

ORDER

1. Prayer of the Petitioner in M.P.No.33 of 2011:-

The prayer of the Petitioner in M.P.No.33 of 2011 is to-

(a) declare that TANGEDCO Proceedings No.83 dated 16-03-2011 is in violation of Tariff Order No.1 of 2010 dated 27-05-2010 inasmuch as it seeks to collect charges towards evacuation and transmission facilities over and above those fixed in the Tariff Order ;

(b) direct the Respondents to establish and maintain transmission and evacuation facilities from the Petitioner's plant as per the terms of the PPA between the Petitioner and the Respondent and as per the terms of Tariff Order No. 1 of 2010 dated 27-05-2010 without insisting on payment of any charges or tariff other than those stipulated in the Tariff Order No.1;

(c) direct the Respondents to obtain the prior approval of this Commission as per the provisions of the Electricity Act, 2003 before imposing any new tariff or charge on the Petitioner that is not already stipulated in Tariff Order No.1 of 2010 dated 27-05-2010.

2. Facts of the Case :-

The Petitioner obtained a pre-registration Certificate dated 12-07-2010 from the Tamil Nadu Energy Development Agency (TEDA) for establishing and running a 1 MW solar power project at Marakathur Village, Kalayarkoil Taluk, Sivagangai District. The Petitioner entered into a Memorandum of Undertaking (MOU) dated

13-07-2010 with TNEB for sale of entire electricity generated by it to TNEB. Pursuant to the MOU, the Petitioner had entered into a PPA with the Respondent dated 13-08-2010 to sell the entire power generated by it from the date of commissioning onwards. The tariff rate at which the energy would be purchased by the Respondent from the Petitioner was fixed at Rs.18.45 for energy charges. The Petitioner has paid Rs.25.75 lacs per Megawatt to the Respondent as per letter D.No.2794/10 dated 04-12-2010 towards Infrastructure and Development Charges (IDC) charges for the Petitioner's proposed plant under the RPSSGP scheme of the Solar Mission. Subsequent to the above payment, the Petitioner received another letter D.No.2680/11 dated 16-03-2011 from the Respondent informing the Petitioner that a cost of Rs.67.179 lacs has to be incurred by the Respondent in setting up the transmission and evacuation facility from the Petitioner's solar power plant and that the same had to be borne by the Petitioner. In letter D.No.350/11 dated 21-03-2011 the Superintending Engineer, Sivagangai Electricity Distribution Circle called upon the Petitioner to pay a sum of Rs.12,11,440/- towards establishment and supervision charges. Aggrieved by TANGEDCO proceedings No.83, dated 16-03-2011 and subsequent orders of the Respondent, the Petitioner has filed this petition.

3. Contentions of the Petitioner as set out in the petition:-

(a) The Respondents have not obtained approval of the Commission for the extra demand of Rs.67.179 lacs over and above Rs.25.75 lacs per Megawatt already paid by the Petitioner in accordance with the provisions of Tariff Order No.1 of 2010 issued by the Commission.

(b) The demand of Rs.12,11,440/- towards establishment and supervision charges for the erection of 22 KV line by the Superintending Engineer Sivagangai Electricity Distribution Circle in his letter D No.350/11, dated 21-03-2011 is not only beyond the above Tariff Order No.1 of 2010 but also beyond the charges prescribed by the first Respondent.

(c) The first Respondent, the licensee has to necessarily approach the Commission as per Section 62 of the Electricity Act, 2003 for the determination of tariff.

(d) The action of the Respondents in seeking Rs.67.179 lacs over and above Rs.25.75 lacs already paid as Infrastructure and Development charges is in violation of the order of the Commission which has specifically fixed Rs.25.75 lacs as Infrastructure and Development Charges for solar energy project under RPSSGP scheme of the Solar Mission.

(e) TANGEDCO's Proceeding No.83 dated 16-03-2011 and subsequent orders of the Respondents are in violation of the scheme of the Act and Tariff Order No.1 of 2010 dated 27-05-2010 and they have to be necessarily set aside.

4. Contentions of the Respondent as set out in the Counter Affidavit:-

(a) The expenditure chargeable to M/s.RL Clean Power Pvt. Ltd. towards erection of 22 KV HT line from the power plant to Kalayarkoil 110/22 KV SS for a distance of 13.225 km is Rs.67.179 lacs.

(b) The expenditure chargeable to the TANGEDCO towards Bay extension work at 110/22 KV Kalaiyarkoil Sub-Station is Rs.21.404 lakhs.

(c) The above fact was informed to the Petitioner company by the TANGEDCO in letter dated 16-03-2011. But the Petitioner company in their letter dated 21-03-2011 has sought permission to take up the line erection works by themselves at their cost. Based on the above Petitioner's request, they have been asked to make payment for an amount of Rs.12,11,440/- towards establishment and supervision charges. On payment of the above charges, the Petitioner was permitted to take up the line erection works under the supervision of the Respondent TANGEDCO. On completion of the line erection works taken up by the Petitioner company and on completion of the bay extension work at sub-station taken up by the TANGEDCO, the power plant was commissioned on 25-07-2011 and now power is being exported to the grid.

(d) The works namely feeder strengthening, up-gradation of SS (voltage ratio), replacement of power transformer on enhancement of transformer capacity, ratio introduction by erecting new transformers, replacement of existing circuit breakers with higher capacity circuit breakers, bus strengthening etc. have to be carried out by the TANGEDCO/TANTRANSCO which leads to huge financial burden to TANGEDCO/TANTRANSCO. As per clause 7(1) of the order dated 08-01-2010 passed by the Hon'ble APTEL, in Appeal No.93 of 2009, the expenditure incurred by the Appellant for providing power evacuation facilities on behalf of the generators cannot be included in the tariff as it is a burden on the general public.

(e) It is appropriate that the generator has to bear the entire cost of providing bay extension work at sub-station and line work from the sub-station to power plant, where the generators get benefited by selling power at higher rate.

(f) The Infrastructure Development Charges of Rs.25.75 lakhs per Megawatt fixed by this Commission, to be paid by the generating companies would meet out such expenditure and the works relate to the individual power plant i.e. bay extension work at sub-station and line erection work has to be carried out by the TANGEDCO/TANTRANSCO on DCW basis or to be carried out by the generating companies at their cost.

(g) As per the order passed by the Hon'ble APTEL in Appeal No.93 of 2009, the expenditure incurred by the Respondent for providing power evacuation facilities on behalf of the generators cannot be included in the tariff as it is a burden on the general public.

5. Finding of Commission:-

5.1. This Petition is filed by M/s.R.L Clean Power Private Limited, Chennai. The prayer in this Petition is (a) to declare that TANGEDCO Proceedings No.83 dated 16.3.2011 is in violation of Tariff Order No.1 of 2010 dated 27.5.2010 inasmuch as it seeks to collect charges towards evacuation and transmission facilities over and above those fixed in the Tariff Order; (b) to direct the Respondents to establish and maintain transmission and evacuation facilities from the Petitioner's plant as per the terms of the PPA between the Petitioner and the Respondent and as per the terms of Tariff Order No.1 of 27.5.2010 without insisting on payment of any charges or tariff

other than those stipulated in the Tariff Order No.1; and (c) to direct the Respondents to obtain the prior approval of this Commission as per the provisions of Electricity Act, 2003 before imposing any new tariff or charge on the Petitioner that is not already stipulated in Tariff Order No.1 of 2010 dated 27.5.2010.

5.2. It is necessary to examine the provisions of regulations as well as the Tariff Order issued by this Commission for Solar Power Plants. It is also necessary to examine the MOU and PPA entered into between the parties with regard to setting up of interface line between the inter connection point and the sub-station of TANGEDCO/TANTRANSCO.

5.3. The Petitioner's 1 MW Solar Photovoltaic Power Plant is covered by Tariff Order No.1 of 2010. Entire power from this Solar Photovoltaic Power Plant is sold to the licensee namely M/s.TANGEDCO.

5.4. The provision regarding evacuation facilities as contained in Regulation 3 of the Commission's Power Procurement from New and Renewable Sources of Energy Regulations 2008 is as follows:-

"3(3) Evacuation facilities shall be provided by the State Transmission Utility (STU) / Distribution Licensee as per the Commission's Intra State Open Access Regulations 2005, Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2006 and Tamil Nadu Electricity Grid Code. The cost of inter facing lines, switch gear, metering, protection arrangement and related other equipments up to the interconnection point shall have to be borne by the generators, but the work shall be executed by STU/Distribution Licensee. The developer may be permitted to execute the works as per the terms and conditions of the STU / Licensee;

Provided that in the case of sale of entire power to the Distribution Licensee by any new and renewable source based generator, the cost of inter facing lines up to the inter connection point shall have to be borne only by the STU / Distribution Licensee;

Provided further that in case where the new and renewable source based generator referred to in the first provision who has entered into an EPA with the Distribution Licensee referred to therein for the sale of entire power to the said Distribution Licensee decides to use such power agreed to be sold to the said Distribution Licensee, for his captive use or for sale of such power to a third person, or to a Distribution Licensee other than the Distribution Licensee referred to above before the expiry of the period referred to in such EPA, then he shall be bound to reimburse the depreciated (Written Down Value) cost of inter facing lines to the Distribution Licensee with whom he has executed such EPA, before the wheeling of power to his captive use or sale to third person or Distribution Licensee other than the Distribution Licensee with whom the said EPA has been executed by him”

5.5. The Commission had also dealt with Hon’ble Appellate Tribunal for Electricity Judgment dated 8.1.2010 in Appeal No.93 of 2009 in its Tariff Order for Solar Power Plants. The relevant portion of the order of the Hon’ble Appellate Tribunal for Electricity as considered in the Tariff Order No.1 of 2010 of this Commission is extracted below.

“12. As indicated above, the mandate of section 10(1) of the Act cannot be over looked, since it is the bounden duty of the generating companies to establish, operate and maintain the sub-stations. If the evacuation work after the inter connection point is carried out by the generators as per section 10(1) and bring the 100 KV inter connection line or 230 KV inter connection line, as the case may be, to connect the same to the TNEB’s 110 KV or 230 KV grid, then the TNEB will have to take care of the evacuation work beyond 110 KV or 230 KV inter connection point by installing a bulk at the inter connection point. In view of the above situation, the expenditure has been incurred by the TNEB for establishing, operating and maintaining the sub-stations on behalf of the generators to do the evacuation work up to the inter connection point. The Generating Company is liable to pay the said expenditure to the TNEB in the name of IDC fixed by the TNEB through various circulars as per the mutual agreement and mutual agreement between the parties.

13. In view of the above, the impugned order dated 19.9.2008 is incorrect in law and therefore the same is liable to be set aside. Accordingly set aside. The TNEB is entitled to continue to collect IDC from the generators as long as the facility is availed of by the generators, as per the circular”.

5.6. The Commission's Tariff Order envisages that a generating company is liable to pay the Infrastructure Development Charges of Rs.25.75 lakhs per MW to TNEB (now TANGEDCO) for establishing, operating and maintaining the sub-stations.

5.7. Let us now examine the MOU entered into between M/s.R.L.Clean Power, the Petitioner herein and the Distribution Licensee, TANGEDCO. The relevant portions of the MOU are extracted below.

*"V. The seller is desirous for sale of entire electricity generated from this Solar Power Project at the delivery point as defined under clause 1.7 of this MOU"
"Clause 1.7 Point of Delivery:- The inter connection point of the sellers Solar Power Project with the buyers network at the nearest sub-station at voltage levels below 33 KV in whose area the generating plant shall be located shall be the point of delivery."*

According to the MOU the point of delivery is at the nearest sub-station of TNEB.

5.8. Solar Energy Purchase Agreement has been entered into between the parties a month after the signing of the above referred MOU. The EPA was signed on 13.8.2010. The EPA defines "interface line" as electric line between the inter connection point and the nearest point at which the electric line could technically be connected to the existing grid or distribution system. The EPA also defines "inter connection point" as the line isolator on out-going feeder of HT side of the pooling sub-station or generator transformer as the case may be. Para 2.1 of the EPA is relevant and therefore extracted below.

"Interfacing and evacuation facilities: (1) The Distribution Licensee agreed to establish the interface lines up to the inter connection point. The Solar Power Generator agreed to pay the Infrastructure Development Charges (IDC) of Rs.25 .75 lakhs per MW to the Distribution Licensee for establishing,

operating and maintaining the line / sub-station. The payment of IDC is subject to the outcome of the Civil Appeal No.1304 of 2010 filed by Indian Wind Power Association before the Hon'ble Supreme Court of India."

5.9. An examination of the definition of "interface line" and "inter connection point" and clause 2(1) of the EPA leads to the following conclusions.

(a) Inter connection point is the pooling sub-station or generator transformer which implies that in the present case the inter connection point is at the HV side of the generator transformer of the solar power plant, as there is no pooling involved in this case. The interface line is supposed to take off at this inter connection point at the generator transformer of the Solar Photovoltaic Plant and should connect on the other side to the sub-station of the existing grid or distribution system. The clear understanding between the parties as agreed to in clause 2.1 indicates that the Distribution Licensee has agreed to establish the interface lines up to the inter connection point. The solar power generators liability is limited to the payment of IDC of Rs.25.75 lakhs per MW which is already a part of the capital cost considered by the Commission while fixing tariff for generation from such solar photovoltaic generating stations. Clause 3(7) of the agreement envisages that the interface lines shall be maintained by the Distribution Licensee at their cost. A combined reading of all the provisions of the Energy Purchase Agreement indicates that the Licensee has agreed to establish the interface lines at his own cost and the solar photovoltaic generator namely the Petitioner has agreed to pay the IDC of Rs.25.75 lakhs per MW, which has actually been paid.

5.10. The issue before the Commission in this case is the demand of TANGEDCO of Rs.67.179 lakhs for establishing interface lines from the inter connection point to the nearest sub-station of the Licensee. It is strange that the Petitioner actually executed the line by himself under the supervision of the Licensee and then questioning the right of the Licensee to claim such charges. The appropriate time for the Petitioner to come before the Commission was when the Licensee had raised the demand for payment of Rs.67.179 lakhs for the construction of interface line. Subsequently, the TNEB/TANGECO had claimed a sum of Rs.12.11 lakhs as Supervision Charges since the Petitioner M/s. R.L. Clear Power had decided to construct the interface line on their own. The Regulation clearly specifies the scope of work between the Generator and the Licensee. According to the provision of the EPA referred in para 5.8, interface line has to be constructed by the Licensee namely TANGEDCO. Since Tariff Order No.1 of 2010 considers Infrastructure Development Charges (IDC) as a part of capital cost, tariff has been worked out accordingly. The Commission also notes that no appeal has been preferred by any parties against Tariff Order No.1 of 2010 and therefore this Order has attained finality. Under these circumstances, the TNEB/TANGEDCO ought not have claimed charges for construction of interface line. The problem has been compounded by the Petitioner by undertaking the execution of the line by himself. Since the Regulation mandates construction of interface line by the Licensee, the Commission has no choice but to rule that the claim of TANGEDCO of Rs.67.179 lakhs is not in accordance with the Regulations. However, the actual payment made by M/s.R.L. Clean Power is only Rs.12.11 lakhs towards the supervision of the construction of interface line at 22 KV voltage. This arrangement of execution of the line by M/s.R.L. Clean Power is also not in line with the EPA entered into between

the parties. We are unable to direct refund of any payment because the line has been constructed by the Petitioner himself. Under these circumstances the Petitioner can only own this line and the question of directing the Licensee to refund any amount would not arise. If the issue was brought before the Commission when the claim was raised by TNEB, the case could have been dealt with in an appropriate manner based on the Regulations and the earlier orders of the Commission. At this late stage, the Commission is not in a position to issue any directions as prayed for. Ordered accordingly.

6. Appeal:-

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for Electricity within a period of 45 days.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission