



# TAMIL NADU ELECTRICITY OMBUDSMAN

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**Present : Thiru A. Dharmaraj, Electricity Ombudsman**

## **Appeal Petition No. 25 of 2015**

M/s.Sabari Alloys & Metals India Pvt Ltd,  
A-3, Sipcot Industrial Complex,  
Gummidipoondi – 601 201

. . . . . Appellant  
(Rep by Thiru. Elango)

Vs.

The Superintending Engineer,  
Chennai EDC / North,  
TANGEDCO,  
5A Block, 144, Anna Salai  
Chennai – 600 002.

..... Respondent  
(Rep by Thiru. Udayakumar,  
Asst. Accounts Officer)

**Date of hearing : 12.05.2015**

**Date of Order : 10.08.2015**

The Appeal Petition dated 02.03.2015 filed by M/s.Sabari Alloys & Metals India Pvt Ltd, Gummidipoondi was registered as Appeal Petition No.25 of 2015. The above appeal petition came up for hearing before the Electricity Ombudsman on 12.05.2015. Upon perusing the appeal petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

## **ORDER**

### **1. Prayer of the Appellant:**

The Appellant prayed for the following:

- (i) To direct the concerned authorities to regulate the excess charges for excess consumption during peak hours as per CMRI downloaded data from 06/2012 onwards after adjusting the amount already refunded. The working sheet shall be supplied to them.
- (ii) To refund the IDP amount already collected on the refundable amount.
- (iii) To pay interest for the delayed settlement as per TANGEDCO rules treating the amount as advance CC charges.
- (iv) To refund the Electricity tax excessively collected on the refundable amount.

### **2. Brief history of the case:**

- 2.1. M/s.Sabari Alloys & Metals India Private Limited, the Appellant herein is a HT consumer. The HT SC.No.is 1772 and the sanctioned demand is 2900 KVA.
- 2.2. The grievance is related to refund of the excess demand charges collected for exceeding the peak hour demand quota fixed for the industry for the period from June 2012.
- 2.3. The Appellant filed a petition before the CGRF on 1.07.2014. Hearings were conducted on 29.09.2014 and 23.12.2014. But no order was issued by the CGRF.
- 2.4. As no order was issued by the CGRF even after two months from the date of 2<sup>nd</sup> hearing conducted on 23.12.2014, the Appellant filed his appeal petition before the Electricity Ombudsman and the same is registered as appeal petition no.25 of 2015.

### **3. Contentions of the Appellant:**

- 3.1. They have submitted their grievances to settle the issue regarding adjustment of excess charges collected towards peak hour excess charges levied without adhering to the TANGEDCO instructions to the Chairman CGRF Chennai EDC on 26.06.2014 and the same was acknowledged on 28.08.2014 after nearly two months.
- 3.2. The grievance meeting was attended by them on 29.09.2014 and submitted their claim in person. Despite that there were no responses till 16-12-2014. Again on 17.12.2014 they were asked to appear before the CGRF for the same issue on 23.12.2014. They have attended the meeting. During the meeting the Chairman CGRF had informed that the request of their claim was referred to Financial Controller/Revenue. Till date they have not received any communication from the CGRF.
- 3.3. They would submit that it is strange to note that even after referring the Honorable Ombudsman orders in person and TANGEDCO orders during the CGRF meeting the matter is referred to Financial Controller to delay their claim.
- 3.4. More over the Chairman CGRF could have obtained the clarification from the office of the Financial Controller which is only 100 metres away from his office. Now another two months had lapsed after the second CGRF meeting on 23.12.2014.

### **4. Contention of the Respondent in the Counter Affidavit**

- 4.1 It is respectfully submitted that the H.T.supply to M/s.Sabari Alloys & Metals India Private Limited, under H.T.SC.No.1772 has been provided with a maximum demand of 2900 KVA at Gummudipoondi.
- 4.2 The above Appeal Petition is not maintainable either on law or on facts. They state that the petitioner being an agreement holder is bound by the provisions of Electricity Act 2003, provision of Tamilnadu Electricity Regulatory

Commission Supply code, and TNERC Distribution Code and as such stopped from contending otherwise and disputing the demand.

4.3 The imposition of Restriction and Control Measure in Tamil Nadu is in force from 01.12.2008. Accordingly, the H.T. consumers are permitted to avail TANGEDCO power with regard to applicable power cut in force in terms of energy and demand. However, the H.T.consumers are being permitted to purchase power from generators within and outside Tamilnadu. However, the overall power, i.e., power supplied by the TANGEDCO and purchased from open market should not exceed the sanctioned demand. During evening peak hour (18.00 hrs to 22.00 hrs) 10% quota only permitted for lighting purposes. The quota details are as follows :-

Quota	Normal Quota		Peak hour quota		Remarks
	Energy	Demand	Peak Energy	Peak Demand	
06/2012	816305	2015.3	86311	240.55	Upto 13.08.2013
	Relaxed	Relaxed	185524	2016	14.08.2013 to 30.09.2013
	1484191	2687	153099	308	1.10.2013 Onwards.

4.4 The petitioner is a group captive consumer from wind mill energy. Accordingly, month war the wind energy statement received from the Generation circle to the Superintending Engineer/Chennai EDC/North for making adjustment. The Wind Energy received by the petitioner was adjusted in their High Tension bill of 1772 and balance only charged. They have executed an agreement with Wind Mills under Group Captive as detaled below:

Sl.No	Name of the Wind Circle	W.F.No.
1	Udumalpet EDC	785,1360,1480,1481,1482&1490 of M/s.Clover Energy (P) Ltd.,
2	Tirupur EDC	292 to 299 and 331 of M/s.Clover Energy (P) Ltd.,
3	Tirupur EDC	551 & 552 of M/s.Clover Energy (P) Ltd.,
4	Tirunelveli	2289,2306,2307,2270,2232,2233,2321,2319,2320,2170,2515, 2501.,2155, 2309,2310,2311,2312,2313,2314, 2315,2316,2317, 2318,2325 & 2471 of M/s.Olive Ecopower Private Limited.
5	Tirunelveli	451,452,759,760,1181,1267,1268,1320,1335,1557,1591,1592, 1618,1620,2055,2056,2176,2212,581,746,747,1186,2446,2472, 2483 of M/s.Clover Energy (P) Ltd.
6	Tirunelveli	48 of M/s. Clover Energy (P) Ltd.,

4.5. In this case, the petitioner has to draw energy during evening peak hour based on the wind energy allocation only.

4.6. If normal H.T.consumer exceeds the TNEB quota, even purchasing power from third party, Indian power Exchange, Captive Power Plant. 48 hours notice has been issued to the consumer. In respect of wind mill adjustment H.T. services the 48 hours notice has not been issued, since the wind energy adjustment is received at the end of the billing month only.

4.7. The excess evening peak hour demand charges may be correctd with the manually worked out figures as per the 48 hours notice issued or as per the downloaded data from the CMRI for proportionate no of days as per CFC's letter dt. 1.9.2009.

4.8. The petitioner has drawn the demand during evening peak hour over and above the power purchased through windmill. The excess demand charges shall be raised in the current consumption bill itself. Subsequently the excess

evening peak hour demand charges leveled was revised as per the CMRI data by number of days exceeded by taking highest demand during the above days.

4.9. In this case, the petitioner has drawn energy intentionally to their requirement of the industry. Therefore, the Demand Side Management cannot be maintained by the TANGEDCO due to overdrawal of demand by the petitioner. Hence, the excess evening peak hour demand charges levied was withdrawn for the days within the quota.

4.10. It is respectfully submitted that the petitioner has exceeded the evening peak hour demand in all months and drawn power for their requirement without ascertaining the demand to be receivable from the wind energy.

4.11. It is respectfully submitted that the billing instruction given by the Director/ Distribution/Vide Lr. Dated 24.08.2013 in the event of Government of Tamil Nadu announcement of the following R & C relaxation measures from 14.08.2013 to 30.09.2013 as a temporary measure in order to ensure maximum utilization of wind energy.

1. The existing 40% power cut to H.T. industrial and Commercial Services is totally relaxed (i.e. up to the level of sanctioned demand and non energy restrictions) other than peak hour i.e. 18.00 hrs to 22.00 hrs.
2. During peak hours the 90% cut is reduced to 40% cut for H.T. industrial and commercial services.

And noted 4.3 "The excess demand charges during the peak hour shall not be arrived on proportionate day basis from 14.08.2013 onwards.

4.12. It is respectfully submitted that the excess evening peak hour demand charges withdrawn for the following month is to be claimed as per the instruction dated 24.08.2013.

Month	Adjusted in C.C.bill
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10/2013	839617 /-
11/2013	1252527 /-
12/2013	320381 /-
Total	Rs.24,12,525

4.13. The petitioner H.T.service was disconnected on 31.10.2014 for non payment of current consumption charges for 09/2014 and the petitioner has also requested for permanent disconnection of their H.T. supply vide Ir.dated 13.02.2015.

4.14. As per TNERC supply code 5(2)(i), in the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.

4.15. It is respectively submitted that the evening peak hour demand charges revised in respect of the petitioner is found to be in order prior to the month of 08/2013 and also the petitioner is liable to pay the refunded amount of Rs.24,12,525/- for the month from 10/2013 in accordance with the Director/Distribution/TANGEDCO's letter dated 24.08.2013.

4.16. For the reasons stated above, it is humbly submitted that the Hon'ble Electricity Ombudsman may issue orders to pay the refunded amount of Rs.24,12,525 /- for the month from 10/2013 onwards in accordance the Director/Distribution/TANGEDCO's letter dated 24.08.2013.

## **5. Hearing held by the Electricity Ombudsman**

5.1 To enable the Appellant and the Respondent to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 12.05.2015.

5.2 Thiru.Elango, has attended the hearing on behalf of the Appellant and putforth his arguments.

5.3 Thiru.Udayakumar, Assistant Accounts Officer, attended the hearing on behalf of the respondent and putforth his side arguments.

**6. Arguments putforth by the Appellant's representative on the hearing date :**

6.1 Thiru.R.Elango attended the hearing on behalf of the Appellant and reiterated the contents of the Appeal Petition.

6.2 The Appellants representative argued that the circular dated 24.08.2013 referred by the respondent that the excess demand charges shall not be arrived on proportionate day basis from 14.08.2013 was not communicated to them. Withdrawing a benefit or changing the billing pattern which is having a financial implication without any prior information to the concerned industry is violation of natural justice.

6.3 TANGEDCO has issued the above instruction without getting the approval of Hon'ble TNERC.

6.4 Citing the Electricity Ombudsman's earlier order, the Appellant's representative argued that Electricity Ombudsman has held that the excess peak hour demand charges shall be collected only on proportionate day basis.

6.5 The Appellant's representative also argued that even before 14.08.2013 also, the respondents have not followed the CFC's circular, they have made their own way of calculation.

6.6 Regarding the interest paid by them for the delayed payment on the refundable amount, the Appellants representative informed that he is not insisting the above prayer

6.7 Regarding Electricity Tax after hearing the arguments of the the respondent that they are not charging electricity tax on the excess demand charges the Appellant's representative informed that in such case there may



not be any refund of electricity tax and he is willing to withdraw the above prayer.

6.8 In the written argument submitted on the hearing date the following arguments were put forth by the appellant:

(i) The Appellant argued that as per the following circulars, the TANGEDCO has instructed to collect the excess demand charges for evening peak hour violation on proportionate day basis only.

(a) CFCs Circular memo CFC/ FC/R/D362/Dt 26.11.2009.

(b) Lrno.Dir/F/FC/R/DIO dated 20.12.2010.

(c) கடித எண்.தநிகஅ/வ/நிகஅ/எண்.109/2010 நாள் 28.5.2010.

(ii) As per the Director/Distribution letter dt 24.8.2013 the excess demand charges during the peak hour shall not be arrived on proportionate day basis from 14.8.2013 onwards. In this regard, the Appellant raised the following question.

(a) Is there any approval from TNERC that the excess penal charges should not be regulated as per CMRI data after 14.8.2013 for peak hour excess consumption ?

(b) Whether the orders discussed above circular memo (1) dated 26.11.2009 (2) DIR/P/FC/D/10/20.12.10.2010 are withdrawn or amended ?

(iii) The orders of CFC dated 24.8.2013 is violative and against natural justice. As per this the CFC wants the industries to violate R&C for all the 30 days since even for 1 day excess charges is levied for 1 full month?.

(iv) From the affidavit it is understood that excess peak hour charges for 10/2013 11/2013 and 12/2013 for Rs.24,12,525/- already adjusted is to be withdrawn . Whether the withdrawn is as per the directions of the TNERC or from any other agencies?

(v) When the TANGEDCO is unilaterally taking decisions without proper approval from the competent authority concerned it is humbly submitted that the Hon'ble Ombudsman may be pleased to pass orders to

refund to the excess charges for exceeding the quota during peak hours as per his own observations setting aside the affidavit by the SE/CEDC/North.

**7. Arguments putforth by the respondent on the hearing date:**

7.1 Thiru.Udayakumar, Assitant Accounts Officer / HT attended the hearing and putforth his arguments.

7.2 The A.A.O informed that as the CMRI downloaded data was available to them only after sending the bills to the HT consumers, they used to levy the excess charges for peak hour violation on monthly basis and refund the excess amount collected after receiving the CMRI data. They calculated the refund only on the non exceeding day and refunded the amount.

7.3 The AAO argued that the Appellant is a Group Captive Consumer of wind mill energy. They have executed group captive agreement with M/s. Clover Energy (P) Ltd and M/s.Olive Eco Power Pvt Ltd and the generation details are to be obtained from Udumalpet EDC, Tiruppur EDC and Tirunelveli EDC. As three different circles and number of wind mill generators are involved, it is not possible to calculate the exact power available from the above wind source and to arrive at excess demand charges in the respective months.

7.4 He argued that before 14.08.2013, the excess demand charges for exceeding the peakhour quota was worked out on CMRI downloaded details basis and from 14.08.2013, the proportionate day basis calculation was withdrawn as per Director / Distribution Circular dated 24.08.2013.

7.5 As per the billing instructions, the excess demand charges for exceeding the peak hour demand quota fixed is to be calculated on proportionate day basis as per CMRI upto 13.8.2013. In their circle, they have calculated the excess demand charges for the full month and allowed the refund for the days not exceeded the peak hour demand quota. However, the Respdnent's representative agreed that they will calculate the excess demand charges for peak hour violation on proportionate day basis and refund the balance amount if any for the period before 14.08.2013.

7.6 In respect of the period after 14.08.2013 the excess demand charges calculated for full month and refund was also made for the days on which the

service has not exceeded the evening peak hour quota fixed. The above is a mistake done by the billing section as the excess demand charges are not to be billed on proportionate day basis from 14.08.2013. Hence, he argued that a sum of Rs.24,12,525 /- wrongly refunded to the Appellant has to be paid back to TANGEDCO by the Appellant.

7.7 He argued that there is no order from Commission either for charging excess demand charges for exceeding the peak hour quota on proportionate day basis or for withdrawing the above concession from 14.08.2013. He further argued that Normally demand charges and excess demand charges are made only on monthly basis and not on daily basis.

## **8. Written argument of the Appellant:**

8.1 The Appellant furnished his written argument duly furnishing his calculation for disputed period vide his letter dated 15.05.2015.

8.2 TANGEDCO had issued orders not to refund the excess charges as per CMRI for the period from 14.08.2013 and the order was issued only on 4/2015. It is submitted to examine whether the order relating to levy of excess charges can take effect retrospectively or prospectively.

8.3 The orders issued by TANGEDCO for the period from 14.08.2013 to 30.09.2013 is a temporary one. Whether the temporary orders may be made applicable to the permanent R&C conditions beyond 30.09.2013.

8.4 Regarding Electricity Tax they submit that they are withdrawing their claim .

8.5 Regarding claiming of interest for the excess amount kept by the licensee they are withdrawing the above claim to have better understanding with the licensee.

## **9. Findings of the Electricity Ombudsman :**

9.1 As the Appellant has withdrawn the prayer on the claim of E.Tax and interest on refundable amount, the only prayer to be considered is refund of

the excess demand charges collected for exceeding the peak hour quota fixed from 6/2012 onwards.

9.2 On a careful consideration of the rival submissions, I find the issue has two parts:

- (i) The excess demand charges for exceeding the peak hour quota upto 13.08.2013.
- (ii) The excess demand charges for exceeding the peak hour quota from 14.08.2013 (i.e) after issue of Director/ Distribution Circular dated 24.08.2013.

9.3 Regarding the first part both the Appellant and the Respondent are agreeable to calculate the excess demand charges for exceeding the peak hour quota on proportionate day basis on CMRI downloaded data. Hence, there is no dispute between the Appellant and the Respondent in the first part.

9.4 Regarding the second part the excess demand charges for exceeding the peak hour quota from 14.08.2013 on full month basis, the Appellant argued that the excess demand charges for exceeding the peak hour quota has to be charged only on proportionate day basis as per the following circulars of the licensee.

- (i) Circular memo no.CFC/Rev/FC/R/D.No.362 dtd 26.11.2009.
- (ii) Lr.No.DIR(F)/FC/R/D.No. /10 dated 20.12.2010.
- (iii) கடித எண்.தநிகஅ/வ/நிகஅ/எண்.109/2010 நாள் 28.5.2010

9.5 The Appellant argued that the TANGEDCO has not got the approval of the Commission for charging the excess demand charges for exceeding the peak hour quota on monthly basis from the existing proportionate day basis. The Appellant also argued that the above instruction is violative of natural justice.

9.6 The Appellant citing the order of Electricity Ombudsman in Petition No.86 of 2011 and argued that the excess demand charges are to be levied on

proportionate day basis only for exceeding the peak hour demand quota fixed and it is a settled issue.

9.7 The Appellant also argued that the order dated 24.08.2013 issued by the Director / Distribution not to charge the excess demand charges for exceeding the quota fixed for the peak hour on proportionate day basis is not approved by the Hon'ble Commission. He also argued that the order dated 24.08.2013 was not communicated to them and they are aware about the order only during 4/2015. Hence, he argued that even if it is applicable it can be made applicable only prospectively from 4/2015 and not with retrospective effect from 14.08.2013.

9.8 The Appellant citing the order dated 24.08.2013 issued by the Director/Distribution and argued that the above order is applicable for the period from 14.08.2013 to 30.09.2013 and is a temporary one. The temporary order, may not be made applicable to the permanent R&C condition beyond 30.09.2013.

9.9 The respondent argued that the circulars referred by the Appellant are applicable for the period before 14.08.2013 only and TANGEDCO has ordered to levy the excess demand charges for peak hour violation on monthly basis only from 14.08.2013 as per circular dated 24.08.2013.

9.10 The Responent argued that there is no order from the Commission either for charging excess demand charges for exceeding the peak hour quota on proportionate day basis or for withdrawing the above concession from 14.8.2013.

9.11 The Respondent also argued that as per the provision in the Supply Code 5(2)(i) the maximum demand charges for any month shall be based on a KVA demand recorded in that month at the point of supply or such percentage as sanctioned demand as declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double

the normal rate. Normally the demand charges and the excess demand charges are charged only on monthly basis.

9.12 The respondent also cited the clarification obtained from their head quarters in this regard and argued that the excess demand charges for exceeding the evening peak hour shall be on monthly basis from 14.08.2013 onwards.

9.13 As the appellant has cited, Electricity Ombudsman's Order in A.P.No.86 of 2011, the relevant portion of the order (ie) para 12.1 to 12.5 are extracted below:-

*"12.1 The Hon'ble TNERC has ordered that the excess demand charges shall be thrice the normal rate. But the licensee has issued a circular dated 26.11.2009. In the above circular in para 10 the following has been specified.*

*"Circular Memo No. CFC/Rev/FC/R./ D. No. 362, Dt. 26.11.2009.*

*10 The peak hour excess demand charges for exceeding the demand may be levied for proportionate day basis on CMRI down loaded data or by 48 hours notice and the excess charges may be levied at double the normal charges only (ie) at Rs.600/- per KVA."*

*12.2 The licensee has also issued clarification in this regard, the relevant portion of the letters are furnished below :*

*In Lr. No. DIR/F/FC/R/D.No. /10 dt. 20.12.2010.is reproduced below :*

*2(iii). For the violation of the peak hour, the instructions has also been issued to the filed to levy the excess charges for the proportionate day basis based on the CMRI downloaded data and not for all the 30 days as in the case of monthly MD charges.*

*கடித எண். தநிகஅ/வ/நிகஅ/எண்.109/2010 நாள் 28.5.2010*

*8.0 மாலை நேர ஒதுக்கீட்டை மீறும்போது எந்தெந்த நாளில் மீறப்படுகிறது, அந்த நாளுக்குண்டான maximum demand charge மட்டுமே வசூலிக்க மேற்பார்வை பொறியாளர்கள் கேட்டுக்கொள்ளப்பட்டுள்ளார்கள். தாங்கள் கேட்டுக் கொண்டுள்ளபடி நான்கு மணி நேரத்திற்கு மாத்திரம் கட்டணத்தொகை வசூலிக்க இயலாது என்பதை தெரிவித்துக் கொள்கிறோம், ஏனென்றால் maximum demand charge என்பது நிலையான கட்டணமாகும்."*

*12.3 The monthly, MD charges are levied based on the highest demand availed by the consumer or 90 % of the sanctioned demand / quota per month which*

*ever is higher. Here, the highest demand reached on any half an hour integration on any day of the month will be taken as the maximum demand for calculating the MD charges. The licensee has categorically informed that the above procedure shall not be followed in the case of arriving excess demand charges for evening peak hour violation.*

*12.4 Hence, on a careful reading of circulars and clarification issued by the licensee it can be stated that the licensee is instructing his officers to levy the excess charges for violation of peak hour demand quota on proportionate day basis only and not on monthly basis.*

*12.5 In view of the above, I am of the view that the excess demand charges for exceeding the evening peak hour quota shall be levied on proportionate day basis only.”*

9.14 On a careful reading of the above, it is noted that the order of the Ombudsman to levy the excess demand charges for exceeding the every peak hour demand quota on proportionat days basis is based on the licensees billing instructions which were in operation at that time only.

9.15 As the respondent has referred Director/Distribution LrNo.CFC/ FC/DFC/AAO.HT/AS.3/DNo.123/13 dt 24.08.2013, the relevant para 4.3 is extracted below :-

*4.3. The excess demand charges shall be levied as per the 17(D) revised illustration vide Lr.No./CFC/FC/DFC/AS.3/D.No.59/11 dt.26.08.2011 in respect of all consumers except under optimum demand consumers. Further, if power factor records below 0.9, then power factor 0.9 only shall be taken for computation of equivalent demand. The excess demand charges during the peak hour shall not be arrived on proportionate day basis from 14.08.2013 onwards.*

9.16 On a careful reading of the above para, it is noted that the excess demand charges during peak hour should not be arrived on proportionate day basis from 14.08.2013 onwards (i.e) the licensee has changed the mode of calculating the excess demand charges from 14.08.2013 onwards.





9.18 On a careful reading of the above, it is noted that the licensee has instructed his officers to charge the excess demand charges for exceeding the peak hour demand quota on a full month basis from 14.08.2013 and on proportionate day basis before 14.08.2013.

9.19 As the respondent has referred regulation 5(2)(i) of the Supply Code the same is extracted below:-

*“5. Miscellaneous Charges.*

*xxxxx xxxx xxxx*

*xxxxx xxxx xxxx*

*(2) Excess demand charge*

*(i) In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate”.*

9.20 I would also like to refer regulation 5(13) of the Supply Code which is applicable to this case.

*“5. Miscellaneous Charges.*

*xxxxx xxxx xxxx*

*xxxxx xxxx xxxx*

*13) Excess demand charge and excess energy charge during Restriction and Control of supply :*

*(i) The maximum demand charges for HT supply shall be based on the actual recorded demand at the point of supply or at 90% of the demand quota as fixed from time to time through restriction and control measures whichever is higher. In case the maximum recorded demand is in excess of the quota fixed, the demand in excess of the quota fixed shall be charged at rates specified by the Commission from time to time.*

*(ii) The energy consumption over and above the energy quota fixed shall be charged at the rates specified by the Commission from time to time in respect of such class of consumers upon whom the restriction and control measures apply.*

*The services which draw electricity from TNEB Grid for using welding sets during the restricted hours shall be charged at the rates specified by the Commission from time to time.”*

9.21 The above regulation is applicable for calculating the excess demand charges during R&C period. On a careful reading of the above regulation, it is noted that if the maximum demand recorded is in excess of the quota fixed the demand in excess of the quota fixed shall be charged at rates, specified by the Commission.

9.22 In respect of HT Industries the maximum demand is the highest value of KVA recorded in any of the consecutive 30 minutes / 15 minutes integration period on any day of the respective month. The demand charge for a billing month is being calculated by multiplying the demand charges per KVA by the maximum demand recorded in the particular month. Similarly, the excess demand charges are calculated by multiplying the excess demand recorded over and above the sanctioned demand/quota fixed by the rates specified by the Commission. Therefore, there is no provision to calculate the excess demand charges on proportionate day or daily basis.

9.23 There is no separate regulation for excess demand charges for exceeding the peak hour quota. Hence, the existing regulation for excess demand charges has to be adopted for the peak hour demand quota violation also. As per the regulation, there is no provision to calculate the excess demand charges for exceeding the quota on daily or proportionate day basis. Therefore, there is no provision to calculate the excess demand charges for exceeding the peak hour quota also on proportionate day basis. Here, I would like to point out that the excess demand charges for exceeding the normal hours quota is being calculated on monthly basis and not on proportionate day basis.

9.24 However, as per regulation 9(i) of Supply Code whenever there is a change in the sanctioned demand, the meter shall be reset and the maximum demand charges shall be billed proportionately for the respective periods. Hence, proportionate billing is possible when there is a change in the sanctioned demand or permitted quota within a billing month. But, in the case on hand the proportionate billing is not claimed based on the change in

sanctioned demand/quota fixed but based on every days recorded demand during peak hours. Hence, the above regulation is not applicable to this case.

9.25 To find out the excess demand charges for exceeding the evening peak hour quota specified by the Commission one has to refer the orders of Hon'ble TNERC in MP No. 42 of 2008 dt. 28.11.2008 the relevant paras 29, 33 and 35 are reproduced below :-

*“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.*

*x x x x x*

*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.*

*x x x x x ”*

9.26 The para 11.10 and 11.11 of the order dated 4.5.2010 of Hon'ble Commission in M.P. No. 4 of 2010 and M.P. No. 7 of 2010 are furnished below:

*“11.10. The contention of the Petitioner that penalty was proposed only for welding operators in the public announcement and that excess demand and excess energy charges would not apply to evening peak hour violation as per the public*

*announcement is not correct. The public announcement did mention that excess demand charges and excess energy charges would apply for exceeding the quota fixed by the TNEB. Since separate quotas have been fixed for peak hours and non-peak hours, it is axiomatic that excess demand charges and excess energy charges would be attracted, if the quota is exceeded.*

*11.11. Therefore, it is clear that the Order of the Commission in M.P. No.42 of 2008 prescribed excess demand and excess energy charges for evening peak hour violation also.”*

9.27 It could be seen from the above that the excess demand charges and excess energy charges exceeding the quota is thrice the normal rate for both HT Industrial and commercial consumers for both evening peak hour and normal hours. It is noted that the Commission has treated the excess demand charges for exceeding the quota fixed for normal hours and peak hours alike.

9.28 In M.P.No. 42 of 2008, the Commission has only ordered to charge the excess demand charges for exceeding the normal and peak hour quota by thrice the normal rate. The licensee has not got approval from the Commission to calculate the excess demand charges for exceeding the peak hour demand quota on proportionate day basis. But the licensee has calculated the excess demand charges for exceeding the peak hour quota alone on proportionate day basis based on their own circulars and have withdrawn it on their own from 14.08.2013 onwards. As the licensee has withdrawn the facility of calculating the excess demand charges for exceeding the peak hour quota on proportionate day basis which was given by them on their own and as there is no provision in the supply code, to levy the excess demand charges on proportionate day basis, I am of the view that the Appellant cannot seek that the excess demand charges for exceeding the peak hour quota could be calculated on proportionate day basis.

9.29 The Appellant argued that the respondent has changed the billing pattern without intimating to them and also has given retrospective effect from 14.08.2013. As the circular was issued on 24.08.2013 with effect from 14.08.2013 the same shall be made applicable from 24.08.2013 prospectively instead of 14.08.2013.

**10. Conclusion:**

10.1 In view of my findings furnished in para 9 above, the excess demand charges for exceeding the peak hour quota in respect of the period before 24.8.2013 (ie) upto 23.8.2013 shall be calculated on proportionate day basis and the excess demand charges for exceeding the peak hour quota in respect of the period from 24.08.2013 shall be calculated on monthly basis.

10.2 If the excess demand charges collected for exceeding the peak hour quota is more than the excess demand charges calculated as per the direction given in para 10.1 above, then the excess amount collected may be refunded to the Appellant within 30 days from the date of receipt of this order.

10.3 If the amount already collected is less than the value calculated as per the direction given in para 10.1 above, then a revised demand notice shall be issued within 30 days from the date of receipt of this order. A compliance report shall be sent within 45 days from the date of receipt of this order.

10.4 With the above findings the A.P.No.25 of 2015 is finally disposed of by the Electricity Ombudsman. No cost.

**(A. Dharmaraj)**  
Electricity Ombudsman

To  
1) M/s.Sabari Alloys & Metals India Pvt Ltd,  
A-3, Sipcot Industrial Complex,  
Gummidipoondi – 601 201

2) The Superintending Engineer,  
Chennai EDC / North,  
TANGEDCO,  
5A Block, 144, Anna Salai  
Chennai – 600 002.

3) The Chairman & Managing Director,  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai,  
Chennai – 600 002.

4) The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai  
Egmore,  
Chennai – 600 008.

5) The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**  
Tamil Nadu Electricity Regulatory Commission,  
No.19-A, Rukmini Lakshmipathy Salai,  
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