(To be printed in the letterhead of consumer)

Specimen I

To Date:

The Superintending Engineer,

TANGEDCO,

----------- Electricity Distribution Circle,

Station --------------.

Sir,

Sub: Verification of Captive Norms from Consumer End-Instructions / Clarifications issued to all SEs by the CFC-Revenue-Objections filed on the grounds of locus standi.

Ref: 1. The Circular Memo No. CFC/FC/REV/AS.3/D.325/17 Dated

 15.03.2017 of CFC-Revenue, Chennai.

 2. The Memo No. CFC/ REV/FC/REV/AS.3/F.CGP/D.203/17 Dated

 18.03.2017 of CFC-Revenue, Chennai.

 3. The Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17

 Dated 30/31.03.2017 of CFC-Revenue, Chennai.

4. The Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259

 /2017 Dated 31.03.2017 of CFC-Revenue, Chennai.

5. Your letter No.--------- dated ----------.

6. The objection filed before the CFC-Revenue on 10.04.2017 by TECA.

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1. We acknowledge the receipt of your letter 5th cited above calling for records for the purpose of verification of CGP Status. In this connection, we wish to invite your kind attention to the letter of objection filed by our Association namely, Tamilnadu Electricity Consumers Association (TECA) on 10.04.2017 before the Chief Financial Controller-Revenue. We wish to further state that the work of verification of Captive Status of any Captive Generating Plant (CGP) is already a function of the State Regulatory Commission and accordingly, only the Hon'ble TNERC has the domain and authority to verify the concerned documents for the purpose of verifying and declaring the status of Captive Generating Plants in the State of Tamilnadu. This has been fully explained in the objection letter filed by our Association quoting with relevant provisions of law and various case laws as decided by APTEL, New Delhi.
2. Therefore, calling for documents as per your letter 5th cited above, is without jurisdiction and hence, it lacks locus standi. It is also learnt that the Generator from whom we received power through Group Captive Mode, is already in the process of filing the papers before the Hon'ble TNERC, to get the status of the CGP cleared suitably for the respective years.
3. As all the case laws as decided by APTEL, only allow the State Commissions alone, to verify and declare the Captive Status of CGPs, any attempt by other authorities to go for verification, would be an act of contempt and would be amounting to supersede the powers of State Commission in this regard. The case law, to the extent extracted below, supports only such a course of action. Hence, calling for records from consumers by TANGEDCO for the purpose of verification of CGP status, is not an authorized course. Please find the operative portion of the Judgement of APTEL in Appeal No. 136 of 2011, Dated 21.12.2012 in the case of M/s. JSW Steel Limited, Vijaynagar Works, Vs. Karnataka Electricity Regulatory Commission & Ors.

***“Secondly, the question as to whether a certain generating plant can be termed as captive generating plant or not, does not fall for determination by the Govt.. It is the Appropriate Commission that has the exclusive jurisdiction to decide the issue.*** *The learned Commission has aptly referred to a decision of this Tribunal in "Chhattisgarh State Power Distribution Company Limited Vs. Hira Ferro Alloys (Appeal No. 116/2009)" which we also quote as follows:-*

*A generating Company which fulfils the special conditions prescribed in Section 2(8) read with Rule 3 above is categorized as captive power plant. Therefore, the captive generating plant will also be subject to the regulatory control of the State Commission inasmuch as a generating company. The proviso of Section 42(2) exempts a captive consumer from payment of cross subsidy surcharge. It is the State Commission which has the jurisdiction to determine whether the exemption provided under Section 42(2) can be accorded or not in the same manner as it is entrusted with the responsibility of determination of tariff and charges payable by the consumers in the State.*

***Therefore, when the question has arisen as to whether the JSW Steel has or has not lost the status of a captive generating plant, it is the State Commission that has the only jurisdiction to decide the same.***

1. In addition to the above case law, there are many other judgements support the same stand and declare that only the State Commission has the Jurisdiction to decide the matter of declaring the Captive Status of any CGP.
2. In view of the same, we request that the right legal course can be understood as extracted above and accordingly, your request to submit the documents for the purpose of verification of captive status of CGP may please be withdrawn.
3. In view of the above position of law, we are not filing the documents as called for through your letter 5th cited above, due to the locus standi issues. Our Generator who is supplying power to us, is making suitable efforts to file the papers before the Hon'ble TNERC and make the status of the CGP cleared satisfactorily for the respective years in which the power supply was extended to us.
4. Therefore, we request you kindly, not to act up on your letter 5th cited above further and withdraw the letter totally and leave the entire matter for the disposal by the Hon'ble TNERC as per the legal course sanctified by the law as well as by the case laws declared by the APTEL, New Delhi.

Thanking You,

Yours Truly,

Copy to: 1. TECA.

 2. Generator.