THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2127 of 2024

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 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-382421.

..... **Petitioner**

VERSUS

Neyveli Uttar Pradesh Power Limited
Through its Chief Executive Officer
Project Liaison Office, 6/42, Vipul Khand, Gomti Nagar,
Lucknow, Uttar Pradesh – 226010.

..... **Respondent**

THE FOLLOWING WAS PRESENT

1. Sh. Sourav Roy, Advocate, Petitioner
2. Ms. Namrata Saraogi, Advocate, NUPPL
3. Sh. Prashant Kumar, Representative, GTL

4. Sh. Manish Dwivedi, CE (PPA), UPPCL

5. Sh. Sanjay Kumar Chaurasia, SE (PPA), UPPCL

ORDER

(DATE OF HEARING: 08.10.2026)

1. The Petitioner has submitted that Ghatampur Transmission Limited has filed an instant 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 late payment surcharge. The Prayer of the Petitioner are as follows:-

   (a) Admit the Petition;

   (b) Hold and Declare that the Petitioner is entitled to payment of LPS amount till the date of payment (₹ 22.31 Crores for the period after this Hon'ble Commission's Order dated 14.02.2023 to June 2024) towards delay in making payment of Monthly Transmission Charges by the Respondent as per Article 10.8.1 of the TSA, and grant such an amount to the Petitioner;

   (c) Direct the Respondent to make payment of LPS amount till the date of payment to the Petitioner;

   (d) 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 entered into a TSA dated 06.04.2018, with PVNNL, MVVNL, PuVVNL, DVVNL, and the present Respondent i.e NUPPL for evacuation of power from 3x660 MW Ghatampur TPS. The Petitioner under the TSA is referred as Transmission Service Provider ("TSP").

3. The Commission, vide Order dated 14.02.2023 in Petition No. 1850 of 2022, titled as GTL vs PVVNL & Ors. had directed the Respondent to pay transmission charges to the Petitioner in accordance with defaulter liability principle for 765 kV Ghatampur TPS - Agra S/C line (including 189MVAR line reactor at Agra end) (Part of Element-2) and 765 kV Ghatampur TPS - Hapur S/C line (including 330MVAR line reactor at Hapur end) (Element -3).

4. Hence, this Petition has filed seeking payment of LPS from the Respondent for delay in payment of Monthly Transmission Charges pursuant to the Commission's relevant Order dated 14.02.2023. The Commission had directed the Petitioner to raise fresh invoice of "liability and past dues of transmission charges" in accordance with Order dated 14.02.2023 in Petition No 1850 of 2022 and directed the Respondent to make the payment of such past transmission charges within forty-five days from the date of issuance of fresh invoices/bills by the Petitioner.

5. The Petitioner, on 15.02.2023, raised a fresh invoice of ₹ 172.18 Crores for Element-2 & ₹ 114.52 Crores for Element-3 for the period from Deemed COD till 31.01.2023 in compliance with this Commission's direction to the Respondent for making payment within 45 days from date of invoice. Therefore, LPS should be payable.

6. The Respondent, on 02.03.2023, sent an invoice dispute notice and stated that the invoices raised by the Petitioner are not in accordance with Commission's Order dated 14.02.2023, and asserted that amounts have been claimed by GTL, i.e. ₹ 172.18 Crores for Element-2 & ₹ 114.51 Crores for Element-3 from the deemed COD date of 26.03.2021 and 28.01.2022 for Element-2 & Element-3 respectively, without adjusting the amounts already paid by the Respondent till date for Element-2 & Element-3, which works out to ₹ 62.19 Crores for Element-2 and ₹ 31.26 Crores for Element-3.

7. Subsequent to the invoice dispute notice, the Petitioner, on 07.03.2023, submitted that the invoices were strictly in compliance with directions of the Commission and requested the Respondent to make payment after duly considering the payments already made towards Element-2 and Element-3 by the Respondent. Accordingly, the Petitioner called upon the Respondent to pay the outstanding amount of of ₹ 109.99 Crores for Element-2 & ₹ 83.25 Crores for Element-3 after adjusting the advance amount ₹ 62.19 Crores for Element-2 and ₹ 31.27 Crores for Element-3 already paid by the Respondent.

8. Meanwhile, the Respondent, on 20.03.2023, preferred an appeal against the Order dated 14.02.2023 in Petition No. 1850 / 2022 before Hon'ble APTEL vide Appeal No. 332 of 2023 along with Interlocutory Application (IA) No. 577 of 2023 seeking interim relief and stay against the Order dated 14.02.2023. The IA No. 577/2023 was heard before Hon'ble APTEL wherein Hon'ble APTEL, vide

its Order dated 06.07.2023, dismissed the IA with a clear direction to the Respondent to make the payment in compliance with the Commission's above referred Order dated 14.02.2023, and held that such payment shall be subject to the outcome of the main Appeal. The relevant extract of the Hon'ble APTEL's order is as under:

"25. We are of the view that the questions raised in the main Appeal including the application of defaulter's liability principle must necessarily await a detailed examination when the Appeal is taken up for hearing later, therefore, at this stage we do not find sufficient reasons to grant interim injunction as prayed by the Appellant. Suffice it to make it clear that the payment to be made by the Appellant, in compliance with the Impugned Order, shall be subject to the result of the main Appeal.

26. The I.A., is accordingly, disposed of."

9. Pursuant to Hon'ble APTEL's Order dated 06.07.2023, the Petitioner, vide its letter dated 07.07.2023, called upon the Respondent to pay the outstanding amounts pending to the Petitioner.

10. The Respondent i.e NUPPL, vide its e-mail dated 18.07.2023, requested an undertaking that in case Hon'ble APTEL's final order ultimately favours the Respondent, the Petitioner will refund the entire amount received from the Respondent within one week. In turn, the Petitioner, vide its letter dated 20.07.2023, submitted an undertaking that it will refund the transmission charges paid by the Respondent in terms of Order dated 14.02.2023 in Petition No. 1850/2022 in excess of its liability under the TSA, in the event captioned appeal is finally decided in favour of the Respondent.

11. The Respondent, on 17.08.2023, challenged the Hon'ble APTEL's order dated 06.07.2023 before the Hon'ble Supreme Court vide Civil Appeal No. 5453 of 2023. The Civil Appeal was heard by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court, vide its order dated 11.09.2023, dismissed the Civil Appeal.

12. Further, as per Hon'ble Supreme Court order dated 11.09.2023, Respondent made a payment of ₹ 211.84 Crores on 15.09.2023 towards outstanding transmission charges till June 2023. The Respondent, vide its letter dated 16.09.2023 submitted the payment advice. The detailed reconciliation of payment received against the outstanding amount for Element -2 & Element -3 is as under:

Table 1: Transmission Charges paid by the Respondent (in Crores)

Billing Period	Transmission Charges
Deemed COD to 31.03.2023	216.56
April 2023	11.82
May 2023	12.21
June 2023	11.82
Total Outstanding Transmission Charges	252.43
Less: Withheld payment equivalent to LD amount as per the Respondent's computation	39.63
Outstanding Transmission Charges after adjusting payment amount equivalent to LD	212.80
Less: TDS	0.96
Total Transmission Charges paid by the Respondent on 15.09.2023	**211.84**

13. The Petitioner had raised LPS invoices along with invoices of Monthly Transmission Charges invoices. However, the Respondent did not pay the Monthly Transmission Charges pursuant to the Commission's Order dated 14.02.2023 in Petition No. 1850/2022 from the due date of 04.05.2023 till 14.09.2023 (4 Months 10 days) and only made partial payment of ₹ 211.84 Crores to the Petitioner on 15.09.2023 & the billed LPS amount was not paid to the Petitioner.

14. The Petitioner submitted that the issue of LPS for the period commencing from COD of respective Elements declared by the Petitioner till the Commission's Order dated 14.02.2023 in Petition No. 1850/2022 was already pending before APTEL in Appeal No. 354/2023 and was not part of this petition. However, the Commission's Order dated 14.02.2023 directed the Respondent for payment of past transmission charges within 45 days from the date of issuance of a fresh invoice by the Petitioner. The Petitioner raised the fresh invoice on 15.02.2023 in terms of order. In respect of said invoice raised on 15.02.2023 pursuant to the Order, the Respondent has admittedly made the payment only on 15.09.2023, after a delay of over six months. Accordingly, Petitioner vide its letter dated 19.12.2023, demanded payment of LPS amounting to ₹17.38 crore for Element-2 and Element-3 for the period 15.02.2023 to 31.10.2023, stating that this amount is not under dispute or stay in any forum and arises solely due to delayed payment as per the Commission's Order. Hence, the Respondent is liable to pay for this LPS.

15. In response to the Petitioner's letter dated 19.12.2023, the Respondent, on 05.01.2024, sent a dispute notice under Article 10.9 of the TSA. The

Respondent also submitted that this Commission has not imposed any LPS liability on the Respondent in its Order dated 14.02.2023 in Petition No. 1850/2022.

16. Soon after the receipt of dispute notice under Article 10.9 of the TSA from the Respondent Petitioner, vide its letter dated 16.01.2024,submitted that under Article 10.9.2 of TSA, in case the Respondent desires to dispute any invoice, the Respondent is obligated to pay the undisputed portion of LPS invoice. Further, as per Article 10.6.4 of TSA, the applicable LPS shall be adjusted first from the payment received from the Respondent, and it shall not be entitled to avail any rebate unless it clears the entire claim amount. Further, the Petitioner on 29.01.2024, gave a detailed response to the Respondent's dispute notice.

17. However, the Respondent vide its letter dated 29.05.2024, requested Petitioner to withdraw the LPS invoices claiming that LPS is a substantive right which has to flow either from contract and Petitioner is claiming LPS for the period prior to UPERC order which is completely untenable .

18. The Respondent has disputed the LPS invoices raised by the Petitioner. As per the LPS invoice sent in the month of June 2024 to the Respondent, the total LPS amount due for the period after the Order dated 14.02.2023 to June 2024 is ₹ 22.31 Crores. The detailed working of LPS of ₹ 22.31 Crores is as under:

Table 2: Total LPS due till 30.06.2024 (in Crore)

Sr. No.	Invoice	Time Period covered in this bill	MTC Amount	Payment Received	LPS Amount
1	15.2.2023 Invoice	Deemed CoD till 31.01.2023	193.25	-	0.00
2	Feb-23	Feb-23	15.81	-	0.00
3	Mar-23	Mar-23	17.51	-	0.00
4	Apr-23	Apr-23	16.89	4.74	0.00
5	May-23	May-23	17.46	5.25	4.78
6	Jun-23	Jun-23	16.89	10.31	2.90
7	Jul-23	Jul-23	17.46	-	3.16
8	Aug-23	Aug-23	17.46	10.31	3.40
9	Sep-23	Sep-23	16.89	243.36	2.08
10	Oct-23	Oct-23	17.46	-	0.69
11	Nov-23	Nov-23	16.89	17.20	0.69
12	Dec-23	Dec-23	17.46	33.84	0.70
13	Jan-24	Jan-24	17.46	17.28	0.73

14	Feb-24	Feb-24	16.33	-	0.71
15	Mar-24	Mar-24	17.46	33.45	0.73
16	Apr-24	Apr-24	16.94	17.11	0.57
17	May-24	May-24	17.51	16.60	0.58
18	Jun-24	Jun-24	16.94	17.16	0.58
Total LPS Due till 30.06.2024					**22.31**

19. As per Article 10.8 of the TSA, if any amount due from one party to the other remains unpaid for thirty (30) days after the due date, the defaulting party is liable to pay Late Payment Surcharge (LPS) at 1.25% per month on the unpaid amount.

20. The Petitioner has submitted that the object of LPS is to enforce and/or encourage timely payment of transmission charges. LPS dissuades the paying party from delaying payment and compensates the Transmission Licensee for the time value of money lost on account of delay.

21. Further, the timeline defined by the Commission for payment of transmission charges is to ensure timely payment by the Respondent to the Petitioner. If no LPS were payable under the Order dated 14.02.2023 in Petition No. 1850/2022, there would have been no need for the Respondent to seek a stay before the Hon'ble APTEL, as filing an Appeal alone would have sufficed. The Respondent's conduct is further shown by its immediate release of payment after the Hon'ble Supreme Court denied its interim stay application.

22. The Petitioner has further submitted that neither the Hon'ble APTEL nor the Hon'ble Supreme Court stayed the Commission's Order dated 14.02.2023 in Petition No. 1850/2022 or granted extra time to the Respondent to make payment. The time taken by the Respondent to pursue legal remedies cannot be at the Petitioner's cost, and the right to appeal cannot be used to defer payment. The Respondent, under the garb of appeal, delayed payment by almost 6 months from the due date. Consequently, the invoices raised by the Petitioner were legitimate, and the Respondent's failure to honour them amounts to non-compliance with the Commission's directions. The Respondent was therefore liable to pay LPS for the delayed payment.

23. The Petitioner has submitted that Article 10.9.2 of TSA provides that in case LTTCs desire to dispute any invoice, then the concerned LTTC is under the obligation to pay the undisputed amount of such invoice. In compliance with

the explicit provision under the TSA, the Respondent is obligated to pay the undisputed portion of the invoice.

24. 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 the PPA is meant for compensation towards time value of money on account of delayed payments.

25. The Hon'ble APTEL in ***Maharashtra State Electricity Distribution Co. Ltd. vs. Maharashtra Electricity Regulatory Commission and Ors., APL No. 77 of 2018*** had held 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."*

26. The Petitioner has further submitted that this Commission vide Order dated 14.02.2023 in Petition No. 1850/2022 has only altered the proportion of sharing of transmission charges as per the defaulter liability principle as an interim arrangement till the work under the scope of Respondent is completed, keeping all other provisions under the TSA intact. Accordingly, Article 10.8 will be applied to the Respondent in case it delays the payment of Monthly Transmission Charges as per Order dated 14.02.2023 in Petition No. 1850/2022.

27. In view of the above, the Petitioner had submitted that the LPS accrued till the date of payment towards delay in making payment of Monthly Transmission Charges after above Order dated 14.02.2023 is to be paid by Respondent.

Reply filed by Respondent (NUPPL) dated 23.05.2025

28. NUPPL has submitted that the claim for Late Payment Surcharge (LPS) pertains to the amounts directed to be paid under the Commission's Order dated 14.02.2023 in Petition No. 1850 of 2022, wherein the principal claim related to transmission charges.

29. NUPPL has submitted that the present Petition seeks recovery of LPS, which is essentially a claim for future LPS that had already been raised by GTL in Petition No. 1850 of 2022 but was not granted. It was contended that GTL had

specifically prayed for payment of transmission charges from the deemed COD along with applicable LPS under Article 10.8.1 of the TSA. According to NUPPL, the same relief cannot be sought again through the present proceedings.

30. NUPPL has further submitted that GTL has already challenged the Order dated 14.02.2023 in Petition No. 1850/2022 before the Hon'ble APTEL in Appeal No. 354 of 2023, wherein the issue of LPS has also been raised. The said appeal is pending adjudication, and no stay has been granted. It is submitted that the Commission's Order dated 14.02.2023 continues to remain operative and cannot be altered through the present proceedings, as any variation would amount to a review of the said Order. According to NUPPL, such review is not maintainable, particularly when the Order is already under challenge before the Hon'ble Appellate Tribunal.

31. NUPPL has contended that the issue relating to LPS, which was not allowed under the relevant Order dated 14.02.2023, cannot be reopened through a subsequent petition, as the findings in the said Order continue to bind the parties. It was further submitted that GTL cannot, through what was described as "clever drafting", seek a relief that was not granted in earlier proceedings between the same parties, especially when the issue is already pending consideration before the Hon'ble Appellate Tribunal.

32. NUPPL has stated that the Commission had not granted the prayer relating to LPS in Petition No. 1850 of 2022. According to it, where a prayer is raised but not specifically allowed, the same is deemed to have been rejected.

33. NUPPL has submitted that the present Petition is barred by the principles of *res judicata* and *constructive res judicata*. It is submitted that GTL had already availed its opportunity to seek LPS on transmission charges arising from the deemed COD determined in Petition No. 1850 of 2022 and, therefore, the issue cannot be reagitated.

34. NUPPL has further submitted that by way of relevant Order dated 14.02.2023, the Commission has not directed any payment for Late Payment Surcharge on the transmission charges while GTL had raised a claim of LPS for future period while seeking payment of transmission charges, but the same was not granted.

35. In support of the above contentions, reliance was placed upon the judgments of the Hon'ble Supreme Court in:

a) *Ramachandra Sonavane & Ors. v. Vithu H. Mahar & Ors.* [(2009) 10 SCC 273];

b) *State of U.P. v. Nawab Hussain* [(1977) 2 SCC 806];

c) *Forward Construction Co. v. Prabhat Mandal (Regd.)* [(1986) 1 SCC 100]; and

d) *Shiv Chander More v. Lt. Governor* [(2014) 11 SCC 744].

36. NUPPL has further submitted that the doctrines of *res judicata* and *constructive res judicata* have consistently been applied by electricity regulatory commissions and such approach has been upheld by the Hon'ble APTEL. Reliance was placed upon:

a) Judgment dated 25.10.2018 in Appeal No. 185 of 2015 (*Kalani Industries Pvt. Ltd. v. RERC & Ors.*) (Paras 61-68); and

b) Judgment dated 18.05.2011 in Appeal No. 172 of 2010 (*Bihar Steel Manufacturers Association v. BERC & Ors.*) (Paras 33 & 34).

37. On the aforesaid grounds, NUPPL submitted that the claim for LPS is not maintainable and deserves to be rejected at the threshold.

38. Without prejudice to its objections on maintainability, NUPPL has submitted that GTL's case is founded on the premise that LPS became payable for the period from the Commission's relevant Order dated 14.02.2023 until payment was made on 15.09.2023, based on the direction to make payment within 45 days and the provisions of the TSA dated 06.04.2018.

39. NUPPL has submitted that the aforesaid contention proceeds on an erroneous assumption. According to NUPPL, the right to claim interest or LPS is a substantive right and can be enforced only when expressly provided under the contract or applicable statutory provisions. It was submitted that GTL itself has consistently maintained that the liability for transmission charges during the mismatch period arose solely from the Commission's exercise of regulatory powers and not from any contractual provision of the TSA. Accordingly, NUPPL contended that the LPS provisions contained in the TSA cannot be invoked.

40. NUPPL has further submitted that GTL cannot simultaneously contend that transmission charges were imposed through the Commission's regulatory jurisdiction outside the TSA and yet seek LPS under the TSA. In this regard, reliance was placed on the observations recorded by the Hon'ble APTEL in its Interim Order dated 06.07.2023 in I.A. No. 577 of 2023 in Appeal No. 332 of

2023, wherein it was noted that the Commission had invoked the defaulter's liability principle and exercised its regulatory powers to fasten liability upon NUPPL.

41. It is further contended that since the levy of transmission charges for the mismatch period itself was outside the scope of the TSA, no provision of the TSA could be invoked for claiming LPS. NUPPL also submitted that the claim for LPS does not flow from the Order dated 14.02.2023.

42. NUPPL has submitted that LPS cannot be awarded on considerations of equity, justice or fair play and, in this regard, relied upon the judgment of the Hon'ble Supreme Court in *NTPC Ltd. v. Madhya Pradesh State Electricity Board & Ors.* [(2011) 15 SCC 580].

43. Referring to the averments made by GTL in the present Petition, NUPPL has submitted that the allegation that NUPPL unsuccessfully pursued remedies before higher forums and yet failed to comply with the Commission's Order is misconceived. NUPPL has also submitted that it has fully complied with the Commission's relevant Order dated 14.02.2023 by making payment of the transmission charges directed therein and that the said Order did not direct payment of any LPS.

44. NUPPL has further disputed GTL's contention that its filing of proceedings before the Hon'ble APTEL seeking interim relief implied an acknowledgment of liability towards LPS. According to NUPPL, interim protection had been sought before the Hon'ble Appellate Tribunal because the Commission had directed payment of transmission charges within 45 days, failing which GTL could have resorted to enforcement proceedings under Section 142 of the Electricity Act, 2003.

45. NUPPL has submitted that the present Petition effectively seeks a review of the Commission's Order dated 14.02.2023 by attempting to re-agitate issues that had already been considered and decided in Petition No. 1850 of 2022.

46. Without prejudice to the above submissions, NUPPL has further contended that the invoice dated 15.02.2023 relied upon by GTL was itself erroneous. According to NUPPL, the defects in the bill were communicated vide letter dated 02.03.2023 and, after correcting the errors, GTL raised a fresh invoice on 20.03.2023.

47. NUPPL has therefore submitted that, even assuming the claim is otherwise maintainable, computation of LPS from the invoice dated 15.02.2023 is unsustainable and the relevant date, if any, can only be 20.03.2023.

48. In view of the above submissions, NUPPL has prayed that the present Petition be dismissed as being devoid of merit and not maintainable in law.

Rejoinder submitted by Petitioner dated 27.05.2025

49. The Petitioner has submitted that the current petition pertains only to the LPS accrued after the Commission's Order dated 14.02.2023, specifically for the period between 15.02.2023 and June 2024, and is not connected to the earlier LPS claims that are currently sub judice before APTEL in Appeal No. 354 of 2023. The cause of action in the present petition is entirely new and distinct, arising from NUPPL's delayed payment of transmission charges directed by the Commission, for which no stay was granted.

I. The present Petition is not barred by the principles of Res Judicata and Constructive Res Judicata

50. In response to the objections raised by NUPPL, the Petitioner has submitted that the present Petition is neither barred by the principles of *res judicata* nor *constructive res judicata*. The Petitioner has denied the contention that the claim for LPS stood concluded in Petition No. 1850 of 2022 or that the pendency of Appeal No. 354 of 2023 before the Hon'ble APTEL renders the present Petition non-maintainable.

51. In paragraphs 21 and 22 of the Petition clearly explain the nature and scope of the present dispute. It is reiterated that while the issue relating to LPS upto the date of the Commission's relevant Order dated 14.02.2023 is pending adjudication before the Hon'ble APTEL in Appeal No. 354 of 2023, the present Petition concerns only the LPS arising due to delayed payment of invoices raised pursuant to the Commission's relevant Order dated 14.02.2023.

52. The Respondent has misconstrued the scope of the present proceedings. According to the Petitioner, the issue pertaining to payment of transmission charges and the associated LPS upto the date of the Order dated 14.02.2023 is sub judice before the Hon'ble APTEL and is not the subject matter of the present Petition.

53. In compliance with the Commission's relevant Order dated 14.02.2023, fresh invoices were raised on 15.02.2023. However, the Respondent made payment only on 15.09.2023 after a delay of more than six months. Consequently, LPS amounting to ₹17.38 Crore for the period subsequent to the Order dated 14.02.2023 remained unpaid. It is contended that such claim is not under challenge before any forum and is therefore legally recoverable.

54. The Petitioner has further submitted that the Respondent failed to make payment within the period of forty-five days prescribed under the Commission's Order dated 14.02.2023 and, therefore, became liable to pay LPS on account of such delay.

55. Neither the Hon'ble APTEL nor any other forum granted any extension of time for making payment of transmission charges. Since there was no stay on the Commission's relevant Order dated 14.02.2023, the Respondent remained under an obligation to make payment within the stipulated timeframe and became liable for consequential LPS.

56. It was further submitted that, as per the LPS invoice issued in June 2024, the total LPS payable for the period subsequent to the relevant Order dated 14.02.2023 upto June 2024 amounted to ₹22.31 Crore. The detailed computation has been set out in paragraph 30 of the Petition.

57. The Petitioner has submitted that merely because the Respondent had exercised its appellate remedies, the same did not absolve it of its obligation to comply with the Commission's Order or discharge its financial liabilities arising therefrom.

58. Accordingly, the Petitioner has submitted that the present dispute arises from post-order events, namely delayed payment of invoices raised pursuant to the Commission's relevant Order dated 14.02.2023, and therefore the bar of *res judicata* or *constructive res judicata* has no application.

II. The present Petition does not seek review of the Order dated 14.02.2023

59. The Petitioner has submitted that the issue regarding the jurisdiction of the Commission stands elaborately addressed in paragraphs 5 to 8 of the Petition and the same were reiterated and relied upon. The Petitioner refuted the Respondent's contention that any relief granted in the present Petition would

amount to a review of the Order dated 14.02.2023 in Petition No.1850/ 2022. The Petitioner has also submitted that it is not seeking any modification, variation or review of the Order dated 14.02.2023 in Petition No.1850/ 2022. Rather, the Petitioner is seeking payment of LPS arising on account of delayed payment of invoices raised pursuant to and in compliance with the said Order.

60. The Petitioner has submitted that adjudication of the present claim does not require reopening or reconsideration of any finding recorded in the relevant Order dated 14.02.2023. Therefore, the allegation that the present Petition constitutes a review of the said Order is misconceived and untenable.

III. The present Petition is founded upon a fresh cause of action and the claim for LPS flows from the Order dated 14.02.2023

61. The Petitioner submitted that paragraphs 11 to 41 of the Petition comprehensively set out the facts giving rise to a fresh and independent cause of action. It is contended that the present claim arises solely on account of delay in payment of transmission charges despite the specific directions contained in the Commission's relevant Order dated 14.02.2023.

IV. LPS is payable under the TSA and constitutes a contractual entitlement

62. The Petitioner has submitted that Article 10.8 of the TSA expressly provides that any amount remaining unpaid beyond thirty days from the due date shall attract LPS at the rate of 1.25% per month. The Petitioner reiterated and relied upon the said provisions.

63. The Petitioner has disputed the Respondent's contention that the claim does not arise under the TSA merely because the Commission exercised regulatory powers while fastening liability upon the Respondent.

64. The Petitioner has submitted that entitlement to transmission charges flows directly from Article 6.3.1 of the TSA. Therefore, once liability for payment of transmission charges has been fastened upon NUPPL, the contractual consequences provided under the TSA, including LPS under Article 10.8, necessarily follow.

65. The Petitioner has further submitted that Article 10.8.1 of the TSA specifically provides for payment of LPS on any amount remaining unpaid beyond thirty

days from the due date and, therefore, LPS constitutes a contractual consequence of delayed payment.

66. The Petitioner has submitted that the Commission's exercise of regulatory powers was confined to identifying the defaulting entity and fastening liability in accordance with the defaulter liability principle. It is contended that the Commission did not alter or replace the contractual framework governing payment of transmission charges and LPS under the TSA. Reliance is placed on paragraphs 125 to 128 of the Commission's relevant Order dated 14.02.2023.

67. In support of the aforesaid contention, reliance is placed on the judgment of the Hon'ble Supreme Court in *PGCIL v. PSPCL & Ors.*, [(2016) 4 SCC 797], wherein the Hon'ble Supreme Court held that the beneficiaries could not be made liable to pay transmission charges before the transmission line was made operational/put to use.

68. Reliance is also placed on the judgment of the Hon'ble APTEL in *Nuclear Power Corporation of India Ltd. v. CERC*, [2019 SCC OnLine APTEL 83], wherein the Hon'ble APTEL, applying the defaulter liability principle, held that the entity due to which the transmission system developed through the TBCB route could not be put to use would be liable to pay the transmission charges from SCOD till commissioning of the upstream/downstream system/terminal bays.

69. The Petitioner has further relied upon the judgment of the Hon'ble Supreme Court in *Power Grid Corporation of India Ltd. v. M.P. Power Transmission Co. Ltd.*, [2025 SCC OnLine SC 1128], wherein the Hon'ble Supreme Court affirmed the principle of defaulter liability and held that where transmission charges accrue before the transmission assets are operationalised due to non-condonable delay attributable to a utility responsible for putting the transmission element into use, such transmission charges cannot be passed on to the beneficiaries or consumers and are required to be borne by the defaulting entity responsible for the delay. The Hon'ble Supreme Court also affirmed the principle applied by the Hon'ble APTEL in *Nuclear Power Corporation of India Ltd. v. CERC* (supra).

70. It is also submitted that mere reliance on the defaulter liability principle for identifying the defaulting party does not displace the contractual provisions of the TSA. According to the Petitioner, once entitlement to transmission charges

is recognized under Article 6.3.1 of the TSA, the provisions relating to LPS under Article 10.8 become equally applicable. It is further submitted that the object of LPS is to ensure timely payment of transmission charges and compensate the transmission licensee for the time value of money lost due to delayed payment.

71. It is submitted that vide letter dated 19.12.2023, it had requested the Respondent to immediately release the outstanding LPS and had also offered that, in the event of success of the Respondent in the pending appeal, suitable adjustments could be made against future transmission charges.

72. Also, vide letter dated 05.01.2024, the Respondent itself invoked Article 10.9 of the TSA and raised a dispute thereunder regarding the LPS invoices. According to the Petitioner, such conduct amounts to an acknowledgment that the controversy concerning LPS arises under the TSA.

73. The Petitioner has contended that the Respondent is simultaneously relying upon the TSA for the purpose of invoking dispute resolution provisions while denying applicability of the TSA to the claim for LPS. The Petitioner characterized such stand as impermissible approbation and reprobation and relied upon the judgments in *Karam Kapahi v. Lal Chand Public Charitable Trust*, *Mumbai International Airport (P) Ltd. v. Golden Chariot Airport* and *Shyam Telelink Ltd. v. Union of India*.

74. The Petitioner has further submitted that even under Article 10.9.8 of the TSA, the Respondent was required to make payment of the disputed amount. It is submitted that LPS is in the nature of interest payable on delayed payments and operates as a deterrent against defaults and delays in discharge of contractual obligations.

75. It is also submitted that the very purpose of incorporating an LPS provision in the TSA is to ensure timely payment and discourage delay. Since the parties voluntarily entered into the TSA, the contractual consequences flowing therefrom cannot subsequently be disregarded. In view of the aforesaid submissions, the Petitioner prayed that the Petition be allowed in its entirety.

Hearing dated 08.10.2026 along with Written Submissions filed by the Petitioner dated 22.10.2026

76. Sh. Sourav Roy, learned Counsel appearing on behalf of the Petitioner, submitted that vide the Commission's relevant Order dated 14.02.2023, Deemed COD of Element-2 and Element-3 was determined as 26.03.2021 and 28.01.2022, respectively. Pursuant thereto, the Petitioner raised fresh invoices on 15.02.2023, which were required to be paid by the Respondent within 45 days. He submitted that the present dispute pertains only to the delayed payment of invoices raised in compliance with the aforesaid Order and is independent of the earlier period. It was further submitted that although the Order dated 14.02.2023 was challenged before the Hon'ble APTEL and the Hon'ble Supreme Court, no stay was granted. The Respondent issued an Invoice Dispute Notice on 02.03.2023 and ultimately made payment of the transmission charges in September 2023 without payment of LPS. Accordingly, the Petitioner claimed entitlement to LPS under Article 10.8.1 of the TSA and contended that, in view of the Commission's findings under the defaulter liability principle, NUPPL is liable for the consequential LPS arising from the delay in payment. Learned Counsel also relied upon the written submissions filed on behalf of the Petitioner discussed in the subsequent paras.

77. The facts on which the claim rests are borne out by the Respondent's own pleadings and correspondence:

i. In the relevant Order dated 14.02.2023, this Commission directed the Petitioner to raise fresh invoices within fifteen days, and directed "*UPPCL/ LTTCs including NUPPL to make the payment of such bills of liability and payment of past transmission charges within forty-five days from the date of issuance of fresh invoices/bills by the Petitioner*";

ii. The Petitioner raised the fresh invoices on 15.02.2023. On the Respondent's own case, a corrected invoice was submitted on 20.03.2023, and the Respondent acknowledged its receipt "*for payment*" by its letter dated 01.04.2023;

iii. The Respondent's application for stay was dismissed by the Hon'ble APTEL on 06.07.2023, and its Civil Appeal against that order was dismissed by the Hon'ble Supreme Court on 11.09.2023. At no stage did any forum stay the relevant Order dated 14.02.2023 or extend the due date for payment fixed by it;

iv. The Respondent paid Rs. 211.84 crore only on 15.09.2023; and

v. The Respondent disputed the LPS invoices by its letter dated 05.01.2024, styled as a "*Dispute under Article 10.9 of TSA dated 06.04.2018*" and has not paid them.

78. The Petitioner has submitted that the Respondent's defence is not that it paid within time but that no LPS attaches to its delay. The Respondent itself describes the Petitioner's claim as one for LPS "for the period spanning from this Commission's relevant Order dated 14.02.2023 until the actual payment date of 15.09.2023, citing the directive that required payment of the Petitioner's raised bills within 45 days", that is to say, a claim founded on events after the relevant Order dated 14.02.2023.

The entitlement to Monthly Transmission Charges, and the consequence of delay in their payment, are governed by the TSA:

79. The Respondent is itself an LTTC and a party to the TSA - this Commission specifically observed that "NUPPL who is a party to the TSA is the defaulting entity in the present matter for both Element 2 and Element 3". Article 10.1 of the TSA obliges the LTTCs to pay the MTC "subject to provisions of this Article 10". Article 10.8.1, which forms part of the same Article, provides:

> "*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.***"
>
> ***(Emphasis Supplied)***

80. It is further submitted that the MTC payable by the Respondent is an "amount due ... pursuant to this Agreement". It is payable under Article 6.2.2, computed under Schedule 3, invoiced as Monthly Transmission Charges, and owed by an LTTC to the TSP. The relevant Order dated 14.02.2023 did not create a new, extra-contractual debt - it determined which of the LTTCs must discharge a contractual one, and fixed the time within which the arrears were to be paid. Article 10.8.1 admits of no exception for an LTTC that disputes its share.

81. The invoices dated 15.02.2023 were themselves raised for "Transmission Charges for Element 2, as per Commission order in case no 1850/2022 dated

14.02.2023 read with TSA dated 06.04.2018", and their covering letters recorded that "in the event of delay in payment of Transmission charges, late payment surcharge as applicable in the TSA shall be payable" . The Respondent was thus put on notice, at the very outset, of the contractual consequence of non-payment.

82. The scheme of the TSA is, moreover, that the obligations of the LTTCs towards the TSP are insulated from disagreements amongst the LTTCs themselves. Article 16.3.2 of the TSA provides that "*the obligations of the Long Term Transmission Customers under this Agreement towards the TSP shall not be affected in any manner by reason of inter-se disputes amongst the Long Term Transmission Customers*". The question pending in the Respondent's appeal is, as the Hon'ble APTEL noted, "*whether the entire liability is to be borne by the Appellant*", which is in substance a question of allocation amongst the LTTCs. The pendency of that question cannot suspend the TSP's right to timely payment, or to LPS upon delay.

There is no approbation and reprobation by the Petitioner - it is the Respondent which has invoked the TSA throughout:

83. The Petitioner has submitted that the Petition No. 1850 of 2022 was filed on 10.05.2022, heard in November 2022 and decided on 14.02.2023. The default which founds the present claim, namely the failure to pay the invoices raised on 15.02.2023 within the forty-five days fixed by the Order dated 14.02.2023, occurred only after that Order was passed. It was not, and could not have been, in issue in Petition No. 1850 of 2022. A claim which had not accrued could neither "*might*" nor "*ought*" to have been raised. Consistently with this, this Commission framed only two issues for determination, namely the dates of Deemed COD and the entitlement to, and incidence of, transmission charges. Therefore, the present petition is a fresh cause of action – which arose on 15.02.2023, i.e., only after the judgement dated 14.02.2023 passed by this Commission. The Hon'ble Supreme Court has in the judgement of ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706***, held as under:

> "***Cause of action***
> *13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action.*

The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

84. It is further submitted that in Prayer (g) of Petition No. 1850 of 2022 sought LPS on MTC which had by then fallen due and remained unpaid. The Petitioner's case, as recorded in the relevant Order dated 14.02.2023, referred to "Rs. 4.80 Cr towards LPS from 26.03.2021 to 31.03.2022" and to LPS "from the due date of the payment of the invoices till the date of actual payment". That claim is the subject of Hon'ble APTEL Appeal No. 354 of 2023. Whatever be the effect of the Order dated 14.02.2023 upon that claim, a question pending before the Hon'ble APTEL on which the Petitioner reserves its contentions, it cannot extend to a default in complying with a payment direction contained in that very Order.

85. The contention of "*deemed rejection*" suffers from the same infirmity. A relief can be deemed to have been refused only if it was claimed and could have been granted. The relief now sought, namely LPS for delay beyond the forty-five days from the date of relevant order i.e., 14.02.2023, could not have been claimed before the Order fixing that period was passed.

86. Hon'ble APTEL Appeal No. 354 of 2023 confirms this position that it was filed on 31.03.2023, before the period of forty-five days had expired on any reckoning: on the Petitioner's reckoning the period expired on 02.04.2023, and, on the Respondent's case that the invoice date is 20.03.2023, the 45 days expires on 04.05.2023. The memorandum of appeal, which the Respondent has itself placed on record refers to "*Rs. 4.80 Crores towards LPS from 26th March 2021 to 31st March 2022*" and complains that this Commission "*has failed to adjudicate upon the said issue in the Impugned Order and has directed the Appellant to issue fresh invoices*". It does not, and could not, adjudicate the Respondent's subsequent failure to pay those fresh invoices within the due date allowed by this Commission.

87. The contention that "*any money claim would naturally include the claim for interest, including future interest*" does not assist the Respondent. The present claim is not for future interest on the sum claimed in Petition No. 1850 of 2022. It is a claim under Article 10.8.1 of the TSA which arose only because the Respondent failed to pay within the due date fixed by the Order dated 14.02.2023. An Order that itself fixed a fresh time for payment cannot be read as having adjudicated, in advance, the consequence of a failure to pay within that time.

88. The Petitioner lastly submitted that the decisions relied upon by the Respondent in its Reply proceed on the settled premise that the bar attaches to a matter which was, or might and ought to have been, raised in the earlier proceeding. The Respondent has not shown how a claim founded on a default that occurred after 14.02.2023 could have been raised in a petition decided on that date. Those decisions, therefore, have no application.

The pursuit of appellate remedies, without a stay, did not suspend the obligation to pay:

89. The Respondent justifies the delay on the ground that it "*under the law, has the right to appeal any order, perceived as unjust, in a higher court*", and that it released the amounts "*as soon as*" the Hon'ble Supreme Court passed its order on 11.09.2023.

90. The Respondent's right to appeal is not in question. The question is whether a party which has failed to obtain a stay may withhold payment for the duration of its unsuccessful pursuit without attracting the consequential LPS for delay in payment within due date. It may not. The Hon'ble APTEL found that the Respondent had "*failed to make out a prima facie case*", that "*the payment of bills by the Appellant cannot be treated as irreparable loss, as the same can always be subject to decision in the main appeal*", and that the Petitioner "*has not been able to recover the transmission charges solely on account of the delay on the part of the Appellant*". The Hon'ble Supreme Court declined to interfere.

91. The Reply concedes the point. It states that "*the stay was sought by the Respondent since there was a direction to pay the transmission charges within 45 days, failing which the Petitioner had the remedy to approach this Hon'ble*

Commission for enforcement of the same under Section 142 of the Electricity Act, 2003". The Respondent thus accepts that the direction to pay within forty-five days was binding and enforceable from the outset, and that only a stay could have relieved it of that obligation. No stay was granted.

92. Even after the Hon'ble APTEL declined interim relief on 06.07.2023, and the Petitioner called for payment on 07.07.2023, the Respondent did not pay. It sought an undertaking for refund, stating that it was required "*so that we can expedite the payment*", received that undertaking on 20.07.2023, and still did not pay. It approached the Hon'ble Supreme Court on 17.08.2023, without any interim protection, and paid only on 15.09.2023, after that Court declined to interfere.

93. The TSA itself does not contemplate that a dispute will suspend the interest payment for the period of delay beyond due date of the invoice. Article 10.9.8 provides that "*despite a Dispute regarding an Invoice, the concerned Long Term Transmission Customer shall, without prejudice to its right to Dispute, be under an obligation to make payment*" in the manner specified therein.

94. The Petitioner placed reliance upon the following judgments:

    a) Hon'ble APTEL in *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors.*, Appeal No. 77 of 2018.

    b) Hon'ble APTEL in *RattanIndia Power Limited v. Maharashtra Electricity Regulatory Commission & Anr.*, Appeal Nos. 118 of 2021 and 40 of 2022.

95. The Petitioner also distinguished the judgment relied upon by the Respondent in *National Thermal Power Corporation Limited v. Madhya Pradesh State Electricity Board & Ors.*, (2011) 15 SCC 580.

96. The Respondent is, in any event, fully protected. The payments made by it are, in terms of the order of the Hon'ble APTEL, "*subject to the result of the main Appeal*". The Petitioner has undertaken to refund the transmission charges in the event the Respondent succeeds and has assured the Respondent that the LPS so recovered shall be adjusted should the Respondent succeed in its appeal. Payment of LPS now causes the Respondent no irreversible prejudice, its denial would reward non-compliance with an Order which no forum stayed.

The alternative plea regarding the invoice date of 20.03.2023 does not defeat the claim:

97. In the alternative, the Respondent contends that the invoice raised on 15.02.2023 was incorrect, that a fresh invoice was raised on 20.03.2023, and that "*the question of payment of LPS computed from the invoice dated 15.02.2023 does not arise*", it is submitted as follows.

98. The invoices dated 15.02.2023 were raised within the time fixed by the Order dated 14.02.2023 and strictly in terms of it. The Respondent's objection of 02.03.2023 was confined to the adjustment of amounts it had already paid. The net amount payable was computed by the Petitioner on 07.03.2023 and has not been disputed since. The Respondent's request of 20.03.2023 for a fresh invoice was made because its "*accounts team cannot process the bills on the basis of this letter*". The corrected invoice was thus a revision of the invoice dated 15.02.2023 following the Respondent's Invoice Dispute Notice, of the kind contemplated by Article 10.9.3 of the TSA, and not a new claim. The Hon'ble APTEL, moreover, recorded the Respondent's grievance as one directed against "*the bills dated 15.02.2023 and 01.03.2023 raised by it, pursuant to the Impugned Order*".

99. The Petitioner has submitted that in any event, the plea goes, at the highest, to computation and not to liability. Under the TSA, the "*Due Date*" is reckoned from the date on which an invoice is "*received and duly acknowledged*" by the LTTC. By its letter dated 01.04.2023, the Respondent acknowledged the corrected invoice dated 20.03.2023 "*for payment*". Even taking that date, the forty-five days fixed by the Order dated 14.02.2023 expired on 04.05.2023, which is the very due date reckoned by the Petitioner. The Respondent paid the said invoice on 15.09.2023, 134 days after even its own reckoning of the due date. The alternative plea, therefore, furnishes no answer to the claim.

100. The LPS has been computed in terms of Article 10.8.1 of the TSA at 1.25% per month on simple rate basis, with payments appropriated in the order of priority prescribed by Article 10.6.4 of the TSA, which requires payments by the LTTCs to be appropriated first "*towards Late Payment Surcharge, payable to the TSP, if any*". The LPS so computed for the period after the relevant Order dated 14.02.2023 up to 30.06.2024 is Rs. 22.31 crore. Save for the alternative plea addressed above, the Reply raises no objection to the computation.

101. The Petitioner has further submitted that as set out in the Petitioner's letter dated 04.07.2024, the said sum includes LPS of Rs. 7.42 crore accrued on Rs. 39.39 crore of monthly transmission charges withheld by the Respondent as an amount equivalent to liquidated damages. By its Order dated 24.06.2024 in Petition No. 1959 of 2023, this Commission held that no liquidated damages can be imposed upon the Petitioner for the delay in commissioning of Element 2 and Element 3. The amount so withheld was, therefore, at all times an amount due under the TSA, and attracts LPS under Article 10.8.1. The Reply does not dispute this component of the claim.

102. According to the Petitioner, the legal position that follows is straightforward. A claim to liquidated damages is an undisputed claim to damages. In case of dispute between the parties towards claim of liquidated damages, until it is adjudicated, it is not a sum due, and it cannot be unilaterally appropriated or set off against an ascertained and payable debt. That is the proposition established by the Hon'ble Supreme Court in ***Union of India v. Raman Iron Foundry, (1974) 2 SCC 231***. Respondent did not adjudicate, rather it asserted, quantified and appropriated.

103. By the Order dated 24.06.2024 this Commission held that no LD were leviable at all. The withholding therefore lacked any legal foundation ab initio.

Hearing dated 08.10.2026 along with Written Submission of NUPPL dated 27.10.2026

104. Ms. Namrata Saraogi, learned Counsel appearing on behalf of NUPPL, submitted that the liability towards Transmission Charges under the Order relevant dated 14.02.2023 had been fastened upon NUPPL in exercise of the regulatory powers of the Commission and that, despite a prayer for LPS having been made in the earlier proceedings, no LPS was granted under the said Order. She further submitted that the invoices initially raised by GTL on 15.02.2023 were disputed by NUPPL as the amounts already paid had not been duly adjusted, pursuant to which the invoices were subsequently revised. It was also submitted that the issue relating to the underlying liability is pending before the Hon'ble APTEL and that no specific direction regarding the period or payment of LPS has been passed therein. The additional submissions of NUPPL, as set out in its Written Submissions, are dealt with in the subsequent paragraphs.

105. NUPPL submitted that the issue raised in the present Petition is regarding the entitlement of the Petitioner for future interest on the transmission charges directed to be paid by the Commission vide relevant Order dated 14.02.2023. In this regard, NUPPL relied upon Para 128 of the said Order, which reads as under:

> *"**128.** The Commission directs the Petitioner to raise fresh invoices/bills of the liabilities and past dues of transmission charges in accordance with this Order within fifteen days from the issue of this Order and the Commission also directs UPPCL/LTTCs including NUPPL to make the payment of such bills of liability and payment of past transmission charges within forty-five days from the date of issuance of fresh invoices/bills by the Petitioner."*

106. NUPPL submitted that the Commission had consciously not granted interest in the above Order and had only directed payment of the transmission charges by the Respondent.

107. It was further submitted that the liability to pay the transmission charges was not in terms of the Transmission Service Agreement ("TSA") dated 06.04.2018 entered into between the parties, but in exercise of purported regulatory powers of the Commission, on the ground that there was a regulatory vacuum, there being no provision in the TSA dealing with the situation.

108. NUPPL further submitted that while Appeals are pending before the Hon'ble Tribunal on the claim in fact being in terms of the TSA and the apportionment of the charges ought to be in terms of the TSA, there is presently no stay. Therefore, the Order dated 14.02.2023 directing payment in exercise of regulatory powers remains in force. Accordingly, NUPPL contended that when the liability itself has been placed under regulatory powers, and not in terms of the TSA, it is erroneous for the Petitioner to claim interest in terms of the TSA entered into between the parties.

Applicability of Section 34(2) of the Code of Civil Procedure, 1908

109. Firstly, the relevant Order dated 14.02.2023 of the Hon'ble Commission does not grant interest. A separate petition for claim of interest is not maintainable. This is barred also by applying Section 34(2) of the Civil Procedure Code, 1908. Section 34(2) reads as under:

> *"34. Interest*
>
> .....

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie:

....."

110. In terms of the above, when the decree is silent on the future interest to be paid, the same is deemed to be refused and further that a separate suit shall not lie on the issue. This squarely covers the issue at hand. The relevant Order dated 14.02.2023 of the Commission being silent on future interest, the same is deemed to be refused. Further, no separate petition or suit shall lie on the same. This is particularly when the claim is not under the TSA, but in terms of the regulatory Order of the Commission.

Claim of LPS on the amount withheld towards Liquidated Damages

111. At the outset, it is submitted that the contention advanced by the Petitioner in relation to the levy of Late Payment Surcharge ("LPS") on the amount of Rs. 39.39 crore is erroneous, misconceived and liable to be rejected.

112. The Petitioner's claim is fundamentally misconceived and proceeds on assumptions contrary to both the factual record and the legal position governing the matter. NUPPL has already demonstrated that, where this Commission while deciding the substantive dispute has consciously not awarded interest on the amount claimed, the same cannot subsequently be claimed through an independent proceeding under a different nomenclature. The claim for LPS on the amount withheld towards alleged Liquidated Damages stands on no different footing. LPS, being compensatory in nature and akin to interest for delayed payment, cannot be claimed when the principal adjudicatory order itself neither recognises any such entitlement nor directs payment thereof. Therefore, the very reasoning which defeats the Petitioner's claim for interest equally defeats its claim for LPS, rendering any separate consideration of the issue unnecessary. On this ground alone, the claim deserves to be rejected in limine.

113. GTL's claim for LPS on the amount of Rs. 39.39 crore proceeds on a fundamentally flawed premise that the said amount represented unpaid transmission charges. This is factually incorrect. The amount in question did not arise out of any delay in payment of Monthly Transmission Charge invoices. Rather, the said amount represented NUPPL's 25% share of Liquidated Damages ("LD") computed on

account of the delays in commissioning Element 2 and Element 3, which delays themselves formed the subject matter of adjudication before this Commission.

114. It is pertinent to note that in Petition No. 1959 of 2023, GTL itself approached this Commission seeking condonation of delay and relief from the consequences arising therefrom. GTL's entire case in the said proceedings was founded on the assertion that the commissioning delays were attributable to force majeure events and circumstances beyond its control, including disruptions arising out of the CAB protests, the Covid-19 pandemic and issues pertaining to obtaining working permission from DFO Agra.

115. Vide Order dated 23.06.2023 in Petition No. 1959 of 2023, this Commission, inter alia, held as under:

"51. Upon the undertaking given by the Petitioner, UPPCL has paid-the amount of approximately Rs. 35 Crore after deducting the LD amount of Rs. 44.40 Crore, subject to the orders of this Commission. NUPPL can equally also therefore release the amount due to Petitioner in terms of this Commission's orders after deducting the LD amount, subject to the orders to be passed by this Commission. At the moment, we are not entering into the controversy of computation of LD amount i.e. whether it should be Rs. 39.39 Crore as computed by NUPPL or it should be Rs 14.80 Crore in accordance with the decision of the lead LTTC. Suffice it to say, that at the moment NUPPL may hold Rs.39.39 Crore as amount towards liquidated damages as per Article 6.4 and 10.6.2 of the TSA, subject to the outcome of the main petition and at the same time expediate to pay rest of amount to the Petitioner towards transmission charges at the earliest, in accordance with our order dated 14.02.2023. Further, an amount more than the liability towards liquidated damages is already kept by NUPPL thus, there cannot be any case of encashment of bank guarantee in terms of Article 6.4 read with Article 10.6.2 of the TSA on account of liquidated damages. Therefore, NUPPL is inhibited from encashment of Bank Guarantee."

116. After non-payment of the LD amount was recognized by this Commission, NUPPL cannot be saddled with the liability of paying LPS upon the same. NUPPL, without any fault of its own, cannot now be directed to pay LPS, when such a direction was never issued earlier.

117. The Petitioner specifically claimed that, in respect of Element 2, 24 days of delay were attributable to CAB-related disruptions, 150 days to the first wave of Covid-19 and 100 days to the DFO Agra issue, aggregating to 274 days. In respect of Element 3, GTL claimed 24 days on account of CAB-related disruptions, 150 days due to the first wave of Covid-19 and 150 days due to the second wave of Covid-19, aggregating to 324 days. Thus, GTL itself admitted the existence of delay and sought condonation thereof on grounds which required adjudication by this Commission.

118. It was in the aforesaid factual backdrop that NUPPL computed Liquidated Damages in accordance with the TSA. According to the LD computation, a delay of 80 days was attributable to Element 1, delays of 150 days and 180 days were attributable to different portions of Element 2, while a delay of 182 days was attributable to Element 3, giving rise to a quantified LD claim. NUPPL's share of the said LD worked out to Rs. 39.39 crore. Accordingly, the amount withheld was not an invoice amount which had become due and payable in the ordinary course, but represented a quantified contractual claim arising from a live and subsisting dispute concerning delay in commissioning.

119. Significantly, GTL's own contemporaneous conduct completely undermines its present claim. By its letter dated 25.06.2023, GTL expressly acknowledged the pendency of the condonation proceedings before this Hon'ble Commission and requested that the issue of delay and consequential LD be left to the outcome of those proceedings. GTL further proposed that while the balance transmission charges may be released, an amount equivalent to the potential LD exposure, capped at Rs. 39.39 crore may be withheld until adjudication. Thus, the withholding of the amount in question occurred pursuant to an interim arrangement expressly contemplated and invited by GTL itself.

120. In light of the foregoing, the attempt of GTL to now characterise the same withholding as a payment default attracting LPS is wholly untenable. The amount remained withheld during the pendency of a bona fide dispute regarding GTL's entitlement and liability. At no stage was the said amount treated by the parties as an admitted and undisputed transmission charge liability which had simply remained unpaid beyond its due date.

121. It is a well-settled principle that surcharge, interest or LPS cannot be imposed mechanically in respect of an amount whose very liability is under bona fide

dispute and which is awaiting adjudication before a competent forum. Liability to pay LPS under Article 10.8 of the TSA presupposes the existence of a crystallised, admitted and payable amount that has remained unpaid beyond the stipulated due date. Such provision cannot be extended to sums which are withheld on account of a genuine dispute concerning contractual rights and obligations and whose ultimate liability is subject to adjudication.

122. In the present case, the amount of Rs. 39.39 crore never attained the character of an admitted receivable during the relevant period. On the contrary, the entitlement to retain or release the same was directly contingent upon the outcome of GTL's own petition seeking condonation of delay. Until the dispute was adjudicated, both the basis and extent of any liability were uncertain and disputed. Consequently, no occasion arose for invocation of Article 10.8 of the TSA.

123. GTL's present position is also barred by the principles of approbation and reprobation. Having expressly sought that the issue of delay and consequential LD await adjudication by this Commission, and having itself proposed interim withholding of the amount corresponding to the alleged LD exposure, GTL cannot now turn around and contend that such withholding constituted a payment default from inception. A party cannot be permitted to assume inconsistent positions to suit its convenience at different stages of the proceedings.

124. By Order dated 23.06.2024 passed in Petition No. 1959 of 2023, this Commission ultimately held that Liquidated Damages were not leviable and condoned the delay. The effect of the said Order was limited to determining the dispute concerning delay and directing consequential release of the withheld amount. The Order neither recorded any finding that NUPPL had committed a payment default nor awarded any LPS, interest or carrying cost in favour of GTL.

125. It is submitted that the subsequent adjudication in favour of GTL does not retrospectively alter the character of the withholding during the period when the dispute remained pending. The legal character of the amount must be assessed with reference to the circumstances prevailing at the relevant time. During the relevant period, the amount represented a disputed LD claim and remained linked to the determination of GTL's entitlement in the condonation proceedings. Merely because the dispute was ultimately decided in GTL's favour does not

retrospectively convert the earlier bona fide withholding into a delayed payment of transmission charges.

126. For the same reason, GTL's attempt to invoke Article 10.8 of the TSA and simultaneously seek denial or reversal of rebate availed under Article 10.7 is equally unsustainable. The release of the withheld amount pursuant to the Order dated 24.06.2024 cannot invalidate rebates that were lawfully availed on separate invoices in accordance with the TSA. Neither the TSA nor the said Order contemplates such retrospective consequences.

127. It is further submitted that had this Commission intended to grant LPS, interest or any compensatory carrying cost on the withheld amount, it would have expressly so directed while deciding Petition No. 1959 of 2023. The complete absence of any such direction is significant and demonstrates that the relief granted was confined solely to release of the amount withheld towards LD.

128. In view of the foregoing facts and circumstances, it is submitted that the amount of Rs. 39.39 crore was withheld only on account of a bona fide and pending dispute regarding levy of Liquidated Damages. The withholding was consistent with GTL's own contemporaneous request and proposal, and the amount did not constitute an admitted invoice liability. The Order dated 23.06.2024 neither awarded nor contemplated LPS. Accordingly, GTL's claim for LPS on the said amount is devoid of merit, contrary to the contractual framework and the record of proceedings and is therefore liable to be rejected in its entirety.

129. Without prejudice, it is further submitted that the Petitioner initially raised supplementary invoices dated 15.02.2023 which admittedly did not account for the 25% transmission charges already paid by the Respondent. Upon objections being raised by the Respondent, the Petitioner was compelled to revise the said invoices on 20.03.2023 and substantially reduce its claim. In the absence of proper quantification of the liability, computation of Late Payment Surcharge from an earlier date is manifestly arbitrary and contrary to settled principles governing surcharge and interest claims. A party cannot seek penal consequences for non-payment of an amount which was itself incorrectly determined and subsequently revised.

130. The Transmission Service Agreement expressly governs the issue of LPS under Article 10.8.1, which stipulates that LPS at the rate of 1.25% per month shall be

calculated on a "simple rate basis". Such contractual stipulation leaves no scope for charging interest upon accrued interest. Accordingly, LPS can be levied only on the unpaid principal amount and cannot, under any circumstance, be capitalised or treated as part of the principal for the purpose of further surcharge computation. Any methodology resulting in "interest on interest" is directly contrary to the express language of Article 10.8.1 and is therefore impermissible.

131. The Petitioner seeks to rely upon Article 10.6.4 of the TSA, which provides for appropriation of payments towards outstanding dues. By applying this provision, the Petitioner appropriates payments first towards LPS and thereafter towards principal. The inevitable effect of such methodology is that the principal amount continues to be shown as outstanding for a prolonged period, leading to a continuing accrual of LPS on the same principal amount. Although styled as an appropriation mechanism, the practical consequence is the creation of a compounding effect, which is fundamentally inconsistent with Article 10.8.1.

132. It is a settled principle of contractual interpretation that a general provision cannot be construed in a manner that defeats or renders otiose a specific provision. Article 10.6.4, being merely an appropriation clause, cannot override the explicit mandate under Article 10.8.1 that LPS shall be computed on a simple rate basis. The Petitioner's interpretation would effectively nullify the contractual prohibition against compounding and must therefore be rejected.

133. Without prejudice to the foregoing, Article 10.6.4 merely prescribes the order in which payments received are to be adjusted. The provision does not authorise capitalisation of LPS, charging LPS on accumulated surcharge amounts, or levy of compound interest in any form. Consequently, the Petitioner cannot employ Article 10.6.4 as an indirect mechanism to achieve what Article 10.8.1 expressly forbids. Any interpretation permitting such a result would amount to rewriting the contract between the parties and would be contrary to established principles of contractual construction.

134. It is pertinent to note that although the Petitioner raised certain LPS invoices after 15.09.2023, such invoices were not relatable to nor computed on the basis of the additional 75% transmission charges that became payable pursuant to the Order dated 14.02.2023 of this Commission. After receipt of payment of the additional transmission charges on 15.09.2023, the Petitioner issued separate LPS invoices during November 2023 and December 2023. These invoices did not disclose any

computation of interest pursuant to the Order dated 14.02.2023 and were not accompanied by any invoice-wise reconciliation or calculation methodology.

135. In fact, it was only from January 2024 onwards that the Petitioner began issuing fresh LPS invoices specifically claiming surcharge for the period up to 15.09.2023 and thereafter sought to justify continued demands through reliance on the appropriation mechanism contained in Article 10.6.4. The delayed and retrospective nature of these claims further demonstrates the absence of a transparent and contractually compliant basis for the alleged LPS demand.

136. The Petitioner's conduct also belies its present interpretation of Article 10.6.4. In practice, the Petitioner raises Monthly Transmission Charge invoices separately and independently. It also raises LPS invoices as standalone invoices. Significantly, LPS invoices are not generated on a monthly basis but are issued at irregular intervals, sometimes after gaps of several months. Such invoicing practice demonstrates that the Petitioner does not, in fact, operate a continuous appropriation mechanism under Article 10.6.4.

137. Having consciously chosen to treat LPS as a separate and independent claim, the Petitioner cannot retrospectively invoke the appropriation clause to create an artificial compounding effect. The sporadic nature of its LPS invoicing itself establishes that Article 10.6.4 has not been implemented in the manner now suggested by the Petitioner and, therefore, cannot be relied upon to justify the impugned LPS computation.

138. In view of the foregoing, the claim for LPS raised by the Petitioner is liable to be rejected. The alleged liability remained under bona fide dispute while the Respondent pursued its statutory remedies; the underlying supplementary invoices were initially erroneous and subsequently revised; and, most importantly, the TSA expressly mandates that LPS be computed only on a simple rate basis. The Petitioner's reliance upon Article 10.6.4 and its appropriation methodology results in an impermissible compounding effect, thereby defeating the express language of Article 10.8.1. An appropriation provision cannot be interpreted so as to circumvent a contractual prohibition against compounding. Accordingly, the LPS claim, as computed and raised by the Petitioner, is unsustainable and deserves to be disallowed in its entirety.

139. In the circumstances, the present Petition is misconceived and the same is liable to be dismissed.

Commission's View

140. The Petitioner, Ghatampur Transmission Limited ("GTL"), has filed the present Petition seeking payment of Late Payment Surcharge ("LPS") from Neyveli Uttar Pradesh Power Limited ("NUPPL") on account of delay in payment of Monthly Transmission Charges ("MTC") payable pursuant to the Order dated 14.02.2023 passed by the Commission in Petition No. 1850 of 2022. The Petitioner has claimed LPS amounting to Rs. 22.31 Crore for the period subsequent to the aforesaid Order upto 30.06.2024 in terms of Article 10.8.1 of the Transmission Service Agreement ("TSA") dated 06.04.2018.

141. It is pertinent to note that the earlier issues relating to Deemed COD of Element-2 and Element-3 and the liability towards payment of Transmission Charges had already been examined by the Commission in Petition No. 1850 of 2022. Vide Order dated 14.02.2023, the Commission determined the Deemed COD of Element-2 and Element-3 as 26.03.2021 and 28.01.2022 respectively and held GTL entitled to MTC in terms of Article 6.2.2 of the TSA. Further, applying the defaulter liability principle, the Commission held NUPPL, which is a party to the TSA, to be the defaulting entity for both Element-2 and Element-3, and fastened the corresponding liability towards Transmission Charges upon NUPPL.

142. The Commission further directed as under:

"128. The Commission directs the Petitioner to raise fresh invoices/bills of the liabilities and past dues of transmission charges in accordance with this Order within fifteen days from the issue of this Order and the Commission also directs UPPCL/LTTCs including NUPPL to make the payment of such bills of liability and payment of past transmission charges within forty-five days from *the date of issuance of fresh invoices/bills by the Petitioner."*

143. The Commission has carefully examined the pleadings of the parties, the Reply, Rejoinder, Written Submissions, the submissions made during the proceedings, the Order dated 14.02.2023, the orders passed by the Hon'ble APTEL and the Hon'ble Supreme Court and the material placed on record.

144. The following issues arise for consideration before us:

Issue No. 1: Whether the present claim towards LPS is barred on account of res judicata, or constructive res judicata or 5.34 (2) CPC, 1908?

Issue No. 2: Whether the liability towards MTC already fastened upon NUPPL attracts LPS under Article 10.8.1 of the TSA and, if so, the period for which such LPS is payable?

145. The Commission now proceeds to examine the first issue in the subsequent paragraphs.

Issue No. 1: Whether the present claim towards LPS is barred on account of res judicata, or constructive res judicata or 5.34 (2) CPC, 1908?

146. NUPPL has contended that GTL had already sought LPS in Petition No. 1850 of 2022 and the Commission, vide Order dated 14.02.2023, did not grant such relief. Therefore, according to NUPPL, the present claim is barred by the principles of *res judicata* and constructive *res judicata*. It has further been contended that since the Order dated 14.02.2023 was silent regarding future interest, a separate claim thereof is barred in terms of Section 34(2) of the Code of Civil Procedure, 1908.

147. The Commission observes that the LPS claimed in the present proceedings is distinct from the LPS, which was claimed in Petition No. 1850 of 2022. The earlier claim related to the period prior to the Order dated 14.02.2023, whereas the present claim has arisen on account of non-payment/delayed payment of the fresh invoices raised pursuant to the directions contained in the said Order.

148. The Commission itself, vide Order dated 14.02.2023, directed GTL to raise fresh invoices and allowed forty-five days for payment thereof. Therefore, the failure to make payment within the period so prescribed was necessarily an event which occurred subsequent to the said Order.

149. In this regard, the Hon'ble Supreme Court in *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 SCC 706, observed:

"***Cause of action***

13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. ***The cause of action is a***

bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

150. In the present case, the default which forms the basis of the present claim had not occurred when Petition No. 1850 of 2022 was decided. Therefore, it could neither have been adjudicated nor could it be treated as having been adjudicated in the earlier proceedings.

151. Further, the present claim is not a claim for future interest simpliciter on the amount adjudicated in Petition No. 1850 of 2022. It is a claim for contractual LPS under Article 10.8.1 of the TSA consequent upon a subsequent default in payment. Accordingly, the Commission is of the view that the present claim is neither barred by *res judicata* or constructive *res judicata*, nor does Section 34(2) of the Code of Civil Procedure, 1908 bar adjudication of the present contractual claim.

Issue No. 2: Whether the liability towards MTC already fastened upon NUPPL attracts LPS under Article 10.8.1 of the TSA

152. NUPPL has contended that its liability towards Transmission Charges arose from the exercise of regulatory powers by the Commission by application of the defaulter liability principle and not from the TSA. Therefore, according to NUPPL, GTL cannot invoke Article 10.8.1 of the TSA for claiming LPS.

153. The Commission is unable to accept the aforesaid contention. The Order dated 14.02.2023 had already recognised GTL's entitlement towards MTC for Element-2 and Element-3 in terms of Article 6.2.2 of the TSA. While determining the entity responsible for payment of such charges, the Commission specifically observed that:

"NUPPL who is a party to the TSA is the defaulting entity in the present matter for both Element 2 and Element 3."

Thus, the liability towards payment of Transmission Charges for the relevant period had already been fastened upon NUPPL.

154. The application of the defaulter liability principle determined the entity required to bear the Transmission Charges. It did not alter the character of the amount payable to GTL or render the other payment provisions of the TSA inapplicable.

155. The Reliance has been placed in *Nuclear Power Corporation of India Ltd. v. CERC*, 2019 SCC OnLine APTEL 83, the Hon'ble APTEL, while examining the defaulter liability principle, held:

> ***"10.7 ...*** *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."*

156. The aforesaid judgment supports the principle on which the liability had already been fastened upon NUPPL in the Order dated 14.02.2023. In the present proceedings, however, the Commission is not required to determine the defaulting entity afresh. The limited question is the consequence of delayed payment of the Transmission Charges already held payable by NUPPL.

157. Further, while considering NUPPL's challenge to the Order dated 14.02.2023, the Hon'ble APTEL observed:

> *"17. Thus, as per Article 6.2.2, the GTL is entitled to monthly transmission charges from the deemed COD as also observed by the State Commission.*
>
> *18. ... there is no contest on the specific finding of the State Commission that GTL is eligible to recover Monthly Transmission Charges as per Article 6.2.2, the only issue is whether the entire liability is to be borne by the Appellant..."*

158. Thus, GTL's entitlement towards MTC under the TSA and the determination of NUPPL as the entity liable to discharge such MTC operate concurrently. Once the liability was fastened upon NUPPL, the consequence of delayed payment thereof is required to be considered under Article 10 of the TSA.

159. It is also pertinent that NUPPL itself invoked Article 10.9 of the TSA while disputing the LPS invoices vide its communication dated 05.01.2024. NUPPL cannot, on one hand, invoke the contractual mechanism under the TSA to dispute the invoice and, on the other hand, completely deny applicability of the payment consequences provided under the same Article of the TSA.

160. In this regard, the principle against approbation and reprobation, though not determinative by itself, also supports the aforesaid conclusion. In *Shyam Telelink Ltd. v. Union of India*, (2010) 10 SCC 165, the Hon'ble Supreme Court held:

> *"23. The maxim* qui approbat non reprobat *(one who approbates cannot reprobate) is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that* ***a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.****"*

161. The Commission, therefore, does not consider it permissible for NUPPL to invoke the invoice-dispute mechanism under the TSA while asserting that the payment consequences forming part of the same contractual framework are wholly inapplicable. However, the entitlement towards LPS has to be independently tested against Article 10.8.1 and does not arise merely because of the aforesaid doctrine.

162. Article 10.8.1 of the TSA provides:

> *"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."*

163. From the aforesaid provision, it is clear that LPS is not attracted merely upon an amount becoming payable. The amount must remain unpaid for thirty days after the Due Date. Once the said condition is fulfilled, Article 10.8.1 provides that LPS shall accrue from the Due Date until actual receipt of the amount.

164. In the present case, paragraph 128 of the Order dated 14.02.2023 specifically granted NUPPL forty-five days from issuance of the fresh invoices/bills for making payment. Therefore, the said forty-five-day period has to be given effect while determining NUPPL's liability towards LPS.

165. GTL initially raised fresh invoices of Rs. 172.18 Crore for Element-2 and Rs. 114.52 Crore for Element-3. NUPPL pointed out that the amounts already paid towards Element-2 and Element-3 had not been adjusted. After such adjustment, GTL communicated the net amount of approximately Rs. 109.99 Crore for Element-2 and Rs. 83.25 Crore for Element-3. Further MTC continued to accrue and the reconciliation placed on record reflects total Transmission Charges upto June 2023 of Rs. 252.43 Crore, against which an amount of Rs. 39.63 Crore was shown as withheld towards LD and, after deduction of TDS of Rs. 0.96 Crore, Rs. 211.84 Crore was paid on 15.09.2023. The specific LD amount claimed/computed by NUPPL and considered under subsequent paras is Rs. 39.39 Crore.

166. NUPPL has contended that the invoice dated 15.02.2023 was corrected on 20.03.2023. The Commission observes that even if the corrected invoice dated 20.03.2023 is taken into consideration, the due date would be reckoned as 04.05.2023, whereas the payment was actually made only on 15.09.2023. Thus, even on NUPPL's case, the amount remained unpaid substantially beyond the permissible payment period.

167. The Commission further observes that pendency of appellate proceedings did not suspend the payment obligation. The Hon'ble APTEL, while rejecting interim relief on 06.07.2023, expressly clarified:

> *"...the payment to be made by the Appellant, in compliance with the Impugned Order, shall be subject to the result of the main Appeal."*

Thereafter, the Hon'ble Supreme Court declined to interfere with the said Order.

168. Thus, while NUPPL's rights in appeal remained protected, there was no stay or extension of the time prescribed for payment. The period during which NUPPL pursued appellate remedies cannot, therefore, automatically enlarge the payment period available under the Order dated 14.02.2023.

169. As regards the nature of LPS, the Hon'ble APTEL in *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission and Ors.*, Appeal No. 77 of 2018, observed:

"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."

170. The aforesaid principle explains the object of Article 10.8.1. Once the principal payment remains unpaid beyond the period permissible under the applicable payment mechanism, the contractual consequence of such delayed payment cannot be avoided merely because the underlying determination had been challenged before the appellate forum without obtaining a stay.

171. The Commission further observes that the payment made by NUPPL on 15.09.2023 has to be given effect from the date of its actual receipt. Accordingly, LPS cannot continue thereafter on the principal amount which stood discharged upon such payment, subject to appropriation of the payment in accordance with the TSA. However, the payment made on 15.09.2023 does not extinguish the LPS which had already accrued on account of the earlier delay, nor does it abolish the liability towards LPS on any principal amount which continued to remain unpaid thereafter.

172. The Commission has also examined the contention of NUPPL that appropriation of payments by GTL under Article 10.6.4 results in compounding of LPS contrary to Article 10.8.1. In this regard, the Commission observes that Article 10.6.4 governs the sequence in which payments received are to be appropriated, whereas Article 10.8.1 governs the rate and manner of computation of LPS. Therefore, giving effect to the contractual order of appropriation under Article 10.6.4 cannot, by itself, be treated as compounding. However, Article 10.8.1 expressly requires LPS to be calculated on a simple rate basis. Accordingly, while the payments received shall be appropriated in accordance with Article 10.6.4, no LPS shall be levied on accumulated LPS itself, and LPS shall be calculated only on the principal amount remaining unpaid after giving effect to such appropriation.

173. Therefore, the Commission is of the view that NUPPL is liable towards LPS under Article 10.8.1 of the TSA on the MTC payable pursuant to the Order dated 14.02.2023, excluding the amount of Rs. 39.39 Crore retained towards LD, which is dealt with separately in subsequent paras. While determining such LPS, the forty-five (45) days expressly allowed for payment under paragraph 128 of the Order dated 14.02.2023 shall be given due effect. In respect of the corrected invoice dated 20.03.2023, the Due Date has been reckoned as 04.05.2023 and,

upon satisfaction of the conditions stipulated under Article 10.8.1, LPS shall be calculated from the applicable Due Date until actual receipt of the corresponding principal amount by GTL. The payment made on 15.09.2023 and all subsequent payments shall be duly accounted for in accordance with Article 10.6.4, without levy of LPS upon accumulated LPS itself till the principal amount gets set off.

174. It is also pertinent to note that while making payment of Rs. 211.84 Crore towards the outstanding Transmission Charges on 15.09.2023, NUPPL continued to retain an amount of Rs. 39.39 Crore towards Liquidated Damages ("LD"). Out of the total LPS of Rs. 22.31 Crore claimed by GTL, an amount of Rs. 7.42 Crore pertains to LPS claimed on the said amount of Rs. 39.39 Crore. NUPPL has contended that retention of the aforesaid amount had been expressly permitted by the Commission during the pendency of Petition No. 1959 of 2023 and, therefore, such retention cannot be treated as delayed payment.

175. In this regard, the Commission observes that vide its **Order dated 23.06.2023 in Petition No. 1959 of 2023**, NUPPL was expressly permitted to retain Rs. 39.39 Crore towards LD, subject to the final outcome of the said Petition. The relevant portion of the Order reads as under:

> *"At the moment, we are not entering into the controversy of computation of LD amount i.e. whether it should be Rs. 39.39 Crore as computed by NUPPL or it should be Rs 14.80 Crore in accordance with the decision of the lead LTTC. Suffice it to say, that* ***at the moment NUPPL may hold Rs.39.39 Crore as amount towards liquidated damages as per Article 6.4 and 10.6.2 of the TSA, subject to the outcome of the main petition*** *and at the same time expediate to pay rest of amount to the Petitioner towards transmission charges at the earliest, in accordance with our order dated 14.02.2023."*

176. Thus, the permission granted to NUPPL vide Order dated 23.06.2023 was provisional in nature and expressly subject to the outcome of Petition No. 1959 of 2023. Accordingly, the retention of Rs. 39.39 Crore by NUPPL during the subsistence of the aforesaid interim direction was protected by the Commission's Order and cannot, for such period, be treated as an independent payment default.

177. Subsequently, vide final Order dated 24.06.2024 in Petition No. 1959 of 2023, the Commission held that LD was not leviable upon GTL. Therefore, upon passing

of the Order dated 24.06.2024, the contingency subject to which NUPPL had been permitted to retain Rs. 39.39 Crore stood finally determined and the basis for continued retention of the said amount towards LD ceased to survive.

178. Accordingly, a distinction is required to be drawn between the period commencing from the Commission's Order dated 23.06.2023, when the retention of Rs. 39.39 Crore was protected and remained subject to adjudication, and the passing of the final Commission's Order dated 24.06.2024, whereby LD was finally held to be not leviable and the said amount crystallised as payable to GTL. Accordingly, the Commission is of the view that, for the period from 23.06.2023 to 24.06.2024, no LPS shall be levied on the withheld amount of Rs. 39.39 Crore, as the retention of the said amount was protected under the directions issued by the Commission.

179. The Commission further observes that although the Petitioner has quantified the LPS claimed in the present Petition at Rs. 22.31 Crore up to 30.06.2024, the relief sought in prayers (b) and (c) is for payment of LPS till the date of actual payment. Therefore, the relief sought by the Petitioner is not confined to the LPS quantified up to 30.06.2024, and the consequence of non-payment of the amount remaining outstanding thereafter is also required to be determined in accordance with Article 10.8.1 of the TSA. However, while calculating LPS on the outstanding amount, no LPS shall be levied on Rs. 39.39 Crore for the period from 23.06.2023 to 24.06.2024, as observed in paragraph 178 of this Order. The Commission further observes that there is a difference between the amount stated to have been withheld by the Petitioner and the amount stated by NUPPL. Accordingly, both the parties shall reconcile the said amount while calculating the final LPS payable.

Conclusion

180. **In view of the foregoing discussion and findings, the Commission holds that NUPPL is liable to pay LPS to GTL under Article 10.8.1 of the TSA in terms of the directions contained hereinabove.**

181. **GTL and NUPPL shall reconcile the LPS payable on an invoice-wise basis. While carrying out such reconciliation, no LPS shall be levied on Rs. 39.39 Crore for the period from 23.06.2023 to 24.06.2024, during which retention of the said amount remained protected under the Commission's Order dated 23.06.2023. The difference in the amount stated to have**

been withheld by the parties shall also be reconciled while determining the final LPS payable. Further, LPS shall be calculated on a simple rate basis on the outstanding principal amount until the same is fully discharged, after giving effect to the payments made and their appropriation in accordance with Article 10.6.4 of the TSA.

182. Hence, the Petition stands disposed of.

(Griesh Kumar Vaish)
Member (Law)

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 19 .11.2026