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.2 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.2 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.2 of 2017:-

The prayer of the Petitioner in the above R.P.No.2 of 2017 is to extend the validity period of TNERC Solar Tariff rate of Rs.5.10 per kwhr applicable for the control period 2016-17 till commissioning of the entire capacity of 130 MW solar power project of NLCIL subject to a maximum period of 31-07-2017 and to pass such order (s) as deemed fit by the Commission.

2. Facts of the Case:-

The NLC India Limited (NLCIL) proposed to establish 2x65 MW solar Power Project spread out at four locations in Neyveli. The Energy Purchase Agreement (EPA) was signed with TANGEDCO for the project with a levellised tariff of Rs.5.10 per Kwhr. which is applicable for the present control period of 2016-2017. Accordingly, the tariff for the solar power supplied to TANGEDCO from the above 2x65 MW Solar Power Project, is applicable only if the project is commissioned during the control period on or before 31-03-2017. Despite ardent efforts being taken up for commissioning of the entire capacity of 130 MW project before 31-03-2017 , it is apprehended that the commissioning of the project get delayed due to various reasons. In the light of the above, NLCIL is seeking extension of validity period for the preferential tariff of the control period 2016-17 for a further period.

3. Contentions of the Petitioner in R.P.No.2 of 2017:-

3.1. The NLC India Limited (NLCIL) proposed to establish 2x65 MW solar Power Project spread out at four locations in Neyveli. The Energy Purchase Agreement (EPA) was signed with TANGEDCO for the project with a levellised tariff of Rs.5.10 per Kwhr. which is applicable for the present control period of 2016-2017. Accordingly, the tariff for the solar power supplied to TANGEDCO from the above 2x65 MW Solar Power Project, is applicable only if the project is commissioned during the control period on or before 31-03-2017. Despite ardent efforts being taken up for commissioning of the entire capacity of 130 MW project before 31-03-2017 , it is apprehended that the commissioning of the project get delayed due to various reasons. In the light of the above, NLCIL is seeking extension of validity period for the preferential tariff of the control period 2016-17 for a further period.

3.2. NLCIL initiated the tendering activities during the month of January 2016 to install the 130 MW (2 Blocks of 65 MW) Solar Project at Neyveli in its own land with a planned schedule of awarding contracts by March/April 2016. The parallel action was taken up for the sale of this 130 MW solar power to TANGEDCO.

3.3. Based on the results of the Load Flow Study, TANGEDCO issued a consent letter for procuring 130 MW power from these projects at the preferential tariff of Rs.5.10 per unit (without Accelerated Depreciation) on 30-04-2016. Meanwhile, the tendering activities were completed and the agencies (EPC contractors) were finalized for executing these projects on 27-04-2016 through e-reverse auction. However, the contracts could not be awarded as Energy Purchase Agreement (EPA) for the project had not been signed then. Subsequently based on the consent given by TANGEDCO on 30-04-2016 for procuring the entire power at the TNERC's preferential tariff of Rs.5.10 per unit, LoA was issued to the agencies on 04-06-2016 for executing the projects. However, the execution of the project could not be commenced immediately and the project activities were virtually on hold as the EPA was not in place for the project. After continuous persuasion by NLCIL, the EPA could be executed on 15-07-2016 between NLCIL and TANGEDCO in the newly approved format of TNERC. Hence, the project execution activities could be effectively carried out from 15-07-2016 only resulting in a delay of about three months.

3.4. As per the LoA of the project, the project is to be commissioned within a period of 12 months from the date of issue of LoA. However, in order to avail the preferential tariff of Rs.5.10 per Kwhr, applicable for the current control period of 2016-17, it is required to commission the projects before 31st March 2017.

3.5. Under these circumstances, NLCIL is taking all out efforts with close follow up of all the project activities with the contractors for commissioning the projects before 31st March 2017. Though the contractors have assured part commissioning of the projects by March 2017, it is apprehended that there may be difficulty in completing the project by 31-03-2017 due to the following reasons:-

(i) The solar project sites are spread over in four different locations at Neyveli involving massive erection/installation works. The site activities could be started only in the month of July 2016 in view of delay in signing the EPA and the issue of LoA.

(ii) The power evacuation scheme from the Pooling Sub Station (PSS) comprising 4 km long 110 kV Double Circuit Tower line and the construction of extension bays in the proposed 230/110 kV sub-station of NNTPS are to be executed by TANGEDCO on DCW basis. The cost estimate for these works is yet to be furnished by TANGEDCO for enabling NLCIL to make the payment. The tendering activities would be commenced by TANGEDCO for undertaking these works only on payment of the same.

3.6. NLCIL is presently confronted with a similar situation as enumerated above, where the project tendered during 2016-17 at the applicable benchmark cost of that period is spilling over to the next control period 2017-18. NLCIL had taken up these solar projects with the broad view of contributing towards the Green Energy

Initiatives of GoI in combating the climate change rather than its business motives. Nevertheless, any reduction in the solar power tariff would have adverse effects on NLCIL's proposal of implementing such green energy projects.

3.7. Considering the above facts and circumstances, it is submitted that the Tamil Nadu Electricity Regulatory Commission may treat this project as a special case and allow NLCIL to avail the preferential tariff of Rs.5.10 (without AD) as per the EPA executed with TANGEDCO till commissioning of the entire capacity of 130 MW subject to a maximum period of 31-07-2017.

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 on 15-07-2016 the project activities could be efficiently carried out only from 15-07-2016 although tendering activities were finalised on 27-04-2016. In order to avail the preferential tariff of Rs.5.10 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 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 Regulation, 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 excess 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