

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

**PRESENT:**

Thiru M.Chandrasekar	.... Chairman
Dr.T.PrabhakaraRao	.... Member
and	
Thiru.K.Venkatasamy	.... Member (Legal)

**D.R.P. No.1 of 2018**

M/s.National Enterprises  
P.O. Box No.44  
Barbil 758 035  
DistKeonjhar (Odisha)  
Represented by its authorised signatory

... Petitioner  
(Thiru Rahul K Jain  
M/s.Bohra& Associates  
Advocate for the Petitioner)

Vs

1. TANGEDCO  
Rep. by its Chairman cum Managing Director  
No.144, Anna Salai  
Chennai – 600 002.
2. Chief Engineer  
Non-Conventional Energy Source (NCES)  
TANGEDCO  
No.144, Anna Salai  
Chennai – 600 002.
3. The Superintending Engineer  
TANGEDCO  
Tirunelveli Electricity Distribution Circle  
Tirunelveli – 627 011.

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

**Dates of hearing :17-09-2019; 15-10-2019; 10-01-2020  
and 11-02-2020**

**Date of order : 20-10-2020**

The D.R.P.No.1 of 2018 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.1of 2018:-**

The prayer of the petitioner in this D.R.P.No.1of 2018 is to-

- (i) direct the Respondent/s to at once release the Late Payment Surcharge amount to petitioner jointly a sum of Total Late Payment Surcharge due i.e. upto 22-05-2018 for a sum of Rs.1,98,28,686/- @ 1% per month beyond 30 days as agreed rate of the PPAs and also as per the Tariff Order of the Commission;
- (ii) direct the respondent to establish a regular practice to release all the future payment in prescribed time limit, also release all principal sum, which is not yet paid and also pay the Late Payment Surcharge on such payment without failure and also release entire overdue principal sum accrued thereafter also till date; and
- (iii) direct the respondent to pay the cost of this litigation.

**2. Facts of the Case:-**

This petition has been filed to direct the Respondents to pay the petitioner a sum of Rs.1,98,28,686/- being the Late Payment Surcharge due to the petitioner

from TANGEDCO on each invoice as and when payments received for power supplied from the wind generation units of the petitioner in Tirunelveli Distribution Circle till 22-05-2018 together with further interest on the aforesaid amount from this day till realization.

### 3. Contentions of the Petitioner:-

3.1. The petitioner is developer of the ecofriendly wind energy in the State of Tamil Nadu and generating the electricity from the wind turbine, the details of the same is mentioned hereunder:-

Sl. No.	Name of WTG	Capacity in (MW)	Location	Manufacturer	Power Purchase Agreement
1	TDA-74	1.5	Balathiraramapuram Village, V.K. Pudur Taluk, Tirunelveli District, Tamil Nadu	Suzlon	30-05-2009 – 30-05-2029 (20 years)
2	TDA-76	1.5	Balathiraramapuram Village, V.K. Pudur Taluk, Tirunelveli District, Tamil Nadu	Suzlon	30-05-2009 – 30-05-2029 (20 years)
3	TDA-115	2.1	Kurukalpatti Village, Sankarankoil Taluk, Tirunelveli District, Tamil Nadu	Suzlon	25-08-2010 – 25-08-2030 (20 years)
4	TDA-133	2.1	Vadakkupanavadali Village, Sankarankoil Taluk, Tirunelveli District,	Suzlon	25-08-2010 – 25-08-2030 (20 years)
5	SK-27	2.1	Devarkulam Site, Village, Devarkulam, Vellapaneri Tamil Nadu	Suzlon	29-09-2015 – 29-09-2035 (20 years)
6	VL-403	2.1	Vellapaneri Site, Village, Achampatti, Tamil Nadu	Suzlon	29-09-2015 – 29-09-2035 (20 years)
	<b>TOTAL</b>	<b>11.4 MW</b>			

#### Tamil Nadu

Sl. No.	Name of WTG	Capacity in (MW)	Location	Manufacturer	Power Purchase
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					<b>Agreement</b>
1	NE1	1.65	SamugarengapuramVillage, RadhapuramTaluk, Tirunelveli District,	Vestas	30-03-2008 – 30-03-2028 (20 years)
2	NE2	1.65	SamugarengapuramVillage, RadhapuramTaluk, Tirunelveli District,	Vestas	30-03-2008 – 30-03-2028 (20 years)
<b>Total Capacity</b>		<b>3.3 MW</b>			

**TOTAL 14.7 MW**

3.2. The petitioner is selling the said generated electricity to the respondent at the rate agreed under the terms of the PPA/EPA, which are duly executed on dates as mentioned in the above table. The said Wind Mills total capacity is of 17.7 MW running in villages as mentioned in the above table. The details regarding the PPA / EPA execution, commissioning and villages are duly defined. The petitioner also executed the PPAs on agreed terms with respondent and the terms of which are binding in nature and contractual one.

3.3. The above referred PPAs are executed and signed by the respondent as well as by the petitioner and the terms defined therein are having a binding force in law. The petitioner is regularly raising the bills for said sale of electricity but since last year the entire payment cycle is adversely effected as respondent has failed to follow the disciplined payment procedure and overlooking the terms of the PPA too, which is having a binding force in law.

3.4. The petition is being filed before the Commission seeking the claim of Delay / Late Payment Surcharge i.e. (Delay payment interest) on delayed payment or late

payment surcharge, against invoices already raised by the petitioner for which payment has already been made by the respondent.

3.5. In addition to the payments which have been made belatedly, still 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 are also due and payable. So in the instant petition of Late Payment Surcharge, part, for which they have received after agreed days and for which the Late Payment Surcharge is overlooked by the respondents. Even on regular demand made for Late Payment Surcharge part, they always overlooked.

3.6. Even after sending regular request letters, reminders, sending petitioner's staff members and representatives personally, sending legal notice, the respondent has overlooked the regular and time bound payment, which is a proved case of financial indiscipline, violating the agreed terms of the PPA.

3.7. The provision of interest on late payments (Late Payment Surcharge) at 1% per month beyond 30 days payment, but respondents are regularly overlooking the binding and contractual term of the PPA, knowing well that it's their financial liability which is to be released as per the terms of the PPA.

3.8. Even when payments are made belatedly, they are being made without any interest for such delay. Such non-payment of interest is a denial of a valuable right conferred by specific Tariff Orders and the judgment of the Hon'ble APTEL, and of

all other Commissions too. Hence it's a proved case of the fragrant violation of the agreed terms of the PPA, duly executed having a binding force in law.

3.9. The delay in making such payment cannot be described as situation beyond control of the respondents or bad financial condition. The respondents are selling the electricity to its consumers and getting the payment, and contrary to this, they are not releasing the time bound agreed payment and payment of Late Payment Surcharge or both.

3.10. 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 requiring 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.*

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*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.”*

3.11. Therefore, all Wind Generators are entitled to interest on delayed payment @ 1% per month for every month's delay from the due date. Only a 30 days time limit is provided for payment and any delay beyond that will have to be made with interest @ 1% per month.

3.12. A court fee for Rs.1,98,300/- (i.e. 1% of the claim) is also deposited.

#### **4. Hearing held on 17-09-2019:-**

In the hearing held on 17-09-2019, the petitioner counsel has been directed to file Memo for acceptance of 6% of interest on the payment from TANGEDCO, since the petitioner has expressed his willingness to the offer made by the respondents with regard to the interest.

#### **5. Hearing held on 15-10-2019:-**

In the hearing held on 15-10-2019, the petitioner has filed a Memo and has stated as follows:-

(a) That the present petition DRP No.1 of 2018 is preferred by the petitioner seeking the direction for release of the Late Payment Surcharge for a sum of Rs.1,98,28,686/- is pending before this Commission.

- (b) That on 17-09-2019 this matter was listed before this Commission wherein, in the presence of the counsel for the respondent TANGEDCO, the petition was admitted with a direction to submit an undertaking by the petitioner for getting the payment @ 6% interest rate before the Commission, to settle this issue, as pending instead of agreed rate of the PPA. Further, it was directed to place on record such undertaking before the next date i.e. 15-10-2019.
- (c) That following the said direction, the petitioner has also decided to file the undertaking for getting the Late Payment Surcharge @ 6% interest rate instead of agreed rate.
- (d) An advance copy of the undertaking has been submitted before the TANGEDCO office.
- (e) That pass an order directing the respondent to release the Late Payment Surcharge without making any further delay @ 6% in the light of the undertaking.

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

In the hearing held on 11-02-2020, the Counsel for the petitioner has informed that TANGEDCO has not made payment fully and only part payments have been made. Both the parties have been directed to file their Written Submissions within 2 weeks after serving a copy to the other side. Neither counter nor written submissions are filed by TANGEDCO in this case.

#### **7. Findings of the Commission:-**

7.1 This petition has been filed to direct the Respondent/s to at once release the Late Payment Surcharge amount to petitioner jointly a sum of Total Late Payment

Surcharge due i.e. upto 22-05-2018 for a sum of Rs.1,98,28,686/- @ 1% per month beyond 30 days as agreed rate of the PPAs and also as per the Tariff Order of the Commission and to direct the respondent to establish a regular practice to release all the future payment in prescribed time limit, also release all principal sum, which is not yet paid and also pay the Late Payment Surcharge on such payment without failure and also release entire overdue principal sum accrued thereafter also till date. The petitioner has also prayed to direct the respondent to pay the cost of this litigation.

7.2. In the hearing held on 17-09-2019, the petitioner counsel has been directed to file Memo for acceptance of 6% of interest on the payment from TANGEDCO, since the petitioner has expressed his willingness to the offer made by the respondents with regard to the interest. Further in the hearing held on 15-10-2019, the petitioner has filed a Memo agreeing the offer of TANGEDCO for settlement of dues at 6% per annum, if the payment is made within 60 days as stated in para 5 of this order. However, in the hearing held on 11-02-2020, the Counsel for the petitioner has informed that TANGEDCO has not made payment fully and only part payments have been made. Both the parties have been directed to file their Written Submissions within 2 weeks after serving a copy to the other side. Neither counter nor written submissions have been filed by TANGEDCO in this case. The petitioner has also not filed any written submission. In the said circumstances, the Commission is inclined to decide the issue based on the available records.

7.3. The respondent TANGEDCO has not denied its liability for payment of interest on belated payment. The respondent having failed to avail the offer made by the petitioner for reduced interest at the rate of 6% per annum, has to pay interest as per the contractual rate or as per the orders of the Commission as the case may be. In this connection our attention is drawn to the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the 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. NarasinghadasAgarwal in Review Petition (Civil) No. 1606 of 2018 in Appeal No. 5465 of 2014 dated 16-08-2018.

7.5. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month on delayed payment beyond 30 days on receipt of the bill as per the above Tariff Order for the balance amount that remains unpaid by the Respondent, TANGEDCO. Further, there cannot be a general ruling in regard to

future payments as prayed by the petitioner in second part of its prayers and it is open to the petitioner to approach this Commission in an appropriate manner and when there is a breach of contractual terms by the respondent.

7.6. It is seen from the prayer of the petitioner that Rs.1,98,28,686/- (Rupees One crore ninety eight lakhs twenty eight thousand and six hundred and eighty six only) is the interest due on the belated payment of invoices received for the year 2013 onwards until 22-05-2018. The limitation period for the money claim is 3 years from the date on which cause of action arose. In the case of interest on delayed payments, the cause of action for claiming interest for the delayed payment commences from the date of receipt of payment on invoice. The present petition has been filed on 29-05-2018 and hence if the payment of invoice is prior to 29-05-2015, the claim of interest on such delayed payment is barred by limitation. Law is also well settled on the point that it is for the concerned Court or Forum to examine the preliminary question of limitation even in the absence of pleadings to that effect and hence limitation factor is necessarily required to be considered.

7.7. In view of the above, the respondent is directed to rework the calculation for payment of interest at 12% per annum for the delayed payment of invoice taking into account the limitation factor as set out in para 7.6 above, after deducting payments, if any already made within a period of 3 months from the date of this order. This is also subject to acknowledgment of liability, if any made in writing by TANGEDCO after 29-05-2015. In the circumstance, there will be no order as to costs.

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

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

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
Member

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

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission