TAMIL NADU ELECTRICITY REGULATORY COMMISSION

(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru.S.Nagalsamy …. Member

and

Thiru.G.Rajagopal …. Member

D.R.P.No.24 of 2012

1. M/s.OPG Energy Pvt. Ltd.
   No.6, Sardar Patel Road
   Guindy
   Chennai.

2. M/s.OPG Power Generation Pvt. Ltd.
   No.6, Sardar Patel Road
   Guindy
   Chennai.

… Petitioners
(Thiru Vinod Kumar
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited
   Rep. by its Managing Director,
   800, Anna Salai,
   Chennai-600 002.

2. State Load Despatch Centre
   TANTRANSCO
   144, Anna Salai
   Chennai – 600 002.

… Respondents
(Thiru P.H.Vinod Pandian
Standing Counsel for the
Respondents)

Dates of hearing: 13-12-2012 and 27-02-2014

Date of Order: 01-07-2015

The D.R.P. No.24 of 2012 filed by M/s.OPG Energy Pvt. Ltd. and M/s.OPG Power Generation Pvt. Ltd. came up for final hearing on 27-02-2014. The Commission upon perusal of the Petition, Counter affidavit filed by the Respondents and all other connected records and after hearing the arguments of both sides hereby make the following:

ORDER

1. Prayer of the Petitioner:

The prayer of the Petitioners in this above DRP is to-

(a) direct the Respondent to treat the 29,51,197 units supplied by the first Petitioner during October 2011 as having been supplied on behalf of the second Petitioner to meet the short supply of 27,39,254 units as per its contractual obligation and consequently direct the Respondents to pay the first Petitioner at the rate of Rs.5.05 per unit in respect of 27,39,254 units as claimed by the first Petitioner vide its Invoice No.OPGE/October/2011-12/016, dated 10-11-2011;

(b) determine the compensation which the first Petitioner is entitled to for the 2,11,943 units supplied to the Respondent during the month of October 2011 and consequently direct the Respondent to pay the first Petitioner the amount so determined;

(c) direct the Respondents to pay interest at 12% to the first Petitioner on the amounts from the date when the payments for the units supplied became due;

(d) pass such other orders as deemed fit in the circumstances of the case ; and

(e) direct the Respondents to pay costs of the present proceedings to the Petitioner.

2. Facts of the case:-

Based on the tender opened on 20-09-2011, the Petitioners have entered into separate agreements with the first Respondent for supply of power viz 3 MW and 50 MW respectively during October 2011 to June 2012 to TANGEDCO. The first Petitioner allege that 29,51,197 units were generated in excess of the contracted quantity in view of G.O. Ms.No.10, Energy, dated 27-02-2009 and injected into the grid. The Petitioners request that said quantum of energy may be adjusted towards the short supply by the second Petitioner and claim payment for the said 29,51,197 units for which the Respondents did not agree. Hence, the present D.R.P is filed by the Petitioners with the above prayers.

3. Contentions of the Petitioners in affidavit dated 29-10-2012:-

3.1. The Petitioners are companies involved primarily in the business of setting up power plants and generating electricity. The Petitioners are part of the same group, namely, the OPG Group of Industries. The first Petitioner had set up a natural gas based captive power plant in Maruthur Village in Nagapattinam District with an installed capacity of 17.5 MW and the plant was commissioned during April 2004. The second Petitioner has set up a 77 MW coal based power plant at Gummidipoondi which has been in operation since 22-04-2010.

3.2. The Petitioners have been supplying power to the Respondents since June 2011 to meet the power shortage in the State. The Petitioners had contracted to supply 3 MW and 50 MW, respectively, to the first Respondent for the period from June 2011 to May 2012 out of their respective generation. The tariff payable to the Petitioners for such supply was fixed at Rs.5.05 per unit. The Petitioners have entered into separate agreements dated 15-10-2011 in this regard with the Respondent.

3.3. Invoking of section 11 of the Electricity Act, 2003, the Government issued G.O.Ms.No.10, Energy, dated 27-02-2009. In terms of the said G.O., sale of electricity outside the State of Tamil Nadu has been banned and all generators have been directed to optimize their generation and deliver the entire generation into the grid irrespective of there being any arrangement with the Respondent or not. The Petitioners have been adhering to the said mandate of the Government and have been delivering entire generation into the grid. On account of the severe shortage of power in the State, the first Respondent has also, from time to time, had discussions with the private generators in the State and requested that all exportable electricity be supplied to the grid. The first Petitioner had by its letter dated 24-10-2011 had informed the Respondent that it would continue to abide by the instructions to maximize generation and supply the entire exportable units to the State grid.

3.4. Since 2008-2009, there has been severe power shortage in the State and to meet the demand, the first Respondent has been procuring power from private generators in the State either directly or through power traders. The Petitioners had in the year 2009 and 2010 contracted to supply power to the first Respondent through the Power Trading Corporation. In terms of the arrangement for sale of power to the Respondent through the Power Trading Corporation, either of the Petitioners was entitled to compensate for any short supply with the excess generation by the other. The Petitioners being part of the same group, having agreed to supply power to the Respondent, the cumulative supply from the Petitioners was being taken into account while determining the short supply (if any) from one of the Petitioners. In fact, when the power was being sourced through PTC, there were instances when excess supply by one generator was adjusted

against short supply by another generator and accepted by the first Respondent. This was being done since there was a huge shortage of power in the State and all the power generators were mandated to maintain optimum generation.

3.5. Natural gas is the fuel for the first Petitioner's plant which is being supplied by the GAIL (India) Ltd. from the wells of Kuttalam. Since 2008-2009, on account of reduction in the overall availability of gas in the region, GAIL has not been supplying the entire contracted quantity of 80,000 SCMD of natural gas to the first Petitioner on account of which the first Petitioner has not been able to optimize its generation capacity.

3.6. The TANGEDCO, the Respondent owns and operates a 110 MW natural gas based power plant in Kuttalam. GAIL supplies 4,50,000 SCMD gas to the Respondent for use at the said plant. The second Respondent's plant has been periodically shut down for varied reasons. During such shut downs, the natural gas contracted to be supplied to the Respondent's plant was available in excess with the GAIL. Other Gas consumers of the region were permitted by GAIL to draw gas in excess of their respective contracted quantity when the Respondent's plant was not drawing gas. Such gas over and above the contracted quantity was being supplied by GAIL at Rs.8.97976 per SCM.

3.7. During mid-October 2011, the Respondent's plant was shut down. Due to the shutdown GAIL informed the Petitioner by fax dated 14th October 2011 that the Petitioner could draw gas in excess of its contracted capacity. As the Petitioner was under obligation to maintain optimum generation in terms of G.O.Ms.10, Energy, dated 27-02-2009, the Petitioner drew excess gas from GAIL and optimized its

generation. During the month of October 2011, the Petitioner drew 362587 SCM (28216 + 334371) of gas in excess of the quantity being supplied by GAIL during the previous months. The total landed cost off such excess / additional quantum of gas was Rs.10.50 per SCM. The Petitioner was able to generate 29,51,197 units of energy by utilizing such additional gas.

3.8. During October 2011, there was reduction in generation at the second Petitioner's plant resulting in reduction in supply of 27,39,254 units of energy to the Respondent. Since the first Petitioner had generated an excess in view of the circumstances mentioned above, the Petitioners requested the Respondent to treat the said excess supply of 29,51,197 units of energy as having been supplied on behalf of the second Petitioner to make up the non-supply of 27,39,254 units by the second Petitioner. The first Petitioner issued a separate invoice dated 10-11-2011 for the aforesaid 29,51,197 units and categorically stated that it was supplied on behalf of the second Petitioner.

3.9. Since the Respondent had filed PPAP No.5 of 2011 before the Commission for fixing the tariff for procuring 600 MW from generating companies in the State, Agreement for purchase of power was finalized only during October 2011. In the meanwhile, the Petitioners had during their discussions and meeting with the Respondent's official requested that the benefit of adjustment of units between the Petitioners which form part of the same group may be permitted as was being done in the past. The request was under consideration of the Respondent. In this regard, a letter dated 27-10-2011 was also issued by the second Petitioner to the Respondent.

3.10. The first Petitioner tried to identify consumers for the excess quantum of power which it was able to generate during October 2011. However, since all consumers had already tied up with other generators, the first Petitioner was unable to identify consumers for the additional units which it was able to generate. In view of the imposition of the total restriction on sale of power to consumers outside the State, the first Petitioner was unable to tie up with any consumers outside the State for such excess units which were generated in the month of October 2011. Since excess gas was available on account of the shutdown of the Respondent's plant and G.O. issued by the Government mandating optimum generation by all generators was in force, the first Petitioner drew excess gas and maintained optimum generation resulting in 29,51,197 units over and above its usual generation during the month of October 2011 and this was injected into the State grid.

3.11. Since the State was reeling under severe power shortage, and in view of G.O.Ms.No.10, Energy, dated 27-02-2009, the 29,51,197 units generated and supplied by the first Petitioner, has benefitted the State. Though not scheduled through the State Load Dispatch Centre, the supply of 29,51,197 units generated by the Petitioner has not caused any adverse impact on the stability of the grid. Had the Respondent's plant been functioning during the relevant point in time, the first Petitioner would not have drawn the additional quantum of gas from and consequently would not have generated the 29,51,197 units.

3.12. The 29,51,197 units fed into the grid by the Petitioner during October 2011 was utilized by the Respondent and despite being supplied power by private generators in the State, the Respondent was still in requirement of power to meet the demand in the State. Since the request made by the Petitioners to allow adjustment

of units between group companies was under consideration by the Respondent and there was a short supply of 27,39,252 units by the second Respondent during the month of October 2011, the first Petitioner requested that the 29,51,197 units supplied by it be treated as a supply on behalf of the second Petitioner and claimed at the rate of Rs.5.05 for such units by its invoice dated 10-11-2011. In the said invoice, it was categorically stated that the said units were on behalf of the second Respondent. After the adjustment, the first Respondent would have supplied excess of 2,11,943 units.

3.13. The Respondent made belated payments in respect of the power supplied under the agreements. Several letters were issued by the Petitioners to clear the payments. In respect of supplies made during October 2011, the Respondent made payments to the Petitioners during May 2012. Payments towards supplementary invoices raised by the second Petitioner for supply during October 2011 were made in the first week of October 2012. However, the Respondent did not make payment to the first Petitioner in respect of the said invoice dated 10-11-2011. Since payments for power supplied during October 2011 has been made to all private generators who had contracted to sell power to the Respondent, it is clear that the Respondent does not intend to make payments to the first Petitioner in respect of the invoice, dated 10-11-2011. The non-payment of the invoice has resulted in the present dispute.

3.14. The Respondent utilized the said units for meeting its supply obligations to its consumers and got benefited out of such units supplied by the first Petitioner. The act of the first Petitioner injecting 29,51,197 units generated by it into the grid is a non-gratuitous act. Hence, there is no basis or justification for Respondent in

withholding payments towards such units. The situation which has resulted in the first Petitioner generating and pumping the 29,51,197 units of power into the grid during October 2011, warrants that the first Petitioner is compensated.

3.15. The first Petitioner would not have drawn additional gas and generated the additional units, but for the G.O.Ms.10, Energy, dated 27-02-2009. Even if it had done so, the first Petitioner would have sold such units to consumers outside the State but for the restriction imposed on such sale. The second Respondent not having been able to supply the entire contracted quantum of 3,72,00,000 units during October 2011, the Respondent ought to have adjusted the 29,51,197 units supplied by the first Petitioner against such short supply. The Respondent is liable in law to compensate the Petitioner for the 29,51,197 units delivered to it by the Petitioner.

3.16. The refusal to make payment for the units which were injected into the grid by the first Petitioner, which has also been utilized by the Respondent in meeting its supply obligations is without any justification and amounts to unjust enrichment on the part of the Respondent.

3.17. Adverse financial impact on the generating company of directions issued by the Government can be offset by the Commission under section 11(2) of the Act. In the instant case, the first Petitioner having complied with the direction contained in G.O.Ms.No.10, Energy, dated 27-02-2009 and generated power by incurring cost is entitled to seek redressal from the Commission for the adverse financial impact on account of non-payment by the Respondent.

3.18. The Petitioner have been grossly prejudiced on account of the Respondent refusing to make payment for the units which is otherwise entitled to be paid for. The non-payment for the said units has caused enormous financial hardship to the Petitioners and is entirely dependent on the revenue generated by the sale of the power produced by the plant. The withholding of the amount by the Respondent being erroneous, arbitrary, contrary to law and totally unjustified, the Respondent is liable to pay interest to the first Petitioner for the delayed payments.

4. Contentions of the First Respondent TANGEDCO in the Counter Affidavit dated 25-02-2013:-

4.1. In pursuance to the order of the Commission in PPAP No.05 of 2011 the Respondent had invited tender vide tender No.14/TANGEDCO/2011, dated 12-09-2011 for procurement of 600 MW of firm power for the period from October 2011 to June 2012, the tender was opened on 20-09-2011 and the I.A. petition has been filed in P.P.A.P.No.5 of 2011 of the Commission. The Commission passed an order dated 04-10-2011 in I.A. No.1 of 2011 in P.P.A.P.No.5 of 2011. In the said order, it has been ordered inter-alia as follows:-

> *"The Commission fixes a ceiling of Rs.5.05 per unit for the purchase of licensee during the period from October 2011 to June 2012".*

4.2. In pursuance to the above, the Respondent had issued Letter of Acceptance to eleven generators including the above Petitioners, namely, (1) M/s.OPG Energy Pvt. Ltd. and (2) M/s.OPG Power Generation Pvt. Ltd. on 11-11-2011 for supply of 3 MW and 50 MW of power, respectively at the rate of Rs.5.05 per Kwhr to the Respondent for the period October 2011 to May 2012. The Petitioners were asked to enter into agreement with respective Superintending Engineers / Electricity

Distribution Circle where the plant is located. Accordingly the first Petitioner had executed an agreement with Superintending Engineer / Nagai Electricity Distribution Circle, Nagapattinam and the second Petitioner had executed an agreement with the Superintending Engineer / Chennai Electricity Distribution Circle (North), Chennai – 02 for supply of above said quantum upto May 2012.

4.3. The following clauses in the executed agreement are relevant for *consideration:-*

"4. Interfacing and Evacuation Facilities:-

x x x x x

(e) It is agreed by both the parties to comply with the Indian Electricity Grid Code, TNE Grid Code, the Electricity Act, 2003, other Codes, Rules, Regulations, Orders and amendments issued thereon by the Commission / CEA from time to time".

x x x x x

10. Billing and Payment

x x x x x

(b) A copy of the open access application and approval of SLDC on such application shall be furnished to the Superintending Engineer / REDC along with the monthly bill.

(c) Any scheduling done beyond the open access approved quantum as also beyond the contracted quantum will not be accepted and in case of such excess injection, no payment shall be made by TANGEDCO".

x x x x x

11. Modification such as addition / deletion:-

The generation plant holder shall stick to the contracted quantum of power under RTC basis for scheduling. There is no liability for payment on TANGEDCO to pay for the excess energy / supplied beyond approved scheduled energy or contracted energy by the generators on its own accord.

However, addition or deletion may be permitted depending on the orders that may be passed by the Hon'ble Commission or if there is any discrepancy in the terms of the agreement contrary to the then existing orders of the Hon'ble Commission".

From the above clauses, it is relevant that the generator is not allowed to revise the quantum of power on its own accord.

4.4. The Petitioner takes a different view on the ground that the Government issued G.O. Ms. No.10 dated 27-02-2009, invoking provisions of section 11 of the Electricity Act, 2003 and in terms of G.O. sale of electricity outside the State of Tamil Nadu has been banned and all generators have been directed to optimize their generation irrespective of there being any arrangement with the Respondent or not. It is further contended that since said G.O.Ms.No.10 has been in operation and has been issued as the State is reeling under severe power shortage, the 29,51,197 units generated and supplied by the first Petitioner, has benefited the State. Though not scheduled through the State Load Despatch Centre, the supply of 29,51,197 units generated by the Petitioner has not caused any adverse impact on the stability of the grid. The Petitioner also contended that the act of the first Petitioner of injecting in the 29,51,197 units generated by it is a non-gratuitous act.

4.5. The Government of Tamil Nadu notified G.O.Ms 10, Energy, dated 27-02-2009 which reads as follows:-

> *"(i) All power generation units operating Tamil Nadu shall operate and maintain generating stations to maximum capacity and Plant Load Factor (PLF) ; and*
>
> *(ii) All generating stations shall supply all exportable electricity generated to the State grid for supply to either Tamil Nadu Electricity Board or to any other HT consumers within the State as per the regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission".*

The Petitioner's contention that the terms of the said G.O. 10 grants blanket approval to pump entire generation irrespective of anything is a misconception of the order which results in the petition before the Commission.

4.6. There is only one agreement executed between CERC approved trader namely M/s.PTC India Ltd as a single bidder and the Respondent herein where the

Respondent had allowed to supply power to fulfill their obligation during the period 2009 to 2010. In the present case as individual bidder each generator had executed a separate agreement with the respective Superintending Engineer of Electricity Distribution Circle where the plant is located. Therefore, that single identity stating as group of companies is fundamentally ultra-vires the principle of tender. Hence, the obligation of the parties concerned is to stick on to their terms and conditions. With respect to the letter of the Petitioner, it was replied suitably vide letter dated 02-12-2011 by TANGEDCO that such adjustment between intra group companies was not feasible as per contractual conditions, as the contract and agreement are independent for each generator.

4.7. The Respondent's plant, namely, Valuthur Gas Turbine Power Station Unit-I 95 MW capacity was shut down from 17-05-2010 onwards due to stator fault. The Petitioner would have got prior approval for injecting any additional power to Tamil Nadu grid. The State Load Despatch Centre and TANGEDCO were not aware of excess injection of 29,51,197 Kwhr by the Petitioner.

4.8. The contention of the Petitioner is that there was an excess energy of 29,51,197 units injected by the first Petitioner for substitution of short fall energy from the second Petitioner is not acceptable in law as there is separate agreement in vogue and hence the Petitioner is not entitled to be paid for it. Also there was a short supply of energy of 27,39,254 units during the period October 2011 by M/s.OPG Power Gen Limited, the second Petitioner. The supply made was above 80% of the contracted quantum (0.8*50 MW*24.31 = 29760000 units). The short fall was within the allowed limits. Hence, the payment was admitted by the

SE/CEDC/North without levying compensation for short fall of energy. It is evident that the above Petitioner wants to make money out of its illegal injection of power.

4.9. In pursuance of P.P.A.P.No.5 of 2011, the Respondent issued LOA to the individual generators for supply of power from their plants as per their offers received in respect of Tender No.14 of 2011. The Respondent issued LOA to the individual generators for supply of power from their plants as per their offers received in respect of Tender No.14 of 2011. This contract is entered with the each generator for supply of power from June 2011 to May 2012 and it is entirely different from the earlier contract made with M/s. PTC and it was the responsibility of M/s. PTC to supply contracted quantum to TANGEDCO and TANGEDCO was not responsible for any adjustment among the group companies as done by M/s.PTC. In the case of Petitioners, it is a different case and hence the adjustment between group companies could not be entertained. The Respondent had also sent a reply dated 02-12-2011 to the second Petitioner informing that the request for intra group adjustment of supply is not feasible of compliance as per contractual conditions.

4.10. The first Petitioner has not sought and obtained any approval for the said injection of power. The TANGEDCO was also not aware of the injection of 29,51,197 Kwhr power by the Petitioner during October 2011 as it was not known under which contract the above excess power was injected. Since the Petitioner injected the energy without any contract / schedule or knowledge of SLDC, the Petitioner is not entitled for any payment.

4.11. Any injection of power without contract / scheduling or knowledge of SLDC would not be in the interest of disciplined operations of the grid which is of vital

concern from the view of reliable and safe operations of the grid. Section 32 (2) of the Electricity Act, 2003 mandates that the SLDC be responsible for optimum scheduling and dispatch of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in the State. In view of grid security and economic operation such injection of power without scheduling should not be encouraged as it will create a bad precedent and lead to indiscipline. The statement of the Petitioner is that "Though not scheduled through the State Load Dispatch Centre, the supply of 29,51,197 units generated by the Petitioners has not caused any adverse impact on the stability of the grid" is nothing but transgressing into the power of SLDC and deserves to be duly punished.

4.12. The claim of the Petitioners was for excess energy injected into grid without any approval. If the Petitioner is permitted for such transmission of power without approval, it will result in creation of wrong precedents and result in more such cases and in future a number of open access generators who are unable to sell their costly power will simply inject the power without any contract / schedule at the time when such power is not needed.

4.13. The APTEL vide Appeal No.123 of 2010 dated 16-05-2011 has held inter-alia as follows:-

"The Commission opines that any injection, without valid contract and / or complying with scheduling requirements as per prevalent procedures for scheduling and dispatch, (however, unintentional and caused due to technical operational misunderstanding as submitted by the Petitioner) would not in principle be in the interest of disciplined operations of the grid which is of the paramount concern from the perspective of reliable and safe operations of the Grid".

4.14. The averment that the units which were injecte4d into the grid by the first Petitioner has also been utilized by the Respondent in meeting its obligation is not

acceptable for the reason that such power would have flown to anywhere in the region or even lost in transmission. Inasmuch as the Respondent has not utilized the disputed power, the Petitioner has no right to claim any payment for the disputed power citing G.O.Ms. No.10 which will result in undue enrichment of the Petitioner.

5. Contentions of the Second Respondent State Load Despatch Centre dated 26-02-2013:-

5.1. Section 32 of the Electricity Act, 2003 dealing with the functions of State Load Despatch Centres provides for the following:-

> *"(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*
>
> *(2) The State Load Despatch Centre shall-*
>
> *(a) be responsible for optimum scheduling and despatch of Electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State ;*
>
> *(b) monitor grid operations ;*
>
> *(c) keep accounts of the quantity of electricity transmitted through the State grid ;*
>
> *(d) exercise supervision and control over the intra-state transmission system ; and*
>
> *(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code".*

Thus, it is the responsibility of SLDC for optimum scheduling and despatch of electricity in accordance with the contracts entered into with the generating company.

5.2. The first Petitioner M/s.OPG Energy Pvt. Ltd., Nagapattinam has been accorded STOA by SLDC from 01-06-2011 for supply of 3 MW of power to

TANGEDCO from June 2011 to May 2012 as per CMD TANGEDCO Proceedings No.291 dated 09-08-2011 under Tender No.14 of 2011 pursuant to the orders of the Commission in P.P.A.P. No.5 of 2011. The second Petitioner M/s.OPG Power Generation Pvt. Ltd., Gummidipoondi has also been accorded STOA by SLDC from 01-06-2011 for supply of 50 MW of power to TANGEDCO from June 2011 to May 2012 as per CMD TANGEDCO Proceedings No.291 dated 09-08-2011 under Tender No.14 of 2011 pursuant to the orders of the Commission in P.P.A.P. No.5 of 2011.

5.3. Some of the conditions stipulated under terms and conditions of the above STOA approval are as below:-

Condition No.6:

"As per Electricity Act, 2003 and the prevailing regulations necessary day ahead generation schedule has to be furnished by the generators and SLDC has to dispatch the schedules as per the contracted agreement".

Condition No.8

"Any energy injected into the Grid over and above the agreed contracted quantum shall not be accounted for any payment under any circumstances".

5.4. Clause 10 (C) of the EPA, dated 15-10-2011 entered between the first Petitioner and the SE/EDC/Nagapattinam, reads as below:-

"Any scheduling done beyond the open access approved quantum as also beyond the contracted quantum will not be accepted and in case of such injection, no payment shall be made by TANGEDCO".

5.5. Clause 8(4) of TEGC stipulates as follows:-

"i The SLDC shall have the total responsibility for scheduling / dispatching the generation of all agencies including the Utilities, IPPs, NCES (excluding wind mills),Co-Generators etc. connected to the Grid.

x x x x x

iii The generating stations shall be responsible for power generation generally according to the daily schedule provided to them by the SLDC on the basis of the drawal schedules received from the beneficiaries / distribution Licensee and also in accordance with Merit Order Despatch and Connectivity Agreements.

However, the generating stations may deviate from the given schedules depending on the plant and system conditions with the prior approval from SLDC".

5.6. The first Petitioner himself has admitted that they have injected an additional quantum of 29,51,197 units during October 2011due to additional gas available from GAIL. The first Petitioner has not sought and obtained any approval for the said injection of power. The SLDC was also not aware of the injection of 39,51,197 Kwhr power by the Petitioner during October 2011 due to non-availability of real time data acquisition facility to the SLDC which is to be provided by the Petitioner.

5.7. No schedule was given by the SLDC to the Petitioner. The first Petitioner himself has admitted that the extra power injected was not scheduled through State Load Dispatch Centre. Since the Petitioner injected the energy without any contract / schedule or knowledge of SLDC, the Petitioner may not be entitled for payment.

5.8. Any injection of power without contract / scheduling or knowledge of SLDC would not in principle be in the interest of disciplined operation of the grid which is of vital concern from the view of reliable and safe operations of the grid. Accordingly, section 32 (2) of the Electricity Act, 2003 mandates the SLDC to be responsible for optimum scheduling and dispatch of electricity within the State in accordance with the contracts entered into with the Licensees or the generating companies operating in the State.

5.9. The injected power without any schedule, contract or agreement or knowledge of the SLDC was also expensive i.e. Rs.5.05/Kwhr. The SLDC plans the grid operation, generation schedule, merit order operation one day in advance based on the contracts / agreement with the generators and declared capacity by the

generators. The generators are expected to follow the schedule in the interest of grid security and economic operation. If a generator connected to the grid injects power into the grid without schedule, the same will be consumed in the grid even without the knowledge of the STU / SLDC. However, in view of grid security and economic operation such injection of power without scheduling could not be encouraged. The injection of power by the Petitioner is without any schedule, contract or agreement or knowledge of the SLDC. Moreover, SLDC is an independent entity and could not sanction injection of such power on behalf of distribution licensees.

5.10. As per section 32 of the Electricity Act, 2003, it is the responsibility of SLDC for optimum scheduling and dispatch of electricity within a State, to monitor grid operation, to exercise supervision and control over the intra-state transmission system and to carry out real time operations for grid control and dispatch of electricity within the State through secure and economic operation of the State grid. All the generators have to follow the schedule in the interest of grid security and economic operation of the grid. Any excess power injected without prior approval of SLDC would endanger the security of the grid. Hence, the Petitioner could not be permitted for payment for the extra energy injection without scheduling.

5.11. If the Petitioner is permitted for such transmission of power without scheduling, it will result in creation of wrong precedent and result in more such cases and in future a number of open access generators who are unable to sell their costly power will simply inject the power without any contract / schedule at the time when such power is not needed. In Appeal No.123 of 2010 dated 16-05-2011, the APTEL

has accepted in para (7) of the order, the following observation of the Maharashtra State Electricity Regulatory Commission:-

> *"The Commission opines that any injection, without valid contract and / or complying with scheduling requirements as per prevalent procedures for scheduling and dispatch, (however, unintentional and caused due to technical operational misunderstanding as submitted by the Petitioner) would not in principle be in the interest of disciplined operations of the grid which is of the paramount concern from the perspective of reliable and safe operations of the Grid".*

5.12. If the contention of the first Petitioner for payment of the excess quantum injected into the grid without the open access approval of SLDC to make up for the shortfall in second Petitioner's plant is accepted by the Commission, it will result in a situation where other generators also will indulge in such practices which would be highly detrimental to the safety and security of the State grid. Reliance placed by the Petitioners on the orders in G.O.Ms.No.10, energy, dated 27-02-2009 in support of the illegal injection of power is unacceptable.

6. Findings of the Commission:-

6.1. Based on the tenders opened on 20-9-2011 and based on the Commission's Order in PPAP No.5 of 2011, the Respondent TANGEDCO has entered into Energy Purchase Agreement with many suppliers including M/s OPG Energy Pvt. Ltd. and OPG Power Generation Pvt. Ltd. for the quantum of 600 MW on 15-10-2011 for the supply to be made during the period June 2011 to May 2012.

6.2. The 1st Petitioner M/s. OPG Energy Pvt. Ltd. entered into Agreement with the Respondent TANGEDCO (Superintending Engineer, Nagapattinam EDC) on 15-10-2011 for supply of 3MW for the above period and the 2nd Petitioner M/s OPG Power Generation Pvt. Ltd. entered into Agreement with the Respondent

TANGEDCO (Superintending Engineer, EDC Chennai North) on 15-10-2011 for supply of 50 MW The above agreements entered into were separate agreements.

6.3. The Government of Tamil Nadu notified G.O. Ms 10, Energy, dated 27-02-2009 which reads as follows:

> *i. All power generating units operating in Tamil Nadu shall operate and maintain generating stations to maximum capacity and Plant Load Factor (PLF); and*
>
> ***ii.*** *All generating stations shall supply all exportable electricity generated to the State grid for supply to* ***either Tamil Nadu Electricity Board or to any*** **other HT consumers within the State as per the regulations notified in this regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission.**

From the above G.O. it is clear that the generating companies which generate power **may sell either to TANGEDCO or to any other HT consumer within the State of Tamil Nadu.** Hence, there is no specific duty cast upon the TANGEDCO to purchase all the power generated by the above Petitioner at high cost. Instead, the generator should have identified HT consumers within the State for supply of power generated by him at a price for supplying the Power.

6.4. As stated in para 4.8, the contention of the 1st Petitioner, that the injection of an excess energy of 29,51,197 is for substitution of short fall energy from the second Petitioner cannot be accepted as the agreements entered into were two separate agreements, one in Nagapattinam and the second one in EDC North Chennai. Further, the shortfall units of 27,39,254 is also well within the contractual obligation of the agreement entered into with the 2nd Petitioner. The supply made was above 80% of the contracted quantum (0.8*50 MW*2431 = 29,760,000 units). Hence, the statement of the 1st Petitioner cannot be considered as the short supply as it is within the permissible limit.

6.5. As stated in para 4.9, in the previous agreement the entire obligation was with M/s.PTC who have agreed to supply power and only one agreement was entered in that Tender with M/s. PTC. Whereas, in the present case several agreements were entered into by the Respondent TANGEDCO with the generators for supply of Power (600 MW) at various Distribution Circles wherever the generating stations were located.

6.6. In the present agreement entered into with the above Petitioners, the following clauses *are relevant:*

> *"**4. Interfacing and Evacuation Facilities:***
> *xxxxxxx*
> *(e) It is agreed by both the parties to comply with the Indian Electricity Grid Code, TNE Grid Code, the Electricity Act, 2003, other Codes, Rules, Regulations, Orders and amendments issued thereon by the Commission / CEA from time to time.."*
> *Xxxxxxxxx*
>
> ***10. Billing and Payment***
> *Xxxxxxxxxx*
> *(b) A copy of the open access application and approval of SLDC on such application shall be furnished to the Superintending Engineer/REDC along with the monthly bill.*
>
> *(c)* ***Any scheduling done beyond the open access approved quantum as also beyond the contracted quantum will not be accepted and in case of such excess injection, no payment shall be made by TANGEDCO.***
>
> ***11. Modification such as addition / deletion:***
> *The generator shall stick to the contracted quantum of power under RTC basis for scheduling.* ***There is no liability for payment on TANGEDCO to pay for the excess energy/ supplied beyond approved scheduled energy or contracted energy by the generators on its own accord.***

However, addition or deletion may be permitted depending on the orders that may be passed by the Hon'ble Commission or if there is any discrepancy in the terms of the agreement contrary to the then existing orders of the Commission.

But here in the present case, TANGEDCO did not give approval for supply of an additional quantum of Power by the 1st Petitioner.

6.7. Some of the Conditions stipulated under terms and conditions of the above STOA approval are as below:

> ***Condition No.6 :***
> ***"As per Electricity Act, 2003 and the prevailing regulations, necessary day ahead generation schedule has to be furnished by the generators and SLDC has to dispatch the schedule as per the contracted agreement."***
>
> ***Condition No.8:***
> ***Any energy injected into the Grid over and above the agreed contracted quantum shall not be accounted for any payment under any circumstances.***

6.8. Further, in the agreement entered into between the 1st Petitioner and the SE/EDC/Nagapattinam is as follows:

> *"Any scheduling done beyond the open access approved quantum as also beyond the contracted quantum will not be accepted and in case of such injection no payment shall be made by TANGEDCO.*

6.9. Clause 8(4) of TEGC stipulates as follows:

> *" i. The SLDC shall have the total responsibility for Scheduling / dispatching the generation of all agencies including the Utilities, IPPs, NCES (excluding wind mills), Co-generators, etc. connected to the Grid.*
>
> *ii xxxxxx*
>
> *iii The generating stations shall be responsible for power generation generally according to the daily schedule provided to them by the SLDC on the basis of the drawal schedules received from the beneficiaries / distribution Licensee and also in accordance with the Merit Order Despatch and Connectivity Agreements.. However, the generating stations may deviate from the given schedules depending on the plant system conditions with the prior approval from SLDC."*

6.10. Taking into account all the above rules, regulations and the terms of separate contract /agreement entered into between the Petitioners and the Respondent

TANGEDCO (respective Superintending Engineer /EDC/xxxxxx) if the approval for compensation for injection of an additional power in to the grid by the 1st Petitioner is allowed then it would set as a bad precedent and there won't be any grid discipline and approval for STOA might not be sought from the SLDC by the generators whenever an additional generation is available with them and when they do not find any purchaser for their generated energy, they may inject power in the Grid and seek compensation from TANGEDCO stating that they have injected the power only in the State Grid and TANGEDCO should pay as it might have utilized the injected energy to meet its consumers demand, which might seriously affect the Southern Grid in which the State of Tamil Nadu is situated.

In view of the above, D.R.P. is dismissed.

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