

**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

**M.P.Nos. 9,10, 13,14,16,28,53,72 and 81 of 2013 and**  
**M.P.Nos.9 & 18 of 2014**

Tamil Nadu Generation and Distribution  
Corporation Limited  
Represented by Chief Engineer / Private Power Projects  
144, Anna Salai  
Chennai – 600 002.

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

Vs

Nil

**Dates of hearing : 17-03-2014 and 25-04-2014**

**Date of order : 15-09-2014**

**1. Prayer in the Petitions:**

Miscellaneous Petitions No. 9, 10, 13, 14, 16, 28, 53, 72 and 81 of 2013 and M.P.Nos.9 & 18 of 2014 were filed by the Petitioner, TANGEDCO with the prayer to approve and ratify the despatch of power from the high cost Independent Power Producers outside the merit order for the month of April 2013, May 2013, June 2013, July 2013, August 2013, September 2013, October 2013, November 2013, December 2013, January 2014 and February 2014, respectively.

2. The TANGEDCO has proposed to purchase power from high cost IPPs namely, M/s.GMR, M/s.SPCL, M/s.MPCL and M/s.PPN outside merit order despatch for the months from April 2013 to February 2014.

3. Clause 7.1.20 of Tariff Order No.1 of 2012 dated 30-03-2012 effective from 01-04-2012 and Clause No.2 .218 of Tariff Order No.1 of 2013 dated 20-06-2013, effective from 21-06-2013 provide inter-alia that wherever the Power Stations are to be despatched outside Merit Order, TANGEDCO shall obtain approval of the Commission in advance by furnishing reasons for such action. In case of emergencies, TANGEDCO is permitted to resort to such a practice but will approach the Commission within a week of such action along with the reasons for such action. Since the approval of the Commission has not been obtained in advance for the despatch of power outside merit order as required in the above provision of tariff orders, TANGEDCO has now sought for approval and ratification for despatching high cost power outside merit order.

#### **4. Hearing on 17-03-2014**

The above MPs were taken up for admission on 17-03-2014. During the hearing on 17-03-2014, the Standing Counsel of TANGEDCO and the Chief Engineer (PPP) have presented the case. Since all the petitions were for ratifications, as no advance approval has been obtained from the Commission, the Commission directed the Petitioner to submit the following details in three weeks:-

- a. Total demand for power, availability of power and details of power purchase made from different generators with cost of power.
- b. Whether steps have been taken to purchase cheaper power other than IPP and if so, the details therefor.
- c. Whether any cheaper power available during the relevant period was backed down or shut down to purchase IPP power.

- d. Do the short term and medium term power purchase agreements contain any clause for purchasing power at a higher level than the contracted quantum and if so, whether such provision was invoked scrupulously before resorting to power purchase from the IPPs during the periods of shortage.
- e. The agreed dates of commissioning, actual dates of trial run and the dates of commercial operation in respect of the new power plants at Mettur, Vallur and North Chennai along with the reasons for the delay in commissioning and the action taken by the TANGEDCO in this regard.
- f. Whether there is any LD clause available in the agreements and if so, steps taken to impose the LD on the contractors.
- g. Is there any clause in the contract document for recovery of loss of generation from the contractor; any such compensation recovered from any contractor.
- h. The average cost of electricity purchased from high cost IPPs and how it is proposed to be recovered from the consumers.

**5. Submissions made by the Petitioner in the Sworn Affidavit:-**

5.1. The Chief Engineer (PPP), TANGEDCO has submitted his sworn affidavit dated nil which has been received by the Commission on 15-04-2014. He has furnished certain particulars in the said affidavit in continuation of hearing on 17-03-2014. With regard to Item No.1, he has submitted that 83522.300 million units of power was in demand during April 2013 to February 2014 and that 76039.233 million units of power was available during the said period resulting in a deficit of 7483.067 million units of power. Through R & C relief, load shedding and power cut, 5008.169 million units were met in the deficit vide Annexure-I to the affidavit. The statement showing the details of power purchase made from different generators with cost of power for the period from April 2013 to February 2014 has been furnished in Annexure-II to the affidavit.

5.2. With regard to the Item No.2, the Petitioner submitted that the State Load Despatch Centre is responsible for optimum scheduling and despatch of electricity

within a State in accordance with the contracts entered into with a Licensee or the generating companies operating in their State in accordance with the section 32 (2) (a) of the Electricity Act, 2003 and that as per the data obtained from State Load Despatch Centre, after exhausting all available cheaper sources, the power was despatched from the high cost IPPs according to the grid conditions. When the contracts between TANGEDCO and the generators permit back down of power the same is being utilized whenever the grid conditions permit. There is no back down provision in Medium term contracts. In short term contracts, the contracted quantum can be backed down to 85% without compensation liability. Based on the Commission's order, M/s.MPCL and M/s.SPCL were given "zero despatch" from 17-07-2013 to 26-08-2013 by SLDC. M/s.PPN was also given "zero despatch" from 21-05-2013 to 27-08-2013 by SLDC.

5.3. With regard to Item No.3, the Petitioner submitted that as per the data obtained from the SLDC, no cheaper power was backed down and only merit order despatch was followed.

5.4. With regard to Item No.4, the Petitioner submitted that there is no provision in short term and medium term power purchase agreement for purchasing of power from the generators at a higher level than the contracted quantum.

5.5. With regard to Item No.5, the Petitioner submitted that the progress of new power plants and joint venture plants of TANGEDCO are as follows:-

Sl. No.	Name of the Project	Scheduled date of Commission-ing	Actual date of trial run	Date of COD/ Expected date of Commissioning
1	Mettur Thermal Power Project – Stage 3 (1 x 600 MW)	23-09-2011	14-09-2013 to 12-10-2013	COD on 12-10-2013

2	North Chennai Thermal Power Project–Stage II (2 x 600 MW)	Unit I 18-05-2011	06-02-2014 to 11-03-2014	Trial operation completed on 20-03-2014
		Unit II 16-11-2011	Under trial operation	May 2014
3	NTPC TNEB JV Project (NTECL) at Vallur (3x500 MW) (share 75%)	Unit I 12-10-2010	20-03-2013 to 22-03-2013	COD on 29-11-2012
		Unit II 12-03-2011	23-11-2013 to 25-11-2013	COD on 25-08-2013
		Unit III 27-09-2012	Yet to commence	August 2014

5.6. With regard to Items No.6 and 7, the Petitioner submitted that in the contract document pertaining to MTPP–Stage III, there is a provision for liquidated damages (LD) with a ceiling of 10%. In addition to the above LD, there is a penalty clause to levy penalty of Rs.107 crores per month for the delay. This penalty clause is addressing the issue of loss of generation. In the case of NCTPP–Stage-II, the LD clause is replaced and in its place a penalty clause is provided. This takes care of LD aspect and penalty aspect for loss of generation. There will be no ceiling on the maximum penalty. In respect of Vallur Thermal Power Project, the same being a joint venture project, orders have been placed by NTECL and not by TANGEDCO. The Petitioner further submitted that the issue of LD / Penalty will be dealt with at the time of closure of contracts.

5.7. With regard to Item No.8, the Petitioner submitted that the average cost of electricity purchased from M/s.GMR was Rs.10.63, M/s. SPC was Rs.11.50, M/s.MPC was Rs.11.29 and from PPN was Rs.11.44 and that the weighted average variable charge for these four units in the order of Rs.11.20 per Kwhr. TANGEDCO purchases power from CGS (thermal), IPPs, private generators, wind mills, co-gen

plants, CPPs, CGS (Nuclear) etc. and the average purchase cost is always pooled cost. Similarly sale of power is also under different category of tariff. Therefore, details regarding recovery proposal etc. will be submitted to the Commission at the time of filing of tariff petition. The Commission took note of the details furnished in the affidavit and posted the M.Ps. for final hearing on 25-04-2017. During the hearing on 25-04-2014, the Standing Counsel for the Petitioner and the Chief Engineer, PPP, TANGEDCO presented the case.

## **6. Findings of the Commission:**

6.1. Following aspects are to be taken into account in respect of purchase of power by the licensee outside the Merit Order Despatch (MOD) prescribed by the Commission. These are discussed below:

*(1) What are the factors that necessitated the distribution licensee for the procurement of costly power outside MOD.*

TANGEDCO had explained in detail that (a) slippage in the generation due to undue delay in commissioning of their own power stations and Central Generating Stations (CGS); (b) poor monsoon, and (c) increase in the consumption of various sectors of the consumers were the primary reasons for the purchase of this costly power outside MOD so as to bridge the gap. TANGEDCO had further explained that improved frequency norms had to be maintained because of stringent measures introduced by CERC which warranted extra purchase of power. It is the fact that there has been delay in commissioning the own power stations of the distribution licensee and by the central power utilities as well during the above period and shortage in both North East and South West monsoon stated by the distribution licensee is factually correct besides increase in the demand from the various categories

of the consumers. But the contract administration of the Licensee has to take responsibility for the undue delay in commissioning of its own power plants.

*(2) Whether any low cost power was deliberately backed down for the purchase of this high cost power outside MOD.*

To a pointed query of the Commission on the above aspect during the hearing on 17.03.2014, CE/Operation of TANGEDCO has filed an affidavit stating that MOD was duly followed and no low cost power was deliberately backed down to accommodate this high cost power.

*(3) What is the purpose of purchasing this high cost power which is outside MOD*

To a query by the Commission on the above aspect TANGEDCO has stated that this is purely to reduce the load shedding to some extent so that the problems faced by the consumers would be reduced to some extent.

*(4) How is the cost of power is going to be recovered?*

To a pointed query of the Commission on the above aspect during the hearing on 17.3.14, the TANGEDCO could not give proper reply but merely stated that it will be included in the ARR during the next tariff revision.

6.2. Hence, it can be seen that for the second and third queries, the response of the TANGEDCO is reasonable. However, in respect of the last query regarding recovering of this high cost of power, the response of the TANGEDCO is not justified. During the hearings, on 13-12-2012 on the same issue in earlier year, TANGEDCO was directed to identify whether this high cost of power can be sold to some of the takers like industrial consumers at landed cost so that it would be

revenue neutral to TANGEDCO. After carrying out the due process, TANGEDCO had clarified by way of an affidavit dated 22-01-2013 that it was not possible for them to supply this power as reliability power to consumers. TANGEDCO has purchased 2477 MU from these four IPPs at the weighted average variable cost of Rs.11.20 / kwhr. This works out to a total expenditure of Rs.2774 crores. The average rate of realization of TANGEDCO by sale of power is Rs.4.89 / kwhr. as per the retail tariff order dated 20-06-2013. Thus, the excess cost of power purchased is not approved for the purpose of ARR.

6.3. However, TANGEDCO could have recovered the revenue to the extent of its Average Rate of Realisation for the said power purchase. Therefore, admission to the extent of Average Rate of Realisation in respect of the above power purchase is allowed.

## **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