

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.122/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 18.11 (g) of the Request for Proposal for purchase of power bearing Tender Specification No. 24/SPATC-155/2015 dated 22.12.2015 and read with terms and conditions of the Letter of intents dated 18.01.2016, 28.01.2016 and 30.01.2016 issued by Uttar Pradesh Power Corporation Ltd. to Tata Power Trading Company Ltd. seeking direction of payment of late payment surcharge on account of delay by UPPCL in honouring the invoice(s) raised by Petitioner in terms of Order dated 17.09.2018 in Petition No. 158/MP/2017 issued by this Commission.
- Date of Hearing : 18.8.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL)
- Respondents : Uttar Pradesh Power Corporation Ltd. (UPPCL) and Anr.
- Parties Present : Shri Aniket Prasoon, Advocate, JITPL
Shri Aman Sheikh, Advocate, JITPL
Shri Rishabh Bhardwaj, Advocate, JITPL

Shri Abhishek Kumar, Advocate, UPPCL
Shri Nived Veerapaneni, Advocate, UPPCL
Shri Venkatesh, Advocate, TPTCL
Shri Adityavardhan Sharma, Advocate, TPTCL
Shri Nehal Jain, Advocate, TPTCL

Record of Proceedings

During the course of the hearing, learned counsel for the Petitioner made detailed submissions in the matter. Learned counsel pointed out that despite the clear directions issued by the Commission vide order dated 17.9.2018 in Petition No. 158/MP/2017 regarding the payment of the differential amount on account of the increase in Clean Environment Cess, the Respondent, UPPCL, only made the payment towards the principal amount on 24.5.2021, i.e. after a substantial delay of 32 months from the date of the aforesaid Order and around 58 months from the date of issuance of the invoices. Learned counsel further referred to the series of meetings and correspondence exchanged between the parties to point out that the Petitioner had repeatedly taken up the issue of interest/late payment surcharge with UPPCL, and at no stage had it waived its right to claim interest/late payment

surcharge. Learned counsel also submitted that the provision of RfP specifically provided the surcharge for late payment and further placed reliance on the Commission's order dated 9.8.2023 in Petition No. 173/MP/2022.

2. Learned counsel for the Respondent, UPPCL, sought the liberty to file its affidavit in terms of the liberty granted by the Commission vide Record of Proceedings for hearing, dated 19.7.2023. Learned counsel submitted that the requisite details, including the proof of payment(s), in support of its Change in Law claim were furnished by the Petitioner only on 8.4.2021, and consequently, the Respondent made the payment on 6.5.2021. Learned counsel also submitted that relevant correspondence in the above regard has not been produced by the Petitioner and the Respondent may be permitted to produce such correspondence along with its affidavit. Learned counsel further submitted that due to the non-availability of arguing counsel, the Respondent may also be permitted another opportunity for an oral hearing to respond to the contentions of the Petitioner.

3. Learned counsel for the Petitioner submitted that despite being given multiple opportunities to file a reply and/or produce the details/correspondence as now sought, the Respondent failed to do so. Learned counsel, accordingly, urged the Commission to issue an interim direction to the Respondent, UPPCL make at least part payment of outstanding interest/late payment surcharge. In response, learned counsel for UPPCL prayed not to issue any interim direction at this stage and pointed out that the Petitioner has not made out any case for the grant of interim relief.

4. Learned counsel for the Respondent No.2, TPTCL, submitted that the Respondent has already filed its affidavit furnishing the information as called for by the Commission vide Record of Proceedings for hearing, dated 19.7.2023.

5. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent, UPPCL, to file its affidavit within a week and the Petitioner to file its response thereon, if any, within three days.

6. The commission directed the Petitioner, to furnish the following information on an affidavit on or before 28.8.2023:

(a) The date of invoices raised for Clean Environment Cess along with supporting documents w.r.t. May, 2016, June, 2016, August, 2016, and September, 2016.

(b) The date of invoices raised for LPS on Clean Environment Cess along with supporting documents w.r.t. May, 2016, June, 2016, August, 2016, and September, 2016.

(c) The decision of management taken after 27.10.2020 w.r.t. LPS and the communication made to the Respondent, TPTCL, in this regard, along with supporting documents.

(d) A copy of the agreement / documents signed with TPTCL w.r.t. subject contract.

7. The matter remained part-heard. The Petition shall be listed for hearing on **20.9.2023**.

By order of the Commission

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