

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 27th Day of June 2024

PRESENT:

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

R.A. No. 2 of 2024

M/s. Grace Infrastructure Pvt. Ltd.
Rep. by its Chairman & Managing Director
Mr. A.L. Shah
A5, Industrial Estate
Thattanchavady
Pondicherry – 605 009

... Remand Applicant
Adv. M/s. Rugan and Arya

Versus

1. TANGEDCO
Rep. by its Chairman cum Managing Director
No. 144, Anna Salai
Chennai – 600 002.
2. The Director of Finance
TANGEDCO
No. 144, Anna Salai
Chennai – 600 002.
3. The Chief Engineer (NCES)
TANGEDCO
No. 144, Anna Salai
Chennai – 600 002.
4. The Superintending Engineer
TANGEDCO
Tirunelveli Electricity Distribution Circle
Tirunelveli – 627 011.

5. The Superintending Engineer
TANGEDCO
Theni Electricity Distribution Circle
Theni – 625 531.
6. The Superintending Engineer
TANGEDCO
Dindigul Electricity Distribution Circle
Dindigul – 624 306.
7. Tamil Nadu Electricity Regulatory Commission
4th Floor, SIDCO Corporate Office Building
Thiru Vi Ka Industrial Estate
Guindy, Chennai – 600 032.

..... Respondents
Represented by
Thiru N.Kumanan and
Thiru A.P.Venkatachalapathy,
Standing Counsel for Respondents

This petition coming up for final hearing on 23-05-2024 in the presence of Thiru K. Ravi from M/s. Rugan and Arya, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. In this present Remand Proceedings, the issue lies in a narrow compass as to whether the disputed amount of Rs.4,44,25,933/- demanded by the respondents from the Remand Applicant is in consonance with the Tariff Orders of the Commission and the APPC rate fixed by the Commission from time to time as the case may be. It is not

necessary to set out the entire pleadings of the parties and it is suffice if a brief history relating to the said case is set out.

2. The instant Remand Application was taken on the file of the Commission consequent to the judgment dated 15-04-2024 of Hon'ble Appellate Tribunal for Electricity in Appeal No. 155 of 2022 wherein the Tribunal set aside the orders passed by the Commission in D.R.P. No. 23 of 2020 dated 06-07-2021 and directed the Commission to initiate *de novo* enquiry in the lis.

3. The matter pertains to the demand raised by the TANGEDCO in regard to the APPC rate payable by the petitioner by the Respondent. To recapitulate the sequence of the events leading to the filing of the appeal, a brief background of the case is set forth herewith. The D.R.P. No. 23 of 2020 was filed by the Remand Applicant herein before the Commission in the first instance seeking directions for payment of Rs.82,81,31,929/- + Rs.14,80,198.65 being the principal and interest dues for the power supplied from the Remand Applicant's generating unit to the Respondents for the period from 16-03-2017 to 07-02-2020.

4. During the course of proceedings, the Respondent TANGEDCO raised a counter claim of Rs.4,44,25,933/- on the basis the contents set out in its communication dated 19-05-2020 to the Remand Applicant herein. The Commission, in its final order, allowed the claim. However, in regard to a sum of Rs.4,44,25,933/- which was supposedly due in regard to the APPC, the Commission rendered a finding to the effect that the demand raised by TANGEDCO being an admitted fact by both parties, the Remand Applicant herein is not entitled to be paid a claim of

Rs.4,44,25,933/-. The Remand Applicant herein filed Review Petition before the Commission and the same was also dismissed. Thereafter, the Remand Applicant herein filed an Appeal before the Hon'ble APTEL in Appeal No. 155 of 2022 which came to be disposed of on 15-02-2024 holding that the Remand Applicant herein never admitted its liability to pay the said sum to the Respondent and the order of the Commission is erroneous. In consequence thereof, the Hon'ble APTEL remanded the matter to the Commission for *de novo* enquiry.

5. Having perused the material records, we are of the view that as held by the Hon'ble APTEL, the Remand Applicant cannot be said to have admitted the liability in entirety and there is every indication to infer from the pleadings that Remand Applicant was never in agreement with the claim of Rs.4,44,25,933/- made by TANGEDCO. Hence, the issue now boils down to a single point i.e., whether the above referred demand raised by TANGEDCO is in consonance with the orders of the Commission issued from time to time.

6. It is seen from the Written Submissions filed by the Remand Applicant in the Remand Proceedings that there are as many as 67 Wind Energy Generators operating in the premises of the Remand Applicant, the details of which having been set forth by the Remand Applicant as below:-

- The Unit 1 was commissioned on 25-03-2006
- No. 02 to 54 were commissioned between 19-09-2008 and 31-07-2012
- No. 55 to 67 were commissioned between 01-08-2012 and 31-03-2016

7. On perusal of records, it is clear that the Respondent, as stated by the Remand Applicant, did not furnish the exact details of the claim in regard to a sum of Rs.4,44,25,933/- which was sought to be recovered from the outstanding bills of the Remand Applicant herein vide its communication dated 19-05-2020. Though a stray reference has been made by the Respondent with regard to the rates payable to the petitioner in regard to APPC rate for the period 2018-19, in our opinion, it is not sufficient to conclude that the communication dated 19-05-2020 is self-explanatory. The Respondent has not clearly stated in the said communication, the basis on which a sum of Rs.4,44,25,933/- has been worked out. In other words, in our well-considered opinion, the date of commissioning which is the basis for the applicability of preferential tariff to various categories of generators and which automatically gets pressed into service in case the APPC rate as fixed from time to time exceeds the preferential tariff, does not find mention anywhere in the said communication. The Respondent ought to have clearly referred to the date of commissioning of the 67 plants of the Remand Applicant and the claim should have been made with a comprehensive reference to the date of commissioning, applicable preferential tariff to each category as per the Tariff Orders issued from time to time and the orders passed by the Commission from time to time on APPC rate and further setting out the date of breach of preferential tariff by the APPC. But that has not been done in the instant case.

8. In the counter affidavit filed by the Respondent, the claim has been reduced to Rs.2,20,22,955/- from Rs.4,44,25,933/-. However, the petitioner filed an additional written submission still disputing the demand raised by the respondent herein with a

prayer to direct the Respondents to pay Rs.2.54 per unit instead of Rs.2.10 per unit, being 75% of the APPC rate.

9. Having considered the issue at length, we are of the view that the Respondent shall have to re-work the entire claim with reference to the date of commissioning of each Wind Energy Generator of the Remand Applicant and the orders issued by the Commission from time to time in regard to pooled cost of power and the preferential tariff fixed from time to time in various Tariff Orders to arrive at the exact amount due to the respondent TANGEDCO in regard to APPC. However, it is made clear that the findings rendered herein are subject to verification of details of commissioning of units, by the parties and in case of any discrepancy, the parties are at liberty to approach the Commission again.

10. In fine, it is ordered as follows:-

The Respondent is directed to verify and confirm the date of commissioning set out by the Remand Applicant in regard to each of its Wind Energy Generator in the Written Submission filed on 02-04-2024 in the present R.A. and pay the actual rate of APPC or 75% of applicable preferential tariff fixed by the Commission for the respective control period in which the WEG was commissioned in case of breach of preferential tariff by APPC rate whichever is less as discussed above.

With these directions, the petition is disposed of. The parties shall bear their respective cost.

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

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission