

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru.S.Nagalsamy Member

and

Thiru.G.Rajagopal Member

I.A.Nos.1 & 2 of 2013

in

D.R.P.No.16 of 2013

and

D.R.P.No.16 of 2013

M/s.Cauvery Power Generation Chennai Pvt. Ltd.,
5, Ranganathan Gardens
Anna Nagar, Chennai – 600 040.

... Petitioner
Thiru P.Vinod Kumar
(Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited
Rep by its Chairman
NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.
2. The Superintending Engineer
Chennai EDC / North
TANGEDCO
Anna Salai
Chennai – 600 002.

....Respondents
Thiru P.H.Vinod Pandian
(Standing Counsel for the Respondents)

Dates of hearing : 28-03-2013, 12-04-2013, 18-09-2013,
18-02-2014 and 17-04-2014

Date of order : 15-09-2014

The above D.R.P.No.16 of 2013 came up for final hearing before the Commission on 17-04-2014. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order:-

ORDER

1. Prayer of the Petitioner:-

The prayer of the Petitioner is to -

- a. declare that in view of the inaction of the Respondents in not granting the additional demand as requested by the Petitioner vide its application dated 13-06-2012, the levy and collection of maximum demand charges from the Petitioner in the monthly bills raised on the Petitioner is illegal and contrary to law ;
- b. declare that the Petitioner's plant is entitled to avail start-up power from the grid after 16-11-2012 without any service connection on payment of the applicable consumption charges ;
- c. declare that the Respondent is entitled to only Rs.10.45 per kWh for the start-up power availed by the Petitioner after the plant having achieved commercial operation on 16-11-2012;
- d. direct the Respondents to pay costs of the present proceedings ; and
- e. pass such further or other orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Facts of the Case:-

2.1. The Petitioner has a generating station at Billakuppam village, Gummidipoondi which is a captive plant. Prior to the CoD, the Petitioner had sought an HT service connection for the pre-commissioning activities. The connection was given on 06-06-2012 with HTSC No.1966 with a sanctioned demand on 625 KVA.

The 230 KVA evacuation line was used for supplying power. On 13-06-2012, the Petitioner sought enhancement of the sanctioned demand to 3750 KVA. Allegedly the said request of the Petitioner was not acted upon by the Respondents and consequently whenever the demand exceeded 625 KVA, excess demand charges at the rate of 600 per KVA has been charged by the Respondents.

2.2. The Petitioner has challenged the levy of maximum demand charges in respect of the power supplied to the Petitioner's 1 x 63 MW power plant during the testing and commissioning stage of the plant prior to its CoD and the levy of demand charges and excess demand charges for the start-up power availed by the Petitioner's plant after the date of CoD.

3. Contention of the Petitioner in the affidavit:-

3.1. The Petitioner is primarily involved in the business of setting up of power plant. The Petitioner has set up a 1 x 63 MW Thermal Power Plant at Billakuppam Village, S.R.Kandigai, Gummidipoondi. The Petitioner's plant was synchronized with the grid on 17-10-2012. After successful completion of the testing and commissioning activities, the plant achieved commercial operation on 16-11-2012. The plant is a captive power plant and has been supplying power to its captive consumers through the Intra-State Open Access facility. Except for generation of power no other activities are carried on at the plant.

3.2. As per the Intra State Open Access Regulations, 2005, in respect of generators who are open access customers availing start-up power from the grid, the charges payable shall be as determined by the Commission. In respect of captive power plants, transactions relating to availing of start-up power is to be governed by

the policy of the Commission relating to captive power plants. On 15-05-2006, the Commission passed Order No.2 determining the transmission and other charges in accordance with the Open Access Regulations. Taking cue from the National Tariff Policy that start-up power should be provided on payment of tariff applicable for temporary connection and its earlier tariff order effective from 16-03-2003, the Commission held that in case of drawl of start-up power by the generator, the same will be permitted by the Licensee on payment of consumption charges (energy charges plus energy equated demand charges) applicable to HT-III tariff category. As supply for temporary connection had not been specified at that time for HT categories, payment of consumption charges (energy charges plus the energy equated demand charges) for HT Tariff III of energy charge of Rs.5.00 / kWh plus demand charge of Rs.300/kVA, applicable to commercial establishments and other categories of consumers not covered under HT Tariff I-A, II-A, II-B, IV and V was made applicable. This was specified to be 621.81 paise per unit which was inclusive of energy charge plus energy equated demand charge.

3.3. In the Tariff Order No.1 dated 30-03-2012 for generation and distribution, a new category i.e. High Tension Tariff V applicable for High Tension consumers availing temporary supply has been created and a tariff has been determined at Rs.9.50 per kWh as the energy charges and Rs.300 per kVA as the demand charges. In terms of the said tariff order, the ABR (Average Billing Rate) for High Tension Tariff V category is applicable for High Tension consumers availing temporary supply and determined Rs.9.50 per kWh as the energy charges and Rs.300 per kVA as the demand charges. In terms of the said Tariff Order, the ABR (Average Billing Rate) for HT V category is as Rs.10.45, which is inclusive of energy charge of Rs.9.50 per kWh plus the energy equated demand charge of Rs.300/kVA.

Hence for availing start-up power from the grid, a generator who is an Open Access Customer is required to pay Rs.10.45. The Respondent had filed a Review Petition (R.P.No.2 of 2012) against the Tariff Order dated 30-03-2012, in which inter-alia the Respondent requested for fixation of grid availability charges at Rs.10.45 per unit being energy charges plus energy equated demand charges. The said request was rejected by the Commission by its order dated 04-12-2012.

3.4. On 16-03-2012, the Petitioner applied for High Tension Service Connection for the purpose of testing and commissioning of its plant prior to declaration of commercial operation. The HTSC No.1966 was provided to the Petitioner on 06-06-2012 with a sanctioned maximum demand of 625 KVA. The supply to HTSC No.1966 was through the 230 KV transmission line, which is also the transmission line for evacuating the output from the Petitioner's plant. Since the demand during testing and commissioning activities of the plant was bound to be more than 625 KVA, the Petitioner made an application to the second Respondent on 13-06-2012 in the prescribed form seeking for enhancement of the permitted maximum demand from 625 KVA to 3750 KVA.

3.5. As per the provisions of the Act and the Distribution Code such application made by the Petitioner seeking enhancement of the maximum demand is to be considered and granted within one month of receipt of the application. However, the Respondent did not process the Petitioner's application within the stipulated time inspite of the Petitioner regularly following the matter with the Respondent.

3.6. Immediately on receiving HTSC No.1966, the Petitioner took steps to commence the pre-commissioning activities. Due to the delay in arrival of the

Chinese service engineer, the pre-commissioning activity was started in July 2012. The Respondent raised bills for the month of June 2012, which was paid by the Petitioner. In the bill for July 2012, the Respondent claimed maximum demand charges for the recorded maximum demand of 1465.91 KVA at the rate of Rs.600 per KVA. The said bill was paid by the Petitioner's accounts department in a routine manner. Subsequently on noticing the levy of excess demand charges, the Petitioner requested the Respondents to withdraw the levy.

3.7. There was total inaction on the part of the Respondent in the enhancement of maximum demand. To avoid any delay in further commissioning activities and to avoid the cost of retaining the Chinese engineers indefinitely, the Petitioner was constrained to draw excess load for testing and pre-commissioning activities from August 2012. After all the testing and pre-commissioning activities, the boiler was ready for normal operation during the first week of October 2012. For the aforesaid testing and pre-commissioning activities, the Petitioner had to draw energy from the grid over and above the permitted maximum demand of 625 KVA. Had the Respondent accorded the requested maximum demand of 3750 KVA within the period of one month stipulated under the Act and the Distribution Code, the Petitioner would not have exceeded the permitted maximum demand.

3.8. In the bill for the month of August 2012, the Respondent levied demand charges at Rs.300 per KVA in respect of the recorded demand of 3763.64 KVA. In respect of excess demand of 3138.64 KVA, the Respondent levied charges at Rs.600 per KVA. This levy of Rs.600 per KVA for excess demand would not have occasioned had the Respondent acted in terms of the Act and the Distribution Code and sanctioned the additional maximum demand as requested by the Petitioner.

Therefore, the Petitioner requested the Respondent to revise the bill. However, the Respondent insisted the payment. The Petitioner paid the amount on 21-09-2012 under protest.

3.9. On 16-10-2012, the second Respondent issued a letter stating that for the month of June 2012 and July 2012 there was erroneous billing and that the Petitioner is required to pay the differential amount of Rs.14,86,580/- within 15 days. By a subsequent letter dated 19-10-2012, the Petitioner was informed by the second Respondent, that the request for enhancement of the permitted maximum demand made on 13-06-2012 will be considered only after the Petitioner pays the amount of Rs.14,86,580/-. The Petitioner had discussions in this regard requesting that the said demanded amount may not be made a pre-condition for enhancing the sanctioned demand since the application for enhancement was made as early as 13-06-2012. However, the Respondents insisted the payment of the amount and hence the said amount was paid under protest on 21-11-2012.

3.10. The plant was synchronized with the grid on 17-10-2012 and after successful trial runs, the plant achieved commercial operation on 16-11-2012. After the declaration of commercial operation the Petitioner has been availing only start-up power from the grid as and when required. Even in respect of the start-up power availed after the declaration of commercial operation of the plant, the Respondent has been levying maximum demand charges at Rs.600 per KVA for the excess demand in the monthly bills.

3.11. Based on the understanding that since the start-up power could be availed from the grid through the transmission line which was connected to the grid for

export of power from the plant, the tariff of Rs.10.45 / kWh would be applicable and no separate High Tension Connection with sanctioned demand is required, the Petitioner vide letter dated 17-12-2012 requested the second Respondent to treat the application for additional demand as withdrawn and to refund the deposit.

3.12. The second Respondent by letter dated 09-01-2013 informing the Petitioner that the application dated 13-06-2012 seeking for an additional demand of 3125 KVA is under process, wanted the Petitioner's concurrence for cancellation of the application for additional demand. The concurrence was given by the Petitioner vide letter dated 24-01-2013. The Petitioner was informed by the Respondents officials that to avail start-up power, it was mandatory for the Petitioner to continue to have a high tension service connection with a sanctioned demand. In view of this, to avoid any further levy of excess demand charges, the Petitioner was constrained to request the Respondents vide letter dated 07-02-2013 to ignore the Petitioner's letter dated 17-12-2012 and grant additional demand as applied on 13-06-2012 before 20-02-2012.

3.13. The Respondent's lack of clarity on the issue is evident from the amounts which it has been charging for the power supplied. For the power supplied during June 2012, the Respondent in its bill dated 01-07-2012 levied Rs.6.218 per kWh and Rs.600 per kVA for demand of 155 KVA (purportedly the contracted maximum demand). Whereas for power supplied during July 2012, the Respondent in its bill dated 31-07-2012 levied Rs.7.02 per kWh per unit and Rs.600 per kVA for demand of 1465.91 KVA (purportedly the contracted maximum demand). Subsequently, the second Respondent vide letter dated 16-10-2012 demanded Rs.14,86,580/- as arrears to be paid in respect of power supplied during June 2012 and July 2012. In

the letter dated 16-10-2012, the second Respondent specifically stated that the HT V Tariff was being levied since the plant was not synchronized with the grid for being entitled to start-up power tariff. Having stated so, the Respondents could not have levied in excess of Rs.10.45 per kWh for the power supplied after 16-11-2012. However, the Respondent continues to treat the start-up power availed by the Petitioner like any other high tension supply and charges amounts in excess of Rs.10.45 per kWh.

3.14. The action of the Respondent in not sanctioning the additional demand to the Petitioner despite application having been submitted by the Petitioner on 13-06-2012 is clearly in contravention of the provisions of the Act and the Distribution Code. Further, the insistence of the Respondent on having a high tension service connection for availing start-up power after the declaration of commercial operation and the Petitioner having availed of Open Access is contrary to the National Tariff Policy and the orders of the Commission.

3.15. Had the Respondent not kept the Petitioner's application for an indefinite period of time, the demand utilized by the Petitioner during the pre-commissioning stage and during the period from the synchronization of the plant with the grid and the declaration of commercial operation would have been within the sanctioned demand. Had the Petitioner's request for additional demand been sanctioned, even if there was excess demand utilized by the Petitioner, it would have been only for such demand which was in excess of 3750 KVA. The Respondent has however treated the demand in excess of 625 KVA as excess demand levied charges at Rs.600 per KVA for such demand in the monthly bills.

3.16. The insistence of the Respondent that there ought to be a High Tension Service Connection even for availing start-up power is contrary to law. In view of the Open Access Regulations and the orders of the Commission, the Respondent can only charge the Petitioner for the start-up power availed by the Petitioner after 16-11-2012 only at Rs.10.45 per kWh which is the energy charges plus the energy equated demand charges. The Respondent cannot levy excess demand charges or any charges, other than Rs.10.45 kWh, for the start-up power availed after 16-11-2012. The Respondents are not entitled to take advantage of their own lapses and collect such charges from the Petitioner which the Petitioner would not have been liable for, but for the lapses and inaction on the part of the Respondents.

4. Contention of the Respondents in the Counter Affidavit:-

4.1. M/s.Cauvery Power Generation Pvt. Ltd., have requested High Tension supply on 16-03-2012 for a permitted maximum demand of 625 KVA at 230 KV allegedly for startup power for the 63 MW Captive Power Plant and the same was effected on 06-06-2012 under H.T.SC.No.1966 and the bills were also processed and rendered accordingly. In second respondents letter dated 22-08-2012, the field engineers were requested to inspect the premises and to report whether the H.T. supply is being utilized specifically for start-up alone or some other construction / commissioning activities inasmuch as there was nil evacuation of energy. The Executive Engineer / MRT / North has reported that M/s.Cauvery Power Generation Chennai Private Limited, have not been accorded permission to synchronize their generator with the grid and they are availing supply for construction and commissioning activities. Based on the report, the current consumption bills already rendered under start-up power has been revised under HT Tariff V vide letter dated 11-09-2012 and which alone is the appropriate tariff and hence the consumer has

been requested to pay a sum of Rs.14,86,580/- towards the revision of bill for the month of 06/2012 and 07/2012. The generator was synchronized only on 17-10-2012 and generator declared Commercial Operation Declaration (COD) on 16-11-2012.

4.2. From the month of November 2012 onwards the current consumption bills for HTSC No.1966 were rendered under start-up power tariff based on the billing methodology. The excess over demand charges were levied whenever the Petitioner exceeded their sanctioned demand of 625 KVA after COD. The generator should have well known that 625 KVA of demand is not technically enough for the start-up activity of 63 MW installed capacity generator and that the start-up power tariff is applicable for start-up activities alone and not for pre-commissioning activities.

4.3. In the agreement executed by the Petitioner on 23-05-2012, the followings are mentioned under clauses 6 & 8:-

“6. Obligation of Consumer to pay all charges:-

From the date this agreement comes into force, the consumer shall be bound by and shall pay the Board, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariffs applicable and the terms and conditions of the supply notified by the Board from time to time for the appropriate class of consumers to which it belongs”.

8. Monthly Minimum charges:-

The consumer agrees to pay minimum charges every month as prescribed in the tariffs and terms and conditions of supply even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges -----“.

While scrutinizing the demand curve, it was observed that the Petitioner had drawn power not only for the purpose of start-up but also for other activities such as construction and commercial. Therefore, the Petitioner has to pay the CC charges under the H.T. Tariff V to till date based on supply utilized.

4.4. On 14-06-2012, the Petitioner has applied for an additional demand of 3125 KVA over and above the permitted maximum demand of 625 KVA at 230 KV for testing and pre-commissioning activities of their 63 MW Captive Power Plant. In order to study the feasibility and to conduct load flow study towards extending additional demand of 3125 KVA over and above the existing demand of 625 KVA to the plant at 230 KV Gummidipoondi SS, detailed feasibility report has been requested from the Executive Engineer / Operation / Gummidipoondi and after receiving details, the same had been sent to System Studies Wing on 21-07-2012 for necessary load flow study. In turn the Superintending Engineer / System Studies has communicated the results of the load flow studies on 17-09-2012 with consent to effect the additional demand of 3125 KVA.

4.5. The Petitioner has been requested to pay the arrears of CC charges amounting to Rs.14,86,580/- pursuant to revision of CC bills for the June 2012 and July 2012 under Tariff V vide Lr.No.SE/CEDC/N/AO/HT/AAO/HT/A6/F.1966/D.2837/12, dated 16-10-2012 and Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT1966/D.1391, dated 19-10-2012 respectively.

4.6. In Lr.No.SE/CEDC/N/AO/HT/AAO/HT/A6/F.1966/D.3066/12, dated 10-12-2012 the Petitioner was requested to make the payment of Rs.26,85,750/- along with BPSC towards the transmission, wheeling and system operating charges for the

month of 11/2012 and also to make payment of Security Deposit towards STOA of Rs.6,57,49,853/- as already requested in letter dated 29-11-2012. Subsequently, as per the representation of the Petitioner dated 03-12-2012, the above mentioned Security Deposit amount was revised to Rs.4,94,58,809/- and the same was intimated to the consumer vide Lr.No.SE/CEDC/N/AO/HT/AAO/HT/A6/F.Cauvery/D.3284/12, dated 24-01-2013. The Petitioner has submitted the Letter of Credit for Rs.4,94,58,809/- only on 23-02-2013. Meanwhile, the Petitioner has cleared the arrears of CC charges demanded by the Respondent on 21-11-2012 and 02-01-2013 only.

4.7. The Petitioner in letter dated 17-12-2012 has made a request to withdraw the sanctioned demand (625 KVA) and refund of the deposit. As a matter of abundant caution the Petitioner was requested on 09-01-2013 to give concurrence to cancel the application for HT additional demand of 3125 KVA at 230 KV supply vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT1966/D.53/13, dated 09-01-2013. Further, necessary instruction has been requested from the Chief Engineer / Commercial regarding surrender of contracted demand for start-up power. Subsequently, the Petitioner in letter dated 07-02-2013 has requested to ignore their earlier letter dated 17-12-2012 for cancellation of the original demand of 625 KVA and further requested to sanction the additional demand for 3125 KVA. Based on that request of the Petitioner, it was requested to pay arrears of CC charges and open access charges for the month of 02/2013 due on 06-03-2013 and 11-03-3013, respectively totaling to Rs.2,04,97,196/- vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/ F.HT1966/ D.393, dated 16-03-2013 to process their additional demand application and the same was paid on 20-03-2013. Thus, the Petitioner was not making payment of current

consumption charges and open access charges and security deposits promptly on the due dates.

4.8. On clearing of all the dues by the Petitioner, the site was inspected by the SE/CEDC/North on 27-03-2013 and it was found that the 230 KV metering point location of their power plant is at a distance of 155 meters from the main road. Hence, the Petitioner has been requested to comply with the regulation 29 (14) (b) of the Tamil Nadu Electricity Distribution Code regarding EHT metering point location. Further, if not possible, the Petitioner has been requested to give a letter expressing their inability to shift the metering point location and to submit valid CEIG safety certificate for the additional load of 2500 KW vide letter dated 30-03-2013. The reply is yet to be received and only after getting exemption for metering point location, the application could be processed.

4.9. From the very first day, the Petitioner exceeded the total requested demand frequently ($3125 + 625 = 3750$ KVA). Further, the Petitioner should have well known of the fact that 625 KVA of demand is insufficient for start-up of the 63 MW installed capacity generator. Without getting the additional load sanctioned after due process, the Petitioner was not entitled to draw more demand over and above the sanctioned demand of 625 KVA on one pretext or other. The Petitioner in order to overcome its deficiency at various stages has blamed the TANGEDCO in order to continue to misuse the start-up power.

4.10. As far as generators are concerned the company should avail supply for construction activities with a sanctioned demand till the plant is ready and it should be billed only at the HT temporary supply tariff (separately for energy and demand).

The issue of start-up power will arise only after declaring the COD. Any energy supplied by a licensee to any person should be accountable and such energy supplied can be accounted only against an account number. No energy can be simply accounted under the head of start-up power. Hence allotment of a HT service number is required for accounting. Further, when such quantum of supply is drawn from the licensee, by a generator, the licensee should be in a position to supply the demand from its grid. For an example, in case of 100 MW generator if the auxiliary consumption termed as start-up power is 9% then 9 MW power may be required for start-up. If such high quantum of demand is drawn from the grid then it will affect the system. Hence, even for availing start-up power the generator has to get a demand sanction which is only a technical requirement. The Commission has fixed the tariff for start-up power, at the rate of Rs.10.45 per unit. The generator becomes a consumer for all practical purposes when the supply is received from the licensee. Hence, even when availing power from the licensee for start-up, the generator should get a demand sanction according to his auxiliary power requirement. But if the generator exceeds such demand, the generator is liable to pay penalty as per the Commission's orders in force.

4.11. In a generating plant, there is always room for repairs and maintenance and use of various machines such as welding set etc. (including a small work shop), for such repairs at any point of time. So the generator may not use the supply only for start-up but also for all other allied activities. Such being the case demand sanction is a prerequisite for availing start-up power and till such time the demand sanction is not regularized the generator is liable to pay penal charges.

5. Contention of the Petitioner in the Reply Affidavit:-

5.1. All the construction activities relating to the plant had been carried out by the Petitioner with the Petitioner's own Generator set of 320 kW. After availing TANGEDCO's supply under H.T.SC.No.1966, no construction activity was carried out at the plant premises and the supply for H.T.S.C.No.1966 was used only for the testing and commissioning activities.

5.2. The Petitioner could not commence the pre-commissioning activities immediately after availing HT S.C.No.1966 during June 2012 due to the delay in arrival of Engineers from China. Therefore, the power drawn from H.T.S.C.No.1966 was used solely and exclusively for pre-commissioning activities.

5.3. The Petitioner made an application on 13-06-2012 to the Second Respondent for enhancement of the permitted maximum demand for HT S.C.No.1966 from the existing 625 KVA to 3750 KVA which has been kept pending till date. Had the second Respondent acted in terms of the provisions of the Electricity Act, 2003 and the Regulations and granted the enhancement of the load as sought, the Petitioner would have followed all the necessary formalities and made payments, etc. and there would not have been levy of excess demand charges at Rs.600 per kVA for the recorded maximum demand of 1465.91 KVA in July 2012.

5.4. The amount of Rs.14,86,580/- raised in the bill was demanded by the second Respondent from the Petitioner vide letter dated 16-10-2012 and not vide letter dated 11-09-2012 as alleged by the second Respondent. As the second Respondent insisted by letter dated 19-10-2012 that only upon payment of the amount demanded vide letter dated 16-10-2012, the request for enhancement of the

demand would be considered, the Petitioner paid the said amount on 21-11-2012. Despite that the sanctioned demand was not enhanced. The demand for payment of Rs.14,86,580/- was as a result of the Respondent levying the tariff of Rs.6.2181 per unit and Rs.7.02 per unit as per the earlier tariff orders as is evident from the bills for the months of June 2012 and July 2012. The allegation of the second Respondent that the bills were revised due to wrong billing under start-up power category is denied.

5.5. Had the Respondents acted on the Petitioner's application for enhancement of demand as per the provisions and enhanced the demand, there would not have been the situation for the Petitioner to exceed the demand, except with marginal excess on rare occasions till the stabilization of the plant. On account of the clear inaction of the second Respondent, the Petitioner has had to pay huge amounts towards excess demand charges which it would not have had to pay. The levy of excess demand charges after the declaration of CoD is without any basis.

5.6. The application for enhancement of the sanctioned demand to 3750 KVA was made keeping in mind the approximate demand that would be required for the testing and commissioning activities involved prior to the CoD of the plant. Had the Respondents granted the same within the timelines prescribed under the applicable provisions, the demand recorded till the date of declaration of the CoD on 16-11-2012, would have been within the requested enhanced demand except for marginal excess during August 2012 and September 2012.

5.7. For availing start-up power from the grid, a generator who is an open access customer is required to pay Rs.10.45 per unit and no charges can be levied as

(towards) excess demand charges. Hence, post synchronization of the plant with the grid on 17-10-2012, the levy of excess demand charges incorrect.

5.8. Being aware of Clause 5 (2) of the Supply Code, the Petitioner had applied on 13-06-2012 for enhanced demand from 625 kVA to 3750 kVA. The Respondent who have a statutory obligation under the Act and the Distribution Code to grant such a request within one month have failed to perform the said statutory obligation and hence no fault lies with the Petitioner. The inaction on the part of the Respondents has resulted in unwarranted excess demand charges.

5.9. The allegation of the Respondents that while scrutinizing the demand curve it is observed that the Petitioner has drawn power not only for start-up purpose but also for other activities is stoutly denied. The supply has been utilized only for the testing and pre-commissioning activities till declaration of COD and after declaration of COD the supply has been used only for start-up purposes. Such false allegations have been made without any basis whatsoever as evident from the statement of the plant in charge wherein the details of the usage of the power supplies through HT S.C. No.1966, are furnished.

5.10. Despite the Distribution Code and the Electricity Act clearly stipulating that request for supply, which includes enhancement of demand has to be granted within one month, the second Respondent has admitted that the Respondents have taken their own time to even process the application. There is no explanation given by the second Respondent for the inaction after 17-09-2012 when the purported consent to effect the additional load is said to have been given. The admissions of inaction

made by the second Respondent clearly attract the penalty prescribed for delay in granting the additional demand.

5.11. The Petitioner cannot be faulted and demanded to pay Rs.14,86,580/- for which demand was made on 16-10-2012 on account of the wrong billing by the Respondent. There was no justification in making the payment of the said amount as a pre-condition for grant of the enhanced demand requested. However, even after payment of the said amount, the Respondents did not grant the enhanced demand which clearly shows that the Respondent is not concerned about the obligations imposed on it under the Act and the Distribution Code.

5.12. The second Respondent after more than four months after for the first time mentioned about the request for additional demand sought by the Petitioner in its letter dated 19-10-2012. The Petitioner made the payment of purported arrears of charges for the months of June 2012 and July 2012 as a pre-condition for considering the request for the additional demand pending since 13-06-2012.

5.13. Had the amounts demanded on 16-10-2012 been included in the respective bills by the Respondents, the Petitioner would have paid them. The said amount as included in the bill for October 2012 was paid on 21-11-2012 after availing the time as per provisions. Even after payment, the second Respondent did not take any action in respect for additional demand.

5.14. The payment of transmission, wheeling and system operation charges and payment of security deposit towards short term open access cannot be linked to the issue involved in the present petition which inter-alia concerns the Petitioner's right

to avail start-up power without availing HT service connection and on payment of Rs.10.45 per unit without there being any levy of excess demand charges.

5.15. Since the Respondents have a statutory obligation to grant the request for enhancement of demand within one month which they have admittedly failed to do for no fault of the Petitioner, the sanctioned demand in respect of HT S.C.No.1966 should be deemed to have been enhanced to 3750 kVA with effect from 14-07-2012 and raised bill for the amount to be paid for the testing and pre-commissioning activities. The Petitioner is entitled to refund of all excess demand charges collected from the Petitioner. When admittedly the Superintending Engineer / Systems studies had on 17-09-2012 consented to effect additional demand, there is no justification for the further delay in granting the enhancement of demand. The Respondents are not entitled to link the payment of CC charges and the open access charges for February 2013 as a pre-condition for enhancing the demand which was requested as early as on 13-06-2012. In any event, the Petitioner having admittedly remitted the amounts on 20-03-2013, the Respondent ought to have granted the enhancement of demand. The fact that till date the enhancement has not been accorded clearly shows the Respondents' total apathy and lack of concern for the rights of open access customers.

5.16. The letter expressing inability to shift the metering point with sketch in triplicate was handed over at the office of the second Respondent on 05-04-2013. It was stated therein, that safety certificate from CEIG had already been submitted even before the CoD for all the loads and accessories with which only the maximum demand was reached at any point of time and there was no further addition or

alteration of loads subsequently. The second Respondent's contention that a reply is yet to be received to the letter dated 30-03-2013 is therefore false.

5.17 The second Respondent's contention that for availing start-up power also HT service connection is required is denied. As understood by the Petitioner, in respect of several other generators, start-up power is being supplied without HT service connection and at Rs.10.45 per unit without any levy towards excess demand charges. No separate sanctioned demand is required for start-up power and hence no demand charges other than what is built into Rs.10.45 per unit is payable. The generators like the Petitioner are entitled to avail start-up power from the grid, post declaration of CoD without any service connection on payment of Rs.10.45 which includes the energy equated demand charges.

5.18. Start-up power is availed from the grid through the transmission line which is connected to the grid for export of power from the plant. For availing start-up from the grid as an Open Access Consumer, formal approval by the Respondent would be sufficient to protect and ensure the safe operation of the Grid.

5.19. What is not specifically provided in the orders of the Commission and Regulations cannot be made applicable by the Respondents. There is no specific provision in the Order No.4 dated 15-05-2006 in respect of fossil fuel based Group Captive Generating Plants to get demand sanctioned for start-up power and make payment for the demand in advance as security and excess demand charges. There is also no provision regarding the applicability of the Commission's Distribution and Supply Codes in respect of Captive Power Plants for availing demand sanction for start-up supply.

5.20. The general statement that in a generating plant there is always room for repairs and maintenance and use of various machines such as welding set including small work shop and hence the generator may not use the supply for start-up purposes alone cannot be made against the Petitioner as a Diesel generator of 320 kW capacity is installed at the Petitioner's plant which is used exclusively for all repairs, maintenance and allied works. Prior to the CoD all the construction works were carried out only using the said generator. Further, there is no work shop inside the plant premises and any work which cannot be supported by the generator are supported by an external agency from outside the plant. This fact is borne out by the gate passes issued as and when any equipment are shifted outside the plant premises for repair works. The true copies of few gate passes are filed along with this reply. Planned plant shut downs / maintenance activities are managed with the diesel generator.

5.21. Enhancement of demand from 625 KVA to 3750 KVA applied on 13-06-2012 for testing and pre-commissioning activities in the HT SC No.1966 intended for that purpose had not been sanctioned within the stipulated time of one month. This inaction on the part of the Respondents resulted in unnecessary and avoidable levy of excess demand charges. As the undue delay was due to no fault of the Petitioner, the levy of excess demand charges till CoD is contrary to law.

5.22. The collection of maximum demand charges from the Petitioner in the monthly bills raised after the date of CoD is illegal and contrary to law, inasmuch as Rs.10.45 per unit has been collected and start-up power availed by the Petitioner has not been used for any other purposes.

6. Petitioner's contentions in the Written Submission:-

6.1. The Petitioner has utilized the power availed through HT SC 1996 only for pre-commissioning activities. The Petitioner had completed all construction activities prior to getting the service connection. The Petitioner has installed a 320 kVA capacity DG set for any other activities.

6.2. The Petitioner had submitted its letter dated 03-04-2013 in reply to the Respondent regarding the distance of the meter from the road and such distance cannot be a reason for not enhancing the demand. The existing original HT SC itself had been effected in the same location.

6.3. The request for enhancement of demand made on 13-06-2012 ought to have been considered and granted within a period of one month in terms of section 43 of the Act and clause 27 (1) of the Distribution Code. The Respondents, having delayed the enhancement beyond the statutorily allowed time limit, were not justified in levying excess demand charges.

6.4. The Petitioner had already paid the amounts claimed for the months of June 2013 and July 2013. The sum of Rs.14,86,580/- claimed by the Respondent on 16-10-2012 was on account of short levy. The Respondents could not have made the payment of such amounts as a pre-condition for enhancing the demand especially when the request for enhancement had been made on 13-06-2012 and admittedly the Superintending Engineer / Systems studies had consented for the enhancement on 17-09-2012.

6.5. In respect of the period after CoD, the Respondents were levying and collecting single part tariff applicable to HT V category from all the generators. This was on account of the Order No.2 dated 15-05-2006 under which the Commission had held that in respect of start-up power the generator is required to pay energy charges and equated demand charges. Hence the levy of demand charges and excess demand charges from the Petitioner for demand in excess of 90% of 625 KVA was unfair and arbitrary. TANGEDCO has in its circular dated 07-09-2013 stated that after the issuance of the Tariff Order dated 20-06-2013, all generators are liable to pay two part tariff for start-up power. This clearly implies that for the period prior to Tariff Order only single part tariff could have been levied.

6.6. The Respondent by levying demand charges and excess demand charges in respect of start-up power availed by the Petitioner is treating the Petitioner, which is generating company, as a consumer, which is clearly contrary to the provisions of the Act and the judgments of the Hon'ble APTEL. Start-up power by its very nature being such that it is used intermittently and only when the plant has to run its auxiliaries to restart generation, the generator availing such power cannot be treated similar to a consumer when the quantum and duration of power drawn is limited.

6.7. The Superintending Engineer / Systems studies having admittedly consented on 17-09-2012 for enhancement of demand as requested by the Petitioner on 13-06-2012, the Respondents have after the petition was filed conducted an inspection and given the excuse of the metering point being at a distance of 155 meters from the road. This is a clear after thought. It is of relevance that the Respondents knowing about the distance of the metering point had granted the service connection.

6.8. The Superintending Engineer / Systems studies who had granted consent on 17-09-2012 had inspected the premises and did not find anything wrong with the metering point. The Petitioner had submitted its response dated 03-04-2013 clearly stating that there is no other suitable and secured location for housing the metering point and the certificate of the CEIG had already been submitted. It is also relevant to note that in terms of clause 29 of the Distribution Code, the Respondents are entitled to exempt from the requirement of having the metering point at a distance of 30 meters from the road.

6.9. The Respondents are liable to refund the amounts collected from the Petitioner till the CoD towards excess demand charges till the CoD (except when the recorded demand had exceeded 3750 KVA). In respect of the amounts collected after the CoD, the Respondents ought to refund the amounts collected towards excess demand charges and the demand charges after deducting the energy charges and equated demand charges (single part tariff) for the start-up power availed.

7. Contentions of the Respondents in the Written Submission:-

7.1. In general, before processing EHT applications, technical study of feasibility and load flow study will be conducted by the operation wing and the system studies wing, respectively, to ascertain the transformer and feeder line loading capacity. For this, the particulars are to be obtained from the operation wing concerned and only on receipt of load flow study results from the system studies wing (based on the technical details provided by operation wing), the EHT application will be registered subject to complying with norms in all aspects.

7.2. In the “Distribution Standards of Performance”, the following time schedule for supply of electricity involving extension of distribution lines etc. has been given. The time schedule is applicable for additional loads also:-

Sl. No.	Category	Time Schedule for EHT
1	For mere service connection	Preferably within a week but not exceeding 30 days
2	Involving extension and improvement	150 days
3	Involving an enhancement of power transformer / addition of power transformers	180 days
4	Involving the commissioning of new substation	270 days

7.3. After conducting load flow study only, it can be ascertained about the nature of work involved as well as the time schedule for effecting EHT SCs. In this case, on receipt of EHT application, on 21-06-2012, the technical particulars were requested from the Executive Engineer/Operation/Gummidipoondi SS vide Memo No.SE/CEDC/N/AEE/Dev/AE/D2/F.HT SC 1966/D.780/12, dated 21-06-2012. The above details were furnished by the Executive Engineer / Operation / Gummidipoondi on 10-07-2012 vide Lr.No.EE/OPN/230KV/SS/GPD/F.10/D.110/2012, dated 07-07-2012 and the same had been sent to the Superintending Engineer / System studies on 21-07-2012 vide Lr.No.SE/CEDC/N/AEE/ Dev/AE/D2/F.Cauvery Power plant/D.927/12, dated 21-07-2012. On 17-09-2012, the Superintending Engineer / System studies had communicated the load flow study results vide Lr.No.SE/SS/EE1/AEE3/ F.Cauvery/D.364/12, dated 17-09-2012 and observed that the line / transformer loadings are within limit and hence suggested that the request for additional demand of 3125 KVA over and above the existing demand of 625 KVA as start-up power to M/s.Cauvery Power Generation Chennai

(P) Ltd., through the 230 KV interconnectivity line from the plant to 230/110 KV Gummidipoondi SS, may be considered for approval.

7.4. Earlier on 22-08-2012, vide Memo No.SE/CEDC/N/DFC/AAO/HT/F.HT/D.2582/12, dated 22-08-2012, the Executive Engineer/MRT/North as well as the territorial Executive Engineer/O&M/Ponneri had been requested to confirm whether the sanctioned HT supply to the Petitioner is utilized specifically for start-up power alone or for other construction / commissioning activities since there is NIL evacuation of energy by the Petitioner Generating Company from the date of availing supply (i.e.) 06-06-2012, to enable to fix the tariff to the Petitioner's Generating Company. On 11-09-2012, the field report was received from the EE/MRT/North vide Lr.No.EE/MRT/N/F.Cauvery/D.404/2012, dated 11-09-2012 stating that the Petitioner was not accorded permission to synchronize their generator with the grid and they are availing supply for construction and commissioning activities.

7.5. After ascertaining that the generator had not synchronized their generating plant with the grid so far from the date of availing EHT supply, the bills of August 2012 and September 2012 were rendered in Tariff V as per the Commission's Retail Tariff Order, dated 30-03-2012 with effect from 01-04-2012. Subsequently, the CC bills of June 2012 and July 2012 were also revised under Tariff V (which were already rendered under start-up power tariff), which resulted in the short levy of Rs.14,86,580/-. On 16-10-2012, the above status had been intimated to the Petitioner vide Lr.No.SE/CEDC/N/AAO/HT/F.G/F.1966/D.2837/12, dated 16-10-2012 and the Petitioner had been requested to pay the above said amount within 15 days from the date of receipt of the said letter, else it would be included in the forthcoming CC bill.

7.6. The process of fixation of correct tariff to the Petitioner's Generating Company was initiated on 22-08-2012 which is well before the receipt of the load flow study results from the System Studies wing. By that time, the load flow results were received from the System Studies wing, the arrears of CC charges to the tune of Rs.14,86,580/- were pending from the Petitioner. The Petitioner had been informed vide Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F.HT 1966/D.1391/12, dated 19-10-2012 that their request for an additional demand of 3125 KVA will be considered only on payment of the CC arrears pending due to TANGEDCO, as per TNERC Regulation (5) sub-regulation (2) clause (iv) of TNERC Supply Code and Regulation 27 (1) of TNERC Distribution Code and hence requested to pay the arrears amount. The above said amount had been paid by them on 21-11-2012 along with CC bill. On 29-11-2012, the Petitioner had been requested vide Lr.No.SE/CEDC/N/AO/HT/AAO/HT/A.6/F.Cauvery/D. /12, dated 29-11-2012 to pay the amount of Rs.6,57,49,853/- towards Security Deposit for short term open access.

7.7. By the time the Petitioner had paid the CC charges arrears, it had been found out that an amount of Rs.26,85,750/- (due date 06-12-2012) towards the transmission, wheeling and system operating charges for the third party power sale (25.07 MW) and CPP (30 MW) were pending due with the Petitioner, the said open access charges has to be paid within 7 days as per TNERC/ISOA/11/1-1, dated 07-07-2008. Hence, the Petitioner had been again informed vide Lr.No.SE/CEDC/N/AO/HT/AAO/HT/A.6/F.Cauvery/D.3066/12, dated 18-12-2012 to make the payment of the above said charges along with BPSC on or before 21-12-2012 and further informed that the Security Deposit for STOA (Third Party / CPP) of Rs.6,57,49,853/- remain unpaid.

7.8. In the meantime, on 17-12-2012, the Petitioner had requested to withdraw the sanctioned demand and refund the deposit. As such, the Petitioner had been requested to give their concurrence to cancel the HT additional demand application vide Lr.No.SE/CEDC/N/AEE/Dev/Ae/D2/F.HT 1966/D.53/12, dated 09-01-2013. In turn, the Petitioner vide letter dated 07-02-2013 had requested to ignore their letter dated 17-12-2012 for cancellation of the original demand of 625 KVA and process the additional demand. However, revised Security Deposit amount to the tune of Rs.4,94,58,809/- & CC charges for the months of December 2012 – Rs.38,81,257/- and January 2013 – Rs.36,94,638/- were pending due at that time. The revised Security Deposit was paid through Letter of Credit vide LC No.0734713LC0000161 on 22-02-2013 and CC charges paid on 05-03-2013. Subsequently, the CC charges for the month of February, 2013 – Rs.47,45,257/- and the open access charges for the month of 2/2013 of Rs.1,57,51,939/- became due, at that time. Huge amount of arrears are involved in this case and the non-realisation of the amount would have made adverse effect on the financial position of the TANGEDCO.

7.9. As per TNERC Regulation (5) sub-regulation (2) clause (iv) of TNERC Supply Code and Regulation 27 (1) of TNERC Distribution Code, “No addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service, may be sanctioned unless the outstanding dues in the same service connection had been paid. Moreover, there is no mention about the various types / categories of dues to be insisted from the consumer, is there in any form in the TNERC Supply & Distribution Codes. As such, the Petitioner had been requested vide Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F.HT 1966/D.393/13, dated 16-03-2013 to pay the arrears amount as per TNERC Regulation (5) sub-regulation (2) clause (iv)

of TNERC Supply Code and Regulation 27 (1) of TNERC Distribution Code, so as to process their application.

7.10. The Petitioner vide letter dated 20-03-2013 had informed about the payment of CC charges for the month of February 2013, and payment of open access charges for the month of February 2013 vides PR.No.54040/20-03-2013 and 54039/20-03-2013, respectively. As there was huge arrears pending due with the Petitioner on each and every occasion, the Petitioner's additional demand application had not been processed and registered till date.

7.11. On payment of all dues by the Petitioner, the service connection had been inspected by the second Respondent on 27-03-2013. Regarding metering point arrangement in respect of power plants, since the metering arrangement proposed for power evacuation in power plants has been utilized for extending supply to their testing and pre-commissioning activities also, the provision of metering point location within 30m from the main gate, which should be easily accessible and visible as per TNERC Distribution Code Regulation 29 (14) (b) had not been insisted earlier while extending temporary supply to CPPs coming under Chennai North Circle such as M/s.Bhatia Coke and Energy Pvt. Ltd., M/s.OPG Power Generation Pvt. Ltd. and the Petitioner's Generating Company-M/s.Cauvery Power Generation Chennai Pvt. Ltd. Even while sending the load sanction proposal (for administrative approval) for a maximum demand of 6500 KVA for testing and pre-commissioning activities of the power plant of M/s.Surya Dev Alloys and Power Pvt. Ltd., the metering point location had been specifically defined as 125m. However, administrative approval had been accorded for the extension of EHT temporary supply for testing and

pre-commissioning activities of the above power plants despite the fact that the metering point location is beyond 30m from the main gate.

7.12. The provision of metering point location in respect of power plants as per TNERC Distribution Code Regulation 29 (14) (b), had been insisted for the first time while sending the load sanction proposal for administrative approval towards the extension of EHT temporary supply to M/s.Tulsyan NEC Ltd., for a maximum demand of 4500 KVA at 110 KV for testing and pre-commissioning activities of their power plant, based on the remarks of the Chief Engineer / Commercial in the load sanction proposal. As such, metering point exemption had been obtained in that case vide Memo No.CE/Comml/EE3/AEE1/F.Metering Pt/D.132/13, dated 22-03-2013. The above Generator's case has been kept as precedence and for all subsequent cases, the provision of metering point location as per Tamil Nadu Electricity Distribution Code Regulation 29 (14) (b) had been insisted and, wherever not possible, necessary exemption had been obtained from the Competent Authority before processing the application. Thereafter, metering point exemption had been obtained from the Chief Engineer / Commercial to other Generator – M/s.ARS Metals Ltd., also vide Memo No.CE/Comml/EE3/AEE1/F.Metering Pt/D.243/13, dated 10-05-2013 towards extension of EHT temporary supply for testing and pre-commissioning activities of their 1st unit 1 x 60 MW power plant.

7.13. After inspection of the Petitioner's company by the 2nd Respondent on 27-03-2013, the Petitioner had been requested to comply with the TNERC Distribution Code Regulation 29 (14) (b) or else to give a letter expressing their inability to shift the metering point location vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT 1966/D.465/13, dated 30-03-2013. The

Petitioner had requested exemption vide letter dated 03-04-2013. Hence, the metering point exemption had been obtained from the Chief Engineer / Commercial for the Petitioner's company also vide Memo.No.CE/Comm/EE3/AEE1/F.Metering Pt/D.281/13, dated 29-06-2013.

7.14. The validity of the certificate obtained from the Tamil Nadu Pollution Control Board to establish the Petitioner industry expired and hence the Petitioner had been requested to submit a fresh validity letter from TNPCB vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT 1966/D.769/13, dated 16-05-2013 and again vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT 1966/D.1033/13, dated 08-07-2013. As the Petitioner had not submitted the TNPCB's consent letter even after 4 months, the HT application had been returned vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT 1966/D.1396/13, dated 20-09-2013 and the Petitioner had been requested to apply afresh after obtaining TNPCB's consent to establish / operate the industry validly from 20-01-2013.

7.15. As per T.P.No.1 of 2013 dated 20-06-2013 and Tariff Order No.7 & 8 dated 31-07-2012, the start-up power demand of the Petitioner's Generating Company had been fixed as 5950 KVA and communicated vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.CPP/D.1439/13, dated 26-09-2013. However, the consumer had resubmitted the additional demand application along with TNPCB's consent on 03-10-2013 for the additional demand of 3125 KVA. As such, necessary clarification had been requested to the CFC/Revenue vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.Cauvery CPP/D.1521/13, dated 17-10-2013 as the new demand for start-up power had been fixed and communicated, is it necessary to process the additional demand application of M/s.Cauvery Power Generation Pvt. Ltd. (which involves collection of

EMD charges and Development charges) since it is well within the new demand now fixed (5950 KVA). The above status had been communicated to the Petitioner vide Lr.No.SE/CEDC/N/AEE/DEV/AE/D2/F.HT 1966 Addl/D.1567/13, dated 18-10-2013.

7.16. The Petitioner has not paid the charges as demanded by TANGEDCO on due dates. All the demands raised in respect of current consumption charges, were not paid by the Petitioner within the due date and there was abnormal delay in paying the CC charges. The CC charges for the month of 12/2012 was paid on 05-03-2013 though the due date for payment was 06-01-2013 and the CC charges for the month of 01/2013 was paid on 05-03-2013 though the due date for payment was 06-02-2013. The open access charges for third party and captive power users was not paid by the Petitioner within seven days. Thus, the Petitioner always had dues with TANGEDCO which alone caused the delay in processing of his additional demand request. The Commission may be pleased to dismiss the D.R.P.No.16 of 2013 of the Petitioner as devoid of any merits.

8. Findings of the Commission:-

- 8.1. The prayers of the Petitioner in D.R.P.No.16 of 2013 are to -
- a. declare that in view of the inaction of the Respondents in not granting the additional demand as requested by the Petitioner vide its application dated 13-06-2012, the levy and collection of maximum demand charges from the Petitioner in the monthly bills raised on the Petitioner is illegal and contrary to law ;
 - b. declare that the Petitioner's plant is entitled to avail start-up power from the grid after 16-11-2012 without any service connection on payment of the applicable consumption charges ;

- c. declare that the Respondent is entitled to only Rs.10.45 per kWh for the start-up power availed by the Petitioner after the plant having achieved commercial operation on 16-11-2012;
- d. direct the Respondents to pay costs of the present proceedings ; and
- e. pass such further or other orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

8.2. The Petitioner's 1x63 MW Thermal Power Plant was synchronized with the grid on 17-10-2012 and achieved commercial operation on 16-11-2012. The Petitioner obtained EHT supply at 230kV for a sanctioned demand of 625 kVA on 06-06-2012 for the reported pre-commissioning activities of the Thermal Power Plant. The Petitioner availed the supply through the 230 kV transmission lines established for evacuation of power from the Petitioner's generating plant. The Petitioner has reported that he made an application to the Second Respondent on 13-06-2012 seeking enhancement of the 625 kVA sanctioned demand to 3750 kVA for testing and commissioning activities of his generating plant. These facts have not been denied by the respondent. The main argument of the Petitioner is that had the Respondent effected the enhanced demand of 3750 kVA as requested in his application dated 13-06-2012, the demand utilized by the Petitioner during the pre-commissioning stage would have been within the sanctioned demand. Even if there was any excess demand utilized by the Petitioner it would have been only in excess of 3750 kVA.

8.3. On the other hand the Respondent has reported that the Petitioner has applied for an additional demand of 3125 kVA over and above the permitted demand of 625 KVA on 14-06-2012. As reported by the Respondent, the Superintending Engineer/System Studies has communicated the results of the Load Flow Study only on 17-09-2012 with consent to effect the additional demand of 3125 kVA. The

TANGEDCO has not explained the need for conducting the load flow study to provide a demand of 3750 kVA in a 230 kV line. But even after 17-09-2012, the additional demand requested by the Petitioner has not been effected by the TANGEDCO. Inasmuch as there is no extension involved in effecting the additional demand of 3125 kVA, the TANGEDCO should have effected the additional demand within 30 days i.e. on or before 14-07-2012 as mandated by section 43 of the Electricity Act 2003. The related provisions of the Act are reproduced below:

Section 43. (Duty to supply on request):

*(1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, **within one month after receipt of the application requiring such supply:***

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

*(2) If a licensee fails to meet the standards specified under sub-section (1), **without prejudice to any penalty which may be imposed or prosecution be initiated,** he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:*

8.4. One of the reasons for not effecting the additional demand brought out by the respondent is the pending arrears of CC charges to be paid by the petitioner. As reported by the respondent the first notice for payment of arrears issued by the respondent to the petitioner has been dated on 16-10-2012. Therefore the question of arrears of current consumption charges arises only after 16-10-2012. The reason for not effecting the additional demand before 15-10-2012 has not been explained by

the TANGEDCO. Even taking into account the time limit provided by the Act, the additional demand should have been effected between 14-07-2012 to 15-10-2012. Hence the existence of CC arrears cannot be adduced by the Respondent for delay in effecting the additional demand.

8.5. Yet another reason putforth by the TANGEDCO is the time taken to conduct feasibility study, load flow study etc. But such activities are their internal issues. The time limit specified by the Act is inclusive of the time taken for conducting such studies. As discussed supra, the additional demand of 3125 kVA as requested by the Petitioner should have been effected by the TANGEDCO on or before 14-07-2012 as specified in the Act.

8.6. The third issue raised by the respondent is the location of meter. As reported by the respondent, it was raised based on the inspection of Superintending Engineer / Chennai Electricity Distribution Circle / North on 27-03-2013. The generator achieved COD on 16-11-2012. The petitioner has become a generator from the date of COD. It is not justifiable to ask the generator to comply with the provision applicable to consumer meter as specified in the Distribution Code.

8.7. In light of the analysis made supra, we have no hesitation to order that the non-sanctioning of additional load of 3125 kVA by the respondent to the petitioner is contravention of the provisions of the Act and regulation and orders issued by the Commission. The Commission reserves its rights to take appropriate action on such contravention. However, we conclude that the petitioner cannot be made to suffer for the inaction of respondent in effecting the additional demand. We hereby order that the TANGEDCO shall revise all the CC charges including the excess demand

charges levied on the Petitioner for the disputed period assuming that the sanctioned demand of the Petitioner was enhanced to 3750 kVA from 625 kVA as on 14-07-2012. Based on the revised bills, the account shall be settled within two months of issuance of this order. The assumed sanctioned demand of 3750 kVA shall be changed to the actual sanctioned demand on the date of subsequent change in sanctioned demand approved by TANGEDCO and agreed by the petitioner. Applicable charges, if any, shall be collected from the petitioner for effecting the additional demand of 3125 kVA.

8.8. Regarding the other prayers of the Petitioner, it is ordered that the Petitioner is eligible for start-up power from 16-11-2012, the date on which the Petitioner's plant achieved commercial operation. Applicable tariff as specified in the Commission's Tariff Order shall be applied on the petitioner for the period before the COD of the petitioner's plant. There are petitions filed in different forums on the tariff for startup power. At this stage we have no inclination to consider the start up power tariff of Rs.10.45 per kwhr. as requested by the petitioner except to confirm that the tariff for start-up power shall be as specified in the Commission's related orders issued from time to time.

8.9. With the above observations and orders the D.R.P.No.16 of 2013 and I.A.Nos.1&2 of 2013 in D.R.P.No.16 of 2013 are finally disposed off by this Commission. There would be no cost.

9. Appeal:-

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(G.Rajagopal)
Member

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission