



THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION

(Constituted under section 82(1) of the Electricity Act 2003)

(Central Act 36 of 2003)

PRESENT

Thiru S. Kabilan - Chairman

Thiru B. Jeyaraman - Member

And

Thiru R. Rajupandi - Member

I.A. Nos 9 &10 of 2009 in DRP No.10 of 2009

M/s Ind- Barath Energies (Thoothukudi) Ltd,
Registered Office at Plot No. 30-A,
Road No.1, Film Nagar, Jubilee Hills,
Hyderabad- 500 037.

Rep. by its Vice President T.S. Das

Petitioner

Versus

1. The Chairman,
The Tamil Nadu Electricity Board,
No.144 Anna Salai,
Chennai-600 002.

2. The Chief Engineer/NCES,
Tamil Nadu Electricity Board,
No.144 Anna Salai,
Chennai-600 002

3. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin- 628 002

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Respondents

The above IA Nos 9 and 10 of 2009 in DRP No. 10 of 2009 praying for grant of interim stay of further action to the orders of demand for the payment of Rs. 1,01,79,378/- made by the third respondent and interim injunction restraining the third respondent from levying and collecting start up charges more than the charges fixed by the Commission pending disposal of the DRP 10 of 2009 coming on for orders on 22.4.2009 before the Commission, upon perusing the petitions and the respective affidavits filed and connected records thereof in support thereof and upon hearing the arguments of both sides, the Commission passes the following order.

INTERIM ORDER DATED 22ND APRIL 2009

The Power Purchase Agreement (PPA) between M/s. Ind Barath Energies (Thoothukudi) Ltd. and Tamil Nadu Electricity Board was executed on 15-3-2004. Clause 3 of the PPA reads as follows:

“The Power Generating Company shall be bound by all the provisions of Electricity Act 2003 Statutory amendments made from time to time and also orders of the Government of Tamil Nadu related to the project and directions of the Board issued from time to time.”

Clause 10 (a) (i) of the PPA which deals with drawal of start up power reads as follows:

“Drawal of power from Board’s grid as recorded by the import meter shall be charged at Board’s H.T Tariff I rate applicable for Industrial consumers. Maximum Demand Charges shall be charged based on tariff notified by the TNERC. Penal and other surcharges shall be levied as per the notified tariff conditions if the sanctioned demand is exceeded or power is availed during peak

load hours as the case may be or as per conditions imposed from time to time by the Board and TNERC.”

(2) Electricity Act 2003 came into force on 10-6-2003. The PPA was executed on 15-3-2004, long after the commencement of the Act and therefore it goes without saying that the agreement has to be in consonance with the Act. Any clause of the agreement which conflicts with the Act should be deemed to be invalid. Clause 10 (a) (i) of the PPA, which stipulates the charges for start up power, should fall in line with the provisions of the Electricity Act 2003. Section 174 of the Act lays down that the provision of the Act shall have overriding effect notwithstanding anything inconsistent therewith in any other law or instrument.

(3) Section 3 of the Electricity Act 2003 provides that the Central Government shall prepare the National Electricity Policy and Tariff Policy in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as, coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. Section 61 of the Act lays down that the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff and in doing so, shall be guided by the National Electricity Policy and Tariff Policy. The Government of India published the Tariff Policy on 6-1-2006. Clause 8.5.6. of the Tariff Policy prescribes that in case of outage of generator supply to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission. The Appropriate Commission, which is the TNERC in the present case, prescribed in Order No.2 dated 15-5-2006 that the charges for start up power shall be Rs.6.218 per unit.

(4) Thus, between 10-6-2003, the date on which the Electricity Act 2003 came into force and 15-5-2006, the date on which the TNERC

stipulated the charges for start up power, the TNEB was at liberty to enforce the Clause 10 (a) (i) regarding start up power. But, once the charges were prescribed by the Commission, the Order of the Commission shall prevail over the relevant clause of the PPA. Clause 3 of the PPA specifically states that the Power Generating Company shall be bound by all the provisions of the Electricity Act 2003. Section 174 of the Act lays down that the provisions of the Act shall have overriding effect notwithstanding anything inconsistent therewith in any other law or in any instrument.

(5) In view of the position stated above, the demand of the Superintending Engineer, TNEB, Tuticorin in Letter No. SE/TEDC/AO/Rev/HTSEC/A3/F.Bio-Mass/2009 dated 3-4-2009 for Rs. 1,01,79,378/- is stayed to the extent of demand in excess of Rs.6.218 per unit for start up charges from the date of commissioning of plant.

(6) The Respondents are further directed to refrain from levying start up charges in excess of Rs.6.218 per unit until further orders.

(Sd)
(R. RAJUPANDI)
Member

(Sd)
(B. JEYARAMAN)
Member

(Sd)
(S.KABILAN)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission