

Appellate Tribunal for Electricity

(Appellate Jurisdiction)

APPEAL No.66 of 2013

Dated: 10th July, 2013

**Present: HON'BLE MR.JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL
MEMBER**

In the Matter of:

**Tuppadahalli Energy India Private Limited
C1-001, Tower-C, Ground Floor
The Millenia, No.1&2
Murphy Road, Ulsoor
BANGALORE-560 008**

...Appellant

Versus

- 1. Karnataka Electricity Regulatory Commission
6th and 7th Floor, Mahalaxmi Chambers,
#9/2, MG Road, Bangalore-560001**
- 2. Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore-575001.**

..... Respondent(s)

**Counsel for the Appellant(s) : ~~Mr. Ramji Srinivasan, Sr. Adv. (Deleted)~~
Mr. ARL Sundareshan, Sr. Adv.
Mr. Vikas Dutta
Ms. Nishdhi Minocha (Deleted)
Mr. Prashanth(Rep)**

(The above corrections are made vide order dated 18.7.2013 of Hon'ble Chairperson). Sd/ by Dy. Registrar on 18.7.2013.

Counsel for the Respondent(s):

Mr. Anand K Ganesan,
Ms. Swapna Seshadri for R-2

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Tuppadahalli Energy India Private Limited is the Appellant herein.
2. This Appeal has been presented by the Appellant as against the impugned order dated 17.01.2013 passed by the Karnataka Commission dismissing the petition filed by the Appellant by interpreting the Article 6.5(v) of the PPA executed between the parties.
3. Short facts of the case are as follows:-
 - (a) The Appellant is a generating company. The Appellant is a generator of electricity and owns wind energy based electric power generating station with a gross capacity of 57.75 MW at Shimoga district in the State of Karnataka.

- (b) Karnataka State Commission the 1st Respondent. Mangalore Electricity Supply Limited(MESCOM), the Distribution Licensee is the 2nd Respondent.
- (c) The State Commission on 11.12.2009 passed the order determining the tariff in respect of purchase of power by the Distribution Licensee through the renewable sources of energy.
- (d) The Appellant is one of the wind energy projects.
- (e) The tariff for wind energy projects was determined at Rs.3.70 per unit.
- (f) The Appellant entered into Power Purchase Agreement on 02.5.2011 with MESCOM(R-2) for sale of the power generated at its project.
- (g) The above PPA was approved by the State Commission on 30.6.2011 with certain directions.
- (h) Thereupon, the Appellant and the MESCOM(R-2) modified the PPA through a addendum agreement dated 02.9.2011.
- (i) Only thereafter in October,2011, the wind energy project of the Appellant got commissioned.

- (j) MESCOM(R-2) through its letter dated 15.9.2011 informed the Appellant that it desires to open the letter of credit in favour of the Appellant.
- (k) The Appellant, by the letter dated 02.12.2011, sent to MESCOM(R-2) furnished its revenue forecast for 2012 as per the PPA and declared that the said forecast was in terms of the expected wind pattern.
- (l) The MESCOM(R-2) through its letter dated 04.2.012 opened the letter of credit for a sum of Rs.2,44,85,860/- in favour of the Appellant.
- (m) On receipt of this letter, the Appellant sent a letter on 09.2.2012 seeking clarification from the MESCOM(R-2) regarding the terms of documents required for drawal of letter of credit as well as the value of letter of credit.
- (n) On 17.2.2012, the MESCOM(R-2) by its letter to the Appellant giving the assurance to modify the letter of credit amount in case of any variations in the wind pattern and consequent increase in the monthly bills.
- (o) Meanwhile, on 3.2.2012, the Appellant raised the bill for Rs.2,54,64,528/- for the month of Jan,2012.
- (p) On 21.2.2012 the MESCOM(R-2), on receipt of the bill, made a payment of Rs.2,50,06.166/- to the

Appellant as against the bill for Rs.2,54,64,528/- after deducting the Rs.4,58,362/- towards rebate.

(q) The Appellant, through its letter dated 22.2.2012 raised an issue on the deduction of Rs.4,58,362/- from the bill for January,2012 and sought clarification on deduction from the payment of invoice.

(r) Through the said letter the Appellant sought for a meeting to be convened between the parties to understand the calculation for the deduction so made.

(s) Accordingly, the meeting was held on 07.3.2012 between the representatives of the Appellant and MESCOM(R-2) where the issues of letter of credit and deduction of rebate of 1.8% were discussed.

(t) On 14.3.2012 the Appellant wrote a letter to the MESCOM(R-2) requesting to increase the letter of credit amount to Rs.4,20,50,223/- and make payment of monthly tariff invoice without deducting 1.8% of rebate.

(u) There was no response. Therefore, the Appellant decided to approach the State Commission for clarification as to whether the deduction from the monthly invoice for the opening of the letter of credit is one time deduction or has to be made from each monthly bill.

(v) Accordingly, the Appellant on 19.6.2012 filed a petition before the State Commission seeking for declaration that Article 6.5(v) of PPA contemplates only re-imbusement of letter of credit opening charges as the one time measure and no rebate on month to month basis is contemplated by the said Article.

(w) On 13.9.2012 the MESCOM filed a reply before the State Commission justifying the deduction of the rebate.

(x) The State Commission after hearing the parties passed the impugned order dated 17.01.2013 dismissing the petition filed by the Appellant.

(y) Aggrieved by this, the Appellant has filed this present Appeal.

4. The learned Counsel for the Appellant, while challenging the impugned order has made the following submissions:-

(a) The interpretation of Clause 6.5(v) of PPA given by the State Commission while rejecting the petition filed by the Appellant is wrong. The word used in the PPA in clause 6.5.(v) is “monthly tariff invoice” and not “monthly tariff invoice of each month thereafter”. Hence, it is clear that the charges for opening of letter of credit can be deducted from the following monthly

tariff invoice only and not each month's invoice subsequent to the letter of credit opening.

(b) The intent of the parties, as reflected in the agreement, has to be derived from entire agreement as a whole and not selectively reading any clause in isolation. There is no specific clause for rebate on prompt payment of tariff invoice. Allowing a rebate under the garb of prompt payment, in respect of one-time payment to cover the letter of credit expenditure would amount to a colourable exercise.

(c) The opening of letter of credit is one time measure to provide security to the Appellant. The MESCOM(R-2) has incurred only Rs.61415/-(Rupees sixty one thousand four hundred fifteen only) for opening of letter of credit of Rs.2.44 crores valid for a period of one year. On the other hand, for the same period, the MESCOM(R-2), has deducted approximately Rs.92 lakhs from the monthly tariff invoices. The deduction of Rs.92 lakhs as against the expenditure of approximately of Rs.61000/- would amount to unjust enrichment of MESCOM(R-2).

(d) The State Commission stated in the impugned order that giving a plain interpretation of the clause, has in fact read the word "every/each" before the words "

“monthly tariff invoice payable to the company”. Even if the Article 6.5(v) is interpreted literally to cover the intention of the parties, the deduction can be only one time deduction. The words “the same shall be deducted from the monthly tariff invoice”, can not be interpreted to mean deducted from every monthly tariff invoice. The State Commission by accepting the interpretation of the MESCOM(R-2) has, in fact, read the words which are not there in Article 6.5(v) into the said Article namely the word “every” is added to the word “monthly”. The words which are absent in the Article can not be read into Article by the State Commission.

(e) Article 6.5 is not relating to the rebate. It is only a mechanism of ensuring re-imbusement of expenses incurred by the MESCOM. This clause is a part of Article 6 of the PPA under the heading “ billing and payment”. The MESCOM is under obligation both to open the letter of credit and pay within 15 days from the receipt of invoices as per the PPA. It can not claim the incentive in the form of rebate to fulfil its obligation. But the State Commission did not take note of the fact that the tariff under Article 5 of PPA was as per the tariff order dated 11.12.2009.

5. In reply to the above submissions made by the Appellant, the learned Counsel for the MESCOM(R-2) advanced the following arguments:-

a) The letter of credit is a payment security mechanism under the Power Purchase Agreement. It is a part of Article 6, which deals with the billing and payment, payment, late payment, disputes, letter of credit and payment under the letter of credit. The purpose of letter of credit, as provided in Article 6.6, is to provide a security for payment to the Appellant and to ensure that under no circumstances the payment is delayed beyond 15 days. Thus, the letter of credit is not only for only one month or a one time measure but is required to be maintained by the MESCOM for the entire life of the power purchase agreement.

b) The words contained in Article 6.5.(v) are as follows:-

“ the company shall allow a rebate of 1.8% of the tariff invoice or actual expenditure/charges for the letter of credit amount incurred, whichever is higher, and the same shall be deducted from the monthly tariff invoice to the company”. These words would mean that the rebate is not a one time measure. On the plain meaning of Article 6.5.(v), the rebate amount has to be deducted from the monthly tariff invoice and not as a one time measure. At

the time of entering into PPA, the Appellant did not raise any issues on the rebate as provided in Article 6.5(v). The above said clause exists in the PPA signed with all the developers. Therefore, the Appellant can not contend now that the said clause is unreasonable and it affects the revenues of the Appellant. If the PPA contemplates that the rebate of 1.8% was only a one time measure, there would have been no need to provide for the same in Article 6 which is for payment of monthly tariff and securing payment thereafter. It is to be noted that the Article 6.5(v) uses the word “monthly tariff invoice” and not “first tariff invoice”.

- c) The language of Article 6.5(v) is clear that the rebate contemplated is in the nature of prompt payment rebate. The rebate is an incentive to the MESCOM to promptly establish the letter of credit and put in place and continue payment security mechanism to the generators. The payment of the bill, therefore, needs to be made by the MESCOM within 15 days from the date of receipt of monthly invoice. If the said payment is not made, the late payment interest will have to be paid by the MESCOM. In order to secure the payment of bills to the Appellant, the Article 6.5. of the PPA provides for the letter of credit as payment security mechanism. This means that if the payment is not made by the MESCOM within 15 days

from the date of receipt of the bill, the Appellant can encash the letter of credit on the 16th day to take its payment. Thereupon, the MESCOM(R-2) needs to immediately replenish the amount of letter of credit drawn by the Appellant.

d) The reference in Article 6.5.(v) to the words “higher among the 1.8% of the tariff invoice or LOC charges” is only to decide on the amount of deduction. The principle of deduction is that of a prompt payment discount in the circumstances, the MESCOM(R-2) is entitled to a rebate of 1.8% in the monthly invoice for the payment security mechanism put in place by the MESCOM(R-2).

e) The Appellant is already entitled to a substantial benefit in the tariff on account of two months receivables being included in the working capital requirements when the actual working capital for receivables is only for 15 days. The rebate of 1.8% is much less than a benefit accruing to the Appellant. Therefore, deduction of the rebate is in accordance with the PPA.

6. Having regard to the rival contentions urged by the learned Counsel for the parties, the main question that may arise for consideration in this Appeal is as follows:-

Whether the State Commission was justified in holding that on the plain reading of the Article

6.5(v) of the PPA it is clear that it can not be read to mean that it provides only for the recovery of charges incurred for operating letter of credit and not with reference to the Rebate?

7. Before adverting to this question, in the light of the rival contentions urged by the learned Counsel for the parties it would be better to refer to the findings rendered by the State Commission in this issue.

“14) In the light of the settled law on interpretation/construction of documents/deeds, we may now consider the grievance of the Petitioner.

15) It is submitted on behalf of the Petitioner that a plain reading of Article 6.5(v) of the PPA makes it clear that the clause does not contemplate, but only seeks to provide for recovery of cost of opening Letter of Credit (in the format and quantum stipulates therein) as a one-time measure and there is no provision in the PPA for recovering the rebate month-on-month. Further, it is submitted by the Petitioner that since the Letter of Credit is opened for the benefit of the Petitioner as a security for payment, the same cannot be used as a mechanism to recover the amount from the Petitioner for the energy generated every month. The Respondent only can recover the charges or expenditure on actual basis from the Petitioner. It is also submitted by the Petitioner that if the rebate was payable every month as claimed by the Respondent, the Commission would have made a specific provision and reckoned the same while computing the rate of return in the Order passed on 11.12.2009(In the matter of Determination of Tariff in respect of Renewable Sources of Energy).

16) Considering the language adopted in Article 6.5(v) of the PPA, we are not inclined to accept the contention put forward on behalf of the Petitioner. The words of Article 6.5.(v) of the PPA are very clear and therefore this Commission cannot give any other meaning than what is provided in the PPA. In our view, Article 6.5.(v) of the PPA cannot be read to mean that it provides only for recovery of charges incurred for opening Letter of Credit, in view of its clear wordings. If it was intended by the parties to recover only the charges incurred to open Letter of Credit charges, Article 6.5(v) of the PPA would not have made any reference to the rebate and would not further have added that, the same shall be deducted from the Monthly Tariff Invoice payable to the Company. The term would have referred only to Letter of Credit charges and stopped at that. In our view, the interpretation placed by the Respondent-Company is in accordance with the wordings used in Article 6.5(v) of the PPA, and not the one the Petitioner is trying to place upon after realizing that the rebate is recurring and quite substantial. Merely the term is onerous, it cannot be ignored. The contention that deduction of rebate every month will have an impact on the Petitioner's Tariff and hence the interpretation placed by the Respondent runs counter to the orders of this Commission dated 11.12.2009, is not tenable. We have looked into the Order referred to by the Petitioner. The said Order only deals with fixation of Tariff and factors considered while fixing tariff. At any rate, there is nothing in Article 6.5(v) of the PPA in view of the clear language used herein. The Order of the Hon'ble Appellate Tribunal for Electricity (ATE) referred to by the Petitioner has no application to the present case, as the issue in this case is the interpretation of a clause agreed to in the Contract.

17) So far as the grievance of the Petitioner, if any, on the form of Letter of Credit or the amount covered by the Letter of Credit is concerned, it may approach the

Respondent-Company to bring the Letter of Credit in line with the terms of the Contract and the Respondent-Company shall consider the same and take appropriate steps, if the same is required as per the terms of the PPA.

18) In view of the foregoing discussion, we hold that the interpretation placed by the Respondent is correct and unexceptionable. Therefore, the relief sought by the Petitioner cannot be granted.”

8. The crux of the finding given in the impugned order is as follows:-

- i) The words of Article 6.5(v) of the PPA are very clear. We cannot give any other meaning than the words provided in the PPA. In our view, this Article namely 6.5.(v) of the PPA cannot be read to mean that it provides only for recovery of charges incurred for opening of letter credit in view of the clear wordings. If it is intended by the parties to recover only charges incurred to open a letter of credit, Article 6.5(v) of the PPA would not have made any reference to the term “Rebate”. It would not further have added that “the same shall be deducted from the monthly tariff invoice payable to the company.” Therefore, the interpretation placed by the MESCOM(R-2) is in accordance with the wordings of Article 6.5.(v) of the PPA whereas the interpretation given by the petitioner is not correct. The tariff order passed by the State Commission earlier

dated 11.12.2009 will not have any bearing on the interpretation of Article 6.5(v) of the PPA, in view of the clear language used therein.

9. On the basis of this finding, the prayer for the refund of the deducted amount of the Appellant before the State Commission was rejected.
10. The entire controversy between the parties in this case would relate to the interpretation to be given for Article 6.5 of the PPA. Let us now refer to the Article 6.5. of the PPA.

“6.5 Letter of Credit: MESCOM shall establish and maintain transferable, assignable, irrevocable and unconditional non-revolving Letter of Credit in favour of, and for the sole benefit of the Company. The Letter of Credit shall be established in favour of, and issued to, the Company on the date hereof and made optional thirty(30) days prior to the Commercial Operation Date of the Project and shall be maintained consistent herewith by MESCOM at any and all times during the Term of the Agreement. Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled Bank and be provided on the basis that:

- i) In the event of Tariff Invoice or any other amount due and payable by MESCOM pursuant to the terms of this Agreement is not paid in full by MESCOM as and when*

due, the Letter of Credit may be called by the Company for payment in full of the unpaid Monthly Invoice or any such other unpaid amount.

- ii) The forgoing as determined pursuant hereto, upon representation of such Monthly Invoice or other invoice or claim for such other amount by the Company on the due date therefor or at any time thereafter, without any notification, certification or further action being required.*
- iii) The amount of the Letter of Credit shall be equal to one month's projected payments payable for MESCOM based on the average of annual generation.*
- iv) The MESCOM shall replenish the Letter of Credit to bring it to the original amount within 30 days in case of any valid drawdown.*
- v) The Company shall allow a rebate of 1.8% of the Tariff Invoice or actual expenditure/charges for the LC account incurred, whichever is higher, and the same shall be deducted from the monthly Tariff Invoice payable to the Company.*
- vi) The Letter of Credit shall be renewed and/or replaced by the MESCOM not less than 60 days prior to its expiration.”*

11. The Hon'ble Supreme Court in various decisions have given guidelines as to how a Section has to be interpreted. The State Commission itself, in the impugned order, has referred to following decisions with reference to the said aspect.

i) AIR 1965 State Commission 1288 in the case of The Central Bank of India Ltd., Amrutsar Vs The Hartford Fiore Insurance Co.Ltd.,

ii) AIR 1966 State Commission 1644 in the case of General Assurance Society Ltd. Vs Chandmull Jain and another.

iii) (1996) 4 SCC 545 in the case of Delta International Ltd., Vs Shyam Sunder Ganeriwalla and another.

12. The guidelines which have been laid down for interpretation of the Section by the Hon'ble Supreme Court are as follows:-

i) The Courts' duty is to give effect to the bargain of the parties according to their intention. This intention could be inferred by reading the words contained in the section. If those words are clear, the Court must give effect to the plain meaning of those words.

ii) While interpreting the documents relating to the contract, the duty of the Court is to interpret wordings in which

contract is expressed by the parties. It is not for the Court to make a new contract.

iii) The intention of the parties is to be gathered from the documents itself. This means that the intention is to be gathered from the meaning of the plain words used in the documents. If the terms of the documents relating to the contract between the parties are not clear then the surrounding circumstances and the contract of the parties have to be borne in mind for ascertaining the real relationship between the parties.

iv) If the words are unambiguous, it would not be proper for the Court to gather their intention different from the language used in the agreement. In construing the Contract, the Court should read the documents as a whole and look at the wordings used in the Contract to find out whether the intention is clear.

13. In the light of the above settled law on interpretation and construction of documents we may now consider the question which has been framed above.

14. According to the Appellant, Article 6.5 of the PPA seeks to provide only for repayment of the cost of opening of letter of credit as a one time measure and the said clause does not provide for month to month Rebate deductions.

- 15.** On the contrary, it is submitted by the MESCOM(R-2) that Article 6.5(v) of the PPA is clear and the same provides for deduction of the rebate or letter credit expenses, whichever is higher every month and that therefore, the deduction is in accordance with the law.
- 16.** As correctly pointed out by the learned Counsel for both the parties that it is a settled law that while interpreting the terms of the Contract, the plain meaning of the words used in the clause should be adopted, unless there is an ambiguity in the words used. It is also laid down by the Hon'ble Supreme Court that in order to find out the true intent or meaning of any clause in a document, the entire agreement has to be read as a whole and no words which are not there in the Article could be added to those words, which are already available in the clause. In other words, the words which are absent in the Article can not be read into the Article while deciding the issue.
- 17.** According to the Appellant, the State Commission has read Article 6.5(v) in isolation while interpreting the Article.
- 18.** On the contrary, MESCOM(R-2) contended that if plain meaning of the words used in the clause 6.5(v) of the PPA is adopted, then the said Article 6.5(v) clearly contemplates that the rebate also be availed of by the MESCOM(R-2) on

month-to-month basis and not, only the letter of credit establishment charges.

19. Having regard to the rival stand taken by both the parties, let us now recall and read the clause 6.5 as a whole including 6.5.(v) of the PPA.

20. It cannot be disputed that the letter of credit is a payment security mechanism under the PPA. Article 6 which deals with Billing and Payment is in 6 parts. Article 6.1 deals with Tariff Invoices and indicates how the Appellant would submit the Monthly Invoice for the delivered energy. Article 6.2 deals with payment, which is to be made within 15 days from the date of Tariff Invoice by the MESCOM. Article 6.3 deals with late payment and provides for interest payable by MESCOM for late payment. Article 6.4 deals with disputes. Article 6.5 deals with letter of credit and Article 6.6 deals with payment under the letter of credit.

21. The reading of Article 6.5. as a whole would reveal that the purpose of letter of credit is to provide security of payment to the Appellant and to ensure that the payment is not delayed beyond 15 days. As per the Article 6.5(i), the distribution company shall establish the letter of credit for the sole benefit of the company and in the event of invoice amount payable by the distribution company is not paid in full, the company

can en-cash the letter of credit for the payment in full of the unpaid monthly invoice.

22. Under Article 6.5(ii), the LC may be called upon representation of such monthly invoice or claim for such other amount by the company on the due date therefore and at any time thereafter without any notification.

23. Article 6.5(iii) provides for the amount of letter of credit shall be equal to one month's projected payment based on the average annual generation.

24. As per Article 6.5.(iv), the distribution company shall replenish the letter of credit to bring to the original amount within 30 days in case of any valid drawdown.

25. Article 6.5.(v) stipulates that the generator shall allow rebate of 1.8% of tariff invoice or the actual expenses for the establishment of letter of credit amount incurred, whichever is higher, and the said rebate shall be deducted by the distribution company from the monthly tariff invoice payable to the generating company.

26. Article 6.5(vi) provides that letter of credit shall be renewed by the distribution company not less than 60 days prior to its expiry.

27. Now, we would see the meaning of Article 6.5(v). This Article is reproduced below:-

“ The company shall allow a rebate of 1.8% of the tariff invoice or actual expenditure/charges for the letter of credit incurred, whichever is higher, and “the same shall be deducted from the monthly tariff invoice payable to the company.”

28. The reading of the above Article would not show that the rebate is a one time measure. It says that the rebate amount is to be deducted from the “monthly tariff invoice” and not as “one time measure”.

29. If the PPA contemplated, as claimed by the Appellant, that the rebate of 1.8% was only a one time measure there is no need to provide for the same in Article 6 which is for payment of monthly tariffs in securing payment thereafter. In this context, it is to be noted that the Article 6.5(v) uses the words “monthly tariff invoice” and not “first tariff invoice”. The language of Article 6.5(v) is clear that the rebate contemplated is in the nature of prompt payment rebate. Thus, the rebate is a incentive to the MESCOM(R-2) to promptly establish the letter of credit and put in place and continue a payment security mechanism to the generators. The charge for the letter of credit is concerned with the letter of credit which has to be maintained with the life of the PPA and not for one month. If a letter of credit is to be maintained only for one month, it will involve much lesser charges as against the letter of credit for a longer period.

- 30.** According to the Appellant, there were delays in the opening of the letter of credit by the MESCOM(R-2). In the present case, the Appellant declared wind energy plant commercially operational in November,2011. According to the MESCOM(R-2), the Appellant did not give any notice for opening of letter of credit and in fact, the MESCOM initiated steps for establishment of letter of credit for all the NCE generators and wrote a letter dated 15.9.2011 to all the generators including the Appellant.
- 31.** We are not inclined to go into these aspects because this Appeal is limited to the correct interpretation of Article 6.5(v) of the PPA.
- 32.** The Appellant cited a judgment of Hon'ble Supreme Court (2009)16 SCC 659 in the case of Tata Power Company Limited Vs Reliance Energy Limited to contend that the State Commission has the power to adjudicate upon the dispute between generating companies and licensees with regard to implementation, obligation, or interpretation of the provisions of the agreements. There is no dispute in this settled position of law laid down by the Hon'ble Supreme Court. In this case, the State Commission, while adjudicating its power under Section 86(1)(f) of the Electricity Act,2003 is required to interpret and apply the provisions of the PPA based upon the well settled principle of the interpretation. Under this principle, the State Commission has interpreted the Article

6.5(v) of the PPA on the basis of plain words used in the PPA.

- 33.** According to the State Commission, considering the language adopted in Article 6.5(v) of the PPA, the words of Article 6.5 are very clear and unambiguous. On that basis the State Commission has held that the Article 6.5(v) of the PPA cannot be read to mean that it provides only for recovery of charges incurred for opening of letter of credit and not with reference to the rebate.
- 34.** As correctly pointed out by the State Commission, if it is intended by the parties to recover only the charges incurred to open a letter of credit, Article 6.5(v) of the PPA would not have made any reference to the term rebate and it would not have also added that “the same shall be deducted from the monthly tariff invoice payable to the company”.
- 35.** The learned Counsel for the Appellant submits that the tariff order of the state Commission dated 11.12.2009 would run against the above interpretation. This contention is not tenable since the said tariff order dated 11.12.2009 only deals with the fixation of tariff and factors considered while fixing the tariff. The State Commission is correct in observing that the order dated 11.12.2009 will not have any bearing on the interpretation of Article 6.5(v) of the PPA, in view of the clear language used therein.

36. According to the Appellant, the State Commission read the Article 6.5(v) in isolation and while doing so, the State Commission has added the word “each” before the words “monthly tariff invoice payable to the company”. This contention is also misconceived as the State Commission has correctly interpreted the said provision to the effect that the wordings contained in the Article “the same shall be deducted from the monthly tariff invoice payable to the company” would indicate that the deduction shall be from the monthly tariff invoice.

37. We do not find force in the contention of the Appellant that the tariff agreed to in the PPA is the tariff determined by the State Commission by its order dated 11.12.2009 which does not provide for rebate for timely payment of monthly invoice. As correctly pointed out by the Respondent No.2, the tariff order did not contain the payment security mechanism and rebate for ensuring timely payment and the same was agreed to in the PPA. However, the tariff decided by the State Commission in its order dated 11.12.2009 included the interest on Working Capital equivalent to 2 months’ receivables. As against the provision of the PPA regarding payment of Monthly Invoice within 15 days from the date of receipt of the tariff invoice, and in case payment is not made within due date, interest on the delayed payments, the interest on Working Capital allowed to the Appellant in the

Tariff is on Working Capital equivalent to 2 months' receivables. Thus, we reject the contention of the Appellant in this regard.

38. In view of the above, we are not inclined to accept the interpretation given by the Appellant, as in our view, the interpretation given by the State Commission in the impugned order is perfectly valid and justified.

39. Summary of the findings:

The Distribution Company is entitled to a rebate of 1.8% of the Tariff Invoice or the actual expenditure/charges on the LC whichever is higher on the Monthly Tariff Invoice in terms of the Article 6.5(v) of the PPA as per the interpretation given by the State Commission.

40. In view of our above findings, we do not find merit in this Appeal. Consequently, the Appeal is dismissed. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:10th July, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~