

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
Thiru.K.Venugopal	Member
	and	
Thiru.S.Nagalsamy	Member

M.P. No. 24 of 2011

Tamil Nadu Generation and
Distribution Corporation Ltd.
No.144, Anna Salai
Chennai – 600 002.

.... Petitioner
(Thiru. P.H.Vinod Pandian,
Advocate for Petitioner)

Vs.

Nil Respondent

Dates of hearing: 13-9-2011, 3-11-2011 and 16-11-2011

Date of Order : 16-11-2011

M.P.No.24 of 2011 came up for final hearing before the Commission on **16-11-2011**. The Commission upon perusing the above petitions and other connected records and after hearing the petitioner passes the following:-

ORDER

Prayer in M.P. No.24 of 2011 as limited in affidavit dated 24-10-2011:-

1. To approve the deviation in respect of Clause 4.10 of the GOI's guidelines and consequential changes in Clause 8.4.11 of PPA relating to provision of

credible escrow mechanism as backup to Letter of Credit and to incorporate new Clause 8.4.0 for making direct payment and to permit the Petitioner to open a standby Letter of Credit instead of unconditional revolving and irrevocable Letter of Credit as mentioned in Clause 8.4 of the PPA and corresponding deletion in the RFP sections 2.2.7 b & c, 5.2.5 and 5.5 enclosure 2 & 3 in the proposed procurement of power for 450 MW RTC power under case 1 bidding process (Phase – II).

Submissions of the Petitioner in the M.P. and affidavits dated 24-10-2011 and 4-11-2011:-

2. The electricity required by TANGEDCO is augmented from various sources such as its own generating stations, purchase of its share of power from various central generating stations, purchase of power from various other sources such as IPPs, CPPs, Wind Generators, Cogeneration Plants, Bio-Mass plants, through traders, power exchanges etc.

3. In view of shortage of power and to meet the demand for the present and for the near future, the Petitioner herein is contemplating to procure power as stipulated under Section 63 of the Electricity Act, 2003.

4. The GOI, MOP had issued guidelines for determination of tariff by bidding process for procurement of power by distribution licensee on 19-1-2005 and updated as on 21-7-2010 under the provisions of Section 63 of the Electricity Act,

2003. The guidelines shall apply in case of the following two kinds of power procurement:-

- (i) Where the location, technology, or fuel is not specified by the Procurer (Case 1).
- (ii) For hydro-power projects, load center projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process (Case 2).

The proposed procurement of power by the Petitioner falls under Case – 1.

5. Para 3.1 (i) of the said guidelines inter-alia provides that the bid documentation shall be prepared in accordance with the guidelines and the approval of the appropriate Regulatory Commission shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. Para 3.1 (ii) of the said guidelines provides that approval of the Appropriate Commission shall be sought in the event of the deviations from the bidding conditions contained in the guidelines, following the process described in para 5.16 of the guidelines. In case there is any deviation from the guidelines, the same shall be with the prior approval of the appropriate Commission and that the appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.

6. Considering the existing as well as capacity additions already sanctioned and being executed, the projected power supply demand position on the basis of

projected load growth of 8.0% CAGR has been estimated. The installed capacity by the end of 2016-17 will be of the order of 26270 MW. With this installed capacity, the availability will be 20341 MW. Thus, there will be an excess of 1347 MW (without spinning reserve)/ 1314 MW (with spinning reserve) to meet the peak demand of 18994 MW during 2016-17 as projected in the 8.0% load growth.

7. If the power is obtained through Case I bidding, during the time of availability of surplus power in STU, the high cost power will be cut down under merit order dispatch principle. In view of the above, to meet the anticipated power requirement, the Petitioner has proposed to purchase an additional quantum of 450 MW through Case I bidding for a period of five years.

8. The GOI model RFP documents states that the minimum bid capacity shall be decided by the procurer which may generally be the lower of two values; 10% of the requisitioned capacity or 50 MW. However, the procurer shall be free to determine any quantum of power as minimum bid capacity. Based on the above principles, this Petitioner prefers to have 50 MW as minimum bid capacity (as the procurer is at liberty to purchase upto 20% over and above the tendered quantity)

9. The wind season is normally between June and September during which period surplus position of grid is expected. However, wind power being volatile in nature and due to vagaries of South West monsoon, availability of such power

during June 2012 could not be considered as firm power considering the load growth. Further, due to delay in capacity additions such as Koodankulam power project, withdrawal of power from Kayankulam project with ER compensating power to an extent of about 315 MW from 31-5-2012, this tender for a quantum of 450 MW at reasonable rates would be finalized so that power could be available from September, 2012 under Medium term open access.

10. Para 4.10 of the GOI guidelines, inter-alia, provides that adequate payment security shall be made available to the bidder which may constitute (i) Letter of Credit and (ii) Letter of Credit backed by credible escrow mechanism. While considering the bidding process to procure power of 450 MW on medium term under Case I bidding following the said guidelines issued by GOI, in view of the financial position, the Petitioner is not in a position to provide Letter of Credit backed up by credible escrow mechanism as stipulated in the said guidelines. However, this Petitioner will be in a position to provide payment security mechanism in the form of stand by Letter of Credit. Due to non-provision of escrow mechanism and collateral agreements, the relevant Clause namely 8.4.11 in the Power Purchase Agreement requires modification and Clause 5.5 of the Request for Proposal (RFP) requires consequential changes relating to the escrow mechanism, which amounts to deviation from guidelines issued by the MOP / GOI.

11. On account of the change in payment security mechanism, in the RFP the expression "Default escrow agreement and hypothecate cum deed of

hypothecation” as mentioned in RFP (in Clauses 2.2.7 – b & c ; 5.2 (5) ; and 5.5 enclosure 2 & 3) and the relevant clauses in the PPA as mentioned above need deletion.

12. The deviation in RFP in providing escrow mechanism for payment security is necessitated on account of accumulated loss of Rs.27,708.56 crores upto 2009-10 incurred by the Petitioner. Further the Petitioner has so far provided escrow cover to one or two CGS only. The seeking of deviation in escrow cover for the purpose on hand is necessitated due to the above said bonafide reasons. However, the Petitioner assures and undertakes to abide and honor its obligation in payments under the proposed power purchase by maintaining suitable stand by Letter of Credit.

Conclusion reached by the Commission:-

13. Thiru.Ezhilarasan, Chief Engineer, CPP presented the case. The matter relates to procurement of 450 MW Base Load Power (Phase II) by TANGEDCO under Case I bidding in accordance with the guidelines for determination of tariff by bidding process. The Petitioner stated that the deviation from the guidelines with regard to default escrow agreement in the payment mechanism was approved by the Commission during the hearing on 3-11-2011. He submitted that an affidavit presenting the corresponding changes in Clause 8.4.11 of the PPA and corresponding changes in RFP has already been filed on 4-11-2011 as directed by the Commission in its hearing on 3-11-2011. After perusal of the

affidavit filed by the Petitioner, the Commission decides to approve the deviation in payment mechanism as prayed for by the Petitioner.

Order:-

14. In view of the conclusion reached in para 13 above, the deviation in payment mechanism in the matter of procurement of 450 MW Base Load Power (Phase II) by TANGEDCO under Case 1 bidding is approved as prayed for by the Petitioner. The order made in this petition on 13-9-2011 is merged with this order. M.P.No. 24 of 2011 is disposed of accordingly.

Appeal:-

15. 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

(Sd.....)
(S.Kaliban)
Chairman

/ True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**