

ORDER

1. Prayer of the Petitioner in M.P.No.32 of 2012:-

The prayer of the Petitioner in M.P.No.32 of 2012 is that the Commission may be pleased to approve the following deviations namely:-

(a) Payment mode is direct payment instead of Letter of Credit. For Collateral arrangement, Standby Letter of Credit / Bank Guarantee is provided in place of Credible Escrow Mechanism.

(b) In case of requisitioned capacity being equal to or greater than 500 MW, the procurer shall have the option to decide the Scheduled Delivery Date, which shall not be less than five months instead of four years from the effective date.

(c) Tender may be invited within Southern Region only instead of International Competitive Bidding.

2. Facts of the case:

The present petition has been filed by TANGEDCO under section 63 of the Electricity Act, 2003 and clause 5.16 of the Guidelines for determination of tariff by bidding process for procurement of power by Distribution Licensee issued by Government of India / Ministry of Power.

3. Contentions set out in the Petition:-

(a) The payment mode is direct payment instead of Letter of Credit as stipulated in para 4.10 of the guidelines of the Government of India and for collateral arrangement, Standby Letter of Credit / Bank Guarantee is provided in place of

Credible Escrow Mechanism as stipulated in the said para 4.10 of the guidelines of the Government of India.

(b) With regard to scheduled delivery date, in case of requisitioned capacity being equal to or greater than 500 MW, the procurer shall have the option to decide the scheduled delivery date which shall not be less than five (5) months from the effective date instead of four (4) years from the effective date as stipulated in para 1.3.1 of R.F.P.

4. Hearing held on 18-10-2012:-

In the hearing held on 18-10-2012, the Commission observed as follows:-

“M.P.No.32 of 2012 filed by TANGEDCO for procurement of 1000 MW plus or minus 20% of power as base load for three years from within the Southern Region was taken up for admission. Thiru K.Seshadri, Chief Engineer argued the matter. Besides the deviations approved in the past by the Commission in similar cases, the two new deviations are:- change in the scheduled delivery date and limiting the international competitive bidding to within the Southern Region only. The Commission desires to know the following details from the Petitioner:-

(a) *The Southern Region is scheduled to be inter-connected with the rest of the country in the 1st quarter of 2014 and the present tender restricting to Southern Region is proposed for a period of three years commencing from 01-09-2013 to 31-08-2016. If the inter-connection of the Southern Region with the rest of the country happens according to the schedule date, most of the period of this contract will fall in the period when the country operates as a single grid and there should be*

competitive advantages arising out of certain inter-connections. This needs to be examined by TANGEDCO and clarified.

(b) In an order issued by the Commission in P.P.A.P.No.5 of 2011, the matter was taken to Hon'ble High Court of Madras and a stay was granted. These details are also to be furnished by TANGEDCO.

These details shall be filed before the Commission within 2 weeks. The petition shall be listed thereafter for disposal".

5. Additional Affidavit filed by TANGEDCO:-

Pursuant to the above orders of the Commission passed in the hearing held on 18-10-2012, the Petitioner has filed an additional affidavit. The following contentions are made by TANGEDCO:-

(a) TANGEDCO floated two tenders under Case I bidding through competitive bidding. The tender was awarded to the successful bidders whose sources are from Northern Region wherein the time schedule for power flow as per the Power Purchase Agreement not achieved due to corridor congestion. In the previous Power Purchase Agreement executed by TANGEDCO, though the scheduled delivery date was fixed as 01-02-2012 and 01-09-2012, the Medium Open Access was granted only for a different period due to congestion in the transmission corridor which made TANGEDCO to go in for procurement limiting the source within Southern Region.

(b) Formation of National Grid is proposed during 1st quarter of January 2014. In case of delay in formation of National Grid due to unforeseen reasons, TANGEDCO

have to get the power during the period from 2013-2016 which will be possible from the sources within Southern Region only without any corridor congestion.

(c) Formation of National Grid will not facilitate immediate transmission of maximum quantum of power due to pending completion of strengthening of the downstream transmission lines importing power to Tamil Nadu.

(d) Considering the load growth as 8% to 9% per year, if projection of demand is made taking into account the capacity addition and reduction in capacity due to unit retirement / expiry of PPA, the deficit expected during the period from 2013-16 will be around 2900 MW to 4900 MW.

(e) Selecting source within Southern Region will facilitate the local generators to get tied up with TANGEDCO without any corridor congestion and with minimal transmission losses thereby Restriction and Control measures prevailing in Tamil Nadu will get minimized.

(f) In regard to details, with regard to the stay of the order of the Hon'ble High Court of Madras, staying the order of the Commission issued in P.P.A.P.No.5 of 2011, it has been stated that the High Court of Madras in W.P.No.18129 of 2011 issued an order on 04-08-2011 giving an interim stay for a period of four weeks subject to the condition that parties before the Court will abide the tariff fixed by the Commission and the case is not yet listed after 04-08-2011.

6. Hearing held on 16-11-2012:-

In the hearing held on 16-11-2012, the Commission held as follows:-

“It was argued that M.P.No.32 of 2012 has been filed with the due approval of the Board of Directors. The copy of the same shall be filed before the Commission within a week. It was further argued that the capacity will be required in keeping view of the load growth study in the State. The points raised in the petition is similar to the earlier petition, the additional submission being that it is intended to procure power from Southern Region. Orders reserved”.

7. Findings of the Commission:-

(a) This petition was filed by TANGEDCO for procurement of 1000 MW \pm 20% of power as base load for 3 years from within southern region under case I bidding procedure issued by the Ministry of power, Government of India. The petitioner has sought the approval of this Commission for the following deviations.

- (i) Payment mode is direct payment instead of LC. For Collateral arrangement, Standby LC /Bank Guarantee is provided in place of Credible Escrow Mechanism.*
- (ii) In case of Requisitioned Capacity being equal to or greater than 500 MW, the procurer shall have the option to decide the Scheduled Delivery Date, which shall not be less than five (5) months instead of four (4) years from the Effective Date.*
- (iii) Tender may be invited within Southern Region only instead of International Competitive Bidding.*

(b) As regards the need for procurement of power of 1000 MW for 3 years period the petitioner has given the following reasons.

- (i) To meet out the deficit upto 2015 – 16 TANGEDCO programmed to purchase 1900 MW RTC power through medium term under case I bidding for the period from 2012–17.*
- (ii) So far TANGEDCO has signed PPA for 100 MW from Northern region and 400 MW from Western region under Case 1 bidding for a period of 5 years through medium term from 2012 – 17. However, medium term open access is made available from June*

2013 to end of 2015 or middle of 2016 only, depending upon the source.

- (iii) Power tied up to the tune of 1100 MW under short term open access by TANGEDCO has actually resulted in power flow of about 100 MW to 300 MW only due to corridor congestion.*
- (iv) PGCIL is in the process of implementation of new transmission lines to constitute a Single Grid synchronizing Southern Grid with NEW Grid and the same is expected to be completed by 2014–15.*
- (v) Only on completion of this, the congestion in the transmission corridor for the import of power to southern region could be relieved. In the above situation, availing of power from other regions is uncertain upto 2014-15.*
- (vi) The anticipated capacity addition of around 3000 MW from the ongoing new projects in Tamil Nadu is getting delayed due to various reasons.*
- (vii) Many power plants in Southern region are ready for commercial operation from April 2013 and therefore if a tender is floated on medium term for three years to get offer from the bidders within the southern region, actual flow of power will be certain overcoming the corridor congestion.*

(c) In view of the above, the petitioner has made the proposal for procurement of 1000 MW on medium term under case I bidding for a period of 3 years from 1-9-2013 to 31-8-2016 within the southern region.

(d) This matter was heard by the Commission on 18-10-2012 and the Commission directed TANGEDCO to submit the following within 2 weeks.

- a. The Southern Region is scheduled to be inter connected with the rest of the country in the 1st quarter of 2014 and the present tender restricting to Southern Region is proposed for a period of three years commencing from 1-9-2013 to 31-8-2016. If the inter connection of the Southern Region with the rest of the country happens according to the schedule date, most of the period of this contract will fall in the period when the country operates as a single grid and there should be competitive advantages arising out of certain inter connections. This needs to be examined by TANGEDCO and clarified.*

b. *In an order issued by the Commission in PPAP No. 5 of 2011, the matter was taken to Hon'ble High Court of Madras and a stay was granted. These details are also to be furnished by TANGEDCO.*

(e) TANGEDCO filed an additional affidavit on 2nd November 2012 and furnished the following clarifications:-

- a. *TANGEDCO floated two tenders under Case I bidding through competitive bidding. The tender was awarded to the successful bidders whose sources are from Northern Region wherein the time schedule for power flow as per the Power Purchase Agreement not achieved due to Corridor Congestion. In the previous Power Purchase Agreement executed by TANGEDCO though the scheduled delivery date was fixed as 01.02.2012 and 01.09.2012, the Medium Open Access was granted only for the period from 16.06.2013 to 31.05.2016 due to congestion in the transmission corridor which made TANGEDCO to go in for procurement limiting the source within Southern Region.*
- b. *Formation of National Grid is proposed during 1st quarter of January 2014. In case of delay in formation of National Grid due to unforeseen reasons TANGEDCO have to get the power during the period from 2013-2016 which will be possible from the sources within Southern Region only without any Corridor Congestion.*
- c. *Formation of National Grid will not facilitate immediate transmission of maximum quantum of Power due to pending completion of strengthening of the downstream transmission lines importing power to Tamil Nadu.*
- d. *Considering the load growth as 8% to 9% per year if projection of demand is made taking into account the capacity addition and reduction in capacity due to unit retirement / expiry of PPA the deficit expected during the period from 2013 – 16 will be around 2900 MW to 4900 MW. (Projection statement enclosed as Annexure)*
- e. *Selecting source within Southern Region will facilitate the local generators to get tied up with TANGEDCO without any corridor congestion and with minimal transmission losses thereby Restriction and control measures prevailing in Tamil Nadu will get minimized.*

(f) With regard to the writ petition filed in the Hon'ble High Court of Madras against order of this Commission in PPAP No. 5 of 2011, TANGEDCO has informed that an interim stay for a period of 4 weeks was ordered on 4-8-2011 and the case is not yet listed after 4-8-2011.

(g) By an affidavit filed on 21st November 2012, TANGEDCO has placed on record the decision of the Board of Directors for proceeding with this power procurement. The Board resolution is extracted below:-

- a. *Procurement of 1000 MW \pm 20% RTC Power (Base load through Medium Term Open Access (MTOA) for a period of three (3) years from 2013 to 2016 by floating tender under case – I bidding (within southern region only).*
- b. *Filing a petition before TNERC for getting necessary approval for the proposed deviations from the bidding guidelines issued by the Government of India, for determination of tariff by bidding process for procurement of power by distribution licensee and for floating the tender.*

(h) After going through the various submissions and the argument on different dates, as discussed above, the Commission, keeping in view the present power supply position and financial health of the petitioner, approves the following deviations from the Government of India guidelines issued under Section 63 of the Electricity Act 2003.

- (i) *Payment mode is direct payment instead of LC. For Collateral arrangement, Standby LC /Bank Guarantee is provided in place of Credible Escrow Mechanism.*
- (ii) *In case of Requisitioned Capacity being equal to or greater than 500 MW, the procurer shall have the option to decide the Scheduled Delivery Date, which shall not be less than five (5) months instead of four (4) years from the Effective Date.*

(iii) *Tender may be invited within Southern Region only instead of International Competitive Bidding, as a special case, in view of the prevailing shortages and grid constraints.*

(i) The Commission expects adequate competition and therefore competitive prices. The Board of Directors of TANGEDCO shall examine the reasonability of the price and satisfy themselves before approaching the Commission for adoption of tariff.

8. APPEAL:

An appeal against this Order lies to the Appellate Tribunal for Electricity under Section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission