

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.30 of 2014

TCP Ltd.
TCP SapthagiriBhawan
No.4, Karpagambal Nagar
Mylapore
Chennai

... Petitioner
(ThiruRahul Balaji
Advocate for the Petitioner)

Vs

1. TANGEDCO
Rep. by its Chairman & 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;
27-08-2019; 05-09-2019; 17-09-2019
22-10-2019 and 12-11-2019**

Date of order : 20-10-2020

The D.R.P.No.30 of 2014 came up for final hearing before the Commission on 12-11-2019 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. 37 of 2014:-

The prayer of the petitioner in this D.R.P.No.30 of 2014 is to pass an order directing the Respondents to forthwith make payment of a sum of Rs.1,28,11,849/- 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 also 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 to make payment of a sum of Rs.1,28,11,849/- 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. 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.

3.2. 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.

3.3. The petitioner is an chemical manufacturer 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 16.5 MW in the State of Tamil Nadu.

3.4. The petitioner submits that it has established Wind Power Generation projects in Tirupur and Tirunelveli in the State of Tamil Nadu with a total capacity of 7.2. MW. The petitioner submits that 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.

3.5. 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	HT SC. No.
1	Tirunelveli District Tirunelveli Circle, TANGEDCO	3.6 MW	761, 762, 780, 822, 823, 824
2	Tirupur District Tirupur Circle TANGEDCO	3.6 MW	2980, 2981, 2982, 2983, 2984, 2985

3.6. 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.

3.7. 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 Hon'ble APTEL in its judgment in Chairman, TNEB and another Vs. Indian Wind Power Association and others in Appeal No.11 of 2012 dated 17-04-

2012 has upheld the payment of interest on delayed payments. The relevant paragraphs are extracted hereunder:-

“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.

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.”

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

3.10. In the light of the specific provision contained in Tariff OrderNo. 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.

3.11. 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 June 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.

3.12. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.1,28,11,849/- towards interest on delayed payments alone.

3.13. The petitioner had sent letters of demand on 29-04-2013 & 15-05-2013 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.1,28,119/- 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 28-04-2014:-

During the hearing held on 28-04-2014, both parties submitted that they proposed to negotiate the issue for finding the possible settlement and considering the submission of both parties, the Commission has granted 60 days time for settlement and report to the Commission.

5. Hearing held on 05-09-2019:-

In the hearing held on 05-09-2019, the Counsel for the Respondent informed that notice seeking the willingness on the part of the petitioner for settlement at 6% interest has already been issued and TANGEDCO was directed to file counter.

6. Hearing held on 17-09-2019:-

In the hearing held on 17-09-2019, the petitioner's counsel has been directed to file Memo for accepting 6% interest on payment from TANGEDCO.

7. Hearing held on 12-11-2019:-

In the hearing held on 12-11-2019, Memo has been filed by the petitioner agreeing the offer of the TANGEDCO Counsel for settlement of dues at 6% per annum, if the payment is made within a period of 60 days.

8. On 12-11-2019, the petitioner also 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 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.

9. Findings of the Commission:-

9.1. The petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.1,28,11,849/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and further direct the Respondents for the future period to pay

interest @ 1% per month 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.

9.2. The hearing in the matter took place on various dates. During the hearing held on 17-09-2019, the Counsel for the Petitioner was directed to file a Memo for accepting 6% interest on payment from TANGEDCO. On 12-11-2019, the Counsel for the Petitioner agreed to the offer of TANGEDCO.

9.3. On 12-11-2019, 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.

9.4. On perusal of records filed before us, we find that the respondent TANGEDCO has not denied its liability for payment of interest. Having failed to avail the payment of 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.”

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

9.6. 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. However, the petitioner has filed a Memo on 12-11-2019

accepting payment of interest at 6% per annum subject to the condition that the full payment is made within 60 days of filing the Memo before the Commission i.e. before 12-01-2020.

9.7. It is seen from the typed set of papers filed along with the petition (vide page 11 & 12 of the typed set) that Rs.1,28,11,489/- (Rupees One crore twenty eight lakhs eleven thousand four hundred and eighty nine only) is the interest due on the belated payment of invoices received for the year December 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 has been filed on 22-08-2013 and hence if the payment of invoice is prior to 22-08-2010, 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.

9.8. In case, the full payment had not been not settled before 12-01-2020 as per the negotiation entered into by the parties, TANGEDCO is directed to rework the calculation for payment at 12% per annum for the delayed payment of invoice taking into account the limitation factor as set out in para 9.7 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 22-08-2010. 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