

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.A.No.2 of 2014

M/s.Tamil Nadu Power Producers Association,
No.6, Sardar Patel Road,
Guindy,
Chennai – 600 032.

... Petitioner
(Thiru Arun Anbumani
Advocate for the Petitioner)

Vs.

Tamil Nadu Transmission Corporation Limited,
(TANTRANSCO),
Represented by its Chairman and Managing Director,
No.144, Anna Salai,
Chennai – 600 002.

... Respondent
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

**Dates of hearing: 22-12-2014, 19-01-2015, 25-04-2016
and 02-06-2016**

Date of Order: 13-11-2017

1. Facts of the Case:-

1.1. The Government of Tamil Nadu by order dated 08-10-2008 accorded in principle approval for the reorganization of Tamil Nadu Electricity Board (“TNEB”) by establishing a holding company, namely TNEB Ltd., and two subsidiary companies, namely, Tamil Nadu Transmission Corporation Ltd., (TANTRANSCO) and Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO). TANTRANSCO was incorporated on 01-12-2009 and it started functioning as such with effect from 01-11-2010. On 19-02-2013, TANTRANSCO filed application before this

Commission for final true-up for FY 2010-11, provisional true up for FY 2011-12, Annual Performance Review for FY 2012-13 and MYT Petition for 2013-14 to 2015-16 along with petition for determination of Intra-State Transmission Tariff and other related charges which were numbered as T.P.No.2 of 2013 by this Commission, wherein this Commission had passed orders on 20-06-2013.

1.2. M/s.Tamil Nadu Power Producers Association, Chennai-32 has filed an Appeal in Appeal No.197 of 2013 and I.A. No.273 of 2013 before APTEL against the orders of this Commission in T.P.No.2 of 2013 dated 20-06-2013, wherein the Commission has determined the transmission tariff and other related charges payable to TANTRANSCO.

1.3. The Hon'ble APTEL issued its order dated 18.10.2014 on the said Appeal. The summary of the findings of the Hon'ble APTEL is as follows:

“71. Summary of our findings:

(i) Violation of the Public Hearing process:

We do not find any violation of public hearing process and principles of natural justice in the present case.

(ii) Interest and Finance Charges: *The State Commission has not allowed ROE on equity base as on 01.11.2010 since the actual loans borrowed by TANTRANSCO are more than the capital expenditure amounts. The excess interest allowed is Rs.186.22 crores. While ROE disallowed is Rs.230.89 crores, allowance of ROE and interest as per Regulation would only increase in the ARR. In view of this, we do not want to interfere with the findings of the State Commission with regard to interest and finance charges.*

(iii) Employees costs: *We do not find any infirmity in the State Commission considering the DA enhancement in the employees expenses as this is required to compensate the employees for inflation.*

(iv) Approval of the capital expenditure without approval of the Capital Investment Plan:

We feel that the capital expenditure and capitalization for the second Control Period appears to be optimistic considering the past performance of TANTRANSCO. We, therefore, direct the State Commission to true up/ provisionally true up the capitalization for FY 2013-14 immediately and the short fall, if any, should be accounted for while determining the tariff for the FY 2015-16, with carrying cost on the impact of variation on this account on the ARR. We direct TANTRANSCO to submit the actual accounts for capital expenditure and capitalization during FY 2013-14 by 30.11.2014 to the State Commission along with Capital Investment Plan for FY 2014-15 and 2015-16 the State Commission shall accordingly approve the Capital Investment Plan of TANTRANSCO for the FY 2014-15 and 2015-16 after following due process of law and consider the same while approving the tariff for the FY 2015-16.

(v) Interest on working capital: The State Commission has determined the Interest on working capital as per the Regulations. Regarding surplus revenue for FY 2012-13, the State Commission has allowed interest cost on the surplus for FY 2012-13 @ 11% while determining the revenue surplus at the end of the period FY 2010-13. The revenue surplus at the end of FY 2012-13 has been deducted from the ARR for FY 2013-14. Thus, we do not find any infirmity in the impugned order.

(vi) Insurance charges: We do not find any infirmity in the State Commission allowing self insurance @0.5% as per the Tariff Regulations.

(vii) Incentive of 1% of equity for availability of transmission system in excess of the norm:

The State Commission has incorrectly allowed incentive on the projected availability for the second Control Period i.e. FY 2013-14 to FY 2015-16. This is contrary to the Regulations. The incentive is to be determined post facto after annual availability achieved is computed after the completion of the Financial Year. The finding of the State Commission in this regard is set aside. The State Commission is, therefore, directed to provide necessary relief to the users of the transmission system on account of excess recovery of revenue on account of incentive in the transmission tariff during FY 2013-14 and FY 2014-15 with carrying cost in the ARR and tariff for FY 2015-16. The ARR for the FY 2015-16 shall also be corrected by the State Commission for the incentive incorrectly provided for higher availability in impugned order.

(viii) Estimates for Open Access and Scheduling Charges from Short Term Open Access:

We do not find any reason to interfere with the findings of the State Commission with regard to estimate for charges from Short Term Open Access customers. However, the State Commission shall true up the same as per the actual revenue recovery from STOA customers, with carrying cost.

(ix) Equating the Short Term Open Access (STOA) and Long Term Open Access (LTOA) Charges:

We do not find any infirmity or illegality in keeping LTOA and STOA charges equal. The Appellant has not stated that this is contrary to the Regulations. We accept the explanation given by the State Commission for equating to LTOA and STOA charges.

(x) Approval of Scheduling and System Operation Charges in the absence of proper ring fencing of SLDC:

We do not find any merit in the contention of the Appellant to disallow System Operation and Scheduling Charges. We, however, direct the State Commission to take necessary action with regard to compliance of their direction for ring fencing of SLDC. The Respondent no.1 is also directed to ensure filing of a separate petition with regard to approval of SLDC charges for FY 2015-16 before the State Commission at the earliest.

72. In view of the above, the Appeal is allowed in part as indicated above. The State Commission is directed to pass consequential orders in terms of our findings on those issues at the earliest. No order as to costs.”

1.4. Pursuant to the above directions of the Hon'ble APTEL, the Commission has numbered the said remanded issues as R.A.No.2 of 2014 and listed the matter for hearing. The said R.A. was heard on 22-12-2014 and Tamil Nadu Power Producers Association and TANTRANSKO were directed to file their respective Written Submissions by 12-01-2015. The TANTRANSKO alone filed its Written Submission and Tamil Nadu Power Producers Association who is the Appellant in Appeal No.197 of 2013 has not filed any Written Submission.

2. Submission of TANTRANSKO in their Written Submission dated 19-02-2015:-

TANTRANSKO has submitted as follows on the remanded issues of
(i) Approval of capital expenditure without approval of the Capital Investment Plan and
(ii) Approval of Scheduling and System Operation Charges in the absence of proper ring fencing of SLDC:-

“In respect of the capital expenditure without approval of the Capital Investment Plan, the respondent has stated that the details of actual Capital Expenditure and capitalization during FY 2013-14 has been submitted on 27-11-2014 and the Capital Investment Plan of TANTRANSCO for the FY 2014-15 and 2015-16 has been filed on 25-11-2014 before the Commission and assigned as M.P.No.54 of 2014.

With regard to ring fencing of SLDC, the respondent has submitted that it is making continuous effort for the preparation of ARR of SLDC for the FY 2015-16 and the same will be filed before the Commission at the earliest.”

3. Findings of the Commission:-

3.1. The present remand proceedings have arisen out of the directions of the APTEL dated 18-10-2014 in Appeal No.197 of 2013 filed by M/s.Tamil Nadu Power Producers Association against the order of the Commission dated 20.06.2013 in Tariff Petition No. 2 of 2013, wherein the Appellate Tribunal directed the Commission to pass orders in terms of their findings on the following issues:

- i) Approval of the capital expenditure without approval of the Capital Investment Plan.
- ii) Incentive of 1% of equity for availability of Transmission system in excess of the norm.
- iii) Estimates for Open Access and Scheduling Charges from Short Term Open Access.
- iv) Approval of Scheduling and System Operation charges in the absence of proper ring fencing of SLDC.

3.2. The issues on remand are taken up one by one.

I Approval of the capital expenditure without approval of the Capital Investment Plan:-

The direction of the Hon'ble APTEL on this issue is as follows:

“We feel that the capital expenditure and capitalization for the second control period appears to be optimistic considering the past performance of TANTRANSCO. We, therefore direct the State Commission to true up/provisionally true up the capitalization for the FY 2013-14 immediately and the short fall, if any, should be accounted for while determining the

tariff for the FY 2015-16, with carrying cost on the impact of variation on this account on the ARR. We direct TANTRANSCO to submit the actual accounts of capital expenditure and capitalization during FY 2013-14 by 30.11.2014 to the State Commission along with Capital Investment Plan for FY 2014-15 and FY 2015-16 in the requisite formats, if not already done. The State Commission shall accordingly approve the Capital Investment Plan of TANTRANSCO for the FY 2014-15 and FY 2015-16 after following due process of law and consider the same while approving the tariff for the FY 2015-16.”

TANTRANSCO's petition filed in T.P No.2 of 2017 involves true up for the years FY 2012 to FY 2016. The true up for capital expenditure and capitalization for FY 2013-14 has been duly taken care of by the Commission in its Order on the said Tariff petition issued on 11.08.2017. The capital investment plan for the years 2014-15 and 2015-16 filed by TANTRANSCO were taken up in M.P No.54 of 2014. Necessary orders have already been passed by this Commission in compliance of the direction of the Hon'ble APTEL approving the CIP of TANTRANSCO for the FY 2014-15 and 2015-16 vide order dated 28-06-2016 and the same has been considered in the Tariff Order No.2 dated 11-08-2017.

II Incentive of 1% of equity for availability of Transmission system in excess of the norm:

The directions of the Hon'ble APTEL on this issue is as follows:

“The State Commission has incorrectly allowed incentive on the projected availability for the second Control Period i.e. FY 2013-14 to FY 2015-16. This is contrary to the Regulations. The incentive is to be determined post facto after annual availability achieved is computed after the completion of the Financial Year. The finding of the State Commission in this regard is set aside. The State Commission is, therefore, directed to provide necessary relief to the users of the transmission system on account of excess recovery of revenue on account of incentive in the transmission tariff during FY 2013-14 and FY 2014-15 with carrying cost in the ARR and tariff for the FY 2015-16. The ARR for the FY 2015-16 shall also be corrected by the State Commission for the incentive incorrectly provided for higher availability in the impugned order.”

Taking into cognizance the direction of the Hon'ble APTEL, the Commission in its subsequent SMT Order No.8 of 2014 dated 11.12.2014 has deducted the carrying cost at 11% on account of excess recovery in ARR for FY 2013-14 allowed in the previous tariff order vis-à-vis the incentive calculated in the said SMT order taking the actual transmission availability into consideration. Further, the Commission in the SMT order has also not allowed incentive for FY 2014-15 as it shall be allowed on a post facto basis, once data on actual availability is made available by TANTRANSCO.

III Estimates for Open Access and Scheduling Charges from Short Term Open Access:

The Hon'ble APTEL's direction on this issue is as follows:

"We do not find any reason to interfere with the findings of the State Commission with regard to estimate for charges from Short Term Open Access customers. However, the State Commission shall true up the same as per the actual revenue recovery from STOA customers, with carrying cost."

The Commission in its SMT Order No.8 of 2014 dated 11.12.2014, has accepted other income which includes income from short term open access consumers in the form of operations and maintenance charges collected from Wind Energy generators and Captive Power Producers etc. for the FY 2011-12, FY 2012-13 and FY 2013-14 as per audited and annual statement of accounts.

IV Approval of Scheduling and System Operation charges in the absence of proper ring fencing of SLDC:-

The Hon'ble APTEL's direction on this issue is as follows:

"We do not find any merit in the contention of the Appellant to disallow System Operation and Scheduling Charges. We, however, direct the State Commission to take necessary action with regard to compliance of their direction for ring fencing of SLDC. The respondent No. 1 is also directed to ensure filing of a separate petition with regard to approval of

SLDC charges for the FY 2015-16 before the State Commission at the earliest.”

Pursuant to the above, the Commission directed TANTRANSCO to file a separate petition for approval of State Load Despatch Centre's ARR in accordance with the Tariff Regulations in its Suo-motu Tariff Order dated 11.12.2014. Subsequently, the State Load Despatch Centre filed the Tariff Petition T.P.No.3 of 2017 for determination of ARR for SLDC for the FY 2017-18 and 2018-19 and the Commission issued its Order on determination of ARR of SLDC for FY 2017-18 and FY 2018-19 and SLDC charges for FY 2017-18 on 11.08.2017.

3.3. Thus, the direction of the Hon'ble APTEL on the above issues have been resolved.

Ordered accordingly.

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