

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 2nd Day of March 2023

PRESENT:

Thiru M. Chandrasekar

.... Chairman

ThiruK.Venkatesan

.... Member

and

Thiru B. Mohan

.... Member (Legal)

P.R.C. No.1 of 2022

M/s. Narbheram Solar TN Private Limited
Rep. by its authorized Signatory
Avani Signature, 6th Floor
91A/1, Park Street, Kolkata – 700 016.

... Petitioner
(Thiru Rahul Balaji
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director
10th Floor, 144, Anna Salai, Chennai – 600 002.
2. The Chief Engineer
NCES, TANGEDCO
144, Anna Salai, Chennai – 600 002.
3. State Load Despatch Centre
TANTRANSCO
144, Anna Salai.Chennai – 600 002.

... Respondents
(Tvl. N. Kumanan & A.P. Venkatachalapathy
Standing Counsels for TANGEDCO,
TANTRANSCO & SLDC)

This matter coming up for hearing today in the presence of Thiru Rahul Balaji, Counsel for the Petitioner and upon hearing the submission made by the Counsel for the petitioner; on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. The present proceedings is the off-spring of the query raised by the Registry with regard to the classification of the petition and sufficiency of the fees paid by the petitioner on the petition.
2. The prayer sought for in the petition is for fixing appropriate capacity Utility Factor band for the period covered under the Power Purchase Agreement dated 26.9.2017 entered into by the petitioner with the 1st Respondent TANGEDCO, by reviewing the working and applicability of Clause 6 of the agreement in the context of the conditions prevailing in the State of Tamil Nadu. Yet another prayer sought for by the Petitioner is to restrain the Respondents (i.e.) TANGEDCO, The Chief Engineer, NCES, TANGEDCO and State Load Despatch Center, TANTRANSCO from issuing backing down / curtailment for any reason other than grid safety and security issues and without recording proper reason and to enforce “must-run” status of the petitioner’s Solar Power Plant.

3. Records reveal that the Registry returned the petition on 29.9.2022 on the ground that the documents filed in the typed set, more particularly from pages 118 to 125, disclosed that the matter pertains to waiver of penalty for the shortfall in generation below 17% CUF for the period October 2019 to March 2021 covered under the PPA and as such the disputed amount has been quantified by the petitioner at Rs.6,18,96,000/- and as such the petition comes squarely under Regulation 10 of the Tamil Nadu Electricity Regulatory Commission – Fees and Fines Regulations 2022 warranting payment of fees at the rate of 1% on the disputed amount. Observing so, the Registry directed the petitioner to pay the deficit court fees.

4. In response to the above referred return, the Counsel for the Petitioner by mentioning that as the prayer sought for by the Petitioner pertain to refixing of CUF band stipulated in the PPA, there is no dispute with regard to any amount and since the Petitioner is seeking exercise of regulatory power vested with the Commission, the petition has to be treated only as a Miscellaneous Petition. The Counsel had also made a request to place the petition before the Commission, if the clarification made is not accepted by the Registry, to decide the maintainability.

5. Subsequently through Office Note dated 11.11.2022, the Registry placed the petition before the Commission for suitable orders. On perusal of records, the Commission directed the Registry to place the petition before the Commission to

decide about the maintainability. Thus the matter has come up for consideration before the Commission.

6. Heard the Counsel for the petitioner. Connected materials perused. Relevant provisions of Fees and Fines Regulations 2022 of TNERC traversed.

7. Before adverting to the submissions made by the Counsel for the Petitioner, this Commission deem it seemly to refer Regulation 10 and the explanation for the terms “amount in dispute” and “claims” set out in the Regulations.

Regulation 10 reads as follows:-

Nature of Application / Petition	Fees
<p>For adjudication of disputes between Licensees and generating companies under Section 86 (1) (f) of the Act or for adjudication of disputes under any other provision of the Electricity Act, 2003 or regulations, rules and orders made thereunder.</p>	<p>Slab Rate:</p> <p>(i) Upto Rs.100 crores – 1% of the claim amount in dispute.</p> <p>(ii) For portion of the claim / amount in dispute which is above Rs.100 crores and upto Rs.150 crores – 0.75% of the claim.</p> <p>(iii) For portion of the claim / amount in dispute which is above Rs.150 crores – 0.50% of the claim.</p> <p>subject to a minimum of Rs.75,000/-</p>

The explanation connected to Regulation 10 is as hereunder:-

For the purpose of Regulation 10 of these Regulations the terms amount in dispute and claim shall mean and include:-

- (a) All monetary claims expressly stated in the prayer or any part of the petition or found in the documents filed thereto.
- (b) A specified claim in the demand notice.
- (c) The value of Bank Guarantee or Performance Guarantee or Liquidated Damages which is sought to be not enforced.
- (d) Any dispute not amounting to monetary claims but requires adjudication by the Commission subject to payment of minimum fee.

8. If the Regulation 10 is read in conjunction with the relevant explanation, it would be abundantly clear that the term “amount in dispute” and “claim” occurring in the Explanation shall include reference to any monetary claim made in any part of the petition or found in the document filed along with the petition. The Explanation to Regulation 10 has been offered with the object of obliterating any difficulty that might arise either in classifying the petition filed or quantifying the proper fee due on the petition and also to prevent petitions which are adjudicatory in nature being filed under the colour of regulatory relief through astute drafting of the petition.

9. In the backdrop of the above position of law, this Commission has to consider the nature of petition preferred by the petitioner. On perusal of the documents in typed set (from page 118 to 125) it transpires that the matter essentially pertains to waiver of penalty for the shortfall in generation below 17% CUF for the period covering October 2019 to March 2021. In fact the averments set out in the application disclose that the disputed amount stand quantified by the petitioner at Rs.7,35,66,000/-. Situated thus the core issue involved in the petition, beyond any doubt, is one covered under Regulation 10. This being so the fee payable on the petition is governed by slab rate (i) set out in Regulation 10 (i.e.) 1% of the amount in dispute.

10. The petitioner by classifying the petition as a Miscellaneous Petition had paid a fee of Rs.25,000/- as prescribed in Clause (b) of Regulation 8, which is manifestly improper.

11. On a prospectus evaluation of the pleadings, documents filed in support of the pleadings and relevant provisions of the TNERC Fees and Fines Regulations 2022, the Commission do not find any fault in the query raised by the Registry in the classification of the petition by the petitioner and also with regard to fee payable on the petition.

12. In fine, the Registry is directed to register the petition preferred by the

petitioner under the classification “Dispute Resolution Petition” (DRP) and assign number on condition that the petitioner shall pay the deficit fee due on the petition within 15 days from the date of this order. For verification of compliance of the Commission’s directives by the petitioner and appropriate consequent order / directions call on 21-03-2023.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**

