



Tamil Nadu Generation and  
Distribution Company Limited  
(successor in interest of Tamil Nadu  
Electricity Board)  
800, Anna Salai  
Chennai – 600 002.

.... Respondent  
(Thiru PH.Vinod Pandian,  
Advocate for Respondent)

**Dates of hearing for both  
the above petitions**

**: 17-04-2012, 29-05-2012 & 26-09-2012**

**Date of order**

**: 16-11-2012**

The above D.R.P. Nos.7 and 8 of 2012 came up before the Commission for final hearing on 26-09-2012. The Commission upon perusing the above D.R.P. Nos.7 & 8 and records connected with the above petitions and upon hearing both sides in both the above D.R.P.Nos. 7 and 8 of 2012 passes this common order since both the above D.R.P.Nos.7 and 8 of 2012 are identical in nature.

**COMMON ORDER**

1. **Prayer in D.R.P. No.7 of 2012:-**

The prayer in D.R.P.No.7 of 2012 is to,-

- (a) direct the Respondent to immediately remit the outstanding dues of Rs.3,14,92,265/- for the supply of electricity effected by the Petitioner to the Respondent in terms of the PPA as per the statement attached as Annexure C together with the interest as stipulated in the PPA.
- (b) declare that the Petitioner has the right to terminate the agreement for non-payments on the part of the Respondents contrary to the provisions of the PPA, without affecting the right of the Petitioner to be entitled to sell electricity generated from its 10 WEGs of cumulative capacity of 8 MW to any person including through

open access and also the Petitioner's eligibility for Renewable Energy Certificates under Regulation 6 of the Renewable Energy Regulations framed by the Commission and Regulation 5 of the Regulations of the Central Commission.

(c) Award costs of the present proceedings in favour of the Petitioner and against the Respondent.

2. **Prayer of the Petitioner in D.R.P.No.8 of 2012 :-**

The prayer of the Petitioner in D.R.P.No.8 of 2012 is to,-

(a) direct the Respondent to immediately remit the outstanding dues of Rs.5,90,32,792/- for the supply of electricity effected by the Petitioner to the Respondent in terms of the PPA as per the statement attached as Annexure C together with the interest as stipulated in the PPA.

(b) declare that the Petitioner has the right to terminate the agreement for non-payments on the part of the Respondents contrary to the provisions of the PPA, without affecting the right of the Petitioner to be entitled to sell electricity generated from its 20 WEGs of cumulative capacity of 16 MW to any person including through open access and also the Petitioner's eligibility for Renewable Energy Certificates under Regulation 6 of the Renewable Energy Regulations framed by the Commission and Regulation 5 of the Regulations of the Central Commission.

(c) Award costs of the present proceedings in favour of the Petitioner and against the Respondent.

3. **Facts of the Case in D.R.P. No.7 of 2012:-**

3.1. The Petitioner in D.R.P.No.7 of 2012 is engaged in the business of establishing, operating and maintaining wind energy generating units. The Petitioner

has established an aggregate capacity of 8 MW of wind energy projects in the State of Tamil Nadu.

3.2. The Petitioner has inter-alia established ten units of 800 KW each at Kattarankulam Village, Tirunelveli Taluk in the State. The Petitioner has executed a Power Purchase Agreement dated 29-09-2010 and 30-09-2010 with the Respondent, for sale of the entire generation by the Petitioner from the above generating units of 8 MW. The above generating units were commissioned and declared for commercial operation by the Petitioner on 29-09-2010 and 30-09-2010 and the Petitioner has been supplying electricity to the Respondent since September 2010. The Petitioner has supplied more than 93.05 lacs units of electricity to the Respondent since the commissioning and commercial operation of the generating station.

3.3. From the month of December, 2010 the Respondent has not paid the amounts becoming due and payable for the electricity generated and supplied by the Petitioner under the above PPA. The total amount of arrears outstanding and payable by the Respondent to the Petitioner is about Rs.3.14 crore excluding the interest that has accrued on the outstanding amount at the rate of 1% per month as provided for in the PPA.

3.4. The Respondent has failed to fulfill its obligations and commitments under the PPA and remit the amounts to the Petitioner. The Petitioner is continuing to supply electricity to the Respondent for which no payments are being made.

3.4. The Petitioner is filing the present petition for directions to the Respondent to remit the entire amounts due and payable and to honour its commitments under the PPA and upon the failure to do so, for declaration of the rights of the Petitioner under the PPA to terminate the PPA for the breach on the part of the Respondent without in any manner affected on its entitlement of Renewable Energy Certificates in terms of the Renewable Energy Regulations.

**4. Facts of the Case in D.R.P. No.8 of 2012:-**

4.1. The Petitioner in D.R.P.No.8 of 2012 is engaged in the business of establishing, operating and maintaining wind energy generating units. The Petitioner has established an aggregate capacity of 16 MW of wind energy projects in the State of Tamil Nadu.

4.2. The Petitioner has inter-alia established twenty units of 800 KW each at Vagaikulam and Kalakudi Village at Tirunelveli Taluk in the State. The Petitioner has executed a Power Purchase Agreement dated 28-12-2010, 31-12-2010 and 11-03-2011 with the Respondent, for sale of the entire generation by the Petitioner from the above generating units of 16 MW. The above generating units were commissioned and declared for commercial operation by the Petitioner on 29-09-2010, 28-12-2010, 31-12-2010, 02-03-2011 and 11-03-2011 and the Petitioner has been supplying electricity to the Respondent since September 2010. The Petitioner has supplied more than 174.28 lacs units of electricity to the Respondent since the commissioning and commercial operation of the generating station.

4.3. From the month of December, 2010 the Respondent has not paid the amounts becoming due and payable for the electricity generated and supplied by the Petitioner under the above PPA. The total amount of arrears outstanding and payable by the Respondent to the Petitioner is about Rs.5.90 crore excluding the interest that has accrued on the outstanding amount at the rate of 1% per month as provided for in the PPA.

4.4. The Respondent has failed to fulfill its obligations and commitments under the PPA and remit the amounts to the Petitioner. The Petitioner is continuing to supply electricity to the Respondent for which no payments are being made.

4.5. The Petitioner is filing the present petition for directions to the Respondent to remit the entire amounts due and payable and to honour its commitments under the PPA and upon the failure to do so, for declaration of the rights of the Petitioner under the PPA to terminate the PPA for the breach on the part of the Respondent without in any manner affected on its entitlement of Renewable Energy Certificates in terms of the Renewable Energy Regulations.

## **5. Contentions of the Petitioners in both D.R.P.Nos.7 and 8 of 2012:-**

The Petitioners in both D.R.P.Nos.7 and 8 of 2012 have contended as follows:-

5.1. The Respondent has been guilty of breach of the terms of the PPA by consistent failure to pay for the electricity supplied by the Petitioner, entitling the Petitioner to terminate the PPA for such breach on the part of the Respondent. The Petitioner is not required to perform its obligations under the PPA of supply of

electricity from the above projects when there is breach on the part of the Respondent and failure to perform the reciprocal promises.

5.2. Apart from the recovery of the past dues from the Respondent, in terms of clause 8 (2) of the PPA, the Petitioner is entitled to terminate the agreement on account of the violation on the part of the Respondent in not paying the tariff as per the terms and conditions of the PPA. Upon termination, the Petitioner is entitled to sell electricity to any person without any obligation to supply electricity to the Respondent.

5.3. As per Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010 (hereinafter called the Renewable Energy Regulations), the Petitioner is also entitled to the benefit of Renewable Energy Certificates for supply of electricity to any third party through open access or on the power exchange, as the termination of the contract would not be on account of the actions or defaults on the part of the Petitioner.

5.4. In terms of Regulation 6 of Tamil Nadu Electricity Regulatory Commission (REPO) Regulations 2010 and Regulation 5 of Central Electricity Regulatory Commission Regulations 2010, if the termination of the PPA is on account of the breaches on the part of the Respondent and without there being any material breach of the terms and conditions of the PPA by the Petitioner (generating company) leading to the termination, the Petitioner is entitled to sell electricity to a third party consumer or licensee or on the power exchange without being affected in any manner on the eligibility to obtain the Renewable Energy Certificates under the

dispensation granted by the Central Commission and also as per the Regulations of the Commission.

**6. Contention of the Respondent in both D.R.P.Nos.7 and 8 of 2012:-**

The contention of the Respondent in both the above D.R.P.No.7 and 8 of 2012 are as follows:-

6.1. The Petitioner has relied on the provisions of the agreement between the parties and the Respondent is not disputing the provisions. As such there is no cause of action to file the dispute resolution petition. Admittedly this Respondent never denied any payment for the energy exported to the grid of TANGEDCO and as such there is no dispute between the parties herein. Therefore, the above petition is liable to be dismissed.

6.2. Even otherwise, the Petitioner has not exhausted the remedy as provided for in clause 9 of the PPA, by intimating the dispute, if any to the Respondent for an amicable settlement in the first instance. Besides, the other condition of agreement has also not been complied with by the Petitioner. Therefore, the petition itself is premature.

6.3. The Respondent had been putting all its best efforts to mobilize funds with the help of the Government Guarantee of Rs.11,000/- crores provided by the State Government. This situation would definitely prove beneficial to the Respondent to clear its outstanding bills in the forthcoming months.

6.4. The Respondent is committed to meet its payment obligations and is taking appropriate steps to revive its financial strength and thereby the question of violation or non-payment of dues on the part of the Respondent does not arise. Hence, in the interest of public the question of termination of agreement is unwarranted and the Respondent and its consumers would be put to hardship.

**7. Hearing held on 26-09-2012 in respect of both D.R.P.Nos.7 and 8 of 2012:-**

On 26-09-2012, hearing was held by the Commission in regard to both D.R.P.Nos.7 and 8 of 2012 and the Counsels for both sides in both the above D.R.P.Nos.7 and 8 were present. After hearing the arguments of both sides in the above D.R.P.Nos.7 and 8 of 2012, the Commission passes the following order:-

*“D.R.P.Nos.7 and 8 of 2012 were taken up together since the issues are identical in nature. The learned Counsel for TANGEDCO submitted that REC and PFC are extending loans to TANGEDCO to the tune of Rs.10,000/- crore and the documentation work is in progress. They confirm that the payment will be released pro-rata to all wind generators once fund flow starts from these institutions. TANGEDCO would be filing a brief note on this by 28<sup>th</sup> September, 2012 with a copy to the Petitioner. Since the TANGEDCO would be making the payment over a period of time, the second issue regarding REC is not gone into at this stage. Arguments concluded and orders reserved”.*

**8. Contention of the Respondent set out in the additional counter filed by the Respondent in both the above D.R.P.No.7 and 8 of 2012:-**

The contentions of the Respondent as set out in the additional counter affidavit filed by the Respondent in both the D.R.P.Nos.7 and 8 of 2012 are as follows:-

8.1. The TANGEDCO has cleared payments to the Wind Energy Generators uniformly upto June 2011.

8.2. The TANGEDCO is in the process reviving its financial strength and the following steps are being taken to mobilize funds:-

(a) Rural Electrification Corporation and Power Finance Corporation have sanctioned transition loans of Rs.5000 crores each against guarantee from Government of Tamil Nadu. Government Guarantee has been obtained. Loan will be released in tranches and disbursement of first tranche is expected to begin from October 2012.

(b) Government of Tamil Nadu has accorded in-principle approval to provide ways and means advance of Rs.1000/- crores to TANGEDCO. The amount is expected to be released during October 2012.

(c) The Government of Tamil Nadu has provided Government guarantee of Rs.6000 crores to TNPFC for mobilizing funds through bonds for onward lending to TANGEDCO. First tranche of Rs.253/- crores has already been mobilized and the second tranche of Rs.500/- crores is expected during October 2012. Tender process has already been initiated.

(d) Government of Tamil Nadu has been requested for providing Government guarantee of Rs.2500/- crores for mobilizing funds through floating of bonds by TANGEDCO.

(e) The Government of Tamil Nadu has announced Financial Restructuring Package for TANGEDCO through which TANGEDCO will reap the following benefits:-

- (i) Government of Tamil Nadu will take over the Short Term and Medium Term Loans of TANGEDCO which will lead to a saving Rs.9529/- crores to TANGEDCO.
- (ii) Government of Tamil Nadu has also agreed for funding 30% of the losses of TANGEDCO for the year 2012-13. Based on the estimated losses of TANGEDCO, this amount works out to Rs.1293.60 crores.

8.3. On receipt of recently sanctioned transitional of loan from Rural Electrification Corporation or Power Finance Corporation, July 2011 and August 2011 bills will be paid to the Windmill Generators during 10/2012. The balance bills upto March 2012 will be cleared in another 3 to 5 months' time.

8.4. With all the above efforts, TANGEDCO's financial health will improve by the end of the financial year 2012-13 which will help in clearing the future bills to the Windmill Generators without delay.

**9. Finding of the Commission with reference to both D.R.P. Nos.7 and 8 of 2012:-**

9.1. The prayers of the Petitioner M/s.Vish Wind Infrastructure LLP, Mumbai in DRP No. 7 of 2012 are as follows:-

- (a) *Direct the Respondent to immediately remit the outstanding dues of Rs.3,14,92,265/- for the supply of electricity effected by the Petitioner*

*to the Respondent in terms of the PPA as per the Statement attached as Annexure C together with the interest as stipulated in the PPA.*

- (b) Declare that the Petitioner has the right to terminate the Agreement for non-payments on the part of the Respondents contrary to the provisions of the PPA, without affecting the right of the Petitioner to be entitled to sell electricity generated from its 10 WEGs of cumulative capacity of 8 MW to any person including through open access and also the petitioner's eligibility for Renewable Energy Certificates under Regulation 6 of the Renewable Energy Regulations framed by the Hon'ble Commission and Regulation 5 of the Regulations of the Central Commission.*
- (c) Award costs of the present proceedings in favour of the Petitioner and against the Respondent.*
- (d) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case.*

9.2. The prayers of the Petitioner, M/s.Vaayu (India) Power Corporation Pvt. Ltd. Daman in DRP No. 8 of 2012 are as follows:-

- (a) Direct the Respondent to immediately remit the outstanding dues of Rs.5,90,32,792/- for the supply of electricity effected by the Petitioner to the Respondent in terms of the PPA as per the Statement attached as Annexure C together with the interest as stipulated in the PPA.*
- (b) Declare that the Petitioner has the right to terminate the Agreement for non-payments on the part of the Respondents contrary to the provisions of the PPA, without affecting the right of the Petitioner to be entitled to sell electricity generated from its 20 WEGs of cumulative*

*capacity of 16 MW to any person including through open access and also the Petitioner's eligibility for Renewable Energy Certificates under Regulation 6 of the Renewable Energy Regulations framed by the Hon'ble Commission and Regulation 5 of the Regulations of the Central Commission.*

*(c) Award cost of the present proceedings in favour of the Petitioner and against the Respondent.*

*(d) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case.*

9.3. These two petitions were taken up together since the issues are identical in nature.

9.4. When these petitions were taken up on 26-9-2012, the Learned Counsel for TANGEDCO submitted that M/s.Rural Electrification Corporation and M/s.Power Finance Corporation are extending loan to the TANGEDCO to the tune of Rs.10,000/- crores and the documentation work is in progress. TANGEDCO further confirmed that the payment will be released pro-rata to all wind generators once fund flow starts from these institutions. TANGEDCO agreed to file a brief note on this by 28<sup>th</sup> September 2012 with a copy to the Petitioner. Since the TANGEDCO would be making the payment over a period of time the Petitioners suggested that the second prayer regarding REC need not be gone into at this stage. In the counter affidavit filed by the Respondent TANGEDCO, they expressed their difficulty in releasing the payment in view of the fund constraint even after additional revenue of Rs.7,875/- crores in view of the revision of tariff. They are awaiting the loans from various

sources for release of this payment. The counter affidavit also states that they are committed to meet the payment obligations and is taking appropriate steps to revive its financial strength and therefore the question of violation or non- payment of dues on the part of the Respondent does not arise. They further pleaded that in the interest of public, the question of termination of Agreement is unwarranted.

9.5. . In the additional affidavit filed by the Respondent on 28<sup>th</sup> September 2012 the following statements are made.

(a) *TANGEDCO has cleared payments to the Wind Energy Generators uniformly upto June 2011.*

(b) *TANGEDCO is in the process of reviving its financial strength and the following steps are being taken to mobilize funds:*

(i) *Rural Electrification Corporation and Power Finance Corporation have sanctioned transition loans of Rs.5000 crores each against Guarantee from Government of Tamil Nadu. Government Guarantee has been obtained. Loan will be released in tranches and disbursement of first tranche is expected to begin from October 2012.*

(ii) *Government of Tamil Nadu has accorded in-principle approval to provide Ways and Means advance of Rs.1000 crores to TANGEDCO. The amount is expected to be released during October 2012.*

(iii) *Government of Tamil Nadu has provided Govt. Guarantee of Rs.6000 crores to TNPFC for mobilizing funds through bonds for onward lending to TANGEDCO. First tranche of Rs.253 crores has already been mobilized and the second tranche of Rs.500 crores is expected during October 2012. Tender process has already been initiated.*

(iv) *Government of Tamil Nadu has been requested for providing Govt. Guarantee of Rs.2500 crores for mobilizing funds through floating of bonds by TANGEDCO.*

(v) *Government of Tamil Nadu has announced Financial Restructuring Package for TANGEDCO through which TANGEDCO will reap the following benefits.*

(a) *Government of Tamil Nadu will take over the Short Term and Medium Term Loans of TANGEDCO which will lead to a saving of Rs.9529 crores to TANGEDCO.*

(b) *Government of Tamil Nadu has also agreed for funding 30% of the losses of TANGEDCO for the year 2012-13. Based on the estimated losses of TANGEDCO, this amount works out to Rs.1293.60 crores.*

(c) *On receipt of recently sanctioned transitional of loan from Rural Electrification Corporation or Power Finance Corporation, July 2011 and August 2011 bills will be paid to the Windmill Generators during 10/2012. The balance bills upto March 2012 will be cleared in another 3 to 5 months time.*

(d) *With all the above efforts, TANGEDCO's financial health will improve by the end of the Financial Year 2012-13 which will help in clearing the future bills to the Windmill Generators without delay.*

9.6. In the light of the mutual consent of the parties for making and receiving the payment as discussed in paras 9.4 and 9.5 above, DRP No. 7 of 2012 and DRP No. 8 of 2012 are finally disposed of. The prayer of the Petitioner regarding termination of the PPA is not gone into at this stage by the Commission as the Petitioners suggested that the same need not be taken up at this stage in view of the promise made by the Respondent for releasing all payment as discussed in this Order.

**10. Appeal:-**

An appeal against the order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within the period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

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

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission