

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 26th Day of March 2024

PRESENT:

Thiru M.Chandrasekar Chairman
Thiru K.Venkatesan Member
and
Thiru B.Mohan Member (Legal)

P.R.C. No. 2 of 2024

M/s.Apraava Wind Energy (Theni- Project II) Private Limited
(formerly, M/s. CLP Wind Farms (Theni-Project II) Pvt. Ltd.
6th Floor, Chanakya, Off Ashram Road
Ahmedabad – 380 009.
Gujarat.

.... Petitioner
Adv.Jafar Alam &
Adv Tanushree Arvind

This P.R.C. No. 2 of 2024 arises out of the Petition filed by M/s. Apraava Wind Energy (Theni – Project II) Private Limited, Gujarat with a prayer to-

- (i) declare and direct that the respondent is liable to and must pay forthwith the last and latest figure of total outstanding amounts with late payment surcharge of 1% per month as per the WEPAs, till the date of receipt of payment by the petitioner calculated to be Rs.81,32,93,175/- as on 30-09-2023;
- (ii) direct the respondent to create adequate payment security mechanism towards the monthly tariff invoices issued under the WEPAs;
- (iii) direct the respondent to amend the existing WEPAs to reflect the change of the name of the petitioner from “CLP Wind Farms (Theni – Project II) Private Limited”

to “Apraava Wind Energy (Theni – Project II) Private Limited”;

(iv) Award costs of the litigation to the petitioner and

(v) pass any such other and further orders as this Commission deems just and proper in the facts and circumstances of the present case.

This matter coming up for hearing on 27-02-2024 for deciding the very maintainability of the petition in the presence of Thiru Rahul Balaji, Advocate for the Petitioner and upon hearing the submission made by the Counsel for the petitioner; on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. The present Pre-Registration Case arises out of the rejection of the petition filed by the petitioner herein with fees applicable to miscellaneous petition in S.R. No. 133 of 2023. The Registry, it is seen from the records has taken objection to the filing of the present petition as a miscellaneous one and returned the same to the petitioner to pay fees as applicable to Dispute Resolution Petition.

2. The Registry in its first communication dated 15-12-2023 pointed out to the petitioner that on perusal of the prayer in the petition, it is seen that the matter pertains to the claim of Rs.81,32,93,175/- and hence 1% of court fee shall become payable. The Registry in its return memo dated 15-12-2023 has further pointed out that the averments of the petitioner at para 22 of the affidavit that there is no dispute in the matter

contradicts petitioner's own averment in paras 16-18. However, the petitioner stuck to its stand and sent a reply dated 02-01-2024 raising additional grounds as follows:-

(1) that there is no letter or communication from TANGEDCO denying its liability

(2) that the liability to pay tariff as well as LPS emanates from the PPA as well as Tariff Orders of the Commission

and hence the issue being purportedly compliance of the terms of the PPA and tariff order squarely falls within the purview of regulatory powers and therefore, no fee as applicable to the D.R.P. would be required to be paid.

3. Again, the registry returned the petition on 08-01-2024 pointing out that the petitioner has not answered the query of the Registry in regard to the contradiction in the averments pointed out by the Registry. The Registry rejected the additional grounds raised by the petition with reference to absence of email or any communication from TANGEDCO denying its liability to pay any amount. The Registry took the view that such absence of email or communication becomes immaterial when by express conduct TANGEDCO reduced the outstanding balance and proceeding to pay on its own. The Registry also strongly placed its reliance on Regulation 6 (10) of Fees and Fines Regulations, 2022 as per which "the amount in dispute" and "claim" shall mean and include all monetary claims expressly stated in the prayer or any part of the petition.

4. Aggrieved by the decision of the Registry, the matter was referred to the Secretary of the Commission under Regulation 20 (6) of Conduct of Business Regulations. The Secretary of the Commission having considered the stand taken by the petitioner and the Registry confirmed the decision of the Registry by clearly

accepting the stand of the Registry that the TANGEDCO itself having reduced the outstanding balance on its own and proceeded to pay on its own, the question of denying its liability to expressly to pay any amount would not arise and the present case warrants the payment of fees as applicable to Dispute Resolution Petition.

5. The Secretary also rejected the stand of the petitioner that the present issue being one arising out of the tariff orders of the Commission and PPA entered into between the parties, the petition should be treated as a miscellaneous one. The Secretary has also recorded the finding to the effect that the PPA and tariff orders only govern the payment to generators and they being the basic documents for payment to generators cannot be separated from Dispute Resolution for the purpose of treating the present issue as a regulatory one.

6. In short, both the Registry and the Secretary have taken a concurring view on the point that explanation (a) to 6 (10) of Fees and Fines Regulations is to be pressed into service to classify the present petition as a Dispute Resolution Petition and hence, the matter is before us as P.R.C. on the question of classification of the petition in S.R. No. 132 of 2023.

7. We have heard the submissions of the counsel for the petitioner on the question of classification. During the course of arguments, the petitioner strongly placed reliance on the Gol Rules on LPS and contended prayer in the present petition is nothing but a mere enforcement of the Government of India Rules and that it is purely an invocation of regulatory jurisdiction and no dispute is involved. We are to observe here that the petitioner chose to give up its initial stand taken before the Registry and Secretary in

regard to the absence of communication from TANGEDCO denying the liability and the issue being one arising out of Tariff Order and PPA and proceeded to canvass its position before us solely on the enforcement of LPS which was not its case before the Registry or Secretary.

8. Be that as it may, having considered the submissions of the petitioner, we are of the view that the present petition cannot be classified as a Miscellaneous one. Even accepting for a moment that the contention of the petitioner that the present issue arises out of the Late Payment Surcharge Scheme of Gol, still the provisions of regulation 6 (10) of the Fees and Fines Regulations cannot be given a go-by or totally discarded as it is a statutory provision generating payment of fees.

9. We are of the view that both the Registry and Secretary of the Commission have correctly decided the issue with reference to regulation 6 (10) of the Fees and Fines Regulations and what is more, during the course of hearing, the petitioner failed to touch upon the issue with reference to the same and instead relied on the enforcement of Gol Rules which, in our view, is an digression from the main issue. The petitioner having failed to advert to the bone of contention, i.e. explanation (a) to Regulation 6 (10), we see no plausible reason to accept the stand of the petitioner. The failure to controvert or dispute the decisions of the authorities below with reference to the explanation (a) to Regulation 6 (10) leads us to conclude that the petitioner has no effective case and in the result, the stand of the petitioner for classification of the petition as Miscellaneous Petition fails.

10. It is further pertinent to point out that during the course of hearing, the petitioner did not put forth any explanation as to why the stand taken earlier with reference to absence of any email or communication from TANGEDCO denying its liability was totally given up which means, the stand of the Registry and Secretary cannot be faulted and in all probability, it is to be concluded that the petitioner has no more effective defence on the same. Even otherwise, we are to observe here that it is only the Regulation 6 (10) which would prevail as the language of the said regulation is very clear on this point and no amount of strenuous canvassing with reference to Gol Rules would have convinced us.

11. For the above said reasons, the present P.R.C. is disposed of with directions to the petitioner to file the petition in S.R. No. 133 of 2023 with required fees as applicable to Dispute Resolution Petition to enable the Registry to list the matter and place it before the Commission.

Ordered accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**