

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

ThiruS.Akshayakumar	Chairman
ThiruG.Rajagopal	Member
and		
Dr.T.PrabhakaraRao	Member

M.P.No.12 of 2018

NLC India Limited
First Floor, No.8, Mayor Sathyamurthy Road,FSD
Egmore Complex of Food Corporation of India
Chetpet, Chennai – 600 031.

... Petitioner
(ThiruHarishankar,
Advocate for the Petitioner)

Vs.

Tamil Nadu Generation and
Distribution Corporation Ltd.
Chennai-600 002.

...Respondent
(ThiruM.Gopinathan,
Standing Counsel for TANGEDCO)

Dates of hearing : 24-04-2018; 08-06-2018; 14-08-2018;
and 18-09-2018;

Date of Order : 10-12-2018

The M.P.No.12 of 2018 came up for hearing on 18-09-2018. The Commission upon perusal of the Petition, Counter and connected records and after hearing the submissions of both the parties hereby makes the following:

ORDER

1. Prayer of the Petitioner in M.P.No.12 of 2018:-

The prayer of the Petitioner in the above M.P.No.12 of 2018 is to allow the tariff protection of Rs.4.41/kWhr in respect of the 500 MW Solar Power projects

being established in various parts of Tamil Nadu under Solar Developer and Operator (SDO) model by NLCIL, considering Force Majeure clauses under power to remove difficulties and to pass such order (s) as deemed fit by the Commission.

2. Facts of the Case:-

The petition has been filed by M/s.NLC India Limited seeking tariff protection under Force Majeure clauses upto 30-09-2018 on issues due to land registration, agitation of local people, rain, Ockhi cyclone and High Court order staying works of Solar Projects of NLCIL in respect of its 500 MW solar project.

3. Contentions of the Petitioner:-

3.1. NLC India Limited (NLCIL) proposed to establish 2x200 MW and 1x100 MW Solar Power Project in Neyveli Mine I & Mine II dumpyards and Township area respectively. 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 the Commission for solar power projects applicable for the control period of 2016-2017.

3.2. The above tariff for the solar power supplied to TANGEDCO would be applicable only if the project is commissioned during the control period on or before 31.03.2017. 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.

3.4. The tendering process was completed and agencies (SDOs) were finalised in the month of February, 2017 for execution of these projects with the scheduled period of 13 months from the date of issue of LOA so as to commission the projects by March 2018.

3.5. NLCIL had filed the petition before the Commission for extension of the validity of the agreed solar tariff of Rs.4.56 per unit till 31.03.2018 which was not admitted by the Commission stating that Commission has consciously prescribed the control period.

3.6. By order dated 28.03.2017, the Commission has notified the Solar PV Tariff of Rs.4.50/kWhr without AD and Rs.4.41/ kWhr with AD for the Solar PV projects commissioned upto 31.03.2018. Accordingly, TANGEDCO vide letter dated 27.10.2017 extended the project time period upto 31.03.2018 with tariff of Rs.4.41/ kWhr with AD benefit applicable for the control period 2017-18 for the 500 MW solar projects of NLCIL.

3.7. However, while execution of the projects, the project timelines got affected due to the following Force majeure issues faced by NLCIL which were beyond the control of the project developers:-

(1) As environmental clearance was not given to erect solar panels in dump yard of NLCIL Mines, new location/area for erection of solar plant was envisaged.

(2) Load flow study results were informed by TANGEDCO 01.07.2017 and 07.08.2017. Load flow study is first activity which determine final location of the project and the same was completed only in July/first week of August 2017. This process took 4 months of time.

(3) Totalland requirement for the project is about 1750 Acres. Formalities and procedures of registration of land above the prescribed ceiling for industrial use took more time and consumed more than 48 registration days in a period from July 2017 to March 2018.

- Most of the land parcels are ancestral properties available in the form of original patta issued to the ancestors and thereby identification of all the legal heirs up to present and co-ordinating them, bringing consensus is a very high time consuming process.
- The persons are not alive at present and in some cases the next generation people are also not alive.
- It becomes very time consuming process to collect the details of their legal heirs and then the legal heirs of these legal heirs.
- Most of the legal heirs are in out stations and some people are out of States. In some cases these legal heirs are outside India also.
- It is very time consuming process to gather them in person for the Registrationprocess and hence the registration process got delayed.
- Not disclosing any un-registered previous agreement to sell and also which is not reflecting in the EC and later invite civil dispute after registration.

(4) From the month of August 2017, there was heavy rainfall in in the project sites at Virudhunagar&Tirunelveli Districts. The Cyclone "Ockhi" which hit the southern coast of Tamil Nadu in November 2017 resulted in excess rainfall of about 50% during North East monsoon and also much distortion in the properties in that area. The cyclone Ockhi and its after effects have caused the delay of execution of the project for more than 3 months.

(5) Local villagers agitated under the assumption that, these projects may affect their daily life. Local people hampered the progress of work by not allowing the labours into the site premises for work demanding certain facilities/requirements affects the progress of work.

(6) In March 2018, Madurai Bench of Hon'ble High Court has issued an injunction order staying the works of Solar projects at one of the sites of NLCIL from 6th March 2018 on the public litigation petition filed by an individual.

(7) Due to very high guideline value of the proposed land for the project cost become 15% higher than the original estimate thereby risking the viability of project. Sellers are hesitate to register at these very high rates fearing about income tax implications. These high guideline values delaying the remaining 15% of the land registration and being taken up and under resolution by District authorities.

(8) Out of 13 effective months of project timeline, the above unforeseen activities nearly took about 9 months necessitating another 6 months for completion of project.

(9) The type of soil is clay (Black cotton which has very high swelling Index) in nature in Virudhunagar District Project site and after rain, it becomes very slushy and it is very difficult for the movement of machineries and men in the subsequent days.

(10) Any reduction in the solar power tariff would have adverse effects on NLCIL's proposal of implementing such green energy projects.

(11) Considering the time required for supplies, erection and related activities, the project is expected to be commissioned by September 2018.

4. Contentions of the Respondent:-

4.1. As per Clause 6 “Applicability of TNERC Order No.2 of 2016”, this order came into force from 01-04-2016. The tariff fixed in this order shall be applicable for the solar power plants commissioned during the control period of this order. As per Clause 11.6 of this order, the control of the order is one year i.e. from 01-04-2016 to 31-03-2017.

4.2. The proposal of M/s.NLC India Limited for establishing 3 Nos. Solar PV Power Plants as shown in the Tabular Column I has been received on 17-10-2016.

Sl. No.	Location of the Power Plant	Capacity
1.	Neyveli Mine – I area, Cuddalore District	200 MW
2.	Neyveli Mine – II area, Cuddalore District	200 MW
3.	Neyveli Township area, Cuddalore District	100 MW

4.3. The above said proposal of M/s.NLCIndia Limited for establishing 3 Nos. solar power plants totalling 500 MW has been accorded approval vide Noted on Record letter vide LrNo:CE/NCES/SE/Solar/EE/SCB/F.NLC-1(200MW)/ D.1328/2016 dated 19.10.2016, LrNo:CE/NCES/SE/Solar/EE/SCB/F.NLC-2(200 MW)/ D.1329/2016 dated 19.10.2016, Lr.No:CE/NCES/SE/Solar/EE/SCB/F.NLC-3(100 MW)/ D.1330/2016 dated 19.10.2016 respectively.

4.4. M/s.NLC India Limited has executed Energy Purchase Agreements with TANGEOCO on 19.10.2016 for the above 3 Solar PV Power Projects. The validity of the Energy Purchase Agreement is 25 years.

4.5. The Petitioner is a Central Government Undertaking engaged itself in electricity sector for so many decades. So also, the TNEB, now TANGEDCO. After the coming into force of the Electricity Act, 2003 and the Commission started functioning fully, the Commission has issued Generic/Average Levelised Tariff Orders from time to time, inter-alia, for wind, bio-mass, bagasse, solar, etc. At alltimes, the Commission fixes control period for such Tariff Orders issued. Accordingly, the generators, whether it is an individual or private entity or otherwise have been generating power and supplying the power to the TANGEOCO. While doing so, the following procedures are broadly adopted, which applies to one and all:-

- (i) An intending generator will approach the TNEB/TANGEOCO to ascertain the technical feasibility for grid connectivity for its proposed project.
- (ii) A Load Flow Study will be conducted and the result will be communicated to the intending generator.
- (iii) If the grid connectivity found feasible in the Load Flow Study, it is for the intending generator to take a further call whether to proceed or not.
- (iv) In case, the intending generator wants to pursue its proposed project, it will make an application and, subject to compliance of the procedures prescribed, it will be issued with Noted-on-Record approval.

4.6. In the Noted-on-Record approval itself it is categorically stated that the project to be commissioned within the period specified therein. It is not out of place to submit

that whenever extension of time is sought for, which will be issued, among other things, with the condition that the Tariff Order in force on the date of commissioning will apply .

4.7. On obtaining the Noted-on-Record approval, the intending generator will approach the TNEB/TANGEDCO for execution of Power Purchase Agreement (PPA).

4.8. PPA will be signed in advance in anticipation of putting up the proposed project by the intending generator.

4.9. The object and purport of executing PPA at the earliest point of time in anticipation of commissioning of the proposed project is that the intending generator will be in a position to source funds from the financial institutions and other benefits, if any from the Government.

4.10. Despite feasibility of grid connectivity, issue of Noted-on-Record approval and execution of PPA, still it is the prerogative of the intending generator either to continue the project or otherwise. The TNEB/TANGEDCO has nothing to do with their decision.

4.11. If the intending generator chooses to commission its proposed project, it can commission the project and connect to the TNEB/TANGEDCO's grid in accordance with the approval/conditions attached to it, including the time, if any prescribed for commissioning.

4.12. On commissioning and by considering the date of commercial operation of the project, the tariff will be made applicable by operation of law, i.e., tariff fixed by the Commission in the Tariff Order in force with due specification as to the control period within which such tariff will be entitled.

4.13. It has already been informed in the Noted for Record Letter that their proposed solar power plants shall be commissioned in synchronization with TANGENCO grid within 10 months from the date of issuance of the Noted for Record letter. Otherwise, Noted for Record letter shall stand automatically cancelled without any further notice or information whatsoever. Further, the applicable tariff will be Rs.4.56 per unit with A.D. benefit if the project is commissioned within the control period of the Commission's Order No.2 of 2016 i.e. on or prior to 31.03.2017. If the solar power plant is commissioned beyond control period of the order i.e. after 31-03-2017, the tariff fixed in the subsequent order to be issued by the Commission will be applicable.

4.14. M/s.NLC India Limited has approached the TANGEDCO on 01.02.2017 for change of locations for all 3 projects from the locations as shown below:-

Sl. No.	Name of the Village	Capacity in MW
1	Chelliyanallur and Ayyaanaruthu Villages near by Maranthai area, Tirunelveli District	100
2	Thoppalakarai, Suthamadam and Sallukuvarpatti Villages in Virudhunagar District.	100
3	Saminatham, Thiruchuli, Parattanatham, Pillayarnatham, Thammanayakanpatti and Villages in Virudhunagar District	100
4	Sethupuram, Raghunathamadai and Nellikulam Villages in Virudhunagar District	100
5	Ethankulam Village, Manur Taluk, Tirunelveli District	50
6	Pudhukulam, Kadamangalam Villages in Kamuthi Taluk and Avathandai village in Kadaladi Taluk of Ramnaddistrict	50

4.15. It is only M/s.NLC India Limited which sought for change of location and the TANGEDCO vide letter dated 07.02.2017 has accorded approval for change in location as sought above subject to the following conditions and also advised them to come forward to make payment for load flow study.

- (i) Solar PV Power plants with a combined total capacity of 500 MW shall be established at not exceeding 10 different locations with each capacity of the plant not less than 50 MW.
- (ii) The land pertains to new locations should be in the name of M/s.NLC India Limited.

4.16. M/s.NLC India Ltd has not sought for time extension or any other request. Therefore, obviously the NLC India Ltd was not requiring any time extension etc. to commission its project.

4.17. After having collected the applicable charges, load flow study was conducted and the load flow study result as specified below was communicated to M/s.NLC Limited:-

Sl. No.	LFS charges collected on	Location of the Power Plants	Capacity in MW	Connectivity details	Date of LFS results communicated
1	29-04-2017	Thoppalakarai, Suthamadam and Sallukuvarpatti Villages in Virudhunagar District	100	Savasapuram 230/110 KV SS, 110 KV level	01.07.2017
2	11.05.2017	Thiruchuli, Parattanatharn, Pillayarnatham, Thammanaickanpatti and Eluppaiyur villages in Virudhunagar District	100	Thiruchuli, 230/110 KV SS/110 KV level	01.07.2017
3	12.05.2017	Arbanerl, Suchchnerl.Panaiyur and Raghunathamadai Villages in Virudhunagar District	100	Thiruchuli 230/110 KV SS, 110 KV level	01.07.2017
4	26.05.2017	Kamuthi Village in Ramanathapuram District	50	Kamuthi 400/230-110 KV SS, 110 KV level	07.08.2017

5	31.05.2017	Ethankulam Village/Manur Taluk, Tirunelveli District	50	Kanarpatti 400/230-110 KV SS, 110 KV level	01.07.2017
6	14.06.2017	Chelliyanallur and Ayyaanaruthy Villages near by Maranthai area, Tirunelveli District	100	Kanarpatti 400/230-110 KV SS, 230 KV level	07.10.2017 (Revised Load Flow)

4.18. Based on the request of M/s NLC India Ltd vide letter dated 07.10.2017 & 09.10.2017, the TANGEDCO vide letter dated 27.10.2017 has informed the following:-

- (i) Security Deposit to be paid for 500 MW project is waived as a special case since M/s. NLC India Limited is a Public Sector Company and also having large scale business with TANGEDCO.
- (ii) The due date for commissioning the solar PV power plant of 500 MW was extended from 18.08.2017 to 31.03.2018 with applicability of tariff of Rs.4.41/unit (With AD benefit) as per the TNERC Order No.2/2017 dated 28.03.2017.
- (iii) To furnish the projects wise Land details (S.F.No & Village) for which registration is completed and the Land details for which registration is under progress.
- (iv) Subject to furnishing the project wise land details, revised Noted for Record Letter for the six locations will be issued and addendum to 3 Nos. EPA will be made.
- (v) To furnish the entire registered copy of land document with one month.

4.19. On receipt of partial land documents and as per the request of M/s. NLC India Ltd, considering as a special case, the following amendment was issued by

TANGEDCO on Noted for Record letter dated 19.10.2016 so as to facilitate M/s. NLC India Ltd to execute such mega projects:-

Sl. No.	Location of the Power Project	Capacity in MW	Date of issuance of Amendment
1	Chelliyallur and Ayyaanaruthu Villages near by Maranthai area, Tirunelveli District	100	29-12-2017
2	Thoppalakarai, Suthamadam and Sallukuvarpatti Villages in Virudhunagar District.	100	17-11-2017
3	Saminatham, Thiruchuli, Parattanatham, Pillayarnatham, Thammanayakanpatti and Villages in Virudhunagar District	100	18-01-2018
4	Sethupuram, Raghunathamadai and Nellikulam Villages in Virudhunagar District	100	18-01-2018
5	Ethankulam Village, Manur Taluk, Tirunelveli District	50	19-12-2017
6	Pudhukulam, Kadamangalam Villages in Kamuthi Taluk and Avathandai village in Kadaladi Taluk of Ramnad district	50	29-01-2018

4.20. Out of the combined total capacity of 500 MW, M/s.NLC India Limited has commissioned 1x100 MW Solar PV Power plant at Chelliyallur Village, Tirunelveli District on 30-03-2018. The above said power plant is entitled to avail a tariff of Rs.4.41 per unit as per the Commission Order No.2 of 2017.

4.21. M/s.NLC India Limited vide letter dated 31-03-2018 has requested extension of time for commissioning the balance 400 MW Solar PV Power project at various five locations from 31-03-2018 to 30-09-2018 stating that the works are in full swing for the above said projects and is expected to be commissioned prior to 30-09-2018.

4.22. Based on the above request of M/s.NLC India Limited, extension of time from 31-03-2018 to 30-09-2018 was granted for commissioning of the balance 400 MW solar PV power projects at different five locations with a condition that since the due date for commissioning the power plants falls under the control period of Order No.5 of 2018, the power purchase tariff of Rs.3.05 per unit (with AD benefit) as fixed in Commission's Order No.5 of 2018 is applicable for the above said power projects.

4.23. Tie-up approval for parallel operation of 1x100 MW solar PV power plant at Sethupuram, Raghunathamadai and Nellikulam Villages, Virudhunagar District with TANGEDCO grid at Thiruchuli 230/110 KV SS at 110 KV level, has been accorded by TANGEDCO vide Dir/Gen's Memo dated 30-04-2018. The power plant is yet to be commissioned.

4.24. Tie up approval for parallel operation of 1x100 MW solar PV power plant at Thoppalakarai, Suthamadam and Sallukuvarpatti Villages in Virudhunagar District with TANGEDCO grid at Savasapuram 230/110 KV SS, 110 KV level has been accorded by TANGEDCO vide Dir/Gen's Memo dated 02.05.2018. The power plant is yet to be commissioned.

4.25. The status of the remaining 200 MW Solar PV is not known to the Respondent, TANGEDCO.

4.26. M/s. NLC India Limited, on coming to a final conclusion that it could not commission the project in time as per the approvals obtained, intending to defy the statutory Tariff Orders issued by the Commission and to obtain unjust enrichment at any cost on one pretext or other, has started filing petition after petition before this

Commission. The Commission has rightly rejected those petition and M/s.NLC India Limited has allowed the same to become final. In this connection, it is submitted that the various findings recorded by the Commission in paragraph 4.2 of the order, dated 25.04.2017 in RP No.2 of 2017 and paragraph 3 of the order, dated 13-03-2018 in R.P.No.5 of 2017 including that the extension of control period is a project specific one; that the NLC has approached now with different reasons for seeking extension of control period for the very same projects etc. are squarely applicable to the case on hand as well.

4.27. M/s.NLC India Limited has also approached the Hon'ble APTEL in I.A.No.574 of 2017 in DFR No.2070 of 2017 and same is pending. In view of the above and as M/s.NLCInida Limited has filed the present petition by inventing reason after reason as an afterthought with a malafide intention to upset the Tariff Order issued from time to time and intended to unsettle the settled position in law, which prayer is allowed would collapse the financial aspects of the TANGEDCO, the petitioner is not entitled to any relief in this petition. ,

4.28. Getting environment clearance is the first step for execution of any type of power project. The petitioner ought to have approached the TANGEDCO for Noted on Record letter only after various statutory compliances and basic requirement including obtaining of the environment clearance. Therefore, the Petitioner's contention that environmental constraintsfor non-execution of the project even after obtaining the NOC is not acceptable.

4.29. The Petitioner's proposal for establishing solar PV power plants has been received by TANGEDCO on 17.10.2016 and Noted on Record letter has been issued

to the petitioner on 19.10.2016 within two days from the date of receipt of the proposal. In the Noted on Record letter itself it has clearly been mentioned the connectivity details and all other conditions attached to it.

4.30. Only because of the change in location proposal of the Petitioner, revised load flow study has to be conducted. The revised load flow study result has been communicated to the Petitioner within two months from the date of receipt of payment towards load flow study charged. Therefore, the petitioner's contention that delay in execution of the project due to delayed load flow study is not only incorrect but also reveals the real intention of the Petitioner to avail the benefits by circumventing the law.

4.31. Without prejudice to the above, that in November 2017 coastal districts such as Kanyakumari and Tuticorin are highly affected due to Ockhi cyclone. But Virudhunagar, Ramnad and Tirunelveli Districts where the Petitioner has proposed to establish the power plants, have not been affected. Therefore the Petitioner's contention that the project execution is affected by Ockhicyclone, is also factually incorrect. It is relevant to reiterate that the Noted on Record approvals were issued as early as on 19-10-2016 and it is an admitted fact of the Petitioner that it took its own time to process it but transferring the blame on others. The Petitioner should not be allowed to make such mutually contradictory and fancy claims.

4.32. TANGEDCO has complied with all rules and regulations framed under Electricity Act, 2003, CERC guidelines, TNERC guidelines, TNERC Tariff Orders and all other relevant order / practices followed in processing the Petitioner's proposal for establishing the 500 MW solar PV power projects.

4.33. Due date for commissioning the Petitioner's solar PV power projects as shown in Para 4.19 except the project under Serial No.1 falls under the control period of the Commission's Order No.5 of 2018, the above said projects are entitled to avail the tariff of Rs.3.05 per unit with AD benefit.

4.34. If the Petitioner is allowed to avail the tariff of Rs.4.41 per unit for their proposed 400 MW solar PV power project against the applicable tariff of Rs.3.05 per unit, every generator who is not able to commission the project would state its own reasons and consequently TANGEDCO will be put into great hardship with huge additional financial burden by the way of paying higher tariff over the entire agreement period of 25 years. In short, the reasons stated are unacceptable and the Force majeure clause before commissioning of the project would not apply.

5. Rejoinder filed by the Petitioner:-

In the Rejoinder filed by the Petitioner on 07-06-2008, they have reiterated their submissions made in the petition in addition to the following:-

5.1. NLCIL took all efforts to mobilize supplies and for erection of panels in all the sites with the intention to commission the projects by 31-03-2018. NLCIL informed the readiness of 3x100 MW to TANGEDCO vide letters dated 19-03-2018, 22-03-2018 and 26-03-2018. Subsequently, CEA approval for these projects was obtained on 28-03-2018. While NLCIL could successfully commission 1x100 MW project at Chellianallur village on 30-03-2018, commissioning of other 2x100 MW projects proposed to be connected to Thiruchuli and Savasapuram Substations could not be achieved before 31-03-2018 for want of evacuation infrastructure such as power transformers at TANGEDCO end.

5.2. When TANGEDCO arranged the temporary connectivity for one day only on 02-05-2018, NLCIL could commission the 1x100 MW project connected to the Savasapuram SS on the same day. Likewise, another 1x100 MW project connected to Thiruchuli SS was also commissioned on 04-05-2018 through the temporary connectivity arranged by TANGEDCO for that day only. However, TANGEDCO restricted the evacuation of power to the maximum of 10 MW by getting comfort letter from NLCIL in both the cases, because of non-availability of the transmission capacity at the TANGEDCO end. Thus, NLCIL have commissioned 1x100 MW project on 30-03-2018 (i.e. within the scheduled time of 31-03-2018) and another 2x100 MW projects on 02-05-2018 and 04-05-2018 due to delay in arranging the power evacuation facility by TANGEDCO though the approval of CEA was obtained on 28-03-2018 itself for all the 3x100 MW projects.

5.3. As the Commission have not considered NLCIL's request for control period extension, NLCIL agreed for the lesser tariff of Rs.4.41/Kwhr. instead of Rs.4.56/Kwhr as per PPA, and proceeded further with the execution of projects in the interest of fulfilling its commitment towards the Green Initiatives of GOI.

5.4. However, while execution of the projects, the project timelines got affected due to the force majeure issues(such as Heavy Rain, Ockhi Cyclone, Agitation of Local Population and stay order of Madurai Bench of Hon'ble High Court of Chennai) among other issues faced by NLCIL in Land Registration (Higher Guideline value than the market price) which were beyond the control of the project developers.

5.5. Appeal No.1A 574 of 2017 in DFR No.20170 of 2017 made to Hon'ble APTEL is pertaining to the 130 MW Solar Project of NLCIL at Neyveli and is no way connected to the subject project of 500 MW capacity in various parts of Tamil Nadu.

5.6. Noted on Record letter issued by TANGEDCO on 17-10-2016 is an enabling letter for signing PPA, which was completed on 19-10-2016. However, NLCIL could proceed with the project activities only after the Load flow study approval i.e. from July / October 2017.

5.7. In spite of NLCIL's readiness to commission 300 MW projects during March 2018, only 100 MW project could be commissioned and another 200 MW projects could not be commissioned in time due to non-availability / inadequate evacuation facility (Transformers) at TANGEDCO end. The temporary Grid tie up approvals was given only on 30-04-2018 and 02-05-2018 and 2 x 100 MW projects were commissioned on 02-05-2018 and 04-05-2018. NLCIL was asked to evacuate only 10 MW and issue comfort letters in this regard.

5.8. The computation of tariff is based on the capital cost. For the above 500 MW solar projects, NLCIL issued LOA to SDOs in February 2017, which in turn placed orders for the supplies. At this stage, any reduction in the solar power tariff would have adverse effects on NLCIL's proposal of implementing such green energy projects in line with the Green Initiatives of GOI.

5.9. As per the requirement of TANGEDCO, the details of the land wherein the proposed solar project, NLCIL has submitted the details of land available with them at that point pending technical assessment. Subsequently, since land details

submitted to TANGEDCO not found technically suitable, new location / area for erection of solar plant was proposed and the same has been accepted by TANGEDCO followed by load flow study.

5.10. NLCIL had taken up these solar projects with the broad view of contributing its commitment 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.

5.11. 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 2018-19 due to issues such as Ockhi Cyclone, Agitation by Local villagers, Stoppage of work at site by injunction order of High Court, Madurai Bench which are beyond the control of the Petitioner.

Now out of 500 MW,

- 1x100 MW was commissioned on 30-03-2018 (Chellianallur)
- 1x100 MW was commissioned on 02-05-2018 (Savasapuram)
- 1x100 MW was commissioned on 04-05-2018 (Thiruchuli)
- 1x100 MW is stayed by Madurai Bench of High Court & Local agitation.
- 2 x 50 MW is under slow progress due to agitation of local people.

5.12. Considering the time required for supplies, erection and related activities, the project of 1x100 MW and 2x50 MW are expected to be commissioned by September 2018.

5.13. In spite of its readiness to Commission 3x100 MW projects before 31-03-2018, NLCIL could commission only 1x100 MW in time and the balance 2x100 MW could not be commissioned before 31-03-2018 due to lack of power evacuation infrastructure (Transformers) at TANGEDCO's end.

5.14. It is submitted that the Hon'ble Supreme Court of India, vide its judgment dated 05-07-2016 in the matter of Gujarat UrjaVikas Nigam Limited Vs. Tarini Infrastructure Limited and others, held as follows:-

"In view of the section 86(1)(b) of Act, court must lean in favor of flexibility and not read inviolability in terms of PPA in so far as tariff stipulated there in as approved by the commission was concerned. It would be a sound principle of interpretation to confer such a power if public interest is dictated by surrounding events and circumstances require a review of tariff".

5.15. Not only the tariff fixed is subject to periodic review furthermore, the above regulations provide for taking into consideration Force Majeure events. Any force majeure is considered as an uncontrollable factor. Considering the above observations made by the Apex Court, though the PPA entered between the TANGEDCO and NLCIL stipulates the Force Majeure factor as per clause 12, by saying that "notwithstanding the above, the existence or otherwise if force majeure event prior to commissioning or delayed commissioning of project for whatsoever

reason shall not be ground to seek tariff specified at Article 5, extension of control period, etc, it is submitted that, looking into the solar projects with the broad views of contributing its commitment towards green energy initiatives of Government of India, in combating the climate change rather than its business motives, it is submitted that, the Commission is having power and jurisdiction to look into the tariff issues on the ground of Force Majeure event.

6. Additional Rejoinder filed on behalf of the Petitioner:-

In the Additional Rejoinder filed on 30-07-2018, the Petitioner has submitted as follows:-

6.1. MNRE and Ministry of Power have issued orders to give relief to the projects affected by various issues such as business interruptions due to GST, delays in land acquisition and delayed financial closure.

6.2. MNRE have issued an office memorandum dated 20.06.2018. In the Office Memorandum, it is informed to SECI/NTPC/Solar Power Plant implementing agencies that all the Projects Developers who claim to have been affected by GST induced disruptions shall make a formal application for extension of time due to GST disruptions giving all documentary evidence in support of their claim. Vide this OM, the extension of 2 months (62 days) can be given to implementing agencies for those solar power projects having date of Actual Financial Closure (AFC)/ Scheduled Financial Closure (SFC) (whichever was later), before 01.07.2017 and having scheduled commissioning date (SCOD) after 31.08.2017.

6.3. Though there is no stipulation of financial closure in the PPA signed with TANGEDCO for 500 MW Solar PV Power Projects implemented under preferential tariff scheme funding arrangements were made in place for this project using internal

resources/working capital facility from SBI well before 01.07.2017. Scheduled commissioning date for NLCIL 500 MW Solar project is 31.03.2018 and hence vide Para 4 (a) of the Office Memorandum, extension of 2 months (62 days) is eligible for this project with tariff protection.

6.4. Ministry of Power issued resolution dated 14.06.2018 have given 12 months' time for land acquisition instead of 7 months earlier given and similarly allowed 12 months' time for financial closure instead of 7 months earlier given. Commissioning schedule also extended from 13 months to 21 months. Though this provision is applicable to bidding based Solar Projects, concern of the ministry of Power to address the genuine grievances of the Solar power generators may be noted for considering force majeure issues of NLCIL Solar Projects.

6.5. Out of 500 MW,

- * 1 x 100 MW was commissioned on 30.03.2018 (Chellianallur)
- * 1 x 100 MW was commissioned on 02.05.2018 (Savasapuram)
- * 1 x 100 MW was commissioned on 04.05.2018 (Thiruchuli)
- * 1x 100MW is stayed by Madurai Bench of High Court & Local agitation.
- * 2 x 50 MW are in nearing completion and Grid tie up is expected shortly.
- * In spite of its readiness to commission 3x100 MW projects before 31-03-2018, NLCIL could commission only 1x100 MW in time and the balance 2x100 MW could not be commissioned before 31-03-2018 due to lack of power evacuation infrastructure (Transformers) at TANGEDCO's end.

6.6. MNRE have made a way to give relief to the generators affected by GST with tariff protection.

6.7. MoPhave considered the issues of Land Acquisition, Financial closure as the area of concern and given extension of time without commercial impact to the extent of 5 months in each issue with the overall ceiling of 12 months.

6.8. Considering the above facts and circumstances, it is submitted that the Commission is requested to include business interruption due to GST as a Force Majeure for seeking the tariff protection of Rs.4.41/Kwhr in respect of remaining 400 MW of 500 MW solar power projects being established in various parts of Tamil Nadu by NLCIL, in line with the Office Memorandum of Ministry of New and Renewable Energy dated 20-06-2018 and Ministry of Power Resolution dated 14-06-2018.

7. Findings of the Commission:-

7.1. The petitioner, NLC India Limited (NLCIL) in the present M.P.12 of 2018 has sought tariff protection of Rs.4.41/kWhr till 30.09.2018 in respect of the 500 MW solar power projects developed in various parts of TamilNadu under Solar Developer and Operator (SDO) model considering Force Majeure clauses under power to remove difficulties. The contention of the petitioner is that the project timelines got affected due to the following Force Majeure issues which were beyond the control of the project developers:

- Environmental clearance was not given to erect solar panels in dumpyard of NLCIL Mines and new location/area for erection of solar plant was envisaged.

- Load Flow study by TANGEDCO took 4 months time.
- Delay in land acquisition.
- Delay due to rain and Ockhi cyclone.
- Delay due to agitation of local communities.
- Delay due to High Court order stopping the works of NLCIL Solar Projects due to public Interest Litigation petition filed by an individual.

7.2. Additionally, the petitioner in support of Tariff protection of Rs.4.41/ kWhr has submitted that MNRE and Ministry of Power have issued orders to give relief to the projects affected by various issues such as business interruptions due to GST, delays in Land acquisition and delayed financial closure.

7.3. The petitioner therefore contends that, of the effective 13 months of project timeline, the above unforeseen activities took nearly about 9 months necessitating another 6 months for completion of project. Thus the petitioner's project tendered during 2016-17 with scheduled completion period of 2017-18 is spilling over 2018-19. So, of the 500 MW solar project capacity, NLCIL could commission only 1x 100 MW project on 30.03.2018 (i.e within the scheduled time of 31.03.2018). Another 2x100 MW projects could be commissioned only on 02.05.2018 and 04.05.2018 respectively, in spite of its readiness before 31.03.2018 due to lack of power evacuation infrastructure (Transformers) at TANGEDCO's end. The temporary grid tie up approvals were given only on 30.04.2018 and 02.05.2018 and the 2x100 MW projects were commissioned on 02.05.2018 and 04.05.2018.

7.4. The petitioner, NLCIL has also referred to observations made by the Hon'ble Supreme Court of India vide its judgment dated 05.07.2016 in the matter of Gujarat UrjaVikas Nigam Limited VsTarini Infrastructure Limited and others wherein it is held as follows:

"In view of the section 86(1)(b) of Act, court must lean in favour of flexibility and not read inviolability in terms of PAA in so far as tariff stipulated therein as approved by the Commission was concerned. It would be a sound principle of interpretation to confer such a power if public interest is dictated by surrounding events and circumstances require a review of tariff.

.....

Para12. Not only the tariff fixed is subject to periodic review. Furthermore, the above provide for taking into consideration the Force Majeure events. Any Force Majeure is considered as an uncontrollable factor."

The petitioner has further submitted that though the Force Majeure Clause as per Para 12 of the PPA between TANGEDCO and NLCIL states that "*notwithstanding the above, the existence or otherwise of Force Majeure event prior to commissioning or delayed commissioning of project for whatsoever reason shall not be ground to seek tariff specified at Article 5, extension of control period, etc.*", it is requested to look into the solar projects with the broader view of its contribution towards green energy initiatives of Government of India, in combating the climate change rather than the business motives and thus view the tariff issues on the ground of Force Majeure event.

7.5. Accordingly the petitioner's prayer is to consider the above issues under Force Majeure clauses and to allow tariff protection till 30.09.2018 as any reduction in solar tariff would have adverse impact on NLCIL proposal of implementing such green energy projects.

7.6. The respondent, TANGEDCO, on its part would submit that only because of change in location proposed by the petitioner, revised load flow had to be conducted, the results of the same were however communicated within two months from the date of receipt of payment towards load flow study charges. The respondent further contends that the Ockhi cyclone affected only the coastal districts of Kanyakumari

and Tuticorin and not Virudhunagar, Ramnad and Tirunelveli Districts where the petitioner has proposed to establish the power plants. Hence, TANGEDCO would submit that the petitioner's solar PV Power projects, except for 1x100 MW which was commissioned during 2017-18 and eligible for a tariff of Rs.4.41 per unit, 4x100 MW fall under the control period of 2018-19 and are entitled only to avail the tariff of Rs.3.05 per unit with AD benefit as per Generic Tariff Order No.5 of 2018 dated 28.03.2018. TANGEDCO would further submit that if the petitioner is allowed to avail the tariff of Rs.4.41 per unit for their proposed 400 MW solar PV projects against applicable tariff of Rs.3.05 per unit, every other generator who is not able to commission the project would follow suit and consequently TANGEDCO will be put into great hardship with additional financial burden of paying higher tariff over the entire agreement period of 25 years.

7.7. The Commission heard the arguments of both the parties. The crux of the issue is that the petitioner seeks tariff protection of Rs.4.41 per unit (with AD) till 30.09.2018 citing various issues as Force Majeure events like constraints faced in land registration, rain, Ockhi cyclone, agitation of local people, and stay granted by the Hon'ble High Court Order besides the orders of MNRE, MOP and lack of power evacuation infrastructure at TANGEDCO's end.

7.8. From the Written submissions of the both the parties, the Commission would like to set out the critical activities of NLCIL's project proposal chronologically before deciding the issue. On petitioner's project proposal dated 17.10.2016 for establishing 3 Nos. Solar PV plants of 500 MW capacity in NLC Mine I, Mine II and Neyveli Township areas under preferential tariff scheme, the respondent, TANGEDCO conveyed its willingness to the petitioner through the Noted on Record letter dated

19.10.2016. The Energy Purchase Agreement between M/s.NLCIL and TANGEDCO was executed on the same day on 19.10.2016 with the solar power tariff for the SPG commissioned during the control period of Order No. 2 of 2016 dated 28.03.2016 at Rs.4.56 per unit (with AD benefit). NLCIL had been informed through the Noted for Record Letter that the proposed solar power projects shall be synchronized with TANGEDCO grid within 10 months (i.e by 18.08.2017) from the date of issuance of the Noted for Record Letter. Subsequently, NLCIL has approached the respondent, TANGEDCO on 01.02.2017 for change of locations for all the three projects with a proposal to establish its 500 MW solar projects at six new locations in various parts of TamilNadu as identified by the SDOs engaged by NLCIL. Approval for the same was conveyed by TANGEDCO on 07.02.2017 and the petitioner was advised to make payment for load flow study. Load Flow study charges has been collected by TANGEDCO between 29.04.2017 and 14.06.2017 for all the six locations and its results communicated on 01.07.2017 for 4 locations (350 MW), on 07.08.2017 for one location (50 MW) and on 07.10.2017 for the sixth location (100 MW). On the request of NLCIL, TANGEDCO extended the due date of commissioning of the projects from 18.08.2017 to 31.03.2018 with applicability of tariff of Rs.4.41/unit (with AD benefit) as per TNERC Order No.2 of 2017 dt.28.03.2017. NLCIL could commission 1x100 MW solar project at Chelliyannallur Village Tirunelveli Dt. with connectivity to Kanarpatty 400/230-110 kV substation at 230 kV level on 30.03.2018, the load flow result of which was communicated on 07.10.2017. Of the balance 400 MW project capacity, NLCIL informed on 26.03.2018 that 2x100 MW was ready for commissioning before 31.03.2018 and the grid tie up request submitted to TANGEDCO. Based on CEA approval for electrical installation on 27.03.2018, connectivity approval was sought again on 27.03.2018. But the 200 MW project could not be commissioned before 31.03.2018. Based on the request of

NLCIL vide letter dated 31.03.2018, extension of commissioning period for the balance 400 MW solar PV project was granted by TANGEDCO from 31.03.2018 to 30.09.2018 with a condition that these 400 MW projects fall under the control period of TNERC order No.5 of 2018 with a solar tariff of Rs.3.05 per unit with AD.

7.9. From the above sequence of events, it is seen that change of location from NLC yard to various locations in the State is the prime reason for NLCIL to skip its schedule of commissioning its project within the control period of 2017-18. Revised load flow study, land issues etc are only consequences of the shifting of project sites. It is also observed that the Load Flow study results have been communicated by TANGEDCO within 2 to 2 1/2 months except for 1x100 MW project which took 4 months. However this project has been commissioned within the control period 2017-18.

7.10. In order to examine the merits of the prayer to treat the issues such as delay in load flow study, constraints faced in land registration, agitation by local people, rain in Virudhunagar area, evacuation constraints etc. as force majeure and unforeseen events beyond its control, the relevant terms of the Energy Purchase Agreement entered into between the petitioner, NLCIL and the respondent, TANGEDCO with respect to the Force Majeure Clause need to be looked into, which is as follows:

“12. Force Majeure:

Both the parties shall ensure compliance of the terms of this agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this agreement to the extent that such failure is due to force majeure events as defined hereunder. Any party claiming the benefit of this clause shall satisfy the other party of the

existence of such events(s) by giving notice to the other party in writing within 15 days from the occurrence of such Force Majeure.

“Force majeure” events means any event which is beyond the control of the parties involved which could not foresee or with a reasonable amount of diligence could not have been foreseen or which could not be prevented and which substantially affect the performance by either party such as but not limited to:-

- (i) Acts of natural phenomena, including but not limited to floods, droughts, earthquakes, lightning and epidemics.*
- (ii) Acts of any Government domestic or foreign, including but not limited to war declared or undeclared, hostilities, priorities, quarantines, embargoes;*
- (iii) Riot or civil commotion; and*
- (iv) Grid/Distribution System’s failure not attributable to parties to this agreement.*

Notwithstanding the above, the existence or otherwise if Force Majeure event prior to commissioning or delayed Commissioning of project for whatsoever reason shall not be ground to seek tariff specified at Article5, extension of Control period, etc.”

7.11. It may be seen that as per terms of Force Majeure clause in the EPA, any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event(s) by giving notice to the other party in writing within 15 days from the occurrence of such Force Majeure. It appears that no such notice has been given by the petitioner to TANGEDCO within the time prescribed. Instead, the petitioner has approached the Commission directly seeking to invoke the Force Majeure clause and consequently allow the tariff protection of Rs.4.41 per unit for its projects.

7.12. It is conspicuous to note that the petitioner is a Public Sector Undertaking engaged in the electricity sector for decades and is executing large capacity power projects throughout the country. Hence handling issues such as land, agitation by

the local people, rain which have occurred due to change of location, are not new to them. On the issue of the relief sought by the petitioner by way of MNRE's O.M. dated 20.06.2018 on GST implications (with respect to financial closure and scheduled commissioning date) and MOP Resolution dated 14.06.2018 on Guidelines for Tariff Based Competitive Bidding Process for procurement of solar power, the Commission would observe that there is no stipulation in regard to financial closure in the EPA signed with TANGEDCO. The MOP's competitive bidding guidelines also do not apply to the petitioner's project as its being executed under preferential tariff scheme. On the prayer of the petitioner seeking tariff protection on the ground that the evacuation infrastructure was not ready at TANGEDCO's end, the Commission observes that as stated in Para 7.8 Supra, though the NLCIL has requested TANGEDCO for necessary grid tie up and synchronization for the 2x100 MW project before 31.03.2018, CEA approval was obtained by NLCIL only on 27.03.2018. The Commission is of the view that TANGEDCO on its part, to provide interfacing and evacuation facilities to the petitioner, needs to comply with provisions contained in Indian Electricity Grid Code, TamilNadu Electricity Grid Code, other codes and regulations issued by TNERC/CEA. For this purpose, TANGEDCO requires sufficient time of atleast ten days to complete its pre-synchronisation preparation activities before actually permitting synchronisation of the power plant. The Commission is therefore of the view that the petitioner is not eligible to make a claim on these counts. Moreover, the Force Majeure terms of EPA also categorically specify that the existence or otherwise of Force Majeure event prior to commissioning or delayed Commissioning of project for whatsoever reason shall not be a ground to seek tariff revision, extension of Control period etc.

7.13. In this connection, we would like to observe that the expression “tariff protection” employed by the petitioner in reality reflects only the extension of control period. What the petitioner seeks to achieve is the extension of preferential tariff which is applicable to those plants commissioned during the control period. The plea of the petitioner by way of seeking tariff protection beyond 31.03.2018 under Force Majeure conditions, seeks to extend the control period fixed in the generic solar tariff Order No.2 of 2017 dated 28.03.2017 exclusively for them. In this regard, the Commission would like to place on record that in the Review Petition No.1 of 2017 preferred by the petitioner earlier before this Commission seeking a tariff of Rs.4.56 per unit applicable for the control period of 2016-17 till 31.03.2018 by extension of control period in Order No. 2 of 2016 dated 28.03.2016 in respect of the subject 500 MW Solar power to be established in various parts of TamilNadu citing the delay in execution of EPA, the Commission declined to interfere with the prayer for review of control period prescribed in the order No. 2 of 2016. In the result, the Review petition was not admitted.

7.14. Again, for the very same project of 500 MW, the petitioner has filed a case in R.P. No.5 of 2017 and sought tariff protection of Rs.4.41 per unit till 30.09.2018 due to issues related to implementation of GST. However, the said R.P.No.5 of 2017 was also not admitted by the Commission. By an order dated 13.03.2018, Commission held that the projects in question should have commissioned before 31.03.2017 during the control period 2016-17 and therefore the impact of GST which came into effect from 01.07.2017 cannot be cited as a reason for delay in executing the project.

7.15. It may be of relevance to refer to the observations of the Hon'ble Supreme Court of India in Civil Appeal No. 6399 of 2016 in Gujarat UrjaVikas Nigam Limited

vs Solar SemiConductor (India) Pvt. Ltd. & Others reported in (2017) 12 SCALE P.781 which is as follows:-

“36 xxxx

Commissioning of a project is the act to be performed in terms of the obligation under the PPA and that is between the producer and purchaser viz, the respondent No.1 and appellant. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under Regulation 85. Therefore, there cannot be an extension of the control period under the inherent powers of the Commission.

37. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In the other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.”

From the above, it is clear that the control period cannot be extended in project specific cases and the inherent power cannot be invoked in such cases. Any extension of control period will have to be done necessarily by invoking inherent power and there is no such provision in the Electricity Act, 2003 or in the regulation to invoke such power in project specific cases. An extension of control period of general nature is permissible but not the extension of control period on project specific basis. The said judgment also clearly brings out the position that the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between parties so as to pre-judice the interest of the respondent and ultimately the consumers.

7.16. The decision of the Hon'ble Supreme Court of India judgment dated 05.07.2016 in the matter of Gujarat UrjaVikas Nigam Limited VsTarini Infrastructure Limited cited by the petitioner, does not come to its rescue for the reasons that the said case was delivered in a different context. We find no similarity between the said case and the case on hand. It was a case of mistake in identifying the evacuation

point. The law on the question of extension of control period is well settled and it is only the decision in M/s.SolarSemi Conductor (India) Pvt. Ltd case discussed in Para 7.15 supra, which in our opinion, would be applicable. Except for stating reasons pertaining to land acquisition, rain, power evacuation etc., the petitioner has failed to come up with enough reasons to convince us. We firmly believe that such reason which has aroused due to change of location originally envisaged in the EPA signed on 19.10.2016, do not fall within force majeure and therefore the rights and obligations of the parties flow from the contract as held by APEX court in M/s.SolarSemi Conductor (India) Pvt. Ltd. Another point which is required to be considered is that assuming a relief is to be granted to the petitioner, it can be done only by way of invoking the inherent powers of the Commission under the Conduct of Business Regulations. It is clear that such invocation is not possible in view of the judgment in M/s.SolarSemi Conductor (India) Pvt. Ltd case which rejected the invocation of inherent power for enforcing the substantive right of the parties. As regards the contention with regard to promotion of green energy, there is no second opinion on the point that the same has to be promoted by the Commission. However we are of the view that there must be a harmonious balancing of promotion of green energy and consumer interest under Section 61 (d). The inevitable result of the acceptance of the prayer would be the absorbing of the excess tariff granted to the petitioner in the ARR of the Licensee thereby further passing on of the same to the consumers at large, to which we are not inclined. Therefore, viewed from any angle, the petition fails and accordingly dismissed.

With the above orders, the petition is finally disposed of.

8. 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.PrabhakaraRao)
Member

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission