

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
P.P.A.P. No.3 of 2012

Tamil Nadu Generation and
Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002.

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

Vs.

NIL ... Respondent

Date of hearing : 21-05-2012, 29-06-2012, 10-08-2012

**Date of hearing : I.A.No.1 of 2012 28-09-2012 and
13-12-2012**

Date of Order : 15-07-2013

1. P.P.A.P. No.3 of 2012 has been filed by M/s.TANGEDCO praying for approval of the purchase of power under sections 62 and 86 (1) (b) of the Electricity Act, 2003 to the tune of 6833 MU (on an average of around 810 MW) from generating companies located in the State for a period from June 2012 to 15th May 2013 and for fixing reasonable prices of the electricity under the proviso to section 62(1)(a) of the Electricity Act, 2003 and section 63 of the said Act.

2. On 21-05-2012, the said P.P.A.P. No.3 of 2012 was heard by the Commission. The Commission inter-alia observed as follows:

“The petition does not clearly bring out that the Restriction and Control Measures or the Load shedding shall be withdrawn or reduced, if this power purchase is resorted to. For a specific query from the Commission with regard to how surplus power will be handled on a real time basis and how the cost of power purchase would be optimized, the TANGEDCO sought additional time for furnishing the details. Accordingly, time was granted for filing the additional details. The Petitioner was also directed to file the petition after getting approval from the Board of Directors.

The Commission also pointed out that the process of estimation of demand is rough and talks in terms of round the clock power. To reduce the cost of power purchase under these circumstances, one option could be to call tenders with two part tariff which will enable purchase of energy according to requirements. The Petitioner is at liberty to come up with any other better alternative.

Thiru S.Gandhi, PESOT was present in the court during the hearing. At the conclusion of hearing of this petition Thiru Gandhi submitted a letter requesting the Commission to place the petition for public hearing, to ensure transparency as mandated under section 86(3) of Electricity Act, 2003. This letter of Thiru Gandhi will be dealt with in accordance with the provisions of the Electricity Act, 2003 and the Regulations made thereunder”.

3. On 29-06-2012, the said P.P.A.P. No.3 of 2012 was again heard by the Commission. The Commission inter-alia observed as follows:-

“As regards the Petitioner’s submission dated 28-06-2012 in P.P.A.P. No.3 of 2012, the prayer is for purchase of power of 6484 MUs from intra-state generators from June 2012 to May 2013. However, the Petitioner has prayed for fixing the tariff by the Commission. A perusal of the petition shows that the same

has been filed under section 63 of the Electricity Act, 2003. The same position was taken by this Petitioner in the High Court in the Writ petition referred above. The Petitioner may therefore take a view on the matter and make a proper prayer for adoption of tariff under section 63 as fixation or determination of tariff is to be done under section 62 and necessary details for the same are also not filed by the Petitioner”.

4. On 10-08-2012, the above P.P.A.P.No.3 of 2012 was again heard. The Commission directed the TANGEDCO to submit their documents such as Tender Evaluation Committee Report, Board Resolution / approval etc.,

5. On 28-09-2012, I.A.No.1 of 2012 filed by Thiru S.Gandhi, President of PESOT was taken up for admission. The prayer in the said I.A.No.1 of 2012 is to implead the Power Engineers’ Society of Tamil Nadu as Respondent in the said P.P.A.P. No.3 of 2012. The Petitioner in the said P.P.A.P. No.3 of 2012 namely M/s.TANGEDCO objected to the locus standi of the aforesaid Petitioner in I.A.No.1 of 2012 namely M/s.Power Engineers’ Society of Tamil Nadu for getting impleaded in the said P.P.A.P.No.3 of 2012.

6. On 13-12-2012, the said I.A.No.1 of 2012 in P.P.A.P. No.3 of 2012 was taken up for arguments. Thiru S.Gandhi, President of the Power Engineers’ Society of Tamil Nadu had contended that the Commission recognized the similar objections made by the Petitioner on earlier occasion. He stated that it is left to the Commission to take the said P.P.A.P. No.3 of 2012 under section 62 of the Electricity Act, 2003 or under section 63 of the said Act. He pointed out that his objection is only with regard to the cost of power. He further contended that if the said P.P.A.P. No.3 of 2012 is taken up under section 63 of the Act, then, the said

petition has to be rejected as the guidelines of the Central Government as mentioned in the said section 63 of the Act have not been followed by TANGEDCO in the instant case. Thiru K.Seshadri, Chief Engineer (PPP), TANGEDCO representing the TANGEDCO contended that every time objections are made to the executive decision of TANGEDCO in regard to purchase of power. He stated that TANGEDCO proposes to purchase the power under section 63 of the Electricity Act, 2003. He pointed out that similar issue is pending before the Hon'ble High Court of Madras. He further stated that the contention of TANGEDCO as stated in the counter affidavit filed by the TANGEDCO to the said I.A.No.1 of 2012 may be taken into consideration while passing orders in this regard.

7. In the counter affidavit filed by the Respondent to the I.A.No.1 of 2012, the following contentions are made by the Respondent namely:

a) The errors pointed out by the Commission in its order dated 29-06-2012 have been corrected and the prayer amended. As of now the petition filed is under section 63 of the Electricity Act, 2003.

b) The above impleading petition is said to be filed under section 94(3) of the Electricity Act, 2003 and under regulation 16(1) of Business Conduct Code of TNERC.

Section 94(3) of the Electricity Act, 2003 read as

"The appropriate Commission may authorise any person as it deems fit to represent the interest of the consumers in the proceedings before it".

It speaks about the powers of the Commission and does not confer any unfettered rights to a third party to get impleaded on its own. In as much as the Commission has not authorised PESOT, till date, PESOT does not have a locus standi in this petition P.P.A.P.No.3 of 2012.

Regulation 16(1) of Business Conduct Code of TNERC read as:

“The Commission may initiate any proceedings Suo Moto or on a petition filed by any affected or interested person”.

It is captioned under “Initiation of Proceedings”.

It provides for filing of a petition by any affected or interested person on which the Commission may initiate any proceedings. It does not offer any scope for filing any I.A. by a third party and calling the I.A. as impleading petition in proceedings which were already initiated and are in midway.

P.P.A.P.No.3 of 2012 is a petition filed by TANGEDCO and the regulation 16(1) of Business Conduct Code of TNERC does not allow any third party to get impleaded in another’s petition by way of filing I.A. On this account, PESOT being third party does not have the locus standi to get impleaded in P.P.A.P.No.3 of 2012 filed by TANGEDCO.

c) From a reading of the Judgement of APTEL in Essar Power Ltd., Vs. UPERC (A.P.No.82 of 2011) (Judgement dated 16-11-2011), it is clear that the process contemplated under section 62 and section 63 of the Electricity Act, 2003 are entirely different. The powers of the State Commission in respect of petitions under section 63 are also provided for, wherein, the Commission is required to exercise its jurisdiction to examine any deviations. Once stage of approval of bid documents by the Commission is crossed, the next step involves receiving the bids from the bidders and for the Licensee to identify the successful bidder/s and upon reaching a decision that it would procure the power place the same before the Commission which has the two options, viz., to determine if the tariff is in accordance with the frame work and accept it or hold that it is not in accordance with the frame

work and reject it. There is thus a defined and limited discretion available to the State Commission.

d) The impleading petition by an organisation claiming to represent consumer interest has no place in petition under section 63 of the Act. This is for the reason that the determination after the acceptance of bid is exclusively restricted to determine if the framework prescribed has been adhered to and if the licensee is of the view that it is in requirement of the power, the third party cannot seek to place its views.

e) Furthermore, any hearing of a third party such as the Petitioner would only be an empty formality or an exercise in futility as in accordance with the judgement of the Hon'ble APTEL, the State Commission is not required or allowed to consider any aspect other than compliance with the approved framework.

f) Most importantly, the impleading party is not questioning the need to procure power, such being the case, when power is being procured, which is in the exclusive discretion of the procurer and the framework has been complied with and has to be tested by the Commission, the question of impleading any 3rd party does not arise. They are not an affected party for the purposes of section 63 of the Electricity Act, 2003 and therefore lack locus standi.

8. Findings of the Commission

The Commission has already held in its Order in M.P.No.35 of 2008 that the Electricity Act, 2003 does not envisage participation of third parties in

dispute between the Generator and Distribution Licensee under section 86 of the Act.

P.P.A.P.No.3 of 2012 is filed by TANGEDCO with regard to procurement of power totalling to a quantum of 810 MW available from Generating Companies located in the southern region for a period less than one year i.e. from June 2012 to May 2013. The Petitioner has also prayed for fixing reasonable prices of electricity under the proviso of section 62(1)(a) and section 63 of Electricity Act, 2003 and subsequently stated that filing is under section 63 of the Act. The main objection raised by the Interim Applicant is that the purchase of 6833 MUs at the rate of Rs.6.2 to 6.4 per unit needs to be placed for public scrutiny. The other points raised in this IA are by and large queries of the Commission. The Commission would like to recall its direction to the TANGEDCO in its Tariff Order for the FY 2012-13 regarding compliance to the short term bidding guidelines to be issued by the Govt. of India with regard to procurement of power for a period less than one year. These guidelines were issued by Government of India on 15th May 2012. The Petitioner commenced the process of procurement of power for the period June 2012 to May 2013, much earlier and filed the petition for approval of the Commission on 7th May 2012. An earlier action to procure power was necessitated by corridor constraint and allotment of corridor based on 'first come first serve' basis. In the interim period tariff petition for the FY 2013-14 was filed by the TANGEDCO on 17-2-2013 and detailed public consultation process was held in May 2013 when true-up exercise for the FY 2012-13 was considered wherein the entire power purchase for FY 12-13 including the

quantum covered by this petition. The Commission issued a speaking order on 20th June 2013 for the Tariff for FY 2013-14. The total power purchase from trading i.e. bilateral and energy exchanges, bilateral including both within the southern region and from other regions was observed to be 6935 MUs at an average price of Rs.5.13 per KWH. The total power purchase including self generation for the FY 2012-13 amounted to 66534 MUs as against the earlier approved quantum of 70748 MUs. Since the quantum of this power purchase has already gone through a public consultation process, while doing the ture-up for FY 2012-13, no other issue survives in the IA filed by the Power Engineers' Society of Tamil Nadu represented by Thiru S.Gandhi, President.

In the light of the above, IA is disposed off.

9. Appeal

An appeal against this Order lies before the Appellate Tribunal 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