

No.N/40/08

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

**Dated : 24<sup>th</sup> January, 2013**

- |                               |          |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath    | Member   |
| 3. Sri K. Srinivasa Rao       | Member   |

**OP No.26/2008**

**BETWEEN :**

Bangalore Electricity Supply Company Limited  
K.R. Circle,  
Bangalore-560 001  
(Represented by M/s. Justlaw, Advocates)

...

**Petitioner**

**AND**

1. Shamanur Sugars Ltd.,  
No.374,  
4<sup>th</sup> Main, P.J. Extension,  
DAVANAGERE – 577 002
2. Reliance Energy Trading Company Limited  
3<sup>rd</sup> Floor, Reliance Energy Limited  
Santa Cruz (East)  
MUMBAI-400 055
3. The Chief Engineer,  
State Load Despatch Centre,  
Karnataka Power Transmission Corporation Ltd.,  
No.26, Race Course Road,  
BANGALORE-560 001  
(Represented by Shri Prabhuling K. Navadgi for R1)

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**Respondents**

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**ORDER****PER SHRI M.R. SREENIVASA MURTHY, CHAIRMAN AND****SHRI VISHVANATH HIREMATH, MEMBER :**

1) Bangalore Electricity Supply Company Limited (hereinafter referred to as 'BESCOM') has filed this Petition to set aside the consent granted on 8.7.2008 by the Chief Engineer, State Load Despatch Centre (the 3<sup>rd</sup> Respondent herein) to the 1<sup>st</sup> Respondent for supply of electricity on Open Access to third parties, and for declaring that the 1<sup>st</sup> Respondent-Generating Company, M/s. Shamanur Sugars Ltd., was bound to supply power to the Petitioner in terms of the Power Purchase Agreement (PPA) dated 7.3.1998 (Annexure-A) and the Supplemental Agreement dated 5.5.2006 (Annexure-B) during the period it awaited 'NOC' for Open Access, and for issuance of a direction to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay the difference of cost incurred by it in procuring equivalent electricity from the open market.

2) The Petitioner, on 26.11.2010, filed an Application for an amendment of the Prayer to include an additional Prayer seeking a declaration that the PPA dated 7.3.1998 (Annexure-A) and the Supplemental Agreement dated 5.3.2006 (Annexure-B) were valid and binding upon the Respondents during the time 'NOC' for Open Access was awaited.

3) On Notice, Shri Prabhuling K. Navadgi, Advocate, appeared on behalf of the 1<sup>st</sup> Respondent and has filed Statement of Objections dated 2.7.2009. The Respondent has filed its objections to Amendment Application on 5.1.2011.

4) We have heard Shri Sriranga, learned Counsel for the Petitioner and Shri Prabhuling K. Navadgi, learned Counsel for the 1<sup>st</sup> Respondent. We have also considered the averments made in the Petition and the Statement of Objections, besides other material placed before us.

5) It is submitted by the Petitioner-Company that it had a Power purchase Agreement (PPA) dated 7.3.1998 with the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent was supplying electricity till 8.7.2008. It is further submitted that the 1<sup>st</sup> Respondent filed an Application dated 20.6.2008 with the 3<sup>rd</sup> Respondent for grant of NOC for Open Access in order to sell electricity to third parties. Considering this Application, the 3<sup>rd</sup> Respondent granted NOC on 5.7.2008 under the Short Term Open Access Regulations and the CERC Order dated 6.12.2007 passed in the case of M/s. Vishwanath Sugar Ltd. According to the Petitioner, grant of 'NOC' for Open Access and the termination of the PPA by the 1<sup>st</sup> Respondent were illegal, and therefore, the 1<sup>st</sup> Respondent under the PPA was bound to supply electricity to it only. Having not supplied electricity in terms of the PPA, the 1<sup>st</sup> Respondent is liable to compensate the Petitioner the difference of cost of electricity it had to purchase from other sources on account of non-supply by the Respondent, as damages. It is further submitted that the CERC Order in the case of Vishwanath Sugars Ltd., relied upon by the 3<sup>rd</sup> Respondent-

SLDC, had no application to the case of the 1<sup>st</sup> Respondent and therefore the grant of 'NOC' for third party sale was also illegal.

6) Per contra, it is submitted by the learned Counsel for the 1<sup>st</sup> Respondent that the contention of the Petitioner-Company that the Respondent was bound to supply electricity generated by it under the terms of the PPA is untenable, as the PPA, on which reliance is placed by the Petitioner, was already terminated by the 1<sup>st</sup> Respondent on 5.6.2008 and the same was not challenged by the Petitioner, till it was pointed out by the 1<sup>st</sup> Respondent in its Counter in the present Petition. According to him, once there was no PPA, the Petitioner cannot demand supply of electricity based on the terms of the terminated PPA. It is further submitted by the Counsel that the consent granted by the 3<sup>rd</sup> Respondent-Chief Engineer, SLDC was valid in the absence of the PPA, as the consent for third party sale on termination of the PPA has to be governed by the Open Access Regulations. It is further submitted by him that the relief of declaration sought by the Petitioner cannot be granted in this case, as specific performance of a Contract cannot be granted by the Courts, if it requires continuous monitoring of performance by the Court, that too after termination of the Contract. It is further submitted by him that the Agreement to supply electricity, signed by the Petitioner was only for the tariff and did not oblige the Respondent-Company to sell electricity only to the Petitioner. As regards the prayer for payment of the difference of amount, he has submitted that the prayer is vague, and therefore, the same cannot be granted.

- 7) The questions that arise for consideration Commission are:
- (1) Whether the PPA dated 7.3.1998 (Annexure-A), as amended on 5.3.2006 (Annexure-B), was subsisting on the date when the 1<sup>st</sup> Respondent applied for NOC for Open Access?
  - (2) Whether the 1<sup>st</sup> Respondent has committed a breach of Contract and is liable to compensate the Petitioner for the same?
  - (3) Whether the consent granted by the 3<sup>rd</sup> Respondent-Chief Engineer, SLDC for Open Access is liable to be set aside?

**ISSUE No.1 :**

8) To examine whether the PPA dated 7.3.1998 (Annexure-A), as amended on 5.3.2006 (Annexure-B), was valid and subsisting on the date when Respondent No.1 applied for 'NOC' for Open Access, we may necessarily have to look into the question, 'Whether the Termination of the PPA effected by Respondent No.1 on 5.6.2008 is valid and legal?' In the Termination Letter, the ground mentioned for termination of the PPA is that the Petitioner had failed to release the interest of Rs.1,89,01,695.29, accrued on account of the belated payments from April, 2002 to March, 2005. We have looked into the material placed before us to see whether there was any default in paying the interest and find that there was no interest due as claimed by the Respondent. The Respondent had earlier initiated proceedings in OP No.14/2009 for claiming the very same amount and this Commission, in its Order dated 2.11.2012, had held that:

*"10. In our view, the present Petition is liable to be rejected, as the earlier Petition, filed for the same amount of interest, was withdrawn by the Petitioner. This Commission, on 18.5.2006, has recorded in OP No.10/2006 that:*

*'Counsel for the Petitioner submits that the parties have negotiated the tariff and a separate proposal is sent by KPTCL to the Commission and in view of this he seeks permission to withdraw the Appeal. The Counsel is permitted to withdraw the Appeal in the circumstances mentioned by him.'*

*11. Pursuant to this submission, the Petitioner has signed a Supplemental Agreement dated 5.5.2006, duly modifying the rates contained in the original PPA. Once the Petitioner has settled the matter with the Respondents and withdrawn the Petition filed for claim of interest, it cannot again initiate a fresh Petition for the very same amount, on the very same cause of action.*

*12. In our view, the present Petition cannot be maintained by the Petitioner and therefore the Petition is liable to be rejected."*

Therefore, the 1<sup>st</sup> Respondent could not have terminated the PPA on the ground that the interest amount was not paid. Consequently, we have to hold that the termination of the PPA was invalid and the PPA continued to subsist, till it came to an end by efflux of time. As a result of this, the 1<sup>st</sup> Respondent was obliged to supply the electricity generated by it to the Petitioner as per the terms of the PPA. Accordingly, Issue No.1 is answered in the affirmative in favour of the Petitioner.

**ISSUE No.2 :**

9) While dealing with Issue No.1, we have held that the termination of the PPA effected by the 1<sup>st</sup> Respondent was invalid and that the PPA continued to exist till it came to an end by efflux of time. Further, we have held that the 1<sup>st</sup> Respondent was obliged to supply electricity generated by it to the Petitioner as per the terms of the PPA. Admittedly, the 1<sup>st</sup> Respondent, on the ground of termination of the PPA, has not supplied the electricity generated by it to the Petitioner and instead has sold the electricity to third parties. This act of the 1<sup>st</sup> Respondent is therefore nothing but a breach of the Contract and the 1<sup>st</sup> Respondent has to meet the consequences of the breach of Contract.

10) Section 73 of the Contract Act, which deals with the consequences of breach of Contract, provides that,

*“When a Contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the Contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the Contract to be likely to result from breach of it.*

*Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.”*

11) The term, ‘compensation’ in Contract Law signifies that which is given in recompense, an equivalent rendered. It denotes a sum of money payable to a

person on account of loss or damage caused to him by the breach of a Contract.

12) 'Breach of Contract', in law, is committed when a party refuses to perform his part of Contract. The measure of damages in Contract is compensation for the consequences which flow as a natural and capable consequence of the breach of a Contract, or in other words, which could be foreseen.

13) Section 57 of the Sale of Goods Act, 1930 provides that, "Where the Seller wrongfully neglects or refuses to deliver the goods to the Buyer, the Buyer may sue the Seller for damages for non-delivery."

14) The measure of compensation depends upon the circumstances of the case. In this case, the Agreement is to sell electricity which is 'goods'. Normally, the measure of damages when the Seller fails to deliver the goods is the difference between the Market Price of the relevant goods at the time of delivery and the Contract Price.

15) Having noticed the law on breach of Contracts and measure of damages, let us now examine the facts of this case.

16) The Petitioner in the present case has claimed a sum of Rs.17,69,98,024/- as damages for the months of July to November, 2008, on the ground that it has purchased power at a higher rate. In support of the said claim, it has produced

Annexure 'B', wherein the basis of the calculation of damages is provided. We have looked into the calculation of damages. It appears that the Petitioner has calculated the damages, not on the basis of the rate at which it has actually purchased additional power, but on the basis of the high cost rate at which it has purchased electricity from regular supply sources. We have looked into these sources. Except IEX, the other sources of power are the sources wherein the Petitioner has/had a Long-Term Contract and was purchasing at the rate fixed in the PPAs depending on the fuel used therein. These purchases of electricity by the Respondent are not comparable with the 1<sup>st</sup> Respondent's generation, as the same is bagasse-based. Further, no case has been made out by the Petitioner that it had to purchase increased quantities of power from these high cost sources as a consequence of the failure of supply from the 1<sup>st</sup> Respondent. Therefore, in our view, the basis of calculation adopted by the Petitioner for calculation of damages cannot be considered as appropriate.

17) From the details produced by the Petitioner, vide Memo dated 1.12.2010, it is further observed that only during the months of July, August, September and November, 2008, the Petitioner had made short-term power purchases at a higher rate from sources other than regular sources, which may be attributable to non-supply from the 1<sup>st</sup> Respondent to the extent of the actual power generation by the latter. Therefore, the Petitioner, in our view, can claim damages only for those months, and the measure of damages for those months has to be the difference between the PPA rate and the then prevailing market rate as per Section 57 of the Sale of Goods Act, and not at the highest cost paid

by the Petitioner as claimed. In order to determine the market rate for power, we have to go by the weighted average of the rates at which power was sold in the short-term market at that time, as there is no single market rate for power available at any given point of time. For this purpose, therefore, we have considered the weighted average of the rates of short-term bilateral transactions during the months of July, August, September and November, 2008, which was Rs.7.08 per Unit as per the CERC published data. The Petitioner, according to us, is thus entitled to damages at the difference between the market rate of Rs.7.08 per Unit and the PPA rate of Rs.3.71 per Unit of energy supplied by the 1<sup>st</sup> Respondent to third parties depriving the Petitioner of the said supply. This works out to Rs.3.37 (i.e., Rs.7.08 – Rs.3.71) per Unit, for the electricity generated by the 1<sup>st</sup> Respondent and exported to third parties during the months of July, August, September and November, 2008. Therefore, the 1<sup>st</sup> Respondent shall pay damages to the Petitioner at the rate of Rs.3.37 per Unit for the electricity generated but not supplied to the Petitioner during the months of July, August, September and November, 2008, within 6 (six) weeks from the date of communication of this Order. Accordingly, Issue No.2 is answered in the affirmative in favour of the Petitioner.

**ISSUE No.3 :**

18) The Petitioner has sought for setting aside the consent granted by the 3<sup>rd</sup> Respondent-Chief Engineer, SLDC, for Open Access in favour of the 1<sup>st</sup> Respondent, vide letter dated 8.7.2008. In view of our finding as above, we

need not go into this question. However, since the issue has been raised against the consent granted by the 3<sup>rd</sup> Respondent, we have gone into the same. In our view, the consent granted by the 3<sup>rd</sup> Respondent cannot be set aside at this length of time and also in view of the fact that the consent granted was as per the directions of the CERC and subject to this Commission's Order on the rights of the parties under the PPA. Accordingly, Issue No.3 is answered the negative against the Petitioner.

19) For the foregoing reasons and the conclusions reached by us on the material placed before us, the Petition is allowed in part in the above terms.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

**ORDER**

**PER SHRI K. SRINIVASA RAO, MEMBER:**

1) Being not in agreement with the views expressed by my colleague-Members in the Order in this case, I am detailing my views in respect of this Petition as under.

2) As the facts of the case have been detailed in the Order by my colleague-Members, I am not going into detailing the facts herein again.

3) I am also in agreement with the three Issues that have been framed in the Order, which are reproduced for reference hereunder :

(1) Whether the PPA dated 7.3.1998 (Annexure-A), as amended on 5.3.2006 (Annexure-B), was subsisting on the date when the 1<sup>st</sup> Respondent applied for NOC for Open Access?

(2) Whether the 1<sup>st</sup> Respondent has committed a breach of Contract and is liable to compensate the Petitioner for the same?

(3) Whether the consent granted by the 3<sup>rd</sup> Respondent-Chief Engineer, SLDC for Open Access is liable to be set aside?

**ISSUE No.1 :**

4) I am in agreement with the conclusion that the termination of the PPA was invalid and the PPA continued to subsist, till it came to an end by efflux of time. As a result of this, the 1<sup>st</sup> Respondent was obliged to supply the electricity

generated by it to the Petitioner as per the terms of the PPA. Accordingly, Issue No.1 is answered in the affirmative in favour of the Petitioner.

**ISSUE No.3 :**

5) I am also in agreement with the conclusion as far as Issue No.3 is concerned stating that we need not go into the question to set aside the consent granted by the Chief Engineer, SLDC (Respondent No.3) for Open Access and also that the consent granted by the 3<sup>rd</sup> Respondent cannot be set aside at this length of time, and related findings. Accordingly, Issue No.3 is answered in the negative against the Petitioner.

**ISSUE No.2 :**

6) Issue No.2 is reproduced for reference hereunder :

“Whether the 1<sup>st</sup> Respondent has committed a breach of Contract and is liable to compensate the Petitioner for the same?”

7) It has been held that the termination of the PPA by the 1<sup>st</sup> Respondent was invalid and the PPA continued till it came to an end at its normal course. It has also been held that the Respondent was obliged to supply electricity generated by it to the Petitioner as per the terms of the PPA. By supplying power to third parties under Open Access, the 1<sup>st</sup> Respondent has failed to supply the electricity generated by it – what would have been supplied to the Petitioner-BESCOM; instead it has sold the same to third parties, resulting in breach of Contract by the 1<sup>st</sup> Respondent, thereby becoming liable to meet the consequences of the said breach.

8) The Petitioner initially had prayed that the Generator and the Trader (Respondent Nos.1 and 2) were to be directed to pay to it the difference in power procurement cost for 20 Mega Watts, for the period in which power was denied to the Petitioner-Company contrary to the terms of the PPA and the Supplemental Agreement thereto. Subsequently, the Petitioner, by its Memo dated 2.12.2010, has restricted its claim of damages to be reimbursed by the 1<sup>st</sup> Respondent to Rs.17.69,98,024/-. It is submitted that during the tenure of Open Access, i.e., from July, 2008 to November, 2008, the 1<sup>st</sup> Respondent supplied power under 'STOA' and has furnished the details of day-wise energy that has been exported by the 1<sup>st</sup> Respondent during the said period. It is further submitted that throughout the Open Access period, i.e., from July, 2008 to November, 2008, the Petitioner had to purchase power from M/s.JSW, Tata Trading, GMR Trading Ltd., IEX and through UI.

9) It is submitted that the UI purchase was treated as a short-term purchase and the same was approved by this Commission in the Tariff Order of 2010. The Petitioner has submitted the details of energy drawn by it from UI, energy purchased on short-term basis from various agencies, like M/s.JSW, Tata Trading, GMR, IEX and UI, during the months of July, 2008 to November, 2008, on a monthly basis. The damages to be reimbursed by the 1<sup>st</sup> Respondent, as per the Petitioner, are Rs.17,69,98.024/-.

10) In order to deal with this Issue, it would be relevant to look into the provisions of Section 73 of the Contract Act, Breach of Contract, provision for non-delivery of goods under the Sale of Goods Act, 1930, etc., as under :

(a) The definition of the words, "compensation" and "damages", as given in P. Ramanatha Aiyer's 'The Law Lexicon' (2<sup>nd</sup> Edition, 1997), is reproduced hereunder for convenience :

**“Compensation** : An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received; recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer.” [Case Law details given.]

**“Damages** : Compensation for legal injury. As a general rule the theory upon which the law allows damages for the violation of a civil right is based upon the doctrine that where a civil injury has

*been sustained the law provides a remedy that should be commensurate to the injury sustained. The term 'damages' in clause (c) and S.630, C.P. Code, includes 'mesne profits.' (9 Cal 695.)*

*The sum claimed or awarded in compensation for loss or injury sustained (S.12, Indian Evidence Act)."*

(b) Section 73 of the Contract Act is reproduced below :

*"When a Contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the Contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the Contract to be likely to result from breach of it.*

*Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."*

(c) 'Breach of Contract' is reproduced below :

*"'Breach of Contract', in law, is committed when a party refuses to perform his part of Contract. The measure of damages in Contract is compensation for the consequences which flow as a natural and capable consequence of the breach of a Contract, or in other words, which could be foreseen."*

(d) Section 57 of the Sale of Goods Act, 1930 provides that, "Where the Seller wrongfully neglects or refuses to deliver the goods to the Buyer, the Buyer may sue the Seller for damages for non-delivery."

11) From the definition of "damages", extracted above, it could be seen that the award of 'damages' is a compensation for a legal injury, based on the doctrine that 'where a civil injury has been sustained the law provides a remedy that should be **commensurate** to the injury sustained'. [Emphasis supplied].

12) From the definition of "compensation", it could be seen that it is 'An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive **equal value for loss**; something given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; **a recompense in value**'. [Emphasis supplied].

13) All the terms used, including 'recompense', convey that the Petitioner in this case is eligible to get compensated with the equivalent amount for the damages sustained [Emphasis supplied] on account of a breach of Contract by the 1<sup>st</sup> Respondent. The definition of the word "recompense", as given in P.Ramanatha Aiyar's 'The Law Lexicon' (2<sup>nd</sup> Edition, 1997), is reproduced below :

**“Recompense.** *The meaning of the word ‘recompense’ according to the Webster’s Dictionary is –*

*(1) To give compensation to; to requite, remunerate; compensate.*

*(2) To give an equivalent for; to make up for as by atoning or requiting; to pay for.*

*(3) To return in kind; to reciprocate as by rewarding or avenging; to payback. Mool Chand v. Rulia, AIR 1963 Pun 516, 518.”*

14) It is interesting to note from the above definition that the idea of recompense in the award of damages by the Courts is also to ‘requite’, which according to the Chambers Twentieth Century Dictionary, conveys as one of its meanings, ‘to counterbalance’ as well as ‘to avenge’. Taken as a whole, this conveys the meaning that the loss or damage suffered by the injury caused by the breach committed by the Respondent-Generator has to be compensated by the Court, measure-to-measure. Accordingly, it is my considered view that the Petitioner has to be compensated pie-to-pie for the loss suffered by it – whatever be the price at which the Petitioner has procured the power that has not been supplied by the action of breach by the Respondent-Generator.

15) The Petitioner, in its Memo dated 2.12.2010 (Annexure-D), has clearly brought out that throughout the Open Access period, the Petitioner had to purchase power from various sources, including IEX and UI. It therefore boils down to the fact that the Petitioner is entitled to be compensated at whatever price he has purchased these quantum of energy – which are not purchased in the usual course by way of Long-Term Contracts; hence, the computation of

compensation should include all short-term purchases, irrespective of the price at which they are purchased.

16) What is now required to be done is to see is whether the compensation to be awarded for damages is a recompense or compensation in equivalent terms. I would like it to be clearly understood that the Petitioner is not entitled to any compensation for the energy procured by it in excess of the energy that has been denied to it and exported by the 1<sup>st</sup> Respondent at the KPTCL Periphery on third party sale. The compensation that accrues to the Petitioner shall stand restricted only to that quantum of energy that has been denied by the 1<sup>st</sup> Respondent, and not more, during the entire period of July, 2008 to November, 2008. Having said that, what remains to be determined is the admissible quantum of compensation amount to the Petitioner. This amount is the sum-total of the admissible quantum of compensation every month during the period July, 2008 to November, 2008. The rate of compensation applicable for any month between July, 2008 and November, 2008 is the difference between the Weighted Average Rate of all the short-term procurements made by the Petitioner from various sources during the respective month on account of denial by the 1<sup>st</sup> Respondent to supply the contracted energy and the respective PPA rate applicable during the same month. The amount of compensation admissible for the above month will be arrived at by multiplying the above rate (as explained in the previous sentence) by the denied quantum of energy to the Petitioner at the KPTCL Periphery during that month. The total compensation amount for the entire period of July, 2008 to November, 2008 will

thus be the sum-total of all the compensation amounts admissible during each month during the period July, 2008 to November, 2008. To reiterate, the Petitioner is eligible to be compensated only for the quantum of energy that has been exported by the 1<sup>st</sup> Respondent-Generator, computed at the KPTCL Periphery, applying the regional loss figures on the REA denoted export figure every month, obtained from the SRPC published monthly REA statements.

17) Regarding the sources of energy that have been indicated by the Petitioner in its Memo dated 2.12.2010, it is submitted that though those are from the sources with whom long-term Contracts have been entered into, they are not normally scheduled due to high variable cost and forced to schedule only at times of shortages, like in the case of the 1<sup>st</sup> Respondent not supplying energy as per the relevant PPA terms, from these costly sources to meet its requirements. I am in agreement with this from the Petitioner and accordingly am inclined to allow consideration of short-term procurement from these sources also.

18) The Petitioner shall claim compensation in terms of the directions herein within 2 (two) weeks and the Respondent is directed to make the payment within 4 (four) weeks succeeding the date of preferred claim of the damages by the Petitioner, in terms of this Order.

19) Accordingly, Issue No.2 is answered in the affirmative in favour of the Petitioner.

20) It is seen from the facts of this case that the Respondent-Generator has unnecessarily terminated a valid and subsisting PPA on a misguided premise that an interest payment was due to him from the Petitioner, although the Respondent-Generator in this Petition had itself withdrawn its earlier Petition OP No.10/2006, admitting therein that same interest dues for the same period quoted in this Petition in the context of termination of the PPA, viz., Rs.1,89,01,695/-, for the period from 1.4.2002 to 31.3.2005, have already been received by it and withdrawal of that Petition was approved by this Commission. This action of the Respondent-Generator has resulted in undue and protracted adjudication process, resulting in considerable and avoidable wastage of time and is highly condemnable in strongest of terms and I place on record my strong condemnation of the action of the Respondent-Generator. It is also to note that a related Petition, OP No.14/2009, filed by the Respondent-Generator (Petitioner in that Petition) for the same interest dues and for the same period, has been dismissed by this Commission.

21) While on this, it is also the role of the Petitioner herein to have brought this fact to the notice of this Commission at the time of filing of the Petition itself, which would have helped in considerable saving of valuable time of this Commission. The Petitioner is hereby advised to exercise extreme caution in such cases, at least in future.

22) For the foregoing reasons, the Petition is allowed in part in the above terms.

Sd/-  
(K. SRINIVASA RAO)  
MEMBER