

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

PRESENT:-

ThiruS. Akshayakumar

.... Chairman

and

Dr. T. Prabhakara Rao

..... Member

M.P.Nos.17 to 26 of 2013, M.P.Nos. 29&30 of 2013, M.P.Nos.32 to 51 of 2013,

M.P.Nos.54 to 71 of 2013, M.P.Nos. 74 to 80 of 2013,

M.P.Nos. 1 to 8 of 2014, M.P.Nos.10 to 14 of 2014 & M.P.Nos.16, 17,26 and 27 of 2014

- 1) Sri Rohith Spinners (P) Ltd.
HTSC No.192
No.5/60, Bridge Road
Pallipalayam, Erode – 638 006
Repd. by its Director
S.Anand (Petitioner in M.P.No.17 of 2013)
- 2) Suriya Spinning Mills
HTSC No.256
SF No.49/1B, Udumalpet Road
Unjavelampatti (P.O.)
Pollachi – 642 003 repd. by its Manager
K.R.Subramanian (Petitioner in M.P.No.18 of 2013)
- 3) SreeSaravanabalaji Textiles
HTSC No.302
S.F.No.88/2, Mettupalayam Road
NSN Palayam, Coimbatore – 31
Repd.by its Authorised signatory
A.Balamurugan (Petitioner in M.P.No.19 of 2013)
- 4) Suriya Spinning Mills Unit – “B”
HTSC No.365
P1, P2, Sakthi Co-operative Industrial Estate
M.K.Patti (PO), Udumalpet Road
Pollachi – 642 003
Repd. by its Manager
K.R.Subramanian (Petitioner in M.P.No.20 of 2013)

- 5) ShriDhanalakshmiSpinntex (P) Ltd.,
HT SC No.265
S.F.No.226/3, NH-47, Avinashi Road
Karumathampatti
Coimbatore – 641 659 repd. its
Authorised Signatory N. Nellaraj (Petitioner in M.P.No.21 of 2013)
- 6) T.T. Limited
(Unit – Tirupathi Spinning Mills)
HTSC No.26 (TEDC)
305/1A, Palangarai Village,
Thevampalayam
Avinashi (Tk), Tiruppur – 641 654
repd. by its HRD Manager
K.Rajendran (Petitioner in M.P.No.22 of 2013)
- 7) Pallipalayam Spinners (P) Ltd.,
HTSC No.35
Trichy Main Road
Nilavarapatty
Salem – 636 201
Repd.by its Authorised Signatory
J.Shanmugasundaram (Petitioner in M.P.No.23 of 2013)
- 8) K.M.Plastics
HTSC No.611
No.188/B2A, Devarayapuram Village
Mettupalayam Post
Millkoilpalayam
Pollachi – 642 100
Repd. its Authorised Signatory
M.Sivakumar (Petitioner in M.P.No.24 of 2013)
- 9) N.S.P.Knitting Mills
HTSC No.231
S.F.No.163, Veeranampalayam
Muthur Road, Kangayam
Kangayam-638701
repd. its Partner G.Senniappan (Petitioner in M.P.No.25 of 2013)
- 10) Rasi Tex (In) Pvt. Ltd.,
HTSC No.192, Cuddalore Main Road
Manivillunthan South (PO)
Attur (TK), Salem – 636 121
repd. by its Manager
N.Krishnan (Petitioner in M.P.No.26 of 2013)

- 11) M/s.Arcot Soles (P) Ltd.,
HTSC No.84
Thuthipet, Ambur, Pincode – 635 802
Vellore District
Represented by its Manager
Mr.AzharOsif (Petitioner in M.P.No.29 of 2013)
- 12) M/s.Farida Shoes (P) Ltd.,
H.T.SC.No.55
No.17, Jalal Road, Mottukollai, Ambur
Pin Code 635 802, Vellore District
Represented by its Manager,
Mr.P.Atheequ Ahmed. (Petitioner in M.P.No.30 of 2013)
- 13) Venilakshmi Mills (P) Ltd.,
HTSC No.247
SF.No.570/4A, Kathirnaickenpalayam
K.Vadamadurai PO
Coimbatore – 641 017 repd. by its
Director N Pradeep (Petitioner in M.P.No.32 of 2013)
- 14) VMD Mills (P) Ltd.,
HTSC No.294
No.427-B, Pollachi Road
Kamanaickenpalayam
Palladam Taluk
Coimbatore – repd.by its Manager
S.Chandrasekar (Petitioner in M.P.No.33 of 2013)
- 15) MallurSiddeswara Spinning Mills (P) Ltd.,
HTSC No. 89
Rasipuram Taluk
Athapur (Post)
Namakkal 636 301 repd by its Manager
K.Mohan (Petitioner in M.P.No.34 of 2013)
- 16) ShriCheran Synthetics India Ltd.,
HTSC No.261, 24, Sankari Main Road
Pallipalayam, Erode District
repd. by its Manager
S.Karthikeyan (Petitioner in M.P.No.35 of 2013)
- 17) Coimbatore Kalpanaa Tex Mill Ltd.,
HTSC No.214
No.4/68F, Kalpana Complex
49, Kavundampalayam, M.T.P.Road
Coimbatore – 641 030 Repd. by its Manager
D.Soundararaj (Petitioner in M.P.No.36 of 2013)

- 18) Raghav Industries Ltd.,
HTSC No. 176, T.S.No.7, Kattipalayam
Tiruchengode – Namakkal Main Road
Ela Nagar, Namakalrepd. by its
Manager R.Chandran (Petitioner in M.P.No.37 of 2013)
- 19) Lucky Yarn Tex India Ltd.,
HTSC No.332
S.F.No.35.2 Anangur Road
Nettavelampalayam
Tiruchengode – 637 304, Namakkal
Represented by its Authorised signature
S.Janarathanan (Petitioner in M.P.No.38 of 2013)
- 20) Chenniappa Yarn Spinners (Pvt.)Ltd.,
HTSC No.165
S.F.No.95/1, MangarasaValayampalaym
AlathurMedu
Avinashi – Puylampatti Road
Tirupur District repd. its
Authorised Signatory V.Senthilkumar
(Petitioner in M.P.No.39 of 2013)
- 21) K.A.C. Yarn Private Ltd.,
HTSC No.73
Cuddalore Main Road, Valapady – 636 115
Salem
repd by its Director C.Parthasarathy
(Petitioner in M.P.No.40 of 2013)
- 22) Arunkumar Spinning Mills (P) Ltd.,
HTSC No.157
Kariyampalayam Post
Annur- 641 653
Coimbatore District
By its Manager A.Thirumoorthy
(Petitioner in M.P.No.41 of 2013)
- 23) Senthil Nathan Spinning Mills (P) Ltd.,
HTSC No.201
Regd. Office: 1D, RamalingaChetty Street
Dharmapuri – 636 701
Repd. by its Manager C.Selvam
(Petitioner in M.P.No.42 of 2013)
- 24) V.S.M. Weaves India Ltd.,
HTSC No.227
27-C, Bye Pass Road, E.Kattur
Elanthakuttai, Pallipalayam, Erode District
Repd. by its Manager S.Karthikeyan
(Petitioner in M.P.No.43 of 2013)

- 25) Viking Textiles (Pvt.) Limited.,
HTSC No.101
505, Avanashi Road
TIRUPUR – 641 603
repd by its Manager S.Loganathan
(Petitioner in M.P.No.44 of 2013)
- 26) K.S.R. Textiles Private Ltd.,
HTSC No.308
K.S.R. Kalvi Nagar
Thokkavaid Post
Tiruchengodu – 637 209
Namakkalrepd by its Manager
P.Govindasamy
(Petitioner in M.P.No.45 of 2013)
- 27) K.S.R. Textiles Private Ltd.,
HTSC No.112
K.S.R.Kalvi Nagar
Thokkavaid Post
Tiruchengodu – 637 209
Namakkalrepd by its Manager
P.Govindasamy
(Petitioner in M.P.No.46 of 2013)
- 28) Gangai Spinning Mills
HTSC No. 101
S.F.No.199, Karuvalur Village
KovilPalayam Road
Karuvalur, AvinashiTaluk
Coimbatore District repd. its
AuthorisedSingatureV.Ramesh Krishnan
(Petitioner in M.P.No.47 of 2013)
- 29) Hindustan Cotton Spinning Mills
HTSC No.79
No.341, Mettupalyam Road
Narasimmanaickenpalayam
Coimbatore – 641 658 District
repd. by its Manager K.Rajendran
(Petitioner in M.P.No.48 of 2013)
- 30) K.A.S. Industries India Limited,
Naneepalayam
ThanneerPanthal
Vellode (Via), PerunduraiTaluk
Erode – 638 112, Repd. by its Director
A.Shraf Ali Khan
(Petitioner in M.P.No.49 of 2013)
- 31) Mirmal Spinning Mills
HTSC No.276
No.285, Pollachi Main Road
Malumichampatty, Coimbatore
Repd. its Manager, K.Aruchamy
(Petitioner in M.P.No.50 of 2013)

- 32) Mirnal Spinning Mills Unit II
HTSC No. 606
S.F.No.65/1, Arasampalayam
Kinathukadavu, Pollachi Taluk, Coimbatore
repd. its Manager
K.Aruchamy (Petitioner in M.P.No.51 of 2013)
- 33) M/s.VTM Limited
Represented by its General Manager
P.B.No.39, Soolakarai, Virudhunagar
Virudhunagar District (Petitioner in M.P.No.54 of 2013)
- 34) Tirupur Textiles Private Limited, Jubilee Unit
Represented by its Executive Director, Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam
Tirupur – 641 652. (Petitioner in M.P.No.55 of 2013)
- 35) Tirupur Textiles Private Limited, Unit No.2
Represented by its Executive Director
Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam
Tirupur – 641 652 (Petitioner in M.P.No.56 of 2013)
- 36) Tirupur Textiles Private Limited
Represented by its Executive Director,
Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam,
Tirupur – 641 652. (Petitioner in M.P.No.57 of 2013)
- 37) Tirupur Textiles Private Limited
Jubilee Unit, HT SC No.6
Represented by its Executive Director, Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam, Tirupur – 641 652.
(Petitioner in M.P.No.58 of 2013)
- 38) Tirupur Textiles Private Limited
(CBE Branch), Unit No.2, HT SC No.90
Represented by its Executive Director, Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam, Tirupur – 641 652.
(Petitioner in M.P.No.59 of 2013)
- 39) Tirupur Textiles Private Limited
Unit No.1, HT SC No.1
Represented by its Executive Director, Mr.K.Chelladurai
Regd. Office at No.1, Anupparpalayam, Tirupur – 641 652.
(Petitioner in M.P.No.60 of 2013)
- 40) M/s.Palladam Hi-Tech Weaving Park
HT SC No.316
Represented by its Director Mr.Era.Velusamy, S/o. M.Ramasamy
Ayyampalayam, Palladam – 641 662.
(Petitioner in M.P.No.61 of 2013)

- 41) Harshni Textiles Limited
Represented by its Manager–Finance Mr.A.Alwar
504, Avanashi Road, Peelamedu
Coimbatore – 641 004.
(Petitioner in M.P.No.62 of 2013)
- 42) M/s.Rajave Textiles Private Limited
Represented by its Electrical Engineer, Mr.R.Murali
77/1, Kannampalayam Road, Sular
Coimbatore – 641 402. (Petitioner in M.P.No.63 of 2013)
- 43) M/s.Precot Meridian Limited
HT SC No.593
Represented by its Company Secretary Mr.C.Murugesh
SUPREM, 737, Pulikulam Road
Coimbatore – 641 045. (Petitioner in M.P.No.64 of 2013)
- 44) Precot Meridian Limited
HT SC No.604
Represented by its Company Secretary Mr.C.Murugesh
SUPREM, 737, Pulikulam Road
Coimbatore – 641 045. (Petitioner in M.P.No.65 of 2013)
- 45) M/s.Sabari Textiles Private Limited
HT SC No.525
Represented by its Chief Executive Officer, Mr.S.Sivakumar
59/1, VelappanaickenPalayam P.O. Vadavalli Village
SularTaluk, Coimbatore – 641 669.
(Petitioner in M.P.No.66 of 2013)
- 46) M/s.Ennar Spinning Mills Private Limited
Represented by its Factory Manager Mr.V.Valliappan
S.F.No.307, KadathurPirivu, KunnathurPudur (PO)
Sathy Main Road (Via Annur), Coimbatore – 641 107.
(Petitioner in M.P.No.67 of 2013)
- 47) M/s.Standard Spinning and Weaving Mills Limited
Represented by its Manager Mr.Agastheeswaran
Chinnapandithanpatti, Near Malli Village
SrivilliputturTaluk – 626 141
Virudhunagar District (Petitioner in M.P.No.68 of 2013)
- 48) M/s.Thiagarajar Mills Private Limited
Represented by its General Manager
Kappalur, Madurai – 625 008.
(Petitioner in M.P.No.69 of 2013)
- 49) M/s.Thiagarajar Mills Private Limited, Unit III
Represented by its General Manager, Nilakottai.
(Petitioner in M.P.No.70 of 2013)

- 50) M/s.Super Spinning Mills Ltd.,
“C” Unit, HT SC No. 127
Reresentedby its Manager Unit Head
D Gudalur, Dindigul District – 624 620. (Petitioner in M.P.No.71 of 2013)
- 51) M/s. Sandhya Spinning Mill Ltd.,
Represented by its General Manager-Electrical
Mr.B.Velvendan
Registered Office No.47, P.S.K. Nagar
Rajapalayam – 626 108. (Petitioner in M.P.No.74 of 2013)
- 52) M/s. Sri Vishnu Shankar Mill Ltd.,
Represented by its General Manager-Electrical
Mr.B.Velvendan
Post Box No.109
P.A.C.R. Salai
Rajapalayam – 626 117. (Petitioner in M.P.No.75 of 2013)
- 53) M/s. Sudarsanam Spinning Mills
(A division of the Ramaraju Surgical Cotton Mills Ltd.)
Represented by its General Manager-Electrical
Mr.B.Velvendan
Post Box No.2
118, P.A.C. Ramasamy Raja Salai
Rajapalayam – 626 117. (Petitioner in M.P.No.76 of 2013)
- 54) M/s.SriRamco Spinners
(A division of RamcoIndustries Limited)
Represented by its General Manager –Electrical
Mr.B.Velvendan
Post Box No.127
Krishnapuram Road
(Off. P.A.C. Ramasamy Raja Salai)
Rajapalayam – 626 117. (Petitioner in M.P.No.77 of 2013)
- 55) M/s.Rajapalayam Mills Ltd
Represented by its General Manager-Electrical
Mr.B.Velvendan
P.A.C.R. Salai
Post Box No.1
Rajapalayam – 626 117. (Petitioner in M.P.No.78 of 2013)
- 56) M/s.Rajapalayam Spinners Private Limited
Represented by its General Manager-Electrical
Mr.B.Velvendan
Administrative Office
Rajapalayam Mills Premises
P.A.C. Ramasamy Raja Salai
P.B.No.1 Rajapalayam-626 117. (Petitioner in M.P.No.79 of 2013)

- 57) M/s.Rajapalayam Textiles
(A Division of Rajapalayam Mills Ltd.)
Represented by its General Manager-Electrical Mr.B.Velvendan
Perumalpatti
Sankarankovil Taluk
Tirunelveli District (Petitioner in M.P.No.80 of 2013)
- 58) Raju Spinning Mills (Pvt) Limited,
HTSC No.78
Srivilliputtur Road (Near R.T.O. Office)
Melapattam Karisalkulam – 626 110
SRIVILLIPUTTUR (TK) – Repd. by its Manager
K.Muthulingam (Petitioner in M.P.No.1 of 2014)
- 59) Raju Spinning Mills (Pvt) Limited “B” Unit
HTSC No.173
Vanniyampatti Road
Padukkasuvaithanpatti Village
Vaithialingapuram – 626 154
SRIVILLIPUTTUR (Tk) – Repd. by its Manager
K.Muthulingam (Petitioner in M.P.No.2 of 2014)
- 60) Eastern Condiments Pvt. Ltd.,
HT SC No.30
4-1-145/2, Mariamman Koil Patti
Kodankipatti (PO)
THENI – 625 531
Repd. by its Deputy Manager (Engg)
N.Vijayakumar (Petitioner in M.P.No.3 of 2014)
- 61) Aswin Textiles (P)m Ltd.
HT SC No.200
Therpattipirivu
Palani Road
Dharapuram – 638 673
Repd. by its Manager K.Periyasamy (Petitioner in M.P.No.4 of 2014)
- 62) Raju Spinning Mills (Pvt) Limited “B” Unit (Expansion)
HTSC No. 216
Vanniyampatti Road
Padukkasuvaithanpatti Village
Vaithialingapuram – 626 154
SRIVILLIPUTTUR (Tk) – Repd by its Manager
K.Muthulingam (Petitioner in M.P.No.5 of 2014)
- 63) Aruppukottai Sri Jayavilas Ltd.,
Cotton Spinning Mills ‘B’ Unit
HTSC No.150, Tamilpadi Post
Tiruchuli Taluk, Aruppukottai – 626 129
VIRUDHUNAGAR DIST – Repd by its Manager
S.Nagarajan (Petitioner in M.P.No.6 of 2014)

- 64) Iswari Spinning Mills,
HTSC No.229
Oddanchatram
Vedasandur Road
Sullerumpu (Post)
Dindigul District repd. by its Manager
P.Ponnuswamy (Petitioner in M.P.No.7 of 2014)
- 65) Sri Raju Cotton Mills
1110-B, Cotton Market
Rajapalayam – 626 117
Virudhunagar District, repd by its
Manager K.Muthulingam (Petitioner in M.P.No.8 of 2014)
- 66) EVEREADY SPINNING MILLS PRIVATE LIMITED
HTSC No.104
Kottaiyur-Agaram Village
Thadicombu, Dindigul – 624 709
Dindigul District –
repd by its Joint Managing Director
Mr.S.Chandrakumar (Petitioner in M.P.No.10 of 2014)
- 67) EVEREADY SPINNING MILLS PRIVATE LIMITED – UNIT - II
HTSC No.177
Nagampatty
Vedasandur – 624 710
Dindigul District –
repd by its Joint Managing Director
Mr.S.Chandrakumar (Petitioner in M.P.No.11 of 2014)
- 68) EVEREADY SPINNING MILLS PRIVATE LIMITED – UNIT - III
HTSC No.282
Nagampatty, Vedasandur – 624 710
Dindigul District –
repd by its Joint Managing Director
Mr.S.Chandrakumar (Petitioner in M.P.No.12 of 2014)
- 69) EVEREADY SPINNING MILLS PRIVATE LIMITED – UNIT - IV
HTSC No.347
Kottaiyur – Agaram Village
Thadicombu, Dindigul – 624 709
Dindigul District –
repd by its Joint Managing Director
Mr.S.Chandrakumar (Petitioner in M.P.No.13 of 2014)
- 70) K.M.D. Clothing
HTSC No.209, No.74, G.Sankari Main Road
Annadhanapatti, Salem – 636 002
Repd. by its Admin Manager
B.Suresh (Petitioner in M.P.No.14 of 2014)

- 71) M/s.Super Sales India Limited, Jay Textiles Unit -I
Represented by its General Manager – Finance Mr.S.Ravindran
Ayyampalayam, Palakkad Road, Pollachi – 642 005
HT SC No. 155
(Petitioner in M.P.No.16 of 2014)
- 72) M/s.Super Sales India Limited, Jay Textiles Unit -II
Represented by its General Manager – Finance Mr.S.Ravindran
Othakkalmandapam, Coimbatore – 641 032.
HT SC No. 13
(Petitioner in M.P.No.17 of 2014)
73. M/s.Aruppukottai Sri Jayavilas Limited
Represented by its Manager V.Ramakrishnan
HTSC No.68
258, Thiruchuli Road
Melakandamangalam, Aruppukottai
(Petitioner in M.P.No.26 of 2014)
- 74) M/s.Aruppukottai Sri Jeyavilas Limited
HTSC No.68
Represented by its Manager V.Ramakrishnan
258, Thiruchuli Road
Melakandamangalam, Aruppukottai
Virudhunagar District
(Petitioner in M.P.No.27 of 2014)

Versus

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai
Chennai – 600 002.
(Respondent in M.P. Nos.
17,18,19,20,21,22,23,24,25,26,29,30,32,33,
34,35,36,37,38,39,40,41,42,43,44,45,46,47,
48,49,50,51,54,55,56,57,58,59,60,61,62,63,
64,65,66,67,68,69,70,71,74,75,76,77,78,79,
80 of 2013 ;
M.P.No.1,2,3,4,5,6,7,8,10,11,12,13,14,16,1
7,26 and 27 of 2014)
2. The Chief Engineer, NCES
144, Anna Salai
Chennai – 600 002.
(Respondent in M.P.Nos.
18, 20,22,23,25,26,34,35,37,39,42,
43,44,48,49 of 2013 and
M.P.Nos.1,2,3,4,5,6,7,8,10,11,12,13,26
and 27 of 2014)

3. The Superintending Engineer
Mettur Electricity Distribution Circle
TANGEDCO
TNEB
Mettur Dam.

(Respondent in M.P.Nos.
17,35,38,43,45,46 of 2013)
4. The Superintending Engineer
Udumalpet Electricity Distribution Circle
TANGEDCO, TNEB, Udumalpet.

(Respondent in M.P.Nos.18,20,62 of
2013 and M.P.No.4, 14, 16, 17 of 2014)
5. The Superintending Engineer
Coimbatore North Electricity Distribution Circle
TANGEDCO, TNEB, Coimbatore

(Respondent in M.P.Nos.19,32,36,41,48,67
of 2013)
6. The Superintending Engineer
Coimbatore South Electricity Distribution Circle
Tamil Nadu Electricity Board
Coimbatore.

(Respondent in M.P.Nos.21,24,33,41,50,51
64,65,66 of 2013 and M.P.No.17 of 2014)
7. The Superintending Engineer
Tiruppur Electricity Distribution Circle
TANGEDCO, TNEB, Tirupur.

(Respondent in M.P.Nos.22,29,30,39,47,
55,57,58,60,61 of 2013)
8. The Superintending Engineer
Salem Electricity Distribution Circle
TANGEDCO, Salem

(Respondent in M.P.Nos.23,40 of 2013 and
14 of 2014)
9. The Superintending Engineer
Erode Electricity Distribution Circle
Tamil Nadu Electricity Board
Erode.

(Respondent in M.P.Nos.25,44, 49 of 2013)
10. The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
Namakkal

(Respondent in M.P.Nos.26, 34, 37 of 2013)

11. The Superintending Engineer
Dharmapuri Electricity Distribution Circle
Tamil Nadu Electricity Board
Dharmapuri.
(Respondent in M.P.No.42 of 2013)
12. The Superintending Engineer
Virudhunagar Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Respondent in M.P.Nos.54,68,74,75,76,77,
78,79 of 2013 and M.P.No.1,2,5,6,8,26 and
27 of 2014)
13. The Superintending Engineer
Coimbatore Electricity Distribution Circle / Metro
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Respondent in M.P.Nos.56, 58, 59, 63 of
2013)
14. The Superintending Engineer
Madurai Electricity Distribution Circle / South
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Madurai – 625 007.
(Respondent in M.P.No.69 of 2013)
15. The Superintending Engineer
Dindigul Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Dindigul
(Respondent in M.P.Nos.70,71 of 2013 and
M.P.No.7, 10, 11,12, 13 of 2014)
16. The Superintending Engineer
Tirunelveli Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Tirunelveli
(Respondent in M.P.No.80 of 2013)
17. The Deputy Financial Controller (I.C.)
Thirupattur Electricity Distribution Circle
TANGEDCO
Tamil Nadu Electricity Board
Thirupattur.
(Respondent in M.P.Nos.29, 30 of 2013)

18. The Superintending Engineer
Theni Electricity Distribution Circle
TANGEDCO, TNEB, THENI
(Respondent in M.P.No.3 of 2014)
19. The Deputy Financial Controller (I.C.)
Thirupattur Electricity Distribution Circle
TANGEDCO
Tamil Nadu Electricity Board
Thirupattur.
(Respondent in M.P.Nos.29, 30 of 2013)
20. The Accounts Officer
Mettur Electricity Distribution Circle
TANGEDCO, TNEB, Metturdam
(Respondent in M.P.Nos.17, 38, 43, 45
46 of 2013)
21. The Accounts Officer / Revenue
Coimbatore North Electricity Distribution Circle
TANGEDCO, TNEB, Coimbatore
(Respondent in M.P.Nos.19,32,36 of 2013)
22. The Accounts Officer / Revenue
Coimbatore South Electricity Distribution Circle
Tamil Nadu Electricity Board
Coimbatore.
(Respondent in M.P.Nos.21,24,33,41,50,51,
66 of 2013)
23. The Accounts Officer / Revenue
Salem Electricity Distribution Circle
TANGEDCO, TNEB, Salem
(Respondent in M.P.Nos.40 of 2013 and
M.P.No.14 of 2014)
24. The Accounts Officer / Revenue
Tiruppur Electricity Distribution Circle
TANGEDCO, TNEB, TIRUPPUR.
(Respondent in M.P.Nos.47, 58, 60, 61 of
2013)
25. The Accounts Officer / Revenue
Coimbatore Electricity Distribution Circle (Metro)
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Respondent in M.P.Nos.58, 59 of 2013)
26. Shalivagana Wind Enginery Ltd.
7th Floor. Minerva Complex
94, S.D. Road
Secunderabad – 3
(Respondent in M.P.Nos.29 and 30 of 2013)

Counsel for the Petitioners: M.P.Nos.17 to 26 of 2013 Thiru A.R.L.Sundaresan
M.P.Nos.32 to 51 of 2013 Senior Advocate for
M.P.Nos.1 to 8 of 2014 Thiru R.S.Pandiyaraj
M.P.Nos.10 to 14 of 2014

M.P.Nos.29 & 30 of 2013
M.P.Nos.26 and 27 of 2014 - Thiru K.Seshadri

M.P.Nos.54 to 71 of 2013
M.P.Nos.16 and 17 of 2014 - Thiru N.L.Rajah

M.P.Nos.74 to 80 of 2013 - Thiru Rahul Balaji

Counsel for the Respondents: Thiru P.H.Aravind Pandian, Additional Advocate
General for Standing Counsel for TANGEDCO
for Respondents 1 to 25.

Dates of hearing : 10-02-2014, 25-02-2014, 07-04-2014
22-04-2014, 29-04-2014, 6-01-2016,
12-10-2017, 13-11-2017, 15-03-2018,
21-12-2018 and 31-01-2019.

Date of order : 22-02-2019

The above Miscellaneous Petitions came up for final hearing before the Commission on 31-01-2019. The Counsel for the Petitioner in M.P.Nos.26 and 27 of 2014 prayed that similar orders as in the other M.Ps. may be passed in the said M.Ps. also. The contentions and prayer in all the above 74 petitions are similar. The Commission upon perusing the above petitions and the connected records and after hearing both sides passes the following:-

COMMON ORDER

1. Prayer of the Petitioners:-

The prayer of the petitioners is to forbear the TANGEDCO from taking energy adjusted instead of energy available to the credit of the Petitioners for the purpose of equivalent demand calculation till the power cut, load shedding are in force and

direct the TANGEDCO to give refund / adjustment of the amount already collected from the Petitioner and pass such further or other orders as deemed fit.

2. Facts of the case:-

2.1. Considering the power shortage in the State of Tamil Nadu, the TNEB approached the Commission for imposition of Restriction and Control Measures. The Commission after following the statutory procedure issued an order in M.P.No.42 of 2008.

2.2. This matter was further examined by the Commission in S.M.P.No.1 of 2009 after a batch of Writ Petitions were filed in the High Court of Madras wherein certain judgments were passed. In order dated 28-10-2009 made in the said in S.M.P.No.1 of 2009, the Commission ruled inter-alia that “the demand and energy quota for the wind energy supplied after 01-11-2008 shall be fixed in accordance with the Memo dated 17-11-2008 of TNEB”.

2.3. The TNEB has issued Lr.No.CFC/Rev/FC/R/D.No./10, dated 25-06-2010 wherein the TNEB has sought to clarify “actual energy supplied” in Memo dated 17-11-2008 to mean actual energy adjusted.

2.4. Aggrieved by the said letter dated 25-06-2010, M/s.Indian Wind Power Association (IWPA) and The South India Mills Association (SIMA) had filed M.P.No.31 of 2010 and M.P.No.42 of 2010 respectively. The Commission disposed of the said M.Ps. vide order dated 28-12-2011. In para 14.11 of the said order dated 28-12-2011, the Commission ruled *inter-alia* that the impugned clarification dated 25-06-2010 issued by the TANGEDCO is in order.

2.5. Challenging the order of the Commission dated 28-12-2011, IWPA and SIMA filed Appeal No.51 of 2012 and Appeal No.56 of 2012, respectively, before the APTEL. The APTEL pronounced its order in the said Appeal Nos.51 and 56 of 2012 on 12-12-2012.

2.6. In the said order dated 12-12-2012, the APTEL allowed the said Appeals and set aside the impugned order of the Commission to the limited extent of the date of effect of the Circular issued by the CFC, TNEB on 25-06-2010, finding that from 01-10-2010 the method of calculating the equivalent demand on the basis of energy from wind energy generators actually consumed or adjusted in consonance with the order dated 07-09-2010 read with Memo dated 17-11-2008 shall take effect. In this regard, the APTEL also directed the Commission to pass the consequential order within 30 days from the date of communication of its judgment. Accordingly in R.A.No.2 of 2013, the Commission made an order on 29-01-2013 wherein it has inter-alia, ordered that TANGEDCO shall resort to calculation of demand energy quota based on the wind energy actually consumed by the captive users and adjusted in the same month with effect from 01-10-2010.

2.7. In the present Miscellaneous Petitions, the petitioners have challenged the levy of penalty in the form of excess demand charges in Sl.No.13 (f) of the bills raised by the TANGEDCO for the reason that the formula for calculating the equivalent demand followed by the TANGEDCO is not in order in view of the prevailing scheduled and unscheduled load shedding effected during the peak hours.

3. Contentions of the Petitioners:-

3.1. The Respondent TANGEDCO is unable to supply sufficient quantity of power from April 2007 onwards and had been imposing power cuts currently at 40%, besides to peak hour restrictions, unscheduled tripping and load shedding to the extent of 10 hours a day and the Petitioners were 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 and also undergoing huge loss in production.

3.2. In order to tide over the power crisis, the Petitioners have installed wind mills for generating wind energy to meet out their energy requirements for their captive consumption. The Petitioners are generating energy in their own wind mills throughout the day including evening peak hours, between 6.00 p.m. to 10.00 p.m.

3.3. Insofar as the HT consumers are concerned, Two Part Tariff System is applicable. In Two Part Tariff System, charges are made for energy consumed in units separately as energy charges and demand charges separately for the recorded demand. Whereas for LT consumers, it is only single tariff, viz. energy charge alone is levied.

3.4. Insofar as the HT consumers who do not own wind mills for their captive consumption or where there is no CPP or third party power purchase is involved the quota is fixed without any difficulty based on the procedure as laid down in the Circular Memo dated 01-11-2008 issued by the Respondent / TANGEDCO. While fixing the quota for wind energy captive generators, CPP and third party power purchase consumers, since they are also generating demand out of the energy

supplied by them by injecting the energy into the TNEB grid from other sources, the equivalent demand was calculated based on the energy supplied / injected into the TNEB grid.

The formula for calculating equivalent demand was as follows:-

$$\text{Equivalent demand} = \frac{\text{Energy supplied by CPP/Wind Mills/Third Party Purchase}}{\text{No. of days x No. of hours x Power Factor}}$$

But all of a sudden, without approval of the TNERC, the Respondent TNEB has issued a Circular Memo dated 25-06-2010 changing the above formula by stating that energy adjusted / consumed should be taken for equivalent demand calculation instead of energy supplied / injected. The operative portion of the Circular Memo dated 25-06-2010 is reproduced below:-

- “iv. Therefore, the deemed demand will also be allowed only based on the actual units adjusted and not based on the energy supplied / injected into the grid”.

In view of the Circular dated 25-06-2010, the Superintending Engineer concerned is now calculating equivalent demand as per the formula given below:-

$$\text{Equivalent demand} = \frac{\text{Energy adjusted by CPP/Wind Mills/Third Party Purchase}}{\text{No. of days x No. of hours x Power Factor}}$$

3.5. The formula in the Circular dated 25-06-2010 would be correct in the normal circumstances when there is no scheduled and unscheduled load shedding or tripping during normal hours and peak hours. But, it would not be correct where the consumer is prevented from consuming their own generated / injected energy during peak hours or any hours by resorting to load shedding or tripping, due to which the equivalent demand comes down drastically, when compared to the equivalent

demand they are eligible if they are permitted to consume the entire energy available at their credit.

3.6. Aggrieved by the sudden change in the formula, some Associations have filed petitions before TNERC in M.P.No.32 of 2010 and M.P.No.41 of 2010. The TNERC has passed its order upholding the Circular Memo dated 25-06-2010. The Petitioners are not challenging the validity of the above order passed by the TNERC in M.P.No.32 and 41 of 2010, since the relief sought for by the Petitioner in the present petitions is not related to the issue decided in the above order. The above order is applicable when there is no load shedding / power cut or tripping in any manner at a given point of time including peak hours. Whereas the present petition is to challenge the levy of penalty during peak hours for alleged excess demand consumption due to the fault of the TANGEDCO by reducing the Petitioner's consumption by enforcing power cut.

3.7. In the case where there is scheduled and unscheduled power cut / load shedding during normal hours and evening peak hours, the consumer is prevented from consuming their own energy equivalent to their energy generated and injected to the grid by their wind mills and it is not fair on the part of the Respondent to levy penalty by taking only the consumed / adjusted units for the purpose of calculation of equivalent demand instead of taking the eligible wind energy available slot-wise to the credit of the petitioner.

3.8. The Petitioners are eligible for quota upto sanctioned demand and energy vide para 4.4 of the order made in M.P.No.6,9,17 of 2010 and D.R.P.No.17 of 2010 dated 07-09-2010 by the TNERC. The said para 4.4. reads-

“4.4. the consumer is at present permitted to utilize power from captive sources. The present order would enable a consumer to purchase power from third party sources as well. Procurement of power by a consumer through open access is protected by the Electricity Act, 2003. The role of the licensee is limited to that of a carrier. Procurement through Open Access will be treated as an additionality. The ceiling, upto which a consumer can utilize power including the TNEB quota demand, captive power and third party purchase would be the sanctioned demand. In such a situation, there would be no need for advance declaration by the consumer of procurement of captive power as stipulated in S.M.P.No.1 of 2009 or procurement of third party power as stipulated in the interim order dated 17-08-2010. As the TNEB has allowed procurement of power upto the sanctioned demand in their communication dated 17-07-2009 “procedure for allowing third party sale / purchase under intra-state open access” there should be no difficulty in allowing the consumer to procure power upto the sanctioned demand”.

Therefore, all put together, i.e.TNEB portion and wind energy portion (injected and not consumed), the Petitioners are eligible for demand and energy quota upto sanctioned demand.

3.9. The Petitioners are having sufficient generation of wind energy during normal hours / evening peak hours and they are also eligible for adjustment / consumption of such energy generated during evening peak hour as per the slot-wise adjustment permitted by the Respondent TANGEDCO vide clause 5 of the Energy Wheeling Agreement entered into between the petitioner and the Respondent TNEB. Under clause 4 (b) of the Energy Wheeling Agreement,the energy generated in the wind mills shall be adjusted for captive consumption in the following manner, namely,-

- (i) Peak hour generation with peak hour consumption
- (ii) Off-peak hour generation with off-peak hour consumption and
- (iii) The normal hour generation with normal hour consumption.

3.10. If the consumer is prevented from consuming eligible energy available to their credit slot-wise, the concept of giving equivalent demand based on energy adjusted / consumed would not be correct and lawful. Therefore, the levy of penalty for the alleged excess demand consumption based on the calculation of equivalent demand worked out on the energy adjusted / consumed basis during the enforcement of scheduled and unscheduled load shedding during evening peak hour is arbitrary, unlawful and hence liable to be set aside.

3.11. In the case of the Petitioner in M.P.No.17 of 2003 which has taken as a sample case, the Accounts Officer, Mettur Electricity Distribution Circle levied penalty of Rs.1,86,945/- for the month of October 2012 under Serial No.13(f) of the bill No.192 dated 01-11-2012 towards alleged excess demand consumption of 311.58 KVA. As a matter of fact, the Petitioner was having energy of about 167660 units during evening peak hour to their credit bought from wind energy and therefore, eligible for 1411 KVA during evening peak hour. Their actual recorded demand during evening peak hour was only 980 KVA. Therefore, there was no actual excess demand consumption as alleged by the Respondent TANGEDCO. The TANGEDCO has taken only the actual restricted consumption 67,820 units for equivalent demand calculation and arrived at equivalent demand of 570.88 KVA and added 10% during peak hour quota for the lighting and security purpose, thus allowed only 668.43 KVA. Thus, after deducting 668.43 KVA from 980 KVA, the Respondent Board has levied penalty for 311.58 KVA as if the Petitioner has exceeded the equivalent demand. If the Petitioner is fairly allowed to consume without any load shedding during evening peak hours, there would not be any occasion to levy penalty as levied by the Accounts Officer, Mettur Electricity Distribution Circle. On the other hand, the TANGEDCO has taken only the restricted / adjusted, viz. 67,820 units due to

scheduled and unscheduled power cut during evening peak hours and allowed only 668.43 KVA demand as equivalent demand during evening peak hours considering the limited usage of energy due to the Respondents' enforcement of load shedding during peak hours. But for the Respondents' enforcement of load shedding, the Petitioner would have availed the full power as enough of power was available at his account and accordingly, his equivalent demand would have been raised to the required extent. However, the Respondents have not permitted to use the energy generated and injected and by way of load shedding, they have prevented the petitioner to make use of his own energy during the evening peak hours. Such action is arbitrary, unreasonable, unlawful and unsustainable in law and hence liable to be set aside.

3.12. In the case of the Petitioner in M.P.No.17 of 2013, the details of calculation of equivalent demand are as below:-

Details of Calculation of Equivalent Demand:-

Recorded Demand during evening peak hour	=	980 KVA
Equivalent Demand Calculation as per the Petitioner:		
Units available to the credit of the Petitioner during Evening peak hours (wind energy)	=	1,77,335 Units
Eligible Equivalent Demand	=	$\frac{1,67,660}{30 \text{ days} \times 4 \text{ hours} \times 0.99}$: 1411 KVA
Excess demand available to the Petitioner (1411 KVA – 980 KVA)=431 KVA		
Therefore, excess demand consumption	=	Nil

From the above, there was no excess demand consumption as alleged by the Respondent TNEB if at all there was no scheduled and unscheduled load shedding during the evening peak hours.

Equivalent Demand Calculation as per Respondent:-

As per TNEB calculation based on energy adjusted / consumed	67,820 ----- 30 days x 4 hours x 0.98	= 570.88 KVA
Add: TNEB Portion at 10% during evening peak hour		= 97.55 KVA ----- = 668 KVA -----

Therefore, alleged excess demand for which penalty is levied (980 KVA – 668 KVA) = 311.58 KVA
Penalty : 311.58 KVA x Rs.600/- = Rs.1,86,945/-

This levy of penalty is arbitrary, unreasonable and unsustainable in law when the Petitioner was prevented from consuming their own wind energy available at their credit due to scheduled and unscheduled power cut during evening peak hours.

3.13. Had the Respondent not resorted to scheduled and unscheduled load shedding during evening peak hours and allowed the Petitioners to consume their wind energy available to their credit to its entirety during evening peak hours, there would not be any occasion to levy penalty as levied now.

3.14. It is due to the fault of the Respondent TNEB by not allowing the Petitioner to consume the wind energy injected and available to their credit during evening peak hours this penalty is levied for no fault of the Petitioner. By restricting the consumption of the Petitioner drastically during evening peak hours by resorting to scheduled and unscheduled load shedding, the Petitioner cannot be held responsible to pay the penalty as it is only on the lapse on the part of the Respondent, the Petitioner was not able to consume more energy.

3.15. In M.P.No.17 of 2003, the Petitioner has not exceeded the demand quota and it is only the Respondent TNEB who prevented the Petitioner from consuming the eligible wind energy during evening peak hour which resulted in short fall of equivalent demand, because the equivalent demand was calculated wrongly based on the energy consumed / adjusted which could be done only when there is no restriction of consumption during the evening peak hour. The Respondent has resorted to similar wrong calculations in the CC bills for the months of August and September 2012 which the Petitioner has paid under threat of disconnection.

3.16. From 07-02-2012, the Respondent TNEB has officially announced a load shedding of 8 hours, i.e. load shedding of 3 hours in the morning, 3 hours in the evening, 2 hours in peak hours. Besides this, they are also resorting to unscheduled load shedding then and there without any notice during night hours from 08-02-2012.

3.17. The Petitioners met the officials of the Respondent to represent the grievance and however, there is no response from them. They informed that they have not received any communication from their Head Office and therefore, they cannot help the petitioner even though the grievance is genuine.

4. Contention of the Respondents:-

4.1. The TNERC is vested with power and jurisdiction to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration, under section 86 (1) (f) of the Electricity Act, 2003. None of the Petitioners is generator of electricity and as such the Petitioners herein are not entitled to seek adjudication of their disputes with TANGEDCO by the Commission. As such, the petitions are liable to be dismissed in *limine* based on the judgment of

the Supreme Court rendered in the case of Maharashtra State Electricity Distribution Company Limited Vs. Lloyds Steel Industries Limited reported in AIR 2008 Supreme Court 1042, wherein it has been specifically held that compliance of the individual consumers are outside the jurisdiction of the State Commission.

4.2. Pursuant to the representations received from various HT consumers requesting for fixation of quota as aggregate total of 60% of their TNEB supply and 100% of the power received from CPPs, a memo was issued to that effect on 17-11-2008 in connection with fixation of demand and energy quota for the HT consumers partially using power from CPPs which are stated below:-

“Fixing of Energy quota:-

- | | | | |
|-------|--|---|-------|
| (i) | Monthly base energy consumption as illustrated in working instructions dated 01-11-2008 | - | A |
| (ii) | In that the actual energy supplied (monthly average) for the above three months average by the CPP | - | B |
| (iii) | The actual energy availed by consumer from TNEB | - | A-B=C |
| (iv) | 60% energy on C (C x 60/100) | - | D |
| (v) | The quota fixed for energy | - | B+D |

Fixing of Demand quota:-

- | | | | |
|------|---|---|---|
| (i) | The base demand consumption as illustrated in working instructions dated 01-11-2008 | - | E |
| (ii) | In that the calculated demand supplied for the energy for the month by CPP | - | F |

$$F = \frac{\text{Energy supplied by CPP in a month}}{\text{No. of days in the month} \times 24 \text{ hours} \times \text{P.F } 0.95}$$

- | | | | |
|-------|---|---|-------|
| (iii) | The actual demand availed by consumer from TNEB | - | E-F=G |
| (iv) | 60% demand of G (G x 60/100) | - | H |
| (v) | The demand quota fixed | - | F+H |

(Calculation of demand supplied by generator may be worked out on par with calculation made for wheeling of power to the captive consumers as communicated in CE / PPP memo dated 06-11-2007 and subsequent amendment thereof)

4.3. The above memo was not adopted for fixation in respect of wind energy captive users at the time of issuance of the above mentioned memo, dated 17-11-2008. Aggrieved with the memo dated 17-11-2008, some of the Wind Energy Captive users filed W.P.No.12448 of 2009 etc. batch case before the Hon'ble High Court of Madras praying for re-fixation of their demand and energy quota on par with the CPP users. The High Court in its order, dated 29-08-2009 and 01-09-2009 had passed the following order which reads as follows:-

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

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

3. *In view of the same, the Petitioner is directed to approach the Appellate Tribunal for Electricity against the order of the Respondent under challenging in this Writ Petition. It would be therefore suffice to pass the following order by consent.*

(a) *The Petitioner has to approach the Appellate Tribunal for Electricity challenging the order of the Respondent dated 28-11-2008 made in M.P.No.42 of 2008 and the consequential order dated 24-12-2008 in M.P.No.2 of 2009 within a period of two weeks from the date of receipt of this order.*

(b) *The unutilized bank units shall not lapse as on 31-03-2009 but it is subject to the outcome of an Appeal.*

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

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

With the above observations and directions, the Writ Petition and Miscellaneous Petitions are disposed of. No costs”.

4.4. Consequent to the order passed by the Hon'ble High Court, the Commission had initiated Suo-Motu Proceedings vide S.M.P.No.1 of 2009 on 28-10-2009 with regard to the fixation of quota for Wind Energy Captive users to be carried out on par with CPP users and thereby the Commission had formally approved the formula contained in the respondent's memo dated 17-11-2008 for re-fixing the demand and energy quota for the period from 12/2008 to 10/2009 and further had stated that from 01-11-2009 all captive users, whether thermal or wind, shall declare on the first day of every month the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of fixing energy quota and demand quota respectively, in the formula of the TNEB, dated 17-11-2008. It is further stated that, the energy declared shall be the monthly average generation. Further, from 01-11-2009, the peak hour power generation shall be eligible for peak hour utilization for every month subject to a limit of one-twelfth of annual peak hour generation.

4.5. In continuation of the above, the Respondent had issued circular to all the Superintending Engineer / Electricity Distribution Circles vide Memo No.CE/Comml/EE/DSM/AEE/PMM/F.Powercut/D.508/09, dated 25-11-2009 and that the Member

(Distribution) of the Respondent had issued the working instructions by way of an illustration vide Circular. Memo No.CFC/REV/FC/R/D.No.362/dated 26-11-2009. As provided in the Memos dated 25-11-2009 and 26-11-2009 the period from 12-12-2008 to 10-10-2009 for the purpose of calculation and fixation could be prior to the issuance of the order of this Commission in S.M.P.No.1 of 2009, but for the period from 1-11-2009 to 03-10-2010 (known as third part), the order of the Commission in S.M.P.No.1 of 2009 is squarely applicable. Therefore, the demand and energy quota had to be revised and re-fixed in respect of the First Part and Second Part only, and the same should be taken in respect of the First Part and Second Part only, and the same should be taken for excess energy and demand calculation. As far as the third part is concerned, the demand and energy quota had to be fixed based on the proposed energy (i.e.) declared by the consumer, the same should be taken for excess energy and demand calculation. Besides, while calculating the equivalent demand to arrive at the excess demand charges, the energy consumed (units) alone is taken from the introduction of Restriction and Control measures. Further, in all the parts, the demand and energy quota had been arrived at in accordance with the memo, dated 17-11-2008. The memo, dated 17-11-2008 stipulated monthly base energy consumption as "A". The energy supplied by the captive generator is termed as "B". Since "A" is measured against consumption, "B" also should be measured against consumption.

4.6. During the base period (i.e.) 10/2007 to 10/2008, the supplied energy clearly means only the adjusted energy. During that period the monthly HT bills are prepared by deducting the units brought in slot wise by the captive HT consumers at the consumption end (after deducting the line loss, banking charges of 5% etc.) for the energy consumed by the HT consumer from TNEB point of supply. Only for the

above adjusted energy, the deemed demand had been calculated as per the Commission's formula.

4.7. Even though clear instructions were issued by the Respondent vide Memos, dated 25-11-2009 and 26-11-2009, clarification was sought for by the Superintending Engineer / CEDC / Metro / Coimbatore and the Superintending Engineer / NEDC / Namakkal vide clarification letter, dated 26-05-2010 based on the representations submitted from the HT industrial consumers. The Superintending Engineers had requested clarification on quota fixation for the period before issuance of S.M.P.No.1 of 2009 (i.e.) 12/2008 to 10/2009, since during that period, only the details of generation and consumed energy were available. On the above requests of Superintending Engineers only, the clarification was issued by the Chief Financial Controller / Revenue vide letter dated 25-06-2010 which reads as follows:-

I) In the Memo dated 17-11-2008, it has been mentioned that (Fixing of energy quota) (i) Monthly base energy consumption as illustrated in working instructions dated 01-11-2008.

II) In that the actual energy supplied (monthly average) for the above 3 months average by the CPP.

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

IV) In the case of wind energy, the energy supplied during a month will be adjusted against the industrial consumption and the excess supplied energy will be sent to the generation circle for baking.

V) *The energy available in the banking will be drawn for adjustment at the time of off-season of wind. At that time, the equivalent demand (deemed demand) will be calculated and added in the quota.*

VI) *Therefore, the deemed demand will also be allowed only based on the actual units adjusted and not based on the energy supplied / injected into the grid”.*

4.8. In the memo, dated 17-11-2008 wherein in Page No.2 under the column of fixing of demand quota, it has been stated as follows:-

“Calculation of demand supplied by the generator may be worked out on par with calculation made for wheeling of power to the captive consumers as communicated in CE / PPP memo dated 06-11-2007 and subsequent amendment thereof”.

In the Chief Engineer / Private Power Project Memo dated 06-11-2007 it had been clearly stated as follows:-

“Demand charges shall be computed for the captive users as per the example worked out in Clause 5.22.4 in order 2 dated 15-05-2006”.

b) The Clause 5.22.4 of Order No.2 dated 15-05-2006 is extracted below:-

The demand charges payable by the Open Access consumer will be calculated as below:-

Case 1:

Injection Voltage	-	110 KV
Drawal Voltage	-	33 KV
Percentage of deemed demand as per the table	-	41.28
Sanctioned demand	-	1000 KVA
Recorded demand	-	855 KVA
Units consumed	-	650000 Units
Power factor	-	0.95
Units supplied by the generator (at consumption point)-		5,00,000 Units
Demand supplied by the generator =		$5,00,000 / 720 \times 0.95 = 659.72$ KVA
Demand supplied by the licensee =		$855 - 659.72 = 195.28$ KVA
Billable demand – Supplied by licensee =		$900 - 659.72 = 240.28$ KVA
(at 90% of the sanctioned demand)		

$$\begin{aligned} \text{Demand charges payable} &= (659.72 \times 0.4128 \times 300) + (240.28 \times 300) \\ &= 81,699.72 + 72,084 = \text{Rs.}153783.72 \end{aligned}$$

Case 2 :

Injection Voltage	-	230 KV
Drawal Voltage	-	22/11 KV
Percentage of deemed demand as per the table	-	40.04
Sanctioned demand	-	1000 KVA
Recorded demand	-	950 KVA
Units consumed	-	700000 Units
Power factor	-	0.92
Units supplied by the generator (at consumption point)-		7,00,000 Units
Demand supplied by the generator =	$7,00,000 / 720 \times 0.92 =$	894.44 KVA
Demand supplied by the licensee =	$950 - 894.44 =$	55.56 KVA
Billable demand – Supplied by licensee =	$950 – 894.44 =$	55.56 KVA
Demand charges payable =	$(894.44 \times 0.4004 \times 300) + (55.56 \times 300)$	
	$= 1,07,440.13 + 16,668 =$	Rs.1,24,108.13

In the above examples, the demand supplied by the generator was reckoned at consumption point, (i.e.) units consumed.

4.9. In Order No.3 dated 15-05-2006 on purchase of power from NCES based generating plants, the demand charges payable by wind energy user was calculated as below:-

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

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

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

The demand charges payable by wind energy user = (A x 81.23% of applicable demand charges) + (C x applicable demand charges).

In the above worked out examples, the demand supplied by the generator had been reckoned at consumption point (i.e.), consumed units only.

4.10. In the case of wind energy captive users, since banking facility is provided under the relevant regulations, calculation of equivalent demand taking into

consideration actual units injected would result in double benefits in respect of the un-adjusted banked units is drawn for subsequent month's utilization.

4.11. Clause 8.7.4 of the Tamil Nadu Electricity Regulatory Commission's Comprehensive Tariff Order on Wind Energy, Order No.1of 2009 dated 20-03-2009 deals with demand charges. The example set out in Clause No.8.7.4.3 is furnished below:-

“Total generated units consumed by the consumer on		
open access divided by (30 x 24 x actual PF recorded during the billing month)	=	A
Recorded demand (or) 90% of sanctioned demand, whichever is higher	=	B
The demand supplied by the Licensee (B – A)	=	C

The energy supplied is only the energy adjusted against the consumption exclusive of line loss even as per the above example. The equivalent demand (deemed demand) as per the formula laid down by the Tamil Nadu Electricity Regulatory Commission can be allowed only for the energy adjusted during that month. If there is any unadjusted surplus energy, it will be sent to banking for adjustment in the subsequent months. Whenever banked energy is drawn and adjusted against the TANGEDCO's power, the equivalent demand will be calculated for the banked energy as per the formula.

4.12. The equivalent demand in other words demand supplied by the generator or deemed demand had been arrived for consumed units only from the date of implementation of the Commission's Order No.3 dated 15-05-2006 and Order No.2 dated 15-05-2006, i.e. before the implementation of the Restriction and Control

measures with effect from 01-11-2008. Based on the above only, the clarification was issued by the TANGEDCO.

4.13. The billing methodology prior to the introduction of Restriction and Control measures (i.e.) what methodology is followed for computation of demand charges, the same methodology applies for computation of excess demand charges too. Therefore, at the end of the month, if the captive consumer has not been able to consume the entire energy injected from the wind energy generator, then the adjustment of captive energy consumption is restricted to the actual energy consumed by the consumer. Logically, the equivalent demand is also to be based on the actual energy consumed from the wind energy generator during the month. Therefore, the contention of the petitioners that the equivalent demand should be based on the energy generation is not correct.

4.14. The base energy had been arrived at based on their earlier consumption wherein there was no power cut i.e. 24 hours power supply without interruption. The energy quota shall not be reworked proportionately based on the power available time and the excess energy charges shall not be arrived based on the time when power was available. Further, in respect of wind energy captive users adjustment of energy is made on three slot basis, on slot to slot basis as per TNERC Regulations. The contention of the Petitioner that the Petitioner cannot use its wind energy during load shedding hours is false. The Petitioner is permitted to adjust the unadjusted units of the evening peak hour against the morning peak hour consumption and vice-versa, when its generation is low. Also the peak and normal generation shall be adjusted against lower slot consumption as per Wind Energy Order No.1 of 2009 and also as per Wind Energy Order No.6 dated 31-07-2012. Hence, the contention of

the Petitioner that if calculation is based on drawal (which is prevented) they are compelled to pay excess demand and energy charges is misconceived one.

4.15. The wind blows during summer season. The WEG generates energy, during May to September. By virtue of banking, the unadjusted units are adjusted at a later date that too when the Distribution Licensee is experiencing power deficit. It is open secret that the power deficit is prevailing most of the States in India and of late, experiencing shortage of coal and gas, difficulties in transportation of coal for various reasons etc. In fact, while the Wind Energy Captive users adjusting the banked energy, the Distribution Licensee is forced to make purchase of power from open market at a much higher cost. Therefore, the Licensee is made to suffer financially. Hence, the contention of the Petitioner is not valid.

4.16. As per the Regulation 38 of Tamil Nadu Electricity Distribution Code, the Petitioners shall curtail, stagger, restrict, regulate and altogether cease to use electricity when so directed by the licensee if the power position or any other emergency in the licensees power supplies or as per the directives of SLDC / SSLDC warrant such a course of action. The licensee shall not be responsible for any loss or inconvenience caused to the Petitioners as a result of such curtailment staggering, restriction, regulation or cessation of use of electricity. The R & C measures like percentage of power cut on demand and energy, peak hour restriction, power holidays and load shedding period are enforced considering the overall requirement and availability of the supply position. Besides, the above, depending upon the grid condition, further load shedding may also have to be done as per the instruction of SLDC / SSLDC to maintain the grid safety. The Petitioners cannot claim any inconvenience or loss for such load shedding. The Petitioners are

bound by the above said provisions contained in Tamil Nadu Electricity Distribution Code.

4.17. The Electricity Ombudsman in Appeal No.25 of 2012 dated 15-11-2012 held *inter-alia* as follows:-

“12.20. In para 8.2.2 of the wind tariff order 1 of 2009 dt 20-03-2009 it has been ordered that the unutilized energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff. But the Commission has ordered that the encashment rate for the unutilized banked energy is full value of the relevant purchase rate as and when the Distribution Licensee enforces Restriction and Control Measures for restricting the consumption of wind energy generator. Hence, the Commission has given a higher rate for the banked units when the consumer is prevented from consuming the wind energy generated due to Restriction and Control measures. But there is no separate formula in the above order for calculation of deemed demand during R&C period based on supply availability period.

12.21. In view of the reasons given in forgoing paras, I am of the opinion that the formula mentioned in para 8.7.4.3 of wind tariff order No.1 dated 20-03-2009 for calculation of demand has to be adopted for the arriving demand supplied by the wind generator. In the above formula, there is no provision for adoption of supply availability period to calculate the deemed demand supplied by the wind generator”.

Therefore, the equivalent demand based on the energy adjusted / consumed would be correct and lawful.

4.18. An analysis of the details of wind energy generation and adjustment during the months from 09/2012 to 03/2013 shows that in the month of 10/2012, the wind energy generation during the evening peak hour in the slot 2 and slot 3 were 57674 units and 18322 units as against the consumption 53040 units and 14780 units, respectively. Hence, the adjustment of captive energy consumption is restricted to

the actual energy consumed by the Petitioner and logically the equivalent demand is also to be based on the actual energy consumed from the wind energy generator during the month (i.e.) for the units 67820 units. After such adjustment balance units 4634 units (Slot 2) and 3542 (Slot 3) had been sent to banking towards the adjustment for subsequent months. Furthermore, it is relevant to note that the Transformer and Distribution loss (T & D loss) had been deducted for adjusted units only and not for the generated units (i.e.) 4218 units (Slot 2) and 1362 units (Slot 3). Further, the banked units had been adjusted units in the subsequent months and the equivalent demand is for the adjusted units including the units drawn from banking. It would result in double benefit to be given to the banked energy i.e. for providing the equivalent demand to the captive user for that energy in the current month. Hence, the equivalent demand arrived at for adjusted units is reasonable and sustainable in law.

4.19. During the Restriction and Control measures the banking facility is available in respect of the wind energy captive users since the unutilized units are being encashed for 100% value of relevant tariff. Furthermore, the Petitioner had adjusted the entire energy generated against their consumption and in subsequent month the Petitioner had exceeded the peak hour demand quota eventhough their entire generation and banked units had been adjusted. From the above, it could be clearly observed that the Petitioner had not consumed the energy depending upon their quota and also their captive consumption. Hence, the contention of the Petitioner that the Petitioner has not exceeded the demand quota and it is the Respondent who prevented the Petitioner from consuming the eligible wind energy during evening peak hour resulting in short fall of equivalent demand, because the equivalent demand was calculated wrongly based on the energy consumed / adjusted which

could be done only when there is no restriction of consumption during the evening peak hour, is misleading and one of misinterpretation.

4.20. If the equivalent demand is given for the entire energy injected into the system by the wind energy generator, redrawn energy from the banked energy would not be eligible for equivalent demand calculation, since allowing it at two different times would amount to providing double benefit for the same energy which would result in unjust enrichment at the cost of Public ex-chequer. During the off-season, the generated energy may not be adequate and therefore the wind energy captive consumer can draw from the bank and consume. Even during the season if the generated energy is not adequate, the captive consumer can draw from the bank. Therefore, consumption has to be the basis for determination of the equivalent demand met from wind energy generator. The Commission has ordered that the encashment rate for the unutilized banked energy is full value of the relevant purchase rate as and when the Distribution Licensee enforces Restriction and Control measures for restricting the consumption of wind energy generator. Hence, the Commission has given a higher rate for the banked units when the consumer is prevented from consuming the wind energy generated due to Restriction and Control measures. Hence, the contention of the Petitioner that the Respondent cannot resort to unjust enrichment by levying penalty on the Petitioner for no fault of the Petitioner is not correct.

4.21. The equivalent demand in other words is the demand supplied by the generator and had been arrived at for the units of captive power consumed by the captive consumer from the date of implementation of the Order No.3 dated 15-05-2006 and Order No.2 dated 15-05-2006 and Order No.1 of 2009. The contention

raised in the petition is nothing but to reopen the issue which was already settled by the Commission in its order dated 28-12-2011, followed by the order of the APTEL dated 12-12-2012 in Appeal No.51 of 2012 filed by SIMA and in Appeal No.56 of 2012 filed by IWPA against the Commission's order dated 28-12-2011. Therefore, the Petitioners are not only making an attempt to reopen the issue which is settled by the Commission and Hon'ble Appellate Tribunal, but also attempting to find fault with the orders of the Commission dated 28-12-2011 and the order of Appellate Tribunal dated 12-12-2012.

5. Contention of the Petitioner in the Rejoinder:-

5.1. The matter of levy of excess demand charges was exclusively questioned only on a single ground whether the Respondents are legally correct in demanding such levy of excess demand charges, when the Respondents themselves have enforced both scheduled and unscheduled load shedding in respect of the supplies relating to the Petitioners and thereby preventing the Petitioners from consuming their own wind energy available abundantly in their account both in current generation and also in banking.

5.2. On one hand, the consumers are having sufficient wind power of their own in their respective slots and however, due to the strong enforcement of load shedding, they were prevented from consuming their own power and accordingly, while calculations are made based on the consumption, they are now facing the excess demand charges.

5.3. The formula dated 17-11-2008 which was approved by the Commission loses its relevancy when the formula does not take care of the enforcement of load

shedding in any manner. Hence, the formula dated 17-11-2008 would be ideal to a situation where there is no load shedding and therefore, in the event of load shedding enforced strongly, the formula should be specifically applied considering the total hours of load shedding enforced, as it affects the consumption pattern of the captive consumers of wind energy in a worst way.

5.4. Neither the decisions pronounced by the Commission on 28-12-2011 nor the decisions of the APTEL, New Delhi in Appeal No.51 and 56 of 2012 have application to the present issue as the present issue totally focuses on a situation as how demand should be calculated for the purpose of levying excess demand charges when the TANGEDCO itself enforces scheduled and unscheduled load shedding and when the captive consumer has sufficient captive power for consumption at his account. The question therefore to be decided in the present case is whether the TANGEDCO is correct in calculating the demand by applying a formula which never takes care the load shedding portion of the enforcement of R & C measures. The formula dated 17-11-2008 would be correct only for an ideal situation when there is no enforcement of load shedding and that too for longer durations.

5.5. The formula dated 17-11-2008 as long as it fails to take care and consider the load shedding enforced timings, the same formula cannot be relied up on for the calculation of demand and consequent demand and excess demand charges when the event of load shedding is heavily enforced among consumers.

5.6. The longer durations of load shedding would lead to levy of excess demand charges for the no fault of the consumers even when the consumers have their own energy at their account for comfortable consumption. Only due to the load shedding,

such excess demand charges are liable to be paid and therefore, the TANGEDCO should come forward with a new formula and accordingly, it should get it approved by the Commission specifically in circumstances where load shedding is heavily enforced.

5.7. Had the Respondent TANGEDCO not resorted to scheduled and unscheduled load shedding during normal hours / peak hours and allowed the Petitioner to consume their wind energy available to their credit to its entirety, there would not be any occasion to levy penalty as found levied now.

5.8. Due to the fault of the Respondent Corporation by not allowing the Petitioner to consume the wind energy injected and available to their credit at their respective slots this penalty is levied for no fault of the petitioner. By restricting the consumption of the Petitioner drastically during normal hours / peak hours by resorting to scheduled and unscheduled load shedding, the Petitioner cannot be held responsible to pay the penalty as it is only on the lapse on the part of the Respondent Corporation the Petitioner was not able to consume the required energy for his consumption during such slots / periods. Hence it is the no fault of the consumer and having restrained him to consume the energy even when it is available abundantly, the TANGEDCO cannot on one side resort to load shedding and on the other side to levy penalties, which would amount to unjust enrichment.

5.9. The Electricity Ombudsman has no jurisdiction to entertain any complaint when it relates to a dispute between a generator and distribution licensee. The complainant is not just a consumer. The complainant is a generator cum captive consumer. Hence, in earlier cases, the same Electricity Ombudsman has rejected to

entertain similar complaints when it pertained to generator cum consumers. In a similar occasion when Tamil Nadu Spinning Mills Association, filed a complaint for the non-receipt of encashment amount by captive consumers of wind energy of his Association, the same was rejected on the sole ground that such nature of complaints are pertaining to generators and therefore, the Electricity Ombudsman has no jurisdiction to entertain. The decision in Petition No.359 of 2011 dated 30-12-2011 was squarely applicable to instant case also. The issue in the instant case is not allowing the wind energy generated by such captive consumers for consumption at their mills without any interruption. Hence, it is a primary problem of a generator cum consumer. Therefore, the decision of the Electricity Ombudsman in having dealt with the matter under Dispute Resolution System which is applicable to a sole consumer cannot be relied upon.

5.10. All the captive consumers are entitled to receive their own power without any discrimination because of the rights provided under Open Access as contained in section 9 (2) and section 42 (2) of the Electricity Act, 2003. By enforcing scheduled and unscheduled load shedding, the TANGEDCO has enforced a discriminatory treatment to wind mill captive consumers and others. Hence, on this point also, such a penalty levied in the form of excess demand charge is not justifiable. It amounts to double punishment, namely, one for not allowing them to consume the energy of their own and the other towards penalty by way of excess demand charges.

5.11. The consumers are adversely affected for the fault and inefficiency of the Respondent Corporation in enforcing such large load shedding. Hence, what is required is that a separate formula other than the one dated 17-11-2008 which focuses on load shedding also and accordingly, as how demand needs to be

calculated when heavy load shedding gets enforced and accordingly, a justification could be made for ideal situation without any load shedding and another situation when load shedding is enforced heavily.

5.12. Considering there exists no such formula as of now, as observed by the Electricity Ombudsman, the Commission may direct the Respondent, TANGEDCO to come with a proposal to bring out a formula to deal with such cases of fixing demand when high level load shedding are enforced and thereby captive consumers are restrained from consuming their own energy.

6. Interim Order passed on 15-09-2014:-

On 15-09-2014, this Commission has passed a detailed Interim order directing the distribution licensee to come out with a proposal on the criteria under which the fixed time of 30 x 24 hrs. can be modified with “power on” time and source of obtaining the “power on data” so as to fairly calculate the equivalent demand and the same shall be done in discussion with the petitioners and proposal may be submitted to the Commission within one month from the date of issuance of the said interim order. Commission has also directed to maintain *status-quo* till the issuance of the final orders in the above cases.

7. Hearing held on 12-10-2017:-

In the hearing held on 12-10-2017, Commission directed both the parties to file the details indicating the no. of petitioners whose source power from conventional fuel generators and wind energy generators. Accordingly, the Respondents have filed additional affidavit on 30-11-2017.

8. Affidavit filed on behalf of the Respondents with regard to the details of indicating the number of Petitioners who have sourced power from Conventional fuel based generators and wind energy generators:-

8.1. TANGEDCO has furnished the following details:-

Sl. No.	Case No.	Name of the Parties	Source of Power
1	M.P.No.17 of 2013	Sri Rohith Spinners (P) Ltd., HT SC No.192	Wind based
2	M.P.No.18 of 2013	Suriya Spinning Mills, HT SC No.256	Wind based
3	M.P.No.19 of 2013	Sree Saravanabalaji Textiles, HT SC No.302	Conventional and wind based
4	M.P.No.20 of 2013	Suriya Spinning Mills Unit B, Pollachi, HT SC No.365	Wind based
5	M.P.No.21 of 2013	Shri Dhanalakshmi Spintex (P) Ltd., HT SC No.265	Wind based
6	M.P.No.22 of 2013	T.T. Ltd., HT SC No.26	Conventional and wind based
7	M.P.No.23 of 2013	Pallipalayam Spinners (P) Ltd., HT SC no.35	Wind based
8	M.P.No.24 of 2013	K.M. Plastics, HT SC No.611	Wind based
9	M.P.No.25 of 2013	N.S.P.Knitting Mills, HT SC No.231	Conventional and wind based
10	M.P.No.26 of 2013	Rasi Tex (In) Pvt Ltd., SE, Namakkal EDC, HT SC No.192	Conventional and wind based
11	M.P.No.29 of 2013	Arcot Soles (P) Ltd., SE, Tiruppattur EDC, HT SC No.84	Wind based
12	M.P.No.30 of 2013	Farida Shoes (P) Ltd., HT SC No.55	Wind based
13	M.P.No.32 of 2013	Venilakshmi Mills (P) Ltd., HT SC No.247	Wind based
14	M.P.No.33 of 2013	VMD Mills (P) Ltd., HT SC No.294	Conventional and wind based
15	M.P.No.34 of 2013	Mallur Siddeswara Spinning Mills (P) Ltd., HT SC No.89	Conventional and wind based
16	M.P.No.35 of 2013	Shri Cheran Synthetics India Ltd., HT SC No.261	Conventional and wind based
17	M.P.No.36 of 2013	Coimbatore Kalpanaa Tex Mill Ltd., HT SC No.214	Conventional and wind based
18	M.P.No.37 of 2013	Raghav Industries Ltd., HT SC No.176	Wind based
19	M.P.No.38 of 2013	Lucky Yarn Tex India Ltd., HT SC No.332	Conventional and wind based
20	M.P.No.39 of 2013	Chenniappa Yarn Spinners Private Ltd., HT SC No.165	Conventional and wind based
21	M.P.No.40 of 2013	K.A.C. Yarn Private Ltd., HT SC No.73	Wind based

22	M.P.No.41 of 2013	Arunkumar Spinning Mills (P) Ltd., HT SC No.157	Conventional and wind based
23	M.P.No.42 of 2013	Senthil Nathan Spinning Mills (P) Ltd., HT SC No.201	Conventional and wind based
24	M.P.No.43 of 2013	VSM Weaves India Ltd., HT SC No.227	Conventional and wind based
25	M.P.No.44 of 2013	Viking Textiles Pvt. Ltd., HT SC No.101	Conventional and wind based
26	M.P.No.45 of 2013	K.S.R. Textiles Pvt. Ltd., HT SC No.308	Conventional and wind based
27	M.P.No.46 of 2013	K.S.R. Textiles Pvt. Ltd., HT SC No.112	Conventional and wind based
28	M.P.No.47 of 2013	Gangai Spinning Mills, HT SC No.101	Wind based
29	M.P.No.48 of 2013	Hindustan Cotton Spinning Mills, HT SC No.79	Conventional and wind based
30	M.P.No.49 of 2013	K.A.S. Industries India Ltd.	Conventional and wind based
31	M.P.No.50 of 2013	Mirnal Spinning Mills, HT SC No.276	Conventional and wind based
32	M.P.No.51 of 2013	Mirnal Spinning Mills, HT SC No.606	Wind based
33	M.P.No.54 of 2013	VTM Ltd.	Conventional and wind based
34	M.P.No.55 of 2013	Tirupur Textiles Private Ltd.	Conventional and wind based
35	M.P.No.56 of 2013	Tirupur Textiles Private Ltd.	Conventional and wind based
36	M.P.No.57 of 2013	Tirupur Textiles Private Ltd.	Conventional and wind based
37	M.P.No.58 of 2013	Tirupur Textiles Private Ltd. HT SC No.6	Conventional and wind based
38	M.P.No.59 of 2013	Tirupur Textiles Private Ltd., HT SC No.90	Wind based
39	M.P.No.60 of 2013	Tirupur Textiles Private Ltd., HT SC No.1	Conventional and wind based
40	M.P.No.61 of 2013	Palladam Hi-Tech Weaving Park HT SC No.316	Conventional and wind based
41	M.P.No.62 of 2013	Harshni Textiles Ltd.	Conventional and wind based
42	M.P.No.63 of 2013	Rajave Textiles Private Ltd.	Conventional and wind based
43	M.P.No.64 of 2013	Precot Meridian Ltd., HT SC No.593	Conventional and wind based
44	M.P.No.65 of 2013	Precot Meridian Ltd., HT SC No.604	Conventional and wind based
45	M.P.No.66 of 2013	Sabari Textiles Pvt. Ltd., HT SC No.525	Conventional and wind based
46	M.P.No.67 of 2013	Ennar Spinning Mills Pvt. Ltd.	Conventional and wind based

47	M.P.No.68 of 2013	Standard Spinning and Weaving Mills Ltd.	Conventional and wind based
48	M.P.No.69 of 2013	Thiagarajar Mills Pvt. Ltd.	Conventional and wind based
49	M.P.No.70 of 2013	Thiagarajar Mills Pvt. Ltd.	Conventional and wind based
50	M.P.No.71 of 2013	Super Spinning Mills Ltd., HT SC No.127	Conventional and wind based
51	M.P.No.74 of 2013	M/s.Sandhya Spinning Mill Ltd.	Conventional and wind based
52	M.P.No.75 of 2013	M/s.Sri Vishnu Shankar Mill Ltd.	Conventional and wind based
53	M.P.No.76 of 2013	Sudarsanam Spinning Mills	Conventional and wind based
54	M.P.No.77 of 2013	Sri Ramco Spinners	Conventional and wind based
55	M.P.No.78 of 2013	Rajapalayam Mills Ltd.	Conventional and wind based
56	M.P.No.79 of 2013	Rajapalayam Spinners Private Ltd.	Conventional and wind based
57	M.P.No.80 of 2013	Rajapalayam Textiles	Conventional and wind based
58	M.P.No.1 of 2014	Raju Spinning Mills Pvt. Ltd., HT SC No.78	Conventional and wind based
59	M.P.No.2 of 2014	Raju Spinning Mills Pvt. Ltd., HT SC No.173	Conventional and wind based
60	M.P.No.3 of 2014	Eastern Condiments Pvt. Ltd., HT SC No.30	Wind based
61	M.P.No.4 of 2014	Aswin Textiles Pvt. Ltd., SE, Udumalpet EDC, HT SC No.200	Wind based
62	M.P.No.5 of 2014	Raju Spinning Mills Pvt. Ltd. HT SC No.216	Conventional and wind based
63	M.P.No.6 of 2014	Aruppukottai Sri Jayavilas Ltd	Conventional and wind based
64	M.P.No.7 of 2014	Iswari Spinning Mills SE, Dindigul EDC	Conventional and wind based
65	M.P.No.8 of 2014	Sri Raju Cotton Mills	Conventional and wind based
66	M.P.No.10 of 2014	Eveready Spinning Mills Pvt. Ltd., HT SC No.104	Conventional and wind based
67	M.P.No.11 of 2014	Eveready Spinning Mills Pvt. Ltd., Unit II HT SC No.177	Conventional and wind based
68	M.P.No.12 of 2014	Eveready Spinning Mills Pvt. Ltd., Unit III, HT SC No.282	Conventional and wind based
69	M.P.No.13 of 2014	Eveready Spinning Mills Pvt. Ltd., Unit IV, HT SC No.347	Conventional and wind based
70	M.P.No.14 of 2014	K.M.D. Clothing SE, Salem EDC HT SC No.209	Wind based
71	M.P.No.16 of 2014	Super Sales India Ltd., Unit I, HT SC No.155	Wind based

72	M.P.No.17 of 2014	Super Sales India Ltd., Unit II, HT SC No.13	Conventional and wind based
73	M.P.No.26 of 2014	M/s.Aruppukottai Sri Jayavilas Limited, HT SC No.68	Conventional and wind based
74	M.P.No.27 of 2014	M/s.Aruppukottai Sri Jayavilas Limited HT SC No.68	Conventional and wind based

8.2. The Petitioner in M.P.No.74 of 2013 has furnished the following details:-

SI. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	74/2013	141/Virudhunagar EDC	Sandhya Spinning Mill Limited	Wind + 3 rd Party + IEX
2		308/Virudhunagar EDC	Sandhya Spinning Mill Limited	Wind + IEX

8.3. The Petitioner in M.P.No.75 of 2013 has furnished the following details:-

SI. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	75/2013	304/Virudhunagar EDC	Sri Vishnu Shankar Mill Limited	Wind

8.4. The Petitioner in M.P.No.76 of 2013 has furnished the following details:-

SI. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	76/2013	5/Virudhunagar EDC	Sudarsanam Spinning Mills	Wind
2		310/Virudhunagar EDC	Sudarsanam Spinning Mill Limited- Unit II	Wind

8.5. The Petitioner in M.P.No.77 of 2013 has furnished the following details:-

SI. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	77/2013	115/Virudhunagar EDC	Sri Ramco Spinners	Wind

8.6. The Petitioner in M.P.No.78 of 2013 has furnished the following details:-

SI. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	78/2013	252/Virudhunagar EDC	Rajapalayam Mills Limited, "C" Unit	Wind

8.7. The Petitioner in M.P.No.79 of 2013 has furnished the following details:-

Sl. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	79/2013	317/Virudhunagar EDC	Rajapalayam Textile Limited (Formerly known as Rajapalayam Spinners Private Limited)	Wind+ 3 rd Party

8.8. The Petitioner in M.P.No.80 of 2013 has furnished the following details:-

Sl. No.	TNERC MP.No.	HT SC No.	Name of the Mill	Sourced Power from
1	80/2013	106/Tirunelveli EDC	Rajapalayam Textiles	Wind+ 3 rd Party

9. Common Written Submission filed on behalf of the Petitioners:-

In the Common Written Submission filed on behalf of the Petitioners, the Petitioners have submitted as follows:-

9.1. It is further submitted that while fixing the quota for wind energy captive generators and other CPP and third party power purchase consumers, since they are also generating demand out of the energy supplied by them by injecting the energy into the TANGEDCO's grid from other sources, the equivalent demand was calculated based on the energy supplied/injected into the grid vide Respondent's Circular Memo dated 17.11.2008. The formula for calculating equivalent demand was as follows:-

$$\text{Equivalent demand} = \frac{\text{Energy supplied by CPP Wind Mills / Third Party Purchase}}{\text{No. of days x No. of hours x Power Factor}}$$

But all of a sudden, without approval of the Commission, the Respondent TANGEDCO has issued a Circular Memo dated 25-06-2010 changing the above

formula by stating that energy adjusted / consumed should be taken for equivalent demand calculation instead of energy supplied / injected.

9.2. In view of the above Circular dated 25-06-2010, the 4th Respondent is now calculating equivalent demand as per the formula given below:

$$\text{Equivalent demand} = \frac{\text{Energy supplied by CPP Wind Mills / Third Party Purchase}}{\text{No. of days x No. of hours x Power Factor}}$$

9.3. It is submitted that the matter of levy of excess demand charges was exclusively questioned and challenged, only on a single ground, whether the Respondents are legally correct in demanding such levy of excess demand charges, when the Respondents themselves have enforced both scheduled and unscheduled load shedding upto 70% in respect of the supplies relating to the Petitioners and thereby preventing the Petitioners from consuming their own wind energy available abundantly in their account both in current generation as well as in banking.

9.4. The details of calculation of impugned alleged excess demand in the Petitioner's CC bill dated 10/2012 in W.P.No.30090 of 2012 before the Hon'ble High Court (now numbered as M.P.No.17 of 2013 before the Commission) is reproduced below:-

Recorded Demand during evening peak hour : 980 KVA

Equivalent Demand Calculation as per TNEB / Respondent:-

As per TNEB calculation based	67.820	
On energy adjusted/consumed:	-----	= 570.88 KVA
	30 days x 4 hours x 0.98	
ADD: TNEB portion at 10% during evening peak hour		= 97.55 KVA

Total		= 668 KVA

Therefore, alleged excess demand for which penalty is levied (980 KVA – 668 KVA) = 311.58 KVA

Penalty: 311.58 KVA X Rs.600/- = Rs.1,86,945/-

9.5. The issue agitated before the Commission is that, on one hand, the consumers are having sufficient wind power of their own in their respective slots during the respective periods and however, due to the strong enforcement of load shedding at the consumption end, they were prevented from consuming their own power and accordingly, while calculations are made based on the consumption, they are now facing the excess demand charges.

9.6. It is submitted that the petitioners are not going into the question whether the demand should be calculated based on consumption or based on injection, Due to the limited question available for decision, the petitioners restrict their submissions only on the question, when the Distribution Licensee by enforcing strong load shedding both in scheduled and unscheduled manner at the consumption end, is justified to levy excess demand charges from the petitioners, when they have sufficient wind power of their own. But for the load shedding enforced at the consumption end, each of the petitioner would have consumed their own wind energy to the required extent and the alleged levies of excess demand and energy charges would not have occurred at all when they have been permitted to consume their own wind energy without such scheduled and unscheduled load shedding at consumption end.

9.7. Neither the decisions pronounced by the Commission on 28.12.2011 nor the decisions of the Hon'ble APTEL, New Delhi in Appeal No.51 and 56 of 2012 have no

application to the present issue, as the present issue is totally different and focuses on a situation as how demand should be calculated for the purpose of levying excess demand charges when the TANGEDCO itself enforced scheduled and unscheduled load shedding at consumption end and when the captive consumer has sufficient captive power for consumption at his account.

9.8. The question therefore to be decided in the present case is whether the TANGEDCO is correct in calculating the demand by applying a formula which never takes care the load shedding portion of the enforcement of R&C measures at the consumption end. The formula dated 17.11.2008 would be correct, only for an ideal situation when there is no enforcement of load shedding at the consumption end and that too for longer durations.

9.9. The Commission has held that the numerator in the above formula has been well settled that the energy consumed by the consumer is to be taken for fixing quota and the only parameter left for discussion is the denominator i.e., the time. It is held that time is the critical issue of the case and time factor is nothing but the supply availability or "power on" time during which the consumer can consume his particular energy referred to in the numerator of the formula. Considering the norms fixed by the Commission in the Standard of Performance Regulation and other practical conditions, a supply interruption of 20% and more in a billing cycle can be considered as a "longer duration". The Commission has held that it is a fair criteria for replacing the 30 x 24 hours by the actual "power on" time to find out the equivalent demand supplied by the open access consumer and further directed the respondents to come out with a proposal on the criteria under which the fixed time of

30 x 24 hours can be modified with "power on" time and the source of obtaining the "power on" data so as to fairly calculate the equivalent demand.

9.10. Even though the opportunity of Appeal under Section 111 of the Electricity Act, 2003 was very much provided to the Respondents, in the order itself, the TANGEDCO has never preferred to seek an Appeal against the order of the Commission dated 15.09.2014. Hence, the order mandating to go for a modified formula has become full, final and enforceable.

9.11. In the guise of complying with the order dated 15.09.2014, the Chief Financial Controller-Revenue issued a circular, suggesting for a discussion proposed to be held on 29.12.2014 at 11.00 AM at its Head Quarters. To the shock and surprise of the Petitioners, the CFC-Revenue vide her Circular at Para 2.7 has taken a stand that the Respondent accepted the intention of the Commission in the order dated 15.09.2014 and consequently rework the excess demand charges proportionately based on the actual power off time over and above 20% in the billing cycle which is completely contrary to the order dated 15.09.2014 passed by the Commission. The Commission in the order dated 15.09.2014 was pleased to hold that the only parameter left for discussion is the denominator i.e. the time - "power on" time during which the consumer can consume his particular energy referred to in the numerator to fairly calculate the equivalent demand. Whereas, in the Circular Memo, the CFC-Revenue has taken totally a contrary stand that the denominator remains unaltered and only the excess demand charges are proportionately reworked.

9.12. It is submitted that the Respondent has filed a proposal by way of an affidavit dated 12-02-2015, wherein the same stand taken in the Circular dated 15-10-2014 is

reiterated the Respondent accepted the intention of the Commission in the order dated 15-09-2014 and consequently rework the excess demand charges proportionately based on the actual power off time over and above 20% in the billing cycle which is completely contrary to the order dated 15-09-2014 passed by the Commission.

9.13. Actual excess consumption based on “Power On” period as per Commission’s order dated 15-09-2014:-

Total Number of Peak hours (6-10 p.m.) in a month (30 days x 4 hours)	=	120 hours – (A)
Actual unscheduled power cut / power failure (Pg.99)	=	<u>53 hours - (B)</u>
“Power On” period as per order dated 15-09-2014	=	67 hours (A-B)
Percentage of unscheduled power cut / load shedding	=	44%

Alleged excess demand calculations in the 10/2012 CC Bill at page 103 under evening quota details:-

	Energy		Demand	
1	Recorded demand		980 KVA	(A)
2	Energy consumed	67,820 Units (in the restricted power on period of 67 hours)		(B)
3	Demand quota	67,820 units / 120 hours x .98 PF	570.88 KVA (+) 97.55 KVA	668 KVA (C) C= (B/30 days x 4 hours x .98 PF) + 5% TNEB quota
4	Alleged excess demand		311.58 KVA (311.58 KVA X Rs.600= Rs.1,86,945)	(A) – (C)

Excess Demand calculations in the 10/2012 CC Bill based on “Power On” period

	Energy		Demand	
	Recorded demand		980 KVA	(A)
	Energy consumed	67,820 Units (in the restricted power on period of 67 hours)		(B)

Demand quota	67,820 units / 67 hours x .98 PF	991.99 KVA (+) 97.55 KVA	1089.54 KVA	(C) C= (B/30 days x X power on hours x .98 PF) + 5% TNEB quota
Excess demand			Nil	(A) – (C)

9.14. The demand needs to be calculated when heavy load shedding gets enforced should be recalculated based on the new formula introduced by the Interim Order dated 15-09-2014. Then only, a fair and equitable justification could be achieved considering the pecuniary nature of the situation. A formula prescribed considering the ideal situation of 24 hours power availability, without taking into account of any load shedding, cannot be *Mutatis Mutandis* made applicable to a different situation, where the load shedding was heavily enforced preventing the consumption of the own energy by captive consumers for longer durations.

10. Written Submissions filed on behalf of the Respondents:-

10.1. The petitioners having filed the remand petitions in line with their prayers made before the Hon'ble High Court of Madras and having taken the benefit of the status quo have subsequently altered their stand and deviated from their original prayer made before the Hon'ble High Court of Madras in various Writ Petitions to consider the supplied energy instead of the adjusted Energy in the numerator.

10.2. They have filed additional affidavit after the case was remanded to the Commission by the Hon'ble High Court of Madras to consider it as per the Hon'ble APTEL order and in accordance with law. In their additional affidavit they have raised a new prayer which was not in their original prayer in the Writ petitions before the Hon'ble High Court of Madras to take the actual Power on time in the denominator instead of the Peak Hour of 4 Hours.

10.3. It is respectfully submitted that Appeal No.51 of 2012 and Appeal No.56 of 2012 were filed before Hon'ble APTEL against TNERC's orders dated 28-11-2011 wherein they have challenged the formula approved for calculation of equivalent demand, wherein they raised the following grounds:

"In the same way, during the evening peak hours when the mills are adjusting the wind power for their captive consumption @ 1000 units per hour, because of the load shedding the mills are not able to fully utilize the energy available to them. The following example will give the correct picture:

Mill X is having 4000 units in evening peak hour per day which can consume 1000 units per hour. Because of 1 ½ hours load shedding, the mill would be able to consume only 2500 units. The first Respondent is calculating the equivalent demand based on the impugned order only of this 2500 units for 4 hours. Under these circumstances, if the mill has consumed 2500 units, they are penalized."

10.4. In this regard, the Hon'ble APTEL after considering all the grounds including the above ground of taking into account the actual hours for which power is available in the denominator instead of 4 hours had issued order in said appeals on 12.12.2012 wherein the relevant portions are furnished below:

"23. The last paragraph of the memo dated.17.11.2008 quoted in paragraph 16 above provides for comparison of demand and energy used by the consumer with the deemed demand and energy supplied by the generator at the end of the month. Therefore, at the end of the month if the captive consumer has not been able to consume the entire intended supply from the wind energy generator, then 'B' is restricted to the actual energy consumed by the consumer logically 'F' has also to be based on the actual energy consumed from the wind energy generator during the month. The contention of the Appellants is that 'F' should be based on the energy generation even though they have not objected to 'B' being restricted to the actual energy from captive generation utilized by the consumer allowing the balance energy , if any, for banking. xxxxxxxx.

27. Ongoing thorough State Commission's orders dated.28.11.2008, the memo of the Electricity Board dated.17.11.2008 and Wind energy Tariff Order dated.20.03.2009, it has to be held that the actual energy supplied by the captive wind energy generator and calculated demand or equivalent demand supplied by the captive WEG have to be based on

the actual energy from the captive WEG consumed by the consumer in a month.

28. Firstly, because the memo dated 17.11.2008 specifies the method for fixing the demand and energy quota for HT consumers partially using power from captive power plant and therefore, the energy consumption, energy supplied by the CPP, the base demand as well as calculated demand supplied by the CPP has to be with respect to the supply to the consumer. CPP could be supplying power to more than one consumer. Therefore, the formulation given in the memo dated.17.11.2008 has to be with respect to the supply by the captive power plant to the consumer. If 'A' is measured against the consumption, 'B' should also be measured against consumption. If 'B' in the formulation is related to actual energy consumed by the captive consumer from the CPP, 'F' should also be calculated based on the energy supplied by the CPP to the consumer during the month.

29. Secondly, the note in the memo dated. 17.11.2008 states that the distribution licensee at the time of monthly meter reading would compare the demand and energy used by the consumer with the deemed demand and energy supplied by the generators.

30. Thirdly, the State Commission's orders dated 28.11.2008 and 20.03.2009 permit utilization of the banked energy in subsequent months. If the equivalent demand is calculated corresponding to the energy injected by the wind energy generator in a month without the entire energy being actually consumed by the consumer, it would result in double benefit to be given to the banked energy i.e. for providing the additional demand quota to the captive user for that energy in the current month as well as banking of the same energy which could be either re-used for providing additional energy and demand quota in the subsequent months or for payment at the end of the Financial Year.

31. Fourthly, the wind energy Tariff Order dated.20.03.2009 clearly indicates that the demand supplied by the generator has to be based on the units consumed by the consumer and not on the basis of energy injected by the wind energy generator."

10.5. The contention raised to take the actual power on time instead of 4 hours in the petitions is nothing but a futile attempt to reopen an issue which was already settled by the Commission in its order dated. 28.12.2011, followed by the order of the Hon'ble APTEL dated. 12.12.2012 in Appeal No.51 of 2012 and Appeal No.56 of 2012 which were filed against the Commission's order dated.28.12.2011 by the

SIMA and IWPA. Therefore, the petitioners are making an attempt to reopen the issue which was already settled by the Commission and Hon'ble Appellate Tribunal.

10.6. The Commission has directed to come out with a proposal on the criteria under which the fixed time of 30x24 hours can be modified with "power on" time and the source of obtaining the "power on" data so as to fairly calculate the equivalent demand. In this connection, the following proposal was given to the petitioners for obtaining their views:-

Though the prayer of the petitioner has already been challenged by TANGEDCO in the counter that the formula for calculation of Equivalent Demand has attained finality in view of the APTEL's judgment in Appeal No.51 and 56 of 2012, without prejudice to TANGEDCO's legal right in order to give some relief to the petitioners in good faith, discussions were held on 29.12.2014 at TANGEDCO'S Head Quarters, with the representatives of Tamil Nadu Spinning Mills Association, Southern India Mills Association and along with other 12 petitioners (approximately) and other petitioners wherein they have submitted their views through letter. They unanimously disagreed with the proposal given by TANGEDCO to give relief and they insisted to change the formula with power on time without consideration of longer duration of 20%. The relevant portion of the proposal is as follows:

"3.6 In view of the above, it is impractical to change the common formula as approved by this Hon'ble Commission in the respective orders.

3.7. However, the Hon'ble Commission has ordered to identify the specific cases of open access consumers who are affected by the longer duration of load shedding and provide them a reasonable relief in excess demand charges by identifying the right time factor for reasonable calculation of the equivalent demand. In this connection, TANGEDCO has also accepted the intention of the Hon'ble Commission and rework the excess demand charges proportionately, based on the actual power off time over and above 20% in the billing cycle in respect of the consumers who were affected a supply interruption as stated by the Hon'ble Commission in the in the interim

order dated.15.09.2014 that a supply interruption of 20% and more in a billing cycle can be considered as a longer duration. The denominator in the existing formula remains unaltered since the quota has not been revised based on the power on time in the respective month in accordance with the memo dated.17.11.2008, which was approved by the Hon'ble Commission. The said method of excess demand calculation is illustrated below for easy understanding:

Illustration:- During 4 hours [18.00 Hrs to 22.00 Hrs] :

1.	The excess demand charges collected during the Month as per the formula in force	Rs.1,00,000
2.	Duration of power off time during the billing cycle	= 55 Hrs
3.	Total hours in the billing cycle	120 Hrs
4.	Percentage of power off against 120 hrs [4X30] = 55/120X100	45 %
5.	Over and above of 20% of the power off = 45% - 20 %	25%
6.	Percentage of Power on time	75 %
7.	Excess demand arrived for 120 hrs [i.e 100%]	Rs.1,00,000
8.	Less 25% power off time (-)	Rs. 25,000
9.	The excess demand charges to be payable by the Consumer as per proposed workings	Rs. 75,000

3.8. Further, it is stated that the petitioner who avail the benefit of the proportionate excess demand charges based on the above illustration, the 75% of the tariff may be allowed towards the encashment of unadjusted units at the credit of the petitioner at end of the respective financial year. Moreover, the aforementioned method of calculation in connection with excess demand charges in respect of the wind energy captive users is applicable only on peak hours [18.00 Hrs to 22.00 Hrs] during Restriction and Control measures in force.”

10.7. The contention of the petitioners that the petitioners were restricted to use their wind energy during Scheduled and unscheduled load shedding hours is incorrect, since the petitioners were permitted to adjust the surplus units of the evening peak hour against the morning peak hour consumption and vice – versa. Similarly, they were also permitted to adjust the higher slot generation against lower slot consumption as per Wind Energy Order No.1 of 2009 and also in subsequent

Tariff orders consequently they have availed the equivalent demand for such adjusted units also. Hence, the contention of the petitioner that if calculation is based on drawal (which is prevented) they are compelled to pay excess demand and energy charges is misconceived one.

10.8. The equivalent demand in other words is the demand supplied by the generator which had been arrived for the units of captive power consumed with number of days of the billing month by the captive consumer from the date of implementation of the Order No.3 dated.15.05.2006 and Order No.2 dated 15.05.2006, Order No.1 of 2009 and from issuance of the memo dated 17.11.2008.

10.9. The petitioners herein stated that due to load shedding they could not able to consume the entire energy generated in the billing month.

10.10. During the year 2013-14, the power cut was well within the limit. This can be clearly understood since most of the cases have no surplus energy as on 31.03.2014 i.e there has been supply of power to the extent of fully utilized the generated energy. The HT consumers/petitioners had availed equivalent demand for the entire energy wheeled for adjustment either in current month or in the subsequent months. However, in a few cases held surplus energy as unutilized at the end of the financial year 2012-2013, 2013-14 that too mainly because of disproportion in wind generation capacity against the captive consumption and also due to wheeling of power from IEX, Third Party and other captive conventional sources.

10.11. The Commission had issued Tariff order on wind energy vide Order No.1 of 2009, wherein the stakeholders had requested as follows:

29. Banking Provisions and Charges:

M/s. Indian Wind Power Association:

A major boost to the growth of the wind sector in the State has been the provision for banking facility for a period of one year with 5% banking charges in kind. The provision for payment of the unconsumed banked units at 75% of the procurement cost would be fair under normal circumstances, but not during restriction and control (R&C) period. WEGs are not permitted to use their own power due of R&C by TNEB. TNEB should be asked to pay at least 100% of the procurement tariff for wind power prevailing on the date to the investors irrespective of whether or not they have signed the new agreement.-----.

M/s. Tamilnadu Spinning Mills Association:

*WEGs are not allowed to consume the whole of energy produced at the consumption end owing to restriction and control of power supply. Besides the entire energy banked is also not allowed to be en-cashed.-
-----*

M/s. Sri Amaravathi Spinning Mills:

Due to power cut, the WEGs are not able to consume all the generated units and therefore requested the Commission that the banked energy must be purchased by TNEB at Rs.2.70 per unit.

Based on the above comments, in the para 8.2.2 this Hon'ble Commission proposes to retain the same features with some modifications based on the suggestions made by the stakeholders. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification in the plea that the unutilized energy at the end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee. In this connection, it is relevant to mention that the said tariff order was issued during the prevailing of Restriction and Control measures. During the above order, the petitioners did not asked to implement the power on time to calculate the demand supplied by the generator. In that Tariff order, the Hon'ble Commission had ordered the formula for calculating the demand supplied by the generator in para 8.7 as follows:

Total generated units consumed by the consumer on open access, the demand supplied by the generator =

$$\frac{\text{Total generated units consumed by the Consumer on open access}}{\text{-----}} \times 30 \times 24 \times \text{actual PF recorded during the billing month}$$

In this regard, it is stated that the Commission ordered to pay full value at relevant tariff for unutilized energy available at end of the financial year due to reasons that they could not consume the energy generated due to prevailing Restrictions and Control measures including Load shedding. Now the petitioners request to calculate the equivalent demand supplied by the generator by taking into account actual power on time. If the requests of the petitioners are considered, it would result in triple benefit to the petitioners compared to others. The Wind energy captive users have banking facility, whereas the other sources do not have banking facility. By virtue of banking facility, the excess generation over and above the consumption will not get lapsed, per contra; the excess generation will get lapsed in respect of conventional power generators. Further, while doing so, in respect of the wind energy captive users have availed the equivalent demand for banked energy also in the subsequent months. In such circumstances, while other captive users including other wind energy captive users paid the excess demand charges by way of calculating the equivalent demand by taking into account of actual no of days in the billing month as per the tariff orders of the Commission, the wind energy captive users i.e petitioners requested to calculate the equivalent demand by taking into account of power on time shall be termed as un-due benefit and unjust enrichment given to the petitioners and also violates Article 14 of the constitution of India.

10.12. During the introduction of R&C measures based on the Government's directive instructions were issued vide circular dated.1.11.2008 in which the load shedding of 2 hours from 6.00 AM to 6.00 PM and 1 hour load shedding from 6.00 PM to 10.00 PM was communicated.

10.13. Further, during R&C measures, the demand and energy quota had been fixed based on the consumption during the period from 10/2007 to 10/2008 (base period) when there was no power cut (ie) 24 hrs power supply without interruption. In this connection, it is stated that though the base energy had been arrived based on their consumption when there was no power cut (ie) 24 hrs power supply without interruption, the energy quota arrived at has not been reworked proportionately based on the actual power available time and the excess energy charges were arrived at accordingly. If Power on time is adopted for fixing of both Demand and Energy Quota, then the demand quota will not vary but energy quota will vary. The first petitioner had paid excess energy charges and excess demand charges, but had not disputed the excess energy charges and only disputed the excess demand charges (to be calculated based on power on time). In this regard, to explain the above, the actual working for the month of May-2014 in respect of the petitioner M/s. Rohit Spinners, by taking with power on time and without taking power on time is as follows:

HT.SC.No.192, M/s. Rohit Spinners – M.P.No.17 of 2013,
SANCTIONED DEMAND 1450 KVA.

Fixing of Energy Quota:
For the month May-2014:

The actual working without taking power on time:

1.	The Base Energy Consumption as illustrated in working instructions Dated.1.11.2008	801987 Units	A
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2.	Actual monthly average energy portion actually adjusted during the consecutive months taken	174012 Units	B
3.	The Actual energy to be availed by the consumers from TANGEDCO [A-B]	627975 Units	C
4.	80% energy on C	502380 Units	D
5.	TNEB Energy Quota	502380 Units	

Fixing of Demand Quota:

The actual working without taking power on time:

1.	The Base Demand Consumption as illustrated in working instructions Dated.1.11.2008	1428 KVA	E
2.	Equivalent demand supplied by the generator 50603 / 31 x 24 x 0.99	68.70 KVA	F
3.	The Actual demand availed by the consumer from TANGEDCO [E-F]	1359.30 KVA	G
4.	80% Demand on G	1087.44 KVA	H
5.	TNEB Demand Quota	1087.44 KVA	

CALCULATION OF EXCESS ENERGY CHARGES:

As per existing CC bills:

Energy calculation	Total Hrs	Peak Hrs (6-9pm)	Peak Hr (9-10pm)
Energy consumed	6,75,445	45,960	14,920
Less Wind Energy	1,68,440	27,155	11,360
Balance Energy	5,07,005	18,805	3,560
TNEB Quota Energy	5,02,380	37,919	12,640
Excess over quota energy	4,625	0	0
Excess Energy Charges	Rs.50,875		

CALCULATION OF EXCESS DEMAND CHARGES:

As per existing CC bills:

Demand Calculation	20 hrs	4 hrs
Recorded demand	1,188 KVA	648 KVA
Wind energy adjusted	1,29,925 Units	38,515 Units
Equivalent demand	129925/30x20x0.99	38515/30x4x0.99

	=218.729 KVA	=324.200 KVA
TNEB Demand Quota	1087.440 KVA	124.740 KVA
Excess over Quota demand	0	199.060 KVA
Charges for excess demand	0	Rs.1,19,436

The method by taking Power on time in the billing

QUOTA AND EXCESS CALUCLATION IS WORKED BY TAKEN INTO ACCOUNT

ACTUAL POWER ON TIME:

Power on time is during 20 Hrs = 18 Hrs

Power on time is during 4 Hrs = 2 Hrs

Fixing of Energy Quota:

1.	The Base Energy Consumption as illustrated in working instructions Dated.1.11.2008 BASE ENERGY = 801987 for 24 Hrs Base Energy for 20 Hrs = 801987/24 x 20 = 668323 Units	668323 Units	A
2.	Actual monthly average energy portion actually adjusted during the consecutive months taken Actual adjusted = 174012 for 24 Hrs Actual adjusted = 174012/24 x 20 = 145010 Units	145010 Units	B
3.	The Actual energy to be availed by the consumers from TANGEDCO [A-B]	523313 Units	C
4.	80% energy on C	418650 Units	D
5.	TNEB Energy Quota	418650 Units	

Fixing of Demand Quota:

1.	The Base Demand Consumption as illustrated in working instructions Dated.1.11.2008	1428 KVA	E
2.	Equivalent demand supplied by the generator 50603/24x20 = 42169 42169 / 31 x 20 x 0.99	68.12 KVA	F
3.	The Actual demand availed by the consumer from TANGEDCO [E-F]	1359.88 KVA	G
4.	80% Demand on G	1087.90 KVA	H
5.	TNEB Demand Quota	1087.90 KVA	

CALCULATION OF EXCESS ENERGY CHARGES:

Energy calculation	Total Hrs	Peak Hrs (6-9pm)	Peak Hr (9-10pm)
Energy consumed	6,75,445	45,960	14,920
Less Wind Energy	1,68,440	27,155	11,360
Balance Energy	5,07,005	18,805	3,560
TNEB Quota Energy	4,18,650	31.398	10,466
Excess over quota energy	88,355	0	0
Excess Energy Charges	Rs.9,71,905		

CALCULATION OF EXCESS DEMAND CHARGES:

Demand Calculation	20 hrs	4 hrs
Recorded demand	1,188 KVA	648 KVA
Wind energy adjusted	1,29,925 Units	38,515 Units
Equivalent demand	$129925/30 \times 18 \times 0.99$ =243.032 KVA	$38515/30 \times 2 \times 0.99$ =648.400 KVA
TNEB Demand Quota	1087.440 KVA	124.740 KVA
Excess over Quota demand	0	0 KVA
Charges for excess demand	0	0

From the above, it is evident that the demand quota 1087 KVA shall not vary in both scenarios considered above and the excess demand charges may not arise if the power on time is taken into account for arriving equivalent demand.

10.14. As far as energy quota is concerned, the energy quota will be 5, 02,380 units (without taking power on time) whereas the energy quota will be 4,18,650 units (taking power on time). The petitioner has to pay excess energy charges of Rs.50, 875 by taking without power on time. On the other hand, the petitioner has to pay excess energy charges of Rs.9,71,905/-by taking with power on time. For the above reason only, the petitioners had not disputed the power on time for calculation of excess energy charges. Therefore, if power on time is applied for calculation of excess demand charges, the same also be applied for calculating excess energy

charges due to reason that the energy and demand are inseparable. Moreover, the energy quota which has been fixed based on 24 hrs during the base period. This will result in comparing of two parameters which are not identical. Such a dissonance, in adopting two sets of parameters one for Excess Energy Charges and one for Excess demand Charges is not practical, legal or legitimate.

10.15. All the petitioners herein are wind energy captive users and in respect of wind energy captive users, the Commission had granted the following benefits considering the wind energy as infirm nature.

a. Banking provision.

b. Higher Slot generation can be adjusted against lower slot consumption.

c. Due to restriction and control measures, Commission has ordered that the encashment rate for the unutilized banked energy is full value of the relevant purchaser rate instead of 75 % tariff. Further, if the generator sells power directly to the respondent TANGEDCO, they are paid for the energy on single part tariff as per the rate fixed by the Commission.

d. By virtue of banking facility, the wind energy generators have not maintained their wind capacity in proportionate to their captive consumption, which leads to more banked energy at the credit of the captive users. This leads and creates all the issues. On the other hand, there is no banking facility in respect of other generators; therefore, they are maintaining generation capacity in proportion to their consumption. In this regard, it is most pertinent to note that those captive users are not facing any difficulty but raising objections in connection with calculation of equivalent demand due to power cut.

10.16. When the commission has directed the licensee to study the cases and take a decision which does not result in any discrimination. Altering the formula does not arise because almost the entirety of generators likely to be subject to levy have had the benefit of banking their energy through the year, thus avoiding

the levy of energy penalty. A miniscule minority alone would stand to gain by altering the formula. To alter a formula that has withstood the test of time and challenge before this Commission and APTEL earlier would be iniquitous and unfair especially when the licensee has offered monetary relief which would obviate the hardship of these stray cases. Such a course of action i.e offering monetary relief in those few cases without altering the formula for the world at large because of such hard cases would avoid discrimination and would remove the threat of opening of flood gates of claims from similarly placed consumers who may have preferred cases in the High court or other fora seeking similar relief.

10.17. Moreover, the Commission has ordered the licensee to identify the specific cases of open access consumers who are affected by the longer duration of load shedding and provide them a reasonable relief in excess demand charges by identifying the right time factor for reasonable calculation of the equivalent demand. In this connection, TANGEDCO has also accepted the spirit of direction of the Commission in this regard and taken in its totality, reworked the excess demand charges proportionately, based on the actual power off time over and above 20% in the billing cycle in respect of the consumers who were affected a supply interruption as stated by the Commission in the interim order dated.15.09.2014 that a supply interruption of 20% and more in a billing cycle can be considered as a longer duration. The denominator in the existing formula remains unaltered since the quota has not been revised based on the power on time in the respective month in accordance with the memo dated.17.11.2008, which was approved by the Commission and which approval has become final due to the APTEL's order in appeal which has not been appealed against.

10.18. If the Petitioners' request is considered it would open the flood gates as any change in formula will lead to multiplicity of litigation and claims for hundreds of crores of rupees from other 2000 plus consumers in the Wind Captive Category as well as other captive users and third party consumers may be in the pipeline or in the offing.

11. Findings of the Commission:-

11.1. We have carefully gone through all the records connected with these petitions and gave anxious consideration of the submissions of both parties. The singular contention in all these petitions is to take the energy available in the credit of the Petitioners instead of energy adjusted for the purpose of calculation of Equivalent Demand i.e. in the numerator of the formula for calculating the Equivalent Demand. But during the course of hearing, they have changed their submissions and argued that the denominator of the formula for calculating the Equivalent Demand should be changed by substituting 24 hours by the actual time during which power supply was available during the period. Inasmuch as prayer of these petitions are not amended to that effect, we are not going into these aspect. Needless to say that the direction of the Hon'ble High Court in its order dated 04-01-2013 in W.P.No.28429 of 2012 and etc. (Batch cases) is also to the effect that Petitioners are at liberty to adjudicate all the issues and questions raised in those Writ Petitions before the Commission for adjudication. In the above Writ Petitions, their main claim was to take the total energy generated instead of energy adjusted for the calculation of Equivalent Demand.

11.2. Now let us examine the scope of the orders of the Hon'ble High Court dated 04-01-2013 in W.P.No.28429 of 2012 and etc. As the present petitions are the sequel to the said orders of the Hon'ble High Court, it is necessary to extract the

operative portion of the said orders of the Hon'ble High Court which reads as follows:-

“16. xxx It is made clear that petitioners are at liberty to adjudicate all the issues and questions raised in these writ petitions before the Commission and the Commission shall look into the same by giving them an opportunity of hearing. Similarly, it is needless to say that the Commission shall take into account all the relevant provisions of law and the discussions and decision arrived at by the Appellate Tribunal in its order dated 12.12.2012. All the writ petitions stand disposed of accordingly. Till such time the Commission takes a decision, the parties to this proceeding are directed to maintain status quo as on date. Connected miscellaneous petitions are closed. There shall be no orders as to the costs.”

From the above, it is clear that the Hon'ble High Court has directed to adjudicate issue by-

- (a) giving opportunity to all the parties; and
- (b) taking into account all the relevant provisions of law and discussions and decisions arrived by the Appellate Tribunal in its order dated 12-12-2012.

11.3. In terms of the above orders of the Hon'ble High Court, elaborate opportunity has been given to all parties. We heard the submissions of the Petitioners in detail. We have also gone in detail the orders passed by Hon'ble APTEL in Appeal Nos.51 and 56 of 2012 dated 12-12-2012.

11.4. The petitioners have filed the remand petitions in line with their prayers made before the Hon'ble High Court of Madras. They have subsequently altered their stand and deviated from their original prayer made before the Hon'ble High Court of Madras in various Writ Petitions to consider the supplied energy instead of the adjusted Energy in the numerator.

11.5. They have filed additional affidavit after the case was remanded to the Commission by the Hon'ble High Court of Madras to consider the case as per the Hon'ble APTEL order and in accordance with law. In their additional affidavit they have raised a new prayer which was not in their original prayer in the Writ petitions before the Hon'ble High Court of Madras to take the actual Power on time in the denominator instead of the Peak Hour of 4 Hours. The formula for calculating the Equivalent Demand is dealt within the succeeding paragraphs.

11.6. The facts leading to the filing of these petitions may be briefly referred to.

11.6.1. During the relevant period, the Government of Tamil Nadu has implemented the Restriction and Control measures on the usage of electricity to all Industrial Consumers in the State. This Commission also approved the Restriction and Control measures issued in this regard. The quota for the use of the power was fixed based on the consumption of the consumer for the period from October 2007 to September 2008. The highest consecutive three months average energy consumption during the aforesaid period was arrived as Base Energy and 40% cut on energy has been imposed. The remaining 60% has been fixed as Energy Quota. The base demand was arrived as the maximum recorded demand in the HT service during the aforesaid period subject to the condition that if the maximum recorded demand exceeds sanctioned demand, the sanctioned demand was the base demand and 40% cut on the base demand was imposed. The remaining 60% was fixed as Demand Quota. In addition to this during evening peak hours (18.00 hrs. to 22.00 hrs.) they were permitted 5%/10% of the demand and energy quota for lighting and security purpose. However, as large number of representations were received from various H.T. consumers having captive power plants requesting exemption from power cut stating that they were unable to utilize the energy generated through their

captive power plants due to Restriction and Control measures, the demand and energy quota for the HT consumers using power partially from their captive plants was refixed. The formula for fixing the Energy and Demand Quota for HT consumers partially using power from CPPs are as follows:-

“Fixing of Energy Quota:-

(i)	Monthly base energy consumption as illustrated in working instructions dated 01-11-2008	A
(ii)	In that the actual energy supplied (monthly average) for the above three months average by the CPP	B
(iii)	The actual energy availed by consumer from TNEB	A-B=C
(iv)	60% energy on C ($C \times 60/100$)	D
(v)	The quota fixed for energy	B+D

Fixing of Demand Quota:-

(i)	The base demand consumption as illustrated in working instructions dated 01-11-2008	E
(ii)	In that the calculated demand supplied for the Energy for the month by CPP	F
	$F = \frac{\text{Energy supplied by CPP in a month}}{\text{No. of days in the month} \times 24 \text{ hours} \times \text{P.F.0.95}}$	
(iii)	The actual demand availed by consumer from TNEB	E-F=G
(iv)	60% demand of G ($G \times 60/100$)	H
(v)	The demand quota fixed	F+H

11.6.2. The HT consumers having group captive plants were permitted to use their wheeled energy only on slot to slot basis. The Commission has approved the fixation of quota for wind energy captive users on par with Captive Power Plant users. The Commission also ordered that from 01-11-2009 all captive users whether thermal or wind shall declare on the first day of the month, the energy proposed for captive use for the following months, and it was roughly the monthly average generation. Further, from 01-11-2009, the peak hour generation was eligible for

peak hour utilization for energy month subject to the limit of one twelfth of annual peak hour generation. The quota fixed based on the advance declaration of the energy proposed to be brought for consumption from CGP or third parties, enabled them to utilize their energy brought in and hence the argument of the Petitioners that they were prevented from using their own energy from CGP or third party sources should fail.

11.6.3. However, the system of advance declaration was dispensed with by the order dated 07-09-2010 of the Commission and with effect from 01-10-2010. The equivalent demand in other words is the demand supplied by the generator and had been arrived at, taking into account the units of captive power consumed by the captive consumer. For the purpose of equivalent demand calculation, the formula approved by the Commission in Suo Motu Order No.1 of 2009 is reproduced below:-

$$\frac{\text{The demand supplied by the CPP in a month}}{\text{Energy supplied by CPP in a month}} = \frac{\text{Energy supplied by CPP in a month}}{\text{No. of days in the month} \times 24 \text{ hours} \times \text{P.F. (0.95)}}$$

The above formula for the CGP has been refined by subsequent said orders of the Commission and the APTEL as below to suit all open access consumers.

$$\text{Equivalent Demand} = \frac{\text{Energy adjusted by open access consumers out of the total energy consumed at the user end during the month}}{\text{No. of days in the month} \times 24 \text{ hours} \times \text{P.F. (0.95)}}$$

This is not a new or specific formula designed for calculating the equivalent demand from the energy consumed. This formula flows from the accepted general formula in the engineering parlance to calculate the average demand from the energy consumed or generated. The Equivalent Demand arrived is deducted from the demand recorded in a month and the actual demand availed by a consumer from TANGEDCO is arrived. If this demand so arrived is found to be excess of the quota

fixed as above, then excess demand charges are levied as per Commission's orders.

11.7. Now let us deal with the orders of the Hon'ble APTEL in this regard. The order of the Hon'ble APTEL dated 12-12-2012 referred by the Hon'ble High Court above is the order passed by the Hon'ble APTEL in Appeal Nos.51 and 56 of 2012. In the said Appeal Nos.51 and 56 of 2012 filed by these Petitioners, one of the grounds (para 7.29 of the Appeal Petition) of Appeal, they have raised was as follows:-

"In the same way, during the evening peak hours when the mills are adjusting the wind power for their captive consumption @ 1000 units per hour, because of the load shedding the mills are not able to fully utilize the energy available to them. The following example will give the correct picture:

Mill X is having 4000 units in evening peak hour per day which can consume 1000 units per hour. Because of 1 ½ hours load shedding, the mill would be able to consume only 2500 units. The first Respondent is calculating the equivalent demand based on the impugned order only of this 2500 units for 4 hours. Under these circumstances, if the mill has consumed 2500 units, they are penalized.

Calculation:

Equivalent demand = 2500/1x2.5x0.95 = 1052.63 KVA

Calculation based on the impugned Order :

Equivalent demand = 2500/1X4X0.95 = 657.9 KVA

The first respondent is thus permitting only 657.9 KVA and not 1052.63 KVA.

XXXX Consequently, in respect of both Intra and Inter State power purchase, the equivalent demand is to be arrived at based on the energy injected into grid and for the number of days and number of hours supplied by the First respondent."

The above ground is the same as the one raised by these Petitioners in the present M.Ps.

11.8. Further, it is seen that Hon'ble APTEL, in its order has also mentioned the following issues raised by the Appellants in the said case. The relevant portion of the order may be extracted for easy reference:-

“ 9. xxx

- iv) *The Electricity Board/TANGEDCO has failed to consider the distinction between “Equivalent demand” and “Deemed demand”. The present case relates to equivalent demand and not deemed demand. The equivalent demand is calculated based on the energy generated by wind generator. On the other hand, the deemed demand is based on energy utilized for captive consumption.*
- (v) *It is incorrect to say that the energy after adjustment would go back to banking that would fetch equivalent demand when it is redrawn. The banked energy would not fetch any equivalent demand at any point of time and would only be encashed as unutilized wind energy at the end of the wind period i.e. on 31st March of every year.*
- vi) *If the energy consumption was the basis for calculating equivalent demand then there was no need for advance declaration of energy generation till orders were passed by the State Commission on 7.09.2010 dispensing with the advance declaration.*
- vii) *The industries are experiencing heavy load shedding at various timings in violation of the scheduled power cuts preventing the consumers from utilizing their own captive plant’s energy.”*

TANGEDCO has pleaded the following points:-

“10. Shri S. Guru Krishna Kumar, Ld. AAG of the State of Tamil Nadu representing the Electricity Board made the following reply submissions:-

The methodology adopted in case of wind energy generators indicates that the unutilized energy for the wind energy generators is available for redrawal. Accordingly if the quota is given for the entire energy injected into the system by the wind energy generator, redrawal from the banked energy would not be eligible for a quota fixation, since allowing it at two different times would amount to providing double benefit for the same energy.

- ii) *During off-season, the generated energy may not be adequate and therefore the captive consumer can draw from the bank and consume. Even during season if the generated energy is not adequate, the captive consumer can draw from the bank. Therefore, consumption has to be the*

basis for determination of the equivalent demand met from wind energy generator.

11.9. It is seen that the Petitioners in these petitions had made similar submissions as made before us in the said Appeals before Hon'ble APTEL. However, the Hon'ble APTEL has not considered the contentions of the Appellants therein and decided as follows:-

“From the above submissions of the parties, the following question would arise for our consideration:-

(i) Whether the clarification letter dated 25.6.2010 issued by the Chief Financial Controller of the Electricity Board and upheld by the State Commission by the impugned order regarding equivalent demand to be based on the energy consumed/adjusted from captive wind energy generator instead of actual energy injected into the grid is correct?

(ii) xxx xxx

27. xxx xxx It has to be held that the actual energy supplied by the captive wind energy generator and calculated demand or equivalent demand supplied by the captive WEG have to be based on the actual energy from the captive WEG consumed by the consumer in a month.

28. xxx xxx If 'A' is measured against the consumption, 'B' should also be measured against consumption. If 'B' in the formulation is related to actual energy consumed by the captive consumer from the CPP, 'F' should also be calculated based on the energy supplied by the CPP to the consumer during the month.

30. xxx xxx If the equivalent demand is calculated corresponding to the energy injected by the wind energy generator in a month without the entire energy being actually consumed by the consumer, it would result in double benefit to be given to the banked energy i.e. for providing the additional demand quota to the captive user for that energy in the current month as well as banking of the same energy which could be either re-used for providing additional energy and demand quota in the subsequent months or for payment at the end of the Financial Year.

31. xxx xxx *The wind energy tariff order dated 20.3.2009 clearly indicates that the demand supplied by the generator has to be based on the units consumed by the consumer and not on the basis of energy injected by the wind energy generator.*

xxx xxx

39 (i) *On going through the State Commission's order dated 28.11.2008, State Electricity Board's memo dated 17.11.2008 and wind energy tariff order dated 20.3.2009, we hold that the equivalent demand has to be based on the energy from wind energy generator actually consumed by the captive user or energy adjusted in a month."*

xxx xxx"

11.10. From the above orders of the Hon'ble APTEL, it is clear that the Equivalent Demand has to be calculated based on the energy actually consumed by the captive user or energy adjusted in a month. The said order has not been appealed by any parties and as such it is allowed to become final and hence it is not now open to the parties to reagitate the same.

11.11. In view of the above position, the contention raised now to take the actual power on time instead of 24 hours in the petitions is nothing but a futile attempt to reopen an issue which was already settled by the Commission in its order dated. 28.12.2011 and confirmed by the judgment of the Hon'ble APTEL dated. 12.12.2012 in Appeal No.51 of 2012 and Appeal No.56 of 2012 which were filed against the Commission's order dated.28.12.2011 by the SIMA and IWPA in M.P.No.32 of 2010 and M.P.No.41 of 2010. Therefore, the petitioners cannot be permitted to reopen the issue which was already settled by the Commission and Hon'ble Appellate Tribunal,

11.12. The Commission in its interim order dated 15-09-2014 has directed the possibility of downloading the power on parameter from the energy meter and use it

for calculating the equivalent demand. The above direction was given with a view to find out a compromising formula between the parties and directed the Respondent to submit a proposal to the Commission after discussion with the Petitioners. While making the said order, the Commission has clearly mentioned that it has no intention of changing the generalised formula approved by the Commission in its earlier orders for calculation of Equivalent Demand.

11.13. Though the prayer of the petitioners has already been challenged by TANGEDCO in the counter that the formula for calculation of Equivalent Demand has attained finality in view of the APTEL's judgment in Appeal No.51 and 56 of 2012, without prejudice to TANGEDCO's legal right in order to give some relief to the petitioners in good faith, as per the interim orders of the Commission referred to above, TANGEDCO held discussion on 29.12.2014 at TANGEDCO'S Head Quarters, with the representatives of Tamil Nadu Spinning Mills Association, Southern India Mills Association and along with 12 other petitioners (approximately) wherein they have submitted their views through letter. They unanimously disagreed with the proposal given by TANGEDCO to give relief and they insisted to change the formula with power on time. It is now reported by the Respondent that no amicable solution has been reached by the parties.

11.14. The contention of the petitioners that the petitioners were restricted to use their wind energy during Scheduled and unscheduled load shedding hours is incorrect, since the petitioners were permitted to adjust the surplus units of the evening peak hour against the morning peak hour consumption and vice-versa. Similarly, they were also permitted to adjust the higher slot generation against lower slot consumption as per Wind Energy Order No.1 of 2009 and also in subsequent

Tariff orders. Hence, the contention of the petitioner that if calculation is based on drawal (which is prevented) they are compelled to pay excess demand and energy charges is misconceived one.

11.15. It is also brought to our notice that in respect of most of the cases of Petitioners, they have no surplus energy as on 31.03.2014 i.e there has been supply of power to the extent of fully utilized the generated energy. The HT consumers/petitioners had availed equivalent demand for the entire energy wheeled for adjustment either in current month or in the subsequent months as permitted. However, in a few cases were there was surplus energy as unutilized at the end of the financial year 2012-2013, 2013-14 the contention of the Respondent that it is mainly because of disproportion in wind generation capacity against the captive consumption and also due to wheeling of power from IEX, Third Party and other captive conventional sources seems to be acceptable.

11.16. The Commission had issued Tariff order on wind energy vide Order No.1 of 2009 dated 20-03-2009 wherein some of the stakeholders had requested as follows:

29. Banking Provisions and Charges:

M/s. Indian Wind Power Association:

A major boost to the growth of the wind sector in the State has been the provision for banking facility for a period of one year with 5% banking charges in kind. The provision for payment of the unconsumed banked units at 75% of the procurement cost would be fair under normal circumstances, but not during restriction and control (R&C) period. WEGs are not permitted to use their own power due to R&C by TNEB. TNEB should be asked to pay at least 100% of the procurement tariff for wind power prevailing on the date to the investors irrespective of whether or not they have signed the new agreement.-----.

M/s. Tamilnadu Spinning Mills Association:

WEGs are not allowed to consume the whole of energy produced at the consumption end owing to restriction and control of power supply. Besides the entire energy banked is also not allowed to be en-cashed.-

M/s. Sri Amaravathi Spinning Mills:

Due to power cut, the WEGs are not able to consume all the generated units and therefore requested the Commission that the banked energy must be purchased by TNEB at Rs.2.70 per unit.

11.17. Based on the above comments, the Commission in the said Wind Tariff Order 2009 issued during the period when the Restriction and Control measures were prevailing, retained the encashment of unutilized energy at the end of the financial year @ 75% of relevant purchase tariff, however, with some modifications based on the suggestions made by the stakeholders which is as follows:-

“As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification in the plea that the unutilized energy at the end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee.”

In that Tariff order, the Commission in para 8.7 had also ordered the formula for demand calculation while calculating the demand charges payable by the OA consumers as follows:

*Total generated units consumed by the
Consumer on open access*

30x24x actual PF recorded during the billing month

11.18. In this regard, it is stated that the Commission in order to mitigate the hardship caused to the HT consumers due to prevailing Restriction and Control measures including load shedding ordered to pay full value at relevant tariff for the

unutilized energy available at the end of the financial year as they could not consume their energy generated available without attempting to modify the formula with power on time. Now the petitioners have requested to calculate the equivalent demand supplied by the generators by taking into account actual power on time. If the requests of the petitioners are considered, it would result in triple benefit to the petitioners compared to others. The Wind energy captive users have banking facility, whereas the other sources do not have banking facility. By virtue of banking facility, the excess generation over and above the consumption will not get lapsed, per contra; the excess generation will get lapsed in respect of conventional power generators. Further, while doing so, in respect of the wind energy captive users have availed the equivalent demand for banked energy also in the subsequent months. In such circumstances, while other captive users including other wind energy captive users paid the excess demand charges by way of calculating the equivalent demand by taking into account of actual number of days in the billing month as per the tariff orders of the Commission, petitioners requested to calculate the equivalent demand by taking into account of power on time shall be termed as un-due benefit and unjust enrichment given to the petitioners and also violates Article 14 of the constitution of India. There is a force in the contention of the Respondent in this regard.

11.19. Further, it has also been pleaded by the Respondents that during R&C measures, the demand and energy quota had been fixed based on the consumption during the period from 10/2007 to 09/2008 (base period) when there was no power cut (ie) 24 hrs power supply without interruption. In this connection, it is stated that though the base energy had been arrived based on their consumption when there was no power cut (ie) 24 hrs power supply without interruption, the energy quota arrived at has not been reworked proportionately based on the actual power

available time and the excess energy charges were arrived at accordingly. If Power on time is adopted for fixing of both Demand and Energy Quota, then the demand quota will not vary but energy quota will vary. The first petitioner had paid excess energy charges and excess demand charges, but had not disputed the excess energy charges and only disputed the excess demand charges (to be calculated based on power on time). In this regard, the Respondent has also furnished the actual working for the month of May,2014 in respect of the petitioner M/s. Rohit Spinners, by taking with power on time and without taking power on time. It is shown in the illustration that the demand quota 1087 KVA shall not vary in both scenarios considered and the excess demand charges may not vary even if the power on time is taken into account for arriving equivalent demand.

11.20. However, as far as energy quota is concerned in the above example, the energy quota will be 5,02,380 units (without taking power on time) whereas the energy quota will be 4,18,650 units (taking power on time). The petitioner has to pay excess energy charges of Rs.50,875 by taking without power on time. On the other hand, the petitioner has to pay excess energy charges of Rs.9,71,905/-by taking with power on time. Perhaps for the above reason only, the petitioners had not disputed the power on time for calculation of excess energy charges. Therefore, if power on time is applied for calculation of excess demand charges, the same also be applied for calculating excess energy charges due to reason that the energy and demand are inseparable. Moreover, the energy quota which has been fixed based on 24 hrs during the base period. This will result in comparing of two parameters which are not identical. Such a dissonance, in adopting two sets of parameters one for Excess Energy Charges and one for Excess demand Charges is not practical, legal or legitimate.

11.21. Commission finds merit in the contention of the respondent that all the petitioners herein are wind energy captive users and in respect of wind energy captive users, the Commission had granted the following benefits considering the wind energy as infirm nature.

- a. Banking provision.
- b. Higher Slot generation can be adjusted against lower slot consumption.
- c. Due to restriction and control measures, Commission has ordered that the encashment rate for the unutilized banked energy is full value of the relevant purchase rate instead of 75 % tariff. Further, if the generator sells power directly to the respondent TANGEDCO, they are paid for the energy on single part tariff as per the rate fixed by the Commission.
- d. The quota fixed based on the advance declaration of the energy proposed to be brought for consumption from CGP or third parties, enabled them to utilize their energy brought in and hence the argument of the Petitioners that they were prevented from using their own energy from CGP or third party sources should fail.

11.22. Further, the Counsel for the Petitioner strenuously canvassed that the interim order passed by the Commission to examine the possibility of down loading power on time from the energy meter and use it for calculating the equivalent demand should be given effect and the Commission cannot change the above orders in view of *res judicata* would operate in this situation. However, the respondent has relied upon Regulation 38 of the Distribution Code of the Commission which empowers it to direct the consumer to curtail, stagger, restrict, regulate and altogether cease to use electricity and the Licensee shall not be responsible for any loss or inconvenience caused to the Petitioner.

11.23. Having taken note of the rival submissions made on behalf of the respondent vis-a-viz, the prayer of the petitioners and the strength of the interim order of the Commission in its order dated 15-09-2014, we are of the view that the earlier interim order was made by the Commission with a view to find out an amicable solution to the issue on hand and since both the parties are not agreeable to the formula suggested in the interim order referred to above, the Commission has to now strictly adjudicate the issue in accordance with the law and as directed by the Hon'ble High Court in its order dated 04-01-2013 in W.P.No.28429 of 2012. In this connection, the orders of the Hon'ble High Court in G.Venkatesh Vs. Bridge Federation of India (W.P.No.2559 of 2011 and 11431 to 11433 of 2015 dated 24-06-2015) may be referred to regarding the scope of interim order passed by the Court. The following portion of the judgment would be relevant:-

“24. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

25. It is well settled position of law that an interim order does not finally and conclusively decide the rights of the parties and is subject to final decision of the main case.”

11.24. From the above, it is clear that it is the settled position of law that an interim order does not finally and conclusively decide the right of the parties and is subject to the final decision of the main case. It is therefore, not possible for us to accept the submission of the petitioner that the interim order passed by this Commission cannot be altered and the principle of *res judicata* will apply, if the issue is decided in a manner different from the orders passed in the interim order referred to above, in

view of the above orders of the Hon'ble High Court cited above, the plea of *resjudicata* also fails.

11.25. Apart from the above, as submitted by the Counsel for the Respondent that if the Petitioners' request is considered it would open the flood gates as any change in formula will lead to multiplicity of litigation and claims for hundreds of crores of rupees from other 2000 plus consumers in the Wind Captive Category as well as other captive users and third party consumers may be in the pipeline or in the offing. We are therefore left with no other alternative but to go strictly with the direction of the Hon'ble High Court and the orders of the Hon'ble APTEL in this matter.

11.26. In view of the discussion in the foregoing paragraphs, the Petitioners claim cannot be entertained and accordingly all these petitions are dismissed as devoid of merit. The interim order already passed on 15-09-2014 is merged with this order.

Ordered accordingly.

12. 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.....)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission