statutory remedy by filing appeal before the Honorable Appellate Tribunal as available in the Electricity Act 2003 and in this view of the matter we are of the humble view that the Board is pursuing the legal remedies as available in law and not otherwise. Further, it is humbly submitted that neither the respondent herein nor the Board has any intention much less any willful intention not to implement the Order of this Honorable Commission. In as much as the Board is pursuing the remedy of appeal before the appropriate forum, our humbly request is that this honorable Commission may consider the above submissions and drop further proceedings pursuant to the show cause notice in the interest of justice.”

2.3 The Commission perused the explanation but was not satisfied with the reply. Therefore, he was directed to appear before the Commission on 6th January 2010 to explain his conduct. CE (NCES) of TNEB appeared before the Commission and reiterated the stand adopted in the reply to the show cause notice.

2.4. It is to be noted that the Order was issued by the Commission on 20th March 2009. More than ten months have elapsed and yet the Order has not been fully implemented by the CE (NCES) of TNEB. As on date, the Order of the Commission has neither been stayed nor set aside by a competent authority and therefore, he is duty bound to implement the Order. Section 111 of the Electricity Act, 2003 permits a grace period of 45 days for appeal against the Order. The officer neither chose to appeal against the Order in time nor has he implemented the Order. The circular memo issued by him on 2nd July 2009 merely states that TNEB has proposed to file appeal petition before the Hon'ble ATE against the above Order No.1 of 2009 dated 20th March 2009 and that for any other issue other than the above in TNERC Order No.1 of 2009 dated 20th March 2009, will be considered only after the outcome of the appeal petition at Hon'ble ATE. The circular seems to convey an anticipation that the Order of the Commission would be stayed by the Appellate Tribunal for Electricity. This is a preposterous assumption. He has unauthorizedly deferred implementation of the Order based on such a presumption. Even the reply to the show cause notice does not mention any stay or reversal of the Order of the Commission.

2.5 Although the officer tenders his unconditional apology in the reply, the Commission is pained to record that the offer of apology is routine; it does not even contain a statement to the effect that the Order of the Commission would be implemented forthwith. The logical conclusion is that the officer seems to believe that the Order of the Commission

can be flouted with impunity. It is the duty of the Commission to correct such deviations and tendencies.

2.6 The same officer has been found guilty of violation of Section 62 of Electricity Act 2003 by an Order of the Commission dated 29th June 2009. He has come under the adverse notice of the Commission repeatedly and therefore the Commission is unable to accept the apology of the officer. The Commission is constrained to impose a fine of Rupees ten thousand on the officer. The fine shall be deposited within 60 days.

3. 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.

(Sd.....)
K.Venugopal
Member-II

(Sd.....)
R.Rajupandi
Member-I

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission