

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

I.A. No. 1 of 2014 in R.P. No. 2 of 2014 & R.P. No. 2 of 2014

I.A. No. 1 of 2014 in R.P. No. 3 of 2014 & R.P. No. 3 of 2014

I.A. No. 1 of 2014 in R.P. No. 4 of 2014 & R.P. No. 4 of 2014

I.A. No. 1 of 2014 in R.P. No. 5 of 2014 & R.P. No. 5 of 2014

Hindustan Clean Energy Ltd.
239, Okhla Industrial Estate,
Phase-III, New Delhi - 110020

..... Petitioner/Applicant
In R.P. No. 2 of 2014 and I.A. No. 1
of 2014 in R.P. No. 2 of 2014

Acme solar Energy Pvt Ltd.
Plot No. 152, Sector-44,
Gurgaon – 122002

..... Petitioner/Applicant
In R.P. No. 3 of 2014 and I.A. No. 1
of 2014 in R.P. No. 3 of 2014

Welspun Renewable Energy Pvt. Ltd.
3 Floor, PTI Building,
4, Parliament Street,
New Delhi – 110 001.

..... Petitioner/Applicant
In R.P. No. 4 of 2014 and I.A. No. 1
of 2014 in R.P. No. 4 of 2014

Vaibhav Jyoti Power Utility Services Pvt. Ltd.
4E, Surya Towers, S.P. Road,
Secanderabad – 500 003.

..... Petitioner/Applicant
In R.P. No. 5 of 2014 and I.A. No. 1
of 2014 in R.P. No. 5 of 2014

Vs.

Tamil Nadu Generation and Distribution
Corporation Ltd.
No.144, Anna Salai
Chennai – 600 002.

..... Respondent in
R.P. No. 2 of 2014 and I.A. No. 1 of
2014 in R.P. No. 2 of 2014 and R.P.
No. 3 of 2014 and I.A. No. 1 of 2014
in R.P. No.3 of 2014

Date of hearing: 29-12-2014

Date of order : 30-04-2015

Review Petition No. 2 of 2014 and I.A. No. 1 of 2014 therein, Review Petition No. 3 of 2014 and I.A. No. 1 of 2014 therein, Review Petition No. 4 of 2014 and I.A. No. 1 of 2014 therein and Review Petition No. 5 of 2014 and I.A. No. 1 of 2014 therein were taken up for admission on 29-12-2014. Since the contentions and prayer in all the above R.Ps are similar the above R.Ps were taken up for consideration as a batch and after hearing the counsel for the petitioners the Commission makes the following order:-

ORDER**2. Prayer in the petitions:**

The prayer in the above petitions is to extend the control period of the Commission's Comprehensive Tariff Order on Solar Power—Order No.7 of 2014 dt. 12-09-2014 by one year i.e. the control period may be fixed as 2 years from the date of applicability of Order No. 7 dated 12-09-2014.

3. Contentions of the petitioners:

3.1 Mrs. Nalini Chidambaram, Senior Advocate argued the case on behalf of the Petitioner in the R.P. No. 2 of 2014 and made the submissions regarding the need for extending the control period in Order No. 7 of 2014.

3.2 The senior counsel submitted that as per the power procurement from New and Renewable Sources of Energy, Regulations, 2008 of the Commission, the control period is ordinarily 2 years. In the instant case, it has been restricted as one year. The CERC provides a period of one year for signing of PPA and one year thereafter for completion of the project. As far as the Order No.7 of 2014 of the Commission is concerned, the model PPA is not yet ready and already 3 months time is over and the remaining period of 9 months is not sufficient to commission the Solar Power project since the financial closure could be achieved only after signing PPA. The Senior counsel contended that the Commission has violated the general norm as to

control period of 2 years even without any state specific reasons to depart from the CERC norms.

3.3 In the case of Jharkhand, Karnataka and MP, the control period is 3 years, 5 years and 2 ½ years, respectively. In the absence of any assurance from the Government such as single window system for getting clearances for project proposals, the senior counsel stressed that the control period needs to be extended. The decision of APTEL in Appeal No. 96 of 2012 and Appeal No. 130 of 2012 has been relied upon by the senior counsel, wherein the order of Gujarat ERC to not to extend the control period has been remanded back to the Gujarat ERC for rehearing on merit.

3.4 During the hearing when the Commission felt that a review will not lie in the matter, the Senior counsel pleaded that the Commission may consider the case of petitioners for extension of the control period by exercising the inherent powers of the Commission.

4. Findings of the Commission:

4.1 Para 11.6.1 and 11.6.2 of the Order No.7 of 2014 providing for the control period of the said order is reproduced below:

“11.6.1. Regulation 6 of the Power procurement from New and Renewable Sources of Energy Regulations, 2008 of the Commission specifies as follows:

“The tariff as determined by the Commission shall remain in force for such period as specified by the Commission in such tariff orders and the control period may ordinarily be two years”.

11.6.2. Since the capital cost of solar modules is volatile, the Commission proposed one year control period in its consultative paper. Some of the stakeholders have recommended a control period of two years. CERC approved a capital cost of Rs.8 crores per MW in the order for the FY 2013-14. However, in the latest order dated 15/5/2014, the CERC has adopted a capital cost of Rs.6.91 crores per MW for the year 2014-15. There is a 14% variation in the capital cost in a single year. Therefore the Commission decides to retain the one year control period in this order as proposed in the consultative paper in view of the rate of change of capital cost.

Thus, the Commission has consciously prescribed the control period in the above Order No.7 of 2014.

- 4.2 Regulation 43(1) of the Tamil Nadu Electricity Regulatory Commission – Conduct of Business Regulations, 2004 provides that the Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order review such decision, direction or order on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Since the Commission prescribed the control period in Order No.7 of 2014 only after considering all material facts and since there is no error apparent on the face of the said Order No.7 of 2014 with regard to the prescription of control period, none of

the grounds for review as contemplated in the said Regulation 43(1) is made out in the matter warranting review of the control period. Therefore, the Commission is not inclined to interfere in the matter to review control period prescribed in Order No.7 of 2014. Moreover the Commission sees no reason to condone the delay in filing the above Review Petitions. All the above R.Ps along with the I.As therein are not admitted.

5. 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

(Sd.....)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission