

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 151/MP/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 7th January, 2026

In the matter of:

Petition under Section 142 of the Electricity Act, 2003 and Regulation 70(2) of CERC (Conduct of Business) Regulations, 2023 r/w Sections 42, 47 and Order XXI Rule 10 of Code of Civil Procedure Code, 1908 and r/w Regulation 65 of CERC (Conduct of Business) Regulations, 2023 and Section 151 of Code of Civil Procedure Code, 1908 seeking execution/ enforcement/ compliance of this Commission's earlier orders (in Petition Nos. 160/GT/2012, 7/GT/2016 & 251/GT/2017)

And

In the matter of

Adani Power Ltd
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle, S.G Highway, Khodiyar,
Ahmedabad-382421, Gujarat

.... Petitioner

Vs

1. Power Company of Karnataka Limited
502, 5th Floor, KPTCL Building, Kaveri Bhavan, Bengaluru, Karnataka – 560009
2. Punjab State Power Corporation limited
Dy. CE/ISB, shed T-1A, Shakti Vihar, Patiala, Punjab – 147001
3. Karnataka Power Transmission Corporation Limited
Corporate Office, KPTCL, Kaveri Bhavan, K.G Road, Bengaluru - 560009,
4. Hubli Electricity Supply Company Ltd
Corporate office PB road, Navanagar, Hubli, Karnataka - 580025
5. Gulbarga Electricity Supply Company Limited
PTC Section, Station Main Road, Opp. Parivar Hotel, Gulbarga, Karnataka - 585102
6. Bangalore Electricity Supply Company,
K.R. Circle Bangalore-560001, Bengaluru, Karnataka – 560001
7. Chamundeshwari Electricity Supply Corporation Limited
No. 29, Corporate Office, Vijayanagar 2nd Stage, Hinkal,
Mysore, Karnataka - 570017



8. Mangalore Electricity Supply Company Limited
Discom Bhavana, Kavoov Cross Road, Bejai,
Mangalore, Karnataka - 575004

...Respondents

Parties present:

Shri Amit Kapur, Advocate, APL
Shri Sunak Rajguru, Advocate, APL
Shri Rajesh Jha, Advocate, APL
Shri Kumar Gaurav, APL
Shri Gourav Sharma, APL
Shri M.G. Ramachandran, Senior Advocate, PCKL & Karnataka Discoms
Ms. Bhabna Das, Advocate, PCKL & Karnataka Discoms
Ms. Srishti Kindaria Advocate, PCKL & Karnataka Discoms

ORDER

The Petitioner, Adani Power Ltd (in short, 'APL'), has filed the present Petition, seeking the following relief(s):

"(a) Admit the present Petition;

(b) Direct Karnataka DISCOMs to release the outstanding dues towards carrying cost payable to Adani as per Adani's invoice dated 27.02.2023 within 4 weeks; along with Late Payment Surcharge;

(c) Pass such order(s) as this Ld. Commission may deem fit and proper in facts and circumstances of the present case."

Submissions of the Petitioner

2. The Petitioner, in support of the above prayers, has mainly submitted the following:

(a) This Commission has been determining the tariff of the Udupi Power Project ('the generating station/Project') of the Petitioner, from time to time [i.e., (a) provisional tariff or (b) final tariff or (c) revised tariff], in accordance with the applicable Tariff Regulations. Against such tariff orders of this Commission, either of the affected party prefers appeals before the Appellate Tribunal for Electricity ("in short, APTEL"). The decisions in such appeals consequently resulted in the revision of the applicable tariff from time to time.

(b) As per Regulation 5(3) of the 2009 Tariff Regulations, if the tariff billed provisionally falls short of the final or revised tariff, the generating company is entitled to recover the differential amount along with carrying cost. In effect, as per Regulation 5(3) of the 2009 Tariff Regulations, APL is entitled to recover the principal sums along with carrying cost (*interest*), if: -



(i) The tariff billed by APL based on the provisional tariff order falls short of the final tariff as determined by this Commission; or

(ii) The tariff billed by APL based on the final tariff order falls short of the revised tariff as determined by this Commission, based on the revisions in tariff *inter alia* due to decisions of APTEL or the Hon'ble Supreme Court in appeals preferred against either the provisional tariff order or the final tariff order;

(c) APL filed Petition No.160/GT/2012 seeking the determination of tariff for 11.11.2010 to 31.3.2014 for Unit-I and from 1.4.2012 (SCOD) to 31.3.2014 for Unit-II of the Project in terms of the 2009 Tariff Regulations, and the Commission, by its order dated **24.12.2012**, determined the provisional tariff for Unit-I for the period from 11.11.2010 to 31.3.2014 ('Provisional tariff order'). On an appeal (**Appeal No. 18/2013**) filed by Respondent PCKL before APTEL against this order, the APTEL vide interim order dated **8.2.2013** *inter alia* directed as under:

"Having regard to the peculiar facts and circumstances of the case, we deem it appropriate to modify the Order to the effect that the Appellant will pay the provisional tariff as decided by the Central Commission in the impugned order with effect from 01.09.2012 to the Respondent no. 2 in respect of Unit Nos. 1 and 2 till the final determination of tariff by the Central Commission for these Units.

The amount of arrears, which are to be paid from 01.09.2012, as directed, is to be paid by the Appellant in four equal instalments by the end of every month. The first instalment would be paid on or before 28.02.2013."

(d) By order dated **20.2.2014**, this Commission determined the final tariff for APL Project for the period from 11.11.2010 to 31.3.2014 for Unit-I and from 19.8.2012 to 31.3.2014 for Unit-II (Final tariff order). On an Appeal (**Appeal No. 108/2014**) filed by PCKL against the tariff order dated 20.2.2014, APTEL vide interim order dated **3.6.2014** *inter alia* directed PCKL/Karnataka ESCOMs to pay the arrears, as under:

"11. Keeping in view of the balance of interests of both the generator and the distribution licensees, we pass the following interim order subject to outcome of final disposal of the Appeals:

(i) The Appellants, PCKL/Distribution Licensees will pay the charges at the final tariff determined by the Central Commission vide impugned order dated 20.2.2014 from 1.4.2014 i.e. bill for energy supplied during the month of April 2014.

(ii) The Appellants will also pay the arrears due from 1.2.2013 on account of difference between the final tariff decided by the Central Commission and the amount already paid at provisional tariff as per the interim order dated 8.2.2013 in eight equal instalments by the end of every month. The first instalment will be paid by 30.6.2014.

(iii) Payment of arrears claimed for the period from 11.11.2010 to 31.1.2013 will be subject to the outcome of these Appeals."

(e) While the Respondents PCKL/Karnataka ESCOMs paid the principal sums through instalments, in line with the directions of APTEL, they have not paid the carrying cost thereon.

(f) APL, by invoice dated 27.2.2023, raised on PCKL/Karnataka ESCOMs, Rs. 786 crores towards carrying cost, by considering the revisions in tariff by APTEL and this Commission, through the respective judgments/orders issued from time to time. Copies of APL invoices dated 27.2.2023 showing the detailed calculation of carrying costs are submitted with the Petition.

(g) As against APL's carrying cost claim for Rs. 786 crores (Rs. 423 crores towards carrying cost + Rs. 363 crores towards interest on carrying cost) for the periods 2009-14 and 2014-19, Respondents PCKL/Karnataka ESCOMs admitted and paid the carrying cost to the tune of Rs. 220 crores in instalments between May, 2023 and September, 2023. However, the Respondents unilaterally and illegally withheld the balance amount towards carrying cost, i.e., Rs. 566 crores (Rs. 203 crores towards carrying cost + Rs. 363 crores towards interest on carrying cost). APL is given to understand that such unilateral and illegal withholding of the balance amount towards carrying cost is by not considering the impact of the carrying cost arising from directions of APTEL in its interim order dated 3.6.2014 in Appeal No. 108 / 2014 read with Regulation 5(3) of the 2009 Tariff Regulations; and restricting the claims till the date of the provisional tariff order/ final tariff order/ revised orders of this Commission. Such unilateral and illegal withholding of the balance amount towards carrying cost is erroneous, and is contrary to: -

(a) APTEL's interim order dated 3.6.2014 in IA No. 199/2014 in Appeal No. 108/ 2014 (b) Regulation 5(3) of the 2009 Tariff Regulations and (c) Findings of this Commission in para 141 of its order dated 13.1.2023 in Petition No.155/ MP/2019 in UPCL vs. PCKL & ors, wherein, this Commission clarified that the carrying cost is applicable for the events where the tariff subsequently approved by this Commission or through adjudication of cases resulting in revision of tariff are in deviation to the tariff approved earlier for the same period.

(h) Evidently, the Respondents PCKL/Karnataka ESCOMs are in wilful disobedience of the judgments/ orders of APTEL and this Commission from time to time and also the Tariff Regulations. In that light, this is a fit case for this Commission to invoke its jurisdiction to enforce the liability of the Respondent Karnataka ESCOMs and issue a time-bound direction to release the outstanding dues towards carrying cost payable to APL as per judgments/orders of APTEL and this Commission from time to time, read with the applicable Tariff Regulations.

A. The Commission is statutorily empowered to execute orders

(i) As per Section 142 of the Act and Regulation 70(2) of CBR 2023, read with Section 94 of the Act and Sections 42, 47, and Order XXI Rule 10 of CPC, this Commission is statutorily empowered to execute orders. It is no longer res integra that a statutory tribunal (in this case, Commission), which has been conferred with the power to adjudicate a dispute and pass necessary orders, also has the power to implement its order and make its order effective. Reliance



is placed on the Hon'ble Supreme Court's decision in *State of Karnataka v. Vishwabharathi House Building Coop. Society*, (2003) 2 SCC 412.

(j) Since the Act confers jurisdiction on this Commission to execute its order, it must be held to have also granted all such powers, and to employ all such acts, as are necessary for its execution, including but not limited to issuing a time-bound direction to the Karnataka ESCOMs to release the outstanding dues towards carrying cost payable to Adani. In this regard, reliance is placed on the Hon'ble Supreme Court's judgment in *Union of India v. Paras Laminates (P) Ltd.*, (1990) 4 SCC 453.

B. The Commission has 'wide regulatory powers' to execute orders

(k) Being a sector expert, this Commission has wide regulatory powers to take all actions necessary for the execution of orders, including issuing a time-bound direction to the Karnataka Discoms to release the outstanding dues towards carrying cost payable to APL. The judgments of the Hon'ble Supreme Court in *Transmission Corporation of AP Ltd. v. Rain Calcining Ltd.*, 2019 SCC OnLine SC 1537 and *Energy Watchdog v. CERC* (2017) 14 SCC 80 are noteworthy regarding the wide regulatory powers of this Commission.

(l) In the absence of any prohibition on embargo, and in view of the wilful disobedience of the judgments/orders of APTEL and this Commission from time-to-time by the Karnataka ESCOMs, it is prayed that this Commission may exercise its '*wide regulatory powers*' and issue a time bound direction to the Karnataka ESCOMs to release the outstanding dues towards carrying cost payable to APL.

C. The Commission has the 'inherent power' to execute orders

(m) As per Regulation 65 of the CERC (Conduct of Business) Regulations, 2003 and Section 151 of the Civil Procedure Code, 1908, the inherent powers of this Commission are saved. Such powers are plenary in nature, and the same can be exercised concerning an area where the Act or Rules are silent. The judgments of the Hon'ble Supreme Court in *GUVNL v. Solar Semiconductor Power Co. (India) (P) Ltd* (2017) 16 SCC 498, and *UPPCL v NTPC Ltd* (2009) 6 SCC 235 are noteworthy.

(n) In view of the above, it is prayed that this Commission may invoke its inherent powers and issue a time-bound direction for the immediate release of outstanding carrying cost dues payable to APL.

D. Adani is statutorily entitled to payment of carrying cost

(o) As per the 2009 Tariff Regulations and the 2014 Tariff Regulations, APL is entitled to charge interest on delayed payments. Evidently, the Tariff Regulations have consistently recognised the entitlement of parties to recover carrying costs in the event of delayed payments. The aforesaid provisions are based on the principle that the affected party is compensated for the time value of money. This



Commission, in its order dated 13.1.2023 in Petition No. 155/MP/2019, already recognised that the same principle is applicable in the event where the tariff subsequently approved results in a revision of the tariff that is in deviation from the tariff approved earlier for the same period.

(p) Therefore, APL is entitled to carrying cost on the differential amounts from the date of the respective orders of this Commission determining and/or revising the tariff [*including the orders passed pursuant to APTEL's interim order dated 3.6.2014 in IA No.199/2014 in Appeal No. 108/2014* to the date of actual payment. As per the reliefs granted by this Commission till date, leading to a revision in tariffs, APL is entitled to receive the carrying cost, as per APL's invoice dated 27.2.2023.

E. Carrying Cost is a consequential relief in case of delayed payment

(q) APL's entitlement to carrying cost flows from its right to recover the time value of money [Ref: UHBVNL v. Adani Power (Mundra) Limited, (2023) 2 SCC 624 (paras 20-24) and APTEL's judgment in M/s. SLS Power Ltd. v. APERC & Ors., (Appeal No. 38/2012-Paras 35.5 and 35.6)]. Carrying Cost is a consequential relief that is ought to be paid to the affected party from the date such entitlement accrued, and the payment became due. It is a settled position of law that payment of interest is consequential when the Court has already awarded the principal sums to be paid to a party [Ref: SECCL v State of M.P (2003) 8 SCC 648 (para 28) and MSEDCL vs. MERC & ors. (2022) 4 SCC 657 (paras 195-198)].

(r) In terms of this Commission's orders, APL is entitled to carrying costs on differential tariffs. Despite a clear and settled position of law with respect to the entitlement of carrying cost, Respondent PCKL/ESCOs have failed to comply with the same till date. It is a trite law that where there is no stay of the directions of the judgment of the court of first instance or appellate court, the directions of the court of first instance or appellate court are in operation and binding. [Ref: Bhopal Sugar Industries Ltd. v. ITO Bhopal, AIR 1961 SC 182 (Paras 7, 8, 10 & 12), RBF Rig Corporation, Mumbai v. Commissioner of Customs (Imports) Mumbai, (2011) 3 SCC 573 (Paras 17 to 19 & 23 to 27)]

3. In view of the above, the Respondents PCKL/ESCOs ought to be directed to pay the carrying cost as per APL's invoice dated 27.2.2023.

Hearing dated 19.9.2024

4. During the hearing 'on admission', the learned counsel for the Petitioner submitted that the present Petition has been filed seeking execution for non-compliance of the tariff orders/judgement of APTEL by the Respondents. The



Commission 'admitted' the Petition and issued notice to the parties, with directions to complete the pleadings in the matter. In compliance with the Commission's directions, the Respondent, PCKL, has filed its reply affidavit on 31.12.2024, and APL has filed its rejoinder on 20.1.2025.

Reply of the Respondent PCKL/Discoms

5. The Respondents PCKL vide reply affidavit dated 31.12.2024 have mainly submitted the following:

Preliminary submissions

(a) The petition under Section 142 of the Act read with Regulation 70(2) can only be filed on account of non-compliance with the order passed by the Commission. Payment against an inflated and arbitrary invoice raised by the Petitioner, which is not in accordance with any order of the Commission, is not a relief which can be sought in proceedings under Section 142 or Regulation 70(2) or even in execution proceedings. The petition is not maintainable at all.

(b) In any event, the Karnataka Discoms have already paid the Petitioner a total sum of Rs. 419.70 crores in compliance with the orders of the Commission, and after thorough reconciliation of accounts and detailed discussions with the representatives of the Petitioner. This includes a sum of Rs 215.86 crores towards carrying cost, and no further amounts remain to be paid to the Petitioner. The Petitioner has miserably failed to show that it is entitled to the amounts claimed in its invoice or that those amounts are in accordance with the orders of this Commission.

(c) Out of the amount being claimed by the Petitioner, Rs 363.04 crore is interest on carrying cost, i.e., interest on interest, which is neither payable nor has been directed to be paid by this Commission. The Petitioner has failed to disclose that it has already paid LPS to the tune of Rs.1591.58 crores for the period between November, 2010 and September 2023. However, it is now claiming further hundreds of crores towards interest/LPS on carrying cost, which is completely unconscionable.

(d) The Petitioner is also seeking payment of the carrying cost basis for certain interim orders of the APTEL, which is completely impermissible. Payments were made by the Discoms in instalments and in accordance with the said interim orders. There was no direction whatsoever for the payment of any interest/carrying cost in the said orders. In any event, the said interim orders do not survive and have merged with the final orders disposing of the concerned appeals.



(e) Pursuant to discussions and reconciliation between the parties, the Petitioner has, in its own letter dated 10.6.2023, revised its calculation of carrying cost and alleged interest thereon, and reduced the amounts claimed by it. Therefore, the invoice dated 27.2.2023 no longer holds the field, and no claims can be made on its basis thereof. The above-said letter, which supersedes the invoice dated 27.2.2023, as well as the details of the discussion/ reconciliation between the parties, has been deliberately suppressed by the Petitioner. On the contrary, it has sought prayers for payment as per the invoice dated 27.2.2023, without disclosing that the calculations therein have been modified. The Petitioner has therefore approached this Commission with unclean hands, and the present Petition deserves dismissal on this ground alone.

Reply on Merits

(f) The Commission vide its judgment dated 13.1.2023 in Petition No.155/MP/2019 held that the Petitioner shall be entitled to carrying cost as per para 142 thereof. The Commission also directed that the recovery of arrears of fixed and energy charges and carrying costs shall be made in 6 instalments in accordance with para 143. Pursuant thereto, the Petitioner raised a supplementary invoice dated 27.2.2023, claiming a total amount of Rs. 1162.78 crore (Principal-Rs.182.91 crore plus Rs 979.86 crore-Interest). Pertinently, the Petitioner had erroneously included interest/ carrying cost, relying on the interim orders dated 8.2.2013 and 3.6.2014 of the APTEL, as well as interest/LPS on the carrying cost, in the above invoices.

(g) PCKL responded vide letters dated 10.4.2023, disputing the computation of the Petitioner as they were not in line with the order of this Commission. The Commission had permitted the Discoms to make the payments in 6 instalments starting from 3 months after the order, and LPS was only payable in the event this was not complied with. Therefore, the claim of Rs.363.04 crores towards interest on alleged delay in paying carrying cost/interest is not payable as per the order of this Commission or the Tariff Regulations. Carrying cost is payable only from the date of the provisional tariff order, i.e., 24.12.2012, as per the order of this Commission, and not from any earlier date.

(h) The order dated 20.2.2014 is not a final tariff order, since the tariff was redetermined on 10.7.2015 pursuant to a remand by the APTEL. Therefore, the Petitioner is not entitled to interest on the difference between the provisional tariff as per the order dated 24.12.2012 and the tariff determined vide order dated 20.2.2014. Therefore, the carrying cost is only payable for the differential tariff from 24.12.2012 (provisional tariff) to 10.7.2015 (final tariff), and for the period from 10.7.2015 to 24.3.2017 (truing up). The Petitioner is not entitled to interest/ carrying cost for the period from 24.3.2017 to 27.6.2019, since the same is neither a final tariff order nor a truing up order.



(i) PCKL accordingly recalculated the amounts due as per the orders of this Commission and found that a total sum of approx. Rs. 35.07 crore was, in fact, recoverable from the Petitioner towards carrying costs on provisional/ final/ truing up tariff orders. Further, a total sum of only approx. Rs. 110.65 crores on the differential energy charges and the carrying costs thereon were payable to the Petitioner. Since there were differences in the manner of computing the amount due, the parties had detailed discussions and undertook a thorough reconciliation of accounts in May and June 2023. The Petitioner even issued a credit note dated 26.5.2023 for Rs. 72.19 crores to PCKL/ Discoms towards the capacity charges. Pursuant thereto, PCKL revised its capacity charge calculations. A true copy of the Petitioner's presentation dated 8.5.2023 is submitted. True copies of the credit note dated 26.5.2023 issued by the Petitioner and a true copy of the e-mail dated 9.6.2023 sent by PCKL to the Petitioner are also submitted.

(j) The Petitioner, vide its letter dated 10.6.2023, modified and reduced its claims for the carrying cost and alleged interest thereon, as follows:

SI no	Particulars	Amount (in Rs crores)		
		Invoice dt. 27.2.2023	Letter dt. 10.6.2023	Difference
1	Carrying cost	423.05	404.08	(-) 18.97
2	Interest on carrying cost	363.05	331.57	(-) 31.48
3	Total	786.10	735.66	(-) 50.40

(k) Respondent PCKL requested APL to provide the supporting calculations in order to verify its correctness. Pursuant to the discussions and reconciliation, the parties arrived at the final amounts payable, which were far less than the amounts claimed by APL in its invoice dated 27.2.2023 or the letter dated 10.6.2023. A break-up of the amounts admitted by the Respondent PCKL, after reconciliation, is as under:

S No.	Particulars	Amount (in Rs. crore)		
		Principal	Interest	Total
1.	Differential Capacity Charges	53.45	69.41	122.87
2.	Differential Energy Charges	33.59	47.38	80.97
3.	Carrying cost on differential tariff qua provisional/ final tariff orders	0	215.86	<u>215.86</u>
4.	Interest on the alleged delay in payment of the carrying cost	0	0	0
5.	Total	87.04	332.65	419.70

(l) The details /break-up of the computation of the carrying cost of Rs. 215.86 crores are as under:

Sl No	Particulars of carrying cost	Control Period	Amount (Rs in crores)
1	Difference between the Commission's order dated 20.2.2014 and GoK order; provisional tariff order dated 24.12.2012	11.11.2010 to 31.3.2014 (computed till 20.2.2014)	234.08
2	Difference between the final tariff order dated 10.7.2015 and the order dated 20.2.2014.	11.11.2020 to 31.3.2014	(-) 47.23
3		1.4.2014 to 31.3.2019 (computed till 10.7.2015)	(-) 14.84
4	Difference between the truing up order dated 24.3.2017 and the final tariff order dated 10.7.2015	11.11.2010 to 31.3.2014	36.93
5		1.4.2014 to 31.3.2019 (computed till 24.3.2017)	(-) 6.21
6	Difference between the order dated 27.6.2019 and truing-up order dated 24.3.2017	11.11.2010 to 31.3.2014	143.28
7		1.4.2014 to 31.3.2014 (computed till 27.6.2019)	19.87
8	Difference between the tariff order dated 22.1.2020 and the previous orders dated 10.7.2015 and 24.3.2017	1.4.2014 to 31.3.2019 (computed till 22.1.2020)	(-) 146.74
	Total		219.14
9	Carrying cost for 2019-20		(-) 3.28
	Total		215.86

(m) The above-said amount was paid in 6 equal instalments in full compliance with para 143 of the order dated 13.1.2023 of this Commission, without any delay.

(n) However, the Petitioner has, thereafter, filed the present Petition claiming additional Rs.207.19 crores towards carrying cost and Rs. 363.05 crores towards interest/LPS on the alleged delayed payment of carrying cost, which is untenable.

(o) Though HESCOM paid certain amounts initially, on subsequent detailed reconciliation and computation with the officers of the Petitioner, it was found that the Petitioner was liable to pay HESCOM a sum of Rs. 32.57 crores. It was mutually agreed that the same would be adjusted against the invoices raised by the Petitioner against HESCOM. Therefore, there is no question of any interest on carrying cost or LPS being imposed on HESCOM.

(p) There is a variation in the quantum of carrying cost, since the Petitioner is once again calculating carrying cost qua the interim orders dated 8.2.2013 and 3.6.2014 of the APTEL. It is reiterated that payments were made in accordance with these interim orders, and these orders did not provide for payment of any interest/ carrying cost thereon. Further, para 142 of the order dated 13.1.2023 of this Commission only provides that "*the Petitioner shall be entitled for interest from the date of provisional tariff or final tariff or revised tariff determined by the Commission*". Similarly, Regulation 5(3) of the 2009 Tariff Regulations and Regulation 8(13) of the 2014 Tariff Regulations only envisage payment of the carrying cost between the provisional/ final/ truing up tariff orders. Therefore, neither the interim orders of the APTEL nor the Commission's order dated



13.1.2023 nor the Tariff Regulations mandate the payment of any carrying cost in respect of such interim orders/ arrangements.

(q) Without prejudice, the Petitioner, in its invoice dated 27.2.2023, has only claimed a sum of approx. Rs.33.71 crores against the interim orders dated 8.2.2013 and 3.6.2014. However, this has been inflated to Rs. 566 crores in the present Petition. This makes it clear that the Petitioner's claims are completely dubious and inflated. The Petitioner has also not accounted for carrying costs up to the date of the tariff order dated 22.1.2020, and has calculated the same only up to 31.3.2019. Accounting for the financial year 2019-20, the recovery of Rs. 3.29 crores is to be made from the Petitioner.

(r) The Karnataka Discoms have cleared the payments in 6 instalments, as per the Regulations and the order of this Commission. Therefore, the question of paying any further interest/ LPS thereon does not arise. In any event, the interest rate considered by the Petitioner is inconsistent with the applicable Regulations. For the year 2013, the interest rate considered by the Petitioner is 13.36%, whereas the applicable interest rate as per the Regulations is 13.20%.

(s) The Petitioner has actually prayed for the payment of alleged outstanding amounts as per its unilateral and baseless invoice dated 27.2.2023. There is no prayer for implementation or execution of any particular order of this Commission, nor is there any averment as to which direction in any order has not been complied with. Therefore, this Petition is not as per the provisions of Sections 142 or 94 of the Electricity Act, 2003, or Order XXI Rule 10 of CPC.

(t) Regulation 5(3) of the 2009 Tariff Regulations is a matter of record. The carrying cost has already been reconciled and paid to the Petitioner. However, the Petitioner is also claiming carrying costs in respect of the interim orders of the APTEL as well as interest on carrying costs, which is not payable.

(u) It is denied that the Karnataka ESCOMs have wilfully defaulted in paying carrying costs to Adani. The orders passed by this Commission and APTEL are a matter of record. However, the orders dated 8.2.2013 and 3.6.2014 passed by the APTEL are admittedly interim orders. Payments were made in accordance with these interim orders. These interim orders have merged with the final judgment passed by the APTEL and no longer survive. In any event, the final order dated 15.5.2015 passed by the APTEL in Appeal No.108/2014 has been challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 13833-34/2015, and is pending adjudication. Hence, these interim orders cannot be executed/ implemented at this stage. It is denied that any carrying cost is liable to be paid as per the directions of APTEL or in respect to payments made as per the directions/ interim orders of APTEL. There is no question of any carrying cost being payable on payments made in accordance with the interim orders of the APTEL. It is reiterated that the Karnataka ESCOMs have complied with the Court



orders, the carrying cost amount has already been reconciled and paid to the Petitioner, and nothing further remains outstanding.

(v) It is denied that the carrying cost of Rs. 786 crores is liable to be paid by the Karnataka ESCOMs to the Petitioner as per revisions in tariff by APTEL or this Commission, as per their judgments/ orders issued from time to time. After detailed discussions and reconciliation, the carrying cost of approx. Rs. 215 crores were paid to the Petitioner. It is not entitled to any further carrying cost or interest thereon.

(w) The Karnataka Discoms have paid the carrying cost of Rs. 215.86 crores as well as other amounts in six instalments, in compliance with the Commission's order dated 13.1.2023 and the applicable Regulations. The Petitioner is not entitled to any further amounts towards carrying costs or interest on carrying costs. It is therefore denied that PCKL/ Karnataka ESCOMs have allegedly unilaterally or illegally withheld any purported balance amount towards carrying cost or that they have not considered the supposed impact on carrying cost arising from interim orders of the Hon'ble APTEL or Regulation 5(3) of the 2009 Tariff Regulations.

(x) There is no illegality or non-compliance associated with the manner in which PCKL has computed the amounts due. Para 142 of the order dated 13.1.2023 says that carrying cost shall be paid "*till the date of this order*". In compliance with the same, PCKL has worked out the carrying cost on the fixed costs and energy charges, till the date of the order dated 13.1.2023, on the difference between the provisional/ final/ revised tariff orders. It is denied that any alleged unilateral or illegal withholding of the purported balance amount towards carrying cost is erroneous or contrary to the interim order dated 3.6.2014 of the APTEL, Regulation 5(3) of the 2009 Tariff Regulations or the Commission's order dated 13.1.2023.

Rejoinder of the Petitioner APL

6. Petitioner APL vide its rejoinder affidavit dated 20.1.2025, has mainly submitted the following:

(a) The Petition is maintainable in view of the Commission's wide statutory, regulatory and inherent power to execute its own orders. Reliance placed on the judgment of the Hon'ble Supreme Court in *State of Karnataka v Vishwa Bharathi House Building Cooperative Society* (2003) 2 SCC 412, *Transmission Corporation of AP Ltd v Rain Calcining Ltd* (2019) SCC Online 1537 and Regulation 65 of the CERC (Conduct of Business) Regulations 2023 read with Section 151 of the CPC.



(b) PCKL/Discoms have wilfully defaulted under the original order and unilaterally and illegally withheld Rs 566 crore out of Rs 786 cr claimed towards carrying cost and interest on carrying cost.

(c) As per Regulation 5(3) and Regulation 6(5) of the 2009 Tariff Regulations, APL is entitled to recover the principal sums along with carrying cost if (a) tariff billed based on provisional tariff falls short of the final tariff determined by this Commission (b) the tariff billed based on the final tariff order falls short of the revised tariff as determined by this Commission, based on the decisions of the superior courts and (c) where after truing-up, the tariff recovered is less than the tariff approved by this Commission.

(d) Petition No.155/MP/2019 was filed by APL before this Commission seeking adjudication of disputes relating to the payment of certain (i) capacity charges, (ii) energy charges, and (iii) carrying cost for the difference between the provisional, final and revised tariff based on various orders of the Commission and APTEL over-time.

(e) APL raised an invoice on 27.2.2023 on the Karnataka Discoms to implement the order dated 13.1.2023 in Petition No. 155/MP/2019, and inter alia claimed Rs 786 crore towards carrying cost (i.e., Rs 423 crore towards carrying cost) and interest on carrying cost (Rs 363 crore). In wilful disobedience and non-compliance of para 141 of the order and Regulation 5(3) of the Tariff Regulations, PCKL/Discoms unilaterally and illegally withheld Rs.566 crore (*Rs.203 crore towards carrying cost plus Rs. 363 crores towards interest on carrying cost*).

(f) The unliteral and illegal withholding of Rs 203 crore towards carrying cost is by not considering the impact of carrying costs arising from the directions of APTEL in its interim order dated 3.6.2014 in Appeal No. 108/2014, whereby APTEL directed PCKL/Discoms to pay the arrears in eight equal instalments by the end of every month. In doing so, PCKL/Discoms have acted in violation of the Commission's findings in paras 141 and 143 of the order dated 13.1.2023.

(g) There is no justification provided by PCKL in support of its claim that the invoice is inflated. APL's invoice is strictly in terms of the findings in the order and Regulation 5(3) of the Tariff Regulations. By not considering the impact of the carrying cost arising from the directions of APTEL in its interim order dated 3.6.2014 in Appeal No.108/2014, it is PCKL which stands to contravene the Commission's findings in para 141 and Regulation 5(3) of the Tariff Regulations.

(h) Nowhere has APL in its letter dated 10.6.2023, admitted or reduced its claims, as opposed to the amount claimed vide invoice dated 27.2.2023. To the contrary, it is evident from the APL letter dated 18.8.2023 addressed to PCKL/Discoms that the same is without prejudice to receive the entire claims, in terms of the invoice dated 27.2.2023. APL insisted on payment of at least the entire admitted amount by PCKL/Discoms to avoid any consequences, in terms of the MOP LPS Rules, 2022

(i) In para 2 of PCKL reply, it has rightly admitted that the order dated 13.1.2023 directed the Discoms to pay LPS if the arrears of carrying cost are not paid. The contention of PCKL/Discoms that neither the original order nor the Tariff Regulations mandate the payment of carrying cost in respect of the interim orders of APTEL, relating to tariff, is a flawed interpretation of Regulation 5(3) of the Tariff Regulations and the specific directions of the Commission in the order dated 13.1.2023. Regulation 5(3) of the Tariff Regulations is not only limited to stand-alone provisional/final/truing-up tariff orders by this Commission, but also applies to subsequent revisions based on the orders/ judgments of the Appellate Courts.

(j) It is a settled position of law that the payment of interest is consequential when the Court has already awarded the principal sums to be paid to a party. In the present case, the Commission has already directed the principal sums, i.e., carrying costs, to be paid by Discoms. Accordingly, interest on carrying cost is only a consequential liability cast on the Discoms, to be discharged in terms of the applicable law and principles of equity.

(k) Without the express provisions in the PPA, the Hon'ble Supreme Court in the following judgments directed the discoms to pay interest on carrying cost: (i) GMRWEL v CERC & ors (2023) 10 SCC and (ii) UHBVNL v AP(M) L (2023) 2 SCC 624. APTEL, in its judgment dated 19.12.2024 in APPL v MESCOM (Appeal No. 211/2021), held that interest can be granted even if not specifically provided under the contract.

LPS is payable by PCKL/Discoms in terms of the Commission's directions/ findings in para 143 of the order

(l) In terms of para 143 of the order dated 13.1.2023, PCKL/Discoms are liable to pay LPS for the delay in paying the monthly instalments. The non-obstante clause under Article 6.4(a) of the PPA rules out any conferred right on the Principal buyers to delay the payments. By order dated 13.1.2023, the Commission directed the Discoms to pay the arrears of fixed charges, energy charges and carrying cost in six monthly instalments and directed that if the arrears are not paid as stipulated, APL shall be entitled to LPS. However, evidently by unilaterally withholding Rs 566 crore, payable in terms of paras 141-143 of the said order, the Discoms ought to pay the LPS, as directed by this Commission.

(m) It is no longer res integra that for any delay in payment, PCKL/Discoms are liable to pay LPS, as per the rate specified in terms of the applicable Tariff Regulations. Reliance placed on the APTEL judgment dated 2.11.2020 in Appeal No. 10/2020 (PCKL & ors v CERC & ors). By order dated 8.2.2022, the Hon'ble Supreme Court dismissed the Civil Appeal (838/2021) filed by PCKL/Discoms. In view of this, PCKL/Discoms ought to pay LPS towards the delay in payment of the invoice dated 27.2.2023.



Hearing dated 25.2.2025

7. During the hearing, the learned counsel for APL made detailed oral submissions and prayed that the Commission may exercise its powers under Section 142 of the Electricity Act, 2003 and issue time-bound directions to the Respondents for the immediate release of the outstanding amounts. The learned Senior Counsel for the Respondent Discoms opposed the submissions of the Petitioner, stating that payments have been duly made by the Respondents, in accordance with the applicable regulations and the directions of this Commission in the order dated 13.1.2023 in Petition No.155/MP/2019. However, the Commission, based on the consent of the parties, reserved its order in the matter, after directing the Respondent Discoms to file the details of the invoices and the payments made thereof to the Petitioner, along with short notes, if required, after serving a copy to the Petitioner, who was permitted to file its response thereafter.

Written submissions of the Respondent PCKL/Discoms

8. In response to the above directions, the Respondent PCKL, vide affidavit dated 13.3.2025, has mainly submitted the following:

- (a) The interest /carrying cost payable till 13.1.2023 has to be computed with reference to the scope mentioned in para 142 of the order dated 13.1.2023. Further, as per para 143, the payment of the amount so computed has to commence after three months from the order and be paid in six equal monthly instalments, i.e., up to 13.9.2023. Only in the event of default shall the delayed payment surcharge at the rate provided in the Tariff Regulations be applicable.
- (b) The reply filed by PCKL and adopted by the Respondent Discoms has dealt with the entire computation in compliance with the above paragraphs of the order dated 13.1.2023. After a detailed reconciliation process, in which the officers of the Petitioner participated and provided factual inputs, the amount payable as per the order dated 13.1.2023 has been worked out to be Rs 419.70 crores, which includes carrying cost on the differential tariff of Rs 215.86 crores. The entire amount was duly paid in six instalments by 12.9.2023.



- (c) As on 12.9.2023, there was no principal or interest/carrying cost outstanding as the entire payment had been made in compliance with the order dated 13.1.2023. Therefore, the application of any delayed payment surcharge as per para 143 of the order dated 13.1.2023 is not attracted. The Respondent Discoms are not liable to pay any LPS. The Petitioner, in its invoices dated 27.2.2023, has made arbitrary and illegal claims which are completely contrary to paras 142 and 143 of the order dated 13.1.2023. The difference between the computation of the Respondents and that of the Petitioner qua the carrying cost, is solely due to the fact that the Petitioner has calculated and claimed carrying cost on the basis of certain interim orders passed by APTEL.
- (d) Para 142 of the order dated 13.1.2023 only directs the payment of interest /carrying cost from the date of the provisional tariff or final tariff or revised tariff determined by the Commission. Similarly, Regulation 5(3) of the 2009 Tariff Regulations and Regulation 8(13) of the 2014 Tariff Regulations only envisage the payment of carrying costs between provisional/final truing up of tariff orders. The APTEL's interim order dated 3.6.2014 is not a determination by this Commission. It does not determine any tariff and is neither a provisional nor a final tariff nor a revised tariff order. Pertinently, the tariff was subsequently revised by this Commission, and hence, the carrying cost has been computed with respect to the revised tariff order. Therefore, any claim for further interest/ carrying cost on the basis of the APTEL interim order is impermissible.
- (e) The Hon'ble Supreme Court in its judgment dated 7.8.2024 in M/s D. Khosla & Co v UOI (SLP No. 812/2014) duly following its earlier judgments held that the power of the Courts to award interest on interest or compound interest in a given case is 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.
- (f) There was no direction whatsoever for the payment of any interest /carrying cost in the said interim orders. The Petitioner had already been paid a huge amount of LPS for this period, including in respect of the payments made pursuant to these interim orders. In any event, the said interim orders do not survive and have merged with the final orders disposing of the concerned appeals. Therefore, there is no question of paying further carrying costs to the Petitioner on the basis of some interim order of APTEL.
- (g) The Petitioners' claim for interest, on a compounding basis, i.e., interest on interest, is outside the scope of the order dated 13.1.2023. Para 142 of the order categorically stipulates that 'simple interest' is payable, and para 143 provides for LPS, only if the payment is not made in six instalments.



Therefore, the Petitioner's claim is outside the scope of Section 142 of the Act.

Reply of the Petitioner APL to the Written Submissions of the Respondents

9. In response, the Petitioner APL, in its reply dated 26.3.2025, has mainly reiterated its submissions made in its reply. In addition, APL has submitted the following:

- (a) While APL participated in the reconciliation process, it did not agree to the amount of Rs 419.70 crore unilaterally worked out by PCKL. In fact, there is no reconciliation statement which is signed by APL in this regard. It is clear from APL's letter dated 18.8.2023 that it has not accepted PCKL's calculation related to carrying cost. APL's claim qua carrying cost lies in terms of the Commission's directions/findings in para 141 and 142 of the order dated 13.1.2023 and Regulation 5(3) of the Tariff Regulations read with the invoice dated 27.2.2023. The claims have never been amended, reduced or diluted, as alleged.
- (b) Regulation 5(3) of the Tariff Regulations is not only limited to standalone provisional/final/truing up orders of this Commission, but also applies to subsequent revisions, based on the orders/judgments passed by Appellate Courts. PCKL is selectively reading para 142 of the said order. At Paras 141-142, this Commission specifically directed the Discoms to pay carrying cost considering the revision in tariff by the APTEL decision. APTEL by interim order dated 3.6.2014 stayed the implementation of final tariff determined vide Commission's order dated 20.2.2014 in Petition No. 160/GT/2012 and directed PCKL to inter alia pay the provisional tariff of (i) Rs 3.12/kWh for the period November, 2010 to August, 2012 and (ii) Rs.4.11 /kWh for the period September 2012 to January, 2013 instead of the final tariff of Rs. 4.47/kWh approved by this Commission in order dated 20.2.2014. In effect, APTEL vide its interim order dated 3.6.2014 revised the tariff (approved vide Commission's order dated 20.2.2014) for the period November 2010 to January, 2013.
- (c) In view of the above, APL did not receive the tariff for the period November 2010 to January 2013 in terms of the final tariff order dated 20.2.2014. APL received payment only on the basis of the Commission's consequential order dated 10.7.2015, based on APTEL's decision dated 15.5.2015. Thus, APL has rightly computed the carrying cost of Rs 423 crore, considering the difference between the provisional tariff of APTEL (interim order dated 3.6.2014) and this Commission's order dated 10.7.2015. APL's computation of carrying cost is by considering all the orders of this Commission and judgments of APTEL, including the interim order dated 3.6.2014.
- (d) PCKL has erroneously considered a tariff of 4.47/kWh based on the Commission's order dated 20.2.2014 for the period from November 2010 to January 2013, though the said order was stayed by APTEL on 3.6.2014. For the period from November 2010 till January 2013, PCKL/Discoms continued to pay only provisional tariff/interim tariff, and from February 2013 onwards



at Rs. 4.47/kWh, based on the Commission's order dated 20.2.2014. They were required to pay the differential based on the consequential tariff order dated 10.7.2015, pursuant to the APTEL judgment dated 15.5.2015. In view of this, the carrying cost for the said period of November 2010 to January 2013 ought to be paid based on the Commission's order dated 10.7.2015.

- (e) By order dated 13.1.2023, the Commission had directed the PCKL/Discoms to pay the arrears of fixed charges, energy charges and carrying cost in six equal monthly instalments and directed that if the arrears are not paid as stipulated, then APL is entitled to LPS. By unilaterally withholding Rs 566 crore (out of Rs 786 crore claimed by APL), the Respondents PCKL/Escoms have not made payment in accordance with the order dated 13.1.2023. Therefore, the liability to pay LPS in terms of the para 143 of the order gets attracted.

10. From the submissions of the parties above, the following issues emerge for our consideration:

Issue No.(A): Whether the Respondent PCKL/Discoms are liable to pay the carrying cost on the differential tariff to the Petitioner APL, in terms of the APTEL's orders/Commissions orders read with Regulation 5(3) of the 2009 Tariff Regulations?

Issue No.(B): Whether the Respondent PCKL/Discoms are liable to pay LPS on the carrying cost?

11. Before proceeding to examine the issues, we take note that APL, pursuant to the COD of Unit-I of the generating station, on 11.1.2010, filed Petition No. 160/GT/2012 before this Commission, for the determination of capital cost and tariff for the period from 11.11.2010 to 31.3.2014 for Unit-1 and from 1.4.2012 to 31.3.2014 for Unit-2 and the Commission vide its order dated 24.12.2012, granted provisional tariff for Unit-I for the period 11.11.2010 to 31.3.2014. Against this order, PCKL filed appeal (Appeal No. 18/2013) before APTEL and vide interlocutory order dated 8.2.2013, the Respondents PCKL/Discoms were directed by APTEL to pay (i) the provisional tariff to APL for Units 1 and 2 from 1.9.2012 till 31.1.2013, till the final determination of tariff of these units; and (ii) arrears in four equal instalments by the end of every month and the first instalment to be paid on or before 28.2.2013. Thereafter, Unit-2 attained COD on 19.8.2012, and the Commission, vide its order



dated 20.2.2014, determined the final tariff for the period from 11.11.2010 to 31.3.2014 for Unit-1 and from 19.8.2012 to 31.3.2014 for Unit-II. On a review (14/RP/2014) filed by APL against this order, the same was disposed of vide order dated 3.6.2014, allowing interest in terms of Regulation 5(3) of the 2009 Tariff Regulations. Further, on appeals filed by UPCL (119/2014), PCKL (108/2014) and Janjagrithi Samithi (122/2014) before APTEL, challenging the order dated 20.2.2014, APTEL vide its interim order dated 3.6.2014 *inter alia* directed PCKL/ Discoms to pay the tariff from 1.4.2014, as determined by the Commission vide order dated 20.2.2014. It also directed that the arrears due from 1.2.2013 be paid, in view of the difference between the final tariff determined and the amounts paid at the provisional tariff as per APTEL's interim order dated 8.2.2013. Subsequently, APTEL vide its common order dated 15.5.2015, disposed of the aforesaid appeals (108, 119 and 122/2014), including Appeal No.18/2013, holding as under:

129. Summary of our findings

(i) Capital cost has to be revised by CERC based on our findings in paragraphs 58 & 59 above and impact on IDC, if any, due to delay of 3 months allowed on account of visa to Chinese personnel (paragraph 76). Accordingly amount of fixed charges will also be re-determined

(ii) Energy charges are to be re-determined by CERC based on gross SHR of 2328 kCal/kWh as decided under paragraph 104

(ii) We do not find merit in other issues raised in Appeal Nos. 108 of 2014 and 122 of 2014. Appeal No. 18 of 2013 does not survive in view of our findings in Appeal No. 108 of 2014.

(iv) There is no merit in Appeal No.119 of 2014 filed by Udupi Power.

(v) CERC has to re-determine the tariff based on the above findings of the Tribunal within 45 days of date of this order. In the interim period, till re-determination of tariff by CERC, Udupi Power will raise bills at the rates determined by CERC in the impugned order i.e. the prevailing rates, subject to adjustment after redetermination of tariff by CERC

12. Against the above judgment, APL filed Civil Appeal No.13848/2015, which is pending. Thereafter, the Commission, vide its order dated 10.7.2015 (in Petition No. 160/GT/2012), revised the tariff of the generating station for the period 11.11.2010

to 31.3.2014. This tariff was later trued up vide the Commission's order dated 24.3.2017 in Petition No.7/GT/2016. Against this order, Respondent HESCOM filed Review Petition No.25/2017, which was dismissed vide Commission's order dated 31.7.2017. However, the Review Petitions (19/2015 and 22/2015) filed by APL and the Respondent PCKL before APTEL against its judgment dated 15.5.2015 were disposed of by APTEL vide its order dated 6.2.2019, and the Commission was directed to re-determine the tariff of the generating station in terms of findings therein. For the period 2014-19, the tariff of the generating station was approved vide order dated 22.1.2020 in Petition No. 251/GT/2017. Thereafter, in Petition No. 155/MP/2019 filed by APL seeking adjudication of the disputes related to the legitimate dues payable to APL by the Respondent discoms for the period 2010-11 till 2018-19, the Commission vide paras 141 to 144 of its order dated 13.1.2023, held as under:

"141.... The same principle is applicable in the event where the tariff subsequently approved by this Commission or decision in adjudication cases resulting in revision of tariff is in deviation to the tariff approved earlier for the same period..."

142. Therefore, we deem it fit to hold that the Petitioner shall be entitled for interest from the date of provisional tariff or final tariff or revised tariff determined by the Commission on the directions of APTEL as the case may be, till the date of this order on the differential amount of fixed charges with simple interest at the rate equal to the bank rate applicable as on 1st April of the concerned financial year. As regards the arrear of energy charges, the Petitioner shall be entitled for arrear of energy charges with simple interest at the rate equal to the bank rate applicable as on 1st April of the concerned financial year from the date it fell due till the date of this order. In case of excess recovery, the Petitioner shall be liable to pay the interest at the same rate.

Recovery of arrears of fixed charges, energy charges and carrying cost

143. The recovery of arrears of fixed charges, energy charges and carrying cost as determined in this order shall be made in six equal monthly instalments starting within three months from the date of the tariff order. If the arrears are not paid as stipulated above, then the Petitioner shall be entitled for late payment surcharge as per the applicable Tariff Regulations.

Summary of Decisions

144. In the light of the above, the summary of our decisions is as under:

- (a) UPCL's claim in the present Petition is not barred under Order II Rule 2 of CPC.*
- (b) UPCL's claims for deemed capacity charges are not barred by limitation.*



(c) PCKL is liable to pay deemed capacity charges to UPCL on account of non-availability of 400 KV transmission line for the period from 10.3.2011 to 18.8.2012 [Unit I] and 19.8.2012 to 6.9.2012 [Unit I and Unit II] except when the generating units were shut down or generation was reduced for the reasons other than attributable to PCKL / ESCOMs/KPTCL.

(d) UPCL is not entitled to deemed capacity charges for the period of shut down between 16.1.2013 and 30.3.2013.

(e) If the annual availability factor is above 70% after taking into account the relief granted for deemed availability, the capacity charges shall be calculated in terms of Regulation 21(2)(a) of Tariff Regulations, 2009 and consequential financial benefits shall be payable to UPCL.

(f) The provisions of Coal Sale and Purchase Agreement as adopted in para 137 of this order shall be used for settlement of dispute between the parties with regard to the spot purchase of coal during the disputed period of 1.3.2016 to 31.3.2019.

(g) The Petitioner shall be entitled for the carrying cost on the arrears of fixed charge and energy charge in accordance with para 142 of this order.

(h) The recovery of arrears of fixed charges, energy charges and carrying cost as determined in this order shall be made in accordance with para 143 of this order”

In the above background, the issues are examined below:

Issue No. (A): Whether the Respondent PCKL/Discoms are liable to pay the carrying cost on the differential tariff to the Petitioner APL, in terms of the APTEL’s orders/Commissions orders read with Regulation 5(3) of the 2009 Tariff Regulations?

13. The grievance of the Petitioner APL is that, it had, on 27.2.2023, raised an invoice for Rs 786 crore, on the Respondent PCKL/Discoms towards carrying cost and interest on carrying cost, and the Respondents, have, in willful disobedience and non-compliance of para 141 of the Commission’s order dated 13.1.2023 read with Regulation 5(3) of the 2009 Tariff Regulations, unilaterally withheld an amount of Rs 566 crore (Rs.203 crore towards carrying cost plus Rs. 363 crores towards interest on carrying cost). According to the Petitioner, the withholding of the said carrying costs is not by considering the impact of the directions of APTEL’s interim order dated 3.6.2014 in Appeal No. 108/2014, wherein the Respondents were directed to pay the arrear amounts. *Per contra*, the Respondent PCKL/Karnataka Discoms have contended that the interest /carrying cost payable till 13.1.2023, has to be computed with reference to the scope mentioned in para 142 of the order dated 13.1.2023 and as per para 143, the payment of the amount so computed has to be



commenced after three months from the order and be paid in six equal monthly installments, i.e., up to 13.9.2023. It has been pointed out that after a detailed reconciliation process, the amount payable as per order dated 13.1.2023 has been worked out as Rs 419 crore, which includes carrying cost on differential tariff of Rs. 215.86 crores and the entire amount was duly paid in six instalments and completed by 21.9.2023. Stating that the difference (in amounts) between the computation of the Respondents and that of the Petitioner qua the carrying cost, is solely due to the fact that the Petitioner has calculated and claimed carrying cost on the basis of certain interim orders passed by APTEL, the Respondents have argued that the APTEL's interim order dated 3.6.2014 is not a determination (of tariff) by this Commission and is neither a provisional nor a final or revised tariff order. The Respondents have also submitted that the tariff was subsequently revised by the Commission, and hence the carrying cost has been computed with respect to the revised tariff order, and therefore any claim for further interest/carrying cost on the basis of the APTEL interim order is impermissible. The Respondents have added that there was no direction whatsoever for payment of any interest/carrying cost in the said interim orders, and hence there is no question of paying further carrying cost to the Petitioner, on the basis of some APTEL's interim order.

Analysis and Decision

14. We have examined the rival contentions. We note that in the present case, the interim/provisional tariff for the Petitioner's project was fixed at Rs.3.127/unit, based on the recommendations of the Gururajan Committee. However, this stood modified when the Commission vide its order dated 24.12.2012 (in Petition No.160/GT/2012 filed by APL for the determination of tariff for Units I & II), granted a provisional tariff of Rs 4.11/kWh, for Unit-I for the period 2010-11 till 2013-14. This was later modified



by APTEL vide its order dated 8.2.2013 (in Appeal No. 18/2013 filed by the Respondent PCKL/Discoms) as under:

“Having regard to the peculiar facts and circumstances of the case, we deem it appropriate to modify the Order to the effect that the Appellant will pay the provisional tariff as decided by the Central Commission in the impugned order with effect from 01.09.2012 to the Respondent no. 2 in respect of Unit Nos. 1 and 2 till the final determination of tariff by the Central Commission for these Units.

The amount of arrears, which are to be paid from 01.09.2012, as directed, is to be paid by the Appellant in four equal instalments by the end of every month. The first instalment would be paid on or before 28.02.2013.”

15. Though the Commission, vide its order dated 20.2.2014 (in Petition No.160/GT/2012), determined the final tariff of the generating station for the period from 11.1.2010 to 31.3.2014 (which worked out to Rs 4.47/kWh), APTEL vide interim order dated 3.6.2014 (in Appeal No. 108/2014 & batch filed by the Respondents) modified the same as under:

“11. Keeping in view of the balance of interests of both the generator and the distribution licensees, we pass the following interim order subject to outcome of final disposal of the Appeals:

(i) The Appellants, PCKL/Distribution Licensees will pay the charges at the final tariff determined by the Central Commission vide impugned order dated 20.2.2014 from 1.4.2014 i.e. bill for energy supplied during the month of April 2014.

(ii) The Appellants will also pay the arrears due from 1.2.2013 on account of difference between the final tariff decided by the Central Commission and the amount already paid at provisional tariff as per the interim order dated 8.2.2013 in eight equal instalments by the end of every month. The first instalment will be paid by 30.6.2014.

(iii) Payment of arrears claimed for the period from 11.11.2010 to 31.1.2013 will be subject to the outcome of these Appeals”

16. It is only pursuant to the APTEL judgment dated 15.5.2015 (in Appeals 108/2014 & batch), directing the Commission to re-determine the tariff in terms of the 2009 Tariff Regulations, the Commission revised the tariff of the generating station for the period 11.11.2010 to 31.3.2014 vide order dated 10.7.2015 (in Petition No.160/GT/2012). This was further revised vide the Commission's truing up order dated 24.3.2017 in Petition No. 7/GT/2016 and subsequently, vide order dated 27.6.2019 based on the APTEL's judgment dated 6.2.2019. Thus, on account of the

revisions in tariff of the generating station, based on the several interim orders/APTEL judgments and orders of this Commission, the Petitioner was entitled to receive the differential tariff amounts along with carrying cost, from the Respondent PCKL/ Discoms, in terms of Regulation 5(3) of the 2009 Tariff Regulations, which is extracted below:

“5.(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the [transmission customers] with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance these regulations:

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the rate equal to short-term Prime Lending Rate of State Bank of India on the 1st April of the concerned/respective year.

17. Regulations 6(5) of the 2009 Tariff Regulations and Regulation 8(13) of the 2014 Tariff Regulations provides as under:

Regulation 6(5)

“Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall recover from the beneficiaries or the transmission customers, as the case may be, the under-recovered amount along with simple interest at the rates specified in the proviso to this regulation.”

Regulation 8(13)

“The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate as on 1st April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments starting within three months from the date of the tariff order issued by the Commission.”

18. It is evident that the Tariff Regulations have consistently recognized the entitlement of the parties to recover the carrying cost in case of delayed payments, based on the principle that the affected party is compensated for the time value of money. This principle has also been recognised and made applicable by this Commission in its order dated 13.1.2023 in Petition No. 155/MP/2019 (UPCL v PCKL & ors) in the event where the tariff subsequently approved results in the revision of



the tariff in deviation of the tariff approved earlier, for the same period. Though the Respondent PCKL/Discoms have paid the Principal amount, in installments, in line with the above directions/orders of the APTEL and this Commission's order dated 13.1.2023, they have, unilaterally withheld the payment of the carrying cost, by not considering its impact arising from the APTEL's order dated 3.6.2014, and restricting the claims till the date the provisional tariff order/final tariff order/revised tariff orders of this Commission. The Respondents have contended that para 142 of the order dated 13.1.2023, only directs the payment of interest/carrying cost from the date of provisional tariff or final tariff or revised tariff determined by the Commission, and since the APTEL's interim order dated 3.6.2014, is not a determination by this Commission, the claim for interest/ carrying cost is not permissible.

19. The above submissions of the Respondents are misconceived. As noted, Regulation 5(3) of the 2009 Tariff Regulations does not limit itself to provisional tariff orders /final tariff orders/truing up tariff orders, but also applies to revisions in tariff, made subsequently, based on the orders/judgments passed by APTEL or higher Courts. In fact, the APTEL interim orders were provisional tariff orders that modified the tariff orders of this Commission and were subject to a final decision in the appeals and to the re-determination of the tariff by this Commission on that basis. We note that the Commission, vide paras 141 to 143 of the order dated 13.1.2023 (quoted under para 12 above), had specifically directed the Respondent discoms to pay the carrying cost, considering the revisions in tariff by APTEL. Admittedly, the APTEL, vide its interim order dated 3.6.2014, had revised the tariff approved by this Commission vide order dated 20.2.2014 for the period November 2010 to January, 2013. In other words, the Petitioner APL did not receive the tariff under, the order dated 20.2.2014, for the said period. The carrying cost computation by the



Respondents, considering the tariff of Rs. 4.47/kWh for the period November 2010 to January 2013, is erroneous, as the same was never considered for payment during the said period. It is only on the basis of the Commission's consequential revised tariff order dated 10.7.2015 (based on APTEL's judgment dated 15.5.2015) that the Respondents became liable to pay the differential tariff along with the carrying cost. We also note that in the Review Petition (14/RP/2014) filed by the Petitioner against the Commission's order dated 20.2.2014 on certain grounds, the Commission, while considering the prayer of the Petitioner for a direction to the Respondents to pay the applicable interest as per Regulation 5(3) of the 2009 Tariff Regulations on the difference between the provisional tariff paid by the Respondents and the tariff determined by the said order, held, vide order dated 3.6.2014, as under:

"As stated, the generating station of the petitioner was granted provisional tariff for Unit-I of the generating station from 11.11.2010 (COD) till 31.3.2014 by order dated 24.12.2012 which was partially modified by the interim order of the Tribunal in I.A. No. 38/2013 in Appeal No.18/2013. Since the tariff for Units I & II of the generating station has been finally determined by the Commission by order dated 20.2.2014, the difference between the tariff provisionally billed and tariff finally determined is required to be adjusted in terms of the said proviso to Regulation 5(3) of the 2009 Tariff Regulations. Absence of a direction in this regard cannot be considered as error apparent on the face of record."

20. In our view, the denial of the legitimate claim of the Petitioner vide invoice dated 27.2.2023, towards the carrying cost on the differential amounts paid by the Respondents, relating to the period from November, 2010 to January 2013, is erroneous and is contrary to APTELs' interim order dated 3.6.2014 and Regulation 5(3) of the 2009 Tariff Regulations read with paras 141-143 of the Commission's order dated 13.1.2023. The Hon'ble Supreme Court, in Central Bank of India v. Ravindra, (2002) 1 SCC 367, referred to its earlier judgement in Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy: (1992) 1 SCC 508, wherein, the Constitution Bench of the Supreme Court had opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation,



call it by any name; it may be called interest, compensation or damages. In *Sham Lal Narula (Dr) v. CIT*: AIR 1964 SC 1878, the Hon'ble Supreme Court held that 'interest' is paid for the deprivation of the use of the money; the general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. Also, APTEL, vide its judgment dated 19.12.2024 in Appeal No. 211/2021 (*Amr Power Private Limited v MESCOM*), held that interest can be granted even if not specifically provided under the contract. In the light of the above, the contentions of the Respondents with regard to pay the carrying cost on the differential tariff to petitioner stand rejected and we hold that the Respondents are liable to pay carrying cost to the Petitioner APL, to be computed in accordance with Regulation 5(3) of the 2009 Tariff Regulations and Regulation 8(13) of the 2014 Tariff Regulations, which provide for simple interest at the applicable bank rate for under-recovery/refund situations arising from provisional/final/truing-up tariff determination. We direct accordingly. Issue No. (A) is disposed of as above.

Issue No (B): Whether the Respondent PCKL/Discoms are liable to pay the LPS on the carrying cost?

21. The Petitioner APL has submitted that in terms of para 143 of the order dated 13.1.2023, the Respondents are liable to pay the Late Payment Surcharge (LPS) for the delay in paying the monthly instalments (of carrying cost). It has submitted that by unilaterally withholding the payment of Rs 566 crore, out of Rs 786 crore, payable in terms of paras 141-143 of the order dated 13.1.2023, the Respondents ought to pay LPS as directed by this Commission, in the said order. Placing reliance on the APTEL judgment dated 2.11.2020 in cross Appeal Nos 10/2020 & batch (PCKL &



ors v CERC & ors), the Petitioner has submitted that the Respondents are liable to pay LPS as per the rate specified in terms of the applicable Tariff Regulations. Per contra, the Respondents, PCKL/Discoms, have argued that the claim for interest on a compounding basis (interest on interest) is entirely outside the scope of the order dated 13.1.2023. They have also pointed out that para 142 of the said order categorically stipulates that 'simple interest' shall be payable, and para 143 provides for LPS only if the payment is not made in 6 monthly instalments.

Analysis and Decision

22. We have considered the submissions of the parties. It is pertinent to note that while the Commission in para 144(g) of the order dated 13.1.2023 held that the Petitioner shall be entitled to the carrying cost on the arrears of fixed charge and energy charge in accordance with para 142 of this order. However, para 143 of the said order, which provides for the recovery of arrears of fixed charges, energy charges and carrying cost in six monthly instalments also provides for the late payment surcharge to the Petitioner, as per the applicable Tariff Regulations, in case the arrears are not paid as stipulated above, by the Respondents. In *Uttar Haryana Bijli Vitran Nigam Ltd. (2023) 2 SCC 624*, the Hon'ble Supreme Court held that 'interest on carrying cost' is nothing but a time value for money and the only manner in which a party can be afforded the benefit of restitution in every which way. On Compound interest, the Hon'ble Supreme Court, in *Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161*, observed that to do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above-or to simply levelise-a convenient approach is calculating interest; here interest has to be calculated on compound basis-and not simple-for



the latter leaves much uncalled for benefits in the hands of the wrongdoer; some of our statute law provide only for simple interest and not compound interest; however, the power of the Court to order compound interest by way of restitution is not fettered in any way. In terms of the settled legal position, as above, we hold that the Respondents are liable to pay LPS on the outstanding carrying cost allowed to the Petitioner as above, subject to adjustment of LPS, if any already paid, in terms of the applicable tariff Regulations. Issue No (B) is disposed of in terms of the above.

Conclusion

23. As stated, the Petitioner has raised an invoice dated 27.2.2023 on the Respondent PCKL/Discoms inter alia claiming Rs 786 crore (Rs 423 crore towards carrying cost plus Rs 363 crore towards interest on interest). The Respondents after admitting and paying carrying cost to the tune of Rs 220 crore between May, 2023 and September 2023, had unilaterally withheld the balance amount towards carrying cost, i.e., Rs 566 crore (Rs 203 crore towards carrying cost plus Rs 363 crore towards Interest on carrying cost), without considering the impact of carrying cost arising from the directions of APTEL's interim order dated 3.6.2014. However, the Respondent has contended that after a reconciliation process, in which the officers of APL also participated and provided factual inputs, the amount payable as per the Commission's order dated 13.1.2023, has been worked out as Rs 419.70 crore, which includes the carrying cost on differential tariff for Rs 215.86 crore. This has been refuted by the Petitioner, who states that though APL participated in the reconciliation process, no reconciliation statement was signed by APL, and the amount of Rs 419.70 crore was unilaterally worked out by the Respondent PCKL. Referring to its letter dated 18.8.2023 addressed to the Respondents, APL has pointed out that without prejudice to its entire claim, it had insisted on the payment



of at least the entire admitted amount by the Respondents, to avoid any consequences in terms of the MOP, LPS Rules.

24. We have examined the submissions. From the computation statements filed by the Respondents, it is evident that the impact of the carrying cost arising out of the APTEL's interim order dated 3.6.2014 has not been considered by the Respondents in terms of the Tariff Regulations, as submitted by the Petitioner and discussed in para 19 above. We have, in paras 20 and 22 of this order, concluded that the Respondents are liable to pay the carrying cost on the differential amounts arising out of the APTEL/CERC order, along with LPS on the carrying cost, in terms of the applicable Tariff Regulations. Accordingly, we direct the Respondents PCKL / Discoms to pay the outstanding dues for carrying costs, along with LPS, within 45 days from the date of this order.

25. Petition No. 151/MP/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson