

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

M.P. No. 32 of 2010 and I.A. No. 1 of 2010

M/s. Indian Wind Power Association
(Formerly Wind Power Producers Association)
Door No. E, 6th Floor
Tower I, Shakthi Towers
No.766, Anna Salai
Chennai – 600 002
Represented by Mr.Rishi Muni Dwivedi
Secretary General.

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

Versus

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

2. The Chief Financial Controller / Rev
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.

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

M.P. No.41 of 2010 and I.A. No. 1 of 2010

The Southern India Mills' Association
Rep. by its Secretary
41, Race Course Road
Coimbatore – 18.

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

Versus

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

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

Dates of hearing: 17-8-2010, 19-10-2010, 2-3-2011, 25-4-2011 and 29-10-2011

Date of Order : 28-12-2011

Since M.P. No. 32 of 2010 and M.P. No. 41 of 2010 deal with identical issues, they were taken up together.

COMMON ORDER

1. Prayer in M.P. No. 32 of 2010

The prayer in M.P. No. 32 of 2010 is to punish the Respondents for non-compliance of the orders made in M.P. No.42 of 2008 dated 28-11-2008 and the order dated 28-10-2009 in suo Moto Proceedings 1 of 2010 under Sections 142 and 146 of the Electricity Act, 2003 read with Regulation 36 of the TNERC (Conduct of Business) Regulations, 2004 in so far as it relates to issuance of a clarification in its impugned communication dated 25-6-2010 bearing reference

CFC/Rev/FC/R/DNo./10 pertaining to calculation of energy quota, which act of the respondent amounts to violation of the orders passed by this Commission and set aside the impugned communication bearing reference CFC/Rev/FC/R/DNo./10 dated 25-6-2010 as being illegal and pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.

2. Prayer in M.P. No. 41 of 2010

The prayer in M.P. No. 41 of 2010 is to direct the Respondent to strictly follow its Technical Branch Memo CE/Comml./EE/DSM/PMM/F.Powercut/D.28/2008 dated 17-11-2008 in respect of calculation of wind energy quota and the order dated 28-10-2009 passed in Suo Moto Proceedings No.1 of 2009 and to calculate wind energy on the basis of units injected into the grid by the wind energy generators and not on the basis of units consumed by the consumer industries.

3. Interim prayer in I.A. 1/2010 in M.P. No. 32 of 2010

The interim prayer in I.A. No. 1 of 2010 in M.P. No. 32 of 2010 is to Issue an order of stay of the operation of the 2nd respondent's communication dated 25-6-2010 bearing reference CFC/Rev/FC/R/DNo./10 being the clarification issued to calculation of energy quota and all proceedings pursuant thereto pending disposal of the petition.

4. Interim prayer in I.A. 1/2010 in M.P. 41 of 2010

The interim prayer in I.A. No. 1 of 2010 in M.P. No. 41 of 2010 is to restrain the Respondent, its men, representatives, agents, officers, servants, etc., by an Interim order from calculating the wind energy quota by taking the actual consumption of wind energy by the consumers instead of taking the actual wind energy supplied to the grid, pending disposal of the main M.P.

5. Interim Order in M.P. No. 32 of 2010

Commission heard both sides on 29-10-2010 and upon perusing the above petition and connected records of the case and upon hearing both sides , stayed the operation of the impugned letter CFC/Rev/FC/R/D.No./10 dated 25-6-2010 till disposal of the main petition. The interim order was passed by the Commission on 29-10-2010.

6. Interim Order in M.P. No. 41 of 2010

Commission heard both sides in MP on 29-10-2010 and upon perusing the above petition and connected records of the case and upon hearing both sides, stayed the operation of the impugned letter CFC/Rev/FC/R/D.No./10 dated 25-6-2010 till disposal of the main petition. The interim order was passed by the Commission on 29-10-2010.

7. Facts of the Case

The facts of the case in Petition M.P. No. 32 of 2010 and M.P.No.41 of 2010 are as follows :-

- (a) In view of the power shortage in the State of Tamil Nadu, the Respondents approached the Commission for imposition of Restriction and Control measures. The Commission after following the statutory procedure issued an order in M.P. No. 42 of 2008.
- (b) The Respondent Board has issued Letter No. CFC/Rev/FC/R/D.No. /10 dt.25-6-2010 wherein the Respondent Board has sought to interpret “actual energy supplied” in Memo dated 17-11-2008 to mean actual energy adjusted. Further, the Respondent Board in its clarification dated 25-6-2010 in para (iii) has provided as follows:-

“(iii) In the above the actual energy supplied was meant only the actual energy adjusted. (If the supplied energy is more than the consumption, the excess energy would have been lapsed)”

- (c) The petitioner’s contention is that the above clarificatory letter dated 25-6-2010 is in violation of the orders passed by the Commission in M.P. No. 42 of 2008 and Suo Motu Proceedings No. 1 of 2009, the above M.P. No. 32 of 2010 and M.P. No. 41 of 2010 were filed by the Petitioners therein.

8. Contention of the Petitioner in M.P. No. 32 of 2010

- (a) The Respondent Board did not choose to file an appeal before the Appellate Tribunal for Electricity against the order of the Commission in

M.P.No.42 of 2008 within the prescribed time period and therefore the order of the Commission has become final and binding on all parties including the Respondent Board and the wind energy generators.

- (b) The act of the Respondent Board in seeking to issue a clarification to a formula already approved by the Commission without seeking the approval of the Commission amounts to willful violation of its orders in M.P. No. 42 of 2008 and Suo Moto Proceedings No.1 of 2009 and as such is punishable under Section 142 of the Electricity Act, 2003 together with Regulation 36 of the Tamil Nadu Electricity Regulatory Commission (Conduct of Business Regulations), 2004.

9. Contentions of the Petitioner in M.P. No. 41 of 2010:-

9.1. Pursuant to the Orders passed by this Commission, the Respondent is following its Technical Branch Memo dated 17-11-2008 for fixation of wind energy quota. Accordingly, the quota for the wind generators is fixed based on the actual energy supplied to the grid by the generating units. But subsequently, some of the EDC's like the Coimbatore EDC (Metro) have started raising bills based on consumption of the energy supplied from the grid, equivalent demand is identified as per the formula of the Respondent and that was followed hitherto. This has led to penalization of wind energy users. Normally, in any industry, the billable demand, i.e., the higher recorded demand and the equivalent demand based on consumption do not match.

9.2. Previously in such occasions there were no penal charges as the recorded demand is within the quota fixed based on generation and supply. However, now the various Circles of Revenue are raising penal charges.

9.3. The present method of calculation would penalize consumers whether they are CPP or wind energy consumers. The only reason is that the calculation of quota is based on consumption, which would never match the equivalent demand. Further, the EDC's of the Respondent are trying to bring 1/12th restriction for the non-peak hours, which is against the Order passed by this Commission in Suo Moto proceedings No.1 of 2009. The act of the officers of the Respondent amounts to altering the formula contained in Memo dated 17-11-2008 without the approval of this Commission amounts to willful violation of the Orders passed by this Commission.

10. Contentions of the Respondent in the common counter:-

10.1. The impugned clarification had been issued based on the request made by the Superintending Engineer/CEDC/Metro Coimbatore and the superintending Engineer/NEDC/Namakkal with a copy to all SEs/Distribution Circles as follows:-

- I) In the Memo dt. 17-11-2008, it has been mentioned that (Fixing of energy quota) (i) Monthly base energy consumption as illustrated in working instructions dt. 1.11.2008.
- II) (ii) In that the actual energy supplied (monthly average) for the above 3 months average by the CPP.

- III) In the above the actual energy supplied was meant only the actual energy adjusted. (If the supplied energy is more than the consumption, the Excess energy would have been lapsed)
- IV) In the case of wind energy, the energy supplied during a month will be adjusted against the Industrial consumption and the excess supplied energy will be sent to the generation circle for banking.
- V) The energy available in the banking will be drawn for adjustment at the time of off season of wind. **At that time the equivalent demand (deemed demand) will be calculated and added in the quota.**
- VI) Therefore the deemed demand will also be allowed only based on the actual units adjusted and not based on the energy supplied/injected into the grid.”

10.2. The above clarification is in consonance with the Commission’s Suo Motu order dated 28-10-2009 and the formula approved by the TNERC which was communicated in the TNEB’s circular dated 17-11-2008.

10.3. TNEB has not violated the orders passed by the Commission in the suo motu proceedings.

10.4. Clause 5.22.4 of the Order No.2 dated. 15-5-2006 refers to the energy supplied at the consumption point only. The energy available for consumption is after adjustment of line losses.

10.5. Clause 8.7.4 of the Commission’s Comprehensive Tariff Order on wind energy order No.1 of 2009 dated 30-3-2009 deals with demand charges. The example set out in clause No. 8.7.4.3 reads as follows:-

<p>“Total Generated units consumed by the Consumer on open access divided by (30 X 24 X actual PF recorded during the billing month)</p>	}	A
<p>Recorded demand (or) 90% of sanctioned demand, Whichever is higher</p>	}	B
<p>The demand supplied by the Licensee (B-A)</p>	=	C

10.6. The energy supplied is only the energy adjusted against the consumption exclusive of line loss even as per the above example.

10.7. As per TNERC order for open access to wind energy and CPP power the demand calculation for wheeling of energy has to be arrived based on the consumption at user end and not for the injected energy as prayed by the petitioner. **One wind energy generator of CPP can wheel the energy to various HT services and TNEB raise bills for each and every HT Service (User end) hence particular wheeled service only to be taken for quota calculation.**

10.8. Further, the Respondent Board was objecting to the grant of deemed demand benefit to the HT Consumer. However, the Commission was pleased to reject this objection. The Respondent Board is able to get approximately 40% / 80% of the demand supplied by the generator. If the interpretation of the petitioner is accepted then the Board would face severe financial implications.

10.9. Further in the case of wind energy, if the full supplied energy is taken for deemed demand calculation, instead of the adjusted energy, then the wind energy generator who is having the banking facility will enjoy two times the benefit of deemed demand.

11. Additional contention of the Respondent in the additional counter:-

11.1. This Commission in amendment issued for Order No.3 dated 16-10-2007, it is stated in the methodology for calculating deemed demand benefits, that the “ **Total generated units consumed by the user** “ is to be taken in to account which is noted hereunder.

Total generated units consumed by the user divided by (30 x 24 x Actual PF recoded during the billing month) ---- A

Recorded demand(or)90% of sanctioned demand, whichever is higher – B

The demand supplied by the Licensee (B-A) --- C

Further, in the comprehensive tariff order on Wind energy Order No.1 of 2009 dated 20-03-2009, in the example given for calculating deemed demand benefits, it is mentioned that the “ **Total generated units consumed by the user** “is to be taken in to account, which is noted hereunder.

Total generated units consumed by the consumer on open access divided by (30 x 24 x actual PF recorded during the billing month) – A

Recorded demand (or) 90% of sanctioned demand, whichever is higher – B.

The demand supplied by the Licensee (B-A) ---- C.

11.2. The equivalent demand (deemed demand) as per the formula laid down by this Commission can be allowed only for the energy adjusted during that month. If there is any unadjusted surplus energy it will be sent to banking for adjustment in the subsequent months. **Whenever banked energy is drawn and adjusted against the TNEB's power, the equivalent demand will be calculated for the banked energy as per the formula.**

11.3. The supplied energy may be fully consumed (adjusted) in a month. At that time the equivalent demand will be calculated and adjusted against the recorded demand. In most of the occasions the supplied energy could not be consumed fully (adjusted) and the balance will be sent to banking. Since the Commission has ordered for slot wise adjustment, always there is mismatch between generation and the consumption from TNEB grid, consequently there will be surplus energy in any one of the slot, for that surplus energy, equivalent demand can be permitted only at the time of adjustment in the subsequent month bills as per the Commission's order.

11.4. Based on the orders of the Commission, it has been clarified to the Information Technology department of TNEB by the Financial Controller/Rev.

vide the U.O note dt. 27-04-2010 that the **equivalent demand has to be calculated based on the actual units injected or consumed units, whichever is less, in other words the units adjusted in the bill for that month.**

11.5. The working sheet furnished by the petitioner (comparison between quota working methodology) was perused and it is noted that the main dispute is between B1 and B2. The petitioner pleads for reckoning the entire energy injected (B1), whereas the Board pleads for reckoning the energy adjusted (B2) during that month.

11.6. The excess demand is billed at the rate of Rs.600/- per KVA

11.7. In the working sheet furnished by the petitioner, the only difference is in the B1 component. The B1 component as computed by the petitioner is not in conformity and in terms of the Memo approved by this Commission. The petitioners are trying to misinterpret the working sheet so as to suit their convenience. In other words in every memo and in every working sheet the petitioners herein are trying to create confusion and trying to mislead this Commission. As a matter of fact the petitioners have not established with example to demonstrate that the consumers have suffered due to the alleged circular issued by the CFC on 25-06-2010. The consumers/ petitioners are duty bound to prove as to how the billing pattern (calculation of demand and energy) caused extra levy. The circular dated 25-06-2010 is only in consonance with the memo dated 17-11-2008. Under some pretext or other the petitioners herein are

filing petition after petition with an intention to mislead this Commission on untenable grounds. There is no merit in the contentions raised by the petitioners. The working sheet furnished by the petitioners with reference to B1 component, is misleading and not in accordance with the terms and spirit of the memo dated 17-11-2008 as approved by the Commission.

11.8. The TNEB being the author of the formula dated 17-11-2008 and as it has been duly approved by this Commission, the TNEB is rightly implementing the memo by proper interpretation. The word “supplied “used in the formula meant only the units adjusted i.e., units consumed by the user (H.T. Consumer).

12. Hearing on 2-3-2011:-

In the hearing held by the Commission on 2-3-2011, the Commission directed the Petitioner to file an affidavit demonstrating with specific instances as to how the impugned clarification of the CFC / Revenue dated 25-6-2010 affected the Petitioner adversely and directed the TANGEDCO to file an affidavit substantiating its stand that the clarification has not adversely affected the Petitioner. The Commission further ordered that the affidavit of the Petitioner shall be filed within a week duly serving it on the Respondent and the Respondent will react within a week thereafter by filing its affidavit.

13. Hearing on 25-4-2011:-

The Petitioner submitted that pursuant to the order of the Commission on 2-3-2011, they have prepared an affidavit demonstrating as to how the impugned clarification of the CFC / Revenue dated 25-6-2010 affected the Petitioner

adversely and served it on TANGEDCO also. The counsel for TANGEDCO however, submitted that an affidavit to be filed on behalf of the TANGEDCO is under the consideration and it would be filed shortly. The Commission heard both the counsels with regard to the calculation of the energy quota and demand quota extensively and then reserved the orders.

14. Finding of the Commission:

14.1 The points for consideration of the Commission are

- (i) Whether the clarificatory letter issued by TNEB on 25-6-2010 is warranted and if so whether the same is in order and
- (ii) Whether this clarificatory letter is in line with the memo dated 17-11-2008 issued by TNEB, which has been recognized by the TNERC in its orders.

14.2 To analyze these two issues, it is necessary to extract the clarificatory letter dated 25-6-2010 as well as memo dated 17-11-2008 of TNEB. The clarificatory letter dated 25-6-2010 of TNEB is under challenge in the two petitions MP No. 32 of 2010 and MP No. 41 of 2010. These two are extracted below:-

14.3 Extract of Clarificatory Letter

“From

*CA.S.Sekkizhar, B.Com., F.C.A.
Chief Financial Controller / Rev
144, Anna Salai
Chennai – 600 002.*

To

*The Superintending Engineers
Distribution Circles / CBE/Metro
Namakkal EDC
Tamil Nadu Electricity Board*

Lr.No. CFC/Rev/FC/R/D.No. /10/Dt. 25-6-2010

Sir,

Sub : Electricity – R&C Measures – Fixing of quota and billing based on TNERC's Suo-Moto Proceedings – Clarification issued – Reg.

*Ref : 1.S.E./CEDC/M/CBE/AO/HT/F.Wind Adjustments/10,
dt. 26-5-10.
2.S.E./NEDC/DFC/HT/AS/Asst/F.Wind Mill/2000 dt. 19-6-10.*

With reference to the above, the clarification is issued as below:-

- I) In the Memo dt. 17-11-2008, it has been mentioned that (Fixing of energy quota) (i) Monthly base energy consumption as illustrated in working instructions dt. 1.11.2008.*
- II) (ii) In that the actual energy supplied (monthly average) for the above 3 months average by the CPP.*
- III) In the above the actual energy supplied was meant only the actual energy adjusted. (If the supplied energy is more than the consumption, the Excess energy would have been lapsed)*
- IV) In the case of wind energy, the energy supplied during a month will be adjusted against the Industrial consumption and the excess supplied energy will be sent to the generation circle for banking.*
- V) The energy available in the banking will be drawn for adjustment at the time of off season of wind. **At that time the equivalent Demand (Deemed Demand) will be calculated and added in the quota.***
- VI) Therefore the Deemed demand will also be allowed only based on the actual units adjusted and not based on the energy supplied / injected into the grid.*

14.4. Extract of Memo dated 17-11-2008

“Memo.CE/Commi/EE/DSM/AEE/PMM/F.Powercut/D.28/2008, dated 17-11-2008.

Sub : Electricity – Restriction & Control – Generation of Power through Captive Power Plants by HT Consumers – Representation to exempt Captive Generation from Power cut – Fixing of quota – Instruction Reg.

*Ref : (i) Memo.CE./Comml/EE/DSM/AEE/PMM/F.Powercut/
D.01/2008, dated 1-11-2008.
(ii) Representation from HT Industrialist.*

A large number of representations have been received from H.T. Consumers having Captive Power Plants requesting exemption from power cut, as they are unable to utilize the energy generated through their Captive Power Plants, since the quota fixed is 60% of their base demand.

They have requested to fix the quota as aggregate total of 60% of their TNEB supply and 100% of the power received from CPPs. Further they have also requested for permission to use the power from CPPs during evening hours.

In this connection, the following instructions are issued:-

The Superintending Engineers of concerned EDC may fix demand and energy quota for HT consumers partially using power from CPPs as stated below:-

Fixing of energy quota:

- | | | |
|--|---|------|
| i) Monthly base energy consumption as illustrated in working instructions dt. 1-11-2008 | } | A |
| ii) In that the actual energy supplied (monthly average) for the above three months average by the CPP | | } |
| iii) The actual energy availed by consumer from TNEB | } | |
| iv) 60% of energy on C (C*60/100) | | = |
| (v) The quota fixed for energy | = | B+D” |

14.5. It is to be noted that the memo dated 17-11-2008 of the Respondent Board is applicable to HT consumers irrespective of the fact whether they have captive power plant or not. The item “B” of the memo dated 17-11-2008 is the actual energy supplied by the captive power plant in the case of HT consumers. After deducting the energy supplied by the CPP from the monthly base energy consumption, the actual energy availed by

the consumer from TNEB has been arrived at as “C”. The power cut has been applied on the energy availed by the consumer from TNEB and the energy to be supplied by TNEB after the power cut has been arrived as “D”. This energy “D” along with the energy brought in from CPP Viz., “B” becomes the quota for energy.

14.6 At the time of introduction of power cut and issue of order by the Commission in MP No. 42 of 2008, the power brought in from CPP alone was recognized. This matter was further examined by the Commission in Suo moto proceeding No. 1 of 2009 after a batch of writ petitions were filed in the High Court of Madras wherein certain judgments were passed. Keeping these judgments in view, the Commission conducted Suo Moto proceeding No. 1 of 2009 and issued an order on 28-10-2009. Relevant portions of the Order are extracted below:-

“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) 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;*
- (3) 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;*
- (4) 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;*

- (5) *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;*
- (6) *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;*
- (7) *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 (6) above;*
- (8) *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;*
- (9) *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;*
- (10) *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;*
- (11) *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;*
- (12) *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;”*

14.7 From the above it can be seen that while conventional captive power plant generates power according to its need, there is no banking facility in their case. In the case of wind generators, energy produced may not be consumed during

the same period and becomes eligible for banking which is either used during non wind season or encashed. Therefore, there is a difference between wind energy generated and wind energy consumed. It is also a fact that wind energy capacities could be higher than the consumption of one single industry and therefore is shared by many industries. Accordingly, wind energy generated is given credit in one circle and wind energy adjusted may be debited in many other circles. The residual wind energy goes for banking in the wind energy generating circle in the name of the generator for either future use or for encashment purposes. It is therefore necessary to distinguish between wind energy generated and wind energy adjusted including the banked wind energy drawn upon for consumption in a subsequent month. The drawal of banked wind energy becomes eligible for calculation of quota. In view of this, it is necessary to monitor the consumption of wind energy at consumption points besides metering at generation points. If the quota is fixed based on the wind energy generation alone instead of wind energy at the consumption point and also taking into account the banked wind energy, the same will amount to double benefit for the consumers. To this extent, the arguments of respondent TANGEDCO is correct.

14.8 The Commission also would like to refer to the related provisions in the comprehensive tariff order on wind energy i.e. Order No. 1 of 2009 dated 20th March 2009. Adjustment of generated energy is covered in para 8.8 of this tariff order. The relevant portion is extracted below:-

“Section 9 (2) of the Electricity Act 2003 confers on the captive generator the right to open access for the purposes of carrying Electricity from his captive plant to the destination of his use. Therefore, a wind energy generator shall be entitled to adjust the generated energy for captive consumption whether as a LT or a HT consumer”.

The same has also been explained in the calculation contained in para 8.7.4.3 of the same order.

14.9 During the hearing held on 2-3-2011, calculations were submitted by the Petitioners in respect of Premier Mills Private Limited. Further, sample working of one of the Member of M/s. Indian Wind Power Association relating to Prima Projects Private Limited was filed on 22-3-2011. These calculations were explained during the hearing held on 25-3-2011. The demand quota and energy quota fixed in advance took into account the declaration made by the consumers according to which, the Petitioner argued that, excess demand charges / excess energy charges may not be leviable. However the revised / consumption based demand quota reworked out by the TANGEDCO is based on the impugned clarification dated 25-6-2010. Based on the revised / consumption based demand quota, the TANGEDCO has levied excess demand / energy charges. The TANGEDCO also filed their calculations which are based on energy adjusted in the month based on which they have levied the excess demand / energy charges. From the above, it could be observed that while the Petitioners are relying on their own declaration for the purpose of fixing demand and energy quota and the consequent levy of excess demand / energy charges, the licensee viz. TNEB / TANGEDCO is relying on energy adjusted for the purpose of levy of excess demand / energy charges. While in the case of other captive power

stations if the generator injects excess energy, the excess energy is deemed to have been lapsed, in the case of Wind Energy Generators, in view of the provisions in the Tariff Order for Wind Energy, the excess energy injected into the system can be retained as banked energy and is allowed to be redrawn from the bank whenever required. The procedure adopted is as follows:-

- (a) The entire energy injected into the system is measured at the generating end and informed to the circle at the consumption end.
- (b) The actual consumption is measured at the consumption end.
- (c) The unutilized energy is then reported back to the generating end for keeping it in the bank.
- (d) The generated energy in a month along with the banked energy is at the disposal of the consumer for drawal subsequently as per the applicable orders.

14.10 The examination of the methodology adopted in case of wind energy generators indicate that unutilized energy from wind energy generators is available for redrawal. Accordingly, if the quota is given for the entire energy injected into the system by the wind energy generators, redrawal from the banked energy would not be eligible for quota fixation. This is also supported by the fact that the thermal captive generators, if they inject excess energy than the consumed energy, are not eligible for banking and therefore the excess energy lapses in the same month. Since in the case of wind energy generators redrawn energy from the bank is being allowed for quota fixation it is appropriate that the energy consumed in that month alone should be eligible for quota fixation.

Alternatively, if the entire energy injected is considered for the purpose of quota fixation, the energy redrawn from the banked units should not be eligible for quota fixation since allowing it at two different times would amount to providing double benefit for the same energy. Para 16 (11) of the order of the Commission in suo moto proceedings No.1 of 2009 issued on 28-10-2009 is extracted below:-

“16(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”

14.11. The energy proposed for captive users has been mentioned in the order of the Commission. There could be various scenarios. During off season, the generated energy may not be adequate and therefore the captive consumer could draw from the bank and consume. Even during the season if the generated energy is not adequate, the captive consumer could draw from the bank. Therefore, consumption has to be the basis for determining the quota. To this extent, the clarification could be deemed to modify the circular of TNEB dated 17-11-2008. The memo of 17-11-2008 stipulated monthly base energy consumption as (A). The energy supplied by the captive generator is termed as (B). Since A is measured against consumption, (B) also should be measured against consumption. The Commission, therefore, decides that the impugned clarification dated 25-6-2010 issued by TANGEDCO is in order. It is but fair that the clarification should have effect from 25-6-2010. In this approach, the orders of the Commission as contained in Tariff Order for wind energy in Order No. 1 of

2009 dated 20-3-2009 and various orders issued for Restriction and Control measures have to be harmoniously constructed and implemented.

14.12 The TNEB has usurped the authority of the Commission in clarifying a matter arising from previous orders of the Commission. The CFC Revenue deserves to be proceeded under Section 142 of the Electricity Act for issuing the clarification in circular dated 25-6-2010. A show cause notice may be issued to him.

14.13 We would also like to clarify that the treatment of banked units as discussed above is only for the purpose of quota fixation and does not alter the method of encashment of unutilized banked units as provided for in the Tariff Order for Wind Energy.

14.14 M.P. No.32 of 2010 along with IA No.1 of 2010 and M.P. No.41 of 2010 along with I.A. No.1 of 2010 are disposed accordingly.

15. Vacation of the interim order of stay granted in M.P. No.32 of 2010 and M.P. No. 41 of 2010:-

The interim order of stay granted in M.P.No.32 of 2010 and M.P.No.41 of 2010 as referred to in paragraphs 5 and 6 above is hereby vacated with effect from 25-6-2010, since the Commission in para 14.11 above held the view that the impugned clarification dated 25-6-2010 issued by TANGEDCO is in order.

16. With the above directions, M.P. No. 32 of 2010 and M.P. No. 41 of 2010 are finally disposed of without cost.

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 forty five days.

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

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission