



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 10 of 2016

Dated 30.07.2016

Present

Sri Ismail Ali Khan, Chairman
Sri H Srinivasulu, Member
Sri L. Manohar Reddy, Member

In the matter of according approval to the two Power Purchase Agreements (PPAs) i.e, one entered into between (i) NTPC Limited and Southern Power Distribution Company of Telangana State Limited (TSSPDCL) and the other one between NTPC Limited and Northern Power Distribution Company of Telangana State Limited (TSNPDC) for sale of power from the Telangana Super Thermal Power Project (Phase I) (2 x 800 MW) being located in Ramagundam, in Karimnagar District, Telangana State.

The petition having been taken on file in the above said O. P. and heard in public hearing on 20.06.2016, the Commission passed the following:

INTERIM ORDER

The Licensees in the State of Telangana having entered into Power Purchase Agreement (PPA) filed with the Commission a request under section 86 (1) (b) of the Electricity Act, 2003 (Act, 2003) read with section 21 (4) of the Telangana Electricity Reform Act, 1998 for approval of the said PPA.

Brief History of the 4000 MW Power Plant to be established by the NTPCL;

1. The Government of India had enacted the Andhra Pradesh Reorganisation Act, 2014 (Central Act 6 of 2014) (Act, 6 of 2014). In terms of the provisions made in the clause 7 of Schedule XIII of the Act, 6 of 2014 the National Thermal Power Corporation Limited (NTPC) is required to establish a 4000 MW power facility in the successor State of Telangana by obtaining necessary coal linkages. Accordingly the NTPC is

establishing a 4000 MW Telangana Super Thermal Power Project (TSTPP) in two phases that is first phase of 1600 MW (2 X 800MW) and the second phase of 2400 MW (3 X 800MW) at Ramagundam in Karimnagar District of Telangana State.

2. The NTPC has entered into two PPAs that is one PPA with the Southern Power Distribution Company of Telangana Limited (TSSPDCL) and second PPA with the Northern Power Distribution Company of Telangana Limited (TSNPDCL), both on 18.01.2016 for supplying electricity from its TSTPP. The first phase comprises of 2 x 800 MW for which an agreement has been entered with a validity of 25 years from the commercial operation date (COD).

3. The TSSPDCL has addressed a letter bearing .No. CGM/ Comml / SE / IPC / F. TSTPP Ph-I / D.No.1781 / 16, dated 14.02.2016 as lead procurer for TSDISCOMs and has furnished the following details of the project:

Sl. No.	Item	Details
1	Estimated Cost	Rs.9954.2 Crores (Non-Mega, II Qtr'2014) Including IDC, FC & WCM.
2	Power Evacuation System	Connectivity & LTA applied
3	Project Financing	Equity: Domestic component 30% (approx.) Debt: ECB loan 30% (approx.), Domestic component 40% (approx.)
4	Land for Main Plant	Main Plant is to be accommodated within the existing plant boundary (MGR Bulb 250 acres of land). No additional land required for main plant.
5	Water	Permission accorded for Telangana Phase-I drawal of 60 cusecs water
6	Fuel	Mandakini-B Coal mines in the tate of Odisha has been allotted to NTPC for Telangana STPP (4000 MW) Dt:10.09.2015) and in-principle approval for Tapering coal linkage (Phase-I, 2X800 MW) given from Coal India Ltd. Coal India Ltd. to indicate the source of coal for 2X800 MW Telangana Phase-I
7	Environment Clearance	After completion of public hearing on 23.05.2015, application for environment clearance had been submitted to MoEF on 24.06.2015. However, MoEF vide letter dated:10.07.2015 has sought the details of firm coal linkage along with status of EC and FC of linked coal block. Communication sent to MoEF regarding allocation of coal block and tapering coal linkage.
8	NOC from AAI	Clearance received on 29.03.2011 (Applied on 10.09.2010)

Sl. No.	Item	Details
		Clearance given for Ramagundam (2X660 MW) and is valid till 2018.
9	Tendering for Main Plant	NIT for SG package & STG package issued on 16.02.2015. technical bids opened in April,15. Price bid for SG package opened on 29.06.2015 & for TG package on 01.07.2015.
10	Commissioning Schedule	CoD of the 1 st unit will be 52 months from sero date indicated in the investment approval (yet to be approved). The CoD of subsequent unit shall be at an interval of 60 months thereafter.

4. The TSSPDCL on the basis of the above details has requested for according in-principle approval to the said PPA under Section 86 (1) (b) of the Act, 2003 in respect of TSTPP Phase-I (2 x 800 MW) at the earliest. The Commission has treated the letter of the TSSPDCL dated: 04.02.2016 as a petition and took it on its file as O. P. No.10 of 2016.

5. Initiating the proceedings in the above said O. P., the Commission issued a public notice inviting objections / comments / suggestions from all the stakeholders so as to reach the Commission on or before 5:00 P.M. on dated 18.04.2016. For this purpose it had placed the notice in the public domain duly placing it on its website on 29.03.2016. The Commission directed the TSSPDCL to upload the PPAs and relevant documents on its website and also directed to issue copies of such documents to the interested parties on payment of photocopying charges. Pursuant to the notice three stakeholders have submitted their objections / suggestions within the due date motioned above. The names of the stakeholders are as follows.

Sl. No.	Name of the stakeholders / address
1	Federation of Telangana and Andhra Pradesh Chambers of Commerce and Industry, Hyderabad.
2	Sri. M. Venugopal Ra, Senior Journalist & Convener, Centre for Power Studies, Hyderabad.
3	Sri. M.Thimma Reddy, Convener for Peoples Monitoring Group on Electricity Regulations, Hyderabad

6. The stakeholders have requested for conducting public hearing so as to submit their views in person before the Commission. The Commission had conducted the public hearing on 20.06.2016 at 11.30 am in the Court hall of TSERC after giving a press release in the daily newspapers and also placing such information on the website of the Commission.

7. The issues have been identified and noted from the written objections / suggestions received and oral submissions made during the public hearing. They are discussed in the subsequent paragraphs by taking the replies given by the licensee into consideration.

Issue: Jurisdiction on determination of Tariff:

8. It has been stated and submitted that the petition has been filed under Section 86 (1) (b) of the Act, 2003. The said provision states that TSERC shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured through PPA. The present PPA is being entered in to with NTPC which is a central government owned and controlled power generating company. Section 79 (1) (a) of the Act, 2003 provides that the Central Electricity Regulatory Commission (CERC) shall regulate the tariff of generating companies owned or controlled by the Central Government. This implies that the CERC alone has jurisdiction to determine tariff in the present case. All the provisions contained in the present PPA can as well become part of the PPA to be approved by the CERC, as such the present PPA becomes superfluous.

Reply from TSSPDCL:

9. The TSTPP is being set up by NTPC as per the provisions of Clause 7 of Schedule 13 in the Act, 6 of 2014 relating to infrastructure. The plant is being set up in Telangana State and it is wholly dedicated to Telangana State. Therefore, the PPA was submitted to the Commission for in-principle approval, though the CERC has jurisdiction to determine tariff u/s 79 (1) (a) of Act, 2003.

Commission's views:

10. It may be appropriate to state that the tariff has to be determined by the CERC under section 79 (1) (a) of Act, 2003, but this Commission is vested with the powers under section 86 (1) (b) of the said Act to regulate the PPA which covers price and terms of the PPA entered by the TSDISCOMs for supplying the power procured from the project within the state of Telangana.

Issue: TSSPDCL as the lead procurer:

11. The present PPA is being signed by TSSPDCL only. There is no mention of TSNPDCL. While the public notice of Commission mentions TSSPDCL as the lead procurer, the PPA mentions procurer(s) and does not specify TSSPDCL as the lead procurer. There is no definition of procurer(s) in the PPA. This issue needs to be clarified.

Reply from TSSPDCL:

12. The procurers of the power from the NTPC project as per the Act, 6 of 2014 are TSDISCOMs that is TSSPDCL and TSNPDCL. The PPA has been signed by both the TSDISCOMs that is TSSPDCL and TSNPDCL (each DISCOM separately) with M/s. NTPC.

Commission's views:

13. The view of the DISCOMs is accepted.

Issue: Allocation of total capacity of the NTPC plant to the State of Telangana:

14. The TSTPP Phase-I is being set up by NTPC as per the provisions of Clause 7 of Schedule 13 in the Act, 6 of 2014. The total capacity of the plant is meant for the state of Telangana. According to Clause 2.2.1 "Allocation of capacity from the Station to the State of Telangana shall be decided by Gol." Following the Act, 6 of 2014 it shall be mentioned that total capacity of the station shall be allocated to the state of Telangana. In Clause 2.2.2 of the PPA it shall be mentioned that the State Government of Telangana shall allocate capacities between the procurers.

Reply from TSSPDCL:

15. As per Act, 6 2014, the entire allocation of 4000 MW is only meant for Telangana State (TSDISCOMs). At present the allocation between TSDISCOMs is being done as per G. O. Ms. No. 20, dated 08.05.2014 by the State Government of Telangana.

Commission's views:

16. The Commission is of the view that the objection raised by the objectors needs to be considered. Mere stating or understanding would not suffice in the matter of PPA and its provisions. To bring the clarity on the allocation of the entire capacity of the

plant exclusively for the State of Telangana, it may be appropriate to amend the clause 2.2.1 and 2.2.2. Therefore, the PPA shall have to be amended as follows.

“2.2.1 Entire capacity of the NTPC plant is exclusively allocated to the state of Telangana. In turn allocation of the capacity shall be made between the procurer(s) that is TSSPDCL and TSNPDCL by the State Government or the State Electricity Regulatory Commission”

“2.2.2 The entire capacity allocated between procurer(s) by the State Government or the State Electricity Regulatory Commission shall be the contracted capacity. The procurer(s) shall draw electricity against the above contracted capacity limited to the amount of Letter of Credit (LC) opened and maintained by them. The NTPC shall intimate SRLDC / SLDC from time to time regarding the quantum of capacity procurer(s) is eligible to draw”.

Issue – Connecting to the CTU network for evacuation of power:

17. While Clause 3.1 states “it shall be the obligation and responsibility of procurer(s) to make the required arrangement for evacuation of electricity”, Clause 3.2 states “For timely and expeditious development of the required transmission system for evacuation of power from the said project to its various beneficiaries, NTPC shall initially make an application for Connectivity and Long-Term Access to the CTU, POWERGRID on behalf of the beneficiaries.” Here it needs to be mentioned that total capacity of TSTPP is meant for the State of Telangana and that it is not an interstate plant though it is being executed by the central utility NTPC. As it is not an interstate plant there is no need to approach the CTU for evacuation facilities and the TSTRANSCO shall be entrusted with the responsibility of setting up the required transmission system.

Reply from TSSPDCL:

18. The evacuation from NTPC plant would be as per the decision taken in the Standing Committee meeting conducted by Central Electricity Authority (CEA).

Commission’s views:

19. (i) The entire capacity of the NTPC plant is meant for the state of Telangana, the connectivity can be given to the TSTRANSCO network, as is being done in case of Simhadri Stage-I plant of NTPC by APTRANSCO. The TSTRANSCO can lay the required line for evacuation of the power from the NTPC plant. This will avoid point of

connection charges (PoC) and losses of Power Grid Corporation of India Limited (PGCIL). This will reduce additional burden on the state consumers. The issue has to be pursued by the TSDISCOMs in the standing committee meeting that may be conducted by the CEA. Accordingly, the clauses 3.2, 3.3 and other clauses of the PPA wherever necessary, shall have to be amended appropriately.

(ii) in the clause 3.2 for the words

“For timely and expeditiously development of the required transmission system for evacuation of power from the said project to its various beneficiaries”

can be replaced with

“One year prior to the declaration of CoD, for evacuation of power from the said project to its procurers (TSSPDCL and TSNDPCL), the procurer(s) shall make an application for connectivity and long term access (LTA) to the TSTRANSCO”.

Based on these lines the entire clause may be amended.

Issue – ESCROW arrangement mechanism:

20. As there is a clear provision for effective LC for adequate amount there shall be no need for ESCROW arrangement.

Reply from TSSPDCL:

21. The NTPC payment terms are to be adhered.

Commission’s views:

22. The Commission agrees with the views of the TSDISCOMs.

Issue – Prudent check of capital cost of the project:

23. The public notice issued by Commission mentioned the estimated cost of the project (2 x 800 MW) as Rs.9954.20 crores. In the objector’s view this needs to be finalized by the CERC after detailed scrutiny of the NTPC proposal, duly taking in to account the opinion of procurers(s) from Telangana state as well as other stakeholders, following the due public process.

Reply from TSSPDCL:

24. The TSDISCOMs will also take appropriate steps.

Commission's views:

25. We are inclined to accept the reply of the DISCOMs. However, the Commission believes that the DISCOM shall spare no effort in defending themselves by filing the objections and suggestions within the time stipulated by the CERC, when the process of determination of capital cost is taken up by the CERC.

Issue – Delivery points of NTPC (giving scope for any NTPC plant):

26. The clause 3.1 of the PPA provides that:

“sale of electricity shall be at the busbars of the station and it shall be the obligation and responsibility of Procurer(s) to make the required arrangement for evacuation of electricity from such delivery points of NTPC.”

This clause leaves scope for divergent interpretations. If it is from

“such delivery points of NTPC,”

it will give scope for interpreting that arrangements need to be made by the DISCOM to evacuate power from

“such delivery points of NTPC”

to mean delivery points of any of the projects of NTPC as decided by the latter, irrespective of whether such additional transmission capacity from the existing transmission network is available and can be obtained for evacuating power. It can put the DISCOM to disadvantage and loss and lead to avoidable legal disputes. It should be incorporated in the PPA that power shall be evacuated from delivery point of TSTPP and not from delivery points of NTPC.

Reply from TSSPDCL:

27. The delivery point of the NTPC is the same as that of TSTPP delivery point. (The power is to be evacuated from delivery point of NTPC means delivery point of TSTPP only). The evacuation of power from NTPC plant would be as per the decision taken in the Standing Committee meeting that may be conducted by CEA. The Standing Committee of CEA will decide the voltage level of evacuation. The technical feasibility for evacuation will be examined by STU (TSTRANSCO). The TSTPP phase-I (2 x 800 MW) envisages a 400 KV GIS Switchyard (in view of space constraint) with provisions for 4 Nos. of 400 KV line bays in generation switchyard for power evacuation.

Commission's views:

28. The Commission is of the view that either in the definition part of the PPA (Article 1) or in the clause 3.1 relating to the delivery point shall be clearly defined / specified as the delivery point of the TSTPP Phase-I of 2 X 800 MW plant Ex-bus at which the NTPC supplies the power to the TSDISCOMs. The relevant Article / clauses shall be amended accordingly.

Issue: Generation of power less than threshold level:

29. It is stated that if the generating station of the NTPC has to back down and the power cannot be supplied to any other customer to the extent TSSPDCL cannot evacuate it, the DISCOM has to pay capacity charges for the same as incorporated in the PPA. The DISCOM has to also buy power from market sources at higher tariffs, if available, to meet its scheduled demand or else it will have to impose power cuts, if TSTPP generates and supplies power below the threshold level of PLF. The clause 4.2 is stating that notwithstanding any other reason not attributable to NTPC restricting the scheduling and dispatch of the capacity at the Ex-Bus of the Station, the station shall be deemed to be available to the extent of declared capacity (DC) by the station for any time period is very harsh and unjustified. It can also be interpreted that for any other reason not attributable to TSSPDCL restricting the scheduling and dispatch of the capacity at the Ex-Bus of the station, the station shall be deemed as available to the extent of DC by the station for any time period and as such TSSPDCL should pay tariff for capacity declared but power is not generated and evacuated. Therefore, a sub clause that, if, for any other reason not attributable to TSSPDCL, scheduling and dispatch of capacity at the Ex-Bus of the Station is restricted, then the Station shall not be deemed to be available to the extent of DC by the station for any time period, should be incorporated in the PPA.

Reply from TSSPDCL:

30. These are governed by CERC Tariff Regulation.

Commission's views:

31. The Commission is in agreement with the views expressed by the TSSPDCL as far as the conditions for payment of the fixed charges is concerned. Regarding non-operation of the plant exclusively on account of failure of NTPC other than force-majeure conditions, there shall be penalty clause for the non-operating period of the

plant, to have equitable liability on both sides. Hence the TSSPDCL may negotiate with the NTPC on this account and modify the relevant clauses suitably.

Issue – Allocation coal linkage from Odisha Coal Mines:

32. The TSSPDCL has informed that Mandakini-B coal mine in the State of Odisha has been allotted to NTPC for TSTPP (4000 MW) on 10.09.2015 and that in-principle approval for tapering coal linkage (Phase-I of 2 X 800 MW) is given from Coal India Limited. The DISCOM has further informed that Coal India Limited has to indicate the source of coal for 2 X 800 MW of Phase-I of TSTPP. Needless to say, the cost of transportation of coal from Odisha coal mine is higher compared to the cost of coal available from mines of M/s. Singareni Collieries Company Limited in view of their vicinity to the TSTPP. The possibility for getting coal allocation to TSTPP from mines of SCCL may be explored by taking up the issue with Gol at appropriate level as and when coal from SCCL is available.

Reply from TSSPDCL:

33. The TSDISCOMs will take appropriate steps as may be necessary or as directed by the Commission.

Commission's views:

34. The variable cost of the generation depends on cost of fuel that is mainly on the cost of coal delivered at the site. As stated by the DISCOM, if the coal is allocated from the mines of Odisha State, it would be costlier. In view of the above, the DISCOM through the State Government may pursue with Coal India Ltd. and MoP, Gol for allocation of linkage of coal from Singareni mines instead of Odisha state mines for the TSTPP.

Issue - Necessity of procurement of power from the NTPC plant on long term basis:

35. Any PPA should be judged fundamentally from three angles: (a) need for purchasing power from the project concerned for the period specified to meet demand growth, (b) cost effectiveness and various options available to get power at the lowest possible or competitive tariff in given circumstances, various options available for selecting generator / supplier of power and the legality and propriety of the procedure adopted for the same and (c) propriety and legality of provision in the PPA and their

adverse impact on tariff to be paid by the end consumers. In order to evaluate the above points, the DISCOM has to submit the long-term load forecast report containing projections of demand growth, availability of installed capacity, plans for timely addition of installed capacity and procurement of power, plans for enhancing capacities of transmission and distribution networks of TSTRANSCO and TSDISCOMs to transmit and distribute required power to meet growing demand. The TSDISCOMs are not submitting long term load forecast plan and the Commission is insisting the TSDISCOMs to file the same.

Reply from TSSPDCL:

36. The Load Forecast and Procurement Plan will be submitted. As per the document on "Power for All", the load forecast is projected at 19053 MW (peak load) for Financial Year 2018-19.

Commission's views:

37. We notice the fact that in order to meet the shortage of power in the Telangana State, provision has been made in the Act, 6 of 2014 to establish 4000 MW coal based power plant by the NTPC. Accordingly, the NTPC proposed to establish the power plant initially with a capacity of 2 X 800 MW plant. The demand is increasing tremendously in view of large scale lift irrigation projects taken up by the Government of Telangana State, expecting significant growth in Industrial sector due to the industrial policy (TSIPASS) issued by the State Government, extending 9 hrs free power supply to the agriculture sector and 24 X 7 supply to all other category consumers in the state. Considering the above points, non-availability of north east west corridor, costs and losses involved in the corridor, the establishment of the plant in the Telangana state is necessary.

Issue – Provision for Termination of agreement is one sided:

38. The reasons for termination for the agreement should be specific and justifiable. Contrary to this, the clause 12.4 is vague, general and unequitable, so that the NTPC can interpret and take advantage unduly to the detriment of TSDISCOMs and thereby to the end consumers, therefore, this clause has to be deleted from the PPA.

Reply from TSSPDCL:

39. The DISCOMs have not offered any comments on the issue.

Commission's views:

40. The Commission considers that equities have to be built into the agreement in the event of the termination of the agreement by either of the parties in the event of any one of the party does not meet the obligation under the agreement. The provision in the PPA should provide for the other party to issue notice for termination. Accordingly the clause 12.4 shall be modified.

Issue – Adhoc tariff:

41. The NTPC shall initiate steps for determination of tariff by the CERC in advance, so as to be known by the declaration of COD. In view of the period taken for implementation of the project, it would not be difficult to approach CERC accordingly and get an order on determination of tariff well in time for commissioning the project.

Reply from TSSPDCL:

42. The CERC will decide the tariff on adhoc basis or regular basis.

Commission's views:

43. We are in agreement with the statement of the DISCOM. The CERC may decide adhoc tariff in the event, it is unable to decide regular tariff due to any unavoidable delay.

Issue – Acquisition of the plant of after completion of agreement term:

44. It is stated that it may be necessary that in place of clause 11.0, the PPA should provide for taking over of the project by the TSSPDCL on completion of the period of PPA which is 25 years, whereupon the NTPC shall handover to TSSPDCL, without any liabilities and with all rights.

Reply from TSSPDCL:

45. The regulation made by CERC does not stipulate for providing buy-out clause in the PPA.

Commission's views:

46. Though the Commission agrees with the submission of the DISCOMs, it desires that endeavor should be made by them to provide for buy-out clause as the project being established as an exclusive one to Telangana State.

47. The Commission is of the view that the tax paid on income gained on this project alone shall be allowed subject to the production of documents regarding liability of taxes on income to be passed on to the procurer(s),

48. Considering the objections / suggestions received, the Commission has identified the issues to be addressed by both the parties. The Commission has expressed its views on each issue identified in the preceding paragraphs supra. The DISCOMs are hereby directed to negotiate with the NTPC authorities to amend the clauses wherever necessary. The amended clauses shall meet the views expressed by the Commission.

49. The DISCOMs shall file the draft agreement duly incorporating the amendments as directed above for according consent / approval by the Commission.

50. The Commission considers that the draft agreement after amendments will have to be placed before the stakeholders and after hearing all the persons a final order can only be passed. Therefore, and in order to facilitate the DISCOMs to negotiate with the NTPC authorities on the clauses to be amended, the Commission hereby passed this interim order.

This order is corrected and signed on this 30th day of July, 2016.

Sd/-
L.MANOHAR REDDY
MEMBER

Sd/-
H.SRINIVASULU
MEMBER

Sd/-
ISMAIL ALI KHAN
CHAIRMAN

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