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

PRESENT:-

Thiru S. Akshayakumar …. Chairman

Thiru.S.Nagalsamy …. Member

and

Thiru.G.Rajagopal …. Member

P.P.A.P.No.2 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.Aravindh Pandian)
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Additional Advocate General for
Standing Counsel for the Petitioner)

Vs

M/s.GMR Power Corporation Limited,
Represented by its Managing Director,
No.1, Pullianthope High Road,
Basin Bridge,
Chennai – 600 012.

….Respondent
(Ms.Revathi M.Kannan
Advocates for the Respondent)

Dates of hearing : 17-03-2014; 29-04-2014; 21-07-2014 and 19-09-2014

Date of order : 13-02-2015

The above P.P.A.P.No. 2 of 2014 came up for final hearing before the Commission on 19-09-2014. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order.

In this order, the Chairman and Thiru G.Rajagopal, Member (per majority) have passed an order with the findings in paragraph 8 hereunder. Thiru S.Nagalsamy, Member has passed a dissenting order which is added at the end.

ORDER

1. Prayer of the Petitioner:-

The prayer of the petitioner is-

(a) to approve the procurement of power from M/s.GMR Power Corporation Limited for a period of one year i.e. from 15-02-2014 to 14-02-2015 subject to the Merit Order Dispatch in force by extending the Power Purchase Agreement (PPA) under proviso of Article 2.1 (c) of PPA, with fresh tariff, commercial terms and conditions ; and

(b) to permit TANGEDCO to file proposed tariff, commercial terms and conditions after negotiation.

2. Facts of the case:-

2.1. Based on the guidelines issued by Government of India, the initial batch of power projects were awarded on the basis of negotiations between the State Electricity Board and power producer. This is otherwise known as the Memorandum of Understanding (MOU) route. This was permitted till 18-02-1995 by the Ministry of Power, Government of India. As per the said guidelines, an MOU was signed on 13-01-1995 and a Power Purchase Agreement (PPA) was executed on 12-09-1996 between Tamil Nadu Electricity Board (now TANGEDCO) and M/s.GMR Vasavi

Power Corporation Ltd. (now M/s.GMR Power Corporation Limited) for a term of 15 years. The norms for the operation of the power project is as per the notification dated 30-03-1992. The power project consists of 4 units of 49 MW Diesel Engines each, totaling to 196 MW.

2.2. The project site is located at Basin Bridge, Chennai on an extent of 29.03 acres of land which is leased by TANGEDCO to M/s.GMR for a period of 20 years from 26-03-1997. The 20 years period was construed, considering a construction period of 3 years, operation period of 15 years and demolition period of 2 years. The present Land Lease Agreement (LLA) between TANGEDCO and M/s.GMR is valid till 25-03-2017. The fuel for the power plant is Low Sulphur Heavy Stock (LSHS) / Low Sulphur Furnace Oil (LSFO).

2.3. As per Techno Economic Clearance of Central Electricity Authority (CEA), New Delhi, the capital cost of the project was Rs.756.778 crores. The capital cost approved by CEA was Rs.854.449 crores.

2.4. After erection and testing, the power project achieved commercial operation on 15-02-1999 and a PPA was entered between the Petitioner and the Respondent for a period of fifteen years. The term of the PPA was due to expire on 14-02-2014 i.e. at 00.00 hrs. on 15-02-2014 with M/s.GMR Power Corporation Limited. The present P.P.A.P. is filed by the Petitioner to extend the PPA.

3. Contentions of the Petitioner:-

3.1 M/s.GMR Power Corporation Limited has requested the Petitioner to consider the renewal of the PPA for further period.

Article 2.1 (b) of the PPA dealing with "Term and Effective Term" is as follows:-

This agreement shall have a term (the "Term") commencing on the date hereof and expiring on the date of the fifteenth (15th) anniversary of the Commercial Operation Date of the last unit to be placed in commercial operation unless earlier terminated in accordance with the terms hereof. The "Effective Term" shall commence on the Effective Date (as notified to TNEB by the company) and expire on the date of the fifteenth anniversary of the Commercial Operation Date of the last unit to be placed in commercial operation, unless earlier terminated in accordance with the terms hereof."

Article 2.1 (c) of the PPA dealing with Extension of Term of the PPA is as follows:

"TANGEDCO may request an extension of the term and the effective term for 3 further period of five (5) years. Such request shall be made in writing not less than 18 months (14-08-12) before the scheduled expiry of the then current terms or at such times as the parties shall otherwise agree. Within a reasonable time after such a request is made, the parties shall enter into good faith negotiations regarding whether such an extension shall be effected and the term and conditions thereof, including provision for additional capital costs to modernize and renovate the project."

3.2. The tariff for the electricity supplied by M/s.GMR consists of two components:

(a) Fixed charges (consisting of interest on working capital, Operation and Maintenance expenses, Return on Equity, Depreciation & Interest on Debt).

(b) Variable Charges (fuel charges).

The following table shows the fixed and variable charges paid by TANGEDCO to M/s.GMR for the years 2006-07 to 2013-14 (upto November 2013).

Sl. No.	Year	Fixed Charges (Rs./ Unit)	Variable Charges (Rs. / Unit)	Total Cost (Rs./Unit)
1	2006-07	1.91	4.55	6.46
2	2007-08	1.42	5.37	6.79
3	2008-09	1.47	6.25	7.73
4	2009-10	1.59	6.16	7.75
5	2010-11	1.74	7.15	8.90
6	2011-12	1.78	9.45	11.23
7	2012-13	2.74	10.41	13.15
8	2013-14 upto Nov. 2013	1.89	10.30	12.19

3.3. Due to high variable cost of power generated from M/s.GMR, the Commission in the Tariff Order for the year 2012-13 and for the year 2013-14, approved only fixed charges to M/s.GMR Power Corporation Limited. The power plant of M/s.GMR is not listed under Merit Order Dispatch. The Commission further ordered that whenever the above power station is to be dispatched 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. Hence, as per the above order, the power plant of M/s.GMR has to be maintained at zero generation, during normal course save in case of emergencies.

3.4. Due to expiry of PPA of M/s.GMR on 15-02-2014, the Commission allowed fixed charges to M/s.GMR upto February 2014 only in the tariff order for the year 2013-14.

3.5. The present average demand of Tamil Nadu grid is around 12,000 MW. But due to various constraints, TANGEDCO could meet the demand of around 9000 MW only leaving a deficit of around 3000 MW. The present power availability of TANGEDCO is as follows:-

a. Existing Base Load Projects

Sl. No.	Type of Plant	Capacity in MW
1	Existing TANGEDCO owned thermal power plants (MTPS, TTPS & NCTPS)	2520
2	TANGEDCO owned Gas Plants	396
3	Independent Power Producers (ST-CMS, Lanco and Pioneer)	400
4	Central Generating Stations Tamil Nadu share (excluding JV)	2939
	TOTAL	6255 MW

Considering the availability of 80%, the net available capacity is about 5000 MW only. Availability from hydro stations is not considered since hydro stations are dispatched for meeting the peak demand. Wind also being infirm in nature and seasonal, is not considered.

b. Ongoing TANGEDCO and Joint Venture Projects:

Sl. No.	Type of Plant	Capacity in MW
1	Mettur Thermal Expansion	600
2	North Chennai Stage – II	1200
3	Vallur Joint Venture (2 Units)	700
	TOTAL	2500

The plants are yet to stabilize and face uncertainty of coal supply in spite of signing of Fuel Supply Agreement.

From these new stations, the present availability is of the order of 1900 MW.

c. Expected additions upto 31-03-2015:

Sl. No.	Type of Plant	Capacity in MW
1	NLC-TNEB Joint Venture, Tuticorin	387
2	NLC-TS-II Expansion	230
3	Kudankulam I & II	925
	TOTAL	1542

Out of the above 3 projects, the present realization is around 200 MW only from Kudankulam as Tamil Nadu's share.

3.6. Considering the existing TANGEDCO's plants, ongoing TANGEDCO and Joint Venture projects, CGS projects to be commissioned till 31-03-2015 and MTOA power purchase of 500 MW the total available power to TANGEDCO will be around 7600 MW. The forecasted peak demand for the year 2013-14 is 15,736 MW as per 18th EPS survey of CEA. The yearwise demand of 18th EPS of Tamil Nadu is as follows:-

Year	Demand in MW
2013-14	15736
2014-15	17497
2015-16	19489
2016-17	20816

The deficit is being managed with difficulty by means of short term purchase, exchange purchase, Restriction & Control measures etc.

3.7. TANGEDCO has signed PPAs with private power projects for 3330 MW for 15 years, under long term basis. Out of this 1172 MW is located within Tamil Nadu and balance 2158 MW is located outside Tamil Nadu like Orissa, Chatisgarh, Maharashtra and Jharkhand. Even from the 1172 MW within Tamil Nadu M/s.IL&FS will be supplying 540 MW only from alternative source till the end of 2014. M/s.Coastal Energen Pvt. Limited for supply of 558 MW, has given a scheduled delivery date of 01-06-2014. Since major private plants of Tamil Nadu are yet to declare commercial operation, a definite time frame cannot be predicted as the new plants have to overcome teething problems generally associated with such events. Therefore, 2698 MW out of 3330 MW has to come from inter regional transmission corridor of which one circuit has been commissioned on 01-01-2014 and it is under trial operation. Another circuit is likely to be commissioned by June 2014.

3.8. One of the 765 KV Double Circuit line from Sholapur-Raichur has been commissioned on 01-01-2014 and may be put into commercial operation in stages over a period of time which could be 6-8 months, going upto November 2014. Also evacuation of the entire 2698 MW will depend upon available transmission capacity based on reliability margin. Therefore, TANGEDCO has to fend for itself with the available sources till the last quarter of 2014-15. The Lok Sabha elections are due to take place in May 2014. Due to North East monsoon deficit of 40%, already dry spell is prevailing in Tamil Nadu. In summer, the load demand will go up. The Election Commission of India usually issues instructions to maintain uninterrupted supply for prepoll activities, during polling and counting etc.

3.9. Due to its strategic location M/s.GMR Power Plant is a useful emergency spinning reserve for the Chennai network in case of major power generation disruption in North Chennai and Vallur Power Plants. TANGEDCO is availing power from M/s.GMR with an installed capacity of 196 MW since December 1998. The following factors necessitate the availability of GMR in the present critical network conditions prevailing in Chennai city and power position.

3.10. Breakdown of the following 230 KV lines feeding to Tondiarpet 230 KV sub-stations occurs frequently because of the coastal area, chemically polluted atmosphere, kite and bird disturbances.

a. 230 KV Tondiarpet - NCTPS feeder I & II
b. 230 KV Tondiarpet - Manali feeder
c. 230 KV Tondiarpet - Basin Bridge feeder

Due to total supply failure at Tondiarpet 230 KV sub-station, supply to the sub-stations viz 110 KV Mylapre, Valluvarkottam, Vyasarpadi, High Court, Nandanam, Sevenwells, Chintadaripet and also to 230 KV Mylapore SS get affected which in turn affect the vital locations namely General Hospital, High Court, Secretariat Complex, Central Railway Station, Egmore Children Hospital, VVIPs residential areas etc. Apart from many such past occurrences even in the recent past such disturbances had occurred on 31-07-2013, 04-08-2013 and 13-10-2013 causing interruption to the above area for more than two hours. The availability of

GMR enabled TANGEDCO for early restoration of supply to the above affected areas.

3.11. In the prevailing winter season also, four numbers of evacuation lines of NCTPS out of eight lines namely 230 KV Gummidipoondi, Sriperambudur, Kilpauk and ETPS lines got tripped due to mist on 06-02-2012. Also, there are occurrences when two units of NCTPS out of three units got tripped due to various reasons which caused much difficulty in maintaining supply to the Chennai city due to line loading, low voltage and cascade tripping. Under these circumstances, the quantum of 196 MW from GMR at prime location of Chennai city only enables quick restoration of supply to the important institutions frequented by the public like High Court, Rajiv Gandhi Government General Hospital, Central Railway Station etc.

3.12. The existing Chennai network necessitates restricting line loading especially in 230 KV Basin Bridge-Mylapore and 230 KV Manali-Mylapore feeders which requires availability from GMR to ensure stable and secured operation of the Chennai network since both the above feeders only are from NCTPS and no alternative source is available to Mylapore SS. The alternative source from Taramani to Mylapore by laying a new 230 KV cable is under progress. Even after completion, the above cable commissioning of 400 KV SS at Sholinganallur will only solve the transmission constraints to Mylapore SS. Hence till such time the availability of GMR will be useful.

3.13. Out of all the generating stations available in the Chennai city i.e. NCTPS, ETPS, Vallur Joint Venture, GMR and Basin Bridge, only GMR and Basin Bridge are having self-start facility. Hence, during the blackout of the Chennai city start-up supply could be availed only from GMR and Basin Bridge. However, as a variable cost of BBGTPS is very high at about Rs.23/Unit due to high cost of naphtha as fuel, the availability of GMR with less variable cost compared to Basin Bridge will be more prudent in the case of blackout restoration. At present three machines in Basin Bridge are operated on condenser mode for voltage improvement in those areas and converting them into generator mode will take 30 to 45 minutes. Restoration of thermal units will take two to six hours and Chennai being the state capital, early restoration of essential loads including VVIP areas is vital which is facilitated by GMR.

3.14. M/s.GMR is located in the load centre of Chennai city feeding vital areas such as High Court, Government Hospital, Secretariat complex, Central Railway Station, Egmore Children hospital and VVIP's residential areas. The Chennai city demand is expected to go beyond 3000 MW during the ensuing summer season and also requires reactive power more than 1000 MVAR to mitigate the low voltage problems for which GMR is also feeding some reactive power.

3.15. Unforeseen fire accidents and breakdown of equipments in the upcoming new projects viz. NCTPS Stage II, Vallur JV and MTPS Stage III are delaying the stabilization of the projects which also necessitates the availability of GMR within an appreciable quantum of 196 MW. Further managing the ensuing summer demand coupled with commitment to ensure power supply to the student community on account of public examinations and provision of uninterrupted supply of power during parliamentary elections scheduled in April-May 2014 necessitates availability from GMR and loss of 196 MW in this critical power position will make the grid management difficult.

3.16. CERC has brought amendment in the Regulations viz. IEGC Code 2014 and Deviation Settlement Mechanism and related matter Regulations, 2014 by narrowing down the operating frequency from 49.7–50.2Hz to 49.90–50.05Hz to be implemented from 17-02-2014. The implementing agency SRLDC Bangalore vide section 5.2 (j) of IEGC, is not allowing the constituents to draw more than 100 MW, as unscheduled interchange irrespective of frequency which is practically very difficult with infirm wind power variations of more than 3000 MW and with less hydro potential for which a firm quantum of 196 MW from GMR as firm power will be useful. Due to the above said problems related to the transmission line elements, generation and upcoming new projects, blackstart restoration procedures, strengthening of transmission networks, the present availability of GMR is required to be continued for a period of one year.

3.17. Considering the demand and supply, aforesaid breakdowns and the prevailing uncertain power scenario, a proposal for extending the PPA with M/s.GMR under terms and conditions to be fixed afresh by negotiation was submitted to TANGEDCO's Board seeking approval-

(a) to extend the PPA of M/s.GMR for one year initially and renewable on need basis thereafter if required

(b) to authorize CMD & Director (Finance) to negotiate the tariff, commercial terms and conditions with M/s.GMR; and

(c) to file a petition before the Commission seeking approval in this regard.

3.18. The Board of TANGEDCO in the meeting held on 07-01-2014, approved the above proposal. The negotiations between TANGEDCO and M/s.GMR are under way and TANGEDCO will submit the final outcome to the Commission in due course for its approval.

4. Contention of the Petitioner in the Interlocutory Application dated 07-03-2014:-

During negotiation, M/s.GMR sought Rs.168.52 Crores of annual fixed charge and variable charge as per then existing PPA. M/s.GMR also came with a proposal for additional capital investment of Rs.15 Crores, Return on Equity and Depreciation on the additional capital cost. After prolonged negotiation, the tariff for the power supply was mutually agreed by TANGEDCO and M/s.GMR as detailed below:-

4.1. Return on Equity:-

The historical capital cost of M/s.GMR's Power Plant as fixed by CEA on 23-02-2011 is Rs.854.449 Crores. This capital cost consists of equity of Rs.238.7 Crores and Rs.615.8 Crores as debt. For the entire PPA period of 15 years of M/s.GMR has been paid return on a portion of the project assets equivalent to the value of invested equity @ 16% p.a. In addition foreign exchange rate variation was also paid to this return as per the PPA provisions. As per CERC Tariff Regulations, the balance value of the project is to be arrived after deduction of accumulated depreciation. In the present case, there is no expenditure towards R & M. Hence, the tariff is to be computed for the balance value of 10% only, i.e. Rs.85.44 Crores. The Commission's (Terms and Conditions for Determination of Tariff) Regulations–2005, para 22 (1), the rate of return on equity is 14%. Hence, the same is adopted for 10% of the project cost i.e. Rs.85.44 Crores i.e. RoE of Rs.11.96 Crores per annum.

4.2. O & M Expenses:-

The total O & M expenses claimed during the previous 5 years 2009-10 to 2013-14 was Rs.186.94 Crores. The average of Rs.186.94 Crores comes to Rs.37.38 Crores. The average should be escalated @ 4% to arrive at the O & M for the current year i.e. base year. Hence, the O & M expense works out to Rs.38.88 Crores.

4.3. Interest on Working Capital:-

Regulation 26 of the Commission's (Terms and Conditions for Determination of Tariff) Regulations, 2005 provides the norms for working capital for Liquid Fuel Stations. The target availability was arrived as follows:-

Year of Operation	Actual PLF achieved by the Respondent's power plant in %
2011-12	50.3416
2012-13	35.8918
2013-14	46.9133
Average	44.3822

In all probability the expected PLF may be more or less in the range of above actual PLF. Therefore for working capital requirements a target PLF of 50% was considered and the following components were included to working capital:-

(i) 15 days fuel
(ii) 30 days lube
(iii) 1% of CEA cost for maintenance spares
(iv) One month O & M Expenses
(v) 60 days receivables.

This works out to Rs.26.38 Crores / year.

Annual Fixed Charges:-

Components of fixed charges per annum	Proposed Tariff (Rs.in Crs)
Return on Equity	11.96
O & M Expenses	38.88
Interest on Working Capital	26.38
TOTAL	77.22

4.4. Variable Cost:-

Station Heat Rate:-

The normative Station Heat Rate of 1906 Kcal / Kwhr, same as of the Power Purchase Agreement dated 12-09-1996 is considered. No approved norms for Station Heat Rate for LSHS operated plants are available. The previous year's Lower Calorific Value of LSHS supplied by M/s.HPCL to M/s.GMR's plant of 9750 Kcal / Kg is adopted for arriving specific fuel consumption. Thus the

Specific Fuel Consumption = Station Heat Rate / Lower Calorific Value of LSHS
= 1906 / 9750 = 0.1954 kg / Kwhr.

Lube Consumption:

M/s.GMR requested flat rate of Rs.0.21 / kwhr at lube consumption of 1.464 gm / kwhr based on the actual consumption of lube oil for the period 2009-10 to 2013-2014 against the past PPA normative of 1.2 gm / KWhr. This was agreed to since the station has completed its useful life period of 15 years and the lube consumption is likely to be higher as no R&M is allowed. Hence, M/s.GMR's request of Rs.0.21/kwhr at 1.464 gm/kwhr was accepted.

Auxiliary Consumption:

M/s.GMR requested auxiliary consumption at 3.67% based on the average actual consumption for the period 2009-10 to 2013-14 against the past PPA normative value of 3%. Hence, the request was agreed to since the station has completed its useful life period of 15 years and auxiliary consumption is likely to be higher as no R & M is allowed.

The net meter energy will be marked up for 3.67% of auxiliary consumption to arrive at gross generation. The fuel price will be determined by weighted average method. The variable charge will be paid for the marked up gross energy. The variable charge consists of Fuel Charge per unit + Lube charge of Rs.0.21/Unit. The approximate per unit variable charge at the present LSHS price of Rs.54,386/MT will be Rs.11.25/Kwhr.

4.5. Other Payments:-

(i) Income Tax:

TANGEDCO has agreed to pay the income tax of Rs.3.17 crores to M/s.GMR for the Return on Equity of Rs.11.96 Crores.

(ii) HPCL fuel facility charges:

TANGEDCO has agreed to pay a sum of Rs.3.50 crores per annum towards the charges for the fuel facility provided by M/s.HPCL at the plant site, in line with Fuel Supply Agreement provisions entered between M/s.GMR and M/s.HPCL.

(iii) Start Stop Expenses:

TANGEDCO agreed to pay a sum of Rs.15,000/- per one start and Rs.10,000/- per one stop, for such start / stop operations carried out as per the instructions of SLDC.

(iv) Land Lease Rent:

TANGEDCO agreed that the existing monthly lease rent of Rs.49,57,655/- shall be paid by M/s.GMR to TANGEDCO for the 29.03 acres of land leased by TANGEDCO to M/s.GMR. This may be claimed from TANGEDCO by way of supplementary invoice by M/s.GMR. Both sides have agreed to abide by the final verdict of the Hon'ble Supreme Court of India in the pending Civil Appeal No.4913 of 2012 with regard to lease rent.

4.6. Other terms:-

(i) Billing period:-

The billing period shall be from 00:00 Hrs. on 15th of the every month to 24:00 Hrs. of 14th of succeeding month.

(ii) Payment terms:

The monthly invoices and other payments will be made by TANGEDCO to M/s.GMR directly.

(iii) Rebate:-

A rebate of 2.5% can be availed by TANGEDCO from the monthly tariff invoices (for both fixed and variable charges), if TANGEDCO makes the payment to M/s.GMR within 7 days from the date of receipt of invoice. For payments made from 8^{th} day to 30^{th} day TANGEDCO can avail 1% on the invoice amount. No rebate is applicable on supplementary invoices and TANGEDCO has to make payments to M/s.GMR within 30 days from the date of receipt of such supplementary invoices.

(iv) Interest on delayed payment:-

TANGEDCO has agreed that for all the invoices (tariff invoice and supplementary invoice) the payments made beyond 30 days from the date of receipt of invoice, a belated payment surcharge @ 12% simple interest is payable to M/s.GMR.

TANGEDCO has agreed to make provisional payment for the power supplied by M/s.GMR to TANGEDCO as below, till approval of the tariff by the Commission.

Variable Charges:-

1.25% of the monthly variable charges shall be retained by TANGEDCO and the balance of 98.75% amount shall be paid to M/s.GMR and for the payments of 98.75% paid to M/s.GMR within the stipulated time, TANGEDCO can avail rebate as applicable.

Fixed charges:-

TANGEDCO has to pay Rs.5.75 Crores out of monthly fixed charge of Rs.6.44 Crores. For the fixed charge of Rs.5.75 Crores paid to M/s.GMR within the stipulated time TANGEDCO can avail rebate as applicable.

4.7. Establishing a new 196 MW power plant requires an investment of Rs.1176 Crores at a minimum of Rs.6 Crores / MW and lead time of 2 to 3 years. By this proposal, TANGEDCO will be able to hire the power plant of M/s.GMR for Rs.77.22 Crores / Annum, and it is considered to be economical. Nearly 3000 MW capacity thermal power plants are located at North Chennai area. In the event of any major breakdown in the grid, start-up power from M/s.GMR plant will be useful to bring back the thermal power plants to operation and considering the opportunity cost, towards early restoration and reducing the downtime, the proposed tariff of M/s.GMR is considered as reasonable. The Board of TANGEDCO in the meeting held on 26-02-2014, approved the above tariff proposal for the power procurement from M/s.GMR for the period from 15-02-2014 to 14-02-2015.

4.8. The monthly fixed charges payable would be Rs.6.44 Crores. This amount shall be paid in full subject to monthly availability of 80% of the plant capacity of 196 MW and should there be shortfall in availability, the same shall be paid on pro rata basis.

5. Contention of the Petitioner in the affidavit filed as directed by the Commission on 17-03-2014:-

5.1. Article 2.1 (c) (Extension of Term) of the PPA dated 12-09-1996 executed between TANGEDCO and M/s.GMR states that TANGEDCO may request an extension of the term which request shall be made in not less than 18 months prior to the scheduled expiry of the then current term of the PPA.

5.2. During the year 2012, i.e. prior to 18 months before the scheduled expiry of the PPA with M/s.GMR, TANGEDCO expected that from the year 2014 onwards there may not be acute power deficit to the grid of Tamil Nadu since the TANGEDCO owned 2 x 600 MW North Chennai Thermal Power Project, Stage-II, 1x 600 MW Mettur Power Project Stage II and 2 x 500 MW TANGEDCO & NTPC Joint Venture Power Project were in advanced stage and would be commissioned, thereby increasing the availability of supply by around 2500 MW to the State's generating capacity. Hence, TANGEDCO did not avail the option to seek an extension of the PPA with M/s.GMR prior to 18 months of the scheduled expiry of the initial term of the PPA. Further, if TANGEDCO had taken the decision to extend the PPA, prior to 18 months of scheduled expiry and if the new projects had come in time as expected, then it would have been considered as unwise decision, considering the cost factor of M/s.GMR Power Plant. In a new project, expected COD and actual COD are common and usual to any project anywhere in our country.

5.3. The new projects underwent unexpected delays and faced a lot of operational problems during the trial run period and other unforeseen outages which have delayed the regular operation of the projects. Till a machine gets stabilized in all respects under a new project, it cannot be counted for reliable generation capacity addition for the purpose of demand management. In view of the above, particularly the essentiality to supply uninterrupted power for school examinations during the months of March / April, for smooth conduct of Parliamentary elections and to meet the summer demand, it was considered that M/s.GMR could not be dispensed with at this point of time under prevailing conditions. Therefore, M/s.GMR's request for further extension of PPA was considered for processing.

5.4. Clause 2.1 (c) of the PPA in vogue which reads as "***or at such times as the parties may agree".*** As per the above said proviso any of the parties can seek extension of the PPA but the extension shall be on mutual agreement. The very fact that the decision to extend the PPA for one year under fresh terms was taken only at the last minute shows that TANGEDCO earnestly tried to avoid any extension to M/s.GMR power of high cost. On careful consideration, it emerged that there was no other alternative till such time new projects stabilize, Transmission corridor from NEW grid to Southern Grid become available to the fullest extent, ongoing Chennai Region Associated Transmission System (ATS) works get completed etc. Therefore, the Board of TANGEDCO in the meeting held on 07-01-2014 considered the proposal of M/s.GMR to seek extension and accorded its approval to extend the PPA with M/s.GMR for one year period i.e. from 15-02-2014 to 14-02-2015 after the scheduled expiry of the PPA, with directions to negotiate commercial terms and conditions.

5.5. Based on the Board's approval, the TANGEDCO was negotiating terms and condition of supply with M/s.GMR. However, as the final terms and conditions could not be finalized upto 12-02-2014, pending finalization of terms and conditions, the present PPAP was filed on 12-02-2014 itself, i.e. before the expiry of the PPA on 14-02-2014.

5.6. After filing of the petition both TANGEDCO and M/s.GMR have agreed to the revised terms and conditions of supply as contained in M/s.GMR's letter dated 14-02-2014. TANGEDCO was in urgent need of M/s.GMR's power of 196 MW and continued to avail supply. The revised terms and conditions were placed before the Board meeting of TANGEDCO held on 26-02-2014 and the Board of TANGEDCO approved the negotiated tariff, terms and conditions. Thereafter, the I.A.No.1 of 2014 seeking approval of this Commission was filed on 07-03-2014. As such, there is no intentional delay on the Petitioner's part in seeking approval of the Commission.

5.7. Regarding average cost of realization of power for TANGEDCO for the year 2013-14 as sought by the Commission in the daily order dated 17-03-2014, it is submitted that the average rate of realization of power for TANGEDCO for the year 2013-14 is Rs.5.50 / Kwhr. as per budget estimte

5.8. The month-wise details of cost of power consisting fixed charges and variable charges of M/s.GMR Power Corporation Ltd. for the period from 01-04-2013 to 14-02-2014 are as below:-

Monthly billing period	Fixed Charges / Kwhr. in Rs.	Variable Charges / Kwhr. in Rs.	Total in Rs./ Kwhr
01-04-2013 to 09-04-2013	1.43	10.31	11.74
09-04-2013 to 09-05-2013	1.60	10.06	11.66
09-05-2013 to 09-06-2013	1.41	9.95	11.36
09-06-2013 to 09-07-2013	1.47	10.45	11.91
09-07-2013 to 09-08-2013	1.41	10.73	12.13
09-08-2013 to 09-09-2013	1.60	10.84	12.44
09-09-2013 to 09-10-2013	1.25	11.36	12.62
09-10-2013 to 09-11-2013	1.48	11.05	12.53
09-11-2013 to 09-12-2013	1.39	11.01	12.40
09-12-2013 to 09-01-2014	1.44	11.01	12.46
09-01-2013 to 09-02-2014	1.40	11.09	12.49
09-02-2014 to 14-02-2014	1.14	11.07	12.22

5.9. The details of other high cost power, fixed charges and variable charge from April 2013 to March 2014 are as below:-

Madurai Power Corporation Pvt. Ltd.			
Month	VC/Unit	FC/Unit	Total Cost / Unit
April 2013	10.89	1.46	12.36
April 2013	10.53	1.53	12.05
May 2013	10.50	1.37	11.87
June 2013	11.55	1.45	13.00
July 2013	11.59	1.45	13.04
August 2013	11.85	1.49	13.34
September 2013	11.65	1.52	13.17
October 2013	11.64	1.49	13.13
November 2013	11.55	1.54	13.09
December 2013	11.44	1.48	12.92
January 2014	11.46	1.49	12.95
February 2014	11.64	1.53	13.17
TOTAL	11.27	1.48	12.75

Samalpatti Power Company Pvt. Ltd.			
Month	VC/Unit	FC/Unit	Total Cost / Unit
April 2013	10.93	1.20	12.13
April 2013	10.75	1.18	11.93
May 2013	10.63	1.22	11.85
June 2013	11.41	1.34	12.75
July 2013	11.38	1.22	12.59
August 2013	11.96	1.20	13.16
September 2013	12.19	1.48	13.66
October 2013	11.89	1.20	13.09
November 2013	11.88	1.22	13.11
December 2013	11.86	1.43	13.29
January 2014	11.86	1.10	12.95
February 2014	11.97	1.42	13.40
TOTAL	11.54	1.27	12.81

PPN Power Generating Company Pvt. Ltd.			
Month	VC/Unit	FC/Unit	Total Cost / Unit
April 2013	8.99	1.14	10.13
April 2013	10.03	1.16	11.18
May 2013	10.91	0.99	11.90
June 2013		0.99	0.99
July 2013		0.99	0.99
August 2013	10.88	0.98	11.86
September 2013	12.12	0.98	13.10
October 2013	12.47	0.98	13.45
November 2013	12.92	0.98	13.90
December 2013	13.36	0.98	14.33
January 2014	13.44	0.98	14.42
February 2014	13.28	0.98	14.26
TOTAL	11.98	1.13	13.11

5.10. TANGEDCO procures power from various sources such as CGS (Thermal), IPPs, Private Generators, Wind Mills, Co-Gen Plants, CPPs, CGS (Nuclear), under long / medium / short term agreement apart from its own generating stations etc. and the weighted average cost of power is always arrived as pooled cost. Similarly sale of power is also under different categories of tariff. Further TANGEDCO is proposing to procure this power only to meet contingencies in its system during the next one year as emergency spinning reserve.

5.11. The situation is analogous to creating of infrastructure in Fire and Rescue services. The expenditure incurred on Fire & Rescue services is not considered as loss. Similarly M/s.GMR's strategic location enables it to be kept as spinning reserve, which will enable to restart generation from thermal stations located around Chennai. Therefore the cost incurred for keeping M/s.GMR as spinning reserve cannot be viewed purely on cost consideration alone but to be viewed in association with the strategic importance and performance under emergency condition such as unit outage or tripping of lines in North Chennai region.

5.12. TANGEDCO made strict negotiation of the terms and conditions of supply and brought down the fixed cost of Rs.165 Crores / annum payable had the PPA been extended as per clause 2.1 (c) of the PPA to Rs.77.22 Croes / annum. TANGEDCO has contracted 196 MW of spinning reserve capacity at a cost of Rs.77.22 Crores / annum as against huge investment required (minimum Rs.6 Cr./MW) to create such an infrastructure.

5.13. The State Load Despatch Centre shall be responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State vide section 32 (2) (a) of the Electricity Act, 2003.

6. Written Submission filed on behalf of the Petitioner as directed by the Commission on 19-09-2014:-

6.1. The Commission in para 6.2 of its order dated 15-09-2014 in M.P.Nos.9,10,13,14,16,28,53,72 and 81 of 2013 and M.P.Nos.9 & 18 of 2014 has held that the following response of TANTRANSCO, in a similar query, as reasonable.

> "Para 6.1 (2) – "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."

6.2. Details of outage experienced during the period from 15-02-2014 to 31-08-2014 is as follows:-

Outages in the Newly Commissioned (Owned, JV and CGS) Stations									
Sl No.	Name of the Station	March 2014	April 2014	May 2014	June 2014	July 2014	August 2014	Sep 2014	Total
1	MTPS Stage-III 600 MW	17 days			8 days	30 days	6 days		61 days
2	NCTPS Stage-II 2*600 MW	Unit I-1 Day, Unit-II – 7 days	Unit I-9 days	Unit-I –15days	Unit I-15 days Unit II-1 day	Unit I-1 day Unit-II – 4 days	Unit I-3 days Unit-II-3 days	Unit I-1 day	Unit I-45 days, Unit II-15 days
3	NTECL Valur JV 2*500 MW	Unit I-4 days Unit-II – 10 days	Unit II-1 Day	Unit I-3 days	Unit I-5 days, Unit-II-4 days		Unit I-1 day Unit-II-10 days		Unit I-13 days Unit-II 25 days
4	Kudankulam Atomic Power Station 1*1000 MW	3 days	5 days	12 days	6 days	15 days	31 days	13 days	85 days

6.3. There had been "zero" dispatch from M/s.GMR Power Plant on a number of occasion during the period from 15-02-2014 to 31-08-2014 as below:-

February 2014	39	Occasion
March 2014	21	Occasion
April 2014	2	Occasion
May 2014	2	Occasion
June 2014	2	Occasion
July 2014	3	Occasion
August 2014	25	Occasion
September	28	Occasion

6.4. The details of monthly PLF and quantum of energy availed from M/s.GMR Power Corporation Limited is as below:-

Monthly Billing Period	Actual PLF (in %)	Energy purchased in MU	Fixed charges Rs. / Kwhr.	Variable Charges Rs./Kwhr.
February 2014 – March 2014	60.21	80.9	0.58	10.85
March 2014 – April 2014	79.42	115.8	0.52	10.56
April 2014 – May 2014	69.12	97.3	0.54	10.32
May 2014 – June 2014	58.30	85.0	0.52	10.19
June 2014 – July 2014	45.90	64.7	0.54	10.34
July 2014 – August 2014	29.88	43.5	0.52	10.24

6.5. The negotiated annual fixed charges for the proposed extended period from 15-02-2014 to 14-02-2015 is Rs.77.22 Crores (works out to Rs.0.52/Kwhr) only and TANGEDCO proposes to retain the station as a reserve for emergency purpose and necessity based dispatch duly abiding by the directive of Merit Order Dispatch principle of the Commission.

6.6. The Commission may be pleased to approve the procurement of power from M/s.GMR Power Corporation Limited for the period from 15-02-2014 to 14-02-2015, as per the affidavits filed on 12-02-2014 and 07-03-2014.

7. Written Submission on behalf of the Respondent:-

The Respondent adopted all the pleadings filed by the Petitioner in the original petition filed on 12th February 2014 and Interlocutory Applications, Additional Affidavits and the Written Statements dated 30th September 2014, filed by the Petitioner and prayed to allow the petition as prayed for by the Petitioner.

8. Findings of the Chairman and Thiru G.Rajagopal, Member (per majority):

1. In this PPAP, the Petitioner has sought for approval of the Commission for procurement of power from M/s. GMR Power Corporation Limited for a period of one year from 15.2.2014 to 14.2.2015 by extending the PPA with fresh tariff and commercial terms and conditions.

2. M/s. GMR Power Corporation Limited is one of the four power projects with liquid fuel namely, LSHS, LSFO or naphtha as fuel. The total capacity of all the four plants is about 725 MW. The plants were established under the MOU route following 1992 Government of India guidelines. Skyrocketing prices of crude in the international market, depreciation of Indian Rupee against US dollars during the period of operation of these plants since their Commissioning have made the cost of power from these plants to go up very high. This has caused a strain in the economic operation of the Petitioner corporation with power purchased from these plants.

3. M/s. GMR Power Corporation Limited was the first plant to be commissioned under the MOU route in 1999. The capacity of the plant is 196 MW and it is located right in the heart of Chennai city. The PPA with M/s. GMR Power Corporation Limited was to expire on 14.2.2014 and the Petitioner came up with the request to approve procurement of power from the Respondent's plant for a period of one year

from 15.2.2014 to 14.2.2015 subject to merit order dispatch by extending PPA by filing a petition on 12.2.2014.

4. As per the PPA the same will be in force for 15 years. There is a proviso in the PPA which provides for extension of PPA beyond its expiry. Article 2.1 (c) of the PPA which contains the above is reproduced below:

> *"TANGEDCO may request an extension of the term and the effective term for 3 further periods of five (5) years. Such request shall be made in writing not less than 18 months (14.08.12) before the scheduled expiry of the then current terms or at such times as the parties shall otherwise agree. Within a reasonable time after such a request is made, the parties shall enter in to good faith negotiations regarding whether such an extension shall be effected and the term and conditions thereof, including provision for additional capital costs to modernize and renovate the project"*

5. The first issue before us is whether the petition made by the Petitioner just two days before the expiry of the PPA amounts to a time barred request or seeking post-facto approval.

6. A mere reading of Article 2.1 (c) of the PPA would suggest that the petition seeking extension of the same should have been made not less than 18 months before its expiry.

7. The Petitioner in reply to the Commission's query on the delay in filing application had furnished several reasons. Their submission was that numerous new projects were under construction and they were expected to be fully operational during the intervening period. Once all the anticipated capacity additions were operationalized there might be no need for such high cost power from M/s. GMR Power Corporation Limited. It would have been an unwise action to have requested for extension of PPA under such situation.

8. In their petition filed on 12.2.2014, THE PETITIONER has reproduced article 2.1 (c) of the PPA as below:-

> *"TANGEDCO may request an extension of the term and the effective term for 3 further periods of five (5) years. Such request shall be made in writing not*

*less than 18 months (14.08.12) before the scheduled expiry of the then current terms or **at such times as the parties shall otherwise agree**. Within a reasonable time after such a request is made, the parties shall enter in to good faith negotiations regarding whether such an extension shall be effected and the term and conditions thereof, including provision for additional capital costs to modernize and renovate the project"*

9. They had provided emphasize on the words 'at such times as the petitioner shall otherwise agree'. Perhaps the Petitioner's position is that the acceptance of the extension of PPA could be made at any time as may be agreed to by the parties, that is to say, if both parties of the PPA agree to the extension of the same there is no time limit which would restrict it.

10. The above article 2.1 (c) is part of the PPA signed between the parties. This talks about the extension beyond its expiry if the procurer desires so. It fixes the minimum time limit of 18 months before its expiry date for approaching the generator with such a request. If the parties agree the time limit mentioned is of no relevance. Words given with emphasize in the said article essentially imply this.

11. The PPA has been signed in 1996. This was a pre-Electricity Act 2003 period. The Commission was not in existence at that time. The time period mentioned in the PPA under the said article cannot be taken as the period before which the petition seeking the extension of PPA has to be filed before the Commission. The Petitioner had also contended that 'the very fact that the decision to extend the PPA for one year under fresh terms was taken only at the last minute shows that they earnestly tried to avoid any extension to M/s. GMR power of high cost and only after ensuring that they had no alternative they had chosen to extend the PPA'.

12. Therefore, the petition as such cannot be treated as time barred or as one seeking post facto approval.

13. Having considered as above, the next issue before us is to see whether there are enough justifications to consider the request for procuring power from this high cost source beyond the expiry of PPA.

14. The Petitioner had furnished various factors which according to them necessitate continued procurement from the Respondent's plant. It has been stated that the demand for power in the State was 12,000 MW as against the availability of 9,000 MW thereby leaving a gap of 3,000 MW. This 9,000 MW of availability had been arrived at after taking into consideration of 1900 MW from new thermal plants at Mettur, North Chennai and NTPC joint venture which were getting stabilized. They had indicated the list of new plants that were likely to become operational by March 2015, the problems faced in bringing the contracted power from other states as the newly laid 765 kV inter-state transmission lines were not fully operational, the failure of the monsoon, school examinations in the month of March & April and the impending general elections to the parliament when they had to maintain uninterrupted power supply as demanded by the Election Commission.

15. The other reasons cited by the Petitioner were that the power distribution in Chennai city would be badly affected whenever there are any interruption in the system network and the strategic location of GMR station would be very useful in bringing normality within a short time. The plant would essentially be used as a spinning reserve from which generation could be picked up with ease in case of any disruptions in power generation elsewhere.

16. They have also claimed that they have brought down the fixed cost substantially to Rs.77 crores per annum, whereas to construct a new plant of the same capacity it would require a capital of Rs.6 crores per MW i.e., approximately Rs.1200 crores.

17. In the nutshell their stand point is that huge demand and supply gap, strategic location, ability to ramping up or down of power easily at very short notice from this readily available plant all call for extending the PPA beyond the expiry by one year.

18. It may be very tempting for the Commission to agree to their request at once. However, there is one important aspect which needs to be considered. The variable cost of power from this plant had been as high as Rs.10.85 per unit. The dispatch of power from this plant along with the other liquid fuel plants has been kept out of the merit order in the tariff orders of 2012-13 and 2013-14 considering the high cost. The prevailing demand and supply gap and difficulty in bringing power from the external sources from other states might have forced the Petitioner to look for power from anywhere at any cost. However, it will not be prudent to source this high cost power even if it is to offset the gap in demand-supply. Especially the prevailing financial situation of the Petitioner will not permit such an action.

19. It is seen that power had been continued to be procured from the plant beyond 14.2.2014 pending approval of the Commission. The utilization factor of this plant in the months of March to June 2014 varies from 46% to 79%. Of course, the same has come down beyond July. This would essentially mean that the plant had been used more as a base load plant and not as an emergency reserve. The cost of power from this plant prohibits the Commission from accepting their request.

20. In the petitions filed earlier by the Petitioner in M.P. Nos.9, 10, 13, 14, 16, 28, 53, 72 and 81 of 2013 and M.P. Nos.9 & 8 of 2014 seeking approval and ratification for dispatch of power from the high cost power producers outside merit order for the months April 2013 to February 2014 from various sources including the respondent's plant the Commission in its order dated 15.9.2014 allowed the procurement only to the extent of the average rate of realization of the Petitioner and did not approve the excess cost of power purchased for the purpose of ARR.

21. In this case also, the Commission is not approving the excess cost of power purchase from M/s. GMR Power Corporation Limited, beyond the date of expiry of its PPA over and above the relevant actual rate of realization of the Petitioner by sale of power in the respective years for the purpose of ARR.

9. 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/-	Sd/-
(G.Rajagopal)	**(S.Akshayakumar)**
Member	**Chairman**

Dissenting order of Thiru S.Nagalsamy, Member:-

1. I have gone through the orders of my learned colleagues viz. Thiru S. Akshyakumar, Chairman and Thiru G. Rajagopal, Member, TNERC circulated in the Commission and I humbly state that I am not able to concur with their orders I have major disagreements with their arguments / justifications and in their conclusions. Hence, after dwelling upon the facts of the case I am recording my findings in this dissenting order.

2. The Power Purchase Agreement signed between TANGEDCO and M/s. GMR was in force for 15 years and was due to expire on 14.2.2014. Two days before this date TANGEDCO filed a Petition on 12.2.2014 in the Commission to renew their expiring agreement for one more year from 15.2.2014 to 14.2.2015. Without waiting for the formal approval from the Commission, TANGEDCO started buying power

from M/s.GMR at a unit cost of around about Rs.12.19 right from 15.2.2014 even before the petition was admitted by the Commission. From 15.2.2014, there was no obligation for TANGEDCO to buy this costly power as the existing Power Purchase Agreement (PPA) between M/s.GMR and TANGEDCO expired on 14.2.2014. But TANGEDCO went ahead and started buying costly power. It did not wait for the approval of the Commission.

3. Now let us look at the cost of this electricity bought from M/s. GMR. According to the petition filed by the TANGEDCO in the Commission, the average unit cost of electricity purchased from M/s. GMR for the last 3 years is as follows:-

Year	Rs. / Unit
2011-12	11,23
2012-13	13.15
2013-14 up to November	12.19

It is to be noted here that the Commission has directed TANGEDCO in its Tariff Order Nos.1 of 2012 and 2013 that the electricity generated from the power plant of M/s. GMR was kept outside the Merit Order Dispatch (MOD) order.

4. Now let us see the sequence of events.

Petition was filed in the Commission on 12.2.2014 by TANGEDCO, just two days before the expiry of the 15 years contract. Petition was taken on file after scrutiny by the Commission on 19.2.2014 and listed for hearing on 17.3.2014. Petition was admitted on 17.3.2014 and as the Petition did not have full details, TANGEDCO was directed to submit further details within 4 weeks. During the next 2 hearings on 29.4.2014 and 21.7.2014, the Counsel for the Petitioner prayed for adjournment of the hearing and it was allowed. Finally, the petition was heard on 19.9.2014 and orders were reserved. In addition to belated submission of petition, TANGEDCO also delayed the hearing also.

Let us consider the prayer of TANGEDCO,

First prayer of the petition is that

> *"to approve the procurement of power from M/s. GMR Power Corporation Limited for a period of one year i.e. from 15.2.2014 to 14.2.2015 subject to the MOD in force by extending the PPA under proviso of article 2.1 (c) of PPA with fresh tariff, commercial terms and conditions and the Honble Commission may be pleased to permit TANGEDCO to file proposed Tariff, Commercial Terms and Conditions after negotiation."*

We can split this prayer into 3 parts.

(a) First part of the prayer is " to approve the procurement of power from M/s. GMR Power Corporation Ltd. for a period of one year i.e. from 15.2.2014 to 14.2.2015"

The cost of this power according to this petition is about Rs.12.19 / unit for 2013-14 till November 2013. Commission has to consider the affordability of Licensee and the consumers. Can the TANGEDCO sell this electricity at about Rs.12.19 / unit to any of its consumers? Is it fair for the Commission to permit TANGEDCO to buy power at this prohibitive cost from a generating station? For 2013-14, average realised cost of power from its consumers by TANGEDCO was about Rs. 5.06 / unit for 2013-14. If TANGEDCO is permitted to buy this power at about Rs.12.19 / unit from M/s. GMR, then TANGEDCO would make a loss of Rs.7.29 for every unit of electricity it buys from M/s. GMR. To a pointed query from the Commission to identify any takers among their consumers of this costly power at this rate of about Rs.12.19 / Unit., the petitioner did not give direct reply. But in M.P.No.9, 10, etc. of 2013 and M.P. Nos. 9 and 18 of 2014, Commission directed

TANGEDCO 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 submitted by way of an affidavit dated 22.1.2013 that it was not possible for them to supply this power as reliability power to any of their consumers. From the above it is clear that TANGEDCO cannot sell this power at this high rate and would incur a loss of Rs.7.29 for every unit it purchases from M/s. GMR. Hence, TANGEDCO cannot afford to bear this loss and in turn consumers cannot be burdened with high tariff. To save TANGEDCO from financial loss and consumers from tariff increase, it is fair on my part to decide not to approve the procurement of power from M/s. GMR.

(b) Second part of first prayer is “subject to the merit order dispatch in force”.

What does it mean? Put it in short, it means that TANGEDCO will extend the contract for one year but will not buy power from them. It amounts to payment of Fixed Cost without buying power. Commission in its Tariff Oder Nos.1 of 2012 and 1 of 2013 issued on 30.3.2012 and 20.6.2013 directed TANGEDCO that this high cost power from M/s.GMR was outside MOD, and was not permitted to dispatch any energy into grid and pay only Fixed Cost as there was valid agreement to buy power at that time.

Interestingly in their SMT Order No.9 of 2014, My colleagues in the Commission did not consider the power purchase from M/s.GMR in their order dated 11.12.2014 as the cost of power was so high and it was outside the MOD, i.e. TANGEDCO was not allowed to buy electricity from M/s. GMR. But now my learned colleagues in the Commission approved the purchase of this costly power. I am not able to comprehend the reasons for this sudden change. Their only restriction is that the power cost is restricted to cost of realisation for 2014-15 for the purpose of ARR. This restriction would not affect the tariff fixation because TANGEDCO did not submit its ARR for 2014-15. My colleagues in the Commission have already revised and raised the tariff substantially on suo-motu basis without their ARR. Even the Commission's order in M.P.Nos. 9, 10, 13, 14, 16, 28, 53, 72 & 81 of 2013 and M.P.Nos. 9 & 18 of 2014 were not taken into account in finalising the SMT Order No.9 of 2014.

Let us come back to the meaning of this second part of the first prayer "subject to MOD"

TANGEDCO should first buy cheaper power and then go to next higher rate until its requirement is met. In this background, if we consider electricity generated from M/s. GMR at about Rs.12.19 / unit, it is outside the MOD. As explained earlier, Commission placed this power outside the MOD and this power should not be purchased. In short, the meaning of this prayer is "to allow TANGEDCO to enter into agreement with M/s.GMR for power purchase for one year but TANGEDCO in effect will not buy power from them as it is outside the MOD". Net effect of this agreement is that TANGEDCO will pay fixed charges to M/s. GMR without buying any power. If TANGEDCO purchases this costly power from M/s. GMR it amounts to violation / disobedience of Commission's Order which can attract penalty under Section 142 of Electricity Act, 2003. Hence, this agreement and approval of Commission will only lead to unnecessary loss to TANGEDCO by way of paying fixed charges to the generator. It is a prayer for a strange agreement which will not benefit either TANGEDCO or consumer but only the Generator.

(c) Third part of the first prayer is "proviso of Article 2.1.(c) of the PPA

" 2.1 (c) of PPA reads as

TANGEDCO may request an extension of the term and the effective term for 3 further period of five (5) years. ***Such request shall be made in writing not less than 18 months (14.8.12) before the scheduled expiry of the then current terms or at such times as the parties shall otherwise agree.*** *Within a reasonable time after such a request is made, the parties shall enter into good faith negotiations regarding whether such an extension shall be effected and the term and conditions thereof, including provision for additional capital costs to modernise the renovate the project."*

Two parts of the highlighted portion are equally significant.

First portion of Article 2.1. (c) says that

> *"TANGEDCO MAY request an extension of the term and such request SHALL be made in writing not less than 18 months (14.8.2012) before the scheduled expiry."*

MAY and SHALL are significant here. There is no compulsion on the part of the TANGEDCO to request for extension. It should be guided by its requirement and economics. It should analyse the advantages and benefits of purchasing this costly power and take a rational decision. If it decides to request for extension of the contract, then it should give such request in writing not less than 18 months (14.8.2012) before the scheduled expiry of their existing contract. This was not done. Next question that naturally arises is when did the TANGEDCO request M/s. GMR for extension? There is no mention about it in the petition. It is also not clear who had asked for the extension of this agreement to buy this costly power? TANGEDCO or M/s.GMR? There is no documentary proof submitted along with the petition. Time required to get formal approval after strict scrutiny from the competent authority might have been kept in mind while fixing this time limit. Alternatively the PPA allows another opportunity in the following manner "at such times as the parties shall otherwise agree"

This is also a meaningful sentence. In the earlier case, TANGEDCO can decide whether to request for extension or not. Once TANGEDCO requests for extension, M/s. GMR cannot refuse. But in the second part, unless both the parties agree for extension, the PPA cannot be extended. Both parties can initiate the proposal. M/s. GMR also can ask for extension. Again it is not clear who has asked for extension of this contract. TANGEDCO in its petition admitted that their Board approved the proposal on 7.1.2014, but filed this petition in the Commission only on 12.2.2014. Reason for waiting for more than a month to file the petition is not known.

When the request was made in accordance with the second part of highlighted portion of Article 2.1 (c) of PPA, TANGEDCO had no time to get the formal approval. It had to–postpone the purchase of power till the petition is approved by the Commission But TANGEDCO started purchasing power right from 15.2.2014. Even in hearings TANGEDCO prayed for adjournment. TANGEDCO did not get the approval of the petition before buying power from M/s. GMR. This is a serious violation of the Commission's order by TANGEDCO.

5. TANGEDCO has given contradictory submissions for the delay in requesting the generator to extend the power purchase agreement beyond the date of expiry and justification for buying their power. The various arguments put forth by the TANGEDCO are:-

(1) There is a huge supply gap of 3000 MW between the demand and supply and they were waiting for the new projects. But this gap is arrived at ignoring substantial capacities and private power purchases. First unit of Joint Venture Project at Vallur NEAR Chennai between TANGEDCO and NTPC with 500 MW capacity was commissioned on 29.11.2012 and Unit II with another 500

MW was commissioned on 25.8.2013. TANGEDCO's combined share in these two projects was 700 MW. TANGEDCO's own plant at Mettur with 600 MW capacity was commissioned on 12.10.2013. In addition first unit with 1000 MW of Kudamkulam Nuclear Power Plant where Tamil Nadu has a share of 450 MW was also commissioned. Own project in North Chennai with 600 MW each of two units were also on Trial Run. In addition TANGEDCO also had entered into Power Purchase Agreement for Long Term and Short Term. Wind generation and Hydel generation were also not taken into account.

From this, it is clear that all the projects were commissioned much earlier except the North Chennai units which were in trial operation when the petition was filed in the Commission and arguing that they were not stabilised and could not get coal supply were within their control. It shows the lack of efficiency in contract management and running the new plants by the TANGEDCO. So these facts make it very clear that the agreement of TANGEDCO is not convincing. Incidentally, TANGEDCO in its petition declared that there is a penal clause in its contract for Mettur and North Chennai Power Plants. For Mettur, there is a penalty of Rs.107 crores for every month of delay. It is not known how much is recovered from these contractors to offset the excess cost incurred by buying costly power.

(2) TANGEDCO, in its affidavit filed on 28.4.2014 claimed that TANGEDCO is proposing to procure this power only to meet contingencies in its system as emergency spinning reserve and compared this situation as analogous to the creating of infrastructure in Fire and Rescue services. The expenditure incurred on fire and rescue services is not considered as loss.

(3) Similarly, M/s. GMR's strategic location and its self start facility makes its generation quite necessary.

Let us consider all these three arguments.

(1) Due to the delay and non-stabilisation of the new plants and shortage of coal led to TANGEDCO the last minute decision to extend the procurement of costly power from M/s. GMR.

(2) It is only for emergency spinning reserve.

(3) It has a self-start facility at a strategic location to take care of the restarting of generation from the tripped thermal stations in and around Chennai like Vallur and North Chennai.

All these three arguments are contradictory to each other. If the extension is for emergency spinning reserve, then the petitioner could have requested M/s. GMR to extend the contract before 18 months of its expiry. The Plant Load Factor (PLF) of more than 50% in M/s.GMR in the first 5 months indicate that this Plant has been used as a base load and not as spinning reserve as claimed by TANGEDCO.

6. Argument of self-start or cold start is also not based on facts and misleading. Such a grid collapse happens very rarely and it may not also happen during one year of this proposed period of 15.2.2014 to 14.2.2015. Even it happens Black Start Power can be obtained from TANGEDCO's Basin Bridge Gas Power Station as it is only for few hours of generation. Even the hydel power can be drawn subsequently as it was done before the setting up of M/s.GMR. So this argument is also not tenable. Whatever the TNEB was doing before the commissioning of M/s. GMR can be followed now.

7. The 2nd prayer in the main petition is "to permit TANGEDCO to file proposed tariff, commercial terms and conditions after negotiation with M/s. GMR".

This negotiation has been completed immediately and TANGEDCO prayed to approve / ratify the above mutually agreed fixed, variable charges and other payments for the procurement of power from M/s. GMR from 15.2.2014 to 14.2.2015. The fixed and variable costs were negotiated so fast with M/s.GMR and the approximate variable cost per unit alone was estimated at Rs.11.25 / kWhr. The petitioner TANGEDCO had negotiated tariff rates and terms and conditions of the power purchase without getting the formal approval of the Commission for extension of contract. At the same time TANGEDCO had also started buying power right from 15th February 2014 till date without the approval of the Commission. They have disobeyed the orders of the Commission for a longtime. Going ahead with the purchase of costly power without the approval of the Commission is a serious violation which attracts penalty under Section 142 of the Electricity Act. In their affidavit added one more prayer

> *"to permit the petitioner till final approval of TNERC to make provisional payment to M/s.GMR subject to realisation of payment on approval".*

It is a known fact that TANGEDCO has delayed the decision to extend the contract and only two days before its expiry submitted the petition and started buying power from M/s.GMR without even waiting for formal approval from the Commission. It is noted and emphasized here that M/s.GMR power has been kept outside the MOD in the earlier two tariff orders of the Commission. It is not considered at all for power purchase in the latest Suo-Motu Tariff (SMT) Order of 2014 issued on 11.12.2014, Hence, it is to be treated that the TANGEDCO has violated two conditions, viz.

(1) Without the formal approval of the Commission, it had gone ahead in negotiating with the Respondent and finalised the tariff and also started purchasing power continuously from the proposed date of extension of the contract i.e.15.2.2014. This violated the condition that TANGEDCO should get the clearance from the Commission before purchasing power through new contract.

(2) In spite of the power generation from M/s. GMR was kept outside the MOD order TANGEDCO continued to buy high cost power around about Rs.12.19 / unit from M/s. GMR against the orders of the Commission. Thus, TANGEDCO again violated the orders of TNERC by buying power outside MOD order.

These are serious violations committed by TANGEDCO.

8. Hence I have no hesitation to order that the proposal to buy power from M/s.GMR by extending the PPA is rejected due to its prohibitive cost of generation at around about Rs.12.19 / unit. Consequently, the rates and terms and conditions negotiated and concluded with the Respondent is also not ratified. Since the petition is rejected and the action of TANGEDCO in purchasing this costly power is also not ratified, the payment to M/s. GMR shall not arise. Payment if any made so far to M/s. GMR is also not ratified.

Hence, it is also ordered to identify the officers who were responsible for these two violations of TANGEDCO and initiate necessary action against them.

9. The Commission with its independence should proceed against TANGEDCO for the violation of its orders under Section 142 of the Electricity Act, 2003.

It is heartening to note that these high cost power from these IPPs are backed down by the new CMD, TANGEDCO and could save Rs.500 crores during the last 2 months by obeying the orders of the Commission and following the MOD instructions.

10. Conclusion:- At end, following are ordered.

(a) The Petition to extend the PPA with M/s.GMR is rejected.

(b) The negotiated tariff rate and terms and conditions are not ratified.

(c) Payment, if any made against this power purchase is also not approved; not ratified.

(d) TANGEDCO is directed to identify and initiate disciplinary action against those responsible in committing this violation and thereby committing financial loss to TANGEDCO.

(e) Commission should proceed against TANGEDCO for its violation of TNERC orders under Section 142 of Electricity Act, 2003.

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/-
(S.Nagalsamy)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission