



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

A.P.No.22 of 2012

M/s.Wichitra Auto Limited,
Rep. by R.Gopalachary,
Divisional Manager,
84/3, Sidco Industrial Estate,
Chennai-600 098.

... Appellant
(Rep by Tvl. M.S. Srinivasan
& K. Dineshbabu)

Vs.

The Superintending Engineer,
Chennai EDC/West,
TANGEDCO
Chennai-600040

... Respondent
(Rep.by Thiru. Sureshkumar /DFC)

Date of hearing : 16.8.2012

Date of Order : 18.10.2012

The above appeal petition No.22 of 2012 came up for final hearing before the Electricity Ombudsman on 16.8.2012. Upon perusing the above petition, the counter affidavit, connected records and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1) Prayer of the Appellant:

The Appellant prayed to set aside the demand of Rs.1,65,266/- passed by CGRF vide order dated 12.4.2012 and direct the Respondent to refund the same

to the Appellant or alternatively adjust the same against the future bills of the Appellant's HT service connection No.1587.

2 Fact of the case:

2.1 M/s.Wichitra Auto Ltd., Ambattur is manufacturing motor vehicle parts and accessories. The HT service connection No. of the above company is 1587. The sanctioned demand is 260 KVA.

2.2 Due to power shortage, the licensee has introduced R & C measures. Accordingly, quotas for demand and energy were fixed by the licensee and intimated to the Appellant then and there. There was peak hour restriction also. Hence, the Appellant is permitted to use TNEB power only for lighting and security purposes during the evening peak hours.

2.3 The respondent has sent a demand notice to the Appellant asking to pay a sum of Rs.1,90,565/- as excess demand and energy charges for exceeding the evening peak hour quota fixed for the period from December 2008 to December 2009 vide letter dated 26.3.2010. As the above amount was included in the CC bill of the Appellant, the Appellant paid the above amount under protest on 6.4.2010.

2.4 The Appellant filed a petition before CGRF stating that they have not exceeded the evening peak hour quota fixed and the CGRF has revised the excess demand/energy charges as 1,65,266/- by taking into account of the transformer losses and directed the respondent to refund a sum of Rs.25,299/- to the Appellant or adjust the same in the HT Sc.No.1587 CC bills. Aggrieved over the above, the Appellant filed an appeal to the Electricity Ombudsman.

3 Contention of the Appellant :

The Appellant has contended the following in the appeal petition:

i) The Appellant, M/s.Wichitra Auto Limited, is a company engaged in manufacturing motor vehicle parts and accessories at its plant situated at No.84/3, SIDCO Industrial Estate, Ambattur, Chennai-600098 with HT service connection No.1587 under Chennai (West) EDC, with a original Sanctioned Demand of 260 KVA and Base Demand due to R&C measures is fixed at 234 KVA.

ii) In November 2008, due to power crisis, the TNEB introduced Restriction and Control measures to curtail the demand of the Petitioner and introduced Demand and Energy quota with effect from 1.11.2008.

iii) The office of SE/CEDC/west have fixed energy and demand quota for the Appellant's factory vide their letters dated 1.11.2008, 26.5.2009 and 28.3.2010.

iv) In view of the power crisis and R&C measures, the Appellant could not carry on its regular manufacturing operations, especially during peak hour. Hence, the Appellants have changed the shift timings so as to avoid operating its factory during the peak hour period i.e. from 6 pm to 10 pm. Accordingly, the Petitioner Company operated its factory and strictly restricted its consumption of energy and demand as per the quota fixed. For running the continuous process (namely Brazing process), the Appellant was running its own Generator.

v) The Appellant had received a demand notice vide Lr.No.SE/CEDC/W/DFC/AS/HT SC No.1587/D.No.497/2010 dated 24/26.3.2010 asking the Appellant to pay an amount of Rs.1,90,565/- as penalty alleging excess consumption of energy and demand over and above the 5% quota fixed, during the period from December 2008 to December 2009.

vi) The Appellant was surprised to find that the said penalty amount of Rs.1,90,565/- was included in the current consumption bill of the Appellant, dated 31.3.2010, without waiting for any response from the Appellant. The due date of payment of the CC bill was indicated as 6.4.2010.

vii) For want of time in taking any remedial action against the inclusion of the penalty amount in the CC bill, the Appellant had paid the CC bill amount (which included the penalty amount), under protest on 6.4.2010.

viii) The Appellant submit that on going through the workings attached to the Demand notice, the office of SE/CEDC/West had taken the power consumed during morning peak hour 6 am to 9 am (which is not under restriction and control measures) and apportioned 50% of the same against the evening peak hour and worked out the penalty even though the petitioner was not running its factory during evening peak hour using TNEB power. Therefore, the apportionment made by the TNEB of the peak hour consumption equally into morning and evening peak hour consumption is arbitrary and incorrect.

ix) Further, the Appellant had tied up for wind energy and are entitled to consume wind power during restricted peak hour 6 pm to 10 pm.

x) The Appellant submits that no evidence had been produced (like CMRI data) to prove that the petitioner had consumed TNEB power during restricted period of evening peak hour from 6 pm to 10 pm. On the contrary, apportioning the morning peak hour at 50% to evening peak hour is highly arbitrary and illegal.

(xi) As the Appellant had operated their factory within the quota fixed, there cannot be any excess demand consumption. Further, assuming without admitting that the Appellant had exceeded the quota, the excess demand charge has been calculated at a flat rate of Rs.600/- per KVA instead of calculating the excess demand charges on proportionate day basis, based on CMRI data. Hence the calculation of excess demand consumption charges @ Rs.600/- per KVA is arbitrary and it not in line with the laid down rules in this regard. The Hon'ble CGRF has failed to render any findings on this issue.

xii) Levy of excess consumption charges retrospectively by changing the quota fixed is arbitrary, illegal and against the principles of natural justice as the operations (consumption of energy and demand against the quota

fixed) cannot be undone. Any such re-fixation of quota can only be prospective and not retrospective.

xiii) The Appellant find from the working sheets provided that for the peak hour excess charges the consumption during the peak hour under 3-slot metering had been apportioned at 50% for morning peak hour 6 to 9 am and 50% for evening peak hour 6 to 9 pm. Similarly, consumption for 9 to 10 pm (1 hour), has been derived from the normal hour consumption and added to the evening peak hour consumption. As the Appellant had changed their shift timings to avoid operating their factory during evening peak hour, this apportionment has no basis and is incorrect.

xiv) The CGRF failed to give effect to the Order passed by the Appellate Tribunal for Electricity which held that penalty can be levied only with effect from 4.5.2010 and not retrospectively.

4 Contentions of the Respondent:

The respondent has contended the following in the counter affidavit.

i) M/s.Wichitra Auto Ltd., situated at Door No.84/3, Sidco Industrial Estate, Ambattur, Chennai-600098 has availed High Tension Service, bearing service connection No.1587 from SE/CEDC/West, Chennai office with a sanctioned demand of 260 KVA and the quota fixed due to R&C measures at 140.40 KVA.

ii) The averments stated in paras 5 and 6 of the Appeal filed by the Appellant are denied. The Appellant have ensured to operate their factory within the quota fixed by TNEB. In most of the places the Appellant has stated that they have modified the shift time in such a way to avoid operating its factory during the peak hours period and drawing the demand and energy from TNEB grid other than 5% for lighting purpose. However as per the actual consumption consumed the Excess Energy over and above 5% during the following months 12/2008, 02/2009, 03/2009 and 04/2009 and also in para 15 of the Appeal they controversially stated that the Appellant had tied up for wind energy and are entitled to consume wind power during restricted evening peak hour 6 pm to 10 pm. If they really modified the shift time,

there is no necessity to tie up with wind energy generator and consume power during evening peak hour.

iii) The averments stated in paras 7 to 13 of the appeal filed by the Appellant are denied. The Respondent have fixed energy and demand quota and communicated well in advance vide letter(s) dated 1.11.2008, 26.5.2009 and 28.3.2010 to restrict their energy usage during off peak and peak hour. Instead of restricting the energy and demand as per R&C measures imposed by the Respondent the Appellant had exceeded the quota and operated the factory which is violation of the rules/provisions. Despite of sending the demand notice dated 24.3.2010 well in advance, the Appellant have not come forward to pay the said arrear amount and hence the said amount was included in the C.C. bill for the month of 03/2010.

iv) The averment stated in para 14 of the appeal filed by the Appellant are denied. They have not changed the shift timings but consumed TANGEDCO's energy during evening peak hours too.

v) The averment stated in para 15 of the appeal filed by the Appellant are denied and thereby, it is respectfully submitted that the working sheets provided for calculation of excess charges by way of excess consumption over and above the quota is logical and reasonable and according to the Rules and Regulations. The C.M.R.I. downloaded data and as per the working instructions of the erstwhile T.N.E.B. vide various circulars issued from time to time and there was no wrongful apportionment of the energy / demand consumption, while calculating actual excess charges. It is further submitted that the detection of violation of restriction and control measures and levy of excess charges are all actual and real, on facts of the case by adjustment of wind energy was carried out as per TNERC suo-moto proceedings.

vi) The energy consumption bill is being issued to all the HT consumers based on the CMRI down loaded data only which is scientifically proven record, however, the CMRI down loaded data will be provided only based on the requests of the consumers and after obtaining the same from the meter relay. Test

(MRT) section. From December 2008 to July 2009 period CMRI is not available. Apportioning the morning peak hour at 50% is based on the guidelines issued by TNEB heard quarters and as per working instruction.

vii) The transformer loss has been considered during CGRF and reworked the difference between the above, a sum of Rs.25,299/- and proposed to adjust in the subsequent H.T.bill, but the appellant have approached Ombudsman, hence the same has not been adjusted and awaiting for the orders of the Ombudsman, TNERC.

viii) The averments stated in para 18 of the appeal filed by the Appellant are denied. It is submitted that if the appellant had furnished the generated units on daily basis for the above month, the excess peak hour demand charges also could have been revised on daily basis at the rate of Rs.20/- per KVA. Hence, the contention of the Appellant is not correct and is denied. Still, as per our records, the Appellant has not submitted the details of generated units on daily basis.

ix) The averments stated in para 19 of the appeal filed by the Appellant are denied. TANGEDCO has given clear instruction to the Appellant to maintain the energy consumption within the quota allotted to them, if they exceed the demand and energy quota over and above the fixed quota, necessary excess consumption charges will be levied.

x) The averments stated in para 20 of the appeal filed by the Appellant are denied and it is submitted that, Respondent has every right to claim Rs.1,90,565/- towards excess consumption charges over and above the fixed quota, which the respondent has intimated well in advance to the Appellant if they exceed the demand and energy quota already fixed.

xi) The averments stated in paras 22 to 24 of the appeal filed by the Appellant are denied. It is respectfully submitted that the order of the CGRF, is consistent with the rules, regulations and directions of the Hon'ble TNERC and guidelines of the erstwhile TNEB. It is further submitted that TNEB has filed appeal before the Hon'ble Supreme Court of India against the Order of the Appellant

Tribunal for Electricity on 11.1.2011 vide civil appeal No.1090-1099 of 2011 in respect of the peak hour excess consumption charges and the Hon'ble Supreme Court has been pleased to grant interim stay in the matters.

xii) The averments stated in the ground "E" of the appeal filed by the Appellant are denied. It is respectfully submitted that as per the guidelines issued by the Headquarters, the wind mill units were adjusted in both slots on the same basis.

5. Hearing held by Electricity Ombudsman:

A hearing was held on 16.8.2012, to enable the Appellant and the Respondent to put forth their arguments in person.

6. Argument of the Appellant:

6.1 The Appellant was represented by Thiru M.S.Srinivasan, Manager Legal Affairs and Thiru K.Dinesh Babu, Asst.Manager (Maintenance). Thiru M.S.Srinivasan, Manager Legal Affairs reiterated the contents of the Appeal Petition.

6.2 He said that they have changed the shift timing of the factory so that there is no production during peak hours. He also informed that during CGRF meeting they have submitted the attendance list indicating the normal employee strength and the strength during the evening peak hour. However he has also informed that to operate the Brazing process, they used their diesel generators. He has also furnished the units generated for the month of December 2008 to December 2009 utilising their diesel generator.

6.3 The Assistant Manager (Maintenance) informed that there are two heaters of capacity 24 KW each in the plant which is utilised for brazing process which is a continuous process. He also informed that the heater will be in service according to the need and only consume about 150 units during the 4 hours period of evening peak hour and to take care of the consumption the Diesel Generator sets were put on service. He also argued that the evening peak hour recorded in the 3 slot meters

are only the consumption during morning peak hour and the apportioning done by the respondents are not correct.

6.4 The Appellants representatives have informed that they do not have any objection for payment of the excess energy / demand charges calculated based on the CMRI down loaded details. But they informed that the CMRI down loaded details are available from September 2009 onwards only.

6.5 The Appellant also argued that in AP No.6 of 2010, the Electricity Ombudsman has held that the licensee can claim excess charges only from the date of intimation of quota fixed and not from any back period and also cited AP.No.18 of 2011 and the excess consumption charges could be levied from 4.5.2010 only.

7. Argument of the Respondent

7.1 The respondent was represented by Thiru Sureshkumar, DFC of CEDC/West. He also reiterated the contents of the counter.

7.2 He argued that the Appellant has stated that they have reduced their staff strength during peak hours and has not run the factory. But, they themselves are stating that they run the diesel generator and availed wind energy during evening peak hours to meet the demand. Hence both are contradicting each other. Further, he argued that in illustrations enclosed with CFC's circular dated 26.11.2001 for calculating the demand of the wind, it has been instructed to apportion the wind energy details available in 3 slots to arrive at the wind energy consumed during evening peak hours. Further he has also argued that TANGEDCO has instructed the SEs to apportion the consumption of the peak hour recorded into morning peak hour and evening peak hour to arrive at the excess demand / energy charges for exceeding the quota during evening peak hour.

7.3 The DFC informed that, there is no CMRI data available for the period from December 2008 to July 2009. He showed the CMRI down loaded details for 12/2009 to establish that the Appellant has reached a demand 13.32 KVA during evening peak hour.

7.4 The DFC also argued that the Appellant have not given any proof that they have not run the factory during evening peak hour.

8. Issues for consideration:

8.1 I have heard the arguments of both sides and perused the documents furnished by the parties. On a careful consideration of rival submissions and perusal of documents, I fix the following as the issues for consideration.

(i) Whether the CMRI down loaded details are available for the period from December 2008 to December 2009?

(ii) Whether, apportioning of peak hour consumption into morning and evening peak hour could be considered for arriving the excess demand and energy charges?

(iii) Whether peak hour excess demand charges has to be calculated on proportionate day basis or monthly basis?

(iv) Whether the quota fixed has been changed retrospectively as contended by the Appellant?

(v) Whether the contention of the Appellant that they have not run the factory using TNEB power during evening peak hours is true?

9. Findings on first issue:

9.1 The Appellant informed that they have not been provided with CMRI down loaded details. The Respondent informed that the CMRI down loaded details for 12/2008 to July 2009 are not available with them. But they furnished the CMRI down loaded details from 17.9.2009 to 31.12.2009 only. Hence, it is a fact that the CMRI down loaded details are available from 17.9.2009 only.

10. Findings on second issue:

10.1 The Appellant informed that the respondent has apportioned the peak hour consumption recorded in the 3 slot meter into morning peak hour and evening peak hour consumption by dividing it by 2 to arrive at the consumption of 18 hrs. to 21 hrs. consumption. Regarding 21 hrs. to 22 hrs. consumption the proportionate consumption from normal hours has been calculated and added to the consumption arrived for 18 hrs to 21 hrs to arrive at the evening peak hours consumption.

10.2 As the above method is only a proportionate calculation and not the actuals, the Appellant argued that, it is not correct to apportion the consumption into two parts and based on the above calculation levying excess demand/energy charges is not legally valid. The Appellant also informed that they have not run their factory during evening peak hours by utilising the licensee's power. He also argued that they have reduced the staff strength to the level of only two staff during the evening peak hours and have not run their factory during evening peak hour.

10.3 The respondent argued that the wind generation recorded in 3 slot meters are apportioned like the apportioning done now done by the respondent for the consumption. When the above is acceptable for generation, the same analogy could be considered for consumption also. Further, TANGEDCO has instructed to calculate the evening peak hours on the above pattern when CMRI down loaded details are not available. Hence, he argued that apportioning is in order. Further he has pointed out that the Appellant is saying that they have not run the factory during evening peak hours but at the same time they also informed that they have used their gen sets and wind power for running the machines during peak hours which are contradictory.

10.4 In para 6 of the TNEB's Chairman Lr.No.க.எண்.த.நி.அ/எண்.109/2010 நாள் 28.5.2010 addressed to Thiru A.R.Chinnaiyan, the following has been specified:

“6) சில மீட்டர்களில் மட்டும் பதிவிரக்கம் செய்வதற்கு வாய்ப்புக்கள் இல்லை என்ற குறைபாட்டையும் மேற்பார்வை பொறியாளர்கள் தெரிவித்துள்ளார்கள். அப்படி தெரிவிக்கும் பட்சத்தில் காலையும் மாலையும் peak hour (3 slot meter) ல் உபயோகப்படுத்தப்பட்ட மின்சாரத்தை இரண்டாக பிரித்து மாலை நேர ஒதுக்கீட்டுடன் ஒற்றுமைப்படுத்தி மீறி உள்ளார்கள் என்று கண்டறிய மேற்பார்வை பொறியாளர்கள் அறிவுறுத்தப்பட்டுள்ளார்கள். மேற்கண்ட முறையில் மின்னுகர்வோர்களுக்கு ஏதேனும் ஆட்சேபனை இருக்கும் பட்சத்தில் அவர்கள் அளிக்கும் சான்றிதழ்களை (documents) அடிப்படையில் அவர்கள் தங்களது ஒதுக்கீட்டை மீறி உள்ளார்களா என்பது கண்டறியப்பட்டு அபராத தொகை மாற்றியமைக்கப்படும்”

10.5 On a careful reading of the above, it is noted that, the licensee has instructed his SEs to apportion the peak hour consumption into two halves for arriving the evening peak hour. However, if the consumers are objecting to it, then, the documents furnished by the consumer in support of their objection shall be examined and the penalty levied may be modified if need be. Hence, the licensee itself has given direction to verify the documents and then decide about the evening peak hour violation. Hence, the apportioning could be taken for arriving the excess charges if the consumer also accept it otherwise it has to be decided on the documents furnished by the consumer in support of their claim.

10.6 The evening peak hour consumption attract penal provision (ie) excess demand charges and excess energy charges. As there is penal provision for exceeding the quota the demand and energy recorded shall be actuals and not arrived figures based on some assumption which may or may not be correct. Hence, I am of the view that apportioned figures cannot be the basis for levying the excess demand and excess charges.

11. Findings on the third issue :

11.1 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.”

11.2 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. துறிகஅ/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.”

11.3 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.

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

11.5 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.

12. Findings on fourth issue :

The appellant argued that the quota has been changed retrospectively :

The respondent argued that the quota has not been changed retrospectively.

The quota fixation letters were issued in time and no retrospective effect was given. The appellant also agreed that the quota fixed were enforced only after issue of the quota fixation letter. Hence, it is held that no retrospective revision of quota was done.

13. Findings on fifth issue:

13.1 The appellant has argued that their staff strength has been reduced during evening peak hour. Hence, there is less production during the shift which falls on the evening peak hour time. The appellant has also furnished a statement showing number of staff attended in all 4 shifts separately for 2 to 5 days in a month. They have also furnished the production details. On analysis of the staff strength

furnished it is noted that in the shift period of 8am to 4.30pm the staff strength varies from 20 to 40 person whereas in shift which covers the evening peak hour (viz.,) 4.30pm to 1.am, the staff strength varies from 0 to 8. Similarly in the shift of 1 am to 8am also the number of person attended varies from 0 to 6. But in the night shift of 10.30pm to 7.pm, the staff strength varies from 6 to 19 (zero on one day). As per the statement, it is noted that the company has employed only a minimum person in the order of about 20% of the strength of normal shift people during the shift covering the evening peak hour. However, the above is only a statement signed by the appellant and there is no supporting document like attendance register etc.,

13.2 The appellant has also furnished a production statement . On scrutiny of the statement it is seen that the production per day during 4.30pm to 1am shift which covers the evening peak hour is only about 3.2% to 3.3% of the normal hours only. But here also the statement is only signed by the appellant without any supporting document.

13.3 The appellant has also furnished a statement showing the consumption of energy in their diesel sets. As per the above, the company has generated 2280 units to 7164 units per month using their diesel generators.

13.4 The respondent have furnished statement showing the consumption recorded in the three slots of the meter in month ware which are given below .

Consumption Details Slotwise From 12/2008 to 12/2009

Sl. No.	Month	Normal Hour Consumption (11 hrs)	Peak Hour Consumption (6 hrs)	Off Peak Consumption (7 hrs)	Total Consumption	Recorded Demand
1.	12/2008	20472	5896	13900	40268	132.80
2.	01/2009	11032	3160	7800	21992	112.00
3.	02/2009	25788	7076	16980	49844	144.80

4.	03/2009	26444	7240	16588	50272	140.00
5.	04/2009	27320	7520	18872	53712	140.40
6.	05/2009	29796	7436	19264	56496	140.80
7.	06/2009	54004	8088	224	62316	166.80
8.	07/2009	55392	8204	192	63788	168.00
9.	08/2009	33952	8864	20996	63812	168.40
10.	09/2009	38950	8541	17119	64675	171.08
11.	10/2009	32900	8248	20508	61656	170.72
12.	11/2009	32720	8484	21140	62344	160.64
13.	12/2009	33360	8592	21080	63032	160.64

13.5 To arrive at the solution on the consumption during the evening peak hour, the following analysis have been made. The per hour consumption during normal hours, off peak hours and peak hour are worked out and tabulated below :

Sl. No.	Month	Per Hour Consumption		
		Normal Hours (11 hours)	Off Peak hour consumption (7 hours)	Peak hour (6 hrs)
1.	12/2008	62	66.2	32.8
2.	1/2009	33.4	37.1	17.5
3.	2/2009	78.1	80.9	39.3
4.	3/2009	80.1	79.0	40.2
5.	4/2009	82.8	89.9	41.8
6.	5/2009	90.3	91.7	41.3
7.	6/2009	163.6	1.1	44.9
8.	7/2009	167.9	0.9	45.6
9.	8/2009	102.9	100.0	49.2
10.	9/2009	118.0	81.5	47.5
11.	10/2009	99.7	97.7	45.8
12.	11/2009	99.2	100.7	47.1
13.	12/2009	101.1	100.4	47.7

13.6 It is observed from the above table that the per hour consumption calculated for peak hour consumption is about 50% of the consumption per hour recorded in the normal hours. Similarly, the per hour consumption calculated based on the peak hour is also about 50% of the per hour consumption of the off peak hour consumption recorded in a month except during 6/2009 and 7/2009. Hence, it may

be presumed that the peak hour consumption recorded in those months may not be for 6 hours utilisation but for about 3 hours utilisation.

13.7 As seen from the previous paras the consumption recorded for the peak hour is not commensurate with consumption recorded for the normal and off peak hour, if we consider the consumption of peak hour recorded is for six hours consumption. But, if we consider the above as consumption recorded for 3 hours, the per hour consumption in peak hour is nearing the consumption of the hourly consumption of normal and off peak hour consumption. But the three hours consumption can be either during morning or evening peak hour or both put together 3 hours. Further, it may also be a consumption for six hours with 50% of the load. But, as the appellant informed that they have reduced the staff strength during evening peak hour time and also reduction in out put during the above period as furnished by the appellant there is a possibility, that the appellant may not have run the plant during the evening peak hours.

13.8 Further, as levying excess demand charges for violation of evening peak hours restriction is a penal provision, it is necessary that the licensee has to give evidence for exceeding the quota fixed for evening hours. The above could be established by furnishing the CMRI downloaded data. But, the licensee has furnished CMRI downloaded details only for the period from 17.9.2009 to 31.12.2009. Alternatively, if 5 slot meter was fixed in the service and if the readings are available that can also be taken for arriving the evening peak hour excess demand and energy charges as one slot will record the evening peak hour reading alone. It is reported by the respondent that 5 slot meter was fixed on 5.6.2009. Hence, the licensee is having record for evening peak hour violation only from 5.6.2009. Hence, the licensee is directed to levy the excess demand charges and

excess energy charges only for the period for which he is having either CMRI downloaded details or readings taken in 5 slot meters to establish the excess consumption over and above the quota fixed for evening peak hour.

14. Conclusion :

14.1 In view of the findings, in paras 9, 10, 11, 12&13 above, the respondent is directed to levy excess demand charges and excess energy charges by verifying the readings taken after erection of the 5 slot meter and for the period to which CMRI downloaded details are available. As the respondent has stated that no CMRI downloaded details are available from 12/2008 to 17.9.2009, the excess demand charges and excess energy charges levied for evening peak hour violation by apportioning the peak hour violation recorded in 3 slot meter shall be withdrawn. As the appellant has stated that they have paid the excess demand charges and energy charges, the amount paid over and above the excess demand charges and energy charges as per the revised demand notice may be refunded to the appellant (or) adjusted in the next CC bill. The revised demand based on this order shall be issued within 30 days from the date of the order and a compliance report shall be sent within 45 days.

14.2 It is to be noted that as per order dated 11.1.2011 in Appeal Nos.111,114,119,120,127 to 131 and 141 of 2011 issued by the Hon'ble Appellate Tribunal for Electricity, the excess demand charges and excess energy charges for evening peak hour restriction has to be given effect only from 4.5.2010 and it is learnt that the licensee has filed an appeal against the above order in the Hon'ble Supreme Court of India and the case is pending. Hence, the excess demand and excess energy charges to be levied by the respondent consequent to this order shall

be subject to the interim / final orders that may be passed by the Hon'ble Supreme Court of India from time to time in the subject matter on the case pending.

14.3 With the above findings the A.P. No.22 of 2012 is finally disposed off by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1. M/s.Wichitra Auto Limited,
Rep. by R.Gopalachary,
Divisional Manager,
84/3, Sidco Industrial Estate,
Chennai-600 098.

2. The Superintending Engineer,
Chennai EDC/West,
TANGEDCO
Chennai-600040

3 The Chairperson,
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/West,
TANGEDCO,
Chennai – 40.

4 The Chairman & Managing Director,
TANGEDCO,
NPKRR Malaigai,
144, Anna Salai, Chennai – 600 002.

5 The Secretary,
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.

6 The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE.**
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai
Egmore,
Chennai – 600 008.