

**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

**I.A.No.1 of 2014**  
**and**  
**P.P.A.P. No.1 of 2014**

Tamil Nadu Generation and Distribution  
Corporation Limited  
Represented by Chief Engineer /  
Non-Conventional Energy Sources  
144, Anna Salai  
Chennai – 600 002.

... Petitioner  
(Thiru P.H.Arvind Pandian,  
Additional Advocate General for  
Thiru P.H.Vinod Kumar  
Standing Counsel for the Petitioner)

Vs

NIL

..... Respondent

**Date of hearing : 17-03-2014**

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

P.P.A.P.No.1 of 2014 along with I.A. No.1 of 2014 filed by the TANGEDCO in the matter of procurement of solar power by the TANGEDCO came up for hearing before the Commission on 17-03-2014. The Commission upon perusing the above petitions and connected records and after considering

the submissions of Thiru P.H.Aravind Pandian, the Additional Advocate General, during the hearing, passes the following order:-

### **ORDER**

TANGEDCO has filed the above P.P.A.P.No.1 of 2014 with the prayer to pass orders on the following:-

- (i) To approve the proposal of the TANGEDCO to purchase solar power of 226 MW from twenty-nine generators within the State of Tamil Nadu for a period of twenty years in pursuance of the tender floated in Tender Specification No.CE/NCES/OT No.1/2012-13 for procurement of 1000 MW of solar power for the year 2013-14 as per the Solar Energy Policy 2012 announced by the Government of Tamil Nadu for supply to SPO consumers;
- (ii) To adopt the purchase rate(s) arrived at in respect of those twenty-nine bidders under section 63 of the Electricity Act, 2003 at Rs.5.97 (10 MW), Rs.6.15 (5 MW), Rs.6.20 (15 MW) and Rs.6.48 (196 MW) per unit, as the case may be, for a combined quantum of 226 MW for the year 2013-14 with applicable escalation, so as to enable the TANGEDCO to procure solar power from those bidders by entering into power purchase agreement ;
- (iii) To approve the proposal of the TANGEDCO to accept further offers from other bidders in Tender Specification No.CE/NCES/OT No.1/2012-13 upto 31-05-2013 and / or from any other developer / person who come forward to supply solar power at the Bench-mark rate arrived at Rs.6.48 per unit for the year 2013-14 with applicable escalation and in accordance with the general terms and conditions or till overall procurement of power reaches 1000 MW.

(iv) to pass such other order or orders as this Hon'ble Commission may consider deem fit and proper.

2. The petitioner in view of developments taken place from the date of filing the above P.P.A.P.No.1 of 2014 to till date submitted that certain averments and reliefs prayed in the P.P.A.P. requires necessary amendments and has since filed I.A.No.1 of 2014 in the above P.P.A.P., wherein it has been prayed to permit the TANGEDCO –

(i) to amend the pleadings in P.P.A.P.No.1 of 2014, particularly in paragraphs 7,29, 30, 35, 37-41 suitably in line with the averments made in paragraphs 3 (i) to 3 (xxv) of the said I.A. ;

(ii) Consequently, to amend the reliefs sought for as below:-

*(a) to approve the proposal of the TANGEDCO to purchase solar power of 708 MW from 52 generators within the State of Tamil Nadu for a period of twenty years in pursuance of the tender floated in Tender Specification No.CE/NCES/OT No.1/2012-13 for procurement of 1000 MW of solar power and to meet Solar Specific RPO on the distribution licensee proposed to be specified by way of amendment to the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.*

*(b) to adopt the purchase rate(s) arrived at in respect of those fifty-two bidders under section 63 of the Electricity Act, 2003 at Rs.5.97 (10 MW), Rs.6.15 (5 MW), Rs.6.20 (15 MW) and Rs.6.48 (678 MW) per unit, as the case may be, for a combined quantum of 708 MW for the year 2013-14 with applicable escalation, so as to enable the TANGEDCO to procure solar power from those bidders by entering into power purchase agreement ;*

*(c) to approve the draft Power Purchase Agreement applicable for the purchase of solar power from 52 developers selected against tender specification CE/NCES/OT.No.1/2012-13 ; and*

*(d) to pass such other order or orders as this Hon'ble Commission may consider deem fit and proper.*

3. The petitioner has contended inter-alia that the prime objective of the policy is to augment power and to tap the environmentally benign solar power in view of shortage of power in the State of Tamil Nadu and the difficulties experienced in sourcing conventional fuels. In view of the mandate to promote the new and renewable energy sources and considering all the difficulties aforesaid, the cost factor alone may not be viewed as the sole criterion. In fact, originally the solar power was costing about Rs.18/- per unit. In view of the various promotional measures and technological development took place in the recent past, the cost of solar power has come down considerably and that many States in India and in various other countries have been evincing keen interest in tapping the new and renewable energies in every form including solar power. Viewing the issue in this angle, the cost agreed to by the TANGEDCO with the private developers in furtherance of the State Solar Policy, 2012 by way of competitive bidding route cannot be said to be high or fancy and that the tariff rate discovered by the petitioner through competitive bidding route for 20 years agreement period is competitive.

4. When the matter came up for hearing on 17-03-2014, Thiru P.H.Aravind Pandian, Additional Advocate General argued the matter on behalf of the petitioner and submitted that a transparency process has been adopted by the petitioner in the matter of finalizing the Tender Specification No. CE/NCES/OT.No.1/2012-13, with regard to proposed procurement of Solar Power from various bidders as stated in the I.A. and therefore, prayed to allow the I.A.. After hearing the arguments of the Additional Advocate General, the Commission reserved orders on the admissibility of the above P.P.A.P. as sought to be amended by the I.A.

## 5. Findings of the Commission:-

5.1. The amended prayer of the petitioner as averred in para 4 of the I.A.No.1 of 2014 in P.P.A.P.No.1of 2014 is reproduced below:

- (i) *to amend the pleadings in P.P.A.P.No.1 of 2014, particularly in paragraphs 7,29, 30, 35, 37-41 suitably in line with the averments made in paragraphs 3 (i) to 3 (xxv) of the said I.A. ;*
- (ii) *Consequently, to amend the reliefs sought for as below:-*
  - (e) *to approve the proposal of the TANGEDCO to purchase solar power of 708 MW from 52 generators within the State of Tamil Nadu for a period of twenty years in pursuance of the tender floated in Tender Specification No.CE/NCES/OT No.1/2012-13 for procurement of 1000 MW of solar power and to meet Solar Specific RPO on the distribution licensee proposed to be specified by way of amendment to the TNERC (Renewable Energy Purchase Obligations) Regulations, 2010.*
  - (f) *to adopt the purchase rate(s) arrived at in respect of those fifty-two bidders under section 63 of the Electricity Act, 2003 at Rs.5.97 (10 MW), Rs.6.15 (5 MW), Rs.6.20 (15 MW) and Rs.6.48 (678 MW) per unit, as the case may be, for a combined quantum of 708 MW for the year 2013-14 with applicable escalation, so as to enable the TANGEDCO to procure solar power from those bidders by entering into power purchase agreement ;*
- (iii) *to approve the draft Power Purchase Agreement applicable for the purchase of solar power from 52 developers selected against tender specification CE/NCES/OT.No.1/2012-13 ; and*
- (iv) *To pass such other order or orders as this Hon'ble Commission may consider deem fit and proper.*

5.2. The main prayers of the petitioner are to approve the proposal of the petitioner to purchase Solar Power of 708 MW from 52 generators and to adopt the purchase rates arrived at in respect of 52 bidders under Section 63 of the Electricity Act 2003. In this connection Section 63 of the Electricity Act 2003 is reproduced below:

*Section 63. **(Determination of tariff by bidding process):***

*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.*

The words “in accordance with the guidelines issued by the Central Government” in the said Section 63 are significant. The petitioner himself has averred in para 3 (x) of the I.A that there were no guidelines put in place by the Central Government in terms of Section 63 of the Electricity Act 2003 and the MNRE has issued draft guidelines only on 27-12-2012, that is, after the tender was invited by the TANGEDCO. As specified in the said Section of the Electricity Act 2003, guideline issued by the Central Government is a prerequisite for the transparent process of bidding. In the absence of such guidelines issued by the Central Government, the TANGEDCO’s said bidding process for procurement of solar power has no legal sanctity for consideration under Section 63 of the Electricity Act 2003.

5.3. The petitioner has contended that they have followed the terms of Tamil Nadu Transparency in Tenders Act 1998 for conducting the said bidding process. The Electricity Act 2003 clearly specifies that the transparent process of bidding shall be done in accordance with the guidelines issued by the Central Government. It is an accepted principle that **“If a statute directs a thing be done in certain way that thing shall not be done in any other way”**. In as much as Section 63 of the Electricity Act 2003 specifies that the bidding process shall be done in accordance with the guidelines issued by the Central Government. It is legally invalid to follow any other terms / procedure for the bidding process. Such principle has also been reiterated by the recent order of the Hon’ble APTEL issued on Appeal No.92 of 2013 & Appeal No.109 of 2013 filed by Tamil Nadu Electricity Consumer’s Association and Tamil Nadu Spinning Mills Association. In the said order the Hon’ble APTEL has struck

down the Commission's Order dated 07-03-2013 on "Issues related to Tamil Nadu Solar Energy Policy 2012". The Tamil Nadu Solar Energy Policy 2012 envisages Solar Power Development in the State through Solar Power Obligations (SPO) to certain consumers. Though the intention of the Government of Tamil Nadu is to promote the Solar Power in the State through SPO, the Commission's Order was struck down by the APTEL on the basis that imposing SPO for certain consumers is not legally valid and only the Renewable Purchase Obligation (RPO) is legally valid as mandated in section 86(1)(e) of the Electricity Act 2003.

5.4. The petitioner has argued that even after the lapse of a decade since the enactment of the Electricity Act 2003, no guidelines have been put in place by the Central Government in terms of Section 63 of the Act. The petitioner has also contended that the solar power has to be promoted as mandated in the Electricity Act, 2003 and policies made thereon. We appreciate the importance of promotion of solar power in the State but we only insist that it shall be done in the manner as specified by the Act and Policy made thereon. The Electricity Act, 2003 and the Tariff Policy issued by Government of India have clearly specified the manner in which the renewable power has to be promoted. The relevant clause 6.4 of the Tariff Policy is reproduced below:-

***6.4 Non-conventional sources of energy generation including Co-generation:***

*(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.*

*It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.*

*(2) Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.*

*(3) The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.*

As specified in the Tariff Policy, competitive bidding route under section 63 of the Act is not the only way to procure and promote solar power. As on date, the solar power is not in a position to compete with conventional power in terms of its full cost. In such a situation, the said policy specifies a better option of procuring such costly renewable power at a preferential tariff rate as determined by the Commission. The petitioner would have filed a tariff petition in time with the Commission for determination of such preferential tariff. This only shows that the petitioner could have very well promoted the solar energy in the State, within the existing legal frame work even in the absence of guidelines issued by the Central Government in respect of Section 63 of the Act.

5.5. In the I.A, the petitioner has contended that other SERCs have approved the tariff discovered by the licensee through competitive bidding route under Section 63 of the Electricity Act 2003 in the absence of approved guidelines issued by the Central Government. The petitioner has submitted the orders issued by the Punjab Electricity Regulatory Commission and Andhra Pradesh Electricity Regulatory Commission. It is pertinent to note that in case of Punjab, the licensee conducted the bidding process in the manner as approved by the



State Commission. Further, the said order reveals that the petition has been filed under sections 86(1)(b) and 86(1)(e) of the Electricity Act 2003 and not under section 63 of the Act. In the case of APERC, the legal position as cited by the TANGEDCO cannot be appreciated in the absence of the copies of the connected petition / materials filed by the petitioner therein. However every State Commission is empowered to approve or disapprove a specific proposal submitted by the licensee taking into consideration of the provisions of the Electricity Act 2003 and policies & regulations made thereon.

5.6. As discussed above, the petitions filed under section 63 of the Electricity Act 2003 by the petitioner suffer from the prerequisite of transparent bidding process in accordance with the guidelines issued by the central Government. In the absence of such guidelines issued by the Central Government, the TANGEDCO's said bidding process for procurement of solar power has no legal sanctity for consideration under Section 63 of the Electricity Act 2003.

5.7. In the light of the findings in para 5.1 to 5.6 above both P.P.A.P.No.1 of 2014 and I.A. No.1 of 2014 in the above PPAP No.1 of 2014 are hereby dismissed.

**6. 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