

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 199/MP/2021

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 and Article 8 of the Power Purchase Agreements dated 29.6.2012 and 23.8.2013 entered into between the Petitioner and the Respondent, for recovery of Late Payment Surcharge on the monthly bills of the Petitioner.

Date of Hearing : 7.6.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Jindal Power Limited (JPL)

Respondent : Tamil Nadu Generation and Distribution Corp. Ltd.
(TANGEDCO)

Parties Present : Shri Deepak Khurana, Advocate, JPL
Shri Ashwini Kumar Tak, Advocate, JPL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking direction to the Respondent to pay the amounts due and payable to the Petitioner towards Late Payment Surcharge ('LPS') on account of delay in payment of Petitioner's monthly bills for the power supplied under the Power Purchase Agreements dated 29.6.2012 and 23.8.2013. Learned counsel submitted that as on the date of filing of the Petition, total outstanding LPS was Rs. 429.14 crore which has now accumulated to approximately Rs. 549 crore. Learned counsel further submitted that despite clear direction of the Commission vide Record of Proceedings for the hearing dated 22.3.2022, the Respondent has not filed reply in the matter by 11.4.2022 and has now belatedly sought extension of time vide its letter 3.6.2022. Learned counsel submitted that neither the liability of payment of LPS nor its quantification is disputed by the Respondent and therefore, the Respondent may be directed to make payment of LPS, in line with the Commission's earlier order dated 8.1.1010 in Petition No. 22/MP/2019 which has also been upheld by the Appellate Tribunal for Electricity ('APTEL') vide its order dated 4.2.2021 in Appeal No. 56 of 2020. Learned counsel further submitted that the Petitioner is also praying for an interim direction to the Respondent to make payment of 75% of the total dues forthwith.

3. In response to the specific query of the Commission regarding the Petitioner having taken any remedial actions as per the provisions of the PPAs, Rules notified by the Ministry of Power in this regard, etc., learned counsel submitted that the Letter of Credits ('LCs') furnished under the PPAs are not sufficient to meet the outstanding amount of LPS. Also, the LCs initially furnished by the Respondent were conditional and the corrective steps were taken by the Respondent only recently. As regard to the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ('LPS Rules') notified by the Ministry of Power on 3.6.2022, learned

counsel submitted that the LPS Rules would not impact the adjudicatory process initiated by the Petitioner upon filing of present Petition back in September, 2021 as the cause of action for the Petition had accrued much earlier to the date of notification of the LPS Rules. In support, learned counsel placed the reliance on the paragraphs 61, 62 and 64 of the judgment of APTEL dated 5.4.2022 in OP No. 1 of 2022 and Ors. Learned counsel added that in any case as per Rule 5 of the LPS Rules, it is the Respondent who has to take the necessary steps and communicate, in writing, the outstanding dues and number of installments in which the outstanding dues would be paid within the time specified therein.

4. Learned counsel for the Respondent, TANGEDCO submitted that the reply of the Respondent is ready and sought liberty to file the same. Learned counsel submitted that in its reply, the Respondent has, *inter alia*, indicated about the Change in Law amounts paid to the Petitioner, rectification of LCs and the severe financial difficulties being faced by the Respondent. The Petitioner's submission that the LPS Rules would not apply in the present case may not be correct as the LPS Rules specifically provide for liquidation of arrears. Learned counsel added that as such the Respondent's reply does not take into account the LPS Rules as they have been notified recently and that she may be permitted to seek necessary instruction in this regard.

5. After hearing the learned counsel for the parties, the Commission directed the Respondent to file its reply within two days. The Petitioner is at liberty to file its rejoinder, if any, within a week thereafter.

6. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**