

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

PRESENT:-

Thiru.K.Venugopal Member

and

Thiru.S.Nagalsamy Member

I.A.No.1 of 2012

in

M.P. No.26 of 2011

M/s.SPIC Electric Power Corporation (Private) Limited
Rep. by its Associate Vice-President
TPL House, 3rd Floor, 3, Cenotaph Road
Teynampet, Chennai – 600 018.

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

Vs

The Tamil Nadu Generation and Distribution Corporation Limited
Represented by its Chairman and Managing Director
No.144, Anna Salai
Chennai – 600 002.

... Respondent
(ThiruP.H.Vinod Pandian
Advocate for Respondent)

Date of hearing : 16-04-2012

Date of order : 02-05-2012

The I.A.No.1 of 2012 in M.P. No. 26 of 2011 came up for hearing on 16-04-2012 before the Commission as to the maintainability with regard to sufficiency of court fee. The Commission upon perusing the above I.A. and

connected records and after hearing the counsel for Petitioner passes the following order:-

ORDER

1. Prayer of the Petitioner in I.A. No.1 of 2012 in M.P. No. 26 of 2011

The prayer of the Petitioner in I.A. No. 1 of 2012 in M.P. No. 26 of 2011 is to pass an order approving the Addendum 2 to the PPA incorporating the amendments as directed by this Commission in its order dated 09-05-2011 in M.P. No.18 of 2010.

2. Order dated 09-05-2011 issued by the Commission in M.P. No. 18 of 2010:-

2.1. The Commission in its order dated 09-05-2011 in M.P. No. 18 of 2010 at para 10.4.3 has observed as follows:-

“10.4.3. We further refer to various definitions in the Regulations which are reproduced below:-

- (i) Clause 2(1) (s) “Existing Generating Station” means a generating station declared under commercial operation from a date prior to the notification of these Regulations”*
- (ii) Clause 2 (1) (t) – “Existing Project” means the project declared under commercial operation from a date prior to the notification of these Regulations.*
- (iii) Clause 37 regarding norms of operation is already extracted in para 8.3.2 of this order.*

The definition of “existing generating station” and “existing project” as contained in the Regulation clearly envisages that only such of those stations or project which were in commercial operation prior to notification of this Regulation could be termed as existing generating station or existing project.

Since the petitioner's project is not a commissioned project, it cannot be considered as an existing generation station or an existing project. Consequently, this can only be treated as a new thermal power station and accordingly norms of operations for new thermal power station can only be applied to this project. The norms for a new thermal plant are as below:-

(a)	<i>Target availability for recovery of full capacity (fixed) charges</i>	<i>- 80%</i>
(b)	<i>Target PLF for incentive</i>	<i>- 80%</i>
(c)	<i>Incentive rate</i>	<i>- 25 paise per kwh for generation in excess of 80%</i>
(d)	<i>Secondary fuel oil consumption</i>	<i>- 2 ml per kwh</i>
(e)	<i>Return on equity</i>	<i>- 14% post tax</i>
(f)	<i>O & M expenses</i>	<i>- as per Clause 25 of Tariff Regulations 2005</i>

We direct that the PPA be amended to incorporate the above norms. The Regulation also stipulates in clause 28 that the norms of operation specified in these Regulations are the ceiling norms and the parties may negotiate for improved norms. Accordingly, improved norms committed in the PPA would apply. The Government of India notification dated 30th March 1992, further, enabled the parties to adopt improved norms with regard to heat rate, etc”.

2.2 The Commission at para X has also directed as below:-

1. “The PPA shall be amended to correct the norms, as directed in para 10.4.3 so as to fall in line with the TNERC (Terms and Conditions for determination of tariff) Regulations – 2005 within a period of three months.
2. The project mile stones set out in sub-para 10.44 of para ix shall be complied with.

3. The amended P.P.A shall be submitted to the Commission in terms of section 86 of the Electricity Act for approval.
4. Interim order dated 7-9-2010 is merged with this order”.

3. Office Directions to Petitioner:-

As the prayer of the petition was to approve the amendments to the power purchase agreements, the petition was treated as Power Purchase Approval Petition. Therefore, the Petitioner was directed by the office of the Commission to pay the remaining fees of Rs.13,12,000/- (Rs.2500/- per MW x 525 MW) to further process the petition.

4. Reply by the Counsel for Petitioner to the above Directions:-

The Counsel has sent his reply requesting to take up the matter for hearing or post the matter for maintainability on sufficiency of court fees. The Counsel has replied as follows:-

“The PPA has been amended pursuant to the directions issued by the Commission and the present petition is a continuation of the initial petition filed in M.P. No.18 of 2010”.

The Counsel has further stated that the present petition is only an application in M.P. No. 18 of 2010 and cannot be construed as power purchase approval petition.

5. Findings of Commission:-

- 5.1. The Commission in its direction given in para X (1) of its order dated 09-05-2011 in M.P.No.18 of 2010 as extracted in para 2.2 has directed to amend the PPA so as to correct the norms in accordance with the provisions of TNERC Tariff Regulations, 2005 referred to in para 10.4.3

of the above order which is also extracted at paragraph 2.1 above. Commission has also directed that the amended PPA shall be submitted to the Commission in terms of section 86 of the Electricity Act, 2003 for approval.

- 5.2. The Petitioner in Para 13 of the Interim Application has detailed the action taken by him to comply with the directions given by the Commission in its order dated 9-5-2011 in M.P. No. 18 of 2010 and prayed to approve the addendum 2 to the PPA incorporating the amendments. It is pertinent to state that the final orders has already been issued in MP 18 of 2010 on 9.5.2011 and as such it cannot be construed that the present petition is an application in the said MP 18 of 2010 or a continuation of the initial petition filed therein, as contended by the learned counsel for the petitioner. It is relevant to note that the approval of the Commission for the amended PPA has been sought for by the petitioner under section 86 for the first time. The learned counsel for the petitioner has also submitted that the PPA has also not been submitted to the Commission for approval on earlier occasion by the parties to this petition. As per the provisions of section 86(1) (b) of the Electricity Act 2003, it shall be one of the functions of the commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from its generating companies. In terms of the above provision approval of the Commission is necessary for the amended PPA also in this case. As per item 4 of the Table under regulation 6 of the TNERC Fees & Fines Regulation, 2004, the fees for power

purchase Approval Petition is Rs. 2500/- per MW if the agreement is for a period of one year and above which relates to conventional fuel based plant and as such the fees of Rs. 13,12,500/- (Rs. 2500 x 525 MW) shall be paid by the party seeking approval of the P.P.A. from the Commission.

Ordered accordingly.

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

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

/True Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission