

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 21st Day of January 2025

PRESENT:

Thiru.K.Venkatesan

.... **Member**

and

Thiru.B.Mohan

.... **Member (Legal)**

M.P. No. 14 of 2024

Thiru.N.Muthukumaar,
Villa 10, Shri Brindavan Gardens,
Vellakinar Pirivu,
G.N.Mills Post,
Coimbatore – 641 029.

... **Petitioner**
(Adv. Rahul Balaji)

Versus

1. Tamil Nadu Generation and Distribution Corporation Ltd,
TANGEDCO,
Represented by its Chairman and Managing Director
No. 144, Anna Salai,
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO,
144, Anna Salai,
Chennai – 600 002.
3. The Chief Engineer / NCES
TANGEDCO
144, Anna Salai,
Chennai – 600 002.

4. The Superintending Engineer,
Tirupur Electricity Distribution Circle,
TANGEDCO
Door No.208/650, KRBS Tower,
3rd Floor, Mettupalayam Bus Stop,
PN Road, Tirupur – 641 602.

... Respondents
(Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy
Standing Counsel for TANGEDCO)

This Miscellaneous Petition stands preferred by the Petitioner Thiru.N.Muthukumaar with a prayer to impose penalty upon the Respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 17.12.2021 in D.R.P.No.12 of 2021 and consequently direct the Respondents to make payments of the entire sum due and payable to the petitioner, as directed in the said order, and thus render justice.

This petition coming up for final hearing on 24.09.2024 in the presence of Thiru.Rahul Balaji, Advocate for the Petitioner and Tvl.N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondent and on consideration of the submissions made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. Contentions of the Petitioner:

1.1. The present petition is filed due to the non-compliance of Order of the Commission dated 17.12.2021 in D.R.P. No. 12 of 2021 which was filed by the Petitioner herein for initiating action under Section 142 of the Electricity Act, 2003.

1.2. The Petitioner is an independent power producer who is involved in the business of developing and operating Wind Energy Generation Projects by utilizing clean technology. The petitioner is having wind power generation projects to the tune of 600 KW in Varapatti Village, Sulur Taluk, Coimbatore District, in the State of Tamil Nadu.

1.3. The petitioner has established Wind Power Generation Project in Coimbatore District in the State of Tamil Nadu with a total capacity of 600 KW. The power generated by the petitioner's Unit is being sold to the 1st respondent under the Terms of Wind Energy Purchase Agreement WF HT Old SC No.863 and New SC No. 718 dated 29.09.2009 with the first respondent Board represented by its Superintending Engineer, Coimbatore EDC /South.

1.4. The wind energy is generated from the Wind Energy Generator HT Old SC No. 863 and New SC No. 718 with 1 No. of RRB Make having capacity of 600 KW installed at S.F No. 134(P) of Varapatti Village, Sulur Taluk, Coimbatore District, which was commissioned on 29.09.2009. The power generated by this unit is being sold to TANGEDCO under the respective agreement. The petitioner has been raising Invoices from time to time in accordance with the Contracts and Tariff Orders. However, for the past many years, the payments that have been received from TANGEDCO have been 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.

1.5. The petitioner has entered into Energy Purchase Agreements with the Respondent, for sale of electricity generated under preferential Tariff Regime. The EPAs contain interest payment clauses. It is also pertinent to state that even without an interest clause, it has been held that interest is eligible to be paid as regards the WEGs Commissioned under the preferential Tariff Regime by virtue of the judgment of the Hon'ble APTEL in Chairman, TNEB & Another Vs 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.

1.6. 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 which deals with billing and payment 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. "

The above provision is applicable to all WEGs commissioned after 19.09.2008. Thus, the petitioner is entitled to interest on delayed payments on the WEGs for which EPA has been entered into by the Petitioner with the Respondent.

1.7. Accordingly, when the Petitioner raised invoices for the period upto 06.12.2019 for power supplied from its WEGs on a monthly basis as per the terms of the EPA, the Petitioner received payments from TANGEDCO with substantial delay of one year or more. As such, TANGEDCO is due and liable to pay interest on delayed payments for

the sale of power generated by the Petitioner's Wind Energy Generators for payments effected for the period from 23.09.2009.

1.8. The petitioner sent letters dated 15.4.2019, 3.6.2019, and 19.9.2019 to the first respondent bringing to its notice the details of various outstanding amounts due and payable by TANGEDCO to the petitioner requesting interest on delayed payments. However, the Petitioner has not received any response in this regard. The Petitioner has not even received any part payment against invoices till date.

1.9. As such, the Petitioner herein, was constrained to file a petition before the Commission in D.R.P. No. 12 of 2021 against the delayed payments made by TANGEDCO for power supplied and for a further direction that the Respondents pay interest @ 1% per month for any delay in settlement of invoices beyond the period of 30 days.

1.10. The Commission, after hearing the petition filed by the petitioner, directed the TANGEDCO in para 6.7 of the said order passed in D.R.P.No.12 of 2021 to verify the claim of the petitioner and make payment towards interest within 30 days as per its findings from the receipt of the order as per applicable Tariff Orders after deducting payments, if any already made. Accordingly, the Commission was pleased to dispose of the petition.

1.12. However, it till date, the Respondents have not made any payments to the Petitioner, in sheer disobedience of the Commission's Order dated 17.12.2021 in D.R.P.

No. 12 of 2021. The non-payment of the said amount by the Respondents is causing severe difficulties for the Petitioner in meeting its 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 loans. The delay in payments by TANGEDCO has further hampered the Petitioner's capacity to carry on its business. The Petitioner is constrained to seek the Commission's indulgence to enforce its rights under the EPA and Tariff Order. Further, the petitioner sent a letter dated 20.09.2023 to the Respondents, along with a copy of the Order dated 17.12.2021 urging the Respondents to comply with the Order, but to no avail.

1.13. In view of the continuing non-compliance of this Commission's Order dated 17.12.2021, the Respondents have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 is reproduced hereunder for ready reference:

"Section 142. (punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if the Commission is satisfied that any person has contravened any of the provisions of this act or the rules or regulations made thereunder, or any direction issued by the commission, the appropriate commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Rs.6000 for every day during which the failure continues after contravention of the first such direction."

1.14. The Respondents have not made any payments to the Petitioner till date much less within 30 days of Order of the Commission, the Petitioner is constrained to approach the Commission for enforcement of the Order. Moreover, since the Respondents have failed to comply with the Order of the Commission dated 17.12.2021, they have rendered themselves for punishment under Section 142 of the Electricity Act, 2003 and are liable to make payment of the entire sums are due and payable to the Petitioner at the full contractual rate i.e., at 1 % per month.

2. Calculation Memo filed on behalf of the Petitioner on 01.08.2024:

2.1. The power generated by the Petitioner's Wind Energy Generator (WEG) is sold to the 1st Respondent under the Wind Energy Purchase Agreement (EPA) dated 29.09.2009. The Petitioner has been regularly raising invoices in accordance with the EPA and Tariff Orders. However, payments from TANGEDCO have been consistently delayed without any interest for such delays, contrary to the provisions in the EPA and Tariff Orders. Even without an explicit interest clause, the interest is eligible to be paid as per the order of the Hon'ble APTEL in Chairman, TNEB & Another v. Indian Wind Power Association and Others (Appeal No. 11 of 2012, dated 17.04.2012), which was further upheld by the Hon'ble Supreme Court in C.A. No. 2397 of 2014, to the extent of 10% per annum interest rate for delays in payment of invoices.

2.2. The Billing and Payment clause in the EPA dated 29.09.2009 require TANGEDCO to make payments within 30 days from the invoice date, failing which, interest at 1 % per month is applicable. Further, according to Tariff Order No.1 of 2009

issued by this Hon'ble Commission, delayed payments beyond 30 days are liable for interest at the rate of 1 % per month. This Tariff Order applies to all WEGs commissioned after 19.09.2008, including the Petitioners WEG which was commissioned on 29.09.2009.

2.3. The Petitioner raised invoices for power supplied from its WEGs, but has been receiving payments with substantial delays of one year or more. Despite letters sent 15.04.2019, 03.06.2019, and 19.09.2019 requesting interest on delayed payments, TANGEDCO did not respond or make any part payments against the invoices. As such, the Petitioner filed a petition in D.R.P. No. 12 of 2021 with interest calculated until the date of filing.

2.4. The Commission directed TANGEDCO to verify the Petitioner's claim for interest on delayed payments and make payment within 30 days from the receipt of the order, as per applicable Tariff Orders. An extract of the Commission's order in D.R.P. No. 12 of 2021 is as follows:

"6.7. In view of the above, the Respondent TANGEDCO is liable to pay 1 % interest per month for delayed payment beyond the stipulated period as per the above Tariff Orders. It is clear that Wind Energy Generators are entitled to interest at the rate of 1 % per month for the delayed payment of invoices.

6.8. In the result, TANGEDCO is directed to verify the claim made by the Petitioner and make payment towards interest as per our findings in para 6.7 above to the Petitioner within one month from the receipt of this order as per applicable Tariff Orders after deducting payments, if any already made. In the circumstances, there will be no order as to costs. "

2.5. However, TANGEDCO has not complied with the order of the Commission, to date, causing severe financial difficulties for the Petitioner. Since the payment on

invoices has been settled well past their due dates, the interest amount accrued at 12% p.a., continues to accrue until full payment is made. In the present case, where payments have been made without including the accrued interest, it is necessary to first adjust the payment towards the interest and then towards the principal, as otherwise, it would deprive the Petitioner of the time value of the money owed to it.

2.6. The interest is not compounded on interest but rather interest is adjusted first from the received payment, and then further interest is calculated on the remaining principal until the final settlement date, in accordance with accounting principles and provisions of the Indian Contract Act, 1872.

2.7. For instance, the invoice amount of Rs. 2,76,195 was due on 03.12.2009, but payment was received only on 12.05.2010, resulting in 161 days of delay. The accrued interest up to 12.05.2010 is Rs. 14,619. The payment received is first adjusted against the interest accrued up to 12.05.2010, which is Rs. 14,619, leaving a principal balance of Rs. 2,61,576. The interest on the remaining principal, which continues to accrue until the final settlement date, has been calculated in the calculation sheet annexed herewith up to 31.03.2024, amounting to Rs. 24,382/-.

2.8. Based on the above calculation methodology, the Petitioner has calculated interest on delayed payments till 31.03.2024, amounting to a total of Rs. 68,43,782.

3. Heard the counsel for the petitioner and the respondents. Petition averments and memo filed on behalf of the respondents traversed. Records perused. Legal precedents pressed into service considered.

4. Findings of the Commission :-

4.1. Having considered the arguments of both side, the sole issue which arises for consideration is whether there is any non-compliance on the part of the respondent in complying with the orders of the Commission in D.R.P.No.12 of 2021 ?.

4.2. The present Miscellaneous Petition has been filed for enforcing the order dated 17.12.2021 of the Commission in D.R.P.No.12 of 2021, in which the petitioner sought direction to the respondent to make payment of Rs.50,09,936/- towards invoices raised for supply of energy with interest on belated payment to the tune of Rs.33,78,773/-. The D.R.P.No.12 of 2021 was finally disposed of with the following directions:-

6.7. In view of the above, the respondent TANGEDCO is liable to pay 1% interest per month for delayed payment beyond the stipulated period as per the above Tariff Orders. It is clear that Wind Energy Generators are entitled to interest at the rate of 1% per month for the delayed payment of invoices.

6.8. In the result, TANGEDCO is directed to verify the claim made by the petitioner and make payment towards interest as per our findings in para 6.7 above to the petitioner with one month from the receipt of this order as per applicable Tariff Orders after deduction of payments, if any already made. In the circumstances, there will be no order as to costs.

4.3. In the present Miscellaneous Petition, the petitioner states that the respondents have not made payments in sheer disobedience of order of the Commission in D.R.P.No.12 of 2021 and the same is causing severe difficulties for the petitioner in meeting its financial obligations towards the Banks and Financial Institutions. The petitioner has further sought punishment of the respondents under Section 142 of the

Electricity Act 2003 by way of imposition of penalty for non-compliance of the order of the Commission in D.R.P.No.12 of 2021.

4.4. The matter came up for consideration on various dates and there was reportedly a discrepancy in regard to the actual dues payable to the petitioner and hence time was granted, from time to time, for reconciliation and for filing Memo of calculation.

4.5. Finally, a memo was filed by the petitioner on 10.09.2024 claiming dues pertaining to interest from the respondents to the extent of Rs.28,97,881/-. It is seen from the earlier memo dated 18.06.2024, that there was a broad agreement on payment of dues by way of 6 instalments. The relevant parts are as set out below:-

Thiru.N.Muthukumaar having WF HT S.No.863 of Coimbatore EDC/ South WEG New No.708 (old 863) of Tirupur EDC & 039224391466 & Palladam EDC in Supplying Energy to TANGEDCO by executing Power Purchase Agreement under long term. The wind mill owned by Thiru.N.Muthukumaar from 10/2009 to 07/2019 for which the energy charges were paid were sold to M/s STGS Agencies during the month of 07/2019.

The SE/EDC's (Coimbatore EDC / South, Tirupur & Palladam) have reported that the following interest has to be paid for generator for the delay period mentioned below .

Sl.No.	Name of the EDC	WEG No.	Total Amount
1.	Coimbatore / South	718 (old 863)	Rs.1,92,242/-
2.	Tirupur	718 (old 863)	Rs.16,62,090/-
3.	Palladam	039224391466	Rs.10,43,550/-
		Total	Rs.28,97,882/-

In the D.R.P.No.12 of 2021 filed by Thiru.N.Muthukumaar, TNERC ordered payment of interest for the delayed settlement of invoices raised by the petitioner. In order to avoid taking action under section 142 of Electricity Act 2003 it was decided by

the respondent to settle the dues in 6 instalments as per the Joint Managing Director Approval (date of Approval 17.05.2024).

In these circumstances approval has been obtained from Joint Managing Director for six instalments and already one instalment has been paid to the petitioner. The details of the instalments are as below:-

<i>Sl. No</i>	<i>Name of the Circle</i>	<i>Total amount of interest</i>	<i>No of instalments (Equal)</i>	<i>Instalment amount</i>	<i>payment details</i>
1	SE/TEDC/ Tirupur	16,62,090/-	6	2,77,015/-	UTR.No.NEFT Dr IOBAN24142459643 / Dt. 21.05.2024
2	SE/CEDC/ South/CBE	1,92,242/-	6	32,040/-	UTR.No. NEFT Dr P141240323913301/ Dt. 20.05.2024.
3	SE/PEDC/ Palladam	10,43,550/-	6	1,73,925/-	UTR.No.IOBAN24142439 763/ Dt. 21.05.2024.

4.6. It is seen from the above that at the time of filing of memo on 18.06.2024 only one instalment had been paid to the petitioner and remaining five instalments were yet to be paid by the respondents. As stated in the said memo, the respondent has already sought approval from the competent authority for settlement of dues in six instalments on 17.05.2024 itself and the first instalment in respect of each of the three Distribution Circle, namely, Tirupur, Coimbatore (south) and Palladam was already paid on 21.05.2024. However, the memo is not clear about the payment of subsequent instalments and hence in the normal course, it is to be presumed that the periodicity of instalments was monthly. If that be so, the last instalment would have fallen on 21.10.2024, but, as of today, there is no confirmation with regard to the payment of succeeding five instalments.

4.7. No evidence has been placed before the Commission to show that the remaining five instalments have been paid. In such a scenario, the Commission has to necessarily arrive at a conclusion that remaining five instalments have not been paid. Situated thus, it is pellucid that a sum of Rs.24,14,900/- which is the aggregate of the remaining unpaid five monthly instalments has to be paid by the respondent to the petitioner. As a corollary, this Commission has to necessarily come to the conclusion that there is non-compliance on the part of respondent and that the petitioner is entitled for an order directing the respondents to pay the amount due forthwith without any delay.

Accordingly the issue is decided.

4.8. In the result, the respondents are directed to pay the unpaid five instalment amounts aggregating a sum of Rs.24,14,900/- to the petitioner within 15 days from the date of this order.

Petition stands disposed of accordingly without cost.

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

(Sd.....)
Member

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**