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

R.P.No.1 of 2017

NLC India Limited
First Floor
No.8, Mayor Sathyamurthy Road, FSD
Egmore Complex of Food Corporation of India
Chetpet, Chennai – 600 031. … Petitioner
(Thiru Mohan
Executive Director/Commercial)

Vs.

Tamil Nadu Generation and Distribution
Corporation Limited
… Respondent
(Thiru M.Gopinathan
Standing Counsel for the Respondent)

Date of hearing: 24-02-2017

Date of Order: 25-04-2017

The R.P.No.1 of 2017 came up for hearing on 24-02-2017 for admission. The Commission upon perusal of the Petition and connected records and after hearing the submissions of the Petitioner hereby makes the following:

ORDER

1. Prayer of the Petitioner in R.P.No.1 of 2017:-

The prayer of the Petitioner in the above R.P.No.1 of 2017 is to extend the validity period of TNERC Solar Tariff rate of Rs.4.56 per kwhr. (with AD) applicable for the control period 2016-17 till 31-03-2018 in respect of the 500 MW solar power projects to be established in various parts of Tamil Nadu under Solar Developer and Operator (SDO) model by NLCIL and to pass such order (s) as deemed fit by the Commission.

2. Facts of the Case:-

2.1. The NLC India Limited (NLCIL) proposed to establish 2x200 MW and 1x100 MW Solar Power Project in Neyveli Mine I & II dumpyards and Township area respectively. The Energy Purchase Agreements (EPA) were signed with TANGEDCO for these projects with a levellised tariff of Rs.4.56 per Kwhr. which is the generic tariff with AD benefit determined by TNERC for solar power projects applicable for the present control period of 2016-2017 as per TNERC's order dated 28-03-2016. The tariff for the solar power supplied to TANGEDCO is applicable only if the project is commissioned during the control period on or before 31-03-2017.

2.2. However, in view of the environmental constraints faced, it became necessary to change the project sites to various locations in the State of Tamil Nadu for implementing these projects. Approval of TANGEDCO has been obtained for change of the project sites from the originally proposed locations at Neyveli to the new locations in the State of Tamil Nadu as identified by the SDOs to be engaged by NLCIL. In order to avail the above tariff, the project has to be commissioned before 31-03-2017 and because of the late execution of EPA, the commissioning of the project may spill over to the next control period. Hence, the present petition has been filed seeking the extension of the control period.

3. Contentions of the Petitioner in R.P.No.1 of 2017:-

3.1. The NLC India Limited (NLCIL) proposed to establish 2x200 MW and 1x100 MW Solar Power Project in Neyveli Mine I & II dumpyards and Township area respectively. The Energy Purchase Agreements (EPA) were signed with TANGEDCO for these projects with a levellised tariff of Rs.4.56 per Kwhr. which is the generic tariff with AD benefit determined by TNERC for solar power projects applicable for the present control period of 2016-2017 as per TNERC's order dated 28-03-2016. The tariff for the solar power supplied to TANGEDCO is applicable only if the project is commissioned during the control period on or before 31-03-2017.

3.2. However, in view of the environmental constraints faced, it became necessary to change the project sites to various locations in the State of Tamil Nadu for implementing these projects. Approval of TANGEDCO has been obtained for change of the project sites from the originally proposed locations at Neyveli to the new locations in the State of Tamil Nadu as identified by the SDOs to be engaged by NLCIL.

3.3. NLCIL initiated the tendering process for establishing Solar Power Projects of 500 MW capacity in the State of Tamil Nadu under SDO mode. The scope of identification and procurement of land along with the power evacuation approval from TANGEDCO has been entrusted to the SDO for implementing these projects. Hence, a contract period of 13 months has been envisaged for this tender. The tendering process was completed and agencies (SDOs) were finalized in the first week of February, 2017 for execution of these projects. If LOA is issued to the agencies by the month of February, 2017, NLCIL would be able to commission the projects by March, 2018 as per the terms of the contract.

3.4. The financial workings for these projects have been done based on the tariff of Rs.4.56 per unit (with AD) which is applicable for the current control period of 2016-17. Thus, any change in the tariff may have dire consequences on the financial parameters / viability of the projects. In the above milieu, the applicability of tariff of solar power is required to be ascertained till the scheduled commissioning of the projects viz. March 2018 as NLCIL would be able to commission the projects by March 2018 only with the issue of LOA to the agencies in the month of February, 2017.

3.5. It may be seen that the EPAs have been signed in October, 2016 and hence spill over the project to the next control period i.e. beyond 31-03-2017 is inevitable. Nevertheless, if the agreed tariff of Rs.4.56 per unit (with AD) is not extended till the end of March 2018, the implementation of these projects will be at stake.

3.6. NLCIL is a Central Generating Station and hence CERC is the appropriate Commission for determining tariff of the company. Accordingly, NLC is entitled for the generic tariff fixed by CERC for 2016-17 which is 5.08 per Kwhr. (with AD) for 2016-17 as against the TNERC generic solar tariff rate of Rs.4.56 (with AD) fixed for the control period 2016-17. However, NLCIL agreed to supply the power to TANGEDCO at the TNERC tariff of Rs.4.56 per Kwhr (with AD) under the provision and the liberty available in the CERC Renewable Regulation for accepting lesser than the CERC determined tariff. Thus, NLCIL has settled for a lesser than the tariff applicable for Central Generating Stations (CGS).

3.7. Moreover as per CERC Renewable Regulations, 2012 dated 06-02-2012, the generic tariff of Solar PV Projects applicable for any year of the control period will also apply for such projects during the next year subject to the condition:-

(i) that the Power Purchase Agreements in respect of the Solar PV projects are signed on or before last day of the year for which generic tariff is determined; and

(ii) the entire capacity covered by the Power Purchase Agreements is commissioned on or before 31st March of the next year.

3.8. NLC in its comments to the draft comprehensive solar order of TNERC for the control period 2016-17, requested TNERC to adopt the same analogy adopted by CERC as stated above, reasoning that if the control period is restricted to one year, a situation may emerge where a project tendered during a particular year at the applicable benchmark cost of that period may spill over to the next control period and be commissioned during the next control period where the bench mark capital cost and the tariff thereof might have declined considerably depriving the solar project developer of a tariff commensurate with the investment made.

3.9. TNERC however did not accept the remarks of NLCIL in this regard and restricted the control period of the solar tariff of the control period 2016-17 to 31-03-2017. It is submitted that the TNERC may treat this project as a special case and extend the preferential tariff of Rs.4.56 (with AD) as per the EPA executed with TANGEDCO upto March, 2018 so as to enable NLCIL to proceed further with the issue of LOA and the project activities related to 500 MW solar power projects in various parts of Tamil Nadu.

4. Findings of the Commission:-

4.1. We have heard the arguments of Thiru Mohan, Executive Director/ Commercial, NLC India Ltd., representing the Petitioner. The crux of the contention of the Petitioner is that as EPA was executed during October 2016 (19-10-2016) and hence spill over of the project to the next control period is inevitable. In order to avail the preferential tariff of Rs.4.56 (with A.D.) per unit, the project is required to be commissioned before 31-03-2017 and due to delay in the execution of EPA there is difficulty in completing the project by 31-03-2017. He has also submitted that any reduction in the solar power tariff would have adverse effect on implementing the project and prayed to extend the control period in this case as a special case.

4.2. It may be stated that while issuing the comprehensive tariff order on solar power in Order No. 2 of 2016, this Commission has consciously fixed the control period. In this connection, para 11.6.1 and 11.6.2 of the said Order No.2 of 2016 dated 28-03-2016 providing for the control period of the said order is reproduced below:

"11.6.1. Regulation 6 of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 of the Commission specifies,-

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

"11.6.2. As the Capital cost is volatile in respect of Solar Power Plants, the Commission proposed one year control period in its consultative paper. One stakeholder has requested the Commission to consider the analogy adopted by CERC on applicability of control period for solar PV by allowing the tariff determined for the control period in the order to projects commissioned in the subsequent financial year subject to the condition that PPAs are signed on or before the last day of the year for which generic tariff is determined and the entire capacity covered by the PPAs are commissioned on or before 31st March of the next year. Yet another stakeholder has suggested to adopt a control period of two years. CERC's approved capital cost for solar PV for the year 2015-16 was Rs.6.0585 Crores per MW and the cost as per the draft order for benchmark capital cost for solar PV is Rs. 5.0132 Crores per MW that accounts for the drop in module prices over the years 2014-15. Market reports suggest that while earlier reduction in prices were due to competitive pricing, the prices are set to reduce further due to adoption of advanced technology and automations in manufacturing. Therefore, the Commission decides to retain the one year control period in this order as proposed in the consultative paper and in consonance with the Commission's regulations on Power Procurement from New and Renewable Sources of Energy."

Thus, the Commission has consciously prescribed the control period in the above Order No.2 of 2016.

4.3. Further, the present petition has been classified as a Review Petition, since the prayer involves the modification of the Commission's own earlier Order No.2 of 2016 with regard to the specification of the control period. Regulation 43(1) of the Tamil Nadu Electricity Regulatory Commission–Conduct of Business Regulations, 2004 provides that the Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order review such decision, direction or order on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Since the Commission prescribed the control period in Order No.2 of 2016 only after considering all material facts and since there is no error apparent on the face of the said Order No.2 of 2016 with regard to the prescription of control period, none of the grounds for review as contemplated in the said Regulation 43(1) is made out in the matter, warranting review of the control period. Therefore, the Commission is not inclined to interfere in the matter to review control period prescribed in Order No.2 of 2016. The above R.P. is not accordingly admitted.

4.4. As per the Commission's Fees and Fines Regulations, 2004, the fees for review applicable to this Petition is Rs.15,000/-. However, the Petitioner has paid Rs.2,00,000/- (Rupees Two Lakhs only) as fees in this case. Hence, we direct that the balance amount of Rs.1,85,000/- (Rupees One Lakh and Eighty Five Thousand only) paid by him towards fees be refunded to the Petitioner.

5. Appeal:-

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

(Sd ....)	(Sd......)	(Sd........)
(Dr.T.Prabhakara Rao)	**(G.Rajagopal)**	**(S.Akshayakumar)**
Member	**Member**	**Chairman**

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Secretary
Tamil Nadu Electricity
Regulatory Commission