THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2349 of 2026

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 of the Electricity Act, 2003 read with Article 16.3 of the Transmission Service Agreement, dated 06.04.2018, seeking payment of Transmission Charges along with Late Payment Surcharge.

AND

IN THE MATTER OF

Ghatampur Transmission Limited

Through its Authorised Signatory

Adani Corporate House, Shantigram, Near Vaishno Devi Circle,

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

..... Petitioner

VERSUS

1. **Uttar Pradesh Power Corporation Limited**

   Through its Managing Director

   Shakti Bhawan 14 Ashok Marg, Lucknow, Uttar Pradesh- 226001.

2. **Neyveli Uttar Pradesh Power Limited**

   Through its Chief Executive Officer

   Project Liaison Office, 6/42, Vipul Khand, Gomti Nagar,

   Lucknow, Uttar Pradesh – 226010.

3. **Paschimanchal Vidyut Vitran Nigam Limited**

   Through its Managing Director

Hydel Colony, Victoria Park, Meerut, Uttar Pradesh – 250001.

4. **Madhyanchal Vidyut Vitran Nigam Limited**

   Through its Managing Director

   4A, Gokhale Marg, Lucknow, Uttar Pradesh – 226001

5. **Purvanchal Vidyut Vitran Nigam Limited**

   Through its Managing Director

   Vidyut Nagar, Bhikharipur, P.O. DLW, Varanasi,

   Uttar Pradesh – 221010

6. **Dakshinanchal Vidyut Vitran Nigam Limited**

   Through its Managing Director

   Urja Bhawan, NH-2 (Agra-Delhi Bypass Road),

   Sikandra, Agra, Uttar Pradesh – 282002

...Respondents

THE FOLLOWING WERE PRESENT

1. Sh. Sourav Roy, Advocate, Petitioner
2. Sh. Anshu Deshpande, Advocate, Petitioner
3. Sh. Abhishek Kumar, Advocate, UPPCL
4. Sh. Nived Veerapaneni, Advocate, UPPCL
5. Ms. Pragya Pushkar, Advocate, NUPPL
6. Sh. Rajiv Singh, EE, UPPCL
7. Sh. Sandeep Srivastava, Dy. Manager, Adani

ORDER

(DATE OF HEARING: 30.07.2026)

1. The instant Petition has been filed by the Petitioner i.e Ghatampur Transmission Limited under Section 86 of the Electricity Act, 2003, read with article 16.3 of the Transmission Service Agreement, dated 06.04.2018,

seeking payment of transmission charges along with late payment surcharge. The Prayers of the Petition are as follows:

(a) Admit the Petition;

(b) Hold and Declare that the Petitioner is entitled to payment of balance monthly transmission charges for the period 24.09.2024 to 12.12.2024 along with LPS in light of the Order dated 14.02.2023 passed by this Hon'ble Commission;

(c) Direct the Respondents individually / jointly or severally to pay the balance Monthly Transmission Charges for the period 24.09.2024 to 12.12.2024 along with LPS as this Hon'ble Commission deems fit;

(d) Hold and Declare that the Petitioner is entitled to payment of LPS accrued on account of the delay in payment of transmission charges of Rs. 44.40 Crore withheld by the Respondent No. 1 on account of their apprehension of applicable LD;

(e) Direct Respondent No. 1 to pay the LPS accrued and Rebate availed during the period of withheld transmission charges to the Petitioner on account of the delay in payment of transmission charges withheld by the Respondent No. 1 on account of LD;

(f) Pass such other order(s) and / or direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

BRIEF FACTS OF THE PETITION

2. The Petitioner has submitted that M/s Ghatampur Transmission Limited ("GTL") is a company incorporated under the Companies Act, 2013 and is a transmission licensee under Section 2(73) of the Electricity Act, 2003. The Petitioner was granted transmission licence by the Commission vide Orders dated 25.10.2018 and 15.11.2018.

3. The Petitioner was entrusted with establishment of the transmission system for evacuation of power from the 3×660 MW Ghatampur Thermal Power Station ("Ghatampur TPS") of Respondent No.2 (NUPPL) under Tariff Based Competitive Bidding. Accordingly, a TSA dated 06.04.2018 was executed between the Petitioner and Respondent No.2 (NUPPL), Respondent No.3 (PVVNL), Respondent No.4 (MVVNL), Respondent No.5 (PuVVNL) and Respondent No.6 (DVVNL) as LTTCs.

4. Respondent No.1 (UPPCL) is responsible for bulk purchase of power on behalf of the distribution licensees in the State of Uttar Pradesh, including Respondent Nos. 3 to 6, and exercises administrative control over the said Discoms.

5. The Commission vide Order dated 14.02.2023 in Petition No. 1850 of 2022 directed Respondent No.2 (NUPPL) to pay transmission charges for 765 kV Ghatampur TPS-Agra S/C line (part of Element-2) and 765 kV Ghatampur TPS-Hapur S/C line (Element-3) in accordance with the defaulter liability principle until completion of its scope of work under the TSA.

6. The present petition pertains only to payment of monthly transmission charges and LPS relating to the entire Element-3 and the Ghatampur TPS-Agra line forming part of Element-2. It has also been stated that no dispute has been raised regarding transmission charges for the 765 kV Agra-Greater Noida S/C line forming part of Element-2.

7. The present petition seeks payment of transmission charges along with LPS for the period from 24.09.2024 to 11.12.2024 in accordance with the Commission's Order dated 14.02.2023 and the provisions of the TSA.

Dispute relating to Transmission Charges for the Period 24.09.2024 to 11.12.2024

8. The present petition seeks payment of transmission charges for the period from 24.09.2024 to 11.12.2024 and also seeks payment of LPS on the amount retained by Respondent No.1 (UPPCL) towards Liquidated Damages and subsequently released pursuant to the Commission's Order dated 24.06.2024 in Petition No. 1959 of 2023.

9. The Commission vide Order dated 14.02.2023 held that Element-2 achieved deemed COD on 26.03.2021 and Element-3 achieved deemed COD on 28.01.2022 and further directed Respondent No.2 (NUPPL) to pay transmission charges in accordance with the defaulter liability principle until completion of its obligations under the TSA.

10. The said Order clearly establishes that: (a) Element-2 and Element-3 achieved deemed COD on 26.03.2021 and 28.01.2022 respectively; (b) the elements could not be operationalised due to reasons attributable to Respondent No.2; (c) the Petitioner became entitled to monthly transmission charges from the

date of deemed COD; and (d) liability for the non-operationalised assets was fixed upon Respondent No.2 (NUPPL) under the defaulter liability principle.

11. The Petitioner and Respondent No.2 (NUPPL) have challenged the Order dated 14.02.2023 before the Hon'ble APTEL in Appeal Nos. 354 of 2023 and 332 of 2023 respectively. Respondent had also preferred an application seeking stay, being IA No. 577 of 2023. The said IA No. 577 of 2023 was decided by the Hon'ble APTEL vide order dated 06.07.2023, wherein the Hon'ble APTEL held that it was not inclined to grant a stay on the operation of the Commission's Order dated 14.02.2023. Subsequently, Respondent No. 2 preferred Civil Appeal No. 5453 of 2023 before the Hon'ble Supreme Court of India. However, vide order dated 11.09.2023, the Hon'ble Supreme Court refused to interfere with the order passed by the Hon'ble APTEL. Accordingly, as on date, the Order dated 14.02.2023 remains operative between the parties.

12. Without prejudice to its rights and contentions in Appeal No. 354 of 2023 filed against the order dated 14.02.2023, it had raised fresh invoices on Respondent No. 2 in compliance with the directions contained in the said order.

13. The Petitioner has stated that Respondent No.2 (NUPPL) and Respondent No.3 (PVVNL) paid monthly transmission charges from the date of deemed COD till 24.09.2024, though with some delay. Invoices for September, 2024 in respect of Element-2 and Element-3 were raised upon Respondent No.2 (NUPPL) on 04.10.2024.

14. Respondent No.2 (NUPPL) vide letter dated 04.10.2024 informed that Element-2 and Element-3 had become operational on 23.09.2024 and contended that from the date of operationalisation its liability stood reduced to 25% in terms of the TSA. Respondent No.2 (NUPPL) thereafter invoked Article 10.9 of the TSA vide letter dated 09.10.2024 and disputed the September, 2024 invoices while seeking revision thereof. Invoices for October, 2024 were subsequently raised upon Respondent No.2 (NUPPL) on 04.11.2024.

15. Further, vide letter dated 05.11.2024, Respondent No. 2 informed the Petitioner that, against the invoice raised towards Monthly Transmission Charges for September 2024, payment had been made in accordance with the terms of the TSA and the Order dated 14.02.2023. Respondent No. 2 stated that it shall be making payments forthwith as per the terms of the TSA.

Thereafter, vide letter dated 06.11.2024, Respondent No. 2 raised a dispute under Article 10.9 of the TSA against the invoices for Monthly Transmission Charges raised by the Petitioner for Element 2 and Element 3 on 05.11.2024. Respondent No. 2 reiterated the contents of its earlier letter dated 04.10.2024 and requested that the invoices be revised in accordance with the terms of the TSA. In accordance with the Order dated 14.02.2023, Petitioner raised another invoice on Respondent No. 2 on 02.12.2024 towards Monthly Transmission Charges for the month of November 2024 for both Element 2 and Element 3.

16. Respondent No.2 (NUPPL) vide letter dated 09.12.2024 informed UPPCL, UPSLDC, UPRVUNL and others regarding successful testing of Unit-1 of Ghatampur TPS and thereafter declared COD of Unit-1 w.e.f. 12.12.2024.

17. That from 12.12.2024 onwards, Respondent No.1 (UPPCL) and Respondent No.2 (NUPPL) have been paying transmission charges in accordance with their respective shares under the TSA.

18. UPPCL vide letter dated 21.12.2024 informed Respondent No.2 (NUPPL) that although the transmission lines had been operationalised, NUPPL remained liable for 100% transmission charges in light of the Order dated. 14.02.2023 until commissioning of Ghatampur TPS and evacuation of power to the UP Discoms. The scope of work cannot be deemed to be completed.

19. The Petitioner, vide letter dated 26.12.2024 responded to the communications dated 04.10.2024, 09.10.2024 and 06.11.2024 issued by Respondent No. 2, wherein Respondent No. 2 had stated that the 765 kV Ghatampur-Agra line (part of Element 2) and the 765 kV Ghatampur-Hapur line (Element 3) had become operational on 23.09.2024. The Petitioner requested NUPPL to obtain confirmation from SLDC/STU regarding operationalisation of the said transmission lines. With regard to the request for adjustment of the Monthly Transmission Invoices, the Petitioner clarified that Respondent No. 2 would remain liable for 100% of the Transmission Charges till such confirmation is received from the SLDC and the same is upheld by this Commission.

20. Also, vide letter dated 03.01.2025, the Petitioner raised invoices on Respondent No. 2 towards Monthly Transmission Charges for the month of December 2024 for both Element 2 and Element 3. In view of the COD of Unit-1 having been declared by Respondent No. 2 from 00:00 hours on 12.12.2024, the Petitioner, with effect from the COD, raised invoices for the Ghatampur-

Agra Line and Ghatampur-Hapur Line in accordance with the proportionate shares of the LTTCs under the TSA. Accordingly, the Petitioner raised invoices for the period from 01.12.2024 to 11.12.2024 as per the Order dated 14.02.2023 and for the period from 12.12.2024 to 31.12.2024 in accordance with the proportionate share of Respondent No. 2 under the TSA. The Petitioner has also submitted that Respondent No. 2 had, from 24.09.2024 onwards, unilaterally revised the transmission charges payable by it to 25%, which was dehors the Order dated 14.02.2023. According to the Petitioner, Respondent No. 2 remained liable to pay 100% of the transmission charges up to 12.12.2024, being the date of declaration of COD of Unit-1.

21. The Petitioner, vide letter dated 04.01.2025 addressed to Respondent No. 1, Respondent No. 2 responded to the latter's communication dated 21.12.2024 and stated that it had completed its scope of work under the TSA and, therefore, was not liable to pay anything beyond what was stipulated therein. It was further stated by Respondent No. 2 that, in terms of the Order dated 14.02.2023, it was liable to bear the entire Transmission Charges only until the scope of work under the TSA remained incomplete. Respondent No. 2 also contended that, since no provision of the TSA mandated completion of the Ghatampur TPS and the works contemplated under the TSA had stood completed on 24.09.2024, it was no longer obligated to pay any additional liability beyond its TSA share of 25% with effect from 24.09.2024.

22. The Petitioner, vide letter dated 06.01.2025 replied to the communication dated 04.01.2025 issued by Respondent No. 2 and requested Respondent No. 2 to pay the transmission charges for Element 2 and Element 3 for the period from 24.09.2024 to 11.12.2024 in terms of the Order dated 14.02.2023. The Petitioner has further submitted that it clarified that adjustment of transmission charges for the said period may be undertaken upon resolution of the dispute between the Respondents. Accordingly, Respondent No. 2 was requested to pay the balance amount of 75% for the aforesaid period.

23. Vide letter dated 18.01.2025, Respondent No. 2 replied to the Petitioner's communications dated 26.12.2024 and 06.01.2025 and furnished confirmation from UPSLDC regarding the operationalisation of the 765 kV Ghatampur-Agra line (part of Element 2) and the 765 kV Ghatampur-Hapur line (Element 3). The Petitioner has submitted that Respondent No. 2 reiterated that it had

fulfilled its obligations in terms of the Order dated 14.02.2023 and, therefore, was not liable to pay the full transmission charges.

24. Despite repeated communications, neither Respondent No.1 (UPPCL) nor Respondent No.2 (NUPPL) paid the balance transmission charges for the period from 24.09.2024 to 11.12.2024. Accordingly, vide letter dated 11.03.2025, the Petitioner requested Respondent No.1 (UPPCL) to make payment of Rs. 31.23 crore along with applicable LPS. The Petitioner has further pointed out that UPPCL had not taken a stand during proceedings in Petition No. 1850 of 2022 that the liability of NUPPL would continue till commencement of power supply from Ghatampur TPS.

25. UPPCL failed to respond to its letter dated 11.03.2025. Accordingly, the Petitioner addressed another communication dated 27.05.2025 to UPPCL reiterating the contents of its earlier letter and informing it regarding the operationalisation of the 765 kV Ghatampur-Agra transmission line (part of Element 2) and the 765 kV Ghatampur-Hapur transmission line (Element 3). The Petitioner has further submitted that, from 24.09.2024 to 12.12.2024, it had received only 25% of the Transmission Charges from NUPPL, and the balance 75% remained unrecovered due to the dispute between the Respondents. Accordingly, the Petitioner once again requested UPPCL to make payment of the balance Transmission Charges amounting to Rs. 31.23 crore along with applicable LPS.

26. Despite issuance of multiple letters and communications to UPPCL and NUPPL, the balance Transmission Charges for the period from 24.09.2024 to 12.12.2024 have not been paid. It has also been submitted that Article 10.9 of the TSA has been invoked by the parties in respect of the invoices raised and the dispute remains unresolved. Accordingly, the Petitioner has contended that a dispute within the meaning of Section 86(1)(f) of the Electricity Act, 2003 has arisen between the parties.

27. The correspondence exchanged between the parties demonstrates that it has not received the entire Monthly Transmission Charges for the period from 24.09.2024 to 12.12.2024. The Petitioner has contended that while NUPPL has paid only 25% of the Transmission Charges, the balance 75% remains unpaid on account of the dispute between UPPCL and NUPPL. Accordingly, the

Petitioner has submitted that the Respondents are jointly liable to ensure payment of the balance Transmission Charges for the aforesaid period.

28. Article 10.8 of the TSA provides that where any amount due from one party to another remains unpaid for thirty days beyond the due date, the defaulting party is liable to pay LPS at the rate of 1.25% per month on the unpaid amount.

29. The object of LPS is to ensure timely payment of Transmission Charges and to discourage delay in payment. LPS compensates the Transmission Licensee for the time value of money lost due to delayed payments.

30. The Hon'ble APTEL in *Rattan India Power Limited vs. Maharashtra Electricity Regulatory Commission and Anr., Appeal Nos. 118 of 2021 and 40 of 2022*, held that the LPS provision in a Power Purchase Agreement is meant for compensate towards time value of money on account of delayed payments.

31. Further, the Hon'ble APTEL in *Maharashtra State Electricity Distribution Co. Ltd. vs. Maharashtra Electricity Regulatory Commission and Ors., Appeal No. 77 of 2018*, observed as under:

"15. Indisputably, LPS is in the nature of interest or disincentive imposed to ensure that there is no default or delay in payment by the procurer. Evidently, LPS is neither income nor expenditure; neither a one-time event nor recurring in nature, it being predicated upon the default in making timely payments. It is in the nature of a contingent liability incurred by the Procurer for failing to adhere to its obligations under the PPA."

32. LPS is in the nature of interest payable on account of delayed payments and operates as a disincentive against defaults or delays in making payment. The LPS provision under the TSA is intended not only to secure timely payment but also to discourage LTTCs from delaying payments. It has been contended that since Article 10.8 forms part of the TSA mutually agreed between the parties, the same is binding and enforceable.

33. In view of the above, the LPS accrued on account of non-payment of Monthly Transmission Charges for the period from 24.09.2024 to 12.12.2024 is also payable to the Petitioner in accordance with the provisions of the TSA.

As Regards Payment of LPS On the Amount that Respondent No. 1 had unilaterally withheld towards Liquidated Damages and subsequently

released to the Petitioner pursuant to the Order Dated 24.06.2024 passed by this Commission in Petition No. 1959 Of 2023.

34. Pursuant to the Commission's Order dated 14.02.2023, Petitioner raised invoices aggregating to Rs. 76.58 crore upon UPPCL towards transmission charges for Element-2, which were payable within 45 days i.e on or before 01.04.2023.

35. Vide letter dated 21.02.2022, UPPCL noted that the Lead LTTC, namely PVVNL, had declared the Commercial Operation Date/Deemed Commercial Operation Date of Element-2 of the Project as 26.03.2021. UPPCL vide said letter also sought to levy Liquidated Damages (LD) upon the Petitioner in terms of Clause 6.4 of the TSA. The Petitioner did not receive the said letter dated 21.02.2022 as the same had been addressed to the Project Office of the Petitioner, which was non-functional at the relevant time in February 2022. Therefore, it became aware of the aforesaid communication only upon reference thereto in another letter dated 20.02.2023 issued by UPPCL pursuant to which the Petitioner obtained a copy of the said letter.

36. Vide letter dated 15.03.2023 Petitioner requested Respondent No.1 (UPPCL) not to make any unilateral deduction towards LD and informed that Petition No. 1959 of 2023 seeking condonation of delay due to force majeure events was already pending adjudication before the Commission.

37. UPPCL vide letter dated 24.03.2023 informed that LD amounting to Rs. 44,40,35,121.91 had become payable on account of delay in commissioning of Elements 2 and 3 and called upon the Petitioner to deposit the said amount.

38. In response thereto, the Petitioner, vide its detailed reply dated 25.03.2023 to the letter dated 24.03.2023 issued by UPPCL, informed that it had already filed a Petition before this Commission on 10.02.2023, being Diary No. 05 of 2023 (Petition No. 1959 of 2023), seeking condonation of delay in commissioning of Element-2 and Element-3 of the Project. The Petitioner has further submitted that, in view of the pendency of the said Petition, it requested UPPCL to await the decision of the Commission on the issues involved. However, considering that Transmission Charges amounting to Rs. 79.75 crore were outstanding and payable by UPPCL as on that date, the Petitioner called upon UPPCL to release the balance Transmission Charges while withholding an amount of Rs. 44.40

crore on an interim basis and without prejudice to the Petitioner's rights under the TSA and other applicable laws.

39. The Petitioner has further submitted that the Commission vide Order dated 24.06.2024 in Petition No. 1959 of 2023 held that no liquidated damages could be imposed for delay in commissioning of Elements 2 and 3 since no loss had been caused to the LTTCs.

40. Pursuant to the aforesaid Order, the Petitioner sought immediate refund of Rs. 44.40 crore withheld by UPPCL and also informed that a separate invoice towards LPS would be raised. LPS invoice upto 30.06.2024 was raised upon UPPCL on 03.07.2024. Also, another LPS invoice upto 31.07.2024 was raised upon Respondent No.1 (UPPCL) on 05.08.2024.

41. UPPCL vide letter dated 07.10.2024 agreed to release the amount withheld towards LD in compliance with the Commission's Order dated 24.06.2024. The amount of Rs. 44,40,35,122 was actually released by Respondent No.1 (UPPCL) on 05.11.2024. UPPCL is liable to pay LPS on the delayed payment of the amount withheld towards LD in terms of Article 10.8 of the TSA.

42. UPPCL continued to avail rebate under Article 10.7 of the TSA despite withholding transmission charges amounting to Rs. 44.40 crore. The rebate is admissible only where the invoice amount is paid in full within the prescribed period and, therefore, UPPCL is not entitled to the rebate claimed by it.

43. Accordingly, LPS accrued due to non-payment of the withheld transmission charges from 26.03.2021 to 30.11.2025, along with the rebate availed by UPPCL during the period, is payable in accordance with the TSA.

UPPCL/UP DISCOMs' Submissions dated 30.06.2026

44. Respondent No.1 UPPCL and Respondents No.3 to 6 namely the Uttar Pradesh Distribution Companies (Collective herein mentioned as UPPCL/UP Discoms) have filed their reply/submissions through UPPCL.

45. UPPCL has submitted that the present Petition has been filed by the Petitioner seeking recovery of the alleged balance monthly transmission charges for the period from 24.09.2024 to 11.12.2024 along with LPS. The Petitioner has also sought LPS on Rs. 44.40 crore withheld by UPPCL towards Liquidated Damages (LD) and subsequently released pursuant to the Commission's Order dated

24.06.2024 in Petition No.1959 of 2023, besides claiming recovery of the rebate allegedly availed by UPPCL.

A. Liability for the Transmission Charges payable for the Period from 24.09.2024 to 11.12.2024, if any, continued to rest with NUPPL and did not shift to UPPCL/UP Discoms

46. The controversy in the present Petition is limited to determination of the entity liable to pay the balance 75% transmission charges for the period from 24.09.2024 to 11.12.2024. This is not a case where UPPCL/UP Discoms utilized the subject transmission assets and thereafter refused payment. Rather, the dispute has arisen because NUPPL unilaterally took the position that its liability stood reduced to 25% upon alleged operationalisation of Element-2 and Element-3 on 23.09.2024.

47. The unilateral position of NUPPL cannot create a payment liability upon UPPCL/UP Discoms. If NUPPL was the defaulting entity prior to 24.09.2024, it continued to remain so till the transmission assets were actually put to regular use for evacuation and supply of power from Ghatampur TPS. According to UPPCL, the transmission system was established for evacuation of power from the 3×660 MW Ghatampur TPS and, until Unit-1 achieved COD and power supply commenced to beneficiaries, the subject transmission assets could not be regarded as having been put to regular use.

48. The contemporaneous record demonstrates that Unit-1 of Ghatampur TPS achieved COD only on 12.12.2024 and monthly transmission charges were thereafter billed and paid in TSA shares from that date onwards. The transition to the ordinary TSA sharing framework occurred only upon commencement of regular commercial operation and supply from Ghatampur TPS and not merely upon charging or synchronization of the lines on 23.09.2024.

49. Accordingly, liability for transmission charges for the period from 24.09.2024 to 11.12.2024 continued to rest upon Respondent No.2 (NUPPL) and no liability arose upon UPPCL/UP Discoms. The claims raised in the Petition towards LPS on the said transmission charges, and the separate claims relating to LPS and rebate in respect of the amount withheld towards LD, are dealt with separately hereinafter in accordance with their own contractual and legal basis.

B. Interpretation of TSA and Order dated 14.02.2023

50. UPPCL has submitted that the present dispute pertains to the liability for payment of Transmission Charges for the period from 24.09.2024 to 11.12.2024. While the Petitioner relies upon the Order dated 14.02.2023 in Petition No. 1850 of 2022 to contend that Respondent No. 2 (NUPPL) remained liable to bear the Transmission Charges so long as the subject transmission assets could not be put to use, NUPPL has taken the stand that after synchronisation of the subject lines on 23.09.2024 the Transmission Charges were required to be shared under the normal TSA sharing mechanism, with NUPPL bearing only its allocated share. The dispute relates to recovery of the balance Transmission Charges for the period from 24.09.2024 to 11.12.2024.

51. The issue is required to be examined in the light of the TSA read together with the Order dated 14.02.2023. It has been submitted that Articles 6.2.1 and 6.2.2 of the TSA deal with declaration of COD/Deemed COD and GTL's entitlement to Monthly Transmission Charges. However, these provisions do not determine the entity liable to bear such charges during a period when the transmission assets, though ready from GTL's side, could not be put to use due to the default of another entity.

52. UPPCL has submitted that the relevant above Order dated 14.02.2023 not only recognised GTL's entitlement to Monthly Transmission Charges but also determined the entity liable to bear such charges till the transmission assets were made operational or put to use. According to UPPCL, the Commission applied the "defaulter-liability principle" and held that the entity due to whose default the transmission system could not be put to use would remain liable to pay the Transmission Charges from the date of Deemed COD till the asset was made operational or put to use. The Commission specifically held that the liability in respect of the 765 kV Ghatampur TPS-Agra S/C Line and the 765 kV Ghatampur TPS-Hapur S/C Line rested exclusively with NUPPL.

53. The aforesaid findings are of significance as the Order dated 14.02.2023 not only recognised GTL's entitlement to Transmission Charges but also fastened liability exclusively upon NUPPL on the basis of the defaulter-liability principle. It has been contended that mere synchronisation/operationalisation of the subject lines on 23.09.2024 does not by itself establish a shift from the exclusive defaulter-liability framework to the ordinary shared liability

mechanism under the TSA. The contractual provisions, findings of the Commission and contemporaneous record demonstrate that liability for the disputed period continued to rest with NUPPL.

54. Article 10 of the TSA provides the mechanism for raising invoices, payment of Monthly Transmission Charges, rebate, Late Payment Surcharge and treatment of disputed invoices. these provisions govern the billing and payment process once liability has been determined. Since the Order dated 14.02.2023 specifically identified NUPPL as the entity liable under the defaulter-liability principle, the billing and payment framework under Article 10 would operate in respect of such liability.

55. Reference has been made to the Petitioner's letter dated 03.01.2025 and subsequent communication dated 06.01.2025, wherein the Petitioner stated that invoices up to 11.12.2024 had been raised in accordance with the Order dated 14.02.2023, whereas TSA-based sharing of Transmission Charges was adopted only from 12.12.2024 onwards, i.e., upon declaration of COD of Unit-1. According to UPPCL, these communications indicate that the period up to 11.12.2024 continued to be governed by the liability framework flowing from the Order dated 14.02.2023.

56. A conjoint reading of Articles 6 and 10 of the TSA along with the Order dated 14.02.2023 does not support the claim of NUPPL that the disputed 75% Transmission Charges should be fastened upon UPPCL/UP DISCOMs. It has been contended that while GTL's entitlement to Monthly Transmission Charges is not in dispute, NUPPL has failed to establish that the matter had moved from the exclusive defaulter-liability regime identified by the Commission to the ordinary shared liability framework under the TSA.

C. Mere energization, charging, synchronization or partial Power flow cannot shift liability to the beneficiaries

57. UPPCL has submitted that NUPPL's attempt to shift the disputed liability upon UPPCL/UP DISCOMs from 24.09.2024 proceeds on an incorrect conflation of technical charging, synchronisation and partial power flow with the stage at which the transmission system could be regarded as having been put to use and the defaulter-liability framework ceased to apply. The contemporaneous record, shows that what occurred on 23.09.2024 was charging and synchronisation of the relevant transmission elements and limited power flow

on the subject lines, whereas evacuation and supply of power from Ghatampur TPS to the beneficiaries commenced only upon COD of Unit-1 on 12.12.2024.

58. NUPPL's letter dated 04.10.2024, as reproduced in the Petition, merely records that Element 2 and Element 3 had been "made operational" on 23.09.2024 at 20:52 hrs and that, at the time of charging, a power flow of about 300 MW was established. According to UPPCL, the communication is confined to a technical event involving charging, synchronisation and power flow on the relevant transmission elements. It does not establish that the transmission system had been put to use for evacuation and supply of power from Ghatampur TPS to UPPCL/UP DISCOMs, nor does it indicate that the stage contemplated in the Order dated 14.02.2023 for cessation of the defaulter-liability framework had been reached.

59. The COD intimation itself records successful 72 hours continuous full load trial operation between 30.11.2024 and 03.12.2024, followed by declaration of COD from 00:00 hrs on 12.12.2024.

60. The contemporaneous record reflects that, from 12.12.2024 onwards, Respondent Nos. 1 and 2 started paying Monthly Transmission Charges according to their respective TSA shares. According to UPPCL, the contemporaneous billing treatment reflects 12.12.2024 as the relevant date from which TSA-based sharing commenced.

61. By communication dated 21.12.2024, UPPCL recorded that, even if the lines had been stated to be operationalized, NUPPL's scope could not be treated as completed unless Ghatampur TPS was commissioned and power was evacuated to UP DISCOMs. UPPCL further stated that NUPPL would continue to remain liable for 100% Monthly Transmission Charges in terms of the Order dated 14.02.2023 until that stage was reached.

62. UPPCL, by its letter dated 26.12.2024, GTL recorded that NUPPL had claimed that the Ghatampur–Agra and Ghatampur–Hapur lines had become operational on 23.09.2024. However, GTL required NUPPL to obtain confirmation from SLDC/STU and expressly stated that NUPPL would remain liable to pay 100% transmission charges for Element 2 and Element 3 until such claim of operationalization was upheld by this Commission.

63. According to UPPCL, the aforesaid communication assumes significance inasmuch as, notwithstanding NUPPL's assertion regarding operationalization

of the lines on 23.09.2024, GTL continued to proceed on the basis that NUPPL remained liable for transmission charges in terms of the Order dated 14.02.2023 unless and until the claim of operationalization was upheld.

64. Even after the alleged synchronisation, the correspondence continued to proceed on the basis that the disputed period remained governed by the defaulter-liability regime recognised under the Order dated 14.02.2023 and that liability continued to rest with NUPPL for the period up to 11.12.2024, the transmission system not having yet been put to use for evacuation and supply of power from Ghatampur TPS to the beneficiaries.

65. GTL also recorded that UPPCL had not accepted NUPPL's contention that its obligations stood completed upon operation of the transmission lines and that transmission charges were liable to be adjusted from 24.09.2024. In terms of the Order dated 14.02.2023, NUPPL remained liable to pay transmission charges for Element 2 and Element 3 for the period from 24.09.2024 to 11.12.2024, and that invoices had accordingly been raised under the said Order till 11.12.2024 and under the TSA only from 12.12.2024 onwards.

66. Even after the alleged synchronization, the contemporaneous correspondence continued to proceed on the basis that the disputed period remained governed by the defaulter-liability regime recognized under the Order dated 14.02.2023 and that liability continued to rest with NUPPL for the period up to 11.12.2024.

67. The only external material relied upon by NUPPL in support of its position that the operationalisation/synchronisation of the subject transmission lines on 23.09.2024 resulted in cessation of its liability under the Order dated 14.02.2023 is the UPSLDC communication dated 10.01.2025. The said document merely records that the lines were synced on 23.09.2024 at 20:52 hrs and that power flow on the said lines was successfully achieved on that date. It does not state that evacuation and supply of power from Ghatampur TPS to UPPCL/UP DISCOMs had commenced on 23.09.2024, or that the transmission system had been put to use so as to bring NUPPL's liability under the Order dated 14.02.2023 to an end.

68. NUPPL's obligations could not be treated as completed unless Ghatampur TPS was commissioned and power was evacuated to UP DISCOMs. GTL's communications dated 26.12.2024, 03.01.2025 and 06.01.2025 proceeded on the basis that NUPPL continued to bear liability for the period up to 11.12.2024.

69. The issue is no longer *res integra*. It is settled that mere energization, charging, synchronization, testing or achievement of power flow through a transmission asset does not, by itself, mean that the asset has been "put to use" in the legal sense, thereby placing the burden on the beneficiaries to pay. The relevant threshold is whether the asset has entered regular service for the benefit of the beneficiaries and whether it has become capable of actual operational use for the purpose for which it was established.

70. In this regard, the decision of the Hon'ble Appellate Tribunal for Electricity ("APTEL") in *Nuclear Power Corporation of India Ltd. v. CERC & Ors.*, 2019 SCC OnLine APTEL 83, also merits consideration. Pertinently, the principle of transmission charges liability falling upon the defaulting entity was considered and affirmed by the Hon'ble APTEL in the said decision.

71. The aforesaid judgment squarely supports the case of UPPCL/UP DISCOMs. In the said case, arguments similar to those now advanced by NUPPL were considered by the Hon'ble APTEL. Even completion of the bays and readiness of the transmission asset falling within the scope of the generator, namely the switchyard and bus-bars, were not considered sufficient to avoid liability for payment of transmission charges where the generating station/downstream system had itself not been commissioned and, consequently, the transmission system could not be put to use for its intended purpose.

72. The Hon'ble APTEL applied the principle that liability for transmission charges continues to rest upon the entity due to whose acts, omissions or default the transmission system cannot be put to use for regular operation.

73. On the aforesaid basis, just as completion of the bays and readiness of the transmission asset were not considered sufficient in *NPCIL* to shift liability away from the defaulting entity, the charging/synchronisation of the subject transmission lines and the partial power flow stated to have been achieved thereon on 23.09.2024 could not, by themselves, result in a shift of liability for transmission charges.

74. Further, the Hon'ble Supreme Court in *Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd. & Ors.* (Barh-Balia), (2016) 4 SCC 797, arising out of Civil Appeal Nos. 9193 and 9302 of 2012, dealt with a situation where the transmission licensee had completed and charged the transmission line, but the corresponding facilities at the other end were not ready due to

delay attributable to another entity. The Hon'ble Supreme Court examined the conditions necessary for achievement of COD and the circumstances in which liability for transmission charges could be fastened upon beneficiaries.

75. The principle emerging from the aforesaid judgment is clear that mere charging of a transmission line does not, by itself, establish that the transmission asset has entered regular service. UPPCL has further submitted that beneficiaries cannot be made liable for transmission charges where the transmission system, though technically ready, cannot be put to regular use due to delay attributable to another entity.

76. The said principle applies squarely to the present case. The charging/synchronisation of the subject lines on 23.09.2024 and the power flow stated to have been achieved thereon could not, by themselves, result in a shift of liability from NUPPL to UPPCL/UP DISCOMs. UPPCL has therefore contended that liability for the disputed period continued to rest with NUPPL.

D. The Order dated. 14.02.2023 does not support any premature shifting of liability upon UPPCL/UP DISCOMs

77. UPPCL has submitted that the Order dated 14.02.2023 passed by the Commission in Petition No. 1850 of 2022 is required to be read as a whole and in the context in which it came to be passed. In the said Order, the Commission recognized that the subject transmission assets were ready from GTL's side but could not be put to use due to default attributable to NUPPL. Accordingly, applying the defaulter-liability principle, the Commission identified NUPPL as the entity liable to bear transmission charges during the period in which the transmission system could not be put to use.

78. According to UPPCL, nothing in the Order dated 14.02.2023 indicates that mere operationalisation, charging or synchronisation of the transmission elements would, by itself, result in a shift of liability from NUPPL to the beneficiaries. On the contrary, the Order proceeds on the principle that liability remains with the defaulting entity until the transmission system is capable of being put to use for the purpose for which it was established. UPPCL has submitted that NUPPL's subsequent assertion that liability stood apportioned amongst the LTTCs with effect from 24.09.2024 is therefore required to be examined in light of the findings recorded in the said Order and the factual position prevailing during the disputed period.

79. The expressions "operationalised" and "put to use" cannot be reduced to mere charging, testing or internal synchronisation of the transmission system. According to UPPCL, these expressions must be understood in the context of the purpose for which the transmission system was established, namely, evacuation and supply of power from Ghatampur TPS to the beneficiaries. UPPCL has contended that mere technical readiness of the asset is not sufficient and that unless the transmission system had entered regular service for evacuation and supply of power to the beneficiaries, it could not be said to have been "put to use". According to UPPCL, till such supply commenced, the subject assets were not in regular use qua UPPCL/UP DISCOMs.

E. Payment of transmission charges by UPPCL towards the Agra-Greater Noida part of Element 2 is not determinative of liability for the disputed period.

80. UPPCL/UP DISCOMs have been paying transmission charges in respect of the 765 kV Agra–Greater Noida line forming part of Element 2. However, according to UPPCL, payment in respect of the said transmission element is required to be appreciated in the context of its distinct operational status and the findings recorded in the Order dated 14.02.2023.

81. The said asset stands on an entirely different footing because it was already operationalised/put to use independently and was not blocked due to the non-commissioning of the Ghatampur generating station in the same manner as the 765 kV Ghatampur TPS–Agra S/C line and the 765 kV Ghatampur TPS–Hapur S/C line. The payment in relation to one part of the system, which was actually capable of being used, cannot be converted into an admission of liability for another part of the system which was not put to regular use for supply from Ghatampur TPS.

82. The basis on which UPPCL/UP DISCOMs were paying Monthly Transmission Charges for the Agra–Greater Noida line is also recorded in the Order dated 14.02.2023 itself.

83. Accordingly, UPPCL has contended that payment of transmission charges in respect of the 765 kV Agra–Greater Noida line cannot be equated with, or relied upon in relation to, the 765 kV Ghatampur TPS–Agra S/C line and the 765 kV Ghatampur TPS–Hapur S/C line, which, according to UPPCL, stood on a distinct footing under the Order dated 14.02.2023.

F. LPS cannot be claimed from UPPCL/ UP DISCOMs when the principal amount itself is not payable by them.

84. UPPCL has submitted that Late Payment Surcharge (LPS) under Article 10.8 of the TSA is accessory to a principal payment obligation and accrues only where an "amount due" from one party to another remains unpaid beyond the due date. According to UPPCL, for the disputed period from 24.09.2024 to 11.12.2024, the balance 75% Monthly Transmission Charges were not amounts due from UPPCL/UP DISCOMs and were, if at all, recoverable from NUPPL under the defaulter-liability principle. UPPCL has therefore contended that where the principal amount itself is not payable by UPPCL/UP DISCOMs, the question of levy of LPS does not arise.

85. Article 10.9.8 of the TSA is an interim payment mechanism applicable where an invoice, otherwise raised on the concerned LTTC in accordance with the TSA, is disputed. According to UPPCL, the said provision does not create an independent substantive liability. UPPCL has submitted that Article 10.9.8 is expressly confined to the "concerned Long Term Transmission Customer" and further requires that the invoice be based on the Allocated Project Capacity and raised in accordance with the TSA.

86. The applicability of Article 10.9.8 is necessarily contingent upon identification of the entity liable to bear the disputed transmission charges. According to UPPCL, that issue is required to be determined in light of the Order dated 14.02.2023, the defaulter-liability principle and the contractual framework governing the disputed period. UPPCL has contended that, as discussed hereinabove, liability for the transmission charges for the period from 24.09.2024 to 11.12.2024 continued to rest with NUPPL under the Order dated 14.02.2023. Article 10.9.8, being a procedural mechanism relating to disputed invoices, operates within that framework and does not alter the underlying determination of liability.

G. GTL is not entitled to LPS on Rs. 44.40 Crore withheld towards LD.

87. UPPCL has submitted that the Petitioner's claim for Late Payment Surcharge (LPS) on the sum of Rs. 44,40,35,121.91 is wholly misconceived. According to UPPCL, the said amount did not arise from any delay in payment of an admitted Monthly Transmission Charge Invoice. Rather, it represented UPPCL's 75% share of the Liquidated Damages (LD) asserted on account of the alleged delay

in commissioning Element 2 and Element 3, in the context of GTL's own force majeure/condonation case concerning the very same delay.

88. In Petition No. 1959 of 2023, GTL's own case was that the delay in commissioning Element 2 and Element 3 was attributable to CAB-related disruptions, Covid-19 impacts and, in the case of Element 2, issues relating to working permission from DFO Agra. UPPCL has submitted that GTL specifically claimed that, in respect of Element 2, 24 days were attributable to CAB protests, 150 days to the first wave of Covid-19 and 100 days to the DFO Agra issue, aggregating to 274 days. Similarly, in respect of Element 3, GTL claimed 24 days on account of CAB protests, 150 days on account of the first wave of Covid-19 and 150 days on account of the second wave of Covid-19, aggregating to 324 days.

89. It was in the aforesaid backdrop that UPPCL's LD computation came to be made. According to UPPCL, the computation reflected delay of 58 days for one portion of Element 2, 89 days for another portion of Element 2 and 85 days for Element 3, resulting in total liquidated damages of Rs. 59.20 crore. Out of the said amount, UPPCL's 75% share was computed at Rs. 44.40 crore and NUPPL's 25% share at Rs. 14.80 crore. The amount on which LPS is now claimed represented a quantified LD withholding arising from a live dispute regarding delay and not an independent payment default under the TSA.

90. The Petitioner's own contemporaneous position completely displaces the present claim. According to UPPCL, in its letter dated 25.03.2023 addressed to UPPCL, GTL expressly referred to the condonation proceedings then pending before this Commission, requested that the issue of delay be left to be decided therein, and further proposed that, out of the outstanding transmission charges, a maximum amount of Rs. 44.40 crore may be withheld in the interim while the balance amount be released. UPPCL has submitted that the withholding of Rs. 44.40 crore did not occur in the ordinary course of invoice default but operated during the pendency of a live adjudicatory dispute and on an interim arrangement which GTL itself had invited pending adjudication of whether any LD were at all leviable.

91. UPPCL has submitted that the position in law is equally clear. In *Nabha Power Limited v. Punjab State Power Corporation Limited & Anr.*, Civil Appeal No. 179 of 2017, the Hon'ble Supreme Court recognized that Late Payment Surcharge

(LPS) operates in the context of non-payment of amounts otherwise due and payable and that a withholding arising out of a bona fide dispute as to liability stands on a different footing. According to UPPCL, the principle emerging from the said judgment is that LPS cannot be mechanically imposed in respect of a sum whose very liability was the subject matter of adjudication and whose withholding was directly linked to the outcome of such adjudication. The relevant extracts from the judgment is as below:

> *"71. Last but not the least is the claim for interest.* ***It is undisputed that no such claim has been laid so far, at any stage. The appellant claims to rely upon clause 11.3.4 read with clause 11.6.8. We have extracted the relevant clause aforesaid. No doubt there is a provision for a late payment surcharge in the event of delay in payment of a monthly bill but in the present case it is not as if there are undisputed bills remaining unpaid. There were serious disputes regarding the interpretation of the contractual clauses itself. We do not think that the present one is a fit case where the principle of compensation for deprivation should enure for the benefit of the appellant as a measure of restitution.*** *More so as it has not been claimed by them at any stage. It does appear that this inclusion in the written synopsis does seem to arise as canvassed by the learned Senior Advocate for the first respondent on account of the Tribunal not finding favour with such claim in the remand proceedings by reason of no claim being laid towards the same. We are, thus, not inclined to grant this claim".*
>
> ***(Emphasis Supplied)***

92. The aforesaid principle squarely applies to the present case. According to UPPCL, the sum of Rs. 44.40 crore was not an admitted billing liability left unpaid in the ordinary course. Rather, it represented UPPCL's quantified share of Liquidated Damages arising from the very delay dispute that GTL had itself brought before the Commission. GTL itself requested that the Commission's decision be awaited and further proposed interim withholding up to the said amount pending such decision. A sum withheld in the course of a live adjudicatory dispute, and pursuant to an arrangement suggested by the Petitioner itself, cannot subsequently be treated as an ordinary invoice amount remaining unpaid beyond its due date.

93. The Petitioner's attempt to retrospectively characterize such dispute-linked withholding as a delayed payment attracting LPS is wholly unsustainable. The subsequent finding that Liquidated Damages were not leviable does not alter

the character of the withholding during the relevant period. At all material times, the withholding remained linked to a disputed LD claim and awaited adjudication by this Commission. In these circumstances, UPPCL has prayed that the claim for LPS on the sum of Rs. 44.40 crore be rejected.

94. UPPCL has submitted that the amount was not withheld arbitrarily. According to UPPCL, it was withheld towards the LD claim arising from the alleged delay in commissioning of Element 2 and Element 3, which formed the subject matter of Petition No. 1959 of 2023 before this Commission. By Order dated 24.06.2024, the Commission held that LD could not be imposed and condoned the delay. Thereafter, the withheld amount was released and payment stood completed. According to UPPCL, this sequence clearly demonstrates that the amount remained withheld only pending adjudication of the LD dispute and not on account of any admitted invoice liability remaining unpaid.

95. Having itself sought payment of the balance amount subject to such interim withholding, GTL cannot now retrospectively characterize the same withholding as a payment default attracting LPS under Article 10.8 of the TSA or as a ground to invalidate rebate validly availed on separate invoices under Article 10.7 of the TSA. The consequence of the Order dated 24.06.2024 passed in Petition No. 1959 of 2023 was confined to release of the withheld LD amount and did not convert the earlier bona fide withholding into a delayed payment default, nor did it direct reversal of rebate already availed by UPPCL. The said Order merely held that Liquidated Damages were not leviable and neither awarded LPS nor held UPPCL to be in default of its payment obligations under Article 10.8 of the TSA. Upon adjudication of the dispute, the withheld amount was released by UPPCL and the payment stood completed.

96. On the aforesaid basis, UPPCL has submitted that the claim for LPS on Rs. 44.40 crore is liable to be dismissed.

H. GTL's claim for recovery of rebate allegedly availed by UPPCL is also misconceived.

97. The Petitioner proceeds on the footing that, since an amount of approximately Rs. 44.40 crore remained withheld towards the disputed LD claim, rebate availed on subsequent invoices automatically became unavailable or liable to be reversed. Such a consequence does not follow either from Article 10.7 of the TSA or from the nature of the amount that was withheld.

98. Article 10.7 is invoice-specific in its operation and provides for rebate where a Monthly Transmission Charge Invoice or Supplementary Bill is paid in full within the stipulated timelines. The entitlement to rebate is linked to the payment status of the concerned invoice itself. Nothing in Article 10.7 provides that rebate, once validly availed on an invoice paid within time, can subsequently be reopened merely because a separate amount remained withheld in relation to a pending dispute.

99. The sum of approximately Rs. 44.40 crore did not represent an admitted unpaid Monthly Transmission Charge Invoice but represented UPPCL's quantified share of Liquidated Damages asserted on account of the alleged delay in commissioning Element 2 and Element 3. GTL itself requested that the Commission's decision on the issue be awaited and proposed interim withholding of up to Rs. 44.40 crore pending adjudication. Therefore, the withholding was linked to a separate LD dispute and cannot be equated with non-payment of the subsequent invoices on which rebate was availed.

100. This position is borne out from the scheme of the TSA itself. Article 6.4 treats Liquidated Damages as a separate contractual consequence for delay in achieving COD. UPPCL has further submitted that the reference to Monthly Transmission Charges in that context is only for quantification of Liquidated Damages and does not convert an LD claim into a Monthly Transmission Charge Invoice or bring an LD dispute within the ambit of Article 10.7.

101. The Order 24.06.2024 did not hold that UPPCL had committed any payment default in respect of any invoice, nor did it direct reversal of rebate validly availed under Article 10.7. Accordingly, GTL cannot enlarge the effect of the said Order into a contractual right to recover rebate already availed on invoices paid within time.

102. The Petitioner is, in effect, seeking to read into Article 10.7 a condition which does not exist. Article 10.7 does not provide that rebate shall stand forfeited merely because a separate disputed amount remains outstanding between the parties. Article 10.7 does not contemplate retrospective reversal of rebate validly availed on timely payment of an invoice merely because a distinct LD withholding was subsequently found to be unsustainable. In the absence of any such stipulation, the claim for recovery of rebate is contrary to the plain language and scheme of the TSA.

103. If GTL intended to contend that such withholding disentitled UPPCL from rebate or entitled GTL to seek reversal of rebate, that contention could and ought to have been specifically urged in those proceedings. However, GTL chose not to raise any such claim and confined the proceedings to the legality and monetary consequences of the withholding itself.

104. The present rebate claim is not only untenable on the scheme of Article 10.7 but is also hit by the principles underlying Order II Rule 2 of the Code of Civil Procedure, 1908 and constructive res judicata. UPPCL has contended that GTL cannot be permitted to reserve one part of its alleged claim, litigate the remainder, and thereafter seek to reopen the same factual controversy through a fresh monetary claim which could and ought to have been urged in the earlier proceedings themselves.

105. Accordingly, UPPCL has submitted that the claim seeking recovery of rebate allegedly availed by UPPCL is wholly untenable and liable to be rejected.

NUPPL's Submissions dated. 22.06.2026:

106. In support of its case, NUPPL relied upon the findings recorded in the Order dated 14.02.2023, wherein this Commission held that the entity due to whose default the transmission asset developed through the TBCB route could not be put to use would remain liable to pay transmission charges from the date of Deemed COD till such time the transmission asset/system was made operational or put to use. NUPPL emphasized that, in respect of Element-3, the Commission had specifically observed that NUPPL would remain liable only till the work under the scope of NUPPL was completed. According to NUPPL, the said Order did not envisage any continuing or permanent liability after completion of interconnection facilities and operationalisation of the transmission assets.

107. Pursuant to completion of the works falling within its scope, the 765 kV Ghatampur-Agra and 765 kV Ghatampur-Rampur (PRSTL/Hapur) transmission lines were successfully charged and synchronised on 23.09.2024 and power flow was achieved on the same date, as certified by UPSLDC. Reference was made to NUPPL's letters dated 04.10.2024, 09.10.2024 and 06.11.2024 whereby GTL was informed that Element-2 and Element-3 had become operational with effect from 23.09.2024 and that NUPPL's obligations under the TSA stood fulfilled.

108. Reference was also made to NUPPL's communication dated 04.01.2025 addressed to UPPCL, wherein paragraph 127 of the Order dated 14.02.2023 was specifically referred to and it was asserted that liability was imposed only till completion of the work under the scope of NUPPL. In the said communication, NUPPL maintained that it had discharged its obligations under Clause 4.2.1 of the TSA by arranging and making available the interconnection facilities necessary to enable GTL to connect the Project.

109. NUPPL argued that any temporary defaulter liability recognised by the Commission under the Order dated 14.02.2023 came to an end upon completion of the interconnection facilities and commencement of power flow through Element-2 and Element-3. Thereafter the liability for payment of transmission charges was required to be governed strictly by the TSA and apportioned amongst all Long Term Transmission Customers, including UPPCL and NUPPL, in proportion to their Allocated Project Capacity.

110. NUPPL submitted that Clause 4.2.1 of the TSA expressly defines the obligations of the LTTCs and casts responsibility upon them, inter alia, for arranging and making available the Interconnection Facilities to enable the TSP to connect the Project. According to NUPPL, once such obligation stood discharged, no basis survived for continuation of 100% transmission charge liability. It was contended that the aforesaid obligation had been fully discharged on 23.09.2024 and, consequently, NUPPL's liability for 100% transmission charges ceased from that date.

111. Neither Clause 4.2.1 nor any other provision of the TSA makes completion of NUPPL's obligations dependent upon commissioning of Ghatampur TPS or commencement of evacuation of power to UP DISCOMs. According to NUPPL, the TSA merely requires provision of interconnection facilities and does not subject completion of such obligation to COD of the generating station.

112. The TSA does not stipulate commissioning of Ghatampur TPS as a pre-condition for declaration of COD or Deemed COD of the transmission elements. Reliance was placed upon Articles 6 and 10 of the TSA read with Schedules 3 and 5 thereof. According to NUPPL, the contractual framework makes payment of Monthly Transmission Charges dependent upon achievement of COD/Deemed COD and availability of the transmission elements and not upon COD of the associated generating station.

113. Article 10.1 obliges LTTCs to pay Monthly Transmission Charges from the date on which an element achieves COD, while Schedule 5 provides that transmission charges are payable by each LTTC in proportion to its Allocated Project Capacity. It was therefore contended that the contractual framework supports proportionate allocation amongst LTTCs and does not support continuation of 100% liability upon NUPPL once its default stood cured.

A. GTL's Own Correspondence Post-Operationalisation

114. NUPPL further relied upon GTL's own conduct and correspondence after operationalisation of the lines. Such correspondence acknowledges that, post-operationalisation of the lines, liability for transmission charges lies primarily with UPPCL and other LTTCs and that NUPPL's earlier default-based liability was merely temporary.

115. In this regard, reliance was placed upon GTL's letter dated 26.12.2024 issued in response to NUPPL's assertion that the 765 kV Ghatampur-Agra and Ghatampur-Hapur lines had become operational on 23.09.2024 and that NUPPL would thereafter be liable only for its 25% TSA share. NUPPL pointed out that GTL merely requested confirmation from SLDC/STU regarding operationalisation and clarified that NUPPL would be liable to pay 100% transmission charges till such confirmation was upheld by this Commission. The said communication itself recognised that, upon confirmation, NUPPL's share would stand reduced to its contractual TSA allocation.

116. Reliance was also placed upon GTL's communication dated 06.01.2025, wherein GTL recorded UPPCL's stand that NUPPL's claim regarding completion of obligations and adjustment of transmission charges could not be accepted until commissioning of Ghatampur TPS. The same communication also records NUPPL's position that, in terms of the Order dated 14.02.2023, it was liable to pay 100% transmission charges only till completion of its TSA scope and that such obligations stood completed on 23.09.2024. According to NUPPL, GTL's demand for charges for the period 24.09.2024 to 11.12.2024, subject to adjustment after resolution of the dispute between NUPPL and UPPCL, itself proceeds on the basis that GTL is entitled to recover 100% transmission charges from LTTCs in accordance with the TSA and not from NUPPL alone.

117. GTL itself had proceeded on the basis that, for the period from 24.09.2024 to 11.12.2024, it had already recovered 25% of the transmission charges from

NUPPL and that the balance 75% remained unrecovered from UPPCL. According to NUPPL, GTL's claim is therefore substantially directed against UPPCL and any attempt to revive or extend NUPPL's earlier limited liability beyond the conditions fixed by the Commission and the TSA is untenable.

B. Response to UPPCL's Interpretation Linking Transmission COD to Ghatampur TPS COD

118. NUPPL submitted that the primary contention advanced by UPPCL, namely that COD of the transmission system is dependent upon COD of Ghatampur TPS, is contrary to the TSA and the factual record.

119. The Scheduled Commercial Operation Dates of the transmission system were never aligned with the Scheduled Commercial Operation Dates of Ghatampur TPS and that the contractual framework itself envisaged independent timelines for the transmission assets and the generating station. Element-I was planned for evacuation of power from Unit-I, Element-II for Unit-II and Element-III for Unit-III. However, the Scheduled COD of Element-I was February, 2020 whereas the Scheduled COD of Unit-I was November, 2020. Similarly, there was a gap of approximately seven months between the Scheduled CODs of Element-II and Unit-II and also between Element-III and Unit-III. NUPPL submitted that such timelines were consciously designed to establish the transmission network prior to commissioning of the generating units and, therefore, payment of transmission charges was never intended to be linked to COD of the generating station.

120. Had the parties intended that COD of the transmission system would occur only upon commissioning of the generating station, an express stipulation to that effect would have been incorporated in the TSA. No such provision exists. The interpretation advanced by UPPCL would render the TSA provisions relating to commissioning, availability and commercial operation of the transmission assets otiose and is liable to be rejected.

121. NUPPL referred to UPPCL's letter dated 21.12.2024, wherein UPPCL had alleged that Element-2 and Element-3 were constructed for evacuation of power from Ghatampur TPS and that, unless Ghatampur TPS itself was commissioned and power was evacuated to UP DISCOMs through the said lines, NUPPL's scope of work could not be considered complete. UPPCL had declined NUPPL's request for adjustment of transmission charges from 24.09.2024 onwards.

122. The aforesaid interpretation was specifically refuted by it through its letter dated 04.01.2025. In the said communication, NUPPL pointed out that the Order dated 14.02.2023 fastened liability upon the entity due to whose default the transmission system could not be put to use and that, in respect of Element-3, the Commission had specifically recorded that liability of NUPPL would continue only till completion of the work falling within its scope.

123. Clause 4.2.1 of the TSA merely requires the LTTCs to arrange and make available the interconnection facilities to enable the TSP to connect the Project. According to NUPPL, neither Clause 4.2.1 nor any other provision of the TSA makes completion of such obligation contingent upon commissioning of Ghatampur TPS or commencement of evacuation of power to the UP DISCOMs.

124. NUPPL also emphasized that the TSA does not stipulate commissioning of Ghatampur TPS as a pre-condition either for declaration of COD or Deemed COD of the transmission elements. Articles 6 and 10 of the TSA, read with Schedules 3 and 5, make payment of Monthly Transmission Charges dependent upon achievement of COD/Deemed COD and availability of the transmission assets and not upon COD of the associated generating station.

125. It was further submitted that both the transmission lines associated with Element-2 and Element-3 stood fully operational on 23.09.2024 and, therefore, the interconnection facilities were ready and NUPPL had fully discharged its obligations under Clause 4.2.1 of the TSA as well as the directions contained in the Order dated 14.02.2023.

126. NUPPL also relied upon its subsequent communication dated 18.01.2025 addressed to GTL, wherein it reiterated that the UPSLDC certificate clearly confirmed successful synchronisation of both the 765 kV Ghatampur-Agra and 765 kV Ghatampur-Rampur (PRSTL) lines and successful power flow through the said lines on 23.09.2024., once operationalisation had taken place and power flow had been established, its obligations stood fulfilled and any demand requiring payment of the entire transmission charges was unjustified.

127. NUPPL further submitted that it had consistently maintained the same position even subsequently, including in its letter dated 10.06.2025 addressed to GTL, wherein it was recorded that both the lines had been fully operational since 23.09.2024. Reference was also made to the fact that NUPPL had raised concerns regarding UPSLDC continuing to treat the lines as deemed available

instead of actually available despite the lines being charged and operational. According to NUPPL, this itself demonstrates that both factually and contractually its obligation was limited to provision of interconnection facilities and that, once power flow was established, the assets stood "put to use".

C. Conduct of UPPCL Establishes Its Present Stand to be Untenable

128. NUPPL submitted that the conduct of UPPCL itself demonstrates that the stand presently advanced by it is untenable. In this regard, NUPPL pointed out that UPPCL had agreed to draw infirm power from Unit-I of Ghatampur TPS even prior to declaration of COD of the generating unit.

129. UPPCL subsequently executed a Supplementary PPA for procurement of infirm power and accepted scheduling of such power before COD of Unit-I. NUPPL also pointed out that 143.78 MUs of infirm power were scheduled and supplied before declaration of COD of Unit-I. According to NUPPL, having accepted evacuation and scheduling of infirm power prior to COD of Unit-I, UPPCL cannot now contend that the transmission system could not be regarded as commissioned or operational before COD of the generating station.

130. NUPPL argued that the aforesaid conduct clearly demonstrates that the transmission system was capable of operation independent of declaration of COD of Unit-I and that UPPCL's present stand is merely an afterthought adopted to avoid its contractual payment obligations.

131. NUPPL further submitted that, since 26.03.2021, UPPCL has been paying 75% of the transmission charges attributable to Section-II of Element-II, namely the 765 kV Agra-Greater Noida transmission line, in accordance with the TSA. According to NUPPL, such payments were made on the basis of independent commissioning and operationalisation of the concerned transmission element.

132. Once power flow had been established and Element-2 and Element-3 had been commissioned on 23.09.2024, the basis on which the defaulter liability principle had earlier been applied ceased to exist. According to NUPPL, upon completion of its contractual obligations, transmission charges became payable by the LTTCs strictly in accordance with the TSA.

133. NUPPL therefore contended that any non-payment by UPPCL or the other beneficiaries after commissioning of the transmission assets cannot be attributed to NUPPL and that such liability cannot be shifted upon NUPPL.

Consequently, according to NUPPL, the Petitioner's claim seeking recovery of transmission charges and/or Late Payment Surcharge from NUPPL for the period after commissioning of Element-2 and Element-3 is liable to be rejected.

D. Specific Submissions in the Present Petition on Factors Indicated by NUPPL

134. GTL cannot now contend that NUPPL continues to be liable as the defaulting entity for any period after 23.09.2024 when, the alleged default had already been cured and the transmission assets had been put to use. According to NUPPL, once the interconnection facilities were made available, the lines were synchronised and power flow was established, the basis upon which the Commission had earlier applied the defaulter-liability principle ceased to exist.

135. NUPPL therefore submitted that, from 23.09.2024 onwards, transmission charges were liable to be recovered strictly in accordance with the TSA framework and shared amongst all LTTCs in accordance with their Allocated Project Capacity and contractual obligations. Accordingly, NUPPL disputed any continued liability for 100% transmission charges beyond 23.09.2024.

136. NUPPL further submitted that the claims raised in the Petition for recovery of transmission charges and LPS for the period from 24.09.2024 to 11.12.2024 proceed on the erroneous assumption that NUPPL continued to remain the defaulting entity during the said period. According to NUPPL, such assumption is contrary to the factual position emerging from the UPSLDC certificate, the TSA and the Commission's Order dated 14.02.2023.

137. NUPPL accordingly submitted that the Petition, to the extent it seeks to recover 100% transmission charges and consequential LPS from NUPPL for the period after 23.09.2024, deserves to be rejected. According to NUPPL, liability for transmission charges after operationalisation of the assets stood governed by the ordinary cost-sharing mechanism under the TSA.

138. In conclusion, NUPPL reiterated that it had completed its obligations under Clause 4.2.1 of the TSA and the scope of work attributable to it on 23.09.2024. It was further submitted that neither the TSA nor the Order dated 14.02.2023 passed by this Commission makes COD of Ghatampur TPS a condition precedent either for operationalisation of the transmission system or for determining cessation of NUPPL's enhanced payment liability.

139. On the aforesaid basis, NUPPL prayed that the present Petition be dismissed insofar as it seeks recovery from NUPPL of 100% transmission charges and consequential Late Payment Surcharge for the period from 24.09.2024 to 11.12.2024. According to NUPPL, its liability after 23.09.2024 was confined to its TSA-allocated share and no further liability could be fastened upon it under the guise of the defaulter-liability principle.

Rejoinder on reply filed by UPPCL dated. 08.07.2026:

140. Notwithstanding the Order dated 14.02.2023, it has not received full transmission charges for the period from 24.09.2024 to 11.12.2024. Although neither of the Respondents disputes its entitlement to full transmission charges, a dispute has arisen between UPPCL and NUPPL regarding which of them is liable to bear the said charges during the disputed period.

141. Although the principal amount of approximately Rs. 44.40 crore was subsequently released on 05.11.2024, UPPCL remains liable to pay transmission charges equivalent to the Late Payment Surcharge on the said amount since the sums represented unpaid dues under the TSA. The Petitioner has also submitted that the alleged unpaid dues on account of Late Payment Surcharge were adjusted in terms of Article 10.6.4 of the TSA against subsequent payments made by UPPCL.

142. UPPCL was not entitled to avail rebate under Article 10.7 of the TSA so long as unpaid dues remained outstanding on the date of payment. Rebate is unavailable where amounts due and payable remain unpaid and invoices are not paid in full. In respect of the aforesaid issues, its submissions are set out in the succeeding paragraphs.

A. Re. Payment of Transmission Charges for the period of 24.09.2024 to 11.12.2024 along with LPS

143. The present Petition has been filed seeking payment of transmission charges for the period from 24.09.2024 to 11.12.2024 together with applicable LPS in terms of the Order dated 14.02.2023 and the TSA. The Order dated 14.02.2023 directed NUPPL to pay transmission charges in respect of part of Element-2 and Element-3 in accordance with the defaulter-liability principle until NUPPL completed its scope of work under the TSA.

144. From a perusal of the aforesaid excerpt of the Commission's Order dated 14.02.2023 it is abundantly clear that:

a) This Commission has held that Element Nos. 2 and 3 of the Project have achieved Deemed COD on 26.03.2021 and 28.01.2022 respectively.

b) Though the Petitioner had achieved the deemed COD, the said Elements could not be operationalized/put to use for reasons attributable to the defaulting entity, i.e., NUPPL.

c) The Petitioner is accordingly entitled to receive payment of Transmission charges as per the terms of the TSA from the date of the Deemed COD.

d) The liability for payment of the entire Transmission charges corresponding to the asset which could not be operationalized was fixed on NUPPL by the application of defaulter liability principle as NUPPL had failed to discharge its obligation under the TSA.

145. Article 10.8 of the TSA provides that where any amount due from one party to another remains unpaid for more than thirty days after the due date, the defaulting party becomes liable to pay LPS at the rate prescribed therein.

146. The Petitioner further submitted that the incorporation of Article 10.8 in the TSA reflects the contractual intent of the parties to discourage delayed payment of transmission charges and, therefore, the said provision must be given full effect in accordance with its terms.

147. On this basis, the Petitioner contended that it is entitled not only to the balance transmission charges for the period from 24.09.2024 to 11.12.2024 but also to the LPS accrued on account of delay in payment of such charges, along with the corresponding rebate allegedly availed by the Respondents.

148. Invoices were continuously raised in terms of the directions contained in the Order dated 14.02.2023 and NUPPL initially discharged the liability cast upon it. However, following synchronisation of the transmission lines, NUPPL unilaterally reduced its payment to 25% while asserting that the balance liability had shifted to UPPCL. UPPCL, on the other hand, maintained that NUPPL continued to remain liable for the entire transmission charges until commercial operation of Ghatampur TPS. Consequently, the Petitioner received only 25% of the transmission charges for the disputed period.

149. TSA does not contemplate suspension of payment obligations merely because LTTCs dispute amongst themselves the entity that ought ultimately to bear liability. According to the Petitioner, Article 10 of the TSA proceeds on the basis that invoices are to be honoured within the stipulated timelines and any delay attracts the agreed contractual consequences.

150. The Petitioner further submitted that the Order dated 14.02.2023 must be read as a whole and in the context of the TSA. According to the Petitioner, the Commission first determined the Petitioner's independent contractual entitlement to transmission charges and thereafter determined which of the LTTCs would bear the burden of satisfying that entitlement during the period when the transmission assets could not be commercially utilised due to NUPPL's default. The Petitioner contended that its entitlement to transmission charges arises under the TSA itself and that the Order dated 14.02.2023 merely recognised and enforced such entitlement.

151. The Petitioner also relied upon paragraph 125 of the Order dated 14.02.2023 and submitted that this Commission had categorically held that the Petitioner achieved Deemed COD of Element-2 on 26.03.2021 and Element-3 on 28.01.2022. Having recorded that the Petitioner had completed all works falling within its contractual scope and that the inability to operationalise the transmission system was attributable to NUPPL, the Commission expressly held that the Petitioner was entitled to transmission charges from the respective dates of Deemed COD.

152. According to the Petitioner, the significance of the finding recorded in paragraph 125 is not confined merely to the finding that NUPPL was in default. Rather, the material finding is that the Petitioner's right to receive transmission charges had crystallised notwithstanding the fact that Ghatampur TPS had not yet been commissioned. Once the Transmission Service Provider has fulfilled its obligations and achieved Deemed COD, it becomes entitled to transmission charges together with applicable LPS in accordance with the TSA.

B. Re. LPS on the withheld amount of Rs. 44.40 Crore refunded belatedly

153. The Petitioner submitted that its claim for LPS arises directly from Article 10.8 of the TSA, which provides that any amount due under the TSA remaining unpaid beyond thirty days from the due date shall attract LPS at the prescribed

rate until actual payment. The operative triggers under Article 10.8 are whether an amount is due under the TSA and whether such amount remained unpaid beyond the stipulated due date. Once these conditions are satisfied, LPS automatically accrues from the due date till actual payment.

154. The only basis on which UPPCL withheld the sum of Rs. 44.40 Crore was its unilateral assertion that it was entitled to levy Liquidated Damages for the alleged delay in commissioning of the Project. The Petitioner contended that the amount retained its character as unpaid transmission charges throughout the relevant period and that the mere description of such retention as "security" or "withholding" could not alter the legal nature of the amount.

155. Article 10 of the TSA comprehensively governs billing, payment, delayed payment and invoice disputes and that Article 10.8 does not distinguish between amounts withheld due to disputes, amounts retained on account of alleged set-off claims or amounts withheld on the basis of unilateral assertions. According to the Petitioner, the only relevant consideration under Article 10.8 is whether an amount due has remained unpaid beyond the due date.

156. The interpretation advanced by UPPCL would effectively permit a party to withhold admitted contractual dues on the basis of an alleged claim for damages and, if such claim ultimately fails, merely refund the principal amount without suffering any contractual consequence. According to the Petitioner, such an interpretation defeats the very purpose of the LPS provision, which is intended to compensate the receiving party for deprivation of the use of money and discourage unilateral withholding of payments.

157. The Petitioner contended that the aforesaid arrangement represented only a commercial accommodation intended to secure release of a substantial portion of the outstanding transmission charges and did not constitute a waiver of its contractual entitlement to claim LPS under Article 10.8 of the TSA.

158. Waiver requires an intentional and unequivocal relinquishment of a known legal right and that nothing contained in the letter dated 25.03.2023 evidences any intention on the part of the Petitioner to waive its rights under Article 10.8. On the contrary, the Petitioner expressly reserved all rights and remedies available under the TSA and law.

159. The issue now stands concluded by the Order dated 24.06.2024 passed by the Commission in Petition No. 1959 of 2023, whereby the Commission held that

Liquidated Damages were not leviable upon the Petitioner. The very basis on which UPPCL had retained the amount of Rs. 44.40 Crore ceased to exist upon passing of the said Order.

160. The amount retained by UPPCL always represented transmission charges payable under the TSA and remained unpaid solely because UPPCL had chosen to assert a claim which was subsequently held to be unsustainable. Since the principal amount was released only on 05.11.2024, the Petitioner submitted that the amount squarely falls within the expression "any amount due remaining unpaid" under Article 10.8 of the TSA and consequently attracts LPS till the date of actual payment.

161. The legal position stands settled by the judgment of the Hon'ble Supreme Court in *Union of India v. Raman Iron Foundry*, (1974) 2 SCC 231, wherein it was held that a mere claim for damages does not constitute a debt and does not entitle one contracting party to appropriate or retain monies otherwise payable under the contract. According to the Petitioner, until liability towards damages is adjudicated or admitted, such claim remains merely a claim in damages. On this basis, UPPCL's alleged entitlement to Liquidated Damages never conferred any right to withhold transmission charges admittedly payable to the Petitioner. The initial withholding itself was wrongful, since there was no adjudication by this Commission sustaining the levy of Liquidated Damages at the time the amount was retained and, when the issue was subsequently adjudicated, the same was decided in favour of the Petitioner.

162. Once this Commission has held that no Liquidated Damages were leviable, the withholding loses its legal foundation retrospectively. The Petitioner contended that UPPCL cannot now argue that although its claim was ultimately found to be unsustainable, it should nevertheless be permitted to enjoy the commercial benefit of retaining the Petitioner's money for over one and a half years without compensating the Petitioner for such deprivation.

163. In support of the aforesaid submission, reliance was placed upon the judgment of the Hon'ble Supreme Court in *South Eastern Coalfields Ltd. v. State of Madhya Pradesh*, (2003) 8 SCC 648. According to the Petitioner, the Hon'ble Supreme Court explained that restitution does not merely require restoration of the principal amount but restoration of the successful party to the same economic position in which it would have stood had the wrongful retention

never occurred. The Petitioner accordingly submitted that a party which has enjoyed the use of another's money cannot satisfy the principle of restitution merely by refunding the principal amount and must also account for the time value of the money wrongfully retained.

164. The same principle underlies the Constitution Bench judgment *in* ***Secretary, Irrigation Department, Government of Orissa v. G.C. Roy, (1992) 1 SCC 508*** wherein the Hon'ble Supreme Court held that interest represents compensation for being kept out of monies lawfully due. The contractual stipulation contained in Article 10.8 of the TSA reflects this very principle. Instead of leaving the question of compensation to general law, the parties themselves agreed that delayed payment would carry LPS at the specified contractual rate. The Petitioner's present claim merely seeks enforcement of that agreed contractual consequence.

165. UPPCL has failed to identify any provision in the TSA excluding the applicability of Article 10.8 in cases where payments are withheld on account of an alleged claim for Liquidated Damages. According to the Petitioner, the TSA does not provide that, if such a claim ultimately fails, the payer would be liable only to refund the principal amount. Had the parties intended such a consequence, an express contractual exception would have been incorporated in the TSA and the absence of any such provision operates in favour of the Petitioner.

166. On the aforesaid basis, the Petitioner contended that UPPCL's Reply discloses no legal or contractual defence to the claim for LPS. The Petitioner accordingly submitted that UPPCL is liable to pay contractual LPS on the amount of Rs. 44.40 Crore from the respective due dates till the date of actual payment together with consequential reliefs.

C. Re. Refund of Rebate claimed by UPPCL:

167. In support of its claim, the Petitioner relied upon Article 10.7 of the TSA and submitted that rebate is available only where Monthly Transmission Charge Invoices or Supplementary Bills are paid in full within the timelines stipulated therein.

168. Despite retaining Rs. 44.40 Crore towards the alleged Liquidated Damages, UPPCL continued to avail contractual rebate under Article 10.7 of the TSA on subsequent Monthly Transmission Charge invoices. Such conduct is contrary to the letter and spirit of the TSA and resulted in UPPCL obtaining an

unintended contractual advantage while simultaneously withholding a substantial portion of the Petitioner's dues.

169. The expression "payment in full" occurring in Article 10.7 cannot be interpreted in a fragmented manner. A contracting party cannot withhold a substantial amount payable under the TSA and, at the same time, claim that it has satisfied the requirement of having made payment "in full" so as to become entitled to rebate on subsequent invoices.

170. UPPCL retained transmission charges aggregating to Rs. 44.40 Crore on the basis of its alleged claim towards Liquidated Damages. The said amount always represented transmission charges payable under the TSA and remained unpaid until its release pursuant to the Order dated 24.06.2024. Consequently, outstanding contractual dues remained payable by UPPCL throughout the period of such withholding.

171. UPPCL could not simultaneously claim that it had made payment of invoices "in full" so as to avail rebate under Article 10.7. According to the Petitioner, the contractual incentive embodied in Article 10.7 is intended to reward timely compliance with payment obligations and not to confer a financial benefit upon a party that has consciously retained amounts otherwise payable under the contract.

172. The conduct of UPPCL becomes wholly untenable once the Order dated 24.06.2024 is taken into account. According to the Petitioner, as this Commission has held that no Liquidated Damages were leviable, the very basis for withholding the amount of Rs. 44.40 Crore ceased to exist. The Petitioner therefore contended that the retained amount always constituted unpaid transmission charges and, consequently, UPPCL never fulfilled the contractual condition precedent for availing rebate, namely payment in full of dues payable under the TSA.

173. It was also submitted that Articles 10.7 and 10.8 of the TSA operate harmoniously, with Article 10.7 incentivising prompt payment through rebate and Article 10.8 discouraging delayed payment by imposing LPS. According to the Petitioner, a party that fails to satisfy the conditions for timely payment cannot simultaneously claim the contractual incentive intended exclusively for parties that have complied with their payment obligations.

174. The Petitioner further contended that permitting UPPCL to retain the benefit of rebate despite continuing default would amount to conferring an unwarranted windfall upon UPPCL at the Petitioner's expense. According to the Petitioner, the interpretation advanced by UPPCL renders the requirement of "payment in full" under Article 10.7 redundant and defeats the commercial purpose underlying the rebate mechanism.

175. On the aforesaid basis, the Petitioner submitted that UPPCL is liable not only to pay LPS on the amount wrongfully withheld but is also required to restore the rebate availed during the period when the transmission charges remained outstanding. According to the Petitioner, any contrary interpretation would permit UPPCL to enjoy both the benefit of retaining the Petitioner's money and the contractual incentive intended only for prompt and complete payment.

Rejoinder on reply filed by NUPPL dated. 08.07.2026:

176. The reply filed by NUPPL proceeds on the erroneous premise that NUPPL's enhanced liability under the defaulter-liability principle stood extinguished on 23.09.2024. According to the Petitioner, such contention finds no support either in the Order dated 14.02.2023 or in the provisions of the TSA. On the issues, reply of the Petitioner is as follows:

A. The Order dated. 14.02.2023 fastens liability on NUPPL until the transmission charges are actually and fully received by the Petitioner, not merely until charging/synchronisation:

177. The Petitioner submitted that mere charging and synchronisation of a transmission line, without actual and continuous evacuation of power for the benefit of the LTTCs, does not amount to the transmission system being made operational or put to use within the meaning of the Order dated 14.02.2023. According to the Petitioner, its consistent position, as reflected in the communications dated 03.01.2025 and 06.01.2025, has been that NUPPL remained liable for 100% of the transmission charges till declaration of COD of Unit-1 of Ghatampur TPS on 12.12.2024, as it was only from that date that actual power flow commenced for the benefit of the DISCOMs and Monthly Transmission Charges began to be paid in accordance with the TSA shares. The Petitioner contended that test or trial power flow established for synchronisation purposes cannot be equated with the transmission system

being put to use for the purpose for which it was constructed, namely evacuation of commercial power to the LTTCs.

178. Clause 4.2.1 merely sets out the obligations of LTTCs in implementation of the Project and is not, by itself, the source or measure of the defaulter liability fastened upon NUPPL under the Order dated 14.02.2023. The Petitioner contended that the Order dated 14.02.2023 fastened liability upon NUPPL on the basis that it was restraining a completely ready transmission element from being put to use and that such restraint continued so long as Ghatampur TPS remained uncommissioned.

B. The TSA does not support NUPPL's contention that its liability is divorced from commissioning of Ghatampur TPS:

179. The TSA nowhere conditions completion of NUPPL's obligations or cessation of its enhanced liability upon commissioning of Ghatampur TPS. According to the Petitioner, while Articles 6 and 10 of the TSA read with Schedules 3 and 5 govern COD/Deemed COD and the ordinary computation of MTC payable by LTTCs in proportion to their Allocated Project Capacity, the Order dated 14.02.2023 represents a special adjudicated departure from the ordinary TSA mechanism because the transmission system, though ready, could not be put to commercial use for reasons attributable to NUPPL.

180. The defaulter-liability principle is not a TSA provision simpliciter, but a regulatory remedy fashioned by this Commission to ensure that the Petitioner does not suffer on account of NUPPL's default in commissioning Ghatampur TPS. According to the Petitioner, the duration of such remedy must necessarily be co-extensive with the duration of the default that gave rise to it.

181. The Petitioner further submitted that, even on NUPPL's own showing, NUPPL paid 100% of the transmission charges for Element-3 and the relevant part of Element-2 from the respective dates of Deemed COD till 23.09.2024 because, although the transmission lines had been constructed, they were not actually put to use for the benefit of the LTTCs/DISCOMs. According to the Petitioner, the said default was attributable to delay in commissioning of Ghatampur TPS.

182. The Petitioner therefore contended that it is wholly inconsistent for NUPPL to now argue that commissioning of the generating station bears no relationship to the defaulter-liability fastened upon it when, according to NUPPL's own case,

the entire preceding period during which it bore 100% transmission charges arose on account of delay in commissioning of that very generating station.

C. Charging and Synchronisation on 23.09.2024 was for testing purposes, Actual COD of the project and commencement of commercial power flow occurred only on 12.12.2024:

183. The Petitioner further denied NUPPL's contention that the UPSLDC charging certificate dated 10.01.2025 and the SCADA data establish that the transmission elements were "put to use" within the meaning of the Order dated 14.02.2023 with effect from 23.09.2024. The UPSLDC certificate merely records that the lines were "synced" on 23.09.2024 for charging purposes and does not certify that the elements had achieved commercial operation for the purpose for which they were constructed, namely evacuation of power from Ghatampur TPS to the beneficiary DISCOMs.

184. The Petitioner also relied upon NUPPL's own letter dated 10.06.2025 addressed to GTL, which has been relied upon by NUPPL in its Reply. According to the Petitioner, the said communication records that UPSLDC continued to treat line availability as "deemed availability" rather than "actual availability", notwithstanding that the lines had been charged from 23.09.2024.

185. According to the Petitioner, the aforesaid communication constitutes a contemporaneous admission by NUPPL itself that mere charging and synchronisation, without actual commercial evacuation of power, does not establish that the transmission assets had been "put to use" in the commercial sense. The Petitioner contended that deemed availability, by its very nature, is a concept applied where actual operation has not been established.

186. NUPPL cannot be permitted to rely upon the said communication for the purpose of contending that it suffered an accounting inconvenience on account of UPSLDC treating the assets as deemed available, while simultaneously asserting elsewhere in the Reply that the very same assets stood fully "put to use" from 23.09.2024 for the purpose of extinguishing its liability under the defaulter-liability principle.

187. UPSLDC, vide its letter dated 25.05.2026, certified the trial operation of Element-2 of the Project. It was submitted that, pursuant thereto, the Petitioner addressed a communication dated 17.06.2026 to UPPCL seeking confirmation regarding declaration of COD of Element-2. According to the

Petitioner, through the said communication, UPPCL was requested to confirm the actual COD of Element-2 for the purpose of obtaining actual availability from UPSLDC and raising invoices for incentive based on actual availability with effect from 00:00 hours on 27.09.2024.

D. The Petitioner's correspondence does not support NUPPL's case; On the Contrary, it reinforces the Petitioner's consistent position:

188. The Petitioner submitted that it never acquiesced in NUPPL's unilateral contention that the transmission lines stood "put to use" from 23.09.2024. According to the Petitioner, its consistent position, as reflected in its letter dated 03.01.2025, was that NUPPL remained liable for 100% of the transmission charges till 12.12.2024, being the date on which COD of Unit-1 of Ghatampur TPS was declared.

189. The letter dated 06.01.2025 relied upon by NUPPL likewise does not support its case. According to the Petitioner, the said communication merely records that, pending final resolution of the dispute between UPPCL and NUPPL regarding the correct interpretation of the Order dated 14.02.2023, the Petitioner requested NUPPL to pay the balance amount for the disputed period in light of the Order dated 14.02.2023 while expressly recording that adjustments, if any, would be carried out after resolution of the dispute between the Respondents.

190. The Petitioner contended that the said communication cannot be construed as an admission that NUPPL's liability stood restricted to 25% of the transmission charges. The communication represents a without prejudice administrative arrangement adopted pending resolution of the dispute between UPPCL and NUPPL regarding apportionment of liability for the disputed period.

191. The dispute regarding allocation of liability between UPPCL and NUPPL has remained unresolved and has compelled the Petitioner to approach this Commission despite its entitlement to transmission charges being undisputed.

192. It was further denied that the Petitioner's claim is directed substantially against UPPCL, as alleged by NUPPL. The Petitioner submitted that both UPPCL and NUPPL have been impleaded as Respondents and that, through the prayers contained in the Petition, directions have been sought against the Respondents individually, jointly and severally for payment of the outstanding Monthly Transmission Charges.

193. According to the Petitioner, the question whether liability for the period from 24.09.2024 to 11.12.2024 rests upon UPPCL, NUPPL or both is a dispute inter se between the Respondents. The Petitioner contended that such dispute cannot be permitted to deprive it of transmission charges which, according to the Petitioner, are indisputably payable under the Order dated 14.02.2023 in respect of transmission services already rendered.

E. The Late Payment Surcharge provisions of the TSA apply equally to NUPPL for the disputed period:

194. Article 10.8.1 of the TSA provides that any amount due from one party to the other and remaining unpaid for thirty days after the Due Date shall bear LPS at the rate of 1.25% per month, accruing from the Due Date until actual receipt of the amount by the payee.

195. The aforesaid provision does not contain any exception in favour of a party disputing its liability. The Petitioner further relied upon the judgment of the Hon'ble APTEL in Maharashtra *State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors.,* Appeal No. 77 of 2018, wherein LPS was held to be "in the nature of interest or disincentive imposed to ensure that there is no default or delay in payment".

196. NUPPL has admittedly not paid 75% of the transmission charges for the disputed period and, therefore, LPS necessarily accrues on such unpaid amount. This position is without prejudice to NUPPL's right to recover any amount that may ultimately be apportioned to UPPCL through inter se adjustment between the Respondents.

197. NUPPL's reliance on the aforesaid judgment of the Hon'ble APTEL to contend that the Petitioner's reliance thereon is misplaced is itself misconceived. The judgment was relied upon only for the limited proposition that LPS is compensatory in nature and is intended to address the time value of money lost on account of delayed payment.

198. The Petitioner contended that the aforesaid principle applies with equal force to delayed payment by NUPPL irrespective of the precise contractual basis on which NUPPL seeks to dispute its underlying liability towards transmission charges for the disputed period.

E. The Inter Se dispute between UPPCL and NUPPL cannot be a ground to deny the Petitioner its dues:

199. The Petitioner further denied NUPPL's contention that the Petitioner ought to have pursued its remedies exclusively against UPPCL and that the Petition, insofar as it proceeds against NUPPL, is liable to be dismissed. According to the Petitioner, the very purpose of the present Petition is to obtain an authoritative determination from this Commission, in light of the dispute between the Respondents inter se, regarding the correct interpretation and application of the Order dated 14.02.2023 and the entity liable to bear the balance transmission charges for the period from 24.09.2024 to 12.12.2024 together with applicable LPS.

200. Despite addressing multiple communications to both UPPCL and NUPPL, including letters dated 11.03.2025 and 27.05.2025, the balance transmission charges have not been paid by either Respondent, each seeking to place the liability upon the other. It is precisely such a situation, where parties to a common contractual arrangement dispute inter se the apportionment of an undisputed overall liability, that necessitates adjudication by this Commission in exercise of its jurisdiction under Article 16.3 of the TSA.

201. The Petitioner therefore contended that, even on NUPPL's own case, there exists a genuine and unresolved dispute regarding allocation of the balance 75% transmission charges and that resolution of such dispute lies squarely within the adjudicatory jurisdiction of this Commission. According to the Petitioner, the existence of such dispute cannot constitute a basis for NUPPL to claim complete immunity from liability in the present proceedings.

202. The Petitioner accordingly submitted that the contentions raised by NUPPL in its Reply are devoid of merit and liable to be rejected. The Petitioner further submitted that it is entitled to the reliefs sought in the Petition, including the reliefs claimed against NUPPL for the period from 24.09.2024 to 12.12.2024.

Hearing Dated. 14.07.2026, 30.07.2026 and GTL Written Submission 20.08.2026

203. Subsequent to the various submissions filed by the Petitioner, the matter was argued on its behalf at the hearing, and written submissions were also filed. As these submissions largely reiterate the information already on record and

captured hereinabove, they are not reproduced for the sake of brevity, and only the salient points are summarized in the subsequent paragraphs.

204. Sh. Sourav Roy, Counsel appearing on behalf of the Petitioner, submitted that the present Petition involves the following two issues:

a. Determination of liability for payment of transmission charges for the period from 24.09.2024 to 11.12.2024, and whether such liability is to be borne by NUPPL or UPPCL; and

b. The claim relating to Late Payment Surcharge (LPS) and connected issues.

205. Learned Counsel further submitted that UPPCL had withheld Rs.44.40 crore towards alleged LD. Subsequently, vide Order dated 24.06.2024 in Petition No.1959 of 2023, the Commission held that no LD was leviable and the amount was released on 05.11.2024. It was therefore contended that the Petitioner is entitled to LPS on the withheld amount as well as refund of rebate allegedly availed during the period of such withholding.

206. It has been submitted that the Petitioner's entitlement to receive MTC in respect of the subject transmission elements is no longer *res integra* between the parties. Referring to the Order dated 14.02.2023 passed in Petition No. 1850 of 2022, the Petitioner has submitted that this Commission held that Element-2 and Element-3 achieved Deemed COD on 26.03.2021 and 28.01.2022 respectively and that the Petitioner became entitled to payment of MTC under Article 6.2.2 of the TSA from those dates. By applying the defaulter liability principle, this Commission fastened liability in respect of the 765 kV Ghatampur TPS-Agra S/C Line and the 765 kV Ghatampur TPS-Hapur S/C Line exclusively upon Respondent No.2.

207. The Petitioner has been denied an amount of approximately Rs.31.23 crore, as quantified in its communications dated 11.03.2025 and 27.05.2025, for transmission service rendered on assets which this Commission itself declared to have achieved Deemed COD.

"The contractual framework: the obligation to pay is that of the LTTCs and is unqualified"

208. The Petitioner has relied upon Article 10.1 of the TSA and submitted that the obligation to pay MTC is placed squarely upon the LTTCs. The relevant provision is reproduced below:

"10.1 Subject to provisions of this Article 10, the Long Term Transmission Customers shall pay to the TSP, in Indian Rupees on monthly basis, the Monthly Transmission Charges from the date on which an Element(s) has achieved COD until the Expiry Date of this Agreement, unless terminated earlier, in line with the provisions of Schedule 5 of this Agreement."

209. The Petitioner has further referred to Article 4.2.1(b) of the TSA and submitted that the obligation to arrange and make available the Interconnection Facilities is cast collectively upon the LTTCs. The relevant extract reads as under:

"4.2 Long Term Transmission Customers' obligations in implementation of the Project:
4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers, at their own cost and expense, undertake to be responsible;
...
b. for arranging and making available the Interconnection Facilities to enable the TSP to connect the Project; ..."

Based on the aforesaid provision, the Petitioner has contended that allocation of specific works amongst the LTTCs does not dilute their collective responsibility towards the TSP.

210. The Petitioner has also relied upon Article 10.8.1 of the TSA and submitted that the contractual provision relating to LPS is unqualified. The relevant provision reads as follows:

"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..."

From above, Article 10.9.8 specifically provides that the existence of a dispute does not suspend the payment obligation and that even a disputed invoice must be paid in the manner prescribed therein.

211. Referring to paragraphs 126 and 127 of the Order dated 14.02.2023, the Petitioner has submitted that the Commission itself held that the entity due to whose default the transmission system could not be put to use would remain

liable to bear transmission charges from the date of Deemed COD until the asset becomes operational or is put to use.

212. On the strength of the aforesaid findings, the Petitioner has submitted that: (a) Element-2 and Element-3 achieved Deemed COD on 26.03.2021 and 28.01.2022 respectively; (b) the inability to operationalise the subject elements was attributable to NUPPL; and (c) the Petitioner remained entitled to receive MTC in accordance with the TSA from the respective dates of Deemed COD.

213. The Petitioner has therefore contended that, since neither Respondent disputes the Petitioner's entitlement to full transmission charges for the period from 24.09.2024 to 12.12.2024, the Petitioner is entitled to receive the said transmission charges together with LPS.

214. The Petitioner has further submitted that the expression *"put to use"* cannot be interpreted dehors the provisions of the TSA. According to the Petitioner, it is the TSA which governs the rights, obligations and liabilities of the parties and, therefore, the expression *"put to use"* must necessarily be construed in the context of the contractual framework agreed between the parties.

215. In this regard, the Petitioner has referred to Article 4.2 of the TSA and submitted that the obligation to arrange and make available the *Interconnection* Facilities was specifically cast upon the LTTCs.

216. According to the Petitioner, the scope of work necessarily has to be determined with reference to the obligations specifically delineated in the TSA. It has been contended that the terms of the agreement are required to be given their natural and ordinary meaning and cannot be supplemented by obligations not contemplated under the TSA. In support of the aforesaid proposition, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470. The relevant observations relied upon by the Petitioner are reproduced below:

> *IV. Interpretation of the terms of contract*
> *23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted*

giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. [Vide United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal [(2004) 8 SCC 644 : AIR 2004 SC 4794] and Polymat India (P) Ltd. v. National Insurance Co. Ltd. [(2005) 9 SCC 174 : AIR 2005 SC 286]]

24. In DLF Universal Ltd. v. Town and Country Planning Deptt. [(2010) 14 SCC 1 : (2011) 4 SCC (Civ) 391 : AIR 2011 SC 1463] this Court held : (SCC pp. 14-15, paras 13-15)

"13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

14. As is stated in Anson's Law of Contract:

'a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large.'

15. The Court assumes:

'that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly.' [Ed. : Anson's Law of Contract; Aharon Barak : Purposive Interpretation in Law, 2005, Princeton University Press.] "

217. Relying upon the aforesaid principles, the Petitioner has contended that the expression *"put to use"* must be construed with reference to the scope of work and obligations specifically provided under the TSA.

218. According to the Petitioner, the consequence of the aforesaid position is that the MTC for the disputed period becomes payable by all the LTTCs, including Respondent No.1 and the UP DISCOMs, in proportion to their Allocated Project Capacity. It has been contended that the balance 75% liability is payable by Respondent No.1 and the UP DISCOMs together with applicable LPS.

219. Without prejudice to the aforesaid contention, the Petitioner has submitted that, in the event this Commission takes the view that the beneficiaries, namely UPPCL and the UP DISCOMs, are not liable to bear transmission charges for the disputed period, then Respondent No.2 ought to be held solely liable to pay transmission charges for the period from 24.09.2024 to 11.12.2024 together with applicable LPS. The Petitioner has emphasized that, irrespective of the inter se liability between the Respondents, its entitlement to receive payment of transmission charges together with LPS ought to be protected.

Late Payment Surcharge on the balance Transmission Charges payable by UPPCL

220. The Petitioner has placed reliance upon the judgment of the Hon'ble APTEL in *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity* Regulatory *Commission & Ors.*, Appeal No. 77 of 2018, wherein it was observed as under:

> *"15. Indisputably, LPS is in the nature of interest or disincentive imposed to ensure that there is no default or delay in payment by the procurer. Evidently, LPS is neither income nor expenditure; neither a one-time event nor recurring in nature, it being predicated upon the default in making timely payments. It is in the nature of a contingent liability incurred by the Procurer for failing to adhere to its obligations under the PPA."*

221. The Petitioner has also placed reliance upon the judgment of the Hon'ble APTEL in *RattanIndia Power Limited v. Maharashtra Electricity Regulatory Commission & Anr.*, Appeal Nos. 118 of 2021 and 40 of 2022, wherein LPS was

held to be compensation towards the time value of money occasioned by delayed payment.

222. Based on the aforesaid principles, the Petitioner has submitted that LPS being accessory to the principal liability, the Respondent ultimately held liable to bear the principal transmission charges for the disputed period would necessarily also be liable to bear LPS thereon under Article 10.8.1 of the TSA from the respective Due Dates till actual receipt.

223. The Petitioner has relied upon the following facts, which, according to it, are not in dispute:

i. Pursuant to the Order dated 14.02.2023, the Petitioner raised invoices aggregating Rs. 76.58 crore on Respondent No. 1 on 15.02.2023, payable within 45 days, i.e., by 01.04.2023;

ii. Respondent No. 1, by its letter dated 24.03.2023, quantified LD at Rs. 44,40,35,121.91 and called upon the Petitioner to deposit that amount by 27.03.2023;

iii. The Petitioner, by its letter dated 25.03.2023, protested, pointed out that the issue of delay was *sub judice* in Petition No. 1959 of 2023 before the Commission, and requested that the balance be released while a amount of Rs. 44.40 crore be withheld in the interim, expressly without prejudice to the Petitioner's rights under the TSA and all other applicable laws;

iv. By its Order dated 24.06.2024 in Petition No. 1959 of 2023, this Commission held that no liquidated damages could be imposed upon the Petitioner;

v. The Petitioner, by its letter dated 25.06.2024, called for immediate refund and expressly recorded that it would raise a separate LPS invoice. The LPS invoices were subsequently raised on 03.07.2024 and 05.08.2024; and

vi. Respondent No. 1 intimated release of payment of the outstanding transmission charges only on 07.10.2024 and actually returned the sum of Rs. 44,40,35,122/- on 05.11.2024.

224. On the basis of the aforesaid facts, the Petitioner has submitted that the legal position is straightforward. A claim towards liquidated damages is a claim for damages and, where such claim is disputed, it does not become a sum due until it is adjudicated. Consequently, it cannot be unilaterally appropriated or

set off against an ascertained and payable debt. In support of this proposition, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Union of India v. Raman Iron Foundry*, (1974) 2 SCC 231. It has been contended that Respondent No. 1 did not adjudicate the claim but unilaterally asserted, quantified and appropriated the alleged LD amount.

225. The Petitioner has placed reliance upon *South Eastern Coalfields Ltd. v. State of Madhya Pradesh*, (2003) 8 SCC 648, wherein the Hon'ble Supreme Court held that a party which has retained money to which it was not entitled must restore the other party to the position in which it would have stood but for such retention, and that restitution carries with it compensation for the use of the money withheld.

226. The Petitioner has further placed reliance has also been placed upon *Secretary, Irrigation Department, Government of Orissa v. G.C. Roy*, (1992) 1 SCC 508, wherein the Constitution Bench of the Hon'ble Supreme Court held that a person deprived of the use of money to which it is legitimately entitled has a right to be compensated for such deprivation, by whatever name such compensation may be called. The parties have themselves stipulated the measure of such compensation under Article 10.8.1 of the TSA.

227. As regards Rebate, the Petitioner has relied upon Article 10.7.1 of the TSA and submitted that the benefit thereunder is available only where payment is made "in full". The relevant provision is reproduced below:

> *"10.7 Payment of Rebate:*
>
> *10.7.1 In case the Long Term Transmission Customer pays to the TSP through any mode of payment in respect of a Monthly Transmission Charge Invoice or Supplementary Bill, the following shall apply:*
>
> *a. For payment of Invoices through any mode of payment, a Rebate of 2% shall be allowed on the Monthly Transmission Charge Invoice or Supplementary Bill for payments made in full within one Business Day of the receipt of the Invoice: or*
> *b. For payment of Invoices subsequently, but within the Due Date, a Rebate of 1% shall be allowed on the payments made in full. ..."*

228. Referring to the aforesaid provision, the Petitioner has submitted that, on each date on which Respondent No. 1 claimed and availed Rebate, it was retaining Rs. 44.40 crore belonging to the Petitioner, which, as subsequently established, was never due to Respondent No. 1. According to the Petitioner, payment was therefore not made "in full" in any substantive sense and the Rebate so availed is liable to be reversed and refunded.

229. The Petitioner has submitted that its claim for LPS is based upon Article 10.8 of the TSA, titled "Surcharge", which provides as under:

> *"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 on simple rate basis and shall accrue from the Due Date until the amount due is actually received by the payee."*

230. Referring to the aforesaid provision, the Petitioner has submitted that the operative triggers for payment of LPS are "any amount due" and "remaining unpaid for thirty (30) days after the Due Date".

231. According to the Petitioner, the import of the aforesaid stipulation is unequivocal. If an amount due under the TSA remains unpaid for thirty days after its Due Date, such amount bears LPS at the rate stipulated under Article 10.8.1. The LPS accrues from the Due Date of the amount and continues until the amount is actually remitted to and received by the payee.

232. The Petitioner has further submitted that transmission charges equivalent to the LD allegedly applicable for delay in completion of the Project were withheld by both Respondent No. 1 and Respondent No. 2 without considering their respective prorated shares in the Project. The Petitioner has clarified that it has claimed LPS from Respondent No. 2 in separate proceedings before this Commission and, therefore, the same does not form part of the subject matter of the present Petition.

233. The Petitioner has contended that the interpretation advanced by Respondent No. 1 would permit a contracting party to indefinitely retain admitted contractual dues merely because it has asserted a claim for damages and, if such claim ultimately fails, escape all contractual consequences by simply

refunding the principal amount. According to the Petitioner, such an interpretation would defeat the commercial object underlying the LPS clause.

234. It has been submitted that Article 10.8 is intended to compensate the receiving party for deprivation of the use of monies contractually due and, at the same time, discourage unilateral withholding of payments. The Petitioner has argued that if the interpretation of Respondent No. 1 were accepted, the clause would become otiose because every delayed payment could be characterised as temporary retention pending resolution of a collateral dispute, while the period taken in adjudication would effectively be added to the contractual Due Date of the invoice.

235. The Petitioner has submitted that the reliance upon *Nabha Power (supra)* is misplaced. The Hon'ble Supreme Court declined the claim to interest in that case principally because "no such claim has been laid so far, at any stage" and because serious disputes existed regarding the interpretation of the contractual provisions. The Petitioner has submitted that neither feature exists in the present case, since the claim was raised contemporaneously and repeatedly, there is no dispute regarding the construction of Article 10.8.1, and the underlying dispute has been adjudicated against Respondent No. 1 by the Order dated 24.06.2024.

236. The Petitioner has submitted that a claim to LD is a claim for damages and, until adjudicated, is not a sum due capable of being appropriated against an ascertained debt. Reliance has again been placed upon *Union of India v. Raman Iron Foundry*, (1974) 2 SCC 231. According to the Petitioner, Respondent No. 1 assumed the roles of claimant, assessor and executing authority.

237. The Petitioner has relied upon the principles of restitution recognised in *South Eastern Coalfields Ltd. v. State of Madhya Pradesh*, (2003) 8 SCC 648, and the right to compensation for deprivation of the use of money recognised in *Secretary, Irrigation Department, Government of Orissa v. G.C. Roy*, (1992) 1 SCC 508. It has further submitted that the parties themselves fixed the measure of such compensation under Article 10.8.1 of the TSA.

238. As regards Rebate, the Petitioner has submitted the Article 10.7.1 confers Rebate only in respect of payments "made in full". The contention that the Article is "invoice-specific" does not answer the Petitioner's claim because the

invoices in respect of which Rebate was claimed were the same invoices out of which Respondent No. 1 was, on each relevant date, retaining Rs. 44.40 crore that was never due to it. According to the Petitioner, it does not seek to introduce a new condition into Article 10.7 but seeks enforcement of the condition already contained therein.

239. The objection based upon Order II Rule 2 of the Code of Civil Procedure, 1908 is misconceived because the said provision applies to suits instituted before civil courts and has no application to proceedings under Section 86 of the Act before this Commission, which is not a civil court and is not governed by the Code.

240. The plea of constructive res judicata is also stated to be untenable on facts. Petition No. 1959 of 2023 concerned condonation of delay and, consequentially, determination of whether LD was leviable. According to the Petitioner, the present cause of action towards LPS and reversal of Rebate accrued only upon the Order dated 24.06.2024 holding that no LD was leviable and the actual release of the withheld amount on 05.11.2024. A claim which had not accrued during the earlier proceedings could not have been raised therein and its omission cannot constitute a bar. The Petitioner has also referred to the plea of Respondent No. 1 that the effect of the Order dated 24.06.2024 was "confined to release of the withheld LD amount" and submitted that this is precisely why the consequential claims require adjudication in the present proceedings.

241. The plea of limitation is a bare plea unsupported by particulars. It has been pointed out that the claim for balance transmission charges relates to the period from 24.09.2024 to 12.12.2024, while the claim for LPS on the withheld amount accrued upon the Order dated 24.06.2024 and actual receipt of the amount on 05.11.2024. Since the Petition was instituted in January 2026, it has been contended that no part of the claim is barred by limitation.

Hearing dated. 14.07.2026, 30.07.2026 & Written Submissions of UPPCL Dated. 21.08.2026

242. Subsequent to the various submissions filed by the UPPCL, the matter was argued on its behalf at the hearing, and written submissions were also filed. As these submissions largely reiterate the information already on record and

captured hereinabove, they are not reproduced for the sake of brevity, and only the salient points are summarized in the subsequent paragraphs.

243. Sh. Abhishek Kumar, Learned Counsel appearing on behalf of UPPCL, submitted that the TSA was executed for procurement of transmission services through the tariff-based competitive bidding route for evacuation of power from the 3×660 MW Ghatampur Thermal Power Project. According to him, the very purpose of the transmission system was evacuation of power from Ghatampur TPS and supply of such power to the beneficiaries. He submitted that mere completion of Interconnection Facilities or synchronization of the transmission lines could not by itself establish that the system had been put to use, unless the transmission system was actually utilized for evacuation and supply of power to the beneficiaries.

244. He referred to the findings recorded in paragraphs 125 and 126 of the Commission's Order dated 14.02.2023 and submitted that the Commission had applied the defaulter liability principle on the basis that NUPPL was the entity due to whose default the subject transmission assets could not be operationalized or put to use. According to him, the expression "put to use" must be understood with reference to the intended purpose of the transmission system, namely evacuation of power from Ghatampur TPS, and not merely with reference to synchronization or charging of the transmission lines.

245. Learned Counsel further submitted that until power from the generating station could actually be evacuated and supplied to the beneficiaries through the transmission system, the assets could not be regarded as having been put to use within the meaning of the TSA and the Commission's Order dated 14.02.2023. In support thereof, he relied upon the judgments in *Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd. & Ors.*, *Nuclear Power Corporation of India Ltd. v. CERC & Ors.*, *Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. v. UPERC & Ors.* and *Nabha Power Limited v. Punjab State Power Corporation Limited & Anr.*, and submitted that where a transmission system remains unutilized due to delay attributable to the defaulting entity, liability for transmission charges continues to remain with such entity and cannot be shifted to the beneficiaries.

246. Upon a query from the Commission regarding the role discharged by NUPPL under the TSA, Learned Counsel submitted that although NUPPL is a

generating company, it had undertaken specific obligations under the TSA relating to Interconnection Facilities and transmission arrangements. According to him, NUPPL itself had acknowledged its liability by paying transmission charges corresponding to its TSA share and could not avoid the consequences flowing from the delay in commissioning of the generating station. He therefore submitted that the transmission system could not be said to have been put to use merely upon synchronization or establishment of power flow and that NUPPL continued to remain liable under the defaulter liability principle till the generating station became capable of evacuation of power to the beneficiaries.

247. He referred to paragraph 125 of the Commission's Order dated 14.02.2023 and submitted that, in respect of the Agra–Greater Noida section forming part of Element-2, the work stood completed and the transmission charges are presently being paid in accordance with the TSA in the ratio of 75% by UPPCL and 25% by NUPPL.

248. In response, Sh. Anand K. Ganesan, Learned Counsel appearing on behalf of NUPPL, submitted that the judgments relied upon by UPPCL, namely *Barh-Balia* and *NPCIL v. CERC*, are distinguishable on facts. He submitted that paragraph 10.9 of the *NPCIL* judgment itself refers to the principles laid down in the *Barh-Balia* case, wherein it was held that beneficiaries cannot be made liable for transmission charges where the transmission asset could not be put to use due to delay in the transmission element. According to him, the said judgment did not deal with delay in commissioning of a generating station. He further submitted that in *NPCIL v. CERC*, although the generating company was outside the jurisdiction of the Central Commission, the issue pertained to inter-State transmission system interconnection facilities and therefore fell within the jurisdiction of CERC. In the present case, however, the interconnection facilities form part of an intra-State transmission system and are governed by a different factual and regulatory framework. He further submitted that the judgment in *PGCIL v. PSPCL* also dealt with a transmission system and associated substation works.

249. In response, Learned Counsel for UPPCL submitted that paragraph 4 of the said judgment records that both the substation and the thermal generating station were within the scope of NTPC.

250. Learned Counsel for NUPPL also relied upon the judgment of the Hon'ble Supreme Court in *Haryana Power Purchase Centre v. Sasan Power Limited* and submitted that in projects awarded under Section 63 of the Electricity Act, 2003, the rights and obligations of the parties are governed by the contractual framework, and the parties are required to be regulated in terms of the TSA/PPA executed between them.

251. Sh. Abhishek Kumar, learned Counsel appearing on behalf of UPPCL, advanced his submissions in the second hearing scheduled on 30.07.2026 on the first issue relating to liability for payment of transmission charges for the period from 24.09.2024 to 11.12.2024. In support of his submissions, he placed reliance upon the Judgment dated 15.09.2025 passed by the Hon'ble APTEL in *TANGEDCO & Moxie Power Generation Ltd. v. CERC & Ors.* in Appeal Nos. 206 and 332 of 2017. Learned Counsel submitted that the Hon'ble APTEL had examined the meaning and scope of the expression "put to use" in the context of a transmission system developed for evacuation of power from the Coastal Energen (now Moxie Power) generating station through the associated transmission network. He submitted that the Hon'ble APTEL recognized that mere completion or energisation of a transmission element is not sufficient and that the asset must achieve its intended purpose and beneficial use.

252. Further, he submitted that the Hon'ble APTEL held that liability of the LTTCs could not arise merely on account of commissioning of a transmission element when the intended use of the transmission system had not been achieved and the beneficiaries had not derived the contemplated benefit from such asset. Learned Counsel contended that in the present case also, the Petitioner may be entitled to transmission charges for the transmission system constructed by it; however, liability cannot be shifted to the LTTCs unless the transmission system is put to its intended and beneficial use.

253. During the hearing held on 30.07.2026, this Commission raised a query as to how the expression "*put to use*" should be interpreted, particularly, whether the expression should be construed with reference to the "*Scope of Work*" under the Transmission Service Agreement dated 06.04.2018 ("TSA") or with reference to the "*Purpose*" of construction of the transmission system under the TSA. The expression "*put to use*" has to be interpreted in juxtaposition with the "*Scope*" and the "*Purpose*" of the transmission system on the bedrock of the TSA. By its order dated 04.08.2026.

I. "PUT TO USE" MUST BE DETERMINED WITH REFERENCE TO WHETHER THE TRANSMISSION SYSTEM HAS ENTERED REGULAR USE FOR ITS INTENDED PURPOSE

254. According to UPPCL/UP DISCOMs, the expression *"put to use"* must be understood with reference to the purpose for which the transmission system was constructed. In support of this contention, reliance has been placed on Section 2(72) of the Electricity Act, 2003. It has been submitted that the emphasis under the statutory definition is on the expression "*transmitting electricity from a generating station or a sub-station*". It has further been contended that where the Act intended to merely reference a system capable of carrying electricity, it has done so expressly through phrases such as "*intended to be supplied*", "*any system for conveyance*" and "*any system for transmission*". Since the Ghatampur TPS lines were specifically created for transmitting electricity from the Ghatampur TPS, the expression *"put to use"* must necessarily be read with reference to that purpose and not merely to the completion of the physical scope of work under the TSA.

255. It has further been argued that, in terms of Section 2(72) of the Act, a transmission line may either originate from a generating station or a sub-station. Therefore, unless the concerned generating station is commissioned and commences supply of power, such lines cannot be regarded as having been *"put to use"*. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., (2023) 10 SCC 60 [Para 55], to contend that where the statute employs different expressions, they must necessarily carry different meanings. Applying the said principle, the special meaning assigned to "Transmission Lines" under Section 2(72) of the Act ought to be given full effect.

256. Referring to the provisions of the TSA, it has been submitted that the TSA identifies the obligations of the parties and provides the consequences of delay in their performance. Delay attributable to GTL in achieving COD of an element or the Project attracts LD under Article 6.4 of the TSA along with the remedies relating to the Contract Performance Guarantee under Article 6.5 of the TSA. Likewise, Article 4.2.1(b) requires the LTTCs to arrange and make available the Interconnection Facilities necessary to enable GTL to connect the Project. It has been submitted that where an LTTC Event of Default prevents timely performance or connection, Article 4.4.1, Article 6.1.2 and Article 6.3.1 of the

TSA provide for extension of Scheduled COD, deferment of connection and the applicable payment consequences during the resulting delay. Thus, where the default is attributable to a particular LTTC, it is such LTTC who remains liable to pay transmission charges until the default is cured.

257. On the strength of the aforesaid contractual framework, it has been submitted that the Order dated 14.02.2023 rightly fastened exclusive liability upon NUPPL until the Ghatampur TPS lines were made operational or "*put to use*" by transmitting electricity from the Ghatampur TPS. NUPPL's letter dated 04.10.2024 records that the Ghatampur TPS lines were synchronised and power flow was established on 23.09.2024. However, it has been contended that while these events may establish charging, synchronisation and power flow through the lines, they do not establish that the Ghatampur TPS lines had been "*put to use*" for the purpose for which they were established, namely transmitting electricity from the Ghatampur TPS. According to UPPCL/UP DISCOMs, unless there was commencement of regular use for evacuation and supply from Ghatampur TPS, it cannot be said that the lines were put to use for their intended purpose.

258. UPPCL further submitted that Unit-1 of Ghatampur TPS achieved COD only from 00:00 hours on 12.12.2024. The UPSLDC communication dated 10.01.2025 also records only synchronisation and successful power flow on 23.09.2024 and does not establish that regular commercial evacuation and supply from Unit-1 commenced on that date. It has also been highlighted that GTL subsequently recorded that invoices were raised under the Order dated 14.02.2023 up to 11.12.2024 and in the respective TSA shares only from 12.12.2024 onwards. Hence, according to UPPCL/UP DISCOMs, even the contemporaneous understanding of the TSP and beneficiaries demonstrates that the default continued till commissioning of Ghatampur TPS, and only thereafter was liability allocated in accordance with the TSA.

259. Accordingly, it has been submitted that the expression "*put to use*" must be interpreted with reference to whether the completed transmission lines had entered regular use for evacuation and supply of power from Ghatampur TPS to the beneficiaries. Completion of the scope of work under the TSA may determine whether the contractual obligations have been discharged and whether the contractual consequences of delay are attracted. However, it is not, by itself, conclusive of the transmission system having been "*put to use*".

Similarly, charging, synchronisation or initial power flow do not satisfy that requirement unless the transmission system has commenced regular use for its intended purpose. It has been contended that this interpretation is also supported by the judicial precedents discussed hereinafter.

II. COMPLETION OR CHARGING OF A TRANSMISSION ASSET IS NOT CONCLUSIVE; THE TRANSMISSION SYSTEM MUST ENTER REGULAR USE FOR THE PURPOSE FOR WHICH IT WAS ESTABLISHED

260. In support of the aforesaid interpretation, reliance has been placed upon the judgment of the Hon'ble Appellate Tribunal for Electricity ("APTEL") in ***Punjab State Power Corporation Limited v. Power Grid Corporation of India Limited*, Appeal No. 123 of 2011 ("Barh-Balia APTEL Judgement").** It has been submitted that in the said case, the components of the transmission line falling within POWERGRID's scope had been completed, while the switchgear, protection and metering arrangements at the generating-station end remained incomplete. The relevant finding in paragraph 13 has been relied upon and is reproduced below:

"13. In our opinion this proviso is not applicable in this case as Barh-Balia line was not ready for regular service due to non-installation of the switchgear at Barh end. Merely because the components of the transmission line in the scope of POWERGRID (R-1) were ready, the line could not be considered as completed and ready for use till the switchgear and protection and metering arrangements, etc; at the Barh end of the line were completed. Both ends of the switchgear protection and metering systems along with the overhead line are components of the transmission line. ***If for the sake of convenience of construction and operation and maintenance, the scope of work of the components of transmission line at the generating station end has been entrusted to the generating company, the transmission line could not be considered as completed unless all the components of the transmission are ready for use....."***

(Emphasis Supplied)

Based on the aforesaid findings, it has been contended that the Hon'ble APTEL did not treat completion of the components falling within POWERGRID's scope as sufficient. Rather, the Hon'ble APTEL examined whether the complete transmission arrangement, including the works at the generating-station end

entrusted to another entity, was ready to perform its intended function. Accordingly, the physical allocation of work was not treated as conclusive of whether the transmission line was ready for use.

261. UPPCL has further been submitted that the same principle squarely applies to the present case. Even assuming NUPPL's contention that the works relied upon by it stood completed upon synchronisation of the subject lines on 23.09.2024, such fact by itself would not establish that the transmission system had entered regular use for evacuation of power from Ghatampur TPS. According to UPPCL/UP DISCOMs, the further question is whether the complete evacuation arrangement had commenced performing the purpose for which it was created.

262. UPPCL has further placed reliance upon the judgment of the Hon'ble Supreme Court in ***Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Ors.*, (2016) 4 SCC 797 ("Barh-Balia Supreme Court Judgement"),** whereby the judgment of the Hon'ble APTEL was upheld. It has been submitted that the Hon'ble Supreme Court clearly held that successful charging is only one of the conditions for achievement of commercial operation and that successful trial operation and regular service are separately required. The relevant findings in paragraphs 7, 10 and 11 have been reproduced below:

> *"7. The language in the above definition is clear and unambiguous. We agree with the Tribunal that COD of transmission lines can be achieved only on fulfillment of following three conditions:-*
>
> *(i) The line has been charged successfully,*
>
> *(ii) Its trial operation has been successfully carried out, and*
>
> ***(iii) It is in regular service***
>
> *....."*
>
> *"10. We have considered the rival submissions. Sub-section (72) of Section 2 of Electricity Act, 2003 defines the word 'transmission lines', which reads as under:-*
>
> *'2(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating*

station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.'"

"11. From the above definition, ***it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3(12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of 'transmission lines' given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date."***

(Emphasis Supplied)

263. Referring to the aforesaid findings, UPPCL has argued that the Hon'ble Supreme Court expressly distinguished successful charging from regular service. According to UPPCL/UP DISCOMs, a transmission line does not enter commercial operation merely because it has been charged. It must also complete trial operation and enter regular service.

264. UPPCL has emphasized that the Hon'ble Supreme Court declined to fasten liability upon beneficiaries merely because the transmission asset had been completed or charged. Rather, the test applied was whether the complete transmission arrangement had entered regular service and whether supply of energy through such arrangement had actually commenced.

265. Directly on the point involved in the present case, are the judgments of the Hon'ble CERC and Hon'ble APTEL (which upheld the Hon'ble CERC's judgment in appeal). Reference is made to judgment of CERC dated 29.04.2015 in Petition No. 105/TT/2012 in the case of ***PGCIL v. KPTCL & Ors.*** In the said case, an issue arose with respect to the liability of a generator, namely Bharatiya Nabhikiya Vidyut Nigam Limited (**BHAVINI**), as the defaulting entity

due to whose default, two transmission assets i.e., Kalpakkam PFBR-Sirucheri 230 kV D/C Line (**Asset I**) and Kalpakkam PFBR-Arani 230 kV D/C line (**Asset II**) could not be put to use. Pertinently, very similar to the facts of the present case, BHAVINI's switchyard was connected, thereby enabling power flow. The assets were utilized for drawing of start-up power as well. However, Hon'ble CERC noted that the assets could not be put to regular use as the assets were planned for evacuation from BHAVINI's generating station. In the absence of commissioning of the generating station, it was held that the assets could not be put to regular use for supply of power to beneficiaries. Therefore, it was held that the generator ought to bear the transmission charges –

"*17. The petitioner has claimed the Assets-I and II were commissioned on 1.12.2011 and 1.4.2012 respectively. The date of commercial operation certificate of Assets-I and II, submitted by the petitioner indicate that the lines have been declared commercial after successful commissioning. As per Regulation 3(12)(c) of the 2009 Tariff Regulations, the petitioner should have approached the Commission for approval of the date of commercial operation in case it is prevented from providing such service for reasons not attributable to it. In this case, the petitioner has declared the commercial operation without the prior approval of the Commission. It is observed that BHAVINI switchyard is connected to Arani and Sirucheri and it will cause power to flow from Sirucheri to Arani and vice-versa in view of the nature of electrical system. Energisation certificates dated 30.11.2011 and 20.3.2012 were issued by CEA. It is however observed that CEA gave permission to energise since the lines were connected at both ends i.e. Kalpakkam end and Sirucheri/Arani end. Hence, the date of commercial operation of Assets-I and II have been approved as 1.12.2011 and 1.4.2012 respectively. As per the submissions of the petitioner, Assets-I and II are being utilized for drawing start up power for BHAVINI PFBR.* ***These assets were planned for evacuation of power from BHAVINI. In the absence of commissioning of BHAVINI, these assets could not be put to regular use for supply of power to the constituents of the Southern Region. Therefore, till the unit of BHAVINI is commissioned, the transmission charges of Assets-I and II shall be borne by BHAVINI*** *in accordance with Regulation 8(6) of the Central Electricity Regulatory Commission (Sharing of Transmission Charges) Regulations, 2010.*

...

19. It has been observed that Asset-I and Asset-II have been included in PoC charges since 1.4.2012 and Asset-III has been included in PoC charges since 1.9.2012 on the basis of the provisional tariff allowed vide order dated 29.3.2012. ***As stated in para 17, the transmission charges in case of Assets-I and II shall be borne by BHAVINI***

and accordingly, NLDC is directed to exclude the tariff for Assets-I and II from the PoC charges. *Further, as the date of commercial operation of Asset-III has not been approved, NLDC is also directed to exclude Asset-III from the PoC charges and the transmission charges already collected from the beneficiaries shall be adjusted as provided under Regulation 5 of the 2009 Tariff Regulations.*

...

63. *We would like to review our directions in order dated 11.7.2012 in the light of Regulation 8(6) of the Sharing Regulations.* ***Accordingly, as stated in para 17, BHAVINI shall bear the transmission charges of Assets-I and II from the date of commercial operation to the commercial operation of its first unit of generating station*** *in line with Regulation 8(6) of Sharing Regulations. Thereafter, the assets shall be pooled in PoC as regional scheme. Our order dated 11.7.2012 stands revised accordingly."*

(Emphasis supplied)

As evidenced by the above extracts, the case before the Hon'ble CERC was similar to the facts and circumstances at hand. While the generator sought to repel its liability as the defaulting entity by taking shelter of the fact that it had operationalized the switchyard at its generating station thereby enabling power flow, the Hon'ble CERC refused to accept that its liability ceased merely because it operationalized the switchyard. The objective of the transmission scheme in the above case, like the present case, was for evacuation from the concerned generating station. Any power flow enabled through the switchyard, from sources upstream of the generating station, would not absolve the generating station from its default of commissioning the generating station. When a particular asset is created for the purpose of evacuation from a particular generating station, default cannot be said to be cured merely because switchyard at such generating station, without the actual generating asset, is constructed.

266. UPPCL has further submitted that the above judgment of the Hon'ble CERC stands upheld by the Hon'ble APTEL and it has attained finality. Although, the Hon'ble APTEL refers to an indemnification agreement executed between BHAVINI and Powergrid, such agreement is for preponement of the commissioning and the same does not affect the applicability of the precedent to the present case. The fact remains that the Hon'ble APTEL did not find any infirmity in the Hon'ble CERC's order. The Hon'ble APTEL particularly refers to

the fact that the generating station is not commissioned. Therefore, it holds that BHAVINI ought bear the liability:

"*8.16 After thorough evaluation of the records placed before us, it is relevant to note that the transmission lines constructed by Respondent No.1-Powergrid were envisaged solely for evacuation of 500 MW power from the generating station of the Appellant. As per the Indemnification Agreement executed between BHAVINI and Powergrid, it was a clear commitment that pending declaration of the transmission assets as part of regional transmission network, the transmission charges up to the commissioning of generating unit shall be borne by BHAVINI, the Appellant herein. Now, after commissioning of Assets –I & II, the Appellant is making peripheral submissions such as Powergrid could not advance the commissioning of transmission lines by May, 2011* ***and the other beneficiaries such as Respondent No.5 is also using the said assets for exchange of power in their territory and hence, either they should bear the entire transmission charges or at least share the charges in proportion of usage to be decided by the Central Commission.*** *After thorough evaluation of the relevant records available on the file regarding this issue placed before us, we opine that as per the relevant regulations of the CERC as well as Indemnification Agreement signed by the Appellant with Respondent No.1 dated 27.12.2012, the transmission charges are liable to be borne by the Appellant up to the commissioning of their generating unit.* ***In view of the facts and circumstances of the case that, the generating unit is not yet commissioned and the reference transmission system could not become part of regional network*** *and also, no documentary evidence available to prove the usage of these lines by Respondent No.5/other entities,* ***the Appellant is legally bound to bear the charges as decided by the State Commission. Accordingly, We do not find any error and irregularity in the impugned order passed by the Central Commission in this regard. Therefore, interference tribunal does not call for.***"

(Emphasis supplied)

267. In the present case, NUPPL's communication dated 04.10.2024 and the UPSLDC communication dated 10.01.2025 record that the subject lines were synchronised on 23.09.2024 at 20:52 hours and that power flow was achieved. Neither communication records that regular commercial evacuation and supply of power from Unit-1 commenced on that date. Unit-1 achieved COD only from 00:00 hours on 12.12.2024. The event of 23.09.2024 could not, therefore, by

itself establish that the transmission system had entered regular service for the purpose for which it was established.

268. Further, in ***Punjab State Power Corporation Limited v. Patran Transmission Company Limited***, Appeal No. 390 of 2017, judgement dated 27.03.2018 ("**Patran Judgement**"), the Hon'ble APTEL considered the liability for transmission charges where the transmission system developed through the tariff-based competitive bidding route was ready, but the downstream system had not been commissioned. The relevant findings in paragraphs 15(b)(iii), 15(b)(vii), 15(b)(viii) and 15(d) are reproduced below:

> *"15(b)(iii) ....Further, the Chapter 3 and 4 of the Sharing Regulations titled 'PRINCIPLES AND MECHANISM FOR SHARING OF ISTS CHARGES AND LOSSES' and 'PROCESSES FOR SHARING OF TRANSMISSION CHARGES AND LOSSES' deals with the principles, mechanism and methodology for sharing of transmission charges and losses. Perusal of the same makes it clear that PoC mechanism is based on the usage of the transmission systems.*
> *The Sharing Regulations provide sharing of transmission charges by the Designated ISTS Customers who use the ISTS. Accordingly, it is clear that all the LTTCs are liable to pay transmission charges only when the Transmission System is being used or put to use."*
>
> *"15(b)(vii**) It is clear that the liability to pay transmission charges by the Appellant to the Respondent No. 1 from SCOD till downstream system is commissioned does not arise from the Regulations of the Central Commission. The most relevant decision of the Central Commission matching to the circumstances of the present case is its order dated 21.9.2016 in Petition No. 43/MP/2016 where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it appears that PSTCL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 1 and PSTCL. The contractual relation between the Appellant and the Respondent No. 1 is the TSA, which lays down the rights and obligations of the parties. Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The relevant portion is reproduced below:***

'4.2 Long Term Transmission Customers' obligations in implementation of the Project:
4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers', at their own cost and expense, undertake to be responsible:
.....
b. for arranging and making available the Interconnection facilities to enable the TSP to connect the Project;'"

"15(b)(viii) It is clear that it was only the Appellant amongst all the LTTCs who was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. This is irrespective of any relation between the Appellant and PSTCL. Accordingly, as per the principles laid down by the Central Commission vide its Order dated 21.9.2016 which are judicial in nature the defaulting entity in the present case is the Appellant.
The LTTCs, including the Appellant at their own cost and expense were required to provide interconnection facilities to the Respondent No. 1 so that the Transmission System could be connected by SCOD and made operational."

"15(d) ***The Hon'ble Supreme Court in the judgement dated 3.3.2016 in Civil Appeal No. 9302 of 2012 in case of PGCIL Vs. PSPCL and Ors. has held that the LTTCs are liable to pay the transmission charges only when the transmission system is made operational/put to use.*** *The Central Commission has also relied on the said judgement while formulating principles of payment of transmission charges by the entities before the transmission system/asset is made operational/put to use."*

The Patran Judgement identifies "*put to use*" as the point at which ordinary sharing among the LTTCs begins. Until the transmission system reaches that stage, the common beneficiaries are not liable. The charges for the intervening period are borne by the entity whose unperformed obligation prevents the system from becoming operational.

In *Patran*, readiness of the transmission licensee's works was not sufficient. The transmission system could perform its intended function only after the downstream system necessary for its connection and operation was commissioned. "*Put to use*" was therefore determined with reference to whether the transmission system had become capable of providing the transmission service contemplated under the project arrangement.

269. UPPCL has submitted that the same principle governs the present matter. The Order dated 14.02.2023 recognised GTL's entitlement to Monthly Transmission Charges but placed liability for the Ghatampur-facing lines exclusively upon NUPPL until those lines were made operational or put to use. Ordinary sharing among the LTTCs could therefore begin only when the transmission system entered regular use for evacuation and supply of power from Ghatampur TPS.

270. UPPCL further submitted that in ***Nuclear Power Corporation of India Limited v. Central Electricity Regulatory Commission & Ors.***, 2019 SCC OnLine APTEL 83, Appeal No. 332 of 2016, judgement dated 18.01.2019 ("**NPCIL Judgement**"), the Hon'ble APTEL considered liability for transmission charges where the transmission asset could not be put to use until commissioning of the corresponding system. In that case, NPCIL relied upon completion of the switchyard bays, bus bars and equipment within its scope, while the generating station and certain associated facilities had not been commissioned. The relevant submissions and the findings of the Hon'ble APTEL in paragraphs 10.7 and 10.9 are reproduced below:

> *"5. The learned senior counsel, Mr. Ramji Srinivasan, **appearing for the Appellant** has made following arguments/submissions for our consideration:*
>
> *.....*
>
> *5.6 CERC failed to appreciate that the **Appellant had in fact made all endeavours to commission the entire project by February 2016. In fact the construction of the 400 kV switchyard bays and erection of the bus bars and equipment in the 400 kV bays was even completed by the month of February 2016** (the agreed date) and the construction of the reactor would be completed by next month. The balance work was commissioning of line reactors and telemetry. Telemetry was to be commissioned by respondent No. 3 on deposit work basis*
>
> *.....*
>
> *5.8 CERC also failed to appreciate and analyse as to whether the line reactors on the Shujalpur end which was within the scope of Respondent No. 3 was ready for commissioning in February 2016 or not. Respondent No. 1 has accepted a mere assertion made on part of Respondent No. 3 that the bays were commissioned by 4.2.2016 and 28.2.2016. **Assuming but not accepting that there has been a delay on part in commissioning the generator, the same was due to unavoidable reason which cannot be***

***attributed to the Appellant**. There are several contributing factors beyond the control of the Appellant which are involved in commissioning of the line reactors and telemetry.*

.....

*10.7 It is clear that the liability to pay transmission charges by the Appellant to the Respondent No. 2 from SCOD till downstream system is commissioned does not arise from the Regulations of the Central Commission. Our most relevant decision matching to the circumstances of the present case is our judgment dated 27.3.2018 in Appeal No. 390 of 2017(Patran judgment) where the principles were laid down clearly **that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/ downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it emerges that NPCIL is the defaulting party and should have been made liable to pay the said transmission charges.** However, we find that there is no contractual relation between the Respondent No. 2 and NPCIL.*

.....

*10.9 In view of the foregoing discussions, we are of the considered opinion that **there is no infirmity in the decision of the Central Commission by holding that the Appellant is liable to pay transmission charges from SCOD of the Transmission Asset until commissioning of the downstream system** along with applicable charges as per TSA which was already raised by CTU."*

The NPCIL Judgement confirms that completion of the physical works relied upon by the generator, or readiness of the transmission asset from the transmission licensee's side, is not conclusive of the system having been "*put to use*". The Hon'ble APTEL sustained liability until commissioning of the corresponding system which enabled the transmission asset to perform its intended function. The judgement also recognises that such liability must be supported by the governing contractual arrangement.

271. UPPCL argued that in the present case, NUPPL is itself an LTTC and signatory to the TSA, and the Project was established for evacuation of power from NUPPL's Ghatampur TPS. Further, this Commission has already examined the contractual arrangement and, by the Order dated 14.02.2023, fastened exclusive liability upon NUPPL until the transmission system was made

operational or "put to use". NUPPL's liability therefore does not require fresh determination.

272. UPPCL has submitted that the only question is whether synchronisation and power flow on 23.09.2024 brought the subject transmission system into regular use for evacuation and supply of power from Ghatampur TPS. The NPCIL Judgement shows that completion of the works identified under the arrangement does not, by itself, end mismatch-period liability where the corresponding generating or downstream system has not been commissioned and the transmission asset remains incapable of its intended use. Since Unit-1 of Ghatampur TPS achieved COD only on 12.12.2024, the technical event of 23.09.2024 did not, by itself, bring NUPPL's liability to an end.

273. UPPCL has further submitted that in ***Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors.***, Appeal No. 352 of 2022, judgement dated 02.05.2023 ("**Fatehgarh-Bhadla Judgement**"), the Hon'ble APTEL considered the meaning of "regular service" in the context of an integrated transmission system and the liability arising from a mismatch between interconnected transmission assets.

The Fatehgarh-Bhadla Judgement defines "*regular service*" with reference to the purpose of the integrated transmission system. The system achieves regular service when it is able to evacuate power intended for the beneficiaries and, ultimately, their consumers. Readiness of an individual transmission asset is not conclusive.

The judgement also distinguishes the transmission licensee's entitlement from the liability of the beneficiaries. A transmission asset may have achieved COD and the transmission licensee may be entitled to tariff. The beneficiaries become liable when they start receiving power through the commissioned interconnected transmission assets.

The above findings apply directly to the present case. The Ghatampur TPS lines form part of the transmission system established for evacuation of power from Ghatampur TPS. Unit-1 achieved COD only on 12.12.2024. Synchronisation and establishment of power flow on 23.09.2024 did not establish that the beneficiaries had begun receiving power from Unit-1 through the transmission system in regular service.

274. UPPCL argued that fastening liability upon UPPCL/UP DISCOMs before Unit-1 achieved COD would produce the consequence identified in paragraph 142 of the Fatehgarh-Bhadla Judgement, namely, recovery from beneficiaries before they begin receiving power through the commissioned interconnected assets. NUPPL's liability under the Order dated 14.02.2023 could not, therefore, cease merely upon the technical event recorded on 23.09.2024.

275. UPPCL further added that it is also essential to take note of the judgement of the Hon'ble APTEL in ***Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors.***, Appeal Nos. 357 and 369 of 2024, dated 28.02.2025 ("**UPRVUNL Judgement**"). The Hon'ble APTEL considered the liability for a transmission element established for evacuation of power from Obra-C TPS. Although the transmission licensee was entitled to tariff from deemed COD, utilisation of the transmission element was affected by delay in commissioning of the generating project and the associated facilities. The relevant finding in paragraph 34 is reproduced below:

> *"34. The Appellant – UPRVUNL has also contended that the liability of payment of transmission charges of Transmission Element No 1 for the period under consideration stating that UPRVUNL is not signatory to TSA or the Supplementary TSA and placed reliance on the judgement of this Tribunal in PSTCL v. CERC, (2022 SCC OnLine APTEL 78). The referred judgement-PSTCL v. CERC (2022 SCC OnLine APTEL 78) has mainly dealt with the issue of non - fixing the liability on the beneficiary PSTCL, in the absence of utilisation of Transmission System due to delay in commissioning of Generation Project; which was upheld by the Supreme Court in "Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited", (2016) 4 SCC 797. The present case also involves the same issue that Respondent – OCBTL is entitled to receive tariff for Transmission Element No 1 from its deemed COD, however its utilisation is affected due to delay in the implementation of facilities by the Appellant – UPRVUNL, therefore, LTTCs cannot be mulched with liability of payment of Transmission charges (Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited", (2016) 4 SCC 797.). As such, the transmission system being implemented by Respondent – OCBTL is for evacuation of power from the Obra C TPS of the Appellant – UPRVUNL and as per TSA,* ***the Appellant – UPRVUNL has to provide 2 nos 765 kV bays at its Obra C TPS (2x660 MW) for termination of Transmission Element No -1. It is not in dispute that the implementation of OBRA – C has delayed beyond their SCOD, which was 21.12.2020 for Unit 1 and 21.04.2021 for unit 2 , in which, only One unit has been commissioned on 09.02.2024, due to which the Transmission Element No. 1 could not be put to use, since its deemed COD of***

30.04.2021. We are in agreement with the views of the State Commission that in terms of UPERC (Grant of connectivity to intra - State Transmission System) Regulations 2010, the Appellant – UPRVUNL was obligated to enter into connection agreement for connectivity of its switchyard including for the 765 kV bays with Respondent OCBTL; and there is link between TSA and the Connection agreement and as per the Appellant – UPRVUNL, the connection agreement has been signed on 27.12.2019, 27.12.2019, therefore, the Appellant – UPRVUNL cannot be absolved of their liability of payment of Transmission charges for Element No 1, which could not be put to use on account of their default.."

(Emphasis supplied)

The UPRVUNL Judgement distinguishes the transmission licensee's entitlement from utilisation of the transmission element. Although the transmission licensee was entitled to tariff from deemed COD, the LTTCs could not be burdened while utilisation of the element remained affected by delay in commissioning of the generating project and the associated facilities.

The Hon'ble APTEL did not determine utilisation merely by examining whether the transmission licensee had completed its asset. It considered the purpose of the transmission system, the delay in commissioning Obra-C TPS, the bays required at the generating-station end and the connection arrangement. Since the generating project had not been commissioned, the transmission element established for evacuation from that project could not be put to use.

The same principle applies in the present case. The subject transmission system was established for evacuation of power from Ghatampur TPS. Although the subject lines were synchronised on 23.09.2024, Unit-1 had not achieved COD and regular commercial evacuation and supply from that unit had not commenced. GTL's entitlement to Monthly Transmission Charges did not, for that reason alone, shift liability for the disputed period to UPPCL/UP DISCOMs.

276. UPPCL argued that the intended use of an associated transmission system was considered further by the Hon'ble APTEL in ***Tamil Nadu Generation and Distribution Corporation*** Limited ***& Moxie Power Generation Limited v. Central Electricity Regulatory Commission & Ors.***, Appeal Nos. 206 and 332 of 2017, judgement dated 15.09.2025 ("**Moxie Power Judgement**"). The Hon'ble APTEL examined whether individual transmission elements could be treated as having achieved their intended benefit when the complete

transmission arrangement required for sustained evacuation remained unavailable.

The Moxie Power Judgement examines use with reference to the intended benefit of the planned transmission system. The intended benefit was reliable and sustained long-term evacuation from the identified generating stations through the complete transmission arrangement, and not merely the capability of an individual element to carry some power.

Paragraph 140 expressly recognises that an individual element may transfer part of the power without achieving the intended benefit. Paragraphs 169 and 189 similarly hold that short-term or medium-term evacuation does not amount to sustained long-term use. The relevant test is whether the complete transmission arrangement has become capable of providing the evacuation for which it was planned.

Paragraphs 180, 209 and 210(a) further establish that completion of an individual element cannot be considered in isolation. Even after the dedicated line became available, the intended benefit was not achieved because the remaining upstream system was unavailable, the full power of the plant could not be evacuated and long-term access had not been operationalised.

277. UPPCL further submitted that Unit-1 achieved COD only from 00:00 hours on 12.12.2024. NUPPL's letter dated 04.10.2024 and the UPSLDC communication dated 10.01.2025 record synchronisation and successful power flow on 23.09.2024, but do not record commencement of regular commercial evacuation and supply from Unit-1 on that date. As in the Moxie Power Judgement, limited power flow through a technically available element did not, by itself, establish achievement of the intended benefit of the complete transmission arrangement.

The above judgement consistently distinguish completion, charging and synchronisation from regular use. They also distinguish the transmission licensee's entitlement from the liability of the beneficiaries. A transmission system is "*put to use*" when the complete arrangement enters regular service for the purpose for which it was established, and not merely when an individual element becomes technically capable of carrying power.

278. UPPCL argued that in the present case, the Order dated 14.02.2023 recognised GTL's entitlement and fastened exclusive liability upon NUPPL until the subject

transmission system was made operational or put to use. Synchronisation and power flow on 23.09.2024 did not establish commencement of regular commercial evacuation from Unit-1, which achieved COD only on 12.12.2024. Liability for the disputed period, if otherwise found payable, therefore continued to rest upon NUPPL.

III. THE TSA ALSO REQUIRES THE PHYSICAL SCOPE TO BE READ WITH THE PURPOSE OF THE PROJECT

279. UPPCL has submitted that it has further been contended that the TSA itself does not support an interpretation whereby completion or synchronisation of the physical elements is treated as conclusive of the Project having been "put to use". In this regard, reliance has been placed upon the definition of "Project" under the TSA, which provides as under:

"Project' shall mean Transmission System for Evacuation of Power from 3X660MW Ghatampur Thermal Power Project, as detailed in Schedule 2 of this Agreement."

280. Referring to the aforesaid definition, it has been submitted that while Schedule 2 of the TSA identifies the physical elements comprising the Project, the very definition of "Project" identifies the purpose for which those elements were established, namely, evacuation of power from the 3 x 660 MW Ghatampur Thermal Power Project. According to UPPCL/UP DISCOMs, this does not enlarge GTL's construction obligations under Schedule 2 of the TSA but merely identifies the purpose against which utilisation of the completed Project must be assessed.

281. UPPCL has further been submitted that the same position is reflected in the definition of "Transmission Service" contained in the TSA, which reads as under:

"Transmission Service' shall mean making the Project available for use by the Transmission Customers as per the terms and conditions of this Agreement."

Based on the above provisions, it has been contended that Schedule 2 of the TSA and the definitions of "Project" and "Transmission Service" are required to be read harmoniously in terms of Article 1.2.5 of the TSA. The physical elements form a Project established for evacuation of power from Ghatampur

TPS, which is to be made available for use by the Transmission Customers. It has therefore been submitted that completion of those elements may establish GTL's entitlement under Article 6.2.2 of the TSA; however, the separate issue of whether the Project had actually been "put to use" still remains to be determined.

282. Accordingly, UPPCL has submitted that the TSA itself supports an interpretation whereby the Project is assessed with reference to regular use for evacuation and supply of power from Ghatampur TPS. Synchronisation and power flow on 23.09.2024 may constitute relevant technical events; however, according to UPPCL/UP DISCOMs, such events cannot be treated as conclusive proof of utilisation prior to achievement of COD of Unit-1 on 12.12.2024.

IV. THE CONTEMPORANEOUS RECORD DOES NOT ESTABLISH A SHIFT IN LIABILITY FROM 24.09.2024

283. UPPCL has submitted that GTL did not accept NUPPL's assertion that operationalisation of the lines had altered the liability fixed under the Order dated 14.02.2023. By its letter dated 26.12.2024, GTL stated that NUPPL would remain liable for the entire transmission charges for Element-2 and Element-3 until its claim of operationalisation was upheld by the Commission.

It has further been submitted that Unit-1 achieved COD and commenced commercial operation only from 00:00 hours on 12.12.2024. Thereafter, GTL itself recorded that invoices had been raised under the Order dated 14.02.2023 only up to 11.12.2024 and that allocation of transmission charges in accordance with the respective TSA shares commenced only from 12.12.2024 onwards. Reliance has accordingly been placed on GTL's letters dated 03.01.2025 and 06.01.2025.

In view of the aforesaid, it has been contended that the record itself distinguishes between the technical event of synchronisation on 23.09.2024 and the commencement of the commercial arrangement on 12.12.2024. According to UPPCL/UP DISCOMs, since none of the material relied upon by NUPPL establishes commencement of regular commercial evacuation and supply from Unit-1 on 23.09.2024, liability for the transmission charges for the period from 24.09.2024 to 11.12.2024, if otherwise found payable, continued to rest upon NUPPL and did not shift to UPPCL/UP DISCOMs.

V. PAYMENT FOR THE AGRA-GREATER NOIDA LINE DOES NOT DETERMINE LIABILITY FOR THE GHATAMPUR-FACING LINES

284. UPPCL has contended that payment of transmission charges for the 765 kV Agra-Greater Noida S/C line does not establish liability for the Ghatampur-Agra and Ghatampur-Hapur lines. In this regard, reliance has been placed upon the Order dated 14.02.2023 itself, wherein a distinction was drawn between the operational status of the two sets of lines. It has been submitted that the Commission specifically recorded that power flow through the Agra-Greater Noida line had commenced, whereas the Ghatampur TPS-Agra line, though ready insofar as GTL's scope of work was concerned, could not be made operational or put to use due to the default of NUPPL.

285. UPPCL has argued that payment for the operational Agra-Greater Noida line merely reflected the operational status of that particular line and cannot be treated as an admission that the Ghatampur-facing lines had similarly entered regular use for evacuation of power from Ghatampur TPS during the disputed period. A transmission line originating from a generating station stands on a different footing from a transmission line originating from a sub-station and both cannot be subjected to the same treatment.

VI. LPS CANNOT BE CLAIMED FROM UPPCL/UP DISCOMS WHEN THE PRINCIPAL TRANSMISSION CHARGES ARE NOT PAYABLE BY THEM

286. UPPCL has submitted that GTL's claim for LPS on the alleged balance transmission charges for the period from 24.09.2024 to 11.12.2024 is entirely consequential to its claim for the principal amount. Article 10.8 of the TSA becomes applicable only where an amount due from one party to another remains unpaid beyond the prescribed period.

287. UPPCL has argued that the liability for the transmission charges for the disputed period, if otherwise found payable, continued to rest upon NUPPL under the Order dated 14.02.2023. Consequently, the alleged balance transmission charges never became amounts due from UPPCL/UP DISCOMs. In the absence of any principal payment obligation, no liability towards LPS can arise against UPPCL/UP DISCOMs.

288. It has further been submitted that Article 10.9.8 of the TSA does not alter the underlying liability framework. According to UPPCL/UP DISCOMs, the said provision merely provides an interim payment mechanism in respect of a

disputed invoice raised upon the concerned LTTC in accordance with the TSA. Therefore, it cannot be invoked to fasten either the principal amount or LPS upon UPPCL/UP DISCOMs contrary to the liability already determined under the Order dated 14.02.2023.

VII. GTL IS NOT ENTITLED TO LPS ON THE AMOUNT WITHHELD TOWARDS LD

289. UPPCL has submitted that GTL's claim for LPS on the amount of Rs. 44,40,35,121.91 did not represent an admitted Monthly Transmission Charge Invoice left unpaid in the ordinary course. Rather, it represented UPPCL's quantified share of LD claimed on account of the alleged delay in commissioning Element-2 and Element-3, which formed the subject matter of Petition No. 1959 of 2023.

290. UPPCL has submitted that GTL by its letter dated 25.03.2023, itself requested that the issue of delay be adjudicated in the pending proceedings and proposed that a maximum amount of Rs. 44.40 crore may be withheld in the interim while the balance transmission charges were released. It has therefore been contended that the withholding arose out of a subsisting LD dispute and operated under an interim arrangement proposed by GTL itself.

291. UPPCL referring to the Order dated 24.06.2024 passed in Petition No. 1959 of 2023, has been submitted that although the Commission ultimately held that LD was not leviable and the withheld amount was thereafter released, the said order neither held that UPPCL had committed a payment default under Article 10.8 of the TSA nor awarded LPS on the amount retained pending adjudication.

The amount remained withheld pending adjudication and was released only after disposal of the LD dispute. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in *Nabha Power Limited v. Punjab State Power Corporation Limited & Anr.*

VIII. GTL'S CLAIM FOR RECOVERY OF REBATE IS UNTENABLE

292. UPPCL has submitted that Article 10.7 of the TSA operates independently in relation to each Monthly Transmission Charge Invoice or Supplementary Bill. The availability of rebate depends solely on whether the particular invoice has been paid in full within the prescribed period. Article 10.7 contains no stipulation providing that rebate validly availed upon timely payment of an

invoice would stand forfeited merely because a separate amount remained withheld owing to an independent contractual dispute.

293. UPPCL has argued that the amount of Rs. 44.40 crore was not an unpaid portion of the subsequent invoices in respect of which rebate was availed. Rather, it was a separately identified amount retained against UPPCL's quantified share of the disputed LD claim. Since GTL itself proposed the interim withholding pending adjudication while simultaneously seeking release of the balance transmission charges, the said withholding cannot be treated as a continuing short payment against every subsequent invoice paid by UPPCL.

Article 6.4 of the TSA treats LD as a distinct contractual consequence flowing from delay in achievement of COD. The reference to Monthly Transmission Charges in Article 6.4 is only for purposes of quantification of LD. The provision neither converts an LD claim into an unpaid Monthly Transmission Charge Invoice nor permits an LD-related withholding to be adjusted against every subsequent invoice for the purposes of rebate under Article 10.7 of the TSA.

294. According to UPPCL/UP DISCOMs, acceptance of GTL's contention would require Article 10.7 of the TSA to be interpreted as permitting retrospective withdrawal of rebate validly availed on timely payment of an invoice merely because a separate LD-related amount was subsequently found to be refundable. It has been submitted that Article 10.7 contains no such stipulation and, therefore, the claim for recovery of rebate is unsustainable on this ground alone.

Hearing dated. 14.07.2026 & Written Submissions of NUPPL Dated. 21.08.2026

295. Sh. Anand K Ganesan, Learned Counsel appearing on behalf of NUPPL, submitted that the dispute is required to be examined strictly in terms of the TSA. He submitted that the scope of work of NUPPL under the TSA was limited to arranging and making available the Interconnection Facilities and that UPPCL was incorrectly seeking to link the operationalisation of the transmission elements with commissioning of the generating station. According to him, the generating station and the Interconnection Facilities are distinct from the transmission project and, once the Interconnection Facilities were completed and made available, the default stood cured and the basis for continuation of the defaulter liability principle ceased to exist.

296. In support of the aforesaid contention, Learned Counsel referred to the definitions of "Element" and "Interconnection Facilities", Clause 4.2.1(b) of the TSA, and Articles 6, 10.1, 10.2 and 18.12 of the TSA. He submitted that the TSA provides the mechanism for payment and recovery of transmission charges upon achievement of COD/Deemed COD of the transmission elements and that the liabilities of the parties are required to be determined strictly within the contractual framework agreed between them. According to him, commissioning of the generating station and supply of power are matters governed by the PPA and cannot be imported into the TSA for determining transmission charge liability.

297. Learned Counsel further relied upon the submissions made by UPPCL in Petition No.1850 of 2022 and the findings recorded by the Commission in its Order dated 14.02.2023 to contend that NUPPL was identified as the defaulting entity solely because the Interconnection Facilities falling within its scope of work had not been made available. According to him, the observations contained in paragraphs 121, 124, 125 and 127 of the Order dated 14.02.2023 demonstrate that the obligation of NUPPL was confined to provision of the Interconnection Facilities and that the Commission had fastened liability upon NUPPL on account of non-completion thereof.

298. Learned Counsel also referred to GTL's communication dated 11.03.2025 and submitted that GTL itself had acknowledged that NUPPL had completed its scope of work relating to the Interconnection Facilities. He further submitted that the Scheduled COD of the generating station and the Scheduled COD of the transmission elements are separate and independent milestones under the contractual framework and, therefore, continuation of NUPPL's liability till commissioning of the generating station would amount to introducing a condition not contemplated under the TSA. According to him, once the Interconnection Facilities were completed and the transmission lines were operationalised, NUPPL's liability stood reduced to its TSA share and the defaulter liability principle could not continue thereafter.

299. NUPPL submitted that the issue sought to be raised by UPPCL in the present proceedings is that the transmission charges payable in terms of the Order dated 14.02.2023 ought to be extended up to 12.12.2024, when the generating station of NUPPL was commissioned, as against 23.09.2024, when the interconnection facilities were made available by NUPPL.

300. The Order dated 14.02.2023, inter alia reads as under:

"……

Reply dated 12.10.2022 of the Respondent Nos. 1-4 &7, UP Discoms and UPPCL

……

51. *It is well settled principle that LTTCS are liable to pay transmission charges only when the transmission system is made operational/put to use. In this regard, I apposite the judgment passed by the Hon'ble Supreme Court in the case of Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd., (2016) 4 SCC 797 (Barh-Balia Judgment) wherein Hon'ble Supreme Court has laid down that unless an asset is put to use, LTTCS cannot be made liable to pay transmission charges.*

56. *It is an admitted position inter-se the parties that the defaulting entity, on account of whom the asset could not be put to regular use, is NUPPL. In this regard, reference is apposite to letters dated 20.08.2020, 31.01.2021, 10.02.2021, 02.03.2021 & 19.03.2021 vis-à-vis Element 2 and letters dated 07.04.2021 & 02.11.2021 vis-à-vis Element 3 issued by Petitioner. By way of the said letters, Petitioner has categorically stated that the feeder bays associated with Ghatampur TPS, which were under the scope of work of NUPPL were not ready. Further, as per RfP documents and its subsequent clarifications, supply of PLCC and FOTE equipment for Agra substation, which were also under the scope of work of NUPPL, were not supplied.*

……..

60. *Applying the above settled principles of law, the Commission may hold that NUPPL is the defaulting entity who would be liable to bear all transmission charges, if any payable to Petitioner in the first place, until NUPPL fulfils its obligation of arranging the interconnection facilities which are admitted within its scope of work. The same would also be in line with the Commission's Order dated 09.07.2021 in Petition Nos. 1621&1622 of 2020. Further, there is no question of any liability qua payment of transmission charges delving upon UPPCL/UP Discoms in the facts and circumstances of present case.*

……

103.*……..It is pertinent to place on record that it is an undisputed fact amongst the parties that construction of interconnection facilities i.e. feeder bays and gantries at Ghatampur and as well as supplying the PLCC and FOTE equipments for 765 kV Agra and 765 kV Hapur substations was under the scope of NUPPL.*

……

83. *Sh. Sitesh Mukherjee Counsel appeared on behalf of UPPCL pointed out the defaulter's liability principle stating that the Barh-Balia Judgement moves on the basis of definition of transmission line as per the Act and has nothing to do with Section 62 and 63 and holds that until and unless the transmission line is put to use, the charges can't be borne by the State Discoms. In the instant case, the transmission line (Element 2 and Element 3) is ready whereas NUPPL is not ready and had failed to perform its obligation under the TSA to construct the feeder bays at Ghatampur TPS*

and supply PLCC and FOTE equipment at Agra end. The primary liability under the TSA, solely rest on NUPPL by virtue of the Barh-Balia Judgement then the Patran Judgement. In the Patran Judgement, there are seven LTTCS, but only one LTTC was made liable, since it was the only defaulter entity. The only reason why this line is not being used is because of NUPPL.
.....

***121. It has been claimed by UPPCL/State Discoms that since NUPPL is the defaulting entity, as it has failed to set-up the interconnection facilities at Ghatampur TPS and supply PLCC, FOTE equipments as per the scope of its works under the TSA**, therefore, NUPPL should be liable to pay transmission charges till the transmission asset becomes operational/put to use, whereas NUPPL submitted that they have 25% share of allocated capacity in each Element of the Project and accordingly has been paying transmission charges without prejudice to its rights under the TSA. **The Commission observed that there is neither any ambiguity nor any dispute that the work under the scope of NUPPL was not completed** and that NUPPL who is a party to the TSA is the defaulting entity in the present matter for both Element 2 and Element 3.*
.....

127.....

RE: Payment of Element 3:
As far as payment liability of transmission charges for 765 kV Ghatampur TPS - Hapur S/C line (including 330MVAR line reactor at Hapur end) is concerned, the entire liability rests with NUPPL as it is the default of NUPPL which is restraining the line in getting operationalized. Therefore, NUPPL is liable to make payment to the Petitioner from Deemed COD (28.01.2022) of Element 3 as per Schedule 3 of the TSA till the work under the scope of NUPPL is completed.
....."

301. NUPPL submitted that as is evident from the above, the specific contentions of the parties including and specifically that of UPPCL was that till such time the interconnection facilities are made available by NUPPL as per the provisions of the TSA, the corresponding transmission charges ought to be paid by NUPPL. The specific finding and conclusion of the Commission is also NUPPL is liable to make payment to the Petitioner from Deemed COD (28.01.2022) of Element 3 as per Schedule 3 of the TSA till the work under the scope of NUPPL is completed.

302. NUPPL further submitted that the Commission has also in Paragraph 103 specifically noted the provisions of the TSA in relation to the interconnection facilities to be provided by NUPPL, which was the alleged default against NUPPL. The above being the specific contention raised and also the specific finding of the Commission, it does not lie for UPPCL to take a completely

contradictory stand merely to suit its convenience at this stage and avoid payment of its liabilities under the TSA even after the interconnection facilities have been made available by NUPPL.

303. NUPPL submitted that quite apart from the specific findings of the Commission in the Order dated 14.02.2023, the terms of the TSA also make it abundantly clear that the obligation of NUPPL was to make available the interconnection facilities. The commissioning of the generating station itself was not either a condition or even a provision as contained in the TSA.

In this regard, the following provisions of the TSA are relevant:

*"**ARTICLE: 1***

1. DEFINITIONS AND INTERPRETATIONS

.....

***"Element"** shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) or each bay of Sub-station or switching station or HVDC terminal or inverter station of the Project, which has a separate Scheduled COD as per Schedule 3 of this Agreement and has a separate percentage for recovery of Transmission Charges on achieving COD as per Schedule 6 of this Agreement;*

***"Interconnection Facilities"** shall mean the facilities as may be set up for transmission of electricity through the use of the Project, on either one or both side of generating station's / CTU's / STU's / Long Term Transmission Customer's substations (as the case may be) which shall include, without limitation, all other transmission lines, gantries, substations and associated equipments not forming part of the Project;*

.....

4.2 Long Term Transmission Customers' obligations implementation of the Project:

.....

***4.2.1** Subject to the terms and conditions of this Agreement, Long Term Transmission Customers, at their own cost and expense, undertake to be responsible:*

***a.** for assisting and supporting the TSP in obtaining the Consents, Clearances and Permits required for the Project and in obtaining any applicable concessions for the Project, by providing letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time;*

b. for arranging and making available the Interconnection Facilities to enable the TSP to connect the Project;

.....

ARTICLE 6 CONNECTION AND COMMISSIONING OF THE PROJECT

6.2 Commercial Operations:

.....

6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Elements), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.

18.12 No Consequential or Indirect Losses

The liability of the TSP and the Long Term Transmission Customers shall be limited to that explicitly provided in this Agreement.

Provided that, notwithstanding anything contained in this Agreement, under no event shall the Long Term Transmission Customers or the TSP claim from one another any indirect or consequential losses or damages.

.....

GENERAL INSTRUCTIONS

.....

4. *Supply, installation and commissioning of 80W digital PLCC cabinets along with wave Trap & LMU's etc. shall be in the scope of TSP. For rest of the lines 80W digital PLCC cabinets shall be provided by Neyveli Uttar Pradesh Power Ltd., Ghatampur (NUPPL) at either ends of line for data and communication, however, the responsibility of the installation and commissioning of the same at 765kV Agra, Hapur and Kanpur (PGCIL) substation shall be in the scope of TSP. Further, wave traps, LMUs and HF*

Cables for Kanpur, Agra and Hapur end for 400 kV Ghatampur – Kanpur D/C Line, 765 kV Ghatampur – Agra S/C Line and 765 kV Ghatampur – Hapur S/C Line shall be in the scope of TSP.

***5.** OPGW on all the 765 kV and 400 kV lines shall be laid and fiber optic terminal equipments shall be provided for data and communication at either ends of line for Agra (UP) – Gr. Noida (UPPPTCL) 765 kV S/C Line. Commissioning of the same shall be in the scope of the developer. Fiber optic terminal equipments for rest of the lines shall be provided by the Neyveli Uttar Pradesh Power Corporation Ltd. Ghatampur (NUPPL) at either end of line for data and communication, however, the responsibility of the installation and commissioning of the same at 765kV Agra, Gr.Noida and Hapur substation shall be in the scope of TSP.*

....."

304. Referring to the aforesaid provisions of the TSA, NUPPL has submitted that the same make it abundantly clear that the obligation cast upon NUPPL under the TSA was limited to providing the interconnection facilities required for charging of the elements of GTL. NUPPL has further contended that, in terms of Articles 6.2.1 and 6.2.2 of the TSA, commercial operation of an element of GTL is linked to the element being connected with the interconnection facilities and becoming ready for charging.

305. NUPPL has further submitted that charging of the line and commencement of power flow from Agra Substation to Rampur Substation through the interconnection facilities established by NUPPL stood achieved on 23.09.2024 and was duly certified by UPSLDC vide its letter dated 19.01.2025. According to NUPPL, the interconnection facilities contemplated under the TSA stood completed on that date. NUPPL has also pointed out that, for the period prior thereto, GTL was granted deemed COD in terms of Article 6.3.1 of the TSA on account of non-availability of the interconnection facilities at NUPPL's end.

306. NUPPL has further been submitted that there is no express provision anywhere in the TSA which makes commissioning or COD of the generating station a condition precedent for cessation of liability. According to NUPPL, the liabilities of the parties are required to be determined strictly in accordance with the provisions of the TSA and cannot travel beyond the contractual framework agreed between the parties.

307. In this regard, NUPPL has relied upon Article 18.12 of the TSA and contended that the liabilities of the parties can only be those expressly provided under

the Agreement. According to NUPPL, once the contract itself limits liability to what has been specifically provided therein, there is no occasion to import any implied obligation or condition into the contractual arrangement.

308. NUPPL has accordingly submitted that, in a commercial contract of the present nature, where the rights, obligations and liabilities of the parties have been expressly delineated, the question of implying additional terms or obligations does not arise.

309. It has further been argued that, in any event, there is no basis whatsoever for reading into the TSA a condition that COD of the generating station must necessarily be aligned with COD of GTL's transmission system.

310. In support of the aforesaid contention, NUPPL has referred to the Scheduled CODs contemplated under the contractual arrangement and submitted that, even if all the parties had adhered to the original timelines, the Scheduled COD of the generating station and the Scheduled CODs of the transmission elements were materially different. NUPPL has reproduced the relevant schedule as under:

Sl. No.	Description	SCOD Dates
1	Element-1	Feb'2020
2	Element-2	Sep'2020
3	Element-3	Mar'2021
4	Unit-1 of GTPP	Nov'2020
5	Unit-2 of GTPP	May'2021
6	Unit-3 of GTPP	Nov'2021

311. Referring to the Scheduled CODs contemplated under the contractual framework, NUPPL has submitted that the same clearly demonstrate that COD of the generating station was never intended to be linked with COD of the transmission elements. According to NUPPL, the only obligation cast upon it under the TSA was to arrange and make available the interconnection facilities, as expressly defined under the Agreement and contemplated under Article 4.2.1(b) thereof.

312. NUPPL has further pointed out that UPPCL itself has been paying transmission charges for part of Element-2, namely the Agra-Greater Noida line, since 26.03.2021, which is much prior to commencement of supply of power to UPPCL from the generating station. According to NUPPL, the aforesaid conduct itself demonstrates that commencement of power supply from the generating

station was never treated as a prerequisite for liability towards transmission charges.

313. In this regard, NUPPL has placed reliance upon the judgment of the Hon'ble Supreme Court in Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Ors., (2016) 4 SCC 797. NUPPL has submitted that the default identified by the Hon'ble Supreme Court in paragraphs 9 and 10 of the said judgment related specifically to non-commissioning of the switchgear by NTPC. According to NUPPL, commissioning or non-commissioning of the generating station itself was not a relevant consideration in the aforesaid decision.

314. Further reliance has been placed upon the judgment of the Hon'ble APTEL in Nuclear Power Corporation of India Limited v. Central Electricity Regulatory Commission (Judgment dated 18.01.2019 in Appeal No.332 of 2016). NUPPL has submitted that the specific default identified therein, while applying the principles laid down in the Barh-Balia judgment, pertained to delay in making available the downstream element by Nuclear Power. According to NUPPL, delay in commissioning of the generating station itself was not even in issue before the Hon'ble Tribunal.

315. NUPPL has further submitted that the generating station of Nuclear Power did not otherwise fall within the jurisdiction of the Central Commission under the Electricity Act. Similarly, NUPPL has contended that it is a generating company covered under Section 79(1)(a) of the Electricity Act, 2003 and, consequently, its generating station falls within the exclusive jurisdiction of the Central Commission and does not come within the jurisdiction of this Commission.

316. NUPPL has also relied upon the judgment of the Hon'ble APTEL in Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors. (Appeal No. 369 of 2024 decided on 28.02.2025). Referring to the said judgment, NUPPL has submitted that the Hon'ble Tribunal specifically held that UPRVUNL was obliged to provide two 765 kV bays at Obra-C TPS for termination of Transmission Element-I and that liability was imposed upon UPRVUNL on account of delay in providing the said bays. According to NUPPL, the same principle was applied by the Commission in its Order dated 14.02.2023, wherein liability was fastened upon NUPPL on account

of delay in making available the interconnection facilities falling within its scope of work.

ALTERNATE CASE:

317. Without prejudice to the aforesaid submissions, NUPPL has further submitted that flow of infirm power from its generating station had already commenced. The parties subsequently entered into a commercial agreement dated 27.11.2024 for sale of infirm power by NUPPL to UPPCL and that such power was purchased by the Distribution Licensees and consumed for the benefit of consumers in the State of Uttar Pradesh. According to NUPPL, the said power was transmitted through the transmission lines of GTL.

318. It has been contended that utilisation of the transmission lines is not dependent upon whether the power being transmitted is infirm power prior to COD or firm power subsequent to COD, particularly when the infirm power itself was the subject matter of a commercial arrangement and was purchased by UPPCL.

319. NUPPL has further submitted that even if the contention of UPPCL is accepted for the sake of argument, namely that transmission charges cannot be imposed upon the beneficiaries until the transmission assets are put to use for supply of electricity, there is still no basis for avoiding liability towards transmission charges from 23.09.2024 onwards.

320. According to NUPPL, the stand consistently adopted by GTL in its communications with the parties is also in conformity with the Order dated 14.02.2023, namely that upon the interconnection facilities being made available by NUPPL, the liability fastened upon NUPPL as the defaulting entity could no longer continue.

321. NUPPL has relied upon GTL's communication dated 11.03.2025 addressed to UPPCL. NUPPL has referred to the contents thereof and, in particular, to GTL's statement that NUPPL had completed its scope of work upon establishment of the interconnection facilities and that neither UPPCL nor the Commission had taken a stand that supply of power from Ghatampur TPS would constitute the event for curing the default attributed to NUPPL. The relevant extract has been reproduced below:

"……

With the above background, GTL would like to submit that as per UPERC order NUPPL had completed its scope of work as interconnection facility was established, which is evidenced with flow of power on both the subject 765 KV lines on 24.09.2024 as certified by UP SLDC, an independent statutory body. UPPCL had also agreed earlier before UPERC that NUPPL's liability as defaulter exists till it completes its scope of work of establishing interconnection facility. It is important to point out that, as seen from the UPERC order dated 14.02.2023, neither UPPCL had taken a stand nor UPERC had taken a decision that supply of power to UPPCL from Ghatampur power station shall be considered as curing of default by NUPPL. The entire discussion was with regard to completing the scope of work under the TSA. No ground taken by UPPCL not discussion regarding by UPERC with regard to fulfilling the obligation under PPA by NUPPL of supply power through Ghatampur Power Station.

In our view, UPPCL cannot take such incorrect stand now or anytime. Further, it is also important for UPPCL to take into account that UPPCL itself is paying Transmission Charges for part of Element - 2 i.e. for Agra- Greater Noida line since 26.03.2021 i.e. much before supply of power to UPPCL from Ghatampur generating station has started. As UPPCL is also aware, commissioning schedule of transmission lines generally would be much before the commissioning of thermal generating stations.

……"

322. Referring to the aforesaid communication, NUPPL has submitted that the same correctly captures the scope and effect of the Order dated 14.02.2023 passed by the Commission.

323. NUPPL has further submitted that, even in the present proceedings, GTL in its Written Submissions dated 20.08.2026 has correctly delineated the contractual framework governing the parties and acknowledged that the obligations of the parties are required to be determined strictly in accordance with the provisions of the TSA.

324. In view of the aforesaid facts and submissions, NUPPL has contended that there is no basis whatsoever for UPPCL to seek continuation of liability upon NUPPL beyond 23.09.2024 and, consequently, no justification for seeking imposition of transmission charges upon NUPPL after the interconnection facilities had been made available and the transmission lines had been successfully charged and put into operation.

COMMISSION'S VIEW:

325. The Petitioner is a Transmission Service Provider which had entered into the Transmission Service Agreement dated 06.04.2018 with the Long-Term Transmission Customers for establishment of the transmission system for evacuation of power from the 3×660 MW Ghatampur Thermal Power Station of NUPPL on Build, Own, Operate and Maintain basis under the Tariff Based Competitive Bidding process. The present Petition relates to payment of balance Monthly Transmission Charges for the 765 kV Ghatampur TPS-Agra S/C Line forming part of Element-2 and the 765 kV Ghatampur TPS-Hapur S/C Line forming part of Element-3 for the period from 24.09.2024 to 11.12.2024, along with Late Payment Surcharge. The Petitioner has also claimed LPS on Rs.44.40 crore withheld by UPPCL towards Liquidated Damages and reversal of the Rebate allegedly availed by UPPCL during the period of such withholding.

326. It is pertinent to mention that the issues relating to Deemed COD of Element-2 and Element-3, entitlement of the Petitioner to Monthly Transmission Charges and application of the defaulter's liability principle were earlier considered by the Commission in Petition No.1850 of 2022 vide Order dated 14.02.2023, the Commission approved Deemed COD of Element-2 as 26.03.2021 and Element-3 as 28.01.2022 and held that the Petitioner was entitled to payment of Monthly Transmission Charges from the respective dates of Deemed COD. The Commission further held that the liability of payment for the Ghatampur TPS-Agra and Ghatampur TPS-Hapur lines rested exclusively with NUPPL, being the defaulting entity due to which said lines could not be made operational or put to use.

327. The Commission, after careful examination and perusal of the submissions made by the parties during the proceedings and the material placed on record, determines the following issues for its consideration:

Issue No.1: Whether NUPPL is liable for payment of balance 75% Monthly Transmission Charges for the period from 24.09.2024 to 11.12.2024 in terms of Order dated 14.02.2023?

Issue No.2: Whether the Petitioner is entitled to LPS on the balance Monthly Transmission Charges for the period from 24.09.2024 to 11.12.2024 and, if so, the entity liable for payment thereof?

Issue No.3: Whether the Petitioner is entitled to LPS on Rs.44.40 crore withheld by UPPCL towards Liquidated Damages and reversal of the Rebate allegedly availed by UPPCL?

Issue No.1: Whether NUPPL is liable for payment of balance 75% Monthly Transmission Charges for the period from 24.09.2024 to 11.12.2024 in terms of Order dated 14.02.2023?

328. At the outset, the Commission observes that the entitlement of the Petitioner to receive Monthly Transmission Charges for the subject transmission assets is not under dispute. The controversy is confined to the entity liable to bear the balance 75% Monthly Transmission Charges for the period from 24.09.2024 to 11.12.2024 in terms of Order dated 14.02.2023. NUPPL has claimed that its enhanced liability under the defaulter's liability principle ceased on 23.09.2024 upon completion of the Interconnection Facilities and synchronization of the transmission lines. UPPCL, on the other hand, has claimed that NUPPL continued to remain liable till the transmission system was put to regular use for evacuation of power from Ghatampur TPS upon COD of Unit-1 on 12.12.2024. It is undisputed that from 12.12.2024 onwards, the transmission charges are being paid by UPPCL and NUPPL in accordance with their respective shares under the TSA. The Commission's findings are therefore confined to the limited issue of liability during the disputed period from 24.09.2024 to 11.12.2024 and are set out in the paragraphs that follow.

329. In order to deal with this issue, it is important to examine the Order dated 14.02.2023 passed by the Commission in Petition No. 1850 of 2022 and the context of various judgements referred therein and/ or placed before us in this proceedings. The Commission while deciding the liability of payment of Monthly Transmission Charges, had analyzed the defaulter's liability principle in para 126 of the said Order and observed as follows:-

*"126. Having discussed the issue of payment of transmission charges to the Petitioner in previous paragraphs, the Commission also intends to analyze the **'defaulter's liability principle'** in accordance with the Hon'ble Supreme Court Judgement dated 03.03.2016 in case of PGCIL vs. PSPCL and Ors. (2016) 4 SCC 797 and Hon'ble APTEL Judgement dated 18.01.2019 in NPCIL vs. CERC & Ors. and various submissions placed before it. In light of above judgements, it is abundantly clear that the entity due to which*

asset/transmission system developed through TBCB route cannot be put to use is liable to pay the transmission charges from the date of Deemed COD till the asset/transmission system is made operational/put to use."

330. From above, it is amply clear that the Commission has observed that the entity due to which asset/transmission system developed through TBCB route cannot be put to use is liable to pay the transmission charges from the date of Deemed COD till the asset/transmission system is made operational/put to use. Therefore, above Order dated 14.02.2023 provides that the liability was fastened upon NUPPL till the transmission system/asset is made operational/ put to use.

331. NUPPL has placed reliance upon the finding recorded in paragraph 127 of the Commission's above Order dated 14.02.2023, wherein it was observed that its liability in respect of Element-3 would continue "till the work under the scope of NUPPL" is completed.

In this regard, it is pertinent to note that at the time when the aforesaid Order was passed by the Commission, the issue before the Commission was that NUPPL had failed to establish the interconnection facilities at the Ghatampur TPS end and had also failed to supply the PLCC and FOTE equipment, as required under its scope of work under the TSA. At that stage, the commissioning of the generating plant was not in question, as the interconnection facilities itself had not been completed by NUPPL at its end.

Nevertheless, the principle of liability of the defaulting entity, as understood and applied by the Commission in light of the various judgments of the Hon'ble Supreme Court and the Hon'ble APTEL, was also recorded in the said Order. Therefore, the observation contained in paragraph 127 cannot be read in isolation or divorced from the governing principles recorded in paragraphs 125 and 126 of the same Order. The defaulting entity liability principle, as recorded in the said Order, is that the entity on account of whose default the asset/transmission system developed through the Tariff Based Competitive Bidding (TBCB) route cannot be put to use shall be liable to bear/pay the transmission charges from the date of deemed COD until the asset/transmission system is made operational and is actually put to use.

In this context, it would be appropriate to examine and elucidate the expression **"made operational/put to use"**, particularly in the factual and

contractual context of the present case. A proper understanding of this expression is essential for determining the point at which the liability of the defaulting entity ceases and, consequently, for resolving the controversy at hand. It is, therefore, necessary to examine the meaning and scope of the expression **"made operational/put to use"** before arriving at any conclusion in the matter.

332. At the outset, it would be appropriate to examine the relevant provisions of the Transmission Service Agreement (TSA) and ascertain the purpose and objective for which the transmission system was established.

The definition of **"Allocated Project Capacity"** under the TSA provides as follows:

*"Allocated Project capacity" shall mean, for **each Long Term Transmission Customer the sum of the generating capacities allocated to such Long Term Transmission Customer from the State Generating Station** and the contracted power, if any, as adopted by UPERC from time to time in determining sharing of transmission charges between the Long Term Transmission Customers."*

Note: in the above definition, due to inadvertent error it is written as 'State Generating Station', otherwise it should be read as 'Concerned Generating Station'.

*Further, **"Project"** has been defined under the TSA as:*

*"Project' shall mean **Transmission System for Evacuation of Power from 3X660MW Ghatampur Thermal Power Project**, as detailed in Schedule 2 of this Agreement."*

*The term **"Long Term Transmission Customer(s)"** has been defined as:*

*"Long Term Transmission Customer(s)" shall mean, **A person availing or intending to avail access to the Interstate transmission system/Intra State Transmission System for a period up to 25 years or more and for the purposes of this project** shall refer to entities listed in **schedule one** of this agreement or any such other person who executes a supplementary agreement for availing transmission service as per the provisions of the TSA"*

The TSA further defines **"Transmission Service"** as follows:

"'Transmission Service' shall mean making the Project available for use by the Transmission Customers as per the terms and conditions of this Agreement."

Further, **Schedule 1 of the TSA** sets out the **Allocated Project Capacity** in percentage terms. Under it, the share of the Project capacity of the generating units is allocated 75% to the UP Discoms and 25% to NUPPL. The 25% allocation to NUPPL, as the generating station, is subject to modification once the amendment to the PPA with UPPCL for that 25% capacity is executed. Further, **Schedule 5 of the TSA** provides that transmission charges are payable on the basis of the **Allocated Project Capacity**, that is, in the same proportion as each beneficiary's share of the Project capacity of the generating units.

A **conjoint reading** of the aforesaid provisions makes it evident that the transmission system contemplated under the TSA was not an end in itself; rather, it was established for the specific purpose of **evacuation of power from the 3X660 MW Ghatampur Thermal Power Project and making such power available to the identified Long Term Transmission Customers/beneficiaries.**

The definition of "Project" itself expressly identifies the transmission system as the **"Transmission System for Evacuation of Power from 3X660 MW Ghatampur Thermal Power Project."** Similarly, the definition of "Transmission Service" makes it clear that the essential obligation under the TSA was to make the Project available for use by the Transmission Customers. Further, the allocation of Project capacity and the corresponding sharing of transmission charges were linked to the generating capacity allocated to the respective Long Term Transmission Customers from Ghatampur TPS.

Thus, the scheme of the TSA, when read as a whole, indicates that the transmission system was conceived, constructed and implemented primarily to facilitate the evacuation and regular flow of power from Ghatampur TPS to the concerned Long Term Transmission Customers/beneficiaries, in accordance with their respective allocated capacities.

Accordingly, mere **physical completion of the scope of work or commissioning of the transmission assets, without the**

corresponding availability of the system for evacuation and regular flow of power from Ghatampur TPS, cannot, by itself, be regarded as complete fulfilment of the substantive and material purpose for which the transmission system was established under the TSA.

In other words, the **material purpose of the Project was not merely the creation or completion of transmission infrastructure, but to make such infrastructure available and operational for the intended evacuation and transmission of power from Ghatampur TPS to the Long Term Transmission Customers**. Therefore, completion of the works in isolation, without achieving the intended purpose of enabling the regular flow of power from Ghatampur TPS to Long Term Transmission Customers, cannot be treated as full and effective fulfilment of the Project contemplated under the TSA.

333. Having examined the relevant provisions of the TSA and the governing principles arising therefrom, it would now be appropriate to examine various judgments relied upon in this context and ascertain the principles laid down therein. Such an examination would also assist in determining the scope and applicability of the principle of liability of the defaulting entity, particularly with regard to the point at which the transmission asset/system can be said to have been 'made operational' or 'put to use'."

334. The Hon'ble APTEL in *Fatehgarh Bhadla Transmission Company Ltd. v. Central Electricity Regulatory Commission & Ors.*, Appeal No.352 of 2022, has clearly distinguished between the entitlement of a transmission licensee to recover transmission charges and the corresponding liability of the beneficiaries to pay such charges. The relevant extracts are reproduced below:

> *"141. .....must ensure that it matches with the commissioning of the generating stations(s) whose power is to be evacuated through the transmission system under the scheme. For the transmission assets implemented under the RTM route, the RTM licensee (in the present case PGCIL) is entitled to receive regulated tariff as determined by the CERC under Section 62 of the Act in accordance with the principles enshrined under Section 61 thereof for determination of tariff, and the applicable Tariff Regulations framed in that behalf by the CERC. For the assets implemented under the Tariff Based Competitive Bidding (TBCB) route,*

the TBCB licensee (in the present case the Appellant) is entitled to receive the tariff discovered through the bidding process and adopted by the CERC."

"142. ***The readiness of both the inter-connected transmission systems to achieve COD are so arranged, and the COD of the transmission assets of both the RTM and TBCB licensees are so matched, as to ensure that the entire transmission system achieves 'regular service' i.e. it is able to evacuate the power intended for its end users i.e. the beneficiaries (distribution licensees) and ultimately their consumers. The problem arises in the case of mismatch i.e. when the transmission assets of one licensee is ready to be commissioned, while those of the other licensee are not. As the COD of the transmission asset of PGCIL was determined as 27.09.2019, they were entitled to recover the capital cost of the subject transmission asset, from that date, through the yearly transmission charges to be determined by the CERC. The right of PGCIL to recover transmission charges from the beneficiaries/Consumers, and the latter's liability for payment of transmission charges, would arise only when they start receiving power through the commissioned inter-connected transmission assets. Recovery of transmission charges in such cases from the pool of consumers would, in effect, mean that, even without receiving power, these consumers would be forced, for no fault of theirs, to make such payment. On the other hand, failure to pay transmission charges to the transmission licensee, whose asset has achieved COD, would require them to bear the loss for this period for no fault of theirs either. As there is no contractual arrangement between the two transmission licensees, there is no contractual mode of compensation for the loss suffered. It is evidently to resolve this issue that the 2019 Regulations now contains provisions, i.e. Regulation 5(2) and 6(2), making the delaying licensee liable to compensate the other licensee for their delay in commissioning their transmission asset.***"

*"145. The above principle has also been recognised by the CERC while framing the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations 2020 (the '2020 Regulations'). **Regulation 13(12) thereof provides that, in case of a transmission system where COD has been approved in terms of clause (2) of Regulation 5 of the 2019 Regulations, or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be (a) paid by the inter-State transmission licensee whose transmission system is delayed till its transmission system achieves COD, or (b) paid by the generating company whose generating station or unit(s) thereof is delayed, till the generating station or unit thereof, achieves COD, or (c) shared in the manner as decided by the Commission on case to case basis, where more than one inter-State transmission licensee is involved or both transmission system and generating station are delayed.**"*

335. The aforesaid findings make an important distinction between the entitlement of the transmission licensee to recover transmission charges and the liability of the beneficiaries to bear such charges. The achievement of COD or Deemed COD by an individual transmission asset does not, by itself, establish the liability of the beneficiaries when the interconnected system is not ready and the intended regular flow of power has not commenced.

In *Fatehgarh Bhadla*, the Hon'ble APTEL was dealing with a situation where the transmission asset of one licensee had achieved COD, whereas the **interconnected transmission system of the other licensee was not ready**. Consequently, the entire interconnected transmission system could not achieve regular service and the intended power could not be evacuated and transmitted to the beneficiaries. The Hon'ble Tribunal further noted that there was **no contractual arrangement between the two transmission licensees** providing for compensation for the loss suffered by the licensee whose asset had achieved COD. It was in this context that the regulatory framework was recognised as providing for compensation by the delaying licensee.

The principle emerging from the aforesaid judgment is of particular relevance to the present case. **In the present case also, although the transmission asset may have been completed and/or achieved COD or Deemed COD, the generating station itself was not ready for generation and consequently the intended regular flow of power could not commence.** Thus, just as the transmission asset in *Fatehgarh Bhadla* could not be put to its intended use due to the non-readiness of the interconnected transmission system, the transmission asset in the present case could not be put to its intended use due to the non-readiness of the generating station from which the power was to be evacuated. The distinction is only with regard to the nature of the facility that was not ready. In *Fatehgarh Bhadla*, it was the **interconnected transmission system**; in the present case, it is the **generating station and the facilities at interconnection point within the generating station necessary for commencement of generation and regular flow of power**. In both situations, however, the transmission asset, despite being otherwise completed, could not perform its intended function of evacuating and transmitting power to the beneficiaries.

Therefore, the mere completion or achievement of COD of the transmission asset cannot, in isolation, be treated as conclusive of the fact that the transmission system had been **"made operational" or "put to use"**. The relevant consideration is whether the complete arrangement necessary for the intended evacuation and transmission of power was available and whether the transmission asset was actually capable of performing the purpose for which it was established.

This principle assumes greater significance in the present case because the transmission system was specifically established for **evacuation of power from Ghatampur TPS**. In the absence of generation from Ghatampur TPS, there could be no intended flow of power through the transmission system and, consequently, the transmission asset could not be put to its intended use. Accordingly, the question of whether the transmission system was "made operational/put to use" has to be examined not merely with reference to the physical completion or COD of the transmission asset, but with reference to whether the **generating station and the necessary**

interconnected facilities were ready so as to enable the regular flow of power.

Further, the fact that there was **no contractual arrangement between the concerned entities**, as noted by the Hon'ble APTEL in *Fatehgarh Bhadla*, also reinforces the principle that the financial consequence arising from such inability to put the transmission asset to use cannot automatically be passed on to the beneficiaries, who/which have not received the intended power. Thus, the ratio of *Fatehgarh Bhadla* supports the proposition that **COD of the transmission asset, by itself, is not synonymous with its being operational or being put to its intended use, particularly where the generation or interconnected system necessary for the flow of power is not ready.** The liability must, instead, be determined in accordance with the applicable contractual and regulatory framework and with reference to the entity responsible for the impediment which prevented the transmission system from being put to its intended use. Although the existence of a contractual arrangement may not, by itself, be necessary for fastening liability towards transmission charges.

336. The Hon'ble Supreme Court in *Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd. & Ors.*, (2016) 4 SCC 797, examined the issue of the liability of the beneficiaries to pay transmission charges. The Hon'ble Supreme Court observed as follows:

"10. We have considered the rival submissions. Sub-section (72) of Section 2 of Electricity Act, 2003 defines the word 'transmission lines', which reads as under:-

'2(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.'"

*"11. From the above definition, **it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3(12)***

of the Regulations, 2009 cannot be interpreted against the spirit of the definition of 'transmission lines' given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date."

"12 ***Since we are in agreement with the Tribunal that in the present case, Respondent 1 and the beneficiaries could not have been made liable to pay the tariff before the transmission line was operational, we find no infirmity in the impugned order."***

337. The aforesaid judgment makes it clear that the liability of the beneficiaries/LTTCs towards transmission charges arises only when the transmission system has been made operational or put to use. Mere physical completion of the transmission line is not sufficient where essential facilities required for the flow of power remain incomplete. Thus, the relevant consideration is whether the transmission system has actually been made available for its intended purpose, i.e., transmission of power to the beneficiaries.

338. Further, the Hon'ble APTEL in *Tamil Nadu Generation and Distribution Corporation Ltd. & Moxie Power Generation Ltd. v. Central Electricity Regulatory Commission & Ors.*, Appeal Nos.206 and 332 of 2017, examined whether limited or partial power flow through an individual transmission element could be regarded as achieving the intended benefit of the integrated transmission system. The Hon'ble Tribunal held that where the upstream system required for evacuation of power on a sustained and long-term basis is not available, mere partial flow of power through an individual transmission element cannot be treated as achievement of the intended benefit. The relevant extracts are reproduced below:

"140. From this, it is clear that till a dedicated transmission line is commissioned from these two generating stations up to the Tuticorin

Pooling station and the Tuticorin Pooling station to Salem line and Salem pooling station is available, power from these generating stations cannot be evacuated on a reliable basis in the long term. Even if dedicated lines are not connected to the Tuticorin Pooling station, the LILOs can only transfer a part quantity of power, and the intended benefit cannot be achieved till the upstream system is ready."

.....

"169. For the first argument, paragraph nos. 72 and 76 of the Impugned Order already mentioned that without the upstream system, the intended benefit of the system cannot be realized. Here, it is clear that, as LILO being part of the associated transmission system, the intended benefit was to evacuate power from two generating stations on a long-term basis. As per POWERGRID, power was evacuated on a short-term and medium-term basis; hence, by not operationalizing Long-term access to these generators, thus, POWERGRID itself conceded that the intended benefit has not been achieved."

.....

"180. The Commission wrongly made these generators liable for payment of transmission assets on the ground that, as dedicated lines are not ready, knowing fully well that even if their dedicated lines are ready, power cannot be evacuated on a long-term basis (intended benefit) without the upstream system getting ready."

.....

"189. As the intended benefit of the planned associated transmission system for evacuation of power from the generating stations occurs to the DICs of PoC pool only if the power from the generating stations can be transferred on a sustained long-term basis, which has not happened in the instant case. Also, as the allocation of transmission charges to designated ISTS users (DICs) under the Sharing Regulation is based on Usage, in the absence of upstream system, the asset in the Impugned Order cannot be used; hence, inclusion of this asset in the PoC pool is also not justified."

.....

"210(a). Due to the delay in both the dedicated line of MPGL and commissioning of the upstream transmission elements, namely the Tuticorin-Salem 765 kV D/C line and the Salem-Madhugiri 765 kV line, the LILO of the Tuticorin JV-Madurai 400 kV Quad D/C line remained non-functional and intended benefit has not achieved effective to the beneficiary due to non-availability of upstream system. Both these factors contributed concurrently. As is evident, even after the availability of a dedicated transmission line of MPGL on 27.10.2016, the full power of the plant could not be evacuated, and LTA was not made operationalized till all upstream elements were commissioned later."

The aforesaid judgment is relevant for understanding the expression "intended benefit" and the application of the defaulter's liability principle. It makes clear that mere completion or partial utilisation of an individual transmission element is not sufficient where the integrated system is incapable of achieving its intended purpose.

Applying the same principle to the present case, the transmission system was established specifically for **evacuation of power from Ghatampur TPS**. Therefore, in absence of readiness of the generating station and consequent regular flow of power, the intended benefit of the transmission system could not be achieved. Accordingly, mere completion of the transmission asset cannot, by itself, establish that the system was **"made operational" or "put to use"** for the purpose for which it was established.

339. A conjoint reading of the aforesaid judgments of the Hon'ble Supreme Court and the Hon'ble APTEL establishes that the beneficiaries cannot be saddled with transmission charges in respect of a transmission system which has not been put to use and that the liability can be fastened upon the entity to whom such delay is attributable. The Hon'ble Supreme Court in Power Grid Corporation of India Limited v. Madhya Pradesh Power Transmission Company Limited & Ors. (2025 INSC 697) has observed that in a situation where transmission charges accrue before the assets are operationalized due to a non-condonable delay on part of one of the utilities in charge of putting the transmission element into use, the cost of transmission cannot be put on the beneficiaries or consumers. Further, in the absence of specific contractual or regulatory provisions governing such situations, the liability for transmission

charges during the period of delay may be assigned to the party to whom such delay is attributable. Accordingly, once it is established that the transmission system could not be put to its intended use on account of delay attributable to NUPPL, the liability to bear the transmission charges for the disputed period cannot be shifted upon UPPCL or the State Discoms.

340. In the present matter, it is not disputed that the 765 kV Ghatampur TPS-Agra and 765 kV Ghatampur TPS-Hapur transmission lines were synchronized on 23.09.2024 and thereafter infirm power flow was established. However, it is not established that commercial evacuation and regular supply of power from Ghatampur TPS to the beneficiary LTTCs commenced from the said date. The Commission further observes that Articles 4, 6 and 10 of the TSA govern the contractual rights and obligations of the parties, whereas the present issue concerns application of the defaulter's liability principle already determined by the Commission in its Order dated 14.02.2023.

Further, in the present context, the transmission system was specifically established for evacuation of power from Ghatampur TPS. Therefore, its intended purpose could be achieved only upon readiness of the generating station and commencement of the intended regular flow of power. Since the generating station was not ready and power could not flow through the transmission system from generating station on a sustained basis, the transmission asset, notwithstanding its physical completion or COD/Deemed COD, cannot be said to have been "made operational" or "put to use" in the substantive sense contemplated under the TSA. Moreover, the entire transmission system developed by the Petitioner remains unutilised and serves no substantive purpose in the absence of regular power flow from the generating station, which is the reason for which the transmission system was established. The intended benefit of the system, namely, evacuation and supply of power to the beneficiaries/consumers, could arise only upon commencement of such power flow from the date of commercial operation. Therefore, the liability towards transmission charges for the period during which the transmission system could not be put to its intended use cannot be passed on to the consumers, who have not received the corresponding benefit of such transmission system.

341. Further, NUPPL has submitted that UPPCL has been paying transmission charges for the 765 kV Agra–Greater Noida line (part of Element-2) since

26.03.2021, well before supply of power from the generating station commenced. NUPPL contends that this conduct shows that commencement of supply was never treated as a prerequisite for liability towards transmission charges.

In this regard, it is pertinent to mention that the 765 kV Agra–Greater Noida line was utilized as being part of grid. Moreover, the Commission, vide its Order dated 14.02.2023 in Petition No. 1850 of 2022, has already held that the 765 kV Agra–Greater Noida line (including the 240 MVAr line reactor) is operationalised and is being utilized for transmitting power received from Lalitpur TPS. The transmission charges paid by UPPCL for this line are therefore attributable to its actual operation and utilization as grid element, and not to the supply of power from Ghatampur TPS. Accordingly, the contention of NUPPL is not tenable and does not merit consideration.

342. Further, NUPPL has contended that the Scheduled CODs of the transmission system were never aligned with those of Ghatampur TPS, as the contractual framework provided independent timelines for the transmission assets and the generating station. There was a gap of about seven months between the SCODs of Element-II and Unit-II, and likewise between Element-III and Unit-III. According to NUPPL, these timelines were deliberately designed so that the transmission network would be established before the generating units were commissioned, and payment of transmission charges was therefore never intended to be linked to the COD of the generating station.

In this regard, it is pertinent to note, first, that the transmission charges become payable by the distribution licensee only from the date on which the transmission line is put to use, as examined in detail in the preceding paragraphs. Further, no agreement has been placed before the Commission providing that transmission charges from the date of synchronisation of transmission lines till Commissioning of the Generating Plant shall be payable by the distribution licensees.

The transmission system for power evacuation is scheduled to be completed ahead of the associated generating unit. Unlike a generating station, which is built on a single, defined site, a transmission line runs a long distance across land held by numerous owners, and its execution is exposed to uncertainties

like right-of-way (RoW) issues etc. Because a line can be energised only when every section along the route is complete, an obstruction at even a single tower location can delay the entire project. To account for this, an adequate time margin is built into the transmission schedule, so that the evacuation system is ready before the unit is commissioned. It is the responsibility of generator to coordinate with STU/transmission licensee to ensure outgoing transmission lines are made available, matching with the project completion schedule. Moreover, there is a deferment clause of certain period in TSA which can be exercised by LTTCs to match the schedule.

343. The judicial dispensation deliberated has since been incorporated into the regulatory framework. An examination of that framework makes the settled position more clear.

It is significant that the lines in question are evacuation lines emanating directly from the generating station. Under Regulation 13(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, where the Associated Transmission System (ATS) of a generating station achieves commercial operation (COD) before the generating station or any of its units, the transmission charges for that ATS are payable by the generating station itself. These charges are borne in proportion to the Long-Term Access granted for the units that have not yet achieved COD. They become part of the charges payable by the beneficiaries or distribution licensees only after the generating station achieves COD. The Central Commission has consistently followed this principle.

It rests on the premise that the party for whose benefit a dedicated evacuation system is built, and whose delay leaves that system idle, must bear its cost until the system is put to use. Further, Regulation 9 of the Uttar Pradesh Electricity Regulatory Commission (Multi Year Tariff for Transmission) Regulations, 2025 contains a similar provision, under which liability for transmission charges rests with the generating company until the generating station, or the unit thereof, achieves commercial operation.

The position is therefore uniform across the judicial and regulatory frameworks, both Central and State. Transmission charges for an evacuation system commissioned ahead of the generating station are to be borne by the generating company, not by the beneficiaries, **until the generating station**

achieves COD. Further, the transmission system was planned and built to evacuate power from the installed capacity of the generating station. Synchronization/ trail run cannot be treated as realization of the intended benefit of the investment made in the transmission system. Nor can synchronization be regarded as fulfilment of the purpose for which the transmission system was conceived and executed. Accordingly, the consequences of the delay until commercial operation of generating unit must rest with NUPPL. Neither the transmission licensee nor the distribution licensees can be made to bear the burden of capacity that remains unused for reasons attributable solely to the generator.

344. Accordingly, the Commission holds that NUPPL is liable, under the Defaulter's Liability Principle and in terms of the Order dated 14.02.2023, for payment of the balance 75% Monthly Transmission Charges for the 765 kV Ghatampur TPS–Agra S/C Line (forming part of Element-2) and the 765 kV Ghatampur TPS–Hapur S/C Line (forming part of Element-3), for the disputed period from 24.09.2024 to 11.12.2024.

Issue No.2: Whether the Petitioner is entitled to LPS on the balance Monthly Transmission Charges for the period from 24.09.2024 to 11.12.2024 and, if so, the entity liable for payment thereof?

345. Having determined the liability for payment of the balance Monthly Transmission Charges, the Commission now proceeds to examine the claim for Late Payment Surcharge (LPS).

346. The Commission observes that the Petitioner had already raised the Monthly Transmission Charge invoices upon NUPPL for the period from 24.09.2024 to 11.12.2024. However, NUPPL unilaterally restricted payment to its 25% share on the premise that its liability under the defaulter's liability principle had ceased upon synchronization of the transmission lines. UPPCL did not pay the balance 75% transmission charges as it consistently maintained that the 100% liability of this portion of Element-2 for the disputed period of the Ghatampur TPS – Agra portion of Element-2 continued to rest upon NUPPL as per the Commission's Order dated. 14.02.2023. Consequently, despite the Petitioner having raised the invoices, the balance Monthly Transmission Charges remained unpaid due to misconceived views and faltered stand taken by NUPPL regarding cessation of its liability.

Since NUPPL is a part to the TSA and has been held to be the defaulter party liable to pay the transmission charges for the disputed period, it is necessary to examine the relevant provisions of the TSA governing the levy of LPS and payment of disputed invoices.

347. Article 10.8.1 of the TSA provides as follows:

"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 on simple rate basis and shall accrue from the Due Date until the amount due is actually received by the payee."

Article 10.9.6, 10.9.7 of the TSA provides as follows:

10.9.2 If either Party disputes any item or part of an item set out in any Invoice then that Party shall serve a notice (an "Invoice Dispute Notice") on the other Party setting out (i) the item or part of an item which is in dispute, (ii) its estimate of what such item or part of an item should be, (iii) and with all written material in support of its claim.

"10.9.4 If the invoicing Party does not agree to the claim raised in the Invoice Dispute Notice issued pursuant to Article 10.9.2, it shall, within fifteen (15) days of receiving the Invoice Dispute Notice, furnish a notice to the disputing Party providing (i) reasons for its disagreement; (ii) its estimate of what the correct amount should be; and (iii) all written material in support of its counter-claim."

"10.9.6 If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Invoice Dispute Notice pursuant to Article 10.9.4, the matter shall be referred to Appropriate Commission for Dispute resolution in accordance with Article 16."

"10.9.7 If a Dispute regarding a Monthly Transmission Charge Invoice or a Supplementary Invoice is settled pursuant to Article 10.7 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues the Invoice Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being

amicably resolved by the Parties pursuant to Article 10.9.5 or settled by Dispute resolution mechanism, along with interest (at the same rate as Late Payment Surcharge) or Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable."

A conjoint reading of the aforesaid provisions makes it clear that, under Article 10.8.1, any amount **due and remaining unpaid for more than thirty days after the Due Date** attracts LPS at the stipulated rate from the Due Date until the date of actual payment.

Further, Article 10.9.7 specifically contemplates the consequence of an invoice dispute being subsequently resolved in favour of the invoicing Party. In such an event, the amount found payable is required to be paid along with **LPS at the stipulated rate for the period prescribed therein**. In the present case also, NUPPL had disputed the invoices raised by the Petitioner and invoked the invoice dispute mechanism under Article 10.9 of the TSA. However, the mere invocation of the dispute resolution mechanism or pendency of a dispute does not suspend or extinguish the contractual consequence relating to LPS. Once the disputed amount is ultimately determined to be payable, the liability towards LPS follows in accordance with Articles 10.8.1 and 10.9.7 of the TSA. Thus, the mere fact that an amount/invoice has been disputed does not, by itself, extinguish the liability towards LPS where the amount is ultimately determined to be payable under the TSA.

It is further observed that the transmission project in question has been awarded through tariff-based competitive bidding, and its tariff has been adopted by this Commission under Section 63 of the Electricity Act, 2003. In respect of such projects, the Commission's role is limited. The rights and obligations of the parties, including those relating to billing, payment and the consequences of delayed payment, are governed by TSA. Where the provisions of the TSA are clear and unambiguous as regards the entitlement of the Petitioner to LPS on delayed payment of transmission charges, the Commission cannot depart from those provisions or substitute any other arrangement in their place.

348. Accordingly, the Commission is of the view that once the invoices had already been raised by the Petitioner and the balance amount remained unpaid on account of the stand taken by NUPPL, the contractual consequence stipulated under the TSA necessarily follows. Accordingly, NUPPL shall be liable to pay LPS of the invoices until actual payment to the Petitioner is made.

Issue No.3: Whether the Petitioner is entitled to Carrying Cost/LPS on Rs.44.40 crore withheld by UPPCL towards Liquidated Damages and reversal of the Rebate allegedly availed by UPPCL?

349. The Petitioner has claimed Late Payment Surcharge on the amount of Rs.44,40,35,122 retained by UPPCL towards Liquidated Damages. The Commission observes that the said amount formed part of the transmission charges payable to the Petitioner pursuant to the Commission's Order dated 14.02.2023. However, UPPCL retained the said amount against its claim for Liquidated Damages on account of the alleged delay in commissioning of Element-2 and Element-3 of the Project. Subsequently, vide Order dated 24.06.2024 passed in Petition No.1959 of 2023, the Commission held that no Liquidated Damages can be imposed upon Petitioner and the retained amount was ultimately released by UPPCL on 05.11.2024. The relevant extract of the Order dated 24.06.2024 is reproduced below: -

" 423. It is well settled that a person who has not suffered any loss or damage cannot be compensated. The philosophy underlying is that in case of a breach, the aggrieved party must be compensated and restored to a position it would have been in, had the contract been performed. But if there is no loss caused to the party, then no question of restoration or compensation arises. Thus, the existence of a legal injury i.e. the sustenance of a loss or damage on account of breach seems absolutely essential for a party to claim compensation. Even in Fatehchand case, AIR 1963 SC 1405, the court had clarified that the aim of awarding compensation is to make good the loss or damage that naturally arose in the usual course of things or which was so contemplated by the parties at the time of making the contract. Thus, there can be no award of any compensation if there is no legal injury to the party. This view of the court was subsequently upheld in various other judgments by courts across the country (State of Kerala v. United Shippers and Dredgers Ltd., 1982: AIR 1982 Ker 281, Maula Bux v. Union of India, (1969) 2 SCC 554: AIR 1970 SC 1955; ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705). For

instance, in Haryana Telecom Ltd. v. Union of Indiacase, 2006 Del 575: AIR 2006 Del 339, when a contractor delayed in supplying cables and the Government had to purchase the same from other sources and subsequently got it at cheaper rates, the award of the arbitrator awarding damages for breach was set aside as no loss was caused. The proof of some loss thus seems indispensable (Pure Pharma Ltd. v. Union of India, 2008 Del 739: ILR (2009) 1 Del 272) though it does not seem necessary to prove the extent of it. Loss therefore is a prerequisite for an award for damages.

424 Juxtaposing the conclusion of the above para that lossis a prerequisite for award of damages with the factual matrix of para 422, it is obvious that there is no change in the status of LTTCs with respect to supply of power even if petitioner exceeded the timelines and it's deemed COD went beyond the revised COD approved by the Commission. Hence in a above situation, no liquidated damages can be imposed upon the petitioner."

From above, it is concluded that the Commission vide above said Order had clearly stipulated that UPPCL was not entitled to deduct liquidated damages as per the law laid down by the Hon'ble Supreme Court of India. Consequently, the retention of **Rs. 44,40,35,122/-** towards LD was not ultimately found sustainable, and the amount was required to be restored to the Petitioner. The fact that the amount was subsequently released on 05.11.2024 does not alter the fact that the amount remained withheld during the intervening period. It is an established law that a party cannot benefit from money it held wrongfully. In cases where the underlying deduction of LD is struck down, the principal amount must be refunded alongside commercial interest. The principal amount withheld as liquidated damages must be refunded to the aggrieved party, typically accompanied by commercial interest to compensate for the time-value of the money wrongly withheld.

350. The issue that now arises for consideration is whether the Petitioner is entitled to LPS or any other interest rate on the aforesaid amount for the period during which it remained withheld by UPPCL. In this regard, reference to Article 10.8.1 of TSA has been made before us. Article 10.8.1 of the TSA provides as follows:

"10 Billing and Payment of Transmission Charges

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 on simple rate basis and shall accrue from the Due Date until the amount due is actually received by the payee."

351. On a plain reading, Article 10.8.1 applies to "any amount due from one Party to the other" that remains unpaid for thirty (30) days after the Due Date. However, the provision cannot be read in isolation. It forms part of Article 10, which is titled "Billing and Payment of Transmission Charges" and deals with how transmission charges are raised, billed and paid. The expressions "amount due" and "Due Date" must therefore be read in that context. They refer to amounts billed under the TSA, for which a Due Date arises under the billing mechanism of Article 10. Article 10.8.1 makes no mention of Liquidated Damages ("LD") or of amounts deducted or withheld by a Party on account of a claim of LD. The LD amount withheld by UPPCL was never raised through a bill with a corresponding Due Date. It therefore cannot be treated as an "amount due" falling within Article 10.8.1 for the period before this Commission's adjudication.

352. The Commission further observes that the TSA expressly provides for LPS under Article 10.8.1 on amounts due and remaining unpaid beyond the prescribed period. However, it contains no specific provision on carrying cost or interest for the period during which an amount is withheld on account of an LD claim. The absence of such a provision does not leave the Petitioner without a remedy. It is a settled principle that a party wrongfully deprived of money lawfully due to it is entitled to be compensated for the loss of its use. Carrying cost is compensation for the time value of money and is not a penalty. In these circumstances, the Commission is required to exercise its regulatory and inherent powers to ensure that the Petitioner is adequately compensated for being deprived of the use of money that has ultimately been found to be lawfully due to it.

353. The principle that a party is entitled to carrying cost on Liquidated Damages wrongfully deducted or recovered has been recognised by the Hon'ble Appellate Tribunal for Electricity ("APTEL"). In its Judgment dated 06.04.2026 in Review Petition No. 5 of 2025 in Appeal No. 126 of 2022, the Hon'ble APTEL

modified paragraph 42 of its earlier Judgment dated 10.02.2025. As modified, paragraph 42 reads as follows:

"33. Accordingly, we hereby direct that para 42 of the judgement dated 10th February, 2025 shall now be read as under:-

"42. Accordingly, we are unable to sustain the impugned order of the Commission. The same is hereby set aside. The appeal stands allowed. Hence, the SCOD of the Appellant's power project stands extended till 11th August, 2017 as sought by the Appellant. Further, we hold the Appellant not liable to pay any liquidated damages to NTPC and, therefore, the NTPC shall refund to the Appellant within one month the entire amount, if any, received from the Appellant on account of liquidated damages. The Appellant shall be entitled to carrying cost on the said amount at SBI PLR from the date when the Bank Guarantees of the Appellant were encashed by the NTPC till the date the entire amount is paid to the Appellant."

The judgment affirms that a party is entitled to carrying cost on LD that was wrongfully withheld, to compensate it for the time value of that money. The same principle applies here, because UPPCL's deduction of Rs. 44,40,35,122/- towards LD has been held unsustainable. The Petitioner is therefore entitled to carrying cost instead of LPS from the date of deduction.

354. As regards the applicable rate, the Hon'ble APTEL applied SBI PLR in the facts of that case. In the present case, the Commission considers it appropriate to adopt the IoWC rate, which is the regulatory benchmark for the cost of short-term funds and accordingly allows carrying cost on the amount of Rs. 44,40,35,122/- for the period from the date of deduction of LD by UPPCL up to thirty (30) days after the date of the Commission's Order dated 24.06.2024. The carrying cost shall be at the Interest on Working Capital ("IoWC") rate applicable for FY 2024-25. That rate is the weighted average interest rate of 8.88% plus 250 basis points, i.e., 11.38% per annum, as adopted by the Commission in the UPPTCL Tariff Order dated 15.04.2026, and is the appropriate benchmark rate for the period concerned. The IoWC rate reflects the cost of short-term funds that a regulated entity would reasonably incur. It compensates the Petitioner fairly without imposing a penal burden to UPPCL.

355. Once the Order dated 24.06.2024 held that the LD amount was not liable to be deducted, it crystallized as an amount due and payable by UPPCL to the

Petitioner under the TSA. UPPCL was required to pay that amount within thirty (30) days of the Order in accordance with Article 10.8.1 of the TSA. Any delay beyond that period amounts to non-payment of an amount due under the TSA and attracts the consequences agreed between the parties. Accordingly, with effect from the expiry of thirty (30) days from 24.06.2024 until the date of actual payment, UPPCL shall be liable to pay LPS at the rate specified in Article 10.8.1 of the TSA, in place of the carrying cost allowed in paragraph above.

Rebate

356. The Petitioner has sought refund of the Rebate availed by UPPCL during the period when the aforesaid amount remained unpaid. Article 10.7.1 of the TSA provides that Rebate shall be admissible only where payment of the relevant Monthly Transmission Charge Invoice or Supplementary Bill is made in full within the stipulated period. Article 10.7.1 of the TSA provides as follows:

"10.7 Payment of Rebate:

10.7.1 In case the Long Term Transmission Customer pays to the TSP through any mode of payment in respect of a Monthly Transmission Charge Invoice or Supplementary Bill, the following shall apply:

a. For payment of Invoices through any mode of payment, a Rebate of 2% shall be allowed on the Monthly Transmission Charge Invoice or Supplementary Bill for payments made in full within one Business Day of the receipt of the Invoice; or

b. For payment of Invoices subsequently, but within the Due Date, a Rebate of 1% shall be allowed on the payments made in full. ..."

357. On a plain reading, Article 10.7.1 grants Rebate as an incentive to the Long Term Transmission Customer for full and timely payment of the Monthly Transmission Charge Invoice or Supplementary Bill. Its purpose is to secure prompt payment of transmission charges so that the TSP has assured cash flow. The Petitioner contends that UPPCL deducted the LD amount from the invoices, so the payments were not "payments made in full", and the Rebate availed is therefore liable to be reversed.

358. The Commission is not persuaded by this contention. The amount withheld by UPPCL was not withheld as a dispute over transmission charges. It was deducted on account of a separate claim of Liquidated Damages raised by UPPCL against the Petitioner. There is no dispute that UPPCL paid the transmission charges billed by the Petitioner, net of the LD deduction, within

the period specified for Rebate. The shortfall arose only from the adjustment of the LD claim against the invoices, and not from any delay or default in paying transmission charges as such. The LD claim and the payment of transmission charges are two distinct matters, and each must be dealt with on its own terms. UPPCL could have paid the full transmission charges within the Rebate period and availed the Rebate and then recovered the LD amount from the Petitioner separately. In that case, UPPCL's entitlement to Rebate on transmission charges would have been beyond dispute, and the LD dispute would have been settled separately on its own merits. The fact that UPPCL chose to adjust the LD amount against the invoice instead of recovering it separately does not change the substance of the transaction. That choice cannot make the timely payment of transmission charges a default that forfeits the Rebate.

359. Further, the Commission has already held in the preceding paragraphs that the Petitioner shall be compensated for being deprived of the use of the withheld LD amount. It has allowed carrying cost at the IoWC rate from the date of deduction up to thirty (30) days after the Order dated 24.06.2024, and LPS under Article 10.8.1 thereafter. The financial consequence of the wrongful deduction has thus been fully addressed through the carrying cost and LPS awarded on that amount. If UPPCL were also directed to reverse the Rebate, the Petitioner would be compensated twice for the same withholding. That would be a windfall to the Petitioner and an unwarranted burden to UPPCL. The appropriate and complete remedy for the withheld LD amount is the carrying cost and LPS already allowed. Accordingly, the Petitioner's prayer for reversal and refund of the Rebate availed by UPPCL is disallowed.

360. The Petition is disposed of in terms of the above findings and directions.

(Griesh Kumar Vaish)
Member (Law)

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow

Dated: 16.10.2026