

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

PRESENT:-

Thiru S. Akshayakumar Chairman

and

Thiru.G.Rajagopal Member

M.P.Nos.45, 46, 47, 48, 49, 50, 51, 52, 53 of 2014

and

M.P.Nos.1 to 5, 8, 11 to 24 and 28 of 2015

1. Anugraha Fashion Mills (P) Ltd.
H.T.SC. No.267, S.F. No.933
DR.No.181/A, Vattamalai Village
Dharapuram Road, Avinashipuram Pudur
Erode – 638 701. ... Petitioner in M.P.No.45 of 2014

2. Pioneer Jellice India (P) Ltd.
H.T.SC.No.77
Semmankuppam
Cuddalore –Chidambaram Main Road
Cuddalore – 607 005. ... Petitioner in M.P.No.46 of 2014

3. Best Cotton Mills (Unit of Best Corporation Ltd.)
HT SC. No.129, S.F. No.113
Chitravuathampalayam Village
Pollachi Road, Dharapuram
Tirupur. ... Petitioner in M.P.No.47 of 2014

4. R.R.D.Tex (Unit of Best Corporation Ltd.)
HT SC No.271
SF No.617, Suriyanallur Village
Dharapuram
Tirupur. ... Petitioner in M.P.No.48 of 2014

5. Supreme Cot-spin Mills (India) Pvt. Ltd.
HT SC No.377
419-1A, 1C, Vadugapalayam Road
Thekkalur Post
Avanashi – 641 654.
Coimbatore District. ... Petitioner in M.P.No.49 of 2014
6. M/s.TULSYAN N.E.C. Ltd.
HT SC No.1823
D-4, SIPCT Industrial Complex
Gummidipoondi – 602 201 ... Petitioner in M.P.No.50 of 2014
7. M/s.TULSYAN N.E.C. Ltd.
HT SC No.1771
No.3, Apex Plaza
Nungambakkam High Road
Chennai – 600 034. ... Petitioner in M.P.No.51 of 2014
8. M/s.Kanishk Steel Industries Ltd.
HT SC No.1501
No.7, Thiru. Vi.Ka.III-Street
Royapettah High Road
Mylapore, Chennai – 600 104.
... Petitioner in M.P.No.52 of 2014
9. M/s.Kanishk Metal Re-Cycling Pvt. Ltd.
HT SC No.1644
Plot No.A-15/N, SIPCOT
Gummidipoondi ... Petitioner in M.P.No.53 of 2014
10. Deventhira Spinners (P) Ltd.
HT SC No.153
No.43, Bye Pass Road
Pallipalayam, Erode – 638 006. ... Petitioner in M.P.No.1 of 2015
11. Durairaj Mills Ltd., Unit I
HT SC No.9
Pettanaickenpalayam
Pongalur Post, Puliampaty
Tiruppur. ... Petitioner in M.P.No.2 of 2015
12. Durairaj Mills Ltd., Unit 2
HT SC No.32
Sathy Main Road
Pongalur Post
Puliampaty
Tiruppur. ... Petitioner in M.P.No.3 of 2015

13. Thangavelu Textiles Mills (P) Ltd.
HT SC No.149
1111/1, Thathampatty
P.B. No.3, K.N. Colony
Salem ... Petitioner in M.P.No.4 of 2015
14. Thangavelu Spinning Mills (Pvt.) Ltd.
HT SC No.105
B.Mallapuram Post
Harur Taluk
Dharmapuri District ... Petitioner in M.P.No.5 of 2015
15. K.R.V.Spinning Mills
HT SC No.129
S.No.117 & 118, Mecheri Road
Nangavalli – 636 454
Salem ... Petitioner in M.P.No.8 of 2015
16. Aruppukottai Sri Jayavilas Ltd.
HT SC No.150
Cotton Spinning Mills “B” Unit
Tamilpadi, Tiruchuli Taluk
Aruppukottai – 626 129.
Virudhunagar District. ... Petitioner in M.P.No.11of 2015
17. Vijay Spinners
HT SC No.223
P.B.No.18A, Pugazhendi Road
Rajapalayam – 626 117.
Virudhunagar ... Petitioner in M.P.No.12 of 2015
18. K.G.S.Nelson Paper Mills Limited
HT SC No.57
Solagampatti
Thogur (Via)
Thanjavur – 613 102
Thanjavur District. ... Petitioner in M.P.No.13 of 2015
19. M/s.Shri Govindaraja Mills Limited
HT SC No.97
Melakandamangalam
Tamilpadi P.O. – 626 129
Aruppukottai
Virudhunagar District. ... Petitioner in M.P.No.14 of 2015
20. M/s.Shri Ramalinga Mills “B” Unit
HT SC No.122
212, Ramasamy Nagar
Aruppukottai
Virudhunagar District. ... Petitioner in M.P.No.15 of 2015

21. M/s.Jayadevi Mills Private Limited
HT SC No.182
Melakandamangalam
Tamilpadi P.O. – 626 129
Aruppukottai
Virudhunagar District. ... Petitioner in M.P.No.16 of 2015
22. M/s.Shri Govindaraja Mills Limited, A Unit
HT SC No.194
Melakandamangalam
Tamilpadi P.O. – 626 129
Aruppukottai
Virudhunagar District. ... Petitioner in M.P.No.17 of 2015
23. M/s.Shri Govindaraja Mills Limited, Unit-II
HT SC No.226
Melakandamangalam
Tamilpadi P.O. – 626 129
Aruppukottai
Virudhunagar District ... Petitioner in M.P.No.18 of 2015
24. M/s.Sri Jayavarthan Spinning Mills Pvt. Ltd.
HT SC No.297
Melakandamangalam
Tamilpadi P.O. – 626 129
Aruppukottai
Virudhunagar District ... Petitioner in M.P.No.19 of 2015
25. M/s.Subburaj Cotton Mills Private Limited
HT SC No.59
Srivilliputhur Road
Rajapalayam
Virudhunagar District. ... Petitioner in M.P.No.20 of 2015
26. M/s.Supreme Coated Board Mills (P) Limited
HT SC No.230
2/2205, Viswanatham Village
Sivakasi ... Petitioner in M.P.No.21 of 2015
27. M/s.Aruppukottai Sri Jayavilas Ltd.
HT SC No.68
258, Thiruchuli Road
Aruppukottai
Virudhunagar District. ... Petitioner in M.P.No.22 of 2015
28. M/s.Sree Kaderi Ambal Mills Ltd., “A” Unit
HT SC No.46
Perattukottai Village
Shanmuganathapuram – 632 314 ... Petitioner in M.P.No.23 of 2015

29. M/s.Sree Kaderi Ambal Mills Ltd., "B" Unit
HT SC No.75
Perattukottai Village
Shanmuganathapuram – 632 314 ... Petitioner in M.P.No.24 of 2015

30. M/s.Seva Gases Private Limited
HT SC No.114
G-18, Royal Castle, Raja Colony
IV Cross, Cantonment
Trichy – 620 001. ... Petitioner in M.P.No.28 of 2015

Vs.

1. The Chairman
TANGEDCO
144, Anna Salai
Chennai – 600 002. Respondents in M.P.No.
45 to 53 of 2014,
M.P.No.1 to 5, 11 to 24 and
28 of 2015

2. The Chief Engineer (Commercial)
TANGEDCO
144, Anna Salai
Chennai – 600 002. Respondents in M.P.No.
45 and 46 of 2014,
and 14 of 2015

3. The Superintending Engineer
Tiruppur Electricity Distribution Circle
TANGEDCO
Tiruppur Respondents in M.P.No.45
of 2014 and 2,3 and
5 of 2015.

4. The Superintending Engineer
TANGEDCO
Cuddalore Electricity Distribution Circle
Cuddalore. ... Respondent in M.P.No.46
of 2014

5. The Superintending Engineer
Udumalpet Electricity Distribution Circle
TANGEDCO
Udumalpet. Respondent in M.P.No.47
and 48 of 2014.

6. The Superintending Engineer
Coimbatore / South Electricity
Distribution Circle
TANGEDCO
Coimbatore. Respondent in M.P.No.49
of 2014

7. The Superintending Engineer
Chennai Electricity Distribution Circle /North
No.144, Anna Salai
Chennai – 600 002. Respondent in M.P.No.50
to 53 of 2014
8. The Superintending Engineer
Mettur Electricity Distribution Circle
Mettur Dam Respondent in M.P. No.1 and
8 of 2015
9. The Superintending Engineer
Salem Electricity Distribution Circle
Salem. Respondent in M.P.No.4 of 2015
10. The Superintending Engineer
Virudhunagar Electricity Distribution Circle
TANGEDCO
Virudhunagar Respondent in M.P.No.11, 12,
and 14 to 22 of 2015.
11. The Superintending Engineer
Thanjavur Electricity Distribution Circle
TANGEDCO
Thanjavur ... Respondent in M.P.No.13 of
2015 and 28 of 2015
12. The Superintending Engineer
Sivaganga Electricity Distribution Circle
TANGEDCO
Sivaganga Respondent in M.P.No.23
of 2015 and 24 of 2015
13. The Chief Financial Controller-Revenue
TANGEDCO
144, Anna Salai
Chennai – 600 002. Respondent in M.P.Nos.
47 to 49 of 2014, 1 to 5, 8, 11,
12, 14 to 22 and 28 of 2015.

Counsel for Petitioners : M.P. Nos.45 to 49 of 2014 and
1 to 5,8,11 to 13 of 2015 ... Thiru. R.S.Pandiyaraj
Advocate

M.P. Nos.50 to 53 of 2014,
23 and 24 of 2015 ... Thiru. K.Seshadri
Advocate

M.P.Nos. 14 to 22 and 28 of 2015 Thiru N.Sudalaimuthu
Advocate

Counsel for Respondents: In all the Petitions

.... Tmt.Varalakshmi
Standing Counsel
for TANGEDCO

Dates of hearing : 26-12-2014 and 20-04-2015

Date of order : 16-09-2015

The above Miscellaneous Petitions No.45, 46, 47, 48, 49, 50, 51, 52, 53 of 2014 and No.1 to 5, 8, 11 to 24 and 28 of 2015 came up for final hearing on 20-04-2015. The Petitioners herein have filed Writ Petitions before the Hon'ble High Court of Madras challenging the impugned orders wherein the Single Judge of the High Court granted interim stay on condition of payment of 30% of the Additional Current Consumption Deposit demanded by the Respondents towards additional security deposit. Ultimately, the Writ Petitions were dismissed. Appeals were filed before the Division Bench of the High Court of Madras wherein the Appellants were given liberty to approach the Commission observing that the Commission will decide the issue on merits and as per law, without in any way being influenced by the observations made by the learned Single Judge in the dismissed writ petitions. The Divisional Bench further directed the Respondents to maintain status-quo for a period of two weeks. The Appellants in the said Writ Appeals have now filed the above Miscellaneous Petitions before the Commission and also got the benefit of interim orders in view of the status-quo granted by the Divisional Bench of the High Court. Since the contentions and relief sought for in the above M.Ps. are similar, all the above M.Ps. were dealt with by the Commission as a batch and heard on 26-12-2014 and 20-04-2015. The Commission upon perusing the above petitions and the connected records and after hearing submissions of the Petitioner passes the following order:-

ORDER

1 Prayer of the Petitioners:-

(a) The Prayer of the Petitioners in the above Miscellaneous Petitions is to set aside the impugned Notices issued by the Respondents viz, Superintending Engineers of various Electricity Distribution Circles, TANGEDCO in the matter of demanding Additional Security Deposit for 2014-2015 as illegal, arbitrary, untenable under law and against the Tariff Order No.6 of 2012 dated 31-07-2012 as issued by the Commission and consequently direct the Respondents to calculate the Additional Security Deposit on the basis of the two times of the maximum net energy supplied by the Board in the preceding financial year as per Clause 8.12.2 of the Tariff Order No.6 of 2012 dated 31-07-2012 as issued by the Commission and pass such other or further orders as the Commission may deem fit and proper in the circumstances of the case and thus render justice.

(b) Prayer in the I.As.:-

The interim prayer in the I.As. filed along with the above M.Ps.is to grant interim stay of all further proceedings pursuant to the impugned letters of the Superintending Engineers of various Electricity Distribution Circles / TANGEDCO.

2. Contentions of the Petitioner:-

2.1. The Respondent Board is unable to supply sufficient quantity of power from as early as April 2007 onwards and had been imposing currently power cut at 20%, besides to peak hour restrictions, unscheduled tripping and load shedding to the extent of 5 to 10 hours a day and the Petitioner industry was facing frequent fluctuations in supply and interruptions in power due to heavy power cut prevailing in the State of Tamil Nadu. The Petitioners were unable to meet out the delivery

schedules and was facing problems in labour management is also and undergoing huge loss in production.

2.2. Since the Respondent Board is not able to supply sufficient power, the Petitioners installed wind mills for captive consumption and also made purchase of 3rd party power in order to meet their industrial consumption. The energy generated in the Petitioners wind mills are getting adjusted against their total industrial consumption and for the balance net energy supplied by the Respondent Board alone bills are raised every month and the Petitioners are paying the same.

2.3. In order to safeguard the interest of the TANGEDCO, Regulation provides collection of Security Deposit and to review the adequacy of the same in suitable manner during the commencement of each financial year by the month of April. There are two types of consumers available in the State of Tamil Nadu. One type of consumers is solely depended on the Respondent TANGEDCO for their full consumption of energy and they do not have any other captive energy of their own for consumption. In order to regulate the adequacy of the security deposit held by such consumers who are solely dependent with the Respondent TANGEDCO the Tamil Nadu Electricity Supply Code 2004 provides as follows:-

Regulation 5(5) (ii) (a): For the categories of Consumer under monthly billing, the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding 12 months prior to April”.

2.4. In respect of the other type of consumers who consume power from the Respondent TANGEDCO and also from their own captive source either through their own windmills or 3rd party sources, the review of adequacy of Security Deposit is being regulated and collected by the respective orders issued by the Commission

from time to time. The latest of such order was released in Order No.6 of 2012 dated 31-07-2012 which goes as follows:-

8.12.2 As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit”.

The Respondent TANGEDCO, depending upon the pattern of consumption by a consumer, namely those who have solely dependent with TANGEDCO or partially with TANGEDCO power and partially by their own captive power, has to review the adequacy of security deposit either by way of Regulation 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code 2004 or applying the Tariff Order No.6 of 2012 issued by the Commission dated 31-07-2012.

2.5. The Petitioners fall under the second category of partial captive consumers of wind energy 3rd party user and therefore, the adequacy of the security deposit needs to be reviewed as per the Tariff Order No.6 of 2012 only and not as per Regulation 5(5)(ii) of the Tamil Nadu Electricity Supply Code, 2004.

2.6. The Respondent when reviewing the adequacy of the security deposit for the year 2014-15 has reviewed the same by erroneously citing Regulation 5(5)(ii)(a) of the Supply Code and then calculated the same on the basis of Tariff Order No.6 of 2012 dated 31-07-2012. The Respondent has attempted to have the best of both, which is impermissible in law. However, without correctly understanding the text of the operating provisions, the Respondent has raised a demand for deposit over and above the existing deposit which are unsustainable in law and against the Tariff Order No.6 of 2012 dated 31-07-2012. The Respondent has however misconceived

the same while calculating the Additional Security Deposit in the demand notice dated 28-04-2014.

2.7. With respect to captive consumers / third party users like the Petitioners the collection of security deposit therefore, needs to be regulated by the respective tariff order of the Commission from time to time. The last order was issued in Order No.6 of 2012 dated 31-07-2012. As per the said order, in respect of such wind mill captive consumers / third party users, the security deposit shall be corresponding to two times of the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year and therefore, it alone shall be taken as the basis for the payment of additional security deposit. This would mean that only the maximum or unit charges collected at the rate of Rs.5.50 per unit with added / reduced charges on peak hour and night hour shall be calculated and accordingly, the maximum of it in any month should be arrived and the two times of the said net energy charges need to be collected as security deposit. However, without following the same, the Respondent has taken the highest gross CC bill of the previous financial year and accordingly, multiplied it by two, in arriving the present demand, which procedure goes against the spirit of the tariff order issued by the Commission.

2.8. In one typical case of M/s.Anugraha Fashion Mills P. Ltd., HT SC No.267 who has filed M.P.No.45 of 2014, the working details as per demand notice of the Respondent dated 28-04-2014 are as follows:-

January 2014 Month (HIGHEST)	-	Rs 63,21,413/-
Two times of Rs.63,21,413/-	-	Rs.1,26,42,830/-
Existing Deposit	-	Rs. 41,50,894/-

Additional Deposit demanded		Rs. 84,92,136/-

In pursuance of the Petitioner's CC bill for the month of January 2014, which is now taken for the calculation of security deposit, it could be seen that the total assessed amount at Serial No.19 is inclusive of demand charges under Serial No.8, Meter Rent Charge under Serial No.11, excess demand and energy charges under Serial No.13 (a,b,e), wind mill service charge under Serial No.14, Electricity Tax under Serial No.17 which are not actually fall within the definition of "net energy charges supplied" by the Respondent TANGEDCO as mentioned in Order No.6 of 2012 dated 31-07-2012. The maximum charge on net energy supplied by the Respondent in the month of January 2014 is clearly mentioned under Serial No.7 of the CC bill which is to a tune of Rs.39,38,045/- only which should have been taken as the basis for the purpose of calculation of two times. Other charges mentioned under Serial No.8 to 19 are either incidental charges or miscellaneous charges and therefore, they all should be excluded for the review of adequacy of security deposit. The split up of various charges in January 2014 CC bill are as under:-

January 2014 consumption details as per the CC Bill

Serial No.	Descriptions	Amount
7	Total energy charges (supplied by the Respondent, TANGEDCO)	Rs.39,38,045
8	Demand charges	Rs. 4,12,200
11	Meter Rent	Rs. 2000
12(a.b.e)	Excess demand and energy charges	Rs.15,76,047 Rs. 1,70,620 Rs. 456
14	Wind mill service charge	Rs. 1,200
17	E-tax	Rs. 2,20,843
18	Total Assessment Amount	Rs.63,21,413

2.9. From the above, it is clear that any other penalty in the nature of excess demand and energy charges which are penal in nature, demand charges, meter rent, e-tax and other such arrears may not constitute to fall under the definition of "Net Electricity Charges" and hence the procedure adopted by the Respondent in taking

the total assessed amount as the basis for the purpose of calculation of two times is illegal and against the Tariff Order No.6 of 2012 dated 31-07-2012.

2.10. In another typical case of M/s. Kaderi Ambal Mills, HTSC No.75, "B" Unit, Sivaganga who filed M.P.No.24 of 2015 working details as provided by the Respondent in the demand notice dated 28-04-2014 are as follows:-

April 2013 month (Highest)	-	Rs. 73,86,098/-
Two times of Rs.84,33,111/-	-	Rs.1,47,72,200/-
Existing Deposit	-	Rs. 17,45,884/-

		Rs.1,30,26,316/-

It is further submitted that in pursuance of the Petitioner's CC bill for the month of April 2013, which is now taken for the calculation of security deposit, it could be seen that the total assessed amount at Serial No.20 is inclusive of demand charges under Serial No.8, meter rent charges under Serial No.11, excess demand and energy charges under Serial No.13 (a,b,e), wind mill service charge under Serial No.14, Electricity tax under Serial No.17 which are not actually fall within the definition of "net energy charges supplied" by the Respondent TANGEDCO as mentioned in Order No.6 of 2012 dated 31-07-2012. The maximum charge on net energy supplied by the Respondent in the month of April 2013 is clearly mentioned under Serial No.7 of the CC bill which is to a tune of Rs.36,66,459.50 only taken should have been taken as the basis for the purpose of calculation of two times. Other charges mentioned under Serial No.8 to 19 are either incidental charges or miscellaneous charges and therefore, they all should be excluded for the purpose of adequacy of security deposit. The split up of various charges under April, 2013 CC bill are as under:-

April 2013 consumption details as per the CC Bill

Serial No.	Descriptions	Amount
7	Total energy charges (supplied by the Respondent TANGEDCO)	Rs.36,66,459.00
8	Demand charges @ Rs.3.00	Rs. 4,35,980.00
11	Meter Rent	Rs. 2,000.00
13(a)	Extra levy for exceeding quota consumption units	Rs. 9,25,705.00
(b)	Exceeding quota demand	Rs. 3,78,672.00
(f)	Evening Peak Energy and Demand Charges	Rs. 17,68,273.60
17	E-Tax	Rs. 2,08,007.50

Thus the other amounts in the nature of excess demand and energy charges which are penal in nature, demand charges, meter rent, e-tax on demand charges stayed by the Hon'ble Supreme Court and other such arrears may not constitute "Net Electricity Charges" and hence the procedure adopted by the Respondent in taking the total assessed amount as the basis for the purpose of calculation of two times is illegal and against the Tariff Order No.6 of 2012 dated 31-07-2012.

2.11. At para 8.7.2.1 and para 8.11 of the Order No.6 under the headings "Energy Charges" and "Billing and Payment", respectively, the meaning of net energy consumed is clearly explained. When a wind energy generator utilizes power for his captive use then the distribution licensee shall raise the bill at the end of the month only for the net energy supplied by the Respondent Board. Thus as per Clause 8.12.2 two times of the maximum net energy charges supplied by the Respondent Board alone could be the basis for calculating the additional security deposit and not otherwise. Clause 4 of the Tamil Nadu Electricity Supply Code, 2004 in sub-clause (2) lists out the following charges as Miscellaneous Charges and therefore, they all should be excluded for the review of adequacy of security deposit as they are only miscellaneous charges and not net energy charges payable every month.

- “(2) Miscellaneous charges, namely,
- (i) Capacitor compensation charge;
- (ii) Excess demand charge;
- (iii) Excess contracted load charge;
- (iv) Belated payment surcharge;
- (v) Additional security deposit, when so called upon;
- (vi) Service / Line shifting charge;
- (vii) Name transfer charge;
- (viii) Reconnection charge;
- (ix) Consumer meter card replacement charge;
- (x) Dishonored cheque service charge;
- (xi) Meter related charges;
- (xii) Application Registration charge;
- (xiii) Service connection charges
- (xiv) Excess demand and excess energy charges during Restriction and Control of Supply”.

2.12. It is evident that the items shown in Clause 4(2) Miscellaneous Charges, any other penalty in the nature of excess demand charges, low power factor disincentive and other such charges and arrears as listed in Clause 4 (2) of the Tamil Nadu Electricity Supply Code, 2004, cannot be taken into account for the purpose of calculating the maximum net energy charges for the preceding financial year as contemplated under Clause 8.12.2 of the Tariff Order No.6 of 2012 dated 31-07-2012 as this Commission.

2.13. In the demand notice dated 28-04-2014, impugned in M.P.No.45 of 2014, the Superintending Engineer, Tiruppur Electricity Distribution Circle has totally misconceived the Tariff Order No.6 of 2012 in adopting a wrong procedure for calculating the additional security deposit and it is clear from the above reasons that the Respondent has issued the impugned demand without any application of mind. By way of an amendment introduced to Tamil Nadu Electricity Supply Code, 2004 with effect 21-03-2012 from by a Notification No.TNERC/SC/7-30, dated 17-02-2012, the Commission has introduced the following clause as Regulation 5(5)(ii)(d):-

“(d) The security deposit in the above categories shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time”.

The Respondent has relied on Regulation 5(5)(ii)(d) of the Supply Code by including components to demand additional security deposit. Regulation 5(5)(ii)(d) of the Supply Code would apply only to the HT consumers for whom security deposit is to be calculated on the procedure laid down in 5(5)(ii)(a) of the Supply Code. In the instant case for the Petitioner clause 8.12.2 of the Order No.6 dated 31-07-2012 would only apply.

2.14. The excess demand charges are penal in nature and the actual charge for the recorded demand has already been calculated and claimed under Item No.8 of the CC bill at the rate of Rs.300/KVA therefore, the excess demand charges at the rate of 600/KVA calculated and claimed under item 13(a,b,c) of the CC bill cannot be taken into account for the purpose of calculating the net energy charge as they are penal in nature and are to be considered as incidental charges. Thus, such kind of incidental charges are not to be considered as net electricity charges and should therefore be excluded from the calculation of additional security deposit.

2.15. The demand notices are illegal and erroneous as the Respondent had arrived at the amounts by taking into consideration of the incidental charges, excess demand and energy charges which are nothing but miscellaneous charges and therefore, they cannot be construed as “net electricity charges” under Tariff Order No.6 of 2012 dated 31-07-2012 issued by the Commission.

3. Contentions of the Respondents in their Common Counter Affidavit:-

3.1. The above Miscellaneous Petitions are neither maintainable in law nor on facts. The subject issue in these Miscellaneous Petitions are already covered by the orders of the Commission in Order No.6 of 2012 dated 31-07-2012. In view of above, the Additional Security Deposit is being collected in accordance with the Commission's orders and regulations in force, the said order is binding on the Petitioners. Therefore, if the Petitioners are aggrieved, they should have filed an appeal before the APTEL in terms of section 111 of the Electricity Act, 2003. Therefore, in any case, these Miscellaneous Petitions are liable to be dismissed in limine.

3.2. As per the tariff order of the Commission, the tariff for HT services has been fixed under two-part tariff system (viz) demand charges and energy charges. The demand charges are the fixed charges component and the energy charges are the charges for the actual energy supplied or variable charges. Hence, the demand charges are payable even when no electricity was consumed by the consumer and in such cases the demand charges alone will have to be charged and no component of energy charges could be added as there was no consumption. Further, they are also required to pay for the right to have energy capacity available to them (whether or not they are using that capacity) at all times.

3.3. The "demand charge" is defined as a charge that "is determined using the maximum demand (or "Peak demand") occurring during the monthly billing period". The demand charge is billed as a fixed rate calculated on per KVA (Kilovolt-ampere) basis. This charge is based on the premise that industrial / commercial consumers and other bulk user of electricity who require power from the grid should pay a share

of the infrastructure and maintenance costs associated with the capacity to provide that power when needed. If the consumer uses that capacity at any given time during the monthly billing cycle, they are charged for that capacity during the entire billing cycle.

3.4. The rationale and relevance of demand charges is well established in the electricity industry. It is to be recognized that when a consumer is connected to a system, the utility has to provide or keep in readiness certain capacity of the system to serve the consumer. Machine capacity, transmission system, certain work force and supervisory staff is kept on the job of monitoring the system, attending to emergency, restoring the supply in the event of outage, routine and periodical maintenance, meter reading, billing, bill delivery, defraying administrative expenses not directly related to the consumption of energy etc., which are the elements of the fixed charges, as an accepted practice, is recovered through the mechanism of demand charges. These charges reflect the cost of generation and transmission requirement of consumer and are well justified. Hence, the demand charges are levied to recover the fixed charges of the licensee's facilities that are made available for effecting service to the consumer.

3.5. The demand charges covered under section 45 (3) (a) of the Electricity Act, 2003 which read as follows:-

“45. Power to recover charges:

(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.

(2) The charges for electricity supplied by a distribution licensee shall be –

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

- (3) The charges for electricity supplied by a distribution licensee may include –
- (a) a fixed charge in addition to the charge for the actual electricity supplied;
 - (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”

3.6. In accordance with sections 50 and 181 of the Electricity Act, 2003, the Commission has issued Tamil Nadu Electricity Supply Code and Tamil Nadu Electricity Distribution Code. Regulation 5 (5) of the Tamil Nadu Electricity Supply Code reads as follows:-

Regulation 5(5) of the Tamil Nadu Electricity Supply Code:-

- (i) *The adequacy of security deposit may be reviewed and refixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking into account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the security deposit shall be on the basis of the Commission’s directive to the Licensees in this regard.*
- (ii) *The adequacy of security deposit shall be based on the periodicity of billing of the respective category.*
- (a) *For the categories of consumer under monthly billing, the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April.*
x x x x x x x x
- (d) *The security deposit in the above categories shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time (amendment effective from 21-03-2012)*
- (iv) *If available deposit is less than the revised security deposit; the balance shall be collected as Additional Security Deposit either through a separate notice or by a distinct entry in the consumer meter card for LT services. Thirty days notice period shall be allowed for the payment. If the payment is not received within the above period of thirty days, the service is liable for disconnection.*
x x x x x x x x”

3.7. Clauses 34 and 35 of the Tamil Nadu Electricity Distribution Code provides as follows:-

34. Earnest Money Deposit:-

- (1) *The applicants required to pay Earnest Money Deposit will be asked to pay Earnest Money Deposit along with registration fee for registration of application.*
- (2) *The Earnest Money Deposit will be adjusted against the quantum of Initial Security Deposit payable by the applicant before availing supply and balance amount if any shall be collected.*
- (3) *In respect of High Tension applicant, the Earnest Money Deposit payable will be equal to the quantum of Initial Security Deposit.*
- (4) *If the applicant backs out after registration and payment of E.M.D. but before payment of Development Charges, Service Connection Charges and Meter Caution Deposit, then the application shall be cancelled and E.M.D. forfeited.*
- (5) *If the applicant backs out after payment of all charges and execution of agreement, the application shall be cancelled and agreement terminated forfeiting all amount remitted except meter caution in the case of both High Tension and Low Tension.*

x x x x x x

35. Security Deposit:-

- (1) *All applicants for supply of electricity shall pay initial security, before availing of the supply, in cash, demand draft at the rate fixed by the Commission from time to time.*

x x x x x

- (4) *Interest will be paid by the Licensee on Security Deposit at the rate as may be fixed by the Commission from time to time. Full calendar months only will be taken into account for the purpose of calculating the interest and the interest will be calculated to the nearest rupee i.e. 50 paise or above will be rounded off to the next higher rupee and less than 50 paise will be ignored.*

3.8. The Licensee is authorized to collect Earnest Money Deposit from all HT and LT Industrial applicants. EMD at the rate Rs.800/KVA is collected from HT applicants in accordance with Commission's order in M.P.No.41,dated 31-08-2004. This will be adjusted against the quantum of initial security deposit payable by the applicants before availing supply. Further, as per Regulation 5 (5) of Tamil Nadu Electricity Supply Code, the adequacy of security deposit is to be reviewed and re-fixed once in a year in case of High Tension consumers and LT consumers with monthly billing; once in two years in case of Low Tension consumers with bi-monthly billing, during April / May, taking into account the interest due for credit. The purpose

of the review and obtaining additional security deposit is to recover charges recoverable by the Licensee.

3.9. Regulation 4 of the Tamil Nadu Electricity Supply Code describes with regard to the charges recoverable by the Licensee as follows:-

“4. Charges recoverable by the Licensee- *The charges, recoverable by the Licensee from the consumers are:-*

(1) Tariff related charges, namely,-

(i) *The price of electricity supplied by him to the consumer which shall be in accordance with the tariff rates as the Commission may fix from time to time, for HT supply, LT supply, temporary supply and for different categories of consumers. x x x*

(ii) **Demand charges for HT supply and fixed charges for LT Supply** shall be payable by the consumer in accordance with the rates as the Commission may fix from time to time for different categories of consumers.

(iii) *Disincentive for power factor*

x x x x

(iv) *Additional charges for harmonics dumping*

x x x x

(2) Miscellaneous charges, namely,-

(i) *Capacitor Compensation charge ;*

(ii) *Excess demand charge;*

(iii) *Excess contracted load charge;*

(iv) *Belated payment surcharge;*

(v) *Additional security deposit; when so called upon;*

(vi) *Service / Line shifting charge*

(vii) *Name transfer charge*

(viii) *Reconnection charge*

(ix) *Consumer meter card replacement charge*

(x) *Dishonoured cheque service charge*

(xi) *Meter related charges*

(xii) *Application registration charge*

(xiii) *Service connection charges*

(xiv) *Excess demand and excess energy charges during Restriction and Control of supply.*

(3) Minimum charges where applicable

Further regulation 5(5) (ii)(d) of the Tamil Nadu Electricity Supply Code 2004 provides that, the Security Deposit in the above categories shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time”.

3.10. The Petitioners have executed agreement with the Respondents, wherein it has been clearly mentioned as follows:-

“4. To comply with requirements of Act and terms and conditions of Distribution Code and Supply Code:-

The consumer hereby undertakes to comply with all the requirements of the applicable Acts, Regulations etc. and Grid Code, Distribution Code and Supply Code and of any amendments, modifications or re-enactment thereof or of any other enactment to be passed in relation to supply made under this agreement from time to time and the rules, regulations or orders etc. made thereunder from time to time, provisions of the Tariffs, Scale of Miscellaneous and other charges and the terms and conditions of supply prescribed from time to time, and the consumer hereby agree not to dispute their applicability to this agreement.”

x x x x

“6. Obligation of consumer to pay all charges levied by Licensee:-

From the date of this agreement comes into force the consumer shall be bound by and shall pay the Licensee, 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 supply notified from time to time for the appropriate class of consumers to which such consumer belongs”.

From the above, it could be revealed that subject to the provisions of section 45, 47, 50, 181 (1) and 181 (2) v and (w) of the Electricity Act, 2003 and Regulation 4 and 5 (5) (ii) (d) of the Tamil Nadu Electricity Supply Code, the distribution licensee is empowered to seek security and to recover the charges such as tariff related charges namely, demand charges for HT supply, disincentive for power factor, additional charges for harmonics dumping, the tax or duty, if any, on electricity supplied and miscellaneous charges, namely, meter rent, excess demand excess energy charges during Restriction and Control of Supply etc. in connection with the charges for requiring a supply of electricity.

3.11. The Commission had issued Tariff Order on 15-05-2006 in connection with Non-Conventional energy sources vide Order No.3 dated 15-05-2006 wherein it has inter-alia been held as, follows:-

“8. Issue-wise Compilation of comments / suggestion and Commission’s views / decisions

Issue No.14: Payment of Security Deposit:-

Mr.K.Kasthurirangaian, Vice-Chairman, IWPA, during the public hearing has stated that payment of ASD may be fixed as 1 ½ months average on net consumption.

Mr.K.Venkatachalam, M/s.Tamil Nadu Spinning Mills Association during the public hearing has requested that for calculation of ACCD, net energy charges may be taken instead of gross energy charges.

Chairman, TNEB during the 5th SAC Meeting has suggested that the generation in wind mill is only for 6 months and for the balance 6 months they depend on Board for supply of electricity. Hence, the collection of security deposit may be continued as at present.

Commission’s views / decisions:-

The security deposit of two times of the average consumption is governed by the Tamil Nadu Electricity Supply Code. Since majority of the NCES power in Tamil Nadu is “Infirm” and they have banking provision, the Commission proposes two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period may be taken as the basis for the payment of security deposit by the user to the distribution licensee.

General Issues:-

10.12 Payment of Security Deposit:

The security deposit of two times of the average consumption is governed by the supply code. Since majority of the NCES power in Tamil Nadu is “infirm” and they have banking provision, the Commission proposes 2 times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period may be taken as the basis for the payment of security deposit by the user to the distribution licensee.

3.12. The security deposit of two times of the average consumption is governed by the Tamil Nadu Electricity Supply Code. Since majority of the NCES power in Tamil Nadu is “infirm” and they have banking provision, the Commission has proposed that two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period (financial year) may be taken as the basis for the payment of security deposit by the user to the distribution licensee. In this connection, it is pertinent to note that TANGEDCO has billed for net energy supplied

by the distribution licensee in respect of the captive user of the NCES based generators after adjusting the generated energy against the total consumption from the distribution licensee. Hence, the Hon'ble TNERC has specified that net energy supplied for calculating the payment of security deposit instead of gross energy. Similarly, since majority of the NCES power in Tamil Nadu is "Infirm" , the Commission has proposed two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period (financial year), instead of two times of the monthly average of the electricity charges for the preceding twelve months prior to April. Therefore, from the above, it is revealed that the Commission has specified the payment of security deposit in respect of the NCES based captive users in two aspects as tabulated below:-

Normal Consumers	NCES based captive user
1. Gross energy has to be taken	1. Net energy has to be taken
2. Two times of 12 months average CC charges has to be taken.	2. Two times of highest / maximum CC charges has to be taken.

Subsequently, the Commission has fixed the payment of security deposit in respect of wind energy captive user vide Order No.1 of 2009, dated 20-03-2009 and Order No.6 of 2012, dated 31-07-2012 as follows:-

"Order No.1 of 2009

8.12 Payment security and security deposit

x x x

8.12.2. As regards the security deposit of the consumer, the Commission decides to retain the present arrangements i.e. two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit by the consumers.

Order No.6 of 2012

8.12 Payment security and security deposit:

8.12.2 As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements i.e. charges corresponding to two times the maximum net energy supplied by the

distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit.”

In clause 8.12.2 of the order dated 31-07-2012, it was stated that the Commission decides to retain the present arrangement i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit. In clause 5 (5) (ii) (a) of the Code, it was stated that for the category of consumer under monthly billing the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April. The above position would make it clear that the Respondents are vested with the power to levy additional security deposit and it is also not disputed by the Petitioners. The above position would make it clear that the Respondents are vested with the power to levy additional security deposit and it is also not disputed by the Petitioners. The only dispute is whether inclusion of other charges for determining the additional security deposit is justifiable or not.

3.13. A simple example can be made to ascertain it easily, the Petitioner herein is a wind energy captive user during the financial year 2013-14. So adequate security deposit for the financial year 2014-15 has to be paid by the Petitioner for charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year 2013-14 in accordance with clause 8.12.2 of the Commission's Tariff Order No.6 of 2012 dated 31-07-2012. In accordance with said regulation, the Respondent arrived at and reviewed the adequacy of SD for the financial year 2014-15 in the test case, being M.P.No.45 of 2014, as follows:-

Working sheet for the year 2013-14

Month / Year	C.C. Charges
04/2013	Rs.28,26,925
05/2013	Rs.27,91,138
06/2013	Rs. 5,08,170
07/2013	Rs. 5,25,760
08/2013	Rs. 5,21,597
09/2013	Rs .5,17,391
10/2013	Rs.14,87,062
11/2013	Rs.25,53,744
12/2013	Rs.50,48,614
01/2014	Rs.63,21,413
02/2014	Rs.57,75,019
03/2014	Rs.23,66,060

The charges corresponding maximum net energy supplied by the licensee	=	Rs. 61,21,413	A
2 times of A	=	Rs.1,26,42,830	B
Required SD for the FY 2014-15	=	Rs.1,26,42,830	B1
SD available at Credit	=	Rs.41,50,694	C
SD required (B1-C)	=	Rs.84,92,136	D

Based on the above workings, the Petitioner in M.P.No.45 of 2014 was required to pay the additional security deposit of an amount of Rs.84,92,136 by the Respondent vide letter dated 28-04-2014. The said demand has been arrived based on the Commission's Tariff Order No.6 of 2012 dated 31-07-2012 read with regulation 5(5) (ii)(d) of the Tamil Nadu Electricity Supply Code.

3.14. The current consumption charges for the month of 01/2014 in respect of the Petitioner in M.P.No.45 of 2014 which includes as follows:-

Sl. No.	Details	Amount
1	Industrial consumption-Energy charges	Rs.38,85,596.00
2	Peak hour consumption – 20% extra charges for peak hour consumption	Rs. 1,19,071.70
3	Night hour consumption Rebate(-)	Rs. 66,621.78
4	Demand charges	Rs. 4,12,200.00
5	Meter Rent	Rs. 2,000.00
6	Excess Energy Charges	Rs.15,76,047.00

7	Excess demand charges	Rs. 1,70,620.20
8	Wind Mill PF RKVAHR	Rs. 1,200.00
9	Electricity Tax	Rs. 2,20,843.40
10	Assessment amount	Rs.63,21,413.00

From the above details, it is clear that the above mentioned charges are being paid by the said Petitioner every month. In this regard, it is pertinent to note that, for example, when the Petitioner defaults in the payment of the current consumption charges for the month of 01/2014 i.e. for the amount of Rs.63,21,413/-, which includes all the corresponding charges related to net energy supplied by the distribution licensee such as demand charges, excess demand charges, excess energy charges, meter rent, excess peak hour demand charges, electricity tax etc. Logically, current consumption deposit should be available at the credit of the CCD amount of the Petitioner inclusive of all the corresponding charges related to the net energy supplied such as demand charges, meter rent, excess peak hour demand charges, electricity tax etc. In case, the Petitioner could not pay the CC bill for 01/2014 and avails extension of time upto 28-02-2014 as permissible under regulation 15 (2) of the Tamil Nadu Electricity Supply Code, then the payment relating to charges for electricity supplied (CC Bill) between the period 27-12-2014 to 26-01-2014 (01/2014) and the period from 27-01-2014 to 26-02-2014 (02/2014) becomes payable by the Petitioner as on 28-02-2014. Then the entire charges to be paid may be Rs.1,26,42,826/- (i.e. Rs.61,21,413 x 2). Whereas, if the adequacy of SD is calculated as contended by the Petitioner, the SD of Rs.78,76,092/- (39,38,046 x 2) would only be available. As a result the available SD in credit of the Petitioner becomes insufficient to adjust against the unpaid current consumption charges for the month of 01/2014 and 02/2014. Therefore, the unpaid current consumption charges may not be realized by the licensee in full quantum in the event of the Petitioner continues to be in default which leads to irreparable loss to

the licensee and also seriously affect the Government exchequer. Ultimately, the purpose behind the review and collection of additional security deposit is to avoid any loss to the Licensee due to the default in the payment of current consumption charges by any consumer becomes meaningless. The provisions of section 45, 47, 50 86(1) (e) & (k) and 181 of the Electricity Act, 2003 and Regulations 4 and 5(5) (ii) (d) of the Tamil Nadu Electricity Supply Code empower the distribution licensee to seek security for all the charges for the harmonics dumping, the tax or duty, if any on electricity supplied, meter rent, excess demand and excess energy charges during the Restriction and Control of Supply etc. Therefore, the contention of the Petitioner that the total assessment amount which is inclusive of demand charges, meter rent, excess demand and energy charges, electricity tax, do not actually fall within the definition of net energy supplied by the Respondent / TANGEDCO as mentioned in Order No.6 of 2012 dated 31-07-2012 is wrong.

3.15. The Division Bench of the Madras High Court had the occasion to consider the validity of regulation 5(5) of the Tamil Nadu Electricity Supply Code, 2004 in a batch of writ petitions filed by the consumers of the State of Tamil Nadu in W.P.No.15469 of 2005 etc. and the Division Bench, while upholding the validity of Regulation 5(5) of the Tamil Nadu Electricity Supply Code, 2004 has followed the decision of the Hon'ble Supreme Court of India in M/s.Ferro Alloys Corporation Ltd. Vs. A.P. State Electricity Board and another (AIR 1993 SC 2005 -1993 supp. (4) SCC 136) wherein, among other things, the right of the Electricity Board to secure consumption deposit from the consumers under section 49 of the Electricity (Supply) Act, 1948 was upheld.

3.16. Further, in paragraph 136 of the said decision, it was inter-alia held that section 49 of the Electricity (Supply) Act, 1948 was valid and the nature of consumption deposit is to secure prompt payment and is intended for appropriation. In this connection, it is relevant to note that in para No.24 of the judgment in W.P.No.15469 of 2005 and etc. batch, the Division Bench of the Madras High Court observed that in so far as the wind mills are concerned, the learned Additional Advocate General appearing for the Electricity Board has conceded that the decision rendered by the Electricity Regulatory Commission in 2006 is accepted and therefore the writ petitions can be allowed in terms of the order passed by the State Electricity Regulatory Commission. Subsequently, the Commission passed Comprehensive Tariff Order on Wind Energy in its Order No.6 of 2012 dated 31-07-2012 in which the other charges were ordered to be included in the additional security deposit. In fact, some of the consumers challenged the order of the Commission and they were directed to pay the average taken in the previous year. That was also challenged and the High Court of Madras held that such an order of the Commission was not in consonance with the Regulations at that point of time and directed them to make a fresh representation which shall be considered by the Respondents. Therefore, the Tamil Nadu Electricity Supply Code was amended by inserting Clause 5 (5) (ii) (d) to include all the components to demand additional security deposit. The object of collecting additional security deposit is only to ensure that the electricity department is not put to any peril in the event of delay or default in payment of the consumption charges. In fact, if the Petitioners are aggrieved by such demand for payment of additional security deposit, they should have approached the APTEL but that was not done.

3.17. The above said decision of the High Court relying on the Supreme Court decision in B.R.Oil Mills's case, it was held that the true nature of the transaction in these cases is one of the advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is further held that it is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, they could make good the shortfall in consumption charges and the security deposit before actual disconnection. The said judgment squarely applies to the facts of the present case on hand. Therefore, following the said decision of the Courts, the demand made by the Respondent in the impugned orders are in consonance with the Tamil Nadu Electricity Supply Code. Therefore, the impugned demand notices issued by the Respondents / TANGEDCO are in order.

3.18. It is pertinent to note that "Consumption Charges" not only mean the consumption of electrical energy in kWhs multiplied by appropriate tariff rates but also include Demand / Fixed charges, fuel price and Power Purchase Adjustment (FPPPA) charges and any other charges approved by the Commission in connection with requiring supply of electricity. In accordance with section 47 of the Act read with 5 (5)(ii)(d), the distribution licensee may require from any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to deposit sufficient security against the all monies / estimated payment, which may become due. Therefore, the Current Consumption Charges / Assessment amount has to be taken for reviewing the adequacy of Security Deposit. Hence, the contentions raised in the petition by the Petitioners are not valid and not sustainable one.

3.19. As provided in section 47 of the Act, the distribution licensee shall be empowered to seek security in connection with the charges for requiring a supply of electricity, i.e. the Distribution Licensee may require from any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to deposit sufficient security against the estimated payment, which may become due. In this regard, it is pertinent to note that the estimated payment due includes Energy Charges, Fixed / Demand Charges, Fuel Price and Power Purchase Adjustment (FPPPA) charges, Electricity duty, meter rent, excess demand and energy charges, electricity tax and all other charges exhibited in the CC bill, as may be levied from time to time as approved by the Commission. In this regard, it is relevant that the current consumption charges, in other words the assessment amount in the HT bill shall include all the charges such excess charges, electricity tax etc., since these charges are the part and parcel of the current consumption charges. When, the consumer fails to pay the current consumption charges, he becomes a defaulter for the payment of the current consumption charges, which also includes excess charges billed for exceeding quota demand and energy, electricity tax and all other charges exhibited in the CC bill of the Petitioner. From the above, it could be observed that in accordance section 47 (1) of Electricity Act, 2003, all monies / estimated payment, which may become due by him, means all charges exhibited in the current consumption bill of the Petitioner (Assessment amount), since the Petitioner becomes a defaulter, all these charges / assessment amount become due by the Petitioner.

3.20. Subject to the provisions of section 45 of the Electricity Act, 2003 and regulation 4 of the Tamil Nadu Electricity Supply Code, the distribution licensee shall be empowered to recover all the charges from persons requiring supply of electricity.

These charges are tariff related charges namely, demand charges for HT supply, disincentive for power factor, additional charges for harmonics dumping, the tax or duty, if any, on electricity supplied, meter rent, excess demand and excess energy charges during Restriction and Control of Supply etc. and all other charges approved by the Commission from time to time. Moreover, from the provisions of amended regulation 5(5) (ii) (d) of the Tamil Nadu Electricity Supply Code read with section 47 and 181 (2) (v) (w), it could be concluded that the charges specifically excluded are alone to be excluded from calculation, and all other charges approved by the Commission including excess demand charges, capacitor compensation charges etc., are to be included for calculation of adequacy of current consumption deposit. Further, the word penalty is not envisaged by the Commission in the order dated 28-12-2008 in M.P.No.42, but approved the word as “Excess Charges”. So, it should be called as excess charges only and not penalty. Therefore, the contention of the Petitioners that the excess demand charges, power factor disincentive and other such charges as listed in Clause 4 of the Tamil Nadu Electricity Supply Code should stand excluded for calculation of adequacy of CCD, is not sustainable one.

3.21. The Distribution Licensee is empowered to recover the excess demand charges in accordance with Section 45 of the Act and regulation 4 (2) of the Tamil Nadu Electricity Supply Code. Moreover, in accordance with section 47 (1) of Electricity Act, 2003 all the monies / estimated payment, which may become due to him, means all charges exhibited in the current consumption bill of the Petitioner / Assessment amount, which also includes excess demand charges also, since when the Petitioner become a defaulter, all these charges / assessment amount become due by the Petitioner. Hence, all charges exhibited in the CC Bill / Assessment amount shall be taken for calculation of adequacy of current consumption deposit. In

this regard, it is pertinent to note that the Petitioner has paid the excess charges for the last year as follows:-

Month	Total Excess Charges
04/2013	182234
05/2013	369221
06/2013	30684
07/2013	56488
08/2013	13973.40
09/2013	0
10/2013	13981.20
11/2013	0
12/2013	912399
01/2014	1746667
02/2014	1366905
03/2014	0

Thus, the Petitioner usually exceeded the demand quota and energy quota and paid the excess charges in almost every month. Hence, the excess charges could not be termed as incidental charges. Therefore, the contention of the Petitioner that the excess charges are in the nature of incidental charges and therefore they are included one among the components under the miscellaneous charges under Regulation 4 (2) of the Supply Code 2004 and hence they cannot be taken for calculation of adequacy of CCD, is a misleading one.

3.22. The Petitioners herein are wind energy captive users. Therefore, the payment of security deposit has to be made in accordance with the clause 8.12.2 of the Order No.6 dated 31-07-2012 wherein the Commission decided to retain the present arrangement i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year. In Clause 5 (5) (ii) (a) of the Supply Code, it was stated that for the category of consumer under monthly billing the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April. The above position would make it clear that the Respondents are vested with

the power to levy additional security deposit and it is also not disputed by the Petitioners, rather the Petitioners admitted that the Petitioners fall under the category of partial captive consumer of wind energy and therefore, the adequacy of the security deposit needs to be reviewed in accordance with Tariff Order No.6 of 2012. The only dispute is whether inclusion of other charges for determining the additional security deposit is justifiable or not. Further, it is pertinent to note that “Consumption Charges” not only means the consumption of electrical energy in kWhs multiplied by appropriate tariff rates but also includes Demand / Fixed charges, Fuel Price and Power Purchase Adjustment (FPPPA) charges and any other charges approved by the Commission in connection with requiring supply of electricity. In accordance with section 47 of the Act, the Distribution Licensee may require from any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to deposit sufficient security against the all monies / estimated payment, which may become due. Therefore, the Current Consumption Charges / Assessment amount has to be taken for reviewing the adequacy of security deposit.

3.23. The ASD demand notices are being issued only in accordance with the provisions of sections 45, 47, 50, 181(2) (v) & (w) of the Electricity Act, 2003 and regulation 4 & 5 (5) of the Tamil Nadu Electricity Supply Code. Further, it is pertinent to note that the purpose of the review and obtaining Additional Security Deposit is to avoid any loss due to default in the payment of Current Consumption Charges by any consumer. In this regard, it is stated that the current consumption charges / assessment amount exhibited in the HT bill shall include all the charges such as excess charges, electricity tax etc., since these charges are the part and parcel of current consumption charges. When, the consumer / petitioner becomes default for the payment of the current consumption charges, which includes excess charges,

electricity tax etc. Logically, the assessment amount / current consumption charges exhibited in the HT CC bill has to be taken for reviewing adequacy of ACCD. If not, the purpose behind the review and collection of Additional Security Deposit (i.e.) to avoid any loss due to default in the payment of Current Consumption Charges (to adjust through available CCD) becomes meaningless.

3.24. Power to require security from the consumers flows from section 47 of the Act. Power to recover charges flows from section 45 of the Act which includes charge for the actual electricity supplied (in units) in addition to the fixed charges (demand charges, etc.) fixed by the Commission, rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee, etc. The Commission determines tariff from time to time in exercise of powers conferred under section 62 (1) and 86 (1) (a) of the Act. The tariff schedule to the tariff orders stipulates the rate at which the consumer has to pay towards Harmonics, Low Power Factor Surcharge, Billable demand (recorded demand or 90% of the sanctioned demand whichever is higher), i.e. demand charge in Rs./KVA/month and Energy charges in paise per kWh (Unit).

3.25. Regulation 4 (1) of the Tamil Nadu Electricity Supply Code specifies the tariff related charges. According to which, the tariff rates payable are the rates as the Commission may fix from time to time, for HT supply, etc., demand charges for HT supply and fixed charges for LT supply, disincentive for power factor, additional charges for harmonics dumping, the tax or duty on electricity supplied. Regulation 4(2) of the said Code specifies the miscellaneous charges which include excess demand charge, excess contracted load charge, meter related charges, excess demand and excess energy charges during Restriction and Control of supply.

3.26. In respect of HT consumers like the Petitioners, every month, all the charges mentioned above will be raised towards current consumption charges for the relevant month.

3.27. Regulation 5(5) of the Tamil Nadu Electricity Supply Code empowers the TANGEDCO to raise additional security deposit on review. Regulation 5(5)(ii)(d) of the said Code provides that the security deposit shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time. In other words, this regulation stipulates that charges specified by the Commission in the respective tariff orders and Code will have to be taken into account for the purpose of arriving at the adequacy of the security deposit and to raise a demand for additional security deposit, if need be.

3.28. In the monthly current consumption bills, the other charges, such as transmission charges, wheeling charges, scheduling and system operating charges arrears relating to past period prior to the financial year under review for security deposit, operation and maintenance of lines / sub-stations of generators, self-generation tax are raised, those charges are not taken into account for the purpose of review of adequacy of security deposit. The reason for not taking those charges is the specific bar provided for in regulation 5(5)(ii)(d) of the said Code.

3.29. The object of securing the deposit based on statutory provisions aforesaid is to prevent a possible loss to the licensee in the event of non-payment of the current

consumption bills for a month. It is relevant to state that the HT consumers are statutorily entitled to pay the current consumption bills within seven days from the date of such bills, which is the due date for payment. Even in case of non-payment within the due date, the supply could not be disconnected automatically, since section 56 of the Act and regulation 14 of the said Code mandates issue of 15 clear days notice prior to disconnection for non-payment of dues. Further, regulation 15 (2) of the said Code allows the consumer to make application for extension of time to make payment beyond the expiry of the notice period. Thereby, the consumer can prolong the payment of current consumption charges for about 60-64 days (over two months). In case of any further default and in order to ensure the current consumption charges for over two months, the adequacy of security deposit is fixed at two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year vide para 8.12.2 of Tariff Order No.6 dated 31-07-2012.

3.30. If the contention of the consumer is accepted that the charges such as demand charges, excess demand and energy charges, electricity tax, etc., should not be taken into account, particularly when the consumer have the habit of invariably exceeding the demand and energy quota every month, the resultant position will be that the TANGEDCO will not have adequate security deposit at all times thereby facing the risk of loss. Therefore, the Petitioner neither entitled to a statutory relief nor an equitable relief.

3.31. Applying the decision of the Supreme Court reported in AIR 1993 SC 2005 and the High Court of Madras in W.P. No.15469 of 2005 etc. batch and regulation 5 (5) of the Tamil Nadu Electricity Supply Code and Clause 8.12.2 of the Tariff Order

No.6 dated 31-07-2012, the demand made by the Respondents / Superintending Engineers concerned in the impugned orders are in consonance with law. Therefore, the impugned demand notices issued by the Respondents / TANGEDCO are in order. Hence, these petitions are neither maintainable in law nor on facts.

4. Common Written Submissions filed on behalf of the Petitioners in M.P.Nos.50, 51, 52, 53 of 2014 and 23 and 24 of 2015:-

4.1. In order to safeguard the interest of the TANGEDCO, Regulations provide for the collection of Security Deposit and to review the adequacy of the same in suitable manner during the commencement of each financial year from April. There are two types of consumers in the State of Tamil Nadu. One type of consumers is solely depended on the Respondent TANGEDCO for their full consumption of energy and they do not have any other captive energy of their own for consumption. In order to regulate the adequacy of the security deposit held by such consumers who are solely dependent on the Respondent TANGEDCO the Tamil Nadu Electricity Supply Code, 2004 provides as follows:-

“Regulation 5(5) (ii) (a) : For the categories of consumer under monthly billing, the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding 12 months prior to April”.

4.2. In respect of the type of consumers who consume power from the Respondent TANGEDCO and also from their own captive source either through their own windmills or third party sources, the review of adequacy of Security Deposit is being regulated and collected by the respective orders issued by the Commission from time to time. The latest of such order was released in Order No.6 of 2012 dated 31-07-2012 which goes as follows:-

8.12.2 As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements, i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit”.

4.3. Depending up on the pattern of consumption by a consumer, namely those who have solely dependent on the TANGEDCO or partially with TANGEDCO power and partially on their own captive power, or third party power, the Respondent TANGEDCO has to review the adequacy of security deposit either by way of Regulation 5 (5) (ii) (a) of the Tamil Nadu Electricity Supply Code, 2004 or by applying Clause 8.12.2 of the Tariff Order No.6 of 2012 issued by this Commission dated 31-07-2012.

4.4. The Petitioners are already having sufficient security deposit to secure the consumption charges payable for the period 2014-15. The Petitioners fall under the second category of partial captive consumer of wind energy / third party power user and therefore, the adequacy of the security deposit needs to be reviewed as per the Tariff Order No.6 of 2012 only and not as per Regulation 5 (5) (ii) of the Tamil Nadu Electricity Supply Code, 2004.

4.5. The Respondents while reviewing the adequacy of the security deposit for the year 2014-15 attempted to have the best of both, which is impermissible in law. However, without correctly understanding the text of the operating provisions, the Respondents have raised a demand for over and above the existing deposits, which is unsustainable in law and against the Tariff Order No.6 of 2012 dated

31-07-2012. The Respondents have however misconceived the same while calculating the Additional Security Deposit in the demand notices issued by him.

4.6. As per Tariff Order No.6 of 2012 dated 31-07-2012 issued by the Commission, in respect of windmill captive consumers / third party users, the security deposit shall be corresponding to two times of the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year and therefore, it alone shall be taken as the basis for the payment of additional security deposit. This would mean that only the maximum of unit charges collected at the rate of Rs.5.50 per unit with added / reduced charges on peak hour and night hour in Item 1 and demand charge in Serial No.7 shall be calculated and accordingly, the maximum of it in any month should be arrived and the two times of the said net energy charges need to be collected as security deposit, excluding excess charges under which has already been billed under Serial No.1 and 7 and tax on demand charges as the same has been stayed by the Supreme Court of India, New Delhi. However, without following the same, the Respondents have taken the highest gross CC bill of the previous financial year viz. consumption for the month in which highest amount is billed and accordingly, multiplied it by two, in arriving the present demand, which procedure goes against the spirit of the tariff order issued by the Commission.

4.7. Other charges mentioned under Serial No.8 to 19 are either incidental charges or miscellaneous charges and therefore, they all should be excluded for the purpose of adequacy of security deposit.

4.8. Any other amount in the nature of excess demand and energy charges which are penal in nature, meter rent, e-tax on demand charges stayed by the Hon'ble Supreme Court and other such arrears may not constitute to fall under the definition of "Net Electricity Charges" and hence the procedure adopted by the Respondents in taking the total assessed amount as the basis for the purpose of calculation of two times is illegal and against the Tariff Order No.6 of 2012 dated 31-07-2012.

4.9. The Respondents ought to have seen that Clause 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code would not be applicable to the case of the Petitioner inasmuch as the Petitioner is not a HT consumer simplicitor, but is a captive wind energy / third party consumer availing power from other than the Respondents.

4.10. The Respondents ought to have seen that in case of captive consumption and third party power usage, the Commission, in exercise of its powers under section 181, 61(h) and 86 (1) (e) of the Electricity Act, 2003 has issued Tariff Order No.6 of 2012 dated 31-07-2012 with effect from 01-08-2012, inter-alia providing under Clause 8.12.2 as follows:-

"As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements i.e. charges corresponding to two times the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit".

4.11. The Respondents have attempted to have the best of both by applying both Regulation 5(5)(ii)(a) which is applicable to the consumers of TANGEDCO alone and

clause 8.12.2 in Order No.6 dated 31-07-2012 which is applicable to wind energy / second party user, which is impermissible in law.

4.12. The Respondents ought not to have relied upon the Chief Financial Controller's Circular Memo No.CFC/FC/DFC/AAO.HT/AS3/ADD Review HT/LT/D.No.144/14, dated 22-02-2014 for claiming the impugned Additional Current Consumption Deposit. The C.F.C. has no authority to issue said circular without the consent and knowledge of the Commission.

5. Common Written Submission on behalf of the Petitioner in M.P.No.45 of 2014:-

5.1. The Petitioner in M.P.No.45 of 2014 is already keeping Security Deposit (SD) to the tune of Rs.41,50,694/- with the third Respondent. Clause 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code would not be applicable in the case of Petitioner inasmuch as the Petitioner is not a HT consumer falling under the above type of category. But the Petitioner being a captive wind energy / OA power consumer having its own generating plants, the adequacy of security deposit needs to be regularized as per the tariff orders issued by the Commission from time to time and the latest being Order No.6 of 2012 dated 31-07-2012.

5.2. In case of captive consumption, the Commission, in exercise of its powers under section 181, 61(h) and 86 (1) (e) of the Electricity Act, 2003, has issued Tariff Order No.6 of 2012 dated 31-07-2012 which came into effect from 01-08-2012, inter-alia providing under clause 8.12.2 as follows:-

“As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements, i.e. charges corresponding to two times the maximum net energy supplied by the

Distribution Licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit”.

5.3. If Clause 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code is applied, the additional security deposit can be only on the basis of two times monthly average of the electricity charges for the preceding 12 months prior to April. On the other hand, if it was calculated under clause 8.12.2 of the Tariff Order 6 of 2012, it would be two times of the highest net energy supplied by TANGEDCO during the preceding financial year.

5.4. The impugned demand notice was erroneously prepared and delivered to the Petitioner by the Respondent purporting to invoke clause 5.5 (ii)(a) of the Supply Code, but in contra calculating the Security Deposit on the basis of highest billing during the preceding one year. Clause 5.5(ii)(a) of the Supply Code is not at all applicable to the Petitioner who is a captive consumer i.e. consuming power from the Respondent TANGEDCO and also from its own captive source either through its own windmills or otherwise. It is clear that the impugned notice is passed without any application of mind and liable to set aside on this ground alone.

5.5. When attempting to review the adequacy of the security deposit for the year 2014-15, the Respondent has reviewed the same by erroneously citing Regulation 5(5)(ii)(a) and then calculated the same on the basis of Tariff Order No.6 of 2012 dated 31-07-2012. The third Respondent has attempted to have the best of both, which is impermissible in law. However, the Respondent without correctly understanding the text of the operating provisions, has raised a demand for Rs.84,92,136/- over and above the existing deposit of Rs.41,50,694/- which is unsustainable in law and against the Tariff Order No.6 of 2012 dated 31-07-2012.

5.6. As per Tariff Order No.6 of 2012 dated 31-07-2012 issued by the Commission, in respect of such windmill captive consumers, the security deposit shall be corresponding to two times of the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year and therefore, it alone shall be taken as the basis for the payment of Additional Security Deposit. This would mean that only the maximum of unit charges collected at the rate of Rs.5.50 per unit with added / reduced charges on peak hour and night hour shall be calculated and accordingly, the maximum of it in any month should be arrived and the two times of the said net energy charges need to be collected as security deposit. However, without following the same, the Respondent has taken the highest gross CC bill of the previous financial year viz. consumption for the month of January 2014 for Rs.63,21,413/- and accordingly, multiplied it by two, in arriving the present demand, which procedure goes against the spirit of the tariff order of the Commission. The wrong procedure adopted by the third Respondent in the demand notice is reproduced below:-

Working details as per third Respondent in the demand notice dated 28-04-2014

January 2014 month (Highest)	:	Rs.	63,21,413/-
Two times of Rs.63,21,413/-	:	Rs.	1,28,42,830/-
Existing Deposit	:	Rs.	41,50,894/-
Additional Deposit now demanded	:	Rs.	84,92,136/-

5.7. The Petitioner's CC bill for the month of January 2014 is now taken for the calculation for reviewing the adequacy of security deposit. It could be seen that the total assessed amount at Serial No.19 is inclusive of demand charges under Serial No.8, Meter Rent Charge under Serial No.11, excess demand and energy charges under Serial No.13(a,b,e), wind mill service charge under Serial No.14, Electricity tax

under Serial No.17 which are not actually fall within the definition of “net energy charges supplied” by the Respondent TANGEDCO as mentioned in Order No.6 of 2012 dated 31-07-2012. Such charges are falling under Miscellaneous Charges as further explained under Regulation 5 of the Tamil Nadu Electricity Supply Code, 2004. Therefore, they are not to be considered for arriving charges for the net energy supplied. The maximum charge on net energy supplied by the third Respondent during the month of January 2014 is clearly mentioned under Serial No.7 of the CC bill which is to a tune of Rs.39,38,045/- only, which should have been taken as the basis for the purpose of calculation of two times. Other charges mentioned under Serial No.8 to 19 are either incidental charges or miscellaneous charges and therefore, they all should be excluded for the review of adequacy of security deposit. Any other penalty in the nature of excess demand and energy charges, demand charges, meter rent, e-tax and other such arrears may not constitute to fall under the definition of “Net Energy Charges” as they are falling under the classification of Miscellaneous Charges as explained in Regulation 5 of the Tamil Nadu Electricity Supply Code, 2004.

5.8. The actual net energy consumed by the Petitioner in the month of January 2014 under Serial No.1 is 7,06,472 units and the corresponding energy charges payable is Rs.38,85,596/- (7,06,472 units x Rs.5.50 per unit) and therefore, it alone shall be taken as the basis for the purpose of calculation of two times in arriving the Additional Security Deposit. The actual net energy consumed charges under Serial No.1 includes the excess energy consumption of 1,43,277 units. The Respondent under Serial No.13 (a) of the CC bill has charged for excess energy consumption of 1,43,277 units at twice normal rate i.e. Rs.15,76,047/- (1,43,277 units x Rs.11 per unit) as per M.P.No.38 of 2008. The excess demand charges are in the nature of

penalty and therefore, they are nothing but Miscellaneous charges which may be there in any one month or may not be there in the other months These excess demand charges are to be considered as incidental charges or miscellaneous charges. Hence, they cannot be considered as Net Charge on Electricity supplied by the Distribution Licensee and therefore be excluded for the purpose of calculation of Additional Security Deposit.

5.9. The impugned demand notice is therefore clearly illegal and erroneous as the Respondent had arrived at the said amount by taking into consideration of the Miscellaneous Charges like excess demand charges and therefore, they are not part of the “Net Charge on Electricity Supplied” as per the definition of the Supply Code in clause 4 (2) and also not falling under the definition of net charges for supply of electricity by the Distribution Licensee as defined in the Tariff Order No.6 of 2012 dated 31-07-2012.

5.10. Clause 4 (2) of the Tamil Nadu Electricity Supply Code, 2004 lists out the charges which are miscellaneous and therefore, they all should be excluded for the review of adequacy of security deposit, as they are only miscellaneous charges and not charges for supply of electricity.

5.11. From the definition made under clause 4(2) miscellaneous charges and also from the fact that a separate clause is provided under clause 5 for explaining the nature of such miscellaneous charges, it is made clear that, any other penalty in the nature of excess demand charges, low power factor disincentive and other such charges and arrears as listed in clause 4(2) of the Tamil Nadu Electricity Supply Code, 2004 may not constitute to fall under the definition of “Electricity Charges” as

they are only miscellaneous charges falling under clause 4 (2) / clause 5 of the Tamil Nadu Electricity Supply Code, 2004.

5.12. The amendments were introduced to the Supply Code by including components vide Regulation 5(5)(ii)(d) to demand additional Security Deposit. Regulation 5(5)(ii)(d) of the Supply Code would apply only to the HT consumers for whom Security Deposit is to be calculated on the procedure laid down in 5(5)(ii)(a) of the Supply Code. In the instant case for the Petitioner is falling under clause 8.12.2 of the comprehensive tariff order on Wind Energy No.6 dated 31-07-2012 and therefore, clause 5 (5)(ii)(d) would not apply to such cases of windmill captive consumers.

5.13. Section 47 of the Electricity Act, 2003 permits the Respondents to collect the required security and based on the power flowing out of the said provision The Respondents are empowered to collect security deposits supported by the Tamil Nadu Electricity Supply Code, 2004. Hence, according to the above provision of law, the power to collect security deposit shall be limited only to the quantum of electricity supplied to such consumers and therefore, the quantum of security deposit should relate only to the cost on electricity and not on any other miscellaneous charges.

5.14. What is to be considered in the present matter is, to ascertain whether the consumer has paid or retaining a deposit to secure the interest of the Respondents in the matter of supply of electricity. This is being regulated under section 47(1)(a) of the Act.

5.15. Normally, in respect of HT services, like those of the Petitioner, the Respondents would supply power in advance for a billing period of 30 days ranging from 27th of the earlier month to 26th of the succeeding month. Accordingly, the bill for such consumption of energy will be supplied to the consumer within 4 days taking the reading on 27th. On receipt of the bill, the consumer should pay the bill within 7 days of receipt of the bill. Hence, the bill needs to be paid within $30 + 4 + 7 = 41$ days. However, the Respondents are having deposit equivalent to 60 days or two months, as the case may be. Hence, the deposits they have already kept with them are equivalent to the average 60 days consumption and however, they are liable to pay the bills within 41 days. Already, the Respondents are having an amount equivalent to additional 19 days. When they are already having excess deposits for more than 19 days, demanding further deposit considering certain few stray charges is totally unsustainable to legal provisions.

5.16. In exceptional cases, where the consumer is not able to pay the CC bill within 41 days, on the request by the consumer and on acceptance by the Respondents, the payment can be made within 15 days of the due date with interest of 18% per annum or 1.5% per month, which again extends the period to avail electricity supply without any interruption for $41 + 15$ days which is equivalent to 56 days only. Thereafter, the Respondents have the right to disconnect the supply if the amount is not paid within 56 days, whereas the Respondents are keeping the security deposit for 60 days. Hence, they have enough security with each consumer and their interest is only restored by way of keeping security deposit for more than the required periods either it is 41 days or 56 days even in the exceptional cases.

5.17. Section 47 (1) (a) empowers the Respondents to collect deposit only in respect of the electricity supplied to such persons. As such, the law does not empower to recover any other incidental charges in advance which may happen or may not happen. The various charges disputed in the M.P. are not regular electricity charges and they are liable to be paid in exceptional circumstances and therefore they cannot be treated as regular electricity charges collected regularly on each month without any exception.

5.18. The judgment of the Division Bench of Madras High Court dated 18-08-2007 in W.P.No.15469 to 15474 of 2007 etc. batch relied by the Respondent is not relevant to the present facts of the case. The judgment in B.R. Oils Mills, Bharathpur Vs. The Assistant Engineer (D), R.S.E.B., Bharatpur which was relied in the said Writ Petition batch cases is also not relevant, since the said judgment was rendered under the Electricity Act, 1910, Electricity Supply Act, 1948 since repealed and the terms and conditions framed thereon. The circumstances of the present case are different after enactment of the new Electricity Act, 2003 and the formation of State Electricity Regulatory Commissions. Supply and Control of Electricity is vested with the Regulatory Commissions who will direct the Distribution Licensees to follow the method of charging and the quantum of charges to be collected from the consumers. Therefore, the reliance on the above judgments as placed by the Respondents is not correct.

6. Common Written Submission filed on behalf of Respondents:-

6.1. Power to require security from the consumers flows from section 47 of the Electricity Act, 2003. Power to recover charges flows from section 45 of the said Act which includes charge for the actual electricity supplied (in units) in addition to the

fixed charges (demand charges etc.) fixed by the Commission, rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee etc. The Commission determines tariff from time to time in exercise of powers conferred under section 62 (1) and 86(1) (a) of the said Act. The tariff schedule to the tariff orders stipulate the rate at which the consumer has to be pay towards Harmonics, Low Power Factor Surcharge, Billable demand (recorded demand or 90% of the sanctioned demand whichever is higher) i.e. demand charge in Rs./KVA/month and energy charges in paise per kWh (Unit).

6.2. Regulation 4(1) of the Tamil Nadu Electricity Supply Code specifies the tariff related charges. According to which, the tariff rates payable are the rates as the Commission may fix from time to time, for HT supply, etc., demand charges for HT supply and fixed charges for LT supply, disincentive for power factor, additional charges for harmonics dumping, the tax or duty on electricity supplied. Regulation 4 (2) of the said Code specifies the miscellaneous charges, which include excess demand charge, excess contracted load charge, meter related charges, excess demand and excess energy charges during Restriction and Control of supply.

6.3. Regulation 5(5) of the Tamil Nadu Electricity Supply Code empowers the TANGEDCO to raise additional security deposit on review. Regulation 5(5)(ii)(d) of the said Code provides that the security deposit shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time. In other words, this regulation stipulates that charges specified by the Commission in the respective tariff orders and Code (as discussed in para 6.1 and 6.2 above) will have to be taken into

account for the purpose of arriving at the adequacy of the security deposit and to raise a demand for additional security deposit, if need be.

6.4. In the monthly current consumption bills, the other charges, such as transmission charges, wheeling charges, scheduling and system operating charges arrears relating to past period prior to the financial year under review for security deposit, operation and maintenance of lines / sub-stations of generators, self-generation tax are raised, those charges are not taken into account for the purpose of review of adequacy of security deposit. The reason for not taking those charges is the specific bar provided for in regulation 5(5)(ii) (d) of the said Code.

6.5. The object of securing the deposit based on statutory provisions aforesaid is to prevent a possible loss to the licensee in the event of non-payment of the current consumption bills for a month. It is relevant to state that the HT consumers are statutorily entitled to pay the current consumption bills within seven days from the date of such bills, which is the due date for payment. Even in case of non-payment within the due date, the supply could not be disconnected automatically, since section 56 of the Act and regulation 14 of the said Code mandates issue of 15 days clear notice prior to disconnection for non-payment of dues. Further, regulation 15 (2) of the said Code allows the consumer to make application for extension of time to make payment beyond the expiry of the notice period. Thereby, the consumer can prolong the payment of current consumption charges for about 60-64 days (over two months). In case of any further default and in order to ensure the current consumption charges for over two months, the adequacy of security deposit is fixed charges corresponding to two times of the maximum net energy supplied by the distribution licensee in any month in the preceding financial year.

6.6. Assessment amount of the Petitioner in M.P.No.42 of 2014 during the month 11/2013 to 02/2014 is more when compared to other months of the year is due to reason that the Petitioner had drawn more energy from TANGEDCO over and above their captive energy, which resulted in the Petitioner's exceeding the energy quota fixed. It is Petitioner's responsibility to monitor their generation against their consumption. In this connection, it is relevant to mention further that the Petitioner had no energy either from current month captive generation or from their banking account so as to fully adjust against consumption. Hence, the Petitioner had paid the excess energy and excess demand charges for drawing power even beyond their quota. Further, the Petitioner is well aware of the prevailing Restrictions and Control measures for HT consumers in the State in accordance with Regulation 38 of the Tamil Nadu Electricity Distribution Code and also the Commission has approved to levy excess demand and excess energy charges for exceeding the quota fixed on energy and demand in M.P.No.42 of 2008 dated 28-12-2008. Moreover, the said charges also included those under regulation 4(ii) of Tamil Nadu Electricity Supply Code. During Restriction and Control, the Petitioners should have planned his consumption from TANGEDCO to be well within the quota provided. Having exceeded the quota, contention of the Petitioner that due to implementation of R & C the Petitioner had paid excess charges and the same could not be included for calculation of adequacy of additional security deposit is not acceptable one. Ultimately, the purpose behind the review and collection of additional security deposit (i.e.) to avoid any loss due to default in the payment of Current Consumption Charges by any consumer (to adjust through available CCD) becomes meaningless. In fact, Regulation 5(5) (ii) (d) of Tamil Nadu Electricity Supply Code has been

notified when Regulation 38 of Tamil Nadu Electricity Distribution Code was in vogue.

6.7. If the contention of the Petitioner is accepted that the charges such as demand charges, excess demand and energy charges, electricity tax etc. should not be taken into account, particularly when the consumer on hand have the habit of invariably exceeding the demand and energy quota every month, the resultant position will be that the TANGEDCO will not have adequate security deposit at all times thereby facing the risk of non-recovery of legitimate CC charges due to the TANGEDCO and thereby incurring loss. Therefore, the petitioners are neither entitled to a statutory relief nor an equitable relief.

6.8. Applying the decision of the Supreme Court reported in AIR 1993 SC 2005 and the Hon'ble High Court of Madras in W.P. No.15469 of 2005 and etc batch cases and Regulation 5 (5) of the Tamil Nadu Electricity Supply Code and clause 8.12.2 of the Tariff Order No.6 dated 31-07-2012, the demand made by the Respondents / Superintending Engineers concerned in the impugned orders are in consonance with law. Therefore, the impugned demand notices issued by the Respondents / TANGEDCO are in order. Hence, these petitions are neither maintainable in law nor on facts.

6.9. The rationale and relevance of demand charges is well established in the electricity industry. It is to be recognized that when a consumer is connected to a system, the utility has to provide or keep in readiness certain capacity of the system to serve the consumer. Machine capacity, transmission system, certain work force and supervisory staff is kept on the job of monitoring the system, attending to

emergency, restoring the supply in the event of outage, routine and periodical maintenance, meter reading, billing, bill delivery, defraying administrative expenses not directly related to the consumption of energy etc. which are the elements of the fixed charges, as an accepted practice, is recovered through the mechanism of demand charges. These charges reflect the cost of generation and transmission requirement of consumer and are well justified. Hence, the demand charges are levied to recover the fixed charges of the Licensee's facilities that are made available for effecting service to the consumer.

6.10. The demand charges are covered under section 45 (3) (a) of the Electricity Act, 2003 which read as follows:-

“45. Power to recover charges:

- (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*
- (2) The charges for electricity supplied by a distribution licensee shall be –*
 - (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;*
 - (b) Published in such manner so as to give adequate publicity for such charges and prices.*
- (3) The charges for electricity supplied by a distribution licensee may include-*
 - (a) a fixed charge in addition to the charge for the actual electricity supplied;*
 - (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee,*
x x x x x x x x “

From the aforementioned provisions of the Electricity Act, 2003, the distribution licensee shall be empowered to recover charges for supply of electricity. In addition, the said section provides for collection of fixed charges (demand charges) and all other charges approved by the Commission from time to time. Accordingly, the demand charges are levied as fixed charges. Hence, the licensee / TANGEDCO is

recovering the demand charges. The general theory in the Electricity Industry is as follows:-

The demand charges reflect the utilities fixed costs of providing a given level of power availability to the consumer, and energy charges reflect the variable portion of those costs as the customer actually uses that power availability”.

From the above, it could be observed that “Consumption Charges” means the consumption of electrical energy in kWhs multiplied by appropriate tariff rates and also includes demand / fixed charges, Fuel Price and Power Purchase Adjustment (FPPA) charges and any other charges approved by the Commission in connection with requiring supply of electricity.

6.11. Section 47 (power to require deposit) of the Electricity Act, 2003 enables the distribution licensee to require security from the consumers. The said section is reproduced below:-

“47. Power to require security:

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues. x x x”

It could be seen from the above that the distribution licensee is empowered to seek security in connection with the charges from the person requiring a supply of electricity. That is, the Distribution Licensee may require from any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act,

to deposit sufficient security against the all monies / estimated payment, which may become due. In this regard, it is pertinent to note that the estimated payment due includes energy charges, fixed / demand charges, Fuel Price and Power Purchase Adjustment (FPPPA) charges, electricity duty and any other charges as may be levied from time to time approved by the Commission. Besides, the security amount so given by the person, requiring a supply of electricity shall be refundable and carry interest as specified by the Commission concerned.

6.12. Section 50 and sub-section (1) and (2) (v) and (w) of section 181 of the Electricity Act, 2003, read as follows:-

Electricity Act, 2003

“50. The Electricity Supply Code:

The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing altering or maintaining electric lines or electrical plant or meter and such other matters.

Powers of State Commissions to make Regulations:-

181 (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

x x x x x x x

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

(a) to (u) x x x x x

(v) Reasonable security payable to the distribution licensee under sub-section (1) of section 47.

(w) Payment of interest on security under sub-section (4) of section 47.”

x x x x x x x

The Commission issued Tamil Nadu Electricity Supply Code and Tamil Nadu Electricity Distribution Code under the above provisions. Regulation 5 (5) of the Tamil Nadu Electricity Supply Code and Regulations 34 and 35 of the Tamil Nadu Electricity Distribution Code read as follows:-

Regulation 5(5) of the Tamil Nadu Electricity Supply Code:-

- (i) *The adequacy of security deposit may be reviewed and refixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking into account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the security deposit shall be on the basis of the Commission's directive to the Licensees in this regard.*
- (ii) *The adequacy of security deposit shall be based on the periodicity of billing of the respective category.*
 - (a) *For the categories of consumer under monthly billing, the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April."*

x x x x x x x

"(d) The security deposit in the above categories shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time (effective from 21-03-2012)."

"(iv) If available deposit is less than the revised security deposit, the balance shall be collected as additional security deposit either through a separate notice or by a distinct entry in the consumer meter card for LT services. Thirty days notice period shall be allowed for the payment. If the payment is not received within the above period of thirty days, the service is liable for disconnection."

x x x x x x x

Tamil Nadu Electricity Distribution Code:-

"34. Earnest Money Deposit:

- (1) *The applicants required to pay Earnest Money Deposit will be asked to pay Earnest Money Deposit along with registration fee for registration of application.*
- (2) *The Earnest Money Deposit will be adjusted against the quantum of initial security deposit payable by the applicant before availing supply and balance amount if any shall be collected.*
- (3) *In respect of High Tension applicant the Earnest Money Deposit payable will be equal to the quantum of initial security deposit.*

(4) If the applicant backs out after registration and payment of E.M.D. but before payment of Development charges, Service connection charges and Meter Caution Deposit, then the application shall be cancelled and E.M.D. forfeited.

(5) If the applicant backs out after payment of all charges and execution of agreement, the application shall be cancelled and agreement terminated forfeiting all amount remitted except meter caution deposit in the case of both High Tension and Low Tension.”

x x x x

“35. Security Deposit:

(1) All applicants for supply for electricity shall pay initial security deposit, before availing of the supply, in cash demand / draft at the rate fixed by the Commission from time to time.”

x x x x x x

“(4) Interest will be paid by the Licensee on Security Deposit at the rate as may be fixed by the Commission from time to time. Full calendar months only will be taken into account for the purpose of calculating the interest and the interest will be calculated to the nearest rupee i.e. 50 paise or above will be rounded off to the next higher rupee and less than 50 paise will be ignored.

The Licensee is thus authorized to collect Earnest Money Deposit from all HT and LT industrial applicants. EMD at the rate Rs.800 / KVA is collected from HT applicants in accordance with the Commission's order dated 31-08-2004 in M.P.No.41. This will be adjusted against the quantum of initial security deposit payable by the applicants before availing supply. Further, as per Regulation 5 (5) of Tamil Nadu Electricity Supply Code, the adequacy of security deposit is to be reviewed and refixed once in a year in case of High Tension consumers and LT consumers with monthly billing; once in two years in case of Low Tension consumers with bi-monthly billing, during April / May, taking into account the interest due for credit. Therefore, the said regulation of Tamil Nadu Electricity Supply Code forms the term of contract and the Respondent is governed by the same, the adequacy of the security deposit is re-viewable once in 12 months.

6.13. Regulation 4 of the Supply Code describes the charges recoverable by the Licensee as follows:-

- “4. Charges recoverable by the Licensee- The charges, recoverable by the Licensee from the consumers are:-*
- (1) Tariff related charges, namely,-*
- (i) The price of electricity supplied by him to the consumer which shall be in accordance with the tariff rates as the Commission may fix from time to time, for HT supply, LT supply, temporary supply and for different categories of consumers.”*
x x x x x
- “(ii) Demand charges for HT supply and fixed charges for LT supply shall be payable by the consumer in accordance with the rates as the Commission may fix from time to time for different categories of consumers.*
- (iii) Disincentive for power factor”*
x x x x
- “(iv) Additional charges for harmonics dumping”*
x x x x
- “(2) Miscellaneous charges, namely,*
- (i) Capacitor compensation charge;*
- (ii) Excess demand charge;*
- (iii) Excess contracted load charge;*
- (iv) Belated payment surcharge;*
- (v) Additional security deposit, when so called upon;*
- (vi) Service / Line shifting charge;*
- (vii) Name transfer charge;*
- (viii) Reconnection charge;*
- (ix) Consumer meter card replacement charge;*
- (x) Dishonored cheque service charge;*
- (xi) Meter related charges;*
- (xii) Application Registration charge;*
- (xiii) Service connection charges*
- (xiv) Excess demand and excess energy charges during Restriction and Control of Supply”.*
- (3) Minimum charges where applicable”*

Further regulation 5(5) (ii)(d) of the Tamil Nadu Electricity Supply Code 2004 provides that, the Security Deposit in the above categories shall exclude incidental charges like operation and maintenance of lines / sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time.

6.14. The Petitioners have executed agreements, wherein it has been clearly mentioned as follows:-

“4. To comply with requirements of Act and terms and conditions of Distribution Code and Supply Code:-

The consumer hereby undertakes to comply with all the requirements of the applicable Acts, Regulations etc. and Grid Code, Distribution Code and Supply Code and of any amendments, modifications or re-enactment thereof or of any other enactment to be passed in relation to supply made under this agreement from time to time and the rules, regulations or orders etc. made thereunder from time to time, provisions of the tariffs, scale of miscellaneous and other charges and the terms and conditions of supply prescribed from time to time, and the consumer hereby agree not to dispute their applicability to this agreement.”

x x x x

“6. Obligation of consumer to pay all charges levied by Licensee:-

From the date of this agreement comes into force the consumer shall be bound by and shall pay the Licensee, 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 supply notified from time to time for the appropriate class of consumers to which (it belongs) which such consumer belongs”.

6.15. From the above, it could be seen that subject to the provisions of sections 45, 47, 50, 181 (1) and 181 (2) (v) and (w) of the Electricity Act, 2003 and Regulation 4 and 5 (5) (ii) (d) of the Tamil Nadu Electricity Supply Code, the distribution licensee is empowered to seek security and to recover the charges such as tariff related charges namely, demand charges for HT supply, disincentive for power factor, additional charges for harmonics dumping, the tax or duty, if any, on electricity supplied and miscellaneous charges, namely, meter rent, excess demand excess energy charges during Restriction and Control of Supply etc. in connection with the charges for requiring a supply of electricity.

6.16. The Commission had issued tariff order on 15-05-2006 in connection with Non-Conventional energy sources vide Order No.3 dated 15-05-2006 wherein the relevant portion, it has been provided as follows:-

General Issues:-

“10.12 Payment of Security Deposit:

The security deposit of two times of the average consumption is governed by the Supply Code. Since majority of the NCES power in Tamil Nadu is “infirm” and they have banking provision, the Commission proposes 2 times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period may be taken as the basis for the payment of security deposit by the user to the distribution licensee.”

Security Deposit of two times of the average consumption is governed by the Tamil Nadu Electricity Supply Code, since majority of the NCES power in Tamil Nadu is “infirm” and they have banking provision, the Commission has proposed two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period (financial year) may be taken as the basis for the payment of security deposit by the user to the distribution licensee. TANGEDCO has billed for net energy supplied by the distribution licensee in respect of the captive user of the NCES based generators after adjusting the generated energy against the total consumption from the distribution licensee. Hence, the Commission has specified that net energy supplied for calculating the payment of security deposit instead of gross energy. The Commission has specified the payment security deposit in respect of the NCES based captive users in two aspects as tabulated below:-

Normal Consumers	NCES based captive user
1. Gross energy has to be taken	1. Net energy has to be taken
2. Two times of 12 months average CC charges has to be taken.	2. Two times of highest / maximum CC charges has to be taken.

Subsequently, the Commission has fixed the payment of security deposit in respect of wind energy captive user vide Order No.1 of 2009, dated 20-03-2009 and Order No.6 of 2012, dated 31-07-2012 as follows:-

Order No.1 of 2009

8.12 Payment security and security deposit

X X X

“8.12.2. As regards the security deposit of the consumer, the Commission decides to retain the present arrangements i.e. two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit by the consumers.”

Order No.6 of 2012

8.12 Payment security and security deposit

X X X X X

“8.12.2 As regards the security deposit to be paid by captive / third party user, the Commission decides to retain the present arrangements i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit.”

While in clause 8.12.2 of the order dated 31-07-2012, it was stated that the Commission decides to retain the present arrangement i.e. charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit in clause 5 (5) (iii) (a) of the Supply Code, it was stated that for the category of consumer under monthly billing the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April. The above position would make it clear that the Respondents are vested with the power to levy additional security deposit and it is also not disputed by the Petitioners. The above position would make it clear that the Respondents are vested with the power to levy additional security deposit and it is also not disputed by the Petitioners. The only dispute is whether inclusion of other charges for determining the additional security deposit is justifiable or not.

6.17. The current consumption charges for the month of 01/2014 in respect of the Petitioner in M.P.No.45 of 2014 is as follows:-

Sl. No.	Details	Amount
1	Industrial consumption-Energy charges	Rs.38,85,596.00
2	Peak hour consumption – 20% extra charges for peak hour consumption	Rs. 1,19,071.70
3	Night hour consumption Rebate(-)	Rs. 66,621.78
4	Demand charges	Rs. 4,12,200.00
5	Meter Rent	Rs. 2,000.00
6	Excess Energy Charges	Rs.15,76,047.00
7	Excess demand charges	Rs. 1,70,620.20
8	Wind Mill PF RKVAHR	Rs. 1,200.00
9	Electricity Tax	Rs. 2,20,843.40
10	Assessment amount	Rs.63,21,413.00

It is clear from the above mentioned details that charges are being paid by the Petitioner every month. In this regard, in case the Petitioner defaults in the payment of the current consumption charges for the month of 01/2014 i.e. for the amount of Rs.63,21,413/-, which includes all the corresponding charges related to net energy supplied by the distribution licensee such as demand charges, excess demand charges, excess energy charges, meter rent, excess peak hour demand charges, electricity tax etc. Logically, current consumption deposit should be available at the credit of the CCD amount of the Petitioner inclusive of all the corresponding charges related to the net energy supplied such as demand charges, meter rent, excess peak hour demand charges, electricity tax etc. In case, the Petitioner could not pay the CC bill for 01/2014 and avails extension of time upto 28-02-2014 as permissible under regulation 15 (2) of the Tamil Nadu Electricity Supply Code, then the payment relating to charges for electricity supplied (CC Bill) between the period 27-12-2014 to 26-01-2014 (01/2014) and the period from 27-01-2014 to 26-02-2014 (02/2014) becomes payable by the Petitioner as on 28-02-2014. Then the entire charges to be paid may be Rs.1,26,42,826/- (i.e. Rs.61,21,413 x 2). Whereas, if the adequacy of SD is calculated as contended by the Petitioner, the SD of Rs.78,76,092/- (39,38,046 x 2) would only be available, as a result the available SD in credit of the

Petitioner becomes insufficient to adjust against the unpaid current consumption charges for the month of 01/2014 and 02/2014. Therefore, the unpaid current consumption charges may not be realized by the licensee in full quantum in the event of the Petitioner's continuing to be in default which would leads to irreparable loss to the licensee and also seriously affect the Government exchequer.

6.18. The assessment amount for the Petitioners in M.P.No.45 of 2014 during the month 11/2013 to 02/2014 is more when compared to other months of the year due to reason that the Petitioner had drawn more energy from TANGEDCO over and above their captive energy, resulting in excess over the energy quota fixed. It is Petitioner's responsibility to monitor their generation against their consumption. In this connection, it is further relevant to mention that the Petitioner had no energy either from current month captive generation or from their banking account so as to fully adjust against consumption. Hence, the Petitioner had paid the excess energy and excess demand charges for drawing power even beyond their quota. Further, the Petitioner is well aware of the prevailing Restrictions and Control measures for HT consumers in the State. The Commission has approved to levy excess demand and excess energy charges for exceeding the quota fixed on energy and demand in M.P.No.42 of 2008 dated 28-12-2008. The said charges are also included under regulation 4(ii) of Tamil Nadu Electricity Supply Code. During Restriction and Control, the Petitioners should plan that the consumption from TANGEDCO to be well within the quota provided. Having exceeded the quota, contention of the Petitioner that due implementation of R & C the Petitioner had paid excess charges and the same could not be included for calculation of adequacy of additional security deposit is not acceptable one.

6.19. The Division Bench of the Madras High Court had the occasion to consider the validity of regulation 5(5) of the Tamil Nadu Electricity Supply Code, 2004 in a batch of writ petitions filed by the consumers of the State of Tamil Nadu in W.P.No.15469 of 2005 and etc. Batch and Division Bench, while upholding the validity of Regulation 5(5) of the Tamil Nadu Electricity Supply Code, 2004 has followed the decision of the Hon'ble Supreme Court of India in M/s.Ferro Alloys Corporation Ltd. Vs. A.P. State Electricity Board and another reported in AIR 1993 SC 2005 -1993 supp. (4) SCC 136 wherein, among other things, the right of the Electricity Board to secure consumption deposit from the consumers under section 49 of the Electricity (Supply) Act, 1948 was upheld. In this connection, relevant portion of the order in the said batch case is extracted below for better appreciation of the case on hand:-

13. It was observed

“100. In B.R. Oil Mills, Bharatpur Vs. Assistant Engineer (D) R.S.E.B., Bharatpur 3, it was observed: (AIR p. 109, headnotes) where demand for deposit of cash security for one months estimated consumption charges and bank security equal to two months estimated charges as contemplated by Regulation 20 read with the Schedule thereto was made by the Electricity Board from a consumer of high tension electricity, the demand could not be said to be unreasonable and the consumer would not be entitled to continuation of the energy under section 24 of the Electricity Act on his failure to deposit such security, even if no agreement had been entered into between the consumer and the Board after the commencement of high tension supply. Once the supply for electricity had commenced the consumer was bound by the terms and conditions of supply contained in the regulations”.

X X X X X

“Nature of Consumption Security Deposit:-

101. Each of the Electricity Boards before us is a State within the meaning of Article 12 of the Constitution of India. The Boards are different from Licensees. Each of the Boards has framed the terms and conditions of supply. One such condition relates to security deposits. Such a deposit varies from Board to Board. For example, under the terms and conditions notified by Andhra Pradesh Electricity Board under Condition 28-01-2001, the consumer is required to deposit with the Board a sum in cash equivalent to estimated three months consumption charges. In the case of Rajasthan, the

security is in the form of cash for one month and bank or insurance guarantee for two months.

102. The legislative sanction behind the power of the Board to direct a consumer to furnish security may be examined. It has already been seen that the Supply Act is complementary to the Electricity Act, 1910. Section 26 of the Supply Act states that the Board shall have all the powers and obligations of a Licensee under the Electricity Act. And this shall be deemed to be a Licensee of the Board for the purpose of the Act. Under the regulations framed by the Board in exercise of powers of section 49 read with section 79 (j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If, therefore, the regulations prescribed a security deposit that will have to be complied with. It also requires to be noticed under clause VI of the schedule to the Electricity Act that the requisition for supply of energy by the Board is to be made under provision after a written contract is duly executed with sufficient security. This, together with the regulations stated above, could be enough to clothe it with legal sanction. In cases, where regulations have not been made Rule 27 of the Rules made under the Electricity Act enables the adoption of model form of draft conditions of supply. In Clause 14 states that the Licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed in his premises. Thus, the Board has the power to make regulations to demand security from the consumers.

103. The next question will be: What is the object in demanding security? The deposit though called security deposit is really an adjustable advance payment of consumption charges. The payment is in terms of the agreement interpreting the conditions of supply. This security deposit is revisable from time to time on the basis of average consumption charges depending upon the actual consumption over a period. This is the position under the terms of supply of energy with reference to all the Boards.

104. As a matter of fact, electricity is supplied in anticipation of payment. In almost every case it takes nearly 2 ½ months for the recovery of the amount before action for disconnection could be taken.”

x x x x x

“105. In practice, some time is also taken between the period allowed for payment and the notice of disconnection. At the same time, there is no obligation that the consumer must use only a particular quantum of electricity. He could even consume more than the average consumption. The Board after 2 ½ months recovers amount for the electricity supplied by it. It could charge late surcharge in case of high tension tariff after the expiry of the said period.

106. Thus, it will be clear that the true nature of the transaction in these cases is one of the advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption

charges and the security deposit before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like a running current account.

107. The cycle of billing by the Board demonstrates that in the very nature of things, the consumer is supplied energy on credit. The compulsory deposit in the context of billing cycle is hardly adequate to secure payments to the Board by the time the formal bill by the Board is raised on the consumer. In one sense, the consumption security deposit represents only a part of the money which is payable to the Board on the bill being raised against the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability.”

6.20. The said decision of the High Court relying on the Hon'ble Supreme Court approving in B.R.Oil Mills's case referred to above, it was held that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is further held that it is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, they could make good the shortfall in consumption charges and the security deposit before actual disconnection. The said judgment squarely applies to the facts of the present case on hand.

7. Findings of the Commission:-

7.1. The review of adequacy of Security Deposit is to ensure security as per section 47 of the Electricity Act, 2003

47. Power to require security:

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues. XXXXXXXXXXXX”

Ultimately the purpose behind the review and collection of ASD is to avoid any loss due to default in the payment of CC Charges by any consumer.

7.2. In case of HT Consumers who consume only TANGEDCO's power, the review will be based on the two times of the monthly average of the electricity charges for the preceding twelve months prior to April.

In case of the NCES based captive user, *two times of the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit by the consumers.* Instead of two times of monthly average, it is the maximum Net energy charges are to be taken. Barring this difference, all other elements of calculation is the same. That is the intention of the provision.

The intention of the above lines is that in any given month, if the consumer did not pay the CC Charges, then the distribution licensee should be at no loss in recovering the dues from the consumers.

7.3. As per regulation 14(1)(b) *For HT services, the due date shall be not less than 7 days from the date of billing. If the last day of the due date happens to be a holiday, the due date shall be extended to till the next working day. 15 days clear notice period shall be allowed prior to disconnection for non-payment. In case the last day of the notice period happens to be a holiday, the period of notice will get extended and the last day for payment to avoid disconnection will be the next working day. Belated payment surcharge shall be levied for HT services during the notice period as specified in this code.*

7.4. The monthly CC bill will be raised after 30 days and the period for making payment of CC Charges shall be not less than 7 days from the date of billing and as per the above regulation, if the last day happens to be a holiday, the due date shall be extended to till the next working day. Further, if the payment of CC Charges is not made within the due date, then 15 days clear notice period shall be allowed prior to disconnection for non-payment. In addition, to the above, as per regulation 15(2), if the HT consumer requests for extension of time to make payment beyond the expiry of the notice period allowed for payment, on an application made to the designated authority of the distribution licensee, subject to the levy of BPSC as specified in this Code, the consumer may be allowed extension of time.

7.5. If the consumer who is under the captive/third party supply consumes energy in any month and if the consumer did not pay the CC Charges within the due date or within the notice period and avails extension of time to make payment along with the BPSC and finally was not able to pay the dues to TANGEDCO the total period for which the CC would not be paid before disconnection of service would be around 60 to 64 days as stated by TANGEDCO in para (vi).

During that time, the availability of the Security Deposit in the Account of the consumer plays a vital role in facilitating the TANGEDCO from incurring loss due to non-payment of CC Charges.

7.6. TANGEDCO has given a test case of M.P.45 of 2014, in which they have given the Working sheet for the year 2013-14.

Since majority of the NCES power in Tamil Nadu is “infirm” and they have banking provision, the Commission has proposed two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period (Financial Year) may be taken as the basis for the payment of security deposit by the user to the distribution licensee. The Commission has specified the net energy supplied for calculating the payment of security deposit instead of gross energy. In this connection, it is pertinent to note that TANGEDCO has billed for net energy supplied by the distribution licensee in respect of the captive user of the NCES based generators after adjusting the generated energy against the total consumption from the distribution licensee. Similarly, since majority of the NCES power in Tamil Nadu is “infirm”, the Commission has proposed two times of the maximum net energy supplied by the distribution licensee in a month in the previous banking period (Financial Year), instead of two times of the monthly average of the electricity charges for the preceding twelve months prior to April. Therefore, from the above it is clear that the Commission has specified the payment Security Deposit in respect of NCES based captive users in two aspects as tabulated below:-

Normal consumers	NCES based captive user
1. Gross energy has to be taken.	1. Net energy has to be taken.
2. Two times of 12 months average CC Charges has to be taken.	2. Two times of Highest/ Maximum CC charges has to be taken.

7.7. As per Wind Order No.1 of 2009, dated 20-03-2009 and Order No.6 of 2012, dated 31-7-2012, the Commission fixed the payment of Security Deposit in respect of wind energy captive user as follows:

Order No.1 of 2009

8.12 Payment security and Security Deposit

xxxxx

8.12.2. As regards the Security Deposit of the consumer, the Commission decides to retain the present arrangements. i.e., two times the maximum net energy supplied by

the distribution licensee in any month in the preceding Financial Year shall be taken **as the basis** for payment of Security Deposit by the consumers.

Order No.6 of 2012

8.12 Payment security and Security Deposit

8.12.2. "As regards the Security Deposit to be paid by Captive / Third Party user, the Commission decides to retain the present arrangements, i.e. charges corresponding to two times the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year shall be taken **as the basis** for the payment of Security Deposit".

In clause 5(5)(ii)(a) of the Code it was stated that "for the category of consumer under monthly billing the Security Deposit is equivalent to 2 times of the monthly average of the electricity charges for the preceding 12 months prior to April". It is to be taken as the base and therefore all other add on are to be secured through Additional Security Deposit.

Example given:

The Petitioner herein a wind energy captive user during FY 2013-14.

MP45 Test case:

Month / Year	CC Charges (Rs. in lakhs)
4/13	28.26
5/13	27.91
6/13	5.08
7/13	5.25
8/13	5.21
9/13	5.17
10/13	14.87
11/13	25.53
12/13	50.48
1/2014	63.21
2/14	57.75
3/14	23.66

The charges corresponding to maximum net energy supplied by the licensee = Rs.63,21,413/-

2 times of Rs.6321413 = 2*6321413= Rs.1,26,42,826/-

SD Available at credit = Rs.41,50,694/=

SD required now = (12642826 - 4150694 = 84,92,132/-)

The said demand has been arrived at based on the Commission's T.O.No.6 of 2012 read with regulation 5(5)(ii)(d) of Tamil Nadu Electricity Supply Code.

The CC for 1/2014 is as follows:

SL.NO.	DETAILS	AMOUNT
1.	Industrial Consumption – Energy charges	Rs.38,85,596.00
2.	Peak hour consumption – 20% extra charges for Pk. Hr. consumption	Rs. 1,19,071.70
3.	Nt. Hr. consumption (Rebate) (-)	(-) Rs. 66,621.78
4.	Demand Charges	Rs. 4,12,200.00
5.	Meter Rent	Rs. 2,000.00
6.	Excess energy charges	Rs. 15,76,047.00
7.	Excess Demand charges	Rs. 1,70,620.20

8.	Windmill PF RKVAHR	Rs. 1,200.00
9.	Electricity Tax	Rs. 2,20,843.40
10.	Assessment amount	Rs. 63,21,413.00

If the Petitioner defaults the payment of 1/2014 for the amount of Rs.63.21 lakhs which includes corresponding charges related to net energy supplied by the distribution licensee such as Energy Charges, Demand Charges, Peak hour charges, Night hour rebate, Excess Demand Charges, Excess Demand Charges and Excess Energy Charges during Restriction and Control of Supply, Meter rent, Electricity Tax, etc., the position obtaining because of this nonpayment is as under.

Logically, Security Deposit should be available at the credit of the account of the petitioner inclusive of all the corresponding charges related to the net energy supplied such as demand charges , meter rent, excess peak hour demand charges, E Tax, etc.. In case the petitioner could not pay the CC bill for 01/2014 and avails extension of time up to 28-02-2014 as permissible under regulation 15(2)of TNES Code, then the payment relating to charges for electricity supplied (CC Bill)between the period 27-12-2014 to 26-01-2014 (01/2014) and the period from 27-01-2014 to 26-02-2014 (02/2014) becomes payable by the petitioner as on 28-02-2014. Then the entire charges payable may be Rs.1.26 Crores (Rs.61.21 lakhs *2) whereas, if the adequacy of the Security Deposit is calculated as contended by the petitioner, the Security Deposit of Rs.78,76,092/-(3938046*2) would only be available as a result the available Security Deposit in credit of the petitioner will become insufficient to adjust against the unpaid CC Charges for the month of 1/2014 & 2/2014.

Therefore, the unpaid CC Charges may not be realized by the licensee in full quantum in the event of the petitioner continues to be in default which leads to

irreparable loss to the licensee and it will also seriously affect the cash flow and may lead to accumulation of dues.

7.8. Ultimately the purpose behind the review and collection of Additional Security Deposit (i.e.) to avoid any loss due to default in the payment of CC Charges by any consumer (to adjust through available Security Deposit) becomes meaningless.

If the consumer wants that the miscellaneous charges viz. excess demand charges, excess contracted load charges, excess demand charge and excess energy charge during Restriction and Control of supply, etc. should not be added in CC charges or Assessed amount in any month, then they should arrange for the required power and should not draw over and above the quota demand and quota energy during the Restriction and Control period. The levying of charges occurs only based on the consumption/usage of energy by the consumers. If the consumers knows their requirement and consume power within their quota and demand, the additional charges by way of penalty would not arise. Accordingly, the petitioners should plan their consumption and they should ensure that they draw the energy well within the quota provided by TANGEDCO.

The Current Consumption Charges depends upon the usage and need of electricity, connected load and quota demand and quota energy of the consumer during R & C. Hence, the Current Consumptions charges shall include charges as per 4(1) and the charges relevant to consumption of energy or demand under 4(2) of the of the Tamil Nadu Electricity Supply Code, 2004, duly excluding the incidental charges like operation and maintenance of lines/substations of generators, charges for purchase of power from third parties as given in regulation 5(5)(ii)(d).

The amount to be included for checking the adequacy of the Security Deposit in respect of the third party or Captive user can be laid down as follows:

1. Energy Charges
2. Demand Charges
3. Peak Hour Charges
4. Night hour Rebate
5. Power Factor disincentive
6. Excess Demand Charges when no R & C in force.
7. Excess demand charge and excess energy charge during Restriction and Control of Supply.
8. Meter related charges.
9. Taxes and levies

But does not include any incidental charges as specified in 5(5)(ii)(d) and audit shortfall or other penalties which does not relate to the preceding year based on which the review of adequacy of security deposit is made.

The intention of the review of Adequacy of Security Deposit every year in respect of monthly billing is to ensure that at any time if the consumer is not in a position to pay the assessed amount and if the service is to be disconnected for non-payment of CC charges or sum due, then adequate amount should be available in the consumer account to avoid financial loss to TANGEDCO otherwise the Utility may have to face huge financial loss. Further, the Respondent TANGEDCO is under an obligation to pay interest on the Security Deposit as stipulated in regulation 5(5)(iii) on the Security Deposit available at the beginning of the year so that the deposit lying with the TANGEDCO earns interest which is presently at 9.00% p.a.

7.9. Hence, the Commission is not inclined to set aside the impugned notices issued by the Respondent viz. Superintending Engineers of various EDCs' of TANGEDCO in the matter of demanding the Additional Security Deposit for 2014-15

as it is well within the provisions of the Tariff Order No.6 of 2012, dated 31-07-2012 issued by the Commission.

8. 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.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission