

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

ThiruM.Chandrasekar

.... Chairman

and

Thiru.K.Venkatasamy

.... Member (Legal)

D.R.P. No.4 of 2020

M/s. Wind Urja India Private Limited
Through its Authorized Representative
Having its Registered Office at:
1st Floor, The IL & FS Financial Centre
Plot C-22, G Block
Bandra-Kurla Complex
Bandra (E), Mumbai – 400 051.

... Petitioner
(ThiruAdithya Reddy
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited
Through its Chairman & Managing Director
Having its office at
10th Floor, NPKRR Maaligai
144, Anna Salai
Chennai – 600 002.
2. Through its Director / Finance
Having its office at
Easter Wing, 10th Floor
NPKRR Maaligai
144, Anna Salai,
Chennai 600 002.
3. Through its Superintending Engineer / A.O. (Rev.)
Having its office at
Tirunelveli Electricity Distribution Circle
Tirunelveli
Tamil Nadu – 627 011.

... Respondents
(ThiruM.Gopinathan,
Standing Counsel for Respondents)

Dates of hearing : 11-02-2020; 10-03-2020; 16-06-2020;
04-08-2020; 18-08-2020; 01-09-2020;
08-09-2020; 03-11-2020; 01-12-2020;
08-12-2020; 29-12-2020; 19-01-2021;
16-02-2021; 02-03-2021 and 09-03-2021

Date of Order : 15-04-2021

The DRP No. 4 of 2020 came up for final hearing on 09-03-2021. The Commission upon perusing the affidavit filed by the petitioner 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.4 of 2020:-

The prayer of the petitioner in D.R.P. No.4 of 2020 is to-

- (i) direct the respondent to strictly comply and abide with the provisions of the EPAs entered into between the Petitioner and the Respondent
- (ii) direct the respondent to pay the outstanding Principal Amount towards unpaid Energy Bills along with outstanding Late Payment Interest and past outstanding Late Payment Interest amounting to a total of Rs.16,70,55,604/- as on 27-12-2019 i.e. the total outstanding dues for supply of wind energy as per the terms of the EPAs; and
- (iii) direct the respondent to pay the costs of the present petition

2. Prayer of the Petitioner in I.A. No.1 of 2020 in D.R.P.No.4 of 2020:-

The petitioner has filed an I.A. on 27-12-2019 with the following prayer:-

The prayer in the I.A. is to direct the respondent to release atleast the Past Outstanding LPI for the period from October 2010 to August 2017 amounting to

Rs.1,48,38,071/- and payment amounting to Rs.8,35,27,802/- towards 50% of the Principal Amount so that the Applicant is able to service its debt obligations and meet its operational expenses and pass *ad interim ex parte* direction in terms of prayer.

3. Facts of the Case:-

The petition has been filed seeking immediate strict compliance with the provisions of the Renewable Wind Energy Purchase Agreements including the payment related obligations and to make payment towards overdue outstanding invoices and corresponding Late Payment Interest in accordance with Clause 6 (2) of the Renewable Wind Energy Purchase Agreements.

4. Contentions of the Petitioner:-

4.1. During the financial year 2013, the petitioner approached the respondent herein with its proposal to sell wind energy generated from its Wind Energy Generator HT SC No.3343, 3405, 3406, 3408, 3404, 3407, 3369, 3344, 3370, 3377, 3403, 3416, 3415, 3357 and 3377 with 15 Nos. of generators of Enercon make having capacity at 12 MW (15 x 800 KW WEG) as installed at Alagiyapandiyapuram Village, Pillayarkulam Village, Kattarankulam Village Tirunelveli Taluka in Tirunelveli District ("Facility").

4.2. The respondent accepted the petitioner's proposal and agreed to buy the energy from the petitioner from their 15 Nos. of Generators of Enercon make having capacity of 12 MW (15 x 800 KW WEG) vide executing Wind Energy

Purchase Agreements (15 Nos.). The details are provided below for ease of reference:-

Sl. No.	HTSC No.	Commissioning Date	Original EPA Date	EPA Date	MW
1	3405	30-09-2010	30-09-2010	06-09-2013	0.8
2	3406	30-09-2010	30-09-2010	06-09-2013	0.8
3	3408	30-09-2010	30-09-2010	06-09-2013	0.8
4	3404	30-09-2010	30-09-2010	06-09-2013	0.8
5	3407	30-09-2010	30-09-2010	06-09-2013	0.8
6	3369	29-09-2010	29-09-2010	06-09-2013	0.8
7	3344	28-09-2010	28-09-2010	06-09-2013	0.8
8	3370	29-09-2010	29-09-2010	06-09-2013	0.8
9	3377	29-09-2010	29-09-2010	06-09-2013	0.8
10	3403	30-09-2010	30-09-2010	06-09-2013	0.8
11	3416	30-09-2010	30-09-2010	06-09-2013	0.8
12	3415	30-09-2010	30-09-2010	06-09-2013	0.8
13	3357	28-09-2010	28-09-2010	06-09-2013	0.8
14	3343	28-09-2010	28-09-2010	06-09-2013	0.8
15	3377	29-09-2010	29-09-2010	06-09-2013	0.8
				Total	12.0

4.3. It has been agreed under Clause 5 (1) of the EPAs that the Energy Charges payable by the respondent to the petitioner would be at the rate of Rs.3.39 / KWH.

4.4. In accordance with the terms of the said EPAs, the petitioner has been continuously supplying wind energy generated from its above referred facility to the respondent since September 2013 without any interruption and to the satisfaction of the respondent who has been duly receiving such supply of energy. Since the commencement of the supply of wind energy from its Facility till the date of filing of this petition, the respondent has not raised any objection / dispute in relation to any non-fulfilment of the petitioner's obligations as per the EPAs.

4.5. In view of the continuous supply of wind energy as per the EPAs, the petitioner has also been raising monthly invoices from September 2013 for the wind

energy supplied by it and received by the respondent, in terms of clause 6 (1) of the EPAs.

4.6. The said invoices have been duly received and accepted by the respondent without any demur or dispute and the respondent has released payments against the invoices only upto September 2017.

4.7. The petitioner herein has not been paid for the energy supplied under the aforesaid EPAs since October 2017 despite there being no dispute with regard to any of the invoices. The details of the energy bills / invoices which are outstanding and payable as on date i.e. 11-12-2019, by the respondent (“Unpaid Energy Bills”) are as follows:-

Date	Invoice No.	Amount in INR
15-11-2017	WUIPL/07/2017-18	90,25,270
13-12-2017	WUIPL/08/2017-18	37,16,013
17-01-2018	WUIPL/09/2017-18	12,16,089
16-02-2018	WUIPL/TN/JAN18/1	11,44,477
17-03-2018	WUIPL/TN/FEB18/1	9,71,519
12-04-2018	WUIPL/TN/MAR18/2	13,47,253
14-05-2018	WUIPL/TN/APR18/1	14,51,727
13-06-2018	WUIPL/TN/MAY18/1	9,29,594
19-07-2018	WUIPL/TN/JUNE18/1	4635,575
16-08-2018	WUIPL/TN/JUL18/1	1,82,58,120
18-09-2018	WUIPL/TN/AUG18/1	2,02,28,246
12-10-2018	WUIPL/TN/SEPT18/1	1,82,88,582
14-11-2018	WUIPL/TN/OCT18/1	68,19,977
17-12-2018	WUIPL/TN/NOV18/1	8,,11,827
23-01-2019	WUIPL/TN/DEC18/1	6,93,271
02-04-2019	WUIPL/TN/JAN/19/1	19,24,200
29-04-2019	WUIPL/TN/FEB19/1	13,95,760
26-06-2019	WUIPL/TN/MAR19/1	13,85,768
01-11-2019	WUIPL/TN/APR19/1	16,13,190
01-11-2019	WUIPL/TN/MAY/19/1	76,31,789
01-11-2019	WUIPL/TN/JUN19/1	1,65,01,735
01-11-2019	WUIPL/TN/JUL19/1	1,51,37,768
	Total	13,51,27,750

4.8. The respondent has failed to pay the amounts due under the unpaid energy bills, even though the due date for payment of the said invoice which is 30 days from receipt of the same as per Clause 6 (2) of the EPAs has long passed.

4.9. The request for payment of Unpaid Energy Bills has also been made in the past vide the petitioner's letters dated 18-07-2019, 11-11-2019 and 02-12-2019 wherein vide letter dated 18-07-2019, the petitioner also offered a one-time rebate of 2% on the unpaid energy bills as on that date because despite several reminders and requests for release of payments, no payments were forthcoming.

4.10. Despite the concessions and accommodations made, no payments have been received from the respondent towards the Unpaid Energy Bills and also clarified in letter dated 02-12-2019, the one-time rebate made under the aforesaid letter dated 18-07-2019 was contingent upon receipt of the balance outstanding before 30-09-2019 and no longer stands valid as on date.

4.11 The respondent has failed and neglected to pay the petitioner for the monthly invoices raised for the wind energy supplied from October 2017 onwards. Accordingly, as on 11-12-2019, a total sum of Rs.13,51,27,750/- (Rupees Thirteen Crore Fifty One Lakh Twenty Seven Thousand Seven Hundred and Fifty only) ("Principal Amount") is due and payable by the respondent to the petitioner towards unpaid energy bills.

4.12. Despite issuance of the aforesaid Unpaid Energy Bills in accordance with the terms of the EPAs and subsequent continuous discussions between the petitioner and the respondent for release of the outstanding dues, the respondent

has failed to pay and neglected to make payment of the principal amount within the due date specified under Clause 6 (2) of the EPAs.

4.13. The aforesaid conduct on the part of the respondent, being a State Utility, reeks of high-handedness and abuse of dominant position of power and requires immediate and urgent redressal by this Commission as such massive delay in payments is causing grave prejudice to the petitioner.

4.14. Till date respondent has neither raised any dispute or objection in relation to the non-fulfilment of any compliances by the petitioner under the provisions of the EPAs; nor raised any dispute towards the unpaid energy bills issued for the wind energy supplied to them by the petitioner. Thus, even after receiving benefits of petitioner's services under the EPAs, the respondent has from October 2017 onwards failed and neglected to clear the principal amount due and payable under the unpaid energy bills raised by the petitioner, for reasons best known to it.

4.15. As per clause 6 (2) of the EPAs, the respondent is required to make payment of the amounts due under the energy bills within 30 days from the date of the receipt of petitioner's monthly energy bills. In the event of any payment that is delayed beyond the due date of payment, late payment interest at the rate of 1% per month is payable by the respondent on the amount due.

4.16. The respondent has without reason delayed payment of the unpaid energy bills. Accordingly, the petitioner is also entitled to LPI amounting to Rs.1,70,89,783/- (Outstanding LPI) that has accrued on the Unpaid Energy Bills for

the period of 01-09-2017 to 27-12-2019 in accordance with clause 6 (2) of the EPAs. The petitioner also requested the respondent to make payment towards a part of such outstanding LPI amount vide its letter dated 24-10-2019. However, the LPI amount has remained outstanding till date. Thereafter as well, vide its letter dated 02-12-2019, the petitioner requested the respondent to release the amount due towards outstanding LPI.

4.17. Apart from the outstanding LPI amount as above mentioned, the petitioner has also accrued LPI against the invoices raised for the period of October 2010 to August 2017 on account of delayed payment of the same. Based on discussions, the petitioner and the respondent were able to amicably resolve this issue of payment of LPI to be made by the respondent. It was agreed upon, that out of the total LPI accrued for the period of October 2010 to August 2017, a payment of 50% of the LPI amounting to Rs.1,48,38,071/- (Rupees One Crore Forty Eight Lakhs Thirty Eight Thousand and Seventy One only) ("Past Outstanding LPI) would be made to the petitioner by the respondent, subject to such Past Outstanding LPI payment being made immediately. Although the petitioner has been informed by the respondent that the Past Outstanding LPI amount has been processed and sent to its Chief Financial Officer (General), however, till date the petitioner is awaiting payment of the said amount.

4.18. The respondent has not raised any dispute regarding the supply of wind energy provided by the respondent. Each of the above invoices as claimed by the petitioner have been received and accepted by the respondent without any dispute. There is no justifiable reason for the respondent to withhold payment of the

outstanding amounts. The withholding of payment due against the said unpaid energy bills and towards LPI by the respondent, is without any basis and in contravention of the terms of the EPAs.

4.19. The petitioner owns and operates wind energy facilities, which being renewable energy are to be promoted and incentivized under section 86 (1) of the Electricity Act, 2003, the Regulations framed thereunder and as per the orders passed by the Commission from time to time. For renewable energy projects to operate in a sustained and viable manner, it is important that timely payments are maintained by the utilities and there is no delay in the payments. The delays in payment by the respondent has resulted in substantial cash flow problems to the petitioner, due to which the petitioner is facing challenges in meeting its debt servicing obligations and operational dues.

4.20. The petitioner has invested substantial amount of capital in setting up of the Facility under the aforesaid EPAs. Also, considerable part of this amount has been borrowed from banks / financial institutions. Under the financing documents, the petitioner is bound to timely service its debts and make repayments as per the decided schedule and in case of any delay, such banks / financial institutions are entitled to charge penal interest. Apart from this, the delayed payment of the petitioner's energy bills also negatively affects its day to day operations due to cash flow problems. The Facility under the EPAs provides employment to a considerable number of people whose livelihood is directly affected by non-payment / delayed payment by the respondent against monthly invoices raised by the petitioner.

4.21. The respondent has failed to respond to the aforementioned letters and has also not taken concrete steps to pay the total outstanding dues till date amounting to Rs.16,70,55,604/- comprising of (i) principal amount towards unpaid energy bills amounting to Rs.13,51,27,750/-; (ii) outstanding LPI from 01-09-2017 to 27-12-2019 amounting to Rs.1,70,89,783/-; and (iii) past outstanding LPI from October 2010 to August 2017 amounting to Rs.1,48,38,071/-.

5. Contentions of the Respondent:-

5.1. The petitioner has filed the above petition praying this Commission directing TANGEDCO to forthwith pay the total outstanding dues sum of Rs.16,70,55,604/- (Rupees Sixteen Crore Seventy Lakhs Fifty Five Thousand Six Hundred and Four only) (i) Principal amount towards Unpaid Energy Bills amounting to Rs.13,51,27,750/-, (ii) Outstanding LPI from 01-09-2017 to 27-12-2019 amounting to Rs.1,70,89,783/- and (iii) Past Outstanding LPI from October 2010 to August 2017 amounting to Rs.1,48,38,071/-.

5.2. 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 invoices for the period upto 27-12-2019. 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.

5.3. The petitioner is seeking direction to forthwith make the payment of a sum of Rs.1,70,89,783/- (Rupees One Crore Seventy Lakhs Eighty Nine Thousand Seven Hundred and Eighty Three only) towards interest for delayed payment for the period of 01-09-2017 to 27-12-2019, in compliance with the order dated 08-07-2016 passed in Civil Appeal No. 2937 of 2014 by the Hon'ble Supreme Court of India.

5.4. TNERC issued Comprehensive Tariff Order on Wind Energy (Order No. 1 of 2009 dated 20-03-2009) from which the relevant portion is extracted as follows:-

“8.11 Billing and Payment

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.”

5.5. From the above, it could be observed that when 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 OrderNo.1 of 2009 dated 20-03-2009. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

5.7. 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

9.3.1When 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.”

5.8. From the above, it could be observed that when 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.

5.9. Due to shortage of power existing in Tamil Nadu, TANGEDCO is in a position to purchase power at higher rate from other sources, which leads to facing critical financial crises, further not able to make payment within the time limit prescribed.

5.10. The following payments have already been made to the petitioner towards the sale to Board energy bills as detailed below:-

Sl. No.	Month of Bill	Amount	Mode of Payment and Date
1	October 2017	90,25,205	Through RTGS/Ch.380340/07-05-2020
2	November 2017	37,15,947	Through RTGS/Ch.380341/12-05-2020
3	December 2017	12,16,024	Through RTGS/Ch.380344/16-05-2020
4	January 2018	11,44,412	Through RTGS/Ch.380346/20-05-2020
5	February 2018	9,71,454	Through RTGS/Ch.380347/22-05-2020

6	March 2018	13,47,188	Through 22-05-2020	RTGS/Ch.380348/
	Total	1,74,20,230		

5.11. 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.

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.

5.12. 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.

5.13. 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. During the month of March 2020, wind mill payments for the period from Sep.2017 to Mar.2018 have been released and it has been proposed to release a substantial payment during

August 2020 on receipt of loan from IREDA loan under a special liquidity package notified by Ministry of Power, GOI from PFC/REC.

5.14. 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 M.P.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.

5.15. The order passed by the Commission was challenged by TNEB before the Hon'ble APTEL. The Hon'ble APTEL vide its judgment dated 17.04.2012 dismissed the same.

5.16. Again the TNEB filed a Civil Appeal vide C.A. 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. The appeal was accordingly dismissed.

5.17. Based on the above Hon'ble Supreme Court order the Generator has claimed a sum of Rs.1,70,89,783/- towards interest payable for the delayed payment made for the past period between 01-09-2017 to 27-12-2019.

5.18. In order to overcome from the financial crises of TANGEDCO, the generator who was affected by delayed payments was personally requested to attend negotiation meeting in the Chamber of the Director / Finance / TANGEDCO /

Chennai. By expressing the financial position of TANGEDCO, it was requested to waive the interest fully. Most of the generators accepted to receive 50% of the interest payment of interest in instalment.

5.19. 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.

5.20. Directing the TANGEDCO to forthwith make payment of a sum of Rs.1,70,89,783/- and Rs.1,48,38,071/- to the payment for the past period from 01-09-2017 to 27-12-2019 and October 2010 to August 2017 will adversely affect the fund flow of the respondents. Further similar placed generators may also seek; it will lead to multiplication of litigations. This may lead to difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, make suppliers and power Generators similar to the petitioner.

5.21. 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 tariff which have to be passed on to the end-consumers and attracts public interest. In any case, for the sake of a company, public authorities under general public should not get suffered financially.

6. Rejoinder on behalf of the Petitioner to the Counter affidavit filed by the Respondent:-

6.1. The respondent entered into 15 Renewable Wind Energy Purchase Agreements dated 06-09-2013 ("EPAs") for supplying energy to the Respondent

from Petitioner's 15 generators of Enercon Make having capacity of 12 MW (15 x 800 KW WEG) installed at Alagiyapandyapuram Village, Pillayarkulam Village and Kattarankulam Village, Tirunelveli Taluka in Tirunelveli district commissioned under the Renewable Energy Certificate scheme. It is important to highlight that the original EPAs were executed in the name of IL & FS Energy Development Co. Ltd. on 30-09-2010, thereafter the project was transferred in the name of the petitioner.

6.2. In complete compliance of its obligations under the EPAs, the petitioner has been duly and continuously supplying wind energy generated from its WEGs to the respondent since September, 2013 without any interruption. Accordingly, the respondent had also been historically releasing payment to the petitioner with some delays.

6.3. During the last three years, there have been significant delays in making payments to the Petitioner. In May 2020 the Respondent has made payments to the tune of Rs.1,74,20,230/- towards the monthly invoices raised for the months of October, 2017 - March, 2018. As on date, the invoices from April-18 onwards are outstanding which are as long as 28 months old.

6.4. The Respondent has never disputed any monthly invoice raised by the Petitioner, and is still making payments, although sparingly, goes on to show that the Respondent admits its liability towards the pending monthly invoices, totalling to Rs.18,45,02,831/- from April, 2018 to July, 2020 (generation months) .

6.5. 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 the payment of interest. Thus, a person deprived of the use of money to which he is legitimately entitled for a particular period has a right to be compensated by way of interest.

6.6. As per Clause 6 (2) of the EPA, the Respondent is required to make payment of the amounts due under the energy bills within 30 (thirty) days from the date of the receipt of Petitioner's monthly energy bills. In the event of any payment that is delayed beyond the due date of payment, Late Payment Interest (LPI) at the rate of 1% per month is payable by the respondent on the amount due. In this view of the matter, the respondent is liable to pay LPI interest to the Petitioner as per the provisions of the EPAs to the tune of Rs.3,12,07,173/- for the period till December 11, 2019 as claimed in the petition (Outstanding LPI from 01.09.2017 to 11.12.2019 amounting to Rs.1,63,69,102/- and Past Outstanding LPI from October 2010 to August 2017 amounting to Rs.1,48,38,071/-).

6.7. As per the discussions held in September-October, 2019 between the Petitioner and the Respondent, the Petitioner had agreed upon 50% rebate in the past outstanding LPI. However, till date the Respondent has not made any payment towards LPI to the Petitioner.

6.8. The Respondent being a state utility has an obligation in law to act fairly, justly and reasonably to a contract. However, the non-payment by the Respondent reeks of arbitrariness, unfairness, abuse of dominant position and high-handedness and the same cannot be permissible in law.

6.9. The Petitioner on its part has been diligently fulfilling its obligations under the EPAs by providing continuous energy supply to the Respondent and it is reiterated that till date the Respondent has not raised any dispute regarding the supply of wind energy provided by the Petitioner.

6.10. In any power project, one of the important aspects is promptitude in payment since the delays affect the viability of the project. All projects are substantially funded through finances obtained from various funding organisations and require regular repayment of principal loan amount with interest by the generators. It is only if regular payments are made for the power generated and supplied, the loans can be serviced along with the promised return of investment.

6.11 The petitioner is bound to timely service its debts and make repayments as per the decided schedule and in case of any delay, such banks/ financial institutions are entitled to charge penal interest. Apart from this, delayed payment of the Petitioner's energy bills also negatively affects its day to day operations due to cash flow problems. The Facility under the EPAs provides employment to a considerable number of people whose livelihood is directly affected by non-payment/ delayed payment by the Respondent against monthly invoices raised by the Petitioner. Thus, it is imperative that the invoices raised by the Petitioner as per the terms of the EPAs are timely paid so that the Petitioner can, in turn, make timely payments to its bankers and employees as well as ensure smooth running of the Facility.

6.12. Financial condition of the Respondent cannot act as a ground and an excuse for the Respondent to wriggle out of its payment obligations under the EPAs. If the same is allowed to be done by the Commission, it would lead to serious consequences which would not only adversely affect the Petitioner's project, but also the supply of electricity to the entire state of Tamil Nadu and the growth and promotion of renewable projects in the State.

7. Compliance Report filed by the Respondents on 16-12-2020:-

A memo has been filed by TANGEDCO on 16-12-2020 in this regard. It reads as follows:-

As per the orders of the Tamil Nadu Electricity Regulatory Commission dated 03-11-2020, the respondent has paid the interest dues @ 6% as agreed by the petitioner. The details of the payment are mentioned below for the orders of the TNERC. Hence, it is prayed that the petition may be closed.

SI. No.	D.R.P. No.	Petitioner Name	Payment Details
1	034of 2020	M/s. Wind Urja India Pvt. Ltd.	Period 10/2010 to 07/2017 Rs.1,60,52,935Canara Bank Cheque No.380377 dated 31-08-2020.

8. Reply by the Petitioner to the Compliance Report dated 03-12-2020 filed by the Respondent:-

8.1. During the pendency of the present petition, in the month of May, 2020, the Respondent / TANGEDCO paid Rs.1,74,20,620/- to the petitioner towards the monthly invoice raised for the months of October 2017 to March 2018. The details of payment made by the Respondent / TANGEDCO in the month of May, 2020 is as under:-

SI. No.	Date of Payment	Amount Paid (inRs.)
1	12-05-2020	90,25,270

2	15-05-2020	37,16,012
3	19-05-2020	12,16,089
4	22-05-2020	11,44,477
5	26-05-2020	9,71,519
6	26-05-2020	13,47,253
	Total	1,74,20,620

8.2. Further, the Respondent / TANGEDCO on 01-09-2020 paid an amount of Rs.1,60,52,935/- towards interest / LPS (details of period of interest / LPS awaited from TANGEDCO).

8.3. The respondent has till date paid an amount of Rs.3,34,73,555/- (Rs.1,74,20,620 + Rs.1,60,52,935) against the total claim of Rs.16,63,34,923/-. Thus, the difference between the outstanding dues and the payment made is Rs.13,28,61,368/-, which is yet to be paid by the Respondent / TANGEDCO.

8.4. The contention of the respondent is that the petitioner agreed to a reduced interest rate of 6% by way of settlement is wrong, misconceived and hence denied.

8.5. The contractual rate of interest for LPI under the Wind Energy Purchase Agreements is 1% per month, and the Petitioner is seeking the same in the present petition. The Petitioner has never agreed to any settlement and/or given any concession for a lower interest rate to the Petitioner.

8.6. The petitioner has never agreed to any concession or settlement of the total amount due. It is pertinent to point out that, during FY-18 (i.e., prior to filing of the present petition), the Petitioner and the Respondent were able to amicably resolve the issue of payment of LPI for the period October, 2010 to August, 2017. It was

agreed upon by the Petitioner that the Respondent would pay 50% of the LPI for the period October, 2010 to August, 2017, to the Petitioner, out of the total outstanding amount of LPI, subject to such past outstanding LPI payment being made immediately. Therefore, at the time of filing of the present petition, the Petitioner consciously deducted 50% of the outstanding LPI payment for the period October 2010 to August, 2017 and only claimed for Rs.1,48,38,071/- instead of Rs.2,96,76,142/-. Apart from this, no other concession and / or agreement and/ or resolution has been agreed to by the petitioner.

8.7. As on date, the status of the payment made by the respondent / TANGEDCO is as under:-

	Principal Amount	LPI	LPI	Total
		01-09-2017 to 11-12-2019	(October 2010 to August 2017)	
	(inRs.)	(inRs.)	(inRs.)	(inRs.)
Amount due	13,51,27,750	1,63,69,102	1,48,38,071	16,63,34,923
Payment received	1,74,20,620	1,60,52,935		3,34,73,555
Difference	11,77,07,130	1,51,54,238		13,28,61,368

8.8. In the light of the foregoing submissions, the petitioner strongly disputes the Compliance Report dated 03-11-2020 filed by the Respondent / TANGEDCO. The petitioner vehemently denies and disputes that the Respondent / TANGEDCO has paid in full and to the satisfaction of the petitioner the outstanding amount due to it, which amount has been claimed under the subject petition.

9. Findings of the Commission:-

9.1. This petition has been filed with a prayer to direct the respondent to pay the outstanding Principal Amount towards unpaid energy bills along with outstanding

Late Payment Interest and past outstanding Late Payment Interest amounting to Rs.16,70,55,604/- as on 27-12-2019 and to direct the respondent to pay the costs of the present petition.

The factual matrix leading to the filing of the present petition may be briefly stated as follows:-

9.2. The petitioner has established 15 Nos. of Generators of Enercon make having capacity of 12 MW each installed at Alagiyapandyapuram Village, Pillayarkulam Village and Kattarankulam Village, Tirunelveli District. The entire energy generated from those generators has been supplied to the respondent TANGEDCO and the petitioner has executed 15 separate Energy Purchase Agreement (EPA) with TANGEDCO containing identical provisions. The date of the said EPA was 06-09-2013. The petitioner has been continuously supplying wind energy to the respondent since September 2013 without interruption and the petitioner has been raising the monthly invoices as provided in the EPAs. But the respondent has made payments only upto September 2017. The agreed tariff for the power supplied is Rs.3.39 / kwh. Thus the total outstanding bills payable to this petitioner as on 11-12-2019 is Rs.13,51,27,750/-. Despite several reminders the above said invoices have not been paid by the respondent.

9.3. As per the clause 6 (2) of EPA, the respondent is required to pay the invoice amount within 30 days from the date of receipt of petitioner's monthly energy bills. Apart from the above, the petitioner has claimed interest on unpaid outstanding bills amounting to Rs.1,70,89,983/- for the energy bills for the period from 01-09-2017 to 27-12-2019 (i.e. upto the date of filing this petition) in accordance with clause 6 (2) of the EPA. For the invoices already paid upto August 2017, an amount of

Rs.1,48,38,071/- is also pending towards past outstanding Late Payment Interest.

Thus, the total amount claimed by the petitioner is as follows:-

(i)	Outstanding (Principal Amount) invoices	Rs.13,51,27,750/-
(ii)	Late Payment Interest from 01-09-2017 to 27-12-2019 (i.e. upto date of filing of this petition)	Rs. 1,70,89,783/-
(iii)	Late Payment Interest for the period from October 2010 to August 2017	Rs. 1,48,38,071/-
	Total	Rs.16,70,55,604/-

9.4. The matter was heard on various dates from 11-02-2020 to 09-03-2021. On 08-09-2020, the counsel for TANGEDCO undertook to pay the claim amount before 30th October 2020. Accordingly, the Commission directed filing of Memo. During 03-11-2020 and 01-12-2020, the counsel for TANGEDCO informed the Commission that settlement has been made. However, on 08-12-2020, the counsel for the petitioner opposed the settlement @ 6% per annum and sought settlement as per the PPA. On 29-12-2020 and 19-01-2021, the Commission directed TANGEDCO to settle atleast the principal amount as the counsel for the petitioner informed that payment was not yet made. The counsel for TANGEDCO informed on 19-01-2021 that arrangements are being made to seek funds from REC/PFC and payment would be made shortly. The same stand was maintained by TANGEDCO on 16-02-2021 as well. However, on 02-03-2021, the counsel for TANGEDCO insisted on the letter of waiver from the petitioner for proceeding further. The Commission observed that waiver is not a matter of right and decided to post the matter for final argument on 09-03-2021. However, on 09-03-2021, the matter did not reach settlement and the Commission reserved its orders. Having reserved orders on merits as the parties are unable to reach agreement, the Commission has to proceed to decide the matter on the basis of available records.

9.5. In this connection, it is seen that the respondent has filed a Compliance Report on 16-12-2020 which indicated the following details:-

1.	10/2020 to 07/2017	Canara Bank Cheque No. 380377 dated 31-08-2020	Rs.1,60,52,935/-
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9.6 The respondent in the above said Compliance Report has submitted that it has paid the interest dues at 6% as agreed by the petitioner and prayed to close this petition. However, the petitioner has filed a reply on 28-12-2020 to this above Compliance Report dated 16-12-2020 and denied the contention of the respondent TANGEDCO that the petitioner has agreed to a reduced interest rate of 6% by way of settlement. Thus, when the petitioner has not agreed the settlement of due at 6%, the respondent cannot as a matter of right claim for such a reduced rate of interest without the consent of the petitioner and hence the Commission cannot compel the petitioner to allow for such reduced rate of interest. The petitioner however accepted receipt of the payment of Rs.3,34,73,555/- (1,74,20,620 + 1,60,52,935), against the total on claim of Rs,16,63,34,923/-. Thus, the petitioner in its reply dated 28-12-2020 submitted the following details of payments due from the respondent to the petitioner:-

	Principal Amount (inRs.)	LPI	LPI	Total (inRs.)
		(01-09-2017 to 11-12-2019) (inRs.)	(October 2010 to August 2017) (inRs.)	
Amount due	13,51,27,750	1,63,69,102	1,48,38,071	16,63,34,923
Payment Received	1,74,20,620	1,60,52,935		3,34,73,555
Difference	11,77,07,130	1,51,54,238		13,28,61,368

9.7 It is seen from the above, an amount of Rs.13,28,61,368/- as against the original claim of Rs.16,70,55,604/- made in the prayer is due to be paid by the respondent to the petitioner. The above averment of the petitioner has not been denied by the respondent TANGEDCO by filing any affidavit or during the oral submission made on 09-03-2021.

9.8 All the 15 EPAs executed by the respondent with the petitioner contain identical provision with regard to billing and payment. The relevant provision is extracted below:-

“Billing and Payment:-

(1) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.

(2) 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.

x xx

x xx “

9.9 From the above, it is clear that the respondent is liable to pay interest at 1% per month (i.e. 12% per annum) for the delayed payment of invoices beyond 30 days of its submission by the petitioner to the respondent. Further, the respondent in their counter have not disputed its liability to pay the outstanding dues to the petitioner. They have only pleaded financial constraints faced by them as the reason for not making the payment in time. The financial constraints faced by the respondent would not absolve their liability to make lawful payments to be made to the petitioner for the energy supplied by the petitioner as per the EPAs entered by them. Further, the respondent has not disputed the averments made in the Reply filed by the Petitioner on 28-12-2020 with regard to the quantum of amount due for payment by the respondent during the arguments on 09-03-2020.

9.10 In the above circumstances, TANGEDCO is directed to verify the claim made by the petitioner and after deducting the amount already paid, settle the same within 30 days from the date of this order together with interest at 12% per annum from the date of filing of this petition till realisation. In the circumstances, there will be no order as to costs.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission