



TELANGANA ELECTRICITY REGULATORY COMMISSION
'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

O. P. No. 3 of 2024

and

I. A. No. 1 of 2024

Dated 26.10.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between.

M/s Hyderabad MSW Energy Solutions Pvt. Ltd.,
11B, Level 11, Galaxy by Aurobindo,
HITECH City Road, Knowledge City Road, Gachibowli,
Hyderabad 500 081.

...Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office, 6-1-50, 5th floor, Mint Compound,
Hyderabad 500 063.
2. Telangana State Power Coordination Committee,
TSPCC, Vidyuth Soudha,
Greater Hyderabad 500 004.
3. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad,
Hyderabad, 500 082.

...Respondents

This petition came up for hearing on 04.04.2024, 06.05.2024, 06.06.2024 and 01.07.2024. Sri. Shashwat Dubey Advocate, counsel for petitioner appeared on 04.04.2024 & 06.05.2024. Sri. Nipun Dave Advocate representing Sri. Shashwat Dubey counsel for petitioner appeared on 06.06.2024. Sri. Matrugupta Mishra, counsel for petitioner appeared on 01.07.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents appeared on 04.04.2025, 06.05.2024,

06.06.2024 and 01.07.2024. The petition along with the interlocutory application having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Hyderabad MSW Energy Solutions Private Limited (petitioner) has filed a petition under Section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking directions to the respondents for payment of outstanding bills along with interest towards sale of energy in terms of the power purchase agreement (PPA) and other reliefs. The averments in the petition are extracted below.

- a. It is stated that the present petition is being preferred by petitioner/HMESPL under Sections 86 (1) (f), of the Act, 2003 seeking recovery from Southern Power Distribution Company of Telangana Limited (TGSPDCL) towards outstanding amount in respect of monthly tariff invoices along with payment of interest on delayed payments and on outstanding amount as per the terms of the power purchase agreement (PPA) dated 19.02.2020 executed between the petitioner (generator) and the TGSPDCL for procurement of power generated from 19.8 MW RDF based power project located at Jawaharnagar, at the applicable tariff as determined by the Commission vide its order dated 18.04.2020 in O.P.No.14 of 2020.
- b. It is stated that the petitioner is a company incorporated under the provisions of Companies Act, 2013 (Act, 2013) and is a generator within the meaning of Section 2(28) of the Act, 2003. The petitioner operates and maintains the 19.8 MW refuse derived fuel (RDF) based waste to energy (WTE) power plant at Jawaharnagar, Hyderabad.
- c. It is stated that the respondent TGSPDCL is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the state of Telangana and carries on the business of distribution and retail supply of electrical energy within its area of operation. The petitioner's plant is falling within the area of operation of the TGSPDCL.
- d. It is stated that the Telangana State Power Coordination Committee (TGSPCC) is the state body which manages the purchase of power on behalf of the DISCOMs, in the state of Telangana.
- e. It is stated that the Transmission Corporation of Telangana Limited (TGTRANSCO) is the state transmission utility (STU) in the state of Telangana,

which is entrusted with the task of planning, constructing and maintaining the transmission network in the state of Telangana.

FACTUAL CHRONOLOGY:

- f. It is stated that on 28.01.2016, Ministry of Power (MoP), Government of India (GoI) notified the National Tariff Policy, 2016 (NTP, 2016) in compliance with Section 3 of the Act, 2003. The material provisions under the said policy excluding competitive bidding qua WTE projects is extracted as under:

"6.4 *Renewable sources of energy generation including Co-generation from renewable energy sources:*

.....
(ii) *Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.*

(2) *States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.*

However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers"

- g. It is stated that on 19.02.2020, the petitioner executed a PPA with the TGSPDCL for the purchase of power generated from 19.8 MW RDF-based power project located at Jawaharnagar at the applicable tariff as determined by the Commission in O.P.No.14 of 2020 vide order dated 18.04.2020. The tariff as per clause 2.2 of the PPA shall be determined by the Commission from time to time.

- h. It is stated that on 18.04.2020, the Commission passed an order in O.P.No.14 of 2020 being *Suo Moto* determination of generic tariff of electricity generated from RDF based power projects in the state of Telangana achieving commercial operation date (COD) during the period from FY 2020-21 to FY 2023-24. Pertinently, the tariff order, vide Issue No.4 dealt with plant load factor ('PLF')

wherein, at para 34, the Commission approved the PLF of 65% for the 1st year, 75% for 2nd year and 80% from the 3rd year and onwards.

- i. It is stated that on 02.06.2020, the terms of the PPA executed between TGSPDCL and petitioner was duly approved by the Commission vide its order dated 02.06.2020. On 20.08.2020, the petitioner achieved COD of its 19.8 MW RDF based WTE plant and since then, has been supplying power to the TGSPDCL as per the PPA. That the Petitioner has been supplying power to TGSPDCL as per the terms and conditions of the PPA, however, barring for the month of August 2020 till February 2021 and June 2022 (part of the payment from this period remains outstanding), TGSPDCL stopped releasing payment towards the outstanding amount qua its energy supplied. The petitioner when pursued the matter with the officers of TGSPDCL and TGTRANSCO, from time to time, to secure the release of the outstanding amount, was made aware of the fact that the computation and accounting of the monthly bills in the books of the TGSPDCL was not in consonance with the calculations of monthly bills made and submitted by the petitioner. Above discrepancy between the calculation of the amount receivable/ outstanding as produced by the petitioner vide its letter dated 30.04.2022 and the records produced by TGPCC in its letter dated 25.05.2022 was brought to the notice of TGPCC by the petitioner vide its letter dated 27.05.2022.
- j. It is stated that the petitioner sent another letter dated 22.06.2022 to TGTRANSCO citing meetings held on 08.06.2022 and 21.06.2022. During the meetings, the above discrepancy in the calculation of the amount outstanding and payable by the TGSPDCL to the petitioner, towards the power procured for the tariff period ending 21.08.2021, was brought to the attention of TGTRANSCO. The representative of the petitioner, during the mentioned meetings, was informed by TGTRANSCO that the deduction is made as per the tariff order of the Commission and is ostensibly linked with the benchmark norm of PLF as given in the tariff order dated 18.04.2020, namely 65%, 75% and 80% for 1st, 2nd, and the 3rd year onwards, respectively. The letter dated 22.06.2022 stated that there is no symmetry, rationality or transparency in computation provided by TSPCC and moreover no communication on such important matters of summary deduction, which the petitioner came to know about a year at this point of time.

- k. It is stated that in the circumstances mentioned above in order to resolve the above-mentioned disputes relating to the application of PLF, illegal deduction of import charges, non-payment of energy bills and failure to maintain LC, the petitioner preferred petition being O.P.No.73 of 2022 under Sections 86(1)(f) and 86(1)(k) of the Act, 2003 before the Commission for the resolution of its disputes on 09.09.2022. The petitioner also filed I.A.No.56 of 2022 in O.P.No.73 of 2022 seeking ex-parte ad-interim direction restraining TGSPDCL from applying threshold PLF mentioned in the tariff order, from deducting any additional amounts towards import charges under the PPA and further seeking a direction to TGSPDCL to make an upfront payment of 50% of the principal amount.
- l. It is stated that O.P.No.73 of 2022 was thereafter, listed on 04.04.2023 when the counsel for the respective parties were heard at length and the matter was reserved for final order and judgment. Relevant portion of the order dated 04.04.2023 is extracted herewith for ready reference of the Commission.
- "The counsel for petitioner stated that the claims made by the petitioner and the correspondence made with the respondent did not yield result in the matter. Therefore, to safeguard its interest and to highlight the misinterpretation being indulged by the respondent, the petitioner had approached the Commission. No doubt reference made to orders of the other Commissions are not binding but are of persuasive value, yet the Commission may consider the interpretation that is placed in respect of RDF projects. The Commission may consider allowing the petition in order to encourage renewable source. Accordingly, the matter is reserved for orders"*
- m. It is stated that on 16.12.2023, petitioner addressed a communication to the Financial Advisor & Chief Controller of Accounts (FACC), of TGPCCL intimating that while considering the bills for March, 2021 to April, 2022, the payment qua May 2022 bill has been omitted, as it has been neither considered in the late payment surcharge (LPS) nor released from the regular billing cycle. Vide the said communication, petitioner requested for release the bill amount for the month of May 2022 amounting to Rs.11,32,78,592/- and it was also stated that upon release of the amount, the interest for the delayed payment for the month of May 2022 will be waived.
- n. It is stated by the petitioner that without prejudice to its rights and contentions in the aforesaid petition being O.P.No.73 of 2022, the present petition seeks

recovery of dues assuming but without admitting to the computation and accounting of energy as admitted by the TGSPDCL. It is submitted that to the extent the petitioner seeks payment of dues, assuming the calculation and accounting method adopted by TGSPDCL, the same may not be taken in any manner to have given away or waived any claim or right thereof, in respect of its PLF claim, hence the petitioner reserves its right to claim the entire balance amount along with interest and carrying cost upon resolution of the issue with regard to PLF capping, which issue is sub-judice. Hence, the relief(s) sought in the present petition is without prejudice to the rights of the petitioner to claim the entire amount. However, given the acute financial difficulty faced by the petitioner, it is constrained to approach the Commission for recovery of its dues. It may be pertinent to mention that the TGSPDCL is liable to pay a sum total of Rs.30,95,10,172.03/- as principle amount with Rs.21,44,97,534/- as interest amount as per its own calculation and accounting of energy bills as on 08.12.2023.

- o. It is stated that it is pertinent to extract the relevant clauses under the PPA. The purchase of energy and tariff has been dealt with under Article 2 of the PPA, wherein clause 2.1 states that after the date of commercial operation of the project, all the delivered energy at the interconnection point for sale to Respondent Discom will be purchased by it, at the tariff provided for in clause 2.2. Clause 2.1 is being reproduced herein below for the ready reference of the Commission:

"2.1 All the delivered energy at the interconnection point for sale to DISCOM (net capacity) will be purchased at the tariff provided for in Article 2.2 from and after the date of commercial operation of the project. Title to delivered energy purchased shall pass from the company to the DISCOM at the interconnection point,"

Clause 2.2 stipulates that the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by the Commission, from time to time. Clause 2.2 has been extracted herein below for the ready reference of the Commission:

"2.2 *The Company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff.*"

Thus, the TGSPDCL vide the agreement made under clause 2, after the date of commercial operation of the project, was obligated to not only purchase 'all the delivered energy at the interconnection point' at the tariff as determined by the Commission from time to time but also pay the tariff allowed by the Commission upon sale having concluded.

- p. It is stated that in terms of Article 1.12 of the PPA, the 'due date' for payment of invoices prescribes thirty (30) days from the date of raising the invoice. According to Article 6.2 of the PPA, in the event payment is made later than the due date specified under the PPA, the TGSPDCL is liable to pay delayed payment charges at the prevailing base prime lending rate of the State Bank of India. Relevant extract from the PPA is reproduced below for the ready reference of this Hon'ble Commission

"1.12 Due Date of Payment" means the date on which the amount payable by the DISCOM to the company hereunder for delivered energy, if any, supplied during a billing month becomes due for payment, which date shall be thirty (30) days from the date of invoice. If the bill is received after 5 days of metering date in particular month, the due date shall be reckoned from the date of receipt of invoice. In the case of any supplemental or other bill or claim, if any, the due date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of the DISCOM/TSTRANSCO.

.....
6.2 *Any payment made beyond the due date of payment, the DISCOM shall pay simple interest at prevailing base prime lending rate of State Bank of India and in case this rate is increased reduced, such an increased / reduced rate is applicable from the date of such notification."*

- q. It is stated that the dispute resolution mechanism has been prescribed under Article 15 wherein sub-clauses 1 to 3 prescribed the method for amicable settlement through the process of appointment of representatives on behalf of each party who shall subsequently attempt to resolve the dispute. Sub-clause 4 states that in the event of failure to resolve the dispute amicably, any party may approach the Commission in terms of Section 86(1)(f) of the Act, 2003. Clause 15 is being extracted herein below for the ready reference of the Commission:

"ARTICLE 15 DISPUTE RESOLUTION

15.1 *Each party shall designate in writing to the other party a representative, who shall be authorized to resolve any dispute arising under this agreement in an equitable manner.*

- 15.2 *Following notice by one party to the other setting out the particulars of the dispute, if the designated representatives are unable to resolve a dispute under this agreement within 15 days, such dispute shall be referred by such representatives to a senior officer designated by the company and a senior officer designated by the TSSPDCL respectively, who shall attempt to resolve the dispute within a further period of 15 days.*
- 15.3 *The parties hereto agree to use their best efforts to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.*
- 15.4 *Failing resolution of the disputes in terms of above provisions or even otherwise, any party may approach the TSERC to the dispute in terms of Section 86(1)(f) of the Act. 2003."*
- r. It is stated that the petitioner has been raising monthly invoices to the TGSPDCL since the commissioning of the project. Accordingly, the petitioner has been raising monthly invoices from August 2020 till present date. It is submitted that the TGSPDCL has failed in its obligation under the PPA to make full and timely payments in respect of invoices raised by the petitioner for the above billing period. The same has caused grave injury to the petitioner. Further, the TGSPDCL has made delayed payments towards all the invoices raised for the billing period from September 2020 up to October, 2023.
- s. It is stated that as on 08.12.2023, the total outstanding amount due to be paid by the TGSPDCL towards unpaid monthly tariff for the billing period of September, 2020 up to October, 2023, considering the PLF capping stands at Rs.30,95,10,172/- and the interest on late payment as per applicable SBI PLR to be recovered from the Respondent Discom for the period from September 2020 up to October, 2023 amounts to Rs.21,44,97,534/-.
- t. It is stated that further, the total outstanding amount due to be paid by the TGSPDCL towards unpaid monthly tariff for the billing period of September, 2020 up to October, 2023, without considering the PLF capping stands at Rs.1,14,21,57,244/- and the interest on late payment as per applicable SBI PLR to be recovered from the TGSPDCL for the period from September 2020 up to October, 2023 amounts to Rs.41,36,52,848/-. The petitioner has already reserved its right to claim the aforementioned amount upon final adjudication and resolution of the issue pertaining to PLF capping of the tariff payable. Nothing in this petition shall be considered as a waiver of the

claim of the petitioner towards the above amount calculated without PLF capping.

- u. It is stated that since that the above payments are made under a running account between the parties, the same is subject to additional interest at the prevailing base prime lending rate of the State Bank of India for the period of delay beyond 08.12.2023 till the aforesaid outstanding dues are actually paid to the petitioner in terms of the PPA itself. It is stated that a PPA is like any commercial contract duly executed between the petitioner and the TGSPDCL. Therefore, the respondents are obligated to honour the provisions of the PPA and duly discharge their payment obligations under the said PPA. That the continued non-payment of the outstanding dues of the petitioner towards monthly invoices as well as late payment charges by the TGSPDCL has severely affected the financial viability of the project and the petitioner is facing cash flow issues resulting in difficulties to sustain the operations of the project.
- v. It is stated that the Hon'ble Appellate Tribunal has held once the sale of energy is complete, there is no requirement to even raise an invoice, as the same constitutes an "undisputed quantum" against which a distribution licensee is required to pay monthly tariff. The payment for such sale becomes due "as and when the electricity is generated and fed into the grid and received by the distribution licensee and the same amounts to sale." In this regard, it is relevant to place reliance on the following decisions:

(a) *Appeal No.1 of 2010 titled Maharashtra State Electricity Distribution Company Limited. vs. Maharashtra State Electricity Regulatory Commission Mumbai reported in 2010 SCC OnLine APTEL 91 which inter-alia held that even when the invoices were not been raised, the plain fact that the JMRs were left uncontroverted, the generator was entitled to be reimbursed for the quantum of energy injected into the grid as the sale stood completed. The relevant portion of the Judgment is reproduced below for the ready reference of this Hon'ble Commission:*

"14. *The core issue which arises for consideration before this Tribunal is whether the Energy Developers Association is entitled to claim Joint Meter Reading amount and the interest without raising any bill as prescribed in the existing policy and applicable orders of the State Commission.*

....

19. *The entire case rests on the finding given by the State Commission in the Wind Power Tariff Order dated 24.11.2003. The relevant observations contained in para 1.6.7, 2.4.6 and 3.4.10 of the said order dated 24.11.2003 are as follows:*

"1.6.7 *Billing and Payment* The developer shall raise a monthly energy bill based on the Joint Meter Reading taken by the developer and the MSEB/utility at the end of each month. The due date for the payment by the utility shall be 45 days from the date of the bill. In case of delay in payment beyond 45 days the developer shall be entitled for an interest on delayed payment at the rate of 2% above SBI, short-term lending rate."

"2.4.6 *Commission's Ruling* The Commission appreciates that timely payment by the utility for the energy purchased by it is an essential requirement without which the Developer cannot meet his liabilities in time. The Commission also notes that the main cost component for generation of wind power is the interest liability on the debt. Any delay in payment of debt and/or interest would have substantial impact on the wind power tariff and if the tariff were to be maintained as constant it would adversely affect the viability of the project. The Commission understands the need for the security of payment and need for compensation to the Developer in case of delay in payment. The Commission, therefore, has decided that a Revolving Irrevocable Letter of Credit, at the option of the Developer, with a nationalized bank should be provided to the Developer as security for payment to ensure timely payment. The Commission also prescribes that the expenses involved in opening the LC, for an amount equivalent to the average monthly bill, should be borne by the Developer. Further to provide the compensation in case of inordinate delay in payment, the utility will pay penal interest on any outstanding amount at the rate of 2% above the short-term lending rate of the State Bank of India."

"3.4.10 *Billing and Payment* The developer shall raise a monthly energy bill based on the Joint Meter Reading taken by the developer and the MSEB/utility at the end of each month. The due date for the payment by the utility shall be 45 days from the date of the bill. In case of delay in payment beyond 45 days the developer shall be entitled for an interest on delayed payment at the rate of 2% above SBI, short-term lending rates."

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26. The perusal of the above three orders dated 24.11.2003, 12.09.2006 passed by the State Commission and the Tribunal order passed on 05.02.2008 would reveal that the State Commission as well as the Tribunal gave a categorical finding that the payment becomes due as and when the electricity is generated and fed into the grid and received by the Appellant and the same amounts to sale. As indicated above, the observation "The payment became due when the energy was received by the Appellant from the members of the Association (Respondent-2)"

would clearly indicate that the liability of the Appellant to pay the amount for the electricity received by them accrues the moment the energy generated by the Association was fed into the grid and the same is received by the Appellant. The wording contained in all the orders, referred to above, would clearly reveal that the mandate was given to the Appellant not to hold back the payment for purchase of power which had already been received by them. Admittedly, these directions which have been given by both the State Commission and the Tribunal have not been challenged before the appropriate forum and as such this aspect, has to be given due consideration while appreciating the issue raised in this case.

.....
31. It cannot be disputed that quantum of the unit for which bill is to be raised as per Joint Meter Reading is known to the Appellant and equally the tariff fixed by the State Commission was also known to the Appellant. Therefore, the Appellant, even without waiting for any bill should be in a position to make payment within 45 days and pay interest for delayed payment beyond the said due date. Therefore, to put the onus of raising the bill on the Developer based on the Joint Meter Reading has no real consequence so far as the quantum of the claim is concerned. Furthermore, it cannot be construed to be a deviation of procedure, that too, when the credit notes have not been issued by the Appellant. The Appellant relied upon its circular which refers to the issuance of bill. This cannot be construed to be binding on the members of the Respondent Association as the circular does not have any statutory force. Further, the same cannot be held to the effect that it was a bona fide intention of the Appellant to always follow the scheme for the payment enunciated by the State Commission through its order dated 24.11.2003. It is specifically stated by the Respondent Association in the counter which has not been disputed, that some of the members of the Respondent Association forwarded the invoices on quarterly basis for August, September and October 2001 and the Appellant issued the credit notes for these invoices only in December 2001 and January 2002 and such delay in issuing the credit note continued till much later. It is further submitted by the Respondent Association that the Appellant later stopped accepting the invoices from the members of the Association with an oblique motive to project the plea that it is not liable to pay interest as it has not received the invoices."

(b) Appeal No.83 of 2017 titled U.P. Ceramics and Potteries Limited. v. Rajasthan Electricity Regulatory Commission reported in 2020 SCC OnLine APTEL 56, which inter-alia held as under:

"1. The Appellant before us challenges the order dated 20.09.2016 passed by the Rajasthan Electricity Regulatory Commission, (hereinafter referred to as the "State Commission") passed on Petition No.RERC-596/2016 whereby the claim of the Appellant (power producer) for payment of the charges for supply of

electricity to the Respondent State Discom during the months of April to June, 2015 was declined, thereby upholding the contention of the Respondent Discom as to disentitlement of the Appellant to that extent in terms of the Power Purchase Agreement (PPA) dated 20.12.2013 which had been renewed by Supplementary Power Purchase Agreement (Supplementary PPA) dated 25.06.2015 extending the period of its validity upto 31.03.2016.

2. *It appears that while the power producer (the Appellant) had initiated a request for revalidation of the Power Purchase Agreement which had come to an end on 31.03.2015 only by communication dated 16.06.2015, the concerned entities (the power producer and the Discom) had continued with the existing arrangement vis-a-vis the joint reading of meter for logging the quantity of supply of electricity injected by the power producer into the grid and drawn by the Discom there against, from month to month, in terms of stipulation in the PPA dated 20.12.2013.*

4. *As noted by us earlier, the joint meter reading continued from month to month pursuant to continued uninterrupted supply of electricity by the Appellant to the Discom for the period beginning with 01.04.2015. There are irrefutable documents submitted in support of this fact which specifically cover the period in dispute i.e. the months of April to June, 2015.*

9. *The State Commission has upheld the contention that under the Renewable Power Purchase Regulations there was no obligation on the part of the State Discom to purchase. This is not a very sound reasoning. The private player in the business producing electricity through renewable sources of energy has been helping the cause of green energy expected to be promoted by the State Commission, it being a matter of public policy adopted by the State. Technically it may be right to say that there is no obligation to purchase. But the private parties did enter into a contract for sale and purchase and, in that sense, there is an obligation to pay for the electricity purchased.*

13. *For the above reasons, while also disapproving of conduct of the Respondent Discom in making an attempt to claim freebies at the cost of a private entity. we allow the appeal.*

14. *The impugned order of the State Commission is set aside. The Respondent Discom is directed to pay the requisite charges against the invoices for the months of April to June, 2015 with late payment surcharge in terms of Clause 8.2(it) of the PPA, subject to proper scrutiny, within a period of one month hereof"*

- w. It is stated that as per the law settled by the Hon'ble Supreme Court as well as the Hon'ble Appellate Tribunal, the payment of late payment charges is necessary to compensate generators for delayed payments. It has also been

held that in such cases, the financial condition of the concerned procurer is not a relevant consideration in proceedings initiated by a generator seeking payment of outstanding dues and consequent late payment charges. In this regard, the relevant excerpts of the judgment passed by the Hon'ble Supreme Court in the case of Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission, 2021 SCC OnLine SC 913 are set out below:

"176. The object of LPS is to enforce and/or encourage timely payment of charges by the procurer i.e. the appellant. In other words, LPS dissuades the procurer from delaying payment of charges. The rate of LPS has no bearing or impact on tariff. Changes in the basis of the rates of LPS do not affect the rate at which power was agreed to be sold and purchased under the power purchase agreements. The principle of restitution under the change in law provisions of the power purchase agreements are attracted in respect of tariff.

.....
181. As observed above, the parties to the power purchase agreements have mutually and consciously agreed to the incorporation of the PLR as notified by SBI from time to time, as the rate for levy of LPS. Therefore, by virtue of the doctrine of incorporation, the PLR as notified by SBI each year gets incorporated in the power purchase agreements, as binding between the parties. Thus, any other system notified by Reserve Bank of India by its circulars has no bearing on the terms of the power purchase agreement and cannot be deemed to be incorporated in the power purchase agreement, except in case of mutual agreement between the parties, in the event of absence of SBI PLR, and approved by the MERC."

- x. It is stated that as per Article 6.4 of the PPA, the TGSPDCL was obliged to put in place an irrevocable revolving letter of credit issued in favour of the petitioner for one month's billing value as a payment security mechanism under the PPA. However, the TGSPDCL is yet to create such letter of credit, leaving the petitioner without any means to redress payment defaults under the PPA.
- y. It is stated that the petitioner is therefore constrained to approach the Commission under Section 86(1)(f) of the Act, 2003. The petitioner seeks an urgent intervention by the Commission in the matter and seeks a consequent direction to the TGSPDCL for making payments towards outstanding monthly tariff and the late payment charges for the delay in payment of monthly tariff for the period of September, 2020 up to October, 2023, in accordance with the provisions of the PPA dated 19.02.2020.

z. It is stated that petitioner further seeks imposition of cost towards litigation in view of the contumacious non-compliance with the obligations under the PPA for which the petitioner was constrained to take legal recourse and approach the Commission. In this regard, reliance is placed on the relevant observations of the Hon'ble Supreme Court in the case of GMR Warora Energy Limited v. Central Electricity Regulatory Commission in Civil Appeal No.11095 of 2018 dated 20.04.2023, wherein it was inter-alia observed as under:

"176. We find that, when the PPA itself provides a mechanism for payment of compensation on the ground of 'Change in Law', unwarranted litigation, which wastes the time of the Court as well as adds to the ultimate cost of electricity consumed by the end consumer, ought to be avoided. Ultimately, the huge cost of litigation on the part of DISCOMS as well as the Generators adds to the cost of electricity that is supplied to the end consumers.

177. We further find that non-quantification of the dues by the Electricity Regulatory Commissions and the untimely payment of the dues by the DISCOMS is also detrimental to the interests of the end consumers. If timely payment is not made by DISCOMS, under the clauses in the PPA, they are required to pay late payment surcharges, which are much higher. Even in case of 'Change in Law' claims, the same procedure is required to be followed.

178. Ultimately, these late payment surcharges are added to the cost of electricity supplied to the end consumers. It is, thus, the end consumers who suffer by paying higher charges on account of the DISCOMS not making timely payment to the Generators."

aa. It is stated that there is a prima facie case in favour of the petitioner and against TGSPDCL, since at the very outset, Respondent Discom, has failed to discharge its obligation under the PPA, at the very least for the undisputed amount that is against the admitted energy quantum for which the sale remains undisputed. Unless the prayers made herein below are granted in favour of the petitioner, the petitioner shall suffer and incur irreparable harm and loss to its business and grave prejudice will be caused to the petitioner and the same shall affect the viability of the WTE plant.

2. The petitioner has sought the following prayer in the petition.

- a) *Declare that the TGSPDCL is liable to pay the petitioner, all outstanding dues along with interest towards sale of energy in terms of the PPA dated 19.02.2020;*
- b) *Direct TGSPDCL to make payment towards unpaid monthly tariff for the period from August, 2020 till date accrued to the petitioner, which amounts to Rs.30,95,10,172/- (Rupees Thirty Crore Ninety-Five Lakh Ten Thousand One Hundred and Seventy Two Only) towards principal*

and Rs.21,44,97,534/- (Rupees Twenty One Crore Forty Four Lakh Ninety Seven Thousand and Five Hundred and Thirty Four Only) towards interest calculated as on 08.12.2023;

- c) Direct TGSPDCL. to henceforth pay all monthly invoices towards sale of energy in a timely manner within the due date stipulated under the PPA dated 19.02.2020;*
- d) Award cost of the present legal proceeding to the Petitioner and to pass such other or further orders as the Commission may deem appropriate.*

3. The petitioner has filed an interlocutory application seeking interim relief under Section 94(2) of the Act, 2003 read with clause 24 of Telangana State Electricity Regulatory Commission (Conduct of Business) Regulation, 2015 (CBR). The averments in the application are extracted below:

- a. It is stated that the present petition is being preferred by petitioner under Sections 86(1)(f), of the Act, 2003 seeking recovery from TGSPDCL towards outstanding amount in respect of monthly tariff invoices along with payment of interest on delayed payments and on outstanding amount as per the terms of the PPA dated 19.02.2020 executed between the petitioner (generator) and the TGSPDCL for procurement of power generated from 19.8 MW RDF based power project located at Jawaharnagar, at the applicable tariff as determined by the Commission vide order dated 18.04.2020 in O.P.No.14 of 2020.
- b. It is stated that the petitioner is filing the present application under Section 94(2) of the Act, 2003, read with clause 24 of the CBR seeking interim relief for the issuance of an interim direction of release of 50% outstanding amount towards non-payment and delayed payments on the monthly energy bills by TGSPDCL on the procurement of power.
- c. It is stated that the applicant is a company incorporated under the provisions of Act, 2013 and is a generator within the meaning of Section 2(28) of the Act, 2003 and is operating a 19.8 MW RDF based WTE plant at Jawaharnagar, Hyderabad in the state of Telangana. The TGSPDCL is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the state of Telangana that has been granted license by the Commission for carrying on the business of distribution and retail supply of electrical energy within its area of operation.
- e. It is stated that the Applicant entered into a PPA on 19.02.2020 with TGSPDCL for the supply of power at the tariff determined by the Commission. The Commission in exercise of its powers under Sections 62(1) read with 86(1)(a),

- (b), (c) & (e) of the Act, 2003, determined the generic tariff by order dated 18.04.2020 in O.P.No.14 of 2020 (tariff order), for purchase of power by the distribution licensees from Refuse Derived Fuel (RDF) based WtE power generation plants whose COD was achieved during the period of FY 2020-21 to FY 2023-24. At para 34 of the tariff order, the Commission approved the PLF of 65% for the 1st year, 75% for 2nd year and 80% from the 3rd year and onwards.
- f. It is stated that the detailed facts and circumstances giving rise to the filing of the accompanying petition, have been stated in the said petition and the said facts and circumstances are not being repeated herein for the sake of brevity. The said facts and submissions made in the petition, may be read as part and parcel of the present application.
- h. It is stated that the petitioner achieved COD of its 19.8 MW RDF based WTE plant, as per the applicable law read with the terms and conditions of the PPA, on 20.08.2020. Notwithstanding the fact that the petitioner has been supplying power to TGSPDCL as per the PPA since the achievement of COD, TGSPDCL has failed to make regular payments towards monthly energy bills in terms of the energy units supplied.
- i. It is stated that TGSPDCL has been erroneously applying this threshold PLF, prescribed in para 34 of the tariff order, for the purpose of billing under the PPA dated 19.02.2020, as a result of which, a huge discrepancy has been identified in the total outstanding payable as per the accounts of TGSPDCL and the accounts of the petitioner. The same is currently sub-judice before this Hon'ble Commission in O.P.No.73 of 2022. Notwithstanding the same, the outstanding amount has reached around Rs.52 crore qua the monthly energy bills.
- j. It is stated that in utter ignorance of the prescription under clause 6.3, read with clause 6.4 of the PPA, TGSPDCL has also failed to open the letter of credit (LC). This further aggravates the financial hardship and the same is sub-judice before this Hon'ble Commission in O.P.No.73 of 2022. It is stated that due to the above-said issues of non-release of payment by TGSPDCL towards monthly energy bills is causing grave financial distress to the petitioner and it is becoming increasingly difficult for the petitioner to optimally sustain the operations of its ongoing project. It is stated that in view of the aforesaid submissions, the applicant is making a request for interim relief under Section

94(2) of the Act, 2003, read with clause 24 of CBR, in view of the above facts and circumstances.

4. In light of the abovementioned facts and circumstances, the applicant has sought the following interim directions from the Commission.

Pass an ex parte ad interim order, directing the TGSPDCL to make an upfront payment of 50% of the amount outstanding to the tune of INR 26,20,03,853/- (Rupees Twenty Six Crore Twenty Lakhs Three Thousand Eight Hundred Fifty Three Only) as on 08.12.2023; and

5. The petitioner has filed another interlocutory application seeking urgent listing under clause 19(1) of the CBR.

- a. It is stated that the present petition is being preferred by petitioner under Sections 86(1)(f), of the Act, 2003 seeking recovery from TGSPDCL towards outstanding amount in respect of monthly tariff invoices along with payment of interest on delayed payments and on outstanding amount as per the terms of the PPA dated 19.02.2020 executed between the petitioner (generator) and the TGSPDCL for procurement of power generated from 19.8 MW RDF-based power project located at Jawaharnagar, at the applicable tariff as determined by the Commission by its order dated 18.04.2020 in O.P.No.14 of 2020.
- b. It is stated that the applicant is a company incorporated under the provisions of Act, 2013 and is a generator within the meaning of Section 2(28) of the Act, 2003 and is operating a 19.8 MW RDF based WTE plant at Jawaharnagar, Hyderabad in the state of Telangana. The TGSPDCL is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the State of Telangana that has been granted license by the Commission for carrying on the business of distribution and retail supply of electrical energy within its area of operation.
- c. It is stated that a PPA was executed between the applicant and the TGSPDCL on 19.02.2020, for purchase of power generated from the 19.8 MW RDF based power project located at Jawaharnagar Village, Hyderabad at the tariff, to be determined by the Commission. It is stated that though the applicant has been supplying power to TGSPDCL as per the terms and conditions of the PPA, however, TGSPDCL has failed to release amounts towards the outstanding payable in terms of the energy units supplied. The TGSPDCL is in gross violation of the terms of the PPA qua clause 2.2, read with clause 6.1, by not

making full payment for invoices raised by the petitioners. It is due to this non-payment by TGSPDCL that the petitioner is facing a tremendous financial crisis and is unable to optimally sustain its operations.

- d. It is stated that the detailed submissions with regard to the petition are not being reiterated herein for the sake of brevity. However, the applicant seeks to rely on the same and in the interest of justice, seeks that this application be read along with the present petition.
- e. It is stated that if non-payment of the above dues continues, then the applicant will have to take the loan to continue its on-going project and it will be huge burden for the applicant. The applicant therefore seeks interim protection by listing of this petition on an urgent basis since the deduction are in grave prejudice to the applicant.
- f. It is s stated that as has been brought on record through detailed submissions in the present petition, a continued non-payment of the total outstanding payable to the tune of Rs.52 crore even de-hors the disputed issue with regards to applying of plant load factor on energy injected, which is sub-judice before the Commission in O.P.No.73 of 2022. In view of the aforesaid deductions and non-payment, the applicant feels that it is imperative that such urgent hearing be granted to it, lest the applicant will suffer irreparably.
- g. It is stated that in view of the above averments the captioned petition may be listed urgently and at the earliest possible date otherwise grave and irreparable injury will be caused to the applicant herein. The balance of convenience and the prima facie case lies in the favour of the applicant and if the prayer sought for herein is not granted, the same will lead to severe adverse impact on the applicant and render the applicant to further financial distress. Moreover, no adverse impact is likely to be caused to the respondents if the prayers herein are granted and this petition is listed before the Commission on an urgent basis.

6. In the facts and the circumstances of the present case, the petitioner has prayed that the Commission may be pleased to pass the following orders on this application.

“list the accompanying petition filed by the applicant at the earliest possible on an urgent basis;”

7. The TGSPDCL has filed its counter affidavit against the submission of the petitioner and stated as follows.

a. It is stated that petitioner has filed the present petition under Sections 86(1)(f) of the Act, 2003, praying for the following reliefs.

- i) *Direct TGSPDCL to pay all outstanding dues along with interest towards sale of energy in terms of PPA dated 19.02.2020;*
- ii) *Direct TGSPDCL to make payment towards unpaid monthly tariff for the period from August 2020 till date accrued to the petitioner, amounting to Rs.30,95,10,172 towards principal and Rs.21,44,97,534 towards interest calculated as on 08.12.2023;*
- iii) *Direct TGSPDCL to henceforth pay all monthly invoices towards sale of energy in a timely manner within the due date stipulated under PPA dated 19.02.2020; and*
- iv) *Award cost of present legal proceeding to the petitioner.*

b. It is stated that the petitioner also filed I.A.Nos.1 and 2 of 2024 seeking ex parte ad interim order, directing the TGSPDCL to make an upfront payment of 50% of the amount outstanding to the tune of Rs.26,20,03,853 as on 08.12.2023 and for listing the petition at the earliest possible on an urgent basis respectively. It is stated that the petitioner previously filed O.P.No.73 of 2022 before the Commission praying the Hon'ble Commission to:

- i. *Declare that TGSPDCL is obligated to purchase all the energy delivered at the interSection point and supplied by the Petitioner in view of the Power Purchase Agreement dated 19.02.2020 read with para 6.4 of the National Tariff Policy, 2016 at tariff as determined by the Commission;*
- ii. *Restrain TGSPDCL from deducting excess amounts towards Import Charges and reimburse an amount of INR 2,04,00,000/- (Rupees Two Crore and Four Lakhs only) with interest towards the deducted amounts during the period when the HT Category-I Agreement was in subsistence;*
- iii. *Direct TGSPDCL to collect the import charges only at actual and as per applicable tariff in compliance with Clause 2.4 (a) of the power purchase agreement read with relevant Regulations notified by the Commission from time to time;*
- iv. *Direct TGSPDCL to make payment of INR 180,63,00,000/- (Rupees One Hundred Eighty Crore and Sixty Three Lakh only) towards outstanding dues payable as per clause 6.2 of the power purchase agreement;*
- v. *Direct TGSPDCL to make timely payment towards the monthly electricity bills raised by the petitioner towards supply of electricity from its 19.8 MW RDF based WTE plant at Jawaharnagar, as stipulated under the power purchase agreement;*
- vi. *Direct TGSPDCL to open letter of credit as per clause 6.3, read with clause 6.4 of the PPA dated 19.02.2020;*
- vii. *To pass such other or further orders as the Commission may deem appropriate;*

It thus become clear that the relief sought in the O.P.No.73 of 2022 on the file of the Commission and the relief in the present petition are similar. On this ground alone, the petition is liable to be dismissed, since petitioner is barred from filing petitions seeking similar reliefs.

- c. It is stated that the order of the Commission in O.P.No.73 of 2022 was reserved at the time of filing of the present petition in O.P.No.3 of 2024 (during December 2023). The Commission disposed of O.P.No.73 of 2022 by order dated 02.01.2024, dismissing the said petition, holding that the relief sought by the developer for purchase of delivered energy beyond threshold PLF cannot be allowed, as the same is beyond the provisions of PPA and also the tariff order. In the matter of other prayers of the petitioner pertaining to import charges and refund of billing dispute, the Commission held that the claim can be resolved by Consumer Grievance Redressal Forum (CGRF).
- d. It is stated that the contention of the petitioner with regard to outstanding payments of Rs.30.95 crore towards energy bills and Rs.21.45 crore towards LPS is totally incorrect. The outstanding amount was arrived at by the petitioner as per its own calculations deviating the terms and conditions of PPA with regard to billing and computation of LPS. The monthly energy bills were computed by TGSPDCL/TGPCC as per the agreed terms and conditions of PPA considering Commission's tariff order. The payments against the admitted monthly energy bills up to the generation period Nov-2023 totalling to around Rs.278.46 crore have already been released to the petitioner except May 2022 energy bill of Rs.7.31 crore. The statement showing the details of energy bills admitted and payments released to the petitioner. Currently, an amount of Rs.23.46 crore is only due to the petitioner against the energy bills for the generation month of May' 22, Dec' 23 and Jan' 24 which will be paid shortly.
- e. It is stated that in this connection it is pertinent to mention that the MoP, GoI notified in the gazette notification dated 3rd June -22 directing the distribution licensees to reschedule the total outstanding dues to the generators up to the date of notification and the due dates shall be re- determined for payment by a distribution licensee in the following maximum number of equated monthly instalments.

Total outstanding dues of DISCOM (Rs. in crore)	Maximum No. of equated monthly Instalments
Up to 500	12
501-1000	20
1001-2000	28
2001-4000	34
4001-10,000	40
> 10,000	48

- f. It is stated that as per LPS Rules 2022, TGSPDCL was eligible to reschedule the dues of generators in (40) EMIs. However, TGSPDCL has rescheduled the entire outstanding dues of Rs.89.90 crore due to the petitioner as on 3rd June - 22 in twelve (12) EMIs only commencing from Aug-22 onwards as against the eligible forty (40) EMIs. The said due amount has already been credited to the designated bank account of petitioner in twelve (12) EMIs by 5th July-2023 as against the scheduled date of 5th November-2025 through the financial assistance provided by M/s REC and PFC. Hence, the contention of the petitioner regarding non-release of admitted payments to the petitioner is false and incorrect.
- g. It is stated that with regard to late payment surcharge the petitioner has computed LPS on the invoice amounts which were claimed erroneously considering the prevailing benchmark prime lending rate of SBI. Whereas as per article No.6.2 of PPA, the DISCOM shall pay simple interest at prevailing 'base prime lending rate' of SBI. Besides, while computing LPS amount, petitioner has not considered the payments released through REC / PFC under LPS Rules-22. TGSPDCL has arranged the billing statements to the petitioner for reconciliation as and when the petitioner requested for the same.
- h. It is stated that in regard to the relief sought by the petitioner for opening LC and outstanding payments, the Commission in O.P.No.73 of 2022 dated 02.01.2024, held that, "*the provisions of PPA are clear on the aspect of establishing LC. However, in view of the rules of MoP, the payments are being made regularly and effects (Sic.efforts) are being made to establish the LC also. The Commission finds this contention of the respondent (TSSPDCL) is acceptable*".
- i. It is stated that the averments of the petition which are not specifically admitted or denied by this respondent may be deemed to have been denied. Hence it is

prayed that the Hon'ble Commission may be pleased to dismiss this petition with exemplary costs

8. The petitioner has filed a REJOINDER to the submissions of the TGSPDCL and stated as follows.

- a. It is stated that the present petition is being preferred by petitioner under Sections 86(1)(f), of the Act, 2003 seeking recovery from TGSPDCL towards outstanding amount in respect of monthly tariff invoices along with payment of interest on delayed payments made and on outstanding amount as per the terms of the PPA dated 19.02.2020 executed between the petitioner and the TGSPDCL for procurement of power generated from 19.8 MW RDF-based power project located at Jawaharnagar, at the applicable tariff as determined by the Commission vide its order dated 18.04.2020 in O.P.No.14 of 2020.
- b. It is stated that the I.A.No.1 of 2024 is being preferred by the petitioner seeking exparte ad interim order, directing the TGSPDCL to make an upfront payment of 50% of the amount outstanding to the tune of Rs.26,20,03,853/- as on 08.12.2023. The contents of the petition are not repeated herein and the same may be read as part and parcel of the accompanying paragraph and is not reiterated for the sake of brevity.
- c. It is stated that at the outset the petitioner disputes and denies each and every averment made by the respondent in its reply. unless the same is expressly admitted. Any omission on the part of the petitioner to deal with any specific averment, contention, or allegation of the TGSPDCL should not be construed as an admission on the part of the petitioner.
- d. It is stated that it is the contention of the TGSPDCL that since the nature of relief sought under the present petition has already been adjudicated inasmuch as the Commission has already dismissed the same vide order dated 02.01.2024 passed in O.P.No.73 of 2022, the present petition is therefore not maintainable in view of identical relief being sought.
- e. It is stated that the contention of the TGSPDCL is wholly incorrect, factually erroneous and misconceived in law. It may be pertinent to mention that neither the relief(s) sought in O.P.No.73 of 2022 and the present petition are same nor the Commission has decided the matter of payment of energy bills qua admitted energy in O.P.No.73 of 2022. It is apposite to mention that vide order dated

02.01.2024 passed in O.P.No.73 of 2022, the Commission while dismissing the relief(s) has held that the purchase of delivered energy beyond threshold PLF cannot be allowed. However, in the present petition, the petitioner has only sought for recovery of amount, inclusive of interest (without prejudice to its rights seeking recovery for energy delivered beyond PLF, towards 'admitted energy' as considered by the TGSPDCL out of delivered energy under the PPA dated 19.02.2020. It is reiterated that the Commission has not decided on the aspect of recovery of money qua admitted energy in O.P.No.73 of 2022.

- f. It is stated that the Commission in the order dated 02.01.2024 categorically observed that the issue of arrears in the payment of energy bills is a different cause of action altogether and should be initiated in a separate proceeding. The present petition is preferred in view of this observation of the Commission. The relevant para of the order dated 02.01.2024 passed by the Commission in O.P.No.73 of 2022 is extracted herein below for the ready reference of the Commission:

"32. *The facts in this case would demonstrate that there is a dichotomy between the parties with regard to amount claimed as due by the petitioner and payable by the respondent. Such dichotomy cannot be the subject matter of a petition where the payment is claimed towards delivered energy and not with regard to arrears of payment of the energy bills in favour of the petitioner. Therefore, the issue cannot be resolved in this petition as it is a separate and distinct prayer arising out of a separate cause of action. The petitioner could not have raised the issue by clubbing the prayer in this petition and ought to have initiated separate proceedings before the Commission to the extent of arrears of payment by the respondent, wherein the Commission would have a liberty to examine and decide whether really there exists a cause of action or otherwise. Thus, this issue though partly related to payment for delivered energy, cannot be considered in this Petition.*"

- g. It is stated that under the present petition, the petitioner has based its claim on the energy bills as admitted by the TGSPDCL while applying the PLF (without prejudice to its rights) and the calculations arrived therein as per the threshold PLF provided under order dated 18.04.2020 passed by the Commission. It is stated that in view of the above, the contention of the TGSPDCL that the relief sought by the petitioner is not maintainable is wholly erroneous and ought to be set aside.
- h. It is stated that it is the contention of the respondent that it has paid the outstanding dues inasmuch as the same were paid in 48 instalments as per

Rule 5 of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (LPS Rules, 2022) notified by the MoP on 03.06.2022. It is stated that the same is incorrect as the TGSPDCL has not applied LPS Rules, 2022 correctly. Firstly, the adjustment of any sum paid had to be made first towards Late Payment Surcharge (LPS) and not towards principal amount and Secondly, the benefit of 48 instalments are not available to the TGSPDCL under Rule 5 of the LPS Rules, 2022. In this regard, a summary containing outstanding dues of which the petitioner seeks recovery is provided herein below for ready reference of the Commission:

Period	Amount (as per admitted energy)	Interest (as per BPLR / PPA or LPS Rules, as applicable)
Sep-20 to Feb-21 [per PPA]	36,91,43,755	5,36,40,041.48
Mar-21 to Oct-21	53,01,53,072	25,73,92,087.17
Dec-21 to Apr-22	36,88,79,195	83,78,604.94
Nov-21 [per PPA]	7,58,35,044	79,57,589.31
May-22 to Feb-24	1,81,60,95,703	26,63,92,708.54
Total	23,22,58,77,461	12,79,90,339.33

LPS Adjustment [refer notes]	6,57,70,692.11
Add: Outstanding Invoices	31,00,12,313.38
Add: Outstanding Invoice after LPS adjustment	₹6,57,70,692.11
Total outstanding including interest	50,37,73,344.82

Note to Summary:

Rs.89 crore was considered under LPS Rules, 2022 for which an interest of 6.5 crore was due, to be paid in 12 EMLs. However, since the interest has not been paid. As per said rules the interest is adjusted first from interest and then against principal due is to be adjusted. Thus, a principal amount of 6.5 crore will still be outstanding for these months, on which interest under BPLR was considered till this date.

- i. It is stated that it is pertinent to mention that the very table provided under Rule 5 which is also reproduced by TGSPDCL in its reply, is emphatic inasmuch as the respondent is only eligible for making payments in 48 monthly instalments if the total outstanding dues as on the date of notification that is 03.06.2022, is more than Rs.10,000 crore, which is not the case under the present matter. Therefore, the respondent could not have availed the benefit of 48 instalments and instead was eligible for making payments in maximum 12 instalments starting from August 2022 till July 2023. The Commission may therefore, not consider payment made beyond 12 instalments in conformity with LPS Rules, 2022.
- j. It is stated that it is equally erroneous to contend that as per Rule 5 of the LPS rules, 2022, the amount of Rs.89 crore becomes eligible for making payments in 12 monthly instalments. As per rule 5 of the LPS Rules, 2022, the amount to be considered by the TGSPDCL for making payment in equated monthly instalments shall also include late payment surcharge against the longest

pending overdue bill, in terms of Rule 4 of LPS Rules, 2022. In this regard, the relevant rule is extracted below for the ready reference of this Hon'ble Commission:

"3. *Late Payment Surcharge.-*

- (1) *Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.*
- (2) *The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 per. cent for every month of delay provided that the Late Payment Surcharge shall not be more than three per. cent higher than the base rate at anytime*
Provided that the rate, at which Late Payment Surcharge shall be payable, shall not be higher than the rate of Late Payment Surcharge specified in the agreement, if any

4. *Adjustment towards Late Payment Surcharge. –*

All payments by a distribution licensee to a generating company or a trading licensee for power procured from it or by a user of a transmission system to a transmission licensee shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

- k. It is stated that however, the TGSPDCL has only considered an amount of Rs.89.90 crore which does not even cover the principal amount due. The TGSPDCL have made legally erroneous and misconceived contention that the payment of Rs.89.90 crore is in lieu of LPS Rules, 2022 are to be considered in line with Rule 4 of the LPS Rules, 2022, the adjustment of outstanding dues is to be reckoned first towards interest component and not the principal component. Therefore, the contention that the payment of Rs.89.90 crore is to be set off against the entire principal liability under the energy bills is wholly wrong. Furthermore, as per the LPS Rules, 2022, late payment surcharge shall be payable on the payment outstanding after the due date at "base rate" of late payment surcharge and the base rate of late payment surcharge as defined in Rule 2(c) of the LPS Rules 2022 is 'the marginal cost of funds' based on lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus an additional five percent.
- l. It is stated without prejudice that even if the amount of Rs.89.90 crore for the period from March 2021 to April 2022 (except November 2021), as considered by the TGSPDCL is accepted, the interest accrued on this amount from the due date till the notification of LPS Rules 2022 (03.06.2022) comes out to be Rs.6,57,70,692.11 and therefore the outstanding amount that the TGSPDCL

should have considered for payment in instalments under Rule 5 comes out to be Rs.96,48,02,959.56/-.

- m. It is stated that therefore, by no stretch of imagination has the TGSPDCL in its payment has complied with the LPS Rules, 2022. The payment made is totally arbitrary as it neither accords itself to the text of LPS Rules, 2022 nor the terms of the PPA dated 19.02.2020. The TGSPDCL has while admitting to no interest liability has disputed the rate at which interest is to be reckoned. It is the contention that the rate of interest payment cannot be benchmark prime lending rate. It is stated that under clause 6.2 of PPA provides that the TGSPDCL shall pay simple interest at prevailing 'base prime lending rate'. Admittedly, there is no base prime lending rate and the only expression which makes mercantile sense is 'benchmark prime lending rate'. The 'benchmark prime lending rate' is the rate at which the bank charges interest on loans/advances. Hence, it is only the benchmark prime lending rate as applicable rate at which the interest accrue to the petitioner in terms of PPA dated 19.02.2020.
- n. It is stated that the TGSPDCL has very conveniently avoided in addressing its contractual stipulation under the PPA dated 19.02.2020, in particular, the mandatory obligation to open a LC thirty days (30) prior to the date of scheduled commissioning of the plant. It may be noted that the TGSPDCL has not denied that it is obligated to open an irrevocable revolving LC under Article 6.4 of the PPA dated 19.02.2020. It is also not denied by the TGSPDCL that it has continued in failing to abide by the Article 6.4 of the PPA dated 19.02.2020 but admittedly, there is an outstanding of around Rs.37,57,83,005/-. Therefore, even with the observations of the Commission in O.P.No.73 of 2022, wherein it was held that as long as regular payments are being made and efforts are being made by TGSPDCL, the issue of LC is decided in favour of TGSPDCL. However, the petitioner is entitled to seeking relief qua LC as neither payments are being made regularly, nor any efforts are being made towards LC.
- o. It is stated that when it has been accepted by the TGSPDCL that it has failed in making regular payments qua the energy bills of the appellant, there is no justification whatsoever, as to why it can today seek to wriggle out of its obligation to open an irrevocable, revolving LC under the PPA dated 19.02.2020. In view of the above, it is submitted that there is no merit in the

contentions of the Respondent and the same are liable to be dismissed at the very outset.

- p. It is stated that the contents of paragraphs 4 and 5 are denied in toto. As already elucidated in the preliminary submissions, present petition is filed for claims based on the admitted energy bills with the PLF capping (without prejudice). Further, the Commission in its order dated 02.01.2024 specifically observed that the arrears in payment of energy bills is a separate cause of action and should be taken up in a different petition. Hence, the petitioner has preferred the present petition before the Commission.
- q. It is stated that the contents of paragraph 6 are denied and disputed. In this regard, the contents of preliminary submissions are reiterated and the same are not repeated for the sake of brevity. The contents of paragraph 7 and 8 are wrong, misconceived, misleading and therefore disputed and denied. In this regard, the contents of preliminary submissions are reiterated and the same are not repeated for the sake of brevity. It is reiterated that according to Rule 4 of the LPS Rules, 2022, the instalments being paid by the TGSPDCL as per Rule 5, shall be first adjusted towards the late payment surcharge accrued up till the date of notification of the LPS Rules, 2022 that is 03.06.2022 and after that it shall be adjusted towards the outstanding principal amount. In the present case, the Rs.89.90 crore considered by the TGSPDCL is wrong as it does not include the late payment surcharge till 03.06.2022 which comes out to be Rs.6,57,70,692.11. As per Rule 4, if the amount paid through instalments is first adjusted towards late payment surcharge, this leaves Rs.6,57,70,692.11 pending towards the principal outstanding amount itself and the interest shall be applicable on this amount as per the provisions of the PPA dated 19.02.2020.
- r. It is stated that the contents of paragraph 9 are misleading and therefore denied in toto. Reference is made to preceding paragraphs under the preliminary submissions wherein the issue of applicable rate of interest has been dealt with and the same is not repeated. The contents of paragraph 10 are denied to the extent that the same are not matters of record.
- s. It is stated that the contents of paragraph 11 are denied in toto. Reference is made to preliminary submissions in the present rejoinder wherein the issue of LC has been dealt with in detail. It is further stated that the finding of this Hon'ble

Commission in the Order dated 02.01.2024 in O.P.No.73 of 2022 is erroneous to the extent that, the payments are being made regularly by the TGSPDCL. It has been made amply clear that the payments for energy bills are not being made regularly by the Respondent Discom and that no efforts have been made by the TGSPDCL to open the LC. This is causing grave prejudice to the petitioner and is adversely affecting the operation of petitioner's project.

t. It is stated that the contents of paragraphs 12 and 13 are formal in nature and as such do not merit any response from the petitioner. In view of the above, it is humbly prayed that the Commission may graciously be pleased to allow the present petition and grant the relief prayed for.

9. The Commission has heard the counsel for petitioner and representative of the respondent. The material as placed by the parties has been examined in the context of the prayers made by the petitioner. The submissions made by the parties on various dates of hearing are reproduced below:

Record of proceedings dated 04.04.2024

"... .. The counsel for petitioner stated that the counter affidavit is yet to be filed in the matter. The representative of the respondents sought time for filing counter affidavit in the matter, stating that the matter is coming for the first time. The Commission noticed that an interlocutory application for listing the matter expeditiously is filed. However, the purpose has already worked out itself in view of the posting of the matter today. Accordingly, the said interlocutory application [viz., I.A.No.2 of 2024] stands closed.

Record of proceedings dated 06.05.2024

"... .. The counsel for petitioner stated that the counter affidavit is filed and he needs to file rejoinder in the matter. He sought time of three weeks and scheduling the hearing thereafter. In view of the request of the counsel for the petitioner, time is extended for filing rejoinder by four weeks. The rejoinder may be filed on or before 06.06.2024 and hearing will be scheduled thereafter. Accordingly, the matter is adjourned".

Record of proceedings dated 06.06.2024

"... .. The advocate representing the counsel for petitioner stated that the rejoinder is being filed today by giving a copy of it to the representative of the respondents. The advocate representing the counsel for petitioner stated that the hearing in the matter of interlocutory application be considered for disposal and hearing may be taken up expeditiously. The Commission is not inclined to take up the interlocutory proceedings and would hear the main matter itself, therefore, proposed to hear the matter on 01.07.2024, to which the parties have no objection. Accordingly, the matter is adjourned"

Record of proceedings dated 01.07.2024

"... .. The counsel for petitioner stated that the petitioner is filing the present petition with regard to amounts due to it towards power supply within the PLF in terms of the PPA. Earlier, the petitioner had filed the petition in O.P.No.73 of

2022 with regard to calculation of PLF and amounts due and payable thereof. The distinction between both the petitions is that the petitioner is now seeking the relief only to the extent of amounts payable towards power supply to the extent of PLF and LPS due on such payments.

The counsel for petitioner stated that the petitioner had already preferred an appeal against the order of the Commission in O.P.No.73 of 2022 and it is pending consideration. Apart from the above, three more appeals have also been filed. However, none is related to the present petition. The core issue in this petition to be precise is non-payment of LPS amount on the amounts due towards the energy charges and which are paid belatedly. The counsel for petitioner has endeavoured to show the different aspects of the PPA and the arrangements made by the respondents for payment of the amounts due towards energy supplied.

The counsel for petitioner sought to explain how the amount towards energy is due and have been paid belatedly to the petitioner. The arrangements made by the respondents with the financial institutions towards clearing the arrears of energy charges is stated and it is explained that the respondents are entitled to make payment in forty instalments, if the gross amount crosses Rs.4,000 crore. However, in the case of the petitioner, the respondents had disbursed the amount within 12 instalments from July 2022 to July 2023. Now the respondents are liable to pay the LPS amount as has been mentioned in the petition and further amounts till such dues are cleared.

The counsel for petitioner stated that right from the inception when the plant is synchronized and started commercial operation, the invoices were honoured belatedly ranging from six months to one year. Thus, the respondents are liable to pay LPS in terms of the PPA.

The counsel for petitioner pointed out that the Government of India had notified the LPS rules, which are binding on the respondents and it has to comply with the same. The counsel for petitioner explained the provisions which are applicable in the instant case and also stated that as the PPA provided for the same, the formula provided in the rules would not strictly apply as the rules themselves give liberty to the PPA to be governed in the matter.

The counsel for petitioner stated that the petitioner is relying on certain judgments of the Hon'ble Supreme Court and Hon'ble ATE. He sought to explain the same by elucidating on the relevant paragraphs in those judgments. He has sought that the prayers made in the petition be considered favourably as nothing is sought beyond the terms of the PPA.

The representative of the respondents stated that the respondents have already made arrangements for payment of the amount due to the petitioner towards the energy supplied and effected payment also through PFC and REC. The issue now remains is with regard to LPS only. The respondents have no question on the amount claimed by the petitioner towards LPS in the petition. However, it will take some time as the arrangements towards the same have to be made. The only opposition the respondents have is with regard to the claims made in terms of the LPS rules in view of the fact that the PPA itself provided for the same.

The counsel for petitioner would endeavour to submit that the petitioner had filed revised calculation along with rejoinder, wherein it has claimed roughly Rs.322 crore towards LPS itself. However, the petitioner is not justifying the calculations at this point of time and would be seeking orders to the extent of

*prayers made in the petition only. The Commission may consider and pass appropriated orders in the matter.
Having heard the counsel for petitioner and representative of the respondents, the matter is reserved for orders.”*

10. The core issue in this petition is with reference to payment of amounts outstanding along with interest which have been quantified as Rs.30,95,10,172/- (Rupees Thirty Nine Crore Ninety five lakhs ten thousand and one hundred and seventy two only) towards principal and Rs.21,44,97,534/- (Rupees twenty one crore forty four lakh ninety seven thousand and five hundred and thirty four only) towards interest calculated as on 08.12.2023.

11. In terms of the PPA the TGSPDCL ought to have complied with payment terms to the extent the same is in accordance with the tariff order passed on 18.04.2020. The TGSPDCL ought to have honoured the bills to the extent they fall within the agreed terms and according to the timeline specified in the PPA between the parties. Though there are certain other issues with regard to PLF, failure to maintain LC, illegal deduction of import charges, the TGSPDCL ought to have honoured the bills to the extent the petitioner is satisfied the conditions of the PPA. The other issues have already been raised and answered in the other proceedings in O.P.No.73 of 2022 and the same was decided by the commission by order dated 02.01.2024, hence those aspects are not germane to the present proceedings.

12. The Commission had occasion to consider the non-payment of bills and not honouring the invoices in so far as several solar generators are concerned. This Commission is on record and had observed as below in O.P.No.39 of 2022 and others

“7. From the pleadings it is noticed that the petitioner is having a long-term Power Purchase Agreement (PPA) with the respondent vide PPA No.199/2015 dated 16.03.2015 r/w its Amendments dated 25.08.2015 and 01.09.2021 for setting up of the Solar Power Project of 10 MW capacity connected to at 132/33 kV Alampur substation in Mahabubnagar District for sale of Solar Power to the respondent for a period of 25 years from the Date of Commercial Operation (i.e., 02.03.2016) at a tariff of Rs.6.90 per unit upto 25% CUF calculated on annual basis (the parties thereto, intending to legally bound and agrees the terms and conditions of the PPA). The terms & conditions of the PPA stipulates that –

a) 5.1 For the Delivered Energy, Solar Power Developer (petitioner) shall furnish a bill to the DISCOM (respondent) for the billing month on or before the 5th working day following the Meter Reading Date;

- b) 5.2 Any payment made beyond the Due Date of payment, the respondent shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India; [Late Payment Surcharge (LPS)]
- c) 5.3 The respondent shall pay the bill on a monthly basis;
- d) 5.4 The respondent shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month's billing value;
- e) 5.5 The respondent shall make payment for the eligible bill amount by the due date of payment;
- f) 5.6 The respondent shall pay the bills of petitioner promptly;
- g) 11.4 any party may approach TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003;
8. *Prima facie*, the prayer in this petition is about action of the respondent in not making the payment in accordance with the provisions of the PPA.
9. The petitioners further contends that the respondent is yet to open the Letter of Credit as provided in Clause 5.4 of Article 5 of the PPA, as such, it is unable to recover the outstanding due or any part thereof from the LC. Therefore, the prayer is sought not only for release of payments due along with interest thereon for late payment but also for directions to the respondent for opening of irrevocable revolving Letter of Credit in favour of petitioner No.1 and for making all future payments in a timely manner, though there is no mention of the amount for subsequent period.
10. The Commission is of the view that in the absence of any contest made by the respondent No.1 as to the veracity of the claims made by the petitioners, there is no dispute on the amounts payable by the respondent No.1 to the petitioners. However, as per the provisions of the PPA, when the petitioner has complied with its part to the PPA by delivering the electricity energy to the respondent No.1, the respondent No.1 is bound to make payment for the same without any demur. Further, in terms of the PPA such occurrence and continuation of event of non-payment of dues by the respondent No.1 to the petitioner and when the petitioner is unable to recover the outstanding amount, shall constitute "DISCOM (Respondent) Event of Default".
11. The Commission takes judicial notice of a decision rendered by the Hon'ble APTEL in the matter of Bangalore Electricity Supply Company Ltd. Vs. Devangere Sugar Company Limited [Appeal No.176 of 2009]. The observations made by the Hon'ble APTEL are extracted below:
- "23. Besides this, there is one more breach. Under Clause 6.6, the Corporation (Appellant) shall establish and maintain transferable, sustainable and irrevocable revolving Letter of Credit (LOC) in favour of the company (Respondent).
.... ..
25. In the instant case, admittedly, neither the amount due were paid in time, nor the penal interest was paid as per Clause 6.3 of the contract, nor the LOC was established within the stipulated time as per Clause 6.6 of the Contract. 26. In every Power Purchase Agreement (PPA), the opening of a LOC is a vital part of the contract. It is fundamental financial obligation cast upon the 14 of

15 Appellant by the contract to honour the same. In other words, to open an LOC forms an integral part of the contract. It is, therefore, clear that there is a failure on the part of the Appellant to honour its obligation under the contract. ... ”

12. *In the present case, the Clause 5.4 of the PPA stipulates opening of irrevocable revolving Letter of Credit in favour of petitioner by the respondent No.1 and the same is not complied with according to the pleadings. In the absence of any statement from the respondent No.1 as to the reasons or compliance of providing Letter of Credit in terms of the PPA, the Commission has no other option to infer that the respondent No.1 did not provide Letter of Credit to the petitioner, which it is required to comply with.*
13. *The petitioner has relied upon the decisions of the Hon'ble Supreme Court in the matter of Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission, 2021 SCC Online SC 913 and Southern Power Distribution Power Company Limited of Andhra Pradesh (APSPDCL) v. Hinduja National Power Corporation Limited, 2022 SCC Online SC 133. The Commission is of the view that the payments due towards power supply as also the late payment charges claimed by the petitioner did not find rebuttal by the respondents herein, as such, it is not necessary for the Commission to dwell into those observations in this case. Suffice it to state the said judgments of the Hon'ble Supreme Court were in the context of other issues and not in relation to payment of the amounts due. Therefore, the Commission do not wish to express any opinion on the same.*
14. *The petitioner has also made TSTRANSCO as respondent No.2 to the petition. Basically, the issue is with regard to payment of the amount and the transmission licensee has no role in the PPA. In fact, the transmission licensee being the state transmission utility is only concerned with transmission business & SLDC activity and is not entitled to or required to dabble with power procurement or retail sale of the same. In that view of the matter, the Commission considers that the transmission licensee is an unnecessary party to the present proceedings and no direction shall go to it.*
15. *Therefore, the Commission is inclined to grant the relief as prayed for in the original petition, both for the billed amount and interest claims and directs the respondent to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month's billing value as per Clause 5.4 of the PPA.*
16. *In the light of the above, the petition stands allowed and the respondent shall comply with this order within forty five (45) days from the date of receipt of this order. While complying with the order, the respondent would ensure that the amounts are settled completely upto date and shall endeavour to make payment for the eligible bill amount against the bills raised by the petitioner promptly in accordance with the provisions of the PPA.*
17. *The original petition is disposed of on the above terms and in the circumstances without any costs.*

13. As observed by the Commission in the above said O.P.No.39 of 2022 and others the terms of the PPA in the case referred above or the instant case are substantially identical, as such the finding rendered by the Commission squarely applies to the present case also. Even the other findings in the said batch of cases is squarely applicable to the facts and circumstances of this case and as such the commission reiterates its view as expressed in the said batch of cases.

14. The Commission had occasion to consider the same issue in another batch of cases in O.P.No.49 of 2022 and batch. It has been observed by the Commission as below:

“From the pleadings it is noticed that the petitioner is having a long-term Power Purchase Agreement with the respondent vide PPA No.2000 MW/06/2016 dated 03.02.2016 r/w its amendment dated 18.01.2021 (PPA) for setting up of the Solar 36 of 39 Power Project of 50 MW capacity at Minpur Village, Medak District connected to at 220/132 kV Minpur substation, for sale of Solar Power to the respondent for a period of 25 years from the Date of Commercial Operation. The terms & conditions of the PPA stipulates that –

5.1 For the Delivered Energy, the Solar Power Developer (petitioner) shall furnish a bill to the DISCOM (respondent) for the billing month on or before the 5th working day following the Meter Reading Date;

5.2 Any payment made beyond the Due Date of Payment, the respondent shall pay simple interest at prevailing base prime lending rate of State Bank of India; [Late Payment Surcharge (LPS)]

5.3 All payments shall be made into petitioner’s designated account;

5.4 The respondent shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month’s billing value;

5.5 The respondent shall make payment of the undisputed amount of the bill by the due date of payment;

5.6 The respondent shall pay the bills of petitioner promptly;

....

11.4 ... any party may approach TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003;

10. *Prima facie, the prayer in this petition is with regard to action of the respondent in not making the payment in accordance with the provisions of the PPA. The petitioner has identified the outstanding amount due against monthly delivered energy bills for the period upto 30.04.2022, which includes LPS amount, the details which are shown in the averments of the petition as Rs.88,29,66,597/- The petitioner further contended that the respondent is yet to open the Letter of Credit as provided in clause 5.4 of Article 5 of the PPA, as such, it is unable to recover the outstanding due or any part thereof. Therefore, in the prayer it is sought not only for release of payments due along with interest*

thereon for late payment (late payment surcharge, LPS) but also for directions to the respondent for opening of irrevocable revolving Letter of Credit in favour of petitioner and for making all future payments in a timely manner, though there is no mention of the amount for subsequent period.

11. *The Commission is of the view that in the absence of any contest made by the respondent as to the veracity of the claims made by the petitioner, there is no dispute on the amounts payable by the respondent to the petitioners. However, as per the provisions of the PPA, when the petitioner has complied with its part to the PPA by delivering the electricity energy to the respondent, the respondent is bound to make payment without any demur. Further, in terms of the PPA such occurrence and 37 of 39 continuation of event of non-payment of dues by the respondent to the petitioner and when the petitioner is unable to recover the outstanding amount, shall constitute "DISCOM (respondent) Event of Default". Further, as the PPA provides for payment of interest, it is bounden duty of respondent to pay the interest in terms of the PPA. Since the respondent did not pay the amounts towards delivered energy bills raised by the petitioner, it is liable to pay interest as claimed by the petitioner to that extent as also further LPS for the amounts which are not paid till date.*
12. *The petitioner sought to rely on the minutes of GoM as also the directions thereof by the GoI with regard to payments of due as well as LPS. Inasmuch as the PPA as also the subsequent rules notified in the year 2022 on the subject matter are binding on the respondent and as such, it cannot escape from the liability.*
13. *The petitioner sought to rely on Judgments of the Hon'ble Supreme Court and APTEL referred in the pleadings of the petitioner with regard to payment of amounts due by the respondent. Without reiterating the relevant observations of those Judgements, which are already extracted in the pleadings, the Commission is in complete agreement with the submission of the petitioner. Moreover, the decisions referred thereof are binding on this Commission. Therefore, it cannot extricate itself from the findings thereof and is accordingly, inclined to accept the submissions of the petitioner.*
14. *The petitioner also relied on the Judgments of the Hon'ble Supreme Court in the matter of unjust enrichment and public authority must act fairly. Even in the case of these judgments as referred by the petitioner, since the respondent did not comply with the provisions of the PPA and did not make timely payment of the invoices, the natural understanding would be that the respondent has unjustly enriched itself by withholding the amounts due to the petitioner and its actions are not in consonance with the principles of public authority must act in fair manner. From the pleadings, there appears to be a certain extent force in the contention of the petitioner insofar as the above two aspects are concerned, but the Commission views that such application is subject to reasonable benefit of regulatory oversight in favour of the petitioner.*
15. *The respondent relied on the Judgment of the Hon'ble Supreme Court in respect of the observations made in the matter of M/s A. P. Power Coordination 38 of 39 Committee on the aspect of limitation. Contra*

argument is also placed by the petitioner on the same aspect by placing reliance on the judgment of the Hon'ble APTEL in the matter of Power Company of Karnataka Vs. Udupi Power Corporation Limited. While it is not denied that the observations of the Hon'ble Supreme Court qua limitation are binding on the Commission as the petition is filed under Section 86(1)(f) of the Act, 2003, at the same time, the decision of the Hon'ble APTEL places importance on the aspect of 'continuous breach'. This case squarely falls within the aspect of continuous breach. Therefore, the contention of the respondent regarding limitation aspect or delayed filing of the petition cannot be accepted.

16. The respondent contended that since the method of calculation of interest is proposed to be changed, it amounts to 'Change in Law'. The contention of the respondent appears to be based on misunderstanding. The method of calculation of interest cannot be deviated upon as provided in the PPA. At the same time, if the competent authority under the financial laws had changed the method of calculation of interest, nothing precluded respondent to initiate appropriate proceedings before the Commission for amendment of the provisions in the PPAs in line with such modifications in financial laws. Having not done so, it cannot now take defence that the same is change in law. For this reason, the contention of the respondent fails and is rejected.
17. The Commission had occasion to consider a judgment rendered by the Hon'ble APTEL in the matter of Bangalore Electricity Supply Company Ltd. Vs. Devangere Sugar Company Limited in Appeal No.176 of 2009. The observations made by the Hon'ble APTEL are extracted below:
 23. Besides this, there is one more breach. Under Clause 6.6, the Corporation (Appellant) shall establish and maintain transferable, sustainable and irrevocable revolving Letter of Credit (LOC) in favour of the company (Respondent)
 25. In the instant case, admittedly, neither the amount due were paid in time, nor the penal interest was paid as per clause 6.3 of the contract, nor the LOC was established within the stipulated time as per Clause 6.6 of the Contract.
 26. In every Power Purchase Agreement (PPA), the opening of a LOC is a vital part of the contract. It is fundamental financial obligation cast upon the Appellant by the contract to honour the same. In other words, to open an LOC forms an integral part of the contract. It is, therefore, clear that there is a failure on the part of the Appellant to honour its obligation under the contract."
18. Thus, it is seen that the present case also provides for Letter of Credit and the same is not complied with according to the pleadings. In the absence of any statement from the respondent as to the reasons or compliance of providing Letter of Credit in terms of the PPA, the Commission has no other option to infer that the respondent did not provide Letter of Credit to the petitioner, which it is required to comply with. The Commission opines that the respondent complying with the said provision in order to safeguard the interest of the petitioner, is appropriate in the interest of justice.
19. The Commission also considers it appropriate to observe that the respondent shall comply with the terms of the PPA without any demur

and also honour all the payments in future towards the invoices to be raised by the petitioner, though it had made arrangement for payment of the earlier invoices and LPS as the case may be.

20. *In view of the above, the petition is allowed and the respondent shall comply with this order within a period of four (4) weeks from the date of receipt of the order. While complying with the order, the respondent would ensure that the amounts are settled completely and shall endeavour to make payment of the undisputed amount of the bills raised by the petitioner promptly in accordance with the provisions of the PPA.*
21. *The original petition is disposed in terms of the observations made supra, without any costs”.*

15. Thus, the Commission is of the view that the respondent licensee ought to have effected payments as also the LPS amount as is applicable without any delay. It is also worth mentioning the petitioner also referred to the decision rendered by Hon'ble Supreme Court in the matter of GMR Warora Energy Limited Vs. Central Electricity Regulatory Commission in Civil Appeal No.11095 of 2018 dated 20.04.2023, which finding is squarely applicable to the present facts and circumstances/

16. The Commission is of the view that the contention set out by the petitioner by placing reliance on U.P. Ceramics and Potteries Vs. Rajasthan Electricity Regulatory Commission reported in 2020 SCC Online APTEL 56, may not attract as the said findings of the Hon'ble APTEL do not match to the events and circumstances as are available in the instant case. Even though the Hon'ble APTEL directed the payment of amount due and interest thereof but the situation that has arisen is at variance with the present case. In the instant case the PPA is a subsisting PPA, whereas from a bare reading of the findings it can be appreciated that the PPA between the parties before the Hon'ble APTEL had already expired. Thus, this judgement is of no relevance to the present case.

17. The petitioner also referred to Maharashtra State Electricity Distribution Co. Ltd Vs. Maharashtra State Electricity Regulatory Commission Mumbai reported in 2010 SCC Online APTEL 91. The issue in the said appeal was payment of bills based on joint meter reading (JMR) and not honouring the same. The generators raised quarterly bills in the said matter. The claims involved in the instant petition are not based on JMR but regular invoices have been raised and some of the payments have not been effected in a timely manner in terms of PPA which is subsisting between

parties as such this judgment would not aid the petitioner in getting relief in this instant petition.

18. The petitioner has chosen to make transmission corporation of Telangana and Telangana State Power Coordination Committee as party respondents to this petition. It is appropriate to state that findings rendered in paragraph No.14 in O.P No.39 of 2022 was squarely applied in so far as TGTRANSCO is concerned and the same is extracted supra. The other party is the TGPC which is a coordination committee which is only between state entities and the state generator including the STU. It does not undertake generation, transmission and distribution independently. As such both TGTRANSCO and TGPC are unnecessary parties to the present petition, PPA being with TGSPDCL only.

19. The petitioner sought to contend and interpret the LPS Rules,2022. It is stated that the instalments availed should not be more than 12 in the case of petitioner. This understanding of Rule 5 regarding instalments is erroneous. The rule itself specifically provides at clause No.1. by employing the words "*total outstanding dues including late payment surcharge*", thus it cannot be taken merely LPS amount or principal amount. From the table extracted by the TGSPDCL its contention is appropriate that as the total outstanding due to all the generators is more than Rs.10,000 crore, it could have availed 48 instalments. However, it has favoured the petitioner by undertaking payment within a period of 12 months. Also, the petitioner sought to state that the instalments that have been paid should be adjusted against their LPS dues at 1st instance along with interest. This is not the case with Rule.5 more particularly clause 3 to 5 thereof which are reproduced below:

- “(3) *Notwithstanding anything contained in rule.3 if the distribution licensee agrees to payments of the arrears dues as per the instalment fixed under the rule, and makes timely payment of these instalment then late payment surcharge shall not be payable on the outstanding dues from the day of the notification of these rules:*
- (4) *In case of delay in payment of an instalment under sub-rule(1), Late payments surcharge shall be payable on the entire outstanding dues as on the date of notification of these rules.*
- (5) *In case of non-rescheduling of the arrears in accordance with this rule, all payments made by the distribution company shall first be adjusted against the arrears.”*

Thus, this argument of the petitioner would aid in securing the prayers in the petition.

20. Having regard to the forgoing discussion and the finding rendered supra the Commission is inclined to allow the present petition with the following directions:

- a) The TGSPDCL is liable to pay the petitioner, all outstanding dues along with interest towards sale of energy in terms of the PPA dated 19.02.2020;
- b) TGSPDCL shall make the payment towards unpaid monthly tariff for the period from August, 2020 to till date accrued to the petitioner, which amounts have to quantified interse and remained unpaid as on this date in terms of the PPA read with the order of the of the Commission dated 18.04.2020, as also the interest for the invoices belatedly paid till date.
- c) Compliance of payment shall be affected as expeditiously as possible if not already done through the financial arrangement made with REC and PFC within the accepted period mentioned by TGSPDCL at paragraph (f) of the counter affidavit filed before the Commission on 06.04.2024.
- d) TGSPDCL is directed to henceforth pay all monthly invoices towards sale of energy in a timely manner within the due date stipulated under the PPA dated 19.02.2020 any deviations thereof would attract the LPS as per terms of PPA.

21. Since the original petition itself has been taken up and is being disposed by the instant order, nothing survives in respect of the interlocutory application filed along with this main petition, as such it stand closed.

22. For the above stated reasons and directions set out above the original petition is allowed to the extent indicated, but in the circumstances without any costs.

This order is corrected and signed on this the 26th day of October 2024.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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