

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.G.Rajagopal Member

and

Dr.T.Prabhakara Rao Member

P.P.A.P.No.1 of 2016

Tamil Nadu Generation and Distribution Corporation Limited
144, Anna Salai
Chennai – 600 002.

... Petitioner

(Tmt.R.Varalakshmi

Standing Counsel for TANGEDCO)

Vs.

Nil

... Respondent

Date of hearing: 23-02-2016

Date of Order: 31-03-2016

ORDER

The P.P.A.P. No.1 of 2016 came up for hearing on 23-02-2016. The Commission upon perusal of the Petition and after hearing the submissions of the Petitioner hereby makes the following:

ORDER

1. Prayer of the Petitioner:

The prayer of the Petitioner in the above P.P.A.P.No.1 of 2016 is -

- (a) For approval and adoption of tariff towards procurement of 1030 MW of RTC power for the period from 29-10-2015 to 31-05-2016 from the

successful interstate bidders in Tender No.07-2015 at the rate of Rs.3.89/- per unit being the landed cost at TN Periphery (L1 rate).

- (b) For approval and adoption of tariff towards the procurement of around 986.5 MW of RTC power at a rate of Rs.5.05 per unit from the Intrastate generators in the Tender No.07-2015.
- (c) For approval for the purchase of 6912 MU for the period from October 2015 to May 2016.

2. Contentions of the Petitioner:-

2.1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is the successor entity of erstwhile Tamil Nadu Electricity Board and engaged in the business of Generation, Distribution activities and a Distribution Licensee in the State of Tamil Nadu for distribution of electricity to various category of consumers in the State of Tamil Nadu. Electricity so required is got from various sources such as its own generating stations, purchase of power from its share from various Central Generating Stations, Independent Power Plants, Captive Power Plants, Wind Generators, Co-generation Plants, Bio-mass Plants, purchase of power through traders and power exchanges etc.

2.2. The demand for electricity in the State is steadily increasing and an all time high demand of 13775 MW was met on 24-06-2014 and an all time high consumption of 303.039 MU supplied on 08-07-2015. The power position has been reviewed by TANTRANSCO to meet out the deficit for the period from October 2015 to May 2016 and requested to make arrangements for procurement of 1200 MW from 1st October 2015 to 31st May 2016. To meet the deficit of around 1200 MW, M.P.No.35 of 2015 was filed before the Commission on 21-09-2015 by TANGEDCO

intimating the fact of floating of Short Term Tender as per MoP guidelines and seeking approval for some deviations.

2.3. A short term Tender No.07-2015 was floated, published in dailies on 22-09-2015 and opened on 29-09-2015 pending approval / ratification of the Commission. The approval for tender process / purchase of power was accorded by Board of TANGEDCO in its 58th meeting held on 30-09-2015. Thirty six (36) bids were received for supply of power from October 2015 to May 2016. Among 36 Nos. bids, M/s.IL&FS has withdrawn their bid before 14:00 hours on 29-09-2015 i.e. due date and time for bid submission. Hence, the balance 35 bids were opened on 29-09-2015 at 14.30 hours. Totally 3011 MW of power was offered under the said Tender, for full contract period. Among them, 1930 MW of power was offered from interstate sources at quoted rates ranging from Rs.3.89 to Rs.6.47 per unit and 1081 MW of power was offered from intrastate sources at quoted rates ranging from Rs.5.15 to Rs.9.622 per unit.

2.4. Apart from the above, M/s.Venkatramana Paper Mills Pvt. Ltd., an Intrastate generator offered their bid for 6 MW, for part of the contract period from November 2015 to May 2016 from their upcoming plant. M/s.Tulsyan NEC Ltd., an Intrastate Generator offered their bid for 14 MW, for part of the contract period from January 2016 to May 2016, from their upcoming unit. Both the generators had not achieved commercial operation of their plants on the tender opening date. M/s.GMR Energy Trading Ltd., an Interstate trading licensee offered 90.76 MW of power from an Intrastate source, M/s.GMR Corporation Limited, for part of contract period from November 15 to May 16 and offered 150 MW of power from M/s.GMR Chhattisgarh Energy Limited for part of contract period from November 2015 to May 2016. The

quantum offered from both sources was not for the entire contract period. M/s.Shree Cements Limited, an Interstate trading licensee offered 145 MW from Balco, Chattisgarh source for the period from November 15 to May 16 and offered 45 MW from Balco Source from November 15 to May 16. Their offer was not for the entire contract period. M/s.PTC India Limited, an Interstate trading licensee offered 150 MW from Dhariwal, Maharastra source for the period from November 15 to May 16. Their offer was also not for the entire contract period. M/s.NVVN Limited, an Interstate Trading Licensee offered different quantum for different periods at different prices from one source, namely, HPPGCL, Haryana. The quantum offered was also not for the entire contract period.

2.5. As per the guidelines of Ministry of Power, GOI for short term procurement of power, a Standing Committee was constituted as per Clause 6 and 10 of MoP guidelines for bid process evaluation, according to the provisions of Rfp document. The Standing Committee recommended that the offers of GMTETL from GMR Chhattisgarh and GMR Corporation, Chennai, NVVN Ltd., from HPPGCL, Haryana, Shree Cements Ltd from Balco, Chhattisgarh and PTC from Dhariwal, Maharashtra, M/s.Venkataramana Paper Mills Pvt. Ltd., and M/s.Tulsyan, Unit II plant may be rejected as they do not satisfy the conditions of clause (6) of RfP and all other bids may be considered for further rate negotiations as their bids were in order.

2.6. M/s.Jindal Power Limited from Western Region emerged as L1 Bidder with their quoted rate of Rs.3.89 per unit for a quantum of 500 MW. M/s.Jindal Power Limited was addressed for further reduction of the quoted rate. M/s.JPL, in their reply dated 30-09-2015 have informed that the rate quoted remains unchanged. All other eligible bidders were addressed to match the L1 rate (Rs.3.89 per KWhr of

M/s.JPL). Among Interstate bidders, M/s.Shree Cements Ltd. for its sources SCL in Rajasthan (100 MW) and JNSTPP in M.P. (150 MW), M/s.NVVN Limited for its source JITPL in ER (200 MW) and M/s.PTC India Limited for its source DB power in Chhattisgarh (80 MW) matched their rate with L1 rate. After negotiation, totally 1030 MW of power from Interstate sources were ready to supply at Rs.3.89 per kWhr. M/s.Shree Cements Ltd for its source Vedanta in ER (200 MW), M/s.NVVN Limited for its source Vedanta in ER (200 MW) and M/s.Essar Power M.P.Ltd. did not match their rate with L1, but reduced their rates to Rs.4.37, Rs.4.30 and Rs.3.955 per kWhr, respectively.

2.7. Among Intrastate bidders, only M/s.TNPL reduced their rate to Rs.5.05 per kWhr. As no other Intrastate bidders have matched their rate with L1 rate, it was necessary to call for another negotiation. Already Interstate bidders have either matched with L1 rate or reduced their quoted rate. Therefore, second negotiation call was sent only to Intrastate bidders. All the Intrastate bidders responded, but no one had reduced original quoted rate. TNPL reiterated their revised rate of Rs.5.05 per kWhr. The reasons enumerated by them are that though market rate in NEW region is less, State like Telangana is purchasing at Rs.5.95 per kwh and even Kerala and Karnataka are still active buyers. The restrictions imposed by GO invoking Section 11 of the Electricity Act, 2003 is depriving their opportunity to sell to these States in Southern Region. Petition challenging the said G.O. is pending disposal of High Court of Madras. The decline in fuel cost is offset by the steep fall in Rupee, increase in cess and port charges on imported coal and transportation cost. The size of the plant and reduced dispatch instruction by SLDC has increased their operational cost. The size of the plant and reduced dispatch instruction by

SLDC has increased their operational cost. Payment outstanding for more than 7 months has crippled their relations with their banks.

2.8. In the past several years, tenders were finalized with differential rates between Interstate bidders and intrastate bidders due to various reasons. The present scenario is not much different from the past. Eventhough there is considerable improvement in the corridor status linking NEW Region and Southern Region, it is not fully free from congestion. The available corridor linking NEW Region and Southern Region is much less than the required level. Therefore, market splitting in price between NEW Region and Southern Region is taking place even now. Therefore, it becomes necessary to consider differential rates between Interstate bidders and Intrastate bidders due to practical situation prevailing at present.

2.9. Considering the above, LOAs were issued to four Interstate bidders at the L1 rate of Rs.3.89 per kWhr for a quantum of 1030 MW for the period from 29-10-2015 to 31-05-2016. It is expected that 100 to 200 MW of power will be realized through Interstate sources depending upon the availability of corridor. LOA was issued to Intrastate bidder M/s.TNPL for a quantum of 10 MW at the rate of Rs.5.05 per kWhr from 29-10-2015 to 31-05-2016. All Intrastate bidders were addressed that whoever match rate of Rs.5.05 per kWhr will be issued LOA prospectively.

2.10. In the meantime, in a batch of Writ Petitions, the Hon'ble High Court of Madras has directed to extend the existing contract till disposal of the cases. Based on court's direction, the previous year short term contract was extended.

Subsequently, generators had come forward for matching Rs.5.05 per kwhr relinquishing their rights extended under court's direction.

2.11. Among the eligible Intrastate bidders, 20 Intrastate bidders have accepted to match the rate of Rs.5.05 per kwh for a total quantum of 986.5 MW. LOAs have been issued to the above bidders prospectively. The second sitting of Standing Committee was held on 23-01-2016 and the Standing Committee had certified that the evaluation of all eligible bids and issue of LOA were done according to the provisions of the Tender document No.7 of 2015. The Commission in its orders pronounced on 28-01-2016 in M.P.No.35 of 2015, approved the deviations to tender specification No.7 of 2015. The Board of TANGEDCO in its 61st meeting held on 25-01-2016 approved and ratified the purchase of 1030 MW at Rs.3.89 per unit from Interstate sources and 986.5 MW offered from Intrastate sources at Rs.5.05 per unit.

3. Findings of the Commission:-

3.1 We have considered the prayers of the petitioner for approval, namely,

a) adoption of tariff for procurement of 1030 MW of RTC power from 29.10.2015 from successful inter-state bidders in respect of Tender 7 of 2015 at the rate of Rs.3.89 Per KWh being the Landed Cost at TN periphery (L₁ rate);

b) approval and adoption of tariff towards the procurement of 986.5 MW RTC power from intra-state generators at a rate of Rs.5.05 per unit in respect of Tender 7 of 2015; and

c) approval for purchase of 6912 MU for the period from October 2015 to May 2016.

3.2 The first question that arises for consideration is whether the approval of the Commission for the procurement process and the quantum of procurement were obtained beforehand as required under the Govt. of India guidelines on competitive

bidding. As per the Government of India Guidelines, approval is required not only for initiating the bidding process but also for quantum of power. It is seen that MP No.35 of 2015 was filed before the Commission on 21.9.2015 intimating the floating of Short Term Tender and seeking approval for deviations and thereafter, Tender No.7 of 2015 was floated and opened on 29.9.2015 pending approval/ratification from the Commission. The Commission delivered its order in the said M.P. No.35 of 2015 on 28.2.2016 approving the floating of Tender No.7 of 2015 which is the subject matter herein and purchase of 1200 MW RTC . In the said order, Commission has also approved deviations such as modification of billing cycle, fixating of EMD as Rs.5 lakhs irrespective of quantum, deletion of payment security clause and performance guarantee clause and treatment of LOA as PPA etc. Thus, the issue in the present petition boils down only to the adoption of the rates in the competitive bidding. However, inasmuch as certain additional documents have been filed in the present PPAP, it may be necessary to examine them before rendering our decision.

3.3 It is seen from the document marked as Annexure A1 that the Managing Director TANTRANSCO sent a communication dated 19.9.2015 to the Director/Generation and Director/Distribution informing that the wind generation was expected to withdraw from October 2015 onwards and the short term power purchase from intra state private/CPP generators to the quantum of 1400 MW was getting expired on 30-9-2015 and in view of the same, Chairman TANTRANSCO approved the short term procurement of 1200 MW from intrastate private/CPP generators for the period from 1st October 2015 to 31st May 2016. It is seen from the document marked as Annexure A2 that the Board of the TANGEDCO, the distribution company also approved the power purchase of 1200 MW for the said

period and also ratified the action of having floated Tender for the purchase of 1200 MW for the period under reference. Thus, both the Transmission Licensee and the Distribution Licensee held the same view that there was a need for procurement of 1200 MW. Hence, we see no difficulty in coming to the conclusion that the quantum of 1200 MW of energy was required at that point of time.

3.4 The next question that arises for consideration is the compliance with regard to GOI guidelines which would enable the Commission to adopt the rates in the competitive bidding held for interstate and intrastate procurement of power. As stated supra, the requirements of the GOI guidelines with regard to prior approval for initiating the bidding process and quantum of power procurement and deviations have already been complied with and approved by the Commission in M.P. No.35 of 2015. However, there is another requirement under the Government of India guidelines, namely, the constitution of evaluation committee for evaluating the bids and submission of the same to the Commission, which also requires our consideration. It is seen that an evaluation committee has been constituted as required under the GOI guidelines with a neutral Member having experience on the financial side. It is further seen that the evaluation committee, in its first sitting, rejected the bids of Sri Venkatramana Paper Mills P. Ltd and Tulsyan NEC Ltd on the ground that the said units had not achieved COD. It is also seen that the bids of GMRETL, NVVN Ltd, Shree Cements Ltd and PTC India Ltd were also rejected as the offer for supply of power was not made for the entire contract period. The Evaluation Committee has further observed in its first sitting that the other bids are in order and suggested further negotiation on the rates. It is seen from Annexure A9 that all eligible bids were further evaluated and negotiated in lines with the provisions of the Tender Document and LOAs were issued to the inter state bidders who

matched their rate with L1 rate of Rs.3.89 per Kwh for procurement of 1030 MW of power. It is further seen that LOAs were also issued for a quantum of 986.5 MW to intra state bidders who matched their rate of Rs.5.05 per KWh which is the lowest among the intra state bidders. The Evaluation Committee has also certified that all evaluation of eligible bids and issue of LOAs were done according to the provisions of Tender Document No.7 of 2015. Thus, the statutory formalities with regard to the constitution of the Evaluation Committee have been complied with and the Commission also does not see any irregularity in the decision arrived by the said Committee.

3.5 Now let us examine the rates obtained in the competitive bidding for adoption. It is seen that the offer of Rs.3.89 per KWh made by JPL was the lowest bid in the inter-state procurement and the other bidders were required to match the same and accordingly, the other bidders matched the lowest rate. The present approval is sought for the L1 bid of Rs.3.89 per KWh in the inter-state procurement and hence, there is no difficulty in approving the same. Even though the quantum sought for approval from the inter-state bidders is 1030 MW, it is stated by the petitioner that only 100 to 200 MW is expected to be realised depending on the corridor availability. With regard to intra state bids, it is seen that the lowest bid of Rs.5.05 per KWh was made by TNPL and none of the bidders including TNPL were willing to go below the rate of Rs.5.05 per KWh so as to match the L₁ bid of Rs.3.89 per KWh secured in the inter-state bid.

3.6 It is to be recalled here that a similar situation arose at the time of approval for procurement of 773 MW of power for the period from 1-10-2014 to 30th September 2015 in PPAP No.5 of 2014. The LI rate in regard to inter-state procurement was

Rs.4.39 per KWh by NVVN and Rs.5.20 per KWh by TNPL in the intra-state procurement. Other bidders were addressed to match the LI rate of Rs.4.39 per KWh which emanated in the inter-state bid but none matched the said rate. The other bidders did not agree to the rate of Rs.4.20 per KWh offered by TANGEDCO and agreed only to the final rate of Rs.5.50 per unit. The Commission adopted the said rate of Rs.5.50 per KWh by observing in para 3.3. of the order that in view of the availability of corridor between the Southern Region and other regions of the country being limited and the attempts made by the various utilities in the southern region to procure power from within the state by way of harnessing power from local generators, captive plants etc considering the assured availability of 1393 MW of power, the said rate of Rs.5.50 per KWh was being adopted. Similarly, in its earlier order dated 15-7-2013 in PPAP 5 of 2013 which was filed for approval of power purchase of 903 to 927 MW from intra state local generators for the period from 1-6-2013 to 25-5-2014, the Commission accorded importance to the assured availability of capacity from the intra-state generators for adopting the rate of Rs.5.50 per KWh. The Commission observed that availability of open access between southern regions and other regions of the country being very limited and the same was likely to improve only when the southern regions is interconnected to NEW grid . Thus, the non-availability of sufficient open access and lack of connectivity between the Southern Grid with the NEW Grid, was the primary reason for the adoption of rate of Rs.5.50/- for the purchase of power by TANGEDCO from the intra-state generators. The facts in the present case are also similar to the above and we do not see any vast improvement in the corridor constraint as may be seen from para 18 of the affidavit filed by TANGEDCO. The corridor constraint has not eased completely and still there is difficulty in procuring power from inter-state sources in view of non-availability of open access and corridor constraint. The intra-state procurement is still

considered to ensure assured availability of power as compared to inter-state procurement and therefore, we see no reason to differ with our earlier rulings. In the result, we are inclined to approve the rate of Rs.5.05 per KWh in the instant case which is lesser than the rate of Rs.5.50 per KWh obtained for the periods from 1st June 2013 to 25th May 2014 and 1-10-2014 to 30th September 2015. Be that as it may, power is to be procured from all sources and there are variations in view of the fuel, technology and other geographical considerations. In our view, so long as the power is procured in line with the Government of India guidelines, the rates emanated in the competitive bidding process could be adopted subject to the compliance of the basic requirements such as approval of the quantum and the constitution of the evaluation committee and evaluation of the bids by the said committee and forwarding of a certificate by the evaluation committee to the Commission certifying that the entire bidding process is in order.

3.7 Importantly, there is nothing in the GOI guidelines which prohibits differential pricing for inter-state and intra-state procurement. There is also nothing in the guidelines which requires the matching of L1 bid with that of the other bids in the same category leave alone the comparison or matching of the rates obtained inter-state bid vis-à-vis the intra-state bids. However, this is not to say that negotiations cannot be held for reducing the rates or matching them with the L1 rates. Matching of L1 bid with the other bids is a wholesome exercise which would help procurement of electricity at the least minimum to protect the interest of the consumer and therefore, we are in agreement with the exercise of matching or negotiations for further reduction. However, the practical difficulties, too, have to be kept uppermost in mind in such matching exercise so as to ensure the procurement of sufficient power to meet the demand supply gap. TANGEDCO has submitted that in the

past, tenders were finalised with differential pricing in regard to interstate and intrastate procurement and that though there is improvement in the corridor status linking NEW Region and Southern Region, it is not fully free from congestion especially, STOA continues to be difficult.

3.8 It is further submitted by TANGEDCO that the available corridor linking NEW Region and Southern Region is much less than the required level and that the market splitting in price between NEW Region and Southern Region is taking place even now and therefore, differential rates can be considered for inter-state and intra-state procurements. Though we would very much like to see that even the intra-state bidders are willing to match the price of Rs.3.89 per unit, in the face of reluctance on the part of the intra-state generators to budge from their stand, we find force in the submission of TANGEDCO that differential pricing has become necessary. Procurement of power to satisfy the consumer demand is the basic requirement and therefore, we see nothing wrong in adopting a differential pricing for inter-state and intra-state procurement. If a strict yard stick is applied to the effect there cannot be a different pricing for inter-state and intra-state procurement of power, we are afraid, it may lead to stalling the power procurement process and hence, we are inclined to agree to the submission of TANGEDCO in this regard.

3.9 In view of the foregoing findings, the procurement of 1030 MW RTC power from 29-10-2015 to 31.5.2016 from interstate bidders at the rate of Rs.3.89/- per unit and procurement of 986.5 MW of RTC power from intrastate generators at the rate of Rs.5.05 per unit are approved and adopted subject to the condition that the same is ratified by the Board of TANGEDCO, if not done earlier.

3.10 TANGEDCO has not followed para 10 particularly para 10.3 of the guidelines for Short-term procurement of power. This is the important guidelines for the purpose of transparency and for adoption of tariff under section 63 of the Electricity Act, 2003. Though this cannot be directed by the Commission for follow up now by the TANGEDCO as the contract period ends with 31.5.2016, the Commission directs TANGEDCO to follow this in future procurement cases when they file petitions.

4. 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)
(Dr.T.Prabhakara Rao)
Member

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

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

/True Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission