

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**

P.P.A.P.No.1 of 2012

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

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

Vs

M/s. National Energy Trading and Services Ltd.
Plot No. 397, Lanco House
Udyog Vihar, Phase III
Gurgaon – 122 016.

....**Respondent**

Dates of hearing : 16-12-2012 and 16-04-2012

Date of order : 21-06-2012

The above P.P.A.P No.1 of 2012 came up for final hearing on 16-04-2012.
The Commission upon perusing the above P.P.A.P. No.1 of 2012 and the connected records of the case and after hearing Counsel for the Petitioner and Thiru K.Ehilarasan, Chief Engineer, Private Power Projects passes the following

ORDER

1. Prayer in P.P.A.P. No.1 of 2012:-

The prayer in P.P.A.P. No.1 of 2012 is to

- (a) approve the process of tender undertaken by the Petitioner under Case 1 bidding (Tender No. 01/PPMT/2011) which exceeded by 28 days over and above the prescribed period of 195 days as stipulated in Clause 5.19 read with Annexure 2 of the guidelines for determination of tariff by bidding process for procurement of power by distribution licencees ;
- (b) consider for adoption of tariff as agreed to by and between the Petitioner and the Respondent in power purchase agreement dated 19-01-2012 in terms of Section 63 of the Electricity Act, 2003.

2. Facts of the Case:-

2.1 The Petitioner, TANGEDCO floated a tender to procure power for 450 MW on medium term under Case 1 bidding procedure through tariff based competitive bidding process for meeting the base load requirement of TANGEDCO for a period of five years i.e. from 10-12-2011 to 09-12-2016.

2.2. A bid evaluation committee was constituted by the Petitioner in regard to the tender floated by them. The only bidder namely M/s. National Energy Trading and Services Limited, the Respondent herein was declared as full responsive bidder. As per Clause 5.19 of the guidelines approval was obtained from the Commission to open the single bid offered by M/s.NETS on 15-12-2011 and financial bid was opened on 17-12-2011.

2.3. As per Clause 3.5 step 4 of RFP dated 10-06-2011 M/s.NETS is declared as a successful bidder of generating source II (100 MW).

2.4. The Board of Directors of the TANGEDCO in its 20th meeting held on 31-12-2011 approved for issuing a letter of intent for purchase of 100 MW RTC Power through Medium Term Power purchase under Case-1 bidding (01/PPMT/2011) to the successful bidder viz. M/s. National Energy Trading and Services Limited, Gurgaon and for seeking approval of the Commission for adoption of tariff under section 63 of the Electricity Act, 2003 in line with the GOI guidelines vide clause 6.4.

2.5. The Power Purchase Agreement between TANGEDCO and M/s.NETS was signed on 19-01-2012. The original scheduled delivery date mentioned in RFP was 10-12-2011. Due to delay in bidding process as stated above, which was neither willful nor wanton, the period got extended to 19-01-2012 resulting in scheduling of power being extended to 01-02-2012. The bidder has been permitted to supply power under short term open access till medium term open access is approved.

2.6. The Petitioner in this petition seeks to -

- (i) approve the process of tender undertaken by the Petitioner under Case 1 bidding (Tender No. 01/PPMT/2011) which exceeded by 28 days over and above the prescribed period of 195 days as stipulated in Clause 5.19 read with Annexure 2 of the guidelines for determination of tariff by bidding process for procurement of power by distribution licencees ;
- (ii) consider for adoption of tariff as agreed to by and between the Petitioner and the Respondent in power purchase agreement dated 19-01-2012 in terms of section 63 of the Electricity Act, 2003.

3. Hearing on 16-02-2012:-

During the hearing on 16-02-2012, the Petitioner was directed to furnish the following information:-

- (1) Justification for the power purchase cost, the rate of power purchase obtained through this tender and earlier tenders since April 2011.
- (2) The transmission charges and the line losses involved in bringing this power through three regions namely North, West and South.
- (3) The upset price has been ordered by the Commission to be kept confidentially vide its order dated 24-12-2010. This may be furnished.
- (4) Confirm that the base date for the price indicated in tabular form in page 9 of the petition is 03-09-2011.

4. Affidavit filed pursuant to the orders passed by the Commission in the hearing held on 16-02-2012:-

The Petitioner, TANGEDCO has filed an affidavit furnishing the following facts namely,

(a) Justification for Power Purchase Cost:-

- (i) TANGEDCO floated a tender on 10-06-2011 for procurement of 450 MW RTC power on medium term under Case I bidding for the first time. The quoted tariff of the successful bidder namely M/s.National Energy Trading and Services Limited was Rs.3.809 per Kwhr. The levelized tariff has been arrived as Rs.4.8841 per Kwhr.
- (ii) On comparing with the quoted price of other States and the average cost of power obtained by TANGEDCO through short term tenders, the quoted price under Case I bidding is found reasonable.

(b) Transmission charges and Line Loss:-

(i) As per new CERC Notification dated 29-06-2011, the interstate transmission charges consists of injection point charges and withdrawal point charges only based on Point of Connection (POC) tariff and the transmission loss figure for the respective region to be applied separately for injecting and drawing entity. Transmission loss matrix consists of three categories namely low, normal and high in percentage.

(ii) Point of Connection Charges (POC):-

(a) Uttar Pradesh Injection: Rs.0.10 per Kwhr.

(b) Tamil Nadu withdrawal : Rs.0.13 per kwhr.

Transmission Loss Matrix:-

(a) Uttar Pradesh Injection (NR) falls on normal category is 1.40%

(b) Tamil Nadu withdrawal (SR) falls on high category is 2.31%

(c) Furnishing of upset price as ordered by the Commission:-

(i) The upset price has to be textured for capping of the purchase. As was the first of its kind of TANGEDCO who was dealing the Case I bidding not having adopted the upset price methodology and for which it has been tendered the apology before this Commission. However, in respect of Phase II tender the upset price has been arrived and submitted to the Commission before opening the financial bid.

(ii) TANGEDCO is purchasing power through short term tender with a fixed tariff for a maximum period of one year and the price cannot be compared with medium term power purchase where escalation factor as per CERC order is taken into consideration for evaluation.

(d) Base date for the price indicated for Petitioner firm:-

- (i) The base date for escalable capacity charges was applied from the scheduled delivery date (10-12-2011) for calculation of levelised tariff.
- (ii) The base date for escalable energy charges shall be applied from the bid deadline (03-09-2011) for calculation of levelised tariff.

5. Finding of the Commission:-

5.1. This petition was filed by TANGEDCO in February 2012. The prayers of the petitioner are (1) to approve the process of tender undertaken by the petitioner under case 1 bidding (tender No. 01/PPMT/2011) which exceeded by 28 days over and above the prescribed period of 195 days as stipulated in clause 5.19 read with Annexure – II of the guidelines for determination of tariff by bidding process for procurement of power by Distribution Licensees and (2) to consider for adoption of tariff as agreed to by and between the petitioner and the respondent in Power Purchase Agreement dated 19-1-2012 in terms of section 63 of the Electricity Act, 2003.

5.2. The Respondent herein is M/s. National Energy Trading and services Ltd., Gurgaon. The power supply of 100 MW is proposed from Anpara 'C' TPS in Uttar Pradesh. Before going into the detail, it is necessary to deal with the process undertaken by TANGEDCO in finalizing this tender. The tenders were invited by TANGEDCO on 10-6-2011. In all, 4 bids were received from the following:-

- 1. M/s. Arkay Energy (Rameswaram) Ltd for 50 MW
- 2. M/s. National Energy Trading and Services Ltd for Source I – 200 MW Source II – 100 MW
- 3. M/s. OPG Energy Private Ltd. for 10 MW

4. M/s. OPG Power Generation Private Ltd. for 100 MW.

5.3. These tenders were examined by an Evaluation Committee comprising of the following :-

1. Thiru.K. Ezhilarasan, Chief Engineer/Private Power Projects
2. Thiru.S. Arulsamy, Chief Financial Controller/TANGEDCO
3. Ms.R.P. Kumudini Devi, Faculty/ Anna University (External Member)
4. Thiru.Gaddam David, Power Finance Corporation, Southern Region, Chennai.

Thiru Gaddam David did not participate in the Bid Evaluation Committee meeting due to personal reasons, as indicated by the petitioner in the petition.

5.4. There were certain writ petitions in the matter. Some of the issues were also brought before the Commission and the Commission had issued the orders on the following:-

- (1) IA No. 1 of 2011 in MP No. 48 of 2010 filed by TANGEDCO on 24-10-2011.
- (2) IA No. 2 of 2011 in MP No. 48 of 2010 filed by TANGEDCO on 16-11-2011.

The Commission permitted opening of the financial bid of M/s. NETS who was the sole qualified bidder. This Order was passed on 15-12-2011. MP No. 32 of 2011 filed by M/s. NETS before TNERC was also disposed off by a speaking Order on 15-12-2011.

5.5. The price bid of the single eligible bidder was opened on 17-12-2011 by TANGEDCO. The prices offered by M/s. NETS are indicated below:-

Contract year	Commencement of date of contract year	End Date of Contract Year	Quoted Non Escalable Capacity Charges (Rs/Kwhr)	Quoted Escalable Capacity Charges (Rs/Kwhr)	Quoted Escalable Energy Charges (Rs/Kwhr)
1	10-12-2011	31-03-2012	1.720	0.001	2.088
2	01-04-2012	31-03-2013	1.720	Same as above	Same as above
3	01-04-2013	31-03-2014	1.720	Same as above	Same as above

4	01-04-2014	31-03-2015	2.450	Same as above	Same as above
5	01-04-2015	31-03-2016	2.450	Same as above	Same as above
6	01-04-2016	09-12-2016	2.450	Same as above	Same as above

5.6. Assumptions for arriving at the levelized tariff, as furnished by the petitioner in his petition are extracted below:-

As per CERC notification dated October 7, 2011 the annual escalation rate for bid evaluation for domestic coal is as follows:

- a. Escalation Rate for Domestic coal : 6.66%*
- b. Inflation Rate to be applied to Indexed capacity charge component : 5.21%*
- c. Discount Rate to be used for bid evaluation : 10.74%*
- d. Escalation for normative component charges : 3.91%*
- e. Transmission charges for U.P. Injection : Rs.0.10 per kwhr*
- f. Transmission charges for T.N. withdrawal : Rs.0.13 per kwhr*
- g. Transmission Loss Matrix U.P. Injection (NR) falls on Normal Category is 1.40%*
- h. Transmission Loss Matrix T.N. withdrawal (SR) falls on High Category is 2.31%*

The levelized tariff was calculated considering the above factors notified by CERC applicable on the day which is seven days prior to Bid Deadline (03-09-2011) and arrived at as Rs.4.8841/Kwhr.

5.7. The Board of Directors of TANGEDCO in its 20th meeting held on 31st December 2011 approved the bid of M/s. NETS, Gurgaon and authorized the Director, Distribution of TANGEDCO to sign the PPA on behalf of TANGEDCO. The Board has also resolved to seek the approval of TNERC for adoption of tariff under section 63 of Electricity Act, 2003 in line with the GOI guidelines-vide Clause 6.4. The PPA was signed between TANGEDCO and M/s. NETS on 10-1-2012.

In the light of the above, let us now examine the prayers of the petitioner.

Prayer No. 1

5.8. Approving the process of tender and the delay of 28 days over and above the prescribed 195 days.

- (i) This is the 1st case of bidding under section 63 of the Electricity Act, 2003 undertaken by the petitioner.
- (ii) 2 IAs were filed by TANGEDCO for various clarifications. One of the IA involved the issue of continuing with the bid process in view of the fact that only one bidder was in contention.
- (iii) Writ petition was filed by one of the bidders before the Madurai Bench of the Madras High Court.

5.9. In view of the additional time involved in the above listed issues, the Commission is of the view that the delay of 28 days taken for processing the bids is acceptable.

5.10. The Certificate of the Evaluation Committee, which included an external member, is in line with the bid Evaluation process as stipulated in the GOI guideline. In view of the fact that there is already an external member in the Evaluation Committee who has signed the Evaluation Committee report, non-participation of Thiru Gaddam David can be accepted.

5.11. The Certificate from TANGEDCO is also enclosed with the petition. This certificate is again signed by Thiru K. Ezhilarasan, who was also a member of the Bid Evaluation Committee. Since the Board of Directors have already approved the proposal for signing the PPA, the signing of the Certificate by Thiru Ezhilarasan on

behalf of TANGEDCO is considered to be acceptable. However, in all future cases, such a certificate should be signed by the Company Secretary of the TANGEDCO.

5.12. While dealing with this matter in M.P No.48 of 2010 the Commission had directed TANGEDCO to keep in a sealed envelope the upset price. The intention of the Commission was to keep a reserve price in a sealed cover beyond which price the TANGEDCO may not like to purchase power. However, in this case such an upset price was not kept in a sealed cover by TANGEDCO. However, in a subsequent case they have submitted a sealed envelope to the Commission. In view of this, compliance of the direction of the Commission in maintaining the reserve price in a sealed cover, being the first time, is not being insisted upon.

Prayer No. 2. Adoption of Tariff

5.13. Tariff as offered by M/s. NETS is extracted in para 5.5.of this order. A cursory examination of the tariff quoted indicates that while the quoted escalable capacity charge of Rs.0.001/Kwhr and quoted escalable energy charge of Rs.2.088 (Rs/Kwhr) are constant for the entire period, the quoted non-escalable capacity charges are Rs.1.720/Kwhr for the first 3 periods and the same is increased to Rs.2.450/Kwhr for the subsequent 3 periods. We do not have any other bid for comparison and a view has to be taken based on the single bid. In the normal circumstances capacity charges component of tariff would show a declining trend whereas in this case it is a lower figure for first 3 periods and is increased by 73 paise/Kwhr during the next 3 periods. Start date of the PPA is 19-1-2012 and the expiry date of the PPA is 31-1-2017. During the hearing, the status of power flow was asked and it was clarified by the parties that the power was delivered on short term open access basis for a period of only two days. Medium term open access for evacuation of this power

is not available upto June 2013. As regards, availability of medium term open access from June 2013 onwards, the same will be known only when a fresh application is made sometimes in next year. From this it is apparent that the availability of power from this PPA is unclear. Since power flow has not started, the levelized tariff of Rs.4.8841/Kwhr as calculated by TANGEDCO will also increase.

5.14. The Commission has made an attempt to re-work the levelized tariff. If cheaper power is not available during the period 10-12-2011 to 31-03-2013, the levelized tariff increases to Rs.5.30 per Kwhr approximately. If there is further delay in availing the medium term open access, the levelized tariff will increase further. Since the tenders were invited with certain dates for supply of power, the Commission has no choice but to adopt the levelized tariff @ Rs.4.8841 per Kwhr for the entire period covered by the PPA. The parties are advised to re-work out the tariff duly taking into account the actual date of commencement of power supply so that the levelized tariff for the supply of power does not go beyond the adopted rate of Rs.4.8841 Per Kwhr.

5.15. The petitioner shall complete all other procedures as contemplated in the guidelines issued by the Ministry of power under Section 63 of the Act.

6. Appeal:-

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.

Pronounced in the open Court on this 21st Day of June 2012.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission