

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.7 of 2012

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

..... **Petitioner**
[Represented by the
Executive Engineer,(PPP)]

Vs

1. M/s.Jindal Power Ltd.
6th Floor
NTNL Building
8, Bhikaji Cama Place
New Delhi.
2. M/s.Adani Enterprises Ltd.
Opp. to Mayor Bunglaw
Law Garden
Ahmedhabad – 380 009
Gujarat.

..... **Respondents**

**Dates of hearing : 28-09-2012, 27-11-2012, and
08-01-2013**

Date of Order : 17-04-2013

The above P.P.A.P.No.7 of 2012 came up for final hearing on 08-01-2013 before the Commission. The Executive Engineer, PPP, TANGEDCO presented the

case and explained the contents of the petition and pleaded for adoption of tariff by the Commission. No one represented for the first Respondent. The second Respondent appeared at the end of the hearing. The Commission after perusing the above petition and the connected records and after hearing arguments passes the following order:-

ORDER

1. Prayer of the Petitioner in P.P.A.P.No.7 of 2012:-

The prayer of the Petitioner in P.P.A.P.No.7 of 2012 is to -

(a) approve the process of tender undertaken by the petitioner under case 1 bidding (Tender No.02/PPMT/2011) which exceeded by 12 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 licensees.

(b) consider for adoption of tariffs for purchase of 200 MW (each) RTC Power through M/s.Jindal and M/s.Adani with levelised tariff of Rs.4.9165/Kwh and Rs.4.99/Kwh respectively as agreed by the petitioner and the respondents in Power Purchase Agreement dated 29-06-2012 in terms of section 63 of the Electricity Act, 2003.

2. Facts of the Case:-

(a) 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 01-09-2012 to 31-08-2017.

(b) The non-financial bids were opened on 18-02-2012 in the presence of the bidders / their authorized representatives by TANGEDCO. All the three bids received were opened one by one.

(c) The three bidders namely, M/s. Jindal Power Limited, M/s. Adani Enterprises Limited and M/s.OPG Power Generation Private Limited were declared as full responsive bidders and hence their financial bids were eligible for opening.

(d) The financial bids of the above three bidders were opened on 05-03-2012. The levelised tariff was calculated considering the factors notified by CERC applicable on the day which is seven days prior to Bid Deadline (18-02-2012) and arrived at as Rs.4.9165/Kwh.

(e) Negotiation meeting was conducted on 07-03-2012 with L1 and L2. During negotiation the L1 was requested to reduce the price. The L1 bidder M/s.Jindal Power Ltd. has not accepted for reduction in quoted tariff. Hence, the L2 and L3 bidder were requested to match with L1 rate. The L2 bidder M/s.Adani Enterprises Ltd has accepted to reduce the levelised tariff to Rs.4.99 / Kwh and submitted the revised financial bid on 02-04-2012. The L3 bidder M/s. OPG has not accepted to match L1 and L2 rate.

(f) The financial bid evaluation committee in its meeting held on 18-04-2012 suggested that the present value of unit rate of M/s.Jindal and M/s.Adani are in line with the prevailing market price and less than the upset price of Rs.4.00/Kwh but the present value of unit rate of M/s.OPG is higher than the prevailing market price and

upset price. The financial bid evaluation committee recommended that the rates quoted by M/s.Jindal and M/s.Adani are reasonable and acceptable and the rates quoted by M/s.OPG is not acceptable.

(g) The Board of Directors of the TANGEDCO in its 24th meeting held on 23-04-2012 accorded approval for the following:-

(i) To issue Letter of Intent (LOI) to successful L1 bidder Ms.Jindal Power Limited, New Delhi for purchase of 200 MW RTC Power sourced from Chattisgarh through Medium Term power purchase under Case –I bidding (02/PPMT/2011) for a period of five years from 01-09-2012 to 31-08-2017.

(ii) To issue Letter of Intent (LOI) to successful L2 bidder M/s.Adani Enterprises Limited, Ahmedhabad for purchase of 200 MW RTC power sourced from Gujarat through Medium Term Power purchase under Case – I bidding (02/PPMT/2011) for a period of five years from 01-09-2012 to 31-08-2017.

(iii) To authorize Director / Distribution to sign the PPA on behalf of TANGEDCO.

(iv) To seek approval of TNERC for adoption of Tariff under section 63 of Electricity Act, 2003 in line with the GOI guidelines vide section No. 6.4.

(h) TANGEDCO issued a Letter of Intent to M/s.Jindal and M/s.Adani on 26-04-2012 and accepted by M/s.Jindal on 27-04-2012. But M/s.Adani has not accepted the Letter of Indent unconditionally linking the issues in other short term tenders and accepted the LOI only on 15-06-2012. Power Purchase Agreement

between TANGEDCO and M/s.Jindal and M/s.Adani was signed on 29-06-2012. Due to delay in signing of PPA as stated above, which was neither willful nor wanton, the period got extended to 207 days.

3. Contentions of the Petitioner:-

(a) The TNERC in their order for PPAP No.1 of 2012 filed for adoption of tariff for purchase of 100 MW RTC power sourced from Lanco Anpara Power Ltd., Uttar Pradesh through M/s.National Energy Trading and Services Ltd. under Case I bidding Tender No.01/PPMT/2011 for a period of five years from 01-02-2012 to 31-01-2017 has ordered TANGEDCO to adopt the levelised tariff at the rate of Rs.4.8841/Kwh for the entire period covered by the PPA and also advised both the parties to rework out the tariff duly taking into account and actual date of commencement of power supply so that the levelised tariff for the supply of power does not go beyond the adopted rate of Rs.4.8841/Kwh.

(b) M/s.Jindal has applied MTOA for the period from 01-09-2012 to 31-03-2015 and PGCIL has cancelled the above application since the corridor has already been booked till 15-06-2013 and M/s.Jindal has applied new MTOA for the period from 01-12-2012 to 30-11-2015.

(c) M/s.Adani has applied MTOA for the period from 01-09-2012 to 30-11-2012 and 01-12-2012 to 30-11-2015. PGCIL has cancelled the above application since the corridor has already been booked till 15-06-2013.

(d) The MTOA is likely to be approved only after 15-06-2013 and assuming commencement of power after 15-06-2013, the levelised tariff for the year from 2013 to 2017 for M/s.Jindal and M/s.Adani works out to Rs.5.07 per Kwh and Rs.5.20 Kwh respectively.

4. Contention of M/s.Jindal Power Limited, the first Respondent in their Counter:-

(a) As the Petitioner has duly followed the process for procurement of power under medium term in line with the competitive bidding guidelines and accordingly tariff has been derived through transparent process of competitive bidding, the Respondent No.1 requests the Commission to adopt the tariff under section 63 of the Act.

(b) The Commission may allow 12 days extension over and above 195 days as stipulated in clause 5.19 read with Annexure 2 of the guidelines for determination of tariff by bidding process. In other words, the Petitioner has complied with the provisions of law and the Commission may adopt the tariff and allow the petition.

5. Contention of M/s.Adani Enterprises Limited, the Second Respondent in their Counter:-

(a) As the Petitioner has duly followed the process for procurement of power under medium term in line with the competitive bidding guidelines and accordingly tariff has been derived through transparent process of competitive bidding, the Respondent No.2 requests the Commission to adopt the tariff under section 63 of the Act.

(b) The Commission may allow 12 days extension over and above 195 days as stipulated in clause 5.19 read with Annexure 2 of the guidelines for determination of tariff by bidding process. In other words, the Petitioner has complied with the provisions of law and the Commission may adopt the tariff and allow the petition.

6. Contention of the Petitioner in Memorandum of Petition:-

(a) The GOI, MOP had issued guidelines for determination of tariff by bidding process for procurement of power by distribution licensee on 19-01-2005 and updated as on 21-07-2010 by exercising power under section 63 of the Electricity Act, 2003 under medium term and long term.

(b) Section 63 of the Electricity Act, 2003 states that notwithstanding anything contained in section 62, the appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

(c) Clause 6.4 of the guidelines states that the signed PPA along with the certification / certificates provided by the evaluation committee and by the procurer as provided in clause 6.2 shall be forwarded to the appropriate Commission for adoption of tariffs in terms of section 63 of the Act.

(d) P.P.A.P.No.7 of 2012 was filed on 25-07-2012 before the Commission to adopt the tariff (Tender No.02/PPMT/2011) for Power Purchase Agreement made between TANGEDCO and M/s.Jindal Power Limited / New Delhi and between TANGEDCO and M/s.Adani Enterprises Limited, Ahmedabad for purchase of

200 MW each RTC power sourced from Western Region for a period of 5 years through medium term under Case I bidding.

(e) While filing a Tariff Adoption Petition (P.P.A.P.No.7 of 2012), Medium Term Open Access approval was not granted by Power Grid Corporation of India Limited (PGCIL) upto the period 15-06-2013 and PGCIL has subsequently granted Medium Term Open Access as detailed below:-

Sl. No.	Tender No.	Name of the Bidder	Capacity (MW)	PPA/Tariff Adoption Date	Period of MTOA granted by PGCIL
1.	02/PPMT/2011	M/s.Jindal	200	PPA dated 29-06-2012	16-06-2013 to 30-11-2015 vide letter dated 06-08-2012
2.	02/PPMT/2011	M/s.Adani	200	PPA dated 29-06-2012	16-06-2013 to 31-12-2015 vide letter dated 20-09-2012

7. Finding of the Commission:-

7.1 P.P.A.P. No.7 of 2012 was filed by M/s. TANGEDCO in July 2012 for adoption of tariff for procurement of 200 MW each base load power from M/s.Jindal Power Limited, New Delhi and M/s. Adani Enterprises Limited, Ahmedabad through Case – I Bidding under section 63 of the Electricity Act, 2003 and for approval of the time taken amounting to 207 days in the bidding process time. The following issues require the consideration of the Commission.

- (1) As against the maximum permissible time of 195 days stipulated by the guidelines, the actual time taken is 207 days.
- (2) The PPA shall be in conformity with the guidelines under section 63 of the Electricity Act subject to the deviations approved by the Commission which is pending.

7.2 In this particular case, the Commission has approved the deviations with regard to Letter of Credit and certain other modifications by a separate order issued in M.P. No.24 of 2011. In all, three bids were received as follows:-

- (1) M/s. Jindal Power Limited, New Delhi : 200 MW
- (2) M/s. Adani Enterprises, Ahmedabad : 200 MW
- (3) M/s. OPG Power Generation Private Limited: 200 MW

7.3 The levelized tariff, based on the factors notified by CERC, were arrived at by the petitioner, as follows:-

- (1) M/s. Jindal Power Limited, New Delhi : Rs.4.9165 per kwh
- (2) M/s. Adani Enterprises, Ahmedabad : Rs.5.4647 per kwh
- (3) M/s. OPG Power Generation Private Limited: Rs.5.9933 per kwh

These are the levelized tariff for the delivery of power at the Tamil Nadu periphery. The Petitioner has informed that they have negotiated with the bidders for reduction in the quoted tariff. **While L1 had maintained the tariff at Rs.4.9165 per kwh, the L2 bidder is stated to have reduced the levelized tariff to Rs.4.99 per kwh and submitted a revised financial bid.** The L3 bidder namely M/s. OPG Power Generation Private Limited is stated to have not matched the L1 and L2 rates. The procurer after comparing various short term power purchase made by himself and also comparing the power procured by Maharashtra through various Case – I Bidding has now suggested power procurement from M/s. Jindal Power Limited, New Delhi and M/s. Adani Enterprises Limited, Ahmedabad to the tune of 200 MW each for the period from 1.9.2012 to 31.8.2017 as per the following quoted price subject to the adoption of the tariff by the Commission.

Period	01.09.12 to 31.03.13	01.04.13 to 31.03.14	01.04.14 to 31.03.15	01.04.15 to 31.03.16	01.04.16 to 31.03.17	01.04.17 to 31.08.17
M/s. Jindal Power Limited, New Delhi						
Fixed Charges	1.97	2.11	2.20	2.35	2.50	2.60
Variable Charges	1.80	1.80	1.80	1.80	1.80	1.80
TOTAL	3.77	3.91	4.00	4.15	4.30	4.40
M/s. Adani Enterprises Limited, Ahmedabad						
Fixed Charges	3.285	3.744	4.083	4.194	4.394	4.546
Variable Charges	0.483	0.483	0.483	0.483	0.483	0.483
TOTAL	3.768	4.227	4.566	4.677	4.877	5.029

7.4 The Board of Directors of TANGEDCO in its 24th meeting held on 23.4.2012 had accorded approval for the following:-

- (1) To issue Letter of Intent (LOI) to successful L1 bidder M/s. Jindal Power Limited, New Delhi for purchase of 200 MW RTC power sourced from Chattisgarh through Medium Term power purchase under Case-I bidding (02/PPMT/2011) for a period of five years from 01.09.2012 to 31.08.2017.
- (2) To issue Letter of Intent (LOI) to successful L2 bidder M/s. Adani Enterprises Limited, Ahmedabad for purchase of 200 MW RTC Power sourced from Gujarat through Medium Term power purchase under Case-I bidding (02/PPMT/2011) for a period of five years from 01.09.2012 to 31.08.2017.
- (3) To authorize Director (Distribution) to sign the PPA on behalf of TANGEDCO.
- (4) To seek approval of TNERC for adoption of Tariff under section 63 of the Electricity Act, 2003 in line with the Government of India guidelines vide Section No.6.4.

7.5 The Letters of Intent to both the successful bidders were issued on 26.4.2012.

While M/s. Jindal Power Limited had accepted the LOI on 27.4.2012, the other bidder namely M/s. Adani Enterprises Limited had accepted the Letter of Intent on 15.6.2012. In the present Petition, the Petitioner had prayed for approval of

the extra time of 12 days for completing the process and also to adopt the tariff for the procurement of 200 MW each RTC Power from M/s. Jindal Power Limited, New Delhi and M/s. Adani Enterprises Limited, Ahmedabad with levelized tariff of Rs.4.9165 per kwh and Rs.4.99 per kwh respectively.

7.6 The Petitioner has also filed a separate Memo on 21st November 2012 confirming the following:-

Availability of Medium Term Open Access duly granted by PGCIL in the Inter-State Network as follows:-

(a) M/s. Jindal Power Limited, New Delhi for 200 MW – MTOA granted by PGCIL for the period from 16.06.2013 to 30.11.2015.

(b) M/s. Adani Enterprises, Ahmedabad for 200 MW – MTOA granted by PGCIL for the period from 16.06.2013 to 31.12.2015.

7.7 From the above, it would be seen that no power flow took place or expected to take place for the period from 01.09.2012 to 15.06.2013 under MTOA. Thereafter, the power flow is expected to take place between 16.06.2013 to 30.11.2015 or 31.12.2015, as the case may be. TANGEDCO should endeavour to tie up the Open Access requirement for the period beyond November 2015 or December 2015 from the respective power plants till the end of the contract period, namely 31.08.2017. In view of the prevailing shortage conditions, TANGEDCO should continue to make efforts to obtain short Term Open Access for the period upto 15.06.2013 since the contract with M/s. Jindal Power Limited, New Delhi and M/s. Adani Enterprises Limited, Ahmedabad are valid during this period also.

7.8 The Table of quoted price as submitted by the petitioner and extracted in para 7.3 does not reflect the true nature of the fixed charge or capacity charge and the variable charge or energy charge. The petitioner has actually indicated the escalable component and non-escalable components of capacity charge and energy charge as fixed charge and variable charge. To get the correct picture of the capacity charge and the energy charge and their division into escalable and non-escalable components the quoted figures have been captured in the following Table to give a true representations of the escalable and non-escalable components of capacity and energy charges.

M/s. Jindal Power Ltd.

(All figures in Rs. per Kwhr)

Period	01.04.2012 to 31.03.2013	01.04.2013 to 31.03.2014	01.04.2014 to 31.03.2015	01.04.2015 to 31.03.2016	01.04.2016 to 31.03.2017	01.04.2017 to 31.03.2018
Capacity charge	-	-	-	-	-	-
Escalable						
Non-escalable	1.9700	2.1100	2.2000	2.3500	2.5000	2.6000
Energy charge						
Escalable	1.8000	1.8000	1.8000	1.8000	1.8000	1.8000
Non-escalable	-	-	-	-	-	-
Total	3.77	3.91	4.00	4.15	4.30	4.40

M/s. Adani Power Ltd. (Based on revised bid)

(All figures in Rs. per Kwhr)

Period	01.04.2012 to 31.03.2013	01.04.2013 to 31.03.2014	01.04.2014 to 31.03.2015	01.04.2015 to 31.03.2016	01.04.2016 to 31.03.2017	01.04.2017 to 31.03.2018
Capacity charge	-	-	-	-	-	-
Escalable						
Non-escalable	1.490	1.500	1.690	1.750	1.750	1.750
Energy charge	(0.285+0.105 +0.093) = 0.483	0.483	0.483	0.483	0.483	0.483
Escalable						
Non-escalable	(1.5610+0.154 + 0.080) = 1.7950	(1.99+0.174 +0.080) = 2.244	(2.139+0.174 +0.080) = 2.393	(2.19+0.174 +0.080) = 2.444	(2.39+0.174+ 0.080)= 2.644	(2.5422+0.174 +0.080)= 2.7962
Total	3.768	4.227	4.566	4.677	4.877	5.0292

7.9 Necessary certificate of the Evaluation Committee attached to the Petition is noted. The TANGEDCO should ensure that the PPA is signed in accordance with the notification issued by MOP under section 63 of the Electricity Act, 2003 read with the deviations approved by the Commission and no other deviations shall be provided for in the concluded PPA.

7.10 The tenders are invited and finalized w.e.f 1-9-2012 and going upto 31-8-2017 i.e. for a period of full 5 years. However, Open Access is becoming available only w.e.f 16-6-2013. The levelized tariff for the period 2013 to 2017 for M/s. Jindal and M/s. Adani has been indicated as Rs.5.07 per Kwhr and Rs.5.20 per Kwhr respectively in para 24 of the petition.

With the above observations, the Commission adopts the levelized tariff of Rs.4.9165 per kwh in respect of M/s. Jindal Power Limited, New Delhi and Rs.4.99 per kwh in respect of M/s. Adani Enterprises Limited, Ahmedabad for supply of 200 MW each of Round the Clock Power as prayed for, for the period discussed in this Order. The impact of non-receipt of power from the date of Award of Contract till the date of availability of open access shall be clarified by the petitioner. The PPA shall be in line with the guidelines issued under section 63 of the Electricity Act, 2003 and the deviations specifically approved by the Commission.

8. 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

