

**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.5 of 2013**

M/s.TCP Ltd.  
04, TCP Sapthagiri Bhavan  
Karpagambal Nagar  
Mylapore  
Chennai – 600 004.

... Petitioner  
(Thiru Rahul Balaji,  
Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,  
Rep. by its Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai,  
Chennai 600 002.
2. The Chief Engineer Planning and RC  
Tamil Nadu Generation & Distribution Corporation Limited  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai,  
Chennai 600 002.

....Respondents  
(Thiru Yasodh Varadhan  
Senior Advocate for  
Thiru P.H. Vinod Pandian  
Standing Counsel for TANGEDCO)

**Date of hearing : 08-02-2013, 19-03-2014 and 25-03-2014**

**Date of order : 13-02-2015**

The above D.R.P.No.5 of 2013 came up for final hearing before the Commission on 25-03-2014. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order:-

### **ORDER**

**1. Prayer of the Petitioner:-**

The prayer of the Petitioner is to -

- (a) set aside the action of the Respondent in denying payment to the Petitioner for energy supplied in 2010-2011 on the ground of failure to comply with the annual commitment of supply of 450 million units ;
- (b) direct payment of a sum of Rs.9,19,24,107/- together with interest at 14% per annum i.e. Rs.4,00,38,655/- in respect of each month's invoice from the date the same became due totaling to Rs.13,19,62,762/- as being due and payable under the terms of the Power Purchase Agreement.

**2. Facts of the Case:-**

The Petitioner had set up a captive power plant of the capacity of 63.5 MW at Gummidipoondi. The Petitioner had entered into a Power Purchase Agreement (PPA) with the Tamil Nadu Electricity Board (TNEB) on 29-01-1999. The scheme of the PPA which is valid for 15 years, till 2014 provides for supply of power to the TNEB and payment to be governed by the terms contained therein. An addendum to the PPA was entered into on 24-04-2009 in respect of the rates applicable for firm power for the years beginning from 2008-2009 to 2013-2014. The rotor of the power generator developed technical problems which according to the Petitioner is an event of force majeure and consequently there was reduced generation / no generation for certain period during 2010-2011 which resulted in non-supply of

450 million units to the TANGEDCO. Alleging that the TANGEDCO denied payment at the rate applicable for firm power for the power supplied in 2010-2011 citing non-compliance of supply of committed 450 million units, the Petitioner came up before the Commission with the present D.R.P.

### **3. Contentions of the Petitioner:-**

3.1. The Petitioner has a captive power plant of the capacity of 63.5 MW at Gummidipoondi. The Petitioner had entered into a PPA with the TNEB on 29-01-1999. The PPA is valid for a period of 15 years, till 2014. The PPA provides for supply of power to the TNEB and payment to be governed by the terms contained therein. An addendum to the PPA was entered into on 24-04-2009 in respect of the rates applicable for firm power for the years beginning from 2008-2009 to 2013-2014.

3.2. Clauses 1.5, 1.7, 1.8, 2, 3.7 to 3.10, 3.14 and 3.15 of the PPA are relevant for the purpose of the present dispute. In terms of clause 3.7 of the PPA, prior to the commencement of each billing year, the Petitioner, after assessing its generation and other commitments and after discussions with the Respondent, commits to supply a specified number of units of power to the Respondent. In line with such commitment, the Petitioner vide letter dated 17-02-2010 communicated a firm committed power supply of 450 million units for the period from 01-04-2010 to 31-03-2011 from its 63.5 MW captive power plant at Gummidipoondi which was accepted by the TNEB vide letter dated 17-03-2010.

3.3. While things stood thus, there was an unfortunate breakdown of the generator rotor during April 2010. In order to supply power to the Tamil Nadu Electricity Board,

during the peak summer season, the Petitioner, in line with the recommendation from equipment supplier, ran the plant at reduced capacity until the end of July 2010.

3.4. The Petitioner vide letter dated 03-07-2010 had intimated to the Respondent that its unit was facing technical problems which they came across during testing and that from the test reports they anticipated that there may be a major breakdown in the generator rotor and the Petitioner may be forced to stop running the plant. The Petitioner also informed the Respondents that only on shutting down and on further detailed inspection, the scope and extent of damage can be ascertained and thereafter the period for attending to the same for restoring the same back to the running condition can be predicted.

3.5. Enclosing copy of RSO Test Report for the reference of Respondents, the Petitioner notified to the Respondent that due to unforeseen force majeure problems that had occurred in running the unit beyond the Petitioner's control and the Petitioner may be exempted from the monthly commitment of firm supply of power during the period of unit shut down and for repair. The Petitioner also intimated to the Respondent that based on the test reports and discussions with the original equipment manufacturer, the Petitioner expected the plant to be under shut down for about 100 days and requested the Respondents to treat 300 million units as firm committed power for the year 2010-11 as against 450 million units already intimated. The Petitioner had continued to keep the Respondent intimated of further developments. On 03-08-2010, the Petitioner informed the Respondents that due to the technical problem the plant had tripped at 01.00 hour on 03-08-2010 with one of the technical reasons being excessive vibration of the generator and they will examine technical problems and would inform the Respondent about further action.

3.6. By a further communication dated 10-08-2010 the Respondents were informed that the Petitioner had opened the generator, after it was cooled down, on 08-08-2010 and after inspection on 08-08-2010 and 09-08-2010, it was found that the rotor had developed technical problems and the Petitioner had therefore transported the same to Alstom Projects India Ltd., Vadadora, for necessary rectification and return. It was also notified that in terms of the expert opinion given by Alstom Projects India Ltd., it would take about 90 days for carrying out the repairs exclusive of the transportation, re-erection and commissioning and also intimating the Respondent that any change in such schedule would be informed to them. The Respondent had also kept itself informed of the development and by letter dated 13-08-2010 confirmed receipt of the communication dated 10-08-2010 from the Petitioner and requested for earlier rectification works and urgent action.

3.7. Thereafter, by a further communication dated 27-08-2010, the Director (Generation) of the Respondent issued a letter claiming that the Petitioner's request dated 03-07-2010 for revised commitment of power, the same was not in line with the provisions of the PPA and that the payment for supply of power to Electricity Board would be regulated in terms of the provisions of PPA for the already approved quantum.

3.8. By yet another letter dated 13-09-2010, the Petitioner invited the reference of the Respondent to Petitioner's letter regarding the breakdown resulting in the stoppage of the generation and export and specifically requested to treat the period of non-operation of the plant as a forced outage. By letter dated 08-10-2010, the Petitioner informed the Respondent of the continuation of the breakdown of the

power plant resulting in “Nil” generation of power during the month of September 2010. The Petitioner issued a further detailed letter dated 23-10-2010 detailing the developments and intimating their anticipation that they would be in a position to re-start the plant by end of November 2010 and that the sudden failure of the rotor was unforeseen force majeure condition and that the commitment to supply power had to be accordingly modified.

3.9. The Petitioner issued a communication dated 01-11-2010 informing the Respondents that the repaired rotor was in transit from Vadodara from Alstom Projects Plant and provided that things proceeded as per schedule, they would be in a position to light up the plant on 07-11-2010 and synchronize the same on 10-11-2010. In line with the said communication dated 01-11-2010 the Petitioner informed the Respondent of lighting up of the boiler on 09-11-2010 and proceeding with testing and trials in order to synchronize the plant with the Grid on 10-11-2010 at about 5.00 p.m.

3.10. The Petitioner thereafter received a communication dated 18-11-2010 from the Respondent requesting that the Petitioner specify the provisions of the PPA under which the Petitioner was requesting approval of revised commitment and also informed the Petitioner that further course of action would be taken after receipt of Petitioner’s reply. The Petitioner, in reply, issued a detailed communication on 22-11-2010 reiterating their position. Thereafter the Petitioner sent the payment details and called upon the Respondent to make payment against invoices raised.

3.11. On 02-12-2010 the Executive Engineer (Operations) had informed the Chief Financial Controller of the TNEB that the Petitioner had stopped their generation on

03-08-2010. After completing the shutdown works the machine was synchronized with the TNEB grid at 11.50 hrs. on 11-11-2010. In view of the failure of the Respondent in acting in terms of the PPA, the Petitioner issued a further communication dated 21-12-2010 setting out details in respect of forced outage and seeking for payment in terms of PPA for firm power supplied, to which it received a reply dated 31-12-2010 stating the issue was under consideration. The Petitioner was, however, disappointed to receive a letter dated 10-02-2011 claiming that the Respondent Board had examined the Petitioner's request in detail and had stated that the request made by it was unacceptable. When the Petitioner received payments for the month of March 2011 on 11-08-2011, it became clear that the issue would not be reconsidered by the Respondents in the correct light.

3.12. The terms of PPA clearly mandate payment by treating the entire power supplied as firm power without any deductions as sought to be done by the Respondent. The scheme of PPA clearly postulates that the Petitioner has to intimate the firm power committed by it for each billing year, with clause 3.8 and 3.11 setting out the minimum energy in units for each monthly period. It is significant to state that in respect of both clauses 3.8 and 3.9, an exception for period of planned and forced shut down have been provided. Significantly, clause 3.10 which specifically provides that if the shutdown is either forced or planned, the minimum and maximum energy in units to be sold to the Board for that billing period, periods are to be arrived at in the manner set forth in clause 3.10 (c ). It appears that the Respondents are applying clause 3.14 in an isolated manner.

3.13. The shortfall percentage of power set out in clause 3.14 of the PPA would be applicable only under normal conditions and not due to conditions of forced outage

or due to any force majeure conditions. In the present case, the reasons for shortfall is solely due to reasons beyond the control of the Petitioner and the Petitioner has also taken appropriate and speedy steps in that regard for repairing the equipment and putting the plant back into operation. Therefore, both on the grounds of force majeure and forced outage, the Petitioner cannot be penalized.

3.14. The total payment due in terms of the Petitioner's calculation for the period from April 2010 to November 2010 in the year 2010-11 is Rs.62,70,18,501/-. However, only Rs.47,02,63,874/- has been received from the Respondents for the said period. Thus the Respondents were liable to pay a sum of Rs.15,67,54,627/- towards the difference in the invoice amount. The Respondents had made a further payment of Rs.6,48,30,520/- on 13-06-2011. A remainder of Rs.9,19,24,107/- is due and payable by the Respondents to the Petitioner towards the shortfall in payments made on the basis of incorrect calculation along with interest.

#### **4. Contention of the Respondents in the Counter Affidavit:-**

4.1. The Petitioner is a Captive Power Plant (CPP) with a capacity of 63.5 MW. The Petitioner had executed a Power Purchase Agreement (PPA) on 29-01-1999 with TNEB as per the provisions of policy issued by GOTN in G.O.Ms.No.48, dated 22-04-1998, for sale of power to TNEB after own use. The agreement is valid for 15 years or for the useful life period of the plant whichever is less. As the rate for power purchase was available only upto financial year 2007-2008, the Commission was pleased to fix tariff for the years 2008-2009 to 2013-2014 in the petition filed by the Petitioner in P.P.A.P.No.3 of 2008. An addendum to agreement was executed for adoption of the above tariff on 24-04-2009.

4.2. As per Clause 3.7 of the PPA, the Petitioner had to intimate the firm power commitment for each billing year one month in advance before the commencement of the billing year. There is no necessity for discussion with the Respondent before commitment of supply of power as per PPA and no discussion took place as averred by the Petitioner in para 6 of the petition. The commitment is absolutely voluntary by the Petitioner and the Respondent had no role in it. The Petitioner had committed to supply 450 M.U. for the period from 01-04-2010 to 31-03-2011 vide letter dated 17-02-2010 and the same was accepted by the Respondent and approval was communicated vide letter dated 17-03-2010. The rate for purchase of power during the above period was Rs.4.04 per Kwhr. for firm power and Rs.3.03 per Kwhr. for infirm power.

4.3. As per clause 3.8 of the PPA, minimum energy in units to be sold to the Board during the billing period is to be 5% of firm power committed by the company for the billing year, except for the periods of planned and forced shut down. As per clause 3.11 of the PPA, monthly billing for the period of April to February of any year (when the quantity of power in units sold for the billing month is below one twelfth of the annual power committed) will be as below:-

$$\begin{aligned} \text{Total cost of the power sold to the Board for the billing period} &= \\ &= (\text{Total units sold during that period}) \times (\text{firm power rate}) \times 0.75 \end{aligned}$$

4.4. As per clause 3.12 of the PPA, monthly billing for the period of April to February of any year (when the total units of power sold to the Board for the billing month is one twelfth of the annual power committed or more) will be as below:-

$$\begin{aligned} \text{Total cost of the power sold to the Board for the billing period} &= \\ &= (\text{Total units sold during that period}) \times (\text{firm power rate}) \end{aligned}$$

4.5. As per clause 3.14 of the PPA, billing for the billing period of March of any year (when the total units sold to the Board for the billing year April to March is below the annual firm power committed) will be as below:-

The shortfall percentage of power sold against the commitment is to be billed under the infirm power rate and the balance out of sold power is to be billed under firm power rate.

**Example:**

If committed power	=	100 units
Supplied power	=	90 units
Shortfall in commitment	=	10%

Out of 90 units supplied only 10% of 90 units (i.e. 9 units) will be billed as infirm power and the balance (81 units) as firm power.

4.6. If the total power sold during the year of billing is in excess of annual maximum power commitment, the excess power sold over and above the annual maximum power commitment will also be calculated at firm power rate. Any adjusting in the annual bill amount is to be adjusted in the March bill and if the entire amount is not adjustable in the March bill, the balance amount will be adjusted in the subsequent month's bills.

4.7. As per the clause 3.8 of the PPA, the Petitioner during the billing period (i.e. in a month) has to supply minimum energy of 5% of the firm power committed by the company for the billing year except for the periods of planned and forced shut down. As the Petitioner had committed 450 MU during the year 2010-2011, the company had to supply minimum of 22.5 MU every month (Billing period). Further as per clause 3.11 of the PPA, the Petitioner can be paid only at infirm power rate in a billing month (i.e. from April to February) when the quantity of power in units sold for the billing month is below one twelfth of the annual power committed. This means if

the company supplies less than one twelfth of 450 MU i.e. less than 37.5 MU in a month, such supplies can be paid only at infirm power rate, which is 75% of the firm power rate. When the company supplies one twelfth of annual committed power in a billing month i.e. equal to 37.5 MU, as per clause 3.12 of the PPA, the company can be paid at firm power rate.

4.8. The company has supplied less than 1/12<sup>th</sup> of the committed power during the months April 2010 to July 2010 and hence payment was settled at Rs.3.03 i.e. infirm power rate (Rs.4.04 x .75) as per the provisions of class 3.11 of the PPA. The Petitioner has accepted the same without raising any dispute.

**Working for the month of April 2010**

Power supplied during April 2010	=	3,16,88,747 units
1/12 <sup>th</sup> of committed power	=	3,75,00,000 units
Amount paid @ infirm rate	=	3,16,88,747 x 3.03
	=	Rs. 9,60,16,903/-

4.9. On 03-07-2010, the Petitioner's company informed that they anticipate major break down in the generator rotor and they may be forced to shut down for a period of about 100 days which is unforeseen force majeure and requested to revise the commitment of power for the year 2010-2011 from 450 M.U. to 300 M.U. The Petitioner vide letter dated 03-08-2010 informed that their plant had tripped at 01.00 hrs. on 03-08-2010 and subsequently in the letter dated 10-08-2010 informed that there was problem in the rotor and it would take 90 days for them to repair.

4.10. After detailed examination, the Petitioner was informed vide letter dated 27-08-2010 that revision of commitment of power for the year 2010-2011 does not

go in line with the provisions of PPA and hence the payment for supply of power to TNEB will be regulated as per the provisions of PPA for the already approved commitment of power of 450 MU. Subsequently during the month of August 2010, the Petitioner had supplied 40,24,800 units. The bill for the month of August 2010 was settled as per the provisions of Article 2 and clause 3.10 of the PPA by treating it as force majeure and the company was paid for August bill at firm power rate i.e. Rs.4.04 per unit as mentioned below:-

The clause 3.10 is to be made applicable if the shutdown of CPP (either forced or planned) is for a part of a billing period and the minimum and maximum energy in units to be sold to the Board for that billing period had been arrived as follows:-

**August 2010**

(a) Minimum energy to be sold is to be :-  
 Minimum units as per condition 3.8 x (No. of hrs. the CPP is in parallel with the grid during the billing period)  
 -----  
 (No. of hrs of the billing period)

= 22500000 x 72/744  
 = 21,77,419 units

(b) 1/12<sup>th</sup> of committed power = 375000000 x 72/744  
 = 36,29,032 units

(c) Maximum energy to be sold is to be :-  
 Maximum units as per condition 3.9 x (No. of hrs. the CPP is in parallel with the grid during the billing period)  
 -----  
 (No. of Hrs of the billing period)

= 524700000 x 72/744

= 50,77,741 units

Therefore as per the above calculation-

- (a) = 21,77,419 units
- (b) = 36,29,032 units
- (c) = 50,77,741 units

The Petitioner had supplied 40,24,800 units during the month of August 2010 which was more than the 1/12<sup>th</sup> of the committed power of 36,29,032 units. Hence the payment was made at firm power rate. There was “Nil” supply of power for the months of September 2010 and October 2010. For November 2010, the supply of power from the Petitioner was as below:-

$$\begin{aligned} \text{(a)} &= 22500000 \times 456 / 720 \\ &= 1,42,50,000 \text{ units} \end{aligned}$$

$$\begin{aligned} \text{(b).} &= 375000000 \times 456 / 720 \\ &= 2,37,50,000 \text{ units} \end{aligned}$$

$$\begin{aligned} \text{(c)} &= 52470000 \times 456 / 720 \\ &= 3,32,31,000 \text{ units} \end{aligned}$$

The Petitioner had supplied 2,11,00,800 units during the month of November 2010 which was less than the 1/12<sup>th</sup> of the committed power of 2,37,50,000 units. Hence, the payment was made at infirm power rate.

4.11. The Petitioner vide letter dated 23-10-2010 once again requested for revision of committed power to 300 M.U. for the year 2010-2011 as against 450 M.U. and to settle the bills at firm power basis. The Petitioner also informed that they hope to restart the plant by end of November 2010. Based on the above representation, letter dated 18-11-2010 was addressed to the Petitioner requesting to confirm under what provisions of the PPA the Petitioner was requesting approval for revised commitment of power. The Petitioner company vide their letter dated 22-11-2010 stated that, sudden failure of the rotor was unforeseen and it is a force majeure condition as per Article 2 of PPA and requested to treat the shutdown period as due to force majeure condition and requested to accept revise commitment of power to 300 M.U. The request of the Petitioner was once again examined in detail, taking into account of various provisions of PPA. The subject was placed before the Board

and the Board examined the issue and concluded that there was no provision available in the PPA to accede to the request of the Petitioner for revision of committed power. Hence the Respondent informed the petitioner in the letter dated 10-02-2011 that the request made by the Petitioner was outside the purview of the PPA, and as such it was unacceptable. The Petitioner was also informed that payment for the energy supplied will be regulated as per the provisions of PPA.

4.12. The terms of PPA does not mandate payment by treating the entire power supplied as firm power without any deduction as claimed by the Petitioner. The Petitioner instead of applying the whole PPA, cherry pick the provisions according to his convenience with the sole aim to derive undue enrichment. Clause 3.7 of the PPA clearly mandates that the Petitioner had to commit firm power before commencement of the billing year and the Petitioner also acknowledge the same and hence there is no dispute on furnishing committed power by the Petitioner. However, it is not necessary for the Respondent to mandatorily purchase such committed power under clause 3.22, since the PPA enables the Respondent not to accept such power. Hence approval and acceptance of the Respondent is required for the purchase of power committed by the Petitioner, and mere intimation by the Petitioner for the power proposed to be sold cannot be taken as acceptance of commitment of power unless specifically accepted by the Respondent.

4.13. Clauses 3.8 and 3.9 of a PPA clearly fix the quantum of minimum and maximum energy that has to be supplied by the Petitioner, every month. The exceptions provided in these clauses for the periods of planned and forced shutdown are applicable for the particular month only (billing period). In the normal course in order to get firm power rate the Petitioner has to satisfy clauses 3.8, 3.9 read with

clause 3.12 of the PPA. As per these clauses, the Petitioner has to supply 1/12<sup>th</sup> of annual committed power to get paid at firm power rate. The Petitioner will be paid only at infirm power rate, in case the quantum supplied is less than 1/12<sup>th</sup> of the Annual Committed Power as per clause 3.11 or for the short fall in quantum and for the power supplied without any commitment as per clause 1.8 of the PPA.

4.14. In the case of Petitioner the annual committed power for the year 2010 to 2011 as accepted by the Respondent was 450 MU. The company had to supply at least 37.5 M.U. every month in order to get payment at firm power rates. The firm power rate for the year 2010-2011 was Rs.4.04 per Kwhr and the infirm power rate was 75% of Rs.4.04 which was Rs.3.03 per Kwhr. Energy supplied less than 37.5 MU was eligible for payment only at infirm power rate every month. It can be seen that the company had not supplied the 1/12 of annual committed power of 450 M.U. i.e. 37.5 M.U. per month as per PPA provisions for making payment @ firm power rate of Rs.4.04 even before the break down of the generator i.e. during the month from April to August 2010. Hence during such periods the company had been paid @ infirm power rate (i.e. 75% of the firm power rate) for the supplied energy as per the PPA provisions.

4.15. As per the Article 2 of the PPA, explosions, accidents, breakage of facilities, plant or equipment, structural collapse etc. amounts to "Force Majeure Conditions". However, clause 3.10 of PPA states how billing is to be made during such shutdown of the plant during billing periods i.e. every month and clause 3.14 of the PPA describes how billing should be made for the period of March of any year when the total units sold is below the annual firm power committed. From the above, it could be seen that there is no provision in the PPA for revising the quantum of power

already committed by the company. The above provisions of the PPA take care of the shortfall due to force majeure condition also on monthly basis i.e. for every billing period.

4.16. Force Majeure clause is applicable only when a shutdown of CPP either forced or planned in a part of billing period. Billing period means the period between the time of taking monthly meter reading of a particular month to that of succeeding month. Hence, the force majeure clause was considered for the period from 03-08-2010 to 11-11-2010 i.e. for the monthly bills of August 2010, September 2010, October 2010 and November 2010 (i.e. during the month in which the rotor has failed).

4.17. The claim made by the Petitioner for Rs.15.67 crore in para 13 of the petition is not correct. The Petitioner claims firm power rates for the entire quantum of power supply, even for the period not covered under force majeure clause when the quantum of power supplied is less than  $1/12^{\text{th}}$  of the annual committed power of 450 M.U. which is 37.5 M.U. As per clause 3.11 of the PPA, the Petitioner is eligible only for infirm power rate during non-force majeure period and same was paid. When the approved committed power is 450 M.U., the  $1/12^{\text{th}}$  of annual committed power will be 37.5 M.U. Appropriate consideration of force majeure clause and force majeure period of about 100 days as per the PPA provisions was not denied to the Petitioner by the Respondent. The amount payable during such force majeure period as envisaged in the PPA had been paid. The claim of the Petitioner is citing a force majeure period of about 100 days, revising the bench mark downward, and apply the down sized bench mark for the entire year. The claim of the Petitioner is to be held as invalid claim and dismissed. If the annual committed power is revised to 300

M.U. then  $1/12^{\text{th}}$  of annual committed power would be 25 M.U. By this the Petitioner tries to circumvent the provisions of PPA to get firm power rates for the energy supplied by the Petitioner below the bench mark of 37.5 M.U.

4.18. The Respondent will suffer the following monthly loss which will be consequential undue enrichment to the Petitioner:-

a)	No. of units supplied (April 2010 to July 2010 & November 2010)	=	15,52,02,599 units
b)	Payment at firm power rate (If the committed power is taken as 300 MU & $1/12^{\text{th}}$ is 25 M.U.)	=	Rs.62,70,18,500/- (15,52,02,599 x 4.04)
c)	Payment at infirm power rate (If the committed power is taken as 450 MU(15,52,02,599 x Rs.3.03) & $1/12^{\text{th}}$ is 37.5 MU)	=	Rs.47,02,63,875/-
d)	Difference	=	(b) – (c) 627018500- 470263875 Rs.15,67,54,625/-

The Petitioner is trying to get additional benefit of Rs.15.67 crore for which he is not entitled as per PPA.

4.19. In as much as the issue is not sustainable and the claim of the Petitioner is invalid, the question of interest claim does not arise. The payment for the month of March 2010 was arrived as per clause 3.14 of PPA and the actual amount for the financial year 2010-2011 was paid to the Petitioner by the Respondent. There are no dues to be paid to the Petitioner in the financial year of 2010-2011. The Respondent had settled the dues to the Petitioner strictly as per the provision of PPA and the Respondent is not liable to make any further payment, and the Petitioner is

estopped from claiming benefits outside PPA and hence the petition is liable to be dismissed.

## **5. Findings of the Commission:-**

5.1. The petitioner had set up a CPP of 63.5 MW at Gummidipoondi and entered into a PPA with TNEB on 29.1.1999 for sale of power to TNEB after own use. The scheme of the PPA is valid for 15 years or for the useful life period of the plant whichever is less. Payment for supply of power is governed by the terms contained therein the PPA. As the rate of power purchase was available only upto FY 2007-08, the Commission in its order dt. 25.02.2009, in PPAP No.3 of 2008, filed by the petitioner fixed tariff for the period from 2008-09 to 2013-14. The addendum to PPA was executed for adoption of above tariff on 24.4.2009.

5.2. The rotor of the power generator developed technical problems which according to the petitioner is an event of force majeure and consequently there was reduced generation / no generation for certain period during the year 2010-11 which resulted in shortfall in the supply of the annual committed quantity of 450 MU to the TANGEDCO. Consequently, the petitioner proposed to reduce the annual committed quantity of 450 MU to 300 MU which the TANGEDCO declined to agree stating that there is no provision for the same in the PPA. This has resulted in short payment to the petitioner and therefore the present DRP is filed by the petitioner.

5.3. The annual committed quantity of power proposed to be supplied by the Generator as per clause 3(7) of the PPA and agreed and communicated by the licensee, reaches the finality. Whether the Generator, citing force majeure conditions due to forced outage of the plant can claim reduction of annual committed quantity is the only issue to be addressed in this DRP.

5.4. To resolve the above issue let us now go through the various clauses governing payment for power purchase, like proposal for supply power and its acceptance, firm rate, infirm rate, minimum quantity, payment during planned/forced outage, etc vis-à-vis its actual position obtaining under this PPA during financial year 2010-11.

5.4.1 As per clause 3.7 of the PPA, the petitioner has to intimate the firm power commitment for each billing year, one month in advance before the commencement of the billing year. This commitment is voluntarily made by the petitioner. The petitioner in their letter dated 17.2.2010, had committed to supply 450 MU for the period from 1.4.2010 to 31.3.2011 and the same was accepted by the respondent and it was communicated in their letter dt. 17.3.2010 to the petitioner and thus it has reached the finality.

5.4.2. As per clause 3.8 of the PPA, minimum energy in units to be sold to the Board during the billing period is to be 5% of firm power committed by the company for the billing year, except for the periods of planned and forced shut down. As the Petitioner had committed 450 MU during the year 2010-2011, the company had to supply minimum of 22.5 MU every month (Billing period).

5.4.3. As per clause 3.11 of the PPA, monthly billing for the period of April to February of any year (when the quantity of power in units sold for the billing month is below one twelfth of the annual power committed) will be as below:-

$$\text{Total cost of the power sold to the Board for the billing period} = \\ (\text{Total units sold during that period}) \times (\text{firm power rate}) \times 0.75$$

5.4.4. As per clause 3.12 of the PPA, monthly billing for the period of April to February of any year (when the total units of power sold to the Board for the billing month is one twelfth of the annual power committed or more) will be as below:-

$$\begin{aligned} &\text{Total cost of the power sold to the Board for the billing period} \\ &= (\text{Total units sold during that period}) \times (\text{firm power rate}) \end{aligned}$$

This means if the company supplies less than one twelfth of 450 MU i.e. less than 37.5 MU in a month, such supplies can be paid only at infirm power rate, which is 75% of the firm power rate that is Rs.3.03/unit being 75% of Firm power Rate of Rs.4.04. However, if the company supplies one twelfth of annual committed power in a billing month i.e. equal to 37.5 MU, as per clause 3.12 of the PPA, the company can be paid at firm power rate of Rs.4.04/Unit.

If the shutdown of CPP (either forced or planned) is for a part of a billing period, then minimum and maximum energy in units etc. is to be derived as per clause 3.10 based on the number of hours the CPP is in parallel with the Grid with the number of hours of that billing period.

5.4.5. As per clause 3.14 of the PPA, billing for the billing period of March of any year (when the total units sold to the Board for the billing year April to March is below the annual firm power committed) will be as below:-

The shortfall percentage of power sold against the commitment is to be billed under the infirm power rate and the balance out of sold power is to be billed under firm power rate.

**Example:**

If committed power	=	100 units
Supplied power	=	90 units
Shortfall in commitment	=	10%

Out of 90 units supplied only 10% of 90 units (i.e. 9 units) will be billed as infirm power and the balance (81 units) as firm power.

5.4.6. If the total power sold during the year of billing is in excess of annual maximum power commitment, the excess power sold over and above the annual maximum power commitment will also be calculated at firm power rate. Any adjustment in the annual bill amount is to be made in the March bill and if the entire amount is not adjustable in the March bill, the balance amount will be adjusted in the subsequent month's bills.

The Petitioner has supplied less than 1/12<sup>th</sup> of committed power during April to July 2010 and therefore infirm power rate of Rs.3.03/Unit (75% firm power rate of Rs.4.04/Unit) was adopted and payments were made which the Petitioner company has accepted without raising any objections.

5.4.7. The plant was shut down during 3.8.2010 to 11.11.2010 and during this period, taking cognizance of this shut down condition of the plant, the quantum of 1/12<sup>th</sup> supply was calculated as per clause 3.10 and accordingly payments were made. Therefore, concessional treatment for shut down period was properly given by TANGEDCO as contemplated in the PPA. But, the claim of the petitioner for revising the annual committed power itself from 450 MU to 300 MU is not supported by any provision in the PPA. If this reduction in annual committed power supply from 450 MU to 300 MU is allowed then higher rate i.e. firm power rate will become payable even for those months which were outside the shutdown period during which power supply was less than 1/12<sup>th</sup> of committed annual supply. This is not a

correct proposition and will end up in undue enrichment to the petitioner. The contention of the petitioner for revising the annual committed power from 450 MU to 300 MU for force majeure due to forced shut down is not tenable and therefore it is dismissed. Consequently, the claim of interest will not survive.

**6. Appeal:-**

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Nagalsamy)**  
**Member**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission