



**THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION
CHENNAI**

**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

P.P.A.P. No. 1 of 2007

M/s. Prathyusha Power Gen Private Ltd.,
#5, Archana Apartments,
No.10, Sarangapani Street,
T.Nagar, Chennai – 600 017.

..... Petitioner

Vs

The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai – 600 002.

..... Respondent

The above petition viz. P.P.A.P.No.1 of 2007 coming up before the Commission for final hearing on 11th December 2007, the Commission upon perusing the petition and the counter affidavit and all records connected with the case and upon hearing the arguments of both sides and having stood over for the consideration of the Commission till this day, passes the following

ORDER

1. Prayer of the Petitioner.

The prayer of the petitioner is to ratify the Power Purchase Agreement dated 14th March 2005 (hereinafter referred to as PPA) which was signed by the Petitioner and Respondent Board.

2. Facts of the Case.

The petition is filed under section 86(b) of the Electricity Act, 2003 (Central Act 36 of 2003) read with Regulation 16(1) of the Tamil Nadu Electricity Regulatory Commission's Conduct of Business Regulations 2004.

The Petitioner states that the Respondent Board has given consent for establishment of 10MW Bio Mass Power Plant at Thuvarasi Village, Tirunelveli (T&K), Tirunelveli District and the petitioner entered into revised Power Purchase Agreement with SE, Tirunelveli Electricity Distribution Circle on 14.03.2005 for export of power to the respondent board. The petitioner further states that the erection of machinery and transmission lines is also completed.

3. Contentions of the Respondent Board.

- a) The petitioner originally submitted proposal for establishment of 7.5MW bio mass power plant at Melakallur Village, Kodanganallure Panchayat, Tirunelveli Taluk and the respondent board has issued consent letter for the same on 07.02.2003 and based on the letter, power purchase agreement was executed on 03.04.2003.
- b) The petitioner required enhancement of plant capacity from 7.5MW to 10MW in letter dated 09.06.2004 and the Respondent Board gave consent in letter dated 05.08.2004 the revised Power Purchase Agreement dated 04.03.2005 was executed and petitioner plant was commenced on 03.08.2007.
- c) As per clause 4 of Order No.3 dated 15.05.2006 the existing PPA dated 14.03.2005 would continue and any renewal of PPA shall be in line with the said Order No.3.
- d) The Commission may ratify the PPA.

4. Arguments of both sides.

The petitioner contended that as per clause 9 (f) (i) prior approval of the TNERC for the enhanced capacity of 10MW shall be obtained before commissioning of the proposed plant. The petitioner further stated that in view of the above said clause 9 (f) (i) the prior approval is necessary for the PPA dated 14.03.2005.

The learned counsel for the Respondent Board contended that as the petitioner plant is commissioned only on 03.08.2007, the Respondent Board was under the impression that the PPA has to be ratified by the Commission.

5. Point in issue.

The point in issue is whether under Electricity Act, 2003 (Central Act 36 of 2003) ratification of the PPA by the Commission is necessary or not.

6. Findings of the Commission.

Petitioner has alleged that the above petition is filed under section 86(1) (b) of the Electricity Act, 2003 (Central Act 36 of 2003). According to the said section 86(1)(b) the Commission shall “regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state”

The Commission has discharged the above function by issuing Order No.3 dated 15.05.2006. The preamble of the said order states that the Commission passes the said order to fix the power purchase and procurement process, including the price for procurement of power by the Tamil Nadu Electricity Board and other distribution licensees in Tamil Nadu from Non-Conventional Energy Sources based Generating Plants and Non-Conventional Energy Sources based Co-Generation Plants.

Clause 4 of the said order which relates to the applicability of the order stipulates that the said order shall be applicable to all future and renewal of existing contracts / agreements for the Non-Conventional Energy Sources (NCES) based

Generating Plants and Non-Conventional Energy Sources based Co-Generation plants located within the State of Tamil Nadu. The existing contracts and agreements between NCES based generators and the distribution licensee signed prior to the date of issue of this order would continue to remain in force.

From the above clause 4 of the said order, it would be clearly seen that the PPA dated 14.03.2005 which is an existing agreement shall continue in force. The above order is a statutory order issued under the statutory provisions of law. Clause 9(f) (i) of the PPA dated 14.03.2005 cannot prevail over the said clause 4 and as such the prior approval or ratification of the Commission is not necessary.

7. Conclusion.

As per clause 4 of Order No.3 dated 15.05.2006, all existing contracts / agreements between NCES based generation / the distribution licensee signed prior to the date of issue of the order would continue to remain in force. In view of the above provision, the PPA dated 14.03.2005 would remain in force for the period for which it was executed and there is no need for the Commission to ratify the said PPA.

With the above observations the P.P.A.P. No.1 of 2007 is finally disposed off. There would be no costs.

Pronounced in the open court by this Commission on 5th February 2008.

Sd.....
(R. RAJUPANDI)
Member

Sd.....
(B.JEYARAMAN)
Member

Sd.....
(S.KABILAN)
Chairman

/ True Copy /

Secretary

Tamil Nadu Electricity
Regulatory Commission