

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order No.4 of 2015 dated 01-04-2015

Present: Thiru S.Akshayakumar - Chairman
Thiru G.Rajagopal - Member

In the matter of: Extension of Control Period of Tariff Order No.7 of 2014 on Solar Power.

The Government of Tamil Nadu issued a Tamil Nadu Solar Energy Policy, 2012. With the object of implementing the said solar policy of the Government, the Commission issued Order No.1 of 2013 dated 07-03-2013 in the matter of Issues Related to Tamil Nadu Solar Policy, 2012 prescribing among others, Solar Purchase Obligation (SPO) starting with 3% SPO till December 2013 and 6% SPO from January 2014 applicable to HT Consumers (HT Tariff I to V) and to LT Commercial Consumers (LT Tariff V) with certain exceptions. However, Tamil Nadu Electricity Consumers Association and the Tamil Nadu Spinning Mills Association filed Appeal No.92 of 2013 and Appeal No.109 of 2013, respectively, challenging the order of the Commission before the Hon'ble Appellate Tribunal for Electricity (APTEL). In order dated 21-01-2014, the Hon'ble Appellate Tribunal for Electricity set aside the said order of the Commission. Thereafter, with the object of optimal exploitation of the solar energy for the sustainable energy base, the Commission after issuing a consultative paper for public view inviting comments from stakeholders, after obtaining the views of the Members of the State Advisory Committee and after considering the views of all the stakeholders and the State Advisory Committee Members made a Comprehensive Tariff Order on solar power in exercise of the

powers conferred by sections 181, 61(h), 62 and 86 (1) (e) of the Electricity Act, 2003 (Act 36 of 2003) read with the National Electricity Policy, the National Tariff Policy and the power procurement from New and Renewable Source of Energy Regulations, 2008 of the Commission vide Order No.7 of 2014 dated 12-09-2014.

Review petitions were filed by the solar power developers, namely, (1).M/s. Hindustan Clean Energy Limited; (2).M/s.Emami Cement Ltd., Kolkata; (3).M/s.Raasi Green Earth Energy (P) Ltd., Bangalore; (4) M/s.Moser Baer Engineering and Constructions Limited, New Delhi; (5) M/s.Welspun, Mumbai; (6) M/s.Green Infra Ltd., New Delhi; and (7) M/s.Auroville Consulting, Auroville with a prayer to review the said Solar Order dated 12-09-2014, so that the control period may be specified as two years instead of one year on account of time consuming procedures involved in setting up of solar projects. The Commission however could not admit those petitions for the technical reason that none of the grounds for review were made out in those petitions. However, while hearing the arguments of the Counsel for the said review Petitioners, the Commission felt that there was substance in their arguments that their prayer need to be addressed in its proper perspective.

In para 11.5 of the said Solar Order, it has been mandated that the format of Energy Purchase Agreement (EPA) shall be evolved as specified in the Commission's "*Power Procurement from New and Renewable Source of Energy Regulations 2008*" as amended from time to time. Regulation 7 of the said Regulations provides that the Distribution Licensees shall file a model Energy Purchase Agreement / Energy Wheeling Agreement after discussions with the generators / open access customers for the approval of the Commission within one

month of the issuance of tariff order by the Commission. The Distribution Licensee, TANGEDCO submitted the model Energy Purchase Agreement in the matter of Solar Power on 10-12-2014. The Commission after scrutiny could approve the said model EPA on 21-01-2015. It is obvious that the solar power generators could move towards financial closure only after their having executed the Energy Purchase Agreements in the form duly approved by the Commission with the Distribution Licensee.

Even after the approval of the PPA by the Commission, there was no tangible growth in the solar capacity in the State. The Commission noticed that after the approval of EPA by the Commission, the balance period left in the original control period is less than 8 months though the intention of the Commission was to give clear one year as control period. The Commission feels that within the said balance period of less than 8 months out of the control period of one year, execution of individual EPA by the prospective developers, achieving financial closure thereafter, procurement, erection, testing and the commissioning of the solar plant will be very difficult. As a result, additional solar power generation in the State may not happen even to the level of a reasonable RPO obligation which is being advocated in the National Action Plan for Climate Change and National Tariff Policy.

Therefore considering the date of approval of the Energy Purchase Agreement by the Commission on 21-01-2015 and the time that would be required by the Generator / Licensee thereafter for execution of the agreements and other subsequent activities, the Commission considers that the ends of justice will be met if the control period specified in the said order is modified suitably to bring out the intention of the Commission to provide one full year in clear terms.

When the draft order extending the control period in this matter was circulated among the Members of the Commission to enable issue of an order by the full Commission, Thiru S.Nagalsamy, Member of the Commission has expressed that he does not agree with the views and that he shall issue his order in the matter separately. Considering the fact that more delay in issuing this order would result in further extension in the control period, to avoid such contingency and at the same time to address the genuine issue in the way of facilitating the process, this order is issued by majority with the above quorum.

In view of the above position, the Commission decided to make modification as to the control period in Order No.7 of 2014 dated 12-09-2014:-

ORDER

In exercise of the powers conferred by Sections 181, 61 (h), 62 and 86(1)(e) of the Electricity Act, 2003, (Act 36 of 2003) read with the National Electricity Policy, the National Tariff Policy and the Power Procurement from New and Renewable Energy Sources Regulations, 2008, the Commission hereby specifies one year from the date of this order as control period for the purposes of the said Order No.7 of 2014 dated 12-09-2014 instead of one year from the date of the said Order No.7 of 2014 dated 12-09-2014 as specified in para 11.6 therein.

Sd/-
(G.Rajagopal)
Member

sd/-
(S.Akshayakumar)
Chairman

Order of Thiru S. Nagalsamy, Member, TNERC

Date of Order: 01.04.2015

I am not able to agree with the views of my learned colleagues. I notice that there are financial and legal violations involved in this order. My order is as below:-

ORDER

Commission never met during these months and discussed this issue. Nobody asked for extension of control period. It is still a mystery that who is instrumental in prompting my colleagues to undertake this exercise which is not legally correct. Learned Chairman mentioned in his note that there is urgency in the matter. "More the delay in issuing this order would result in further extension in the control period".

Why this urgency? Who is the beneficiary? Certainly not the consumers and not the TANGEDCO.

Financial violation:

There is no second opinion that solar power generation should be encouraged and new solar capacity should be added every year in the State. But the main question here is at what price?

My learned colleagues want to extend the last year price of Rs.7.01 per unit for the period beyond September 2015, when the current price for 2015 has already come down to Rs.5.87 (approx.) per unit. The Commission has to consider the interests of all the stakeholders viz. Consumers, TANGEDCO and Generators.

In 2014, the Commission proposed to determine the preferential tariff for solar power and invited public opinion and after considering public opinion, the rate was fixed at Rs.7.01 per unit. The capital cost was considered at Rs.7.00 crores / MW.

During 2014, the cost of the solar panels had come down by 14%. Taking into account this fact, it was consciously decided by the Commission that the control period should be one year because the capital cost of the solar power plant is declining fast. TANGEDCO also asked for one year only. This order was issued on 12th September 2014 and valid upto 11.9.2015. As per this order, whoever is able to establish and commence generation of solar power before 11th September 2015 will get a rate of Rs.7.01 per unit. Beyond this period a new rate has to be fixed by the Commission taking into account, the prevailing capital cost of solar power at that time. The present capital cost is Rs.5.86 crore / MW.(approx.)

Central Electricity Regulatory Commission (CERC) in its Order SM/004/2015 dated 3.3.2015 has already notified that the capital cost of the solar power plant has come down to Ra.5.86 crores per MW. This is 15% reduction from last year's rate. This translates into Rs.5.87 per unit (approx.) as per our calculation adopted in our earlier order. This is known to all. The solar power plants which are set up after 12.9.2015 and generate power should have a new rate to be determined by the Commission considering the capital cost prevailing at that time.

Considering the last year rate of Rs.7.01 per unit and the present rate of Rs.5.87 (approx.) per unit, there is a reduction of Rs.1.14 per unit. The price of solar power has come down by Rs.1.14 / per unit within this short period. Government

of Tamil Nadu indicated that it has received applications from the solar power generators to the tune of 5366 MW. If all the applicants are allowed at the old rate of Rs.7.01 per unit **by extending this control period**, it will translate into a huge loss of Rs.23,000 crores to TANGEDCO for the period of next 25 years, as the contract entered now is valid for 25 years. Even, if we take a very conservative estimate of 2500 MW which are in the process of registration, still there will be a loss of Rs.10,700 crores for next 25 years. This loss to TANGEDCO has to be collected from the large number of consumers through the increased tariff. Hence the extension of control period only helps the generator and affects the crores of consumers for the next 25 years.

Power Purchase Agreement is valid for 25 years. The price fixed to day shall be valid for 25 years. If we fix an additional rate of Rs.1.14 per unit, the extra rate has to be paid for next 25 years. CERC also in its draft order dated. 3.3.2015 mentioned that “the capital cost norms for Solar PV and Solar Thermal Projects shall be reviewed on annual basis.”. To avoid this loss, the control period should not be extended beyond 11th September 2015 and a new rate should be fixed beyond this period as done regularly. The extension of control period will only enrich the generators and burden the TANGEDCO and finally the consumers. Hence I strongly oppose the extension.

Legal violation:

Commission issued the solar tariff order on 12th September 2014 after following all the provisions of the Act and Regulations. Public opinions were called for. TANGEDCO submitted its views and asked for a control period of one year after considering the fast declining cost of solar power panels. The

tariff order was finalised after considering the views of the power generators, consumers and the licensee, viz. TANGEDCO. The Commission took a conscious decision of fixing the control period as one year as demanded by TANGEDCO as the price of solar panels were coming down drastically. The capital cost came down by 14% in 2014. Considering all the facts and also to encourage the solar power generation in the State Commission fixed solar tariff of Rs.7.01 per unit. Order is valid only for one year from 12.9.2014 to 11.9.2015.

Now, my colleagues want to extend the control period beyond 11.9.2015 and upto 31.3.2016 i.e. for one year from the date of this order i.e. from 31.3.2015 to 31.3.2016. This amounts to extending the control period to more than 1½ years.

Who has asked for this extension?

Consumers? No.

TANGEDCO? No: It has specifically asked for one year upto 11.9.2015 only.

Generators had asked for, but their Petitions were not admitted.

Then what is the motivation for ordering this extension of control period. My colleagues have mentioned in their order that “certain developments have taken place subsequently”. I could not comprehend these developments and only my colleagues might have known it. It is beyond the comprehension of any judicial mind.

Few generators filed review petition praying for the extension of control period and they were not admitted by the Commission as they do not qualify as

review petition as per Commission's Regulation. The Regulation No.43(1) of TNERC Conduct of Business Regulations 2004 is given below:-

43(1)

“Review of the decisions, directions and orders

(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.”

From the above, it is clear that the affected parties or persons or the Commission on its own can review such decisions only if such decision / order was made under (1) mistake of fact (2) ignorance of any material fact (3) or any error apparent on the face of the record.

All these review petitioners did not point out anyone of the above three grounds for review warranting a review of the solar tariff order. The Commission can also review its own order only if any one of the above grounds is noticed in the order. When the order has no mistake of fact, no ignorance of any material fact or any error apparent on the face of the record neither the Commission can review nor review petitioners ask for review of the order. Hence it is not correct for the Commission to review its own order when none of the above grounds exist.

My colleagues have approved the solar tariff order fixing one year as control period and now by extending this control period, they are violating their own order. Their

order says that “certain developments have taken place subsequently which necessitated the Commission to revisit the order”. But their revisit should not be confined to control period alone. It should have covered capital cost also. The main reason adduced by my colleagues was delay in issuing the EPA (Energy Purchase Agreement). For the sake of this delay, Commission cannot enrich the generators at the cost of consumers by giving high solar power purchase cost at Rs.7.01 / unit. Commission can always issue a revised tariff order in time taking into account the declining capital cost of the Solar P.V. and the parties can sign EPA accordingly. For delaying to submit the Draft E.P.A., Commission also has not proposed any action against TANGEDCO under Sec.142 of Electricity Act, 2003.

This order is also hastened very much. I have brought to the notice of the Commission, the important urgent matters for discussion and prompt action, but nothing has been done for the last 5 months. But this order which is not legally correct is done urgently. I do not approve the order and oppose it due to the following grounds:

- (1) Commission cannot amend / modify its own order during the currency of its order.
- (2) Stakeholders are not consulted
- (3) No stakeholders has asked for this extension. TANGEDCO has also not asked for extension.
- (4) Commission cannot review its own order when it is not attracted by any of the grounds stipulated in Regulation 43 (1) of TNERC Conduct of Business Regulations, 2004

(5) Revisiting of order cannot be done selectively on the aspect of control period alone leaving the other aspects especially the declining trend in capital cost that too without following the due process of law. .

This order is against legal provisions.

I order accordingly.

Sd/-

(S. Nagalsamy)
Member

(By order of the Tamil Nadu Electricity Regulatory Commission)

Sd/-

(S.GUNASEKARAN)
Secretary