

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

PRESENT:

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

D.R.P. No.16 of 2014

M/s.Orange County Resorts and Hotels Ltd.
II Floor, St. Patrick's Business Complex
21, Museum Road
Bangalore – 560 025.
Karnataka
India

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

Vs

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

....Respondents
(ThiruM.Gopinathan
Standing Counsel for the Respondents)

**Dates of hearing :: 29-01-2014; 30-01-2014; 28-04-2014;
13-08-2019; 17-09-2019; 22-10-2019;
10-01-2020 and 11-02-2020**

Date of order : 04-08-2020

The D.R.P.No.16 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.16 of 2014:-

The prayer of the petitioner in this D.R.P.No.16of 2014 is to direct the Respondents to pass an order directing the respondents to forthwith make payment of a sum of Rs.9,17,160/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and further direct the respondents to pay interest @ 1% per month for the future period for any delay in settlement of invoices beyond the period of 30 days from the date of invoice and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

2. Facts of the Case:-

This petition has been filed to direct the Respondents to forthwith make payment of a sum of Rs.9,17,160/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and direct the Respondents to pay interest @1% per month for any delay in settlement of invoices beyond the period of 30 days.

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 running the business of Hotels & Resorts which is *inter alia*, involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is having Wind Power Generators to the tune of 0.6 MW in the State of Tamil Nadu.

3.5. The petitioner has established Wind Power Generation projects in Sermdamangal Village, Sankarankovil Taluk, Tirunelveli District in the State of Tamil Nadu with a total capacity of 0.6 MW. The power generated by these units is

being sold to the 1st respondent under the terms of agreements executed by the petitioner with the TANGEDCO.

3.6. The location of its Windmills, date of commissioning, capacity and HT SC Nos. are set out herein below:-

No.	Location of Windmill & Jurisdictional TANGEDCO Circle	Date of commissioning	Capacity of Windmill	HT SC. No.
1	Sermdamangal Village, Sankarankovil Taluk, Tirunelveli District, Tamil Nadu Tirunelveli Circle, TANGEDCO	27-03-2008	0.6 MW	2542

3.7. The power generated by these units is being sold to TANGEDCO under the respective agreements. The petitioner has been raising invoices from time to time in accordance with the Contracts and Tariff Orders. However, for the past few years, the payments that have been received from TANGEDCO are being consistently delayed. Even when payments are made belatedly, they are being made without any interest for such delay.

3.8. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion of interest payment. 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.”

3.9. 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 long with the promised return of investment.

x xx

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.”

3.10. 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 day time limit is provided for payment and any delay beyond that will have to be made with interest @ 1% per month.

3.11. In the 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 11 of 2012, the petitioner is entitled to interest on delayed payments including those payments which have already been remitted.

3.12. 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 agreement.

3.13. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.9,17,160/- towards interest on delayed payments alone.

3.14. 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 carry on its business.

3.15. The petitioner had sent a letter of demand on 12-03-2010 with a reminder on 23-06-2011 seeking payment on interest on delayed payments and 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.

3.16. The petitioner is paying a substantial court fee of Rs.9,172/- 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 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. 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 their views to the offer made by the respondents with regard to the interest.

5. Hearing held on 22-10-2019:-

In the hearing held on 22-10-2019, the petitioner's counsel has filed 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. In the Memo, the petitioner has submitted 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 shall be paid.
- (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.

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. The petition has been filed to direct the Respondents to pass an order directing the respondents to forthwith make payment of a sum of Rs.9,17,160/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and further direct the respondents to pay interest @ 1% per month for the future period for any delay in settlement of invoices beyond the period of 30 days from the date of invoice and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

7.2. During the hearing on 22-10-2019, the counsel for the petitioner has filed a Memo agreeing to accept the offer made by the respondent, TANGEDCO for settlement of the dues with interest at 6% per annum, if the payment is made within a period of 60 days. But in the hearing held on 11-02-2020, the Counsel for the

petitioner has informed that TANGEDCO has not made payment to the petitioner fully and only partial payments have been made. The Commission directed both the parties to file their Written Submissions within 2 weeks after serving a copy to the other side. But none of the parties have filed the Written Submissions. In the 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, they are liable to pay interest as per the contractual terms or the orders of the Commission in force, 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. GangadharNarasinghadasAgarwal in Revised Petition (Civil) 1606 of 2018
in Appeal No.5465 of 2014 dated 16-08-2018.

7.5. In view of the above position, 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 receipts.

7.6. The respondent is directed to make payment of Rs.9,17,160/- 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.PrabhakaraRao)
Member

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission