

**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

**M.P.No.13 of 2012**

Cuddalore PowerGen Corporation Limited  
Rep. by its Managing Director, T.Sankaralingam  
443, Anna Salai, Teynampet, Chennai – 600 018.

.... Petitioner

(Thiru. Rahul Balaji, Advocate for Petitioner)

**Vs.**

Tamil Nadu Generation and Distribution  
Corporation Ltd.  
Rep. by its Chairman-cum-Managing Director  
NPKRR Maaligai, 144, Anna Salai  
Chennai -600 002.

.... Respondent

**Dates of hearing: 02-05-2012, 20-11-2012 and 30-01-2013**

**Date of Order : 17-04-2013**

1. M.P.No.13 of 2012 was last heard on 30<sup>th</sup> January, 2013. The prayer of the petitioner is to pass orders extending the date for financial closure of the project till 30-04-2014 and direct the TANGEDCO, the respondent herein, to amend the PPA dated 28-09-2006 accordingly.

2. As per the PPA approved by the Commission vide order dated 24-04-2008, the financial closure should have been achieved within 12 months from the date of approval of PPA by the Commission. According to this approval, the financial closure should have been achieved by 23-04-2009. The financial closure date was extended upto 31-03-2010 by an order passed by this Commission in M.P.No.9 of 2009. The financial closure date was further extended up to 30-09-2011 by an order of this Commission in M.P.No.13 of 2010. This date was further extended upto 30-04-2012 by an order passed by this Commission in M.P.No.27 of 2011. In the present M.P.No.3 of 2012, the petitioner is seeking a further extension of time upto 30-04-2014 for achieving the financial closure.

3. The extension of time upto 30-04-2014 for achieving the financial closure is sought on the following grounds.

- (i) The existence of Vinyl Chloride Monomer (VCM) pipeline of M/s.Chemplast Sanmar Limited (CSL) at the site of the proposed power plant of the petitioner. This pipeline is stated to be causing delay in achieving financial closure of the project and steps were being taken to resolve the issue. The petitioner further states that the shifting of VCM pipeline was to have been done by 3-12-2011 which has not been done so far and the Government of Tamil Nadu is seized off the matter.
- (ii) The petitioner further submits that they have achieved substantial progress in the project implementation, including statutory

approvals, purchase of land, etc. The petitioner also submits that the land acquisition from private parties is in progress. Further transfer of Government, poromboke and temple lands is also in progress. The petitioner has also stated in the petition that they have already approached banks and domestic and foreign financial institutions to achieve financial closure of the project, but the existence of VCM pipeline in the plant area has delayed the financial closure. The petitioner has initiated fresh steps to address and conclude the financing issues in view of the comfort and assurance given by the Government of Tamil Nadu to remove the biggest impediment in the petitioner's way to achieve financial closure.

4. The petitioner further affirms that they will make endeavours and best efforts to maintain the project cost at the overall levels as approved by the Commission in April 2008. However, in the event the efforts taken by the petitioner are not adequate enough to maintain the project cost approved in principle by this Commission and should the project cost eventually be higher than the approved levels, then the petitioner would approach this Commission by filing an appropriate petition.

5. The respondent in their counter affidavit submitted that if the petitioner achieves the financial closure by 30-04-2014, the first 660 MW unit of the project is likely to be commissioned on or after 31-10-2017 and the second unit by

30-04-2018. They further indicated that they have carried out the demand supply projection for the period 2012 – 2013 to 2020 – 2021 considering 8% load growth and without spinning reserve, according to which there may be surplus in the years 2017–2018 and 2018–2019. In view of anticipated slippage in commissioning and non-off take of some of the identified projects, TANGEDCO may still require the power from the proposed project by the petitioner company.

6. The respondent has further submitted that

- (a) The capital cost of the project may be frozen at Rs.6,202 crores ( as agreed in the PPA);
- (b) Tamil Nadu Electricity Regulatory Commission may be pleased to disallow the petitioner to approach the Commission for enhancing the capital cost of the project later;
- (c) To direct the petitioner to give an undertaking to maintain the capital cost of Rs.6,202 crores as already approved by the Commission, if the Commission considers approving the request of the petitioners and
- (d) The Commission may be pleased to consider a suitable compensation payable to TANGEDCO if there is delay in completion of the project beyond the extended time period granted by the Commission.

7. The rejoinder filed by the petitioner lists out the following issues:-
- i) The Counter filed by the Respondent is contrary to the decisions taken by the Respondent organization and to substantiate this the petitioner is referring to the minutes of meeting dated 30<sup>th</sup> May, 2012 wherein approval was granted for extension of time for achieving financial closure till 30-4-2014.
  - ii) The freezing of capital cost and consequent direction are untenable in view of the Orders already passed by this Commission.
  - iii) The prayer with respect to denial of permission to the petitioner to approach this Hon'ble Commission in future is entirely untenable as it is contrary to the law and public policy and such a prayer is not maintainable.
  - iv) The claim for compensation is entirely untenable.
  - v) The relationship between parties is governed by contract and the respondent cannot seek to make a claim contrary thereto.

The Commission observes that it is not necessary to take up these issues for adjudication as there is no cause of action for the same.

8. When the petition was taken up for hearing on 30-01-2013, the representatives of M/s.Chemplast Sanmar Limited appeared before the Commission and stated that certain allegations have been made by the petitioner M/s.Cuddalore PowerGen Corporation Limited regarding the Vinyl Chloride Monomer (VCM) pipeline. Similar issue was also raised when extension of time

was discussed in 2011 and the Commission's order dated 15-11-2011 in M.P.No.27 of 2011 will be relevant and therefore extracted below :

*“ (C) There is no scope for third party intervention in the proceedings before the Commission under section 86(1)(f) of the Electricity Act 2003, which reads as follows:-*

*“adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration”*

*The learned counsel for M/s.Chemplast Sanmar Limited was in agreement with the views expressed by the Commission and stated that his intervention in this matter is limited to the allegations made against his client in this petition by the petitioner.*

*(d) In accordance with the above provisions of the Act, the Commission is unable to entertain the prayer of M/s.Chemplast Sanmar Limited to be impleaded as a third party in the present case. It was made clear to M/s.Chemplast Sanmar Limited that the Commission has no intention of recording a finding on the inter-corporate dispute between M/s.Cuddalore PowerGen Corporation Limited and M/s.Chemplast Sanmar Limited.”*

The Commission reiterates its earlier stand with regard to the dispute between M/s.Cuddalore PowerGen Corporation Limited and M/s.Chemplast Sanmar Limited. The Commission is not adjudicating upon any dispute between the parties M/s. Cuddalore PowerGen Corporation Limited and M/s. Chemplast Sanmar Limited who do not come under the jurisdiction of the Commission under section 86(1)(f) of the Act.

9. During the hearing, both the petitioner and the respondent have reiterated the stand taken by them in their written submission.

10. After perusing the written submissions and oral arguments, the Commission is of the view that the capacity addition in the State is to be encouraged and the respondent TANGEDCO has justified the setting up of this project and also expressed desire to off take power from this project. But it is also a known fact that the delay of 4 years in executing and commissioning of this plant had deprived TANGEDCO of availing this power when the power shortage in the State was at the maximum. In this respect, TANGEDCO also had been incurring extra expenditure due to purchase of high cost power. The question of awarding compensation as demanded by TANGEDCO can be considered at the time of tariff fixation. Taking all the above facts, the Commission extends the time for achieving financial closure up to 30-04-2014, subject to the condition that the actual completion cost shall not exceed the cost agreed in the PPA entered into between the parties. The petitioner should not ask for further extension of time.

**11. 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 from the date of receipt of a copy of this order by the aggrieved person.

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

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission

