

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. 7 of 2013

M/s. OPG Power Generation Pvt. Ltd.
No. 6, Sardar Patel Road,
Guindy,
Chennai – 600 032.

..... Petitioner
(Thiru P. Vinod Kumar,
Advocate for the petitioner)

Vs.

1. Tamil Nadu Generation and Distribution
Corporation Limited,
Rep. by its Managing Director,
NPKRR Maaligai,
144, Anna Salai, Chennai – 600 002.

2. PTC India Limited
2nd Floor, NBCC Tower
15, Bhikaji Cama Place,
New Delhi – 110 066.

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

**Dates of hearing: 12-04-2013, 05-02-2014, 04-04-2014,
21-04-2014, 22-04-2014, 09-10-2018
20-11-2018 and 29-11-2018**

Date of order: 04-01-2019

The above D.R.P.No.7 of 2013 was heard and reserved on 21-04-2014 by the earlier Commission consisting of two Members and as one of the Members demitted office before pronouncement of the order, the case was posted for further argument before this Commission and accordingly arguments of both the parties were heard elaborately on 29-11-2018. The Commission upon perusing the above petition, counter and other connected records and after hearing the arguments on both side passes the following order:-

ORDER

1. Prayer of the Petitioner in D.R.P.No.7 of 2013:-

The Prayer of the Petitioner in D.R.P.No.7of 2013 is to -

- (a) direct the PTC to pay the petitioner the sum of Rs.35,99,523/- being the amount deducted from the payments due to the petitioner against the invoices raised in the months of June 2010 to August 2010 along with interest / surcharge at 15% per annum till the date of payment;
- (b) direct the PTC to pay an amount of Rs.16,99,626/- being the amount payable as surcharge at 15% as the delayed payments made to the petitioner against the invoices raised in the months of June 2010 to August 2010;
- (c) pass such other orders as deemed fit in the circumstances of the case;
- (d) direct the respondents to pay costs of the present proceedings to the petitioner.

2. Facts of the Case:

The petitioner, a coal based thermal energy generator, has entered into a contract with PTC, a power trading licensee to supply power to the first

respondent TANGEDCO. In the course of settlement of bills for power supplied a dispute as to a deduction of 2% rebate from the bill amounts has been raised by the petitioner in the present D.R.P.

3 Contentions of the Petitioner:

3.1 The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 involved primarily in the business of setting up power plants and generating electricity. The petitioner had set up a coal based captive power plant in Gummidipoondi, Tamil Nadu.

3.2 There has been severe shortage of power in the State and to meet the severe shortfall of power, to augment the power supply, the First Respondent TANGEDCO had in the year 2009, sought to purchase power from captive generators and other private generators through trading licensees recognized by the Central Electricity Regulatory Commission ("the CERC") and in this regard issued tenders. The Second Respondent PTC India Ltd. (PTC) which is a trading licensee was selected by the TANGEDCO, as the medium through which captive power plant / private generators were to sell power to the Board. Consequently the petitioner entered into an Agreement dated 1.6.2009 with the PTC wherein the petitioner had agreed to sell certain quantities of power every month for onward supply to the TANGEDCO till 31.5.2010. A LoA dated 04.07.2009 was issued by the PTC incorporating the terms and conditions of the supply. The term of the Agreement between the petitioner and the second respondent was extended till 31.5.2014 by Supplementary Agreement dated 27.10.2009.

3.3 Based on fresh tender issued by the TANGEDCO for procuring power from CERC approved trading licensee for the period from 1.6.2010 to 31.5.2011 the PTC came to be selected. The petitioner had offered to supply 46 MW of power to TANGEDCO through the PTC. A new LoA, dated 23.8.2010 was issued by PTC to the Petitioner stipulating the terms and conditions under which power from the petitioner's captive power plant was to be scheduled to the TANGEDCO. The LoA formed integral part of the agreements between the petitioner and PTC under which power was to be supplied to TANGEDCO.

3.4 The Power Purchase Agreement (PPA), dated 1.6.2009 was entered into by the petitioner with PTC and the PTC had a back to back agreement with the TANGEDCO. The agreement between the Petitioner and PTC was entirely for the benefit of the TANGEDCO. Therefore, there is a clear nexus between the transaction under agreements entered into by the Petitioner with PTC and the transaction under agreement entered into by PTC with the TANGEDCO.

3.5 The LoA dated 23.8.2010 *inter alia* stipulated that the delivery point of the power to be scheduled to the TANGEDCO was to be the plant bus at the Petitioner's plant switchyard. The Petitioner was required to schedule and dispatch power in coordination with the SLDC. Further, except in case of transmission constraints as certified by the SLDC, the petitioner was required to schedule the power in full. The petitioner was to raise monthly bills on the second respondent, for the energy supplied, to the first respondent, along with all relevant materials like signed joint meter reading etc. All bills raised by the petitioner for the supply made

under the Agreement were required to be paid within 10 days of their receipt, by the second respondent. The petitioner had agreed to allow rebate of 2% of the invoice value in case the payment towards the bills were made within 10 days of its presentation. Under the Agreement dated 1.6.2009, the petitioner was entitled to surcharge at 15% per annum on payments outstanding after 30th day of receiving the petitioner's bill.

3.6 The petitioner supplied power to the first respondent in accordance with agreement with the second respondent. For the supply made during the months of June 2010, July 2010 and August 2010 the petitioner had raised the following invoices:

S.No.	Invoice No.	Date	Amount
1.	E 0073	30.06.2010	4,20,57,534.32
2.	E 0106A	31.07.2010	3,06,58,078.33
3.	E 124	31.08.2010	10,72,60,560.00

The total value of the aforesaid three invoices was Rs.17,99,76,172.70. Payments were not made by the second respondent as agreed under the Agreement and there was significant delay in making payment for the said invoices.

3.7 Part payment of Rs.4,03,67,894/- was made on 24.09.2010. Thereafter, on 06.10.2010 and 26.10.2010 further amounts of Rs.12,00,96,448/- and Rs.1,59,02,207/- each were paid. Therefore, the payments made by the second respondent against the aforesaid three invoices totals upto only Rs.17,63,66,549/- and an amount of Rs.35,99,523/- still remains to be paid. On being contacted for the

balance payment, the second respondent informed the petitioner that rebate at 2% has been deducted while making payments for the aforesaid invoices.

3.8 The deduction of Rs.35,99,523/- by the second respondent from the payments towards the aforesaid three invoices is without any basis. In terms of the Agreement, only payments made within 10 days of invoices are entitled to rebate at 2%. The petitioner has not agreed to allow the said rebate of 2% in respect of delayed payments and hence the same is totally unauthorized and unjustified. In fact since there was significant delay in making the payments, it is the petitioner who is entitled to interest/surcharge on the delayed payments.

3.9 The petitioner had by its letter dated 21.4.2011 sent a debit note dated 31.3.2011 to the second respondent for the aforesaid amount of Rs.35,99,523/- which has been deducted without authorization while making belated payments towards the petitioner's invoices. However, the petitioner has till date has not received the said amount. In terms of clause 12 of the agreement, the petitioner is entitled to surcharge of 15% per annum calculated on a day to day basis for each day of delay, on all payments outstanding after the 30th day of receiving the relevant invoices. For the supply of power effected during June 2012 to August 2012, the total surcharge calculated at 15% per annum commencing after 30 days of the receipt of the petitioner's respective invoices by the second respondent till the receipt of the payments works out to Rs.16,99,629/-. Further, in terms of clause 12 of the

agreement dated 1.6.2009, the petitioner is also entitled to interest at 15% on the aforesaid amount of Rs.35,99,523/- till the date of payment.

3.10 The First Respondent being the distribution utility of the State at whose instance and for whose benefit the transaction between the petitioner and the second respondent came into existence is also duty bound to ensure that the trading licensee selected by it complies with its obligations to the generators and does not act in contravention of the agreed terms.

3.11 The petitioner had issued a notice dated 15.10.2012 to the Respondents calling upon PTC to make the payment of Rs.35,99,523/- along with surcharge/interest towards belated payment of the invoices. Despite receipt of the said notice the respondents have not taken any action towards making the payment till date.

3.12 PTC is a trading licensee, and the transaction out of which the present dispute has arisen relates to supply of power to TANGEDCO which is the generation and distribution licensee of the State of Tamil Nadu. Although PTC is an Inter-State Trading Licensee, since the transaction between the petitioner and PTC has a clear nexus with TANGEDCO and PTC has only carried out a purely intra-state transaction within the State of Tamil Nadu, the Commission has jurisdiction to entertain the petition. The Agreement between the petitioner and PTC provides for dispute resolution through arbitration in terms of Arbitration and Conciliation Act, 1996. In

view of section 86(1)(f) of the Electricity Act, 2003 and the decision of the Supreme Court in Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd. reported in 2008 (4) SCC 755, the Commission is entitled to adjudicate the present dispute.

4 Written Submissions of the petitioner on maintainability of the DRP before the Commission:

4.1. During the hearing held on 12-04-2013 the Commission observed that it would like to decide the jurisdiction issue in this petition. Accordingly the petitioner submitted the following as to maintainability of the petition before the Commission.

4.2 The Agreement between the petitioner and the second respondent was pursuant to the tender issued by the first respondent TANGEDCO to purchase power. The entire transaction (generation, purchase and supply) in respect of which the dispute relates has taken place within the State of Tamil Nadu of which the Commission is the Regulator.

4.3 Under section 86(1)(f) of the Electricity Act, 2003 the Commission has jurisdiction to adjudicate all disputes between a generating company and a licensee. The petitioner is a generating company with its plant in Tamil Nadu. The second respondent is a licensee as defined under the Act and has carried out a purely intra-state transaction by virtue of the license granted to it by the CERC. The present dispute being one between the petitioner (generating company) and licensee (second respondent), this Commission has jurisdiction in terms of section 86(1) (f) of the Act. Section 86(1)(f) of the Act is wide and encompasses all disputes. The provisions of

the Act do not exclude dispute of any specific nature from the jurisdiction of the Commission. In the absence of any exclusion under the Act, all disputes arising between a generator and licensee can be adjudicated only by the Commission. The Agreement between the parties provides for Arbitration as the dispute resolution mechanism. The Supreme Court in *Gujarat Urja Nigam Ltd. vs. Essar Power Ltd.* 2008(4) SCC 755 has held that when arbitration is provided as the mechanism for dispute resolution, the Regulatory Commission can either adjudicate the dispute itself or refer the dispute to Arbitration.

4.4 The second respondent PTC herein had entered into a back to back agreement with the first respondent for supply of the power that was to be purchased from the petitioner. There is a clear nexus between the two agreements. The second respondent by purchasing power from the petitioner and reselling to the first respondent was carrying on activity permitted under Rule 9 of the Electricity Rules, 2005. The supply of power by the petitioner under the transaction was for the first respondent and the transaction was merely routed through the second respondent. The APTEL in Appeal No. 15 of 2011, (*Lanco Power Limited v. Haryana Electricity Regulatory Commission*), has held that when power is supplied to a trading licensee which has back to back arrangement for supply of the same power to the distribution licensees, the appropriate State Commission has the power to determine the tariff. Similar view has been taken by the APTEL in Appeal No. 31 of 2012 (*PTC India Ltd. v. Gujarat Electricity Regulatory Commission and Anr.*) and in Appeal No. 200 of 2009 (*Pune Power Development v. Karnataka State Electricity Regulatory Commission*). In

the instant case the entire transaction has occurred in the State of Tamil Nadu. As such it is submitted that this Hon'ble Commission has the jurisdiction to adjudicate this matter. The Commission in DRP No. 16 of 2011 in the case of *Shree Ambika Sugars Ltd. & Anr. v. the TNEB Ors.* considered the aforesaid orders of the Appellate Tribunal in holding that so long as the distribution licensee is procuring power, from any trader inter-state or intra-state, disputes relating to such matter shall be dealt with by the State Commission under section 86(1)(f). As such the position on the jurisdiction of the Commission in this regard has been considered in length by the APTEL and the Commission with the finding that the Commission shall have jurisdiction in such matters.

4.5. In this instance the transaction has taken place between a generating company and a licensee within the jurisdiction of Commission. The Agreements being back to back Agreement with the Distribution licensee within the State the Commission has the jurisdiction taking into consideration the fact that there exists a clear nexus between the trading licensee and the State licensee.

5.0 Contentions of the first respondent, TANGEDCO in the counter affidavit dt. 02-04-2014:

5.1 No relief is sought for in the petition as against the first respondent herein and as such the petition as against this respondent is liable to be dismissed on this ground alone. The above petition has been filed by the petitioner seeking the second respondent to make payment of Rs.35,99,523/- deducted by the second respondent, towards rebate, from the bills submitted by the petitioner, for the months of June 2010

to August 2010, along with surcharge payable for the delayed payment. All the averments in the above petition are denied as false and misleading.

5.2 TANGEDCO (First respondent) has entered into an agreement with the Trading Licensee, M/s. PTC India Limited, (second respondent) for purchase of power available from various sources such as CPPs/IPPs/Co-gen plants located in the state of Tamil Nadu. An agreement is said to have been made between the petitioner company and the second respondent, M/s. PTC India Limited, for sale of power generated by it. Accordingly, an LoA dated 04.07.2009 has been issued by the second respondent. Thus, the first respondent is in no way connected with the agreement made between the petitioner company and the second respondent.

5.3 As per clause 4 of the Power Purchase Agreement executed between the petitioner company and the second respondent, the power shall be supplied at the 'Delivery Point' of 110 kV bus available at the switch yard of the petitioner company, connected with the TNEB grid. Except this arrangement / facility of injecting the power into the grid, at the delivery point, no other terms and conditions of the PPA executed between the petitioner and the second respondent, are related to the first respondent.

5.4 As per the Agreement made by the first respondent with the second respondent, M/s. PTC India is supplying power from various sources such as CCPs, IPPs, Co-gen plants, etc located in the State of Tamil Nadu. The power procured by them is injected into the Grid at the delivery point located at the premises of the

generator. No specific name of the generator has been mentioned in the Agreement. It is the look out of the second respondent to identify the sources of energy and to supply the same to the first respondent.

5.5. As per Clause No.4 of the Power Purchase Agreement executed between the Petitioner and the Second Respondent, the delivery point for supply of power shall be 110 KV bus at the Petitioner's plant switch yard.

5.6 As per clause No.11 of the PPA executed between the petitioner and the second respondent, the petitioner would allow 2% rebate, in case of payment made by the second respondent, within 10 days of presentation of the bill through fax. Further as per clause 8 of the Letter of Agreement dt. 04-07-2009 addressed by the PTC to the second respondent, 2% rebate is allowed when the payment is made within 7 days of presentation of the bill through fax. Thus, there is no inter connection or nexus for the TANGEDCO with regard to payments made between the first respondent and the petitioner, as the agreements have been executed separately.

5.7 The details of payments made, by the first respondent, to the second respondent, i.e. M/s. PTC India Limited, for the supply of power during the period mentioned by the petitioner, are furnished below:

Period of supply	Sources	Amt claimed and admitted Rs.	Rebate @ 2% Rs.	Net payment Rs.	Cheque No. and date
June 10 Inv. Dt. 17.9.10	M/s. OPG Powergen & 19 others	77,25,71,600	1,54,51,432	75,71,20,168	805931 dt. 22.09.10

July 10 and Aug 10 Inv. Dt. 29.9.10	M/s. OPG Powergen & 27 others	183,94,55,246	3,67,89,105	180,26,66,141	805937 dt. 1.10.10
--	-------------------------------------	---------------	-------------	---------------	-----------------------

The above table would reveal that the rebate of 2% had been deducted and the payments have been made within 7 days of presentation of bills as per clause No.8 of the Agreement between first respondent and the second respondent.

5.8 The prayer of the petitioner being one for release of the amount of rebate deducted by the second respondent the dispute is between the petitioner and the second respondent and in no way the first respondent is connected with this dispute. The averment of the petitioner to the extent that the power is dispatched to the first respondent by the petitioner company, in accordance with the contract executed between the petitioner and second respondent is admitted.

5.9 The first respondent is not in a position to verify each and every transaction made between the second respondent and various generators located in the State, to ensure whether all the payments are released correctly. There is no breach of contract whatsoever between the petitioner and the first respondent relating to the claim raised in the above petition.

6.0 Contentions of Second respondent, PTC India Ltd. in their counter affidavit dt. 19-04-2014:

6.1 As per the clause 5 of the Agreement dated 01.06.2009 entered between the petitioner and the second respondent the provision for Tariff is as below:

Tariff:

- (i) *The tariff shall be agreed and finalized between PTC and TNEB in consultation with OPGPGPL at the rate of Rs.5.94 per Kwh.*
- (ii) *The tariff rates mentioned in clause 5(i) above are for energy delivered at the Delivery point.*

Further clause (1) of the LoA dated 04.07.2009 issued by the respondent No.2 to the petitioner provides for Tariff as below:

Tariff

24 Hrs RTC power (00:00 hrs to 24:00 hrs) Rs.5.90/Kwh at delivery point till 31st May 2010.

The clause 2 of the Supplementary Agreement dated 27.10.2009 which extended the original agreement till 31.05.2014 the clause relating to revised tariff is as under:

Clause 2**Tariff:**

- (i) *The Tariff shall be Rs.5.90/kWh at Delivery Point till 31st May 2010. The contracted quantum from June 2009 to May 2010 shall be as per Annexure-I. Quantum and tariff beyond 31st May 2010 shall be mutually discussed and agreed at an appropriate time.*

6.2 PTC participated in a tender issued by respondent No.1 and submitted a proposal to TNEB vide its letter No. PTC/MTFG/TNEB/2541 dated 25th May 2010 which amongst others also quoted the tariff (at Delivery Point) which for the relevant months were as under

June 2010 : Rs.5.27/kWh
 July 2010 : Rs.5.27/kWh
 August 2010: Rs.5.27/kWh

6.3 Subsequently negotiations were held between respondent No.1 and respondent No.2 on issues including fixation of tariff and finally respondent No.2 vide its letter No. PTC/MTFG/3149-52 dated 7th June 2010 communicated the tariff which are as under for relevant months:

June 2010	: Rs.5.17/kWh
July 2010	: Rs.5.17/kWh
August 2010	: Rs.5.17/kWh

In the said letter respondent No. 2 had clearly informed respondent No.1 that the tariff quoted was after discussing the matter with CPPs / IPPs.

6.4 TANGEDCO vide its letter No. CE/DIR/EE/AEE/PP/F.Purchase-June'10 to May'11/D/096/10 dated 07.06.2010 revised the tariff for the relevant months as under:

June'10	: Rs.4.73/kWh
July'11	: Rs.4.73/kWh
August'11	: Rs.4.73/kWh

Accordingly PTC informed all the supporting CPPs/IPP, including the petitioner herein, about the revised tariff as received from the respondent No.1.

The petitioner vide its email dated June 10, 2010, confirmed the tariff as approved by the respondent No.1. PTC vide its letter dated 3rd June 2010 had informed that respondent No.2 would release the payment only on receipt of payment from TNEB.

6.5 It is true that three bills were submitted by the petitioner but the same were received not on the day as per the invoice date but were submitted at a date much later than the dates of invoice and there was no delay on part of the second respondent in making the payment. In fact the payments were made by PTC within the stipulated period of 10 days and accordingly the rebate of 2% was deducted from the total amount of invoices in terms of the said agreement. This is elucidated by the fact that on the date as mentioned in the invoice the tariff was not yet finalized and the indicative tariff on that date was totally different from those mentioned in the invoices. Further the payments were made after the same was received from TNEB.

6.6 PTC has paid the bills as per terms of the said Agreement within the stipulated period of 10 days and was thus entitled to a rebate of 2%. In the light of the above provision, any liability to pay the alleged amount to the petitioner is denied.

6.7 The contentions of the petitioner that there was a clear nexus between the PTC and Respondent No.1 and that the PTC had only carried out a purely intra state transaction and the Commission had jurisdiction to entertain this petition are true. Further in terms of the section 86 (1) (f) of the Electricity Act, 2003 and the decision of the Hon'ble Supreme Court in case of Gujrat Urja Vikas Nigam Ltd. vs. Essar Power Ltd. a dispute between a Generating Company and a licensee needs to be adjudicated upon by the respective State Electricity Regulatory Commissions.

7. Findings of the Commission:

7.1. The following three issues are to be addressed by the Commission:

- i) Jurisdiction
- ii) Liability of the Licensees in the present DRP
- iii) Liability of M/s.PTC India Limited

7.2. JURISDICTION

During the hearing held on 12-4-2013, the Commission observed that it would like to decide the jurisdiction issue in this petition and accordingly the petitioner filed written submission justifying the jurisdiction of the Commission duly quoting various orders of the Hon'ble APTEL, Hon'ble Supreme Court and the orders of the Commission in DRP No.16 of 2011.

Section 86 (1) (f) of the Electricity Act, 2003, provides,- "*Adjudicate upon the disputes between the licensees, and Generating Companies and to refer any dispute for arbitration*".

This issue was dealt with by the Supreme Court in the Gujarat Urja case wherein it has been held that the Appropriate Commission may either adjudicate upon the disputes between the licensees and generating companies or may refer any dispute for arbitration.

The Commission in its orders dated 30-11-2011 in DRP.No.16 of 2011 has gone through various issues raised by Hon'ble APTEL in its orders in Appeal No.200 of 2009 and Appeal No.15 of 2011 has held that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86 (1)(f) to adjudicate upon the

dispute. Further as long as the Distribution Licensee is procuring power, from any trader inter-state or intra-state, disputes relating to such matter shall be dealt with by the State Commission under Section 86 (1)(f) of the Act.

The Commission notes that M/s.PTC India Ltd., has performed purely an intra-state transaction in this particular case. Power was supplied by generators who are located within Tamil Nadu and the distribution licensee is also located in Tamil Nadu. As the parties to the dispute are located within Tamil Nadu, the Commission rules that TNERC has jurisdiction to adjudicate the dispute on this count as well.

7.3. Liability of the Licensees in the present DRP

TANGEDCO (First respondent) has entered into an agreement with the Trading Licensee, M/s.PTC India Ltd., (Second respondent) for purchase of power available from various sources such as CPPs/IPPs/Co-gen plants located in the state of Tamil Nadu. An agreement is said to have been made between the petitioner company and the second respondent, M/s.PTC India Limited, for sale of power generated by it. Accordingly, an LoA dated 4-7-2009 has been issued by the second respondent. No such back to back agreement has been made as claimed by the petitioner. Thus, the first respondent is in no way connected with the agreement made between the petitioner company and the second respondent.

As per Clause 4 of the Power Purchase Agreement executed between the petitioner company and the second respondent, the power shall be supplied at the

'Delivery Point' of 110 kV bus available at the switch yard of the petitioner company, connected with the TNEB grid. Except this arrangement / facility of injecting the power into the grid, at the delivery point, no other terms and conditions of the PPA executed between the petitioner and the second respondent, are related to the first respondent.

As per the Agreement made by the first respondent with the second respondent, M/s.PTC India is supplying power from various sources such as CCPs, IPPs, Co-gen plants, etc., located in the State of Tamil Nadu. The power procured by them is injected into the Grid at the delivery point located at the premises of the generator. No specific name of the generator has been mentioned in the Agreement. It was in the look out of the second respondent to identify the sources of energy and to supply the same to the first respondent.

As per Clause No.11 of the PPA executed between the petitioner and the second respondent, the petitioner would allow 2% rebate, in case of payment made by the second respondent, within 10 days of presentation of the bill through fax. Whereas as per clause 8 of the Agreement between the first respondent and second respondent, 2% rebate is allowed when the payment is made within 7 days of presentation of the bill through fax. Thus, there is no inter connection or nexus for the TANGEDCO with regard to payments made between the first respondent and the petitioner, as the agreements have been executed separately with different set of terms and conditions.

Payment for the supply of power during June 2010 to August 2010 were made by TANGEDCO to M/s.PTC Power Limited with 2% rebate as the payments were made within 7 days in line with clause 8 of the agreement between them. Thus there is no breach of contract by the 1st Respondent in its contract with the 2nd Respondent.

The prayer of the petitioner being one for release of the amount of rebate deducted by the second respondent the dispute is between the petitioner and the second respondent and in no way the first respondent is connected with this dispute.

The first respondent is not in a position to verify each and every transaction made between the second respondent and various generators located in the State, to ensure whether all the payments are released correctly. There is no breach of contract whatsoever between the petitioner and the first respondent relating to the claim raised in the above petition. In view of the above, the first respondent TANGEDCO is discharged from the liability to make payment of the claim raised in the petition.

7.4. Liability of M/s.PTC India Ltd.,

The claim made by the Petitioner, OPG Power Generation Pvt. Ltd. in the present DRP is stated to be towards wrong deduction of rebate by the 2nd Respondent PTC while making payment of its invoices as follows:

Sl. No.	Invoice No.	Date	Units	Rate/Unit (in Rs.)	Amount (in Rs.)
1.	E0073	30-06-2010	9005896	5.27	4,20,57,534.32
2.	E0106A	31-07-2010	6564899	4.74	3,06,58,078.33
3.	E124	31-08-2010	22968000	4.67	10,72,60,560.00
		Total	38538795		17,99,76,172.70

It is seen that an agreement dated 01-06-2009 has been entered into between the Respondent No. 2, PTC with the Petitioner for supply upto 60 MW power from September 2009 or COD whichever is later to 31-5-2010.

Again a Supplementary agreement dated 27-10-2009 was also signed between the Petitioner and the 2nd Respondent, PTC, extending the validity of the Agreement till May 2014.

PTC vide its letter dated PTC/MTFG/TNEB/2541, dated 22-05-2010 participated in the tender no.02/TNEB/2010-11, dated 8th May 2010 floated by TNEB and submitted its proposal for sale of power to TNEB from June 2010 to May 2011 with a tariff as in Annexure – I and with the list of suppliers in Annexure – II. In the proposal submitted to TNEB, the tariff quoted by PTC for the month of June'10, July'10 and August 2010 was Rs.5.27 per unit for RTC Power at the Delivery Point as, *“Interconnection of plant system with TNEB system at 11/33/110/230kV level.”*

TNEB invited PTC to conduct negotiation relating to the Rate and Terms and Conditions vide its letter no. DIR/EE/AEE/PP/F.Purchase-June'10 to May'11/D.1021-3/2010, dated 27-05-2010.

Meanwhile, PTC vide letter dated 3rd June 2010, requested OPG Power Generation Pvt. Ltd., the Petitioner to start scheduling 55 MW of power from the Petitioner's plant located at Gummidipoondi from 00.00 Hours of 7th June 2010.

It was observed, that after negotiation, PTC accepted the tariff at Rs.5.17/kWh vide its letter dated 7th June 2010. In reply to the above letter of PTC dated 07-06-2010, TNEB informed vide letter no. CE/PPP/DIR/EE/AEE/PP/F. Purchase – June'10 to May'11 /D.276/10, dated 07-06-2010, the tariff at which it will pay the PTC and requested to inform the remarks regarding the rate as listed in the annexure. Further, in the said letter, TNEB requested PTC to confirm by return fax. The rate indicated was Rs.4.73 per unit for the month of June'10 to September'10.

The Petitioner communicated its acceptance for the rate intimated by TNEB through email dated 10-06-2010. The rate accepted for the month of June'10 to September'10 was Rs.4.73 per unit.

From the documents submitted, it is seen that finally PTC vide its letter dated 12th July 2010 has accepted the tariff as Rs.4.74 per unit for the sale of power available to PTC from CPPs/IPP's located in the state of Tamil Nadu for the months of June'10 to September '10 as below:

“.....we hereby confirm sale of power that is available to PTC from CPPs/IPP's located in the state of Tamil Nadu at a tariff of Rs.4.74 per kwh for the

month of June 2010 to September 2010 provided the annual average tariff for the period of June 2010 to May 2011 is agreed to by TNEB to be Rs.5.40 per kwh.”

From the above, it can be seen that the tariff finally accepted by PTC and TANGEDCO is Rs.4.74 per unit for the period from June 2010 to September 2010.

Further, PTC in their Counter Affidavit has also stated that the tariff payable by TANGEDCO for the sale of power by PTC was not finalized on the date of Invoice. The same was finalized only on 12th July 2010. The 2nd respondent has accepted that the three invoices were submitted by the Petitioner but stated that the same were received not on the day as per the invoice date but were submitted at a date much later than the dates of invoice and it is elucidated by the fact that on the date mentioned in the invoice the tariff was not yet finalized and the indicative tariff was totally different from those mentioned in the invoices and payments were made after the same was received from TNEB and therefore, there was no delay on part of the second respondent in making the payment. M/s.PTC has further stated that the payments were made by PTC within the stipulated period of 10 days and accordingly a rebate of 2% was deducted from the total amount of invoices in terms of the said agreement.

In the present case, the Petitioner, OPG Power Generation Pvt. Ltd. has only submitted copy of invoice no. E0073 - dated 30-06-2010, E0106A- dated 31-07-2010 and E124- dated 31-08-2010 with original claim. In respect of Invoice

Nos. E0073, dated 30-06-2010 and E0106A, dated 31-07-2010 the proof as to Credit Note or a new Invoice with a claim based on Rs.4.67/- per unit for the month of June 2010 and July 2010 were not submitted by the Petitioner. As per the email dated 10th June 2010 of the Petitioner, the Petitioner had accepted for the tariff payable by TANGEDCO to PTC which was Rs.4.73 per unit for the period from June 2010 to September 2010, whereas, the final tariff agreed between TANGEDCO and PTC was Rs.4.74 per unit.

A copy of Invoice alone was submitted by the Petitioner without any proof for date of submission(acknowledgement by PTC) and the amount mentioned as claim for the month of June 2010 and July 2010 varies with that of the amount finally accepted by the Petitioner itself. A Debit Note dated 31-03-2011 for Rs.35,99,523/- has been enclosed in the Petitioner's letter dated 21-04-2011 addressed to PTC requesting it to refund the cash discount deducted for the month of June 2010, July 2010 and August 2010 without details as to the date of original invoice, revised invoice, amount to be paid without deduction of rebate or after deduction of rebate, due date, etc.

PTC gave directions to schedule the Power to TNEB only in the letter dated 03-06-2010 and it has also clearly communicated that the payment will be made as and when the same is received from TNEB in respect of the above interim period and did not say anything specifically on the availing of rebate. PTC has stated that the Invoice for the month of June 2010 to August 2010 were not submitted on the

date of invoice but the same were submitted at a later date and the payment for the above period was made within the due date and the rebate availed by PTC is legal.

The Petitioner did not submit any letter supporting its stand that the Invoices were submitted actually on the date mentioned in the Invoice and there was no delay on the part of submission of invoice. Further, the Petitioner did not submit any letter supporting that the payment has to be made within 10 days from the date of submission of invoice to avail the rebate even for the interim period. The Petitioner started supplying the stipulated quantity of power to TNEB only based on the PTC's letter dated 03-06-2010 and now cannot complain that PTC has wrongly availed the rebate.

In view of the above reasons, the present claim made in the Petition is dismissed.

8. Appeal:

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person

(Sd)
(Dr.T.Prabhakara Rao)
Member

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission