

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)  
Appeal No. 202 of 2005**

Dated: 20<sup>th</sup> December, 2006

**Present:**

Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A.Khan, Technical Member

Tata Power Co. Ltd.	-Appellant
V/s.	
Reliance Energy Ltd. & Ors	-Respondents

Counsel for Appellant: Mr. Janak Dwarakadas, Sr. Adv.,  
Mr.Srikant Doijode, Mr. Parag Kabadi &  
Ms. Ruchira Gupta

Counsel for Respondents: Mr. J.J. Bhatt, Sr. Adv.,  
Ms. Anjali Chandurkar, Mr. Syed Naqvi &  
Ms. Smieeta Inna for Resp.1

Mr. Venkat Subramaniam & Mr. Kylasanatha  
Pillay for NTC

**JUDGMENT**

Consequent to the divergence of opinion between the members of this Bench leading to delivery of separate Judgments, both dated 04.10.2006, a reference was made under Section 123 of the Electricity Act, 2003, to the Judicial member. By his Judgment, dated 13.12.2006, the Judicial member has concurred with the Judgment of the Technical member (Mr. A.A. Khan). In view of the opinion of the majority, the following order is passed:-

2. The appellant – Tata Power Company (TPC) is entitled to recover the following amount from the first respondent -Reliance Energy Limited (REL) towards the cost of providing the standby service till 31.03.2004.

(a) Financial year	Amount (in Crores)
1998-1999	Rs. 9.00 (outstanding of 1998-99)
1999-2000	Rs. 84.15
2000-2001	Rs. 89.37
2001-2002	Rs. 91.85
2002-2003	Rs. 91.85
2003-2004	Rs. 91.85
<b>TOTAL</b>	<u>Rs. 458.07</u>
	<u>~Rs. 458.00</u>

3. Considering the payments on account of cost of standby, delayed payment charges, overdue interest from or to the parties over the period FY 1999-2000 to FY 2003-2004, TPC is directed to refund to REL as on 31.03.2004, the amounts detailed below and the same need to be settled through payments within thirty days of the issue of this order.

(a) Standby charges / amount refundable by TPC to REL for 275 MVA capacity for the period FY 1999-2000 to FY 2003-04 (Rs.797 – Rs.458)	=Rs. 339 crores
(b) Interest on excess amount deposited by REL (see Table No. 2 in the main Judgment)	= Rs. 15.14 crores
(c) Total amount to be refunded to REL by TPC	= Rs. 354.14crores ~Rs. 354 crores

Additionally, the payment should also include a simple interest at the rate of 10% per annum on the amount payable on or after 01.04.2004, till the date of payment.

4. In view of the above, we set aside the impugned order, dated 31.05.2004, of the Maharashtra Electricity Regulatory Commission and we adjudicate the dispute in the above terms. The parties shall bear their respective costs throughout.

5. Since the issue relating to standby has caused a lot of acrimony and litigations between the parties, we direct that REL will be at liberty to take the standby, if needed, from any source, and similarly, it will be for TPC to decide whether to extend standby facility to REL or not.

The appeal disposed of.

(A.A.Khan)  
Technical Member

(Anil Dev Singh)  
Chairperson

Dated: 20<sup>th</sup> December, 2006