

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

P.P.A.P. No. 6 of 2011

M/s. OPG Power Generation Pvt. Ltd
No.117, P.S. Sivasamy Salai
Mylapore
Chennai – 600 004.

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

Vs.

1. Tamil Nadu Electricity Board
Rep by its Chairman
800, Anna Salai
Chennai – 600 002.
2. TANTRANSKO
Rep. by its Chairman
NPKRR Maaligai
144, Anna Salai
Chennai – 600 002.
3. The Chief Engineer / PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
4. Superintending Engineer (Operation)
Chennai Electricity Distribution Circle / North
144, Anna Salai
Chennai – 600 002.

.... Respondents
(Thiru.H.S.Mohammed Rafi, Advocate for Respondents)

Dates of hearing: 5-1-2011, 4-3-2011, 26-4-2011,
12-7-2011 and 5-8-2011

Date of Order : 7-10-2011

P.P.A.P. No. 6 of 2011 came up for final hearing before the Commission on 5-8-2011. The Commission upon perusing the above P.P.A.P. No. 6 of 2011 and other connected records and after hearing both sides passes the following:-

ORDER

Prayer in P.P.A.P. No. 6 of 2011 :-

1. To fix the rate at which the Respondent Board should make payment in respect of the 7,48,100 units of infirm power from the Petitioner's 1 x 77 MW generating plant from the date of commissioning i.e. 14-4-2010 till the Commercial Operations Date i.e. 22-4-2010 and direct payment of the said sum and pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.

Facts of the case :-

2. The Petitioner's power plant of 1 x 77 MW based on fossil fuel at Gummidipoondi is conceived as a generating station on a merchant basis from the date of commissioning, till achieving COD. The Petitioner approached the Respondent for necessary inspections and for the grant of evacuation facility in respect of its power plant. The Petitioner duly obtained all the necessary approval from the Chief Electrical Inspector to the Government.

3. The Petitioner in its Letter No. OPGPG.TNEB/2009 dated 11-1-2010 requested the Respondent Board to accept the infirm power generated from its plant till the Petitioner goes in for commercial operations of the plant. The Respondent Board, accorded their acceptance for the same through Lr. No. CE/PPP/EE/AEE/PPP/F.OPG/D142/10, dated 25-3-2010 and further directed the Petitioner to approach this Commission for fixation of the rates for the infirm power to be supplied to the Respondent Board and to execute necessary agreement with the Respondent Board.

4. The Petitioner has supplied a total of 7,48,100 units of infirm power to the TNEB grid till the date of COD i.e. 22-4-2010 and the same is not in dispute. In view of the fact that such power was never intended to be gratuitously supplied and the Respondent had also never objected to the supply of the power and has admittedly utilized the same, the Petitioner is liable to be compensated for the same.

Contentions of the Petitioner

5. The Petitioner sent a communication requesting to accord approval for the third party sale of power by the Petitioner to the Respondent Board through a letter bearing OPGPGEN/TNEB/Third Party Sale/2010-11 dated 22-4-2010 which was received by the Director, Operation, Tamil Nadu Transmissions Corporation Ltd. on 24-4-2010. The 4th Respondent vide his letter No. SE/CEDC/N/AEE/Dev/AE/D2/F OPG Power 1 x 77 MW/D 119/10, dated

24-4-2010 accorded in principle approval to the Petitioner to sell the power generated by the Petitioner to third parties within Tamil Nadu through Intra State Short Term Open Access.

6. The Commission has fixed tariff for infirm power only with respect to fossil fuel based Group Captive Generating plants and fossil fuel based cogeneration plants. The parties therefore entered into an Energy Purchase Agreement dated 13-4-2010 for the purchase of infirm power which specifically sets out the terms in respect thereof, including the delivery point, metering arrangements etc.

7. If the company declared the COD (Commercial Operation Date) before the due date of 12-10-2010, then this agreement shall be automatically terminated from the date of declaration of COD. The Petitioner's plant has been pumping power to the TNEB grid from 14-4-2010 onwards.

8. As per Clause 4 of the EPA, the rate of power purchase shall be as fixed by the TNERC for the infirm power to be supplied by OPG Power Generation Private Ltd. to TNEB. As per Clause 6 (1) of the EPA, the agreement shall remain in force from the date of commencement of pumping of energy into TNEB's grid (i.e. 13-4-2010) upto 12-10-2010 and thereafter the term may be extended for further period based on the mutual agreement between Board and the Generation Plant.

9. The Petitioner wrote a letter to the Chairman of the Respondent Board on 16-6-2010 demanding payment for the supply of 862000 units of infirm power from 14-4-2010 to 22-4-2010, (7,48,100 units as per letter from the Superintending Engineer vide letter No.SE/CEDC/N/AEE/DEV/AE/D2F/F HT OPG/D 989/10, dated 22-10-2010) after necessary approval from this Commission. The Respondent Board has however, not chosen to approach this Commission for fixation of the rates.

10. The Respondent Board directed the Petitioner to approach this Commission for fixation of the rate for infirm power supplied by the Petitioner to the Respondent Board and informed that only on receipt of such order, the payments will be made through their letter No.CE/PP/SE/PP/EE/AEE2/PPP/ F.OPG/D.228/10, dated 23-6-2010.

Contentions of the Respondents in Counter Affidavit and Additional Counter Affidavit :-

11. The Petitioner company has established a 1 x 77 MW coal based power plant at Periya Obulapuram of Gummidipoondi. As per the request of the company necessary parallel operation and short term open access approval has been accorded to the Petitioner's company for sale of 72 MW power to TNEB grid through PTC on short term basis for one year vide letter dated 22-12-2009 with a condition that the company shall furnish an undertaking that they will not inject any power or they will not claim for the energy injected to the grid till wheeling / sale is requested and approved by TNEB. It was also informed that

any excess energy injected into the grid will not be accounted and paid for by TNEB under any circumstances.

12. On 11-1-2010 the Petitioner intimated that their machine is ready for synchronization with grid and also requested approval to inject the infirm power into the TNEB grid before declaring the Commercial Operation Date (COD). The third Respondent intimated to the Petitioner in their letter dated 25-3-2010, that TNEB was ready to accept the infirm power generated from the Petitioner plant before the commercial operation of the plant. The third Respondent further directed the Petitioner to approach the TNERC to fix the rates for their infirm power to be supplied to TNEB and also requested to execute an agreement for the infirm power purchase with the fourth Respondent.

13. The Petitioner executed an agreement with the fourth Respondent on 13-4-2010 as requested by the third Respondent wherein it is clearly mentioned that the rate of purchase for the infirm power to be supplied by the Petitioner company to the Respondent / TANGEDCO shall be as fixed by the TNERC. The agreement shall remain in force from the date of commencement of pumping of energy into TNEB's grid i.e. 13-4-2010 upto 12-10-2010 and thereafter the term may be extended for further period based on the mutual agreement between the parties. If the company declared the COD before the said date of 12-10-2010 then this agreement shall automatically stand terminated from the date of declaration of COD.

14. Pursuant to the Petitioner's letter dated 15-4-2010, the Director/Operation/TANTRANSCO in his letter dated 21-4-2010 accorded approval to the Petitioner for third party sales through Intra State Open Access to HT consumers within Tamil Nadu. Based on this the fourth Respondent vide letter dated 22-4-2010 accorded in principle approval from 21-4-2010 to sell the Petitioner company's surplus power of 50 MW on third party sales to the HT consumers within Tamil Nadu through Intra State Open Access Regulation notified by TNERC subject to certain conditions in which it is mentioned in the condition No.5 that if the consumers of M/s. OPG Power Generation Pvt. Ltd. do not draw the committed power, M/s. OPG Power Generation Pvt. Ltd. will not be compensated. Further the sale is permitted from the date of COD as intimated by the Petitioner i.e. from 22-4-2010.

15. The Petitioner company injected infirm power from 14-4-2010 to 22-4-2010 to the tune of 7,48,100 units to TANGEDCO's grid. If the Commission consider to fix tariff, the same may be fixed as per the provisions of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005.

16. The normative variable cost of the existing similar capacity plant is furnished as follows:-

- (i) The normative variable cost of the Ennore Thermal Power Station (ETPS) belonging to TANGEDCO is at the rate of Rs.1.75 per unit. The ETPS is

an age old plant having served about 40 years but its capacity is almost similar to M/s.OPG Power Generation Ltd. Plant.

- (ii) The ETPS plant was originally commissioned during 1969. The plant is around 40 years old plant. Various parameters considering for arriving the normative variable cost such as heat rate, specific coal consumption, specific oil consumption, auxiliary power consumption etc. would differ from a new plant as the said criteria would be in minimum in a new plant.

17. Regulation 20 (3) of TNERC (Terms and Conditions for Determination of Tariff) Regulation 2005 stipulates that “cost of infirm power shall be the lowest fuel cost applicable to the existing similar type of station”. This would imply to the comparison of a new plant with another similar new plant. The normative variable cost (approximate calculation) for a new 63 MW plant is calculated for the above said period applying the guide lines of the TNERC (Terms and Conditions for Determination of Tariff) Regulation, 2005 works out approximately at Rs.1.49 per unit.

18. The difference in cost in comparison of the age old ETPS with the new OPG Power Generation Pvt. Ltd. plant would be around Rs.0.26 per unit. Hence the normative variable cost of ETPS may not be appropriate.

Finding of the Commission:-

19. The above petition was filed by M/s. OPG Power Generation Pvt. Ltd., Chennai for fixing the rate at which TNEB should make payment in respect of 7,48,100 units of infirm power from their 1 x 77 MW generating plant from the date of commissioning i.e. 14-4-2010 till the commercial operation date i.e. 22-4-2010. The petition was heard on 5-1-2011 and was admitted with a direction to the Respondent to file their counter within four weeks. At the time of hearing on admission, the learned Counsel for the petitioner Thiru Rahul Balaji argued that this case is covered by the order of this Commission in DRP No. 6 of 2010 wherein the tariff was ordered to be based on the variable charge of Ennore Thermal Power Station. He also submitted that the date of commissioning was 14-4-2010 and infirm power was injected into the grid from 14-4-2010 to 22-4-2010. The learned Counsel further submitted that the 1 x 77 MW power project of the petitioner is a merchant plant and the entire power from this power plant after the date of commercial operation i.e. 22-4-2010 is being sold to M/s.Power Trading Corporation of India, a trader with a license granted by CERC.

20. The petition was further listed on 4-3-2011 and had to be adjourned as the petition was served on the Respondent only on 18-2-2011.

21. The counter of the Respondent TANGEDCO was received on 16th March 2011. The Respondent objected to the treatment of this petition as a dispute

redressal petition and suggested that the petition should have been filed as a PPAP petition by paying appropriate fees. During the hearing the Petitioner undertook to pay the difference of the fees amounting to Rs.86,250/- for treating this petition as a PPAP petition.

- (i) As already stated, the Petitioner generated and injected infirm power into the TNEB grid with the due approval of the TANGEDCO /TANTRANSCO during the period commencing from the date of synchronization i.e. 14-4-2010 and the date of commissioning i.e. 22-4-2010. The quantum of energy injected is claimed to be 7,48,100 units. The Respondent in para 11 of the counter has informed the dates and the quantum of infirm power injected and as such there is no dispute with regard to the quantum of infirm power injected into the grid. The Respondent in his counter further submitted that the rate for infirm power may be fixed as per the provisions of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005. The same was reiterated by the respondent during the hearing.

22. As pointed out by the learned Counsel for the Petitioner Thiru Rahul Balaji, this case is covered by the decision of this Commission in DRP No. 6 of 2010.

- (i) This Commission would like to refer to the relevant provisions relating to fixing the cost of infirm power from its Regulation TNERC

(Terms and Conditions for the Determination of Tariff) Regulations, 2005.

The relevant provision of the regulation in this regard are reproduced below:-

Clause 20:

Revenue / Charges during trial stage (prior to COD)

- (1) The cost incurred during trial upto COD shall be treated as capital cost;
- (2) The revenue earned from sale of power (infirm power) shall be treated as reduction in capital cost.
- (3) Cost of infirm power shall be the lowest fuel cost applicable to the existing similar type of station.

Clause 38:

Capital cost and sale of infirm power

- (1) The capital cost of a Generating company shall be worked out in accordance with the provisions of regulation 18 and 19.
- (2) Any revenue other than the recovery of fuel cost earned by the Generating Company from the sale of infirm power shall be taken as reduction in capital cost as provided in regulation 20.

23. From the above regulations it should be observed that the cost of infirm power shall be the lowest fuel cost applicable to the existing similar type of stations. Further, any revenue other than the recovery of fuel cost earned by the generating company from the sale of infirm power shall be taken as reduction in

capital cost as provided in regulation 20. It should be noted that the Petitioner has clearly stated that his plant is a merchant plant and power is being supplied by him to PTC after commercial operation date. There appears to be no long term PPA for supply of power from this plant to the licensee Viz., TANGEDCO. In such a scenario the question of deciding the capital cost, etc., does not arise. During the hearing on 26-4-2011 the Commission directed the Respondent to file an affidavit regarding the variable cost payable to the Petitioner in comparison with the existing similar type of stations. The Commission also directed the Petitioner to file an affidavit regarding its actual variable cost and also to furnish the lowest variable cost of similar plants like TCP and Ind Bharath, Tuticorin. The additional counter affidavit filed by the Respondent indicated the estimated normative variable cost for a new 63 MW plant as Rs.1.49 per kwhr where as for the age old ETPS it will be Rs.1.75 per kwhr and therefore the estimated cost of Rs.1.49 per kwhr should only be allowed instead of the normative variable cost of ETPS of Rs.1.75 per kwhr. The Petitioner furnished an affidavit on 4th August 2011 indicating variable cost of Rs.3.94 per kwhr presumably based on imported coal and he also furnished another letter of M/s.Ind Bharath Power Gen Company Ltd. addressed to him indicating a variable cost of Rs.2.60 per kwhr. The commission would like to observe that the inter connection with the grid for the purpose of testing, which results in injecting of infirm power into the grid, is a service rendered by TANGEDCO / TANTRANSCO. There is no prior agreement with regard to the rate for infirm power between the parties to the petition. The Tariff Regulation of the Commission provides for cost of infirm power as the

lowest fuel cost applicable to the existing similar type of situation. The intention of the regulation is not to provide for reimbursement of the actual variable cost of various generators who might require the service of the licensee for interconnection of their generating units for the purpose of testing. Going by the Regulation of the Commission as extracted above and also by the ratio decided by this Commission in DRP No. 6 of 2010 ordered on 19-10-2010, the Commission orders the cost of infirm power as Rs.1.75 per kwhr which is the rate indicated by the respondent in its counter for a similar type of power station.

Direction:-

24. In view of the findings of Commission above, necessary invoice may be raised by the Petitioner on the Respondent and the payment for the same shall be made within a period of three months by the Respondent.

Appeal:-

25. 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.

P.P.A.P. No. 6 of 2011 is ordered accordingly. No order as to costs.

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

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission