

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**

P.R.C. No.1 of 2017

M/s. Kamuthi Renewable Energy Ltd.
Adani House
Nr. Mithakhali Six Roads
Ahmedabad – 380 009
Gujarat.

... Petitioner in P.R.C.No.1 of 2017

P.R.C. No.2 of 2017

M/s.Ramnad Solar Power Ltd.
Adani House
Nr. Mithakhali Six Roads
Ahmedabad – 380 009
Gujarat.

... Petitioner in P.R.C.No.2 of 2017

P.R.C. No.3 of 2017

M/s.Adani Green Energy (Tamil Nadu) Ltd.
Adani House
Nr. Mithakhali Six Roads
Ahmedabad – 380 009
Gujarat.

... Petitioner in P.R.C.No.3 of 2017

(Thiru Rahul Balaji
Advocate for the Petitioners
in P.R.C.Nos.1,2 and 3)

Vs.

1. Tamil Nadu Generation & Distribution Company Ltd.
(TANGEDCO)
Represented by its Chairman
No.144, Anna Salai
Chennai – 600 002.

2. Tamil Nadu State Load Despatch Centre (TNSLDC)
Represented by Director (Operation)
144, Anna Salai
Chennai - 600 002.
3. Tamil Nadu Transmission Corporation Limited (TANTRANSCO)
144, Anna Salai
Chennai – 600 002.
4. The Ministry of New and Renewable Energy
Represented by its Secretary
Block-14, CGO Complex
Lodhi Road, New Delhi – 110 003.

...Respondents
(in P.R.C.No.1,2 and 3 of 2017)

Date of hearing : 16-06-2017

Date of Order : 30-06-2017

ORDER

. Consequent to the orders of the Hon'ble Appellate Tribunal for Electricity dated 16.5.2017 in Appeal Nos.71 to 73 of 2017 directing the Secretary of the Commission to place the matter before the Chairperson for disposal, the matter has been referred to me by the Secretary of the Commission under Regulation 20(7) of the TNERC-Conduct of Business Regulations and they are numbered as Pre-Registration Cases (PRC) Nos.1 to 3 of 2017. The referral has been made against the orders of the Registry under Regulation 20(6) of the TNERC-Conduct of Business Regulations. The hearing date was fixed on 16-06-2017 A.N. and the Counsel for the Petitioners Thiru Rahul Balaji appeared on that day to make his submissions.

2. The Petitioners have filed petitions before this Commission *inter alia* with the following prayers:-

- (i) To direct the Respondent to strictly enforce / implement “MUST RUN” status on solar power plant of the Petitioner in the State of Tamil Nadu and consequently direct the Respondent not to issue orders to the solar power plants to switch off generation or to back down generation;
- (ii) To issue appropriate directions to consider deemed generation to solar plant for loss of generation due to outages / backing down instructions of Respondents and to approve the methodology for estimating deemed generation.

3. I have gone through the file notings of the Registry of the Commission on the original petitions filed as well as the contentions of the petitioner made therein on the question of classification of this petition. The issue lies in a narrow compass and therefore it is suffice, if it is examined whether the petition filed by the petitioner herein has the attributes of dispute resolution and whether the Registry was right in classifying the present petition as a Dispute Resolution Petition (D.R.P.) and rejecting the claim of the petitioner for classification of the petition as a Miscellaneous one.

4. The main contention of the Counsel for the Petitioners is that the prayer in the above petitions involved the exercise of regulatory power of the Commission and that the Commission has already accepted the petition filed by M/s. National Solar Energy Federation of India with a similar prayer and classified the same as Miscellaneous Petition only. Now I have to see whether the return of the above

petitions by the Registry directing them to file as Dispute Redressal Petitions (DRPs) is in accordance with the provisions of the TNERC's Fees and Fines Regulations, 2004. On the question whether the present petition is one of Dispute Resolution or a Miscellaneous one, I have no manner of doubt that the present case requires adjudication by the Commission and cannot be taken up in regulatory jurisdiction, since without hearing the other side, the Commission cannot decide the monetary claim made by the Petitioners and on previous occasions the Commission has classified the petitions filed by the generators for "MUST RUN" status as Dispute Resolution Petition only. It is for this reason, I am inclined to hold that the issue of "MUST RUN" Status requires formal adjudication and not exercise of regulatory jurisdiction. Therefore, the argument of the petitioner that the entire matter falls within the regulatory jurisdiction of the Commission cannot be countenanced and hence rejected.

5. Having said so, the next point that arises for consideration is whether the decision of the Registry in treating the petition filed by the National Solar Energy Federation as a Miscellaneous one is correct and on the same logic whether the present petitions could also be classified as Miscellaneous Petitions (M.P.). Firstly, the issue cannot be examined only with reference to the Conduct of Business Regulations alone as it involves the Fees & Fines Regulations as well. I am of the view that the Registry of the Commission has two fold duties before it, namely, ensuring the adherence to TNERC's Conduct of Business Regulations as well as the Fees and Fines Regulations. The Registry has to not only ensure that the petition is filed as per Conduct of Business Regulations but is also duty bound to exercise due diligence in ensuring the collection of appropriate fees for which proper classification

should be done by the Registry without going into the merits of the case lest it may result in financial loss to the Government to which the fees collected by the Commission are remitted. It is important to note here that the petitioner in the said case namely National Solar Energy Federation Ltd. relied upon by the petitioner herein is an Association representing the cause of generators collectively. Needless to say fees cannot be levied for a petition filed by an Association under Item No.7A in the Table under Regulation 6 of the Fees & Fines Regulations as only Dispute Resolution Petition involving a generator and a licensee would attract fees under the said regulation. At the same time, the right of the Association to file a petition cannot be curtailed so long it satisfies the requirements of Conduct of Business Regulations and Fees & Fines Regulations and rightly for this reason, the petition filed by the National Solar Energy Federation, which is an Association was classified as Miscellaneous Petition. However, in the present case, the petitioner is a generator who cannot maintain a Miscellaneous Petition as per Fees & Fines Regulations and he is entitled to file only as a D.R.P., falling under the said item 7A of the Fees and Fines Regulations.

6. Though the petitioner has strenuously canvassed for classification of the present petition on the ground that the prayer sought for relates to the "MUST RUN" status and not dispute resolution and in a similar case, the same type of petition was admitted and classified as "Miscellaneous Petition" (i.e. in the case of National Solar Energy Federation Ltd.), I am of the considered view that there is subtle distinction between these two cases as explained in para 5 above. A reference to the fees and fines Regulations would bring out the fact that there is a difference between the fees payable by an Association and by a Generator who seeks a Dispute Resolution. The

following portions of the Fees and Fines Regulations of the Commission would be relevant for better understanding.

The relevant portion of the Regulation 6 of the Fees & Fines Regulations of the Commission is reproduced below:-

“

7	<i>Miscellaneous petitions filed by associations or groups not covered by other listed categories</i>	
	<i>(a) Miscellaneous petitions filed by registered association of consumers or generators</i>	<i>Rs.2,00,000/-</i>
	<i>(b) Miscellaneous Petitions filed by other registered associations.</i>	<i>Rs.10,000/-</i>
7A	For adjudication of disputes between licensees and generating companies under section 86(1)(f) of the Act.	1% of the amount in Dispute subject to a minimum of Rs.20000/-.

”

7. As may be seen from the above, the petitioner being a generator, his case for dispute resolution could be taken up only under Section 86(1)(f) of the Electricity Act, 2003 read with item 7A in the Table under Regulation 6 of the Fees & Fines Regulations which prescribes 1% of the amount of Dispute, subject to a minimum of Rs.20000/-. On the other hand, the Miscellaneous Petitions filed by an Association is subject to payment of Rs.2,00,000/- under item 7 in the Table under Regulation 6 of the Fees & Fines Regulations. The question involved herein being one of monetary nature and the Commission remits the fees collected by it under the Regulations to the Government of Tamil Nadu, the Registry has to classify the petitions and collect fees as per the Regulations to avoid any monetary loss to the Public Exchequer.

8. Further, the learned Counsel himself admitted during the hearing that he has filed with a similar prayer in respect of M/s.Green Infra Wind Farms Ltd. as D.R.P. for “MUST RUN” status of wind energy (vide D.R.P.No.28 of 2012). On this count also I hold that the contention of the Counsel for the Petitioner that the above cases ought to be classified as Miscellaneous Petitions is not sustainable for the reasons stated above.

9. Under these circumstances, I hold that the Registry has rightly returned the above petitions with a direction to file the same as D.R.P. I therefore direct the Petitioners to file the petitions as D.R.P. with applicable fee.

With the above orders, the PRCs are disposed of.

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission