

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 48 of 2006

In the matter of

**Petition of The Tata Power Company Limited for approval of short-term power
purchase from NTPC Kayamkulam Plant**

Dr Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S.B.Kulkarni, Member

ORDER

Dated: June 5, 2007

The Tata Power Company Limited (“TPC”) filed a petition on 10th November 2006, wherein it submitted that, in order to meet the demand of distribution licencees and its own direct consumers in the city of Mumbai, it has, since 2nd November 2006, been procuring power on round the clock basis for the month of November 2006 from NTPC’s 350 MW Kayamkulam Plant based in Kerala through the Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) which in turn procures the same from M/s. NTPC Vidyut Vyapar Nigam (the trading arm of NTPC). The landed price of power at the generator bus based on the current naphtha price is stated, in the Petition, to be Rs. 6.31/kWh. In the Petition, it has been submitted that the aforesaid procurement of power would be in accordance with the direction of the Commission contained in the Order dated 3rd October 2006 in Case No.s 12 of 2005 and 56 of 2005 (*in the matter of ARR Petition of TPC Limited for FY 2005-06 and ARR & Tariff Petition for FY 2006-07*) wherein TPC-D (distribution arm) has been allowed to purchase power from other sources for meeting the requirement of its own distribution network as well as for supplying power to the other two distribution licensees, i.e., Reliance Energy Limited



(distribution arm) (“REL”) and Brihan Mumbai Electric Supply and Transport Undertaking, Municipal Corporation of Greater Mumbai (“BEST”), to meet their overall energy requirement. It has been submitted that in the aforesaid Order, the quantum, rate and cost of short term power purchase for TPC-D has been specified as under:

Power Purchase by TPC-D from other sources during FY 2006-07

Particulars	Quantum (MU)	Rate (Rs/kWh)	Cost (Rs. Crore)
Power purchase from other sources	305	4.41	134

2. As per the facts stated in the Petition, a meeting was held on 20th October 2006 amongst Secretary (Energy), Government of Maharashtra and the representatives of TPC, REL, BEST and MSEDCL wherein a decision was taken that TPC will, in order to meet the requirement for the city of Mumbai, draw power from NTPC’s Kayamkulam Plant in Kerala. In the said meeting, the Ministry of Power, Government of India, has assured availability of 350 MW power from the said plant by operating it on naphtha. It has also been decided therein that the extra power from the said source, which may become available (i.e., in excess of the combined requirement of TPC for areas serviced by BEST, TPC and REL), would be absorbed by MSEDCL for its own service areas.

3. As regards the inter-se arrangement between TPC, BEST, and REL, although, it has been submitted in the Petition that REL and BEST have consented to the aforesaid power procurement by TPC from NTPC’s Kayamkulam Plant for supply to them, no written communication to this effect has been placed on record. Instead, a written communication dated 27th October 2006 issued by TPC to REL has been annexed to the Petition wherein it has been conveyed to REL, inter alia, that power from NTPC’s Kayamkulam Plant would be supplied to TPC-D, REL-D and BEST between 0800 hrs to 2300 hrs and in case the plant does not back down during the night time, TPC-D, REL-D and BEST would be forced to purchase such power and the additional cost on account thereof would be charged to the aforesaid licensees in proportion to their requirement. It had also been stated therein that MSEDCL would, during the night time, absorb 150 MW



out of a total quantum of 330 MW of power that is procured from the said NTPC's Kayamkulam Plant.

4. It is in the above background that TPC has, in its Petition, sought the Commission's approval for purchase of 350 MW power on round the clock basis for the month of November 2006 at Rs. 6.31/kWh at the delivery point, i.e., NTPC Kayamkulam generator bus. Approval has also been sought on the amount of payment which would need to be made, at actuals, by TPC, on account of transmission losses and open access charges for intervening transmission corridor. TPC has also prayed, that, should TPC be able to procure power at rates lesser than the aforesaid rate of Rs. 6.31/kWh from any source other than NTPC Kayamkulam for meeting the demand for the month of November 2006, the Commission may also approve such power purchase by TPC.

5. Written submissions under an affidavit dated 4th December 2006 has been received from BEST, in the aforesaid matter, wherein it has been brought to the notice of the Commission that there is a proposed agreement between BEST and TPC for purchase by BEST of 800 MW power from TPC for ten years. It has been contended therein that the rate of Rs. 2.72/kWh. has been approved by the Commission and therefore TPC is under an obligation to supply 800 MW power at the said rate irrespective of the source of generation or procurement and rate thereof. It is BEST's contention that, in light of the aforesaid proposed agreement between BEST and TPC, the rate applicable for the purchase made by TPC from NTPC's Kayamkulam Plant will be applicable to BEST only if BEST draws power over and above 800 MW which has been committed by TPC to be supplied for ten years.

6. An admissibility hearing was held on 11th December 2006 in the presence of consumer representatives, authorised on a standing basis under the Electricity Act, 2003 ("EA 2003"). Shri. J.D. Kulkarni, appeared on behalf of TPC. Shri. P.S.Pandya and Shri. Kapil Sharma appeared on behalf of REL. Shri. S.A. Puranik, Shri. A.V. Khare, Shri. S.M. Salipal and Shri. N.V. Bhandari represented BEST. Shri. G.S. Trimukhe represented MSEDCL. Smt. Kavita Chafale represented MSETCL. Dr. Ashok Pendse appeared for MGP, one of the Consumer Representatives. Shri. J.D. Kulkarni submitted on behalf of TPC that, although, the quantum and rate for power purchase by TPC-D during FY 2006-07 had been specified by the Commission in the aforesaid Order dated 3rd October 2006,



the mismatch between the anticipated shortfall of 150 MW and the actual shortfall of about 300 MW in the month of November 2006, has necessitated procurement of power by TPC from other sources at rates higher than that specified by the Commission in the aforesaid Order. On a query from the Commission, TPC admitted that MSEDCL was procuring the NTPC Kayamkulam power and due to Mumbai's requirement, after the meeting with MoP and GoM, it was agreed that TPC would purchase this power to meet the requirements for the city of Mumbai. Therefore, a post facto approval of the Commission, to the aforesaid short-term power procurement, is being sought in accordance with Regulation 25 of the MERC (Terms and Conditions of Tariff) Regulations, 2005. It has been submitted that approval is being sought, particularly with respect to the quantum and cost but not on the rate. It has also been submitted that NTPC's Kayamkulam Generating Station is not a "previously approved" source for short-term power procurement by TPC-D. TPC has submitted that the Central Electricity Regulatory Commission ("CERC") has determined the tariff for NTPC's Kayamkulam Generating Station in terms of its Order dated 9th May 2006 with respect to Petition No. 147/2004 with IA No. 38 of 2005.

7. As regards power procurement from previously approved sources, it has been submitted that TPC has procured about 55 MW infirm power from M/s. JPTCL, Power Trading Corporation, etc., out of which 20 MW to 30 MW power has been procured from TISCO. Infirm power has also been procured from GRIDCO at a source rate of Rs. 5.65/- per kWh and a landed price of Rs. 6.45/- per kWh. It has been submitted that, as regards the source rate of 6.31/- per kWh for power procurement from NTPC's Kayamkulam plant, the landed rate at the DISCOM boundary in Mumbai, after accounting for the transmission charges and losses, works out to Rs. 7.42/- per kWh. After taking into account losses of about 4.85 %, the net landed price amounts to Rs. 7.80/- per kWh. It has been submitted that, thus, in effect, TPC-D, REL-D, BEST-D have agreed to short-term power procurement from NTPC's Kayamkulam plant at the landed price of Rs. 7.80/- per kWh. This is the first instance wherein TPC has entered into such a joint arrangement with REL, BEST and MSEDCL for procurement of firm power. It has been submitted that the Commission would be required to take into account, while it disposes off the present Petition, the factors which necessitated TPC to undertake such short term power procurement. It has been further submitted that firm power could not be procured earlier, firstly, due to its unavailability and secondly, due to the fact that exact quantum of



shortfall could not be anticipated with precision by the licensees earlier. MSEDCL has agreed to absorb power procured from Kayamkulam, during the night time, as additional power is required by TPC solely to meet the demands of Mumbai consumers during peak hours. A power purchase agreement to that effect has been executed (though not annexed to the present petition) with MSEDCL, in which, MSEDCL has agreed to draw power for TPC from NTPC Kayamkulam at a peak rate (day time) of Rs. 6.58/- per kWh and an off-peak rate (night time) of about Rs. 5.85/- per kWh. As regards the contentions of BEST regarding the commitment of TPC-G to supply 800 MW power for next ten years at Rs. 2.72/kWh, TPC refuted such contentions on the basis that no such written agreement has yet been executed to reflect such a commitment on behalf of TPC-G.

8. Section 86(1)(b) of EA 2003 provides that 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. Such a power that is vested with the Commission is required to be exercised in accordance with the terms and conditions for determination of tariff which the Commission has specified under Section 61 vide the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 (“**Tariff Regulations**”). In terms of Regulation 25.1 of the Tariff Regulations, it is mandatory for the licensees to undertake short-term power procurement during a given year in accordance with the power procurement plan for such year as approved by the Commission in accordance with Regulation 76.5 of the Tariff Regulations whereunder it is required that the licensees prepare their annual power procurement plan. Regulation 76.5.1 provides that the distribution licensee shall be allowed to recover the cost of power purchase from external sources for supply to consumers based on the annual power procurement plan. Regulation 76.5.5 provides that the Commission shall determine the quantum of electricity to be procured from various sources of supply including the generation business of the distribution licensee, in accordance with the principle of merit order schedule and dispatch, based on a ranking of all approved sources of supply in the order of variable cost or price. Regulation 25.2 provides that

“Subject to the exceptions contained in this Regulation 25, any variation, during any quarter of a financial year, in the quantum or cost of power procured and any



procurement from a source other than a previously approved source, in excess of five (5) per cent of the quantum or cost, as the case may be, of power procurement for such quarter, as approved by the Commission in the power procurement plan of the Distribution Licensee, shall be only with the prior approval of the Commission.”

9. During the determination of the ARR for FY 2006-07, the power procurement plan of TPC-D including various sources for the purposes of power procurement, had been considered. During the hearing, it has been admitted by TPC that NTPC's combined cycle generating station of the capacity of 359.6 MW at Kayamkulam, Kerala, was not included as a source in the power procurement plan of TPC-D that was submitted for the determination of ARR and tariff for FYs 2005-06 and 2006-07. Although, in the petition, TPC has sought approval of the Commission on the quantum of 350 MW, and the rate of power procurement at Rs. 6.31/ kWh from Kayamkulam generating station, TPC, during the hearing submitted that approval has only been sought with regard to the procurement from a source other than a previously approved source, namely Kayamkulam generating station, and that approval has not been sought on the quantum and the cost as the same is within the limits of power purchase allowed for TPC-D under paragraph 6.3.4 of the Order dated 3rd October 2006.

10. As against the contentions made by TPC, the Commission is of the view that prior approval is required under Regulation 25.2 of the Tariff Regulations when the licensee procures power from either a previously approved source or from any other source in excess of 5% (five percent) of the quantum or cost, as the case may be, of power procurement as approved by the Commission in the power procurement plan of the licensee for that quarter. It should be noted that the above Regulation refers to comparison with the total power procurement, and not only the short-term power procurement. Also, as TPC-D is undertaking the power purchase on behalf of the three licensees, viz., TPC-D, REL-D and BEST, the reference power purchase quantum and power purchase cost is the summation of the power purchase quantum and power purchase cost of the three licensees.



11. The quantum and cost of power purchase approved by the Commission for the three licensees for FY 2006-07, and the effective quantum and cost per quarter, is given in the Table below:

Table: Approved Power Purchase Quantum and Cost

Power Purchase	Units	TPC-D	REL-D	BEST	Total	Quarterly
(A)	(B)	(C)	(D)	(E)	(F) = (C) + (D) + (E)	(G) = (F)/4
Quantum	MU	2561	8597	4449	15607	3902
Cost	Rs. Crore	827	2231	1399	4457	1114

12. TPC has not submitted the computations of the quantum and cost of power purchase for which the Commission's approval has been sought. TPC has also not submitted the computation of whether the quantum and cost of power purchase for the transaction in question exceeds the approved quantum or cost in that quarter. TPC submitted certain scenarios of power purchase as a part of its submissions in this matter.

13. The Commission has undertaken a comparison of the quantum and cost of power purchase with the approved levels, to assess whether the clause under Regulation 25.2 comes into play in this case. The comparison of the power purchase from Kayamkulam with the quantum and cost of power purchase approved by the Commission for the three licensees for FY 2006-07 on a quarterly basis, is given in the Table below:

Table: Comparison of power purchase from Kayamkulam

Power Purchase	Units	Quarterly	Case I	Case II	Percentage	
(A)	(B)	(C)	(D)	(E)	(F) = (D)/(C)	(G) = (E)/(C)
Quantum	MU	3902	186	108	4.8%	2.8%
Cost	Rs. Crore	1114	130	80.136	11.7%	7.2%

14. The above calculation below shows that the cost of power purchase from Kayamkulam exceeds 5% of the approved cost of power purchase for the quarter in both Case I and Case II, though the quantum of power purchase is lower than 5% of the approved quantum of power purchase for the quarter in both Case I and Case II. Thus, the



Commission's approval is required for the same. The Commission approves the cost of power purchase from Kayamkulam, as projected by TPC, subject to actuals, considering the necessity of the same to overcome the shortfall in supply. During the hearing, TPC submitted that though the particular transaction was being undertaken at a higher rate, in the overall mix of power purchase, there was no increase in cost, due to the higher hydel generation and consequent lower power purchase from other sources. Hence, there would be no likelihood of increase in the overall cost of power purchase, on account of power purchase from Kayamkulam.

15. Having heard the parties and after considering the material placed on record, the Commission is of the view that, considering the exigencies, although, TPC has commenced procuring power since November 2, 2006, the approval of the Commission has been sought under the present petition post procurement and not prior to the procurement. There is clear contravention of Regulation 25.2 of the Tariff Regulations in that the same requires "prior approval". While the Commission, in public interest, keeping in view the objectives met by the aforesaid procurement of power by TPC, does not reject the same.

16. However, the Commission directs the licensees, i.e., TPC, REL and BEST, as well as MSEDCL, to follow the Commission's Regulations in letter and in spirit, and seek prior approval for such power purchases, wherever necessary, failing which the Commission may initiate action as provided for in EA 2003.

17. As regards the bilateral arrangement between TPC and MSEDCL for differential peak and off-peak rates, TPC is directed to submit the details of the Agreement between MSEDCL and TPC, and to clarify as to how it is in consonance with the Commission's Orders in this regard. Since FY 2006-07 is now complete, TPC is directed to submit the details of the actual power purchased under this arrangement from the Kayamkulam, the actual rate of power purchase at the generator bus-bar and at the delivery point, the actual absorption of power by MSEDCL during different time slots out of this power purchase, and payment made by MSEDCL to TPC for the same.

18. As regards BEST's contentions, the Commission is of the view that the position as regards the proposed arrangement between TPC and BEST does not impinge on the



issues raised in the present petition filed by TPC which deals only with the approval of Kayamkulam Generating Station as a source for power procurement by TPC-D for the month of November 2006. In light thereof, the Commission does not propose to dwell upon the contentions taken by BEST under its affidavit dated 4th December 2006. As regards the Power Purchase Agreement (PPA) between TPC-G and BEST, the same is being considered by the Commission separately, under Case No. 87 of 2006.

In view of the above, the Commission disposes off the petition filed by TPC with the aforesaid observations.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman, MERC



Secretary, MERC