

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

Petition No.

**In the Matter of: Petition as per Clause 31 of Supply Code, for removal of
difficulties faced by field offices for the implementation
of the Order of the Hon'ble Commission dated 19-01-
2010 in petition No. DP 75/2009**

**Petitioner : Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram**

Respondent:

AFFIDAVIT VERIFYING THE APPLICATION

I, **DINESH .D**, son of Sri. **Divakaran.M**, aged **53** years, residing at **KRIPA, House No. 9, TKM Nagar, TKM College P.O, Kollam-5** do solemnly affirm and state as follows:

I am the Chief Engineer (Commercial & Tariff) of the Kerala State Electricity Board, Vidyuthi Bhavanam, Pattom, Thiruvananthapuram, and the petitioner in the above matter and I am duly authorized by the Board to make this affidavit on its behalf. I solemnly affirm at Thiruvananthapuram on this the 8th day of February 2013 that

- (i) Contents of the above petition are true to my information, knowledge and belief. I believe that no part of it is false and no material has been concealed there from.
- (ii) That the statements made in paragraphs of the accompanying application now shown to me are true to my knowledge and are derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

Deponent

Chief Engineer (Commercial & Tariff)
Kerala State Electricity Board,
Vidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004

VERIFICATION

I, the above named deponent, solemnly affirm at Thiruvananthapuram on this the 8th day of February 2013 that the contents of the affidavit are true to my information, knowledge and belief, that no part of it is false and that no material has been concealed there from.

Deponent

Chief Engineer (Commercial & Tariff)
Kerala State Electricity Board,
Vidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004

Solemnly affirmed and signed before me

Advocate and Notary

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY REGULATORY
COMMISSION**
at its office, KPFC Bhavan, Vellayambalam, Thiruvananthapuram

In the Matter of: Petition as per Clause 31 of Supply Code, for removal of difficulties faced by field offices for the implementation of the Order of the Hon'ble Commission dated 19-01-2010 against petition No. DP 75/2009

Petitioner: Kerala State Electricity Board, Vidyuthi Bhavanam, Pattom, Thiruvananthapuram

Repondent:

THE PETITIONER SUBMITS THE FOLLOWING THAT:

1. The Honb'le Kerala State Electricity Regulatory Commission had stipulated a separate methodology for recovering the penal charges for unauthorised additional loads in its Order dated 19-01-2010.
2. As per the methodology prescribed in the Order, for the calculation and collection of penal amount in respect of the difference between average monthly energy consumption for last 12 normal months *before the additional unauthorized load is connected* and the monthly energy consumption *after the unauthorized load is connected* shall be used for charging the penalty.
3. It was reported from the field offices that the difficulty in implementing the order due to the following reasons.
 - a) Difficulty lies in ascertaining the day / month on which an unauthorized load is installed in a premises. The meter readings will not always reflect

such an addition at times when these unauthorized loads are installed at different intervals or stages or periods.

- b) In the case of unauthorized additional load, detection of variation in consumption before and after the inclusion of the unauthorised load is significant only if the entire unauthorized load is connected all of a sudden to the already existing load. In majority of the cases, the additional gadgets are installed and connected to the system over a period of time.
- c) Normally inspections on installations are not carried out every year in a consumer premise. If the consumer had been using the additional load for more than one year, it will be difficult to detect a considerable difference in consumption, if one year assessment period is taken as instructed in the Order.
- d) If the unauthorized load is connected to the system for a very long period or if the load factor is reduced after the connection of unauthorized additional load, the variation in consumption before and after the inclusion of unauthorized additional load may not be significant. In such cases, the date of connection of unauthorized additional load can not be detected by analyzing the available data.
- e) Usually consumption varies with season, business, market fluctuation, work in the premises and on various other factors other than the connected load. Hence the difference between consumption before after load addition (even if date of load addition is available) need not necessarily reflect the effect of additional load.

- f) In the case of new consumers, previous average for 12 months may not be available and hence the penalty amount can not be easily derived.
- g) In the case of consumers having consumption only for a few months and the rest of the period the premises being locked up by paying only Fixed Charges (FC) and rent, fixing the average monthly consumption for 12 months will lead to a lesser value. The difference between the fixed average and the monthly consumption after the connection of unauthorized load will lead to higher energy value for penalization resulting heavy burden on the consumer.

4. The explanation (a) given under (6) of Section 126 of the Electricity Act, 2003 for "assessing officer" is as follows :

"assessing officer" means an officer of State Government or Board or Licensee, as the case may be, designated as such by the State Government.

i.e, the assessing officer is a statutory authority appointed by the Government and hence independent assessment of an "assessing officer" shall not be restricted from carrying out his duty in the true spirit of the Act, 2003 by imposing any methodology/direction.

But the direction contained in the Order restricts the "assessing officer" from independently carrying out the assessment in the case of unauthorized additional load. This is against the true spirit of the Section 126 of the Act.

5. The above said fact is upheld by the Hon'ble Supreme Court in its judgment in Seetharam Rice Mill's Case (2010(4) KHC 1). Hon'ble Supreme Court in the judgment had declared that whenever the consumer commits breach of an agreement falls under regulations and provisions of the Act and by consuming

electricity in excess against the sanctioned connected load, such consumer would be in blame and under liability within the scope of Section 126 of the Act, 2003. The assessment of the penalty can be made as per the Section 126 (6) of Electricity Act, 2003 as declared in the ruling in Seetharam Rice Mill's case. The Hon'ble Supreme Court has also directed that Sections 126 and 127 of the Act is a Code in itself having detailed provisions for inspection, provisional assessment, hearing of party, final assessment, appeal and disposal. Since the ruling of the Apex Court amounts to declaration of law, the prescription of limiting methodology which amounts to limiting the roles of a statutory authority needs to be reviewed.

6. Section 126 (5) of the Electricity (Amendment) Act, 2007 requires for assessment for the entire period during which unauthorized use of electricity has taken place or atleast a period of twelve months immediately preceding the date of inspection. Here, the period of unauthorized use of electricity is not certain, in implementing the method indicated in the Order against DP 75/2009 due to the difficulty in demarcating the period of installation of unauthorized load.
7. Also, the Hon'ble High Court in its judgment in W.P.(C) No. 13631/2008, 21674/2009 and 563/2012 has directed the "assessing authority" to dispose of the subject cases in the matter of assessment under Section 126 of Electricity Act, 2003 in accordance with the decision of the Hon'ble Apex Court in Seetharam Rice Mill's Case (2010(4) KHC 1) and the observations of the KSERC in DP 75/2009, after giving the petitioner an opportunity being heard. The assessment of penalty to be made as per Section 126 (6) of Electricity Act as declared in the ruling in

Seetharam Rice Mill's case (supra) discarding the methodology prescribed in the order in DP 75/2009 to assess the charge portion.

8. The abrupt use of unauthorized additional load in the distribution grid will create imbalance loads in the distribution system which in turn affects the quality of power provided by the licensee to the consumers. Usage of additional load with the permission of the licensee enables to ensure its safety to the consumers also it enables the licensees to plan the System Improvement works, well in advance in accordance with the requirements. This results in healthy maintenance of the distribution system by the licensee with minimum interruption to its consumers.

PRAYER

Considering the facts submitted above and to be submitted at the time of hearing, it is prayed that in the case of unauthorized additional load connected by a consumer, the assessing officer may be permitted for taking appropriate decision as envisaged in the Act, based on the merits from case to case and to review the order dated 19-01-2010 which issued on a particular petition in DP 75/2009 and issue specific orders clarifying that the order dated 19-01-2010 shall not be applicable to all such cases since it restricts the independent assessment of the assessing officer. It is also prayed that whenever a consumer commits breach of the agreement by connecting any unauthorized additional load in his premises, may be put under liability within the ambit and scope of Section 126 of the Electricity Act, 2003.

Chief Engineer (Commercial & Tariff)