THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2286 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 on behalf of UP Rajya Vidyut Utpadan Nigam Limited u/s 86(1)(f) of the Electricity Act, 2003 seeking recovery of additional late payment surcharge paid to Obra-C Badaun Transmission Company Limited in pursuance of the order passed by the Hon'ble Commission on 24.06.2024 in Petition No. 1920 of 2022 and order dated 28.02.2025 passed by the Hon'ble Appellate Tribunal for Electricity, New Delhi in Appeal No. 357 of 2024 and 369 of 2024.

AND

IN THE MATTER OF

Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited,
through its Chief Engineer (Commercial), 14th Floor,
Shakti Bhawan, 14 Ashok Marg, Lucknow,
Uttar Pradesh-226001 ..... **Petitioner**

VERSUS

1. **Obra -C Badaun Transmission Limited,**

   Through its Managing Director,

   Adani Corporate House, Shantigram, Near Vaishno Devi Circle,

   S.G. Highway, Khodiyar, Ahmedabad, Gujarat-382421

2. **Uttar Pradesh Power Corporation Limited**

   Through its Managing Director

   11th Floor, Shakti Bhawan Extension,

   14 Ashok Marg, Lucknow, Uttar Pradesh – 226001. ..... **Respondents**

THE FOLLOWING WAS PRESENT

1. Sh. Divyanshu Bhatt, Advocate, UPRVUNL
2. Sh. Prakher Shukla, Advocate, UPRVUNL
3. Sh. Shashwat Singh, Advocate, UPRVUNL
4. Sh. Sourav Roy, Advocate, OCBTL
5. Sh. Nehul Sharma, Advocate, OCBTL
6. Sh. Mohit Chandra, Advocate, OCBTL
7. Sh. Manish Dwivedi, CE (PPA), UPPCL
8. Sh. Sanjay Kumar Chaurasia, SE (PPA), UPPCL
9. Sh. Pramod Kumar, CE (Comm.), UPRVUNL
10. Sh. Raj Kumar Verma, AE (Comm.), UPRVUNL

ORDER

(DATE OF HEARING: 13.10.2026)

1. The Petitioner, Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL), has filed the instant petition under Section 86(1)(f) of the Electricity Act, 2003 seeking recovery of additional late payment surcharge paid to M/s Obra-C Badaun Transmission Limited (OCBTL) in pursuance of the order passed by the Commission on 24.06.2024 in Petition No. 1920 of 2022 and order dated 28.02.2025 passed by the Hon'ble Appellate Tribunal for Electricity, New Delhi (APTEL) in Appeal No. 357 of 2024 and 369 of 2024. The Petitioner has made the following prayers:-

   (a) Issue direction to the Respondent to refund the excess payment amounting to Rs. 2,01,19,690 along with the applicable interest, erroneously paid by the Petitioner to the Respondent as LPS.

   (b) Pass such orders that this Hon'ble Commission may deem fit in the present facts and circumstances of the case.

Brief Facts of the case

2. On 15.10.2018, OCBTL entered into a Transmission Service Agreement (TSA) with Uttar Pradesh Power Company Limited (UPPCL), the holding company for the Uttar Pradesh Distribution Companies (UP Discoms) for establishing transmission system for evacuation of power from Obra C Thermal Power Project (2x660 MW) &

construction of 400 kV GIS substation at Badaun with associated Transmission Lines ("Project").

3. After the construction of the Project started, OCBTL approached the Commission vide petition no. 1824 of 2022 to declare certain events on account of COVID-19 Pandemic as Force Majeure events and the Commission, vide order dated 03.10.2022, condoned the delay in commissioning the elements from SCOD on account of COVID -19.

4. Thereafter, OCBTL filed the Petition No. 1920 of 2022 before the Commission seeking payment of Transmission Charges along with Late Payment Surcharge ("LPS") and consequential reliefs.

5. The Commission, vide its order dated 24.06.2024 passed in the Petition, held that the Petitioner is liable to pay transmission charges of Element -1 of LOT-1 from the date of its approved deemed COD till Element-1 is connected with OCBTL TPS switchyard and LILO is operationalized.

6. Furthermore, the Commission had also held that the Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) is liable to pay transmission charges of Element -9 of LOT -2 from its deemed COD till the commissioning of downstream network was imposed upon UPPTCL.

7. The aforementioned order passed by the Commission was challenged by the Petitioner as well as UPPTCL before the Hon'ble APTEL in Appeal 357 of 2024 and Appeal 369 of 2024 respectively. Vide order dated 28.02.2025, the Hon'ble APTEL upheld the order passed by the Commission and the aforementioned appeals were thereby dismissed.

8. Thereafter, OCBTL, vide communication dated 06.03.2025 issued to the Chairman of the Petitioner, informed that in terms of the aforementioned orders passed by the Commission as well as the Hon'ble APTEL, the Petitioner is liable to make payment of Transmission Charges along with LPS for the period from 30.04.2021 till 08.02.2024, i.e., the date on which Element 1 Lot 1 was connected with Obra-C TPS and LILO was operationalized. Vide the aforementioned communication, OCBTL had also annexed the invoice dated 01.03.2025 amounting to Rs 27,00,89,280/- and LPS invoice dated 01.03.2025 amounting to Rs 9,48,68,277/-.

9. The Petitioner, acting in bonafide intention and in abidance with the orders passed by the Commission as well as the Hon'ble APTEL, made the aforementioned payment for transmission charges and LPS to OCBTL on 10.03.2025 and 25.03.2025 respectively in order to avoid any further liability of LPS.

10. After making the aforesaid payments, the Petitioner realised that an excess amount of Rs. 2,01,19,690/- had been paid towards LPS, which was also rechecked with the consulting agency engaged by it. Accordingly, vide email dated 02.05.2025, it informed OCBTL of the alleged excess payment and sought refund thereof. OCBTL, vide email dated 12.05.2025, maintained that the payment was correct and in accordance with the opinion received from the consulting agency. UPRVUNL thereafter reiterated its request for refund vide communication dated 16.05.2025.

11. Another communication dated 10.06.2025 was issued to OCBTL requesting refund of the overpaid LPS for the period from 09.02.2024 to 08.08.2024. In the said communication, the Petitioner referred to Article 10.8.1 of the TSA as well as the aforementioned Orders and contended that its liability was limited to the period from 30.04.2021 to 08.02.2024 and thereafter from 09.08.2024, i.e., after expiry of 45 days from the Order passed by the Commission, till 28.02.2025. Accordingly, inclusion of LPS for the period from 09.02.2024 to 08.08.2024 in the invoice was stated to be erroneous and the additional amount paid as LPS was sought to be refunded by OCBTL.

12. In response, OCBTL vide communication dated 30.06.2025 stated that in terms of the Order passed by the Commission, the Transmission Charges were payable for the default period commencing from 30.04.2021 and LPS was payable even for the period prior to the aforementioned Order, which had not been disputed by the Petitioner. Therefore, according to OCBTL, the same principle would extend to payment of LPS on the unpaid Transmission Charges till the date of actual payment.

13. The Petitioner relied upon the definition of "Late Payment Surcharge" contained in Article 1 and Article 10.8 of the TSA, which reads as under

"Late Payment Surcharge shall have the meaning ascribed thereto in article 10.8"
"10.8 Surcharge
10.8.1 Any amount due from one party to the other, pursuant to this agreement and remaining unpaid for thirty (30) days after the due date, shall bear late payment surcharge @1.25% per month on the unpaid amount. Such late payment surcharge shall be calculated in simple rate basis and shall accure from the due date until the amount due is actually received by the payee."

14. The Commission, vide the order dated 24.06.2024, had clearly mentioned that its liability was limited from 30.04.2021 to 08.02.2024 and 09.08.2024 (45 days after the order passed by the Commission) to 28.02.2025. The para 383 (d) of the aforementioned order has been reproduced below:

"(d) The Commission has observed that UPRVUNL being a defaulting entity is liable to pay transmission charges of Element 1 of LOT-1 from the date of its approved COD till Element 1 of the Project is connected with Obra C TPS switchyard and LILO (Element 1) is operationalized, and thereafter, LTTCs shall be liable to pay transmission charges as per the TSA in terms of para 349"

15. The date of deemed commissioning of Element 1 has been approved as 30.04.2021 and the Element 1 of the Project is connected with Obra C TPS switchyard and LILO was operationalized on 08.02.2024. Hence in terms of the aforementioned provisions of the TSA, the LPS is payable by the Petitioner for the aforementioned period only and thereafter 45 days from the order passed by the Commission till the aforementioned order has been passed by the Hon'ble Appellate Tribunal, i.e., 09.08.2024 to 28.02.2025.

16. It is a settled principle of law that any additional payment made erroneously can be refunded back to the payer by the payee if the payment was made under a mistake of fact. In this regard, reliance has been placed upon the section 72 of the Indian Contract Act, 1872 which states as follows:

*"72. Liability of person to whom money is paid, or thing delivered, by mistake or under **coercion**.—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."*

17. The reliance was also placed towards the settled law on unjust enrichment and restitution which states that no person should unfairly benefit at the expense of the other person without any legal justification and the person who has obtained such enrichment is bound to return the same.

18. The objective of section 72 in the Contracts Act is to prevent unjust enrichment and this principle is based on the doctrine of equitable restitution. The aforementioned principle was set down the Hon'ble Supreme Court of India in Sales Tax Officer vs Kanhaiya Lal Makund Lal Saraf & Ors [1958 SCC Online SC 28]. The sum and substance of the aforementioned principle had been explained by the Hon'ble Kerala HC in NV Joseph vs Union of India.

Respondent No.1 (OCBTL) Reply dated 23.02.2026

19. OCBTL denied the claim of UPRVUNL for refund of the alleged additional LPS amounting to Rs. 2,01,19,690/- and submitted that the Petition proceeds on a fundamentally erroneous appreciation of the Commission directions in the order dated 24.06.2024 in the Petition No. 1920 of 2022 and the legal principles governing the incidence and continuity of LPS. According to OCBTL, the liability of UPRVUNL for

payment of LPS was not limited to the period from 30.04.2021 till 08.02.2024 and thereafter from 09.08.2024 to 28.02.2025, as contended by UPRVUNL.

20. OCBTL relied upon Article 10.8.1 of the TSA to contend that any amount due from one party to the other and remaining unpaid for thirty days after the due date bears LPS @ 1.25% per month on the unpaid amount and such LPS accrues from the due date until the amount due is actually received by the payee.

21. OCBTL relied upon the Commission's order dated 24.06.2024 and submitted that the Commission had categorically held UPRVUNL, being a defaulting entity, liable to pay Transmission Charges for Element-1 of LOT-1 from the date of its approved deemed COD, i.e., 30.04.2021, till Element-1 of OCBTL was connected with the Obra-C TPS switchyard and LILO of Element-1 was operationalised i.e., 08.02.2024, along with LPS. The Commission had further directed that the bills be raised within 15 days and that UPRVUNL shall make payment within 45 days from the date of the Order. The relevant extract relied upon by OCBTL reads as under:

> "
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> ...
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> Therefore, considering defaulter liability principle, UPRVUNL is adjudged as a defaulter in present case as it is accordingly, liable to make payment of transmission charges along with LPS for Element 1 of LOT-1 till Element 1 of the Petitioner is connected with Obra-C TPS switchyard and LILO (Element 1) is operationalised. Thereafter, LTTCs are liable to make payment of the transmission charges as per TSA. Accordingly, the Petitioner shall raise bills within 15 days in accordance with above directions, UPRVUNL and LTTCs as the case may be shall make the payment of the same within forty five days from the date of this Order."

22. OCBTL further relied upon the invoices and subsequent correspondence exchanged between the parties, as already noted hereinabove, and maintained that UPRVUNL's liability towards LPS continued till the date of actual payment.

23. OCBTL further submitted that through the present Petition, UPRVUNL is attempting to create an artificial bifurcation for the period in which LPS may be levied, in the following manner:

    (i) From the period 30.04.2021 (deemed commissioning of Element 1 of LOT-1) till 08.02.2024 (i.e., till the date Element 1 of the OCBTL system is connected with the Obra-C TPS switchyard and the LILO of Element 1 is operationalised); and

    (ii) From 09.08.2024 (45 days from the order dated 24.06.2024 passed by this Hon'ble Commission in Petition No. 1920 of 2022) to 28.02.2025

As is evident from the above, by such bifurcation, UPRVUNL seeks to exclude LPS for the period from 09.02.2024 to 08.08.2024.

24. OCBTL submitted that the Order dated 24.06.2024 is being misinterpreted by UPRVUNL to construe that along with the liability towards Transmission Charges, the liability towards LPS also ended on 08.02.2024 and would resume only after expiry of 45 days from the said Order. According to OCBTL, through the Order dated 24.06.2024, the Commission merely decided who should pay OCBTL the Transmission Charges for the period from 30.04.2021 till 08.02.2024. However, the finding regarding liability of LPS payable by UPRVUNL was not confined till 08.02.2024 and such liability continued until the actual date of payment.

25. With regard to the above, reliance has been placed on the below- mentioned jurisprudence laid down with respect to levy of LPS:

(i) Judgment dated 28.07.2025 in Appeal No. 107 of 2022 titled as M/s Rosa Power Supply Co. Ltd. v. UPPCL & Anr.:

*"53.---- **The incidence of LPSC arises in case of nonpayment of tariff bills by a procurer or a consumer before the due date. It is a penalty levied for delayed payments of electricity bills and thus, separate from the standard charges for consumption. There won't arise occasion for charging LPSC in case the procurer pays the tariff bills of the generating company on or before the due date. Therefore, LPSC is a separate charge applied only when the procurer fails to pay tariff bills by the due date. It is designed to compensate the generating company for the cost of delayed payment and the risks associated with it**."*

(ii) Judgment dated 02.11.2020 in Appeal No. 10 of 2020 titled as Power Company of Karnataka Limited & Anr. v. Udupi Power Corporation Ltd. & Ors.:

*"93. From the above facts, and bearing in mind the operations of the generator of electricity, as indeed the philosophy and rationale of the Tariff Regulations, **we conclude that the Late Payment Surcharge is imposed to restitute the party burdened with excessive working capital requirement due to delay in payments and, therefore, it is dependent or linked to the working capital regulation**. The generator cannot claim LPS for delay up to the period covered in working capital provision. The applicability of LPS starts only after the period covered by working capital has elapsed. **The reason is plain - if LPS is not paid, it would erode the return on equity violating the letter and spirit of Section 61 Electricity Act.**"*

The above Judgment has been upheld by the Hon'ble Supreme Court in Civil Appeal No. 32 of 2021 vide Order dated 08.02.2022.

(iii) Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra ERC, reported in (2022) 4 SCC 657:

> *"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****.*
> *180.----* ***The payment of late payment surcharge ("LPS") is penalty suffered by the procurer, that is, the appellant on account of default in timely payment.****"*

26. The Respondent submitted that it is evident from the above precedents, that LPS is a provision that is there to ensure timely payment of charges (monthly transmission charges in the present case) and works as a deterrent/ penalty where the party who ought to make payment is dissuaded from making delayed payments. Furthermore, it saves the innocent party from being burdened with excessive working capital/ borrowing requirement and to ensure it is paid on time. Applying the above principle to the present case, OCBTL contended that delay in receipt of the monthly Transmission Charges attributable to UPRVUNL for the period commencing from deemed COD of Element-1 of LOT-1 (i.e., 30.04.2021) till the date Element 1 of the OCBTL system is connected with the Obra-C TPS switchyard and the LILO of Element 1 is operationalised (i.e., 08.02.2024) shall attract LPS for the period of delay till actual payments were made by the UPRVUNL.

27. OCBTL further submitted that under the defaulter liability principle applied by the Commission and upheld by the Hon'ble APTEL, UPRVUNL stepped into the shoes of the LTTCs for the period during which Element-1 could not be put to use on account of its default. According to OCBTL, the liability so shifted included not only the Transmission Charges attributable to the said period but also the consequences of delayed payment thereof. The Order dated 24.06.2024 did not alter either the quantum of the Transmission Charges or the consequences of their delayed payment and, therefore, curing of the physical default on 08.02.2024 did not, according to OCBTL, bring the accrual of LPS on the unpaid Transmission Charges to an end.

28. OCBTL questioned the conduct of UPRVUNL in accepting LPS up to 08.02.2024 and thereafter from 09.08.2024 while disputing LPS for the intervening period from 09.02.2024 to 08.08.2024. According to OCBTL, by adopting such a position, UPRVUNL was approbating and reprobating at the same time.

29. OCBTL submitted that it is a well settled principle of law that a party who has taken a position cannot approbate and reprobate at the same time and placed reliance upon

the following judgments:

i. *Amar Singh v. Union of India, reported in (2011) 7 SCC 69* [Para 50];
ii. *Joint Action Committee of Air Line Pilots' Assn. of India v. DGCA, reported in (2011) 5 SCC 435* [Para 12];
iii. *Suzuki Parasrampuria Suitings (P) Ltd. v. Official Liquidator, reported in (2018) 10 SCC 707* [Para 12 to 14];
iv. *PR Deshpande v. Maruti Balaram Heibatti, reported in (1998) 6 SCC 507* [Paras and 9];
v. *Mumbai International Airport Pvt. Ltd. v. Golden Chariot Airport & Ors, reported in (2010) 10 SCC 422* [Para 55 to 65].

30. OCBTL submitted that UPRVUNL was liable to pay LPS on the outstanding Transmission Charges from their respective due dates until actual payment and that such liability could not be suspended or fragmented for the intervening period. According to OCBTL, exclusion of the disputed period would militate against the object of LPS, namely, timely payment and compensation for the time value of money withheld beyond the due period.

31. Aiding the above submissions, OCBTL placed reliance on the legal maxim "*Ubi Jus Ibi Remedium*" meaning that where there is a right, there is a remedy. In the present case, Respondent has two rights, firstly, the right to receive transmission charges, and secondly, the right to receive transmission charges in time, and in case of delay, LPS was levied for delay in payment of transmission charges, till the time payment is made. As such, considering that the payment was made in a belated manner, the Respondent ought to be paid LPS till such payment was actually paid. It thus follows that the remedy of the Respondent cannot be denied in the present case.

32. Further, OCBTL placed reliance upon the judgment passed by the Hon'ble Supreme Court in Central Bank of India v. Ravindra, reported in (2002) 1 SCC 367, whereby while expounding the legal principles governing the nature and accrual of interest, the Hon'ble Court unequivocally held that interest runs from the date the amount becomes due and continues to run until payment, unless the Court, by specific order, curtails such period.

33. OCBTL submitted that applying the ratio of the said judgment to the facts of the present case, the liability of UPRVUNL to pay LPS subsists from 30.04.2021 and continues uninterrupted until the date of actual payment or realization by OCBTL. In the absence of any judicial or regulatory pronouncement curtailing such period, the

accrual of LPS till the date of payment is a matter of settled legal principle, rendering the UPRVUNL contrary assertions baseless and untenable.

34. OCBTL submitted that non-payment of the Transmission Charges and consequential LPS constitutes a continuing breach and gives rise to a continuing source of injury until actual payment, as the receiving party continues to bear the additional working capital and financing burden for so long as the underlying dues remain unpaid. In this regard, reliance was placed upon the Hon'ble APTEL's Judgment dated 02.11.2020 passed in Appeal No. 10 of 2020 & Batch, titled as *Power Company of Karnataka Limited & Anr. v. Udupi Power Corporation Ltd. & Ors.*, wherein it was held that LPS is a continuing breach, accruing till the date of repayment by the defaulting entity. The same also been upheld by the Hon'ble Supreme Court by way of the judgment dated 08.02.2022 in Civil Appeal No. 32 of 2021:

35. In view of the above, OCBTL submitted that as long as the Transmission Charges attributable to UPRVUNL remained unpaid, the consequential liability towards LPS continued to accrue and could not be extinguished merely by treating the curing of the physical default on 08.02.2024 as the end of the payment obligation

36. OCBTL further submitted that exclusion of the disputed period would prejudice it on account of the pendency of Petition No. 1920 of 2022, which was ultimately decided in its favour, and invoked the principle *"Actus Curiae Neminem Gravabit"*. As regards the 45-day period granted under the Order dated 24.06.2024, OCBTL maintained that such period could not operate as a suspension of LPS, particularly when UPRVUNL failed to make payment within the stipulated period and eventually made payment only on 10.03.2025 and 25.03.2025.

37. OCBTL also disputed the applicability of Section 72 of the Indian Contract Act, 1872 and the plea of unjust enrichment. According to OCBTL, the LPS payment was made against a subsisting and crystallised liability and not under any mistake of fact. Since the amount was stated to have been recovered on account of delayed payment of legally payable Transmission Charges, there existed a legal basis for retention thereof and the principles of mistake, unjust enrichment and equitable restitution were not attracted.

38. On the aforesaid basis, OCBTL submitted that UPRVUNL was liable to pay LPS with effect from 30.04.2021 till the date of actual payment, without exclusion of the period from 09.02.2024 to 08.08.2024.

Respondent No:2 (UPPCL) Reply dated 18.02.2026

39. UPPCL in its reply submitted that the Commission, vide ROP dated 23.12.2025 passed in the present matter, had observed that although UPPCL had not been formally impleaded as a party, a response was required from UPPCL. Accordingly, the Commission directed the Petitioner to implead UPPCL and amend the memo of parties.

40. UPPCL further submitted that the present dispute pertains to recovery of additional LPS by OCBTL from UPRVUNL pursuant to the orders passed in the matter. According to UPPCL, although the TSA was executed between OCBTL and UPPCL, the issue relating to recovery or non-recovery of the disputed LPS amount does not concern the role of UPPCL as the procurer under the TSA.

41. UPPCL accordingly submitted that the present dispute may be decided by the Commission in accordance with the terms and conditions of the TSA and the observations made by the Hon'ble APTEL.

The Petitioner (UPRVUNL) Rejoinder dated 13.04.2026

42. UPRVUNL, submitted that the Commission had held its liability as the defaulting entity towards Transmission Charges along with LPS to subsist only till Element-1 of LOT-1 was connected with the Obra-C TPS switchyard and LILO was operationalised on 08.02.2024. Thereafter, the liability shifted to the LTTCs in terms of the TSA.

43. UPRVUNL disputed OCBTL's contention that LPS continued until actual payment merely because the Transmission Charges attributable to the earlier period remained unpaid. According to UPRVUNL, LPS is ancillary to the principal liability and cannot survive independently in the absence of valid and subsisting underlying dues. Therefore, extending its liability beyond 08.02.2024 was stated to be contrary to the Order dated 24.06.2024

44. With regard to the judgments relied upon by OCBTL concerning the nature and incidence of LPS, UPRVUNL did not dispute that LPS ordinarily arises on account of delayed payment of tariff dues. It, however, contended that such liability necessarily presupposes an enforceable underlying amount. The judgments relied upon by OCBTL were therefore stated to be distinguishable, since, no underlying liability existed during the disputed period.

45. UPRVUNL also disputed the reliance placed upon the principle of "continuing breach". According to UPRVUNL, a continuing breach can arise only where an existing and

enforceable obligation remains unfulfilled. It specifically distinguished *Power Company of Karnataka Limited v. Udupi Power Corporation Ltd.* on the ground that the said judgment concerned an admitted and continuing liability towards tariff dues and LPS, whereas in the present matter the very existence of liability for the disputed period is contested

46. In response to OCBTL's reliance upon *"Actus Curiae Neminem Gravabit"*, UPRVUNL relied upon *Jang Singh vs Brij Lal [1963 SCC Online SC 219]*, wherein the Hon'ble Supreme Court held as under:

> *"6.----**If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim:***
>
> ***"Actus curiae neminem gravabit"**.*

47. UPRVUNL further relied upon *AR Antulay vs RS Nayak [1988 (2) SCC 602]* and *State of Punjab vs Davinder Pal Singh Bhullar [2011 (14) SCC 770]* and contended that it could not be burdened with LPS for the period during which it was exercising its statutory right to pursue adjudication of its liability.

48. On the issue of approbating and reprobating, UPRVUNL submitted that its stand remained consistent: LPS was payable till its liability as a defaulter ceased on 08.02.2024 and thereafter from 09.08.2024 in terms of the 45-day period stipulated in the Order dated 24.06.2024, but not for the intervening period.

49. On *"Ubi Jus Ibi Remedium"*, UPRVUNL submitted that the maxim presupposes an enforceable right. In the absence of any principal liability upon it for the disputed period, OCBTL could not claim an independent right towards LPS.

50. With regard to Section 72 of the Indian Contract Act, 1872, UPRVUNL submitted that the disputed LPS had been paid under an erroneous understanding regarding the extent of its liability. According to UPRVUNL, Section 72 applies not merely where there is a complete absence of liability but also where payment is made in excess of the legally payable amount.

51. On the OCBTL's reliance upon the time value of money and unjust enrichment, UPRVUNL, submitted that both concepts necessarily presuppose a legally payable amount remaining unpaid. Since no amount was stated to be due from UPRVUNL for

the disputed period, OCBTL could neither claim compensation for such period nor retain the alleged excess LPS.

52. Accordingly, UPRVUNL reiterated its prayer for refund of Rs. 2,01,19,690/- along with applicable interest

The Commission Hearing dated 13.10.2026

53. During the hearing, Sh. Divyanshu Bhatt, Learned Counsel for the Petitioner, submitted that the issue involved in the present Petition is limited to the levy of LPS for the period from 09.02.2024 to 08.08.2024. He submitted that the liability upon UPRVUNL was determined by virtue of the Commission's Order dated 24.06.2024 and, prior thereto, no invoices had been raised upon UPRVUNL. Therefore, the entire regime under the TSA for giving effect to the applicability of LPS may not necessarily apply to UPRVUNL in the same manner.

He submitted that subsequently, pursuant to the Order dated 24.06.2024, when the invoices were raised upon UPRVUNL, LPS was claimed up to 08.02.2024 and thereafter from 09.08.2024 onwards. Accordingly, the period from 09.02.2024 to 08.08.2024 is the period for which he seeks exclusion from the liability towards LPS. It was submitted that the said period also includes 45 days available after the Order dated 24.06.2024, during which UPRVUNL was entitled to challenge the said Order.

Referring to the relevant para of the Commission Order dated 24.06.2024, he submitted that there is no dispute with regard to the liability towards payment of Transmission Charges along with LPS had been fastened upon UPRVUNL for the period from 30.04.2021 till 08.02.2024, when Element-1 was connected with Obra-C TPS and LILO was operationalised. The limited case of UPRVUNL is that once the defect/default stood cured, LPS ought not to be levied upon UPRVUNL for the subsequent disputed period from 09.02.2024 to 08.08.2024.

54. During the course of hearing, the Commission raised a query regarding the applicability of the concept of time value of money. In response, Learned Counsel for the Petitioner submitted that, even if the said concept is taken into account, the liability should begin from the date when the period available to UPRVUNL for pursuing its challenge against the Order of the Commission had expired. He further clarified that there is no dispute regarding the principal amount and that the dispute in the present Petition is confined only to the levy of LPS.

55. Sh. Sourav Roy, Learned Counsel for OCBTL, submitted that the Petitioner had already paid the Transmission Charges along with LPS and they are not disputing their liability towards the same from the date of deemed commissioning till the date on which the defect was cured. According to OCBTL, however, in terms of the TSA, LPS continues to run until actual payment of the amount due.

He submitted that he is not conceding that the period of 45 days granted under the Order dated 24.06.2024 was required to be excluded from the computation of LPS. He, however, submitted that, at the highest, such exclusion could have been the case, but UPRVUNL had not even set up its case accordingly. Relying upon Articles 10.6.4 and 10.8.1 of the TSA, he submitted that LPS continues to run till the date of actual payment.

He further submitted that if the liability towards LPS were to commence only pursuant to the Order passed by the Commission, the question would arise as to why UPRVUNL had paid LPS for the period prior thereto. According to him, UPRVUNL has not challenged its liability towards LPS for that period in the present Petition and has confined its challenge only to the period after curing of the default. OCBTL, therefore, maintained that curing of the defect did not bring the accrual of LPS on the unpaid Transmission Charges to an end.

He also submitted that the date of deemed commissioning and the levy arising therefrom had been challenged by the Petitioner before Hon'ble APTEL, but that challenge had already been dismissed.

Written submission(s) by the parties

56. Subsequent to the hearing, Parties submitted their written submission, which have not been repeated for the sake of brevity while summarizing in subsequent paras considering the information already on record and being captured herein above.

Respondent No.1 (OCBTL) Written Submission dated 28.10.2026

57. OCBTL submitted that the case of UPRVUNL is principally founded upon paragraph 349 read with paragraph 383(d) of the Order dated 24.06.2024. According to UPRVUNL, its liability as the defaulting entity towards Transmission Charges along with LPS subsisted only till Element-1 of LOT-1 was connected with the Obra-C TPS switchyard and LILO was operationalised. UPRVUNL has further contended that LPS is ancillary to the principal liability and cannot continue in the absence of any subsisting liability towards Transmission Charges.

LPS under Article 10.8.1 of the TSA accrues from the Due Date until the amount due is actually received

58. OCBTL submitted that the LPS provision identifies actual receipt of the amount due as the terminal point for accrual of LPS. Therefore, UPRVUNL cannot rely upon the said provision for the rate and commencement of LPS while disregarding its stipulation regarding accrual till actual receipt.

The transmission charges remained due and unpaid throughout 09.02.2024 to 08.08.2024

59. OCBTL submitted that no Transmission Charges are being claimed from UPRVUNL for any period after 08.02.2024. The amount of Rs. 27,00,89,280/- represents the Transmission Charges attributable to UPRVUNL for the period from 30.04.2021 to 08.02.2024 and remained unpaid until 10.03.2025. According to OCBTL, UPRVUNL has conflated the period for which Transmission Charges accrued against it with the subsequent period during which such already accrued Transmission Charges remained unpaid. Thus, LPS for the disputed period is claimed as a consequence of non-payment of the Transmission Charges already accrued and not as Transmission Charges for any period after 08.02.2024.

There is no "grace period" on LPS in the Order dated 24.06.2024

60. OCBTL submitted that the direction contained in paragraph 349 requiring payment within 45 days from the date of the Order was only a compliance timeline for payment of the arrears already due and could not be construed as a waiver, suspension or moratorium on LPS. It was further submitted that UPRVUNL made payment beyond the stipulated period and that the 45-day contention, in any event, provides no basis for excluding LPS for the period from 09.02.2024 till passing of the Order dated 24.06.2024.

The defaulter steps into the shoes of the LTTCs and bears all consequences of delay in payment

61. OCBTL relied upon Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd., (2016) 4 SCC 797, to contend that where the transmission system cannot be put to use for no default of the LTTCs, the corresponding liability is required to be borne by the defaulting entity. According to OCBTL, once UPRVUNL stepped into the shoes of the LTTCs, such liability carried with it the consequences of delayed payment.

Nature and object of LPS: compensation for delayed payment which accrues till payment

62. OCBTL placed reliance upon the Judgment dated 17.04.2012 in Appeal No. 11 of 2012, Chairman, TNEB & Anr. v. Indian Wind Power Association & Ors., wherein it was held as under:

> *"13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.*
> *...*
> *17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project.*
> *..."*

63. OCBTL also placed reliance upon Tamil Nadu Generation and Distribution Co. Ltd. v. T.T. Industries Ltd., (2017) 15 SCC 550, wherein it was held as under:

> *"15. ... If it is claimed that the Board is not liable to pay the interest on delayed payment, there will be no sanctity of clause 5(b) of the agreement imposing the time-frame for payment. ...*
> *17. ... a person deprived of the use of money to which he is legitimately entitled for a particular period has got a right to be compensated by way of interest. ...*
> *18. As held by the Hon'ble Supreme Court, the delayed payments without any entitlement to interest on the same, will lead to a situation whereby the appellant would not be inclined to pay in time.*
> *...*
> *21. In any power project, one of the important aspects is promptitude in payment since the delays would seriously affect the viability of the project.*
> *..."*

64. OCBTL further relied upon Section 61 of the Electricity Act, 2003 and submitted that the electricity sector is required to operate on commercial principles and that an entity deprived of legitimate dues cannot be denied the consequences attached to delayed payment.

Section 72 of the Indian Contract Act, 1872 has no application

65. OCBTL submitted that the disputed LPS was not paid under any "mistake of fact", but towards a subsisting and crystallised liability arising from the applicable regulatory framework and the directions contained in the Order dated 24.06.2024. According to OCBTL, once LPS had accrued on account of delayed payment and was discharged towards an enforceable obligation, the payment could not subsequently be characterised as one made under mistake.

66. OCBTL further submitted that LPS was paid on 25.03.2025, after the Judgment dated 28.02.2025 passed by the Hon'ble APTEL, after UPRVUNL had obtained verification of

OCBTL's computation from its consultant, and without protest. According to OCBTL, the subsequent change in position based upon a revised opinion could not convert the earlier payment into one made under mistake.

The plea of unjust enrichment is untenable

67. OCBTL submitted that LPS was levied and recovered on account of delayed payment of the Transmission Charges and therefore had a legal basis. Accordingly, retention of such amount could not constitute unjust enrichment or attract the principles of equitable restitution.

68. It was further contended that UPRVUNL would itself stand unjustly enriched if it were permitted to retain the benefit of the unpaid Transmission Charges during the intervening period without compensating OCBTL for the delayed payment.

UPRVUNL's own consultant verified OCBTL's computation

69. OCBTL referred to the opinion obtained by UPRVUNL from Percept360 Consulting Limited and stated that the consultant had recorded that "the calculations provided by OCBTL are correct in terms of methodology and logic, aligning with the provisions of the Transmission Service Agreement (TSA) and the directives of the Uttar Pradesh Electricity Regulatory Commission (UPERC)". It was further submitted that the consultant had computed the LPS payable up to 24.03.2025 at Rs. 9,75,69,170/-.

70. In view of the aforesaid submissions, OCBTL reiterated that the claim of UPRVUNL seeking refund of Rs. 2,01,19,690/- along with applicable interest is liable to be rejected.

<u>The Petitioner Written Submission dated 30.10.2026</u>

71. UPRVUNL submitted that it does not seek to reopen or challenge the determination of liability made by the Commission vide Order dated 24.06.2024 in Petition No. 1920 of 2022 and affirmed by the Hon'ble APTEL vide Judgment dated 28.02.2025.

72. UPRVUNL submitted that the limited controversy concerns the correctness of the computation of LPS undertaken by OCBTL and the consequential recovery of Rs. 2,01,19,690/-, stated to have been paid in excess of the liability legally attributable to UPRVUNL. It was submitted that the determination of liability towards principal Transmission Charges and computation of LPS are distinct, though related matters, and that LPS can be recovered only in accordance with the TSA, the applicable Orders

of the Commission and the principal Transmission Charges legally due and remaining unpaid.

LPS must be founded upon an amount of principal transmission charges legally due and payable

73. UPRVUNL submitted that LPS is consequential in nature and presupposes the existence of an amount legally due and payable which has remained unpaid beyond the stipulated period. Relying upon Article 10.8.1 of the TSA, it submitted that determination of LPS necessarily requires identification of the principal Transmission Charges legally payable by UPRVUNL, the applicable due date, the period for which such amount remained unpaid and the date of actual receipt by OCBTL. Accordingly, any computation based upon an incorrect principal amount, due date or period would require correction in accordance with Article 10.8.1 of the TSA.

The contractual stipulation that LPS accrues until actual payment does not dispense with the requirement of a correct principal base and due date

74. UPRVUNL acknowledged that Article 10.8.1 provides for accrual of LPS on an amount validly due and remaining unpaid until actual receipt by the payee. It, however, submitted that the said provision cannot be read independently of its opening requirement of an "amount due" under the TSA. According to UPRVUNL, existence of an amount legally due is a condition precedent to levy of LPS and must first be established while undertaking the computation.

75. UPRVUNL further submitted that the expression "until the amount due is actually received" determines the terminal point for accrual of LPS on a validly outstanding amount but does not authorise computation upon an incorrect principal base or due date. Accordingly, the LPS invoice dated 01.03.2025 could not be treated as conclusive merely because payment had been made against it and remained subject to verification against the TSA and the applicable Orders of the Commission.

The order dated 24.06.2024 and the judgment dated 28.02.2025 do not dispense with scrutiny of the LPS computation

76. UPRVUNL submitted that even where the underlying liability stands determined, the amount recovered pursuant thereto must remain consistent with the terms of the TSA and the operative directions of the Commission. OCBTL was therefore required to demonstrate how the LPS of Rs. 9,48,68,277/- had been computed and how the disputed amount of Rs. 2,01,19,690/- was attributable to principal sums legally due

from UPRVUNL. According to UPRVUNL, the dispute can be resolved through invoice-wise and period-wise examination without disturbing the findings recorded in the earlier proceedings.

The excess amount paid is liable to be refunded in accordance with Section 72 of the Indian Contract Act, 1872

77. UPRVUNL relied upon Section 72 of the Indian Contract Act, 1872 and *Sales Tax Officer v. Kanhaiya Lal Mukund Lal Saraf*, AIR 1959 SC 135, to contend that money paid by mistake, where such amount was not legally due, is required to be restored.

78. UPRVUNL accordingly prayed that OCBTL be directed to refund the excess LPS amounting to Rs. 2,01,19,690/-, along with applicable interest, or such amount as may be determined upon reconciliation of the computation.

Commission View

79. The Petitioner, Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL), has filed the present Petition seeking refund of an amount of Rs. 2,01,19,690/-, along with applicable interest, stated to have been paid in excess to Obra-C Badaun Transmission Limited (OCBTL) towards Late Payment Surcharge (LPS) pursuant to the Order dated 24.06.2024 passed by the Commission in Petition No. 1920 of 2022 and the Judgment dated 28.02.2025 passed by the Hon'ble APTEL in Appeal No. 357 of 2024.

80. It is pertinent to note that the issues relating to deemed commissioning of Element-1 of LOT-1, non-availability of the requisite interconnection facilities at Obra-C TPS and the liability arising therefrom were examined by the Commission in Petition No. 1920 of 2022. Vide Order dated 24.06.2024, the Commission held UPRVUNL to be the defaulting entity and directed it to pay Transmission Charges along with LPS from the approved deemed COD of Element-1 of LOT-1 till Element-1 was connected with Obra-C TPS switchyard and LILO (Element-1) was operationalised. The Commission further directed that thereafter, the LTTCs would be liable to pay Transmission Charges in accordance with the TSA. It also prescribed timelines for raising bills and making payment. The aforesaid findings were upheld by the Hon'ble APTEL vide Judgment dated 28.02.2025 in Appeal No. 357 of 2024.

81. The Commission has carefully examined the pleadings of the parties, the submissions made during the proceedings, the Written Submissions filed by the parties, the Order dated 24.06.2024 passed in Petition No. 1920 of 2022, the Judgment dated

28.02.2025 passed by the Hon'ble APTEL in Appeal No. 357 of 2024 and the material placed on record.

82. The issue for consideration before us, therefore, is whether UPRVUNL is liable to pay LPS on the Transmission Charges for Element-1 of LOT-1, that had accrued up to 08.02.2024, the date up to which its default was cured, for the period from 09.02.2024 to 08.08.2024, the date on which the 45-day payment period under the Commission's Order dated 24.06.2024 expired.

83. The Commission now proceeds to examine this issue. UPRVUNL has contended that paragraphs 349 and 383(d) of the Order dated 24.06.2024 restricted its liability towards Transmission Charges along with LPS to the period from the approved deemed COD of Element-1 of LOT-1 on 30.04.2021 till 08.02.2024, when Element-1 was connected with Obra-C TPS switchyard and LILO was operationalised. Once the Obra-C TPS switchyard was commissioned and Element -1 LILO was operationalised, its default stood cured, and the liability for transmission charges shifted to the LTTCs under the TSA. Therefore, UPRVUNL has argued that no LPS should be levied on the transmission charges accrued up to 08.02.2024 for the period from 08.02.2024 (the date on which its default was cured) to 08.08.2024 (the date on which the 45-day payment period under the Commission's Order dated 24.06.2024 expired). Further, there is no dispute regarding the period after the expiry of the 45-day payment period, i.e., from 08.08.2024 until the date of actual payment by UPRVUNL.

84. OCBTL, on the other hand, has contended that the liability of UPRVUNL towards Transmission Charges along with LPS had already been determined by the Commission in Petition No. 1920 of 2022 and the said determination was subsequently upheld by the Hon'ble APTEL. According to OCBTL, LPS is compensatory in nature and continues to accrue on the outstanding amount till the date of actual payment. OCBTL has accordingly contended that the inter-connection of Element-1 with Obra-C TPS switchyard and operationalisation of LILO on 08.02.2024 only determined the period for which the underlying transmission charges were attributable to UPRVUNL and did not extinguish the consequences arising from non-payment of the amount so determined.

85. In order to deal with the aforesaid issue, it is necessary to first examine the findings and directions contained in the Order dated 24.06.2024 passed by the Commission in Petition No. 1920 of 2022, since the disputed LPS liability, which is the subject matter

of the present proceedings, arises from the said Order. While determining the liability of UPRVUNL, the Commission had held as under:

> *"**Liability of transmission charges of Element 1 of LOT-1***
> *349. It is observed that the Commission vide Order dated 03.10.2022 in Petition No. 1824 of 2022 has already approved the deemed COD of the Element 1 as 30.04.2021. It is also pertinent to mention that UPRVUNL did not complete its work by constructing two number of 765 kV line bays at Obra-C TPS for termination of LILO of 765 kV Anpara D - Unnao 5/C line by the time Petitioner's Element 1 got deemed Commissioned and could not provide connectivity to the Petitioner for the same. Further, the Commission has observed that although UPRVUNL is not party to the TSA, however, it is specifically provided under Schedule 3 of the TSA that Obra-C (UPRVUNL) to provide 2 no. 765 kV line bays at Obra-C TPS for termination of 765 kV Anpara 'D' Unnao SC line. The relevant extract of Schedule 3 (Notes) of TSA provides as under*
> *"Schedule 3*
> *.....2 Scope*
> *Notes*
> *(a) Obra-C {UPRVUNL) to provide 2 no. 765 kV line bays at Obra-C TPS for termination of 165 kV Anpara 'D' Unnao SC line."*
> *Further, it is also pertinent to mention that in terms of UPERC (Grant of Connectivity to intra-State Transmission System) Regulations, 2010, UPRVUNL was obligated to enter into connection agreement for connectivity of its switchyard/electrical system including of 765 kV bays. However, UPRVUNL has not submitted a copy of the connection agreement for connectivity with intrastate transmission network i.e. Element 1 of the Petitioner. Therefore, as we have already observed in this Order that the connection agreement and the TSA are co-terminus and there is a clear link between TSA and connection agreement. Further, UPRVUNL was obligated to enter into connection agreement and provide interconnection facilities at its switchyard. Therefore, considering defaulter liability principle, UPRVUNL is adjudged as a defaulter in present case as it is accordingly, liable to make payment of **transmission charges along with LPS** for Element 1 of LOT-1 till Element 1 of the Petitioner is connected with Obra-C TPS switch yard and LILO (Element 1) is operationalised. Thereafter, LTTCs are liable to make payment of the transmission charges as per TSA. Accordingly, the Petitioner shall raise bills within 15 days in accordance with **above directions, UPRVUNL and LTTCs, as the case may be, shall make the payment of the same within forty five days from the date of this Order**."*

86. From the above Order, it is clear that UPRVUNL was liable to pay **the Transmission Charges along with LPS** from the approved deemed COD of Element-1 of LOT-1, as upheld by the Commission, until the inter-connection of Element-1 with Obra-C TPS switchyard and operationalisation of LILO on 08.02.2024, i.e. the date on which its default was cured. Further, OCBTL was required to raise bills within 15 days, and UPRVUNL was required to make payment within 45 days from the date of the Order.

87. Pursuant to the award of LPS in the Order dated 24.06.2024, such LPS operates in terms of the TSA. This reflects a standard and fundamental commercial principle: a

surcharge or interest on delayed payment continues to run until the date of actual payment. Once an amount has fallen due and remains unpaid, LPS continues to accrue on it until it is paid. However, the only period for which exemption of LPS can be claimed by UPRVUNL is for 45 days period governed in terms of Order dated 24.06.2024. The scheme of the TSA itself recognizes that LPS is not attracted immediately when an amount becomes payable. Under Article 10.8.1, an amount attracts LPS only if it remains unpaid for thirty (30) days after the Due Date. The Order dated 24.06.2024 followed a similar billing-and-payment mechanism. OCBTL was directed to raise bills within 15 days from the date of the Order, and UPRVUNL, was directed to make payment within 45 days from the date of the Order. It corresponds, in substance, to the period that the TSA itself allows between the raising of a bill and the attraction of LPS.

88. Accordingly, the Commission hold that UPRVUNL shall be entitled to relief from late payment surcharge (LPS) under Article 10.8 of the TSA for a maximum period of forty five (45) days, being the period allowed for payment under the order dated 24.06.2024, on the transmission charges of Element-1 of LOT-I accrued for the period from 30.04.2021 to 08.02.2024.

89. Hence, the Petition stands disposed of.

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

Place: Lucknow
Dated: 16 .11.2026