

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.59 of 2014

M/s.Simran Wind Project Limited
(Name changed to M/s.Techno Electric &
Engineering Company Limited)
2F & 3F, North Block
Park Plaza
71 Park Street
Kolkata 700 016.

... Petitioner
(ThiruRahul 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 : 16-10-2018; 17-09-2019; 22-10-2019;
10-01-2020; and 11-02-2020**

Date of order : 20-10-2020

The D.R.P.No.59 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.59 of 2014:-

The prayer of the petitioner in this D.R.P.No.59of 2014 is to pass an order directing the Respondents to forthwith make payment of a sum of Rs.11,80,85,729/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and pay additional interest @ 1% per month compounded at monthly rests on such amount from the dates the sums became due till the date of realization 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 pass an order directing the Respondents to forthwith make payment of a sum of Rs.11,80,85,729/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for invoices raised during the financial year 2009-10 to 2012-13 for the power supplied and further interest till realization of the said interest.

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 in respect of WEGs commissioned after 19-09-2008. The petitioner is currently preferring the claim only in respect of interest portion for invoices raised during the financial year 2009-10 to 2012-13 for power supplied for which payment has already been released beyond the contractual period of payment and 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.

3.2. The petitioner is having a total installed capacity of 156.35 MW of wind generation in Tamil Nadu. The entire generation is being injected into the State Grid under Power Purchase Agreements (PPA). Out of the said 156.35 MW, 131.70 MW have been commissioned after 19-09-2008.

3.3. The petitioner has established after 19-09-2008 Wind Power Generation projects in Tirupur, Coimbatore, Dindigul, Tirunelveli and Udumalpet Districts in the State of Tamil Nadu with a total capacity of 131.70 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.

3.4. 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	Capacity of Windmill (MW)	HT SC. No.	WTG No.	Date of Commissioning
1	Dindigul	0.60	D-171	E767	29-09-2008
2	Dindigul	0.60	D-170	E778	29-09-2008
3	Tirupur	0.60	638 (765)	E797	29-09-2008
4	Tirunelveli	1.50	2699	TDA 40	29-09-2008
5	Tirunelveli	1.50	2700	TDA 41	29-09-2008

6	Tirunelveli	1.50	2701	TDA42	29-09-2008
7	Tirunelveli	1.50	2707	TDA 44	29-09-2008
8	Tirunelveli	1.50	2706	TDA 45	29-09-2008
9	Tirunelveli	1.50	2720	TP 67	29-09-2008
10	Tirunelveli	1.50	2723	TDA 43	30-09-2008
11	Tirunelveli	1.50	2725	TP 94	30-09-2008
12	Tirunelveli	1.50	2836	TP 166	02-04-2009
13	Tirunelveli	1.50	2838	TP 25	02-04-2009
14	Tirunelveli	1.50	2837	TP 55	02-04-2009
15	Tirunelveli	1.50	2855	TP 86	17-06-2009
16	Tirunelveli	1.50	3721	M 139	15-04-2011
17	Tirunelveli	1.50	3722	M 95	15-04-2011
18	Tirunelveli	2.10	3723	TDA 129	15-04-2011
19	Tirunelveli	2.10	3724	TDA 142	15-04-2011
20	Tirunelveli	2.10	3725	TDA 156	15-04-2011
21	Tirunelveli	2.10	3726	TDA 77	15-04-2011
22	Tirunelveli	1.50	3731	M 137	10-05-2011
23	Tirunelveli	1.50	3746	M-98	31-05-2011
24	Tirunelveli	2.10	3747	TDA 139	31-05-2011
25	Tirunelveli	1.50	3748	M 79	13-06-2011
26	Tirunelveli	1.50	3749	M 80	13-06-2011
27	Tirunelveli	1.50	3753	M 122	18-06-2011
28	Tirunelveli	2.10	3766	M 33	30-06-2011
29	Tirunelveli	1.50	3767	M 168	01-07-2011
30	Tirunelveli	1.50	3787	M 123	04-07-2011
31	Tirunelveli	1.50	3792	M 71	20-07-2011
32	Tirunelveli	1.50	3793	M 133	20-07-2011
33	Tirunelveli	2.10	3794	K 861	22-07-2011
34	Tirunelveli	1.50	3795	M 34	26-07-2011
35	Tirunelveli	2.10	3822	VL 309	01-08-2011
36	Tirunelveli	2.10	3823	TDA 198	01-08-2011
37	Tirunelveli	2.10	3824	VL 315	02-08-2011
38	Tirunelveli	1.50	3828	M 187	06-08-2011
39	Tirunelveli	1.50	3829	M 49	06-08-2011
40	Tirunelveli	2.10	3830	M 20	06-08-2011
41	Tirunelveli	2.10	3833	TDA 135	08-08-2011
42	Tirunelveli	2.10	3834	VL 55	08-08-2011
43	Tirunelveli	2.10	3835	VL 56	08-08-2011
44	Tirunelveli	2.10	3869	TDA 102	14-09-2011
45	Tirunelveli	2.10	3885	TDA 140	20-09-2011
46	Tirunelveli	2.10	4010	TDA 141	08-02-2012

47	Tirunelveli	2.10	4011	TDA 180	08-02-2012
48	Tirunelveli	2.10	4020	TDA 197	24-02-2012
49	Udumalpet	1.50	U 2072	KD 247	31-03-2011
50	Udumalpet	1.50	U 2073	KD 125	31-03-2011
51	Udumalpet	1.50	U 2074	KD 245	31-03-2011
52	Udumalpet	1.50	U 2075	KD 244	31-03-2011
53	Udumalpet	1.50	U 2076	M 12	31-03-2011
54	Udumalpet	1.50	U 2077	M 008	31-03-2011
55	Udumalpet	1.50	U 2078	M 32	31-03-2011
56	Udumalpet	1.50	U 2079	M 56	31-03-2011
57	Udumalpet	1.50	U 2080	M 40	31-03-2011
58	Udumalpet	1.50	U 2081	M 285	31-03-2011
59	Udumalpet	1.50	2087	KD 246	10-06-2011
60	Udumalpet	1.50	2093	M 24	13-06-2011
61	Udumalpet	1.50	2096	M 94	24-06-2011
62	Udumalpet	1.50	2097	KD 100	28-06-2011
63	Udumalpet	1.50	2098	M 003	28-06-2011
64	Udumalpet	1.50	2099	M 18	30-06-2011
65	Udumalpet	1.50	2100	M 31	30-06-2011
66	Udumalpet	1.50	2101	KD 251	30-06-2011
67	Udumalpet	1.50	2102	KD 97	02-07-2011
68	Udumalpet	1.50	2103	M 95A	02-07-2011
69	Udumalpet	1.50	2126	KD 69	07-07-2011
70	Udumalpet	1.50	2127	KD 234	09-08-2011
71	Udumalpet	1.50	2128	KD 235	09-08-2011
72	Udumalpet	1.50	2129	KD 39	09-08-2011
73	Udumalpet	1.50	2130	M 86	09-08-2011
74	Udumalpet	1.50	2131	M 45	09-08-2011
75	Udumalpet	1.50	2132	KD 94	12-08-2011
76	Udumalpet	1.50	U 2141	KD 127	02-09-2011
77	Udumalpet	1.50	U 2142	KD 104	10-09-2011
78	Udumalpet	1.50	U 2146	KD 34	15-09-2011
79	Udumalpet	1.50	U 2147	KD 204	15-09-2011
80	Udumalpet	1.50	U 2148	KD 203	15-09-2011
81	Udumalpet	1.50	U 2149	KD 16	16-09-2011
82	Udumalpet	1.50	U 2151	KD 217	22-09-2011

3.5. 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.

3.6. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific instruction for 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.”

3.7. 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.”

3.8. 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 5 days for submission of bill from the date of invoice and any delay beyond that will have to be met with interest @ 1% per month compounded at monthly rests till the payment of interest is made.

3.9. 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 No.11 of 2012, the petitioner is entitled to interest on delayed payments on all WEGs for which PPA has been entered into by the petitioner with the respondent. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA.

3.10. 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.

3.11. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.11,80,85,729/- towards interest on delayed payments in respect of WEGs covered by the interest clause in the Agreement / Tariff Order which are eligible for interest and are commissioned after 19-09-2008.

3.12. 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 is 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.

3.13. The petitioner had sent letter of demand to the respective circles on 06-11-2012, 07-03-2013, 26-08-2013 and 20-02-2014 seeking payment of 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.

3.14. The petitioner is paying a substantial court fee of Rs.11,80,857/-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. Amendment of Cause Title:-

The name of the Petitioner company got changed from M/s.Simran Wind Project Limited to M/s.Techno Electric & Engineering Company Limited and an affidavit to that effect was filed on 27-08-2019.

5. 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.

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

In the hearing held on 22-10-2019, the petitioner's counsel has filed an affidavit accepting the offer of TANGEDCO to pay 6% interest on the belated payment. In the affidavit, the petitioner has stated 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.

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

In the hearing held on 11-02-2020, the Counsel for the petitioner submitted that payment has not been made fully and only part payments have been made. The Commission directed both parties to file their Written Submissions within 2 weeks. However, the Written Submissions has not been filed by any part.

8. Findings of the Commission:-

8.1. This petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.11,80,85,729/- (Rupees eleven crores eighty lakhs eighty five thousand seven hundred and twenty nine only)being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for the invoices raised during FY 2009-10 to 2012-13 for power supplied and pay additional interest @ 1% per month compounded at monthly rests on the such amount from the dates the sums became due till the date of realization

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.

8.2. The hearing in the matter took place on various dates. During the hearing on 17-09-2019, the counsel for the petitioner was directed to file a Memo for acceptance of 6% of interest on the payment from TANGEDCO. On 22-10-2019, the counsel for the petitioner agreed to the offer of TANGEDCO, the petitioner also filed an affidavit agreeing to accept the offer of TANGEDCO for payment of interest at 6% per annum. In the affidavit, the petitioner has stated 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.

8.3. On 11-02-2020, the Counsel for the Petitioner submitted that only part payment has been made and the Commission therefore directed both the parties to file their Written Submission within 2 weeks. However, none of the parties has filed any Written Submission. Hence, the Commission is inclined to decide the issues based on available records.

8.4. On perusal of material records, it is seen that the Respondent, TANGEDCO has not denied its liability for payment of interest. In such circumstances, having failed to avail the settlement on a reduced rate of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or 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.”

8.5. 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 confirmed by the Hon'ble Supreme Court

in CFC Vs. GangadharNarasinghadasAgarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

8.6. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order.

8.7. It is seen from the typed set of papers filed along with the petition (vide page 30 of the typed set) that Rs.11,80,85,729/- (Rupees eleven crores eighty lakhs eighty five thousand seven hundred and twenty nine only) is the interest due on the belated payment of invoices received for the year July 2009 onwards. 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 was filed on 16-06-2014 and hence if the payment of invoice is prior to 16-06-2011, 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.

8.8. 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 invoices taking into account the limitation factor as set out in para8.7 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 16-06-2011.

In the circumstance, there will be no order as to costs.

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

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission