THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION

[Constituted under Section 82 of the Electricity Act, 2003]
[Central Act 36 of 2003]

PRESENT:
Thiru. S. Kabilan - Chairman
Thiru. B. Jeyaraman - Member
and
Thiru. R. Rajupandi - Member

Miscellaneous Petition No. 42/2008

The Chief Engineer/Commercial,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai – 600 002. … Petitioner

In the matter of Restriction and Control of power supply and levy of excess demand charges & energy charges for the consumption of HT and LT consumers for exceeding quota and excess demand charges for HT Consumers due to implementation of Restriction and Control of power supply.

1. Prayer of the Petitioner

In M.P. No.42 of 2008, filed by TNEB the petitioner herein, it has been prayed that necessary amendments to Tariff Order dated 15-03-2003 and Tamil Nadu Electricity Supply Code may be issued so as to give effect to proposals in paragraph 7 of the above petition which are briefly as follows:

(i) In case energy consumed is in excess of quota fixed for the HT Industrial and Commercial consumers, it is prayed that they be charged at three times the normal rates for the excess over quota.
(ii) To permit the petitioner Board to collect Demand charges for HT Industrial and Commercial consumers for 90% of quota demand or actual recorded demand which ever is higher.

(iii) To charge at three times for energy consumption in excess of quota fixed, for the LTCT Industrial and LTCT Commercial consumers.

(iv) To levy 50% additional charges over and above the applicable tariff for the excess consumption over and above the ceiling fixed for the LT Industrial and LT Commercial consumers.

(v) To permit the petitioner Board not to provide Electricity supply for lavish and decorative lighting to private functions, except for festivals organized at public places of worship.

(vi) To permit the petitioner Board to charge thrice the consumption charges for welding sets who draw supply from TNEB during evening hours i.e. 18.00 Hrs. to 22.00 Hrs.

(vii) In order to enable the Board to enforce the Restriction & Control measures as directed by the Government of Tamil Nadu.

2. **Consultation with State Advisory Committee (SAC)**

   The Commission has convened the meeting of SAC on 18-11-2008 and obtained the views of SAC in regard to the prayer of the petitioner board as set out in paragraph 1 above.

3. **Holding Public Hearing**

   A public hearing was held by the Commission on 21-11-2008 at Kalaivanar Arangam, Chepauk, Chennai and the Commission
obtained the views of public in regard to the prayer of the petitioner board as set out in paragraph 1 above.

4. Decision of the Commission:

The Commission having consulted SAC and having heard the views of the public in the public hearing and having considered the documents available on records passes the following order:

**ORDER dated 28th November 2008**

1. The Tamil Nadu Electricity Board, the electricity distribution licensee for Tamil Nadu submitted a petition on 6-11-2008 listing the restriction and control measures adopted by them and proposing charges for exceeding the demand quota and energy quota determined by them. The petition is silent on the legal authority for imposing the restriction and control measures. We presume that the restriction and control measures have been imposed in exercise of the powers conferred under Clause 38 of the Tamil Nadu Electricity Distribution Code 2004.

2. Clause 38 of the Tamil Nadu Electricity Distribution Code 2004 is reproduced below:

“The consumer shall curtail, stagger, restrict, regulate or altogether cease to use electricity when so directed by the Licensee, if the power position or any other emergency in the Licensee’s power system or as per the directives of SLDC/ SSLDC warrants such a course of action. The Licensee shall not be responsible for any loss or inconvenience caused to the consumer as a result of such curtailment, staggering, restriction, regulation or cessation of use of electricity.
Notwithstanding anything contained in any agreement/ undertaking executed by a consumer with the Licensee or in the tariff applicable to him, the consumer shall restrict the use of electricity in terms of his/her maximum demand and/ or energy consumption in the manner and for the period as may be specified in any order that may be made by the Licensee on the instructions of State Government or the Commission.”

3. Clause 38 empowers the Commission and the State Government to impose restriction on consumption of electricity. Tamil Nadu Electricity Regulatory Commission was established by the Government of Tamil Nadu on 17-3-1999 under Section 17 of the Electricity Regulatory Commission Act 1998 and subsequently continued under Section 82 of the Electricity Act 2003.

4. Section 86 (2) of the Electricity Act 2003, which narrates the functions of the Commission is reproduced below:

“(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-.

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.”

5. Section 86 (2) enjoins upon the State Commission to advise the State Government on matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by the Government. It is the bounden duty of the State Commission
to advise the Government on a matter so serious as the present power crisis, which impacts on distribution of electricity. Therefore, the distribution licensee ought to have first approached the Commission on the present power crisis and the Commission could have suitably advised the Government on measures considered necessary for tackling the power crisis. The TNEB bothered the Government directly and in the process has embarrassed the Commission by exposing the restriction and control measures and the excess demand and energy charges for public scrutiny by the State Advisory Committee and public hearing. We strongly advise the Tamil Nadu Electricity Board not to give room for such embarrassment in future.

6. Section 23 of the Electricity Act 2003, which governs restrictions and controls on electricity distribution, is reproduced below:

“If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.”

7. A view has been expressed in the State Advisory Committee and the public hearing that Clause 38 of the Tamil Nadu Electricity Distribution Code 2004 on restriction on use of electricity is violative of Section 23 of the Electricity Act 2003 in as much as the power for regulation of supply, distribution, consumption and use is vested in the State Commission and the Commission has no legal authority to confer this power on the State Government through Regulations. This view has been reiterated by several consumer fora through memoranda. The Commission is seized of the issue. Be that as it may, the Commission decided to take up the petition of the Tamil Nadu Electricity Board for scrutiny in accordance with the Electricity Act 2003.
8. Section 62 (1) (d) of the Electricity Act 2003 lays down that the State Commission shall determine the tariff for retail sale of electricity. Section 64 (2) of the Act states that every applicant shall publish application in such abridged form and manner as may be specified by the State Commission. Section 64 (3) mandates the Commission to dispose of the application within 120 days after considering all suggestions and objections received from the public, either accepting the application with modifications or conditions or rejecting the application.

9. Section 88 of the Act stipulates that the State Advisory Committee shall advise the Commission on protection of consumer interest, matters relating to quality, continuity and extent of service provided by the licensees, etc.

10. The Commission directed Tamil Nadu Electricity Board to publish their proposals in two Tamil and two English newspapers, which have wide circulation in the State. The Commission issued a Press Note on 12-11-2008 publicizing the date of public hearing. The proposals were published in Dina Thanthi, Dina Malar, The New Indian Express and Deccan Chronicle on 15-11-2008. The proposals of the TNEB are at Annexure I. The meeting of the State Advisory Committee was held on 18-11-2008. The views expressed by the members of the Committee are summarized in Annexure II. The public hearing was held on 21-11-2008 at Kalaivanar Arangam. There was wide and enthusiastic participation. A total of 185 persons and organizations registered themselves for the public hearing, out of which 63 chose to present their views on the stage. The list is enclosed in Annexure III. The speakers included eminent public persons and leading industrial and trade organizations such as Confederation of Indian Industries, Indian Wind Power Association, Tamil Nadu Spinning Mills Association, South India Mills Association, Madras Chamber of Commerce and Industry, South India Small Spinners Association, Tamil Nadu Small and
11. The petition of TNEB has indicated demand and energy cut of 40% but the basis for this has not been mentioned. Therefore, the Commission thought it fit to summon the Chairman, TNEB and his team on 24-11-2008 to furnish the statistics. The TNEB stated that the present generation capacity is about 7500 MW, which includes 300 to 400 MW of purchased power. The peak demand hovers around 9200 MW at present and could shoot up to 9700 MW from January 2009. The present shortage is of the order of 1600 MW, which could escalate to 2000 MW by January 2009. The present energy availability is 170 million units per day, including purchased power. The present deficit is in the range of 15 to 20 million units per day, which is estimated to shoot up to 25 million units per day from January 2009. The data furnished by TNEB is enclosed at Annexure V. The TNEB stated in the State Advisory Committee meeting held on 18-11-2008 that the peak demand registered by HT industrial and HT commercial users is 3600 MW. The TNEB has proposed to slash 40% of this demand, which works out to roughly 1440 MW.

12. A view has been expressed in the State Advisory Committee and the public hearing that some industrial undertakings have been exempted from power cuts. The TNEB reports that the total demand of organizations,
which have entered into bilateral memorandum of understanding with the Government is about 100 MW and therefore this does not significantly alter the situation.

13. Another point which repeatedly figured is the equitable distribution of the present shortage amongst all consumers. The TNEB would be well-advised to take serious note of this suggestion. A view which had strong echo was that high-end, affluent domestic consumers indulging in luxurious consumption should also be brought under some sort of discipline. There are about 1,17,000 domestic consumers, who consume more than 750 units per month. This large consumption would generally indicate that air conditioners are being used. The tariff fixed for this category is Rs.4.75 per unit with effect from 16-3-2003, of which subsidy borne by the Government is Rs.1.70 per unit with effect from 16-6-2004. The burden on the consumer is Rs.3.05 per unit from 16-6-2004. A view may be taken by TNEB whether such affluent consumers should also be brought under the discipline of Restriction and Control measures at least during the ensuing summer. We wish to make it clear that single service connection which serves a group of tenants such as row houses may be exempted from the purview of this restriction.

14. We wish to comment on the method devised by the Tamil Nadu Electricity Board for determination of the demand quota and energy quota. The petition does not disclose the basis. The TNEB has clarified in the Advisory meeting that in regard to captive users, the TNEB supply and the captive supply have been segregated for the purpose of determination of the demand and energy quota. Cut has been enforced with reference to the TNEB segment of demand and energy supply. The captive consumer has been permitted to avail of the entire demand and energy supply by the captive generator.
15. The same method has not been adopted for captive users of wind energy. In their case, the cut has been enforced on the total base demand and energy consumption without segregating the TNEB and captive components. This is discriminatory.

16. We quote from the National Electricity Policy.

“5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures.”

“5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.”

17. Para 6.4 of the National Tariff Policy states as below:
“(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006. It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.

(2) Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.

(3) The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.”

18. Section 86 (1) (e) of the Electricity Act 2003 states that the State Commission shall promote concentration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.

19. Section 61 (h) of the Electricity Act 2003 states that the Appropriate Commission shall, subject to the provisions of this Act,
specify the terms and conditions for determination of tariff and in doing so shall be
guided by the following namely, (h) the promotion of cogeneration and generation of
electricity from renewable sources of energy, (i) the National Electricity Policy and Tariff
Policy.

20. Preamble of the Electricity Act 2003 reads as follows:

“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and **environmentally benign policies** constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

21. A reading of the National Tariff Policy, National Electricity Policy and the Electricity Act 2003 establish the overwhelming emphasis on environmental friendly renewable sources of energy such as wind, hydel, solar and biomass. Tamil Nadu has been a pioneer in harnessing wind power, which has enabled the State to capture 4100 MW, which amounts to 43 % of the capacity in the entire country as on date. But, this trend witnessed reversal during 2007-08 owing to the perceived adverse factors such as constraints on evacuation of wind energy and frequent load shedding of captive users of wind energy.

22. We are constrained to emphasize that wind energy is cheap and environment friendly. It came to the rescue of the State during the difficult months of 2008. The Commission has all along adopted progressive and
forward-looking policies in regard to wind energy. It would be a tragedy to let the initiative slip out of Tamil Nadu. Gujarat, Maharashtra and Karnataka are fast becoming a destination of wind energy investments. Tamil Nadu should strive its best to retain the leadership in this field.

23. Yet another factor, which is to be borne in mind, is that while thermal generation plants take three to four years to mature, wind energy generators require just three to six months to instal their capacity. Considering the difficult times ahead for the next three years, it is essential that the State adds capacity quickly, even discounting the fact that wind energy is available only for six months in a year.

24. Therefore, we direct that the method for determination of demand and energy quota for wind energy captive users shall be the same as that of other captive users. It has, further, been reported by the TNEB that 315 million units of wind energy generated between 1-4-2008 and 31-10-2008 have been banked with TNEB. This wind energy so banked by the generators during the difficult months of May, June, July, August, September and October 2008 enabled the TNEB to ward off load shedding and power cut effectively. They came to the rescue of TNEB in difficult times. The statistics of load shedding and the wind energy generated during these months has been analysed by the Commission before reaching the above conclusion. The Commission feels that it is incumbent upon the TNEB to come to the rescue of the wind energy captive users, if they choose to utilise their banked energy now.

25. By all accounts, there is a strong case for a preferential treatment of the banked wind energy captive users. The Commission estimates that utilization of banked energy of 315 million units between 1-12-2008 and 30-4-2009 would raise the consumption level of 170 million units by additional 2 million
units daily. The incremental demand required for the utilization of this banked energy is estimated to be 100 MW, after considering the peak hour restriction, out of the total availability of 7500 MW.

26. We, therefore, direct the TNEB to permit the utilization of banked wind energy between 1-12-2008 and 30-4-2009 in five monthly equal instalments, wherever necessary by enhancing the demand and energy quota as done in the case of other captive consumers subject to the evening peak hour restrictions.

27. Now, let us examine the excess demand charges and excess energy charges proposed by the TNEB. At present the excess demand is charged at thrice the normal rate and no ceiling has been imposed on energy consumption. The present proposal is to charge the HT industrial and HT commercial consumers for the demand in excess of the quota at five times the normal rate. The proposed tariff for the above category for consumption of energy in excess of quota is four times the normal rate. According to the above formula proposed by the TNEB, the excess consumption is liable to be charged at a rate equivalent to Rs.18.38 per unit for HT industrial consumers and at Rs.25.87 per unit for HT commercial consumers, provided the consumer exceeds both the demand and the energy quota. In addition to the above excess charges, the TNEB proposes to cut the demand to 5% or 10%, as the case may be, for the following 48 hours, if the demand or consumption exceeds the quota.

28. The thrust of the scheme for charging excess demand and excess energy consumption is that the consumer should be discouraged from drawing power from the grid. At today’s price of diesel at Rs.37/- litre, the generation cost per unit of electricity is about Rs.12/- per unit. The Commission believes
that it is reasonable to prescribe a rate a little above Rs.12/- per unit to dissuade the consumer away from the grid.

29. If the excess demand is charged at a rate thrice the normal rate as at present and if excess energy consumption is charged thrice the normal rate, the excess consumption is liable to be charged at a rate equivalent to Rs.13.20 per unit for HT industrial consumers, if both the demand and energy quota are exceeded. We believe that this is fair and just to the consumer and the licensee and therefore the Commission directs that excess demand shall be charged at a rate thrice the normal rate and excess energy consumption be charged at thrice the normal rate for both HT industrial and commercial consumers.

30. As regards LTCT industrial and LTCT commercial consumers, the proposal of TNEB is that the excess consumption be charged at four times the normal rate. This works out to Rs.18.80 per unit for industrial consumers and Rs.23.20 per unit for commercial consumers. If the excess energy consumption is charged at thrice the normal rate then the respective figures are Rs.14.10 per unit for industrial consumers and Rs.17.40 per unit for commercial consumers. These consumers are also subject to the same restriction of energy consumption to 5% or 10% as the case may be for the following 48 hours, if at any time the energy quota is exceeded. Therefore, in the opinion of the Commission it will be more than adequate to peg the charges for excess consumption at thrice the normal rate and therefore, we direct the licensee to fix the energy consumption charges for LTCT industrial and LTCT commercial consumers at thrice the normal rate.

31. TNEB has banned welding during evening peak hours on the ground that use of welding during evening peak hours adversely affects the voltage profile. If a consumer is found to use welding sets during the evening
peak hours, TNEB has proposed to levy charges equal to three times the average weekly consumption during the previous bi-monthly period in addition to the normal rates. Ends of justice would be met, if the charges are limited to thrice the daily average of the previous bi-monthly period and therefore the Commission directs the licensee to fix the charges accordingly.

32. The proposal of TNEB in regard to levy of excess consumption charges for LT industrial and LT commercial consumer for levy of 50% additional charges over and above normal tariff charges for the excess consumption over the ceiling is reasonable and the Commission approves the same.

33. The TNEB has proposed to restrict the demand of HT industrial and HT commercial consumers to 5% and 10% respectively during the evening peak hours from 6 pm to 10 pm. They have, further proposed that consumers violating the restrictions and the demand and energy quota should be liable to face the restricted demand of 5% or 10% as the case may be for the following 48 hours. The Commission accepts the above proposals in view of the acute shortage of power.

34. Regarding the prayer of the TNEB to deny supply for lavish and decorative lighting for private functions, TNEB is advised to dispose of the applications in accordance with Section 43 of the Electricity Act 2003 and Regulation 4 of the Tamil Nadu Electricity Distribution (Standards of Performance) Regulations of 2004 of TNERC.

35. The TNEB has proposed to adjust the excess consumption during one quota period against the entitlement for the following quota period. This has to be read along with the proposal to levy excess demand charges and excess energy charges and also the proposal to drastically prune the quota to 5% or
10% as the case may be in case of violation of the energy or demand quota. Adjustment in the following month is a third deterrent, which in our opinion is excessive in as much as the unutilized energy of one quota period is not permitted to be utilized in the succeeding quota period. Therefore, we direct that there shall be no set off of the excess consumption of one quota period in the following quota period.

36. The consequential amendments to the Tariff Order 2003 and the Tamil Nadu Electricity Supply Code 2004 are being notified by the Commission.

37. We shall be failing in our duty, if we do not address the question of supply side management during this severe power crisis. A strong point has been made in the State Advisory Committee meeting, public hearing and in the memoranda submitted to the Commission by various organizations for augmenting power supply utilizing the generator sets to the tune of 1000 MW available with consumers, mainly industrial, for a period of six hours during the evening peak and the morning peak. Open market diesel is currently available at about Rs.37/- per litre. The generation cost works out to Rs.12/- per unit. The excess over the tariff for supply to industrial and commercial consumers is about Rs.8.50 per unit. Assuming that 1000 MW is utilized for six hours in a day, the expenditure per day works out to Rs.5.10 crores. If this capacity is utilized for five months from 1-12-2008 to 30-4-2009, by which time the windmills would have started functioning, the total commitment works out to Rs.765 crores. Of this, the VAT component of Rs.165 crores accrues to the Government. The net expenditure is Rs.600 crores or Rs.120 crores per month. Initially, the industrial and commercial consumers were willing to bear the extra burden but they have backed out because of resistance from rural consumers. The addition of capacity of 1000 MW
for this five month period will bring considerable relief to the industrial consumers particularly the small scale units and ease the power crisis to a large extent. The industrial activity would bring in more revenue to the exchequer and protect employment in the organised sector. Today power is available on sale in the range of Rs.8 to 10 per unit at the delivery point of TNEB and even that is not available in adequate quantity. Therefore we recommend that the TNEB seriously considers this proposal.

38. Before we conclude, the Commission would like to draw the attention of the TNEB to the need for energy conservation and energy efficiency. Further, the projects on the anvil need to be monitored vigorously so as to augment capacity addition in the shortest possible time.

39. TNEB submitted the revised petition for enforcement of Restriction and Control measures on 6-11-2008. This petition proposed Restriction and Control measures effective from 01-11-2008. The petition quantified the excess demand charges and excess energy charges. The Commission posted the petition for hearing on 10-11-2008 and directed the TNEB to publish the Restriction and Control measures and the charges for excess demand and excess energy consumption in leading news papers. This was done on 15-11-2008. The State Advisory Committee considered the petition on 18-11-2008. Suggestions and Objections from the public were presented on 21-11-2008 at the public hearing.

40. The TNEB intimated the consumers on 01-11-2008 and again on 05-11-2008 about the Restrictions and Controls. The intimation also stated that the excess demand charges and excess energy charges as fixed by the TNERC will be applicable but the quantum was not mentioned. Therefore, the quantum of excess demand charges and excess energy charges, for the first time, was brought to
the knowledge of the public on 15-11-2008 through newspapers. The consumers could well argue that had the excess demand charges and excess energy charges been notified, they would have desisted from exceeding the quota.

41. Section 64 of the Electricity Act 2003, prescribes an elaborate procedure for determination of tariff and stipulates a time limit of 120 days for issue of Tariff Order.

42. Taking a pragmatic and legal view, the Commission considers that it is fair and just to enforce the excess demand charges and excess energy charges from the date of Order of the Commission i.e. to-day. That is to say that any excess demand or excess energy consumption shall be reckoned for the consumption beginning from to-day.

43. As the base for computation of maximum demand charges would undergo a change, this is being notified with prospective effect. Excess energy consumption charges, which is introduced for the first time, will have prospective effect from the date of the Order. Similarly, the computation of the demand and energy quota shall be revised for wind captive users with immediate effect in accordance with the formula prescribed by the Commission. As regards the Restriction and Control measures, which have been enforced from 01-11-2008, the date of effect shall be 01-11-2008.

Pronounced in the open court by this Commission on twenty eighth day of November 2008

(R.RAJUPANDI) (B.JEYARAMAN) (S.KABILAN)
MEMBER II MEMBER I CHAIRMAN