

**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.K.Venugopal** .... **Member**

**and**

**Thiru.S.Nagalsamy** .... **Member**

**I.A. No. 1 of 2011**

**in**

**M.A.P. No. 1 of 2007**

Tamil Nadu Electricity Board  
Now known as  
Tamil Nadu Generation and  
Distribution Corporation Limited  
Represented by its Chairman Cum Managing Director  
No.144, Anna Salai  
Chennai – 600002

... Petitioner

(Represented by Thiru P.H.Vinod Pandian, Advocate  
Senior Counsel Thiru.N.C. Ramesh)

Vs.

PPN Power Generating Company Private Limited  
III Floor, Jhaver Plaza  
1-A, Nungambakkam High Road  
Chennai – 600 034  
Represented by its Managing Director

.... Respondent

(Represented by Thiru.Rahul Balaji, Advocate)

**Date of hearing: 14-9-2011**

**Date of Order: 7-10-2011**

In the above I.A.No.1 of 2011 in M.A.P.No.1 of 2007, the Commission  
passes the following :-

## ORDER

1. The TANGEDCO has filed an Interim Application No.1 of 2011 in M.A.P.No.1 of 2007 praying that they may be permitted to make further submission in so far as payment of escalation cost to the EPC contractors, service charges, construction power, water and others in the main head EPC. The Interim Application was taken up by the Commission on 14-9-2011.

2. The learned senior counsel for TNEB, Thiru.N.C.Ramesh submitted that since the arguments are not yet over in the case relating to determination of capital cost of PPN, he quoted Clause 48(1) of Conduct of Business Regulations 2004 of the Commission, which is based on Section 151 of the Code of Civil Procedure 1908. The Clause is extracted below:-

*“Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission”*

3. He stated that in the interest of justice, re-hearing on the issues listed in the Interim Application of the TANGEDCO would be in order. He submitted that he would take 1 ½ hours to argue the additional points.

4. The learned counsel for the Respondent opposed the prayer of the TANGEDCO and submitted that reopening of arguments on certain issues would further delay the proceedings, which are already three years old. Ends of justice would be met, if the Petitioner TANGEDCO is permitted to file additional written submission on the issues listed by them. At the worst, the Petitioner may be permitted to circulate their arguments in advance to the Respondent so that the Respondent can effectively counter the arguments.

5. In this context the Commission is constrained to refer to the annual statement of accounts of the TNEB for 2009-2010 (preliminary). The following statement appears in para 3 of page 49:

*“If I were to opine that based on the judgement of the Supreme Court in Gujarat Urja, the TNEB could move a petition to set aside the Award (irrespective of whether the same is moved in India or in overseas). The filling of the said petition will immediately act as a stay of the Award (as per Indian Law) and the matter may take couple of years for determination. Thereafter, even if the Award is set aside, the capital cost determination will be relegated to TNERC who would take some years to determine the same. I am compelled to take note of this delays because, several capital cost fixation in respect of other IPP’s are still pending before the TNERC for the last several years.”*

6. The report states that the TNERC takes several years for completing the determination of capital cost. TNEB cannot now, to seek to delay further the determination of capital cost by reopening the issues, which have been heard. The change of counsel by the TANGEDCO cannot be a ground for fresh arguments on the issues already covered. The statement of the TNEB is incorrect because other than PPN no other IPP has filed petition for determination of capital cost.

7. Since this is the first major case of determination of capital cost which will also decide the tariff for the entire life of the PPA, the prayer as sought for is granted, limiting to the four issues raised in the IA.

(Sd.....)  
(S. Nagalsamy)  
Member – II

(Sd.....)  
(K. Venugopal)  
Member – I

(Sd.....)  
(S.Kaliban)  
Chairman

/ True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**