

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.77 of 2014

M/s. Vision Textiles
14, Dharmaraja Layout
Sowripalayam Road
Ramanathapuram
Coimbatore – 641 045.

... 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 Director Finance
TANGEDCO
144, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
Udumalpet Electricity Distribution Circle
TANGEDCO.

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

**Dates of hearing :23-10-2018; 06-08-2019; 20-08-2019;
17-09-2019;22-10-2019; 10-01-2020
and 11-02-2020**

Date of order : 01-09-2020

The D.R.P.No.77 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. 77 of 2014:-

The prayer of the petitioner in this D.R.P.No.77of 2014 is to pass an order directing the Respondents to forthwith make payment of a sum of Rs.5,12,965/- being the interest due and payable to the petitioner as on 03-06-2014 against delayed payments made by TANGEDCO, for sale of power from Wind Generators of the petitioner bearing numbers 1633 and 1635 and direct the respondents to bear the costs of the instant petition including court fees and legal expenses.

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.5,12,965/- being the interest due and payable to the petitioner as on 03-06-2014 against delayed payments made by TANGEDCO, for sale of power from Wind Generators of the petitioner bearing numbers 1633 and 1635 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 payments were made by TANGEDCO.

3.2. In addition to the payments which have been made belatedly, there is still some amounts that are still due and outstanding under invoices as of the date of filing of the present petition. The payment of the invoice amounts together with the interest thereon is also due and payable.

3.3. The petitioner has preferred the present claim only in respect of interest portion of invoices for which payments have already been made. The petitioner is entitled to interest arising out of delayed payments for which the respondents are in contract and under law bound to pay.

3.4. The petitioner is engaged in the business of wind power generation and has set up two wind generators bearing No(s) 1633 and 1635 in Dharapuram in Tamil Nadu. The combined capacity of its project is 450 KW.

3.5. For the sale of power generated by the project, the petitioner executed various Wind Energy Purchase Agreements with the Respondent on 21st March, 2011 in respect of WEG No.1635, on 21-03-2011 in respect of WEG No.1633. The WEPA's are valid for a period of 20 years from the date of execution.

3.6. 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.”

3.7. The WEGs belonging to the petitioner operate under EPAs wherein, pursuant to Clause 6, TANGEDCO is liable to make payment against invoices raised by the petitioner within a period of 30 days from the date of invoice falling which the invoice amount would be payable along with interest towards delayed payment at the rate of 1% per month. The petitioner is extracting the relevant clause hereunder:-

“Billing and payment:

- a. The wind energy generator shall raise a bill every month for the net energy sold after the deducting the charges for start up power and reactive power;*
- b. 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 &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 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. 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, it is entitled to interest on delayed payments including those payments which have been made in respect of the principal sums of the invoices.

3.10. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.5,12,965/- towards interest on delayed payments alone.

3.11. The petitioner is paying a substantial court fee of Rs.20,000/- 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 and Tariff Order No.1 of 2009 issued by this Commission. The action of TANGEDCO in not paying the 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 accepting of 6% of interest on payment from TANGEDCO.

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

In the hearing held on 11-02-2020, the counsel for the petitioner submitted that no payment has been made and the Commission is directed to file both parties to file Written Submissions within two weeks. However, the Written Submission has not been filed by any party.

6. Findings of the Commission:-

6.1. The petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.5,12,965/- being the interest due and payable to the petitioner as on 03-06-2014 against delayed payments made by TANGEDCO, for sale of power from Wind Generators of the petitioner bearing

numbers 1633 and 1635 and direct the respondents to bear the costs of the instant petition including court fees and legal expenses.

6.2. The hearings in the subject matter were held on various dates. However, though there was a proposal for settlement of the interest at the rate of 6% p.a., it was submitted by the Petitioner's Counsel on 11-02-2020 that payments were not fully and only part payments were made. In such circumstances, the Commission is inclined to pass orders on the basis of available records and the legal position with regard to payment of interest.

6.3. It is seen from the material records submitted before us 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 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. As regards the legal position, the payment of interest for the delayed payment has been upheld by the Hon'ble APTEL in Appeal No.11 of 2012 vide its judgment dated 17-04-2012. This decision has been further 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.

6.5. In view of the above, the respondent, TANGEDCO is liable to pay 1% interest for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order for the balance amount that remains unpaid by the respondent, TANGEDCO.

6.6. As a result, TANGEDCO is directed to make payment of Rs.5,12,965/- towards interest as per our findings in para6.5 above to the petitioner within three months from the receipt of this order, after deducting payments, if any already made. 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