

ORDER

The D.R.P.No.17 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. 17 of 2014:-

The prayer of the petitioner in this D.R.P.No.17 of 2014 is to direct the Respondent to

- (a) pass an order directing the respondents to forthwith make payment of a sum of Rs.63,92,296.00 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 and pass such further or other orders as this Commission may deem fit.

2. Facts of the Case:-

The petition is filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.63,92,296.00 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. The petition is 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. However, 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.

3.2. The petitioner is a luxury hotels developer and operator 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 5 MW in the State of Tamil Nadu.

3.3. The petitioner has established Wind Power Generation projects in Tirunelveli in the State of Tamil Nadu with a total capacity of 5.0 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 as stated below:-

No.	Location of Windmill & Jurisdictional TANGEDCO Circle	Capacity of Windmill	HT SC. No.
1	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.25 MW	2326
2	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.25 MW	2327
3	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.50 MW	2328
4	Tirunelveli District, Tirunelveli Circle, TANGEDCO	2.00 MW	2329
5	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.75 MW	2330
6	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.75 MW	2342
7	Tirunelveli District, Tirunelveli Circle, TANGEDCO	0.50 MW	2343

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. Such non-payment of interest is a denial of a valuable right conferred by specific Tariff Orders and the judgment of the Hon'ble APTEL.

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. TANGEDCO took the position that only for windmills covered by Tariff Order No.1 of 2009, there is a requirement for paying interest. This resulted in the Indian Wind Power Association filing a petition before the Commission which upheld the right of all wind generators irrespective of the date of commissioning to receive interest on delayed payments at the rate of 1% per month. The said judgment was upheld by the Hon'ble Apte in its judgment in Chairman, TNEB & Anr. V. Indian Wind Power Association and Ors. in Appeal No.11 of 2012 dated 17-04-2012. The relevant paragraph is reproduced hereunder:-

“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 days time

limit for payment is provided and any delay beyond that will have to be made with interest @1% per month

3.9. In 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 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.

3.10. 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 November 2012. 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.63,92,296.00 towards interest on delayed payments alone.

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 being 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 a letter of demand on 18-07-2013 seeking payment of interest on delayed payments. But, 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. Therefore, it has become necessary to file this petition.

3.14. The petitioner is paying a substantial court fee of Rs.63,923.00 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 petitioner submits that 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.

3.15. The matter came up for hearing on various dates, the recent ones being on 17-09-2019, 22-10-2019 and 12-11-2019.

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

In the hearing held on 17-09-2019, the petitioner counsel was directed to file Memo for acceptance of 6% of interest on the payment from TANGEDCO, since the petitioner was willing to offer made by the respondents with regard to the interest.

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

At the request of the petitioner's counsel, the matter was adjourned to 12-11-2019.

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

The petitioner filed a Memo accepting the payment of interest on belated payments at 6% per annum. In the affidavit, the petitioner has, inter *alia*, 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.

7. Findings of the Commission:-

7.1. The prayer in this petition is to direct the respondent to forthwith make payment of a sum of Rs.63,92,296.00 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 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. The matter came up on various dates, the recent one being 12-11-2019.

7.2. During the hearing on 12-11-2019, Selvi Tanushree Arvind, Junior to Thiru Rahul Balaji, Advocate appeared for the petitioner and filed an affidavit for acceptance of 6% interest.

7.3. In the said affidavit, the petitioner has stated as follows:-

“The TANGEDCO has made an offer for settlement by agreeing to pay 6% interest on the payments made belatedly towards invoices for supply of electricity as a one time measure citing their desire to amicably resolve the dispute and also the financial position they find themselves in. The petitioner has suffered enormous loss due to the non-payment of the interest fixed under Tariff Orders since it pays substantial sums towards interest to banks and financial institutions due to the delay in payments of the invoice dues. Upon advice of its lawyer to accept an amicable settlement and after consideration of such offer and the stand of TANGEDCO that it is currently in a financial difficulty, the petitioner is willing to accept 6% interest on the following terms-:

- 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 Hon'ble TNERC.*
- c. The Hon'ble TNERC 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%p.m. 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 DRP.*
- 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 payment in that regard shall be paid by TANGEDCO.”*

7.4. As the parties have reached a settlement out of court, the respondent shall make payment as agreed to the petitioner within a period of 60 days from the date of this order. Accordingly, the petition is disposed of.

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

(Sd.....)
(Dr.T.Prabhakara Rao)
Member

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission