

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

**Appeal no. 136 of 2012**

**Dated: 8<sup>th</sup> April, 2013**

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

**In the matter of:**

**M/s. Wardha Power Company Limited .....Appellant(s)  
8-2 293/82/A/431/A,  
Raod No. 22, Jubilee Hills  
Hyderabad – 500 033**

**Versus**

- 1. Maharashtra State Electricity Distribution ...Respondent(s)  
Company Limited  
Prakashgad  
Plot No. G-9, Bandra (East)  
Mumbai – 400 051**
  
- 2. Maharashtra Electricity Regulatory Commission  
13<sup>th</sup> Floor, Centre No.1, World Trade Centre  
Cuffe Parade  
Colaba, Mumbai – 400 005**

**Counsel for the Appellant (s):                      Mr. Sanjay Sen  
   Mr. Hemant Singh  
   Mr. Anurag Sharma  
   Ms. Shikha Ohri**

**Counsel for the Respondents (s): Ms. Deepa P. Chawan  
Ms. Ramni Taneja  
Mr. Kiran Gandhi  
Mr. N. Shah**

## **JUDGMENT**

### **MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been preferred by Wardha Power Company Ltd. against the order dated 30.04.2012 passed by Maharashtra Electricity Regulatory Commission (“State Commission”) in the petition filed by the Appellant seeking recovery of dues for supply of electricity in terms of the Power Purchase Agreement.

2. Maharashtra State Electricity Distribution Co. Ltd. is the Respondent no.1. The State Commission is the Respondent no.2.
3. The brief facts of the case are as under:-

3.1 The Appellant is a generating company which has set up a power project with 4 units of 135 MW each in Maharashtra. The Appellant participated in the competitive bidding for procurement of power on short term basis by the distribution licensee, the Respondent no.1 herein, in terms of the guidelines for competitive bidding notified by the Central Government for supply of 300 MW power on round the clock basis.

3.2 The bid of the Appellant was accepted and subsequently a Power Purchase Agreement (“PPA”) was executed between the Appellant and the Respondent no.1 for sale of power for the period from 15.11.2009 to 31.10.2010. The PPA had a clause for compensation by the distribution licensee to the generating company if the licensee, without prejudice to the provision of force majeure, fails to schedule the

capacity approved for open access for the concerned period at least to the extent of 80% in energy terms in a month. Similarly, the generating company has to compensate the distribution licensee if, without prejudice to the provision of force majeure, it fails to ensure supply the full requisitioned quantum on daily basis.

3.3 When the power project of the Appellant was under execution, several unexpected difficulties cropped up including the embargo on Chinese Visa restraining the Chinese engineers and other technical staff working in India. The power project of the Appellant was being supplied and executed by Chinese supplier and their engineers from China were involved in the execution of the project. Consequently, the commissioning of the project got delayed.

3.4 Accordingly, the Appellant by letter dated 20.10.2009 informed the distribution licensee (R-1) about delay in commissioning of the First Unit of the project by January/February, 2010 and revision in supply schedule. The distribution licensee (R-1) by letter dated 14.12.2009 accepted the aforesaid request for rescheduling of supply on the ground of force majeure events.

3.5 The Appellant again wrote a letter to the distribution licensee (R-1) on 28.12.2009 informing further delay in implementation of the project as Government of India continued to impose restrictions on visas for Chinese engineers and technicians and furnished a revised schedule for supply of power beginning from 01.04.2010.

3.6 The distribution licensee (R-1) by letter dated 03.02.2010 accepted the request of the Appellant and agreed to extend the time for commencement of supply of power by the Appellant from 01.04.2010.

3.7 The Appellant again experienced some technical problem in the power equipment during commissioning and trial run of the First Unit. Hence, the Appellant by letter dated 30.03.2010 informed the distribution licensee (R-1) about the technical difficulties and delay in commissioning of the First Unit. Further, the Appellant proposed to arrange supply of power from alternate source through M/s. LANCO, another company, so that the Appellant's obligation under the PPA to supply power is fulfilled.

3.8 The distribution licensee (R-1) accepted this proposal for availing power from alternate source to be arranged

by the Appellant until power is scheduled from the generating plant. The distribution licensee (R-1) also confirmed that the power supplied from the alternate source will be at a tariff provided in the PPA dated 13.05.2009.

3.9 The arrangement for supply of power from the alternate source continued during the entire period of the PPA. Whenever, the Appellant was unable to generate power from its own power plant, it made arrangements for supply from alternate source.

3.10 The distribution licensee (R-1) made payment for the supplies made from the alternate source during the month of April, May and June, 2010 at the rate agreed to in the PPA. However, the distribution licensee (R-1) stopped making payments at the rate in terms of PPA to the Appellant for such supply made from 15.07.2010

and withheld an amount of Rs. 64.01 crores for supply of 336.49 Million Units during the period 16.07.2010 to 31.10.2010. During this period, the distribution licensee (R-1) did not make payment at the PPA rate but at the rate at which the Appellant was arranging power from the alternate source.

3.11 Thereafter, the Appellant filed a petition before the State Commission seeking recovery of unpaid dues for supply of electricity in terms of the PPA rate.

3.12 The State Commission by the impugned order dated 30.04.2012 disposed of the petition holding that the rates payable for the quantum of electricity supplied from alternate sources would be on the actual rates at which power was procured by the Appellant and the Appellant should not be allowed to make profit from sale and purchase of power.

3.13 Aggrieved by the impugned order dated 30.04.2012, the Appellant has filed this Appeal.

4. The Appellant has made following submissions.

4.1 The distribution licensee (R-1) by their letter dated 31.03.2010 had conveyed its consent to avail power from any alternate source until power is scheduled from the Appellant's generating station at the rate at the distribution licensee's periphery and other terms and conditions as per the PPA dated 13.05.2009. The contention of the Respondents that the letter dated 31.03.2010 envisages that the rate of supply of power at the distribution licensees periphery means the landed cost of power is devoid of any merit. Upon the plain reading of letter dated 31.03.2010 of the distribution licensee, it is clear that the words "at the rate(s) at

MSETCL periphery and other terms and conditions as per the Agreement dated 13.05.2009” have to be read as a whole. The same is also confirmed by the conduct of the distribution licensee in paying promptly for the bills of power consumed during the period April-June, 2010 as per the PPA rate and not even once raising any question over the rates.

4.2 There was modification/amendment of the original PPA dated 13.05.2009, firstly vide letters dated 28.12.2009, 03.02.2010 and 05.02.2010 and secondly vide letters dated 30.03.2010 and 31.03.2010. The first set of amendments were about rescheduling of the timelines of supply of power from earlier date of 15.11.2009 to 01.04.2010. The second amendment/modification of the agreement was with regard to the source of supply of power. The tariff, however, was not amended and remained untouched, since the same was discovered

through a transparent process of biddings in accordance with the provisions of Section 63 of the Electricity Act.

4.3 The Appellant had accepted PPA rate even when the market rate of power was much higher and the Appellant had incurred the differential cost and consequent financial loss. The distribution licensee also made payment at the PPA rate during the period April-June 2010. The distribution licensee also did not impose any penalty during the period it received power from alternate sources. Therefore, through the conduct of the parties, all the conditions of a binding agreement i.e. terms in writing and parties unequivocally acting on such terms, were satisfied by the parties. Therefore, the distribution licensee could not renege on the terms of the said agreement.

4.4 The original PPA and subsequent amendments/modifications are not hit by Section 23 of the Contracts Act, 1872 and, therefore, not unlawful. The provision of alternate source of power supply is available in the case I Standard Bidding documents for long term agreement approved by the Ministry of Power, Government of India. Even though the PPA of the Appellant is for short term, a principle which is acceptable to long term PPA can not be unlawful for short term PPA.

4.5 There can be no argument with regard to the consumer interest as the consumer interest is taken care of through a tariff determined by a transparent process of bidding.

4.6 There was no need for the approval of amendment/modification in the PPA from the State

Commission as the PPA pertained to short term procurement of power through competitive bidding which did not require the approval of the State Commission as per its tariff regulations. Moreover, the terms and conditions of the PPA are non-statutory in nature and the parties are free to deviate from the approved bidding documents, provided the same does not affect the tariff.

5. The reply submissions made by the distribution licensee (R-1) are as under:

5.1 The distribution licensee had accepted revision in schedule of supply on force majeure grounds on 14.12.2009 and again on 03.03.2010. The second approval was subject to the condition that the supply would be commenced by the Appellant from 01.04.2010. It was also pointed out in letter dated

- 03.02.2010 by the distribution licensee that penalty would be levied in terms of the PPA in the event of failure to commence supply from 01.04.2010. This was also accepted by the Appellant by an undertaking dated 06.02.2010 confirming commencement of supply from 01.04.2010 failing which penalty could be levied on them as per the terms of the PPA.
- 5.2 On 30.03.2010, just two days prior to the expected commencement of supply from 01.04.2010 as per the revised schedule, the Appellant again informed delay in commissioning their project and proposal for supply of power from alternate source to the tune of 16 MW.
- 5.3 On 31.03.2010 the distribution licensee conveyed its consent to arrange power from alternate source though not contemplated in PPA. The stand taken by the distribution licensee was *inter alia*, in spirit and sanctity

of permitting the Appellant to mitigate the penalties which may arise due to non-compliance of PPA and last minute change/no supply situation faced by the distribution licensee.

5.4 It is an admitted position that for the period April-June, 2010 the distribution licensee inadvertently paid the Appellant at the PPA rates for the power supplied from alternate sources. However, later, the distribution licensee ratified the computation after being made aware of the rates in respect of sourcing of power from the alternate source like the power exchanges. Thereafter, the distribution licensee paid the IEX/PXIL rate at its periphery or the contracted rate whichever is lower.

5.5 The distribution licensee has already made it clear in the proceedings before the State Commission that it

would make payment for the energy supplied as per the arrangement between the parties entered into in April, 2010 at actuals.

5.6 The Appellant being a generator should not gain profit by trading power, even though it did not possess a trading licensee.

6. On the above issues we have heard Ld. Counsel for the Appellant and the Respondent no.1. After taking into account the contentions of the parties, the following question would arise for our consideration:

*“Whether the Appellant is entitled to payment in respect of power supplied from alternate sources w.e.f. 01.04.2010 to 31.10.2010 at the rates agreed in the PPA for supply from the Appellant’s power plant?”*

7. We notice that the Short Term Power Purchase Agreement dated 13.05.2009 entered into between the Appellant and the Respondent no.1 based on

competitive bidding process undertaken by the distribution licensee (R-1) indicated commencement of power supply from 15.11.2009 for the period between 15.11.2009 and 31.10.2010. There is a provision for compensation by the defaulting party for default in supply by the generating company and default in off take by the distribution licensee without prejudice to the provisions of force majeure. The relevant paragraph of the PPA is reproduced below

**“4) Compensation:-**

*Without prejudice to the provisions of force majeure, if MSEDCL fails to schedule (for reasons other than transmission constraints) the capacity approved for open access for the concerned period at least to the extent of 80% in energy terms in a month, then MSEDCL shall pay compensation @ Rs.2.00/Kwh for the difference (shortage) quantity below 80%.*

*Without prejudice to the provisions of force majeure, if WPCL fails to ensure supply (for reasons other than partial/complete failure of Generator and/or operation of Generator at low LF and/or supply of power to notified customers of WPCL) the full requisitioned quantum on a daily basis on first charge basis WPCL shall pay compensation @ Rs.200 per KWh for the short fall in*

*the daily supply. In addition, the Open Access charges (beyond delivery point which is already paid or is to be paid by MSEDCL) proportionate to the short fall quantum shall also be paid/borne by M/s. WPCL.*

*In case M/s. WPCL fails to schedule the capacity approved for the Open Access for the concerned period on account of loss of generation i.e. failure of generator/transmission constraints, then M/s. WPCL shall pay compensation @ Rs.2.00/kwh for the difference (shortage) quantity below 80% in energy terms on a monthly basis. In such cases, M/s. WPCL shall provide an undertaking regarding the failure of generator and confirming that power has not been sold to a third party during the period. For the purpose of clarity, Third Party would mean party other than MSEDCL and notified customers of WPCL. The list of notified customers would be submitted by WPCL 15 days before the commencement of supply of power. This list will also specify the quantum of power which needs to be supplied to notified customers as per their agreements with WPCL. In case rescheduling is required; rescheduling will be done proportionately. This list, upon submission will become an integral part of the agreement.*

*In case WPCL schedules more than generation/installed capacity; all charges/penalties for the overscheduled quantum of power, if any, payable to MSLDC shall be paid by WPCL.*

*WPCL is liable to pay the compensation/Penalties according to the conditions mentioned in this clause only.”*

Thus, the Appellant is liable to pay compensation @ Rs. 2.00 per kWh for shortfall in quantity for reasons other than partial/complete failure of generator, etc., in the daily supply and compensation @ Rs. 2 per kWh for shortfall in quantity below 80% in energy terms on monthly basis in case of loss of generation.

8. There is no provision in the PPA for supply of power from the alternate sources in case of delay in commissioning of the power project of the Appellant.
  
9. Let us now examine the letter dated 30.03.2010 from the Appellant addressed to the first Respondent regarding their offer to arrange power from alternate sources in view of delay in commissioning of their First Unit. The contents of the letter are summarized as under:

- i) Due to some problems in the power plant like failure of Boiler Feed Pump during commissioning and trial run, the First Unit is expected to be synchronized during April, 2010 end only and it will take two weeks for stabilization and before power could be scheduled to the distribution licensee.
  
  - ii) Meanwhile, the Appellant is arranging 16 MW power from alternate sources through its trader. The distribution licensee is requested to accept this arrangement of supply and apply for grant of open access so that power could be scheduled w.e.f 01.04.2010.
10. The consent was given by the distribution licensee (R-1) to the above arrangement by letter dated 31.03.2010. The extracts of the letter are reproduced below:

*“It is indicated in your aforesaid letter 30.03.2010 that the synchronization of first unit of your plant at Wardha is expected only towards the end of April 2010 and two weeks thereafter will be required for the unit to get stabilized. You have therefore agreed to arrange supply from alternate source with effect from 01.04.2010.*

*MSEDCL hereby conveys its consent to avail power from any alternate source that may be arranged by you until power is schedule from your generating plant, at the rate(s) at MSETCL periphery and other terms and conditions as per the Agreement dated 13.05.2009 between MSEDCL and WPCL.*

*As per the consent given by you on 22.03.2010, MSEDCL had already applied to the State Load Dispatch Centre for the Open Access for supply from you Wardha plant from 01.04.2010.”*

Thus, the distribution licensee by its letter dated 01.04.2010 communicated its consent to avail power from alternate sources w.e.f. 01.04.2010.

11. Let us examine the findings of the State Commission in the impugned order dated 30.04.2012. The findings of the State Commission in the impugned order are summarized as under:

11.1 The Appellant in its letter to the distribution licensee giving offer to supply power from alternate sources did not ask for rates to be paid as per the PPA.

11.2 The rates at which the Appellant had procured power from alternate sources are much lower than the rates as per the PPA dated 13.05.2009. The State Commission has given the following table for comparison of PPA rates and market traded rates

<i>Period</i>	<i>PPA rate at delivery point paise/kWh</i>	<i>Traded Market traded rate** in paise/kWh</i>		
		<i>As per MSEDCL affidavit dated March 18, 2011</i>	<i>As per data from IEX/PXIL traded volumes for Maharashtra and Gujarat</i>	<i>As per data from IEX/PXIL on National average trading volumes</i>
<i>April 2010</i>	<i>550.00</i>	<i>534.00</i>	<i>784.29 (IEX) 738.774(PXIL)</i>	<i>788.37(IEX) 745.16(PXIL)</i>
<i>May 2010</i>	<i>550.00</i>	<i>439.00</i>	<i>455.63(IEX) 438.241(PXIL)</i>	<i>456.86(IEX) 439.37(PXIL)</i>
<i>June 2010</i>	<i>423.00</i>	<i>307.00</i>	<i>336.12(IEX) 331.39(PXIL)</i>	<i>338.91(IEX) 333.89(PXIL)</i>
<i>July 2010</i>	<i>423.00</i>	<i>408.00</i>	<i>344.25(IEX) 334.96(PXIL)</i>	<i>345.11(IEX) 335.91(PXIL)</i>

<i>August 2010</i>	<i>423.00</i>	<i>423.00</i>	<i>335.25(IEX)</i> <i>328.35(PXIL)</i>	<i>337.42(IEX)</i> <i>332.45(PXIL)</i>
<i>September 2010</i>	<i>550.00</i>	<i>347.00</i>	<i>232.07(IEX)</i> <i>249.41(PXIL)</i>	<i>232.87(IEX)</i> <i>250.05(PXIL)</i>
<i>October 2010</i>	<i>550.00</i>	<i>454.00</i>	<i>252.09(IEX)</i> <i>251.92(PXIL)</i>	<i>261.35(IEX)</i> <i>263.72(PXIL)</i>

Except for the month of April, 2010 when market trading rates were higher than PPA rates, the market trading rates in the remaining period were significantly lower than the PPA rates.

11.3 The Commission has interpreted the consent letter dated 31.03.2010 sent by the distribution licensee for supply from alternate sources to infer that “at the rate(s) at MSETCL periphery” stated in the letter implied the landed cost i.e. the rate at which the trader has sold power plus inter-State transmission losses, transmission charges, open access charges, etc. In terms of the PPA, the distribution licensee has to bear short term open access charges and losses beyond the delivery point. Thus, the rate payable for quantum of

power supplied from the alternate sources are the actual rates i.e. landed cost.

11.4 “Other terms and conditions as per the Agreement dated 13.05.2009” referred to in the acceptance letter dated 31.03.2010 from the distribution licensee implied the terms and conditions regarding delivery point, open access charges, transmission charges, transmission losses, scheduling, compensation, rebate, etc.

11.5 There is nothing on record to show that the parties agreed to amend the PPA allowing procurement of power from alternate sources. The distribution licensee’s letter dated 31.03.2010 is outside the competitive bidding process and the PPA and is a protem arrangement between the parties.

11.6 Appellant's claim for PPA rates for alternate supplies arranged through the traders is not tenable as it amounts to making undue profits on sale and purchase of energy. The Appellant is not a trading licensee and hence should not profit from sale and purchase of power.

11.7 The Commission has noted that about 60.6% of the supplies have come from alternate sources of supplies. The Commission has directed payment for supplies from alternate rates at actual rates and the supplies from the generating station of the Appellant at PPA rate.

11.8 Regarding penalty, the State Commission has held that the Appellant could not provide any document by which the Respondent no.1 agreed not to levy any penalty for the failure to affect supply from 01.04.2010. Hence the

- Commission has declined to interfere in the matter of penalty imposed by the distribution licensee.
12. We are in agreement with the findings of the State Commission that the Appellant could not be paid the PPA rate from the energy supplied from the alternate sources and the Appellant is liable to pay penalty for the shortfall in supply.
  13. Admittedly, neither the bid documents for procurement of short term supply by the distribution licensee nor the PPA had a provision for making good supplies from the alternate sources in the event of delay in execution of the power project or in case of shortfall in supplies from the power project from the contracted schedule of supply. According to the PPA, the Appellant was liable to pay compensation for the shortfall in supplies @ Rs. 2.00 per kWh.

14. The distribution licensee in deviation of the terms of PPA, accepted the offer of the Appellant to arrange power from alternate sources, through trader. We do not understand as to why the distribution licensee instead of imposing penalty on the Appellant for shortfall in supply and arranging alternate supplies on their own through the power exchange or traders had accepted the offer of the Appellant to arrange supplies from alternate sources. The distribution licensee (R-1) in their reply affidavit before the State Commission has admitted that the stand taken by them was to permit the Appellant to mitigate the penalties which may arise due to non compliance of PPA.

15. Having received a favour from the distribution licensee (R-1) to accept the supplies for alternate sources to avert imposition of penalty due to delay in

commissioning of the power plant, the Appellant could not be allowed to profit from the transaction of arranging the supplies from alternate sources. The State Commission has allowed payment for supplies from the alternate sources as per actuals. In this arrangement, the Appellant is not put to any loss on the account of procurement of power from alternate sources but on the other hand have been able to save penalty they had to pay to the distribution licensee to the extent of power supplied from alternate sources. In our opinion the loser in the whole arrangement is the distribution licensee (R1) as it had in order to avert imposition of penalty on the Appellant accepted supplies from alternate sources which in our opinion it could have arranged on its own from traders or power exchanges without taking the help of the Appellant. The Appellant being a generating company was not placed

in any way in a better position than the distribution licensee to arrange supplies from the alternate sources.

16. Ld. Counsel for the Appellant has referred to Standard Bidding Document issued by the Ministry of Power, Government of India regarding procurement of long term power through competitive bidding which had a provision for making up the shortfall in the contracted supplies by the supplier from alternate sources at the PPA rate. We feel that the provisions of the Standard Bidding Document for procurement of long term supply under case I framed by the Ministry of Power is not applicable to the present case where the Standard Bidding Document of Ministry of Power was not the basis for procurement of power by the distribution licensee for short term supplies. In the present case, the bidding document of the short term procurement on the basis of which the distribution licensee procured

power and the PPA entered into between the Appellant and the Respondent no.1 are only the relevant documents. Admittedly, there is no such clause for supply from alternate sources either in the bidding documents for short term power supply or in the PPA between the parties.

17. The impugned order indicates, that the Appellant before the State Commission had argued that the PPA dated 13.05.2009 stood novated by the distribution licensee's letter dated 31.03.2010. According to Ld. Counsel for the Respondent no.1 only some of the conditions of the Agreement i.e. payment terms, provision from alternate source were varied by their letter dated 31.03.2010.
  
18. The terms "novation" and "Alteration or Variation" have been defined in "Pollock & Mulla Indian Contract and Specific Relief Acts" as under:-

### **“Novation**

*The word ‘novation’ is used in the marginal note to the section, and is the accepted catchword for its subject matter. It has been thus defined: that, there being a contract in existence, some new contract is substituted for it either between the same parties (for that might be) or between different parties, the consideration mutually being the discharge of the old contract. Novation of a contract comprises two elements: the discharge of one debt or debtor and the substitution of a new debt or debtor. It is well settled that the parties to an original contract can, by mutual agreement, enter into a new contract in substitution of the old one.”*

### **“Alteration or variation**

*Parties to an agreement may vary some of its terms by a subsequent agreement. Mere alteration or modification of the terms of the contract are not enough, the modification must be read into and become a part of the original contract. The original terms continue to be part of the contract and are not rescinded or superseded except in so far as they are inconsistent with the modifications.”*

We agree with the contention of the Respondent no.1 that the PPA was not novated by letters dated 30.03.2010 and 31.03.2010. By these letters the PPA

was altered to the extent that the Appellant was permitted to make up the shortfall in supply by arranging power from alternate sources to meet its obligation for the purchase of averting penalty for short supply.

19. According to the Appellant, accepting and consuming power from alternate sources as well as from the Appellant's power plant and further release of payments as per PPA rates during April, May and June 2010 confirms that there existed a valid and binding Agreement between the parties. On the other hand, the Respondent no.1 contended that payments during April, May and June 2010 were released at PPA rate inadvertently and correction was made thereafter during the mid term of the duration of the PPA.

20. We feel that merely because the distribution licensee released payment for the power arranged from alternate sources at the PPA rate for three months would not give any right to the Appellant to charge the power arranged from alternate sources at the PPA rate as the distribution licensee corrected its position in July 2010 in a reasonable time during the tenure of the PPA. The Appellant could not be permitted undue enrichment by charging PPA rate for the power arranged from alternate sources at much lower price and at the same time avoid payment of penalty as per the terms of the PPA. In our opinion, the Appellant wants the cake and eat it too. In our view the payment by the distribution licensee initially for a period of three months does not amount to unequivocal acceptance of the rate for power supplied from the alternate sources at PPA rate agreed for supply of power from the Appellant's power plant.

21. We also find that the Appellant had given an offer for supply of 18 MW from alternate sources by its letter dated 30.03.2010 without indicating that the price for the same would be the PPA rate applicable for supply of power from its power plant. However, the Appellant actually supplied power much more than 18 MW offered by its letter dated 30.03.2010. Since the distribution licensee has actually accepted the power more than 18 MW from alternate sources, the distribution licensee cannot argue that their acceptance was only for 18 MW. Therefore, the State Commission has correctly recognized the actual supply from alternate sources for honoring the payment as per actuals.

22. As regards penalty for shortfall in supplies with respect to schedule, we find that the distribution licensee permitted revision in schedules of supplies twice on account of force majeure conditions caused by acts of

the Government on 14.12.2009 and 03.02.2010. The distribution licensee by its letter dated 03.02.2010 had agreed to extend the time for commencement of supply of power by the Appellant to 01.04.2010. However, due to some technical problem experienced at the power plant, the power supply from the power plant could not commence from 01.04.2010. The distribution licensee is thus, entitled to compensation for short supplies w.e.f. 01.04.2010 according to the terms of the PPA.

**23. Summary of findings.**

**The Appellant is entitled to the payment for supply from alternate sources as per the actuals as decided by the State Commission. The Appellant could not be permitted undue enrichment by charging PPA rate for the power arranged from alternate sources at much lower price and at the same time avoid payment of penalty as per the**

terms of PPA. The distribution licensee is also entitled to compensation for short supplies w.e.f. 01.04.2010 according to the terms of PPA.

24. In view of above, the Appeal is dismissed as devoid of any merits. No order as to costs.

25. Pronounced in the open court on this 8<sup>th</sup> day of April, 2013.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

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REPORTABLE/NON-REPORTABLE  
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