

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 27th Day of February 2025

PRESENT:

Thiru.R.Manivannan Chairman
Thiru.K.Venkatesan Member
and
ThiruB.Mohan Member (Legal)

I.A.No.1 of 2024
in
M.P.No.51 of 2024

M/s.OPG Power Generation Pvt. Ltd.
OPG Power Plant, OPG Nagar,
PeriyaObulapuram Village NagarajaKandigai,
Madharapakkam Road, Gummidipoondi,
Thiruvallur – 601 201.

... Petitioner
(Adv.Rahul Balaji)

Versus

Tamil Nadu Power Distribution Corporation Limited
(TNPDCCL)
Rep. by its Chairman-cu-Managing Director,
NPKRR Maaligai, 144 Anna Salai,
Chennai – 600 002.

... Respondent
(Adv.Richardson Wilson)

I.A.No.1 of 2025
in
M.P.No.55 of 2024

M/s.A.R.S. Metals Limited,
Represented by its Deputy Director Mr.N.Prabu,
Power Division H.T.SC No.1984
D-109, 2nd Floor, IBR Complex,
Anna Nagar East,
Chennai – 600 102.

... Petitioner
(Adv.S.P.Parthasarathy)

Versus

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002.
2. The Director (Finance),
TANGEDCO
144, Anna Salai,
Chennai – 600 002.
3. The Chief Financial Controller / Revenue,
Tamil Nadu Generation and Distribution Corporation Ltd.
144, Anna Salai,
Chennai – 600 002.
4. The Superintending Engineer,
TANGEDCO
Chennai Electricity Distribution Circle / North
144, Anna Salai,
Chennai – 600 002.

... Respondent
(Adv.Richardson Wilson)

These Interlocutory Applications coming up for hearing on 28-01-2025 in the presence of Thiru.Rahul Balaji, Advocate for the Petitioner in I.A.No.1 of 2024 in M.P.No.51 of 2024 and Thiru.S.P.Parthasarathy, Advocate for the petitioner in I.A.No.1 of 2025 in M.P.No.55 of 2024 and Thiru.Richardson Wilson, Advocate for the Respondent and upon hearing the submission made by the counsel for the Applicants and the respondents and on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following.

COMMON ORDER

1. As the fulcrum of the dispute and the Core issue involved in both the interlocutory applications being identical it would be nothing but proper to dispose of both the applications through a common order as this common order would not only to save precious time but also to avoid duplication of orders.

2. Prayer in I.A.No.1 of 2024 in M.P.No.51 of 2024 :-

This Interlocutory Application in the above Miscellaneous Petition stands preferred by the Petitioner OPG Power Generation Private Limited., in M.P.No.51 of 2024 with a prayer to issue an interim injunction restraining the Respondent, their men, officers, subordinates, employees or any other person(s) claiming and/or acting under them from initiating any recovery action, contrary to the directions/clarifications issued by Hon'ble Commission in the order dated 29.12.2023, pending disposal of the above

petition, and pass such further and other orders as it deems fit in the facts and circumstances of the case.

3. Prayer in I.A.No.1 of 2025 in M.P.No.55 of 2024 :-

This Interlocutory Application in the above Miscellaneous Petition stands preferred by the Petitioner M/s. A.R.S. Metals Limited., in M.P.No.55 of 2024 with a prayer to pass an Order of INTERIM INJUNCTION, restraining the 1st to 3rd respondent, their officers and representatives from claiming the demand charges, for the supply of electricity to generators, falling under category I under the order dated 29.12.2023, at any amount in excess of the 50% of the demand charges, as provided in the table under the Tariff Order dated 31.01.2015 and 09.09.2022, passed by the Commission, pending disposal of this Miscellaneous Petition.

4. As directed by the Hon'ble High Court of Madras in its order dated 08.01.2025, the present interim injunction applications seeking to restrain the respondent TNPDC from initiating any recovery action contrary to the directions / clarifications issued by this Commission in its order dated 29.12.2023 the IAs filed in M.P.No.51 & 55 of 2024 were taken up for hearing on 28.01.2025.

5. Heard Mr.Rahul Balaji and Thiru.S.P.Parthasarathy, Advocates for the petitioners in I.A.No.1 of 2024 in M.P.No.51 of 2024 & I.A.No.1 of 2025 in M.P.No.55 of 2024 and Mr.Richardson Wilson, Advocate for Respondents. Records perused.

6. Having considered the submissions of the petitioner and respondent and the issue involved herein at length, it is observed that the order dated 29.12.2023 of the

Commission has not been set aside or stayed by the Hon'ble APTEL in entirety. The order dated 29.12.2023 of the Commission has been stayed by Hon'ble APTEL only to the extent that it falls foul of Tariff Orders of 2017 and 2022. Further, TNPDCCL has been set at liberty to recover the two part tariff if the order dated 29.12.2023 of the Commission falls foul of tariff order 2017 & 2022. This effectively means that the order dated 29.12.2023 passed by the Commission has not been stayed for the period from 2013 – 2017.

7. Further, the main Appeal No.290 of 2024 filed against the order dated 29.12.2023 of the Commission is yet to be disposed by the Hon'ble APTEL and is still pending. In the absence of any stay or final disposal by Hon'ble APTEL with regard to the claim for the period 2013-2017, only the start-up charges fixed by the Commission in its order dated 29.12.2023 is applicable for the period 2013 - 2017. Resultantly, if there is a claim on the part of TNPDCCL for the period from 2013-2017 in its latest notice dated 12.12.2024 issued to the applicants herein or to any other generator drawing start-up power, the notice dated 12.12.2024 is invalid to such extent in terms of the order dated 12.09.2024 passed by Hon'ble APTEL and such claim for the period 2013-2017 cannot be enforced by TNPDCCL. Consequently, this Commission clarifies that the notice dated 12.12.2024 of TNPDCCL which was under challenge before Hon'ble High Court of Madras is valid for the period from 2017-2022.

8. As regards the period posterior to 2022, it is to be noted that there is yet another issue which requires quietus. While the Tariff Order of 2023 prescribes two part tariff, the Tariff Order of 2024 prescribes single part tariff i.e., the tariff fixed in the order dated

29.12.2023 of the Commission. While the TNPDCCL has challenged tariff order of 2024 on the ground that it extended the tariff fixed in the order dated 29.12.2023 to the tariff order of 2024 automatically without affording and opportunity of being heard, in regard to tariff order of 2023, TNPDCCL did not seem to have laid any claim before APTEL and confined itself only to the claims arising out of 2017 and 2022 order.

9. In view of such challenge made by TNPDCCL only to the tariff order of 2024 leaving out the Tariff Order 2023 altogether, the fate of two part tariff fixed in tariff order 2023 has been left in wilderness as it is sandwiched in-between the Tariff Order of 2022 & 2024. Viewed in the said background, the Tariff Order of 2023 which has prescribed a start-up charge similar to the one prescribed in Tariff Orders of 2017 and 2022 cannot be treated differently as the very basis of order dated 12.09.2024 of APTEL directly applies to the Tariff Order of 2023 also and no different view can be taken by the Commission for the 2023 Tariff Order. Hence there is no ambiguity at all in effecting a clarification that the communication dated 12.12.2024 of TNPDCCL is perfectly valid for the period from 2017-2023.

10. The only question which requires further consideration is whether two part tariff similar to the one fixed in Tariff Order of 2017, 2022 and 2023 can be extended to Tariff Order of 2024 as well. In this connection, it is to be observed that consequent to the order dated 08.10.2024 of the Hon'ble APTEL in Appeal No. 396 of 2024, wherein the order of the Commission has been set aside to the limited extent the Commission decided the issue of start-up power without giving the TNPDCCL of opportunity of being heard, the matter was taken on the file of the Commission as

R.A.No.5 of 2024 and it is pending for disposal. In view of the same, we have to observe that even if an opportunity is given in R.A.No.5 of 2024 to TNPDCCL to express its views on the tariff determined by the Commission in its order dated 29.12.2023 and validity of its subsequent extension to Tariff Order of 2024, the same would not make any difference as the Commission cannot rely on its decision rendered in its order dated 29.12.2023 and extend it to R.A.No.5 of 2024 due to pendency of appeal against the order dated 29.12.2023 of the Commission before the Hon'ble APTEL. It is because of the clear cut view expressed by Hon'ble APTEL in its order dated 12.09.2024 that the Commission could not have extended the decision rendered in the order dated 29.12.2023 to Tariff Order of 2017- 2022 when the remand made by Hon'ble High Court of Madras pertained only to the period 2013-2017.

11. In our view, the view expressed by APTEL in its order dated 12.09.2024 has direct application for the tariff order of 2024 as well. In the ultimate analysis, the Commission is of the view that it cannot extend the decision rendered in its order dated 29.12.2023 to Tariff Order of 2024 until final disposal of Appeal No.290 of 2024 by Hon'ble APTEL and only the two part tariff shall apply to the Tariff Order of 2024 until the validity of single part tariff or the tariff fixed in the order dated 29.12.2023 is tested and decided by the Hon'ble APTEL in the appeal.

12. In the ultimate analysis, Commission clarify and direct as follows :

- a) The communication of TNPDCCL dated 12.12.2024 claiming two part tariff i.e., demand and energy charges separately as per the respective tariff order for the

period from 01.08.2017 to 30.06.2024 is held valid except for the claim with regard to BPSC.

- b) The TNPDCCL shall ensure that no two part tariff or any tariff fixed in the Tariff Order dated 11.08.2017 in T.P.No.1 of 2017 and Order No.7 of 2022 dated 09.09.2022 or Order No.6 of 2023 dated 30.06.2023 is extended to the period anterior to 2017 specifically with regard to the period for which the remand was made by Hon'ble High Court of Madras i.e., 2013-2017 in view of the pendency of matter before the Hon'ble APTEL.
- c) This order is also applicable to all persons or entities who have been served with demand notices similar to the one issued in Lr.No.CFC/REV/FC/AO/AS-3/REV/D.No.557-1/24, dated 12.12.2024 which was under challenge before the Hon'ble High Court of Madras.

13. In view of the aforesaid findings and observation, Commission is of the view that the communication dated 12.12.2024 of TNPDCCL does not fall foul of Tariff Order of 2017 and 2022. The Hon'ble APTEL has given liberty to the respondent TNPDCCL to recover the amounts from the OPG Power Generation Private Limited, the petitioner in M.P.No.51 of 2024 and M/s.A.R.S Metals Limited, the petitioner in M.P.No.55 of 2024.

14. In view of the above said order passed by the Hon'ble APTEL in favour of the respondents and as a consequence of the findings of the Commission that the communication dated 12.12.2024 does not fall foul of the Tariff Orders passed in the year 2017 and 2022, this Commission decides that there is no merit in the interlocutory applications filed by the applicants in I.A.No.1 of 2024 and I.A.No.1 of 2025 in M.P.No.51

of 2024 and M.P.No.55 of 2024 respectively seeking interim injunction restraining the respondents from initiating any recovery proceedings contrary to the orders dated 29.12.2023 passed by the Commission or restraining the respondents from claiming any amount in excess of 50% of the demand charges.

15. In fine this Commission decides that there is no merit in both the interim injunction petitions.

In the result the petitions I.A.No.1 of 2024 in M.P.No.51 of 2024 and I.A.No.1 of 2025 in M.P.No.55 of 2024 are dismissed. Parties shall bear their respective costs.

Ordered accordingly.

(sd.....)
Member(Legal)

(sd.....)
Member

(sd.....)
Chairman

// True Copy //

Secretary
Tamil Nadu Electricity
Regulatory Commission