

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 27/MP/2022

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 18th January, 2024

In the matter of

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 read with Power Purchase Agreement dated 01.04.2013 (as amended) executed between Sembcorp Energy India Limited and distribution companies of Andhra Pradesh for recovery of amounts wrongly deducted towards rebate and for payment of Late Payment Surcharge on delayed payments towards reimbursement of transmission charges and rebate wrongly deducted.

And

In the matter of

Sembcorp Energy India Limited,
(now known as SEIL Energy India Limited)
5th Floor, Tower C, Building No 8, DLF Cybercity,
Gurgaon-122002, Haryana

... Petitioner

Versus

1. Andhra Pradesh Power Coordination Committee,
1st Floor, APPCC Building, Vidyut Soudha,
Near Eluru Road, Gunadala, Vijayawada-520004.

2. Southern Power Distribution Company of Andhra Pradesh Limited,
19-13-65/A,
Srinivasapuram, Tiruchanoor Road, Tirupati,
Chittoor-517503, Andhra Pradesh.

3. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara,
Visakhapatnam-530013

4. Central Power Distribution Company of Andhra Pradesh Limited,
Beside Polytechnic College,
ITI Road, Vijayawada-520008

... Respondents

The following were present:

Shri Vishrov Mukerjee, Advocate, SEIL

Shri Yashawi Kant, Advocate, SEIL

Shri Damodar Solanki, Advocate, SEIL

ORDER

The Petitioner, Sembcorp Energy India Limited (now known as SEIL Energy India Limited) (“Petitioner”/“SEIL”), has filed the present Petition seeking recovery of the amount towards unlawful retention of rebate and the payment of Late Payment Surcharge (“LPS”) from Respondents/distribution licensees of Andhra Pradesh (“Respondents”/“AP Discoms”) towards rebate amount wrongfully deducted and delayed reimbursement of the transmission charges under the provisions of the Power Purchase Agreement dated 1.4.2013 entered into between the Petitioner and the Respondents (“the PPA”). The Petitioner has made the following prayers:

“(a) Direct AP Discoms (Respondent Nos. 1 to 4) to pay Rs. 7,23,55,082/- to SEIL, which were wrongly deducted as rebate from SEIL’s Monthly Bills for the period August 2016 to August 2017;

(b) Direct AP Discoms (Respondent Nos. 1 to 4) to pay Rs. 5,60,69,082/- to SEIL, towards Late Payment Surcharge for delayed payment on account of wrongful deduction of rebate amounts from the monthly energy bills for the billing period of August 2016 to July 2020;

(c) Direct AP Discoms to pay Rs. 27,18,78,207/- Crore towards Late Payment Surcharge on delayed payment of Supplementary invoices (for reimbursement of transmission charges) for the period April 2017 to August 2021;

(d) Direct AP Discoms to pay carrying cost to SEIL to be determined by this Hon’ble Commission;

(e) Direct AP Discoms to pay 75% of the outstanding dues in the interim, till the pendency of the petition; and

(f) Pass any other order or direction as this Commission may deem fit in light of facts and circumstances of the present Petition.”

Background

2. The Petitioner is a generating company within the meaning of Section 2(28) of the Act as it is engaged in the business of generation, operation, and maintenance of generating plants, including owning and operating Sembcorp Energy India Limited and Sembcorp Energy India Limited comprising 1320 MW (2x660 MW), respectively, located in the State of Andhra Pradesh.

3. On 1.4.2013, the Petitioner and the Respondents entered into a PPA for the supply of 500 MW of power for a period of 25 years. The PPA was amended on 10.4.2015, 3.5.2018, and 28.12.2020 for revision of the contract capacity amongst the Respondents. The supply of power to the Respondents under the PPA commenced on 20.4.2015.

Re: Wrongful deduction of Rebate

4. On 5.9.2016, the Petitioner raised its first monthly invoice to the Respondents for the supply of power in the month of August 2016. The due date for payment was 5.10.2016. The Respondents delayed payment of the said invoice, the last tranche of payment being made on 24.1.2017, and further proceeded to deduct the rebate from the said invoice.

5. On 25.1.2017, the Petitioner objected to the deduction of rebate from its monthly bill. However, no response was received by the Petitioner in this regard, and the Respondents continued to deduct the rebate from the subsequent monthly invoices raised by the Petitioner despite making payments beyond the Due Date.

6. On 5.6.2017, the Petitioner wrote to the Respondents that it had not received complete payments towards monthly bills for the period of supply from the months of August 2016 to February 2017.

7. On 16.5.2018, the Petitioner wrote to the Respondents that he had met officials of the Respondents on the issue regarding the incorrect deduction of rebate and had been assured that the matter would be settled amicably and the pending bills would be released soon. The Petitioner also attached details of the amounts deducted from each invoice from August 2016 to June 2017 towards the rebate.

8. On 11.10.2018, the Petitioner wrote to the Respondents regarding payments released against the energy bills for the period April 2016 to March 2018 and stated that on reconciliation, the Petitioner found that deductions had been made on account of the rebate claimed (even though payments were made beyond the due date). The Petitioner requested that the Respondents release the said amounts. Reminders in this regard were sent on 9.1.2019, 9.10.2019, and 8.4.2020.

9. On 7.10.2020, the Petitioner requested the Respondents to release the amount wrongly deducted towards rebate from their invoices for the period from August 2016 to July 2020. A reminder was also sent on 6.1.2021, in this regard.

10. On 30.3.2021, the Petitioner informed the Respondents that a total of Rs. 16.29 crore had been deducted by the Respondents towards the rebate, even though payment was released beyond the due dates. After several reminders, out of a total amount of Rs. 16.29 crore, the Respondents admitted Rs. 8.84 crore for payment on account of the rebate (pertaining to October 2017 to July 2020). Accordingly, the Petitioner requested that the Respondents process payment of the balance amount of Rs. 7.23 crore (pertaining to August 2016 to August 2017) in terms of the PPA. A reminder in this regard was also sent on 6.4.2021.

11. For the period between 9.4.2021 and 16.4.2021, the Respondents released a part amount of Rs. 8,84,75,567/- to the Petitioner towards rebate amounts wrongly deducted. The same was confirmed by the Respondents, vide letter dated 11.5.2021, wherein the Respondents intimated to the Petitioner that a payment of Rs. 8,84,75,567 has been made against the rebate claim of Rs. 16.29 crore made in the letter/invoice dated 7.10.2020. However, the Respondents did not indicate the period for which the refund of the wrongly deducted rebate amount was released.

12. On 7.9.2021, the Petitioner wrote to the Respondents seeking the release of the balance amount of Rs. 7.23 crore (pertaining to August 2016 to August 2017).

13. On 4.10.2021, the Respondents wrote to the Petitioner stating that Rs. 8.84 crore was paid towards the refund of the rebate for the period November 2017 to August 2020 and that the Petitioner's request for the payment of the balance rebate amount of Rs. 7.23 crore for the period from August 2016 to August 2017 is not possible since the claim period is beyond 3 years under the law of limitation.

14. On 8.10.2021, the Petitioner sent a notice under Article 14 of the PPA to the Respondents stating that the plea of limitation is incorrect as the Respondents denied their liability to pay a rebate only on 4.10.2021, from which date the cause of action for the purpose of limitation would commence. The Petitioner also requested that the Respondents release the balance rebate amount of Rs. 7.23 crore (pertaining to the period August 2016 to August 2017) along with a surcharge in terms of the PPA.

Re: LPS on delayed payment of transmission charges and rebate wrongfully deducted

15. On 7.8.2018, the Petitioner informed the Respondents that it had been paying the transmission charges regularly on behalf of the Respondents for the period from April 2017 to March 2018 and had submitted invoices and proof of payment to the Respondents for the reimbursement of the said charges amounting to Rs. 98.65 crore in terms of Article 4.3.1(b) of the PPA. However, the Respondents have not reimbursed the transmission charges to the Petitioner, for which the Petitioner has raised a supplementary bill dated 2.8.2018 for LPS of Rs. 6,37,18,125/- on Respondents till 31.7.2018. The Petitioner sought reimbursement of the transmission charges and LPS immediately.

16. The Petitioner raised subsequent supplementary invoices on 14.11.2019 and 13.12.2019 towards LPS on the outstanding monthly invoices, including LPS on the withheld rebate amounts.

17. The Petitioner sent various letters to the Respondents, including on 6.4.2021, 6.5.2021, 7.6.2021, 7.7.2021, 5.8.2021, and 7.9.2021, along with the details of the bills submitted during the period August 2018 till July 2021, stating that it has regularly been submitting bills towards LPS in terms of Article 8.3.5 of the PPA. However, the Respondents have not made any payments against the same.

18. On 8.10.2021, the Petitioner sent a notice under Article 14 of the PPA requesting Respondents to, *inter-alia*, release Rs. 27,18,78,207/- against the LPS for the delayed payment of reimbursement of the transmission charges, due and payable to the Petitioner and Rs. 5,60,69,082/- against the LPS on the unlawfully withheld rebate amounts.

19. In this backdrop, the Petitioner has filed the present Petition.

Submissions of the Petitioner

20. The Petitioner has mainly submitted as under:

(a) As per the PPA dated 1.4.2013 (as amended), Respondents were responsible for the payment of transmission charges (from the Injection Point onwards) and applicable RLDC / SLDC charges in relation to the respective contracted capacity under the PPA. If these charges were paid by the

Petitioner, the Respondents were to reimburse the charges to the Petitioner. (*Article 4.3.1(b) of the PPA*). 'Due Date' for the bills was the thirtieth (30th) day after a monthly invoice or a supplementary invoice was received and duly acknowledged by Respondents.

(b) The Respondents were entitled to a rebate if the payment towards the invoice was made before the due date (*Article 8.3.6 of the PPA*). If payment was released by Respondents against a monthly invoice or a supplementary invoice beyond the due date, the Respondents were to pay the Late Payment Surcharge to the Petitioner (*Article 8.3.5 and 8.8.3 of the PPA*)

Re. Petitioner is entitled to a rebate wrongly deducted by Respondents

(c) The Respondents have wrongly deducted the amount towards the rebate from the Petitioner's monthly bills for the period from August 2016 to July 2020, even though the payment was made after the due date. Such a unilateral deduction was contrary to the PPA since Respondents were not entitled to the rebate.

(d) The Respondents had admitted and acknowledged that Rs. 16.07 crore was due to the Petitioner on account of the wrongful deduction of the rebate for the period from August 2016 to July 2020. This is evident from the part-payment of Rs. 8.84 crore by Respondents during the period from 9.4.2021 to 16.4.2021 against the rebate wrongly deducted. However, the balance of Rs. 7.24 crore is still due.

(e) The Respondents accepted and admitted their liabilities towards the rebate but continued to withhold the rebate amount that was illegally and unilaterally deducted from the Petitioner's monthly bills in contravention of the PPA. This stand is established in terms of the part-payment made between 9.4.2021 and 16.4.2021 and the letter dated 11.5.2021 issued by the Respondents.

Re. Petitioner's claim for rebate is within the limitation:

(f) The Petitioner has sought to amicably resolve the issue and has repeatedly raised the issue of unilateral and wrongful deduction of the rebate with Respondents through various correspondences.

(g) The Petitioner's claim for a rebate is in the nature of a continuing cause of action. The supply of power by the Petitioner and liabilities of Respondents to make the payment towards the same are continuing obligations of the parties during the term of the PPA, and the failure of Respondents to make the complete payment to the Petitioner on a recurring basis results in a continuing cause of action.

(h) The Respondents denied the Petitioner's claim of rebate for the period from August 2016 to August 2017, vide letter dated 4.10.2021. There was no denial of liability for the payment towards rebate by Respondents to the Petitioner before the said date. Accordingly, the period of limitation commenced only on 4.10.2021 because the cause of action (denial of claim) arose on 4.10.2021.

(i) Without prejudice to the foregoing, the Respondents acknowledged and accepted that the payment is due to the Petitioner on account of the wrongful deduction of the rebate. The Respondents had further released part of the payment towards the rebate claim for the period from October 2017 to July 2020, during the period from 9.4.2021 to 16.4.2021. This position stands confirmed by Respondents, vide letter dated 11.5.2021. Since Respondents acknowledged and admitted the debt on 11.5.2021, the limitation period would commence on 11.5.2021 in terms of Section 18 of the Limitation Act, 1963.

(j) The Respondents cannot be permitted to take advantage of their own wrongs. It is trite law that where an obligation is cast on a party, and it commits a breach of such obligation, such party cannot be permitted to take advantage of such failure.

(k) Even otherwise, the Petitioner's claims are covered under Order dated 10.1.2022 passed by the Hon'ble Supreme Court in M.A. No. 21 of 2022 & batch ("SC Order dated 10.1.2022") (Para 5), in terms of which the period between 15.3.2020 and 28.2.2022 stands excluded for the purpose of limitation. Therefore, the claims have been raised within the period of limitation.

Re. Petitioner is entitled to LPS under the PPA

(l) As per Article 8.3.5 of the PPA, in case of delay in payment of the amount, the Respondents are liable to pay the LPS at the rate of 2% in excess

of the applicable SBAR per annum on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest), for each day of the delay.

(m) Since the Petitioner has yet to refund the rebate amount wrongly deducted for the period from August 2016 to August 2017 and has delayed the refund of rebate amounts for the period from October 2017 to July 2020, the Respondents are liable to pay the LPS for the non-payment and delayed payment of complete monthly bills to the Petitioner.

Hearing dated 23.6.2022

21. The Petition was admitted on 23.6.2022, and notices were issued to the parties to file their replies and rejoinders.

Hearing dated 20.10.2022

22. During the course of the hearing, the Commission observed whether the Respondents were willing to pay the LPS amount at this stage. In response, the learned counsel for the Respondents submitted that the amount towards LPS on the delayed reimbursement of the transmission charges works out to Rs. 27.87 crore and, without prejudice to their rights and contentions, the Respondents are willing to pay such an amount within a period of three (3) months. Accordingly, the Respondents were directed to pay an amount of Rs. 15 crore towards LPS for the delayed reimbursement of transmission charges within fifteen days from the date of the order, and the balance amount under this head was to be paid within two months thereafter.

Hearing dated 10.1.2023

23. During the course of the hearing dated 10.1.2023, the Petitioner pointed out that no amount has been paid by the Respondents in terms of the directions passed by this Commission in the Record of Proceedings dated 20.10.2022, and such conduct of the Respondents deserves the initiation of proceedings under Section 142 of the

Act against them for the non-compliance of the directions of this Commission. In response, the learned counsel for the Respondents submitted that the Respondents have already paid Rs. 5 crore to the Petitioner on 3.1.2023 and are seeking an additional time of two months for making the payment of the balance amount. Based on the submissions of the Respondents, the Commission directed to Respondents to make the payment of Rs. 10 crore towards the LPS for the delayed reimbursement of transmission charges to the Petitioner within 10 days from the date of the order and the balance amount under this head by the end of the first week of February 2023.

Reply of AP Discoms / the Respondents

24. The Respondents in their joint reply dated 6.1.2023 (filed on 13.1.2023) have mainly submitted as under:

(a) The Petition is not maintainable since the PPA contains an Arbitration Clause, which states that any dispute that does not relate to the determination of the tariff shall be resolved through Arbitration. In this regard, the APTEL vide common judgment dated 14.11.2022 in Appeal No. 397 of 2022 titled '*Southern Power Distribution Company of AP Limited v. APERC & Anr.*' and Appeal No. 147 of 2021 titled '*JSW Power Trading Company Ltd. v. APERC & Anr.*' has passed certain guidelines to be followed by the Regulatory Commissions in the matter of exercise of jurisdiction in the context of provision for reference of disputes to the Arbitration. However, the reply is being filed without prejudice to the said objection in the interest of expeditious adjudication.

(b) There is no acknowledgement or admission of debt by the Respondents. None of the conditions under Section 18 of the Limitation Act, 1963 (which defines acknowledgement of debt) have been fulfilled in relation to the liability of rebate amount of Rs. 7,23,55,082/-.

(c) In any case, a letter dated 4.10.2021, issued after the expiry of the limitation period does not result in any extension of the limitation period.

(d) Since the issue of refunding of the rebate amount pertains to the period of August 2016 to August 2017, any claim regarding the same should have been sought prior to August 2020. The period of limitation with respect to the Petitioner's claim expired in August 2020, whereas the Petition was filed in December 2021, i.e., 16 months after the expiry of the limitation period.

(e) Liability to pay the interest, or LPS, is founded on the doctrine of compensation and damages. The Petitioner has failed to plead or provide any evidence of damages or loss caused to it. The Petitioner has refrained from exercising its rights under the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 and the PPA to sell power to third parties to recover the outstanding dues owed to it and / or to terminate the PPA on account of breach of any provision of the PPA by the Respondents. Therefore, the Petitioner is not entitled to claim any LPS.

(f) The delay in payment of the amount directed to be paid by this Commission is on account of the precarious financial condition of the Respondents. Due to the various reasons, the Respondents are constantly running into losses, thereby causing an unintentional delay in payment of the Petitioner's outstanding dues.

Petitioner's Rejoinder

25. The Petitioner, in its rejoinder dated 10.2.2023, has mainly submitted as under:

Re. The Petition is maintainable

(a) Article 14.3.1.1(a) of the PPA provides that any dispute/claim arising out of the terms of the PPA shall be submitted to adjudication by the Appropriate Commission (this Commission in the present case). Further, in terms of Article 14.3.2.1 of the PPA, only those disputes that are not covered under Article 14.3.1.1(a) of the PPA shall be resolved through arbitration.

(b) The claims raised in the present Petition are under Articles 4.3.1(b), 8.3 and 8.8 of the PPA. Accordingly, these claims, being claims arising out of the terms of the PPA, are covered under Article 14.3.1.1(a) of the PPA. Thus, no question arises about resolving the said claims through arbitration, as claimed by the Respondents.

(c) The operation of the guidelines framed / findings of the APTEL in Judgment dated 14.11.2022 has been stayed by the Hon'ble Supreme Court vide Order dated 16.01.2023 in Civil Appeal Nos. 86-87 of 2023 titled '*JSW Power Trading Company Ltd. v. Southern Power Distribution Company of Andhra Pradesh Ltd. & Anr.*'. The stay has also been continued vide Order dated 23.01.2023 in Civil Appeal Nos. 309-310 of 2023 filed by the Respondents. Accordingly, no reliance can be placed on the Judgment dated 14.11.2022.

(d) The Respondents' submissions regarding the maintainability of the Petition are an attempt to obfuscate the merits of the matter.

Re. Petitioner's claim for rebate is within the limitation

(e) With regard to the contention of Respondents that the period of limitation with respect to the Petitioner's claim for refund of rebate deducted from the monthly invoices of August 2016 to August 2017 expired in August 2020 however, the Petition was filed only in December 2021, even assuming, without admitting, that the period of limitation expired in August 2020, the present Petition has been filed within the period of limitation in terms of the Hon'ble Supreme Court Order dated 10.1.2022 passed in *Suo Motu Writ Petition (Civil) No. 3 of 2020* in re. cognizance for extension of limitation, wherein the Hon'ble Supreme Court directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(g) The contention of Respondents that the Petitioner seeks to rely on the Respondents' letter dated 4.10.2021 as an acknowledgement of debt; but there is no acknowledgement or admission of debt in the said letter, is incorrect. The Petitioner does not seek to rely on the Respondents' letter to contend that there was acknowledgement of debt by the Respondents. On the contrary, the Petitioner has relied upon the said letter to submit that the Respondents, for the first time, denied the Petitioner's claim of rebate for the period from August 2016 to August 2017, vide letter dated 4.10.2021. There was no denial of liability for the payment towards rebate by Respondents to the Petitioner before the said date, and thus, the period of limitation would only commence on 4.10.2021.

(h) With respect to the acknowledgement of debt, between 9.4.2021 and 16.4.2021, by releasing the part payment of Rs. 8.84 crore towards the rebate claim for the period from October 2017 to July 2020, the Respondents acknowledged and accepted that payment is due to the Petitioner on account of the wrongful deduction of the rebate. This position was confirmed by Respondents vide letter dated 11.5.2021. Since Respondents acknowledged and admitted the debt on 11.5.2021, the limitation period would commence on 11.5.2021.

(i) Without prejudice, the Petitioner's claim towards the rebate is in the nature of a continuing cause of action. The supply of power by the Petitioner and liability of the Respondents to make payment towards the same are continuing obligations of the parties during the term of the PPA, and failure of the Respondents to make complete payment to the Petitioner on a recurring basis results in a continuing cause of action.

Re. The Petitioner is entitled to LPS under the PPA

(j) The payment of the LPS for delayed payment of bills in terms of the PPA is mandatory.

(k) The Respondents' contentions that the liability to pay interest or LPS is founded on the doctrine of compensation and damages and that the Petitioner has failed to plead or provide any evidence of damages or loss caused to it, are incorrect. It is trite that payment of LPS is a penalty imposed on a party for its failure to pay the bills within the stipulated time period. Therefore, there is no obligation on the Petitioner to prove any damages/losses caused to it. Further, payment of LPS is a contractual remedy envisaged in the PPA to dissuade the Respondents from delaying payment of bills beyond the due date. This has also been held by the Hon'ble Supreme Court in the case of '*Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors.*' [(2022) 4 SCC 657 (Para 176-177, 180, 190, 195)]

(l) The additional rights available to the Petitioner under the Power Supply Regulations and the PPA on account of breach of any provision of the PPA by Respondents do not take away the Petitioner's right under the PPA to claim the

LPS for delayed payment of bills. The PPA also provides the Petitioner the right to claim LPS, which is being exercised by way of the present Petition.

(m) The inability or financial difficulty of a Discom is not a reason to avoid paying the dues of the generating companies.

Hearing dated 16.8.2023

26. During the course of the hearing on 11.4.2023, the Petitioner and the Respondents made their respective submissions on the aspect of limitation in relation to the Petitioner's claims towards refund of the rebate and LPS thereon. Based on the request, the Petitioner and Respondents were permitted to file their written submissions. Accordingly, the Petitioner filed its written submissions on 27.9.2023 which have been dealt with in the subsequent paragraph of this order.

Analysis and Decision

27. After considering the submissions of the parties and perusal of the documents placed on record, the following issues arise for our consideration:

Issue No. 1: Whether this Commission has the jurisdiction to adjudicate the present Petition?

Issue No. 2: Whether the claims raised by the Petitioner in the present Petition fall within the period of limitation?

Issue No. 3: Whether the Petitioner is entitled to LPS on rebate amounts withheld by the Respondents for the period October 2017 to July 2020 and delayed reimbursement of Transmission Charges?

Issue No. 4: Whether the Petitioner is entitled to *pendente lite* interest / carrying cost on the outstanding LPS amounts?

The above issues have been dealt with in the subsequent paragraphs.

Issue No. 1: Whether this Commission has the jurisdiction to adjudicate the present Petition?

28. The Respondents have submitted that the Petition is not maintainable since the PPA contains an Arbitration Clause, which states that any dispute that does not relate to the determination of tariff shall be resolved through Arbitration. In this regard, the

APTEL vide common judgment dated 14.11.2022 in Appeal No. 397 of 2022 titled '*Southern Power Distribution Company of AP Limited v. APERC & Anr.*' and Appeal No. 147 of 2021 titled '*JSW Power Trading Company Ltd. v. APERC & Anr.*' ("JSW Judgment") has passed certain guidelines to be followed by the Regulatory Commissions in the matter of exercise of jurisdiction in the context of provision for the reference of disputes to the Arbitration.

29. *Per Contra*, the Petitioner, in its rejoinder, has submitted that Article 14.3.1.1(a) of the PPA provides that any dispute/claim arising out of the terms of the PPA shall be submitted to the adjudication by the Appropriate Commission. Further, in terms of Article 14.3.2.1 of the PPA, only those disputes which are not covered under Article 14.3.1.1(a) of the PPA shall be resolved through arbitration. The claims in the present Petition arise from Articles 4.3.1(b), 8.3 and 8.8 of the PPA. Accordingly, these claims, being claims arising out of the terms of the PPA, are covered under Article 14.3.1.1(a) of the PPA. Thus, no question arises about resolving the said claims through arbitration.

30. The Petitioner has further submitted that the operation of the findings of the APTEL in JSW Judgment dated 14.11.2022 has been stayed by the Hon'ble Supreme Court vide Order dated 16.01.2023 in Civil Appeal Nos. 86-87 of 2023 titled '*JSW Power Trading Company Ltd. v. Southern Power Distribution Company of Andhra Pradesh Ltd. & Anr.*'. The stay has also been continued, vide Order dated 23.01.2023 in Civil Appeal Nos. 309-310 of 2023 filed by Respondents. Accordingly, no reliance can be placed on the JSW Judgment dated 14.11.2022.

31. We have considered the submissions of the Petitioner and Respondents. It is relevant to mention that during the course of the hearings, the Respondents did not raise objections regarding the maintainability of the Petition or the lack of jurisdiction

of this Commission to adjudicate the present Petition. However, since the said issue was raised in the reply filed by the Respondents, we deem it appropriate to deal with it.

32. The relevant provisions of the PPA are extracted as under:

“1.1. Definitions

“Appropriate Commission” shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;

“Dispute” shall mean any dispute or difference of any kind between a Procurer and the Seller or between the Procurers (jointly) and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement.

[...]

ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.3. Dispute Resolution

14.3.1. Dispute Resolution by the Appropriate Commission

14.3.1.1. (a) Where any Dispute arising from a claim made by any party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in Tariff or determination of any of such claims could result in change in Tariff or any other claims arising out of the terms of this Agreement, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the Provisions of the Electricity Act, 2003, as amended from time to time.

[...]

14.3.2. Dispute Resolution through Arbitration

14.3.2.1. If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1(a), such Dispute shall be resolved through arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. [...].”

33. Article 14.3.1.1(a) of the PPA provides that any dispute arising from the claims arising out of the terms of the PPA shall be submitted to adjudication by the

Appropriate Commission (this Commission in the present case). Further, Article 14.3.2.1 of the PPA states that if the dispute arises out of or in connection with any claims not covered in Article 14.3.1.1(a) of the PPA, such dispute shall be resolved through arbitration.

34. It is relevant to note that the present Petition has been filed seeking recovery of the amounts towards unlawful retention of the rebate and payment of LPS towards the wrongfully deducted rebate amount and delayed reimbursement of transmission charges under the provisions of the PPA. From a perusal of the PPA, it is evident that:

- (a) 'Rebate' is governed in terms of Article 8.3.6 of the PPA;
- (c) 'Reimbursement of the transmission charges' by Respondent to the Petitioner is governed in terms of Article 4.3.1(b) of the PPA;
- (c) 'Payment of LPS' for delayed payment of monthly and supplementary bills is governed in terms of Articles 8.3.5 and 8.8.3 of the PPA, respectively.

35. Accordingly, the claims raised in the present Petition, being claims arising out of the PPA, are covered under Article 14.3.1.1(a) of the PPA, which provides that such disputes shall be adjudicated by this Commission. In the alternative, we have considered that in order to invoke any alternate dispute resolution mechanism, there must be some initial element of settlement that may be acceptable to both parties.

36. We also find that the operation of the findings and guidelines framed by the APTEL in the JSW Judgment has been stayed by the Hon'ble Supreme Court, vide Order dated 16.1.2023 in Civil Appeal Nos. 86-87 of 2023 titled '*JSW Power Trading Company Ltd. vs. Southern Power Distribution Company of Andhra Pradesh Limited & Anr.*'. The stay on the JSW Judgment was further extended, vide Order dated 23.1.2023 in Civil Appeal Nos. 309-310 of 2023 filed by Respondents.

37. The jurisdiction of this Commission is to regulate the tariffs of the generating companies derived from Section 79(1)(a) and (b) of the Act and to adjudicate the dispute under Section 79(1)(f) of the Act. The said provisions are extracted as under:

“Section 79. (Functions of Central Commission): --- (1) The Central Commission shall discharge the following functions, namely:

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

[...]

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

38. In terms of the scheme of the Act, Section 79(1)(a) empowers the Commission to regulate the tariffs of the generating companies owned or controlled by the Central Government. Section 79(1)(b) of the Act provides that this Commission shall have the jurisdiction to regulate the tariff of a generating company if it has a composite scheme of generation and sale in more than one State. Under Section 79(1)(c), the Commission has jurisdiction to regulate the inter-State supply of electricity; under Section 79(1)(d), the Commission has the power to determine the tariff for inter- State transmission of electricity; and under Section 79(1)(f) of the Act, the Commission has the power to adjudicate a dispute involving a generating company or transmission licensee in respect of Section 79(1)(a) to (d) of the Act. The word used is “involving” a generating company or a transmission licensee in a case to be brought before this Commission for the adjudication of a dispute under Section 79(1)(f) of the Act. In other words, if one of the parties to the dispute is a generating company or transmission licensee and the dispute can be related to any of the functions under Section 79(1)(a)

to (d) of the Act, the case for adjudication of such a dispute shall lie before this Commission.

39. The expression “composite scheme” and the jurisdiction of this Commission have been explained by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC & Ors.* [(2017) 14 SCC 80], as under:

*“22. The scheme that emerges from these sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in clauses (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in clauses (a), (b) and (d), and “intra-State” in clause (c). **This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. **This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.*****

.....

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a “composite scheme”. This makes it clear that the expression “composite scheme” does not have some special meaning — it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.”

40. As per the above findings of the Hon'ble Supreme Court, it is observed that if under a scheme, there is generation or sale of electricity in more than one State, it is covered under the expression “composite scheme” and is consequently under the jurisdiction of this Commission.

41. In the present case, we observe that the Petitioner's Project supplies power to the States of Andhra Pradesh and Telangana under the PPA dated 1.4.2013 and to the State of Telangana under another Power Supply Agreement dated 18.2.2016. In addition, the Petitioner is also supplying power to the States of Gujarat and cross-border supply to Bangladesh. Thus, the Petitioner's project fulfils the criteria of the 'composite scheme' under Section 79(1)(b) of the Act as elucidated by the Hon'ble Supreme Court in the Energy Watchdog Judgment. We also note that the issue of jurisdiction post re-organisation of the erstwhile State of Andhra Pradesh stands settled in terms of the Hon'ble Supreme Court's Order dated 4.2.2020 in Civil Appeal No. 3788-3790 of 2019 titled '*Eastern Power Distribution Co. of Andhra Pradesh Ltd. vs. GMR Vemagiri Power Generation Ltd. & Ors.*', in which the Petitioner was also a party, wherein the Hon'ble Supreme Court held as under:

"4. As the controversy involves State of Andhra Pradesh as well as the State of Telangana and ultimate effect is going to be on more than one State, considering the provisions contained in Section 105 of the Andhra Pradesh (Reorganization) Act, 2014, CERC is appropriate authority to hear and decide the dispute. In the facts and circumstances of the case, we find no ground to interfere with the decision of the High Court."

42. Accordingly, we find no merit in the objections raised by the Respondents that the claims raised in the present Petition shall be resolved through arbitration and hold that this Commission has the jurisdiction to adjudicate the present Petition.

43. The issue is answered accordingly.

Issue No. 2: Whether the claims raised by the Petitioner in the present Petition are barred by the limitation?

44. The Respondents have submitted that the claims raised by the Petitioner towards the rebate and LPS for the period from August 2016 to March 2017 are barred by the limitation. The Respondents have submitted that the cause of action with respect to the alleged non-payment of the amount withheld towards the rebate arises

on the date of the issuance of each invoice. Since the cause of action arose on various dates between August 2016 and March 2017, the limitation period expired on various dates between August 2019 and March 2020. However, the Petition was instituted by the Petitioner on 21.12.2021, i.e., more than three years after the first cause of action arose in favour of the Petitioner under the invoices raised for the months from August 2016 to March 2017.

45. The Respondents have further contended that the Hon`ble Supreme Court Order dated 10.1.2022 in *Suo Moto Writ Petition (C) No. 3 of 2020* applies only to those claims where the limitation period has ended during the period from 15.3.2020 to 28.5.2022. Therefore, the claims raised by the Petitioner are not covered by the Hon`ble Supreme Court Order. Further, there is no acknowledgement or admission of debt by Respondents and in any case, the letter dated 4.10.2021, having been issued after the expiry of the limitation period does not result in any extension of the limitation period. Accordingly, as per the provisions of the Limitation Act, 1963, the reliefs that have been claimed after three years are barred by limitation.

46. *Per Contra*, the Petitioner has submitted that the claims raised by the Petitioner are within the period of limitation. The Petitioner has submitted that the cause of action with respect to the non-payment of the rebate amount will not arise on the date of issuance of the invoice but from the date when payment was made against the said invoice with the deduction of rebate. The cause of action cannot arise on the due date (i.e., the 30th Day) since the deduction of the rebate was made upon part payment of the monthly bills. Therefore, the period of limitation with respect to the Petitioner's claim for rebate for the period from August 2016 to August 2017 and LPS thereon would have expired on:

(a) Scenario-1: Since the cause of action arose on 11.5.2021 (i.e., date of acknowledgement of debt when Respondents made part-payment of the outstanding amount), the period of limitation would expire on 10.5.2024.

(b) Scenario-2: Since the cause of action arose on 4.10.2021 (i.e., the date when the Respondents for the first time denied their liability to pay), the period of limitation would expire on 3.10.2024.

(c) Scenario-3 (i.e., as per the Respondents): Since the cause of action arose in August 2017, the period of limitation would have expired in August 2020. However, in terms of the SC Order on limitation, the period from 15.3.2020 till 28.2.2022 stands excluded from the purview of limitation.

47. The Petitioner has submitted that in all the above scenarios, the claims raised in the present Petition, which was filed on 29.12.2021, are within the period of limitation. Even otherwise, the Petitioner's claim for unlawful retention of the rebate is a continuing cause of action. Further, the Respondents' failure to pay LPS also constitutes a "continuing breach", giving rise to a fresh cause of action every day till the breach continues. Thus, there exists a continuing cause of action. In this regard, the Petitioner has placed reliance on the Judgment dated 2.11.2020 passed by the APTEL in Appeal No. 10 of 2020 and batch titled '*Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd.*' ("Udupi Judgment") and the Order dated 9.8.2023 passed by this Commission in Petition No. 173/MP/2022 titled "*Sembcorp Energy India Limited v. Andhra Pradesh Power Coordination Committee & Ors.*" (Para 27-28).

48. We have considered the submissions of the Petitioner and Respondents on the aspect of limitation. We note that the Respondents have raised the issue of limitation only with respect to the Petitioner's claim for the release of the rebate wrongly deducted for the period from August 2016 to August 2017 and the payment of LPS thereon.

49. In so far as the Petitioner's claim for release of a rebate wrongly deducted by Respondents is concerned, the following is noted:

(a) On 25.1.2017, the Petitioner informed the Respondents that they had incorrectly deducted a rebate from the Petitioner's invoice dated 5.9.2016. The Respondents did not respond to this communication, but continued to deduct the amount towards the rebate from the subsequent monthly invoices raised by the Petitioner despite making payments beyond the due date.

(b) On 5.6.2017, the Petitioner wrote to Respondents that the Petitioner had not received the complete energy invoice amount for the period of supply from August 2016 to February 2017 and requested them to provide details of the deductions and release the balance amount at the earliest.

(c) On 9.1.2019, the Petitioner wrote to Respondents regarding the payment released against energy bills for the period from April 2017 to March 2018 and reiterated its demand of releasing amounts incorrectly deducted towards rebates.

(d) On 9.10.2019, the Petitioner wrote to the Respondents, stating that even though the payments made by Respondents against the bills raised in financial years 2016-17 and 2017-18 were made beyond the due date, which was not extended, the Respondents have deducted amounts towards the rebate from the Petitioner's bills. Accordingly, the Respondents were requested to release the amount at the earliest.

(e) On 7.10.2020, the Petitioner requested the Respondents to release the amount wrongly deducted towards the rebate, amounting to Rs. 16.29 crore, from the Petitioner's bills for the period from August 2016 to July 2020.

(f) From 9.4.2021 to 16.4.2021, the Respondents released part amount of Rs. 8.84 crore, out of Rs. 16.29 crore to the Petitioner towards rebate amounts wrongly deducted.

(g) On 11.5.2021, the Respondents intimated to the Petitioner that a payment of Rs. 8.84 crore has been made against the Petitioner's claim of a rebate of Rs. 16.29 crore made in the letter/invoice dated 7.10.2020.

(h) On 4.10.2021, the Respondents intimated to the Petitioner that Rs. 8.84 crore was paid towards the refund of the rebate for the period from November 2017 to August 2020 and that the Petitioner's request for the payment of the balance rebate amount of Rs. 7.23 crore for the period from August 2016 to August 2017 is not possible since the claim period is beyond three years under law of limitation.

50. It is evident from the above that on 11.5.2021, the Respondents acknowledged and accepted that payment is due to the Petitioner on account of the wrongful deduction of rebate and released part payment of Rs. 8.84 crore to the Petitioner towards the rebate claim for the period from October 2017 to July 2020. Since the Respondents acknowledged and admitted the debt on 11.5.2021, the limitation period of 3 years would commence from 11.5.2021 and would have ordinarily expired on 10.5.2024. As the present Petition was filed on 29.12.2021, we observe that the Petitioner's claim for rebate is within the period of limitation.

51. We note that even otherwise, the APTEL in the Udupi Judgment has held that the period of limitation for claims will be governed by Article 113 of the Limitation Act (Part X: Suits for which there is no prescribed period), under which the limitation period shall be calculated as three years from the date on which the "right to sue accrues" or the "cause of action" arises. Relevant extracts of the Udupi Judgment are extracted as under:

"175. The argument that Article 25 occurring in Part-I of the Schedule to Limitation Act, 1963 applies to the present dispute involving specific issue of LPSC itself is wrong. There is no specific limitation period specified for claiming LPSC in Schedule to the Limitation Act, 1963. Accordingly, even in cases where there is no running account, the period of limitation for LPSC claims will have to be governed by Article 113 of Limitation Act, 1963 (Part X- Suits for which there is no prescribed period), which provides the limitation period as three years computed from the date on which the "right to sue accrues" which is same as the date on which the "cause of action" arises.

176. The chronology speaks for itself. The respondent Udupi Power has kept the ESCOMs informed since 2011 about the amount of LPSC payable by them at the end of each financial year, due to delay in payment of monthly bills. Even on 01.04.2016 and 01.07.2017, Udupi Power raised consolidated bills for LPSC for the period from

11.11.2010 till 31.03.2016 and from 11.11.2010 till 31.03.2017 respectively. It was only on 05.06.2018 that PCKL/ESCOMs, for the first time, disputed their liability to pay LPSC. It is on that date (05.06.2018) that the right to sue PCKL/ESCOMs effectively accrued in favour of Udupi Power.”

52. Although the findings in the Udupi Judgment were challenged before the Hon'ble Supreme Court in Civil Appeal No. 838 of 2021 titled '*Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd.*'; however, vide Order dated 8.2.2022, the Civil Appeal was dismissed on the ground that there was no substantial question of law that merited consideration.

53. Relying upon the foregoing principle laid down in the Udupi Judgment, this Commission has passed similar findings in the Order dated 9.8.2023 in Petition No. 173/MP/2022 titled "*Sembcorp Energy India Limited v. Andhra Pradesh Power Coordination Committee & Ors.*" (Para 27-28). Accordingly, in the present case, it was only on 4.10.2021 that the Respondents, for the first time, denied their liabilities towards the release of the rebate amount wrongly deducted for the period from August 2016 to August 2017. Prior to 4.10.2021, there was neither any challenge/dispute to the invoices raised by the Petitioner nor any denial of liabilities by Respondents. Therefore, the cause of action (i.e., the right to sue) arose on 4.10.2021. Since the period of limitation commenced on 4.10.2021, the limitation period of 3 years would have expired on 3.10.2024. As the present Petition was filed on 29.12.2021, we observe that the Petitioner's claim for the rebate is within the period of limitation.

54. Notwithstanding the above, even if we proceed to accept the contention of the Respondents, in Paras 10(v) and 14 of the reply, that the cause of action with respect to the Petitioner's claim for refund of rebate deducted from the monthly invoices of August 2016 to August 2017 arose in August 2017 and thus, the period of limitation expired in August 2020, but the Petition was filed on 29.12.2021. Even then, we observe that the Petitioner's claims would still be within the period of limitation in view

of the Hon`ble Supreme Court Order on the extension of the limitation period on account of the Covid-19 pandemic.

55. By way of Order dated 10.1.2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020 in re. Cognizance for Extension of Limitation, the Hon`ble Supreme Court excluded the period from 15.3.2020 till 28.2.2022 from the purview of limitation in all petitions/applications/suits/appeals/all other proceedings. Additionally, the Hon`ble Supreme Court had further granted a period of 90 days from 1.3.2022 notwithstanding the actual period of limitation, for claims wherein limitation expired between 15.3.2020 to 28.2.2022. Relevant findings of the Hon`ble Supreme Court in the Order dated 10.1.2022 are extracted as under:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, **it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

56. Accordingly, even considering the Respondents' contention that the cause of action arose in August 2017 and the limitation expired in August 2020, we observe that the claims raised by the Petitioner in the present Petition are within the period of limitation since:

(a) The period from 15.3.2020 till 28.2.2022 is excluded from the purview of limitation in terms of the Hon`ble Supreme Court Order dated 10.1.2022.

(b) Further, the period of limitation would have stood extended to 90 days from 1.3.2022, i.e., till 1.6.2022.

(c) Given that the present Petition was filed on 29.12.2021, the Petitioner's claim has been raised within the period of limitation.

57. The Petitioner has claimed an amount of Rs. 7,23,55,082/- towards wrongfully withheld rebate from the Petitioner's monthly bills for the period from August 2016 to August 2017. The amount has not been disputed by the respondents. Accordingly, the Respondents are liable to pay the amount of Rs. 7,23,55,082/- wrongfully withheld towards rebate from the Petitioner's monthly bills for the period from August 2016 to August 2017 within a month of this Order.

58. Since we have already observed, in the foregoing paragraphs, that the principal claim for rebate withheld for the period from August 2016 to August 2017 would fall within the period of limitation, we observe that the claim for LPS on the rebate amount withheld by Respondents is not barred by the limitation.

59. It is noted that the Petitioner has additionally pleaded that its claims are in the nature of a continuing cause of action and, as such, the bar of limitation will not apply. However, since in the aforesaid paragraphs, we have already held that the claims raised by the Petitioner are within the period of limitation, we do not find any need to separately deal with the above submission in the present case. This issue is answered accordingly.

Issue No. 3: Whether the Petitioner is entitled to LPS on rebate amounts withheld by the Respondents for the period October 2017 to July 2020 and delayed reimbursement of the transmission charges?

60. The Petitioner has submitted that in terms of Articles 8.3.1 and 8.8.2, read with Article 1.1 of the PPA, the Respondents are required to pay monthly bills and supplementary bills within 30 days from the date of raising the said bill (Due Date).

Further, in terms of Article 8.3.5 (re. monthly bills) and Article 8.8.3 (re. supplementary bills), in case of delay in payment of the amount due under the PPA, the Respondents are liable to pay the LPS at the rate of two per cent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest), for each day of the delay.

61. The Respondents have contended that payment of LPS is compensatory in nature, and consequently, in terms of Sections 73 and 74 of the Contract Act, the Petitioner is required to prove damages or loss caused by delayed payment by the Respondents in order to substantiate its LPS claim. The Respondents also contended that since the Petitioner has refrained from exercising its rights under the Power Supply Regulations and the PPA to sell power to third parties to recover the outstanding dues owed to it and/or to terminate the PPA on account of breach of any provision of the PPA by the Respondents, the Petitioner is not entitled to claim any LPS. However, the Respondents did not press these submissions in the final hearing held on 16.8.2023.

62. We note that a similar objection was raised by the Respondents in Petition No. 173/MP/2022 filed by the Petitioner before this Commission, wherein, vide Order dated 9.8.2023, this Commission has observed as under:

“38. We have considered the submissions of the Petitioner and the Respondents and perused the case law relied on by the parties. In our view, LPS is a contractual right that arises upon default in payment of Invoices within the due date. The intent behind incorporating the LPS clause in an agreement is to enforce/encourage timely payment of bills within the stipulated time. The rate of LPS is also provided in the agreement to avoid the time-consuming exercise of assessing the losses of individual power generating companies by reason of late payment of bills. We are also of the view that accepting the Respondent’s contentions would lead to placing an additional obligation/burden on the Petitioner to prove damages, which is not contemplated under the current statutory framework or the legal regime. Accordingly, we are of the opinion that the Petitioner is not required to prove damages on account of non-payment/delayed payment of invoices by the Respondents.

[...]

42. The Respondents have also contended that the Petitioner is taking advantage of the LPS provision without taking mitigating measures. The Petitioner could have terminated the Purchase Orders due to non-payment of Invoices or curtailed the power supply and sold the excess power to third parties on account of non-payment by the Respondents. We find that the foregoing contention is devoid of merit. The availability of additional rights, including termination, does not preclude the exercise of other available rights by the Petitioner.

43. Since we have already held that the Petitioner's LPS claims in respect of Batch 1 and Batch 2 Invoices are within the period of limitation, the Petitioner is entitled to outstanding LPS for the delay on the part of the Respondents in making payments towards Energy Charges under these Invoices. The Petitioner has indicated the outstanding LPS amount at Rs. 26,31,84,557/- for the supply of power during the period from 17.9.2018 to 30.11.2018 under POs 1 & 2. Even though the Respondents have not disputed the said computation in their reply, the Petitioner and the Respondents shall reconcile the amount within 15 days of this Order and thereafter make the payment of the aforesaid outstanding LPS amount within a month."

63. Article 8.3.5 of PPA provides as under:

"In the event of delay in payment of a Monthly Bill by the Procurer(s) beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer(s) to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay."

64. In view of the above, the submissions of the Respondents regarding the payment of LPS do not merit any consideration. Accordingly, we observe that the Respondents are liable to pay the LPS to the Petitioner in terms of Article 8.3.5 of the PPA.

65. The Petitioner has indicated the outstanding LPS amount at:

(a) Rs. 6,42,59,274/- towards wrongfully deducted rebate amount for the billing period from August 2016 to August 2017 (as on 31.8.2023);

(b) Rs. 1,36,93,877/- towards rebate for the period from September 2016 to July 2020 amounting to Rs. 8.84 crore, which was paid by the Respondents to the Petitioner between the period from 9.4.2021 to 16.4.2021; and

(c) Rs. 27,18,78,207/- towards delayed payment of supplementary bills for reimbursement of transmission charges for the period April 2017 to November 2021.

66. We note that in terms of our directions in the ROPs dated 20.10.2022 and 10.01.2023, the Respondents have already deposited the full amount of Rs. 27,18,78,207/- towards the LPS for the delayed reimbursement of transmission charges. Accordingly, the Petitioner and the Respondents shall reconcile the amount of remaining LPS amount within 15 days of this Order and thereafter make the payment of the aforesaid outstanding LPS amount within a month. The issue is answered accordingly.

Issue No. 4: Whether the Petitioner is entitled to *pendente lite* interest / carrying cost on the outstanding LPS amounts?

67. The Petitioner has submitted that it is entitled to *pendente lite* interest / carrying cost on the outstanding LPS amount that is yet to be paid by the Respondents or was paid during the pendency of the present Petition in terms of the directions passed by this Commission. The Petitioner requested that the Commission issue appropriate directions with respect to payment of interest on outstanding LPS on the following:

(a) Interest on outstanding LPS on rebate amounts for the period from August 2016 to August 2017;

(b) Interest on outstanding LPS on rebate amount for the period from September 2016 to July 2020; and

(c) Interest on LPS on the reimbursement of the transmission charges for the period from April 2017 to November 2021.

68. *Per Contra*, the Respondents have merely stated that the Petitioner is not entitled to any carrying costs/interest in respect of its claims.

69. It is relevant to note that this Commission, in the Order dated 9.8.2023 passed in Petition No. 173/MP/2022, has held that the Respondents are liable to pay interest on the outstanding LPS claims to the Petitioner, as under:

“46. We have considered the submissions made by the parties. Admittedly, the LPS claims of the Petitioner pertaining to the period from 21.1.2019 till 10.1.2020 under POs 1 & 2 are yet to be paid by the Respondents, and in the foregoing paragraphs, we have issued directions to the Respondents to make the payments within a month from the date of this order. Accordingly, the question arises as to whether there can be any direction for awarding interest on the LPS till the date of its actual payment. We notice that a similar issue had come up for consideration before the APTEL in Appeal No. 386 of 2019, titled Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Anr. The said appeal was filed by the appellant, Maharashtra State Electricity Distribution Company Limited (MSEDCL), on being aggrieved by the direction of MERC to pay the penal interest on the outstanding Delayed Payment Surcharge to the wind power generator. The said direction was contested by MSEDCL on various grounds, including that it amounts to interest on interest (double penalty), that the penal levy is against the provisions of the agreement, etc. However, by rejecting such ground, **the APTEL, vide judgment dated 20.9.2021, upheld the direction of MERC to levy interest on the Delayed Payment Surcharge. The aforesaid judgment of APTEL was challenged before the Hon’ble Supreme Court by Civil Appeal No.6440 of 2021, wherein the Hon’ble Supreme Court, while vacating the directions given by APTEL (by Para 45) for the financial affairs of MSEDCL to be examined and for appropriate measures to be taken in such regard by the State Commission, disposed of the appeal, declining to interfere with the above- mentioned decision on its merits, by order dated 2.3.2022.**

47. In view of the aforesaid judgment of the APTEL, which has been upheld by the Hon’ble Supreme Court, the contention of AP Discoms that there cannot be any interest on the outstanding LPS cannot survive. Moreover, as observed by the APTEL in the said judgment, if such contention of AP Discoms is accepted, it would lead to a patently unfair and absurd situation wherein defaulting parties, i.e. AP Discoms in the present case, could simply avoid meeting their undisputed payment commitment towards LPS for the delayed payment of energy charges under the POs and thereafter, not paying the interest thereon despite such dues having remained outstanding for a considerable period (as noted, LPS liability pertains to the period from 21.1.2019 to 10.1.2020), which ultimately compelled the Petitioner to initiate the present legal proceedings for recovery of its legitimate dues. Accordingly, in the facts and circumstances of the present case and balancing the interests of the consumers and the generators, we find it proper to award the interest on the outstanding LPS dues under POs 1 & 2 at the actual rate of interest paid by the Petitioner for arranging working capital funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per the 2019 tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest. Thus, the Respondents shall also be liable for interest (at the rate specified above) on the outstanding LPS from the 30th day from the date of the respective LPS invoices till the date of the Order. The Petitioner and the Respondents shall reconcile the amount of interest on LPS within 15 days of this Order and thereafter make the payment of the interest within 30 days.

48. In view of our findings, the Respondents, AP Discoms, shall make the payment towards the outstanding LPS along with interest thereon calculated in terms of the above, Further, in case the payments are not made within the timeline specified (15 days for reconciliation and 30 days thereafter) the provision of Late Payment Surcharge in the PPA would kick in.”

70. In view of the foregoing, we find it proper to award the interest on the outstanding LPS dues at the actual rate of interest paid by the Petitioner for arranging working capital funds (supported by an Auditor’s Certificate) or the rate of interest on working capital as per the 2019 tariff Regulations or the LPS rate as per the PPA, whichever is the lowest. Thus, the Respondents shall be liable for interest (at the rate specified above) on the outstanding LPS from the 30th day from the date of the respective LPS invoices until the date of the Order.

71. In view of our findings, the Respondents shall make the payment towards the outstanding LPS along with interest thereon calculated in terms of the above. Further, in case the payments are not made within the timeline specified (15 days for reconciliation and 30 days thereafter) the provision of LPS in the PPA would kick in.

72. This issue is addressed accordingly.

73. Petition No. 27/MP/2022 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson