

**No.N/42/12**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BANGALORE**

**Dated 4<sup>th</sup> April, 2013**

- |                               |   |
|-------------------------------|---|
| 1. Sri M.R. Sreenivasa Murthy | Chairman                                  |
| 2. Sri Vishvanath Hiremath    | Member                                    |
| 3. Sri K. Srinivasa Rao       | Member (Will pronounce<br>Separate Order) |

**OP No.22/2012**

**BETWEEN :**

M/s.JSW Power Trading Company Limited  
Jindal Mansion, 5A, Dr. G. Deshmukh Marg  
MUMBAI – 400 026 ..  
*[Represented by M/s. Shridhar Prabu Associates, Advocates]*

**Petitioner**

**AND**

- 1) Power Company of Karnataka Limited (PCKL)  
1<sup>st</sup> Floor, KPTCL Building  
Cauvery Bhavan  
BANGALORE – 560 009
- 2) Mangalore Electricity Supply Company Limited  
Paradigm Plaza, A.B. Shetty Circle  
MANGALORE – 575 001
- 3) Gulbarga Electricity Supply Company Limited  
Station Road  
Gulbarga – 585 101
- 4) Hubli Electricity Supply Company Limited  
P.B. Road, Navanagar  
Hubli – 580 029
- 5) Chamundeshwari Electricity Supply Company Limited  
No.927, LJ Avenue  
New Kantharaja Urs Road  
Saraswathipuram  
Mysore – 570 009 ..

**Respondents**

*[R1 represented by Shri Arvind Kamath, Advocate, ALMT Legal and  
R2 to R5 represented by M/s.Justlaw, Advocates]*

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1) In the present Petition, the Petitioner has prayed for: (a) quashing letter No. PCKL/A12/170/2008-09/7567-72, dated 2.3.2012 (Annexure-P1) issued by the 1<sup>st</sup> Respondent requesting the Electricity Supply Companies (ESCOMs) to adjust the amount due to the 1<sup>st</sup> Respondent for the alleged shortfall in supply against the power purchase dues to it; and (b) a direction to the 1<sup>st</sup> Respondent to refund the amount of Rs.5,94,66,844/- (Rupees Five Crore Ninety Four Lakh Sixty Six Thousand Eight Hundred and Forty Four only), illegally deducted by the 1<sup>st</sup> Respondent, against the power purchase dues to the Petitioner, along with interest of 1.25% per month, from the date of deduction up to the date of payment.

2) Thereafter, on 4.9.2012, the Petitioner filed an Amendment to the main Petition, for impleading the ESCOMs, viz., MESCOM, GESCOM, HESCOM and CESC as Respondents 2 to 5 in the Petition, as they are necessary parties, and also seeking amendment of the main Prayer to read as follows :

“Direct the Respondent to refund the amount of Rs.5,94,66,844/- (Rupees Five Crore Ninety Four Lakh Sixty Six Thousand Eight Hundred and Forty Four only), being illegally deducted by the Respondent Nos.2 to 6 Distribution Companies at the behest of the 1<sup>st</sup> Respondent, against the power purchase dues to the Petitioner, along with interest of 1.25% per month, from the date of deduction up to the date of payment, in full, to the complete satisfaction of the Petitioner.”

3) On Notice, the Respondents have put in appearance through their Counsel and have filed their Objections dated 27.9.2012 and 13.12.2012. The Petitioner has also filed Rejoinders dated 11.10.2012 and 13.12.2012, respectively to the above Objections.

4) Before proceeding to decide the Petition on merits, we have considered the Application filed by the Petitioner on 4.9.2012 for amendment of the Petition for impleading all Electricity Supply Companies (ESCOMs) and also seeking amendment of the Prayer as stated in the Application. In our view, the amendment Application deserves to be allowed, as all the ESCOMs are necessary parties considering the fact that they have deducted the penalty at the instance of the 1<sup>st</sup> Respondent and they are the ones who had received electricity from the Petitioner.

5) The brief facts leading to the case are as follows :

(a) The 1<sup>st</sup> Respondent-PCKL, on behalf of all the Electricity Supply Companies (ESCOMs) in the State on 6.11.2008 (Annexure-P2) had invited bids for procurement of power in blocks of minimum of 50 MW and part thereof up to a maximum of 700 MW, from 15.11.2008 to 30.11.2008. The Petitioner submitted its Offer letter dated 10.11.2008 (Annexure-P3), offering to supply 50 MW of power during the above period at the rate of Rs.8.86 per KWhr. Subsequently, discussions took place between the Petitioner and the 1<sup>st</sup> Respondent, and on

13.11.2008 the Petitioner was asked to reduce the quoted rate and also to supply 100 MW of power.

(b) Followed by this discussion, the 1<sup>st</sup> Respondent on 13.11.2008 (Annexure-P22) directed BESCO to enter into a Contract with the Petitioner to supply 100 MW (RTC) power from 15.11.2008 to 30.11.2008 at Rs.8.80 per KWhr, subject to the terms notified in the Bid. Simultaneously, the 1<sup>st</sup> Respondent on 14.11.2008 (Annexure-P24) sent a letter to the Petitioner to supply 100 MW of power at the negotiated rate of Rs.8.80 per Unit.

(c) On receipt of a copy of the 1<sup>st</sup> Respondent's letter dated 13.11.2008 to BESCO, the Petitioner, vide its letter dated 14.11.2008 (Annexure-R1), stated that it is ready to supply 50 MW (RTC) power and it will be its earnest efforts to increase the quantum to 100 MW. In this letter, the Petitioner conveyed its agreement to supply power at Rs.8.80 per Unit and sought an order from the 2<sup>nd</sup> Respondent the same day. The 1<sup>st</sup> Respondent issued a Letter of Intent dated 14.11.2008 (Annexure-R3) to supply 100 MW of power, subject to the conditions annexed to the said Letter of Intent.

(d) The Petitioner, vide its letter dated 18.11.2008 (Annexure-P7), reiterated the statement made in its letter dated 14.11.2008 (Annexure-R1) and stated that as against the Tender offer of 50 MW, it is scheduling 65 MW, but the offer of 50 MW made in the Bid may be considered as a committed quantum. Further, the Petitioner, vide its letter dated 20.11.2008 (Annexure-P8), clarified its stand again

that its offer remains firm for 50 MW and for the remaining power, it shall make best efforts and the quantum of power shall be as per its Offer (Annexure-P3) only. Thereafter, the Petitioner supplied the power and the Respondents-ESCOMs made the payments.

(e) When things stood like this, the 1<sup>st</sup> Respondent, vide its letter dated 26.11.2011 (Annexure-P9), by way of Notice, requested the Petitioner to pay compensation for the short-supplied energy during the period from 15.11.2008 to 30.11.2008, along with interest at 15% to the ESCOMs, as mentioned therein, amounting to Rs.5,94,66,844/-. In reply, the Petitioner addressed a letter dated 29.11.2011 (Annexure-P10) to the 1<sup>st</sup> Respondent, clarifying as to why it is not liable to pay compensation as claimed by the 1<sup>st</sup> Respondent, and requesting the 1<sup>st</sup> Respondent to withdraw their claim for compensation for the alleged short-supply of power during the above period. Subsequently, the 1<sup>st</sup> Respondent, vide its letter dated 30.12.2011 (Annexure-P11) directed the Petitioner to pay compensation of Rs.5,94,66,844/- within three days from the date of receipt of the letter, failing which the 1<sup>st</sup> Respondent would adjust the same against the power purchase dues payable to the Petitioner by the ESCOMs. The Petitioner, vide its reply dated 31.12.2011 (Annexure-P12), informed the 1<sup>st</sup> Respondent that any payment default in the current supply would be considered as a default in payment and no rebate would be allowed on such payments.

(f) Finally the 1<sup>st</sup> Respondent, vide its letter dated 2.3.2012 (Annexure-P1), directed the ESCOMs to adjust the amount due to the 1<sup>st</sup> Respondent for the alleged short-fall in supply against the power purchase dues to the Petitioner and the same was deducted by the Respondents-ESCOMs.

(g) The Petitioner, vide its reply letter dated 5.3.2012 (Annexure-P13), for the reasons stated therein, wrote to the 1<sup>st</sup> Respondent requesting it to withdraw the claim for illegal compensation and to resolve the matter in a more rational manner.

(h) On behalf of the Respondents, it is submitted that the Petitioner though had initially offered 50 MW, however on discussion agreed to supply "power upto 100 MW". It is stated on behalf of the Respondent-PCKL that "the Respondent was under a bonafide belief that the Petitioner would supply 100 MW power between 15.11.2008 and 30.11.2008". Therefore, the Letter of Intent dated 14.11.2008, mentioning the quantum of power as 100 MW, was issued and this constitutes the Contract. The Petitioner having accepted the request for supply of 100 MW, cannot supply anything less than 85% of the contracted capacity, i.e., 32.640 MU, and having not supplied electricity to the said extent (the actual supply was only 23.215 MU), it is liable to pay penalty as per Clause-8 of the Terms and Conditions of the Bid and the Letter of Intent.

5) We have considered the averments made in the Petition and the Rejoinders of the Petitioner, the averments made in the Statement of Objections

on behalf of the Respondents, and the documents placed on record by the parties in support of their respective case. We have also heard the oral submissions made by the Counsel for the parties.

6) The Issue that arises for consideration and decision is :

“Whether the deduction of a sum of Rs.5,94,66,844/-made by the Respondents-ESCOMs as penalty pursuant to the 1<sup>st</sup> Respondent-PCKL's letter dated 2.3.2012 (Annexure-P1) is legal and valid?”

7) There is no dispute on the facts stated in Paragraph-4 above, as the same are culled out from the documents produced by both the parties. There is also no dispute on the fact that no formal Contract was signed between the parties. However, what is in dispute is, whether there was a concluded Contract to supply 100 MW of power or not.

8) It is contended by the Petitioner that deduction of penalty is illegal and untenable, as the Petitioner had never agreed to supply 100 MW of power on a firm basis, as alleged by the Respondents and therefore there was no concluded Contract between it and the Respondents to supply 100 MW of power. Pointing out to its various letters referred to above, the Petitioner submits that it had given firm offer of 50 MW only and anything over and above the same was on best efforts basis. Further, it is contended by the Petitioner that the 1<sup>st</sup> Respondent did not raise the claim for compensation amounting to Rs.5,94,66,844/-, during the supply period, i.e., between 15.11.2008 and 30.11.2008, or immediately

thereafter, and the same has been raised after a lapse of so many years, and therefore the claim is belated and needs to be rejected on the ground of limitation alone. The Petitioner has also contended that the deductions made by the Respondents-ESCOs are from the amounts payable against an independent and a different Contract and therefore the said deductions are illegal.

9) Per contra, the Respondents have contended that though it is true that the Petitioner's offer was initially for 50 MW, thereafter during the discussions held on 13.11.2008, the Petitioner had agreed to supply 100 MW of power and considering the agreement of the Petitioner for the same in the meeting, the Letter of Intent dated 14.11.2008 came to be issued, specifying the quantum of power to be supplied as 100 MW. As the Petitioner failed to supply 100 MW of power as agreed to in the discussion, as per Clause-8 of the terms of the Letter of Intent, the Petitioner is liable to pay the penalty to the Respondents. Therefore, the Respondents are right in levying and deducting the amount of Rs.5,94,66,844/- towards penalty and no exception can be taken for the same.

10) Before considering the factual aspects of the case and deciding whether there was a concluded Contract between the parties to supply 100 MW of power, let us notice what is the law on conclusion of a Contract under the Indian Contract Act.



11) Section 7(1) of the Indian Contract Act, 1872, states that in order to convert a proposal into a promise (Contract), the acceptance must be absolute and unqualified.

12) The Division Bench of the Hon'ble High Court of Delhi in the case of *Himachal Pradesh –Vs- M/s. Sumer Chand and Sons* in **RFA (OS) No.8/2001**, has held at Paragraph-11 that :

*“Under Section 7 of the Contract Act, in order to convert a proposal into a contract the acceptance must be absolute and unqualified. An acceptance with a variation is in effect a counter offer and not an acceptance. Absolute acceptance of an offer to result in a binding contract must extend to all the terms of the contract under negotiation. ...”*

13) The Hon'ble High Court of Madras in the case reported in **(1969) 1 MLJ 394** in the case of *The Municipal Council, ...-Vs- Pasupathi Muthuraja*, referring to an earlier decision, has observed at Paragraph-7 that:

*“To have an enforceable contract there must be an offer and unconditional acceptance. A person who makes an offer has the right of withdrawing it before acceptance, in the absence of a condition to the contrary supported by consideration. Does the fact that there has been provisional acceptance make any difference? We can see no reason why it should. A provisional acceptance cannot in itself make a binding contract. There must be a definite acceptance or the fulfillment of the condition on which a provisional acceptance is based. ...”*

14) We have examined the facts of the present case in the light of the legal position as stated above. In the present case, the 1<sup>st</sup> Respondent had called for Bids for supply of electricity in blocks of 50 MW. The Petitioner had submitted its offer for supply of 50 MW in response to the same. However, the Petitioner was called for a discussion, and during the discussion on 13.11.2008, the Petitioner was requested to reduce the rate from Rs.8.86 per Unit quoted to Rs.8.80 per Unit, and was also requested to supply 100 MW of power instead of 50 MW of power offered in the bid submitted. As a follow up of its discussion, the 1<sup>st</sup> Respondent also issued a Letter of Intent dated 14.11.2008 to the Petitioner for supply of 100 MW of power at Rs.8.80 per Unit. However, this Letter of Intent has not been accepted by the Petitioner unconditionally, so as to constitute a concluded Contract. This is clear from the letter dated 14.11.2008 (Annexure-R1) of the Petitioner written in reply to BESCO's letter dated 13.11.2008 addressed to PCKL. The said letter dated 14.11.2008 reads as follows :

*"This is with reference to offer dated 1.11.2008 submitted by JSWPTC for supply of 50 MW Round the Clock power to ESCOMs of Karnataka State & the subsequent letter dated 13.11.2008 as referred above issued by PCKL to BESCO with a copy to JWSWPTC. In this regard, it is kindly submitted as below :*

- 1. JSWPTC is ready to supply up to 50 MW Round the Clock power from 00:00 hrs of 15.11.2008 to Karnataka under subject offer.** As discussed during the meetings held on 12.11.2008, presently only up to 50 MW power is likely to be available for scheduling since the balance power was tied up and Open Access schedule booked two months back till 30.11.2008. **We would like to**

**assure that it will be the earnest efforts of JSWPTC to increase the quantum up to 100 MW shortly (from next week itself) so as to meet the deficit power requirement of your State.**

2. As a gesture of good long relationship with esteemed State of Karnataka, we **hereby agree to supply the above quantum from 15.11.,2008 to 30.11.2008 at a very special rate of Rs.8.80 per Unit** (against offered rate of Rs.8.86 per Unit in our bid dated 10.11.2008).

*In view of the above, it is requested to confirm / issue order before 4.00 P.M. today so as to enable us to commence dispatch of available power to Karnataka w.e.f. 00:00 hrs on 15.11.08."*

15) Once the Letter of Intent of the 1<sup>st</sup> Respondent is not accepted unconditionally, in our view, there was no consensus *ad idem* on the terms specified therein and consequently there is no concluded Contract on the terms of the Letter of Intent. If the Letter of Intent was accepted by the Petitioner unconditionally, in our view, concluded Contract between the parties could have come into existence. In view of the letter of the Petitioner dated 14.11.2008, the concluded Contract remains only for supply of power of 50 MW on firm basis and for additional supply of power, but on best efforts basis. The fact that the 1<sup>st</sup> Respondent never insisted upon supply of full 100 MW of power thereafter, clearly indicates that the Respondents were reconciled to the Petitioner's offer on best efforts basis and accepted whatever power over and above 50 MW was made available. If the Respondents were of the view that there is a concluded Contract for supply of 100 MW of power, they would have

protested on the short-supply of power during the supply period and brought to the attention of the Petitioner that the Contract is for full 100 MW, and any short supply will attract penalty.

16) The 1<sup>st</sup> Respondent's Counsel feebly attempted to argue that in consideration of the 1<sup>st</sup> Respondent agreeing to off-take more power, the Petitioner reduced the rate for supply of power. In our view, this argument does not find any support in the correspondence produced by the Respondents. The reply sent to the Letter of Intent by the Petitioner, extracted earlier, on the contrary, contradicts what is recorded in the Minutes of the Meeting and the Letter of Intent issued thereafter.

17) In the light of the facts and circumstances of this case, we hold that there was no concluded Contract for supply of 100 MW of power on firm basis between the Petitioner and the Respondents, and consequently, the Respondents could not have levied penalty on the ground of short-supply of power and deduct the same from the pending Bills.

18) In view of the above finding on the Contract between the parties, it is not necessary for us to deal with the other questions, including the question of limitation, raised on behalf of the Petitioner.

19) Consequently, we allow this Petition. We hold that the levy of penalty of Rs. Rs.5,94,66,844/- and deduction of the same by the Respondents from the Bills of the Petitioner is illegal and therefore the Respondents are liable to refund the same to the Petitioner within 4 (four) weeks from the date of this Order.

Sd/-  
(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

No.N/42/12

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BANGALORE**

**Dated : 4<sup>th</sup> April, 2013**

- |                               |          |   |                                    |
|-------------------------------|----------|---|------------------------------------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman | } | (Will pronounce<br>separate Order) |
| 2. Sri Vishvanath Hiremath    | Member   |   |                                    |
| 3. Sri K. Srinivasa Rao       | Member   |   |                                    |

**OP No.22/2012**

**BETWEEN :**

M/s.JSW Power Trading Company Limited  
Jindal Mansion, 5A, Dr. G. Deshmukh Marg  
MUMBAI – 400 026 ..  
*[Represented by M/s. Shridhar Prabu Associates, Advocates]*

**Petitioner****AND**

- 1) Power Company of Karnataka Limited (PCKL)  
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- 2) Mangalore Electricity Supply Company Limited  
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Saraswathipuram  
Mysore – 570 009 ..

**Respondents**

*[R1 represented by Shri Arvind Kamath, Advocate, ALMT Legal and  
R2 to R5 represented by M/s.Justlaw, Advocates]*

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1) I am generally in agreement with the facts and details of submissions brought out in the order of my colleagues. The additional facts will be described at the appropriate locations in my order. I am not in agreement with the conclusion in regard to grant of prayers of the Petitioner in the order by my colleagues. The same is being detailed hereunder.

2) As recorded in the Proceedings of the Meeting of the Committee constituted for negotiation for procurement of power by the Board of Directors of PCKL, held on 13.11.2008 (Annexure R1), it is seen that the Committee met on 13.11.2008 and contacted the representatives of M/s.JSW Energy Trading Limited, among others, for negotiating the rates offered in the bid and to finalize the rates and quantum for procuring power on short-term basis from 15.11.2008 to 30.11.2008 against the Bid Notification dated 7.11.2008. M/s.JSW Energy Trading Company Limited (Petitioner) was requested to reduce the quoted rate of rs.8.86 per Kwh and also to supply 100 MW. Reacting to the above, the Petitioner has agreed to reduce the rate to Rs.8.80 per Kwh and also agreed to supply 100 MW. The Committee decided for issue of Letter of Intent (LoI) by BESCO in favour of the Petitioner for procuring power to an extent of 100 MW round-the-clock on firm basis from 15.11.2008 to 30.11.2008 at the negotiated rate of Rs.8.80 per Kwh at the delivery point.

(a) The Petitioner itself, while submitting the list of Chronology of Events on 7.2.2013 to this Commission, had included Annexure-P-22, which was a

communication from Additional Director, PCKL to the Managing Director, BESCOM, wherein the resolution of the Board of Directors of PCKL dated 13.11.2008 and the proceedings of the Committee for negotiation held on 13.11.2008 have been included as enclosures. The contents of Annexure-P22 have not at any time been disputed by the Petitioner. On the contrary, the Petitioner itself had provided copies of the said communications, without disputing, which goes to show that it was in agreement with the recordings in terms of negotiations by the Committee with the Petitioner on 13.11.2008. Therefore, the Petitioner's admission about its commitment for supply of 100 MW at Rs.8.80 per Kwh gets amply established. This is further corroborated by the letters of the Petitioner, viz., (1) No.JSWPTC/SR/ PCKL/Nov/02/OT-870, dated 14.11.2008; and (2) No.JSWPTC/SR/ PCKL/Nov/03/OT-877, dated 14.11.2008.

(b) In its communication No.JSWPTC/SR/PCKL/Nov/02/OT-870, dated 14.11.2008, the Petitioner again referred to the letter of PCKL to addressed to BESCOM with reference No.PCKL/A1/22/2007-08/4401-11, dated 13.11.2008, wherein PCKL had requested BESCOM to place Lol on the Petitioner for 100 MW supply between 15.11.2008 and 30.11.2008 at Rs.8.80 per Kwh. By its communication, the Petitioner further assured that it would be the earnest efforts of the Petitioner to increase the quantum of 50 MW RTC from 15.11.2008 to 30.11.2008, upto 100 MW within the next week itself, so as to meet the deficit power requirement of the State of Karnataka. It also agreed to supply, as a gesture of good long relationship with the



esteemed State of Karnataka, 'the above quantum', from 15.11.2008 to 30.11.2008, at a very special rate of Rs.8.80 per Kwh (against the offered rate of Rs.8.86 per Kwh in its Bid dated 10.11.2008). In view of this, the Petitioner further requested the Respondent-PCKL to confirm / issue of order before 4 P.M. of that date itself, so as to enable it to commence dispatch of available power with effect from 00:00 hours of 15.11.2008.

- (i) Seeing the background of the communication of the Petitioner, it is evident that the Petitioner offered to increase the quantum of supply to 100 MW within a short span of time, at the same time offering a consequential rate reduction for supply of the 'above quantum' in the circumstances cited. The reduction in rate, as could be seen, has been linked by the Petitioner, in the context, for its being in a position to sell additional 50 MW of power (total 100 MW), and hence establishes - without any ambiguity - its commitment to supply 100 MW of power. The keenness of the Petitioner to get a confirmation from the Respondent for the arrangement to supply as indicated further enhances the plea of the Respondent that the Petitioner had concurred to supply 100 MW.

3) In addition to the above, the Petitioner, in its communication No.JSWPTC/SR/PCKL/Nov/03/OT-877, dated 14.11.2008, mentions that subsequent to its correspondence No.JSWPTC/SR/ PCKL/Nov/02/OT-870, dated

14.11.2008 and the subsequent discussion held on that day (i.e., on 14.11.2008) with the Managing Director, PCKL, it will do its best to supply upto 100 MW power to meet the deficit power scenario of Karnataka. It assured further that in case there is any shortfall in supply of power due to less availability from the source of supply (i.e., JSWEL Plant) it will do its best to compensate the shortfall subsequently, preferably before 30.11.2008 or latest within December, 2008 itself. It reiterated its request to issue the order immediately to enable supply commencement from that night itself, i.e., from 00:00 hours of 15.11.2008. If the intention of the Petitioner was not to supply 100 MW, there apparently was no need for it to assure to compensate the shortfall before 30.11.2008 or latest by December, 2008 itself.

- (a) This act of the Petitioner detailed above, further evidences that the Petitioner has been keen to supply 100 MW power and conveyed its intention to compensate for the shortfall in supply than 100 MW occurring, if any, before 30.11.2008, failing which latest by December, 2008.
  
- (b) From this, if one were to look into the submissions by the Petitioner later to 18.11.2008, that it was supposed to supply only upto 50 MW round-the-clock power from 15.11.2008, as offered under the tender dated 10.11.2008, which may be considered as a committed quantum and any additional power over and above 50 MW was only on best efforts basis, one can not but think that the Petitioner was only attempting in the best possible manner to justify its second thoughts on the issue. There has been

a sustained set of communications thereafter by the Petitioner to assert that it was never its intention to commit supply any quantum above 50 MW of power, which one finds it hard to get convinced, looking at the earlier actions of the petitioner.

- (c) The Petitioner has contended that the Lol dated 14.11.2008 was received by it only on 20.11.2008. Even so, from the conduct of the Petitioner in commencement of scheduling its supply from 00:00 hours on 15.11.2008, it is apparent that it must have received some form of confirmation from the Respondent to commence supply of power from 00:00 hours on 15.11.2008, because of the fact that the Petitioner had, vide its communication No..JSWPTC/SR/ PCKL/Nov/02/OT-870, dated 14.11.2008, as well as in its communication No.JSWPTC/SR/ PCKL/Nov/03/OT-877, dated 14.11.2008, insisted on issue of confirmation order before 4.00 P.M. on that day, to enable commencement of dispatch of available power with effect from 00:00 hours on 15.11.2008.
- (d) From the chronology of events and as per the available documents on record, it gets well-established that until 00:00 hours of 15.11.2008 the Petitioner was committed to supply 100 MW at the agreed rate, which becomes clear from his commitment to make good the shortfalls, if any, within November, 2008 or latest by December, 2008. Even the conduct of the Petitioner in additionally scheduling extra power, ranging from 10 MW upto 30 MW, between 16.11.2008 and 23.11.2008, reveals that it was part

of its best efforts to meet its commitment to ensure supply of 100 MW, as seen from the chronology of events.

4) In view the above, the Petitioner does not become entitled to the relief sought by it. The Petition is therefore liable to be rejected and accordingly rejected.

Sd/-  
(K. SRINIVASA RAO)  
MEMBER