

**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

**P.P.A.P.No.7 of 2017**

Tamil Nadu Generation and Distribution Corporation Ltd.  
represented by the Chief Engineer/  
Non-Conventional Energy Sources  
144, Anna Salai, Chennai – 600 002.

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

Vs.

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

Impleading Applicant  
(Thiru K. Hari Shankar  
Counsel for M/s.NLC)
2. M/s.ReGen Powertech Private Limited  
KRM Plaza, 7<sup>th</sup> Floor,  
No.2, Harrington Road,  
Chetpet  
Chennai – 600 031.  

Impleading Applicant  
(M/s.Fox Mandal & Associates  
Counsel for Impleading Applicant)
3. M/s.ReGen Infrastructure and Services Pvt. Ltd.  
KRM Plaza, 7<sup>th</sup> Floor,  
No.2, Harrington Road, Chetpet  
Chennai – 600 031.  

Impleading Applicant  
(M/s.Fox Mandal & Associates  
Counsel for Impleading Applicant)

**Date of hearing** : 12-10-2017; 13-11-2017; 04-12-2017  
and 19-12-2017

**Date of Order** : 08-06-2018

The P.P.A.P.No.7 of 2017 came up for final hearing on 19-12-2017. The Commission upon perusal of the Petition and connected records and after hearing the submissions of the Counsel for the Petitioner and the Counsel for the Impleading Petitioner hereby makes the following:

**ORDER**

1. Prayer of the Petitioner in P.P.A.P.No.7 of 2017:-

The prayer of the Petitioner in the above P.P.A.P.No.7 of 2017 is to-

- (i) grant permission to TANGEDCO for the procurement of additional quantum of 450 MW over and above the quantum of 500 MW approved vide the detailed order dated 10.07.2017 in M.P.No.10 of 2017.
- (ii) adopt the rate of Rs.3.42 arrived by the tender process vide Specification CE/NCES/OT.No.2/2017-18 for M/s.NLC Limited also for fulfilling the balance RPO.
- (iii) sign PPA with M/s.NLC who has participated in the tender, vide Specification CE/NCES/OT.No.2 of 2017-18 floated by TANGEDCO for 500 MW at a rate of Rs.3.42 per unit.

2. **Facts of the Case:-**

The petition has been filed to grant permission to TANGEDCO for the procurement of additional quantum of 450 MW over and above the quantum of 500 MW approved vide the detailed order dated 10.07.2017 and to adopt the rate of Rs.3.42 arrived by the tender process vide Specification CE/NCES/OT.No.2/2017-18 for M/s.NLC Limited and to sign PPA with M/s.NLC who has participated in the tender, vide Specification CE/NCES/OT.No.2 of 2017-18 floated by TANGEDCO for 500 MW at a rate of Rs.3.42.

### **3. Contentions of the Petitioner in P.P.A.P. No.7 of 2017:-**

3.1. The present petition is being filed seeking permission for procurement of 450 MW over and above the 500 MW arrived through reverse bidding process considering the tariff of Rs.3.46 per unit, as upper limit as per the approval of TNERC in M.P.No.10 of 2017 and to approve the rate of Rs.3.42 evolved in the tender floated vide specification CE/NCES/OT.No.2 of 2017 by the TANGEDCO in line with the draft guidelines for procurement of wind power through bidding issued by MNRE, during November 2017.

3.2. TNEB started to develop wind power generation from the year 1986 by erecting demonstration wind farm of capacity 55 KW to 250 KW totaling 17.465 MW. Subsequently due to the encouragement and generator supportive policy large number of private developers have started to invest in wind energy and erected WEGs.

3.3. Due to continuous encouragement and support, the installed capacity of wind mills in Tamil Nadu stands at number one since 1986 to till date with an installed capacity as on 31.08.2017 as 7864.64 MW with 12008 Nos. WEG's which constitutes 22.53% of total installed capacity of India.

3.4. TNEB started giving banking facility for captive users of wind energy from 1990 which encouraged the Industrial and Commercial HT consumers in the State to setup their own WEG for captive use which helps the industrialization of the State.

3.5. Due to the banking facility and the preferential wheeling and transmission charges extended to the captive consumers, the share of captive consumers in the total installed capacity of the State has gone from 40% to now above 70%.

3.6. The MoP has fixed a target of 175 GW of RE Power by 2020 of which 60 GW for Wind Power as per the "Guidelines for development of Onshore Wind Power Projects" issued by MNRE vide notification F.No.66/183/2016-WE, dated 22.10.2016. For achieving the ambitious target of 60 GW of Wind Power capacity, the additions from wind energy has to be doubled. While doing so, the competitive rate has also be arrived at.

3.7. The Commission vide notification dated 07.03.2016 has issued following amendment to the Renewable Energy Purchase Obligation Regulations, 2010:

*"(1) Every obligated entity shall purchase not less than defined minimum percentage of its consumption of energy from renewable energy sources under the Renewable Purchase Obligation (RPO) during a year as specified below:*

*(1A) The following percentage of Renewable Purchase Obligation is fixed:*

<i>Sl. No.</i>	<i>Year</i>	<i>Minimum quantum of total renewable purchase obligation in percentage (in terms of energy in kWh)</i>	<i>Minimum quantum of solar renewable purchase obligation in percentage out of the total renewable purchase obligation mentioned in Column (3) (in terms of Energy in kWh)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1	2015-16	9.50%	0.50%
2	2016-17	11.50%	2.50%
3	2017-18	14.00%	5.00%

*The Renewable Purchase Obligations as specified for the year 2011-12 in sub-regulation (1) shall be applicable for the years 2012-13, 2013-14 and 2014-15 to the distribution licensee."*

In compliance with the above said RPO, the required capacity of the Wind power plant as on date is as follows:

Sl. No.	Year	Non Solar RPO Target	Total electricity units sold and expected to be sold to different category of consumers	Electricity units to be procured in proportionate to Non Solar RPO	Total capacity of wind power generation required to meet out non solar RPO	Expected capacity of wind power generation available	Capacity of wind power generation required to be added
1	2	3	4	5	6(*)	7(**)	8
1	2015-16	9.0%	95050 MU	8555 MU	3597 MW	2280 MW	
2	2016-17	9.0%	99802 MU	8982 MU	3777 MW	2355 MW	
1	2017-18	9.0%	104792 MU	9431 MU	3966 MW	2355 MW	1611 MW

\* - on the assumption of 27.15% PL.F

\*\* - on the assumption that 70% of the capacity are under captive generation

The above tabular column reveals that 1611 MW under sale to Board category WEG may have to be achieved to meet RPO. The energy generated from the captive generators are not taken into account to meet RPO in view of the Writ Petition No.4558 of 2012 filed at Hon'ble High Court by the captive stakeholders.

3.8. To meet the RPO target of 9% for the year 2017-2018 as fixed by the Commission and to avoid purchase of Renewable Energy Certificate in power exchange, to meet the compliance of RPO, if need be, TANGEDCO may have to consider to procure wind power of 1611 MW from the developers. Hence, TANGEDCO decided to initially procure wind power to a total capacity of 500 MW from WEG's within the State of Tamil Nadu.

3.9. In the State Advisory Committee Meeting held on 17.03.2016 where the issues relating to tariff fixation and wheeling in respect of renewable energy sources

of power such as wind, solar, Biomass and bagasse based Co-generation plants, were discussed, wherein from TANGEDCO it was inter-alia suggested that it may be appropriate to procure wind power through bidding route so that TANGEDCO could get power at lesser tariff.

3.10. As per the provisions under section 63 of Electricity Act, 2003, the State Electricity Commission is conferred with power to adopt tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. While so, section 86 (1) (b) of the said Act, inter-alia, provides that the State Commission shall regulate Electricity purchase and procurement process of distribution licensee including the price at which electricity shall be procured.

In the National Tariff Policy issued by MoP Resolution dated 28.01.2016, it is stated:

*"States shall endeavor to procure power from Renewable Energy Sources through competitive bidding to keep the Tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from Renewable energy Sources from Projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government. "*

Such final guideline is not available as of now. However, draft guidelines for procurement of Wind Power through bidding by the MNRE is available and yet to be finalized by the Government of India. Hence, approval of the Commission is sought based on draft guidelines issued by the MNRE, Gol issued in the notification No.F.No 238/1/2017-18. Since, TANGEDCO is of the firm view that by virtue of such approval/permission by the Commission, the TANGEDCO will be achieving the objects of sourcing power from WEGs meeting RPO and also at a competitive rate which will be in Public interest.

3.11. In view of the above situation TANGEDCO has sought the Commission's approval for procurement of 500 MW initially through e-reverse bidding vide M.P.No.10 of 2017 and the Commission has approved to proceed with the tender process vide the detailed order dated 10-07-2007.

3.12. The price quoted by the 3 eligible bidders against the upper limit of Rs.3.46 per unit is furnished below:-

Sl. No.	Name of the Company	Capacity (in MW)	Location	Rate offered per unit	Ranking
1	M/s. Regen Powertech Pvt. Ltd.	200	Onamkulam Village, Ottapidaram Taluk, Tuticorin District.	Rs.3.42	L1
2	M/s. Leap Green Energy Pvt. Ltd.	250	1) Rasipalayam 400-230 KV SS – Uthiyur Village, Kangeyam Taluk, Tirupur District. 2) Rasipalayam 400-230 KV SS – Moolanur Village, Kangeyam Taluk, Tirupur District. 3) Kanarpatti 400-230 KV SS- Sayamalai Village, Sankarankovil Taluk, Tirunelveli District.	Rs.3.43	L2
3	M/s. NLC India Ltd.	500	1) Sudamani & Munalur of Dharapuram in Tirupur District 2) Alangulam of Tirunelveli District 3) Kayatharu of Tuticorin District.	Rs.3.45	L3

From the above, it is seen that M/s. Regen Powertech Pvt. Ltd has quoted the lowest rate of Rs.3.42 against the upper limit of Rs.3.46 and is the L1 bidder.

3.13. The L1 bidder M/s.Regen Powertech Pvt. Ltd, (offered 200 MW) was called for negotiation on 29.08.2017 conducted by the high level negotiation committee members comprising of Director/Generation/TANGEDCO & Chief Financial Controller/Genera/TANGEDCO. During the negotiation, the L1 bidder was requested to reduce the quoted rate to the maximum extent possible but the firm has expressed their inability to reduce the quoted price further.

3.14. The Bidders (L2 & L3) were called for price matching with L1 rate i.e. Rs.3.42 per unit, conducted by the high level negotiation committee members comprising of Director/Generation/TANGEDCO & Chief Financial Controller/General/TANGEDCO on 29.08.2017. The L2 bidder M/s.Leap Green Energy Pvt. Ltd, have accepted to match their offered rate to that of L1 rate i.e.Rs.3.42 per unit for the entire capacity of 250 MW quoted by them.

3.15. The L3 bidder M/s.NLC India Ltd, has accepted to match the L1 bidding of Rs.3.42 per unit but requested to offer the entire bid quantity of 500 MW and not willing to take the balance quantity of 50 MW only. Hence Power Purchase Approval Petition (PPAP) was filed adopting the rate of Rs.3.42 per unit for 450 MW only out of 500 MW approved by the Commission in M.P. No.10 of 2017.

3.16. Since TANGEDCO is in need of 1611 MW to fulfill the RPO of 9%, and further floating of another tender for the balance quantity to meet the RPO will take another 5 months, it is submitted that the quantity of 500 MW offered by the Public Sector Undertaking M/s.NLC India Ltd at a very competitive rate of Rs.3.42 which is lowest so far in India, at the rate of Rs.3.42 may be considered as a special case.



**4. Contentions of the Petitioner in the additional affidavit dated 27-10-2017:-**

TANGEDCO in its additional affidavit dated 27-10-2017 has submitted as follows:-

4.1. Section 63 of the Electricity Act, 2003 states as follows:-

*“Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*

Based on the above provision TANGEDCO floated the tender for procurement of 500 MW through e-reverse bidding vide Spec. No. CE/NCES/OT No.02/2017-18, based on the MNRE draft guidelines for procurement of wind power through Bidding Process for Grid Connected Wind Power Projects issued by MNRE vide Notification F.No.238/1/2017 .

4.2. Further, the Tamil Nadu Transparency in Tender Act, 1998 and Tamil Nadu Transparency in Tender Rules, 2000 with amendments as on date contains the following provisions:-

*“TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.*

*Clause 14: **Commercial Conditions***

*(1) ..... xxxx*

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*(8) ..... xxxx*

*(9) The tender documents shall indicate the quantity proposed to be procured in the tender, and the Tender Accepting Authority shall be ordinarily permitted to vary the quantity finally ordered only to the extent of twenty five percent either way of the requirement indicated in the tender documents.”*

**TAMIL NADU TRANSPARENCY IN TENDERS ACT, 1998.**

*“Section 16: Provisions of this Act not to apply in certain cases.-*

*The provisions of sections 9 and 10 shall not apply to procurement:-*

(a) ..... xxxx

(b) ..... xxxx

(c) *from departments of Government, Public Sector Undertakings, Statutory Boards and such other institutions as may be notified by the Government only in respect of goods manufactured or services provided by them:*

*Provided that such procurement shall not exceed forty percent of the total requirement in that procurement and shall be at a price not exceeding the price of the lowest tender in respect of the remaining sixty percent.”*

“Section 20: Act to override other laws:-

*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or agreement or decree or order of a Court or a Tribunal or other Authority.”*

4.3. In view of the above, the Commission may consider to grant permission to TANGEOCO for the procurement of additional quantum of 450 MW over and above the quantum of 500 MW approved vide the detailed order dated 10.07.2017 in M.P.No.10 of 2017, from the Public Sector Undertaking M/s. NLC India Ltd.

4.4. TANGEDCO needs to procure 1611 MW as stated in the original petition to fulfill the Renewable Purchase Obligation of 9% for the year 2017-2018.

4.5. The quantity of 500 MW approved by the Commission vide PPAP No.6 of 2017 to purchase wind power is not likely to commence generation before March 2018 and TANGEDCO may fall short of its Renewable Purchase Obligation. Hence to avoid further delay in commissioning of the wind power project to fulfill the Renewable Purchase Obligation, TANGEDCO proposed to procure additional quantity of 450 MW over and above the already approved 500 MW at a rate of Rs.3.42 per unit arrived through the transparent process of bidding, floated by TANGEDCO vide Specification No. CE/NCES/OT No.2/2017-2018.

4.6. The above rate of Rs.3.42 per unit pertains to a WEG with CUF of 27.15%. But, if the WEGs would opt for advanced technology generator which normally has higher CUF than 27.15%, the effective purchase rate of Rs.3.42 per unit to TANGEDCO comes down as follows, since as per the specification TANGEDCO needs to purchase at 75% of Rs.3.42 per unit for the generation above the CUF of 27.15%.

CUF	Rate in Rs.
27.15	3.42
30	3.34
32	3.29
34	3.25
36	3.21
38	3.18

In view of the above, the rate arrived through the tender specification No. CE/NCES/OT No.2/2017-2018 floated by TANGEDCO is reasonable.

4.7. The prevailing wind energy rate has to be seen in the scenario of

- a) The present financial capacity of the procurer/developer.
- b) The past record of the developer who is developing the WPG.
- c) Connectivity and grid availability for the particular project in a State, with regard to the case whether the connectivity is with Intrastate Grid or Interstate Grid.
- d) Availability of payment security mechanism.

4.8. Floating of another tender for procurement of this quantity of 450 MW needs minimum of 4 months time which will postpone the date of commissioning of the projects.

4.9. M/s.NLC India Ltd. is a Central Government Public Sector Undertaking, and based on its financial and technical capabilities, the BOARD of the TANGEDCO in its meeting held on 26.08.2017 has resolved to consider augmentation of additional

capacity procurement in the tender floated vide specification No.CE/NCES/OT No.2 /2017-2018.

4.10. TANGEDCO is not able to fulfill its Renewable Purchase Obligation, and if in any case, it is compelled to comply the Renewable Purchase Obligation, on any fortituous circumstances it may be forced to buy the REC certificate from the market (which has a floor price of Rs.1 and forbearance price of Rs.2.90 per unit) which when calculated for 500 MW comes to approximately Rs.120 Crores to Rs.345 Crores per year depending upon the rate of purchase of REC certificate, without getting the power to TANGEDCO account.

4.11. The Indian Wind Energy Association (IWEA) has filed a Writ Petition No.15205 of 2017 in Hon'ble High Court, Chennai praying to stay the procurement of wind power through e-tender process by TANGEDCO, but could not get the stay from High Court, Chennai.

4.12. Similarly, the IWEA has also filed a Special Leave Application No.19312 of 2017 in Hon'ble High Court of Gujarat at Ahmedabad and got stay on 23.10.2017 against the orders of GERC's order dated 06.10.2017 approving the competitive bidding process for procurement of 500 MW wind power initiated by Gujarat Urja Vika's Nigam Limited (GUVNL).

4.13. Hence, going for another tender, for procurement of additional wind power required to meet RPO may likely face the legal hurdles, which will affect the wind energy procurement objective of TANGEDCO to meet RPO.

5. M/s.NLC India Limited has filed I.A.No.1 of 2017 on 24-10-2017 with a prayer to implead NLCIL, being an interested party in the TANGEDCO's Petition No.P.P.A.P.No.7 of 2017 filed to approve for procurement of 500 MW of Wind Power and adopt the rate of Rs.3.42 per unit for fulfilling the balance RPO.

6. Similarly, M/s.ReGen Powertech Private Limited has filed I.A.No.2 of 2017 with a prayer to implead ReGen Powertech Private Limited as interested and/or affected party in the TANGEDCO's Petition No.P.P.A.P.No.7 of 2017, which has been preferred to approve further 450 MW power allocation to NLC India Limited at the rate of Rs.3.42 per unit.

7. Further, M/s.ReGen Infrastructure and Services Private Limited has filed I.A.No.3 of 2017 with a prayer to implead ReGen Infrastructure and Services Private Limited as interested and/or affected party in the TANGEDCO's Petition No.P.P.A.P.No.7 of 2017, which has been preferred to approve further 450 MW power allocation to NLC India Limited at the rate of Rs.3.42 per unit.

**8. Contentions of NLC India Limited in I.A.No.1 of 2017 in P.P.A.P.No.7 of 2017 dated 24-10-2017:-**

8.1. In order to fulfill the Renewable Energy Purchase Obligation (RPO) of 9% for 2017-18, TANGECO floated a tender on 19.06.2017 vide Reference No. 02/2017-18 inviting bids under tariff based Reverse bidding process to procure 500 MW wind power from the Wind Power Developers establishing the Wind Power projects in Tamil Nadu.

8.2. M/s NLCIL quoted for 500 MW wind power capacity remitting Rs.1.25 Crore as EMD for the quoted capacity as required in the tender. Three bidders participated in the tender and all the three qualified bidders were accepted.

8.3. The price bids of the following three eligible bidders were opened on 28.08.2017 and the price quoted along with their ranking is tabulated below:-

Name of the Bidder	Quote Rs. Per Unit	Capacity quoted in MW	Rank
M/s. Regen Powertech Pvt Ltd., Chennai.	3.42	200	L1
M/s Leep Green Energy Pvt Ltd., Coimbatore.	3.43	250	L2
M/s.NLC India Ltd. (NLCIL)	3.45	500	L3

8.4. Based on the above, M/s.NLCIL could get an allocation of 50 MW only as against their quoted capacity of 500 MW on matching with the L1 rate of Rs.3.42 per unit.

8.5. M/s NLCIL agreed for matching with L1 rate vide their letter dated 29.08.2017 however with a request for allocation of their quoted capacity of 500 MW. Based on NLCIL's request, TANGEDCO has filed petition before TNERC praying to approve for procurement of 450 MW over and above 500 MW arrived through reverse bidding and adopt the rate of Rs.3.42 per unit for fulfilling the balance RPO for admission.

8.6. NLCIL has participated in the TANGEDCO's tender dated 19.06.2017 and quoted for the full quantum of 500 MW and paid EMD of Rs.1.25 Cr. as per the tender. With the experience already gained in setting up of 51 MW Wind power project in Tamil Nadu, NLCIL quoted for the full capacity of 500 MW for administrative convenience for establishing the Wind power project. While opening

the price bids, NLCIL stood at 3rd position and agreed to match with L1 Rate however with the request for allocation of 500 MW capacity. In this regard, NLCIL has submitted the following:-

A. NLCIL is a Navratna PSU with the core business of Mining cum Power generation meeting a major share of the power requirements of the state of Tamil Nadu. NLCIL has a long term relationship with the Govt. of Tamil Nadu being the consumer as well as a partner in the Respondent's power generation and utility business.

B. NLCIL, being a socially responsible company, has undertaken many initiatives towards meeting the basic needs of the people of Tamil Nadu and towards the economic development of the people by creation of more job opportunities in the State. NLCIL has always shown much interest in making large investments in the State of Tamil Nadu for aiding the development of the State apart from its own business motives. This Petitioner is therefore carrying on Power Generation and serves large Scale Public Interest.

C. NLCIL and TANGEDCO, the power arm of the State have formed the JV company known as NTPL with the shareholding pattern of 89% and 11% respectively. A 1000 MW Coal based Power Plant in Tuticorin is being operated successfully under this JV partnership. Moreover, Govt. of Tamil Nadu is having 3.56% shareholding with NLCIL.

D. NLCIL is the first company passing over the benefit of implementation of GST to TANGEDCO without any intervention of statutory authority. The removal of Green Energy Cess and consequent reduction of tariff by 40-70 paise per unit has come much to the relief of TANGEDCO in financial terms.

E. NLCIL has recently forayed into Renewable Energy (RE) sector and has an ambitious programme of achieving 4000 MW RE generation within 2-3 years. As such, NLCIL is operating a 10 MW solar plant in Neyveli and the company is in the verge of commissioning another 130 MW solar plant in Neyveli. Also, 500 MW solar power projects are being executed in various parts of Tamil Nadu under the Preferential tariff scheme and the entire power from these projects is supplied to TANGEDCO.

F. It is not out of place to mention that in the recent tender floated by TANGEDCO for procurement of 1500 MW Solar Power under tariff based reverse bidding, NLCIL had quoted for the entire tendered capacity. However, NLCIL could get an allocation of only 709 MW as per the tender conditions. Only with the participation of NLCIL, TANGEDCO could easily achieve the target of 1500 MW capacity.

G. It bears mention that NLCIL is already operating 51 MW wind power project with 34 Nos of 1.5 MW Wind Energy Generators at Tirunelveli District of Tamil Nadu

under the preferential tariff approved by TNERC. (Rs.3.96/kwhr for WEGs commissioned upto 31.03.2016 and Rs.4.16/kwhr for WEGs commissioned after 01.04.2017). Taking into account of the current Wind power rate of Rs.3.51 per unit being paid by TANGEDCO for NLCIL's Wind project in Tamil Nadu, the rate of Rs.3.42 per unit emanated in the present tender is most competitive and reasonable.

H. Also, the tariff of Rs.2.64 per unit discovered through the tender floated by SECI cannot be compared with the current tariff of TANGEDCO in view of many variations in the tender conditions especially in the generation criteria such as the freedom to declare annual CUF with permission to change the declared CUF within first year of COD, freedom to operate with wider range of 90% to 120% of declared CUF for the agreed tariff etc. and 18 months duration for commissioning of projects. However, many experts and institutions have opined that the tariff of Rs.2.64 per unit may not be viable and the sustainability of the projects would be at stake.

I. TANGEDCO's tender specifies 27.15% as CUF and the excess generation would be purchased at 75% of the PPA tariff which is only Rs.2.57 per unit. Further, as per the tender, it is not mandatory to procure generation more than 27.15% CUF. It is relevant to mention that the present 1.5 MW Wind mills are designed for about, 32% efficiency. Hence, the excess generation will be purchased by TANGEDCO only at Rs.2.57 per unit which is lesser than the rate of Rs.2.64 per unit arrived in the recent SECI tender for procurement of Wind power. Further SECI tender specifies Escrow payment security mechanism in addition to LC. Hence, the rate of Rs.3.42 arrived in the TANGEDCO's tender is justified and not comparable with the rate arrived in the recent SECI tender. Further, as per the NLCIL's financial working with 80:20 Debt : Equity ratio and 12% ROE, the rate of Rs. 3.42 per unit arrived in the TANGEDCO's tender is the minimum viable rate for NLCIL.

J. Considering the size of the company and its capability in executing major projects, going for the establishment of large size Wind Power projects to the extent of 500 MW by NLCIL will be viable on cost consideration.

K. Since there is no unsuccessful bidder in the tender and the L1 and L2 bidders have remitted EMD only to the extent of their quoted capacity, allocation of 450 MW more for NLCIL which have remitted EMD for 500 MW capacities, would not attract any claim of disparity.

L. TNERC stated in para 3.6 of the Order No.10 of 2017 dated 10.07.2017 that 1611 MW of Wind Power Capacity is required to be added by TANGEDCO to fulfill the RPO of 9% for 2017-18. Hence, allotment of 500 MW Wind projects to NLCIL would also help TANGEDCO achieve their balance RPO targets.

M. Based on the above grounds, NLCIL is making the request for the allotment of 500 MW wind power projects at the discovered tariff of Rs.3.42 per unit in Tamil Nadu.



**9. Hearing held on 13-11-2017:-**

In the hearing held on 13-11-2017, the Commission directed TANGEDCO to file an additional affidavit on the admissibility of the main petition and also held that the impleading petitions shall be taken up thereafter.

**10. Hearing held on 19-12-2017:-**

During the hearing held on 19-12-2017, the Counsel for M/s.ReGen Powertech Private Limited and M/s.ReGen Infrastructure and Services Private Limited has withdrawn the impleading petitions namely I.A.No.2 of 2017 and I.A.No.3 of 2017 as instructed by his client. The Counsel has also made necessary endorsement in this regard. Further, the Counsel for the Petitioner prayed to permit them to file an additional affidavit by limiting their power purchase as per rule 14(9) of the Tamil Nadu Transparency in Tenders Rules, 2000 and the said prayer is permitted by the Commission. Accordingly, the Petitioner has filed an additional affidavit on 26-12-2017.

**11. Contention of the Petitioner in the additional affidavit dated 26-12-2017:-**

11.1. During the hearing on 19.12.2017, TANGEDCO has deposed to accept the additional quantum of 25% over the approved tender quantum of 500 MW as approved in M.P.No 10 of 2017 as provided in the Tamil Nadu Transparency in Tender Rules, 2000, and the Commission directed to file additional petition mentioning, the above decision of the TANGEDCO along with the consent of L1 & L2 tenderer for allotting the excess quantum to the L3 bidder M/s NIC India ltd.

11.2. The Tamil Nadu Transparency in Tender Act, 1998 and Tamil Nadu Transparency in Tender Rules, 2000 as amended contains the following provision:-

*“TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.*

*Clause 14: Commercial Conditions*

*(1) ..... xxxx*

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*(8) ..... xxxx*

*(9) The tender documents shall indicate the quantity proposed to be procured in the tender, and the Tender Accepting Authority shall be ordinarily permitted to vary the quantity finally ordered only to the extent of twenty five percent either way of the requirement indicated in the tender documents.”*

11.3. In view of the above, the Commission may consider granting permission to TANGEDCO for procurement of additional quantum of 25% over the approved tendered quantum of 500 MW by the Commission vide order in M.P. No.10 of 2017, which comes to 125 MW.

11.4. The tender process has not been completed till now since, only 450 MW out of the tendered quantity of 500 MW has only been allocated so far and still balance quantity of 50 MW is to be allocated.

11.5. The L1 & L2 tenders have communicated their no objection in allocating the additional quantity of 125 MW, if approved by the Commission, to the L3 bidder M/s.NLC India Limited, since they have already signed PPA for their full tendered quantity. Also M/s NLC India Ltd has given their acceptance to supply 175 MW of wind power at the rate of Rs.3.42 Per Unit. Hence, the balance quantity of 50 MW along with the 125MW (25% over the approved quantum of 500 MW) totaling to 175 MW may be allocated to M/s NLC India Ltd. subject to approval of the Commission. The consent letter is also enclosed in the additional affidavit.

## 12. Findings of the Commission:-

12.1 The Petitioner TANGEDCO has filed the Petition No. P.P.A.P.No.7 of 2017 with the prayer to grant permission for the procurement of additional quantum of 450 MW over and above the quantum of 500 MW approved in M.P.No.10 of 2017 dated 10-07-2017 @ Rs.3.42 per unit arrived in the tender process vide specification CE/NCES/OT.No.2/2017-18 from M/s.NLC india Limited and also to sign PPA with the said M/s.NLC india Limited who participated in the above tender. The Petitioner has floated Tender specification CE/NCES/OT.No.2/2017-18 for procurement of 500 MW of Wind Power after obtaining the approval of the Commission. In the said tender, the following companies have participated offering the quantity and the offered rate per unit as mentioned below:-

Sl. No.	Name of the Company	Capacity (in MW)	Location	Rate offered per unit	Ranking
1	M/s.Regan Powertech Pvt. Ltd.	200	Onamkulam Village, Ottapidaram Taluk, Tuticorin District.	Rs.3.42	L1
2	M/s.Leap Green Energy Pvt. Ltd.	250	1) Rasipalayam 400-230 KV SS – Uthiyur Village, Kangeyam Taluk, Tirupur District. 2) Rasipalayam 400-230 KV SS – Moolanur Village, Kangeyam Taluk, Tirupur District. 3) Kanarpatti 400-230 KV SS- Sayamalai Village, Sankarankovil Taluk, Tirunelveli District.	Rs.3.43	L2
3	M/s.NLC India Ltd.	500	1) Sudamani & Munalur of Dharapuram in Tirupur District 2) Alangulam of Tirunelveli District 3) Kayatharu of TuticorIn District.	Rs.3.45	L3

It is seen from the above that M/s.Regen Powertech Pvt. Ltd. has quoted the lowest rate of Rs.3.42 per unit against the upper limit of Rs.3.46 per unit. The L1 Bidder M/s.Regen Powertech Pvt. Ltd. who has offered 200 MW was called for negotiation on 29-08-2017 conducted by the high level negotiation committee comprising of Director (Generation), TANGEDCO and CFC (General), TANGEDCO.

12.2. During the negotiation, the L1 Bidder was requested to reduce the quoted rate to the maximum extent possible but the firm expressed their inability to reduce the quoted price. Therefore, the L2 and L3 Bidders were also called for price matching with the L1 rate of Rs.3.42 per unit on 29-08-2017. The L2 Bidder M/s. Leap Green Energy Private Limited have accepted to match their offer rate to that of L1 rate i.e. Rs.3.42 per unit for the entire capacity of 250 MW quoted by them. The L3 Bidder M/s. NLC India Limited has accepted to match the L1 Bidder of Rs.3.42 per unit. But requested to offer the entire quoted quantity of 500 MW and not willing to take the balance quantity of 50 MW only. Hence, Power Purchase Approval Petition i.e. P.P.A.P. was filed for adopting the rate of Rs.3.42 per unit for 450 MW only out of 500 MW approved by the Commission in M.P.No.10 of 2017. The Commission has also adopted the tariff of Rs.3.42 per unit for the 450 MW to be purchased from M/s.Regen Powertech Pvt. Ltd. and M/s. Leap Green Energy Private Limited and as such orders have been issued in P.P.A.P.No.6 of 2017 dated 13-11-2017.

12.3. Now the Petitioner has come up with the present petition seeking the approval of the Commission for purchase of entire 500 MW quoted by M/s.NLC India Limited with the tariff of Rs.3.42 per unit as discovered in the above said Tender Specification No. CE/NCES/OT.No.2/2017-18. M/s.TANGEDCO and M/s. NLC India

Ltd., have filed additional affidavit on 26-10-2017 and an Impleading Application on 24-10-2017 respectively. When questioned about the provisions available in the tender documents to consider nearly 100% over and above the tendered quantity it was pleaded in the court that they may be considered additional quantity of 25% as the Tamil Nadu Transparency in Tenders Act, 1998 and Rules 2000 under clause 14(9), permits that the  $\pm 25\%$  of the considered quantum.

12.4. Moreover going by the Solar Corporation of India's third wind auction of 2000 MW in February 2018, the successful bidders have quoted at Rs.2.44 per unit. The earlier second auction floated by the Solar Corporation of India for 1000 MW held in October 2017 saw the winning bid price of Rs.2.64 per unit.

12.5. At a time when prices of wind power tariff obtained in such auctions and also in other States are in declining trend, the Petitioner has come out with a request to approve the additional quantity at the price of Rs.3.42 per unit.

12.6. Now the question has arisen as to whether the Petitioner can be permitted to purchase the additional 175 MW of power from M/s.NLC India Limited who has participated in the above said tender in which the left out available capacity is only 50 MW in the tender called for. It may be stated that the Commission in its order dated 10-07-2017 in M.P.No.10 of 2017 has approved for procurement of 500 MW of wind power through tender specification evolved in line with the draft guidelines formulated for procurement of wind power through transparent process of bidding by Ministry of New and Renewable Sources of Energy, Government of India. Pursuant to the above quantity approval by the Commission, the Petitioner has

floated a tender in Wind Tender Specification CE/NCES/OT.No.2/2017-18 for procurement of 500 MW of wind power. However, the Petitioner came up for tariff approval in P.P.A.P.No.6 of 2017 for a quantity of 450 MW only in respect of the tender specification in question. The Commission has also accorded its approval for adoption of tariff of Rs.3.42 per unit for the 450 MW of wind power to be purchased from M/s.Regen Powertech Private Limited and M/s.Leap Green Energy Pvt. Ltd., (200 MW and 250 MW each respectively) and order in this regard has been issued in P.P.A.P.No.6 of 2017 dated 30-11-2017. As such, it should be construed that all the process involved in Tender Specification No. CE/NCES/OT.No.2/2017-18 is over and the said tender has to be construed as closed for all purposes.

12.7. In view of the above position, the Petitioner cannot now re-open / re-start the above tender specification and seek to procure the left out quantity of 50 MW of wind power already approved by the Commission in M.P.No.10 of 2017 and also to procure additional quantum of another 125 MW over and above the tender quantity in the above said tender specification by invoking rule 14 (9) of the Tamil Nadu Transparency in Tenders Rules, 2000.

12.8. Besides, the above option now resorted by the Petitioner will not only curtail the other wind energy developers the benefit of participating in the tender if fresh tender is floated, but likely to cause financial loss to the utility also as the tariff for wind energy has fallen steeply.

12.9. Further the Commission has recently approved procurement of 1500 MW wind power through reverse auction competitive bidding with a ceiling price of

Rs.2.65 per unit as proposed by the Petitioner in M.P.No.8 of 2018 dated 24-04-2018. Therefore, the proposal of the Petitioner to procure a quantum of 175 MW at a higher rate, namely at Rs.3.42 per unit cannot be permitted and if the Petitioner needs this additional power of 175 MW, it is open to the Petitioner to go for a fresh tender and alternatively M/s.NLC India Limited may participate in the tender proposed to be floated by the Petitioner for the procurement of 1500 MW of wind power approved by the Commission in the said M.P.No.8 of 2018.

The petition is accordingly dismissed.

### **13. 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