

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

**Thiru M.Chandrasekar**

**.... Chairman**

**and**

**Thiru. K.Venkatasamy**

**.... Member (Legal)**

**D.R.P.No.23 of 2020**

M/s. Grace Infrastructure Pvt. Ltd.  
Rep. by its Chairman & Managing Director  
Mr. A.L. Shah  
A-5, Industrial Estate  
Thattanchavady  
Pondicherry – 605 009.

... Petitioner  
(Thiru K.Ravi from  
M/s. Rugan and Arya  
Advocate for the Petitioner)

Vs

1. TANGEDCO  
Rep by its Chairman cum Managing Director  
144, Anna Salai  
Chennai – 600 002.
2. The Directorate of Finance  
TANGEDCO  
No. 144, Anna Salai  
Chennai – 600 002.
3. The Chief Engineer (NCES)  
TANGEDCO  
144, Anna Salai  
Chennai – 600 002.
4. The Superintending Engineer  
Tirunelveli Electricity Distribution Circle  
Tirunelveli – 627 011
5. The Superintending Engineer  
Theni Electricity Distribution Circle  
Theni – 625 531.

6. The Superintending Engineer  
Dindigul Electricity Distribution Circle  
Dindigul – 624 306.

....Respondents  
Thiru M.Gopinathan  
(Standing Counsel for the Respondent)

**Dates of hearing** : 22-12-2020; 09-01-2021; 09-02-2021  
and 09-03-2021

**Date of Order** : 06-07-2021

The D.R.P.No.23 of 2020 came up for final hearing on 09-03-2021. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent, Rejoinder affidavit filed by the respondent and all other connected records and after hearing both the parties passes the following:-

### **ORDER**

#### **1. Prayer of the Petitioner in D.R.P.No.23 of 2020:-**

The prayer of the Petitioner in the above D.R.P.No.23 of 2020 is to direct the respondents to forthwith pay to the petitioner a sum of Rs.80,81,31,929/- plus Rs.14,80,198.65 being the balance amount due for the period from 16-03-2017 to 07-12-2020 to the petitioner from TANGEDCO for power supplied from the wind generation units of the petitioner, together with interest @ 1% per month from 07-12-2020 till the actual date of payment and direct the respondents to pay the cost of this petition including court fees, legal expenses of the petitioner and pass such further or other orders as the Commission may deem fit and proper.

#### **2. Facts of the Case:-**

This petition has been filed is to direct the respondents to forthwith pay to the petitioner a sum of Rs.80,81,31,929/- plus Rs.14,80,198.65 being the balance

amount due for the period from 16-03-2017 to 07-12-2020 to the petitioner from TANGEDCO for power supplied from the wind generation units of the petitioner, together with interest @ 1% per month from 07-12-2020 till the actual date of payment and direct the respondents to pay the cost of this petition including court fees, legal expenses of the petitioner

### **3. Contentions of the Petitioner:-**

3.1. The petitioner is in the business of Wind Power Generation and is running several Windmill Units in Tamil Nadu. The entire power generated by these Units is being sold to the above Respondents 4 to 6 under the terms of various wind Power Purchase Agreements (PPAs) executed between the Petitioner and the Respondents 4 to 6, with respect to the Tirunelveli, Theni and Dindigul EDC.

3.2. Under the said PPAs, the Petitioner has been generating and supplying energy to the Respondents 4 to 6 and has also periodically raised Bills.

3.3. The Power Purchase Agreement dated 18.03.2008 has the billing and payment clause which reads as follows:-

#### **"5. Billing and Payment**

a. The Wind Energy Generator agrees to raise bill on the distribution licensee for the energy generated and fed into the grid after deducting the energy imported from the grid.

b. The payment to Wind Energy Generator in respect of the energy supplied shall be made by the Board within the same period as provided by the Board to recover payments from its HT Industrial consumers."

3.4. All other Power Purchase Agreements have the billing and payment clause as follows:-

“6. Billing and Payment.

- (1) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.
- (2) The Distribution Licence shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.
- (3) The Wind Energy Generator agrees that if the consumption of the wind mill is more than the generation during a particular month, such excess consumption shall not be allowed to be carried forward to next month and the billing shall be done on the same month at the per unit realization rate of HT Industrial service as per tariff order in force.”

3.5. Under the said PPAs, the Respondents 4 to 6 are required to release payments against Bills within 30 days from the date of receipt of such Bills, failing which the Respondents 4 to 6 are liable to also pay interest @ 1% per month on such payments made after the said 30 days which is mentioned under the Billing and Payment Clause of each of the respective PPAs.

3.6. Till date, the Respondents 4 to 6 have released only part payments against such Bills, that too in a staggered manner and much after the stipulated 30 day period. Such delayed part payments made by the Respondents 4 to 6 have been duly adjusted by the Petitioner against part of such Bills and also against the interest

due for delayed payments on each of such Bills for the period from 16.03.2017 to 30.11.2020 (calculated @ 1% per month as and when payments were received).

3.7. After making the above adjustments, as against such Bills and as on 30.11.2020, the Respondents 4 to 6 are still due and liable to pay as follows:

- (i) Rs.50,03,06,451/- together with interest @ 1% per month till the actual date of payment with respect to the Windmill located in Tirunelveli
- (ii) Rs.18,05,19,392/- together with interest @ 1% per month till the actual date of payment with respect to the Windmills located in Dharapuram and
- (iii) Rs.12,73,06,086/ - together with interest @ 1% per month till the actual date of payment with respect to the Windmills located in Theni.

3.8. At this juncture, the Petitioner had received a letter dated 19.05.2020 from the 4th Respondent, Superintending Engineer, Tirunelveli EDC Circle, making a bald demand of Rs.4,44,25,933/-, allegedly payable by the Petitioner. The Petitioner submits that the contractually agreed to rate cannot be unilaterally reduced. Without prejudice to the same, the Petitioner further submits that in the said letter no calculations or justifications for arriving at such sum of Rs.4,44,25,933/ - is provided and it is also conspicuous that there is no reference to any contract or the specific Windmill Units with respect to which such rate was allegedly reduced. Thus, such demand, without even a proper statement of accounts as to how the alleged sum of Rs.4,44,25,933/- was arrived at as due and payable by the Petitioner, is arbitrary and not maintainable. Further, vide the said letter, it has also been unilaterally decided

that such sum of Rs.4,44,25,933/- will be recovered from the pending bills of the Petitioner. However, such action cannot be legally sustained.

3.9. Since the said letter was received during the lockdown period, the Petitioner had issued a preliminary reply to the same as the Petitioner did not have full access to their books at such point of time and hence the same was issued without prejudice to finalisation of accounts at the Petitioner's end.

3.10. After finalising accounts, the Petitioner's claim as on 30.11.2020, a total sum of Rs.80,81,31,929/ - is indisputably due and payable by the Respondents 4 to 6 for the power supplied by the Petitioner till 17.09.2020.

3.11. In spite of several demands including the legal notice, the Respondents failed and neglected to pay the amounts due to the Petitioner. The present claim is well within the time prescribed under the Limitation Act.

#### **4. Contentions of the Respondents:-**

4.1. The Petitioner has raised invoices for power supplied from its WEG on a monthly basis as per the terms of the Power Purchase agreement, and the petitioner received payments against invoice for the period up to 11/2020. The payment details are as follows:-

Sl. No.	Month	Amount	Cheque No. (thro'RTGS)	Dates
1	April 2016	2650410	789895&790046	04-04-2017
2	May 2016	4149389	790275&790455	05-04-2017
3	June 2016	28998138	790793&7903086	06-04-2017
4	July 2016	45877620	730527&730560	12-07-2017
5	August 2016	38712355	730997&731095	13-07-2017
6	September 2016	45713871	734226&734368	07-08-2017

7	October 2016	43695462	735872&736223	25-09-2017
8	November 2016	4905793	736655&736934	09-10-2017
9	December 2016	1840385	737832	10-10-2017
10	January 2017 to March 2017	15721351	RTGS	14-12-2017
11	April 2017 to May 2017	15816560	RTGS	23-01-2018
12	June 2017	38974421	RTGS	17-04-2018
13	July 2017	1355915	RTGS	23-04-2018
14	August 2017	85969069	RTGS	11-03-2019
15	September 2017	25428989	212024	07-06-2019
16	October 2017	22961314	380340	07-05-2020
17	November 2017	9475482	380341	15-05-2020
18	December 2017	2810643	380344	16-05-2020
19	January 2018	3422474	380346&380357	20-05-2020 & 18-06-2020
20	February 2018	2742925	380347	22-05-2020
21	March 2018	4031340	380348	22-05-2020
22	April 2018 to June 2020	17,79,77,165/-	50% payment made by PFC on 18-12-2020 and 05-01-2021 under Special Long Term Transition Loan vide UTR No. HDFC R52020121864130622	

4.2. The petition is neither maintainable in law nor on facts and as such the same is liable to be dismissed in limini.

4.3. The petitioner has 46 Wind Energy Generator Services i.e. WEG HT Nos. 1183, 3023, 3024, 3025, 3026, 3027, 3030, 3031, 3032, 3028, 3029, 3044, 3060, 3083, 4057, 3077, 3078, 3079, 3080, 3081, 3082, 3084, 4023, 4028, 4034, 4035, 4105, 3942, 3943, 3958, 4038, 4039, 3940, 4036, 3939, 4037, 4055, 4024, 4104, 4022, 4056, 4021, 4103, 4026, 4027 at Tirunelveli Electricity Distribution Circle. The petitioner has entered an Energy Purchase Agreement (EPA) with TANGEDCO.

4.4. The Commission issued a Comprehensive Tariff Order on Wind Energy (Order No. 1 of 2009 dated 20-03-2009) wherein the relevant portion is extracted as follows:-

*"8.11 Billing and Payment*

*8.11.1. When a wind generator sells power to the distribution license/ the generator shall raise a bill every month for the net energy sold power and reactive power. The Distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1 % per month."*

4.5. From the above, it could be observed that when wind energy generator sells power to the distribution licensee, the generator shall raise a bill for the net energy sold. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill in accordance with Tariff Order No.1 of 2009 dated 20.03.2009. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

4.6. The Commission issued Comprehensive Tariff Order on Wind energy (Order No.3 of 2016 dated 31-03-2016) wherein relevant portion is extracted as follows:-

*"9.3 Billing and Payment*

*9.3.1. When a wind generator sells power to the distribution licensee / the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution licensee reactive power charges etc. The distribution license shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month. TANGEDCO has suggested for levy of interest at 0.75% per month. Some of the shareholders have sought for interest at 1.5% to 2% for delayed payment beyond 60 days and-some of them have requested for payment within 30 days. Having considered receivables of two months/ Commission decides to retain the duration for payment by the Distribution licensee as 60 days as proposed and adopted in previous order and decides to adopt rate of interest of 1% per month for any delayed payment by the Distribution licensee beyond 60 days."*

4.7. From the above, it could be observed that wind energy generator sells power to the distribution licensee. The generator shall raise the bill for the net energy sold. The distribution licensee shall make payment to the generator within 60 days of receipt of the bill in accordance with Tariff order No.3 of 2016 dated 31.03.2016. Any delayed payment beyond 60 days is liable for interest at the rate of 1 % per month.

4.8. Due to shortage of power existing in Tamil Nadu, TANGEDCO is in a position to purchase power at higher rate from other sources, which leads to facing critical financial crises, further not able to make payment within the time limit prescribed.

4.9. In the meantime, interest on delayed payment is the additional burden which has to be faced by the TNEB. The Commission confirmed the interest payment vide its order dated 17.04.2011 passed in M.P No. 36 of 2010 which held that the TNEB is liable to pay interest at the rate of 1% per month to the Generator on the delayed payment .

4.10. The order passed by the Commission was challenged by TNEB before the Hon'ble Appellate Tribunal for Electricity. The Hon'ble APTEL vide its judgment dated 17.04.2012 has dismissed the Appeal filed by TNEB in Appeal No. 11 of 2012.

4.11. Again the TNEB filed a Civil Appeal vide C.A.No.2937 of 2014 before the Hon'ble Supreme Court of India which was also dismissed on 08.07.2016 by the Hon'ble Supreme

Court of India holding *"We see no reason to interfere with the award of Simple interest at the rate of 10% per annum on the amount of outstanding against the appeal and Electricity Board. The appeal is accordingly dismissed."*

4.12. The monthly fund inflow of TANGEDCO through revenue from sale of power to its consumers is around Rs.3200 Crores and tariff subsidy from Government of Tamil Nadu is around Rs.600 Crores per month.

The monthly fund outflow towards the revenue expenditure is as below:

1. Payment for procuring fuel - Rs.300 Crores
2. Transportation of fuel - Rs.300 Crores
3. Payment to power suppliers, both CGS and Private generators - Rs.2000 Crores.
4. Payment to Central and State Transmission Utilities - Rs.300 Crores.
5. Employees cost including pension - Rs.650 Crores
6. Repairs, Maintenance and administrative expenses – Rs.100 Crores
7. Interest and finance charges - Rs.1000 Crores.
8. Repayment of loan by TANGEDCO - Rs.500 Crores.

For all the above expenditures, the total outflow is around Rs.5150 Crores. There is an average shortfall of about Rs.1350 Crores per month. However 50% payments upto June/2020 are made as loans from REC/PFC/IREDA and other financial institutions.

4.13. In the above circumstances, releasing of huge payments to wind generators will be difficult one. However efforts are being taken for releasing balance payments

for one or two months. And moreover, paying or adjustment of interest due every month will affect the cash inflow of TANGEDCO and payment of surcharge before payment of the dues will not be a correct one under accounting principles. During the month of March/2020 wind mill payments for the period from Sep.2017 to Mar.2018 have been released. Moreover an amount of Rs.17,79,77,165/- has been made by PFC to the Petitioner Company on 18-12-2020 and 05-01-2021 under Special Long Term Loan (SLTL).

4.14. In order to overcome from the financial crises of TANGEDCO, the generators who had been affected by delayed payments are personally requested to attend negotiation meeting in the Chamber of the Director / Finance / TANGEDCO / CHENNAI. By expressing the financial position of TANGEDCO it was requested to waive the interest fully. Most of the generators have accepted to receive 50% of the interest payment in instalments.

4.15. Despite severe financial constraints faced by the TANGEDCO, sincere efforts are being made in clearing the pending bills of the wind energy generators as per seniority basis.

4.16. In so far as the averments in paragraph 14 of the affidavit of the petitioner that *"The petitioner had received a letter dated 19-05-2020 from the 4th Respondent Superintending Engineer/ Tirunelveli EDC, making a bald demand of Rs.4,44,25,933/- allegedly payable by the petitioner, the petitioner submits that the contractually agreed to rate cannot be unilaterally reduced"*, it is submitted that TNERC has issued Order vide TNERC/MO- 04-5/ RPO/ Dated 14-09-2017 by fixing

the APPC rate for REC Category WEGs for the financial year 2018-2019. The applicable APPC rate for the WEGs commissioned under the RPO regulation for the financial year 2018-2019 is as follows:-

- a) WEGs commissioned under the RPO Regulation availing Accelerated Depreciation benefit - 2018-19 - Rs.2.10/-
- b) WEGs commissioned under the RPO Regulation not availing Accelerated Depreciation benefit - 2018-19 - Rs.2.145/-

Based on the TNERC order, Chief Financial Controller / Revenue / Chennai has issued the instruction to revise the rate vide Memo No. CFC/Rev/FC/DFC/AAO/AS/HT/D-250/2019, dated 30-04-2019. Based on the instructions, the petitioner's billing units has to be revised amount of Rs.4,44,25,933/- (Rupees Four Crores Forty Four Lakhs Twenty Five Thousand Nine Hundred and Thirty Three only) for the financial year 2018-19 and intimated to the petitioner vide the Superintending Engineer / Tirunelveli EDC Lr. No. SE/TEDC/TIN/DFC/AOWIND/AS/F-REC/D-2242/2020, dated 19-05-2020.

4.17. If TANGEDCO is directed to forthwith make payment, it will adversely affect the fund flow of the respondents. Further, similarly placed generators may also seek the same and it will lead to multiplicity of litigations. This may lead to difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, make suppliers and power Generators similar to the petitioner.

4.18. TANGEDCO which is a corporation company wholly owned by the Government of Tamil Nadu and catering the need of the general public at large

would be put into irreparable losses grave prejudice, undue hardship and financial losses. In fact such losses will be passed through in the future tariff which have to be passed on the end-consumers and attracts public interest. In any case, for the sake of a company, public authorities under general public should not get suffered financially.

5. A Memo was filed by the petitioner on 18-01-2021 stating that the petitioner vide its letter dated 13-01-2021 declined to accept the settlement of interest @ 6% per annum and claimed interest @ 1% per month in accordance with the agreement between the petitioner. During the hearing held on 09-02-2021, Standing Counsel for TANGEDCO appeared and informed that the counter affidavit has been filed and sought to fix the date for arguments.

**6. Findings of the Commission:-**

6.1. We have considered the rival contentions. Except for setting up the defence of financial difficulty, the respondent has not set out any cogent reasons for non-settlement of bills but has set out a brief defence for deduction of Rs.4,44,25,933/- by placing reliance on the order of the Commission in TNERC/MO-04-5/RPO/Dt. 14-09-2017 for revising the bill for APPC. The petitioner, too has not totally disowned the said liability and merely stated in para 15 of the petition that the said communication having been received during the lock down period and having had no access to the books of accounts at that point of time, a letter was issued as a preliminary reply without prejudice to finalization of accounts at petitioner's end. However, the petitioner claims the entire amount of Rs.80,96,12,127.60 (Rs.80,81,31,929 + Rs.14,80,198.65) and did not dispute the

liability for the sum of Rs.4,44,25,933/- during the course of further hearings on the above amount and place any records in support of its defence. Hence, we are of the view that the payment of Rs.4,44,25,933/- by the respondent to the petitioner is an admitted fact by both parties and accordingly we hold that the petitioner is not entitled to be paid this part of the total claim made.

6.2. On the question of payment of interest, the respondent has not denied the fact that the invoices raised by the petitioner for the energy supplied by the petitioner were paid belatedly. Further, the respondent has also not disputed its liability to pay interest for the belated payment of invoices raised by the petitioner. Therefore, the Commission holds that late payment of invoices raised by the petitioner is admitted by the respondent and interest is payable thereon. In this connection, the following provisions of the Tariff Order No. 1 of 2009 would be relevant. Para 8.11.1 of the said Tariff Order deals with billing and payment and is extracted hereunder:-

*“8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”*

6.3. In view of the above, there is no manner of doubt that TANGEDCO is liable to pay interest at the rate of 1% per month beyond 30 days from the date of receipt of the invoices.

6.4. The Commission would like to observe that the typed set filed by the petitioner does not provide break up for the claim of Rs.14,80,198.65 and also the

para 13 of the petition which deals with the dues and the claim for interest @ 1% does not provide the break up. Hence, it has become necessary to direct the parties to verify the claim themselves and the Commission decides to pass orders only on entitlement to claim leaving the verification to the parties.

6.5. In the above circumstances and subject to Paras 6.1 and 6.3 TANGEDCO is directed to verify the claim made by the petitioner again and after deducting the amount if any, already paid and settle the same within 30 days from the date of this order. In the circumstances, there will be no order as to costs.

Accordingly, this petition is finally disposed of.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission