



TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION

Regd. No. 181-8524/1998 – **CIN.No.** U37102TZ1998GAP008524

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TECA:2023-24:CIR/060

5 December 2023

To All Members

CIRCULAR

Dear members

Sub: Banked Energy already available with a CGP whether could be allotted for a New Captive User on introducing newly by Utility Change-TNERC ruled not possible-APTEL set asides the Order of TNERC and remands back the matter to the TNERC for fresh Consideration-Regarding

Ref:

1. The Order of TNERC in DRP No.1 of 2023 dated 05.10.2023
2. The Order of Hon'ble APTEL in Appeal No.853 of 2023 dated 30.11.2023

The Appellate Tribunal for Electricity (APTEL) has set aside the Tamil Nadu Electricity Regulatory Commission (TNERC) order No. DRP No. 1 of 2023 dated 05.10.2023. APTEL has remanded the matter back to the TNERC for fresh consideration.

The TNERC's original order had stated that allotment of banked energy already available in the banking account of the CGP, to a New Captive User introduced subsequently by making Utility Change, is not possible and accordingly directed the CGP to encash the banked energy to its 75% value.

Hon'ble Tribunal has set aside the TNERC order and remanded the matter back to the TNERC for fresh consideration. APTEL has stated that the TNERC order is based on an incorrect interpretation of the law. The Operative Portion of the APTEL Order is as follows;

*"Since the TNERC has erred in holding that the orders of the Madras High Court in W.P. No. 8634 of 2019 dated 17.08.2021 and W.P. (MD) No. 6221 and 6222 of 2018 are binding, and it could not therefore follow its earlier order in DRP No. 8 of 2009 dated 26.08.2009, **the order under appeal must be, and is accordingly, set aside. The matter is remanded to the Commission for its consideration afresh in accordance with law. It is made clear that***



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we have not examined the rival contentions on merits, and have only held that the two judgements of the Madras High Court, on which the TNERC has relied upon, does not bind the Commission. Needless to state that, on the petition being taken up for hearing on remand, parties on either side are at liberty to raise all such contentions as are available to them on merits, and the Commission shall consider the same in accordance with law."

We are enclosing the soft copy of APTEL Order for the reference of our members.

With Warm Regards

N. Pradeep
President