

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru M.Chandrasekar, Chairman
Dr.T.Prabhakara Rao, Member
Thiru K.Venkatasamy, Member/Legal

Order No. 1 /2020

In the matter of : Implementation of the order dated 31.5.2019 of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 232 of 2017 & IA No.572 of 2017.

Date of order: 12-11-2020

1. M/s.Techno Electric & Engineering Company Ltd. (Formerly known as Simran Wind Project Limited) preferred an appeal before the Hon'ble Appellate Tribunal for Electricity against the order issued by this Commission on 28.04.2017 in M.P.No.22 of 2016.
2. The order in M.P No.22 of 2016 was issued by the Commission in pursuance of the directions of the Hon'ble High Court of Madras in the judgment in W.P No.22097 and 32576 of 2013 dt. 15.7.2016 where the petitioners challenged the amendment issued to Regulation 2(h) of Commission's Renewable Energy Purchase Obligation Regulations 2010, to the definition of 'Pooled Cost of Power Purchase' linking the Average Pooled Cost of Power Purchase with the preferential tariff of the Renewable Energy generators. The Hon'ble High Court while upholding the amendment issued vide notification

dt.21.1.2013 as well as the consequential order No.4-2 dt.15.7.2013 granted liberty to the petitioner to move to this Commission for appropriate directions in the matter of APPC on account of the contentions put forth by the petitioner that the APPC has not breached the preferential tariff and hence the actual need to effect the notification has not arrived.

3. Commission after hearing the petitioner and the respondent, dismissed the petition in M.P No.22 of 2016 on 28.4.2017 with the observation that the APPC rate of Rs.3.11 per unit arrived for the year 2013-14 exceeded the preferential tariff of Rs.2.75 per unit fixed for a category of generators and the TNERC (RPO) Regulations, 2010 were applicable to all entities covered under the regulations and direction cannot be issued to the Licensee to postpone the implementation of the regulations when the regulation is in force much so when factually the APPC rate (Rs.3.11) exceeded in the year 2013-14 itself over the preferential tariff of Rs.2.75.

4. In the appeal filed by the petitioners in A.No.232 of 2017, Hon'ble Appellate Tribunal of Electricity observed that the tariff rate of APPC and preferential tariff are dynamic in nature and vary from year to year as determined by the State Commission and at best, they need to be compared in the same year and not in any heterogeneous manner as done in the case of the Appellant by the Respondents. Further, making a comparison of rates of yearwise APPC and

preferential tariff, APTEL has observed that starting from 2012-13 no breach has occurred.

Tabulation (para 11.25 in Appeal No.232 of 2017)

Year	APPC Rate	Preferential Tariff	Breach (Yes/No)
2012 - 13	2.54	3.96	No
2013 - 14	3.11	3.96	No
2014 - 15	3.38	3.96	No
2015 - 16	3.55	3.96	No
2016 - 17	3.96	4.16	No
2017 - 18	3.70	4.16	No

5. The summary of findings of Hon'ble APTEL in the Appeal No.232 of 2017 dt.31.5.2019 is as follows:

“12. Summary of our Findings:

In light of the above, we sum up our findings as under:-

12.1 The notification dated 19.06.2013 which amended the definition of the APPC shall not be given effect to in as much as till date, the APPC of a year has not exceeded the preferential tariff payable to wind generators for that corresponding year.

12.2 Being dynamic in nature (which may go up or down), the APPC rate shall be compared by the State Commission on year to year basis and the proposed cap of

75% under the amendment shall be implemented for a particular year in which APPC rate crosses over the rate of preferential tariff for that corresponding year.

12.3 The State Commission is directed to issue necessary instructions to Respondent No. 1 to make payment to the Appellant at the full APPC rate without applying any cap, for the relevant period, together with normal interest thereon at the rate provided for in the EPA from the date such capped tariff was effected by Respondent Discom until date of payment to the Appellant.”

6. In the hearing on 9.6.2020 in R.A No.2 of 2020 in M.P No.22 of 2016, subsequent to the submissions of the counsel of the petitioner for passing of consequential order in accordance to the directions of APTEL, Commission ordered closing of the petition as a Remand Application and pass appropriate orders in terms of the orders of Hon'ble APTEL.

7. Accordingly, in view of the directions of Hon'ble APTEL in para 12 of A.No.232 of 2017, Commission passes the following order :

(i) TANGEDCO is directed to make payments to the appellants at the full APPC rate without applying any cap for the years 2013 -2014 to 2017-2018 together with normal interest thereon at the rates provided in the Energy Purchase Agreement from the date the capped tariff was effected until date of payment to the Appellants.

During the hearing on 9.6 2020, TANGEDCO informed that an appeal has been filed before the Hon'ble Supreme Court of India. This order is subject to the

final outcome of the appeal filed by the Respondent TANGEDCO before the Hon'ble Supreme Court of India.

Sd./-
(K.Venkatasamy)
Member/Legal

Sd./-
(T.Prabhakara Rao)
Member

Sd./-
(M.Chandrasekar)
Chairman

(By order of the Commission)

Secretary
Tamil Nadu Electricity Regulatory Commission

To

The Chairman and Managing Director/TANGEDCO, Chennai-600002.