

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru.S.Nagalsamy **Member**

and

Thiru.G.Rajagopal **Member**

D.R.P.No.6 of 2013

M/s.B&G Solar Private Ltd.
New No.25, Old No.10
Sir Madhavan Nair Road
Mahalingapuram
Nungambakkam
Chennai – 600 034.

... Petitioner
Thiru Vinod Kumar
Advocate for the Petitioner

Vs

1. The Tamil Nadu Generation and Distribution Corporation Ltd.
Represented by its Chairman & Managing Director,
144, Anna Salai,
Chennai – 600 002.
2. The Chief Engineer/NCES,
TANGEDCO
2nd Floor, Eastern Wing,
144, Anna Salai,
Chennai – 2.
3. The Superintending Engineer,
TANGEDCO,
36, Saliyappar East Street,
Nagapattinam – 611 001.

....Respondents
Thiru P.H.Vinod Pandian
Standing Counsel for the Respondents

Dates of hearing : 12-04-2013 and 18-02-2014

Date of order : 15-09-2014

The above D.R.P.No.6 of 2013 came up for final hearing before the Commission on 18-02-2014. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order:-

ORDER

1. Prayer of the Petitioner:-

The prayer of the petitioner is to

- (a) Declare that the collection of Rs.15,76,300/- from the petitioner by the respondent towards construction of the transmission system for the connectivity and power evacuation of Petitioner's 1 MW Solar PV power plant by connecting the plant to the Palaiyur sub-station based on second respondent's communication in Lr.No.CE/NCES/SE/EE/WCB/AEE1/F.M/s.B&G Solar/D.2992/11, dated 18-03-2011 is illegal and contrary to law ;
- (b) Direct the respondents to refund the amount of Rs.15,76,300/- collected from the petitioner towards construction of the transmission system for the connectivity and power evacuation of petitioner's 1 MW Solar PV power plant by connecting the plant to the Palaiyur sub-station based on second respondent's communication in Lr.No.CE/NCES/SE/EE/WCB/ AEE1/ F.M/s.B&G Solar/D.2992/11, dated 18-03-2011 along with interest at 12% per annum ;
- (c) pass such other orders as deemed fit in the circumstances of the case ;
- (d) direct the Respondents to pay costs of the present proceedings to the petitioner.

2. Facts of the case:-

- 2.1. The petitioner has established 1 MW Solar PV Power Plant at Komal West Village, Kuttalam Taluk, Nagappattinam District under Rooftop PV and other

Small Solar Generation Programm (RPSSGP Scheme) of Jawaharlal Nehru National Solar Mission (JNNSM).

- 2.2. An amount of Rs.15.763 lakhs has been paid by the petitioner to TANGEDCO towards cost of erecting 11 KV power evacuation line.
- 2.3. The petitioner's contention is that they are not required to pay such amount and hence filed the present D.R.P.

3. Contentions of the Petitioner:-

- 3.1. The Government of India announced the Jawaharlal Nehru National Solar Mission (JNNSM) during November 2009 in order to promote Solar Power. In furtherance of the mission several steps have been taken by the Ministry of New and Renewable Sources of Energy (MNRE) to enhance the solar power capacity in the country. One such step is the Rooftop PV & Small Solar Power Generation Programme (RPSSGP), under which generation based incentive is payable to the distribution utility for the power purchased from solar projects selected and commissioned under the programme.
- 3.2. The Tamil Nadu Electricity Regulatory Commission issued Tariff Order No.1 of 2010 dated 27-05-2010, in respect of projects with installed capacity of 1 MW and upto 3 MW connected at HT level of distribution network (below 33 kV) and commissioned in the State under the RPSSGP. The levellised tariff for 25 years for the projects being developed under the programme was determined as Rs.18.45 per kWh.
- 3.3. A Memorandum of Understanding dated 13-07-2010 was entered into between the petitioner and the TNEB whereby the TNEB agreed to purchase the entire power generated at the petitioner solar power plant for 25 years. An Energy Purchase Agreement (EPA) dated 13-08-2010 came to be

executed between the petitioner and the TNEB whereby inter-alia it was agreed that the tariff of Rs.18.45 as determined by the Commission will be paid to the petitioner towards energy charges.

- 3.4. Clause 2 (1) of the EPA dated 13-08-2010, provides for payment of Rs.25.75 lakhs per MW by the petitioner as Infrastructure Development Charges (IDC) for establishing, operating and maintaining the line / sub-station.
- 3.5. As per the letter dated 04-12-2010 issued by the second respondent, the petitioner on 09-12-2010 paid the said amount of Rs.25.75 lakhs per MW towards IDC. The said payment is subject to the final outcome of Civil Appeal No.1304 of 2010 pending before the Hon'ble Supreme Court.
- 3.6. A meeting of all the project selected under the scheme from Tamil Nadu under the RPSSGP was called for on 02-12-2010 by the first respondent. It was informed by the officials of the first respondent that works relating to the installation of transmission line between the sub-station and the generation point will be carried out by the Board on Deposit Contribution Work (DCW) basis and the project developers will have to bear the cost. The respondent was not entitled to collect the cost of transmission lines from the project developers.
- 3.7. By letter dated 18-03-2011 issued on behalf of the first respondent, the petitioner was called upon to pay Rs.15.763 lakhs towards the transmission system for connectivity and power evacuation by connecting the petitioner's plant to the Palaiyur 110/33-11 KV sub-station. The petitioner was not required to make the said payment and the said demand of the respondents was clearly contrary to the EPA and the Regulations. However, since the project developers were totally dependent on the respondents to evacuate the

power from the power plant to be commissioned within the time limit stipulated under the programme, the project developers did not register any formal protest and under the programme the petitioner was required to commission the plant in a time bound manner and any delay in commissioning had serious financial and other implications. The Petitioner, to avoid any delay in commissioning on account of the evacuation facility not being in place, paid the said amount of Rs.15.763 lakhs and communicated the same to the respondents by its letter dated 21-03-2011.

- 3.8. The fact of the petitioner not registering its formal protest against the stand of the respondents that the petitioner will have to bear the cost of works relating to line between the sub-station and the plant during the joint meeting held on 02-12-2010 or the act of petitioner making payment of the amount of Rs.15,76,300/- as demanded by the respondents, do not amount to waiver and it cannot be said that the petitioner is estopped from seeking refund. It is well settled position that there cannot be estoppel against law.
- 3.9. By letter dated 27-11-2010 the petitioner informed the respondents that in terms of Regulation 3 of the Procurement from New and Renewable Sources of Energy Regulations, 2008 framed by the Commission, the cost of interfacing line upto the interconnection point is to be borne only by the Distribution Licensee. There was no response from the respondents to the said letter. The petitioner issued another letter dated 06-08-2011 requesting the respondents to refund the amount of Rs.15,76,300/- collected towards installation of transmission lines for evacuation of power. The second respondent by letter dated 16-08-2012, relying on the minutes of the meeting dated 02-12-2010 rejected the Petitioner's request for refund.

- 3.10. The third respondent by letter dated 18-10-2012 while forwarding the letter of the second respondent dated 09-10-2012 informed the Petitioner that the second respondent has rejected the request for refund. The second respondent's letter dated 09-10-2012 rejecting the request for refund inter-alia refers to the order passed by the Commission in M.P.No.33 of 2011 filed by M/s.RL Clean Power (P) Ltd., as the reason for not considering the petitioner's request for refund.
- 3.11. The facts of the petitioner's case are different from those of M/s.RL Clean Power (P) Ltd. The petitioner did not construct the evacuation lines on its own under the supervision of the respondents as in the case of M/s.R.L.Clean Power (P) Ltd. The petitioner does not own the transmission lines and the ownership of the transmission lines vest with the respondent and the Regulations and the clauses in the EPA between the parties clearly establish that the interface lines were to be established by the respondents at their own cost. Having not done so, the respondents are liable to refund the amounts collected from the petitioner.
- 3.12. The parties cannot give a go by to the Procurement from New and Renewable Sources of Energy Regulations, 2008 framed by the Commission. Further, the EPA between the parties also does not contemplate that the petitioner should pay the cost of construction of the interface lines. The tariff order passed by this Commission only accounts for the IDC as part of the capital cost while arriving at the tariff for generation from solar photovoltaic plants under the programme. The guidelines dated 16-06-2010 issued by the MNRE also stipulate that Distribution Utility shall provide infrastructure for evacuation of power generated.

- 3.13. The levy and collection of the additional charges of Rs.15,76,300/- collected towards installation of transmission lines for evacuation of power by the respondents is contrary to the purport of the programme of the MNRE under which the petitioner has set up its solar power generating station. In terms of the programme, the respondents are availing of generation based incentive from the Indian Renewable Energy Development Authority (IREDA) for purchasing the power from the petitioner's plant. Therefore, the petitioner's plant has, in addition to helping the state utility to meet its Renewable Energy Purchase obligation, also offset the financial burden on the State utility arising out of purchasing solar power at higher costs.
- 3.14. A dispute has arisen on account of the stand taken by the respondents in its response to the petitioner's request for refund of the amount of Rs.15,76,300/- collected towards installation of transmission lines for evacuation of power from the petitioner's solar power generating station. The EPA between the parties provides for adjudication of all disputes by the Commission in the event of they not being resolved amicably.
- 3.15. The respondent, being fully aware that it is not entitled to collect any charges towards construction of interface lines for evacuating power from the petitioner's power plant, has taken advantage of its dominant position to collect the amount of Rs.15,76,300/- from the petitioner. Such demand and collection being clearly in contravention of law, the respondents, are liable to refund the said amount to the petitioner along with interest at 12% p.a. from the date when the amount was collected. The interest amount till the date of the petition works out to Rs.3,54,473/-.

4. Contentions of the Respondents:-

- 4.1. The petitioner has established 1 MW solar PV power plant at Komal West Village, Kuttalam Taluk, Nagappatinam District under RPSSGP Scheme of JNNSM and the above petitioner's plant was commissioned on 10-06-2011. The power exported from the above said power plant is being purchased by the respondent at the rate of Rs.18.45 per unit as fixed by the Commission.
- 4.2. Under RPSSGP Scheme of National Solar Mission, seven developers including the petitioner company were selected for establishment of each 1 MW solar PV power plant across the State of Tamil Nadu. As per the above scheme, the power generated from the solar power plants has to be purchased by the State Utility i.e. the respondent TANGEDCO at the rate fixed by this Commission.
- 4.3. The Commission has fixed the power purchase tariff of Rs.18.45 per unit in its Order No.1 of 2010 dated 27-05-2010. Out of the above tariff, generation based incentive of Rs.12.41 per unit for the year 2010-2011 (with annual decrease of 3%) is to be paid by the MNRE, Government of India through Indian Renewable Energy Development Agency (IREDA) and balance of Rs.6.04 per unit is to be paid by the State Utility i.e. respondent TANGEDCO. The Commission has also approved the Energy Purchase Agreement applicable for the purchase of solar power under RPSSGP of National Solar Mission.
- 4.4. Seven developers including petitioner company, who have been selected under RPSSGP Scheme of National Solar Mission, have entered into an Energy Purchase Agreement with the TANGEDCO for supply of power to the TANGEDCO, in the format approved by the Commission in line with its Order No.1 of 2010.

- 4.5. TANGEDCO has been purchasing such high cost solar power even when the generation cost of solar PV power is under reducing trend because of drastic reduction of capital cost of power plant and technology advancement.
- 4.6. An Infrastructure Development Charges for an amount of Rs.25.75 lakhs per MW has been collected vide receipt No.170735 dated 09-12-2010. After having conducted the load flow study, it has been decided to interface the above referred power plant with the existing Palaiyur 110/33-11 KV Sub-station owned by the respondent TANGEDCO at 11KV level by erecting 11 KV line from the solar power plant to the TANGEDCO's sub-station.
- 4.7. As per the power evacuation estimate, bay extension works comes under the scope of TANGEDCO and line erection works come under the scope of the petitioner company. The above practice was adopted for all the other 6 developers.
- 4.8. A meeting was convened by the Chief Engineer/NCES on 02-12-2010 with all the 7 developers selected under this scheme and officials of TANGEDCO to discuss various issues related to the establishment of solar power plants under RPSSGP scheme of JNNSM. In the above meeting, TANGEDCO agreed to take up bay extension works on collection of IDC charges from the developers and the developers including the petitioner company agreed to bear the cost of line erection works.
- 4.9. The power evacuation estimate for providing transmission system required for the power plant has been sanctioned by the TANGEDCO vide Per CMD TANGEDCO Proceedings No.86 dated 18-03-2011. As per the above estimate,

- (a) The expenditure chargeable to M/s.B&G Solar Private Ltd., towards erection of 11 KV HT line from the power plant to Palaiyur 110/33-11 KV SS was Rs.15.763 lakhs.
- (b) The expenditure chargeable to the TANGEDCO towards bay extension work at Palaiyur 110/33-11 KV SS was Rs.11 lakhs.

The above contents were communicated to the petitioner company by the TANGEDCO vide letter dated 18-03-2011.

- 4.10. On receipt of payment of Rs.15.763 lakhs from petitioner company towards cost for erecting the 11 KV power evacuation line connecting the 1 MW solar power plant and Palaiyur 110/33-11 KV SS, TANGEDCO carried out the above work on DCW basis in addition to the 11 KV bay extension work at Palaiyur 110/33-11 KV SS. The 1 MW solar power plant of the petitioner was commissioned on 10-06-2011 and now the power is being exported to the grid of TANGEDCO.
- 4.11. While more solar PV power plants developed by the private companies are proposed to be interfaced with the existing substation owned by the TANGEDCO / TANTRANSCO, certain common works related to all solar PV power plants proposed to be interfaced with the sub-station and bay extension work related to the individual solar PV power plant are to be carried out.
- 4.12. Clause 7 (1) of the order, dated 08-01-2010 passed by the APTEL, in Appeal No.93 of 2009 specify that the expenditure incurred by the appellant, TANGEDCO for providing power evacuation facilities on behalf of the generators cannot be included in the tariff as it is a burden on the general public. In view of the above, it is appropriate to bear the entire cost of power evacuation works by the generating company.

- 4.13. While extending supply to HT consumers, those who have opted for dedicated feeder (Separate feeder exclusive for the consumer from sub-station to consumer premise upto metering point), in case of feasibility, the TANGEDCO has been in the practice of carrying out the line works along with bay extension work at SS end on DCW basis (i.e.) and the entire cost has to be borne by the HT consumer, even when the TANGEDCO is fetching revenue from the HT consumers by the way of collecting current consumption charges.
- 4.14. It is appropriate that the generator has to bear the entire cost of providing bay extension work at the sub-station and line work from the sub-station to the power plant, where the generators get benefited by selling power at higher rate especially the solar power generator M/s.B&G Solar Private Limited is getting higher rate of Rs.18.45 per unit by selling solar power to TANGEDCO as per this Commission's Order No.1 of 2010 dated 27-05-2010.
- 4.15. As per the state solar policy, the finalized rate of solar power is only Rs.6.48 per unit. As per this Commission's Order No.1 of 2010 dated 27-05-2010, IDC has been loaded in power purchase tariff. Hence, the petitioner company gets back the IDC amount by the way of power purchase tariff.
- 4.16. TANGEDCO took action for providing power evacuation facilities in respect of the petitioner's 1 MW Solar PV Power Plant at Komal West Village, Kuttalam Taluk, Nagappatinam District:
- (a) Bay extension work at Palaiyur 110/33-11 KV SS for the petitioner's power plant, has been carried out by the TANGEDCO at the cost of Rs.11 lakhs.
 - (b) Erection works of the existing 11 KV line from Palaiyur 110/33-11 SS to petitioner power plant have been carried out by the TANGEDCO on DCW basis at a cost of Rs.15.763 lakhs.

IDC amount of Rs.25.75 lakhs has been collected by the TANGEDCO from the petitioner company vide P.R.No.170735 dated 09-12-2010.

- 4.17. Regulation 3 (3) of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 reads as follows:-

“Evacuation facilities from the point of generation to the interconnection point including the required metering, protection arrangement and related other equipments and the entire interface line shall be provided by the generator as per the Commission’s Intra State Open Access Regulations, Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations and Tamil Nadu Electricity Grid Code, in force”.

- 4.18. TANGEDCO has taken a uniform stand in the erection of interface line for all the solar power plants proposed to set up under RPSSGP scheme of National Solar Mission (i.e.) the cost of interface line has to be borne by the developers on DCW basis.
- 4.19. The petitioner company without any objection has paid Rs.15.763 lakhs for the erection of 11 KV power evacuation line connecting their 1 MW solar power plant and Palaiyur 110/33-11 SS. Based on their acceptance, TANGEDCO has carried out the above power evacuation line work on DCW basis.
- 4.20. There was no objection from the petitioner’s side either on 02-12-2010 or after raising the demand vide second respondent’s letter, dated 18-03-2011 or while making payment vide petitioner’s letter, dated 21-03-2011 and after 10-06-2011, the date of commissioning of its plant. The petitioner, having failed to raise any objection at the relevant points of time before the respondent or agitating on the same before appropriate Forum, is now estopped to claim refund of the same on one pretext or other.

- 4.21. Only after more than twenty months from the date of agreement dated 02-12-2010, the petitioner has claimed refund vide their letter dated 06-08-2012. The petitioner was replied suitably vide second respondent's letter dated 16-08-2012 and all other further correspondences were also replied. However, after a lapse of more than two years from 02-12-2010, the date of agreement, the petitioner has filed the above petition. Hence, the petitioner is guilty of delay and laches.
- 4.22. The PPA conditions have to be read with the subsequent agreement dated 02-12-2010 entered into between the parties, which forms a binding contract. The petitioner, having individually and consciously taken a decision to pay the cost of the interface line, thereby waiving its individual right, if any in terms of the PPA to insist the respondent to establish the interface line for the reasons best known to it, cannot, after the acceptance, payment and commissioning of the plant, turn around to say that in order to commission the plant within the time limits stipulated under the programme, the project developers did not register any formal protest. In view of the said admission that there had been no formal protest by its developers, the petition is not maintainable.
- 4.23. The contention of the petitioner that the case of M/s.RL Clean Power (P) Limited decided by this Commission in M.P.No.33 of 2011 dated 28-09-2012 is different, is unacceptable. The only difference between the case of M/s.RL Clean Power (P) Limited and the petitioner herein is that, in the former case, the generator themselves established the line under the supervision of the Board by paying establishment and supervision charges, but in the petitioner's case they agreed to pay the cost of the line together with establishment and supervision charges and the respondents executed the work. Therefore, the said difference in the mode of executing the work cannot render the decision

of the Commission dated 28-09-2011 in M.P.No.33 of 2011, inapplicable to the case of the petitioner.

5. Contentions of the Petitioner in the Rejoinder:-

- 5.1. The petitioner incurred a total investment of Rs.1840.29 lakhs for setting up the plant in the year 2011. The tariff of Rs.18.45 per unit has been arrived at by the Commission in its tariff order dated 27-05-2010, based on varied factors including the 12% rate of interest to be paid to the banks and 19.85% pre-tax return on equity. The base rate for generation based incentive remains constant once fixed for a particular year for the entire contract period of 25 years.
- 5.2. Presently the cost of setting up a 1 MW solar power plant similar to the petitioner's plant will be approximately Rs.7.20 crores. As such to say that the generation cost of solar PV power is under a reducing trend would have no bearing in this instance.
- 5.3. In terms of the Proviso to Regulation 3 (3) of the Procurement from New and Renewable Energy Sources Regulation, 2008 the cost of interfacing the line upto the interconnection point is to be borne by the respondents and not the project proponent where the entire power is sold to the distribution licensee. The regulation being clear that the cost is to be borne by the respondents, there is no question of the parties agreeing something contrary to the regulation. The reliance placed by the respondents on the order of the Hon'ble APTEL in Appeal No.93 of 2009 is misconceived. It is not for the respondents to determine without jurisdiction what costs are appropriate to be borne by the petitioner. The respondents have acted in blatant violation of

Regulation 3 of the Procurement from New and Renewable Energy Sources Regulations, 2008.

- 5.4. The petitioner is not a HT consumer. To seek to place the petitioner, which is a generating plant and other H.T. consumers on the same plane is an untenable afterthought by the respondents.
- 5.5. The costs of generation and setting up the power plant of the petitioner far exceeds the current costs and as such for the respondents to place reliance on the recent state solar policy power purchase rate of Rs.6.48 is unjustified. While the Infrastructure Development Charges (IDC) have been made a part of the tariff, the costs of erection of evacuation lines does not become a part of the power plant itself and as such cannot be brought within the ambit of Tariff Order No.1 of 2010 dated 27-05-2010. The IDC is payable for establishing, operating and maintaining the sub-stations by the respondents and as such to claim that the IDC would be applicable even for the erection of evacuation lines would be fallacious.
- 5.6. The petitioner herein has entered into a long term agreement for supply of its entire power to the TANGEDCO and as such it is in the interests of the respondents as well that the power be evacuated from the petitioner's plant.
- 5.7. The respondent's contention that the petitioner is estopped from claiming a refund as it had paid the costs is without merit in so far as the doctrine of estoppel cannot operate as against a statute, in this instance the Procurement from New and Renewable Energy Sources Regulations, 2008.
- 5.8. The respondent having chosen not to respond to the petitioner's letters for refund cannot now state that delay is attributable to the petitioner. The fact that the petitioner has effected payment does not absolve the respondents of their statutory duties.

5.9. The reliance placed on the order of the Commission in M/s.RL Clean Power Pvt. Ltd. in M.P.No.33 of 2011, is meritless as the same circumstances do not exist. In the said case, the generator had constructed the evacuation lines itself and retained ownership of the same. However, in the case of the petitioner, the respondents are duty bound to construct the same and the petitioner had no role to play in the construction of the evacuation lines. As such in the case of M/s. RL Clean Power Pvt Ltd., this Commission held that the reason that a refund could not be directed because the lines had been constructed by M/s. RL Clean Power Pvt. Ltd. themselves. In the instant case the transmission lines have been erected, controlled and owned by the respondents and not by the petitioner. As such the petitioner had no choice to effect payment of the demanded amount for erection of the lines.

6. Findings of the Commission:-

6.1. The main prayers of the petitioner are :-

(a) Declare that the collection of Rs.15,76,300 /- from the petitioner by the respondent towards construction of the transmission system for the connectivity and power evacuation of petitioner's 1 MW Solar PV power plant is illegal and contrary to law;

(b) Direct the respondents to refund the amount of Rs.15,76,300 /- collected from the petitioner towards construction of the transmission system for the connectivity and power evacuation of petitioner's 1 MW Solar PV power plant along with interest at 12% per annum;

6.2. Clause 2(1) of the Energy Purchase Agreement (EPA) signed by the petitioner and the respondent related to the subject in question is reproduced below:

(1) The Distribution Licensee agrees to establish the interface lines up to the interconnection point. The SPG agrees to pay the infrastructure Development Charges (IDC) of Rs.25.75 lakhs per MW to the Distribution Licensee for establishing, operating and maintaining the Line / sub-station. The payment of IDC is subject to the outcome of the Civil Appeal No.130 of 2010 filed by Indian Wind Energy Association before the Hon'ble Supreme Court of India.

In this connection the clause 3(3) of the Commission's regulation on Power Procurement from New and Renewable Sources of Energy Regulations 2008 which was in force during the claim / payment of the disputed amount Rs.15.763 lakhs for the evacuation of power from the petitioner's generating plant is reproduced below:

(3) Evacuation facilities shall be provided by the State Transmission Utility (STU) /Distribution licensee as per the Commission's Intra State Open Access Regulations 2005, Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007 and Tamil Nadu Electricity Grid Code. The cost of interfacing lines, switch gear, metering, protection arrangement and related other equipments up to the interconnection point shall have to be borne by the generators, but the work shall be executed by STU/distribution licensee.

2[Provided that, in the case of sale of entire power to the distribution licensee by any new and renewable source based generator, the cost of interfacing lines up to the interconnection point shall have to be borne only by the STU/ distribution licensee.

Provided further that in case where the new and renewable source based generator referred to in the first proviso who has entered into an EPA with the distribution licensee referred to therein for the sale of entire power to the said distribution licensee decides to use such power agreed to be sold to the said distribution licensee, for his captive use or for sale of such power to a third person or to a distribution licensee other than the distribution licensee referred to above before the expiry of the period referred to in such EPA, then he shall be bound to reimburse the 3[depreciated (Written down value) cost of interfacing lines] to the distribution licensee with whom he has executed such EPA, before the wheeling of power to his captive use or sale to third person or distribution licensee other than the distribution licensee with whom the said EPA has been executed by him.]

6.3. It has been reported by the petitioner that Rs.25.75 lakhs per MW towards IDC was paid by the petitioner on 09-12-2010 as per EPA. The petitioner in his letter dated 27-11-2010 has requested the TANGEDCO to establish the interface line as per the Commission's regulation and the energy purchase agreement signed between the petitioner and the respondent. Though the request of the petitioner is in order as per the Regulation and EPA, the Chief Engineer, Non-conventional Energy Sources, TANGEDCO vide letter dated 18-03-2011 called upon the petitioner to pay Rs.15.763 lakhs towards the cost of power evacuation line to be done on DCW basis.

6.4. In support of their claim of Rs.15.763 lakhs, the respondent TANGEDCO argued that in M.P.No.33 of 2011 the Commission has declined to direct the TANGEDCO to refund the cost of interface line to the generator. The relevant Para 5.10 of the said Order is reproduced below:

5.10. The issue before the Commission in this case is the demand of TANGEDCO of Rs.67.179 lakhs for establishing interface lines from the inter connection point to the nearest sub-station of the Licensee. It is strange that the Petitioner actually executed the line by himself under the supervision of the Licensee and then questioning the right of the Licensee to claim such charges. The appropriate time for the Petitioner to come before the Commission was when the Licensee had raised the demand for payment of Rs.67.179 lakhs for the construction of interface line. Subsequently, the TNEB/TANGECO had claimed a sum of Rs.12.11 lakhs as Supervision Charges since the Petitioner M/s. R.L. Clean Power had decided to construct the interface line on their own. The Regulation clearly specifies the scope of work between the Generator and the Licensee. According to the provision of the EPA referred in para 5.8, interface line has to be constructed by the Licensee namely TANGEDCO. Since Tariff Order No.1 of 2010 considers Infrastructure Development Charges (IDC) as a part of capital cost, tariff has been worked out accordingly. The Commission also notes that no appeal has been preferred by any parties against Tariff Order No.1 of 2010 and therefore this Order has attained finality. Under these circumstances the Petitioner can only own this line and the question of directing the Licensee to refund any amount would not arise. If the issue was brought before the Commission when the claim was raised by TNEB, the case could have been dealt with in an appropriate manner based on the Regulations and the earlier orders of the

Commission. At this late stage, the Commission is not in a position to issue any directions as prayed for. Ordered accordingly.

In the above order, the following observation of the Commission is very relevant.

Under these circumstances, the TNEB/TANGEDCO ought not have claimed charges for construction of interface line. The problem has been compounded by the Petitioner by undertaking the execution of the line by himself. Since the Regulation mandates construction of interface line by the Licensee, the Commission has no choice but to rule that the claim of TANGEDCO of Rs.67.179 lakhs is not in accordance with the Regulations. However, the actual payment made by M/s.R.L. Clean Power is only Rs.12.11 lakhs towards the supervision of the construction of interface line at 22 KV voltage. This arrangement of execution of the line by M/s.R.L. Clean Power is also not in line with the EPA entered into between the parties. We are unable to direct refund of any payment because the line has been constructed by the Petitioner himself.

In the above case, the generator himself established the interface line. But in this case, the Chief Engineer, Non-conventional Energy Sources, TANGEDCO in his letter dated 16-08-2012 has reported that the TANGEDCO has carried out the power evacuation work on DCW basis. The MNRE guidelines reports invoking of bank guarantee given by the generator in case of delay in project commissioning. Therefore, there is a reason to believe that the petitioner was under pressure to pay the amount as claimed by the TANGEDCO so as to commission the project in time.

6.5. Clause 2(1) of the EPA signed between the respondent and the petitioner clearly states that the distribution licensee agrees to establish the interface line up to the interconnection point. Similarly clause 3 (3) of Commission's regulation on Power Procurement from New and Renewable Sources of Energy which was in force during the claim of the disputed amount specifies that the interface line has to be constructed by the distribution licensee / transmission licensee. Therefore the TANGEDCO's claim of Rs.15.763 lakhs from the petitioner / generator is not only the violation of their EPA but also the Regulation of the Commission. Therefore we have

no hesitation in directing the TANGEDCO to refund Rs.15.763 lakhs collected from the petitioner towards the cost of interface line. We also direct that the TANGEDCO shall pay the interest rate equivalent to respective RBI banking rate for the period between the collection of Rs.15.763 lakhs and refunding the same to the petitioner. The amount of Rs.15.763 lakhs along with interest shall be paid to the petitioner by TANGEDCO within one month of issuance of this order.

7. Appeal:-

An appeal against this order shall lie before 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 a copy of this order by the aggrieved person.

(Sd.....)
(G.Rajagopal)
Member

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission