THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition Nos. 2321 of 2025 and 2322 of 2025

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

Hon'ble Shri Griesh Kumar Vaish, Member (Law)

IN THE MATTER OF

Petition under Section 86(1)(b) read with Section 86(1)(f) of the Electricity Act, 2003, and PPA dated 10.12.2010 seeking directions to UPPCL for payment of interest/carrying cost component on outstanding dues as on 03.06.2022 converted into "Equated" Monthly Instalments in terms of the Rule 5 of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

AND

IN THE MATTER OF

Lalitpur Power Generation Company Limited,

TC – 13, Vibhuti Khand, Gomti Nagar, Lucknow - 226010

AND

Bajaj Energy Private Limited,

TC – 13, Vibhuti Khand, Gomti Nagar, Lucknow – 226010 **.....Petitioner(s)**

VERSUS

U.P. Power Corporation Ltd. (UPPCL)

Shakti Bhawan, 14, Ashok Marg, Lucknow-226001

..... Respondent

THE FOLLOWING WERE PRESENT

1. Shri Amit Kapoor, Advocate, LPGCL/BEPL
2. Shri Akshat Jain, Advocate, LPGCL/BEPL
3. Shri Avdesh Mandloi, Advocate, LPGCL/BEPL

4. Ms. Shikha Verma, Advocate, LPGCL/BEPL
5. Shri Sanjeev Kumar Singh, Advocate, LPGCL/BEPL
6. Shri Amit Mittal, Executive Director, LPGCL/BEPL
7. Shri Ketan Patil, V. P, LPGCL/BEPL
8. Shri Shailabh Gupta, Sr. Manager, LPGCL/BEPL
9. Shri Amit Kumar Pandey, Sr. Manager, LPGCL/BEPL
10. Shri Hemant Sahai, Advocate, UPPCL
11. Shri Nitish Gupta, Advocate, UPPCL
12. Shri Nipun Sharma, Advocate, UPPCL
13. Ms. Varanika Tyagi, Advocate, UPPCL
14. Shri Manish Dwivedi, CE(PPA), UPPCL
15. Shri Kashi Nath Yadav, EE(PPA), UPPCL
16. Shri Dharmendra Ratna, AE, PPA, UPPCL

FINAL ORDER

(DATE OF HEARING: 27.08.2026)

1. These Petition(s) have been filed by Lalitpur Power Generation Company Limited (LPGCL) and Bajaj Energy Private Limited (BEPL) seeking directions to Uttar Pradesh Power Corporation Limited (UPPCL/Respondent) for payment of interest component/carrying cost on the outstanding dues as on 03.06.2022, which were rescheduled into forty monthly instalments under Rule 5 of the Electricity (Late Payment Surcharge and Related Matters) Rules 2022 ("LPS Rules, 2022"), along with carrying cost until actual payment.
2. The Prayers of the Petitioners are as follows:

Petition No. 2321/2025:-

a. Admit the present Petition;
b. Direct UPPCL to make the payment to LPGCL towards interest cost component as submitted by LPGCL by considering "Equated" Monthly Installments of the outstanding dues as on 03.06.2022 as per Rule 5 of LPS Rules, 2022;
c. Direct UPPCL to make the above payment along with carrying cost till the date actual payment by UPPCL; and
d. Pass any other order as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case.

Petition No. 2322/2025:-

a. Admit the present Petition;
b. Direct UPPCL to make the payment to BEPL towards interest cost component as submitted by BEPL by considering "Equated" Monthly Installments of the outstanding dues as on 03.06.2022 as per Rule 5 of LPS Rules, 2022;
c. Direct UPPCL to make the above payment along with carrying cost till the date actual payment by UPPCL; and
d. Pass any other order as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case.

3. Since both the Petitions filed by Lalitpur Power Generation Company Limited (Petition No. 2321/2025) and Bajaj Energy Private Limited (Petition No. 2322/2025) arise from a common set of facts and seek identical reliefs against UPPCL, namely payment of the interest component and carrying cost on the outstanding dues of Rs. 3803.06 crore and Rs. 450.67 crore respectively, as on 03.06.2022, rescheduled into forty monthly instalments under Rule 5 of the LPS Rules, 2022, the issues for consideration are common in both matters. The Commission therefore deems it appropriate to dispose of both Petitions by this common order, in the interest of consistency and to avoid repetition.

Submission in the Petition(s):

4. The matter arises from the *Electricity (Late Payment Surcharge and Related Matters) Rules, 2022* ("LPS Rules, 2022") notified by the Ministry of Power on 03.06.2022, which provided a mechanism for liquidation of outstanding dues as on that date through instalment payments. Under Rule 5(1), outstanding dues, including LPS outstanding as on the date of notification, were to be liquidated through monthly instalments, with the permissible repayment period linked to the quantum of dues. Since UPPCL's outstanding dues were approximately ₹6,600 crore, including ₹3,803.06 crore relating to LPGCL and ₹450.67 crore relating to BEPL, the applicable maximum repayment period was 40 months.

5. Rule 5(2) of the LPS Rules, 2022 permitted the distribution company to pay the dues in "Equated Monthly Instalments" (EMIs) or a higher amount. The LPS Rules also contained incentives and consequences linked to timely payment. Under Rule 5(3), if the distribution company regularly paid both current dues

and the monthly instalments, no LPS was payable from 03.06.2022 onwards. Conversely, under Rule 5(4), any delay or default would result in LPS becoming payable on the entire outstanding amount from the date of notification.

6. Following notification of the Rules, UPPCL and Petitioners exchanged correspondence for reconciliation of outstanding amounts. On 29.06.2022, UPPCL communicated that the dues, inclusive of LPS as on 03.06.2022, would be paid in 40 "Equal" Monthly Instalments and that LPS would not be payable thereafter in accordance with Rule 5(3). The Petitioners, vide its letter dated 07.07.2022 responded regarding reserving its right on adjustments that emerge on reconciliation, that term of LPS couldn't be altered without approval of the Commission although it did not specifically raise a claim for interest or carrying cost at that stage. This was responded by UPPCL vide letter dated 25.07.2022 stating that LPS Rules override the contractual relation between the parties.

7. The first instalment was paid by UPPCL on 05.08.2022, and UPPCL thereafter paid all 40 instalments regularly without any default. The outstanding dues were accordingly fully liquidated on the basis of equal division of the principal amount into 40 instalments. Thus, there is no dispute regarding timely compliance with the repayment schedule; the substantive dispute concerns whether each instalment should additionally have included an interest/carrying-cost component, resulting in a higher total payment.

8. On 14.07.2025, the Petitioners wrote a letter to UPPCL requesting it to compute the Equated Monthly Instalments (EMIs) by including the carrying cost/ interest on outstanding dues in terms of the LPS Rules 2022 and shared a computation of Interest Component based on EMIs. The Petitioners subsequently reiterated its claim on 25.09.2025 and quantified the amount at ₹709.99 crore for LPGCL and ₹107.83 crore for BEPL using the Bank Rate applicable on 03.06.2022 under the UPERC Tariff Regulations, 2019. The Petitioner's principal contention is that the statutory expression "Equated Monthly Instalments" necessarily incorporates an interest component and that exclusion of such component deprived it of the time value of money during the 40-month repayment period.

9. UPPCL, however, rejected the demand on 29.10.2025, contending that Rule 5 does not mandate or contemplate payment of interest along with the instalments. According to UPPCL, the LPS Rules constituted a special one-time

mechanism for liquidation of past outstanding dues: timely compliance resulted in waiver of subsequent LPS under Rule 5(3), while default resulted in revival of LPS under Rule 5(4), with no separate interest/carrying-cost entitlement contemplated by the Rules.

10. Consequently, on 30.10.2025, the Petitioner(s) filed separate petitions before the Commission in respect of LPGCL and BEPL, seeking directions to UPPCL to pay the interest/carrying-cost component allegedly inherent in the expression "Equated Monthly Instalments". In support of its claim, the Petitioner(s) has also relied upon Regulation 16(6) of the UPERC Tariff Regulations, 2019, which provides for simple interest at the Bank Rate where payment of bills by a distribution licensee is delayed beyond the due date. Regulation 3(7) defines the Bank Rate as SBI's one-year MCLR plus 350 basis points. The Petitioner has relied upon this rate for calculating the claimed carrying cost.

RECORD OF PROCEEDINGS

11. The Commission, after perusing the Petitions and hearing the preliminary submissions, granted four weeks to UPPCL to file its reply. UPPCL accordingly filed its detailed reply on 04.06.2026, contesting the Petitioner's claim for interest/carrying cost on various grounds, including the interpretation of Rule 5 of the LPS Rules, 2022, absence of any statutory mandate for interest in the instalment mechanism, and the conduct of the parties during the repayment period. The Petitioner filed its Rejoinders on 03.07.2026, reiterating its claim and responding to the contentions raised by UPPCL. Thus, the pleadings on merits stood completed.

12. On 09.07.2026 (Order dated 15.07.2026), the Commission heard the parties on the merits. During the hearing, UPPCL raised an objection regarding limitation. Though the objection was raised after filing of the detailed reply on merits, the Commission, considering limitation to be a threshold jurisdictional issue going to the maintainability of the Petitions, granted UPPCL one week to file an Additional Affidavit confined to the issue of limitation. UPPCL filed the Additional Affidavit on 14.07.2026. Thereafter, on 16.07.2026 (Order dated 30.07.2026), the Commission granted two weeks to the Petitioner to respond. The Petitioner filed its response on 14.08.2026, contesting the limitation objection. The pleadings on limitation consequently stood completed.

13. A comprehensive hearing was thereafter held on 27.08.2026, at which both parties were heard at length on the question of limitation as well as the substantive issues, including the interpretation of Rule 5 of the LPS Rules, 2022, the distinction between "Equal" and "Equated" Monthly Instalments, applicability of the UPERC Tariff Regulations, 2019, and the conduct of the parties. Upon conclusion of the oral submissions, the matter was reserved for Orders, with four weeks being granted to the parties for filing their written submissions.

14. The Petitioner filed its Written Submissions on 01.10.2026. UPPCL, vide letter dated 30.09.2026, sought two weeks' additional time for filing its Written Submissions, which were subsequently filed on 29.10.2026.

Submissions of Respondent – UPPCL

15. The submissions of UPPCL principally rest on two independent grounds: (i) the claim for interest/carrying cost is untenable on merits under Rule 5 of the Late Payment Surcharge Rules, 2022 ("LPS Rules"); and (ii) in any event, the Petition is barred by limitation. UPPCL contends that Rule 5 created a specific, self-contained mechanism for liquidation of legacy dues through interest-free equated monthly instalments (EMIs) and that LPGCL and BEL, having accepted the arrangement and all instalments without protest for more than three years, cannot subsequently seek to impose an additional interest or carrying-cost liability.

I. Submissions on Merits

16. UPPCL's primary contention was that **Rule 5 of the LPS Rules provides for equated monthly instalments (which PFC, the nodal agency, and MPERC, by Order dated 10.06.2025 in Petition No. 77 of 2024, have understood as "interest free")** for liquidation of outstanding dues of distribution licensees towards generating companies. According to UPPCL, the outstanding dues of **₹3,803.06 crore for LPGCL and ₹450.67 crore for BEPL**, as crystallised, as on **03.06.2022**, included the LPS payable up to that date. Once this amount was restructured into 40 EMIs, the liability became a fixed and determined amount payable in accordance with Rule 5. Rule 5, according to UPPCL, prescribes no rate, rest or method of computation for interest and therefore excludes any further interest, carrying cost, finance charge or time-value-of-money component unless specifically provided by the

Rules, separately agreed between the parties, or otherwise notified by the competent authority.

17. UPPCL relies upon the object and purpose of the LPS Rules, submitting that the Rules were introduced as a one-time settlement mechanism to facilitate liquidation of accumulated legacy dues between generating companies and distribution licensees. The rule-maker was conscious of concepts such as interest and carrying cost but deliberately provided no interest component on the EMIs. Therefore, adding carrying cost through interpretation would amount to rewriting Rule 5 and would defeat the ameliorative purpose of the scheme. UPPCL argues that the Rules were intended to provide finality to old outstanding dues and not to create a fresh interest-bearing liability.

18. A further important submission was that the ₹3,803.06 crore for LPGCL and ₹450.67 crore for BEPL already included LPS calculated up to 03.06.2022. According to UPPCL, LPS itself is compensatory in nature and compensates the generating company for delayed receipt of its dues. Consequently, allowing another layer of interest/carrying cost on the same amount would effectively result in double recovery or interest upon interest. UPPCL submits that such an additional burden would be inequitable and would ultimately be borne by electricity consumers through future tariff proceedings.

19. In support of its strict interpretation of Rule 5, UPPCL relied upon *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra, (1975) 2 SCC 22*, submitting that statutory liabilities cannot be enlarged by implication and that a financial liability not expressly provided by the statute or rule cannot be judicially created. It also relied upon *D. Khosla & Co. v. Union of India, (2024) 9 SCC 476*, which, according to UPPCL, supports the proposition that where a statutory or contractual restructuring mechanism prescribes payment through EMIs without an interest component, a creditor cannot subsequently superimpose interest or carrying cost upon those instalments. UPPCL also relies on the *maxim expressum facit cessare tacitum*, *Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744* and APTEL's order dated 10.05.2020 in *Punjab State Power Corporation Ltd. v. GNA Udyog Ltd.* to submit that interest cannot be implied where the Rules expressly provide for the consequences of timely payment and of default.

20. UPPCL submitted that each of Late payment surcharge and carrying cost is compensation for the time value of money, computed as principal x rate x time, and that they differ only in name and in the event that triggers them, as recognised in *Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd., (2019) 5 SCC 325*, relied upon by the Petitioners. The Petitioners' own computation (letter dated 25.09.2025), applying 10.50% per annum on a running balance, is an LPS-type computation, and LPS on the rescheduled dues is exactly what Rule 5(3) declares not payable.

21. UPPCL submits that "equated" means made equal, that "EMI" has no uniform meaning even in lending (zero-interest EMI schemes exist), and that the second proviso to Rule 5(2), permitting payment of more than the EMI for the month, shows that the EMI is simply the monthly share of the consolidated amount. An interest-bearing amortisation would have required the Rule to specify a rate, rests and a method of computation.

22. UPPCL also relied upon the **conduct of LPGCL**. It pointed out that:

a) UPPCL communicated the restructuring and EMI arrangement in **June 2022**;

b) UPPCL reiterated the position by letter dated 25.07.2022, recording that Rule 5 provides for liquidation through equal monthly instalments, to which LPGCL did not respond;

c) LPGCL did not object to the absence of interest/carrying cost at that stage;

d) LPGCL accepted the instalments without protest, demur or reservation;

e) the first specific demand for interest/carrying cost was raised only on **14.07.2025**, more than three years after commencement of the arrangement; and

f) by then, the instalment mechanism had been acted upon and the payments had been made.

23. On this basis, UPPCL argued that LPGCL's conduct amounts to **acquiescence and waiver**, and that it is **estopped from retrospectively altering the basis of a transaction that had already been performed**. UPPCL contends that its own conduct was based upon the understanding, created by LPGCL and

BEL's acceptance of the payments, that the EMI arrangement was final and satisfactory.

24. UPPCL distinguishes the judgments cited by LPGCL, including **Jakson Power Pvt. Ltd., Dhariwal Infrastructure Ltd., Torrent Power Ltd. and SLS Power Ltd.** According to UPPCL, those cases concern **tariff determination or Change in Law proceedings, where carrying cost may arise** as a consequence of the regulatory principle that a generator or licensee should be placed in an economically neutral position when legitimate costs or revenues are deferred.

25. The present dispute, according to UPPCL, is fundamentally different because it arises under the **LPS Rules, 2022**, and not under tariff determination, ARR, truing-up or Change in Law provisions. Rule 5 constitutes a separate statutory restructuring mechanism with its own terms. Therefore, principles developed in tariff proceedings cannot automatically be imported into the LPS regime.

26. UPPCL further submits that *Vir Chand Maini*, the CESTAT order in *Haryana Ship Demolition* and the RBI Directions on microfinance loans presuppose a lender, a borrower and a contractually agreed rate of interest, and that *MSEDCL v. MERC*, (2022) 4 SCC 657 and *Nisagra* concern carrying cost as restitution under change-in-law clauses of a PPA. None of them deals with a statutory rescheduling in which the compensatory element has already been factored into the rescheduled dues.

27. UPPCL has submitted that the **LPS Rules constitute a complete code** for settlement of the relevant legacy dues. UPPCL particularly relies upon the internal mechanism contained in Rule 5:

    a) **Rule 5(3)** provides an incentive by waiving the LPS component where all EMIs are paid on time; and

    b) **Rule 5(4)** provides a consequence for default by reviving the LPS in the event of failure to comply with the instalment schedule.

28. According to UPPCL, Rule 5 demonstrates that the rule-maker consciously created its own **reward-and-sanction mechanism**. There is consequently no scope for importing an additional carrying-cost liability from some other regulatory framework. UPPCL further argues that accepting Petitioner(s)'s interpretation would **render Rule 5(3) substantially meaningless**. If the

distribution licensee receives a waiver of LPS but is simultaneously required to pay an equivalent or substantial amount as interest/carrying cost on the same restructured dues, the benefit of the statutory LPS waiver would become illusory. Such an interpretation would violate the principle that every statutory provision must be given meaningful effect.

29. UPPCL added that the due dates were themselves re-determined by Rule 5(1), so that payment of an instalment on its re-determined date involves no delay for which compensation can arise; that Rules 5(3) and 5(4) contemplate only two outcomes (timely payment without LPS, or delay with LPS), so that "timely payment plus interest" has no foothold; and that, whereas for LPS the Rules prescribe the base rate, reset and escalation (Rules 2(1)(c) and 3), Rule 5 prescribes no rate, rest or method of computation.

30. UPPCL further submits that the LPS Rules, framed under Section 176(1) of the Act, are delegated legislation with the force of law and prevail over inconsistent contractual terms (*PTC India Ltd. v. CERC*, (2010) 4 SCC 603; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27), as also clarified by the Ministry of Power on 04.08.2022 and reflected in Regulation 41 of the UPERC Tariff Regulations, 2024.

31. UPPCL rejects Petitioner(s)'s reliance on the UPERC Tariff Regulations for claiming carrying cost. It submits that those Regulations govern matters such as ARR determination, tariff fixation and truing-up, whereas Rule 5 deals with a one-time restructuring of historical arrears. There is neither a tariff determination nor an ARR/truing-up exercise in the present proceedings.

32. Thus, according to UPPCL, the Petitioner's attempt to apply tariff-regulatory carrying-cost principles to Rule 5 amounts to conflating two distinct regulatory regimes. The liability must be determined exclusively with reference to the LPS Rules.

33. UPPCL reiterates that interest on a statutory liability cannot be claimed as a matter of right unless the statute or rule expressly provides for it. Here, the position is even stronger because Rule 5 prescribes no rate, rest or method of computation for interest, and PFC (the nodal agency) and MPERC have understood the instalments as "interest free." UPPCL therefore submits that there is no ambiguity requiring interpretation. The Commission must give effect

to the plain language of the rule and cannot create an additional liability through judicial interpretation. Any perceived deficiency or policy concern is for the rule-making authority, rather than the Commission, to address.

34. UPPCL also invokes the Commission's statutory responsibility to protect consumers. Any additional interest/carrying cost imposed on UPPCL would ultimately have the potential to be recovered through future tariffs, thereby increasing the burden on electricity consumers. UPPCL adds that the Rules have achieved their objective (DISCOM dues fell by ₹29,857 crore after five timely instalments) and that adding the claimed interest would defeat it.

II. Limitation -Independent Ground

35. Without prejudice to its merits-based defence, UPPCL raised a separate and substantial objection that the Petition itself is barred by limitation. According to UPPCL, the cause of action, if any, arose when LPGCL first became aware that the EMIs did not contain any interest component. It identifies three possible starting points:

(i) **03.06.2022**, when the LPS Rules were notified, on which date the terms of the restructuring became known and a claim for interest could have been raised;

(ii) **29.06.2022**, when UPPCL communicated the dues of₹3,803.06 crore for LPGCL and ₹450.67 crore for BEPL, and the 40-EMI structure, on which date the absence of any interest component was expressly communicated; and

(iii) **05.08.2022**, when the first EMI was paid and accepted without interest, from which date LPGCL had actual and complete knowledge that the payments excluded interest.

However, the Petition was filed on **30.10.2025**. UPPCL therefore submits that even the latest possible starting date, 05.08.2022, results in expiry of the three-year period on **04.08.2025** (and in June 2025 if computed from 29.06.2022). The Petition filed thereafter is consequently time-barred. The Petition was filed 87 days after expiry of limitation and is *ex facie* barred under Section 3.

36. UPPCL relies upon **Section 3 of the Limitation Act, 1963**, submitting that limitation is mandatory and a proceeding instituted after expiry of the prescribed period is liable to be dismissed. It further invokes **Article 113 of**

the Schedule to the Limitation Act, which, according to UPPCL's submission, prescribes a three-year period from the date when the right to sue accrues, and not afresh every time an EMI is paid (*Delhi Cloth and General Mills Ltd. v. Union of India*, 1983 SCC OnLine All 105; *Devas India (P) Ltd. v. Delhi Stock Exchange Assn. Ltd.*, 2012 SCC OnLine Del 5008). UPPCL argues that even if it were assumed for argument's sake that interest was legally payable, the right to claim such interest had accrued no later than **05.08.2022**, when the first interest-free instalment was paid and accepted.

37. UPPCL submitted that none of the statutory mechanisms for extending limitation applies.

   (a) **Section 18 (Acknowledgment):** There was no acknowledgment by UPPCL of any liability to pay interest or carrying cost. Payment of the EMIs cannot be treated as acknowledgment of a separate interest liability.

   (b) **Section 19 (Part Payment):** The 40 EMIs were payments of the entire restructured liability under Rule 5 and were not part payments towards some larger liability that included interest. Therefore, according to UPPCL, Section 19 cannot extend limitation.

   (c) **Section 5 (Condonation):** Section 5 applies only to appeals and applications and not to suits, and the period for a money claim cannot be extended on equitable considerations (*Popat Bahiru Govardhane v. Special Land Acquisition Officer*, (2013) 10 SCC 765). UPPCL also points out that LPGCL has offered no explanation whatsoever for its silence between 05.08.2022 and 14.07.2025.

   (d) **LPGCL's letter dated 14.07.2025:** The Respondent submits that a unilateral demand cannot revive an already time-barred cause of action. Limitation runs from accrual of the cause of action and cannot be extended merely because the claimant chooses to make a demand at a later date.

38. UPPCL relied upon ***B & T AG v. Union of India*, (2024) 5 SCC 358**, particularly the principle of the **"breaking point."** According to UPPCL, once the terms of the obligation were communicated and accepted, the cause of action was crystallised. In the present matter, the breaking point was at the latest **29.06.2022**, when the EMI structure was communicated, or **05.08.2022**, when the first instalment was paid without interest. Subsequent

correspondence or unilateral demands cannot postpone the commencement of limitation.

39. UPPCL also relied upon ***AP Power Coordination Committee v. Lanco Kondapalli Power Ltd.*, (2016) 3 SCC 468**, for the proposition that the Limitation Act applies to proceedings before Electricity Regulatory Commissions under the Electricity Act, 2003. UPPCL adds that the Petition is, in substance, a money claim under Section 86(1)(f) (Prayers (b) and (c)) and not a tariff matter, so that the limitation applicable to a civil suit, namely Article 113, governs it. It submits that the Commission not only possesses the power but also has a **duty to examine limitations**, including Suo motu. Therefore, if the Petition is found to be beyond the prescribed period, it should be dismissed irrespective of the merits of the underlying interest claim.

40. UPPCL additionally relies upon:

i. ***State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1** – limitation begins when the right to sue/cause of action first arises;

ii. ***R. Nagaraj v. Rajmani, 2025 SCC OnLine SC 762*** – Section 3 requires dismissal of a time-barred proceeding even if limitation has not been pleaded;

iii. ***Food Corporation of India v. Assam State Cooperative Marketing & Consumers' Federation Ltd.*, (2004) 12 SCC 360** – the period can be extended only by acknowledgment under Section 18 or part-payment under Section 19 before its expiry;

iv. ***Sant Lal Mahton v. Kamal Prasad Mahton*** – limitation is computed from accrual of the cause of action and cannot be extended by unilateral acts of the claimant, and can be extended only by acknowledgment or part-payment under Sections 18 and 19;

v. ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*,** AIR 1959 SC 798 – a completed wrongful act with continuing effects is not a continuing wrong under Section 22; and

vi. ***Khair Mohammad Khan v. Mst. Jannat*, 1940 SCC OnLine Lah 113** – a completed act with continuing effects does not give rise to a continuing cause of action.

UPPCL has submitted that these authorities are invoked collectively to support the proposition that **the Petitioner's delayed demand cannot shift the statutory starting point of limitation.**

41. UPPCL specifically distinguished the **Udupi case** relied upon by LPGCL. According to UPPCL, Udupi concerned tariff determination under the PPA, whereas the present dispute pertains to payments under the LPS Rules, which are special delegated legislation and a complete code in themselves; it also concerned payments arising from **continuing supply of electricity under a PPA**, where each successive default could potentially generate a fresh cause of action. The present case, however, concerns **historical arrears crystallised into a fixed sum of ₹3,803.06 crore as on 03.06.2022**. The 40 EMIs were predetermined and finite. They did not relate to continuing supply or a running contractual account.

42. Accordingly, UPPCL submitted that here was no continuing obligation of the kind involved in Udupi; there was no recurring cause of action; the "continuing wrong" doctrine cannot apply; and the cause of action, if any, arose when the restructuring terms were communicated and accepted, rather than upon payment of the final instalment.

43. On Section 22, UPPCL further submitted that fixing the instalments without an interest component was a single, completed act on 29.06.2022, implemented from 05.08.2022, and that the subsequent instalments are merely its consequences (*Balakrishna*; *Khair Mohammad Khan*; *Faqir Chand v. Lila Ram*, 1993 SCC OnLine Del 371; *Sanskar Dastidar v. Banjula Dastidar*, (2006) 13 SCC 470).

44. UPPCL also dealt with LPGCL's **letter dated 07.07.2022**, by which LPGCL apparently reserved its rights. UPPCL argues that a general or omnibus reservation of rights does not constitute a specific claim for interest/carrying cost because it does not identify the precise right allegedly reserved; the amount claimed; or the legal basis for the claim. More importantly, a unilateral reservation cannot extend a statutory limitation period. Limitation is governed by the statute and not by a claimant's unilateral declaration that it reserves its rights.

45. UPPCL has, therefore, strongly rejected any suggestion that the 40 instalments constituted a **running account or continuing transaction**. According to

UPPCL, the liability was fixed at **₹3,803.06 crore for LPGCL and ₹450.67 crore for BEPL**; crystallised on **03.06.2022**; divided into **40 predetermined EMIs**; and not subject to continuing debits, credits or fluctuations. Consequently, there was no running account in the legal sense and no basis for treating each instalment as giving rise to a fresh cause of action.

46. In its Additional Affidavit which was confined to maintainability, UPPCL submitted, without prejudice to its objections on merits, that the relief sought is in substance a **monetary claim** for interest/carrying cost on the dues rescheduled under Rule 5, which, however described, is governed by the Limitation Act, 1963 and, therefore, had to be instituted within three years, the cause of action having arisen on **03.06.2022**, alternatively on **29.06.2022**, or at the latest on **05.08.2022**.

47. UPPCL stated that its communications dated **29.06.2022** informed Petitioner(s) that the outstanding dues, including LPS accrued up to 03.06.2022, amounted to **₹450.67 crore** for BEL & **₹3803.06 crore** for LPGCL and would be discharged in **40 monthly instalments** from 05.08.2022, and that no further LPS would be payable on them from 03.06.2022, subject to compliance with Rule 5(3).

48. As regards Petitioner(s)'s **letter dated 07.07.2022**, UPPCL contended that it concerned the calculation of LPS on the principal outstanding tariff and disputed the figure of **₹450.67 crore** for BEL & **₹3803.06 crore** for LPGCL but raised no claim for interest or carrying cost on the rescheduled dues and was relatable to a separate proceeding before the Commission. Petitioner(s) accepted the first instalment on 05.08.2022 and the instalments that followed without protest on the exclusion of interest or carrying cost and raised the claim for the first time by **letter dated 14.07.2025**, when about **35 of the 40 instalments** had already been paid; that unilateral communication neither created a fresh cause of action nor revived a claim already barred.

49. UPPCL accordingly contended that Petitioner(s)'s alleged entitlement was crystallised in 2022, that its later representations and correspondence could not create a fresh cause of action or extend limitation, and prayed that the Petition be dismissed *in limine* under Section 3 of the Limitation Act, 1963, without adjudication on merits.

50. The Respondent's case can therefore be distilled into the following **eight principal propositions**:

a) **Rule 5 provides for EMIs without any interest component**, and therefore no interest/carrying cost can be added by implication.

b) The **₹3,803.06 crore for LPGCL and ₹450.67 crore for BEPL already included LPS up to 03.06.2022**; imposing further interest would amount to double compensation/interest upon interest.

c) The **LPS Rules are a complete and self-contained settlement mechanism**, including their own incentive through LPS waiver and sanction through revival of LPS upon default.

d) **Tariff-regulatory principles of carrying cost** applicable to tariff/Change in Law proceedings cannot be imported into a separate statutory restructuring mechanism under the LPS Rules.

e) LPGCL's **three-year silence and unconditional acceptance of the instalments** establish acquiescence, waiver and estoppel against its belated claim.

f) The Petition is independently **barred by limitation**, with the latest possible starting point being 05.08.2022 and the three-year period expiring on 04.08.2025, whereas the Petition was filed on 30.10.2025.

g) Neither **acknowledgment, part payment, unilateral demand, general reservation of rights, running account theory nor continuing cause of action** can save the Petition from limitation.

h) The **Udupi decision is distinguishable** because it concerned tariff determination under the PPA and continuing electricity supply and recurring defaults, whereas the present case concerns a fixed historical liability crystallised under Rule 5.

Submissions on behalf of LPGCL and BEPL

51. Learned Counsel appearing for the Petitioners, **LPGCL and BEPL**, submitted that the present dispute essentially arises from the manner in which UPPCL implemented the instalment mechanism contemplated under **Rule 5 of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ("LPS Rules, 2022")**. It was contended that Rule 5 expressly provides for

liquidation of outstanding dues through **"Equated Monthly Instalments" (EMIs)**, whereas UPPCL, by treating the dues as repayable through merely **"Equal Monthly Instalments"**, effectively excluded the interest component inherent in an EMI. According to the Petitioners, this was not a mere difference in terminology but resulted in substantial financial prejudice, as the Petitioners were deprived of the time value of money during the period over which the outstanding dues were deferred.

I. Submissions on Merits

52. The Petitioners submitted that the expression **"Equated Monthly Instalment"** has a settled and universally understood financial meaning. An EMI represents a fixed periodic payment comprising both **principal and interest**, with the relative proportion of the two components changing over the repayment tenure. It is a standard financial concept used in banking, housing finance, vehicle finance, consumer finance and infrastructure financing. Thus, according to the Petitioners, UPPCL could not lawfully convert the statutory expression "Equated Monthly Instalments" into a mechanism under which the principal alone was divided into equal monthly portions.

53. Reliance was placed on the judgment of the Delhi High Court in Vir Chand Maini v. Reliance Capital Ltd., 2018 SCC OnLine Del 7694, particularly paragraph 18, wherein, according to the Petitioners, an EMI was recognized as comprising inseparable principal and interest components. It was submitted that although the proportion of principal and interest may vary during the repayment period, the total amount of the EMI remains constant. The Petitioners contended that this principle squarely applies to the present case and demonstrates that UPPCL could not treat the instalments as repayment of principal alone.

54. The Petitioners also relied upon the RBI Master Direction – Regulatory Framework for Microfinance Loans, 2022, which defines an "Equated Periodic Instalment" as an equated or fixed amount of repayment consisting of both principal and interest components. It was submitted that the RBI's regulatory understanding reinforces the proposition that "equated" is materially different from "equal" and that an equated instalment necessarily incorporates an interest component. Reliance was further placed on the CESTAT decision in Haryana Ship Demolition Pvt. Ltd. v. CCE & ST-Bhavnagar, wherein EMI was also understood as comprising principal and interest.

55. The Petitioners placed particular emphasis on the language of Rule 5(1) of the LPS Rules, 2022, which uses the expression "Equated Monthly Instalments" and not "Equal Monthly Instalments". It was argued that the distinction must be given meaning under settled principles of statutory interpretation. Every word employed by the rule-making authority is presumed to have been deliberately chosen and must be given effect. Had the intention been merely to divide the outstanding principal equally over the prescribed number of months, the expression "Equal Monthly Instalments" could easily have been used.

56. According to the Petitioners, treating "Equated" as synonymous with "Equal" would render the former word otiose and defeat the deliberate choice of language in the statutory provision. The expression "Equated" necessarily conveys the concept of equating the total periodic payment comprising principal and interest into uniform instalments. UPPCL's methodology, therefore, was alleged to have materially altered the repayment mechanism prescribed by the LPS Rules.

57. The Petitioners further submitted that UPPCL had incorrectly conflated Late Payment Surcharge (LPS) with interest/carrying cost. Reliance was placed principally on the judgment of the Hon'ble Supreme Court in MSEDCL v. MERC & Ors., (2022) 4 SCC 657, particularly paragraphs 176-177. It was submitted that LPS is essentially penal/deterrent in character, intended to discourage delayed payment, whereas carrying cost is compensatory, representing the time value of money denied to the generator on account of deferred payment.

58. Reliance was also placed on Nisagra Renewable Energy Pvt. Ltd. v. MERC & Ors., 2021 SCC OnLine APTEL 81, where APTEL recognized carrying cost as the value of money denied at the appropriate time and distinguished it from LPS. The Petitioners submitted that when payment due to a generator is deferred, the generator loses the opportunity to deploy that money for debt servicing, operational expenditure or investment, and carrying cost merely compensates for that economic loss.

59. Further reliance was placed on the Hon'ble Supreme Court judgment in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd., (2019) 5 SCC 325, in support of the restitutionary principle. According to the Petitioners, once an amount legally due is deferred and subsequently paid, complete restitution requires compensation for the intervening loss of the time value of money.

Mere payment of the principal at a later date does not place the generator in the same economic position in which it would have been had the payment been made when due.

60. The Petitioners disputed any contention that the waiver of LPS under Rule 5(3) extinguished their entitlement to interest/carrying cost. It was submitted that Rule 5(3) deals specifically with LPS and provides an incentive for timely payment of the scheduled instalments. It does not contain any express waiver of interest or carrying cost.

61. According to the Petitioners, LPS and carrying cost have different juridical bases and serve different purposes: LPS is penal, whereas carrying cost is compensatory. Consequently, waiver of the former cannot automatically amount to waiver of the latter. Reading Rule 5(3) as extinguishing carrying cost would, in the Petitioners' submission, amount to importing into the provision an exemption that the rule does not contain.

62. The Petitioners relied upon a series of decisions to contend that carrying cost is an established principle of electricity regulatory jurisprudence. Reliance was placed on *SLS Power Ltd. v. APERC & Ors., 2012 SCC OnLine APTEL 209*, wherein carrying cost was stated to compensate the generator for money denied to it, and on *Torrent Power Ltd. v. GERC & Ors., 2019 SCC OnLine APTEL 110*, wherein it was held that where an amount is due but recovery is deferred, the utility is entitled to compensation by way of carrying cost. The Petitioners contended that the present case is a direct application of this principle because the outstanding dues were statutorily deferred and paid over the prescribed instalment period.

63. The Petitioners further relied upon the Commission's own orders in *Jakson Power Pvt. Ltd. v. UPPCL*, Order dated 22.05.2023 in Petition No. 1764/2021, and Dhariwal Infrastructure Ltd. v. UPPCL, Petition No. 1798/2021, to submit that the Commission has previously recognized the entitlement of generators to carrying cost on deferred payments. It was contended that these precedents support application of the same principle to the present case.

64. The Petitioners also invoked Regulation 16(6) of the UPERC Tariff Regulations, 2019, submitting that the regulatory framework itself recognizes interest on deferred recovery. Reference was made to the provision for recovery/refund of under-recovered or over-recovered amounts along with simple interest at the

Bank Rate, with "Bank Rate" being defined under Regulation 3(7) by reference to SBI's one-year MCLR plus 350 basis points. According to the Petitioners, this reflects the Commission's recognition of the principle that deferred recovery carries an appropriate financial cost.

65. The Petitioners further submitted that they are entitled to Late Payment Surcharge and other consequential claims in terms of the PPA and the applicable Tariff Regulations whenever payments against energy invoices are delayed beyond the prescribed due date. According to the Petitioners, this contractual and regulatory framework continues to govern the relationship between the parties and is not extinguished merely because the outstanding dues were rescheduled under Rule 5 of the LPS Rules, 2022. It was further submitted that UPPCL, having opted to liquidate the outstanding dues (₹450.67 crore in the case of BEPL and ₹3,803.06 crore in the case of LPGCL) through 40 monthly instalments, incorrectly treated the repayment mechanism as one of "equal" monthly instalments by excluding the carrying cost/interest component that is inherent in "equated" monthly instalments.

66. On this basis, the Petitioners stated that they had computed the interest/carrying-cost component applying simple interest to the outstanding principal for the respective instalment periods. They prayed that UPPCL be directed to pay the said amount together with further interest until actual realization.

67. The Petitioners rejected UPPCL's contention that allowing carrying cost would amount to double recovery. It was submitted that LPS relates to the period when the dues were outstanding before restructuring, whereas the carrying-cost claim relates to the subsequent period during which the restructured EMIs were paid without the interest component. Since the two operate in different periods and have different purposes, there can be no double recovery.

68. The Petitioners also denied that they had acquiesced in UPPCL's method of repayment or waived their entitlement. Particular reliance was placed on the letter dated 07.07.2022, by which LPGCL had expressly reserved its rights regarding adjustments, modifications and corrections in the LPS amounts and the computation of EMIs. It was argued that such express reservation negates any inference of unconditional acceptance, waiver or acquiescence.

II. Submissions on limitation

69. On the preliminary objection of limitation, the Petitioners submitted that the claim is founded upon a continuing cause of action. Since Rule 5 contemplated repayment through a series of monthly EMIs, every instalment paid without the appropriate interest/carrying-cost component constituted a separate deficiency and gave rise to a fresh cause of action. The alleged wrong was therefore not a single event occurring at the commencement of the repayment schedule but a recurring wrong continuing with each instalment.

70. The Petitioners relied upon Section 22 of the Limitation Act, 1963, which provides for a fresh period of limitation in cases of continuing breach or continuing wrong. It was submitted that each deficient EMI constituted a continuing breach of the obligation under Rule 5, and therefore the claim relating to instalments falling within the relevant limitation period remained maintainable.

71. Strong reliance was placed on APTEL's judgment in *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd., 2020 SCC OnLine APTEL 94*, wherein, according to the Petitioners, each breach of a continuing obligation gives rise to a fresh cause of action and running accounts may constitute a continuing cause of action so long as the account remains open and unsettled. The Petitioners stated that the said judgment was subsequently upheld by the *Hon'ble Supreme Court in Civil Appeal No. 32 of 2021* by order dated 08.02.2022.

72. The Petitioners further relied on *Shree Ram Mills Ltd. v. Utility Premises (P) Ltd., (2007) 4 SCC 599*, submitting that where the dispute remains live and subsisting, limitation ought not to be applied to defeat a continuing claim. They also characterized the accounts between LPGCL and UPPCL as running accounts, involving continuous billing, payments and adjustments. The letter dated 07.07.2022 was again relied upon to demonstrate that Petitioners had expressly reserved their rights and had not abandoned the dispute.

73. The Petitioners distinguished the judgment in *B & T AG v. Union of India, (2024) 5 SCC 358*, relied upon by UPPCL, on the ground that that case concerned a single identifiable event constituting a "breaking point", whereas the present matter involves recurring monthly deficiencies in the EMI payments., and therefore the ratio of B & T AG does not apply. The Petitioners clarified that their limitation case does not depend upon Sections 18 or 19 of the Limitation

Act relating to acknowledgment or part-payment, but rests specifically upon Section 22 and the doctrine of continuing cause of action.

74. Finally, reliance was placed on *Rani Kusum v. Kanchan Devi, (2005) 6 SCC 705 and Mahila Ramkali Devi v. Nandram, (2015) 13 SCC 132*, for the proposition that procedural law, including limitation, is intended to advance justice and should not ordinarily be applied so as to defeat legitimate substantive rights. The Petitioners submitted that their claim was neither stale nor abandoned, particularly in view of the continuing nature of the alleged wrong, the running accounts and the express reservation of rights in 2022. Accordingly, the objection of limitation was characterized as devoid of merit.

Commission's Analysis and Decision

75. The Commission has considered the pleadings, documents, correspondence, statutory provisions, regulations and submissions placed on record by both parties. The Commission observes that UPERC (Conduct of Business), Regulation, 2019 provides as follows:

> ***15. Petitions and pleadings before the Commission:***
> *"b. All Petitions shall contain a summary / synopsis of the brief facts, issues, case law referred to and reliefs sought therein and shall mention the following particulars:*
> .....
> *iii. whether the Petition is filed within the time limit prescribed in the Limitation Act, 1963, and if not, the period of delay and whether the Petitioner is seeking condonation of delay, and on what grounds.*

The Petitioner's claim is for compensation for the alleged non-payment of a sum said to be due under a statutory scheme read with the PPA. The appropriate article is Article 113 of the Schedule to the Limitation Act, which prescribes three years from when the right to sue accrues; even if the claim was characterised as one for compensation for breach of contract under Article 55, the period is three years from the date of breach. On either article, time began running in June–July 2022. **The Commission is therefore bound to examine limitations as a threshold issue and, thereafter, proceed to examine the substantive merits of the Petitioner's claim, if survived.**

The Petitioner's Case in Brief

76. The Petitioner contends, in essence, that the expression "Equated Monthly Instalments" used in Rule 5(1) of the LPS Rules necessarily carries an interest component, and that UPPCL, by paying the rescheduled dues in forty

instalments of principal alone, has deprived it of the time value of money. In support, the Petitioner relies upon the judgment of the *Hon'ble Delhi High Court in Vir Chand Maini v. Reliance Capital Ltd.*, the definition of "Equated Periodic Instalment" in the Reserve Bank of India's Master Direction on microfinance loans, and an order of the CESTAT in *Haryana Ship Demolition Pvt. Ltd.* It argues that Rule 5(3) waives only the Late Payment Surcharge and not interest, that LPS and carrying cost are distinct concepts as recognised in *MSEDCL v. MERC, (2022) 4 SCC 657*, and that the second proviso to Rule 5(2), which permits prepayment, would be meaningless if the instalments were interest-free. It claims interest in the Bank Rate taken from Regulation 16 of the UPERC Tariff Regulations, 2019.

77. On the issue of limitation, the Petitioner contends that every instalment paid without interest constituted a fresh and independent cause of action; that the accounts between the parties are running accounts, relying on the judgment of the Hon'ble Appellate Tribunal for Electricity in *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd., 2020 SCC OnLine APTEL 94*; that Section 22 of the Limitation Act applies to a continuing breach; that proceedings before the Commission are not "suits" within the meaning of Section 3 of the Limitation Act; and that, in any event, limitation being procedural, it ought not to defeat substantive justice, relying on *Shree Ram Mills Ltd. v. Utility Premises (P) Ltd., (2007) 4 SCC 599, Rani Kusum v. Kanchan Devi, (2005) 6 SCC 705 and Mahila Ramkali Devi v. Nandram, (2015) 13 SCC 132.*

78. Significantly, the Petitioner has expressly stated that it does not invoke Section 18 (acknowledgment of liability) or Section 19 (part payment) of the Limitation Act, and that the maintainability of its Petition does not depend upon acknowledgment, part payment or negotiations. The Petitioner's case on limitation therefore stands or falls on a single proposition, namely, that the alleged wrong is a continuing one.

UPPCL's case in brief

79. The Respondent, Uttar Pradesh Power Corporation Ltd. ("UPPCL") submits that the present Petition, by which the Petitioner(s) seek ₹709.99 crore for LPGCL and ₹107.83 crore for BEPL towards so-called interest or carrying cost on their outstanding dues of ₹3,803.06 crore relating to LPGCL and ₹450.67 crore relating to BEPL, liquidated in forty monthly instalments under Rule 5 of the

Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ("LPS Rules"), is ex facie barred by limitation and deserves to be dismissed on that ground alone, without the Commission being required to enter into the merits of the claim.

80. As per UPPCL, the entire claim of the Petitioner rests on a single decision taken and communicated by UPPCL as far back as 29.06.2022, namely, that the outstanding dues as on 03.06.2022 would be liquidated in forty equal instalments. That decision was protested by the Petitioner on 07.07.2022 and rejected by UPPCL on 25.07.2022. The right to sue, if any, accrued at the latest on 25.07.2022, and the period of three years prescribed by the Limitation Act, 1963 expired on 25.07.2025. The present Petition, filed on 30.10.2025, is therefore beyond the prescribed period, and no provision of the Limitation Act saves it.

The Commission has analysed the issue of limitations in the below paragraphs:

81. The Petitioner's contention that proceedings before a regulatory commission are not "suits" and that the applicability of the Limitation Act is therefore "subject to qualification", is no longer open. UPPCL contends that this question was authoritatively settled by the Hon'ble Supreme Court in *Andhra Pradesh Power Coordination Committee v. Lanco Kondapalli Power Ltd.*, (2016) 3 SCC 468, a case which, like the present, arose out of a money claim by a generating company against distribution utilities under a power purchase agreement. The Hon'ble Supreme Court noted that no separate period of limitation is prescribed for claims before the Commission, and held that the Commission, which adjudicates such disputes in place of the civil court, cannot entertain claims which would be time-barred in a civil suit. The Hon'ble Court held as follows:

> ***"Hence we hold that a claim coming for adjudication before the Commission under Section 86(1)(f) of the Electricity Act cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act."***

82. The Hon'ble Supreme Court reasoned that the legislature could not have intended that the mere change of forum from the civil court to the Commission would revive or enlarge the period for claims that the law of limitation had

already been extinguished. The present Petition is filed expressly under Section 86(1)(f) read with Section 86(1)(b) of the Electricity Act and seeks a money decree. It is therefore squarely governed by *Lanco Kondapalli*.

83. The Commission has also noted that, even prior to *Lanco Kondapalli*, the Hon'ble Appellate Tribunal for Electricity had consistently held that money claims brought before a State Commission beyond three years are barred, as is clear from its judgment dated 17.04.2014 in Appeal No. 127 of 2013, following its earlier decision in *Gujarat Urja Vikas Nigam Ltd.* (judgment dated 22.02.2010). The position is now beyond doubt.

Therefore, the Commission holds that the Limitation Act Governs Claims brought before this Commission under Section 86(1)(f)

84. It is settled law that the right to sue accrues when there is a clear and unequivocal denial of the right asserted by the claimant, or when the claimant becomes aware of a decision adverse to it. In *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1, the Hon'ble Supreme Court, while dealing with an order alleged by the aggrieved party to be void, held that even such a party must approach the court within the period of limitation:

> ***"...the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time-limit expires the court cannot give the declaration sought for."***

85. The Hon'ble Supreme Court in Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 has further held that where a right is invaded more than once, time runs from the first clear invasion, and successive repetitions of the same denial do not give rise to fresh causes of action:

> ***"...if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."***

86. Though *Khatri Hotels* was rendered in context of Article 58, the principle that the starting point is the first clear denial, and not each repetition of it, is of

general application and applies with full force to the present facts, where each instalment was merely the repetition of the computation first communicated on 29.06.2022.

87. Applying these principles, UPPCL's letter of 29.06.2022 stating that the dues would be paid in forty instalments with no LPS or any other charge. Petitioner's present claim flows from this single decision and the Petitioner does not allege any other wrongful act. The Petitioner recognised the decision as adverse to it and protested on 07.07.2022. UPPCL rejected the protest on 25.07.2022. At that point the dispute had fully crystallised.

88. The Hon'ble Supreme Court in *Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.*, (2020) 14 SCC 643, a case involving a state power utility, held that limitation runs from the "breaking point" at which a reasonable party would have abandoned efforts at settlement, and that a claimant cannot extend limitations by its own inaction or by sending reminders:

> ***"...once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."***

89. In the present case there was not even a failure to respond: there was an express written rejection on 25.07.2022. Thus, the breaking point was reached on that date, with express clarity and abundant emphasis.

90. The same principle was reiterated in *B and T AG v. Union of India*, (2024) 5 SCC 358, where the Hon'ble Supreme Court, approving earlier authority, observed that mere negotiations do not postpone the cause of action:

> ***"Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the 'cause of action' for the purpose of limitation."***

91. The Petitioner's attempt to distinguish *B and T AG* on the ground that there was a single "breaking point" in that case (the encashment of the bank guarantee) and no such "breaking point" here is misconceived. The

communication of 29.06.2022 and the rejection of the Petitioner's protest on 25.07.2022 constitute a breaking point every bit as definite as the encashment of a guarantee. It is also pertinent that the Petitioner's protest of 07.07.2022 did not raise any claim to interest at all. As UPPCL points out, in the case of BEPL and LPGCL, the letters of 07.07.2022 concerned the calculation of LPS on the principal outstanding and disputed the figure of **₹450.67 crore & ₹3803.06 crore respectively**; it made no claim for interest or carrying cost on the rescheduled dues.

92. A claimant who chooses to sit over a claim for three years cannot postpone the accrual of its cause of action by the device of raising the demand for the first time at the end of that period. The Petitioner(s) accepted the first instalment on 05.08.2022 and the instalments then followed, and when the demand for interest was first made on 14.07.2025 about 35 of the 40 instalments had already been paid. The letters of 14.07.2025 and 25.09.2025 are unilateral demands which neither extend limitation nor create a fresh cause of action, and UPPCL's reply of 29.10.2025 to a claim already barred cannot revive it.

93. Therefore, reckoned from 29.06.2022, the period of three years expired on 29.06.2025; reckoned from 25.07.2022, it expired on 25.07.2025. Even on the most generous reckoning, namely 05.08.2022, when the first instalment was paid without any interest component and from which date the Petitioner knew that UPPCL was implementing Rule 5 exactly as communicated on 29.06.2022, the period expired on 04.08.2025, and the Petition was filed 87 days thereafter (97 days after 25.07.2025 and 123 days after 29.06.2025).

94. The Petitioner's entire argument related to the plea of limitation is that each instalment paid without interest constituted a "separate and independent cause of action" and that Section 22 of the Limitation Act applies. The Commission finds that this contention confuses a continuing wrong with the continuing effect of a completed act, a distinction that has been firmly drawn by the Hon'ble Supreme Court for over six decades.

95. The locus classicus is the judgment of the Hon'ble Supreme Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*, AIR 1959 SC 798, construing Section 23 of the Limitation Act, 1908 (corresponding to the present Section 22). The Hon'ble Court held:

> ***"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."***

96. This test was reaffirmed by the Constitution Bench of the Hon'ble Supreme Court in *M. Siddiq (Dead) through LRs v. Mahant Suresh Das*, (2020) 1 SCC 1, which applied *Balakrishna* and held that the doctrine of continuing wrong cannot be invoked where the injury is complete on the date of the act, however long its consequences may endure.

97. Applying for this test, the alleged injury to the Petitioner was complete on 29.06.2022, when UPPCL fixed the schedule of forty instalments without interest, and in any event on 25.07.2022, when it rejected the Petitioner's protest. The subsequent instalments were not fresh wrongful acts. They were the faithful performance of the very schedule that had been communicated in 2022. The Petitioner does not allege that any instalment was delayed, short-paid or otherwise in breach of that schedule. **What the Petitioner calls a "monthly shortfall" is nothing other than the arithmetical consequence, spread over forty months of a single decision taken at the outset. To hold otherwise would mean that a claimant could defeat the law of limitation in every case of a deferred payment schedule merely by pointing to the last instalment.**

98. The Hon'ble Supreme Court has also drawn this distinction in *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, explaining that the exception of a continuing wrong applies only where the wrong creates a continuing source of injury, and that, even then, relief cannot travel back beyond the period of limitation. The Hon'ble Court observed:

> ***"One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay***

in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained."

99. The decision of UPPCL in June 2022 was precisely a decision taken in implementation of a statutory scheme applicable uniformly to all generators supplying to UP Discoms. The rescheduling of legacy dues was carried out across all generating companies on an identical, interest-free basis, and the Discoms' liquidity planning, their tariff, and ultimately the burden on consumers of the State in form of retail tariffs, have proceeded on that basis for over three years.

100. The Hon'ble Appellate Tribunal for Electricity has rejected identical pleas of continuing cause of action in recent judgments. In *Matrix Power (Wind) Pvt. Ltd. v. Hubli Electricity Supply Company Ltd.*, Appeal No. 61 of 2019, decided on 07.08.2025, the Hon'ble Tribunal held that the cause of action for the generator's compensation claim arose on a fixed date, and that a petition filed more than three years thereafter was barred under Article 113 of the Limitation Act, expressly rejecting the plea of a continuing cause of action and of suspension of limitation on account of regulatory uncertainty. Similarly, in its judgment of 2025 in the appeal of NETS against the Rajasthan distribution companies, the Hon'ble Tribunal set aside the order of the Rajasthan Electricity Regulatory Commission which had treated a stale compensation claim as within time, holding that the petition had been filed after the three-year period had expired and that the correspondence relied upon did not amount to an acknowledgment of liability. These decisions apply squarely to the present facts.

Therefore, in view of above discussions, the Commission holds that the alleged wrong is not a continuing wrong and Section 22 of the Limitation Act has no application.

101. The Petitioner's second line of argument is that the parties maintain a running account, and that, following the judgment of the Hon'ble Appellate Tribunal in *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd.*,

2020 SCC OnLine APTEL 94, every default in a running account gives a fresh cause of action. It is submitted that this argument overlooks the very nature of Rule 5 of the LPS Rules.

102. Rule 5 operated precisely to remove the legacy dues as on 03.06.2022 from the ordinary billing cycle under the PPA. Those dues were identified, quantified and frozen as on the date of notification, and a fresh, closed schedule of payment was substituted for the original due dates. The Petitioner itself pleads, in its Written Submissions, that the outstanding dues *"are first identified and thereafter rescheduled for payment"*. Once so identified and rescheduled, the legacy dues ceased to be part of any open account; they became a stated and liquidated sum payable on a fixed schedule. On the Petitioner's own definition, drawn from Black's Law Dictionary, **a running account is an open, unsettled account "as distinguished from a stated and liquidated account".** The rescheduled legacy dues fall squarely within the latter category.

103. Moreover, an account is not a running or mutual account merely because one party makes periodic payments to the other. The Hon'ble Supreme Court in *Hindustan Forest Co. v. Lal Chand*, AIR 1959 SC 1349, explained the essential requirement of a mutual account as follows:

> ***"In order that an account may be mutual there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations."***

104. The forty instalments paid by UPPCL were nothing but partial discharges of a single, fixed obligation. They created no reciprocal obligations on the Petitioner. The legacy-dues schedule is therefore not a mutual, open and current account in law.

105. The *Udupi* judgment is clearly distinguishable. That case concerned LPS accruing month by month on tariff bills which remained unpaid in an open billing account, under an express clause of the PPA creating a recurring liability for LPS on every day of delay. The liability in *Udupi* was therefore renewed by each day of non-payment. In the present case, by contrast, there is no clause in the PPA or in the LPS Rules creating any monthly liability for interest on rescheduled

dues; on the contrary, Rule 5(3) expressly relieves the distribution licensee of LPS on those dues upon timely payment. The very existence of the claimed right was denied in 2022. There was no recurring statutory or contractual obligation to pay interest that could be breached afresh each month. The reasoning in *Udupi*, which presupposes a subsisting recurring liability, cannot be transposed to a claim whose foundation itself was rejected at the outset.

106. The Petitioner's further contention that the dues as on 03.06.2022 were "tentative" and not frozen, is self-defeating. If the principal had not been determined, no instalment, and no interest on any instalment, could have been computed at all. The reconciliation referred to by UPPCL in its letter of 25.07.2022, and the adjustment in February 2023 of an excess payment of Rs. 124 crore, related only to the correctness of the principal figure, and not to any right to interest. Neither event altered the date on which the Petitioner's alleged right to interest was denied.

Therefore, The Commission therefore holds that the running-account argument fails, that *Udupi Power* is distinguishable, and that time began to run on the decision communicated on 29.06.2022.

107. The Petitioner has stated in unequivocal terms, its Written Submissions, that it does not invoke Section 18 or Section 19 of the Limitation Act and that the maintainability of the Petition does not depend upon acknowledgment, part payment or negotiations. Having abandoned these routes, the Petitioner cannot now contend that any communication of UPPCL, including the letter of 25.07.2022 inviting reconciliation of figures or the letter of 29.10.2025, extended limitation. Equally, the instalments paid by UPPCL were payments of principal under a schedule that expressly excluded interest; they cannot, in law, be treated as part payment of an interest claim that UPPCL had specifically repudiated. The only plea left to the Petitioner is that of continuing wrong, which, for the reasons set out above, must fail.

108. The Petitioner relies on *Shree Ram Mills Ltd. v. Utility Premises (P) Ltd.*, (2007) 4 SCC 599, for the proposition that where an issue is "live", the question of limitation "automatically resolved". In the Commission's view, this is a misreading of the judgment. *Shree Ram Mills* arose under Section 11 of the Arbitration and Conciliation Act, 1996, at the stage of appointment of an arbitrator, where the parties had been engaged in continuous negotiations

culminating in a memorandum of understanding. The Hon'ble Supreme Court merely declined to restrain the reference at the threshold and expressly left the question of limitation to be decided by the Arbitral Tribunal. It did not lay down that limitation ceases to apply whenever a claimant asserts that its grievance continues. Indeed, the Hon'ble Supreme Court in *Bharat Sanchar Nigam Ltd. v. Nortel Networks India (P) Ltd.*, (2021) 5 SCC 738, has since clarified that even at the referral stage, a court may decline to refer claims that are ex facie time-barred, observing that in rare and exceptional cases, where the claims are ex facie time-barred and it is manifest that there is no subsisting dispute, the court may refuse to make the reference.

109. The Petitioner next relies on *Rani Kusum v. Kanchan Devi*, (2005) 6 SCC 705 and *Mahila Ramkali Devi v. Nandram*, (2015) 13 SCC 132, for the proposition that procedural law is the handmaid of justice and that limitation ought not to be applied mechanically. Both judgments concerned procedural timelines in the conduct of a pending proceeding, such as the time for filing a written statement under Order VIII Rule 1 of the Code of Civil Procedure, which the courts have held to be directory. They have no bearing on the statutory bar of limitation, which extinguishes the remedy itself and which, by Section 3 of the Limitation Act, the forum is bound to apply. The correct position is stated by the Hon'ble Supreme Court in *Popat Bahiru Govardhane v. Special Land Acquisition Officer*, (2013) 10 SCC 765:

> ***"It is a settled legal proposition that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds."***

110. The Petitioner's submissions on waiver, relying on *All India Power Engineers Federation v. Sasan Power Ltd.*, (2017) 1 SCC 487 and Article 18.3 of the PPA, are beside the point. The bar of limitation does not depend upon waiver or estoppel. Even if it was to be assumed that the Petitioner never waived its alleged right, a right that is not enforced within the prescribed period becomes unenforceable by operation of the statute.

111. In nutshell, the Petitioner(s) received its first instalment against outstanding payment way back in August 2022, its claim was denied in July 2022 and then it merrily preferred to sit back for more than 3 years before

agitating the issue before the Commission in October 2025 - is a classic case of Petitioner(s) growing too late smart. But alas! the water has slipped from the hands of the Petitioner(s) to understand it too late and now they will have to live without it. As **Søren Kierkegaard** says, **"Life can be understood backwards, but it must be lived forwards".**

Commission's View

112. On the threshold issue of limitation, the Commission finds and holds that:

(i) the Petition, being a money claim under Section 86(1)(f), is governed by Article 113 of the Schedule to the Limitation Act and cannot be entertained if it would be barred in a civil suit;

(ii) the only act complained of, namely the fixing of forty instalments without an interest component, was communicated on 29.06.2022, implemented from 05.08.2022 and denied on 25.07.2022, so that the right to sue, if any, accrued not later than 05.08.2022;

(iii) limitation accordingly expired on 29.06.2025, 25.07.2025 or, on the most generous reckoning, 04.08.2025, whereas the Petition was filed on 30.10.2025, 87 days thereafter;

(iv) Sections 18 and 19 are disclaimed by the Petitioner and are in any case inapplicable, its letters of 14.07.2025 and 25.09.2025 being unilateral demands, and no ground has been shown for excluding time, which cannot be extended on equitable considerations;

(v) the instalments paid were consequences of a completed act and not fresh wrongs, so that Section 22 and the running-account theory are not attracted, and *Udupi Power* is distinguishable; and

(vi) under Section 3 of the Limitation Act the Commission is bound to dismiss a time-barred claim although limitation has not been set up as a defense under Section 3.

113. Therefore, the Commission decides to dismiss these cases as barred by limitation under Section 3 of the Limitation Act read with Article 113 of the Schedule thereto, the claim having become time-barred by 04.08.2025 at the latest. Since the Petition fails on limitation alone, the Commission does not find it necessary to adjudicate on the merits.

Both Petition Nos. 2321 of 2025 and 2322 of 2025 are hereby dismissed as barred by limitation.

(Griesh Kumar Vaish)	(Sanjay Kumar Singh)	(Arvind Kumar)
Member (Law)	**Member**	**Chairman**

Place: Lucknow

Dated: 06.11.2026