

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

PRESENT:

ThiruM.Chandrasekar

.... Chairman

and

ThiruK.Venkatasamy

.... Member (Legal)

D.R.P. No.7 of 2021

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
(M/s. Rugan & Arya
Advocate for the Petitioner)

Vs.

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

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

...Respondents
(Thiru. M.Gopinathan,
Standing Counsel for Respondents)

Dates of hearing : 10-08-2021;31-08-2021; 21-09-2021;
05-10-2021; 26-10-2021; and
16-11-2021

Date of Order : 19-01-2022

The DRP No. 7 of 2021 came up for final hearing on 16-11-2021. The Commission upon perusing the affidavit filed by the petitioner, counter 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.7 of 2021:-

This petition in D.R.P.No.7 of 2021 has been filed to direct the Respondents to forthwith pay to the Petitioner a sum of Rs.17,04,11,543/- (Rupees Seventeen Crore Four Lakh Eleven Thousand Five Hundred and Forty Three only) being the deficit amount to be paid to the petitioner by TANGEDCO for the period from FY 2013-14 to 2017-18 plus interest of Rs.11,03,76,188/- upto 05-07-2021 for the power supplied from the wind generation units of the petitioner, together with interest thereon at 12% per annum from the dates on which they ought to have been paid originally and until actual payment thereof and direct the Respondents to pay the cost of this petition including court fees, legal expenses of the petitioner.

2. Facts of the Case:-

The present petition has been filed to direct the Respondents to forthwith pay to the Petitioner a sum of Rs.17,04,11,543/- (Rupees Seventeen Crore Four Lakh Eleven Thousand Five Hundred and Forty Three only) being the deficit amount to be paid to the petitioner by TANGEDCO for the period from FY 2013-14 to 2017-18 plus interest of Rs.11,03,76,188/- upto 05-07-2021 for the power supplied from the wind generation units of the petitioner, together with interest thereon at 12% per annum from the dates on which they ought to have been paid originally and until actual payment thereof and direct the Respondents to pay the cost of this petition including court fees, legal expenses of the petitioner.

3. Contention 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 EDCs.

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, which are already in receipt of the Respondents 4 to 6, at the rates as specified by the Respondents.

3.3. 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

3.4. The Respondents 4 to 6 had released only part payments against such Bills, that too in a staggered manner and much after the stipulated 30-day period. Hence, after adjusting such delayed part payments made by the Respondents 4 to 6 against part of such Bills and also against the interest due for such delayed payments on each of such Bills, the Petitioner had filed a claim before the Commission vide D.R.P.No.23 of 2020. Orders have been reserved thereon.

3.5. In the meanwhile, the Petitioner 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 by referring to TNERC/M.O. 04-5/RPO, dated 14.09.2017 and Memo No. CFC/REV/FC/REV/DFC/AAO/AS/HT/D.250/19, dated 30.04.2019. The said letter had no calculations or justifications for arriving at such sum of Rs.4,44,25,933/- and it is also conspicuous that there is no reference to any contract or the Windmill Units with respect to which such sum was demanded. 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 was also unilaterally decided that such sum of Rs.4,44,25,933/- will be recovered from the pending bills of the Petitioner which cannot be legally sustained.

3.6. Since the said letter was received during the lockdown period, the Petitioner

issued a preliminary reply to the same since the Petitioner did not have full access to their books at such point of time and hence the same was issued without prejudice to finalization of accounts at the Petitioner's end.

3.7. Under the several Wind Energy Purchase (WEP) Agreements executed with the Respondents, the Petitioner has been generating and supplying Wind Power to the Respondents under the REC Framework.

3.8. For the purpose of promotion of renewable energy various State Commissions have been fixing separate Renewable Purchase Obligations (RPO), in their respective States, because of the difference in the renewable energy and options and the capacity to produce electricity from various renewable energy sources is different in various States.

3.9. The State Commission, on 7/12/2010, framed REC Regulations providing for RPO on the Obligated Entities which was to be fulfilled either by purchase of physical power from renewable sources or by purchasing the RECs from the power Exchanges approved by the State Commission. Under those Regulations, the Average Pooled Power Purchase Cost (APPC) was defined and later amended on 16/10/2012, by fixing a cap at 75% of the preferential tariff fixed by the Commission on the purchases from the Renewable Sources.

3.10. The amended definition and explanatory statement reads as under:-

"Pooled cost of power purchase means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation in the previous year from all the long-term energy suppliers, but excluding those based on liquid fuel, purchase from traders,

short-term purchases and renewable energy sources subject to the maximum of 75% of the preferential tariff fixed by the Commission to that category/sub category of NCES generators.

EXPLANATORY STATEMENT In the long run, Pooled Cost or Power Purchase may exceed the preferential tariff fixed by the Commission for renewable energy due to escalation of conventional fuel cost. It is prudent that a limit has to be fixed for arriving at the reasonable Pooled Cost of Power Purchase. Therefore, it is proposed to amend the said regulation.

3.11. The APPC rates were thus periodically fixed by the State Commission. However, in practice, the rates were communicated by the Respondents to the Petitioner only when the Petitioner logged into their account on the website of the Respondent for effecting payments and accordingly, on the basis of such rates as communicated by the Respondents, the Petitioner would raise their invoices/bills for the power supplied by them to the Respondents.

3.12. However, only after receipt of the above said letter dated 19.05.2020, the Petitioner started to look into the accounts and the actual annual rates as prescribed by the State Commission from time to time, and was shocked to find that the Respondents had in fact been providing wrong rates to the Petitioner over all these years, contrary to statutory provisions.

3.13. The Petitioner is now given to understand that overlooking the orders of the Hon'ble Appellate Tribunal for Electricity, New Delhi, the Respondents had been arbitrarily fixing the rates, as payable to the Petitioner, at 75% of the preferential tariff rates even for the years where the APPC rates did not breach the preferential tariff rates. The Petitioner is advised to submit that in spite of repeated orders, including orders passed by the Commission, condoning such practice, the Respondent had fixed the rates contrary to such orders. The Respondents had thus

played a fraud on the Petitioners to unjustly enrich themselves and such fraud was revealed only recently.

3.14. Thus the petitioners fell a victim to such erroneous calculations and were forced to raise invoices for the past several years at 75% of the preferential tariff rates for the corresponding years, even when the APPC Rate for that year had not breached the corresponding Preferential Tariff. The tabular column below will clearly establish such wrongful practice of the Respondents:

Year	APPC Rate	Preferential Tariff (P.T.)	75% of P.T.	Rates as provided by TANGEDCO	Rates as per Appellate Tribunal's Order; i.e. applicable rate
2013-14	3.11	3.53	2.65	2.54	3.11
2014-15	3.38	3.53	2.65	2.54 & 2.63	3.38
2015-16	3.55	3.53	2.65	2.63	2.65
2016-17	3.96	3.70	2.65	2.63	2.78
2017-18	3.70	3.70	2.78	2.63 & 2.78	3.70

3.15. The orders of the Hon'ble Appellate Tribunal for Electricity, New Delhi, in Appeal No.232 of 2017, in the matter of M/s.Techno Electric & Engineering Co. Ltd (formerly M/s.Simran Wind Project Ltd), squarely applies to the petitioner. The Respondents had thus paid the Petitioner less than what it was legally entitled to. This fact came to light only recently. Hence the Petitioner is entitled to payments of such deficit sums from the Respondents for all those years where the rates were wrongly fixed by the Respondents at a rate lower than what the Petitioners were in fact entitled to. Thus the Respondents have wrongfully enriched themselves while

causing a huge loss to the Petitioner.

3.16. Notwithstanding the above, the APPC rates, though are meant to be annually revised, subject to other factors, such revisions are fixed and communicated sometimes much after the commencement of the financial year, by which time the Petitioner has already planned their year of power supply on the basis of the prevalent rates. Thus such belated fixing of rates, that too with a retrospective effect, causes irreparable loss and hardship to the Petitioner.

3.17. The Petitioner also received a subsequent demand notice dated 05.02.2021 from Superintending Engineer, Theni Electricity Distribution circle, 5th Respondent demanding a refund from the Petitioner, alleging that they had paid in excess of the revised rate of Rs.2.10 fixed by the Commission vide Tariff Order No.6 dated 13.04.2018, for the period from 04/2018 to 03/2019.

3.18. Further, the fact that the abovementioned demand notices from the Respondents 4 and 5, which were sent with over a year's gap between such 2 notices, coupled with the further fact that the 6th Respondent has not made any similar demand till date and that the demand itself is vague, only goes to show the arbitrariness in it. Whereas, after going through the relevant Tariff Orders, it is now clear that in fact the Respondents had, over the years, paid to the Petitioner at rates less than what the Petitioner is statutorily entitled to.

3.19. The Petitioner thus caused the issuance of 3 distinct legal notices dated 03.06.2021 to Respondents 4, 5 and 6, demanding payment of Rs.6,55,54,724/ -

from the 4th Respondent, Rs.5,32,56,672/- from the 5th Respondent and Rs.5,16,00,147/- from the 6th Respondent, the total of all the three sums being Rs.17,04,11,543/ - together with interest thereon at 12% p.a. from the dates on which they ought to have been originally and until actual payment. These are sums payable towards deficit amounts for the financial years from 2013-2014 to 2017-2018 as per the actual and corresponding rates for such periods, as prescribed by the Hon'ble Appellate Tribunal For Electricity, New Delhi vide order dated 31.05.2019 in A.No.232 of 2017, which rates are applicable to the Petitioner. The first Respondent is primarily liable to pay this sum with interest since Respondents 4 to 6 are merely the extended limbs of the 1st Respondent.

4. Contention of the Respondent:-

4.1. The petitioner has filed the above petition praying the Commission directing to forthwith make the total outstanding delayed period interest of Rs.3,59,95,597/- (Rupees Three crores fifty nine lakhs ninety five thousand five hundred and ninety seven only) for the period from 04/2013 to 03/2018

4.2. 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 invoices for the period up to 06/2020. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not included interest on delayed payments.

4.3. The petitioner directing to forthwith make the payment of a sum of Rs.3,59,95,597/- (Rupees Three crores fifty nine lakhs ninety five thousand five

hundred and ninety seven only) towards interest for delayed payment for the period of 04/2013 to 03/2018.

4.4. All the averments made in the affidavit filed by the petitioner are denied except those that are specifically admitted hereunder and the petitioner is put to strict proof of all the averments. The petition is neither maintainable in law nor on facts and as such the same is liable to be dismissed in limini.

4.5. The wind mill details are below:-

Old No.	New No.	Capacity	Make	SF No.	Village	Taluk	Date of Commissioning
RE2-T.21	059304760142	1500 KW	REGEN	252/2 (p)	Jangalpatti	Theni	30-03-2011
RE2-T.22	059304760143	1500 KW	REGEN	366/4B (P)4D(P)	Jangalpatti	Theni	30-03-2011
RE2-T.27	059304760148	1500 KW	REGEN	180 (P)	Seelayampatti	Theni	30-03-2011
RE1-T.29	059304760116	1500 KW	REGEN	594/7(P)	Koduvilarpatti	Theni	11-03-2011
RE1-T.30	059304760117	1500 KW	REGEN	370/1(P)2 B2(P)	Vallalnathi	Theni	11-03-2011
RE1-T.31	059304760118	1500 KW	REGEN	370/1(P), 2B2(P)	Vallalnathi	Theni	16-03-2011
RE1-T.32	059304760119	1500 KW	REGEN	80/2(P), 3,7,8,9,10	Thenkkampatti	Theni	16-03-2011
RE1-T.33	059304760120	1500 KW	REGEN	451/2B, 3,4	Poomalaikundu	Theni	16-03-2011

4.6. In the meantime, the following payments have already been made to the petitioner towards the Sale to Board energy bills as detailed below:-

Statement showing workings for Theni Location and Wind Power sale rate revision for the period from FY 2013-14 to 2017-18

2013-14 invoice rate Rs.2.54 our eligible rate Rs.3.11

Sl.	Invoice	Month of	Invoice	Invoice	Eligible	Eligible	Due from	Interest
-----	---------	----------	---------	---------	----------	----------	----------	----------

No.	No.	Generation	Rate	Amount (A) Rs.	Rate	Amount (B) Rs.	TANGEDCO Amount (B-A) Rs.	Amount Rs.
1	251	April 2013	2.54	941539	3.11	1153942	212403	206030
2	255	May 2013	2.54	2052286	3.11	2513925	461639	443173
3	260	June 2013	2.54	13416348	3.11	16427710	3011362	2860794
4	264	July 2013	2.54	13807789	3.11	16907289	3099500	2913530
5	268	August 2013	2.54	9645244	3.11	11810292	2165048	2013495
6	272	September 2013	2.54	8740412	3.11	10702208	1962066	1805101
7	276	October 2013	2.54	7051727	3.11	8634761	1583034	1440561
8	280	November 2013	2.54	2723770	3.11	3335893	612123	550911
9	283	December 2013	2.54	613799	3.11	752771	138972	123685
10	286	January 2014	2.54	731680	3.11	896868	165188	145366
11	290	February 2014	2.54	1001748	3.11	1227409	225661	196325
12	294	March 2014	2.54	835808	3.11	1024281	188473	162087
		Total 2013-14		61561880		75387349	13825469	12861058

2014-15 invoice rate Rs.2.54 & 2.63 their eligible rate Rs.3.11 & 3.38

Sl. No.	Invoice No.	Month of Generation	Invoice Rate	Invoice Amount (A) Rs.	Eligible Rate	Eligible Amount (B) Rs.	Due from TANGEDCO Amount (B-A) Rs.	Interest Amount Rs.
1	301	April 2014	2.54	1558244	3.11	1908758	350514	297937
2	306	May 2014	2.54	1172083	3.11	1435983	263900	221676
3	310	June 2014	2.54	8205247	3.11	10047209	1841962	1528829
4	314	July 2014	2.54	14925679	3.11	18275702	3350023	2747018
5	322	August 2014	2.54	13558086	3.11	16609831	3051745	2471914
6	323	September 2014	2.54	8749551	3.11	10713657	1964106	1571285
7	327	October 2014	2.63	6356623	3.38	8170492	1813869	1432956
8	332	November 2014	2.63	1241273	3.38	1596504	355231	277080
9	336	December 2014	2.63	652978	3.38	840541	187563	144423
10	341	January 2015	2.63	297265	3.38	447319	150054	114041
11	347	February 2015	2.63	380623	3.38	522791	142168	106626

12	349	March 2015	0.09	3891745	0.09	3891745	0	0
13	351	March 2015	2.63	467799	3.38	634871	167072	123633
		Total 2014-15		61457196		75095403	13638207	11037418

2015-16 invoice Rate Rs.2.63 their eligible rate Rs.2.65

Sl. No.	Invoice No.	Month of Generation	Invoice Rate	Invoice Amount (A) Rs.	Eligible Rate	Eligible Amount (B) Rs.	Due from TANGEDCO Amount (B-A) Rs.	Interest Amount Rs.
1	405	April 2015	2.63	804394	2.65	810552	6158	4496
2	407	May 2015	2.63	497903	2.65	501726	3823	2752
3	410	June 2015	2.63	3209406	2.65	3233836	24430	17346
4	415	July 2015	2.63	10716202	2.65	10797713	81511	57058
5	420	August 2015	2.63	11823070	2.65	11912999	89929	62051
6	424	September 2015	2.63	8193412	2.65	8255747	62335	42388
7	428	October 2015	2.63	6070864	2.65	6117056	46192	30949
8	435	November 2015	2.63	736890	2.65	742534	5644	3725
9	441	December 2015	2.63	511342	2.65	515262	3920	2548
10	445	January 2016	2.63	856309	2.65	862855	6546	4189
11	450	February 2016	2.63	543031	2.65	547205	4174	2630
12	503	March 2016	2.63	1085856	2.65	1094150	8294	5142
		Total 2015-16		45048679		45391635	342956	235274

2016-17 invoice rate Rs.2.63 their eligible rate Rs.2.78

Sl. No.	Invoice No.	Month of Generation	Invoice Rate	Invoice Amount (A) Rs.	Eligible Rate	Eligible Amount (B) Rs.	Due from TANGEDCO Amount (B-A) Rs.	Interest Amount Rs.
1	507	April 2016	2.63	940698	2.78	994615	53917	32889
2	510	May 2016	2.63	1619349	2.78	1711975	92626	55576
3	514	June 2016	2.63	8469969	2.78	8953213	483244	285114
4	518	July 2016	2.63	14580898	2.78	15412653	831755	482418
5	522	August 2016	2.63	13319471	2.78	14079552	760081	433246
6	526	September 2016	2.63	15399155	2.78	16277571	878416	491913

7	530	October 2016	2.63	12956268	2.78	13695359	739091	406500
8	534	November 2016	2.63	2765040	2.78	2922976	157936	85285
9	538	December 2016	2.63	650110	2.78	688080	37970	20124
10	542	January 2017	2.63	561500	2.78	594386	32886	17101
11	545	February 2017	2.63	1006484	2.78	1064658	58174	29669
12	557	March 2017	2.63	786722	2.78	831690	44968	22484
13	561	March 2017	2.63	463910	2.78	490439	26529	13264
		Total 2016-17		73519574		77717167	4197593	2375583

4.7. The TNERC issued 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 license 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".

4.8. From the above, it could be observed that 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.

4.9. The TNERC 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 licensee 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 .75% per month. Some of the shareholders have sought for interest 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".

4.10. 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.

4.11. Due to shortage of power exist in TamilNadu, 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.

2017-18 invoice rate Rs.2.63 their eligible rate Rs.3.70

Sl. No.	Invoice No.	Month of Generation	Invoice Rate	Invoice Amount (A) Rs.	Eligible Rate	Eligible Amount (B) Rs.	Due from TANGEDCO Amount (B-A) Rs.	Interest Amount Rs.
1	558	April 2017	2.63	466562	3.70	657134	190572	93380
2	562	April 2017	2.63	278468	3.70	392340	113872	55797
3	563	May 2017	2.63	2519237	3.70	3545514	1026277	492613
4	564	June 2017	2.63	7157946	3.70	10070846	2912900	1369063
5	570	July 2017	2.63	10652071	3.70	14986662	4334591	1993912

6	574	August 2017	2.63	11481895	3.70	16177925	4696030	2113213
7	581	October 2017	2.63	6450206	3.70	9083867	2633661	1132474
8	582	October 2017	2.63	5555334	3.70	7816451	2261117	972280
9	584	September 2017	2.63	953439	3.70	1341535	388096	163001
10	585	October 2017	2.63	894841	3.70	1259072	364231	152977
11	587	November 2017	2.63	2529363	3.70	3559981	1030618	432859
12	591	December 2017	2.63	797188	3.70	1122952	325764	133563
13	595	January 2018	2.63	1030645	3.70	1451350	420705	168282
14	649	February 2018	2.63	521190	3.70	753655	232465	90661
15	689	March 2018	2.63	687067	3.70	968804	281737	107060
16	692	March 2018	2.63	97277	3.70	137091	39814	15129
		Total 2017-18		52072729		73325179	21252450	9486264
		Grand Total	293660058			346916733	53256675	35995597

Location	Principal	Interest
Theni	53256672	35995598
Total Court Fee	-	2807878

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.100Crores.
7. Interest and finance charges - Rs.1000 Crores.
8. Repayment of loan by TANGEDCO - Rs.500 Croes.

For all the above expenditures, the total outflow is around Rs.5150 Crores. There is an average shortfall of about Rs.1360 Crores. Some payments are postponed and made as and when loans are received 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 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. On 18.12.2020, wind mill payments up to the month of 06/2020 have been released.

4.14. Regarding, Interest on delayed payment in respect a wind generators, TANGEDCO has consented in the Commission, for payment of 50% of the surcharge due to the wind generators as eligible by the PPA. Payment is being made towards interest at 50% who have filed DRP and also agreed for 50% waiver. Due to Covid-19 pandemic, as the Cash Inflow of TANGEDCO has considerably reduced, there is some delay in making the payments. However, action is being taken. to clear the dues at the earliest.

4.15. In the meantime interest on delayed payment is the additional burden has to

be faced by the TNEB. The Commission Confirmed the interest payment vide its order dated 17.04.2011 passed in MP No.36 of 2010 held that the TNEB is liable to pay interest at the rate of 1% per month to the Generator on the delayed payment.

4.16. The order passed by the Commission was challenged by TNEB before the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL). The Hon'ble APTEL vide its judgment dated 17.04.2012 passed in Appeal No.11 of 2012 was dismissed. Again the TNEB filed a Civil Appeal vide No.2937 of 2014 before the Hon'ble Supreme Court of India 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.

4.17. Based on the above Hon'ble Supreme Court order the Generator has claimed a sum of Rs.3,59,95,597/- (Rupees Three crores fifty nine lakhs ninety five thousand five hundred and ninety seven only) towards interest payable for the delayed payment made for the past period between 04/2013 to 03/2018.

4.18. In order to overcome from the financial crises of TANGEDCO, the generator who had affected by delayed payments are personally requested to attend negotiation meeting in the Chamber of the Director/ Finance/TANGEDCO/CHENNAI 2. By expressing the financial position of TANGEDCO and requested to waive the interest fully. Most of the generators have accepted to receive 50% of the interest payment in installment.

4.19. 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.

4.20. The Commission if such directing the TANGEDCO to forthwith make payment of a sum of Rs.3,59,95,597/- (Rupees Three crores fifty nine lakhs ninety five thousand five hundred and ninety seven only) towards interest for delayed payment for the period from 04/2013 to 03/2018 will adversely affects the fund flow of the respondents. Further similar placed generators may also seek; it will lead to multiplication 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.

4.21. TANGEDCO 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 passing through in the future tariffs 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. Findings of the Commission:-

5.1The prayer of the petitioner is to direct the Respondents to forthwith pay to the petitioner a sum of Rs.17,04,11,543/- being the deficit amount to be paid by TANGEDCO for the period from FY 2013-14 to 2017-18 for the power supplied from the wind generation units of the Petitioner together with interest at 12% p.a.from the dates on which they ought to have been paid originally i.e

Rs.11,03,76,188/- upto 5.7.2021 and pay cost of the petition including court fees, legal expenses and pass such further orders.

5.2 From the petitioner's submissions, it is noted that the petitioner has been generating and supplying power from their windmills under the REC framework located in the jurisdiction of the Superintending Engineers in Theni, Tirunelveli, Dindigul Electricity Distribution Circles. Only after the receipt of the letter dt.19.5.2020 received from the fourth Respondent, the Superintending Engineer/ Tirunelveli Electricity Distribution Circle where a demand for Rs.4,44,25,993/- was raised from the petitioner, the petitioner had logged into their accounts and found that the rates of APPC differed consequent to the judgment passed by Hon'ble APTEL in the Appeal No.232 of 2017 dt.31.5.2019 and the Respondents had paid less than what the petitioner was legally entitled to.

5.3 The petitioner has thus claimed the difference between the APPC rates already paid prior to the judgment of APTEL in A.No.232 of 2017 and the APPC rates applicable after the judgment of APTEL for the financial years 2013-14 to 2017-18 which amounts to Rs.17,04,11,543/- . The petitioner claims an interest of Rs.11,03,76,188/- (upto 5.7.2021) from the date on which the sum should have been paid originally till the date of payment at 12% p.a. Under the PPAs executed between the petitioner and TANGEDCO, the respondents are liable to pay interest at 1% per month on payments made after 30 days.

5.4 The submissions made by both the parties lacks details. Commission is constrained to bring out the following facts:

i) The entire power generated from the petitioner's windmills under the REC framework has been sold to TANGEDCO, respondents 4 to 6 under various Power

Purchase Agreements. Under the REC scheme, the generators are to be paid at the Average Pooled cost of Power Purchase.

ii) As per the amended RPO regulations notified on 19.6.2013, the Pooled cost of power purchase under regulation 2(h) was defined as the weighted average pooled price at which the distribution licensee has purchased electricity including cost of self-generation in the previous year from all the long term energy suppliers but excluding those based on liquid fuel, purchase from traders, short term purchases and renewable energy sources subject to the maximum of 75% of the preferential tariff fixed by the Commission to that category/sub-category of NCES generators.

iii) Thus, payment at APPC rates to the WEGs under the scheme is subject to the price comparison between APPC rate and the preferential tariff rate.

iv) Hon'ble APTEL in A.No.232 of 2017 dt.31.5.2019 dealt on the limited issue regarding purported breach of Preferential tariff by APPC, compared the APPC notified by the Commission for each FY with the wind tariff of that year from FY 2012-13 to FY 2017-18 and observed that no breach took place. The Tribunal ordered that the APPC rate shall be compared by the State Commission on year to year basis and the proposed cap of 75% under the amendment shall be implemented for a particular year in which APPC rate crosses the rate of preferential tariff for that corresponding year and further directed the State Commission to issue directions to the Respondent TANGEDCO to make payments at APPC rate without applying any cap for the relevant period together with normal interest thereon at the rates provided in the EPA from the date such capped tariff was effected by the DISCOM until the date of payment.

v). The remand application in R.A No.2 of 2020 in M.P No.22 of 2016 was heard on 9.6.2020 and appropriate orders in terms of the order of APTEL was issued in

Order No.1/2020 on 12.11.2020. During the hearing of the remand case, TANGEDCO had informed that an appeal was filed before the Hon'ble Supreme Court of India against the judgment in Appeal No.232 of 2017. The directions in the Order No.1/2020 issued by the Commission is extracted below:

“TANGEDCO is directed to make payments to the appellants at the full APPC rate without applying any cap for the years 2013 -2014 to 2017-2018 together with normal interest thereon at the rates provided in the Energy Purchase Agreement from the date the capped tariff was effected until date of payment to the Appellants.

During the hearing on 9.6 2020, TANGEDCO informed that an appeal has been filed before the Hon'ble Supreme Court of India. This order is subject to the final outcome of the appeal filed by the Respondent TANGEDCO before the Hon'ble Supreme Court of India.”

vi) Thus the Order No.1/2020 dt.12.11.2020 is subject to the final outcome of the appeal filed by TANGEDCO before the Apex Court.

5.5 Neither of the parties have brought the actual facts in detail. TANGEDCO without disputing the amount, has expressed inability to pay the interest due to its dire financial condition.

5.6 The order No.1 /2020 dt.12.11.2020 passed by the Commission to implement the directions of APTEL in A.No.232 of 2017 is applicable to the instant case. TANGEDCO is directed to make payments in compliance with the Commission's order no.1 of 2020 dt.12.11.2020 within one month from the date of this order.

5.7 As to the liability of the petitioner for Rs.4,44,25,933/-, this issue has been dealt in the order disposed in DRP No.23 of 2020 and in the subsequent review petition filed by the petitioner.

The Petition is disposed of accordingly.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission