

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the Day of 28th May2024

PRESENT:

Thiru M.Chandrasekar	Chairman
Thiru K.Venkatesan	Member
	and	
Thiru B.Mohan	Member (Legal)

M.P. No.1 of 2024

Tamil Nadu Generation and Distribution Corporation Ltd.
Represented by Chief Engineer / Private Power Projects
144, Anna Salai
Chennai – 600 002.

.... Petitioner
Thiru. N.Kumanan and
Thiru. A.P.Venkatachalapathy,
Standing Counsel for Petitioner

This Miscellaneous Petition stands preferred by the Petitioner TANGEDCO with a prayer to approve and ratify for the power dispatched from M/s.CEPL (from 11.04.2023) , M/s.IL&FS (from 14.04.2023) and M/s.OPG (from 30.05.2023) till 30.11.2023 and to approve the procurement of power from M/s CEPL, M/s.IL&FS and M/s.OPG from 01.12.2023 till 30.06.2024, under pass through basis as per the MoP guidelines dated 20.02.2023 and subsequent MOP directives dated 12.06.2023, 23.08.2023 and 23.10.2023 .

This petition having come up for hearing on 23-01-2024 in the presence of Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Petitioner and on consideration of the submission made by the Counsel for the Petitioner, this Commission passes the following:

ORDER

1. Contentions of the Petitioner:-

1.1. TANGEDCO had executed Power Purchase Agreement with M/s.Coastal Energen Pvt Ltd.,(558 MW) M/s.IL&FS Tamil Nadu Power Company Ltd (540MW) and M/s.OPG Power generation Ltd (74MW) in 2013 for supply of RTC power for a period of fifteen years.The expiry date is 30.09.2028.

1.2. As per the provision of PPA, computation of tariff is based on the escalation rate notified by the CERC once in six months considering the WPI and CPI Index. Based on the escalation rate, the quoted tariff is being escalated and tariff is arrived at each month and billing is done on cumulative basis.

1.3. For the miscellaneous petition filed vide M.P.No.2 of 2023, the TNERC vide order dated 03.08.2023 has approved and ratified the energy charges tariff paid by TANGEDCO based on the bench mark ECR fixed by the committee constituted by the MoP on pass through basis and also approved the power dispatched from M/s. Coastal Energen Private Ltd, M/s.IL&FS Tamil Nadu Power Company Ltd and M/s.OPG Power

generation Ltd, during the period from 01.05.2022 to 30.11.2022 by relaxing the provision of the PPA as one time measure.

1.4. In order to overcome the power demand prevailed all over India, Ministry of Power, GOI given directions on 20.02.2023 and advised that the all Imported coal based power plants should be operated as per Section 11 of Electricity Act, 2003 and be reasonably compensated, to overcome the power crisis.

1.5. Section 11 of Electricity Act; 2003 is extracted as follows:

"11. Directions to generating companies. -

(1) The Appropriate Government may specify that a Generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation. -For the purposes of this section/ the expression-extraordinary circumstances means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate".

1.6. In the MoP Directions No.23/13/2021-R&R (Pt-3), dated 20.02.2023, the ICB

Plants were directed that,

- All imported power plants shall operate and generate power to their full capacity.

- Plants in the first instance shall supply power to the PPA holders and the surplus power with no PPA will be sold in the Power Exchanges.
- A committee was constituted by MoP with representatives from MoP, CEA, NTPC and CERC which will bench mark the rate of power supplied on pass through basis considering the coal price, shipping cost and O&M cost with fair margin.
- If the procurer is not willing to procure at the bench mark rate fixed by the Committee or is not able to make weekly payment then such quantity of power shall be sold in the Power Exchanges and the net profit shall be shared between the generator and PPA holder in the ratio of 50-50 on monthly basis and also giving effect to the order upto 31.10.23.
- The PPA holders shall have an option to make payment to the generating company according to the bench mark rate worked out by the committee or at a rate mutually negotiated with the generating company.
- Payment at the above rates shall be made to the Generating Company on a weekly basis. "

1.7. The Ministry of Power vide Order No.23/13/2021- R&R (Pt-3) dated 20.02.2023 had issued directions to adopt benchmark ECR notified by MOP for making payment of energy charges on weekly basis to ensure the availability to meet the anticipated demand and to ensure the optimum generation of ICB plants. The above is valid from 16-03-2023 to 15.06.2023, extended upto 30.09.2023 vide directive No:23/13/2021 - R&R(pt-2) dated 12.06.2023, again extended up to 31.10.2023 vide directive No:

23/13/2021-R&R(pt-1) dated 23.08.2023 and further extended up to 30.06.2024 vide directive No:23/13/2021-R&R(pt-1) dated 23.10.2023.

1.8. The Board of TANGEDCO by circulation on 27.01.2023 has accorded approval to extend the period of power supply by the imported coal based power plants located within Tamil Nadu from 01.02. 2023 to 31.05.2023 on pass through basis as a one time measure, considering the expected rise in power demand during summer month of 2023 in the State of Tamil Nadu. The approval has been confirmed by Board of TANGEDCO in its 111thBoard meeting held on 08.02.2023.

1.9 The Board of TANGEDCO, vide 114thBoard meeting held on 30.06.2023 accorded approval to extend the period of power supply by the imported coal based power plants located within Tamil Nadu from 16.06.2023 to 30.09.2023 on pass through basis as a one time measure considering the expected rise in power demand in the state of Tamil Nadu.

1.10 TANGEDCO made Energy Charge Payment to M/s.OPG from 30.05.2023, CEPL from 11.04.2023 and IL&FS from 14.04.2023 for the power supplied ,at the bench mark Energy Charge Rate fixed by MoP.

1.11. The Board of TANGEDCO in the 118th Board meeting held on 18.11.2023 has accorded approval to avail power from ICB plants on as and when required basis depending on the demand during month of October 23 and also for future one year period (i.e.) up to October 2024, Whenever MoP gives directions on procuring power from the ICB plants at the bench mark rate notified by Ministry of Power.

1.12. The details of bench mark rate declared by committee for the period from 16.03.2023 to 26.10.2023 is detailed below:

Bench mark rate fixed by MoP in Rs./Kwh			
Period	M/s. CEPL	M/S. IL & FS	M/s. OPG
From 16-03-2023 to 29-03-2023	4.62	4.62	6.05
From 30-03-2023 to 12-04-2023	4.67	4.67	6.12
From 13-04-2023 to 26-04-2023	4.76	4.76	6.23
From 27-04-2023 to 10-05-2023	4.75	4.75	6.22
From 11-05-2023 to 24-05-2023	4.79	4.79	6.28
From 25-05-2023 to 07-06-2023	4.74	4.74	6.20
From 08-06-2023 to 21-06-2023	4.71	4.71	6.16
From 22-06-2023 to 05-07-2023	4.49	4.49	5.88
From 06-07-2023 to 19-07-2023	4.04	4.04	5.29
From 20-07-2023 to 02-08-2023	3.64	3.64	4.76
From 03-08-2023 to 16-08-2023	3.63	3.63	4.75
From 17-08-2023 to 30-08-2023	3.74	3.74	4.89
From 31-08-2023 to 13-09-2023	3.74	3.74	4.89
From 14-09-2023 to 27-09-2023	3.79	3.79	4.96
From 28-09-2023 to 11-10-2023	3.78	3.78	4.95
From 12-10-2023 to 25-10-2023	3.87	3.78	5.07
From 26-10-2023 onwards	4.05	4.05	5.31

Energy Tariff as per PPA in Rs./Kwh			
Month	M/s. CEPL	M/s. IL & FS	M/s. OPG
March 2023	4.4106	3.8704	4.9487
April 2023	4.2532	3.8607	4.3460
May 2023	4.2352	3.8403	4.3296
June 2023	4.2635	3.8690	4.3584
July 2023	4.2425	3.8454	4.3389
August 2023	4.2430	3.8446	4.3404
September 2023	4.2785	3.8807	4.3427
October 2023	4.2907	3.8921	4.3889
November 2023	4.2946	3.8964	4.3926

2. Additional Affidavit dated 18-01-2024 filed by the Petitioner:-

2.1. This Miscellaneous Petition is filed and registered as Petition(SR) No.148 of 2023 dated 21.12.2023 seeking approval and ratification for the Power purchased from M/s.Coastal Energen Ltd., M/s.IL&FS Tamil Nadu Power Company Ltd and M/s.OPG Power generation Ltd. on pass through basis to meet out the power demand from April 2023 to June 2024 as a onetime measure, by relaxing certain provisions of Power Purchase Agreement

2.2. The affidavit it is filed for the queries in the Miscellaneous Petition filed and registered as Petition(SR) No.148 of 2023 dated 21.12.2023. The petition is returned for compliance for clarifying whether the subject matter either as a whole or in part is pending before any other forum.

2.3. M/s. Coastal Energen Pvt Ltd filed M.P. No.161 of 2022 against Tamil Nadu Generation and distribution Co. Ltd and Union of India, Ministry of Power to Determine/

Allow the Energy Charges (ECR) to the Petitioner based on actual cost of generation (in addition to the fixed cost envisaged under the PPA dated 19.12.2013) in terms of Section 11(2) of the EA, 2003, payable by the Respondent No.1, with effect from 06.05.2022, for the power supplied/ to be supplied in terms of the notifications dated 05.05.2022, 13.05.2022,20.05.2022 and 27.05.2022 issued by the Respondent No. 21 Ministry of Power, Government of India under Section 11(1) of the EA, 2003. The last hearing held on 21.02.2023.

2.4. M/s. IL&FS Tamil Nadu Power Co. Ltd. filed MP 162 of 2022 against Tamil Nadu Generation and distribution Co. Ltd and Union of India, Ministry of Power to Allow complete pass through of Energy Charges to the Petitioner based on actual cost of generation (in addition to the fixed cost already decided under the PPA dated 12.12.2013) in terms of Section 11(2) of the EA, 2003, to be payable by the Respondent No.1 with effect from 06.05.2022 for the power supplied in terms of the notifications dated 05.05.2022,13.05.2022, 20.05.2022, 27.05.2022 issued by the Ministry of Power, Government of India under Section 11(1) of the EA,2003. The last hearing held on 21.02.2023.

2.5. In the Ministry of Power notification No.23/13/2021-R&R (Pt-I) dated 05 May 22, it is stated that in para 4d ,4j &4h as follows:-

"4d. considering the fact that the present PPAs do not provide for the passthrough of the present high cost of imported coal, the rate at which the power shall be supplied to PPA holders shall be worked out by a committee constituted by the Ministry of Power (MoP) with representatives from MoP, CEA and CERC. This Committee shall ensure that bench mark rates of power so worked out meets all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs and O&M costs etc. and a fair margin. "

"4j. Bench mark rates worked out by the Committee shall be reviewed every 15 days taking into consideration the change in the price of imported coal, shipping cost etc. "

"4h. Where any DISCOM / State is not able to enter into mutually negotiated rates with the generating company and is not willing to procure power at the bench mark rate worked out by the committee or is not able to make weekly payment the such quantity of power shall be sold in the Power Exchange."

2.6. The bench mark rate is fixed by the committee with representatives from MoP,CEA and CERC by considering all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs and O&M costs etc. and a fair margin. The rates are reviewed every 15 days taking into consideration the change in the price of Imported coal, Shipping cost etc. as per para 4J, consideration the change in the price of Imported coal, Shipping cost etc. as per para 4J.

2.7. Any DISCOM /State is not able to enter in to mutually negotiated rates with generating company and is not willing to procure power at the bench mark rate worked out by the committee or is not able to make weekly payment the such quantity of power shall be sold in the Power Exchange. TANGEDCO scheduled power from the ICB generators considering only bench mark rates notified by MOP from time to time and the

same was intimated to Generators. After availing supply and passed the energy charges, the generators seeking the revision of bench mark Energy cost is not tenable.

2.8. In M.P.No.2of 2023, the Commission vide its order dated 03.08.2023 has approved and ratified the energy charges tariff paid by TANGEDCO based on the bench mark ECR fixed by the committee constituted by the MoP on pass through basis and also approved the power dispatched from M/s. Coastal Energen Private Ltd, M/s.IL&FS Tamil Nadu Power Company Ltd and M/s.OPG Power generation Ltd, during the period from 01.05.2022 to 30.11.2022 by relaxing the provision of the PPA as one time measure. Pleading so, the petitioner prays for allowing the application.

3. Argument heard. Records perused.

The seminal point that crops up for consideration is as to whether the approval and ratification sought for by the petitioner deserve to be accorded.

4. Findings of the Commission:-

4.1. The petitioner has stated that the present petition has been filed with a prayer to approve the power purchase tariff (variable charge) for the power supplied from 11.04.2023 to 30.11.2023 by M/s. Coastal Energen Private Limited, M/s. IL&FS and M/s. OPG Power Generators Private Limited on pass through basis as per the Ministry of Power's directions dt.20.02.2023.

4.2. TANGEDCO is having the Power Purchase Agreement with M/s. Coastal Energen Ltd.(558 MW), M/s IL & FS Tamil Nadu Power Company Limited (540 MW) and M/s. OPG Power Generation Limited (74 MW) in 2013 for supply of RTC power for a period of fifteen years i.e., upto 30.09.2028. Its tariff is allowed based on the escalation rate notified by the Central Electricity Regulatory Commission (CERC) once in six months considering the WPI & CPI index escalation,thequoted tariff is being escalated and tariff is arrived at every month and billing is done on cumulative basis.

4.3. Now, TANGEDCO has filed this petition praying for (i) approval and ratification for having dispatched the power from the Imported Coal Based stations(ICB), M/s.CEPL from the date 11.04.2023, M/s.IL&FS from 14.04.2023 and from M/s.OPG from 30.05.2023 till 30.11.2023, on pass through basis, and (ii) approval for procurement of power from the aforesaid three power stations from 01.12.2023 till 30.06.2024 under pass through basis as per the MoP guidelines dated 20.02.2023 and subsequent MoP directives dated 12.06.2023, 23.08.2023 and 23.10.2023.

4.4. In order to overcome the power demand that prevailed all over India, Ministry of Power, GOI had given directions on 20.02.2023 and advised that the all Imported coal based power plants should be operated as per Section 11 of Electricity Act, 2003 and be reasonably compensated, to overcome the power crisis.

4.5. The Ministry of Power, GOIhas given directions vide its Direction No.23/13/2021-R&R (Pt-3) Dt. 20.02.2023 that the all Imported coal based power plants should be operated as per Section 11 of Electricity Act, 2003 and be reasonably compensated, to

overcome the power crisis. The substratum of the above referred directions is as follows:-

"All imported power plants shall operate and generate power to their full capacity

Plants in the first instance shall supply power to the PPA holders and the surplus power with no PPA will be sold in the Power Exchanges.

A committee shall be constituted by MoP with representatives from MoP, CEA, NTPC and CERC which will bench mark the rate of power supplied on pass through basis considering the coal price, shipping cost and O&M cost with fair margin.

If the procurer is not willing to procure at the bench mark rate fixed by the Committee or is not able to make weekly payment then such quantity of power shall be sold in the Power Exchanges and the net profit shall be shared between the generator and PPA holder in the ratio of 50-50 on monthly basis and also giving effect to the order upto 31.10.23.

The PPA holders shall have an option to make payment to the generating company according to the bench mark rate worked out by the committee or at a rate mutually negotiated with the generating company.

Payment at the above rates shall be made to the Generating Company on a weekly basis."

4.6. The Ministry of Power, GOI, vide its communication No.23/13/2021-R&R (Pt-3) dt. 20.02.2023, issued directions to adopt benchmark ECR notified by MOP for making

payment of energy charges on weekly basis to ensure the availability to meet the anticipated demand and to ensure the optimum generation of ICB plants. It was also notified in the communication that this arrangement of power supply on pass through basis by adopting benchmark ECR would be valid from 16-03-2023 to 15.06.2023. The validity period which was extended upto 30.09.2023 vide directive No:23/13/2021-R&R(pt-2) dated 12.06.2023 was again extended up to 31.10.2023 vide directive No:23/13/2021-R&R(pt-1) dated 23.08.2023 and further extended up to 30.06.2024 vide directive No:23/13/2021-R&R(pt-1) dated 23.10.2023.

4.7. The Board of TANGEDCO, on 27.01.2023, has approved to extend the period of power supply by the imported coal based power plants located within Tamil Nadu from 01.02. 2023 to 31.05.2023 on pass through basis as an one time measure, considering the expected rise in power demand during summer month of 2023 in the State of Tamil Nadu. The said approval has been confirmed by Board of TANGEDCO in its 111th Board meeting held on 08.02.2023. The TANGEDCO, in its 114th Board meeting held on 30.06.2023, extended the period of power supply by the imported coal based power plants located within Tamil Nadu from 16.06.2023 to 30.09.2023 on pass through basis. Later, TANGEDCO in the 118th Board meeting held on 18.11.2023 has approved to avail power from ICB plants as and when required on pass through basis depending on the demand during month of October 23 and also for future one year period (ie) up to

October 2024, whenever MoP gives directions on procuring power from the ICB plants at the bench mark rate notified by Ministry of Power.

4.8. The details of bench mark rate declared by the expert committee constituted by the Ministry of Power which fixed the tariff in respect of M/s.Costal EPL, M/s.IL&FS and M/s.OPG for the period from 16.03.2023 to 26.10.2023 are detailed below:

Bench Mark Rate fixed by MoP in Rs./kWh			
Period	M/s.CEPL	M/s.IL&FS	M/s.OPG
From 16.03.23 to 29.03.23	4.62	4.62	6.05
From 30.03.23 to 12.04.23	4.67	4.67	6.12
From 13.04.23 to 26.04.23	4.76	4.76	6.23
From 27.04.23 to 10.05.23	4.75	4.75	6.22
From 11.05.23 to 24.05.23	4.79	4.79	6.28
From 25.05.23 to 07.06.23	4.74	4.74	6.20
From 08.06.23 to 21.06.23	4.71	4.71	6.16
From 22.06.23 to 05.07.23	4.49	4.49	5.88
From 06.07.23 to 19.07.23	4.04	4.04	5.29
From 20.07.23 to 02.08.23	3.64	3.64	4.76
From 03.08.23 to 16.08.23	3.63	3.63	4.75
From 17.08.23 to 30.08.23	3.74	3.74	4.89
From 31.08.23 to 13.09.23	3.74	3.74	4.89
From 14.09.23 to 27.09.23	3.79	3.79	4.96
From 28.09.23 to 11.10.23	3.78	3.78	4.95
From 12.10.23 to 25.10.23	3.87	3.78	5.07
From 26.10.23 onwards	4.05	4.05	5.31

The tariff as per the Power Purchase Agreement between TANGEDCO and generators are tabulated below;

Energy Tariff as per PPA in Rs./kWh			
Month	M/s.CEPL	M/s.IL&FS	M/s.OPG
March '23	4.4106	3.8704	4.9487
April '23	4.2532	3.8607	4.3460
May '23	4.2352	3.8403	4.3296
June '23	4.2635	3.8690	4.3584
July '23	4.2425	3.8454	4.3389
August '23	4.2430	3.8446	4.3404
September '23	4.2785	3.8807	4.3427
October '23	4.2907	3.8921	4.3889
November '23	4.2946	3.8964	4.3926

4.9. The Commission has gone through all the details furnished by the TANGEDCO in this petition with reference to Section 11 of the Act which reads as below :-

“11. Directions to generating companies.-(1) *The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.*

Explanation:- For the purpose of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) *The Appropriate Commission may off set the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.”*

4.10. The Commission, vide order dated 03:08:2023 in M.P.No. 2 of 2023, has approved and ratified the energy charges tariff paid by TANGEDCO based on the benchmark ECR fixed by the committee constituted by the MoP on pass through basis and also approved the power dispatched from M/s. Coastal Energen Private Ltd, M/s.IL&FS Tamil Nadu Power Company Ltd and M/S.OPG Power generation Ltd, during the period from 01.05.2022 to 30.11.2022 by relaxing the provision of the PPA as one time measure.

4.11. It is to be noted that though the petitioner was under a compelling situation to procure the power from the aforesaid sources, having receipt of directions from the MoP vide Lr.Dt.20.02.2023 and its subsequent tariff fixation in respect of these stations vide communications dt.12.06.2023, 23.08.2023 & 23.10.2023. However, TANGEDCO could have filed this petition much earlier than 21st December 2023 (Date of filing of this petition) and obtained the approval of this Commission for tariff adoption.

4.12. Commission has taken note of the directions of the Government of India and the willingness of TANGEDCO for availing the power dispatched from the Imported Coal Based stations(ICB), M/s.CEPL from date of 11.04.2023, M/s.IL&FS from 14.04.2023 and from M/s.OPG from 30.05.2023 till 30.11.2023 and to the extended period till 30.06.2024 at the pass through tariff with the benchmark rates determined by the Committee consisting the representatives of MoP, Central Electricity Authority and Central Electricity Regulatory Commission.

4.13. Taking into account the fact that the power has been dispatched as per the direction of the Government of India under sub-section 1 of Section 11 of the Act, the Commission considers such dispatch under sub-section (2) of Section 11 and agrees to offset such financial impact duly accepting the same as pass through.

4.14. Moreover, Commission has taken note of the petitions filed by M/s.Coastal Energen Private Limited and M/s. IL&FS Tamil Nadu Power Company Limited filed before the Central Electricity Regulatory Commission vide Petition No.161/MP/2022 and Petition No.162/MP/2022 and its subsequent disposals with conjoint reading of the directions issued by the MoP under 4(d), (f) & (h) which provides mutual liberty of option to both the parties within the frame of this arrangement.

4.15. On a conspectus evaluation of all facts and circumstances, this Commission decide that the approval and ratification sought for by the petitioner for power procurement has to be necessarily accorded in the interest of all the stakeholders.

Accordingly the point is answered in favour of the petitioner.

4.16. In the result,

(i) The Commission hereby approves and ratify the Energy charges tariff for power procured by TANGEDCO based on the Benchmark ECR fixed by the Committee constituted by the MoP on pass through basis from the Imported Coal Based stations(ICB), M/s.CEPL from date of 11.04.2023, M/s.IL&FS from 14.04.2023 and from M/s.OPG from 30.05.2023 till 30.11.2023, and also

(ii) The Commission approves the procurement of power from M/s.Coastal Energen Private Limited, M/s.IL&FSTamilnadu Power Company Limited and M/s.OPG Power Generators Private Limited during the period from 01.12.2023 to 30.06.2024 by relaxing the provisions of the PPA as one time measure.

Petition ordered accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission