

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

and

Thiru. K.Venkatasamy

.... Member (Legal)

D.R.P. No.1 of 2021

M/s. Natesan Precision Components Pvt. Ltd.
54/4, Paulwels Road
Sripuram Colony
St. Thomas Mount
Chennai – 600 016.

... Petitioner
(Thiru Rahul Balaji
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Rep. by its Chairman & Managing Director
10th Floor, 144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (NCES)
Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
144, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
Theni Electricity Distribution Circle
TANGEDCO, Theni.

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

**Dates of hearing : 02-03-2021; 20-04-2021; 22-06-2021;
06-07-2021; 27-07-2021 and 17-08-2021**

Date of Order : 07-09-2021

The DRP No. 1 of 2021 came up for final hearing on 17-08-2021. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent and all other connected records and after hearing both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in D.R.P. No.1 of 2021:-

This petition in D.R.P. No. 1 of 2021 has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.1,58,337/- being the sum due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and such further *pendente lite* interest as this Commission may deem fit from the date of filing 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:-

The present petition has been filed to pass an order directing the respondents to pay a sum due and payable of Rs.1,58,337/- as interest under the Power Purchase Agreements entered into with Respondent TANGEDCO for the sale of power generated by the petitioner's Wind Energy Generators for payments effected since December 2017 and pass such further or other orders as the Commission may deem fit proper in the facts and circumstances of the case.

3. Contention of the Petitioner:-

3.1. The present petition is being filed seeking for payments due to the petitioner

under the Wind Energy Purchase Agreements it has entered into with the Respondent TANGEDCO. The belated payment to the petitioner is all the more objectionable since not only have payments been effected after years of Invoices being raised, even when such payments are effected, they are not paid with the interest in terms of the Tariff Order and applicable terms of the EPA. By inordinately delaying such payments the Respondents have pushed the petitioner to financial distress by not only withholding payments under EPAs for years together but also not paying interest for the belated payments despite an express clause to the effect in the EPA.

3.2. The standard methodology now being employed by the Respondent is to delay payment of Invoices to renewable Energy generators for years together and then force them to give rebates against Invoices as a pre-condition to release payments and also seek for express undertakings seeking waiver of interest claims or agreeing for 50% rebate on interest. Such actions are contrary to the express regulatory scheme and contrary to the binding judgment of the Hon'ble Supreme Court where TANGEDCO was a party and the Hon'ble Supreme Court has held that obtaining rebates against payments were contrary to express terms of the EPA and are impermissible.

3.3. The petitioner commissioned the following capacities in Tamil Nadu:-

Site (Village / District)	Capacity (KW)	HTSC No.	Commissioning Date
Theni	0.60 MW	T 202	March 2011
Tirupur	0.56 MW	427 734	March 2004 March 2005
Tirunelveli	0.85	2820 4115	March 2009 March 2011

3.4. The Petitioner has entered into Energy Purchase Agreements with the Respondent, for sale of electricity generated under preferential Tariff Regime / REC regime. The EPAs contain interest payment clauses. It is also pertinent to state that even without an interest clause, it has been held that as regards the WEGs Commissioned under the preferential Tariff Regime by virtue of the judgment of the Hon'ble APTEL in Chairman, TNEB & Another V. Indian Wind Power Association and Others in Appeal No.11 of 2012 dated 17.04.2012 which was upheld by the Hon'ble Supreme Court in C.A.No.2397 of 2014 and 10% p.a. interest fixed.

3.5. In Tariff Order No.1 of 2009 issued by the Hon'ble TNERC, there is a specific instruction 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."

3.6. 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 the specific interest payment clause in its EPA which reads as under

"Clause 6(a) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting charges for startup power and reactive power.

Clause 6(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."

3.7 The petitioner is entitled to interest on delayed payments on all WEGs for which 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.

3.8. Thus, the following principles / directives apply for interest with respect to the type of Agreement and date of Commissioning

a. Tariff Order No. 1 of 2009 issued by the TNERC, contains a specific inclusion of interest payment.

i. Para 8.11.1. of the Tariff Order deals with billing and payment and is 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."

Thus all generators who have WEGs covered by the 2009 Tariff Order will be entitled to claim interest at 1 % per month upon pending Invoice amounts beyond 30 days from the receipt of the bill by TANGEDCO (as opposed to 12%p.a.- the rate is a monthly 1% rate under the Tariff order and not an annual rate).

3.9. The power generated by the WEGs details of which have been set forth in this petition are being sold to TANGEDCO under the respective EPAs. 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.

3.10. It has become necessary to set out the entire regime to highlight the injustice being meted to the generators and the advantage the Respondent is taking due to the inability of the affected parties from approaching the Commission due to the High Court fees of 1% of the amount in dispute that has been fixed. The TANGEDCO is also benefiting from the non-awarding of costs and the non-awarding of *pendente lite* interest and the petitioner is therefore seeking for such relief specifically in order that there is a disincentive imposed upon the Respondents from delaying payments and effecting payments to their favoured sectors or generators. Unless the Commission exercises its full powers and puts the Respondents to terms, the said illegal actions by the Respondent would continue to be resorted to.

3.11. The Electricity Act, 2003, the National Electricity Policy, the National Action Plan on Climate Change (NAPCC) are unanimous in the need to encourage development of Non-conventional energy.

3.12. However, the TANGEDCO has delayed these payments for one year to almost three years consistently. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the provision in the Tariff Order and the terms of the binding contract. The details of the invoices raised such as date of invoices, date of payment, date when the actual payment was made and the amount of interest on delayed payment has been filed.

3.13. The Hon'ble Appellate Tribunal for Electricity has upheld the rationale behind incorporating interest/ surcharge clauses in power purchase agreements in the case of Chairman, TNEB & Another V. Indian Wind Power Association and Others in Appeal No.11 of 2012 dated 17.04.2012. 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 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."

3.14. In case of TANGEDCO v PPN Power Generation Co Ltd Civil Appeal No. 4126 of 2013, the Hon'ble Supreme Court of India has set at enunciated the rationale behind incorporating interest clauses in agreements in the following manner:-

"We are also not able to accept the submission of Mr.Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5% for having made part payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by the respondents. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices. With regard to the issue raised about the interest on late payment,

APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in Central Bank of India vs. Ravindra & Ors. In this judgment it has been held as follows:

"..... The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd. All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab 2002 (1) SCC 367 speaking through Tek Chand, J. in CIT v. Dr. Sham Lal Narula thus articulated the concept of interest the words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money..... In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

56. Similar observations have been made by this Court in Indian Council of Enviro-Legal Action vs. Union of India & Ors. wherein it has been held as

follows:

"178. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above-or to simply levelise-a convenient approach is calculating interest. But here interest has to be calculated on compound basis-and not simple-for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.

180. Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice. However, the power of the Court to order compound interest by way of restitution is not fettered in any way. We request the Law Commission to consider and recommend necessary amendments in relevant laws.

57. The late payment clause only captures the principle that a person denied the benefit of money, that ought to have been paid on due dates should get compensated on the same basis as his bank would charge him for funds lent together with a deterrent of 0.5% in order to prevent delays. It is submitted by Mr. Salve and Mr. Bhushan that bankers of the respondents have applied quarterly compounding or monthly compounding for cash credits during different periods on the basis of RBI norms. Article 10.6 of the PPA has followed the norms of the bank. This cannot be said to be unfair as the same principle would also apply to the Appellants"

3.15. The judgment of Central Bank of India vs. Ravindra & Ors would also apply and when the Invoice payments were made belatedly, at the time of effecting payment the interest not having been paid, the said sum became due and payable. Such sum having crystallized would continue to carry interest.

3.16. Furthermore, the Hon'ble Appellate Tribunal for Electricity in cases such as-(1) Jaipur Vidyut Nigam Limited vs. Rajasthan Electricity Regulatory Commission [(2019) SCC Online APTEL 98] and (2) Maharashtra State Electricity Distribution Co. Ltd. Vs. Maharashtra Electricity Regulatory Commission & Anr. [(2018) SCC Online APTEL 38] has settled the law regarding mandatory payment of Late Payment Surcharge in the event of delay in payment of admitted outstanding dues by the Distribution Licensee to a Generating company.

3.17. In cases such as the Petitioner's, where there is a specific provision in the EPA enjoining upon the Respondent TANGEDCO the duty to pay interest for delayed honouring of invoices, TANGEDCO ought to be held liable to make good the claim for the same, otherwise it would render the whole purpose of incorporating such strictures hollow and meaningless.

3.18. The Respondent TANGEDCO deliberately delays payments to RE Generators who are always paid after conventional generators since the RE Generators are smaller players and cannot easily file recovery proceedings due to the costs involved. Further, as would be seen from their past conduct, the TANGEDCO after withholding payments, on the verge of the proceedings would belatedly offer 6% interest and delay payments of even such interest payment. It

is thus necessary that such conduct detrimental to the interest of the generators and which is in the teeth of the regulator's directives be curbed and put an end to. Thus the petitioner is seeking for award of costs of the litigation including court-fees since the petitioner is forced to approach the Commission due to the deliberate disobedience to pay admitted dues. The status of the petitioner is all the more pitiable since it is an REC generator and is already being compensated by the Respondent for the electricity purchased at a very low rate. Therefore, to not be paid even this low rate on time is wholly arbitrary and unexpected of a State controlled body such as the Respondent.

3.19. The Petitioner has raised invoices for power supplied on a monthly basis as per the terms of the EPA. However, the Respondent has failed to pay the invoice amounts within the agreed timelines, thereby incurring liability to the interest on such belated payments where payments have been effected. The petitioner reserves its rights to enforce payments for the sums due under regular Invoices should there be any further delays. Despite the substantial delay, TANGEDCO has till date not made any payment of the interest on delayed payments till date. The petitioner is filing the present claim only for interest.

3.20. The default on part of the respondents to make payment for electricity supplied as per the terms of the agreement has made it difficult for the Petitioner to meet its commitments.

3.21. The Commission vide order dated 25.03.2019, in the case of Century Flours Mills v TANGEOCO D.R.P.No. 21 of 2013 has stated that the TANGEDCO is

liable to make payment of interest on delayed payments at 12% per annum in the following manner:-

"From the above, it is clear that the petitioner is entitled for an interest of 1 % per month i.e. 12% per annum for any delayed payment beyond 30 days. As such claim of the petitioner for interest at 12% as mentioned in Annexure "A" to the petition is correct. In view of the above, the petition is allowed. The respondents are directed to make the payments claimed by the petitioner after duly verifying the calculation within three months from the date of this order."

3.22. As is evident TANGEDCO is due and liable to pay to the petitioner a sum of Rs.1,58,337/- towards interest on delayed payments in respect of WEGs.

3.23. 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 loan. The delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

3.24. The failure of TANGEDCO to make payments promptly as per terms of the energy purchase agreements has adversely affected the petitioner's financial position and strained its finances. The current attitude of TANGEDCO not only affects the petitioner but would also have long term negative impact on the viability of the State of Tamil Nadu as most favored destination for investment in Renewable Energy, particularly Wind Energy Projects.

4. Contentions of the Respondents:-

4.1. The petitioner has raised invoices for power supplied from its WEG on a

monthly basis as per the terms of the Power Purchase Agreement, and the petitioner received payments against invoiced for the period up to 06/2020. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not included interest on delayed payments.

4.2. The petition is maintainable in law nor on facts and as such the same is liable to be dismissed.

4.3. The wind mill being WEG HT SC No: 202 with 1 No of generators of RRB make having capacity of 0.6MW (1 X 600) in Theni Electricity Distribution Circle in the name of M/s.Natesan Precision components (P) Ltd., is located in T. Meenachipuram Village, Uthamapalayam Taluk, Theni District. The consumer had executed wind energy purchase agreement for the above WEGS on 27.09-2011 respectively.

4.4. The Commission issued Comprehensive Tariff order on wind energy (Order No.1 of 2009 dated 20.03.2009) where is the relevant portion is extracted as follows:-

"8.11 Billing and Payment

8.11.1. When a wind generator sells power to the distribution license, the generator shall raise a bill every month for the net energy sold power and reactive power. The Distribution license shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days in liable for interest at the rate of 1 % per month".

From the above, it could be observed that wind energy generator sells power to the distribution licensee, the generator shall raise a bill for the net energy sold.

The distribution licensee shall make payment to the generator within 30 days of receipt of the bill in accordance with Tariff Order No. 1 of 2009 dated 20-03-2009. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

4.5. The TNERC issued Comprehensive Tariff order on Wind energy (Order No.3 of 2016 dated 31.03.2016) wherein relevant portion is extracted as follows:-

"9.3 Billing and Payment

9.3.1. When a wind generator sells power to the distribution license, the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution license reactive power charges etc. The distribution license shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month. TANGEDCO has suggested for levy of interest at .75% per month. Some of the shareholders have sought for interest 1.5% to 2% for delayed payment beyond 60 days and some of them have requested for payment within 30 days. Having considered receivables of two months. Commission decides to retain the duration for payment by the Distribution license as 60 days as proposed and adopted in previous order and decides to adopt rate of interest of 1 % per month for any delayed payment by the Distribution license beyond 60 days".

4.6. From the above, it could be observed that wind energy generator sells power to the distribution licensee, the generator shall raise the bill for the net energy sold. The distribution licensee shall make payment to the generator within 60 days of receipt of the bill in accordance with Tariff order No. 3 of 2016 dated 31.03.2016. Any delayed payment beyond 60 days is liable for interest at the rate of 1 % per month.

4.7. Due to shortage of power exist in Tamil Nadu, TANGEDCO had to purchase power at higher rate from other sources, which led to facing critical financial crises, further not able to make payment within the time limit prescribed.

4.8. In the meantime, the following payments have already been made to the Petitioner towards the Sale to Board energy bills as detailed below:-

EDC/ Jurisdictional SE	Invoice Date	Amount	Due Date	Date of receipt	No. of days delayed	Intere st @ 12%
Theni	03-06-2017	189,295	03-07-2017	11-12-2017	161	10,020
Theni	07-07-2017	451,436	06-08-2017	11-12-2017	127	18,549
Theni	09-08-2017	82,436	08-09-2017	30-04-2018	234	6,342
	09-09-2017	430,704	09-10-2017	06-03-2019	523	74,057
	09-10-2017	262,302	08-11-2017	31-05-2019	569	49,068
Total						158,337

4.9. The monthly fund inflow of TANGEDCO through revenue from sale of power to its consumers is around Rs.3200 crores and tariff subsidy from Government of Tamil Nadu is around Rs.600 crores per month.

4.10. The monthly fund outflow towards the revenue expenditure is as below:

1. Payment for procuring fuel - Rs.300 Crores
2. Transportation of fuel - Rs.300 Crores
3. Payment to power suppliers, both CGS and Private generators
Rs.2000 Crores.
4. Payment to Central and State Transmission Utilities - Rs.300 Crores.
5. Employees cost including pension - Rs.650 Crores
6. Repairs, Maintenance and administrative expenses - Rs.100 Crores.
7. Interest and finance charges - Rs.1000 Crores.
8. Repayment of loan by TANGEDCO - Rs.500 Crores

4.11. For all the above expenditures, the total outflow is around Rs.5150 Crores. There is an average shortfall of about Rs.1360 Crores. Some payments are postponed and made as and when loans are received from REC/PFC/IREDA and other financial institutions.

4.12. In the above circumstances, releasing of huge payments to wind generators will be difficult one, however efforts are being taken for releasing payments for one or two months. And moreover, paying or adjustment of Interest due every month will affect the cash inflow of TANGEDCO and payment of surcharge before payment of the dues will not be a correct one under accounting principles on 18.12.2020, wind mill payments up to the month of 06/2020 have been released.

4.13. Regarding, Interest on delayed payment in respect a wind generators, TANGEDCO h consented in the TNERC, for payment of 50% of the surcharge due to the wind generators as eligible in the PPA. Payment is being made towards interest at 50% who have filed DRP an also agreed for 50% waiver. Due to Covid-19 pandemic, as the Cash Inflow of TANGEDCO has considerably reduced, there is some delay in making the payments. However action is being taken to clear the dues at the earliest.

4.14. In the meantime interest on delayed payment is the additional burden which has to be faced by the TNEB. The Commission confirmed the interest payment vide its order dated 17.04.2011 passed in MP NO.36 of 2010 held that the TNEB is liable to pay interest at the rate of 1 % per month to the Generator on the delayed payment. The order passed by the Commission was challenged by TNEB

before the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL). The Hon'ble APTEL vide its judgment dated 17.04.2012 passed in appeal No.11 of 2012 was dismissed.

4.15. Again the TNEB filed a Civil Appeal vide No. 2937 of 2014 before the Hon'ble Supreme Court of India which was also dismissed on 08-07-2016 by the Hon'ble Supreme Court of India holding "We see no reason to interfere with the award of Simple Interest at the rate of 10% per annum on the amount of outstanding against the appeal and Electricity Board. The appeal is accordingly dismissed.

4.16. Based on the above, the Hon'ble Supreme Court order the Generator has claimed a sum of Rs.1,58,337/-towards interest payable for the delayed payment made for the past period between 07/2017 to 11/2017.

4.17. In order to overcome from the financial crises of TANGEDCO, the generator who had affected by delayed payments were personally requested to attend negotiation meeting in the Chamber of the Director/ Finance /TANGEDCO/ Chennai- 2 by expressing the financial position of TANGEDCO and requested to waive the interest fully, most of the generators are accepted to receive 50% of the interest payment of interest in installment.

4.18. Despite severe financial constraints faced by the TANGEDCO, sincere efforts are being made in clearing the pending bills of the wind energy generators as per seniority basis.

4.19. Directing the TANGEDCO to forthwith make payment of a sum of Rs.1,58,337/- towards interest for delayed payment for the period from 07/2017 to 11/2017 will adversely affects the fund flow of the respondents. Further, similar placed generators may also seek such direction and it will lead to multiplicity of litigations. This may also lead to difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, make suppliers and power Generators similar to the petitioner.

4.20. TANGEDCO is a corporation company wholly owned by the Government of Tamil Nadu and catering the need of the general public at large would be put into irreparable losses grave prejudice, undue hardship and financial losses. In fact such losses will be passing through in the future tariffs which have to be passed on the end-consumers and attract public interest. In any case, for the sake of a company, public authorities under general public should not get suffered financially.

5. Findings of the Commission:-

5.1. The petition has been filed to direct the Respondents to pass an order directing the respondents to forthwith make payment of a sum of Rs.1,58,337/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and such further *pendente lite* interest as this Commission may deem fit from the date of filing till the date of realization 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.

5.2. We have considered the rival submission on both facts and law. The matter came up on various dates and ultimately on 17-08-2021, the both sides sought passing of orders on merits. The legal position is very clear on the point that interest is payable by the licensee to the generators for delay in settlement of invoices. Except for stating that there is a financial constraint and directing TANGEDCO to pay the claim in question would adversely affect its fund flow, the respondent has not given any other justification for delay in the payment. We cannot agree to the prayer of the respondent for dismissal of petition on such ground and hence the petition is required to be disposed of on the basis of the provision in the Tariff Orders of the Commission and judgment of APTEL and Supreme Court.

5.3. In this connection, the provisions in Tariff Order No. 1 of 2009 dated 20-03-2009 would be relevant:-

“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.”

5.4. The TNERC issued Comprehensive Tariff Order on Wind Energy (Order No. 3 of 2016 dated 31-03-2016) from which relevant portion is extracted as follows:-

“9.3 Billing and Payment

9.3.1 When a wind generator sells power to the distribution licensee, the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution licensee reactive power charges etc. The distribution licensee shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month. TANGEDCO has

suggested for levy of interest at .75% per month. Some of the shareholders have sought for interest 1.5% to 2% for delayed payment beyond 60 days and some of them have requested for payment within 30 days. Having considered receivables of two months. Commission decides to retain the duration for payment by the Distribution licensee as 60 days as proposed and adopted in previous order and decided to adopt rate of interest of 1% per month for any delayed payment by the Distribution Licensee beyond 60 days.”

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

5.6. From the above, it is clear that Wind Energy Generators are entitled to interest at the rate of 1% per month for the delayed payment of invoices.

5.7. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month for delayed payment as per the above Tariff Order.

5.8. TANGEDCO is directed to verify the claim of the petitioner and make payment towards interest as per our findings in para 5.6. above to the petitioner within one month from the receipt of this order, after deducting payments, if any already made, in line with the applicable Tariff Orders of the Commission. 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.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission