

Tamil Nadu's growing demand-supply gap on an “as and when” required basis and to approve/ ratify the tariff for the power supplied from 01.10.2023 to 31.03.2024 and to be supplied from 01.04.2024 30.06.2024 as per the tariff fixed by Ministry of Power, Government of India stated in Para 17 above by relaxing certain provisions of PPA/Addendum 3 as a one-time measure and take into consideration the sums already paid by TANGEDCO as per the MoP direction and pass such other or further orders as this Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

This petition coming up for final hearing on 30-05-2024 in the presence of Thiru Richardson Wilson, Advocate for the Petitioner and Ms. Gayatri Aryan and Thiru Rajesh Jha, Advocates from M/s. J. Sagar Associates and on consideration of the submissions made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. Contentions of the Petitioner:-

1.1. The Petitioner is engaged in the business of generation and distribution of electricity to various categories of consumers in the State of Tamil Nadu and is a distribution licensee in the State of Tamil Nadu. The electricity so required is availed from various sources such as its own generating stations, and purchase of power from various Central Generating Stations of its share, Independent Power Plants, Captive

Power Plants, Wind Generators, Co-generation plants, Bio mass plants, Merchant power plants, Power exchanges etc.

1.2. The Petitioner and the Respondent originally entered into a PPA dated 12.02.1998, which underwent subsequent amendments based on various orders of this Commission. Based on the order of the Commission dated 10.01.2020 in M.P. No. 27 of 2016, Addendum 3 was entered into by which the Respondent was supposed to achieve COD by 08.04.2021 which was actually achieved on 30.11.2021.

1.3. The Ministry of Power, ("MoP"), GOI had issued a directive dated 05.05.2022 under Section 11 of the Electricity Act, 2003 to overcome the demand for power that prevailed all over India in March and April 2022 due to non-operationalization of ICB power plants. The ICB Plants were directed that,

- *All imported power plants shall operate and generate power to their full capacity.*
- *Plants in the first instance shall supply power to the PPA Holders and the surplus power with no PPA will be sold in the Power Exchanges.*
- *A committee was constituted by MoP with representatives from MoP, CEA and CERC which will bench mark the rate of power supplied on pass through basis considering the coal price, shipping cost and O&M cost with fair margin.*
- *If the procurer is not willing to procure at the bench mark rate fixed by the Committee or is not able to make weekly payment, then such quantity of power shall be sold in the Power Exchanges and the net profit shall be shared between the generator and PPA holder in the ratio of 50:50 on monthly basis and also giving effect to the order upto 31.10.2222.*
- *The PPA holders shall have an option to make payment to the generating company according to the bench mark rate worked out by the Group or at a rate mutually negotiated with the generating company.*
- *Payment at the above rates shall be made to the Generating Company on a weekly basis.*

1.4. Based on the above direction, a committee was formed by the MoP vide letter dated 05.05.2022 with representatives from MoP, CEA and CERC to calculate the rate at which the power shall be supplied to PPA holders. The Respondent was directed to abide by the tariff fixed by the said Committee by letter dated 07.05.2022. Thereafter, MoP had issued clarifications dated 13.05.2022 and 20.05.2022 on the calculation of tariff, Benchmark ECR, and method of payment to the generators. Thereafter, vide order dated 11.07.2022, Benchmark ECR was fixed for M/s SEPC as 6.88 per KWh. The said benchmark ECR was varied from time to time. The Respondent herein supplied power on pass through basis from May 2022 till November 2022 under these directions.

1.5. The Petitioner had filed M.P. No. 1 of 2023 before the Commission praying as below:-

“It is humbly prayed that the Commission may be pleased to ratify and approve

- a. The power despatched from M/s. SEPC Power Private Limited to the grid on pass through basis as per the MoP guidelines dated 05.05.2022.*
- b. To fix the tariff for the power supplied from 30.04.2022 to 30.11.2022 by considering the payment already made by relaxing certain provisions of PPA Addendum 3 as one time measure.”*

1.6. In turn, SEPC had filed D.R.P. No. 17 of 2023 under section 11 (2) of the Electricity Act, 2003 praying for:

- (a) Allow the petition*
- (b) Hold and declare that as per Section 11(2) of the Electricity Act 2003, SEPC is entitled to receive actual cost of generation for power supplied under Section 11(1) including Supply Periods mentioned in para 1 above in order to mitigate adverse impact.*

- (c) Direct TANGEDCO to compensate SEPC for:
- (i) *actual cost of generation for power supplied by SEPC to TANGEDCO as per Section 11(1) including Supply periods mentioned in para I above along with interest and*
 - (ii) *Court fee (paid as per Rs.122,69,82,905 Cr. Till 12.06.2023 including interest computed i.e., 18,65,27,398) paid by SEPC to this Commission for filing the present petition;*
- (d) *Pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.*

The petitions are pending for adjudication before the Commission.

1.7. The Ministry of Power, Gol vide order dated 20.02.2023, had again issued another direction u/s 11 of Electricity Act, 2003, in order to ensure sufficient availability of electricity across the country to meet the anticipated demand in larger public interest. The validity of the said direction was originally from 16.03.2023 till 15.06.2023. Thereafter, the said direction was extended upto 30.09.2023 by MoP's directive dated 12.06.2023 and upto 31.10.2023 by directive dated 23.08.2023. SEPC had supplied power during these periods as well.

1.8. Ministry of Power vide Lr.No.23/13/2021-RAR (Pt-3) Dt. 31.03.2023 had communicated the bench mark Energy Charge Rate (ECR) fixed by the expert committee for M/s. SEPC as Rs.4.83 per unit w.e.f 16.03.2023.

1.9. The bench mark energy charge rate was issued by the committee constituted by Ministry of Power (MOP) every fortnight considering the updated prices of imported coal and shipping charges as follows:

Sl. No.	MoP Letter Date	Bench Mark ECR Period		SEPC
		From	To	
1.	31.03.2023	16.03.2023	29.03.2023	4.83
2.	03.04.2023	30.03.2023	12.04.2023	4.89
3.	19.04.2023	13.04.2023	26.04.2023	4.98
4.	04.05.2023	27.04.2023	10.05.2023	4.97
5.	19.05.2023	11.05.2023	24.05.2023	5.02
6.	29.05.2023	25.05.2023	07.05.2023	4.96
7.	13.06.2023	08.06.2023	21.06.2023	4.93
8.	03.07.2023	22/06.2023	05.07.2023	4.70
9.	25.07.2023	06.07.2023	19.07.2023	4.23
10	28.07.2023	20.07.2023	02.08.2023	3.81
11.	16.08.2023	03.08.2023	16.08.2023	3.80
12.	23.08.2023	17.08.2023	Till Date	3.91

1.10. The Board of TANGEDCO in the 118th Board meeting held on 18.11.2023 has accorded approval to avail power from ICB plants on as and when required basis depending on the demand during the month of October 2023 and also for future one year period (i.e.) up to October 2024, whenever MoP gives directions procuring power from the ICB plants at the bench mark rate notified by Ministry of Power.

1.11. Seeking ratification of the second pass through period, the Petitioner had filed Miscellaneous Petition No. 30 of 2023 seeking for the following reliefs:

- a. *The power dispatched from M/s SEPC Power Private Limited (Tuticorin) 525 MW to the grid on pass through basis as per the guidelines issued by the Ministry of Power, Government of India dated 20.02.2023 under Section 11 of the Electricity Act 2003, to meet out the Tamil Nadu's growing demand supply gap caused by the extension of summer 2023, on an 'as and when required' basis, from. March 2023 till September 2023 or thereafter if required;*

- b. *To fix the tariff for the power supplied from 16.04.2023 to 30.09.2023 as per the tariff fixed by Ministry of Power, Government of India stated in para 14 above by relaxing certain provisions of PPA/Addendum 3 as a one-time measure and to take into consideration the sums already paid by TANGEDCO as per the MoP direction;*
- c. *The payment for VFC made by TANGEDCO to SEPC for the power supplied from 29.05.2023 to 17.07.23 was by restricting their claim to the tariff by restricting the cost of secondary oil as per PPA. may please be approved,*
- d. *Pass such other or further orders as this Court may deem fit and proper in the facts and circumstances of the case and thus render justice."*

1.12. Thereafter, in view of the surge in electricity demand, the MoP had decided to further extend the section 11 directive issued vide letter dated 20.02.2023 and clarified by letter dated 31.03.2024 further from 01.11.2023 till 30.06.2024 vide its Directive No:23/13/2021-R&R(pt-1) dated 23.10.2023.

1.13. The Bench mark energy charge rate is issued by the committee constituted by Ministry of Power (MOP) every fortnight considering the updated prices of imported coal and shipping charges as follows:

Sl. No.	MoP Letter Date	Bench Mark ECR Period		SEPC
		From	To	
1.	12.09.2023	31.08.2023	13.09.2023	3.91
2.	22.09.2023	14.09.2023	27.09.2023	3.97
3.	13.10.2023	28.09.2023	11.10.2023	3.96
4.	20.10.2023	12.10.2023	25.10.2023	4.05
5.	07.11.2023	26.10.2023	08.11.2023	4.24
6.	08.03.2024	09.11.2023	22.11.2023	4.24
7.	08.03.2024	23.11.2023	06.12.2023	4.38

8.	08.03.2024	07.12.2023	20.12.2023	4.53
9.	08.03.2024	21.12.2023	03.01.2024	4.42
10	08.03.2024	04.01.2024	17.01.2024	4.36
11.	08.03.2024	18.01.2024	31.01.2024	4.51
12.	08.03.2024	01.02.2024	14.02.2024	4.35
13.	26.03.2024`	15.02.2024	28.02.2024	4.33
14.	26.03.2024	29.02.2024	Till Date	4.28*

*Last Benchmark ECR notified by MOP for making payment of energy charges, subject to revision as per the MoP notification prospectively.

1.4. Despite the precautions measures taken by TANGEDCO, TANGEDCO was in need of power to maintain uninterrupted power supply, summer crisis and hence, purchase of power from the intra state generator became inevitable. Hence TANGEDCO had also reiterated all the Intra State Power Generators including SEPC to operationalize the plant as per the MoP directions anticipating the necessity of availing power from ICB power plants during summer months of 2024.

1.5. TANGEDCO is continuing to procure power from SEPC to meet out the ensuing Summer Grid demand until 30.06.2024 if necessary, it is submitted that TANGEDCO is bound to follow the directives issued by the MoP, Gol, u/s 11 of the Electricity Act, 2003 to meet out the anticipated demand for power in the larger public interest. However, since the same is in variance of the PPA, the present petition is necessitated seeking the ratification and approval of this Commission and to fix the tariff for such period.

1.6. The tariff fixed by the MoP committee is taking into account the price of coal, transportation charges and O&M cost and after hearing all the stakeholders. Hence, the

same may be approved as the tariff for the pass through method for the VFC by this Commission.

- a. The power despatched from M/s SEPC Power Private Limited (Tuticorin)- 525 MW to the grid on pass through basis as per the directive issued by the Ministry of Power, Government of India in Directive No:23/13/2021-R&R)pt-1) dated 23.10.2023 under Section 11 of the Electricity Act 2003, to meet out the Tamil Nadu's growing demand-supply gap on an "as and when" required basis; and
- b. To approve/ ratify the tariff for the power supplied from 01.10.2023 to 31.03.2024 and to be supplied from 01.04.2024 to 30.06.2024 as per the tariff fixed by Ministry of Power, Government of India stated in Para 17 above by relaxing certain provisions of PPA/Addendum 3 as a one-time measure and take into consideration the sums already paid by TANGEDCO as per the MoP direction;
- c. Pass such other or further orders as this Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Reply on behalf of the Respondent:-

2.1. This Reply is filed on behalf of M/s. SEPC Power Private Limited ("SEPC/Respondent") the captioned Petition by Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO/Petitioner). TANGEDCO filed this petition seeking ratification of tariff paid for power supplied by SEPC TANGEDCO under Section 11(1) of the Electricity Act, 2003 ("Act") is noteworthy that TANGEDCO has in total filed three ratification petitions before this Commission viz.

S. No.	Date of filing the petition	TANGEDCO's Ratification Petition	Period
1.	05.01.2023	M.P No. 1 of 2023 [TANGEDCO v. SEPC) ("First Ratification Petition")	30.04.2022 to 31.11.2022
2.	21.09.2023	M.P No. 30 of 2023 [TANGEDCO v. SEPC) ("Second Ratification Petition")	16.04.2023 to 30.09.2023
3.	02.04.2024	M.P No. 17 of 2024 [TANGEDCO v. SEPC) ("Third Ratification Petition")	(a) 01.10.2023 to 31.03.2024 (b) 01.04.2024 to 30.06.2024

2.2. The tariff paid by TANGEDCO to SEPC for Section 11(1) supply in the abovesaid periods has been as per the rate notified by Ministry of Power ("MoP"). SEPC is objecting to TANGEDCO's prayer for ratification of tariff paid to SEPC for supply made under Section 11 (1) of the Act since the tariff paid is not adequate, SEPC suffered adverse impact as the cost of generation for the above said Section 11 (1) supply period was much more than tariff paid by TANGEDCO.

2.3. M/s. SEPC has already filed a petition under Section 11 (2) for a period starting 30.04.2022 till 12.06.2023 (later extended to 30.06.2023) i.e. DRP No. 17 of 2023. In such petition, the data reconciliation is ongoing as on date. In this view, SEPC sought liberty of this Commission to file a separate petition under Section 11 (2) for periods starting 01.07.2023, once there is clarity on data reconciliation between TANGEDCO and SEPC.

2.4. M/s. SEPC filed its counters in First Ratification Petition on 28.03.2023 and in Second Ratification Petition on 21.11.2023. Through both counters, SEPC conveyed its

no objection to prayer(s) i.e. ratification of power despatched from SEPC to the grid on pass through basis as per MoP guidelines and objected to Prayer (b) i.e. to fix tariff for power supplied under Section 11 (1) as per MoP determined rates. SEPC makes the same submissions on principle for similarly worded prayer (a) and (b) in the present petition.

2.5. M/s. SEPC is not agreeable to fixation of tariff for Section 11 (1) supply, as per MoP determined rates. As per settled law, a generator supplying power under Section 11 (1), ought to be compensated for its cost of generation. Submissions in this regard are as follows:

2.6. M/s. SEPC's submissions on legal framework of Section 11(2) of the Act also form part of SEPC's petition along with counter affidavits dated 28.03.2023 and 21.11.2023 in TANGEDCO's First and Second Ratification Petitions respectively. The contentions are in the following manner:

- (a) This Commission is vested with the powers under Section 11(2) to offset the adverse financial impact of the directions passed under Section 11(1) on any generating company.
- (b) Benchmark ECR decided by the MoP is interim in nature which is subject to final determination of adverse financial impact by the Commission under Section 11(2) of the Act. This has been settled by courts i.e. Hon'ble Supreme Court, Hon'ble Appellate Tribunal for Electricity ("APTEL") and Central Electricity Regulatory Commission (CERC) viz:

- (i) *APTEL's judgment dated 23.05.2014 in Appeal No. 37 of 2013 (GMR Energy Limited v. Karnataka Electricity Regulatory Commission & Ors.) (Para 29)*
- (ii) *Above judgment attained finality in view of Hon'ble Supreme Court's Order dated 30.03.2022 in Civil Appeal No. 8439-8440 of 2014 titled Bangalore Electricity Supply Company Ltd. & Ors. v. M/s, GMR Energy Ltd. & Ors.].*
- (iii) *CERC also adopted the approach as per APTEL's judgment. [Order dated 03.01.2023 in Petition No. 128/MP/2022 (Tata Power Company Ltd. v. Gujarat Vikas Nigam Limited & Ors.) (Para 59)].*

(c) Tariff for the power supplied by SEPC to TANGEDCO under Section 11 directions has to be evaluated according to the provision enshrined in the Act, i.e. this Commission having power under Section 11(2) to offset adverse impact, and principles settled by the Hon'ble Tribunal (APTEL).

(d) MoP's directions dated 20.02.2023 recognise that the tariff payable to generating companies is required to take into consideration all the prudent costs of using Imported coal for generating power, including the present coal price, shipping costs and O&M costs etc. and a fair margin [Para 5(b)].

(e) Determination of compensation under Section 11(2) is different from determination of tariff under Section 62 of the Act.

2.7. In view of the settled position of law, this Commission is prayed to take into consideration the actual cost of generation incurred by SEPC for the sole purpose of supply of power to TANGEDCO.

2.8. On 20.02.2023, MoP issued fresh directions under Section 11(1) of the Act to all ICB power plants to supply power to the PPA holders on priority, on requisition basis, either according to the benchmark rate worked out by the "Committee" constituted by the

MoP or at a rate mutually negotiated by the generating company and the procurer. The period of applicability of said direction dated 20.02.2023 has further been extended from time to time by MoP's letters dated 12.06.2023, 23.08.2023, 23.10.2023 and 12.04.2024. As per latest letter by Mop dated 12.04.2024, the Section 11 direction dated 20.02.2023 is to remain in effect till 15.10.2024.

2.9. So far as the rate determined by MOP is concerned, the difference between MoP Committee's calculation of Benchmark ECR and costs actually incurred by SEPC are on account following factors viz:

S. No.	MoP Committee's bases of calculation	SEPC' requirement
<i>Incorrect assessment of parameters</i>		
1.	5000 GCV (ARB) coal is the basis of computation	SEPC's boiler design requires coal of higher grade. The boiler design coal is 5450 GCV (ARB). In case MoP's benchmark ECR is based on lesser GCV, the generators with superior boiler designs (including SEPC) would inevitably face loss. Needless to say, SEPC has used coal of lesser GCV depending upon availability. The benefit of the same has been passed on to TANGEDCO. SEPC also uses coal of higher GCV, Le. 5450 kCal/kg based on availability. Therefore, since requirement of GCV of coal differs with different plant types, a standardised benchmark ECR is not adequate.
2.	FOB cost based on lowest of Argus, Plants and HBA Index	SEPC's coal imports primarily made from Indonesia Africa and Australia The coal miners and traders sell coal on Argus and Global Coal Index. Since Section 11 demand is always subject to abrupt discontinuation by the PPA holder (in this case TANGEDCO), SEPC could never order bulk consignments of coal. Accordingly, each consignment was

		purchased at the cheapest price available at that time.
3.	Freight has been calculated based on Clarkson Shipping Index value for Panamax vessels (70,000 MT size)	SEPC mostly procures Indonesian coals. Indonesian ports have the capacity to load only Supramax (58,000 MT Size) vessels. The freight for smaller vessels is higher. Maximum stock on sales happens with Supermax vessels and such constraint is <i>interalia</i> due to Section 11 power procurement being short term and uncertain. The benchmark ECR considering freight for a bigger vessel is therefore unavailable.
Cost Exclusions		
4.	Finance Cost opening of LCs	Imported coal sellers also add finance charges of Letters of Credit ("LC") for supply of coal. Financing costs of opening such LCs before Vessel arrival at load port ought to be included in VFC payable to SEPC.
5.	Miner's premium	No coal is being traded without 'Miners' premium" and the same is included in the Invoices raised by the coal suppliers on SEPC. The same ought to be included in VFC.
6.	Exchange Rate	The Customs Exchange Rate for import is to be considered instead of RBI Reference Rate since coal supplier charges rates notified by Central Board of Indirect Taxes and Customs.
7.	Actual cost of coal handling at Discharge Port and inland transportation.	These expenses are incurred by SEPC and are legitimate. The same ought to be included in VFC.

2.10. The inadequacy of MoP determined Benchmark ECR for covering prudent costs incurred by SEPC has also been recognised by this Commission and Central Electricity Authority ("CEA") viz:

- (a) This Commission vide Order dated 09.03.2023 in M.P. No. 3 of 2022 [M/s. SEPC Power Private Ltd. v. TANGEDCO] granted liberty to SEPC to approach this

Commission for offsetting the adverse financial impact or to claim compensation under Section 11(2) of the Act.

- (b) On 26.12.2023, in the meeting organised by MoP, which was attended by Chairperson of CEA along with representatives of ICB plants including SEPC, the Committee concluded that the MoP rates are only benchmark rates notified to facilitate running of ICB plants and that generators ought to approach State Commissions for further relief.

2.11. The benchmark ECR prices stipulated by the MoP Committee have consistently fallen short of covering SEPC's actual cost of generation for all supplies made to TANGEDCO. For the concerned supply period in the present Petition, following Benchmark ECRs were notified by MoP as against SEPC's actual cost of generation viz:-

Sl. No.	Date of MoP's clarification	Control Period		MoP Benchmark ECR (Rs./kWh)	Actual Tariff (Rs./kWh)*
		From	To		
1.	13.10.2023	28.9.2023	11.10.2023	3.96	4.57
2.	20.10.2023	12.10.2023	25.10.2023	4.05	4.63
3.	07.11.2023	26.10.2023	08.11.2023	4.24	4.73
4.	08.03.2024	09.11.2023	22.11.2023	4.24	4.97
5.		23.11.2023	06.12.2023	4.38	5.19
6.		07.12.2023	20.12.2023	4.53	4.88
7.		21.12.2023	03.1.2024	4.42	4.86
8.		04.1.2024	17.1.2024	4.36	4.60
9.		18.1.2024	31.1.2024	4.51	4.81
10.		1.2.2024	14.2.2024	4.35	4.58
11.		26.3.2024	15.2.2024	28.2.2024	4.33
12.	29.2.2024		13.3.2024	4.28	4.52
13.	1.4.2024	14.3.2024	27.3.2024	4.31	4.46
14.	8.4.2024	28.3.2024	10.4.2024	4.34	4.59

15.	23.4.2024	11.4.2024	24.4.2024	4.37	4.57
16.	8.5.2024	25.4.2024	8.5.2024	4.47	4.55
Weighted Average				4.32	4.70

**Rates are approximate as the billing cycle was on weekly basis as per MoP directions and MoP rates issued were on fortnightly basis.*

2.12. This Commission may take into consideration the above aspects along with submissions in SEPC's Section 11(2) petitions (already filed and to be filed subsequently), to adequately compensate SEPC for supply of power to TANGEDCO under Section 11(1). Accordingly, TANGEDCO's prayer 'b' seeking this Commission to fix the tariff for the power supplied by SEPC to TANGEDCO under Section 11 directions, ought not be entertained.

2.13. At the outset, each and every averment, contention and/or submission made by TANGEDCO in the captioned Petition is hereby denied in totality and traversed completely. No submission of TANGEDCO shall be deemed to be accepted/admitted, unless specifically admitted hereinafter by SEPC. SEPC is not responding to the facts within exclusive knowledge of TANGEDCO. However, SEPC reserves the right to respond to such averments at an appropriate stage, if such a need arises.

2.14. It is clarified that TANGEDCO's attempt to raise the issue regarding date of achieving COD by SEPC in paragraph 4 is frivolous at the present stage. In this regard, following is noteworthy:

- (a) During the hearings in M.P. No. 26 of 2021 [M/s. SEPC Power Private Ltd.v TANGEDCO], SEPC had set out the effect of COVID-19 related government

mandated lockdowns on the project and also how the project itself was affected by the same directly.

(b) This Commission in its Order dated 09.11.2021 in M.P. No. 26 of 2021 has already taken note of SEPC seeking an extended date for COD citing the COVID-19 pandemic restrictions and lockdowns as a reason for delay and had directed SEPC and TANGEDCO to invoke the revised clause 12.7(e)(ii) in the Addendum #3 for amicable settlement.

(c) Further, this Commission vide same Order has already noted the delay and had directed SEPC and TANGEDCO to bring the project into operation without any further delay.

(d) In view of the same, the issue with respect to delay in COD has already been discussed between SEPC and TANGEDCO, adjudicated upon by this Commission and appropriately settled.

(e) Even otherwise, delay in the Project is not a subject matter of the present petition. TANGEDCO is attempting to re-agitate an issue which has already been settled by the Commission. [Ref to Ld. Commission's latest Order dated 31.08.2023 in M.P. No. 3 of 2022-M/s. SEPC Power Pvt. Ltd. v. TANGEDCO-Para 10.10]

2.15. It is also clarified that benchmark rate notified by MoP has not been adequate to cover the actual cost of generation for SEPC and has resulted in adverse impact.

2.16. As regards the "Prayer" in the Petition, SEPC is in support of the relief sought by TANGEDCO in prayer 'a', however, the relief sought in prayer 'b' ought to be rejected by the Commission.

3. Findings of the Commission:-

3.1. The seminal point which arises for consideration in the present petition is whether the bench mark rate fixed by the MoP is applicable for the period from 01-10-2023 to 30-06-2024 pursuant to the direction issued under section 11 of the Electricity Act, 2003 for the purpose of supply of power by SEPC to the Distribution Licensees is interim in nature as contended by the respondent herein.

3.2. It is not in dispute that an expert committee was constituted solely for this purpose with a clear direction that such Benchmark price for supply on pass through basis shall be arrived at considering the coal price, shipping cost and O&M cost with fair margin. The Committee is a high powered committee consisting of representatives from MoP, CEA and CERC. On perusal of material records, we find that the Government of India issued a direction to all Generating Companies under Section 11 of Electricity Act 2003 on 05.05.2022 making it obligatory on the part of all imported coal based plants to operate and generate power to their full capacity with options to supply power to the licensee i.e., the procurer at the tariff worked out by the Experts Committee constituted by it or in the alternative to supply power at a rate mutually negotiated with PPA holder i.e., the licensee. It is also seen that further directions have been issued from time to time on the same lines set out in the original communication dated 05.05.2022.

3.3. On a careful consideration of the communication dated 05.05.2022 of the Government of India, it emerges that the rate fixed by the committee is not mandatory and not binding upon of the generator and it is exactly for the said reason that clause 4(f) finds place in the said communication. Situated thus, the rate fixed by the expert committee can be said to be only interim in nature in all cases where a generating company finds that the rate so fixed is not good enough to meet its cost of generation. In the present case, the respondent has made it explicitly clear that the rate fixed by the expert committee is not viable from its point of view and hence approached the commission for pass through of the actual cost of generation.

3.4. Coming to the prayers sought for by the petitioner, it is seen that there is no divergence of stand between the petitioner and the respondent in this regard except for the fact that while the petitioner seeks the actual pass through on the basis of rates worked out by the expert committee of Gol, the respondent seeks the actual pass through on the basis of the actual cost of generation. There is no difference in the stand taken by the petitioner and respondent in regard to the period of supply for which ratification is sought and the relaxation of the PPA to make way for payment for the supply of energy at the MoP rates.

3.5. Thus, the issue now boils down to a single point i.e., whether the rate fixed by the MoP is final or interim in nature. In our view, given the explicit provision in para 4(f) of the Government of India communication dated 05.05.2022 there is no manner of doubt that the rate fixed by the Committee can be said to be final only in cases where the generating company is agreeable to the rates fixed by the committee and not in cases

where the generating company prefers to supply power at a mutually agreed rate with the licensee i.e., the procurer. As a natural corollary, it goes without saying that in the absence of any such broad agreement between the parties on the price for the supply of the energy, it is the Commission which is empowered to determine the adverse impact on the generating company arising out of the Section 11 direction and issue direction for offsetting the same.

3.6. It is further seen that the respondent herein has preferred the separate petition for offsetting the adverse financial impact under Section 11 of the Electricity Act, 2003 and the same is pending before the Commission. Needless to say that the extent to which respondent herein suffered adverse financial impact requires long drawn arguments between the parties and extensive perusal of material records which cannot be done in the instant petition and it can only be a subject matter of the separate petition which has already been filed. Insofar as the present petition is concerned, we confine ourselves to the ratification of the power supply for the period stated in the prayer and the relaxation of the PPA for such purpose. As there is no disagreement between the parties on these aspects, we are inclined to ratify the dispatch of power from the respondents generating station to the petitioner's grid for the period from 01.10.2023 to 30.06.2024 by relaxing the provisions of the PPA to make way for supply of power as per Section 11 direction outside the purview of PPA.

3.7. With regard to rate payable by the petitioner to the respondent for the energy supplied from 01.10.2023 to 30.06.2024, the rate fixed by the expert committee constituted by the Government of India and the payments made hitherto based on the

same shall be treated as an interim arrangement subject to the outcome of the separate petition preferred by the petitioner under Section 11 of the Electricity Act 2003.

In fine, it is directed as follows:-

(1) The power already dispatched and to be dispatched from M/s SEPC Power Private Limited (Tuticorin) 525 MW to the grid on pass through basis as per the guidelines issued by the Ministry of Power, Government of India dated 05.05.2022 under Section 11 of the Electricity Act, 2003 from 01.10.2023 to 30.06.2024 is hereby ratified.

(2) The cost of generation of power dispatched by the Respondent to the petitioner's grid from 01.10.2023 to 30.06.2024 is allowed on pass through basis as per the rates from time to time fixed by the Expert Committee constituted by MoP vide its communication dated 05-05-2022 as a stop-gap arrangement and payment based on such rates shall be treated as an interim one with liberty to the respondent to agitate all the issues concerning the adverse impact suffered on account of Section 11 directions in the separate petition which has been preferred specifically for this purpose.

(3) To the extent of power already supplied and to be supplied by the respondent to the petitioner's grid from 01.10.2023 to 30.06.2024 as per the guidelines of the Committee constituted by MoP, the provisions in the PPA concerning the payment for the supply of power from the respondent to the petitioner stand relaxed.

(4) Both parties shall bear their respective costs.

Petition is ordered accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission