

**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.30 of 2013**

M/s.SakthiMurugan Textiles  
MathakadaiThottam  
S.F. No.141/2  
Pallapalayam Post  
Irgur (via)  
Coimbatore – 641 103.

... Petitioner  
(ThiruS.Sivanandam  
Advocate for the Petitioner)

Vs

1. The Chairman  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
New No.14, (Old No.800), Anna Salai  
Chennai – 600 002.
2. The Chairman  
Tamil Nadu Transmission and Distribution  
Corporation Ltd.  
New No.14, (Old No.800), Anna Salai  
Chennai – 600 002.
3. The Superintending Engineer  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
Tirunelveli Distribution Circle  
Tirunelveli.

4. The Superintending Engineer  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
Coimbatore Distribution Circle (South)  
Coimbatore.

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

**Dates of hearing :04-10-2013; 18-10-2013; 14-07-2014;  
30-07-2019; 20-08-2019; 01-10-2019;  
12-11-2019 and 17-12-2019**

**Date of order : 21-07-2020**

### **ORDER**

The D.R.P.No.30 of 2013 came up for final hearing before the Commission on 17-12-2019 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.30 of 2013:-**

The prayer of the petitioner in this D.R.P.No.30 of 2013 is to direct the Respondent to

(a) claim interest of Rs.10,25,299/- for the belated payment for supply of electricity for WEG HT SC No.3146 calculated at 12% interest after 30 days from the date of invoice till date of payment for the period of supply from October 2010 to November 2012.

(b) claim interest of Rs.22,65,883/- pertaining to belated payment for encashment of unutilised banking energy after 7 days from the date of invoice calculated at 18% for the period before 31-03-2009, 2010-2011 and 2011-2012;

(c) to claim cost of the petition.

and any other order or direction deemed fit under the circumstances of the case.

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

The petition is filed to claim interest on delayed payment for the purchase of power from the petitioner and delayed payment for purchased of un-utilised banked energy by the Respondents as per Energy Purchase Agreement between the petitioner and respondents and as per provisions of the Electricity Act.

## **3. Contentions of the Petitioner:-**

3.1. The petitioner is having Spinning Mill with High Tension connection in H.T. No. 230 within the area jurisdiction of 4<sup>th</sup> Respondent. Since, the respondents could not meet out energy demand of petitioner and there is shortage of power throughout the State of Tamil Nadu, the petitioner erected wind mill of their own to bridge the gap of power shortage.

3.2. The petitioner is owning 4 wind mills out of which 3 at Tirunelveli and 1 at Tiruppur districts. The petitioner has generated its own energy through its wind mills from the year 2009 and it has consumed its units. The petitioner sells excess energy to the respondents. Further un-utilised energy which was banked in the respective years and the same has been encashed to 100% of value. The details of wind mills are as follows:-

Sl. No.	WEG HTSC No.	Place	Superintending Engineer
1	3146	Tirunelveli	Tirunelveli
2	3180	Tirunelveli	Tirunelveli
3	1681	Tirunelveli	Tirunelveli
4	365	Selakkarachal (Tiruppur)	Coimbatore (South)

3.3. The petitioner has entered into necessary Wind Energy Purchase Agreement for sale of excess energy and Energy Wheeling Agreement for wheeling the self-generated energy to the Spinning Mill consumption.

3.4. The petitioner has raised monthly bills for purchasing of generated units by the respondents. However, the respondents failed to make the payment within due date and only after various reminders, the payments were made by the respondents. However, the respondents failed to pay interest for delayed payment.

3.5. The petitioner sells generated energy from Wind Mill having WEG HT SC No.3146 to the respondents from the year 2010. The respondents have paid respective monthly bills from October 2010 to November 2012 belatedly with delay from 175 to 447 days for various monthly bills. The respondents have not paid interest for the delayed payment made by them. As on today the respondents are liable to pay interest for belated payment for a sum of Rs.10,25,299/- (Rupees Ten Lakhs Twenty Five Thousand Two Hundred and Ninety Nine only).

3.6. The respondents are liable to pay interest at the rate of 1% per month for the delayed payment on purchase of generated units from the petitioner. Thus, the petitioner has sent letters dated 23-03-2013, 06-01-2012, 06-06-2012, 14-07-2012, 25-08-2012, 18-10-2012, 30-11-2012, 08-01-2013, 21-02-2013, 26-03-2013, 20-03-2013, 26-04-2013, 29-05-2013, 18-06-2013 etc. requesting the respondents to pay interest on the delayed payment.

3.7. The non-payment of interest by the respondents for delayed payment on purchase of generated energy from petitioner is contrary to clause 6 of Wind Energy Purchase Agreement. The said clause contemplates that the Wind Energy Generators shall raise bill in the respective months for sale of energy to the distribution licensee and the distribution licensee shall make the payment within 30 days of receipt of the bill. Further, it is contemplated that belated payment beyond 30 days is liable for interest at 1% per month.

3.8. The clause 6 of the EPA provides as follows:-

*“6. Billing and Payment:-*

- (1) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.*
- (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.”*

3.9. The respondents have also violated the Wind Energy Tariff Order in Tariff Order No. 1 of 2009 dated 20-03-2009, para 8.11.1 directs the Distribution Licensee to pay interest for the delayed payment beyond 30 days from the date of receipt of bill.

3.10. The respondents are bound by the Tariff Order No.1 of 2009 dated 20-03-2009 and accordingly they have to pay interest on delayed payment for the respective monthly bills.

3.11. In similar matter D.R.P. No. 9 and 10 of 2012 dated 28-03-2013, this Commission has followed Appellate Tribunal's order in Appeal No.11 of 2012 dated 17-04-2012 where in it is stated that Wind Power Generators are entitled for payment of interest on delayed payment made by the respondents for purchase of power from the generators.

3.12. The petitioner, initially, claimed interest from the date of invoice. However, in Comprehensive Tariff Order on Wind Energy No.1 of 2009 is restricting the claim beyond 30 days from the date of invoice. Hence, the reduced calculation, deducting interest for the first 30 days time is as follows:-

Sl. No.	Particulars	Interest Amount
1	Interest claim for supply of energy and for the delayed payment as per letter dated 20-06-2013 regarding wind energy WEG HT SC 3146 from October 2010 to November 2012 as per the Statement enclosed interest at 12% per annum	Rs.11,26,830/-
2	Deducting 30 days interest from the date of invoice i.e. time for payment	Rs.1,01,531/-

3	Balance interest claimed by the petitioner for the supply of energy and delayed payment thereon.	Rs.10,25,299/-

3.13. The petitioner has raised the invoices for encashing 100% of the banked energy in the respective years and the payments were belatedly paid with delay of 207 days to 724 days for various bills. So petitioner sent letter dated 29-06-2010 with remainder letter dated 22-06-2013, 16-04-2013 with remainder letter dated 20-06-2013, 16-04-2013 with remainder letter dated 20-06-2013 for three invoices claiming interest.

3.14. In the letter dated 29-06-2010 for the period 2008-2009, petitioner claimed 18% rate of interest. For the period 2010-2011 & 2011-2012 in the letters dated 16-04-2013 and 12-04-2013, the interest for belated payment for banking was wrongly claimed at 12% per annum.

3.15. The Tamil Nadu Electricity Supply Code, 2004 in regulations 5 (4) (v) and 14 (1) (b) specify interest at 18% per annum and payment has to be made within 7 days from receipt of invoice.

3.16. The Commission in the order in M.P. No.17 of 2009 and D.R.P. No.15 of 2009 dated 03-12-2009 held that for delay in payment of un-utilized banked units TNEB could be liable to pay interest at the rate it charges its consumers for delayed payments namely 18%. Therefore, belated payment for encashment of banking

energy, the petitioner is entitled to claim 18% interest after 7 days from the date of invoice. The details are as follows:-

Sl. No.	Date of invoice	Delayed days	Amount	Period	Rate of Interest	Amount of Interest
1	05-12-2009	200	229740/-	Before 31-03-2009	18%	23452/-
2	20-04-2011	717	5200748/-	2010-2011	18%	1838927/-
3	05-04-2012	366	2235566/-	2011-2012	18%	403504/-

Total interest claim for belated payment banking encashment of energy is = Rs.22,65,883/-

3.17. The petitioner has prayed to file separate claim on miscalculation of transmission and wheeling charges on generated point and not on consumption and payment for old wind mill generation instead of new wind mill generation, the same may be permitted.

3.18. Due to the non-payment of interest for the belated payment, petitioner has to pay compounding rate of interest and suffer much hardships in the commercial transactions. The petitioner's nationalised bank charges compounding rate of interest.

#### **4. Contentions of the Respondents:-**

4.1. During October 2013, Respondent has released payment of bills pertaining to all the wind energy generators for the period upto August 2013.

4.2. Due to financial constraints underwent by the Respondent TANGEDCO, it was unable to meet its financial commitments in time. 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 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 much less any criminal breach of trust as alleged by the Petitioner. The Respondent is functioning under the purview of the State Government and thereby discharging its duties in the larger interest of public. It is the duty of the Respondent to generate and supply electricity to its consumers at the tariff rate approved by the Commission and the tariff rates for certain categories of consumers are subsidized.

4.3. The Respondent managed to make payments upto August 2013 bills to Wind Energy Generators during October 2013. The above payments made clearly indicates the bona-fide intention of the Respondent to repay the outstanding dues to the Wind Energy Generators. The Respondent does not deny its payment obligations to the petitioner as per the order of the Commission.

4.4. The Respondent has huge outstanding payments to the tune of Rs.4,000crores to several generators and coal companies also. Even the loan repayments and interest payments could not be made on the due dates due to the financial crisis of the Respondent. During the year 2012-13, average outstanding bills to power generators, suppliers & contractors, coal etc. was in the range of Rs.11000.00 crores. This amount has been brought down to Rs.4000 crores as on

31.10.2013 due to Ways & Means Advance from GoTN, advance release of subsidy, transitional loan from REC/PFC, funds from TNPFC through bond issue. These receipts have not only helped TANGEDCO in clearing the accumulated bills, but also in clearing the current bills so that there is no further accumulation of bills.

4.5. As per the Financial Restructuring Plan, the GoTN has to take over 50% of the Bank loans of TANGEDCO as on 30.09.2013. The balance loans are to be restructured by banks with a moratorium of 3 years. Further the scheme mandates funding of loss by banks to the tune of 100%. 75% and 50% during the FYs 2012-13, 2013-14 and 2014-15 respectively. More than 85% of the cash loss funding loan for the year 2012-13 has been released by the banks.

4.6. The respondent is also taking all efforts to improve the power situation of the State which will help in improving the revenue realization from the consumers. The power position is improving due to operation of new plants at NCTPS (2x600 MW), MTPS (600 MW) and Joint Venture projects with NTPC (2x500 MW). The third unit of JV project with NTPC (500 MW) and 2 units of JV project with NLC (2x500 MW) are expected to put into operation before March 2014 resulting in additional revenue realization. This situation would definitely prove beneficial to the Respondent to clear its outstanding bills in the forthcoming months.

4.7. The Commission has approved a comprehensive tariff revision for the financial year 2012-13. However, due to R & C measures, the revenue expected from the tariff revision could not be realized in full resulting still revenue deficit. Due

to improvement in power position, TANGEDCO has enhanced the quota from 60% to 80% to HT consumers.

4.8. The Respondent is committed to meet its payment obligations and is taking appropriate steps to revive its financial strength. This may result in timely payment of power dues avoiding interest in future.

4.9. The petitioner has entered into Energy Wheeling Agreements (EWA) with TANGEDCO as detailed below:

S.C.No.	Date of Agreement	Date of Commission
365	06-03-2009	21-03-2005
1681	26-03-2009	25-03-2006
1346	29-03-2010	29-03-2010
3180	31-03-2010	31-03-2010

4.10. None of the Energy Wheeling Agreements (EWA) entered into between the petitioners and TANGEDCO(erstwhile TNEB) specifically provides for payment of interest on delayed payments.

4.11. The petitioner has cited the Commission's Order dated 03.12.2009 in M.P.No.17 of 2009 and DRP No.15 of 2009. The petitioner has claimed interest on delayed payments for unutilizedbanked energy at 18% for delay beyond 7 days from the date of billing. The Commission order dated 03.12.2009 in respect of M.P.No.17 of 2009 and D.R.P.No.15 of 2009 is as follows:

*"The main issue has been disposed off in SuoMotu Proceedings No.1 of 2009 of the Commission in order dated 28.10.2009. The petitioners shall*

*submit their claims to TNEB for encashment of unutilized banked units as on 30-04-2009. The TNEB shall make payment within 60 days of the claim, failing which, the TNEB will be liable to pay interest at the rate it charges its consumers for delayed payments, namely, 18%.”*

The above order of this Commission is limited to the interest payment for encashment of unutilized banked units as on 30-04-2009.

4.12. It is submitted that sub-clause 15 of clause 16 of the Commission's Suo-motu Proceedings No.1 of 2009 dated 28.10.2009 reads as under:-

*"Energy which remains unutilized as on 31.03.2010 shall be eligible for encashment at the rate prescribed in Para 8.2.2 of Order No. 1 of 2009 dated 20-03-2009 of TNERC"*

4.13. Para 8.2.2 of Order No.1 of 2009 dated 20.3.2009 of this Commission reads as under:

*"The banking charges shall be realized every month for the quantum of units generated during the billing month less the consumption of the captive users / third party sale. Slot-wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate/extra charges No carry over is allowed beyond the banking period. Unutilized energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff. The commission proposes to retain the same features with some modifications based on the suggestions made by the stakeholders. As and when the distribution licensee enforces restriction and control measures for restricting the*

*consumption of wind energy generators, the Commission finds justification in the plea that the unutilized energy at the end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee. The plea of the TNEB to raise the banking charge from 5% to 15% and curtail the banking period from one year to one month are too radical to be accepted by the Commission."*

4.14. The above order does not provide for payment of interest on delayed payments towards unutilized bank energy. The interest claims of the petitioner for the unutilized banked energy for the period beyond 30.04.2009 is not maintainable under law.

## **5. Rejoinder filed by the Petitioner:-**

5.1. It is admitted that respondents paid the cost of wind energy sold but there was huge delay in payment.

5.2. The contract terms and the Electricity Regulatory Commission's order are binding on the respondents. The loss or subsidy to other are not the issue. Taking all factors into account as per Electricity Act, 2003, the Power Purchase Agreement are made, Electricity Regulatory Commission orders are passed regarding delay in payment, the same would be binding on the respondents.

5.3. The efforts to make payment for the purchased energy, are welcome one. The Respondents are duty bound to pay for the purchased power.

5.4. In Appeal No. 11 of 2012 order dated 17.4.2012, Hon'ble Appellate Tribunal for Electricity at para 11 observed as follows:

*"Therefore, the Appellant is bound to pay within the same period as provided to HT consumers. It has not paid within time. It ought to pay interest on delayed payment. If it is claimed that the Board is not liable to pay the interest on delayed payment, there will be no sanctity of clause 5(b) of the Agreement imposing the time frame for payment. Therefore, the Appellants cannot claim for an exemption on payment of interest on admitted delayed payments, especially when the Board is entitled for the same from consumers."*

5.5. It is erroneous to state that Energy Wheeling agreements do not contemplate payment of interest for delayed and payment.

5.6. The Hon'ble Appellate Tribunal in Appeal No. 11/2012 dated 17.4.2012 at para 16 concluded the issue as follows:

*"16 In the present case, even though there is no express stipulation with regard to the interest, as pointed out by the Commission, the Commission has invoked the powers, as provided in the relevant sections of CPC to order the same. In the light of the various principles regarding the grant of interest laid down by the Hon'ble Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa Vs., G.C. Roy reported in 1992 Vi1.SCC508, the Respondent Wind Power Generators are entitled to receive interest on the admitted delayed payment."*

5.7. In M.P. No.17 of 2009 and D.R.P. No.15 of 2009, the Commission concluded that TNEB liable to pay interest at the rate it charges its consumers for delayed payment, namely, 18% if not paid in 60 days day of claim.

5.8. The respondents liable to pay 18% interest on the belated payment for encashment of unutilised banking energy after 7 days from the date of invoice till payment for the period from 2008-2009, 2009-10, 2010-2011 and 2011-12 as per the claim in petitioner statement.

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

6.1. This D.R.P. has been filed with a prayer to direct the respondent to pay interest of Rs.10,25,299/- for the belated payment for supply of electricity for WEG HT SC No.3146 calculated at 12% interest after 30 days from the date of invoice till date of payment for the period of supply from October 2010 to November 2012 and to claim interest of Rs.22,65,883/- pertaining to belated payment for encashment of unutilised banking energy after 7 days from the date of invoice calculated at 18% for the period before 31-03-2009, 2010-2011 and 2011-2012. The petitioner has also prayer to award cost of the petition.

6.2. It is not necessary to deal with all the averments in the pleadings submitted by the parties as the issue lies in a narrow compass. The sole question which arises for consideration is whether interest is payable on the delayed payment and if so at what rate. One of the prayers of the petitioner is that the respondent be directed to pay interest for the belated payment of supply of electricity from WEG HTSC No.3146. Clause 6 of the Energy Purchase Agreement relating to the said H.T.S.C. No. 3146 provides as follows:-

*“6. Billing and Payment:-*

- (1) *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.*
- (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.”*

6.3. From the above, it is clear that the contract between the petitioner and the respondent provides for payment of 1% interest per month for delayed payment beyond 30 days of receipt of bill. Since the respondent TANGEDCO has not denied its liability to pay the interest amount and in fact paid the invoice amount, having been paid belatedly we hold that interest at 1% per month as provided in the EPA is payable by the respondent for the late payment of invoice amount.

6.4. The next question which arises for consideration is regarding the rate of interest payable for the belated payment for encashment of unutilized banking energy after 7 days from the date of invoice. In this connection, attention has been invited to the earlier orders of this Commission dated 03-12-2009 in M.P. No.17 of 2009 wherein 18% interest was ordered for delay in settlement of invoices beyond the 60 days in regard to the encashment of unutilized banking energy.

6.5. However, the said earlier order of this Commission cannot be applied in this case, since the issue of payment of interest subsequently attained the finality before the Supreme Court in Review Petition (Civil) No. 1606 of 2018 in Appeal No.

5465 of 2014 dated 16-08-2018 in the matter of CFC Vs. Gangadhar Narasingadhas Agarwal wherein the Hon'ble Supreme Court affirmed the judgment dated 17-04-2012 of APTEL in Appeal No.11 of 2012 which ordered payment of interest at the rate of 10% on delayed payment.

6.6. The above said case is one where there was no clause with regard to interest in the PPA and the issue was decided on the principle of equity. Thus, there is no ambiguity on the point that interest is payable even when there is no clause to that effect in the PPA. Applying the above said principle in the instant case, the Commission holds that interest at 10% for delayed payment for the encashment of unutilized banking energy after 7 days from the date of invoice is payable in this case.

6.7. In the result, the Commission directs the respondent to pay 12% of interest after 30 days from the date of invoice for the belated payment for supply of electricity from WEG HT SC No.3146 and interest @ 10% for belated payment for encashment of unutilized banking energy after 7 days from the date of invoice. TANGEDCO is directed to re-work the calculations with regard to settlement of dues as allowed in the proceeding para and make payment accordingly within three months from the date of this order. In the circumstances, there will be no order to the costs.

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

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
Member  
/True Copy /

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

Secretary  
Tamil Nadu Electricity  
Regulatory Commission