

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 347/MP/2023

Coram:

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

Date of Order: 7th August, 2025

In the matter of

Petition under Section 79 of the Electricity Act, 2003, seeking direction upon the Respondent No. 1 to pay Late Payment Surcharge, compounded on monthly rest, on the delayed payments, in terms of the PPA dated 21.07.2017.

And

In the Matter of:

**Wind Three Renergy Limited,
(Formerly Known as Wind Three Renergy Private Ltd.)
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S.G. Highway, Khodiyar,
Ahmedabad- 382421, Gujarat**

..... Petitioner

VERSUS

**1. Power Trading Company India Limited,
2nd Floor, NBCC Tower
15 Bhikaji Cama Place
New Delhi – 110066**

**2. Jharkhand Bijli Vitran Nigam Limited,
Engineering Building,
H.E.C., Dhurwa
Ranchi -834004, Jharkhand**

...Respondents

Parties present:

**Shri Sanjay Sen, Sr. Advocate, WTRL
Shri Hemant Singh, Advocate, WTRL
Ms. Supriya Rastogi, Advocate, WTRL
Shri Harshit Singh, Advocate, WTRL**



Ms. Lavanya Panwar, Advocate, WTRL
Shri Jay Lal, Advocate, WTRL
Shri Arun Lal, Advocate, WTRL
Shri Devansh, Advocate, WTRL
Ms. Ruth Elwin, Advocate, WTRL
Ms. Neha Dabral, Advocate, WTRL
Shri Ravi Kishore, Advocate, PTC

ORDER

The Petitioner, Wind Three Renergy Limited ('WTRL') (formerly known as Wind Three Renergy Private Ltd.), has filed the present Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking appropriate directions upon Respondent No. 1, PTC India Limited ('PTC'), for payment of the Late Payment Surcharge (in short 'LPS') accrued in favour of the Petitioner on account of the delayed payment of monthly energy supply bills by the PTC, in terms of the provisions of billing and payment and LPS provided under the Power Purchase Agreement ('PPA') dated 21.7.2017. The Petitioner has made the following prayers:

- "a. Declare that that Petitioner has correctly raised the supplementary bills towards Late Payment Surcharge by first adjusting the payment made by the Respondent No. 1 towards Late Payment Surcharge and thereafter, towards Monthly Energy Bills, starting from the longest overdue Bills*
- b. Declare that the Petitioner is entitled to claim the LPS/ interest compounded on monthly rests for the delay in payment of Energy Supply/ Supplementary bills etc. raised under the PPA.*
- c. Direct the Respondents to make payments of the outstanding LPS amount of Rs 77,12,535/- being the remaining balance out of the LPS amount accrued up to 30.04.2023 in terms of the Article 10.3.3 of the PPA; and*
- d. Pass any such orders as may deem fit in the facts and circumstance of the present petition."*

Submission of the Petitioner

2. The Petitioner has mainly submitted as under:

- (a) The Petitioner, a generating company under Section 2(28) of the Act, has set up a 50 MW Wind Power Plant at Kutch, Gujarat. The Petitioner executed a PPA dated 21.7.2017 (read with amendment dated 20.12.2017) with PTC for the supply of 50 MW of Wind Power for a period of 25 years



commencing from 5.7.2019 to 4.7.2044 at a tariff of Rs. 3.46/ unit. The power procured under the PPA is supplied by PTC to Respondent Nos. 2, Jharkhand Bijli Vitran Nigam Limited ('JBVNL'), i.e., Jharkhand DISCOM, under a back-to-back Power Sale Agreement ('PSA') for the 50 MW.

(b) Subsequent to the execution of the aforesaid agreements, the Petitioner achieved commissioning and started the supply of power to Respondent, PTC, and Jharkhand DISCOM, from 5.7.2019. Accordingly, the Petitioner has been raising monthly Energy supply bills upon PTC in terms of the provisions under PPA. However, Respondent No. 1, PTC, defaulted in making timely payment to the Petitioner qua monthly energy supply bills, and accordingly, the Petitioner has been raising supplementary bills towards LPS against PTC.

(c) Thereafter, the Petitioner vide its email dated 9.5.2023 had requested PTC for payment of the supplementary bills raised qua LPS. However, PTC, vide its various emails dated 9.5.2023, 20.7.2023, and 7.8.2023, disputed the computation of the LPS raised by the Petitioner, vide supplementary bills. It is the stand of the PTC that LPS shall be computed on the delay of payment beyond 30 days of the 'Due Date', and the Due Date is defined as the 33rd day from the bill date in the PPA. Therefore, the surcharge should be calculated from the 63rd day onwards from the Bill date till the date of payment.

(d) The aforesaid stand of PTC was disputed and denied by the Petitioner while making categorical stand vide its emails dated 12.7.2023, 26.7.2023, and 9.8.2023 that for any payment made after the 63rd day from the receipt of the invoice (i.e., Due date of 33 Days + Grace period of 30 days), LPS will be applicable from the 34th day itself i.e., after the Due Date on a compounding basis and adjustment of payment first against LPS, and thereafter, towards Monthly Energy Bills, starting from the longest overdue Bills.

(e) Article 10 of the PPA provides the methodology for Billing and Payment qua the supply of power by the Petitioner to PTC, and in turn to Jharkhand Discom. As per the provisions contained under Article 10.1.2 of the PPA, PTC is liable to make the payment of the Monthly Bills on or before the Due Date of a Monthly energy supply bill to the Petitioner. From a reading of the aforesaid provisions, it becomes clear that PTC is liable to make the payment of the

Monthly Bills on or before the 33rd day of receipt of a Monthly energy supply bill to the Petitioner. Article 10.3.3 of the PPA provides for the LPS in the event of a delay in payment of monthly energy supply bills/ supplementary bills. Article 10.6.2 of the PPA provides that LPS, after making payment adjustments, is to be computed from the date on which partial payment was previously made or from the original due date itself, i.e., the 33rd day from the date of invoice, in case no payment was made previously. A combined reading of the aforesaid provisions, i.e., Articles 10.1.2, 10.3.3, and 10.6.2, makes it evidently clear that the Petitioner will raise monthly energy supply bills upon the Respondent, which becomes due on the 33rd day from the date when such invoice is received and acknowledged by the Respondent. In the event, the Respondent fails to make payment qua the monthly energy supply bills on or before the 63rd Day from the receipt of the invoice (i.e., Due date of 33 Days + Grace period of 30 days), the Respondent, PTC is liable to pay the LPS computed from the 34th day itself, on compounding basis.

(f) However, PTC is computing the LPS qua delayed payment of monthly energy supply bills incorrectly and in contradiction to the above understanding of the provisions of the PPA. PTC is wrongly calculating LPS from the 63rd day from the date of invoice till the date of payment of the principal amount, that too on a simple interest basis. Whereas, in terms of the provisions of the PPA and the settled position of law, LPS ought to be computed from the due date, i.e., 33rd day from the date of receipt of invoice till the date of the payment, on a compounding basis.

(g) PTC has made payment of Rs. 44,46,510/- towards the LPS dues out of the total LPS outstanding of Rs. 1,21,59,045/- computed on a monthly compounding basis after firstly adjusting the payment made by the PTC towards LPS and thereafter, towards Monthly Energy Bills, starting from the longest overdue Bills. PTC's consideration of LPS on a simple interest basis is completely wrong and not as per the prevailing accounting standards/principles. The aforesaid understanding of PTC is flawed and is contrary to the settled law and regulations in this regard.

(h) However, PTC is withholding payment of the amount on the basis of an incorrect and flawed understanding of the provisions of the PPA and the settled

principles of law and Regulations. PTC has failed to abide by the contractual obligations agreed upon between the parties under the PPA and PSA dated 21.7.2017 and 23.6.2017, respectively.

Proceedings before the Commission

Hearing dated 19.1.2024

3. During the course of the hearing on 29.1.2024, the learned counsel for the Petitioner reiterated the submissions made in the Pleadings. After hearing the learned counsel for the Petitioner, the matter was admitted on 28.11.2023, and notices were issued to the Respondents permitting them to file their respective replies.

Reply of the Respondent, PTC

4. Pursuant to the liberty granted by this Commission, Respondent No.1, PTC vide its reply dated 28.2.2024, has mainly submitted as under:

(a) The contention of the Petitioner is based on a misinterpretation of the relevant Article, i.e. Article 10.3.3 of the PPA. The LPS, as per the provisions of the PPA, is payable after the 63rd day from the bill date, i.e., after taking into account the period of 30 days beyond the due date. There is no provision/concept of a grace period for making payment, as contended by the Petitioner. It has always been the practice of incentivizing the release of payment by the Beneficiary to Generator, as this Commission has also framed the Regulations on the same logic.

(b) As per the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, the LPS is applicable after 45/60 days, as the case may be and not from the 31st day when applicable early payment rebate becomes zero. The PPA between Petitioner and Respondent, PTC, has similar provisions as explained in the foregoing paragraphs. Hence, the contention of the Petitioner that PTC has not made payment as per the PPA is denied, and the LPS is to be calculated from the 64th day and not from the 34th day. A similar provision exists in the PSA signed between Respondent Nos. 1 and 2.

(c) Respondent, PTC, has received the LPS from Respondent No. 2, JBVNL, for the delayed payment beyond the due date, considering the applicability of the LPS from the 61st day and not from the due date as contended by the Petitioner. Further, no compounding has been done on the LPS by Discoms and Respondent, PTC. Accordingly, LPS has been paid to the Petitioner, as provided in the PPA. Supply of power from the Petitioner plant to Respondent No.2 is under the Scheme of MNRE, and Respondent No.1 has signed similar PPAs/PSAs with other WPD and Discoms and a similar methodology has been adopted for calculating the LPS wherever payments have been delayed beyond 60/63 days.

(d) Respondent, PTC, has paid the LPS strictly in line with the provisions of the PPA, and Petitioner has wrongly and arbitrarily calculated the LPS of Rs. 1,21,59,045/-. The Petitioner has erroneously relied upon the BERC order dated 12.6.2020 in case No. SMP 11/2020 in *sou- motu* proceedings to specify the reduced rate of LPS. The above order is applicable for the case where the tariff is determined under Section 62 of the Act. However, power from the Petitioner is being supplied under Section 63 of the Act to Respondent No.2 through Respondent No. 1.

(e) The contention of the Petitioner that LPS is to be calculated from the 34th day in case the payment is made after the 63rd day is totally misconceived and based on a misinterpretation of the relevant Articles of the PPA. In case the alleged contention of the Petitioner is taken into account, the concept of period of no rebate i.e., granting 30 days after the due date for making the payment loses its relevance, as rebate of 1% is applicable for payment up till 33rd day and no rebate is applicable for payment between 34th day up till 63rd day. The Petitioner has erroneously relied on Article 10.6 of the PPA. Article 10.6 is only applicable for quarterly/ annual reconciliation of accounts for cases like variation in data of energy accounts, tariff adjustment payment, tariff rebate, LPS, etc. By no stretch of imagination, this provision can be applied for the re-interpretation of the specific provision of the LPS for regular energy bills as provided in Article 10.3.3 of the PPA in the garb of reconciliation of accounts.

(f) A conjoint reading of Articles of the PPA pertaining to the billing and the LPS, there remains no doubt that the LPS is payable only after taking into account a period of 30 days after the due date, i.e., the LPS is payable after 63 days. The provisions of Article 10.3.3 are in addition to the provisions regarding the due date. The provisions of Article 10.3.3 also state that the LPS by Respondent No.1 is payable only after a similar payment is received from Respondent No.2.

(g) The provision under Article 10.3.3 clearly states that the interest @ 1.5% per month shall be calculated on a day-to-day basis, and there is no provision for compounding of interest. The Petitioner has also erroneously contended for adjusting the payment towards LPS first, then the Principal amount and relied upon the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 and Late Payment Surcharge Rules 2022 issued by the Ministry of Power.

(h) It is a well-settled principle of law that any Contract/ Agreement/ PPA is to be read and interpreted and acted upon as per the terms of the document and not otherwise. Further, the Hon'ble Supreme Court in the case of Sasan Power has held that the commission cannot alter the terms of the contract. The Respondent, in support of its submissions, has also placed reliance on the judgment of the Hon'ble Supreme Court in the cases, namely (i) *Haryana Power Purchase Centre Vs. Sasan Power Ltd. & Ors.* [2023 SCC OnLine SC 577], (ii) *Nabha Power Limited Vs. Punjab State Power Corporation Ltd. & Anr.* [(2018) 11 SCC 508], and (iii) *Maharashtra State Electricity Distribution Company Ltd. Vs. Ratnagiri Gas and Power Pvt. Ltd. and Ors.* - [(2024) 1 SCC 333].

(i) The principle to ascertain the intention of the parties to a contract is only through the words that have been used in the PPA, as a contract is a commercial document which ought to be interpreted in a manner to give efficacy to each provision and word of the contract. The Respondent has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Citibank, N.A. v. TLC Marketing PLC*, [(2008) 1 SCC 481].

Rejoinder of the Petitioner

5. The Petitioner, vide its rejoinder dated 1.4.2024, has mainly submitted as under:

(a) From a reading of the provisions of the PPA, it is inferred that (a) due date as per the definition clause under the PPA is defined as the 33rd day from the date of receipt of invoice by PTC; (b) Article 10.1.2 of the PPA stipulates that PTC is liable to make the payment of the monthly energy supply bills to the Petitioner, on or before, the due date of such bill; (c) Article 10.3.3 provides for LPS to be applicable from the 34th day itself in the event of delay in payment of the monthly energy supply bills beyond the 63rd day of the invoice receipt (i.e., due date of 33 days + grace period of 30 days). As such, the LPS on delayed payments ought to be computed on a compounding basis; and (d) Article 10.6.2 stipulates that the LPS (after making payment adjustments) is to be computed from the date on which partial payment was previously made or from the original due date itself, i.e., the 33rd day from the date of invoice.

(b) The implication of LPS is to be triggered only in case payment is made after the 63rd day from the receipt of the invoice (i.e., Due date of 33 Days + 30 days). However, once LPS is triggered, it will be applied from the original due date itself, i.e., from the 33rd day from the receipt of the invoice. A grace period of 30 days beyond the due date is provided under PPA as an incentive to Respondent No. 1 to make timely payment. However, it will not relieve the said Respondent from paying the LPS if the payment is not made during this grace period. Even if no rebate is applicable, if the payment is made within the said grace period, i.e., 30 days from the due date in terms of Article 10.3.4 of the PPA.

(c) The LPS, after making payment adjustment, is to be computed from the original due date, i.e., the 33rd day from the date of invoice, in case no payment was made on or before the 63rd day from the receipt of the invoice (i.e., Due date of 33 Days + Grace period of 30 days). Any other interpretation would render the concept of the due date as otiose. If the intention of Article 10.3.3 was to extend the due date by 30 days and apply the LPS from the 64th day onwards, it may very well be taken care of by simply defining the due date as

the 63rd day under the PPA. As such, 30 days under Article 10.3.3 is only provided as grace period, and if the payment is made within such grace period i.e., 30 days, no LPS is levied upon, neither any rebate is to be claimed by, Respondent No. 1. In addition to the above, the language of Article 10.3.3 is sufficiently clear, when it states “In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buyer ‘within thirty (30) days beyond its Due Date”, that the intention is to provide a grace period to the procurer/ PTC/ Respondent No. 1, failing which LPS will apply from the original due date.

(d) The LPS being time value of money is based on the restitutionary principle as it ensures that the party to the contract, who is denied payment of its dues within the “Due Date,” is restituted to the same economic position as it was when such payment became due. Further, such cost is based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the generating company in terms of working capital from lenders and/ or promoters and/ or internal accruals, has to be paid along with interest, by way of such charges (LPS). Thus, if the interest for working capital requires compounding, the interest on the Delayed Payment Surcharge is also to be compounded. The Reserve Bank of India vide a Circular viz., Circular of Master Direction – Reserve Bank of India (Interest Rate on Advances) Directions, 2016 also recognized that interest on working capital is to be fixed on a compounding basis. In this regard, the Petitioner has also placed reliance on the judgment of the Hon’ble Supreme Court in the case of *T.N. Generation and Distbn. Corpn. Ltd. v. PPN Power Gen. Co. Pvt. Ltd.*, [reported in (2014) 11 SCC 53].

(e) The CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021, whereunder amendment to Regulation 59 clearly stipulates that if the parties have not explicitly agreed to accounting method with respect to adjustments under the PPA, then the payment made by a beneficiary shall be first adjusted towards the LPS on the outstanding charges and thereafter, towards monthly charges billed by the generating company.

(f) Keeping in view the commercial principle iterated in the aforesaid Regulation and the LPS Rules, 2022, this Commission has held that charges paid by the buyer, or the beneficiary, were first directed to be adjusted towards

the LPS amount and only thereafter towards the monthly energy supply charges.

(g) The priority of appropriation is the same in all three statutory instruments, i.e., first towards LPS and then towards monthly charges, starting with the longest overdue bill. The said methodology shall be adopted for appropriation of the payments made against the outstanding dues. The Petitioner has placed reliance on the Orders passed by the Commission in the cases, namely (a) Petition No. 239/MP/2019 & Batch (*THDC India Limited v. BSES Yamuna Power Limited*), (b) Petition No. 199/MP/2021 (*Jindal Power Limited v. Tamil Nadu Generation and Distribution Corporation Limited*).

(h) In case the part payment is allowed to be adjusted towards the principal sum first, LPS will stop accruing from the date of such payment. This would further result in an eventuality where the Respondent would be able to keep the outstanding amount towards the LPS invoice pending. This goes completely against the intent behind the grant of such delayed interest. Section 61 of the Act mandates adopting commercial principles, recovery of the cost of electricity, encouragement of efficiency, optimum investments and promotion of renewable energy. As submitted hereinabove, the commercial principles would include charging interest/ LPS on a compounding basis for deferred recoveries, as well as adjusting any late payments towards the outstanding LPS component first and then the principal amount.

Hearing dated 23.4.2025

6. During the course of the hearing, learned counsel for the learned senior counsel for the Petitioner and the learned counsel for the Respondent, PTC, made detailed submissions and concluded their respective arguments. Considering their request, the Commission permitted both sides to file their respective written submissions. Further, the Commission also permitted the Respondent, PTC, to indicate the details of supplementary bills raised upon Respondent No.2, Jharkhand Bijli Vitran Nigam Limited, under the PSA, if any, in its written submissions. Subject to the above, the matter was reserved for order.

7. Pursuant to the above liberty granted by the Commission, the Petitioner and the Respondent, PTC in their written submissions dated 16.5.2025, respectively, have reiterated their submissions, and the same are not repeated here for the sake of brevity.

8. Despite being given the opportunity, the Respondent No.2, JBVNL, neither filed a reply in the matter nor entered an appearance in the matter.

Analysis and Decision

9. 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 Late Payment Surcharge, on the delayed monthly payment, is to be calculated from the 34th or 64th day from the receipt of the invoice?

Issue No. 2: Whether PTC's payment is to be first adjusted towards the accrued Late Payment Surcharge before adjusting against the principal dues?

Issue No. 3: Whether the Late Payment Surcharge is to be calculated on a simple or compound basis?

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

Issue No. 1: Whether the Late Payment Surcharge, on the delayed monthly payments, is to be calculated from the 34th or 64th day from the receipt of the invoice?

10. At the outset, the Petitioner has submitted that as per the provision of the PPA dated 21.7.2017, PTC is liable to make payment of the monthly energy supply bills to the Petitioner on or before the due date from the receipt of such bill. Due Date, as per the definition clause under the said PPA, is defined as the 33rd day from the date of receipt of invoice by PTC. The provision of the PPA, specifically Articles 10.1.2, 10.3.3 & 10.6.2, read with the definition of 'Due Date,' provides as to when the LPS becomes 'applicable' and when it becomes 'payable'. The LPS becomes 'applicable' in the event

payment of the monthly bill is delayed by PTC beyond 30 days from the due date, i.e., 63 days (30+33 days). This means that the LPS becomes 'applicable' after 63 days from the receipt of the invoice. However, the LPS becomes 'payable' from the 34th day, as the aforesaid provision contains the words "within thirty (30) days beyond its Due Date.

11. *Per Contra*, the Respondent, PTC, has submitted that the LPS is payable only when the monthly bill/ supplementary bill is delayed by 30 days beyond its due date. In the present case, as the due date is the 33rd day from the bill received date and there is a grace period of 30 days, accordingly, the LPS will trigger after the 63rd day, and the LPS shall be payable only from the 64th day and not the 34th day as contended by the Petitioner. There is no provision in the PPA or the PSA that in case the payment is not made within the grace period, then LPS is to be charged from the original due date.

12. We have considered the submissions made by the parties. The relevant provisions of the PPA dated 21.7.2017 are extracted as under:

Article 10.1.2

"10.1.2 From the commencement of supply of power, Buyer shall pay to the WPD the monthly Tariff Payments, on or before the Due Date, in accordance with Article 9. All Tariff Payments by Buyer shall be in Indian Rupees."

Article 1.1

"Due Date shall mean the thirty-third (33rd) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Buyer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the Buyer."

Article 10.3.3

"10.3.3 Late Payment Surcharge In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buyer within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the WPD at the rate of 1.5% per month on the outstanding amount calculated on a day-to-day basis subject to such late payment is duly received by Buyer under the PSA. The Late Payment Surcharge shall be claimed by the WPD through the Supplementary Bill."

Article 10.6.2

“10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the WPD and Buyer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the WPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.”

13. As per the above provisions of the PPA, the Buyer/PTC is required to pay to the Petitioner the monthly tariff payment on or before the Due Date, which is the 33rd day after the Monthly Bill or Supplementary Bill is received and acknowledged by the Buyer/PTC. In the event of the failure of Buyer/PTC to make such payment within the Due Date, Article 10.3.3 gets attracted, which provides for the levy of the LPS. As per the said Article, in the event of delay in payment of a Monthly/Supplementary Bill by the Buyer/PTC within 30 days beyond its Due Date, a LPS shall be payable to the WPD/Petitioner at the rate of 1.5% per month on the outstanding amount calculated on a day-to-day basis subject to such late payment is duly received by Buyer/PTC under the PSA. On a bare reading of the said Article, it reveals that the Buyer/PTC's liability of the LPS gets triggered only in the event of delay in making the payment of a Monthly/Supplementary Bill within 30 days beyond its Due Date. In other words, the liability of LPS gets attracted only in the event the Buyer/PTC fails to make the payment of a Monthly/Supplementary Bill within 63 days after the receipt of such Monthly/Supplementary Bill. However, once such a liability of LPS gets triggered, the computation of the LPS, as per the Petitioner, has to be done from the 34th day itself rather than the 64th day as averred by PTC. On the contrary, the Respondent has submitted that LPS shall be payable only from the 64th Day. In our view, accepting the submission of PTC that the computation of LPS shall be from the 64th day onwards would make the 'Due date' definition as provided in the PPA redundant. It is trite that

the contract, being a creature of an agreement between two or more parties, has to be interpreted giving the harmonious meaning of a contract. In the present case, the Due date has been defined in Article 1.1 as 33 days, which means that payment ought to have been made within the due date, i.e. within 33 days, and Article 10.1.2 of the PPA also provides that PTC is obligated to pay the monthly tariff payment within the due date only. If the intent of the parties is as understood by PTC, then the due date could have been defined as 63 days instead of 33 days. We agree with the Petitioner's submission that an additional time period of 30 days beyond the due date has been provided to encourage the Respondent to pay by availing the grace period of 30 days without any LPS liability. In the event that the Respondent fails to pay within the grace period, then the Respondent shall be liable to pay LPS from the due date. Thus, upon conjoint reading of Articles 1.1, 10.1.2, and 10.3.3, although the liability of the LPS shall get triggered on the 64th day, its computation will be done from the 34th day itself if the payment is not made within 63 days.

14. Issue No.1 is decided accordingly.

Issue No. 2: Whether PTC's payment is to be first adjusted towards the accrued Late Payment Surcharge before adjusting against the principal dues?

15. The Petitioner has submitted that the CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021, whereunder amendment to Regulation 59 clearly stipulates that if the parties have not explicitly agreed to accounting method with respect to adjustments under the PPA, then the payment made by a beneficiary shall be first adjusted towards LPS on the outstanding charges and thereafter, towards monthly charges billed by the generating company. In addition, the Petitioner has made reliance upon Rule 4 of the Late Payment Surcharge Rules, 2022, which clearly provides for the adjustment of payment made by the beneficiaries for the power procured by it, towards LPS first and only thereafter towards monthly energy supply

charges. In this regard, the Petitioner has relied upon the order dated 8.7.2022 of the Commission passed in Petition No. 199/MP/2021 (*Jindal Power Limited v. Tamil Nadu Generation and Distribution Corporation Limited*) dealing with the matter of LPS. Accordingly, the Petitioner has prayed for computing the LPS after making an adjustment of the payment made towards outstanding dues, firstly towards the aforesaid LPS amounts and thereafter from the principal amount under the monthly energy supply bills.

16. *Per Contra*, the Respondent, PTC, has submitted that the Petitioner had been drawing bills for principal amount and LPS separately. The LPS amount built was in the form of supplementary bills. Accordingly, on receipt of payment, principal amount and LPS amount (supplementary bills) were adjusted separately, and PTC has been paying the bills as per the provisions of the PPA.

17. We have considered the submissions of the parties. The PPA entered into between Petitioner and PTC does not contain any express provision delineating the methodology for the appropriation of payment in the context of the LPS. In a similar issue, the Commission vide order dated 23.9.2023 in Petition No. 239/MP/2019, 54/MP/2021, and 135/MP/2022 has held that any payment made by the debtor is, in the first instance, to be applied towards satisfaction of interest and thereafter, towards the principal. The relevant extracts of the order dated 23.9.2023 are as under:

“63. THDC has also argued that the appropriation methodology proposed by it through its letter dated 9.8.2019, effective from 1.9.2019, was in line with the general rule of appropriation settled by Hon’ble Supreme Court in a number of judgements. Few of the judgements of Hon’ble Supreme Court including those relied upon by THDC are discussed as under:

(a) Meghraj v. Bayabai, [(1969) 2 SCC 274]

“5. In Venkatadri Appa Row v. Parthasarathi Appa Row [LR 47 IA 150] , the Judicial Committee of the Privy Council observed that upon taking an account of principal and interest due, the ordinary rule with regard to payments by the debtor unappropriated either to principal or interest is that they are first to be

applied to the discharge of interest. Lord Buchmaster delivering the judgment of the Board observed:

“There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Rigby L.J. in the case of Parr Banking Co. v. Yates [(1898) 2 QB 460] in these words: “The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract.”

(b) Industrial Credit & Development Syndicate v. Smithaben H. Patel, [(1999) 3 SCC 80]

“14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e., that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.”

(c) Gurpreet Singh v. Union of India, [(2006) 8 SCC 457]:

“20. In Industrial Credit & Development Syndicate v. Smithaben H. Patel [(1999) 3 SCC 80 : (1999) 1 SCR 555] this Court considered the question whether Sections 59 to 61 of the Contract Act would apply to a debt that has merged in a decree. This Court held that Sections 59 and 60 of the Contract Act would be applicable only at pre-decretal stage and not thereafter, since post-decretal payments are to be made either in terms of the decree or in terms of the agreement arrived at between the parties, though on the general principle as mentioned in Sections 59 and 60 of the Contract Act. It was also held that the general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount, subject of course, to any agreement between the parties.”

64. From the above judgements, the following principles of appropriation of payment towards outstanding dues emerge:

(a) The normal rule is that in the case of a debt due with interest, any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal.

(b) In case of decretal amount, the general principle of appropriation is that it should be in terms of the decree and in the absence of such direction, adjustments shall be made firstly in payment of interest and costs and thereafter in payment of the principal amount.

(c) The above principles are subject to one exception i.e. the parties may agree to the adjustment of the payment in any other manner. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree.

65. It emerges from the above that as per the general principle of appropriation, in a case of debt with interest, any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter, towards the principal. The Commission is of the view that the methodology proposed by THDC vide its letter dated 9.8.2019 is in line with the (i) provision in BRPL PPA for appropriation of “unpaid, undisputed outstanding” amounts first and thereafter the “current bill” and (ii) the general rule of appropriation between principal dues and interest as laid down by the Hon'ble Supreme Court in a number of judgements as quoted in para 63 above. Accordingly, based on the reconciled amount of outstanding dues and LPSC as on 1.9.2019 arrived based on the original method (current dues first and thereafter LPSC with the exception for the period from April 2013 to December 2013), THDC shall adjust the payments received from BRPL and BYPL on or after 1.9.2019 first towards LPSC, next towards outstanding principal and finally towards current bills.”

18. In our view, the above findings are also applicable in the instant case, and we hold that for the purpose of computation of LPS, the Petitioner is entitled to adjust the payment made towards outstanding dues, firstly towards the LPS amount and thereafter, from the principal amount under monthly energy supply bills. We further note that Rule 5 of the LPS Rules, 2021 and thereafter, Rule 4 of the LPS Rules, 2022 issued by the Central Government also provided that all payment by a distribution licensee to a generating company or a trading licensee have to be first adjusted towards LPS and thereafter, any balance is required to be adjusted towards the monthly charges starting from the longest overdue bill. Accordingly, the aforesaid principle under the LPS Rules of adjusting payment first against the interest/LPS accrued and thereafter the principal, is applied in the present case as well.

19. Issue No. 2 is decided accordingly.

Issue No. 3: Whether the Late Payment Surcharge is to be calculated on a simple or compound basis?

20. The Petitioner has submitted that Article 1.2.15 read with Article 10.3.3 of the PPA categorically provides that LPS/ interest is to be computed on a day-to-day basis. From a conjoint reading of the aforesaid provisions, it can be clearly seen that application of 'day-to-day basis' itself means that the same is to be computed on a compounded basis. The Petitioner has further submitted that in terms of Article 10.3.3 of the PPA, the LPS is essentially interest charged over and above the principal or monthly invoice amount. Further interest is compensation for the use or retention of money that belongs to another. It serves as consideration for either using the money or delaying its repayment once due, and is thus a charge for such use or delay. Thus, the PPA itself contemplated that the LPS for delayed payment is to be computed on a compounding basis.

21. *Per Contra*, the Respondent, PTC, has submitted that the provision under Article 10.3.3 clearly states that the interest @ 1.5% per month shall be calculated on a day-to-day basis and there is no provision for compounding of interest.

22. We have considered the submissions made by the parties. Article 1.2.15 of the PPA provides as under:

Article 1.2.15

"1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;"

23. A plain reading of Article 1.2.15, read with Article 10.3.3 of the PPA, indicates that any interest payable under the PPA, if applicable, will accrue on a daily basis. However, the above Articles of the PPA do not prescribe the manner in which a party should be restituted or the nature of interest (whether simple or compound) they are

entitled to as a measure of restitution. Merely because the PPA provides for the accrual of interest on a day-to-day basis does not translate to the computation of interest on a compounding basis as averred by the Petitioner, particularly in the absence of any express provision to this effect. Recently, while dealing with the similar issue, the APTEL, in its judgment dated 21.3.2025 in Appeal No. 138 of 2021 in the matter of *Gujarat Urja Vikas Nigam Limited v. Essar Power Limited & Ors.*, has reiterated findings of the Hon'ble Supreme Court in the case of *D. Khosla & Co. v. Union of India*, [(2024) 9 SCC 476], that the courts cannot grant compound interest on delayed payment if it is not specifically provided for in the contract. The relevant extract of the said judgment dated 21.3.2025 is as under:

“73. The Supreme court in the judgement “D. Khosla & Co. v Union of India (2024) 9 SCC 476, made reference to few other supreme court judgments like “State of Haryana v. S.L. Arora & Co.” (2010) 3 SCC 690; “Hyder Consulting (UK) Ltd. v. State of Orissa”, (2015) 2 SCC 189; “UHL Power Co. Ltd. v. State of H.P.”, (2022) 4 SCC 116 and held that that courts cannot grant compound interest on delayed payments if it is not specifically provided for in the contract. The relevant extract of D.Khosla (supra) is as under:

“24. In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest.”

In view of the above deliberation, we are unable to concede to the contention of GUVNL that DPC at compound interest should be given.”

24. Accordingly, the prayer of the Petitioner on this ground, i.e., LPS for delayed payments, is to be computed on a monthly compounding basis, cannot be accepted.

25. Issue No. 3 is decided accordingly.

26. In view of the above findings, the Petitioner and Respondent, PTC, shall reconcile the differential LPS amount, if any, payable to the Petitioner within 30 days of this Order and shall make the payment thereof within 15 days thereafter. The Respondent, PTC, has also pointed out that in terms of Article 10.3.3 of the PPA, its liability for making the payment of LPS is also subject to the receipt of such payment under the PSA. Given the PPA and PSA are back-to-back agreements and the principles enunciated by us for the computation of LPS shall equally apply to the PSA, needless to add that the Respondent, PTC shall also be entitled to receive the differential LPS amount, if any, under the PSA and shall carry out the necessary reconciliation thereunder also within the above stipulated timeline and thus, PTC is obligated to take necessary actions to recover the LPS from the Respondent Discom and to pay the same to the Petitioner.

27. Accordingly, Petition No. 347/MP/2023, along with the pending IA, if any, 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
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