

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

PRESENT:-

Thiru.S.Kabilan ... Chairman

Thiru.K.Venugopal Member
and

Thiru.S.Nagalsamy Member

**D.R.P. No. 14 of 2011
and
I.A. No. 1 of 2011
in
D.R.P. No. 14 of 2011**

Gangadhar Narsingdas Agarwal
Anand Bhavan
Old Station Road
Margoa
Goa – 403 601.

.... Petitioner
(Ms.Bhavya Sriram, Advocate for Petitioner)

Versus

Tamil Nadu Electricity Board
Rep. by its Chairman
Anna Salai,
Chennai – 600 002.

.. Respondent

Date of hearing : 11-7-2011

Date of Order : 11-7-2011

D.R.P. No. 14 of 2011 and I.A. No.1 of 2011 in the said D.R.P. came up for admission before the Commission on 12-7-2011. The Commission upon

perusing the above petitions and other connected records and after hearing the Petitioner passes the following:-

ORDER

Prayer in D.R.P. No. 14 of 2011:-

To punish the Respondent Board, its officials for failure to comply with the Tariff Order, dated 20-3-2009 issued by this Hon'ble Commission in making payment to the Petitioner generator due under the Energy Purchase Agreement within a period of 30 days and pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case.

Prayer in I.A. No. 1 of 2011 in D.R.P. No. 14 of 2011:-

To issue an interim direction directing the Respondent Board to forthwith make payment of the sums due to the Petitioner generator for energy supplied under the respective Energy Purchase Agreements together with interest at 1% for every month from the respective due date of the respective bills.

Facts of the case :-

1. The Petitioner is engaged in the generation of wind energy by way of Wind Energy Generators ("WEGs"). The Petitioner has entered into three Energy Purchase Agreements, the first two in connection with WEG HT.SC. No. 999 and WEG HT SC. No.953 both dated 11-4-2008 and the third for WEG HT SC No. 1218 dated 21-7-2008 with the Tamil Nadu Electricity Board (TNEB) whereby the TNEB has agreed to buy energy from the Petitioner as set out in the terms and conditions of the said agreements.

2. The Respondent failed to make prompt payment towards the power supplied by the Petitioner by not making payments within a period of 30 days as agreed to in the Energy Purchase Agreements.

3. Even the delayed payments were being made by the Respondent without payment of any interest.

Contentions of the Petitioner:-

4. As wind energy is by nature infirm and is dependent upon seasonal variations, payments are generally bunched together during the wind season. Only if regular payments are made for the power generated and supplied, can the loans be serviced with promised return of investment.

5. Clause 5 of the agreements dealing with billing and payment reads as follows:-

“ 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 payments 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.”

6. The Commission, in its tariff order on wind energy, dated 20-3-2009, at para 8.21 of Annexure –I has specifically held that in case of NCES generation selling power to distribution licensees generator will raise the bill every month for

the net energy supplied after deducting the charges for start-up power, reactive power charges etc and the distribution licensee is required to make payment to the generators within the same period prescribed for recovery of dues from the HT Industrial Consumers which presently is 30 days.

7. In respect of interest, under para 8.11.1 of the Tariff Order any delayed payment beyond 30 days is liable for interest at 1% per month. Para 8.11.1 reads as follows:-

“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 start up 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”.

8. Para 8.12.1 of the Tariff Order reads as follows:-

“8.12.1. The National Tariff Policy calls for adequate and bankable security arrangements to the generating companies. Order No.3 dated 15-5-2006 of the Commission stipulated a bankable security in favour of generators. This mechanism has been found impractical, as there are a large number of wind generators and the monolith distribution licensee is unable to offer security for such a large number. Therefore, the Commission believes that the penalty of 1% per month for delayed payment by the licensee would serve the ends of justice”.

9. The Respondent Board has failed to make payments despite reminders by the Petitioner and even when payments are forthcoming, it is without any interest. Such an action on the part of the Respondent is in clear violation of the orders of this Hon'ble Commission dated 20-3-2009. The Petitioner by way of two letters both dated 8-3-2010 made known to the Respondent the above

mentioned fact of continuing delayed payments and the amounts of interest and principal due in relation to the same. No response was received in relation to this from the Respondent. A further legal notice dated 30-6-2010 was also sent to the Respondent, proof of receipt of which is evidenced by RPAD dated 3-7-2010. Again the Petitioner has received no response at all to this.

10. The principal amount due in respect of each and the interest due thereon.

Due as on	Machine / Site No	Principal Due (Rs.)	Interest Due (s.) (@ 1% for each month from respective due dates)	Total amount Due (Rs.)
31-12-2010	HTSC 953	3043508.00	500993	3747130.00
31-12-2010	HTSC 999	3597485.00	519638	4117123.00
31-12-2010	HTSC 1218	3811342.00	760363	4571705.00

In view of the above, it is just and necessary that the Hon'ble Commission be pleased to direct compliance with its orders.

Findings of the Commission :-

11. The Petitioner is covered by Order No.3 dated 15-5-2006 of the Commission and not by Order No. 1 of 2009 dated 20-3-2009 of the Commission as claimed in the petition.

Clause 10.15 of Order No.3 of 2006 reads as follows:-

“The payments to the generators in respect of energy supplied shall be made by the distribution licensee within the same period as provided by the distribution licensee to recover payments from its industrial consumers.”

The period stipulated for recovery of dues of HT consumers is seven days. Therefore this clause would mean that the TNEB is expected to make payment within seven days to the wind energy generator. The clause is silent on interest liability.

12. It is significant to note that the TNEB is entitled to charge its consumers for delayed payment of their dues @ 1.5% per month in accordance with Clause 5(4) of the Tamil Nadu Electricity Supply Code, 2004 of the Commission. Therefore, it is logical that even where there is no specific provision in the Orders of the Commission on delayed settlement of bills of generators by TNEB, liability for interest should be deemed to accrue.

13. In this context, we refer to Section 34(1) of the Code of Civil Procedure 1908.

“(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent per annum, as the court deems reasonable on such

principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I: In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability."

14. Settlement of bills of generator by the TNEB has been in arrears for about seven months now and therefore interest liability would mostly be for this period. We have ascertained from the State Bank of India the interest rate applicable for commercial transactions. This is in the range of 12.75% to 13% per annum. Therefore, 1% per month would not be unreasonable for delayed payment by TNEB.

15. As regards payment of principal by TNEB within the period as provided by TNEB to recover payments from its industrial consumers, in view of the position stated in paragraphs 11-14 above, we believe that delayed payment would attract interest and nothing beyond that. The payment itself cannot be forced by the Commission.

16. The present order of the Commission enables the Petitioner to raise a claim of interest. If such claim is not honoured, the Petitioner may approach the Commission with specific complaints of violation of the Order.

17. **Direction :-**

In the light of the findings in paragraphs 11 to 16 above, the TNEB is directed to pay interest on delayed settlement of bills as per the provision of Code of Civil Procedure 1908 at the rate of 1% per month.

18. **Appeal:-**

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

(Sd.....)
(S. Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission