

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

**PRESENT :**

**Thiru S. Kabilan**

**- Chairman**

**and**

**Thiru R. Rajupandi**

**- Member**

**M.P. No.11 of 2009**

Tamil Nadu Electricity Board  
No.144 Anna Salai  
Chennai-600 002,

...

Petitioner

Nil

...

Respondent

The above M.P. No. 11 of 2009 came up for final hearing before the Commission on the 26<sup>th</sup> August 2009. The Commission upon perusing the above petition and other connected records of the case and upon hearing Thiru H.S. Mohamed Rafi, the Learned Counsel appearing for the Petitioner Board hereby pronounces the following:

**ORDER DATED 14<sup>th</sup> OCTOBER 2009**

**1. Prayer of the petitioner Board**

The prayer of the petitioner Board in M.P. No. 11 of 2009 is to accord approval to settle the bill for the approval to power supplied to TNEB from some of the sugar mill co-generation plants by using imported coal as fuel during the period November and December 2008 at the rate of Rs.7.40 / per unit.

## **2. Facts of the case**

(a) Based on the order dated 14-10-2008 issued by the Commission in M.P. 33 of 2008 which directed the petitioner Board to adopt the procedure indicated therein in regard to bagasse based plants adopting coal based generation, the petitioner Board invited bids for coal-based co-generation against the specification No. SE/NCES/DT.No.03/2008-2009 for procurement of power from co-generation plants within Tamil Nadu using imported coal as fuel during non-crushing period fixing tender opening date on 25-10-08.

(b) 8 firms have submitted their bids and the tenders were opened on 25-10-2008 in the presence of representatives of the firms. The bidders have quoted rates ranging from Rs.7.41 per unit to 7.56 per unit.

(c) The petitioner Board has filed a petition before the Hon'ble Commission viz. M.P. No;41 of 2008 praying to permit the petitioner Board to purchase of about 250 MW power from the co generation plants within Tamil Nadu using imported coal as fuel during non crushing season for the period up to 15-12-2008 or date of commencement of crushing season, whichever is earlier at the rate to be finalized by the Hon'ble Commission by considering the rate of Rs. 7.41 per unit accepted by co-gen. plants. The above petition was withdrawn by the petitioner Board.

(d) In anticipation of order to be pronounced by the Hon'ble Commission on the above petition, as per the clause (d) of the order dated 14-10-2008 in M.P.No.33 of 2008 pronounced by the Hon'ble Commission and also to meet out the power crisis, the generators of sugar mill co-

generation plants, was requested in letter dated 1-11-2008 to start generation of power and export to grid during non-crushing period.

(e) Based on the above letter dated 1-11-2008 some of the generators sugar mill co-generation plants have exported power from their co-generation plants by using imported coal during the period of November and December 2008 and also claimed the power purchase bill at the rate of Rs.7.40 per unit. These bills are yet to be settled.

The above petition has been filed for according approval of the Hon'ble Commission for the settlement of bills of the co-generators referred to above.

### **3. Contentions of the Petitioner Board**

(1) The petitioner Board faced a problem of shortage of power to meet its demand due to various reasons such as sudden drop in wind energy generation, due to poor inflows in the hydel reservoirs and due to reduced power generation from the central generating stations at Neyveli complex, Madras and Kaiga atomic power stations in the southern region.

(2) The demand of the Tamil Nadu grid was about 8500 MW to 9500 MW and the petitioner Board was able to meet only 7000 MW to 7500 MW and therefore resorting to load shedding to an extent of 1500 to 2000 MW to sustain the operating frequency with in the IEGC operating band. The demand is likely to touch 10000 MW during the ensuing summer which may lead to further load shedding.

(3) It was felt necessary to tap the available capacity with the private generators within the State.

(4) Taking into account the present power position it was considered essential to tap additional power from co-generation plants in order to meet the grid demand.

(5) The sugar mill owners suggested that during non-crushing period they can run their plants at their maximum capacity and supply power to the petitioner Board provided, they are paid a workable rate considering the high cost of imported coal.

(6) In the additional affidavit filed by the petitioner Board, the petitioner submitted as follows:-

(a) Under Section 63 of the Electricity Act, 2003 the Central Government had framed the guidelines only in respect of long term procurement for a period of seven years and above and in respect of medium term for a period upto seven years but exceeding one year. The petitioner reliably understands that the Central Government had not framed any guidelines in respect of the short term procurement i.e. less than one year.

(b) Since no guidelines have been framed in respect of the short term procurement, the Board followed the Rule 20 (2) of the Tamil Nadu Transparency in Tenders Rules 2000 framed under the Tamil Nadu Transparency in Tenders Act, 1998 by the State Government. Accordingly the notification called for the tender was advertised in the daily news papers calling for tenders from various sugar mill co-generation plants.

#### **4. Arguments of the Petitioner**

The Learned Counsel for the Board, while referring to paragraph 11 of the additional affidavit, stated that since no guidelines have been framed in respect of short term procurement, the Petitioner Board followed Rule 20 (2) of the Tamil Nadu Transparency in Tender Rules 2000 framed under the Tamil Nadu Transparency in Tenders Act 1998. He has stated that Section 6 of the said Act has not been followed by the Petitioner Board.

#### **5. Findings of the Commission**

5.1. The Commission disposed of the petition M.P.No.33 of 2008 of TNEB on 14-10-2008 with the following directions:-

“The TNEB shall adopt the following procedure for bagassee based co-generation plants adopting coal based generation.

- (a) The existing agreement with the cogeneration plants have to be terminated as the status of an IPP and a co-generating plant cannot co-exist.
- (b) In accordance with Sections 62 and 63 of the Electricity Act 2003, read with the National Tariff Policy, the TNEB will invite bids separately for bagassee based cogeneration and coal based cogeneration and submit the bids for the approval of the Commission.
- (c) The Commission already is equipped with data on the fixed cost and the variable cost of cogen plants available under Order No.3 of 15.5.2006. The bids will be evaluated with reference to the data available in the Order.

(d) If the co-generating plants have already started supplying power on the basis of coal, the bids may have retrospective effect in view of the acute power shortage prevailing in the State.”

5.2. Section 62 (1) (a) of the Electricity Act, 2003, empowers the Commission to fix the minimum and maximum ceiling of tariff in case of shortage of supply of electricity, for a period not exceeding one year. Section 63 of the Act enables the Commission to adopt the tariff, if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

5.3. The TNEB did not terminate the agreement with the co generating plants as stipulated in the Order dated 14-10-2008 of the Commission but decided to keep the agreement in abeyance. This created an anomalous situation. The same plant cannot co exist as a co generating plant and as an independent power producer. The TNEB invited bids for coal-based co generation and arrived at the rate of Rs.7.41 per unit. As the fixed charges for co-generation plants has been built into the tariff of Rs.3.15 determined by the Commission in Order No.3 dated 15-5-2006, there is no justification for adopting the rate of Rs.7.41 per unit. The fixed charges ought to have been discounted from the accepted rate. The TNEB was directed to submit the bids for approval of the Commission. This has been done six months after the acceptance of bids in the form of M.P. No.11 of 2009. Even here, the tender was not published in the tender bulletin as required under the Tamil Nadu Transparency in Tenders Act, 1998.

**6. Conclusion**

The Commission approves the rate of Rs.7.40 per unit for procurement during November and December 2008.

**7. Appeal**

An appeal against this Order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of 45 days.

With the above directions M.P. No. 11 of 2009 is finally disposed of.

**Pronounced in the open court by this Commission on this 14<sup>th</sup> day of October 2009.**

**(R.RAJUPANDI)  
MEMBER**

**(S.KABILAN)  
CHAIRMAN**