

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

and

Dr.T.Prabhakara Rao

.... Member

M.P.No.4 of 2019

Union of India
Represented through
The Chief Electrical Distribution Engineer
Office of the Principal Chief Electrical Engineer
Southern Railway
7th Floor, NGO Annex, Park Town
Chennai – 600 003.

... Petitioner
(Shri Siddarth Bahety,
Advocate for the Petitioner)

Vs

1. The Chairman and Managing Director
TNEB Limited
10th Floor, NPKRR Maligai
No.144, Anna Salai
Chennai – 600 002.
2. The Director / Distribution
TANGEDCO
10th Floor, NPKRR Maligai
No.144, Anna Salai
Chennai – 600 002.
3. The Director (Operation)
TANTRANSCO
State Load Dispatch Centre
MLDC Block, TNEB Complex
No.144, Anna Salai
Chennai – 600 002.

4. Chief Engineer (Operation)
State Load Despatch Centre
1st Floor, SLDC Block, TNEB Complex
No.144, Anna Salai,
Chennai – 600 002.
5. The Superintending Engineer
Open Access and Coordination
State Load Despatch Centre
1st Floor, SLDC Block, TNEB Complex
No.144, Anna Salai
Chennai – 600 002.

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

Date of hearing : 22-02-2019

Date of Order : 25-03-2019

The M.P.No.4 of 2019 came up for admission on 22-02-2019. The Commission upon hearing the submissions of the learned Counsel for the petitioner and after perusing the records relating to the above said M.P.No.4 of 2009 passes the following:-

ORDER

1. Prayer of the Petitioner in M.P.No.4 of 2019:-

The prayer of the petitioner in the above M.P.No.4 of 2019 is to-

- (a) direct the Respondents to process the applications of the petitioner and grant non-discriminatory open access to Railways as deemed licensee with immediate effect for facilitating flow of power from Ratnagiri Gas and Power Pvt Ltd power plant and any other sources till the Railway's Traction Substations;
- (b) direct the Respondents to consider all the drawal points from ISTS located within the Tamil Nadu as a single entity for the purpose of Scheduling and

Energy Accounting as Central Electricity Regulatory Commission in their order dated 05.11.2015 clearly directed that the drawal points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling and the group of TSSs situated in a State and connected directly with ISTS may be treated as one fragmented control area.

- (c) direct the Respondents to claim the backup power supply charges as per Traction Tariff approved by the Commission for the backup power supplied by TANGEDCO only and not for the power which is wheeled through open access.
- (d) direct the Respondents that Harmonics and Low Power Factor surcharge shall not be claimed on power purchased from other sources through open access and surcharges may be levied only on the backup power supplied by TANGEDCO as per interim order of the Hon'ble High Court of Madras in W.P.No.28977 of 2015 pending disposal of the Writ Petition No.28977 of 2015 before the Hon'ble High Court of Madras and M.P.No.25 of 2015, I.A.No.1 of 2015 pending before the Commission.

2. Facts of the Case:-

The above Miscellaneous Petition has been filed for allowing Non-Discriminatory Open Access to Southern Railway as Deemed Licensee by TANTRANSCO for conveyance of 100 MW of power allocated by Ministry of Power from M/s.Ratnagiri Gas and Power Private Limited (RGPPL) for Railway Traction purpose in the State of Tamil Nadu and for determination of charges for backup power supply from TANGEDCO and defining the terms and conditions for availing power supply under open access as Deemed Licensee.

3. Contentions of the Petitioner:-

The contention of the petitioner relevant to the issue to be determined in this case is briefly set forth as follows:-

3.1. The Southern Railway is availing power supply for Railway Traction from TANGEDCO at 110 kv for through 31 supply points spread over the State of Tamil Nadu. Considering the unique characteristics of Railway Traction, the Commission have adopted separate tariff category HT-1B for Railway Traction from 01-08-2010 and tariff now being adopted for Railway Traction is as follows:-

Tariff Order	Date with effect from	Category	Demand Charges ₹/kVA	Energy Charges ₹/kWh
T.O.1 of 2012	01-04-2012	HT-1B	250	5.50
T.O.9 of 2014	12-12-2014	HT-1B	300	6.35
T.P.1 of 2017	11-08-2017	HT-1B	300	6.35

3.2. The average cost of energy for Railway Traction paid to TANGEDCO in the State of Tamil Nadu at the above tariff during the last three years are as follows:-

Year	Total Energy consumed in MU	Total charges paid in Rs.Crore	Average cost per unit in Rs./Unit
2015-16	834.35	676.19	8.10
2016-17	810.29	657.38	8.11
2017-18	816.19	689.05	8.44

3.3. It is submitted that Indian Railways have the status of Deemed Distribution Licensee by virtue of provisions contained in the section 11(a) & 11 (g) of Indian Railways, Act 1989 read with the Third Proviso to section 14 and section 173 of Electricity Act 2003.

3.4. It is submitted that as per the policy decision of Ministry of Railways, Southern Railway have entered into a Power Purchase Agreement (PPA) with M/s. PTC India Ltd on 04.08.2016 for supply of 120 MW of power for Railway Traction in the State of

Tamil Nadu at a landed cost of Rs.5.70 per unit at the injection point i.e. at the metering point in Railway Traction Substation.

3.5. M/s. PTC India Ltd, on behalf of Southern Railway have submitted the application for Intra-State Short Term Open Access (STOA) on 08.08.2016, 11.08.2016, 17.08.2016, 08.12.2016, 06.01.2017 & 02.02.2017 to SLDC/TANTRANSCO/Chennai. However, SLDC returned the applications stating that as per sections 14 to 17 of the Electricity Act, 2003, without the approval of the Commission, Southern Railway may not be treated as distribution licensee and issue open access approval.

3.6. The Southern Railway is a Deemed Licensee in terms of third Proviso to section 14 of Electricity Act, 2003 and this has been dealt in detail and approved by Central Electricity Regulatory Commission (CERC) in their Order in Petition No.197/MP/2015.

3.7. The Hon'ble Appellate Tribunal for Electricity (APTEL) prima facie agreeing with the order of the Hon'ble CERC that Railways are Deemed Licensee, refused to grant stay sought by the West Bengal State Electricity Distribution Company Ltd. (WBSEDCL) in I.A.No.444 & 445 of 2015 in the appeal filed by them in A.No.276 of 2015.

3.8. The Hon'ble APTEL while disposing I.A.Nos. 416 & 478 of 2016 filed by TNEB, for impleading themselves as a party in Appeal No.276 of 2015, on

27.09.2016 have reiterated that their above order dated 16.12.2015 to continue till further orders.

3.9. The Southern Railway have also sought clarification from the Commission and the Commission vide Letter No.TNERC/AD(F&EA)/ D/(T)/F.Southern Railway/D.No.58/2017 dated 11.01.2017 have clarified that;

"Southern Railway may approach the State Transmission Utility (STU) for procuring power through open access as deemed licensee for use in Railway Traction as per Regulation 9 of TNERC (Grid connectivity and Intra-State Open Access) Regulation, 2014. There is no need to approach the Commission for any specific orders at this stage and it is open to Southern Railway to proceed further in the manner provided in Law".

3.10. SLDC/Chennai has again refused open access to Southern Railway as deemed distribution licensee vide their letter dated 15.02.2017 and stated that Southern Railway's Open Access application will be considered only after the outcome of the Appeal Petition No.276 of 2015 filed by West Bengal State Electricity Distribution Company Ltd. (WBSEDCL) pending before APTEL in which TNEB have also impleaded themselves as a party.

3.11. Subsequently Ministry of Power (MoP) has allocated 100 MW of power from M/s.Ratnagiri Gas and Power Pvt. Ltd., Maharashtra to Southern Railway for use in Tamil Nadu for five years upto 31.03.2022. Accordingly Southern Railway have entered into PPA with M/s.Ratnagiri Gas and Power Pvt Ltd, Maharashtra on 25.04.2017 for supply of 100 MW of power at a landed cost of Rs.5.50 per unit for electric traction in the State of Tamil Nadu for five years from 01.04.2017 to 31.03.2022 as per the allocation of MoP.

3.12. Consequent to signing of PPA with M/s.Ratnagiri Gas and Power Pvt Ltd., the Southern Railway has requested SLDC/Chennai vide their office letter dated 19.04.2017 to accord concurrence and NOC for availing the 100 MW power allocated from M/s.Ratnagiri Gas and Power Pvt Ltd under MTOA through ISTS of CTU. However, SLDC Chennai has again declined to accord concurrence and NOC for availing open access as deemed distribution licensee.

3.13. The petitioner is authorised to distribute electricity under the Railways Act, 1989 read with Electricity Act, 2003. Section 11 of the Railways Act, 1989 specifically authorizes the Railway Administration to undertake electric supply and distribution and such authority existed even during the period prior to the Electricity Act, 2003.

3.14. Sub-clause (g) of section 11 of the Railways Act, 1989 provides for the powers of the Railway Administration to erect, operate, maintain, repair etc. any electric traction equipment, power supply and distribution installation in connection with the working of the Railways. Besides the above, sub-clause (h) of the said section 11 provides for the power in the petitioner to do all other acts necessary for making, maintaining, altering and repairing and using Railways.

3.15. Section 11 of the Railways Act, 1989 would apply notwithstanding anything contained under the Electricity Laws for the time being in force, namely, the requirement of the licence for transmission, distribution or supply of electricity under the Electricity Act.

3.16. The Central Electricity Regulatory Commission has held that the petitioner would be governed by the Railways Act and are entitled for grant of open access in connection with working of the Railways as per the provisions applicable to a distribution licensee. The Central Commission has also directed all concerned RLDCs, State Transmission Utilities and SLDCs to facilitate long term access and medium term access in terms of the Connectivity Regulations from the generating stations or other sources to the facilities and network of Indian Railways.

3.17. The petitioner is authorised to distribute electricity and as such the petitioner in such capacity is entitled to procure electricity from any source of its choice. The petitioner has made PPA with M/s.PTC India Limited from 04-08-2016 to 31-03-2017 and now entered into a PPA with M/s.Ratnagiri Gas and Power Pvt. Ltd., Maharashtra for a period of five years from 01-04-2017 as per the allocation of Ministry of Power. Further the petitioner is setting up a 1000 MW (4x250 MW) thermal power plant at Nabinagar, Bihar in collaboration with NTPC Limited, which will be managed by Bharatiya Rail Bijlee Company Limited (A Joint Venture of NTPC and the Indian Railways). 90% of the generated capacity of the plant has been allocated to Railways, out which, 300 MW is proposed to be allotted from the 3rd and 4th units of the power plant to the States of Tamil Nadu and Kerala.

3.18. The petitioner is entitled to seek Open Access on the existing transmission and/or distribution line of the licensees for getting the electricity from the place of generation to the Interconnection Point of the Railways Network.

3.19. Open Access has already been accorded to Railways as Deemed Licensee and power supply through Open Access availed at six States viz., Maharashtra, Madhya Pradesh, Gujarat, Jharkhand, Rajasthan, Uttar Pradesh (Central Transmission Utility supply points) and Karnataka and NOC has been accorded in Haryana.

3.20. The petitioner is agreeable to provide energy metering, monitoring and accounting system as demanded, however the condition stipulated for Railways to furnish Traction Substation (TSS) wise block wise daily day-ahead drawal schedule is discriminatory and in violation of the order of the Hon'ble CERC in Petition No.197/MP/2015 dated 05-11-2015 and the condition for payment of fixed charges is not governed by any Regulation.

4. Findings of the Commission:-

4.1. Before proceeding to examine the main prayer of the petitioner for directing the respondents to process their application and grant non-discriminatory open access to Railways as Deemed Licensee, we find it appropriate to consider in the first instance as to whether Railways can be termed to be a Deemed Distribution Licensee in the State of Tamil Nadu.

4.2. We have already heard the counsel for the Railways on this question. The contention of the petitioner is that Indian Railways have the status of Deemed Distribution Licensee by virtue of the provisions contained in sections 11 (a) and 11(g) of Indian Railways Act, 1989 read with third proviso to section 14 and section 173 of the Electricity Act, 2003 and that the CERC in its order dated

05-11-2015 in Petition No.197/MP/2015 has accorded such status and the same has not yet been stayed by the Hon'ble APTEL in the appeal pending before it against the said decision. .

4.3. In view of the above, we are of the view that it would be pre-mature on the part of the Commission to go into the merit of the submissions of the petitioner at this stage. To entertain a petition from anyone in the capacity as a Licensee or a Deemed Licensee, such petition should have been filed in the manner as provided for under section 15 of the Electricity Act, 2003. Even in such cases, such as the petitioner's who claims to be a Deemed Licensee under section 14 (3) of the Electricity Act, 2003 which do not require obtaining of licence , still the provisions of section 16 of the Act would be applicable. The said section is reproduced for reference:-

“Section 16. (Condition of licence):

The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.”

It may be seen that the above provision of law requires that general or specific condition applicable to the Deemed Licensee shall be specified by the appropriate Commission. This cannot be done unless a person who claims to be a Deemed Licensee approaches the Commission with such a petition.

4.4. Even the Hon'ble CERC's order which is relied upon by the petitioner specifically says in para 45 as follows:-

x x x

“Therefore, the Central Commission and State Commissions are required to specify the general or specific conditions of licence applicable to the deemed licensees. As and when Indian Railways decides to undertake transmission, distribution or trading in electricity as deemed licensee under third proviso under section 14 of the Electricity Act, they will be required to approach the respective State Commission for specifying the general or specific conditions of licence, if the concerned State Commission has not already specified the terms and conditions of licence under proviso to section 16 of the Act.”

4.5. Therefore, we are unable to be of any help to the petitioner as we cannot admit the petition in its present form and in the result, we are constrained to dismiss the same with liberty to the petitioner to approach the Commission appropriately in the manner known to law.

. The petition is disposed of on the above lines.

5. 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 the copy of this order by the aggrieved person.

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

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

//True copy//

Secretary
Tamil Nadu Electricity
Regulatory Commission

