

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 220 of 2012 & Appeal no. 221 of 2012

Dated: 22nd April, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Appeal no. 220 of 2012

In the matter of:

**M/s. Chemplast Sanmar Limited
Nagore Main Road, Melavanjore
TR Pattinam Commune Panchayat
Karaikal – 611 002**

...Appellant(s)

Versus

- 1. Joint Electricity Regulatory Commission ...Respondent(s)
2nd Floor, HSIDC Office Complex
Vanijya Nikunj Complex, Udyog Vihar
Phase – 5, Gurgaon, Haryana – 112 016**
- 2. Government of Puducherry
Electricity Department
137, NSC Bose Salai
Puducherry 600 001**

**Counsel for Appellant(s) : Mr. Vijaya Narayan, Sr. Adv.
Mr. K.V. Mohan
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Mr. K.V. Balakrishnan

Counsel for the Respondent(s): Mr. R. Venkatramani, Sr. Adv.
Mr. V.G. Pragasam
Mr. S. Prabu Ramasubramanian
Mr. J. Sridharan
Mr. S.J. Aristotle
Mr. Anish Garg (Rep.)
Mr. K.K. Garg (Rep.)

Appeal no. 221 of 2012

**M/s. Chemfab Alkalis Ltd.
Team House, GST Salai
Vandalur
Chennai – 600 048**

...Appellant(s)

Versus

- 1. Joint Electricity Regulatory Commission ...Respondent(s)
2nd Floor, HSIDC Office Complex
Vanijya Nikunj Complex, Udyog Vihar
Phase – 5, Gurgaon, Haryana – 112 016**
- 2. Government of Puducherry
Electricity Department
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Counsel for the Respondent(s): Mr. R. Venkatramani, Sr. Adv.
Mr. V.G. Pragasam
Mr. S. Prabu Ramasubramanian
Mr. J. Sridharan
Mr. S.J. Aristotle
Mr. Anish Garg (Rep.)
Mr. K.K. Garg (Rep.)

JUDGMENT

RAKESH NATH, TEHNICAL MEMBER

The above Appeals have been filed by M/s Chemplast Sanmar Ltd. and M/s. Chemfab Alkalis Ltd., the industrial consumers, challenging the impugned order dated 25.9.2012 passed by the Joint Electricity Regulatory Commission determining the Incremental Fuel Surcharge for the period from April 2010 to October 2010 for Electricity Department of Government of Puducherry.

2. The Appellants are industrial consumers. The Joint Electricity Regulatory Commission, hereinafter referred to as “Joint Commission”, is the Respondent no.1. The Electricity Department of Government of Puducherry which is a deemed licensee under Section 14 of the Electricity Act for transmission and distribution of electricity is the Respondent no.2.

3. The brief facts of the case are as under:
 - a) The Joint Commission passed an order dated 5.2.2010 determining the retail supply tariff for Electricity Department. In the tariff order, the State Commission stipulated a Power Purchase Cost Adjustment (“PPCA”) formula and decided that the PPCA charges would be revised by the Electricity Department for the first time after six months from the date of implementation of the order and every six months thereafter.

- b) On 10.12.2010 the Electricity Department filed a petition before the Joint Commission seeking incremental fuel charges for the period from April 2010 to October 2010 on all categories of consumers except subsidized consumer category and agriculture category.

- c) The Joint Commission passed order dated 12.8.2011 deciding the fuel surcharge of 34.25 paise unit on all consumers except the subsidized and agriculture categories.

- d) This order dated 12.8.2011 was challenged before this Tribunal in Appeal no. 187 of 2012. On 27.4.2012, the Tribunal set aside the order dated 12.8.2011 and remanded the matter to the Joint Commission for redetermination of the said Incremental Fuel Surcharge.

- e) Thereafter, the Electricity Department filed a petition before the Joint Commission for redetermination of fuel Surcharge for the period April – October 2010. In the petition the Electricity Department gave calculation for fuel surcharge using a formula. Public notice was issued and the public hearings were held on 10.6.2012 and 20.6.2012, in which the suggestions and objections of the public were heard. The Appellants also filed their objections and made their submission before the Joint Commission.
- f) On 25.9.2012, the Joint commission passed the impugned order determining the fuel surcharge for the period from April 2010 to October 2010 to be recovered by the Electricity Department from the consumers other than subsidized and agriculture categories.

- g) Aggrieved by the impugned order dated 25.9.2012, the Appellants have filed these Appeals.
4. As the impugned order and the issues raised in both the Appeals are same, a common judgment is being rendered.
5. The issues raised by the Appellants are as under:
- a) In the original tariff order dated 5.2.2010, Formula A had been specified, but in the impugned order Formula B has been followed. No notice was issued for use of new formula. Non issuance of notice has violated the final order since a different formula has been used without notice to the public.
- b) Having passed the order dated 5.2.2010 stipulating a PPCA formula, the Joint Commission does not have

- power to review the same and impose a new formula unless such formula is sanctioned by law.
- c) Even assuming that the Joint Commission has power to review its own order, the new formula was put in place only by the impugned order dated 25.9.2012. This formula cannot be relate to an earlier period (April-October 2010), as formula A was specified in Tariff order dated 5.2.2010.
 - d) Procedure contemplated by law has not been followed in devising a new formula.
 - e) It was not open to the Electricity Department to propose a formula since this function is exclusively reserved to the Joint Commission by virtue of Section 62 of the Electricity Act, 2003.

- f) As per condition no. VIII of the original tariff order dated 5.2.2010, the PPCA charges are to be revised by the Electricity Department for the first time after six months from the date of implementation and every six months thereafter. Thus, right to claim PPCA accrues to the Electricity Department only after 5th August 2010. On this ground alone, only the PPCA for the period April – October 2010 has to be turned down.
- g) In order to claim PPCA, material evidence need to be substituted by the Electricity Department. The Electricity Department submitted voluminous documents in support of its claim. However, no co-relation has been made by the Electricity Department either before the Joint Commission or before this Tribunal. This Tribunal in Appeal no. 169 of 2010 in the Daman Industries Association matter had very clearly directed the distribution licensee to display the computation of

- PPCA in a consumer friendly format on its website for the benefit of the consumers.
- h) The Joint Commission has not considered the objection raised by the Appellants in the public hearing.
 - i) The Joint Commission has ignored compliance of some of the conditions set out in the formula given in the original tariff order dated 5.2.2010.
 - j) The Joint Commission has not applied its mind about compliance of the conditions to the formula.
 - k) There are discrepancies in the calculation of Fuel Price Adjustment Charges.
6. The Electricity Department (Respondent no.2) in support of the impugned order has submitted that the

State Commission has passed the order after duly considering the objections of the objectors and after following the procedure. Further, the Electricity Department has approached the State Commission for fuel price adjustment after six months of the original order as per the conditions laid down in the original tariff order.

7. On the above issue we have heard Shri Vijay Narayan, Learned Senior Advocate representing the Appellants, Shri R. Venkataramani, Learned Senior Advocate representing the Respondent no.2 and Shri K.K. Garg, representative of the Joint Commission.

8. On the basis of the contentions of the parties, the following issues arise for our consideration:

- i) Whether the Joint Commission has followed the principles of natural justice and followed the correct procedure laid down under law while passing the impugned order allowing Fuel Price Adjustment to the Electricity Department?**

- ii) Whether the Joint Commission could have used a revised formula for Fuel Price Adjustment based on the suggestion of the Electricity Department ignoring the earlier formula given in the original tariff order dated 5.2.2010?**

- iii) Whether the revised formula for Fuel Price Adjustment decided in the impugned order can be used for the earlier period of April – October 2010?**

- iv) Whether the Fuel Price Adjustment for the period April – October 2010 can be allowed when the**

original order stipulated that the Electricity Department has to approach the Joint Commission for PPCA after six months of the date of the order?

v) Whether the Joint Commission has determined the Fuel Price Adjustment without application of mind?

9. Let us take the first issue regarding principles of natural justice and procedure followed while passing the impugned order.

10. We find that the tariff order dated 5.2.2010 specified a Power Purchase Cost Adjustment (“PPCA”) mechanism indicating a formula and the conditions to be followed in approving the PPCA. On 12.8.2011, the Joint Commission passed an order allowing Incremental Fuel Surcharge of 34.25 paise per unit for the period April to October 2010 to recover Incremental

Fuel Surcharge of Rs. 46.40 crores incurred by the Electricity Department in power procurement.

11. The above order dated 12.8.2011 was challenged by the Appellant in Appeal no. 187 of 2011 before this Tribunal. This Tribunal by judgment dated 27.4.2012 set aside the order dated 12.8.2011 and remanded the matter to the Joint Commission with certain directions.

12. The findings of the Tribunal in the judgment dated 27.4.2012 in Appeal no. 187 of 2011 are as under:-

“35. This Tribunal in its order dated 11.11.2011 in O.P.No.1 of 2011 had directed the State Commissions to place a mechanism for Fuel and Power Purchase Cost Adjustment in terms of Section 62(4) of the Act so that the fuel and power purchase cost adjustment could be allowed on monthly basis and in no case exceeding a quarter to avoid problem of cash flow to the distribution licensee. In this case even though the State Commission passed an order for the incremental fuel surcharge we are constrained to set aside the same due to infirmity in the process as discussed

above. Learned Counsel for the Respondent No.2 had argued that for no fault of theirs they may be deprived of the fuel surcharge due to them resulting in cash flow problem. In view of this, we direct the State Commission to undertake an exercise afresh to determine fuel surcharge, if any, after following the procedure as per law as indicated above.”

“(1) The First Issue relates to the failure to follow the principles of natural justice. If the conclusion regarding the Fuel Surcharge was arrived at merely on the basis of the mathematical calculations based on the formula specified by the State Commission then no notice is necessary to the public or consumers. But in this case, it involves not merely arithmetic or mathematical calculations but also requires verification of the compliance of the conditions as specified by the Joint Commission in the Tariff Order dated 5.2.2010. The Fuel Surcharge has to levied on the consumers by using the Formula as prescribed by the Tariff Order dated 5.2.2010 on the verification of the fulfilment of the requirements imposed by the Joint Commission in the Tariff Order. Hence, it is the duty of the Joint Commission to exercise its discretion while passing the order on Fuel Surcharge after analysing all the materials. In this case a different formula was used in computing the Incremental Fuel Surcharge. In the facts and circumstances of this case, it is necessary to hold a public hearing in order to enable the Joint Commission to exercise its discretion with the judicial approach. In this case, having the peculiar facts and

circumstances we hold that the failure to issue public notice and the failure to hear the consumers has vitiated the whole proceedings.

- (2) The Second Issue is relating to the earlier tariff order dated 5.2.2010. The Joint Commission in the said order had approved the PPCA under Chapter 6 as per the Formula given there in. The perusal of the above Formula would make it clear that the PPCA is subject to the compliance of 9 conditions as set out therein. Regulation 7 of the Tariff Regulations 2009 mandates that the Fuel Surcharge can be passed on to the consumers as per this specified Formula due to reasons beyond the control of the licensee. In this case, the impugned order does not indicate that Joint Commission has undertaken the said exercise.*
- (3) The next issue is with regard to different Formulae used in the impugned order. On comparison of both the Formulae it would reveal that both the Formulae are entirely different. In the tariff order, the Joint Commission framed a particular Formula as per paragraph 6.1 of the Tariff Order. But the present Formula which has been used in the impugned order would reveal that different Formula has been adopted. Thus, both the Formulae are entirely different. This would indicate that the Joint Commission had not applied its mind in this regard. Furthermore, the authority exercising quasi judicial functions has to give reasons for the conclusion in the impugned order. But in this case, the impugned order contains only conclusion and there was no discussion or reasons for the said conclusion.*

(4) The State Commission may note our directions in paragraph 35 for further necessary action.”

13. The Tribunal in the above judgment also noted that the similar formula for Power Purchase Cost Adjustment was specified in the tariff order for Daman and Diu which was set aside by the Tribunal by order dated 29.2.2012 in Appeal no. 169 of 2011 as it was found inconsistent with the Tariff Regulations of the Joint Commission.

14. We find that the Joint Commission on remand of the matter by the Tribunal, reconducted the exercise of determination of Incremental Fuel Surcharge for the period April – October 2010. A public notice was issued seeking suggestions and objections.

15. Accordingly, the public hearing was held and the Appellants participated in the same. The Appellants filed their objections and participated in public hearing. We also find from the impugned order that the Electricity Department had uploaded its petition along with worksheet of calculation of Fuel Price Adjustment, statement of compliance of conditions, power purchase bills and other related data on its to enable the objectors to file their objections. We find that the objections of the Appellants have been recorded in the impugned order and have been dealt with by the Joint Commission. The Appellants have appeared before the Joint Commission on 29.5.2012, 4.6.2012 and 11.6.2012. The Appellants also appeared before the Joint Commission in the public hearing on 19.6.2012 and 20.6.2012. Thus adequate opportunity was given to the Appellants to raise their objections before the Joint Commission. The Joint Commission has decided the

Fuel Price Adjustment after considering the objections of the Appellant.

16. Thus, we find that the principles of natural justice were followed and due procedure as laid down under Section 64 of the Electricity Act was adhered to by the Joint Commission before passing the impugned order. Accordingly, the first issue is decided as against the Appellants.

17. The second issue is regarding use of revised formula.

18. This Tribunal in various judgments and in Appeal no. 187 of 2011 has held that no public notice is necessary for Fuel and Power Purchase Cost Adjustment ('FPPCA') in the cases where the conclusion was arrived at on the basis of the mathematical calculations based on Fuel and Power Purchase Cost Adjustment

formula stipulated in the relevant tariff order or specified in the Regulations. However, if FPPCA is decided using a different formula and basis then public notice would be necessary. The Tribunal in judgment in Appeal no. 187 of 2011 noted that similar formula for Power Purchase Cost Adjustment as specified in tariff order for Daman and Diu was set aside by the Tribunal by order dated 29.2.2012 in Appeal no. 169 of 2011 as it was found inconsistent with the Regulations of the Joint Commission. It was also noted by the Tribunal that a different formula was used in computing the Incremental Fuel Surcharge and, therefore, the Tribunal directed the Joint Commission to hold public hearing to exercise its discretion with judicious approach.

19. Thus, the Joint commission could not have used the same formula as stipulated in the tariff order dated 5.2.2010 for calculation of the Fuel Price Adjustment in

the impugned order as this formula was inconsistent with the Regulations as held by this Tribunal.

20. We find that Electricity Department in its petition gave calculations of Fuel Price Adjustment ('FPA') using a simple formula dividing the increase in fuel price with respect to that allowed to them in the main tariff order and incurred by them during the period April – October 2010 by the energy sold to the consumers from whom the FPA bill has to be raised after adjusting for the transmission and distribution losses.

21. The computation of the FPA by the Electricity Department was made public and the Appellants also filed objections on the same. We find that the Appellants did not raise any specific objection regarding the formula for FPA but only raised the objection that

the Electricity Department did not use the PPCA formula as per tariff order dated 5.2.2010.

22. We feel that the Joint Commission could not have used the same formula as stipulated in the tariff order dated 5.2.2010 in view of the findings of the Tribunal that it was inconsistent with the Regulations. The Regulations provided for adjustment for Fuel Price only whereas the formula stipulated in the tariff order dated 5.2.2010 was based on adjustment for Power Purchase Cost which included fuel cost and fixed cost, etc.

23. The Power Purchase Cost Adjustment formula given in the tariff order dated 5.2.2010 was as under:

$$PPCA \text{ (per/kWh)} = \frac{QPP (RPP_2 - RPP_1)}{QPP \times (I-L) - PSE}$$

Where:

QPP= Quantum of power purchase from different sources and fed to EDP system (in MUs)

RPP1= Average rate of power purchase as approved by the Commission (in Rs./kWH)

RPP2= Average rate of power purchase during the adjustment period (in Rs./kWh)

L= T&D loss as provided by the Commission or actual whichever is lower

PSE = Power sold to exempted categories.

Thus, the PPCA was to be calculated on the basis of difference in Average Rate of power actually purchased during the adjustment period and the Average Rate of power purchase as allowed in the tariff order. The difference in rate of power purchase when multiplied with the quantum of power purchased gives the amount of increase in power purchase cost incurred by the distribution licensee with respect to that allowed in the tariff order. This increased amount divided by the energy supplied to the consumers on which the PPCA has to be passed on i.e. excluding the exempted

subsidized categories after adjusting for T&D losses would give the PPCA per unit.

24. The above formula could not be used as the Tribunal had held that it was inconsistent with the Regulations as according to the Regulations only fuel price adjustment could be passed on as Fuel Price Adjustment. The power purchase cost comprises the fixed cost and fuel price. According to the Regulations enhancement in fuel price component could only be recovered as Fuel Price Adjustment in the tariff during the tariff year. Therefore, the Joint Commission directed the Electricity Department to claim increase on account of fuel price adjustment alone and the remaining amount of increase in power purchase could be claimed in the true up.

25. Accordingly, the Electricity Department in its petition gave calculations for Incremental Fuel Price Adjustment. The formula used by the Electricity Department in its proposal for Fuel Price Adjustment as made public during the proceedings before the Joint Commission was as under:

“Since the Hon’ble Commission ordered to work out the increase in Fuel Price Cost alone, RPPI has been substituted by FPPA1 i.e. Fuel Price Approval per unit in tariff order and RPP2 has been substituted by FPPA2 i.e. Actual Fuel Price per unit during the period April 2010 to October 2010. Hence the formula incorporating the charges is

$$\text{Incremental Fuel Price Adjustment (per/kWh)} = \frac{QPP(FPPA_1 - FPPA_1)}{QPP \times (I-L) - PSE}$$

26. Thus, the Electricity Department in its petition proposed to recover only the increase in price of fuel component incurred in the power purchase cost during the period in question instead of the entire power purchase cost which comprised of fixed cost and fuel component, as per the directions of the Joint Commission. The Electricity Department also furnished details of the increase in fuel price and computation of Incremental Fuel Price Adjustment per Kwh to be levied on the consumers.

27. We find that in the impugned order the State Commission has given reasons for accepting the formula proposed by the Electricity Department which was based on the formula given in the tariff order dated 5.2.2010 except that in place of Rate of Power Purchase, the Fuel Price per unit has been considered.

The relevant paragraph of the impugned order is as under:

“The formula approved in Chapter 6 of Tariff Order dated 5.2.2010 was for computation of Incremental Power Purchase Cost Adjustment. The Commission observed that in accordance with the Section 62 of the Electricity Act, 2003 and Regulation 7 of the JERC (Terms and Condition of Determination of Tariff) Regulations, 2009 envisages provisions for passing on of fuel surcharge only. Accordingly the Commission modified the formula as below and computed the approved value of FPA, which is to be used for the computation of fuel surcharge for the period 2009-10 & Apr-Oct’2010 and conducted Public hearings at Commission’s Court room as well as at Public places at Puducherry and Karaikal with due publication of public notices in the leading Newspapers.

(Incremental) FPA per kwh = $QPP \times (FPA_2 - FPA_1) / QPP \times (I - L) - PSE$ ”

28. We find that the Joint Commission has modified the FPA formula with respect the tariff order dated 5.2.2010 and accepted the formula as proposed by Electricity Department in its petition on which the suggestions and

objections of the public were sought in the public hearing.

29. We do not find any infirmity in the order of the Joint Commission in this regard. Thus, the second issue is also decided as against the Appellants.

30. Let us now take the third and fourth issues which are interconnected regarding use of formula for the period April- October 2010 and adjustment for period of six months from the date of the original tariff order.

31. We find that the issue remanded by this Tribunal in Appeal no. 187 of 2011 was pertaining to Adjustment for Power Purchase Cost for the period April – October 2010. The formula for PPCA as decided in the earlier tariff order dated 5.2.2010 could not be used as only fuel price adjustment was permitted as per the

Regulations. Accordingly, the increase in fuel price borne by the Electricity Department during the period April – October 2010 was computed by a simple computation which was subjected to the public hearing. When the entire computation of the fuel price adjustment was subjected to the public hearing for the period which was as per the remand order of this Tribunal, it cannot be objected that the revised formula could not be used for computation of the fuel price adjustment. If the argument of the Appellants is accepted then the Electricity Department will not be able to claim the increase in power purchase cost on account of increase in fuel price which is uncontrollable, for the period April 2010 to October 2010. Clause 5.3(4) of the Tariff Policy stipulates that the uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs.

Clause 5.3(4) also stipulates that the uncontrollable costs would include fuel costs.

32. The approved PPCA formula in the original tariff order dated 5.2.2010 was subject to condition that the PPCA charges would be revised by the Electricity Department for the first time after six months from the date of implementation of the order and every six months thereafter. According to the Appellants, the Fuel Price Adjustment could not be claimed for the period of 6 months from date of implementation of the order.
33. Let us first understand the concept of fuel and power purchase cost Adjustment. The State Commission determines the tariff for the financial year at the beginning of the year based on the projections. The fuel price/power purchase cost is assessed based on the projections at the time of issuing the tariff order. However, during the financial year for which the tariff is determined in advance, the cost of fuel/power purchase

varies during the year. Fuel Price/Power Purchase Cost is an uncontrollable cost and has to be allowed as a pass through in tariff as early as possible to avoid the problem of cash flow of the distribution licensee and to avoid passing on the carrying cost during true up of accounts which is carried out after the financial year is over and the accounts have been finalized. As the true up of the power purchase cost takes a long time, it is required to pass on the increase in fuel and power purchase cost in tariff through Fuel and Power Purchase Adjustment mechanism during the course of the financial year. This is permissible under Section 62(4) of the Electricity, 2003.

34. This Tribunal in OP 1 of 2011 dated 11.11.2011 had given directions to the State Commissions/Joint Commissions to place a mechanism for Fuel and Power Purchase Cost Adjustment in terms of Section 62(4) of

the Act so that the fuel and Power Purchase Cost Adjustment could be allowed on monthly basis and in no case exceeding a quarter to avoid problem of cash flow to the distribution licensee. Thus, at the end of the month or a quarter the increase in price on account of fuel and power purchase during that month or quarter is to be computed using the specified formula and passed on in the tariff as additional charges in the remaining months of the financial year.

35. The condition imposed in the original tariff order dated 5.2.2010 only stated that the PPCA could not be charged before the expiry of six months from the date of implementation of the order and thereafter every six months. Thus, the Joint Commission provided for six monthly adjustment of power purchase cost. According to the tariff order the Electricity Department has to compute the increase in price of power for six month period from the date of implementation of tariff order

and compute the actual incremental charge based on the actual power purchase cost incurred after the period of six months is completed to be recovered during the remaining period of the year. The PPCA has to be for the past period as the actual price of power purchase would known at the end of the relevant period. If the interpretation of the Appellant is accepted then the Electricity Department will not be able to recover the excess cost of fuel incurred during the period April to October 2010 which is not the intent of the Fuel and Power Purchase Adjustment mechanism and the directions given in order dated 11.11.2011 of the Tribunal in OP 1 of 2011 issued under Section 121 of the Electricity Act.

36. Accordingly, the contention of the Appellant on 3rd and 4th issues are also rejected.

37. Let us now examine the 5th issue namely whether the Joint Commission has correctly allowed the Fuel Price Adjustment in the impugned order.
38. We find that the Joint Commission has determined the Fuel Price Adjustment for the period April – October 2010 after considering all the conditions as laid down in the PPCA formula in tariff order dated 5.2.2010 and the Fuel Price increase in various thermal and nuclear power stations from which energy has been procured by the Electricity Department during the period April-October 2010. The Joint Commission has given detailed calculations of FPA.
39. The Joint Commission in the impugned order has given explanation regarding compliance of each of the nine conditions laid down in the order dated 5.2.2010 and noted that all the conditions have been complied with.

However, the Joint Commission has allowed component of Fuel Price Adjustment only in the impugned order instead of the entire Power Purchase Cost Adjustment as envisaged earlier in the original tariff order dated 5.2.2010.

40. The Joint Commission has computed the FPA for FY 2009-10 as 4.983 paise per unit and for the period April – October 2010 as 34.25 paise per unit. The Joint Commission did not allow the FPA for FY 2009-10 as it was less than 5 paise per unit as per the condition laid down in tariff order dated 5.2.2010 and allowed 34.25 paise per unit for the period April – October 2010 to be recovered from all categories of consumers except one hut one bulb and agriculture categories from September 2011 to March 2012. We do not find any infirmity in the computation of FPA for the period April – October 2010. Just because the FPA determined by the Joint

Commission is same as proposed by the Electricity Department, it cannot be said that the Joint Commission has not applied its mind in determining the FPA.

41. Accordingly 5th issue also is decided against the Appellants.

42. Summary of our findings:

i) The Joint Commission has passed the impugned order after inviting suggestions and objections of the public and after public hearing and after considering the objections received in the public hearing. Thus, the State Commission has followed principles of natural justice and due process of law under Section 64 of the Electricity Act before passing the impugned order.

- ii) The formula for fuel price adjustment has been correctly revised as the earlier formula given in the tariff order dated 5.2.2010 was inconsistent with the provisions of the Regulations as held by this Tribunal. The Joint Commission has correctly followed the order of this Tribunal in remand and decided the FPA for the period April – October, 2010.**

- iii) There is no infirmity in applying FPA for the period April – October 2010 i.e. 6 months period from the effective date of the tariff order 5.2.2010.**

- iv) The Joint Commission has given a reasoned order with detailed computation of the FPA. We do not find any infirmity with the same.**

43. In view of above the Appeals are dismissed as devoid of any merits. No order as to costs.

44. Pronounced in the open court on this 22nd day of April, 2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

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