

The D.R.P.No.36 of 2014 came up for final hearing before the Commission on 11-02-2020 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

ORDER

1. Prayer in D.R.P. No.36 of 2014:-

The prayer of the petitioner in this D.R.P.No.36of 2014 is to pass an order directing the respondents to make payment of a sum of Rs.20,01,815/- being the interest due and payable to the petitioner against delayed payments made till 05-08-2013 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:-

This petition has been filed to direct the Respondents to forthwith make payment of a sum of Rs.20,01,815/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied till 08-04-2013 from Wind Generation Units of the petitioner.

3. Contentions of the Petitioner:-

3.1. This petition is being filed seeking to claim interest on delayed payment against invoices raised by the petitioner for which payment has already been made by TANGEDCO.

3.2. In addition to the payments which have been made belatedly, there are substantial sums of money due under invoices raised which are as yet outstanding. The payment of the invoice amounts together with the interest thereon is also due and payable.

3.3. 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.

3.4. The petitioner is an independent power producer from its Wind Energy Generator which is, inter alia, involved in the business of developing and operating Wind Energy Generation Projects by utilizing clean technology. The petitioner company is having Wind Power Generating projects to the tune of 1.5MW in the State of Tamil Nadu.

3.5. The petitioner has established Wind Power Generation projects in the village of Eragampatti Dharapuram Taluk, Tirupur Districts in the State of Tamil Nadu with a combined capacity of 1.5 MW. The power generated by these units is being sold to the 1st respondent under the terms of Wind Energy Purchase Agreement dated 4th October, 2010 executed by the petitioner with the TANGEDCO.

3.6. The location of its Windmills, date of commissioning, capacity and HT SC Nos. as stated by the petitioner in Annexures are set out herein below:-

No.	Location of Windmill & Jurisdictional TANGEDCO Circle	Capacity of Windmill	HT SC. No.
1	S.F. No. 580 (Part) Eragampatti Village, Dharapuram Taluk, Tirupur District, Tamil Nadu	1.5 MW	WTG SC No. U 2006

3.7. The petitioner submits that 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. With respect to the clauses relating to billing and payment for energy generated and supplied to TANGEDCO, 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 old category of Energy Purchase Agreements have a billing and payment clause which reads as follows:-

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 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.

3.9. The time period stipulated for recovery of dues from HT consumers by TANGEDCO is 7 days and therefore as per the terms of the Energy Purchase Agreement, TANGEDCO is liable to make payment against invoices within a period of 7 days from the date of invoice.

3.10. The WEGs 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.

3.11. The Hon'ble APTEL in its judgment in Chairman, TNEB &Anr.V. Indian Wind Power Association and Ors. in Appeal No.11 of 2012 dated 17-04-2012 held as follows:-

“13. 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.

17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project.

All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied the loans can be serviced along with the promised return of investment.

x x x

The wind power generators are entitled for payment of interest on delayed payment made by the appellant for the purchase of the power from the generators.”

3.12. In the light of the specific provision contained in Tariff Order No. 1 of 2009 on interest on 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 11 of 2012, the petitioner is entitled to interest on delayed payments including those payments which have already been remitted.

3.13. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA and the petitioner has received payments against invoices for the period upto 8th April 2013. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the order of the Hon'ble APTEL and the provisions of the Tariff Order No.1 of 2009 and the terms of the EPA.

3.14. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.20,01,815/- towards interest on delayed payments alone.

3.15. The substantial delays in making payments by the respondent have caused severe difficulties for the petitioner in meeting the financial obligations towards banks and financial institutions. The interest on delayed payments being much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The petitioner further submits that the delay in payments by TANGEDCO has also hampered the petitioner's capacity to proceed with its expansion plans.

3.16. The petitioner had sent a letter of demand on 05-08-2013 to the 1st respondent bringing to its notice, the details of various outstanding payments due and payable by TANGEDCO to the petitioner. The petitioner had also highlighted the difficulties faced by it due to the delay in making payments and had called on the 1st Respondent to expedite settling of dues. There has been no response or positive action from the respondents. The respondents have been making ad-hoc payments from time to time which are substantially delayed and even while making such admittedly belated payment, they have failed to pay interest on such delayed payments.

3.17. The petitioner is paying a substantial court fee of Rs.20,018/- to file the instant petition for recovery of interest on 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 this Commission. The action 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. Hearing held on 22-10-2019:-

During the hearing held on 22-10-2019, the counsel for the petitioner has submitted a Memo accepting the offer of the TANGEDCO for settlement of dues with interest at 6% per annum, if the payment is made within a period of 60 days as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month..
- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards costs of this D.R.P.
- (e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable

at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

5. Hearing held on 10-01-2020:-

During the hearing held on 10-01-2020, the counsel for the petitioner has submitted that the payment has not been made to the petitioner till date as directed by the Commission earlier but the Standing Counsel for the Respondent has submitted that TANGEDCO is processing the payment to the petitioner.

6. Hearing held on 11-02-2020:-

During the hearing held on 11-02-2020, the counsel for the petitioner has informed that TANGEDCO has not made the payment to the petitioner fully and only partial payments have been made. Both the parties have been directed to file their Written Submission within two weeks.

7. Findings of the Commission:-

7.1. The prayer in this petition is to pass an order directing the respondents to make payment of a sum of Rs.20,01,815/- being the interest due and payable to the petitioner against delayed payments made till 05-08-2013 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.

7.2. During the hearing held on 22-10-2019, the counsel for the petitioner has submitted Memo accepting the offer of TANGEDCO for settlement of dues with

interest at 6% per annum if the payment is made within 60 days. During the hearing held on 11-02-2020, the counsel for the petitioner has informed that TANGEDCO has not made the payment to the petitioner fully and only partial payments have been made. Both the parties have been directed to file their Written Submission within two weeks. However, no Written Submission has been filed by both parties. Therefore we are left with no option except to decide the issue on the basis of available records.

7.3. The only question which arises for consideration of the Commission is the rate of interest payable by the respondent to the petitioner for belated payment of energy charges payable to the petitioner by the TANGEDCO. TANGEDCO has not denied its liability to pay interest. Having failed to avail the payment of reduced rate of interest at 6% per annum, it has to pay interest as per contractual rates or as orders of this Commission in force. In this connection, our attention has been drawn to the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by this Commission which provides 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 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."

7.4. The Hon'ble APTEL in its order dated 17-04-2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been upheld by the Hon'ble Supreme Court in

CFC Vs. Gangadhar Narasinghadas Agarwal in Revised Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

7.5. In view of the above provision, the Commission holds that the respondent is liable to pay interest at the rate of 1% per month for payment of invoices beyond 30 days of its receipt.

7.6. The respondent is directed to make payment of Rs.20,01,815/- with interest as per our findings in para 7.5 above to the petitioner within a period of three months from the date of this order, after deducting payment, if any, already made. In the circumstances, there will be no order as to costs.

This D.R.P. is finally disposed of on the above direction.

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

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission