

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

PRESENT:

Thiru S.Akshayakumar

.... Chairman

and

Dr.T.Prabhakara Rao

.... Member

D.R.P.No.21 of 2013

Century Flour Mills Limited
Indian Chamber Buildings
1st Floor, Esplanade
Chennai – 600 108.

... Petitioner
(Thiru Rahul Balaji
Counsel for the Petitioner)

Vs.

1. TANGEDCO
Rep. by its Chairman & Managing Director
No.144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
Chennai – 600 002.

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

Dates of hearing : 13-09-2013; 04-03-2014; 17-04-2014;
21-04-2014 and 22-02-2019

Date of Order : 25-03-2019

The D.R.P.No.21 of 2013 came up for final hearing on 22-02-2019. After hearing the learned Counsels for both the parties and after perusing the records, the Commission passes the following:-

ORDER

1. Prayer of the Petitioner in D.R.P.No.21 of 2013:-

The prayer of the Petitioner in the above D.R.P.No.21 of 2013 is to pass an order directing the Respondents to make payment of a sum of Rs.26,71,104/- being the interest due and payable to the petitioner against delayed payments made till 14-02-2013 for power supplied from its Wind Power Generation Projects forthwith to the petitioner and direct the respondents to bear the costs of the instant petition including court fees.

2. Facts of the Case:-

The petition has been filed to pass an order directing the respondents to forthwith make payment of a sum of Rs.26,71,104/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied till 07-10-2011 (upto Inv. No.20/14.10.11, payment recd. on 14-02-2013) from wind generation unit of the petitioner.

3. Contentions of the Petitioner:-

3.1. The petitioner is currently preferring the claim only in respect of interest portion of Invoices already made as the cause of action for making a claim on interest for payments against unpaid Invoices would arise only when payments in that regard are received and when such payments are made without interest which the Respondents are in contract and under law bound to pay.

3.2. The petitioner company is having wind power generating projects to the tune of 4.80 MW in the State of Tamil Nadu.

3.3. The petitioner has established Wind Power Generation project in Kongal Nagaram village, Udumalpet-642 126, Coimbatore district in the State of Tamil Nadu with a capacity of 1.65 MW. The petitioner submits that the power generated by this unit is being sold to the 1st respondent under the terms of Energy Purchase Agreement W.F.H.T.S.C. No.U1723 executed by the petitioner with the TANGEDCO on 22.02.2010 for a minimum period of 20 years from the date of execution.

3.4. The details of the various WEGs owned by the petitioner along with the dates of the respective agreements, their respective generation capacity and date of Commissioning are as below:-

Details of Wind Energy Generators (WEG's)

HTSC No.	Capacity	Make / Date of installation	Location	Date of Energy Wheeling Agreement
415	1 X 225 KW	Vestas – 15-02-2002	Pazhavor Village, Radhapuram Taluk	28-04-2010
490	1 X 750 KW	NEG Micon – 05-03-2003	Panagudi Village, Radhapuram Taluk, Tirunelveli District	28-04-2010
968	1 X 600 KW	Enercon – 30-09-2004	Panagudi Village, Radhapuram Taluk, Tirunelveli District	28-04-2010
1797	1 X 500 KW	Vestas – 31-03-2006	Kumbaneri Pudukudi Village, Tenkasi Taluk	29-04-2006
684	1 X 225 KW	Vestas – Sept-07	V.Kallipalayam Village, Palladam Taluk, Tirupur District	16-03-2011

1723	1 X 1650 KW	Vestas Wind Technology 23-02-2010	Kongalnagaram Village, Udumulpet, Tirupur District	22-02-2010
UGA-99	1 X 850 KW	Gamesa 20-03-2012	Sankarandampalayam Village, Dharapuram Taluk, Tirupur District	20-03-2012
Total	4.800 MW			

3.5. The petitioner submits that these agreements are covered by the respective applicable Tariff Orders.

3.6. The Wind Energy Generators (WEGs) belonging to the petitioner commissioned after the coming into effect of Tariff Order No.1 of 2009 issued by the Commission are governed by the said order.

3.7. Para 8.11.1. of the 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.

3.8. The newer WEG belonging to the petitioner operate under energy purchase agreements wherein TANGEDCO is liable to make payment against invoices raised

by the petitioner within a period of 30 days from the date of invoice failing which the invoice amount would be payable along with interest towards delayed payment at the rate of 1% per month as per the following provisions of the EPA:-

“Billing and Payment:

- a. The wind energy generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power.*
- b. 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.”*

3.9. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.

3.10. In light of the specific provision contained in Tariff Order No.1 of 2009 on interest in delayed payments, which is applicable to all WEGs commissioned after 19-09-2008 such as those of the petitioner, and because of the ruling of the Hon'ble APTEL in Appeal No.11 of 2012 dated 17-04-2012, it is entitled to interest on delayed payments including those payments which have already been remitted.

3.11. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.26,71,104/- towards interest on delayed payments alone.

3.12. Failure of TANGEDCO to make payments promptly as per terms of the energy purchase agreements has adversely affected the petitioner's financial position and strained its finances. The petitioner submits that current attitude of TANGEDCO not only affects the petitioner but would also have long term negative impact on the viability of the State of Tamil Nadu as most favored destination for investment in Renewable Energy, particularly Wind Energy projects.

3.13. The petitioner submits that it is paying a substantial court fee of Rs.26,720/- to file the instant petition for recovery of interest of delayed payments despite being entitled to the same as per the terms of the EPA, order of APTEL in Appeal No.11 of 2012 and Tariff Order No.1 of 2009 issued by the Commission. The Petitioner submits that the actions of TANGEDCO in not paying the petitioner interest on delayed payments, which the petitioner is legally entitled to, is contrary to the terms of the contract / EPA and binding judgments and the petitioner submits that it ought to be awarded the costs of the petition including court fees and legal expenses incurred.

4. Contentions of the Respondent:-

4.1. The petition has been filed by the petitioner for a direction to the respondents to make interest dues of Rs.26,71,104/- against delayed payments made till 14-02-2013 for the supply of electricity by the petitioner to the respondent in terms of the PPA. The petitioner is put to strict proof of its claim particularly the dues alleged and the interest component claimed.

4.2. The Dispute Resolution Petition filed under section 86 (1) (f) of the Electricity Act, 2003 is not maintainable, for the reason that no dispute has arisen between the petitioner and the respondent / TANGEDCO, since these respondents never denied payment for the energy supplied by the petitioner at any point of time. This petition is therefore liable to be dismissed on this score alone.

4.3. The petitioner has not exhausted the remedy as provided for in clause 9 of the respective PPA by intimating the dispute, if any, to the respondent for an amicable settlement in the first instance. Therefore, the petition is liable to be dismissed as premature.

4.4. The Respondents had released all the payment of bills pertaining to all the wind energy generators for the period upto March 2013.

4.5. Due to financial constraints underwent by the Respondent/TANGEDCO, it was unable to meet its financial commitments in time. It is submitted that due to the losses incurred by the Respondent Corporation, over a period of many years, the Respondents credit rating had deteriorated resulting in difficulty in raising of funds by way of loans also. It is submitted that, the delay in making payments by the Respondent was due to financial constraint in the recent years and the said non-payment of dues is not intentional. It is submitted that the Respondent TANGEDCO is functioning under the purview of the State Government and thereby discharging its duties in the larger interest of public.

4.6. TANGEDCO has huge outstanding payments to the tune of Rs.10,000 crores to several generators and coal companies also. It is submitted that even the loan repayments and interest payments could not be made on the due dates due to the financial crisis of the Respondent.

4.7. In spite of the above circumstances, the Respondent / TANGEDCO managed to make payments to Wind Energy Generators upto March 2013. It is submitted that the above payments made clearly indicates the bona-fide intention of the Respondent to repay the outstanding dues to the Wind Energy Generators. It is further stated that the Respondent does not deny its payment obligations to the Petitioner as per the order of the Commission.

4.8. The Respondent had been putting all its best efforts to implement Financial Restructuring Plan announced by Government of India. Tamil Nadu has been the first State to implement FRP. Funds have been mobilized under Financial Restructuring Plan. Government of Tamil Nadu will be taking over 50% of the loans liability to banks, as on 30.09.2012. This situation would definitely prove beneficial to the Respondent to clear its outstanding bills in the forthcoming months.

4.9. TANGEDCO 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.

5. Findings of the Commission:-

5.1. We have heard the submissions of learned Counsels appearing for the petitioner and the respondents. The petitioner has filed the petition seeking direction

to the respondents to make payment of a sum of Rs.26,71,104/- being the interest due and payable to the petitioner against the delayed payments in respect of the invoices made till 14-02-2013 for the power supply from its Wind Power Generation Projects to the respondents. On perusal of the petition, it is seen that the period of invoices for which interest is now claimed relates to the period from September 2010 to February 2013 as detailed in Annexure "A" to the petition.

5.2. The respondent in their counter affidavit filed on 30-09-2013 has stated that the Dispute Resolution Petition filed under section 86 (1) (f) of the Electricity Act, 2003 is not maintainable, for the reason that no dispute has arisen between the petitioner and the respondent / TANGEDCO, since these respondents never denied payment for the energy supplied by the petitioner at any point of time and this petition is therefore liable to be dismissed on this score alone.

5.3. Further, it is the contention of the respondent that the petitioner has not exhausted the remedy as provided for in clause 9 of the respective PPA by intimating the dispute, if any, to the respondent for an amicable settlement in the first instance. Therefore, the petition is liable to be dismissed as premature and the Respondents had released all the payment of bills pertaining to all the wind energy generators for the period upto March 2013. The only defence of the respondent is that due to financial constraints underwent by the Respondent/TANGEDCO, it was unable to meet its financial commitments in time and due to the losses incurred by the Respondent Corporation, over a period of many years, the Respondents credit rating had deteriorated resulting in difficulty in raising of funds by way of loans also.

The respondent further submitted that the delay in making payments by the Respondent was due to financial constraint in the recent years and the said non-payment of dues is not intentional and that the Respondent TANGEDCO is functioning under the purview of the State Government and thereby discharging its duties in the larger interest of public.

5.4. A close reading of the counter reveals that the respondent did not seek to dispute the claim made by the petitioner. The energy supplied by the petitioner to the respondent is not at all disputed. The respondent has only submitted that due to loss incurred by the respondent over a period of many years, the respondent credit rating had deteriorated resulting in difficulty over raising of funds by way of loans also and that the delay in making payment by the respondent was due to financial constraint in the recent years and the said non-payment of dues is not intentional. The respondent has also submitted that it is committed to meet its payment obligation and is taking appropriate steps to revive its financial strength. In view of the above submissions of the respondents, it is clear that the respondent admitted its delay in making payment for the energy supplied by the petitioner and also has accepted that there was a delay in making payment due to financial constraints. Therefore, we are constrained to allow the plea of the petitioner to claim interest on the belated payment on invoices by the respondent.

5.5. It is seen from the claim of interest made by the petitioner that the interest has been calculated at 12% per annum. In this connection, clause 6 of the Energy Purchase Agreement dated 22-02-2010 provides as follows:-

“6. Billing and payment:-

2. 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”.

From the above, it is clear that the petitioner is entitled for an interest of 1% per month i.e. 12% per annum for any delayed payment beyond 30 days. As such claim of the petitioner for interest at 12% as mentioned in Annexure “A” to the petition is correct. In view of the above, the petition is allowed. The respondents are directed to make the payments claimed by the petitioner after duly verifying the calculation within three months from the date of this order.

6. Appeal: -

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

**(Sd.....)
(Dr.T.Prabhakara Rao)
Member**

**(Sd.....)
(S.Akshayakumar)
Chairman**

//True copy//

**Secretary
Tamil Nadu Electricity
Regulatory Commission**