

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.267 of 2014

Dated: 15th April, 2015

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

M/s. Cauvery Power Generation Chennai Pvt. Ltd.,
No.5 Ranganathan Garden,
Anna Nagar, Chennai-600040.

.... Appellant

Versus

1. Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmiipathy Salai,
Egmore, Chennai-600008.
2. Tamil Nadu Generation and Distribution Corporation Ltd.,
NPKRR Maaligai,
144, Anna Salai,
Chennai-600002.
3. The Chief Engineer/PPP,
Tamil Nadu Electricity Board,
6th Floor, Eastern Wing,
144, Anna Salai,
Chennai-600002.
4. Director/Operation
TANTRANSCO,
144, Anna Salai,
Chennai-600002.

.... Respondents

Counsel for the Appellant :

Mr. Apoorva Misra
Ms. Pallavi Mohan
Mr. Vinod Kumar
Mr. Vishal Anand

Counsel for the Respondents:

Mr. Vallinayagam
Mr. Swapnil Verma

JUDGMENT

Rakesh Nath, Technical Member

The present Appeal has been filed by Cauvery Power Generation Chennai Pvt. Limited against the order dated 15.09.2014 passed by the Tamil Nadu Electricity Regulatory Commission (“State Commission”) in a Petition filed by the Appellant for fixing the tariff for the infirm power supplied by the Appellant’s thermal power project during its testing and trial run till the commercial operational date (“CoD”). The Appellant is a generating company which has set up 1x63 MW power project for supplying power to third parties. The State Commission is Respondent No.1. TANGEDCO, generating and distribution company is the Respondent No.2. Tamil Nadu Electricity Board is the Respondent No.3. TANTRANSCO, the State Transmission Utility is the Respondent No.4

2. The brief facts of the case are given as under:-

- a) The Appellant has set up coal based power plant in Tamil Nadu with installed capacity of 1x63 MW. The Appellant’s plant was granted approval by TANTRANSCO, the Respondent No.4 herein for grid connectivity on 1.9.2012. Thereafter, an agreement dated 5.9.2012 was entered into between Appellant and 2nd Respondent for parallel operation, wheeling of power to the destination of the Appellant’s choice using the transmission/distribution network of the licensee.
- b) By letter dated 1.10.2012, the Appellant informed the 2nd Respondent that the Appellant’s plant was ready to be synchronized and requested that infirm power generated by the plant till the plant achieved commercial

operation be accepted by the 2nd Respondent. The Appellant wrote another letter dated 4.10.2013 but no response was forthcoming. Appellant filed a Petition before the State Commission seeking direction to the 2nd Respondent to accept the infirm power from the Appellant's power plant at the rates to be fixed by the State Commission. Before the said Petition was taken up, Respondent No.4 sent a communication to Appellant allowing synchronization of the power plant with the grid in the presence of the Respondent's officials. Thereafter, synchronization was achieved in the presence of the Respondent's officials on 17.10.2012. On 18.12.2012 the State Commission disposed off the Petition filed by the Appellant stating that the Appellant must exhaust its remedy as available with the Respondent Nos. 2 and 4.

- c) By letter dated 25.10.2012, the Appellant again requested the Respondent No.2 for accepting infirm power. The Respondent No.2 by letter dated 30.12.2012 agreed to accept the infirm power from 26.10.2012 and directed the Appellant to approach the State Commission to fix the tariff for such infirm power. The Appellant's plant achieved CoD on 16.11.2012.
- d) Thereafter, the Appellant filed a Petition before the State Commission for fixing of tariff for infirm power injected into the grid from the date of synchronization till the date of CoD, relying on the cost of similar plant that was using imported coal.
- e) The State Commission passed impugned order dated 15.9.2012 holding that the Appellant is liable to pay for the purported services provided to the

Appellant by offering the grid for conducting tests and trial runs by introducing a factor, namely “Grid Facilitation Factor” to compensate the 3rd Respondent. The State Commission also decided the rate of infirm power after accounting for grid facilitation factor. The State Commission also held that the Appellant is not entitled to claim payment for power injected from 17.10.2012 till 25.10.2012 as there was no express approval from the Respondent No. 3.

3. In this Appeal following three issues have been raised:-
 - (A) Introduction of grid facilitation factor
 - (B) Adoption of cost of Indian coal for the purpose of fixation of price for infirm power.
 - (C) Entitlement of the Appellant to claim charges for infirm power from the date of synchronization till acceptance of infirm power by the Respondent No.2 i.e. from 17.10.2012 to 25.10.2012.
4. We have heard the Learned Counsel for the parties. It was pointed out by the Learned Counsel for the Appellant that the first two issues are covered by this Tribunal’s judgment dated 29.11.2014 in Appeal Nos. 142 and 145 of 2014 in the matter of OPG Power Generation Pvt. Limited Vs. Tamil Nadu Electricity Regulatory Commission and Ors.
5. We find that the first two issues are covered by our judgment dated 25.10.2012 in a similar case in Appeal Nos. 142 and 145 of 2014. The findings of the Tribunal

in the above judgment are as under:-

- (i) **The introduction of Grid Facilitation Factor for calculation of tariff for infirm power is not in consonance with the Regulations and is set-aside.**
- (ii) **We do not find any infirmity in the State Commission order allowing tariff for infirm power based on lowest cost of coal in Tamil Nadu.**

6. The above findings squarely apply in the present Appeal. Accordingly, first two issues are decided in terms of the findings of the Tribunal in Appeal Nos.142 and 145 of 2014.
7. Regarding the 3rd issue about the payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012, we find that the State Commission has observed that the Appellant vide letter dated 25.10.2012 had informed in its first communication with TANGEDCO about the synchronization of the plant. TANGEDCO conveyed its consent to purchase the infirm power from 00 hours 26.10.2012 till CoD of the plant as per the tariff to be determined by the Commission. The State Commission held that mere request on the part of the Petitioner to sell the infirm power generated during the period of testing and commissioning to the Respondents will not create an obligation on the part of the Respondent to pay and the liability to pay would arise only in respect of power injected w.e.f. 26.10.2012.
8. We agreed with the findings of the State Commission that the Appellant is not entitled to claim payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012 without getting express approval from the TANGEDCO. We also

find that TANTRANSCO in its communication to the Appellant while allowing the Appellant to synchronize their unit with the grid requested the Appellant to contact CE/PPP, TANGEDCO for any infirm power injection into the grid before CoD. Thereafter, communication was sent by the Appellant to TANGEDCO only on 25.10.2012 intimating about synchronization of the power plant on 17.10.2012. TANGEDCO communicated its acceptance to purchase the infirm power from 26.10.2012 vide its letter dated 30.10.2012. Accordingly, this issue is decided against the Appellant.

9. Summary of our findings:

- i) The introduction of Grid Facilitation Factor for calculation of tariff for infirm power is not in consonance with the Regulations and is set-aside.
- ii) We do not find any infirmity in the State Commission's order allowing tariff for infirm power based on lowest cost of coal in Tamil Nadu.
- iii) The Appellant is not entitled to claim payment of infirm power injected into the grid without the approval from TANGEDCO from 17.10.2012 to 25.10.2012.

10. The Appeal is allowed in part as indicated above.

11. Pronounced in the open court on this **15th day of April, 2015.**

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE
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