

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 307/MP/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 17th July, 2025,

In the matter of

Petition under Section 79(1)(f) for adjudication of dispute on the issue of Payment of Interest on Delayed Payment by the Respondent.

And

In the matter of:

Shree Cement Ltd.

Bangur Nagar, Post Box No. 33,
Beawar 305901, Rajasthan

..... Petitioner

VERSUS

- 1. Telangana State Power Coordination Committee,**
VidyutSoudha, Khairatabad,
Hyderabad-500 082.
- 2. Southern Power Distribution Company of Telangana Ltd.,**
6-1-50, Mint Compound,
Hyderabad-500 063.
- 3. Northern Power Distribution Company of Telangana Ltd.,**
H.No. 2-5-31/2, VidyutBhawan,
Nakkalgutta, Hanamkonda,
Warangal-506 001

...Respondents

Parties present:

Ms. Swapna Seshadri, Advocate, SCL
Ms. Harsha V Rao, Advocate, SCL
Ms. Aishwarya Subramani, Advocate, SCL
Shri D. Abhinav Rao, Advocate, Telangana Discoms
Shri H Raghav, Advocate, Telangana Discoms

ORDER

The Petitioner, Shree Cement Ltd. ('SCL'), has filed the present Petition under Sections 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act')



seeking adjudication of dispute on the issue of payment of interest on delayed payment of power purchase cost by the Respondents on the electricity supplied by the Petitioner to the Respondents in terms of the Purchase Orders dated 16.11.2018 & 27.4.2019. The Petitioner has made the following prayers:

- “(a) Hold and direct that the Respondent is required to pay the delayed payment surcharge payable to the Petitioner in terms of the PPA and remit an amount of Rs. 43,74,65,422/- as on 02/06/2023 as per the Statement attached in Annexure B to the Petition;*
- (b) Direct the Respondents to pay carrying cost at the rate of 15% per annum of the delay in payment of the late payment surcharge by the Respondent computed till the date of actual payment;*
- (c) Direct the Respondents to remit the amounts due and payable on time in terms of the Purchase Orders;*
- (d) Direct the Respondent to pay the costs of the present petition; and*
- (e) Pass such other further order(s) as the Commission may deem just in the facts of the present case.”*

Submission of the Petitioner

2. Brief particulars of the Project of the Petitioner, tied-up capacities, and the various arrangements entered into for the supply of power from the Project, etc., are as under:

S. No.	Particulars	Details
1.	Location of the Project (s)	Ajmer, Rajasthan.
2.	Project Details	Total Capacity: 300 MW (150 MW X 2); Thermal Power Station
3.	Power Supplied to	Various arrangements entered into for the sale of electricity to (i) Punjab Discoms, (ii) State of Tamil Nadu, (iii) BYPL, (iv) DIAL, (v) IEX, (vi) Nepal Electricity Authority, (vii) Telangana Discoms
4.	Concerned Purchase Orders details	Purchase Order dated 16.11.2018 (15.1.2019 to 30.4.2019 for 200 MW) Purchase Order dated 27.04.2019 (1.7.2019 to 31.3.2020 for 280 MW)

3. The Petitioner has mainly submitted as under:

- (a) The Petitioner is a generating company within the meaning of Section 2(28) of the Act, *inter alia*, having a CTU connected 300 MW (150 MW X 2) generating unit at Bangur Nagar, Ajmer District, Rajasthan. The Respondents

(being Government of Telangana entities) are licensees operating under the provisions of the Act, operating in the State of Telangana. Respondent No. 1 is a coordinating agency for the purchase of power by the distribution licensees, being Respondents No. 2 and 3 in the State of Telangana.

(b) The Respondents had issued Purchase Orders dated 16.11.2018 and 27.4.2019 for the procurement of power from the Petitioner from its CTU connected 300 MW (2X150 MW) generating units located at Ajmer District, Rajasthan to the delivery point located at Telangana State periphery. The relevant details of the Purchase Orders issued by Telangana Discoms are as under:

S. No.	Date of Purchase Order	Period of Supply	Quantum of Supply
1.	16/11/2018	15/01/2019 to 30/04/2019	200 MW
2.	27/04/2019	01/07/2019 to 31/03/2020	280 MW

(c) During the contract period from 15.1.2019 to 30.4.2019 and from 1.7.2019 to 31.3.2020, apart from supplying power to Telangana Discoms, the Petitioner had also supplied surplus power to other parties as well, namely Punjab Discoms, State of Tamil Nadu, BYPL, DIAL, IEX and Nepal Electricity Authority from its CTU connected 300 MW (2X150 MW) Thermal Power Station thereby constituting generation and sale of power in more than one State and thus making it an inter-State transaction.

(d) The above-referred Purchase Orders of Telangana Discoms provided for the terms of payment, including but not limited to the billing cycle, timeline for payment, rebate in case of timely payment, as well as consequences of delay in making payment. In terms of the Purchase Orders, the payment was required to be made by the Respondents within 30 days from receipt of the seller's monthly energy bills by the Respondents, failing which the Respondents were required to pay the Late Payment Surcharge (LPS) at the rate of 1.00% per month.

(e) The electricity was supplied by the Petitioner to the Respondents in terms of the Agreement(s) between the parties. The bills were raised by the Petitioner for the electricity supplied at the tariff rate(s) as provided for in the Agreement(s). However, there has been a substantial delay of 568 days in the payment to be made by the Respondents on the invoices/bills raised by the

Petitioner. Thus, the Respondents were liable to pay the interest at the rate of 12% per annum for the delay in the payment, as per the terms of the Purchase Order(s). There is a substantial amount of interest on account of delayed payment, which is due and payable, which is Rs. 43,74,65,422/- as on 2.6.2023.

(f) The Petitioner has been continuously following up with the Respondent in relation to the amount due and payable through its letters dated 2.7.2020, 21.7.2020, 7.4.2021, and 2.6.2023. However, no response was received from the Respondent in this regard.

(g) Subsequently, Respondent No. 1, vide its letter dated 15.12.2020, invited the Petitioner to a meeting scheduled on 21.12.2020 to discuss compensation payable by the Telangana Discoms under the Purchase Orders dated 274.2019. During the meeting held in the office of the Chairman & Managing Director, both parties agreed that all outstanding payments towards energy and compensation bills would be cleared within 30 days, provided the Petitioner granted a 2.5% discount on the compensation amount and a full waiver of the Late Payment Surcharge (LPS). This understanding was confirmed by the Petitioner via letter dated 21.12.2022 (Letter No. 633), which also stated that if Respondent No. 1 failed to settle the dues within the stipulated 30 days, the Petitioner would no longer be bound to offer the discount or waive the surcharge.

(h) In reference to the Purchase Order dated 16.11.2018, the Petitioner, through Letter No. 632 dated 21.12.2020, informed that no discount would be offered on the compensation amount but agreed to waive the Late Payment Surcharge, subject to full payment of the compensation by Respondent No. 1 within 30 days. The Petitioner also stated that failure to make the payment within this period would nullify the waiver. Thereafter, the Petitioner vide its letter dated 16.1.2021 requested Respondent No.1 to release the 100% amount corresponding to outstanding payments as the discount/waiver period of 30 days was coming to an end. However, despite the continuous reminders, the Respondent did not clear the dues within 30 days from 21.12.2020, and resultantly, the Petitioner withdrew the above-stated offer and communicated the same vide letter dated 23.2.2021.

(i) The PPA/PO provides for the due date to be 30 days upon receipt of the invoices. However, the Respondents have invariably delayed in payment of

invoices, resulting in substantial loss and prejudice to the Petitioner. Further, the Respondents also do not pay the interest amount due and payable in terms of the PPA/PO. An amount of Rs. 43,74,65,422/- as on 2.6.2023 is due and payable by the Respondents towards overdue interest, which the Respondents have failed to pay.

(j) The Respondents are liable to compensate the Petitioner for the delay in payment of the LPS along with the interest/carrying cost till the time the amounts due and payable are fully paid to the Petitioner.

Proceedings before the Commission

Hearing dated 28.11.2023

4. The matter was admitted, and notices were issued to the Respondents permitting them to file their respective replies on the maintainability as well as on merits. During the course of the hearing, the learned counsel for the Petitioner reiterated the submissions made in the Pleadings. In response to the specific query of the Commission on the aspect of jurisdiction, the learned counsel submitted that during the contract periods i.e. 15.1.2019 to 30.4.2019 and 1.7.2019 to 31.3.2020, apart from the supplying power to the Telangana Discoms, the Petitioner also supplied its surplus power to other parties, namely, Discom(s) of Punjab, Tamil Nadu, BYPL, IEX, and Nepal Electricity Authority from its CTU connected 300 MW Thermal Power Station located in the State of Rajasthan thereby constituting generation and sale of power in more than one State. Learned counsel also added that even without considering the above transactions, the supply of power to Telangana Discoms under the Purchase Orders, in relation to which the dispute has arose, is inter-State transaction and as per the ratio laid down by the Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, [(2017) 14 SCC 80], only this Commission can have the jurisdiction to entertain the dispute arising out of such inter-State transaction.

5. Learned counsel for the Respondents, Telangana Discoms, objected to the maintainability of the Petition and pointed out that as per Clause 13 of Purchase Order(s), the parties have agreed that any dispute arising out of the Purchase Orders will be adjudicated by the Telangana State Electricity Regulatory Commission only.

6. The Petitioner, vide Record of Proceedings for the hearing dated 28.11.2023, was directed to file the documents/PPAs establishing the composite scheme of the generating station. In pursuance of the above directions of the Commission, the Petitioner vide affidavit dated 19.1.2024 has placed on record the documents for establishing the composite scheme of the generating station. The documents *inter-alia* include Regional Energy Accounts issued by the Northern Regional Power Committee for January 2019 dated 20.8.2019, PPAs between the Petitioner and Noida Power Company Limited for short-term supply of power across various periods from January – June 2019 and Lols between the Petitioner and other entities i.e. GMR Energy Trading Limited, TANGEDCO & PTC India for onward sale of power including the Nepal Electricity Authority, for establishing the composite scheme of the generating station.

Reply of the Respondents

7. Pursuant to the liberty granted by this Commission, Respondent No.1, Telangana State Power Coordination Committee ('TSPCC'), Respondent No.2, Southern Power Distribution Company of Telangana Ltd. ('SPDCL') and Respondent No.3, Northern Power Distribution Company of Telangana Ltd. ('NPDCL') vide their common reply dated 30.1.2024, have mainly submitted as under:

(a) The Energy Bills (weekly) were already paid to the Supplier/Petitioner, in terms of the respective purchase orders, and there is no cause of action to file the present petition. The present Petition has been filed by the Petitioner on 8.8.2023 for the claims which have admittedly arisen in the year 2018-19, and

the same are ex-facie barred by limitation. Thus, there has been a gross delay on the part of the Petitioner, and therefore, the present Petition deserves to be dismissed *in limine* on the ground of limitation.

(b) The present Petition is not maintainable before this Commission on the ground of lack of jurisdiction and the same deserves to be dismissed *inter-alia* for the reasons that the appropriate forum for adjudicating the present dispute is the Telangana State Electricity Regulatory Commission (Ld. TSERC) only, and therefore, the present petition is liable to be dismissed on the ground of lack of jurisdiction. In this regard, the Petitioner has placed reliance on the APTEL's Judgment passed in *Southern Power Distribution Company of AP Limited vs. Andhra Pradesh State Electricity Regulatory Commission and Anr.*, (Appeal No. 397 of 2022).

(c) Clause 13 of the Purchase Orders clearly provides that "*Any disputes arising out of the Purchase order shall be adjudicated by the TSERC only*". In terms of the clear and unambiguous clause in the Purchase Orders, this Commission lacks the jurisdiction to adjudicate the present Petition.

(d) The present Petition is ex facie barred by limitation. The Hon'ble Supreme Court in the case of *Andhra Pradesh Co-ordination Committee V/s LANCO Kondapally Power Ltd.*, [(2016) 3 SCC 468], has held that the Limitation Act, 1963 is be applicable to proceedings before the Electricity Regulatory Commissions exercising the adjudicatory functions Section 86(1) (f) of the Act, which is akin to the powers of the present Commission under Section 79(1)(f) of the Act. The present Petition under Section 79(1)(f) was filed on 8.8.2023, which is ex-facie barred by limitation in terms of Articles 25 and 58 of the Limitation Act, 1963, which read as under:

Article Sl. No.	Description of Suit	Period of Limitation	Time from which period begins to run
25	For money payable for interest upon money due from the defendant to the plaintiff	Three Years	When the interest becomes due
58	To obtain any other declaration	Three years	When the right to sue first accrues

(e) The Petitioner has claimed the LPS in respect of energy bill payment as well as open access bill payment by clubbing the two Purchase Orders placed

on different dates. Furthermore, admittedly, all the invoices against which the Petitioner is claiming LPS were raised in the year 2019, and the limitation period for claiming the LPS expired in the year 2022. As per the terms of the Purchase Orders, the delayed payment surcharge was leviable from the 31st day of non-payment of the bill, and the cause of action, if any, to file the present Petition would begin to run from the date when the right to sue first accrues, i.e., in the year 2019. Hence, the period of limitation (3 years) for claiming the LPS has already expired in the year 2022. Therefore, the present Petition, which was filed on 8.8.2023, is *ex facie* barred by limitation and deserves to be dismissed *in limine*.

Rejoinder of the Petitioner

8. The Petitioner, vide its rejoinder dated 11.3.2024, has mainly submitted as under:

Re: Limitation

(a) The Respondents have erroneously contended that the claim for late payment surcharge is barred by limitation since the invoices against which the late payment surcharge is being claimed were raised in 2019, and hence the limitation period expired as of 2022. However, the above contention is incorrect. The supply of power between the parties ended only on 31.3.2020. This is a case of an executory contract where a running account is maintained, and the accounts have to be settled only upon termination of the agreement between the parties. The last date for payment for power purchase pertained to May 2020, and the actual last against that invoice was made only on 25.3.2021. Hence, the claim for late payment surcharge arose only on 25.3.2021 when the Respondents made payment of the invoice amount without the late payment surcharge. Hence, the claim of the Petitioner for late payment surcharge is not barred by limitation.

(b) Only after the termination of the power purchase agreement between the parties, the accounts for late payment could have been finally settled, and the invoices raised. In any event, the due date of the last invoice for late payment surcharge was 16.4.2021, and this Petition was filed on 8.8.2023, which is well within the limitation period of 3 years. The dispute arises/limitation starts running from the due date for payment only, and hence the present Petition is

within limitation. The right to sue accrued to the Petitioner only upon non-payment by the Respondents on the due date of the invoice for the late payment surcharge. Further, the period from 15.3.2020 to 29.2.2022 has been excluded for the purposes of limitation on account of the orders passed by the Hon'ble Supreme Court due to the COVID-19 pandemic. Therefore, in any event, there can be no question of limitation in the present case.

Re: Jurisdiction

(c) The Petitioner, vide its affidavit dated 22.2.2024, has demonstrated that during the contract periods from 15.1.2019 to 30.4.2019 and from 1.7.2019 to 31.3.2020, in addition to supplying power to the Telangana Discoms, the Petitioner also supplied surplus electricity to multiple other entities, including the Discoms of Punjab and Tamil Nadu, BYPL, DIAL, IEX, and the Nepal Electricity Authority. This pattern of supply across multiple states constitutes the generation and sale of electricity in more than one state, thereby qualifying the transaction as an inter-state sale.

(d) The reliance placed by the Respondents on the decision in the case of *Southern Power Distribution Company of AP Limited v. Andhra Pradesh State Electricity Regulatory Commission and Anr.* (APL No. 397 of 2022). The case involved a dispute between a trading licensee and the discoms, wherein, for the purposes of the said sale by the trading licensee and the distribution licensee, the sale was intra-State. Therefore, *inter se* those parties, the transaction was an intra-state transaction since the delivery point, according to their contract, was the southern regional periphery. How the trading licensee brought electricity to the state had no correlation to the contract in issue in that case. However, the instant Petition is a dispute between the generator and the purchaser where the power plant is located in Rajasthan and the consumer is in Telangana. Hence, in light of the settled law laid down in *Energy Watchdog v Central Electricity Regulatory Commission & Ors.* ((2017)14SC C 80). the instant transaction formed a composite scheme and falls within the jurisdiction of the Central Commission.

(e) The issue involves the tariff terms and conditions for the supply of electricity by the generator to the distribution licensee. The expression regulate in Section 79(1)(b) has been held to be of wide import, and the expression

composite scheme has been held to be mere generation and sale of electricity in more than one State. This Commission vide order dated 1.1.2024 in *Solairepro Urja Private Limited v NTPC Limited & Ors. (Petition No. 176/MP/2019)*, has held that 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 it is enough that generating companies have, in any manner, a scheme for the generation and sale of electricity, which must be in more than one State.

(f) In the case of *Uttar Haryana Bijli Vitran Nigam Limited & Others v. Central Electricity Regulatory Commission & Others (Appeal No. 97 of 2014)*, the Appellate Tribunal for Electricity ('APTEL'), in its judgment dated 7.4.2016 has held that the supply of power to more than one state from the same generating station of a generating company, *ipso facto*, qualifies as 'Composite Scheme' to attract the jurisdiction of the Central Commission under Section 79 of the Act.

(g) Further, it is a settled position of law that parties can neither vest nor take away jurisdiction vested in a court by law.

Hearing dated 9.9.2024

9. During the course of the hearing, learned counsel for the Petitioner made detailed arguments on the issues involved in the matter. However, learned proxy counsel for the Respondents prayed for an adjournment and requested to list the matter on another date for the submissions of the Respondents. Considering the request of the learned counsel for the Respondents, the matter was adjourned.

Hearing dated 14.1.2025

10. During the course of the hearing, the learned counsel for the Respondents, Telangana Discoms, prayed for a short adjournment. Learned counsel for the Petitioner, as such, did not oppose the said request but prayed that the matter may be listed at the earliest. Considering the request of the learned counsel for the Respondents, the matter was adjourned.

Hearing dated 8.4.2025

11. During the course of the hearing on 8.4.2025, the learned counsel for the Petitioner briefly reiterated the submissions made in the Petition and added that, contrary to the averment made by the Respondents, the claims of the Petitioner are not time-barred. Learned counsel pointed out that the last payment against the invoice was made by the Respondents only on 25.3.2021, and hence, their claim for late payment surcharge arose only on the said date when the Respondents made the payment without the late payment surcharge.

12. Learned counsel for the Respondents, Telangana Discoms, submitted that the Respondents have already filed their reply, which may be considered by the Commission. Considering the submissions made by the learned counsel for the parties, the Commission permitted both sides to file their respective written submissions, if any. Subject to the above, the matter was reserved for order.

13. Pursuant to the above liberty granted by the Commission, the Petitioner and the Respondents, in their written submissions dated 17.4.2025 and 9.4.2025, respectively, have reiterated their submissions, and the same are not repeated here for the sake of brevity.

Analysis and Decision

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

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

Issue No. 2: Whether the Petitioner's claim for LPS is barred by limitation?

Issue No. 3: Whether the Petitioner is entitled to LPS?

Issue No. 4: Whether the Petitioner is entitled to interest on the outstanding LPS amounts till the actual date of payment?



We now proceed to discuss the above issues and examine the claims of the Petitioner.

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

15. At the outset, the Respondents have submitted that the present Petition is not maintainable before this Commission on the ground of a lack of jurisdiction. They have placed the reliance on the judgement of APTEL in *Southern Power Distribution Company of AP Limited vs. Andhra Pradesh State Electricity Regulatory Commission and Anr.*, Appeal No. 397 of 2022 and submitted that in the light of the clause(s) in the Purchase Orders and the law laid down by the APTEL in the said Judgment, the appropriate forum for adjudicating the present dispute is the Telangana State Electricity Regulatory Commission (TSERC) only.

16. *Per Contra*, the Petitioner has submitted that the power supply was an inter-state transaction since its plant is located in Rajasthan and the Procurer is in the State of Telangana, and in light of the settled law laid down in *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80], the instant transaction formed a composite scheme and falls within the jurisdiction of the Central Commission.

17. We have considered the submissions made by the parties. As rightly pointed out by the Petitioner, the sale of electricity under the concerned Purchase Orders was indeed an inter-state transaction since the generating station of the Petitioner is located in the State of Rajasthan and the Procurers were in the State of Telangana. Further, during the supply period of 15.10.2019 – 30.4.2019 and 1.7.2019 – 31.3.2020 under the Purchase Orders, the Petitioner supplied the power not only to Telangana Discoms but also to Discoms of Punjab, Tamil Nadu, BYPL, DIAL, IEX, and Nepal Electricity Authority from its CTU connected 300 MW (2X150) Thermal Power Station. As has been explained by the Hon'ble Supreme Court in *Energy Watchdog v. CERC*

and Ors. (2017) 14 SCC 80, the State Commission's jurisdiction extends only to where the generation and supply take place within the State and the moment generation and sale take place in more than one State, the Central Commission becomes the Appropriate Commission under the Act. The relevant extract of the aforesaid judgment reads 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."

18. Undeniably, the sale of electricity under the Purchase Orders entailed the generation and sale of electricity in the more than one State - the generating station being located in the State of Rajasthan and the Procurers in the State of Telangana - therefore, as held by the Hon'ble Supreme Court in above judgment, the jurisdiction of the State Commission is only where the generation and supply takes place within the State. Besides, as noted above, the generation station of the Petitioner, at the relevant period, was also supplying the power to the various Discoms located in

multiple States and had a composite scheme of generation and supply of electricity in more than one State. Given that the dispute, as brought up in the present Petition pertains to the inter-state transactions, this Commission has the necessary jurisdiction to entertain the present Petition in light of the ratio laid down by the Hon'ble Supreme Court in Energy Watchdog Judgment.

19. The reliance placed by the Respondents on the APTEL's Judgment in *Southern Power Distribution Company of AP Limited v. Andhra Pradesh State Electricity Regulatory Commission & Anr.* (APL No. 397 of 2022) is misplaced, as in the said case, the grievance arose out of an agreement between a trading licensee and the distribution licensee. The generating company was not even a party to the said proceedings, and hence, findings rendered by the APTEL in the said judgment do not apply to the present case. It is also well settled that conferment of jurisdiction is a legislative function and it can neither be conferred on a court or tribunal with the consent of parties nor by a Superior Court or tribunal. Hence, the parties cannot, even by agreement, confer the jurisdiction on the State Commission when, as per the provisions of the Act, the jurisdiction vests with the Central Commission.

20. Issue No. 1 is decided accordingly.

Issue No. 2: Whether the Petitioner's claim for LPS is barred by limitation?

21. The Respondents have submitted that the declaration prayed for by the Petitioner that it is eligible for payment of the LPS is clearly time-barred. The present Petition under Section 79(1)(f) was filed on 8.8.2023, which is *ex-facie* barred by limitation in terms of Articles 25 and 58 of the Limitations Act, 1963. All the invoices against which the Petitioner is claiming an LPS were raised in the year 2019, and the limitation period for claiming the LPS expired in the year 2022. In terms of the Purchase Orders, the delayed payment surcharge was leviable from the 31st day of

non-payment of the bill, and the cause of action, if any, to file the present petition would begin to run from the date when the right to sue first accrues, i.e., in the year 2019. Hence, the period of limitation (i.e., 3 years) for claiming the LPS has already expired in the year 2022.

22. Whereas, the Petitioner has submitted that the contention of the Respondents as regards the claims/reliefs claimed being barred by limitation is erroneous and untenable. The supply of power between the parties ended only on 31.3.2020. This is a case of an executory contract where a running account is maintained, and the accounts have to be settled only upon termination of the agreement between the parties. The last date for payment for power purchase pertained to May 2020, and the Respondents made the corresponding payment, excluding the LPS, only on 25.3.2021. Hence, the claim of the Petitioner for LPS is not barred by limitation. The due date of the last invoice for LPS was 16.4.2021, and this petition was filed on 8.8.2023, which is well within the limitation period of 3 years.

23. We have considered the submissions of the Petitioner and the Respondents on the limitation and find that the said objection, as raised by the Respondents, is misconceived. Pertinently, the APTEL in the Udupi Judgment (*Appeal No. 10 of 2020 and batch titled Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd.*) as regards the claim for the LPS being a 'continuing wrong' has held that a "continuing wrong" includes a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. Further, the APTEL has held that every time a breach is committed, the aggrieved party gets a fresh cause of action to invoke appropriate judicial proceedings and that the default of the distribution licensee to pay the LPS partakes the character of a continuing breach as contemplated

under Section 22 of the Limitation Act. Relevant extracts of the Udupi Judgment are as under:

*“207. We uphold the submission that, in the facts and circumstances presented before us, the elements of “continuing breach” are satisfied. Indisputably, there have been breaches of the contract on account of the non-payment of regular monthly bills and invoices towards infirm power and LPSC by the ESCOMs in terms of the PPA as well as Regulations. **Each ‘breach’ by the ESCOMs resultantly burdened Udupi Power with additional working capital cost till it gets paid by the ESCOMs. As such, the breach creates a continuing source of injury, thereby satisfying the first element of ‘continuing breach’. Since ESCOMs have consistently defaulted in paying charges and LPSC, there has been a continuous and recurring disobedience and non-compliance of applicable law. The ‘breach’ being recurring, the second element of ‘continuing breach’ is satisfied. There is no obligation on the part of Seller to specifically claim LPSC by raising invoices since neither Regulations nor PPA envisage anything but its accrual which has to be automatic.***

*208. For the foregoing reasons, we uphold the submission of the second respondent that the default of ESCOMs in paying against **monthly tariff bills as well as LPSC partakes the character of a “continuing breach” as contemplated under Section 22 of the Limitation Act, 1963. Thus, “a fresh period of limitation begins to run at every moment of the time during which the breach continues”. Since the breach continues on account of continued refusal to discharge liability towards LPSC, a fresh cause of action is constituted so long as the breach is recurrent and continues.***”

24. Hence, as per the ratio laid down by the APTEL in Udupi Judgment, the failure of Respondents to discharge their liability towards the LPS partakes the character of a continuing breach, which gives a fresh cause of action so long as the breach is recurrent and continues, and thereby, such claims of the Petitioner cannot be held time-barred under the limitation period. Accordingly, the plea of bar of limitation as raised by the Respondents is not tenable.

25. This issue is decided accordingly.

Issue No. 3: Whether the Petitioner is entitled to the payment of LPS?

26. The Petitioner has submitted that there was a substantial delay in the payment by the Respondents against the invoices/bills raised by the Petitioner in terms of the Purchase Orders. As per Clauses 4 & 8 of the Purchase Orders, in case the Respondents fail to pay within 30 days of the receipt of invoices, they are liable to pay

the LPS at the rate of 1% per month. The Petitioner has also submitted that the Respondents have not even disputed its claim for the delayed payment surcharge, but have only failed to pay the same.

27. The Purchase Orders dated 16.11.2018 & 27.4.2019 of Telangana DISCOMS provided for the following terms of payment and LPS:

“2. Billing cycle

Weekly bills may be raised provisionally by sellers for the energy delivered at Telangana State (TS) Periphery based on RLDC schedules, duly considering PoC Withdrawal Losses. For the purpose of raising of weekly bills, the month shall be divided into four parts i.e., from 00:00 hrs of 1st of the month to 24:00 hrs of 8th, from 00:00 hrs of 9th to 24:00 hrs of 15th, from 00:00 hrs of 16th to 24:00 hrs of 23rd, from 00:00 hrs of 24th to 24:00 hrs of last day of the month.

[...]

4. Payment Terms

The due date for payment would be 9th day after the date of receipt of fax/ email bill subject to receipt of original invoice within due date. In case the due date is a Bank holiday in Telangana State, the next working day would be treated as due date. The bill received before 2:00 PM on a working date at TSPCC will only be considered as date of receipt, otherwise the next day will be considered as date of receipt. If the bill is not in full shape and needs to be corrected, the date of receipt of corrected bill will be treated as date of receipt.

8. Surcharge for Late Payment

A delayed payment surcharge of 1.00% (one percent) per month shall be leviable on all dues remaining unpaid for more than 30 days from the date of receipt of the bill. If the due date for payment is a Bank holiday in Telangana State, the immediate next working day will be treated as due date of payment. Surcharge will be liable for payment for the period beyond 30 days till date of payment.”

28. As per the above clauses, all dues that remain unpaid for more than 30 days from the date of receipt of the bill, the Petitioner is entitled to LPS at the rate of 1% per month till the date of actual payment.

29. We note that the Petitioner has supplied power to the Respondents in terms of the Purchase Orders dated 16.11.2018 & 27.4.2019 during the period from 15.1.2019 to 30.4.2019 & 1.7.2019 to 31.3.2020 respectively and has raised bills in accordance

with the said Purchase Orders. It is not disputed that there was a delay on the part of the Respondents in making the timely payment towards the said bills and that they have not paid the LPS claimed by the Petitioner for this period of delay. Further, the Respondents have not submitted any document/correspondence on record to show that either the bills or the LPS bills have been disputed by the Respondents. In the absence of any such dispute, the liability to pay the LPS stands admitted by the Respondents.

30. Since we have already held that the Petitioner's LPS claim of LPS is not barred by limitation, the Petitioner is entitled to outstanding LPS for the delay on the part of the Respondents in making payment towards such bills. The Petitioner has indicated the outstanding LPS amount at Rs. 43,74,65,422/- (as on 2.6.2023) for the supply of power during the period from 15.1.2019 to 30.4.2019 & 1.7.2019 to 31.3.2020 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.

31. This issue is decided accordingly.

Issue No. 4: Whether the Petitioner is entitled to interest on the outstanding LPS amounts till the actual date of payment?

32. The Petitioner has contended that the Purchase Orders entitle the Petitioner to claim the LPS on all dues that remain unpaid beyond a period of 30 days. As the LPS invoices have also remained unpaid for a period beyond 30 days, interest will apply for the period of delay till the date of actual payment.

33. We note that a similar issue has already been dealt with by the Commission in its Order dated 9.8.2023 in Petition No. 173/MP/2022 (Sembcorp Energy India Ltd. v. APPCC and Ors.) wherein the Commission held 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 abovementioned 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.”

34. Accordingly, the Commission has already held that if the interest on delayed payment is not levied, the same would lead to a patently unfair and absurd situation wherein defaulting parties could simply avoid meeting their undisputed payment commitment towards the LPS for the delayed payment of energy charges under the Purchase Orders and thereafter not paying the interest thereon despite such dues having remained outstanding for a considerable period. Thus, in accordance with the view taken by the Commission in its Order dated 9.8.2023 in Petition No. 173/MP/2022, we find it proper to award the interest on the outstanding LPS dues under Purchase Orders dated 16.11.2018 and 27.4.2019 at the actual rate of interest paid by the Petitioner for arranging working capital funds (supported by the 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/PO, whichever is lower .

35. Thus, Respondents shall be liable for the 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. The Petitioner and Respondents shall reconcile the amount of interest on the LPS within 15 days of this Order and thereafter make the payment of the interest within 30 days thereafter.

36. This issue is decided accordingly.

37. In view of our findings, the Respondent Discoms (Telangana 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 the Late Payment Surcharge as per the Purchase Orders would kick in.

38. Accordingly, Petition No. 307/MP/2023 is disposed of in terms of the above discussions and findings.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson