

**TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION****Regd. No.** 181-8524/1998 – **CIN.No.** U37102TZ1998GAP008524

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TECA:2025-26/CIR-39**06 January 2026****To All Members****CIRCULAR**

Subject: Comments on order of Hon'ble Division Bench of Madras High Court in the matter of Deemed Demand – Writ Appeals filed by TNPDCL Regarding.

The web-hosted Judgment of the Hon'ble Division Bench of the Madras High Court, allowing all the Writ Appeals filed by TNPDCL, is enclosed herewith for the information of our members.

Background of the Issue

The Tamil Nadu Electricity Regulatory Commission (TNERC) issued its First Wind Energy Tariff Order dated 15.05.2006, wherein, inter alia, the concept of Deemed Demand benefit was introduced for Wind Energy projects with effect from 15.05.2006.

The TNERC also prescribed a specific methodology / formula for arriving at the Deemed Demand benefit in cases where Open Access Consumers sourced power from their own generating sources, other than the power supplied by TANGEDCO / TNPDCL.

This concept was introduced on the principle that when an Open Access Consumer injects energy into the grid from its own source, thereby reducing drawal from the State Utility, a corresponding rebate / adjustment should be provided in the Demand Charges otherwise payable on the full sanctioned demand.

II. Continuation and Expansion of Deemed Demand Benefit

The Deemed Demand benefit, introduced under the Wind Energy Tariff Order dated 15.05.2006, was continued **without any modification** in the subsequent Wind Energy Tariff Order dated 20.03.2009.

Thereafter, the same principle was extended and followed for other sources of Renewable Energy, including **Solar Power and Bio-Mass Power**, and subsequently also for **Thermal Power**, especially during the period when the State was under severe **Restriction & Control (R&C) measures**, up to

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05.06.2015. During this period, TANGEDCO actively encouraged sourcing of power through Open Access, as it was unable to supply power to the extent of the contracted demand.

III. Sudden Withdrawal under Wind Energy Tariff Order dated 31.07.2012

While the position remained settled and undisputed till 31.07.2012, the TNERC, through its Wind Energy Tariff Order dated 31.07.2012, suddenly and unilaterally withdrew the Deemed Demand benefit for Wind Energy Open Access Consumers, without assigning any justifiable or cogent reasons.

The said Order dated 31.07.2012 was challenged by one of the Association called TASMA before the Hon'ble Appellate Tribunal for Electricity (APTEL) on several grounds, including the suo-motu withdrawal of the Deemed Demand benefit.

After prolonged litigation, the Hon'ble APTEL, by its Judgment dated 16.06.2025 in Appeal Nos. 176 & 177 of 2016, set aside the Wind Energy Tariff Order dated 31.07.2012 and remanded the matter back to the TNERC for fresh consideration.

Importantly, the Hon'ble APTEL also directed that all benefits as available prior to 31.07.2012 shall be continued till a fresh Tariff Order is issued by TNERC.

However, it is pertinent to note that even after the lapse of more than **six months**, the TNERC has not yet taken up the matter for passing a fresh order, in clear disregard of the directions of the Hon'ble APTEL.

IV. Position with respect to Other Sources of Energy

Similar to Wind Energy, the TNERC has withdrawn the Deemed Demand benefit in respect **of** Solar Power and Bio-Mass Power also.

In the case of Bio-Mass Power, upon Appeals filed by the affected generators, the Hon'ble APTEL, by its Judgment dated 22.12.2025 in Appeal No. 139 of 2016, issued directions similar to those issued in the Wind Energy matters and remanded the issue back to TNERC for fresh consideration.

However, in respect of Solar Power, the withdrawal of Deemed Demand benefit was not specifically challenged.

V. Position of Deemed Demand Benefit in respect of Thermal Power

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With this background, it is relevant to point out that the TNERC has never passed any specific order withdrawing the Deemed Demand benefit in respect of Thermal Power at any point of time, including till date.

In the absence of any such specific order, several consumers sourcing power under Thermal Power through Open Access / Group Captive schemes continued to avail the Deemed Demand benefit, as was being done earlier.

However, without any approval or authorization from the TNERC, **the** CFC-Revenue of TANGEDCO, by its Circular in Communication No.CFC/FC/DFC/AAO.HT/AS 3/ REV/ D.No.115/13 dated 29.07.2013, unilaterally withdrew the Deemed Demand benefit even for Thermal Power.

This unilateral administrative action was taken without any regulatory backing, despite the fact that the TNERC had not issued any Tariff Order or clarification withdrawing such benefit for Thermal Power.

Writ Petition filed before the Single Judge:

The communication issued by the CFC-Revenue Wing dated 29.07.2013 was challenged by several Open Access consumers, who were, at the relevant time, sourcing thermal power for their requirements under the Group Captive Scheme, owing to the severe power cuts enforced in the State of Tamil Nadu. Upon hearing the writ petitions filed by the respective petitioners, the Hon'ble High Court granted interim orders permitting the continued levy and payment of 50% of the Deemed Demand Charges to TANGEDCO and stayed the collection of the remaining 50%, thereby allowing the same to be retained as savings by the Open Access consumers.

All the batch of writ petitions were thereafter heard together and finally disposed of by order dated 14.09.2018. The Hon'ble Single Judge, while allowing the continuance of the benefit of payment of only 50% of the Deemed Demand Charges, directed TANGEDCO to approach the Tamil Nadu Electricity Regulatory Commission (TNERC) and obtain a specific order, similar to the dispensation already extended by the TNERC to Wind, Solar, and Biomass energy generators.

TANGEDCO's Appeal before High Court Division Bench

However, without approaching the TNERC, the TANGEDCO has filed Writ Appeals, before the Hon'ble Division Bench, against the order of the Hon'ble Single Judge dated 14.09.2018 and accordingly, the Writ Appeal matter was continuously heard till 26.11.2025 on various dates and the matter was thereafter heard finally and reserved for orders on 26.11.2025. Finally, the Hon'ble Division Bench has released its order on 05.01.2026, holding as below.

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"29. Therefore, we hold that the learned single Judge due to misdirection by the writ petitioners, had erroneously concluded that, the concession granted earlier withdrawn impliedly without affording hearing and following the procedure of adjudication. The examination of records as discussed above proves otherwise.

*30. As a result, the common order of the learned single judge in W.P.No.5918/2015 etc., batch, dated 14.09.2018 is set-aside and the writ appeals stand allowed. Consequently, the writ petitions stands dismissed. In view of dismissal of W.P.No.5918 of 2015 and batch by this order, the other writ petitions, which are grouped along with this batch of writ appeals shall also stand dismissed. The interim orders, if any passed in this batch of matters shall stand dissolved. **If any charges/ amount due and payable to TANGEDCO by the respondents/ writ petitioners, the same to be paid within a period of three (3) months from today. Till then no coercive steps for collection of due need be taken by TANGEDCO.** With this subject to above observation, all the pending miscellaneous petitions stand closed. No costs. Connected miscellaneous petitions are closed."*

The TNPDCL Headquarters has already issued directions to all the Superintending Engineers (SEs) to keep ready the amounts recoverable from the Open Access Consumers towards the 50% of Deemed Demand Charges that were withheld by the consumers. Pursuant to these directions, all the SEs are in the process of compiling the details of arrear amounts recoverable from the Open Access Consumers.

Inasmuch as the Hon'ble Division Bench has granted a period of three months and has further directed that no coercive steps shall be taken during this period, the Open Access Consumers who are affected by the said judgment are required to avail this window and file appropriate Special Leave Petitions (SLPs) before the Hon'ble Supreme Court within the said three-month period.

Hence members are advised to approach the respective Advocates to file the SLP's before the Hon'ble Supreme Court and obtain the interim order. TECA will also review this issue seriously and advise suitably as soon as possible

With Warm Regards

L. Santhosh
President



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