

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

**PRESENT:**

**Dr.T.PrabhakaraRao**

.... **Member**

**and**

**Thiru K. Venkatasamy**

.... **Member (Legal)**

**R.A. No.1 of 2019**

M/s.Ramnad Solar Power Ltd.  
Adani House  
Nr. Mithakhali Six Roads  
Ahmedabad – 380 009  
Gujarat.

... Petitioner in R.A.No.1 of 2019

**R.A. No.2 of 2019**

M/s. Kamuthi Renewable Energy Ltd.  
Adani House  
Nr. Mithakhali Six Roads  
Ahmedabad – 380 009  
Gujarat.

... Petitioner in R.A.No.2 of 2019

**R.A. No.3 of 2019**

M/s.Adani Green Energy (Tamil Nadu) Ltd.  
Adani House  
Nr. Mithakhali Six Roads  
Ahmedabad – 380 009  
Gujarat.

... Petitioner in R.A.No.3 of 2019

(Thiru RahulBalaji  
Advocate for the Petitioners  
in R.A.Nos.1,2 and 3 )

Vs.

1. Tamil Nadu Generation & Distribution Company Ltd.  
(TANGEDCO)  
Represented by its Chairman  
No.144, Anna Salai  
Chennai – 600 002.
2. Tamil Nadu State Load Despatch Centre (TNSLDC)  
Represented by Director (Operation)  
144, Anna Salai  
Chennai - 600 002.
3. Tamil Nadu Transmission Corporation Limited (TANTRANSCO)  
144, Anna Salai  
Chennai – 600 002.
4. The Ministry of New and Renewable Energy  
Represented by its Secretary  
Block-14, CGO Complex  
Lodhi Road, New Delhi – 110 003.

...Respondents  
(in R.A.No.1,2 and 3 of 2019  
Thiru M.Gopinathan, Standing  
Counsel for R1, R2 and R3)

**Dates of hearing : 01-07-2019 and 16-07-2019**

**Date of Order : 30-07-2019**

#### **COMMON ORDER**

Pursuant to the orders of the Hon'ble APTEL dated 30-05-2019 in Appeal Nos. 350–352 of 2017 directing this Commission to pass orders in the light of the observations made in the above said Appeals and also directing the Appellants and the Respondents in the said Appeals to appear before this Commission on 01-07-2019 without further notice, these Remand Applications came to be listed on 01-07-2019. Thiru Rahul Balaji, Advocate appeared for the Remand Applicants and made elaborate submissions and prayed that the main petition filed before this Commission by the Remand Applicants be treated as a miscellaneous one and

accordingly a direction may be issued to the Registry to register them as Miscellaneous Petition (M.P.).

2. Inasmuch as the Quorum of the Commission for hearing is two among the three Members (vide Regulation 12 of the TNERC–Conduct of Business Regulations, 2004), the case was again posted for further hearing on 16-07-2019 upon the assumption of charge by the Member (Legal) in this Commission and the detailed submissions of Thiru Rahul Balaji, learned Counsel appearing for the Remand Applicants and Thiru M. Gopinathan, Standing Counsel for TANGEDCO appearing for R1, R2 and R3 was heard by the Commission.

3. The Remand Applicants have filed petitions before this Commission *inter alia* with the following prayer:-

- (i) to direct the Respondents to forthwith stop issuing backing down / curtailment instructions to Petitioner's Solar Power Project as the backing down is causing huge losses to the petitioner almost on daily basis, pending final decision in the matter;
- (ii) to issue a direction to Respondent to strictly enforce / implement "Must Run" status on Solar Power Plant of the Petitioner in the State of Tamil Nadu and consequently direct the Respondent not to issue orders to the solar power plants to switch off generation or to back down generation;
- (iii) to issue appropriate directions to consider deemed generation to solar plant for the loss of generation due to outages / backing down instructions of Respondents and to approve the methodology for estimating deemed generation;

- (iv) to direct the Respondents to compensate the Petitioner corresponding to loss of generation on account of backing down instructions with retrospective effect at the tariff of the PPAs;
- (v) to declare that all directions issued by the Respondents to the Solar Plants in the State of Tamil Nadu, directing them to switch of generation or back down generation, till date as invalid, in case they are not able to establish compliance with above stated provisions and to issue guidelines for formal procedure to be adopted and conditions to be satisfied for carrying out / giving backing down instructions in future;
- (vi) pass any such other order/s and or direction/s, which the Commission may deem fit and proper in the facts and circumstances of the case.

4. Thiru Rahul Balaji Counsel for Remand Applicants would submit that the Commission has various functions and one such functions is to regulate the power procurement and essentially the prayer in the main petition falls within the domain of power procurement and the enforcement of the applicable regulations. He has also argued that the energy from solar, wind, hydro and nuclear are renewable sources of energy and are all given “Must Run” status meaning that the energy generated from such source shall go as a waste, if unutilised and hence shall not be curtailed (vide regulation 8 (3) (b) of the Tamil Nadu Electricity Grid Code). The learned Counsel has also heavily placed reliance on the observations of Hon’ble APTEL in para 8 (ii) to (viii) of its order. He also draw attention of this Commission to clause 2 (d) of the Energy Purchase Agreement whereby parties must adhere to and comply with the provisions of the Indian Electricity Code and Tamil Nadu Electricity Grid Code and other applicable Regulations governing the Renewable

Energy Sources. He has also pointed out that as per clause 5.2 (u) of CERC (Indian Electricity Grid Code) Regulations, 2010 all SLDCs/RLDCs are obliged to evacuate available solar power treating them as "Must Run" status. He would further submit that the matter is in principle related to procurement of electricity from solar plant of the Appellants and as such this is a regulatory aspect and not adjudicatory function and the determination of deemed generation is the consequential one.

5. On the other hand, the learned Standing Counsel appearing for the Respondents R1 to R3 would submit that there is no categorical findings of the Hon'ble APTEL that the main petition filed by the Remand Applicants before this Commission should be treated as Miscellaneous Petitions and that the Hon'ble APTEL has only gone through a part of the prayers of the Applicant and has laid down the principle that the classification of any petition filed before this Commission should be done based on the prayer in the petitions and gave the liberty to the Commission in this case to go into the prayer of the Remand Applicants made in their original petitions filed before this Commission and to take a decision as to the classification of the petitions of the Remand Applicants.

6. We have carefully gone through the arguments made both sides and also we have gone through the petitions originally filed by the Remand Applicants before this Commission.

The Hon'ble APTEL in its order dated 30<sup>th</sup> May 2019 in Appeal No. 350 of 2017 *has held as follows:-*

*“From the plain reading of the prayer made by the Appellant in their petition filed before the State Commission, it is clear that the Appellant approached the State Commission regarding the non-adherence of the provisions of IEGC and TNEGC regarding the “Must Run” status of the Solar Power Plants by SLDC. The Appellant requested the State Commission to direct SLDC to stop issuing backing down instructions and strictly enforce “Must Run” status of Solar Power Plants.*

*Basically the Appellant approached the State Commission for ensuring effective implementation of the Regulations regarding the “Must Run” status of the Solar Power Plant. The Energy Purchase Agreement clearly provides for adherence of the relevant provisions of IEGC and TNEGC regarding “Must Run” status of the Solar Power Plants.*

*This matter is in-principle related to procurement of electricity from the Solar Power Plants of the Appellants. This is a regulatory aspect and not an adjudicatory function .....*”

7. From the above, it is clear that the prayer of the Petitioner for enforcing the “Must Run” status on Solar Power Plants of the Petitioner in the State of Tamil Nadu is essentially a regulatory aspect as pointed out by the Hon’ble APTEL.

8. The Hon’ble APTEL in the above said order has also held as follows:-

*“It is the nature of the prayer which will define the nature of the petition. If the nature of the prayer calls for the exercise of the regulatory powers of the*

*State Commission then it is a regulatory and it will be termed as Miscellaneous Petition, whereas if the nature of the petition is such that it is not regulatory but adjudicatory then only it can be termed as a Dispute Resolution Petition. It is also relevant to point out here that the mere fact that the Appellant has filed the petition under section 86 (1) (f) and therefore it should be termed as a Dispute Resolution Petition is wrong and erroneous and need not to be relied upon. In all such cases one must be guided by the nature of the prayer alone .....*”.

9. Now let us examine each prayer of the Applicant in the light of the above dictum laid down by the Hon'ble APTEL as to whether the petition falls under the regulatory or adjudication power of this Commission. It is seen that the Applicant in the petition filed before this Commission has made the following prayers:-

- (a) to direct the Respondents to forthwith stop issuing backing down / curtailment instructions to Petitioner's Solar Power Project as the backing down is causing huge losses to the Petitioner almost on daily basis, pending final decision in the matter;
- (b) to issue a direction to Respondent to strictly enforce / implement “Must Run” status on Solar Power Plant of the Petitioner in the State of Tamil Nadu and consequently direct the Respondents not to issue orders to the Solar Power Plants to switch off generation or to back down generation;
- (c) to issue appropriate directions to consider deemed generation to solar plant for the loss of generation due to outages / backing down instructions of Respondents and to approve the methodology for estimating deemed generation;

- (d) to direct the Respondents to compensate the Petitioner corresponding to loss of generation on account of backing down instructions with retrospective effect at the tariff of the PPAs;
- (e) to declare that all directions issued by the Respondents to the Solar Plants in the State of Tamil Nadu, directing them to switch of generation or back down generation, till date as invalid, in case they are not able to establish compliance with above stated provisions and to issue guidelines for formal procedure to be adopted and conditions to be satisfied for carrying out / giving backing down instructions in future.
- (f) to pass any such other order/s and or direction/s, which the Commission may deem fit and proper in the facts and circumstances of the case.

10. We will now proceed to examine the nature of each prayer. Item Nos. (a) and (b) of the above prayer read as follows:-

- (a) *“to direct the Respondents to forthwith stop issuing backing down / curtailment instructions to Petitioner’s Solar Power Project as the backing down is causing huge losses to the Petitioner almost on daily basis, pending final decision in the matter;*
- (b) *to issue a direction to Respondent to strictly enforce / implement “Must Run” status on Solar Power Plant of the Petitioner in the State of Tamil Nadu and consequently direct the Respondents not to issue orders to the Solar Power Plants to switch off generation or to back down generation;”*

It may be seen that both the above prayers in effect seek to enforce the “Must Run” status of the power plants of the Applicant. In this connection, the following



observation of the Hon'ble APTEL in Appeal No. 350 of 2017 would be relevant to quote:-

*“The Appellant requested the State Commission to direct SLDC to stop issuing backing down instructions and strictly enforce “Must Run” status of Solar Power Plants.*

*Basically the Appellant approached the State Commission for ensuring effective implementation of the Regulations regarding the “Must Run” status of the Solar Power Plant. The Energy Purchase Agreement clearly provides for adherence of the relevant provisions of IEGC and TNEGC regarding “Must Run” status of the Solar Power Plants.*

*This matter is in-principle related to procurement of electricity from the Solar Power Plants of the Appellants. This is a regulatory aspect and not an adjudicatory function .....*”

In view of the above, we hold that the above two prayers are regulatory in nature, since the above prayers seek to ensure effective implementation of the Regulations regarding the “Must Run” status of Solar Power Plants and also related to the procurement of electricity from the Solar Power Plants.

11. The prayer in Item (c ) in para 9 reads as follows:-

*“(c) to issue appropriate directions to consider deemed generation to solar plant for the loss of generation due to outages / backing down instructions of Respondents and to approve the methodology for estimating deemed generation;”*

The above prayer involves disputed question of facts and law. It has to be ascertained from the records of the SLDC as to the actual duration for which backing down instructions were issued to solar generators and also whether any power actually flowed in the Grid during such period and what was the Grid frequency when backing down was ordered and whether backing down of solar power would have been avoided by backing down any conventional power and what is the actual quantum of energy not evacuated and what would be the tariff payable for non-drawal of such solar power. It has not been brought to our notice during the hearing by the Counsels appearing for both sides as to any legal provision in the Regulations or in the EPA which provides for any formula or criteria for estimating deemed generation and hence this prayer cannot be said to seek implementation of any Regulations or connected with the procurement of electricity. Hence, we hold that decision on the above issue cannot be arrived by the Commission without adjudicating the above issue after giving opportunity to the party concerned.

12. The prayer of the Applicant in Item No. (d) in para 9 reads as follows:-

*“(d) to direct the Respondents to compensate the Petitioner corresponding to loss of generation on account of backing down instructions with retrospective effect at the tariff of the PPAs;”*

It is needless to point out that without adjudicating the issue it is not possible for us to estimate the actual generation which was stopped on account of backing down instructions issued by the Respondent. Further, the Applicant has also sought to compensate the said loss with the retrospective effect at a tariff of the PPAs. As pointed out in para 11 above, there is no legal provision in the Regulations or in the

EPA for arriving compensation on account of loss of generation. Hence, the relief sought for by the Applicant cannot be decided without adjudicating the issue.

13. The prayer of the Applicant in Item No. (e ) in para 9 reads as follows:-

*“(e) to declare that all directions issued by the Respondents to the Solar Plants in the State of Tamil Nadu, directing them to switch of generation or back down generation, till date as invalid, in case they are not able to establish compliance with above stated provisions and to issue guidelines for formal procedure to be adopted and conditions to be satisfied for carrying out / giving backing down instructions in future.”*

In the above prayer, the Applicant has sought to declare all the directions issued by the Respondent Licensee to the solar plants in the State of Tamil Nadu to switch of the generation or backing down generation till date as invalid and to issue guidelines or formal procedures to be adopted and conditions to be satisfied for giving backing down instructions. A decision on the above prayer cannot be arrived at without adjudicating the said issue and after thoroughly going through the legal and factual issues involved in the matter. The question whether such guidelines need to be issued at all and whether the Commission is empowered to issue such directions or guidelines within the frame work of the Electricity Act, 2003 itself involves complicated question of law to be adjudicated by the Commission.

14. In view of the foregoing discussions, we hold that the prayer in Items (a) and (b) involves regulatory aspect and other prayers in Items (c), (d) and (e ) referred to para 9 above involves adjudicatory functions of the Commission. Accordingly, we

direct the Registry to register the petition filed by the Applicant before this Commission as a Dispute Resolution Petition upon its re-presentation with applicable fee as per the TNERC Fees and Fines Regulations, 2004 and thereafter list the same for admission as per the TNERC Conduct of Business Regulations, 2004.

With the above orders, the Remand Applications are disposed of.

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

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

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission