

**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.64 of 2014**

M/s.Tamil Nadu Newsprint & Papers Ltd.  
67, Mount Road  
Chennai – 600 032.

... 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.
3. The Superintending Engineer  
TANGEDCO  
Tirunelveli Electricity Distribution Circle  
Maharaja Nagar  
Tirunelveli – 11.

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

**Dates of hearing :16-10-2018; 17-09-2019; 22-10-2019;  
12-11-2019; 17-12-2019; 28-01-2020  
and 11-02-2020**

**Date of order : 28-07-2020**

The D.R.P.No.64 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.64 of 2014:-**

The prayer of the petitioner in this D.R.P.No.64of 2014 is to pass an order directing the respondents to forthwith make payment of a sum of Rs.3,76,43,231/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied 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.3,76,43,231/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for the power supplied and direct the Respondents to bear the costs of the instant petition including court fees and legal expenses.

**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 a manufacturer of Newsprint and printing and writing paper using bagasse 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 35.5 MW in the State of Tamil Nadu.

3.5. The petitioner has established Wind Power Generation projects in Tirunelveli District in the State of Tamil Nadu with a total capacity of 35.5 MW. The power generated by 28.5 MW out of 35.5 MW has been sold to the 1<sup>st</sup> respondent under the terms of Energy Purchase Agreement / Energy Wheeling Agreement executed by the petitioner with the TANGEDCO for the period from November, 2009 to July 2012 and 17.5 MW out of 35.5 MW has been sold to the 1<sup>st</sup> Respondent under the terms of Energy Purchase Agreement for the period from August 2012 to January

2014 and 34.75 MW out of 35.5 MW is being sold to the 1<sup>st</sup> Respondent under the terms of Energy Purchase Agreement since then.

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	HT SC. No.
1	Devarkulam, Tirunelveli EDC	04-09-1993 & 30-09-1993	3.5 MW	HTSC 3
2	- DO -	Commissioned on 30-09-1993 & 03-12-1993; Re-commissioned on 03-05-2008	2.5 MW	HTSC 2623
3	- DO -	Commissioned on 30-09-1993 & 03-12-1993; Re-commissioned on 03-05-2008	1 MW	HTSC 2624
4	- DO -	Commissioned on 29-03-2001; & Re-commissioned on 12-10-2007	2.25 MW	HTSC 388
5	- DO -	Commissioned on 29-03-2001; Re-commissioned on 12-10-2007	0.75 MW	HTSC 2500
6	-	24-03-2004	1.25 MW	HTSC 708
7	- DO -	24-03-2004	1.25 MW	HTSC 709

8	- DO -	24-03-2004	1.25 MW	HTSC 710
9	- DO -	18-02-2006	1.25 MW	HTSC 1567
10	- DO -	18-02-2006	1.25 MW	HTSC 1568
11	- DO -	18-02-2006	1.25 MW	HTSC 1569
12	- DO -	18-02-2006	1.25 MW	HTSC 1570
13	- DO -	18-02-2006	1.25 MW	HTSC 1571
14	- DO -	23-03-2007	1.25 MW	HTSC 2208
15	- DO -	23-03-2007	1.25 MW	HTSC 2209
16	- DO -	23-03-2007	1.25 MW	HTSC 2210
17	- DO -	28-03-2007	1.25 MW	HTSC 2256
18	- DO -	28-03-2007	1.25 MW	HTSC 2257
19	- DO -	29-03-2007	1.25 MW	HTSC 2268
20	Perungudi, Tirunelveli EDC	07-03-1994	4 MW	HTSC 5
21	- DO -	26-03-1994	4 MW	HTSC 14

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 payment 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 OrderNo. 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 delayedpayments 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 uptoSeptember 2013. However, these payments have been delayed by as much as one year or more. Despite thesubstantial 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.3,76,43,231/- 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 delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

3.15. The petitioner had sent letters of demand on 09-04-2014 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.

3.16. The petitioner is paying a substantial court fee of Rs.3,76,440/- to file the instant petition for recovery of interest of 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. 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 11-02-2020:-**

In the hearing held on 11-02-2020, the counsel for the petitioner has submitted that the petitioner is not accepting the offer of TANGEDCO. Hence, the parties were directed to submit their Written Submission within two weeks after serving a copy to the other side. But both the parties have not submitted any Written Submission.

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

6.1. This petition has been filed to pass an order directing the respondents to forthwith make payment of a sum of Rs.3,76,43,231/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied 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.

6.2. During 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 willingness to the offer made by the respondents with regard to the interest. But in the hearing held on 11-02-2020, the counsel for the petitioner has submitted that the petitioner is not accepting the offer of TANGEDCO for settlement of dues at 6% interest per annum. Hence, the parties were directed to submit their Written Submission within two weeks after serving a copy to the other side. But both the parties have not submitted any Written Submission. In the circumstances, the Commission is inclined to decide the issue based on the available records.

6.3. The respondent TANGEDCO has not denied its liability for payment of interest on belated payment. Though respondent's counsel has offered to settle the claim at 6% per annum, the petitioner has not accepted the same. As such the respondent is liable to pay interest as per the contractual terms or as per the order of this Commission as the case may be. In this connection, our attention is drawn to the provisions of Tariff Order No.1 of 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."*

6.4. 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.

6.5. In view of the above, the Commission holdsthat the respondent is liable to pay interest at the rate of 1% per month for the delayed payment beyond 30 days of receipt of invoice

6.6. The respondent TANGEDCO is directed to make payment of Rs.3,76,43,231/- with interest as per our findings in para 6.5 above, to the petitioner within three months from the date of receipt of this order, after deducting payments, 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/-xxxxxx  
**(K.Venkatasamy)**  
**Member (Legal)**

Sd/-xxxxxxx  
**(Dr.T.PrabhakaraRao)**  
**Member**

Sd/-xxxxxx  
**(M.Chandrasekar)**  
**Chairman**

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**