

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

**PRESENT:-**

ThiruM.Chandrasekar	.... Chairman
Dr.T.PrabhakaraRao	.... Member
and	
Thiru.K.Venkatasamy	.... Member (Legal)

**Review Petition No.3 of 2016**  
**in**  
**M.P.No.30 of 2014**

CuddalorePowerGen Corporation Limited  
(Formerly known as Cuddalore Power Company Limited)  
Rep. by its Director, PriyadershiniRaghupathy  
443, Anna Salai, Teynampet  
Chennai – 600 018. ... Petitioner

(ThiruRahul Balaji  
Advocate for the Petitioner)

Vs.

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

...Respondent  
(ThiruM.Gopinathan  
Standing Counsel for the Respondent)

**Dates of hearing: 26-10-2016; 16-11-2016; 28-04-2017;  
02-06-2017; 01-10-2017 and 05-11-2019**

**Date of Order: 10-12-2019**

The above R.P.No.3 of 2016 against the orders of this Commission dated 29-08-2016 in M.P.No.3 of 2014 came up for final hearing on 05-11-2019. After hearing the learned Counsel for both the parties and after perusing the records, the Commission passes the following order:-

## ORDER

2. The Petitioner, CuddalorePowerGen Corporation has filed M.P.No.30 of 2014 with the prayer to order extending the date for financial closure of the project till 30-04-2016 and to direct the Respondent TANGEDCO to amend the PPA dated 28-09-2006 accordingly. The Petitioner has proposed to establish 2 x 660 MW thermal power project at Thiyagavalli and Kudikadu villages in Cuddalore district. The Power Purchase Agreement (PPA) between the Petitioner and TANGEDCO was approved by the Commission vide order dated 24-04-2008 in P.P.A.P.No.1 of 2006. As per clause 16 (4) (d) under the head "16. Grant of Approval" of the said order of the Commission dated 24-04-2008, the Petitioner should have achieved financial closure within 12 months from the date of approval of the PPA by the Commission (i.e.) on or before 24-04-2009. However, owing to the several difficulties expressed by the Petitioner extension of time was sought for achieving financial closure on several occasions and the same has also been granted by the Commission as detailed below:-

<b>Order No. and Date</b>		<b>Extension of time granted</b>
(i)	M.P.No.9 of 2009 dated 29-07-2009	: Time for financial closure extended upto 31-03-2010
(ii)	M.P.No.13 of 2010 dated 11-06-2010	: Time for financial closure extended upto 30-09-2011
(iii)	M.P.No.27 of 2011 dated 15-11-2011	: Time for financial closure extended upto 30-04-2012
(iv)	M.P.No.13 of 2012 dated 17-04-2013	: Time for financial closure extended upto 30-04-2014

3. While extending time for financial closure upto 30-04-2014 in M.P.No.13 of 2012, this Commission has clearly granted the extension of time on condition that the Petitioner should not ask for further extension of time. During the hearing on 28-04-2016 in the said M.P.No.30 of 2014, the Commission wanted to ascertain the

ground realities in the progress of the project and whereupon the Counsel for the Petitioner indicated that the efforts to get the land required for the project through the process of exchange had not been completed and that the pipeline beneath the land owned by the project needs to be removed. By considering the above submissions made by the Counsel for the Petitioner and other circumstances including the many extension of time for financial closures being granted by the Commission and also the submission made by the Chief Engineer, PPP who represented TANGEDCO that considering the surplus power position in the State, TANGEDCO is not interested any more in the project and it is for the project to look out for the prospective purchases for its power if at all the project comes to reality, this Commission closed the said M.P.No.30 of 2014.

4. The grounds on which the Petitioner seeks to review the orders in M.P.No.30 of 2014 are as follows:-

- (i) There is no such decision by the Chairman, TANGEDCO and Board of TANGEDCO that the Respondent are not interested in the project;
- (ii) The Commission has closed the said M.P.No.30 of 2014 solely on the ground that the Respondent is not interested in the project as the State is power surplus, which according to the Petitioner is not correct ;
- (iii) Events / facts mentioned in the Daily Order dated 28-04-2016 and the final order dated 29-08-2016 does not tally with regard to the submissions made by the Counsel for the Petitioner regarding the land required for the project;
- (iv) The Commission passed its orders based on the oral submission made by the Chief Engineer which according to the Petitioner, is not correct.

5. With regard to the grounds (i) and (iv) above, it is to be stated that if the submissions made by the Chief Engineer representing TANGEDCO is not correctly reflecting the views of TANGEDCO, it is for TANGEDCO to agitate the same and not for the Petitioner to oppose it. Secondly, the Chief Engineer, representing the TANGEDCO is the authorized person to represent TANGEDCO. However, in order to clarify the doubts raised by the Petitioner, the Commission in its Daily Order dated 12-06-2017 directed the Respondent to file an affidavit specifically answering the issue raised by the Petitioner that the oral submission made by the Chief Engineer during the hearing on 28-04-2016 is not that of the TANGEDCO but that of the Chief Engineer in her personal capacity. Although there is no need to examine this contention of the Petitioner in a Review Petition, in order to offer a fair chance to the Petitioner, we have directed the Respondent to file an affidavit in the above issue. The Respondent in its affidavit dated 23-06-2017 has filed an affidavit explaining the various stages of the State owned projects indicating their capacity and scheduled date of their commissioning. It has also been stated therein that the Chief Engineer, PPP is an authorized representative of TANGEDCO and the submissions made by her on 28-04-2016 before the Commission were on behalf of TANGEDCO and not in her personal capacity. We have to accept the above submission of the Respondent in the absence of any materials to the contrary.

6. As regards the plea of the Petitioner that the Commission ought not to have closed M.P.No.30 of 2014 by accepting the contention of the Respondent that the State is power surplus, it is to be stated that the question whether the State is power surplus or not is not the real issue in granting extension of period of financial closure but it is the feasibility of the project to come into existence within the time schedule. It is an admitted fact that despite several extension of period for financial closure is

granted, the Petitioner is not able to place on material any progress made by it in bringing the project into operation but is only adopting the dilatory tactics to pull on the time. Even on the previous occasion on 17-04-2013, the Commission has indicated that the extension of time was granted as a last chance and no more extension should be sought for.

7. As regards the contention that there is a difference between Daily Order and the final orders of the Commission, we have to state that the Daily Order does not contain all the submissions made by the Counsels and all minute details of the proceedings. It mainly indicates the stages of the case with noteworthy points if any. Therefore, this issue cannot be construed as an error on the face of the record required to be reviewed.

8. During the hearing on 01-10-2019, the learned Counsel appeared for the petitioner has sought for two weeks time for filing additional affidavit in the matter. Accordingly, time as prayed for by him was granted and on 05-11-2019, the Counsel for the petitioner has filed an additional affidavit. In the additional affidavit dated 05-11-2019, the petitioner has stated facts which are wholly unconnected with the present Review Petition. In the said affidavit, the petitioner has stated that the statement of the respondent that power is in surplus, is misleading. He has also urged for the first time that as per the terms of MoU, the erstwhile company, namely TNEB would make necessary arrangements for transfer of land to the petitioner's project. The petitioner has also submitted that the petitioner had to put tremendous efforts and huge expenditure in procuring the lands required for the project and thus therefore became the primary reason for not achieving the financial closure. By the above averment, the petitioner has indirectly admitted the fact of not achieving

financial closure. The petitioner has also averred the violation of contractual obligation by TANGEDCO. All the above averments are not relevant to decide the merit of the Review Petition. Accordingly, the Commission does not indulge itself on the veracity of the averments made in the affidavit filed by the petitioner on 05-11-2019.

9. Be that as it may, the Conduct of Business Regulations of the Commission provide for review only on limited grounds. The said regulation is re-produced below.

*"43 (1) The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decision, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Review of the decisions, directions and orders.*

*(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations."*

10. It may be seen from the above that the scope of review is limited and it cannot be enlarged or converted into an appeal. As per the above regulation, review of an order is permissible only if (i) the order was made under a mistake of fact or (ii) the order was made under ignorance of any material fact or (iii) there is any error apparent on the face of the record. The orders passed by the Commission in M.P.No.30 of 2014, is not made under any mistake of fact or it has been passed under ignorance of any material fact nor is there any error apparent on the face of

the record warranting review of the same under the above regulation. The petitioner's prayer for extension of financial closure which has been granted several times in the past resulted in no progress in the project. Since the factors required have not been established by the petitioner as per the provisions of the above said regulation 43, the Commission is unable to accede to the prayer of the petition. The Review Petition is accordingly dismissed.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
**Member**

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission