

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

D.R.P.No.20 of 2011

M/s. MMS Steel & Power Pvt. Ltd.
6-3-1109/A/1-3rd Floor
Navabharat Chambers
Somajguda
Raj Bhavan Road
Hyderabad – 500 082.

... Petitioner
(Thiru Rahul Balaji
Advocate for Petitioner)

Vs

1. TANGEDCO
Rep. by its Chairman and Managing Director
144, Anna Salai
Chennai – 600 002.

2. M/s.PTC India Ltd.
2nd Floor, NBCC Towers
15, Bhikaji Cama Place
New Delhi – 110 066.

... Respondents
(Thiru M.Gopinathan,
Standing Counsel for TANGEDCO for R1
(Thiru Ravi Kishore, Advocate for
M/s.RNS Associates for R2)

Dates of hearing : 04-11-2011, 16-11-2012, 20-12-2012
07-02-2013, 04-02-2014, 25-03-2014
21-04-2014, 21-07-2014, 16-10-2018
and 27-11-2018

Date of order : 04-01-2019

The above D.R.P.No.20 of 2011 came up for hearing on 27-11-2018. The Commission after perusing the petition, counter and connected records of the case and after hearing the parties passes the following order:-

ORDER

1. Prayer of the Petitioner in D.R.P.No.20 of 2011:-

The prayer of the petitioner in D.R.P.No.20 of 2011 is to direct the Respondent to pay suitable compensation to the Petitioner at the rate of Rs.4.67 per unit amounting to Rs.2,30,33,089/- for the power supplied by the Petitioner to the Respondent Board between 24-05-2010 to 21-06-2010 and pass such further or other orders as the Commission may deem fit in the facts and circumstances of the case and thus render justice.

2. Facts of the case:-

The petition has been filed to direct the First Respondent to pay suitable compensation at the rate of Rs.4.67 per unit amounting to Rs.2,30,33,089/- for the power supplied by the Petitioner to the Respondent Board between 24-05-2010 to 21-06-2010.

3. Contentions of the Petitioner:-

3.1. The present petition is filed seeking to direct the respondent Board herein to make payment to the Petitioner of the sums due, at the rate of Rs.4.67 per unit amounting to Rs.2,30,33,089/- for the power supplied by the petitioner to the respondent Board between 24.05.2010 to 21.06.2010.

3.2. The petitioner herein operates two group owned captive gas based power plants located near Nagapattinam and Nallur in the State of Tamil Nadu, with a

combined installed capacity of 28 MW. The petitioner herein supplies power under a wheeling arrangement to about 8 group captive consumers. The petitioner further submits that after meeting its internal requirement, it has a surplus of 12 MW depending upon the availability of machines, gas etc. However, owing to non-availability of quality gas, the petitioner herein was able to generate only 18 MW instead of 28 MW of power in both the power stations. Out of the 18 MW of power generated, the petitioner herein would use 10 MW for its group captive consumers and had intended to sell the balance 8 MW of power to third party outside the state of Tamil Nadu through Inter-State Open Access .

3.3. However, the Government of Tamil Nadu, on 27.2.2009 had issued a Government Order in G.O. Ms. No.10, citing a power shortage within the State and therefore directing all generating companies to operate and maintain their generating stations at their maximum capacity and Plant Load Factor (PLF) and had further directed all generators to supply all the exportable electricity generated by them to the State Grid alone. It would further be relevant to state that the TNEB had refused to grant Inter-State Open Access and the Tamil Nadu Government had passed an order purportedly under S.11 of the Electricity Act, 2003 which had effectively prevented sale of power outside the State of Tamil Nadu.

3.4. It is pertinent to state in this regard that the entire basis of the dispute arises, out of the State Government's action at the instance of the Tamil Nadu Electricity Board preventing sale of power outside the State of Tamil Nadu. The entire dispute had commenced out of the refusal of the Tamil Nadu Electricity Board in permitting Inter-State Open Access. It was only pursuant to the action of the respondent Tamil Nadu Electricity Board and the Government of Tamil Nadu, which in purported

exercise of its powers under section 11, prevented Inter-State Open Access. Therefore, all of the surplus power has to necessarily be sold to the Tamil Nadu Electricity Board. The order under section 11 of the Electricity Act, 2003 mentioned above by the Government of Tamil Nadu preventing the sale of power outside the State of Tamil Nadu impliedly directs to sell the entire surplus power after supplying to the captive consumers, to the TNEB.

3.5. The TNEB was issuing tenders for purchase of power from time to time and PTC Ltd. an electricity trader had been the successful bidder in respect of such tenders. PTC Ltd. had a back to back arrangement with various generators including the petitioner herein. Accordingly, the Petitioner was supplying power to the third party trader PTC Ltd., which in turn was pumping power purchased from generators such as the Petitioner into the TNEB grid. The Petitioner states that the PTC Ltd., was in the practice of issuing Letters of Intent for supply of power from time to time fixing the rates at which such supply would be compensated and such supply would be in terms of the main contract between the generators and PTC Ltd. The Petitioner states that the Lol between the Petitioner and PTC expired on 31st May 2010. The Petitioner states that the Lol was not extended by PTC for the period beyond 31.05.2010.

3.6. Towards the sale of power for the period from June 2009 to May 2010, the petitioner company had participated through the tender by PTC which was invited by TNEB for purchase of power. The tender was finalized at Rs.5.90 per unit, for the months of June 2009 to May 2010. Towards the power supplied by the petitioner company from June 2009 to May 2010 payments had been finalized by the TNEB and was paid. In addition to the agreed quantum of power under the above said

agreement 44,400 units of power was generated in excess and the same has been pumped into the grid during the period from 24.05.2010 to 31.05.2010 and has been utilized by TNEB.

3.7. The TNEB had indicated that the generators within the State could continue to supply power and the same would be compensated on the basis of the rates that would be fixed in the proposed tender. It appears that though TNEB had called for tenders and was processing the same for supply from 01.06.2010 there had been some delays. The Petitioner states that it has supplied 48,87,739 units of power during the period from 01.06.2010 to 21.06.2010 for which no payment has been made by the TNEB to the Petitioner. The Petitioner therefore had first written to PTC Ltd., bringing to their notice the fact that excess power of 44,400 units, in addition to the agreed units under the agreement, had been supplied between the period from 24.05.2010 to 21.06.2010 and the same has to be compensated for. The Petitioner further drew notice of PTC to the fact that no payment for such supply had been made and had requested PTC to re-compensate the Petitioner for the power supplied at the rate of Rs.4.67 per unit being the price which has been fixed by the TNEB subsequently for power supplied / procured during the period from 01-06-2010 onwards.

3.8. PTC Ltd., responded to the same vide their letter dated 15.02.2011 informing the Petitioner that the issue had been discussed with TNEB and TNEB had informed PTC Ltd., that all such claims were to be settled by the TNEB directly with the generators. PTC Ltd. also informed the Petitioner that details of the units supplied by the Petitioner had been given to the TNEB and directed the Petitioner to approach the TNEB to receive appropriate payment.

3.9. Accordingly, the Petitioner addressed a letter dated 28.04.2011 to the Respondent requesting that payments be made at the rate of Rs.4.67 per unit, being the rate at which payments had been made to other similarly situate generators, in all totaling to Rs.2,30,33,089/- for the total of 49,32,139 kWhr units supplied during the period from 24.05.2010 to 31.05.2010 and from 01.06.2010 to 21.06.2010 i.e. altogether the claim is for the period from 24.05.2010 to 21.06.2010. Altogether the petitioner is claiming the payment for 49,32,139 units.

3.10. Therefore, it is evident that power had been supplied by the Petitioner and that the same had been fed into the TNEB grid has been accepted by the TNEB. In fact, the Superintending Engineer of the Nagapattinam Electricity Distribution Circle, within which the Petitioner plant is situated has also provided the Petitioner with a slot wise breakup of the power pumped into the TNEB grid from the Petitioner plant during the period from 24.05.2010 to 21.06.2010.

3.11. The Petitioner states that under section 11 of the Electricity Act 2003, which specifically provides that in the event of any order being passed by the Government under the said section, the Commission may pass suitable orders for compensating the supplier of power.

3.12. The petitioner states that in addition to restricting interstate open access, the TNEB also imposed restriction and control measures within the State of Tamil Nadu imposing very stringent power cuts to alleviate the widely prevalent situation of power shortage. Due to the restriction and control measures, the consumption by the captive consumers of the petitioner dropped significantly, and the Petitioner had to necessarily export the surplus power to the TNEB grid.

3.13. The petitioner states that the group captive consumers were unable to consume all the power due to the stringent power cuts imposed by the respondent Board at the respective EDC's. Owing to the restriction and control measures adopted by the respondent board, the petitioner being a generating company, was compelled to export this excess energy to the respondent board.

3.14. The Petitioner further states that similarly placed generators have been compensated at the rate of Rs.4.67 per unit from 01.06.2010 onwards and the Petitioner is only seeking similar compensation. Since the Respondent has made payment to other similarly situate generators at the rate of Rs.4.67 per unit as mentioned above, it would be just and equitable that the Petitioner is compensated at the same rate for the power supplied by it.

4. Contentions of the First Respondent:-

4.1. The Petitioner was originally supplying to its captive users only to an extent of 18 MW, it appears due to the reduced availability of the Natural Gas. From June 2009 to 31-05-2010, the Petitioner was having sale agreement for supplying part of its power generated after consumption for its own captive use. The said trader was having sale agreement for supplying power with the Respondent during the said period and was supplying power from various sources including the Petitioner herein. The said contract for purchase of power by this Respondent with PTC India Ltd is from June 2009 ended on 31-05-2010 and subsequent contract relating to the period from 04.06.2010 to 31.05.2011 also ended. Before beginning of each calendar month, M/s. PTC India Limited will furnish the list of generators with quantum of power that will be supplied by each of them and based on which initial and final readings will be taken by the field officials of the respondent. The invoices were

claimed by M/s.PTC India Limited on a monthly basis based on the meter reading so taken in the Distribution Circle concerned of the Respondent herein and the agreement with M/s..PTC India Limited. The quantity of power admitted for billing and payment was at actuals subject to contracted quantum level with variance to the extent allowed in the agreements. In this connection, it is categorically stated that there was no contractual obligations between the Respondent and the Petitioner herein during the period in question.

4.2. As a part of entering into a fresh contract for supply of power from PTC under the tender that was being finalized, M/s. PTC India was requested to start scheduling of power from 00.00 Hrs on 04.06.2010. In the list furnished by M/s.PTC India Limited vide their letter dated 03.06.2010, the petitioner's plants were not included. In the letter of M/s.PTC India Ltd dated 21.06.2010 only the Petitioner's name was included as one of the power suppliers and requested to take reading from 00.00 hrs on 22-06-2010 and readings were taken accordingly. The bills were settled to the trader based on the readings taken. The Petitioner had supplied the power into the grid from 01-06-2010 to 21-06-2010 without proper scheduling or approval from the respondent. The energy claimed here is the excess un-requisitioned energy over and above the quantum permitted for their own captive users / third party sales for which permission was available. Further, there was no contractual obligations between the petitioner and the respondent. Therefore the petitioners are not eligible to claim any payment or compensation from the respondent. It is pertinent to mention that Hon'ble APTEL in Appeal No. 123 of 2011 dated 16.05.2011 has categorically ruled that the eligibility for any compensation in such cases. The Commission has also taken similar stand in recent cases. It is further submitted that the payment claimed by the

petitioners during the period from 24.05.2010 to 31.05.2010 is only for energy pumped unauthorisedly by them without any requisition. Hence this claim deserves to be rejected and payment cannot be made for the un-requisitioned energy.

4.3. The Respondent submits that this petition is not maintainable and sustainable under the eye of law for the reasons (i) There is no contractual obligations between the petitioner and the respondent for raising a dispute before this Forum. (ii). M/s. PTC India, to whom the petitioner had a contract for supply of power, was permitted to supply power only from 22.06.2010, 00.00 Hrs as per the letter received from the trader, M/s.PTC India Limited and therefore any energy supplied prior to this date after the expiry of the earlier contract i.e. on 31.05.2011 is to be treated as supply of unauthorized injection of supply into the grid and only by violating the law provisions (the Act, the Grid Code etc.); (iii) Regarding the claim for the balance unbilled excess energy supplied between 24.05.2010 and 31.05.2010, for all the reasons stated herein, the same is also to be treated as un-requisitioned energy and unauthorized injection only, and (iv). This DRP indirectly seeks approval for tariff of the Commission for the energy supplied without proper approval from either of the Distribution Licensee, open access approval of STU / Distribution Licensee /SLDC as the case may be, providing generation scheduling to the SLDC as required under such procedures. After doing all illegalities, the petitioner by virtue of this petition intended to get post facto fixation of tariff and to regularize such illegal acts.

4.4. The claim made consists of two parts (viz) (i). claim for supply of excess energy of 44,400 units between 24.05. 2010 to 31.05.2010 during its earlier contract with PTC India Limited and (ii) claim for 48,87,739 units allegedly injected supplied by them between 01.06.2010 and 22.06.2010. It is submitted that while making their

claims, for the period upto 31.05.2010, the petitioners have indicated in their letter, dated 03.06.2010 that out of the 17,72,300 units generated 17,28,300 units meant for PTC India Limited leaving an excess of 44,400 units which they have on their own stated that the same will be adjusted after taking reading on 24-06-2010 by taking fresh readings. And the excess energy of 44.400 units excessively supplied by them prior to 01.06.2010 and 48,87,739 units between 01.06.2010 and 22.06.2010 have to be treated as un-requisitioned and illegal pumping of energy for which the petitioner is not eligible for any payments as per the Commission's earlier orders in similar cases and also the decision of the Hon'ble APTEL in Appeal No. 123 of 2011 on 16.05.2011.

4.5. Insofar as the specific averment in the petition that "the petitioner herein would use 10 MW for its group captive consumers and had intended to sell the balance 8 MW of power to third party outside the State of Tamil Nadu through Inter-State Open Access" is made for the purpose of getting the relief as prayed for in this petition for the energy illegally pumped into the respondent's grid in utter violation of the provisions of law.

4.6. Insofar as the G.O.Ms.No.10 dated 27.02.2009 is concerned, the petitioner is amenable to the said order but is otherwise free to conduct its business in accordance with law and in the manner known to law. In regard to the contention of the Petitioner that the order under Section 11 of the Electricity Act, 2003 mentioned above by the Government of Tamil Nadu preventing the sale of power outside the State of Tamil Nadu impliedly directs to sell the entire surplus power after supplying to the captive consumers, to the TNEB, it is submitted that the same are so averred

in gross mis-interpretation of the orders in the said G.O. perhaps for the sole aim to extract money for the energy illegally injected into the respondent's grid.

4.7. In this connection, it is submitted that admittedly the Government of Tamil Nadu has issued directions in G.O.Ms.No.10, Energy (C3) dated 27.02.2009 to the generating stations to operate and maintain generating stations to maximum capacity and PLF. It is to be noted that the said direction is subject to compliance of transmission constraints, compliance of grid code, seeking prior approval / permission as per the provisions of the Electricity Act, 2003, the regulations, rules, Codes, etc. made thereunder. The said Government Order nowhere directed the generating stations to operate and maintain generating stations to the maximum capacity and PLF in utter contravention of all laws, mandates, practices in force. Having committed an illegality in injecting power without the prior approval/permission as per statutory requirements or a contract, either orally or in written, the petitioner is estopped from claiming for the illegal injection of power for the relevant periods.

4.8. It is further submitted that approval was accorded to the petitioner for parallel operation of its power plant with TNEB Grid, among other things, subject to compliance of the provisions of the Electricity Act, 2003, the rules, regulations made thereunder. It has been periodically applying and getting third party approval/open access approval subject to permissible limits in law. Therefore, the petitioner cannot be said to be a novice to generation business to believe that supply can be injected to the licensee's grid without a valid agreement.

4.9. In view of the illegal act of injecting power without the approval / permission, the grid system would have got collapsed due to unscheduled illegal injection and the petitioner is bound to compensate such loss as and when a claim is made by the respondent after quantifying the loss. It is further submitted that the petitioner had acted maliciously without having any agreement or approval/permission. It appears that the petitioner has done such a cowardly act with an intention to claim payment at a later date by one way or other by mis-representing the rules or mis-representing the facts/communications or on any other irrelevant grounds. If, in any case, the petitioner is aggrieved over the said G.O., it should have approached the respondent for sale to the TANGEDCO on such terms and conditions and the tariff as may be fixed by the Commission and the other available option of selling power to the consumers within the State of Tamil Nadu.

4.10. Further, the invoice for the June 2010 also passed as per the claim of M/s.PTC India Limited. Since, the energy supplied between 01.06.2010 and 22.06.2010 has also been injected without requisition and illegally, the same is not eligible for payment and the respondent also not liable to pay any compensation. In fact, the petitioner has admitted that it had sought payments from PTC for the supplies made by them during the captioned period. The respondent has floated a tender vide Tender No.2 of 2010 for purchase of 600 MW RTC power in May 2010. The PTC and TATA quoted the lowest price but since it was felt on very high side but in view of requirement of power pending finalization of the rate for power purchase the said traders were asked to commence power supply effective from 04.06.2011 vide letter dated 03.06.2011. In the initial list of M/s. PTC India Limited, the petitioner was not one of the sources. Only in a subsequent letter dated 21.06.2010, PTC requested the respondent to include the sources of petitioner that too with effect from

00.00 Hrs on 22.06.2010 only and take initial meter reading and the same was carried out.

4.11. Insofar as the specific averment in the petition that the TNEB to compensate the generators within the State, it is submitted that the same will be considered only if the generators like the Petitioner herein follows the said G.O.No.10 in its letter and spirit and not in the cases of commission of mischievous and illegal acts. Inasmuch as the Petitioner is not entitled to any payment, the rate at Rs.4.67 per unit sought for by the Petitioner has no relevance to the case of the Petitioner.

4.12. The Petitioner has claimed that he has quoted for a lesser rate for the excess energy supplied by them. It needs to be rejected since they are not at all eligible for any payment under the provisions of law as this being un-requisitioned and illegal injection of energy.

4.13. Insofar as the averments in the petition, it is submitted that even though the Restriction and Control measures are in force the captive consumers have been permitted to use from their captive generators upto their sanctioned demand. Further, as the petitioner has not explored all the avenues permitted in the said G.O. in accordance with law and in the manner known to law. Therefore, the averment that their captive users were not able to utilize their energy and that the petitioner was compelled to export (illegally inject) energy are mere cock-and-bull story. It appears that the petitioner, for the reasons best known to it, was not able to make an agreement with the PTC for the periods in question but would like to cover-up its failures by illegally injecting the power and claiming the same at this distance of time.

4.14. It is considered relevant to state that the illegal injection of power pertained to the period May 2010 and June 2010. The above petition came to be filed during October 2011, i.e., after a lapse of about sixteen months and after the decisions of the Hon'ble APTEL in Appeal No.123 of 2011 dated 16-05-2011 and the Commission in DRP No.12 of 2011 dated 17.10.2011. However, no valid reason is stated in the petition for the delay in raising the dispute. Perhaps, the Petitioner would have waited for the subsequent developments including the decision of the Commission in the said DRP No.12 of 2011 so as to think beyond and to make further new pleas, like the plea of compensation claimed herein under section 11 of the Electricity Act, 2003.

5. Implead Petition filed on 21-04-2014 by the Petitioner:-

The Commission has directed impleadment of PTC Ltd. by its order dated 25-03-2014. In the Impleading Petition filed on 21-04-2014, the Petitioner has submitted as follows:-

5.1. The petitioner herein operates two group owned captive gas based power plants located near Nagapattinam and Nallur in the State of Tamil Nadu, with a combined installed capacity of 28 MW. However, owing to non-availability of quality gas, the petitioner herein was able to generate only 18 MW instead of 28 MW of power in both the power stations. Out of the 18 MW of power generated, the petitioner herein would use 10 MW for its group captive consumers and had intended to sell the balance 8 MW of power to third party outside the State of Tamil Nadu through inter-state open access.

5.2. On citing of power shortage within the State, the first respondent Board along with the Government of Tamil Nadu, prevented Inter-State open access, under

section 11 of the Electricity Act, 2003. Therefore, all of the surplus power has to necessarily be sold to the Tamil Nadu Electricity Board and the same prevented the sale of power outside the State of Tamil Nadu impliedly directing to sell the entire surplus power after supplying to the captive consumers, to the TNEB.

5.3. In view of the above mentioned order, the TNEB issued tenders for purchase of power from time to time and PTC Ltd. an electricity trader had been the successful bidder in respect of such tenders. PTC Ltd. had a back to back arrangement with various generators including the petitioner herein. The proposed respondent was in the practice of issuing Letters of Intent for supply of power from time to time fixing the rates at which such supply would be compensated and such supply would be in terms of the main contract between the generators and PTC Ltd.

5.4. The Petitioner states that the Lol between the Petitioner and PTC expired on 31st May 2010. The Petitioner states that the Lol was not extended by PTC for the period beyond 31.05.2010.

5.5. The petitioner company had participated through the tender by PTC which was invited by TNEB for purchase of power. The tender was finalized at RS.5.90 per unit, for the months of June 2009 to May 2010. In addition to the agreed quantum of power under the above said agreement 44,400 units of power has been pumped into the grid during the period from 24.05.2010 to 31.05.2010 and has been utilized by TNEB. At that time, the TNEB had indicated that the generators within the State could continue to supply power and the same would be compensated on the basis of the rates that would be fixed in the proposed tender.

5.6. The Petitioner states that it has supplied 48,87,739 units of power during the period from 01.06.2010 to 21.06.2010 for which no payment has been made by the TNEB to the Petitioner. The Petitioner therefore had first written to PTC Ltd., bringing to their notice the fact that excess power of 44,400 units, in addition to the agreed units under the agreement, had been supplied between the period from 24.05.2010 to 21.06.2010 and the same has to be compensated for. The Petitioner further drew notice of PTC to the fact that no payment for such supply had been made and had requested PTC to re-compensate the Petitioner for the power supplied at the rate of Rs.4.67 per unit being the price which has been fixed by the TNEB subsequently for power supplied/procured during the period from 01.06.2010 onwards. However, the proposed respondent via letter dated 21.06.2010 stated that there shall be no compensation clause applicable for the sale of power and PTC shall not entertain any excess injection in the interim period and no payment shall be made by PTC.

5.7. In addition, this Respondent in its reply to the Petitioner letter dated 10-02-2011, stated that the matter was discussed with the first Respondent and they had advised this Respondent that all such cases may be settled directly by the first Respondent with the generators.

6. Counter Affidavit filed the Second Respondent:-

In the counter affidavit filed on 21-07-2014, the Second Respondent has submitted as follows:-

6.1. The Respondent submits that it is not a necessary party to this Petition as the claims made by Petitioner is entirely against Respondent No.1 which has allegedly consumed the extra electricity supplied by the Petitioner. Petitioner admittedly has supplied extra energy i.e. 44,000 units between 24.05.2010 to 31.05.2010, which

was over and above the contracted quantum on its own volition without any advice from the Respondent. This Respondent is not liable to pay for 44,400 units.

6.2. That after the expiry of Lol issued by the Respondent on 31st May 2010, the Petitioner supplied further 48,87,739 units of power during the period 01-06-2010 to 21.06.2010 to Respondent No.1 for which no payment has been received from respondent No.1.

6.3. The Respondent submits that between May 2009 and May 2011, Respondent No.1 .i.e. Tamil Nadu Electricity Board (TNEB) and Tamil Nadu Generation and Distribution Company (TANGEDCO) issued several Notices Inviting Tenders (hereinafter referred to as NITs), for purchase of electricity of different quanta of electricity between different periods from June 2009 to September 2011.

6.4. The Respondent No.1 accordingly issued Lols in favour of the Respondent. As the Respondent had a back to back arrangement with its suppliers, it issued similar Lols to the supporting suppliers. The Lols issued always indicated the duration of supply, rate and the quantum of power to be supplied.

6.5. The Petitioner was one of the supporting suppliers. This particular Lol expired on 31st May 2010.

6.6. The Petitioner herein has, in its main petition, has accepted the fact that “..... Towards the power supplied by the petitioner company from June 2009 to May 2010 Payments had been finalized by the TNEB and was paid. In addition to the agreed quantum of power under the above said agreement, 44,000 units of power was

generated in excess and the same has been pumped into the grid during the period 24.05.2010 to 31.05.2010 and has been utilized by the Petitioner company ... "

6.7. Thus from the above, it is clear that the Petitioner herein had supplied 44,000 units of power directly to the Respondent No.1 in excess of the agreed quantum.

6.8. That the Respondent No.1 issued another Tender No.02/TNEB/2010 on 08.05.2010 for supply of power during the months of June 2010 to May 2011. Again the Respondent was one of the successful bidders. The Respondent started supplying power under the above Tender/Lol w.e.f. 00.00 hrs of 04.06.2010. The Respondent vide its letter No PTC/MTFG/TNEB/3065-68 dated 03.06.2010 addressed to the Respondent No.1 informed that they would be supplying power w.e.f. 00.00 hrs of 04.06.2010 and submitted list of CPPs/Generators from whom power would be supplied. The petitioner was not one of the suppliers in the said list.

6.9. That subsequently the Petitioner, vide email dated 7th June 2010, evinced its willingness to supply power w.e.f. 22.06.2010 under the aforesaid tender dated 8th May 2010 of the Respondent No.1. Accordingly the Respondent informed Respondent No.1 vide its letter No.PTC/MFTG/TNEB/3756-59, dated 21.06.2010 that it could supply additional power w.e.f. 00.00 hrs of 22.06.2010 available from two other CPPs/Generators, including the Petitioner, which was duly accepted by the Respondent No.1. Consequently the Respondent vide its Letter No.PTC/MTFG/MMS/335, dated 21-06-2010 informed the Petitioner to commence the supply w.e.f. 00.00 hrs. of 22-06-2010.

6.10. That accordingly the Petitioner started supplying power, under the said arrangement only from 22-06-2010. Thus any supply made by the Petitioner before 22-06-2010 i.e. during the period between 01-06-2010 and 21-06-2010 was not under any contract with the Respondent. The Respondent submits that the extra electricity supplied by the Petitioner is admittedly on its own volition and no remedy lies against the Respondent. Furthermore, the Respondent submits that the Petitioner has made no claim against the Respondent.

7. Written Submission filed by the Second Respondent:-

In the Written Submission, the Second Respondent has submitted as follows:-

7.1. That the Respondent is not a necessary party to this petition as all the claim and relief have been sought against First Respondent i.e. TANGEDCO only. The contention of the Petitioner is that they had supplied extra electricity between 24-05-2010 to 31-05-2010 which was over and above the contracted quantum.

7.2. The Petitioner had admittedly supplied 44000 units of additional energy to TANGEDCO during the period 24-05-2010 to 31-05-2010. Further, after expiry of the LOI issued by the Respondent on 31-05-2010, the Petitioner supplied 4887739 units of power as stated above was supplied outside the contract, PTC is not liable to make the payment.

7.3. In view of the fact that the power supplied by the Petitioner was outside the contract / LOI issued by the Respondent, the Respondent has no liability to make payment. As the power has been supplied to TANGEDCO and have been consumed by TANGEDCO, the responsibility to make the payment lies with the First Respondent i.e. TANGEDCO.

8. Findings of the Commission:-

8.1. We have heard both sides. The short point which arises for consideration is whether the petitioner is entitled to payment for the energy injected into the grid of the respondent Corporation from 24.5.2010 to 21.6.2010 in the absence of a valid agreement between the petitioner and the First Respondent for supply of energy. On going through the facts of the case, it is clear that there was no prior agreement in writing between the parties for injection of energy during the said period. The petitioner has sought to place reliance on the G.O.Ms.No.10 dated 27.2.2009 for injection of energy into the grid of the respondent Corporation on the ground that in view of the said G.O. it was left with no option but to inject the energy into the grid. The petitioner has also taken a stand that the effect of the said G.O. which directed the injection of all exportable energy generated by a generating station into the grid of the respondent Corporation tantamount to denial of open access. On the other hand, the First Respondent contends that there was no proper scheduling or approval for the energy injected by the petitioner during the disputed period and the energy injected was unsolicited and unauthorized. It is further contended by the First Respondent that there is no contractual obligation (which means privity of contract in legal parlance) between the petitioner and the First Respondent for raising a dispute before the Commission and after committing illegality by injection of energy in an unauthorized manner, the petitioner is seeking to get ex-post facto approval to legitimize the illegal act of unauthorized injection of energy. The First respondent has further contended that the interpretation of G.O.Ms.No.10 dated 27.2.2009 by the petitioner is faulty and the direction given in the said G.O. is also subject to compliance of transmission constraints, compliance of grid code and prior approval from the respondent.

8.2. On the careful consideration of the rival submissions, we find that the present case in the normal circumstances relating to absence of agreement for injection of energy would have been squarely covered by the judgment of the Hon'ble Tribunal in Appeal No.123 of 2010 in the matter of M/s.Indo Rama Synthetics (I) Limited Vs MERC which rejected compensation for any power injected into the grid of the licensee without any scheduling or agreement. In such case, we would have no difficulty in straight away rejecting the claim for injection of energy without prior approval. However, the present case is slightly different from the one relating to Indo Rama Synthetics (I) Limited in that the petitioner herein has sought to rely on the conditions imposed in G.O.Ms.No.10 dated 27.2.2009 for justifying the injection of energy. It is therefore necessary to refer to the G.O. relied upon by the petitioner. The relevant portion of the said G.O. is re-produced for easy reference.

“In exercise of the powers conferred by sub-section (1) of section 11 of the Electricity Act, 2003 (Central Act 36 of 2003), the Governor of Tamil Nadu hereby issues the following directions in the circumstances arising in the public interest namely;

- (i) All power generation units operating in Tamil Nadu shall operate and maintain generating stations to maximum capacity and Plant Load Factor (PLF); and***
- (ii) All generating stations shall supply all exportable electricity generated to the State Grid for supply to either Tamil Nadu Electricity Board, or to any other HT consumers within the State as per the regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission.***

8.3. It may be seen from the above that there are two directions by the Government of Tamil Nadu to all generating stations in the State of Tamil Nadu, namely,

- i) To operate and maintain the generating stations to maximum capacity and plant load factor.
- ii) To supply all exportable electricity generated to the State Grid or to any other HT consumer within the State of Tamil Nadu as per the Regulations notified by the TNERC.

8.4. It is clear from the above that the intention of the G.O. is to make use of the energy generated within the State of Tamil Nadu to the maximum extent for the requirement of the State and only for such purpose, the above directions have been given. We are not in complete agreement with the contention of the petitioner that the petitioner was left with no option but to inject the energy into the grid of the respondent in view of the said G.O. for the reason that the said G.O. prohibited only the export of energy outside the State of Tamil Nadu and there was no prohibition with regard to Intra-State Open Access which the petitioner could have very well attempted before injecting the energy into the grid of the respondent. Here again, it is to be noted that the said G.O., even while directing that all the exportable energy generated within the State shall be supplied to the State Grid or to any other HT consumers, at the same time, made it obligatory to comply with the regulations notified by TNERC. Thus, it was not a free-for all situation wherein anybody can inject energy at will. The intention on insistence of agreement was in the interest of securing the safety of the Grid. Therefore, in the absence of any agreement for the injected energy generated during the period in question, the petitioner could not have injected the energy on its own unmindful of the extent regulation meant for security of the Grid. The Regulation 8 of the Tamil Nadu Electricity Grid Code which deals with Scheduling and Despatch of Energy prescribes the procedures to be followed in injection of energy into the grid. The section 32 of the Electricity Act, 2003 which

sets out the functions of State Load Despatch Centre also requires the scheduling and dispatch of electricity within the State in accordance with contracts entered into between generating companies and licensees which means that there shall be no injection of energy without the prior approval of the SLDC. On further reading of the said section, it is clear that the SLDC is responsible for carrying out the real time operation of the grid through secure and economical manner and for exercising supervision and control over the energy transmitted through the system. It is essential that an approved schedule by the SLDC is obtained for any injecting of energy into the State Grid. Therefore, the present claim in regard to supply of energy without a formal contract or agreement between the distribution licensee and the petitioner or atleast a prior approval, is not sustainable. The fact that the concerned Superintending Engineer has issued a certificate in confirmation of the receipt of energy injected by the petitioner into the grid of the respondent does not support the case of the petitioner for the reason that a mere acknowledgement of the injection of energy into the grid cannot be construed to be an act legalizing the illegal act of injection of energy into the grid which was deprecated in the Indo Rama's case by the Hon'ble APTEL.

8.5. As stated supra, there is no order in the G.O. under reference to the effect that a prior agreement with a licensee is not necessary for injection of exportable energy into the grid of the respondent. That even in the face of extreme power shortage prevailing at that point of time, the Government was cautious enough to insist on compliance of rules and regulations cannot be lost sight of. All that was sought to be emphasized in the said G.O. was that the energy generated in the State of Tamil Nadu should be utilized within the State and there was no indication of whatsoever nature to form a conclusion that the G.O. directed the generators to

supply the energy only to the grid of the respondent Corporation. There was an option also to sell power to any other HT consumer within the State of Tamil Nadu. The petitioner herein has failed to provide any document to the effect that all his effort to sell the excess power to the consumers other than the licensee within the State through Intra-State Open Access failed and that it was forced to inject the energy into the grid of the respondent Corporation. Even in such a case when the Petitioner finds it impossible to sell his energy to anyone, it should have approached the Commission or any other appropriate authority for permission to export power into the State Grid and for fixing of such cost of power in view of the G.O. cited. In the absence of a proper agreement which is required as per the extent regulation to inject energy into the grid of the respondent, the petitioner's unilateral decision to inject energy into the grid is tainted with illegality. Further, in the absence of any material on record to the effect that the attempts to export power on Intra-State Open Access to the consumers within the State of Tamil Nadu failed, the prayer of the petitioner for settlement of claim for the energy injected into the grid during the period in question is unsustainable. The contention that the other generators have been compensated on similar grounds would not confer any legality on the actions of the petitioner. It is seen that the petitioner has made only a blank statement to the effect that other similar generators have been compensated without any material proof, which cannot be taken on record. Even otherwise, such illegalities by the other generators cannot be treated as a precedent for settlement of claims arising out of illegal acts. Needless to say that the security of the grid is of paramount importance and any injection without scheduling would endanger the real time operation of the grid. In fact, such actions of the petitioner is required to be dealt with under the penal provisions of the Electricity Act, 2003. But, however, in view of

the considerable lapse of time, we are not inclined to proceed further. In the result, the petition is dismissed as being devoid of merits. No costs.

9. 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