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.5 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 Harishankar,
Advocate for the Petitioner)

Vs.

Tamil Nadu Generation and
Distribution Corporation Ltd.
Chennai - 600 001.

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

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Date of hearing : 31-01-2018

Date of Order : 13-03-2018

The R.P.No.5 of 2017 came up for hearing on 31-01-2018. 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.5 of 2017:-

The prayer of the Petitioner in the above R.P.No.5 of 2017 is to extend the validity period of the preferential tariff of Rs.4.41/kWhr with AD applicable for

2017-18 (agreed by TANGEDCO vide letter dated 27.10.2017) upto 30.09.2018 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 and to pass such order (s) as deemed fit by the State Commission.

2. Contentions of the Petitioner:-

2.1. NLC India Limited (NLCIL) has proposed to establish 2 x 200 MW and 1 x 100 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 as per TNERC's order dated 28.03.2016.

2.2. 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.

2.3. NLCIL initiated the tendering process for establishing Solar Power Projects of 500 MW capacity in the State of Tamil Nadu under SDO mode. The scope of identification and procurement of land along with the power evacuation approval from TANGEDCO has been entrusted to the SDO for implementing these projects.

Hence, a contract period of 13 months has been envisaged for this tender.

2.4. The tendering process was completed and agencies (SDOs) were finalised in the first week of February, 2017 for execution of these projects. Accordingly, LOA was issued to the agencies in the month of February, 2017, so as to commission the projects by March, 2018 as per the terms of the contract.

2.5. Meanwhile 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 and not inclined to interfere in the matter to review control period prescribed in the Commission's order dated 28.03.2016.

2.6. Further vide 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.

2.7. Goods and Services Tax was implemented from 01.07.2017. The Solar PV projects under implementation have been affected as detailed below:-

(i) The concessions and exemptions for renewable energy under various Central/State Laws have been pruned.

(ii) For Solar developer and Operator model, the entire supplies and Services are taxed at the rate of 18%, whereas earlier supplies were taxed at 5%.

(iii) For O&M, earlier 70% of value was charged at 15%, now the entire value is taxed at 18%.

(iv) HSN Code for importing modules is argued and challenged by Customs Authorities at various Ports.

(v) The landed cost of components have undergone upward revision due to higher incidence tax, vendors are at wait and watch mode for clarity of Tax structure.

2.8. As the project works progressing to commission the entire 500 MW by March 2018, supply of Components to the Solar Projects have been stalled due to issues narrated in the above paras due to implementation of GST with effect from 01-07-2017 on Solar Project Components.

2.9. As per NLCIL Project time line specified in the contract, supplies have to be completed by 10 months from the date of issue of LOA, i.e. by January, 2017. But as on date, less than, 10% of supplies have been completed.

2.10. MNRE have already taken up with Ministry of finance to consider the concessions for Renewable Energy Sector and to revise GST rates. Confusion in Tax structure for Solar Components & HSN Code issue for Modules are likely to be resolved and it is expected that supply of components would resume/improve in the coming months.

2.11. 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.

2.12. 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 related implementation of GST which is beyond the control of the Petitioner. Considering the time required for supplies, erection and related activities, the project is expected to be commissioned by Sep 2018.

2.13. Considering the above, facts and circumstances, the NLCIL requested that the Commission may treat this project as a special case, and extend the preferential tariff of Rs.4.41/kWhr (with AD- agreed by TANGEDCO vide letter dated 27.10.2017) applicable for 2017-18 upto 30.09.2018.

3. Findings of the Commission:-

3.1. We have heard the arguments of Thiru Harishankar, learned Counsel for the Petitioner. The prayer of the Petitioner is to extend the validity period of the preferential tariff of Rs.4.41/kWhr with AD benefit applicable for 2017-18 upto 30-09-2018. The Petitioner NLCIL had proposed to establish 2x200 MW and 1x100 MW (totaling 500 MW) Solar Power Project in Neyveli Mine-I and Mine-II Dumpyards and Township area respectively and EPA had also been signed with TANGEDCO for purchase of the power generated from the above plants at a levellised tariff of Rs.4.56/Kwhr. This is the generic tariff with AD benefit determined by this Commission for solar projects which would apply to the projects commissioning during the control period 2016-17 as per the orders of the Commission dated 28.03.2016 in Order No.2 of 2016. In other words, the above said project proposed to be established by the petitioner NLCIL was scheduled to commence on or before 31.03.2017 so as to get the tariff of Rs.4.56/kwhr, as per the above said Order No.2 of 2016 dated 28.03.2016.

3.2. The above projects could not be commissioned before the end of the control period on 31.03.2017. Citing the delay in the execution of EPA as the reason, which resulted in spillover of the project to the next control period, the petitioner NLCIL sought extension of the said control period upto 31.03.2018 and filed in R.P.No.1 of 2017. The said R.P.No.1 of 2017 was not admitted by the Commission by the order dated 25.04.2017, as none of the grounds for review as contemplated in regulation 43(1) of the TNERC's Conduct of Business Regulations, 2004 was made out.

3.3. Again for the very same projects of 500 MW, the Petitioner NLCIL has filed the present Review Petition No.5 of 2017 seeking the extension of control period upto 30.09.2018 so as to get the tariff of Rs.4.41/kwhr as per the orders of this Commission dated 28.03.2017 in Order No.2 of 2017. The extension of control period sought for by the Petitioner is a project specific one. However, this time, the petitioner has adduced a different reason for seeking the extension of control period, namely, (1) the concessions and exemptions for renewable energy under various Central / State Laws have been pruned; (2) for solar developer and operator model, the entire supplies and services are taxed at the rate of 18%, whereas earlier they were taxed at 5%; (3) for O&M earlier O&M of value was charged at 18% now the entire value is taxed at 18%; (4) HSN Code for importing modules is argued and challenged by Customs Authorities at various Ports and (5) the landed cost of components have undergone upward revision due to higher incidence of tax, vendors are at wait and watch mode for clarity of tax structure.

3.4. It may be stated that the Goods and Services Tax was implemented from 01.07.2017. But the projects in question should have commissioned before 31.03.2017 during the control period of 2016-17. Therefore, the impact of GST Act which came into force with effect from 01.07.2017 cannot be cited as a reason for delay in the execution of the projects and the project components could have been purchased and installed much before the implementation of GST Act.

3.5. Leaving the factual scenario as stated above, it may also be pointed out that 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 2017 only after considering all material facts and since there is no error apparent on the face of the said Order No.2 of 2017 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 warranting review of the control period.

3.6. It may also be stated that Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company (India) Private Limited and others reported in (2017) 12 SCALE P.781) has held as follows:-

> *"36. x x x x*
> *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 the 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 a extension of the control period under the inherent powers of the Commission.*
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> *37. The Commission being a creature of statute cannot assume to itself any*

powers which are not otherwise conferred on it. In 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 projects specific cases and the inherent power cannot be invoked in such cases. Needless to say that 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 projects specific cases. Such being the case invoking inherent powers for the purpose of extension of control period in projects specific case such as the present one would go against the ratio laid down by the Apex Court.

3.7. For the above reasons, the Commission is not inclined to interfere to review the control period prescribed in Order No.2 of 2017 dated 28-03-2017. The present Review Petition is therefore not admitted.

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

/True Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission