



NADU ELECTRICITY REGULATORY COMMISSION

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PRESS NOTE

The attention of the Commission has been drawn to a press note circulated by the Power Engineers Society of Tamil Nadu (PESOT) on 2-8-2011 alleging a loss of Rs.6000 crores to TNEB by the judgements of the Commission. The press note is replete with exaggeration, insinuation and half truth. The PESOT is a dubious organisation with dubious sources of funding and dubious expenditure. There are unexplained expenditure of this organisation in fighting a large number of cases in the High Court of Madras.

2. Tamil Nadu Electricity Regulatory Commission is a three member Commission with a Chairman and two Members. All the judgements of the Commission are based on the petition of the Petitioners and the counter affidavit of the Respondents and arguments thereon. Section 86 of the Electricity Act 2003 empowers the Commission to adjudicate upon the disputes between the Licensee and the Generating Companies. It is in pursuance of this provision that the Commission adjudicates disputes between generators and the TNEB. There is open Court hearing which is open to everybody. As per Section 94 of the Electricity Act 2003, the Commission has the powers of a Civil Court. As per Section 95, all proceedings before the Commission are deemed to be judicial proceedings. The judgements are delivered after discussion of the case by the Chairman and the two Members. There is no room for one man show. The PESOT has made it appear as though Chairman is the authority who decides judgements.

3. The judgements of the Commission are not final. There are remedies of appeal before the Appellate Tribunal for Electricity, New Delhi and thereafter the Supreme Court. The Commission's judgments are also subject to the writ jurisdiction of the High Court. Any aggrieved party has remedy in the form of appeal and writ petition.

4. The commission does not have the powers of entertaining Public Interest Litigation as in the case of High Court and Supreme Court. The PESOT which has on several occasions attempted to raise Public Interest Litigation before the Commission has failed to succeed and therefore there is a deep grievance against the Commission by the PESOT. The judgement of the Commission in regard to Public Interest Litigation has been upheld by the Appellate Tribunal for Electricity, New Delhi.

5. The Independent Power Projects of GMR, PPN, ST-CMS, Madurai Power and Samalpatti Power entered into PPA with the TNEB between 1996 and 1998. The contracting parties are at liberty to revise the terms of the contract any time. The amendments to the contracts are mutual between the parties. TNERC never stopped the parties from negotiating. The TNERC delivered a judgement in 2004 directing TNEB and the five IPPs to re-negotiate the PPAs. This judgement of the Commission was stayed by the High Court of Madras and the matter continues to be subjudice. It is not the business of a quasi judicial body like the Commission to get the stay order vacated; it is for the affected parties viz., TNEB and the five IPPs to get the stay vacated. Any comments on the pending writ petition amount to contempt of High Court.

6. The PESOT claims that the five IPPs owe Rs.2000 crores to TNEB. The TNEB is at liberty to recover the dues through available legal methods. The TNERC has not stayed any such remedy. The PESOT has claimed that Rs.6000 crores has been lost by the TNEB due to the judgements of the TNERC. It is not clear that on what basis this statement has been made. The breakup has not been furnished. It is a wild statement not supported by facts. Are they losses? Are they dues which TNEB legitimately owes to the IPPs and wind generators?

7. The PESOT has mentioned that the TNERC ordered to supply back 315 million units of lapsed energy costing Rs.315 crores to wind mill generators. The judgement of the Commission was in pursuance of the direction of the High Court of Madras and therefore this statement would be a direct contempt of the High Court of Madras.

8. The PESOT has alleged that concessional tariff was granted to Information Technology companies. The tariff order of the Commission clearly mentions that this concession was extended at the request of the IT department of the Government of Tamil Nadu and the TNEB. The PESOT has deliberately suppressed these facts to mislead the press.

9. The tariff order of the Commission was challenged by some parties before the Appellate Tribunal for Electricity, New Delhi and the Tribunal has upheld the provisions in regard to IT companies. It is strange why the PESOT did not challenge the concession granted to IT companies before the Appellate Tribunal for Electricity, New Delhi.

10. The PESOT has alleged that wind generators have been permitted banking of energy. The Commission merely extended the practice adopted by the TNEB since 1986. The order of the Commission on banking has been upheld by the Appellate Tribunal for Electricity, New Delhi. Here again, the PESOT did not choose to appeal against this concession of banking before the Appellate Tribunal for Electricity, New Delhi.

11. The PESOT has alleged that wind generators have been given by the Commission concessional charges in open access. This is pursuant to Section 86 of the Electricity Act 2003, which enjoins upon the Commission to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures to connectivity with grid. Here again the PESOT never chose to appeal against this concession before the Appellate Tribunal for Electricity, New Delhi.

12. The PESOT has alleged that mis-interpretation of the long-term open access in regard to OPG Energy, OPG Renewable Energy (p) Ltd., Rengaraj Power India (P) Ltd., Madras Cements Ltd. and Saheli Exports Pvt. Ltd., has caused a loss of Rs.112 crores to the TNEB. The Commission's interpretation of short term and long term open access has been upheld by the Appellate Tribunal for Electricity, New Delhi. Here again, it is mysterious why the PESOT did not challenge the interpretation of the Commission before the Appellate Tribunal for Electricity. Is it a loss to TNEB? or else has the TNEB overcharged the generators?

13. The PESOT has alleged that the TNERC has admitted two petitions of monetary claims of GMR and PPN. The judgement of the Commission in regard to PPN has been upheld by Appellate Tribunal for Electricity and is now sub-judice in the Supreme Court. The judgement of the Commission in regard to GMR is sub-judice in the Appellate Tribunal for Electricity. By commenting on this matter, which are sub-judice, PESOT has clearly committed contempt of the Supreme Court and Appellate Tribunal for Electricity.

14. The PESOT alleges that the capital cost of PPN has not been decided from 2007. The pending litigation of the PPN in the High Court delayed commencing of the proceedings of determination of capital cost. One case of PPN is not related to another and in any case the determination of capital cost will have retrospective effect. If TNEB happens to be the affected party, the PPN will have to return the dues with interest as per the Power Purchase Agreement retrospectively.

15. All these facts have been clarified to the PESOT in February 2011 by the Commission and yet they persist in their statement of half truth and insinuation. Perhaps, PESOT believes that the repetition of lies would make them truths.

(S.Gunasekaran)
Secretary