THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2135 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 15.10.2018, seeking payment of Late Payment Surcharge.

AND

IN THE MATTER OF

Obra-C Badaun Transmission Limited
Through its Authorized Signatory
Adani Corporate House, Shantigram, Near Vaishno Devi Circle,
S.G. Highway, Khodiyar, Ahmedabad, Gujarat- 382421.

..... **Petitioner**

VERSUS

1. **Uttar Pradesh Power Corporation Limited**
   Through Its Managing Director,
   11th Floor, Shakti Bhawan Extension,
   14 Ashok Marg, Lucknow, Uttar Pradesh-226001.
2. **Paschimanchal Vidyut Vitran Nigam Limited**
   Through Its Managing Director,
   Urja Bhawan, Victoria Park, Meerut,
   Uttar Pradesh-250001.
3. **Madhyanchal Vidyut Vitran Nigam Limited**
   Through Its Managing Director,
   4-A, Gokhale Marg, Lucknow,

Uttar Pradesh-226001.

4. **Purvanchal Vidyut Vitran Nigam Limited**
   Through Its Managing Director,
   Vidyut Nagar, DLW Bhikharipur, Varanasi,
   Uttar Pradesh-221010.
5. **Dakshinanchal Vidyut Vitran Nigam Limited**
   Through Its Managing Director,
   Vidyut Bhawan, Nh-2 (Agra-Delhi Bypass Road), Sikandra,
   Uttar Pradesh-282007.
6. **Kanpur Electricity Supply Company Limited**
   Through Its Managing Director,
   Headquarter, Kesa House, 14/71, Civil Lines,
   Kanpur, Uttar Pradesh-208001.
7. **Uttar Pradesh State Load Despatch Centre**
   Through Its Managing Director
   Phase II, Vibhuti Khand,
   Lucknow, Uttar Pradesh-226010

..... Respondents

THE FOLLOWING WAS PRESENT

1. Sh. Sourav Roy, Advocate, Petitioner
2. Sh. Abhishek Kumar, Advocate, UPPCL
3. Sh. Nived Veerapaneni, Advocate, UPPCL
4. Sh. Aniket Kanhaua, Advocate, UPPCL
5. Sh. Divyanshu Bhatt, Advocate, UPSLDC
6. Sh. Abhayaditya Singh, Advocate, UPSLDC
7. Sh. Manish Dwivedi, CE (PPA), UPPCL
8. Sh. Sanjay Kumar Chaurasia, SE (PPA), UPPCL
9. Sh. Prashant Kumar, Representative, OCBTL

ORDER

(DATE OF HEARING: 08.10.2026)

1. The instant Petition has been filed under Section 86 of the Electricity Act, 2003, read with Article 16.3 of the Transmission Service Agreement, dated 15.10.2018, seeking payment of Late Payment Surcharge. The Prayers of the Petitioner are as below:

   a. Admit the Petition;

   b. Hold and declare that the Petitioner is entitled to payment of LPS amount till the date of payment towards delay in making payment of Monthly Transmission Charges for period from April 2021 to November 2021 by the Respondent No.1 as per Article 10.8.1 of the TSA, and grant such an amount to the Petitioner;

   c. Direct the Respondent No. 1 to make payment of LPS amount till the date of payment to the Petitioner;

   d. Direct the Respondent No. 1 to refund the unlawfully deducted rebate in view of outstanding transmission charges as per Article 10.6.4 & Article 10.7.

   e. Direct the Respondent No. 1 to establish the Letter of Credit in favour of the Petitioner as per Article 10.11.1.

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

Brief of the Petition

2. The Petitioner, Obra-C Badaun Transmission Limited ("OCBTL"), a subsidiary of Adani Transmission, is a Transmission Licensee under Section 2(73) of the Electricity Act, 2003.

3. The Petitioner entered into a Transmission Service Agreement dated 15.10.2018 with Respondent Nos. 2 to 6 (collectively, "LTTCs")—PVVNL, MVVNL, PuVVNL, DVVNL and KESCO—for establishing the transmission system for "Evacuation of Power from Obra-C (2x660 MW) Thermal Power Project & Construction of 400 kV GIS Substation Badaun with associated Transmission Lines". In terms of Article 18.1.1 of the TSA, Respondent No.1 i.e UPPCL has

administrative control over the LTTCs. Accordingly, invoices for Monthly Transmission Charges ("MTC") and LPS are raised on UPPCL.

4. The Petitioner executed a Supplementary Agreement dated 15.10.2020 with the LTTCs and UPPTCL, under which UPPTCL was nominated by the LTTCs to discharge their rights and obligations during the construction period.

5. This Commission, vide Order dated 03.10.2022 in Petition No. 1824 of 2022 (Obra-C Badaun Transmission Limited v. UPPCL & Ors.), extended the SCOD of Lot-1 without levying LD and held that:

   i. Element-1 of Lot-1 stood Deemed Commissioned on 30.04.2021;

   ii. Elements 2 to 8 of Lot-1 stood Commissioned on 16.04.2021.

A) Non-Payment of LPS due to delay in payment of Transmission Charges (Element 2-8):

6. The Petitioner had declared the Deemed COD of Elements 2 to 8 of Lot-1 as 09.04.2021 in terms of Article 6.2.1 of the TSA.

7. In accordance with Article 10.5.1, the Petitioner had started raising Monthly transmission charges invoices for Elements 2 to 8 of Lot-1 from 09.04.2021 and had also been submitting monthly availability data to Respondent No. 7 i.e UPSLDC from the same date.

8. On 01.12.2021, Respondent No. 2 i.e PVVNL issued a letter acknowledging the deemed COD of Elements 2 to 8 of Lot-1 as 16.04.2021. Further, on 07.12.2021, Respondent No. 1 i.e UPPCL raised an LD claim for Lot-1, while simultaneously acknowledging the COD accepted by PVVNL.

9. For the period April 2021 to November 2021, the Petitioner had regularly submitted availability data to UPSLDC; however, UPSLDC delayed availability certification. This data was necessary to determine the Transmission System Availability Factor. UPSLDC issued the availability certification for this period only on 11.01.2022 after an unjustified delay, which did not suspend or dilute UPPCL's obligation to pay transmission charges.

10. Despite the acceptance of COD by PVVNL, UPPCL did not release transmission charges for April 2021 to November 2021 until March 2022 and instead issued LD claim vide its letter dated. 07.12.2021 for Lot-1 of the project.

Consequently, the Petitioner filed Petition No. 1824 of 2022 on 31.01.2022 seeking SCOD extension and LD waiver before this Commission.

11. It is further submitted that UPPCL verified the invoices which earlier submitted by the Petitioner for the period April to November 2021 only on 28.01.2022 and released payment in March 2022, thereby attracting Late Payment Surcharge at the rate of 1.25% per month under Article 10.8.1.

12. Subsequently, the Commission's Order dated 03.10.2022 condoned the delay in achieving COD and waived LD. That Order is under challenge before the Hon'ble APTEL in Appeal No. 452 of 2022. The appeal disputes two things: the extension of SCOD of LOT-1 (Element Nos. 1 to 8) on account of Covid-19 (a Force Majeure event), and the direction to refund LD to the Petitioner. The Hon'ble APTEL has not stayed the Order.

13. The Petitioner raised LPS invoices on Respondent No. 1 for delayed payment of transmission charges for Elements 2 to 8 of LoT-1, covering April 2021 to November 2021. UPPCL repeatedly returned them. On 05.07.2023, UPPCL said the Petitioner had not factored LD into the LPS calculation. The Petitioner replied the same day that the Commission's Order dated 03.10.2022 had condoned the COD delay and held that UPPCL cannot levy LD, so there is no question of adjusting LD in the LPS.

14. On 06.07.2023, UPPCL communicated to Petitioner via email, indicating that the invoices raised from April 2021 to November 2021 could not be verified earlier due to the lack of supporting documents. UPPCL has also submitted that the bill cannot be considered prior to intimation of COD on 07.12.2021.

15. It is further submitted that all necessary documentation was submitted in a timely manner, and the delay in certification by Respondent No. 7 i.e UPSLDC does not invalidate the invoice raised by the Petitioner. Further, Respondent No. 1 i.e UPPCL has misunderstood the approval of COD by PVVNL on 01.12.2021 as a declaration of COD by the Petitioner. The Petitioner had declared the COD vide its letter dated 02.04.2021.

16. By letter dated 25.07.2024, UPPCL again disputed the LPS claim. It alleged non-compliance with the TSA and the Commission's Order dated 03.10.2022, and raised documentation issues and delayed certification by UPSLDC. UPPCL

asked for reconciliation and for the claim to be withdrawn, arguing that the procedural delays negated its liability.

17. By letter dated 13.08.2024, the Petitioner replied that the LPS invoices were due and payable in full under Article 10.8 of the TSA, and that UPSLDC's delayed certification did not absolve UPPCL of liability. Under the TSA, payment delayed more than 30 days beyond the due date attracts LPS at 1.25% per month, so UPPCL's non-payment is a clear breach. The invoices met the procedural requirements of the TSA and the UPERC MYT Regulations 2019, and the Petitioner sought immediate settlement.

18. As per the LPS invoice sent for the month of July 2024 to UPPCL, the total LPS amount due for delay in payment of transmission charges for the period April 2021 to November 2021 for Element No. 2 to 8 is Rs. 6.56 Crores.

19. As per the TSA, the term 'Availability' is calculated, as per the procedure contained in Annexure B of the UPERC MYT Regulations 2019. In terms of Regulation 33.1.3 of UPERC MYT Regulation 2019, the Transmission Licensee shall raise the bill for the transmission charge for a month based on its estimate TAFM. Adjustments, if any, shall be made on the basis of the TAFM to be certified by the SLDC within 30 days from the last day of the relevant month.

20. The delay in issuing the availability certificate occurred because UPSLDC had waited for acceptance of the commissioning certificate. This approach was contrary to the TSA, as Article 6.2.1 provided that COD was deemed achieved 72 hours after grid connection without requiring further acceptance from PVVNL or any LTTCs. Therefore, the delay in certification could not prejudice the Petitioner, as transmission charges were required to be paid based on estimated availability, with subsequent adjustments if needed. Accordingly, delayed payment attracted LPS under the TSA.

21. Under Article 10.6.4 of the TSA, all payments made by LTTCs were required to be appropriated in the following order:

    a) towards Late Payment Surcharge, payable to the TSP, if any;

    b) towards earlier unpaid Monthly Transmission Charge Invoice, if any;

    c) towards earlier unpaid Supplementary Bill, if any;

    d) towards the then current Monthly Transmission Charge Invoice, if any; and;

e) towards the then current Supplementary Bill.

22. The Petitioner had also submitted that UPPCL had availed rebate despite having outstanding LPS, which was contrary to Article 10.7 that permitted rebate only when all dues were fully cleared. Accordingly, the Petitioner became entitled to a refund of ₹0.44 Crores illegally deducted as rebate.

23. It is further submitted that the conduct of UPPCL's caused undue financial hardship to the Petitioner. Accordingly, the Petitioner requested that this Commission direct UPPCL to release the outstanding LPS amount without further delay in accordance with the TSA.

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 purpose of the LPS provision was not only to ensure timely payment but also to deter delayed payments. Since the provision existed in the TSA, it was required to be enforced, and the parties could not resile from terms knowingly agreed to.

Non-establishment of LC as per Article 10.11.1 of the TSA:

27. The Petitioner, vide letters dated 23.09.2021, 28.12.2021, 18.07.2022 and 17.09.2024, requested UPPCL to establish the LC in accordance with Article 10.11.1 of the TSA. However, no LC has been established. The establishment of LC will also help in complying with the requirements of lenders.

28. The persistent failure of UPPCL to establish the LC not only violated the TSA but also caused operational and financial strain to the Petitioner. Given the substantial transmission charges payable under the TSA, the absence of an LC

exposed the Petitioner to undue financial risk in the event of delayed or non-payment. The Petitioner also had contractual obligations towards its lenders and suppliers, and the lack of an LC impeded timely disbursement.

29. The Petitioner has submitted the reliance of Hon'ble Supreme Court in ***United Commercial Bank v. Bank of India, (1981) 2 SCC 766***, which has held that the issuance of the LC constitutes an absolute obligation on the part of the bank to honour payments, provided the terms of the credit are strictly complied with. The Hon'ble Supreme Court further emphasized that the LC operates independently from the underlying contract between the buyer and seller, ensuring financial certainty for the beneficiary, irrespective of any disputes. This principle reinforces the Petitioner's right to demand the timely establishment of the LC, as non-compliance directly undermines the financial security guaranteed under the TSA.

30. In ***Shree Padmawati Metaliks Private Limited v. Damodar Valley Corporation (2013) SCC OnLine Cal 11609***, the Hon'ble Calcutta High Court directed the petitioner to establish an LC as per the supply agreement and noted that the absence of the LC justified the curtailment of power supply. The Hon'ble Calcutta Court's direction was clear in recognizing the obligation to establish an LC as not merely contractual but as a measure to ensure the financial security of the supplier.

31. In ***Bharat Aluminium Company Limited (BALCO) v. TANGEDCO (2022) SCC OnLine CERC 579***, the Hon'ble Central Electricity Regulatory Commission addressed the issue of delayed payments and the necessity of LCs as part of the payment security mechanism. In this case, the petitioner sought directions for the establishment of a standby LC to secure payment for the power supplied. Although during the pendency of the proceedings, UPPCL established the LC, the aforesaid judgment illustrates the necessity of the establishment of the LC.

32. The establishment of LC is essential to ensure the timely recovery of the transmission charges of the TSP.

<u>Submissions made by Parties during the proceedings</u>

33. It is pertinent to mention that the information already on record and being captured once, have not been repeated for the sake of brevity while

summarizing reply/rejoinder/written submission in subsequent paras. Accordingly, only the additional information brought on record subsequently have been listed thereon.

UPSLDC Reply dated. 22.02.2025

34. UPSLDC has submitted that the Petitioner has erroneously confused the acceptance of COD with the legitimate requirement of duly communicating the COD to UPSLDC. No such communication was ever provided to UPSLDC by any of the parties and therefore, in absence of this relevant information, UPSLDC could not have provided the Certificate of Availability to the Petitioner.

35. UPSLDC has submitted that Schedule 9 of the TSA lays down the procedure for calculation of Transmission System Availability. The said schedule is in consonance with UPERC Annexure-B of Multi Year Tariff Regulations, 2019.

36. As per Article 6.1.1 of the TSA, the Petitioner was required to provide a written notice at least sixty days in advance communicating to UPSLDC, LTTCs and any other agencies as required, the date on which it intended to connect an element of the project. Further, this date could not be fixed earlier than its Scheduled COD or the Scheduled COD as extended.

37. Further, UPSLDC was neither a direct party to the TSA entered into between the Petitioner and the Respondents nor was it privy to the communications exchanged between them regarding the declaration of COD. UPSLDC had never received any advance notice as laid down in Article 6.1.1 of the TSA either from the Petitioner or the LTTCs and, without such relevant details, UPSLDC could not have issued the Certificate of Availability to the Petitioner.

38. On 17.12.2021, UPPCL/Respondent No.1, vide its email dated 17.12.2021, had submitted a letter to CE (Commercial), PVVNL dated 01.12.2021 in which the COD of elements of Lot-1 had been declared, which was never endorsed to UPSLDC.

39. UPPCL had communicated the declaration of COD of elements of Lot-1 vide its email dated 17.12.2021. UPSLDC, vide letter dated 23.12.2021, had sought clarification regarding the declaration of COD of elements of Lot-1 for the purpose of availability verification. Upon submission of data by the Petitioner for verification, UPSLDC had issued the certified monthly transmission system availability of Lot-1 of the Petitioner vide letter dated 30.12.2021.

40. UPPTCL, vide its email dated 06.01.2022, had requested UPSLDC to verify the cumulative system availability for the months of April 2021 to December 2021, and the same was provided by UPSLDC vide letter dated 11.01.2022.

41. In light of the above-mentioned facts, once UPSLDC had been apprised of the relevant information by the other parties, it not only provided the Certificate of Availability in a prudent manner but also provided the certified cumulative transmission system availability. Therefore, each accusation of the Petitioner against UPSLDC of purposely delaying the issuance of the Certificate of Availability was misleading and liable to be dismissed in *toto*.

Rejoinder filed by Petitioner dated. 07.03.2025 against UPSLDC Reply dated 22.02.2025

42. The Petitioner has submitted that as per Article 18.1.1 of the TSA, the LTTCs had appointed and authorized PVVNL as the Lead Long-Term Transmission Customer to represent the LTTCs in discharging their rights and obligations under the TSA. The Project had been divided into two Lots, namely LOT-1 comprising Element Nos. 1 and 2 to 8, and LOT-2 comprising Element No. 9.

43. The Petitioner, vide letter dated 21.09.2020, had duly informed UPSLDC, in compliance with Article 6.1.1 of the TSA, by providing a 60-day advance written notice regarding the intended date for the connection of Element Nos. 2 to 8 of LOT-1 of the Project.

44. The Petitioner, vide letter dated 16.03.2021, had also informed all the parties, including UPSLDC, regarding the readiness of interconnection facilities for LOT-1 of the Project, consisting of 8 Elements. Also, vide letter dated 02.04.2021, had declared the Deemed COD of Element Nos. 2 to 8 of LOT-1 of the Project as 09.04.2021 in compliance with Article 6.2.1 read with Article 6.2.2 of the TSA.

45. The Petitioner had intimated on 02.04.2021 that Element Nos. 2 to 8 of LOT-1 were ready for charging, having completed its scope of work, whereas the inter-connection facilities were yet to be made ready by the LTTCs. Accordingly, in terms of Article 6.2.1 of the TSA, the Petitioner claimed entitlement to transmission charges from 09.04.2021 without requiring any further declaration or acceptance of COD by PVVNL or any other LTTC.

46. Accordingly, the Petitioner submitted that the contentions raised by UPSLDC in its Reply are devoid of merit and do not warrant consideration.

UPPCL Reply dated. 19.03.2025 on Petition

47. UPPCL has submitted that under Clause 1.2.1 of Schedule 5 of the TSA, read with the definition of "Availability" and Schedule 9, OCBTL had to provide cumulative availability certified by UPSLDC. Article 10.5.1(b) also required each Monthly Transmission Charge (MTC) invoice to carry the supporting documents the LTTCs requested for. OCBTL did not furnish these, which held up verification and payment of the invoices raised between May 2021 and December 2021 for April 2021 to November 2021.

48. UPPCL has further submitted that OCBTL wrote to UPSLDC for certification of cumulative availability for Elements 2 to 8 (April to November 2021) only on 16.12.2021. UPSLDC certified it on 11.01.2022, the MTC bills were presented on 18.01.2022, and they were verified on 28.01.2022. UPPCL has also submitted that because the delay arose from OCBTL not following the agreed procedures, the LPS claim fails.

Interplay of TSA provisions and invoicing requirements

49. UPPCL has submitted that the TSA provisions clearly establish a framework for invoicing and payment that OCBTL failed to adhere to. In this regard, UPPCL relied upon the following provisions:

a. Definition of Availability (Article 1.1.1): "Availability" is defined as *"the time in hours during that period the Project is capable to transmit electricity at its Rated Voltage and shall be expressed in percentage of total hours in the given period and shall be calculated as per the procedure contained in Annexure B to Uttar Pradesh Electricity Regulatory Commission (Multi Year Transmission Tariff) Regulations, 2014 attached herewith in Schedule 9".* UPPCL submitted that the definition clarifies that availability is not merely a statement of completion but a technical certification of the Project's capacity to transmit electricity, calculated according to a specific procedure and verified by an independent authority.

b. Article 10.5.1(b): The Article provides that *"Each Monthly Transmission Charge Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as*

Long Term Transmission Customers may reasonably require/request, from time to time." UPPCL submitted that OCBTL's failure to provide these documents prevented UPPCL from verifying the invoices promptly and that supporting documentation was essential for timely processing.

c. Clause 1.1(g) of Schedule 5: UPPCL has submitted that this clause reinforces the importance of availability certification and that, without UPSLDC certification, determining the actual availability and calculating the accurate charges was not possible.

d. Clause 1.2.1 of Schedule 5: UPPCL has submitted that this clause outlines the computation of MTC based on availability, thereby further emphasizing the need for certified availability data.

e. Clause 1 of Schedule 9: UPPCL has submitted that the procedure for calculating Transmission System Availability provides that the same *"shall be calculated by the respective Transmission Licensee, got verified and certified by the SLDC"*. Accordingly, certification by UPSLDC was a mandatory step in determining availability and, consequently, the transmission charges.

50. UPPCL has further submitted that OCBTL's failure to provide cumulative availability certified by UPSLDC along with supporting documentation as required under Article 10.5.1(b) directly contravenes the aforesaid provisions and forms the basis of the alleged delayed payment. The delay in obtaining the availability certification from UPSLDC cannot be attributed to UPPCL. UPPCL was entitled to receive complete and accurate invoices with supporting documentation, including the availability certification, before processing the payment. In the absence of OCBTL issuing invoices which were complete in all due respects, UPPCL could not have proceeded with clearing the invoices without duly verifying them. In support thereof, UPPCL referred to the order dated 27.04.2023 passed by the Hon'ble CERC in Petition No. 202/MP/2021, *MB Power (Madhya Pradesh) Limited v. UPPCL & Ors.*

51. UPPCL has further relied upon the well-settled legal principle that when law requires something to be done in a particular manner, the same must be done in that manner or not at all.

52. UPPCL has accordingly submitted that OCBTL cannot be allowed to stake its claim for LPS without following the procedure set out under the TSA for

invoicing. If such claims of OCBTL are entertained, it would amount to rendering Article 10.5.1(b), Clause 1.1(g) of Schedule 5, Clause 1.2.1 of Schedule 5 and Clause 1 of Schedule 9 of the TSA otiose and redundant, which is impermissible as per settled principles of law.

53. Without prejudice to the aforesaid, UPPCL has submitted that UPSLDC certified cumulative availability for OCBTL's Project on 11.01.2022 on the basis of a letter written by OCBTL on 16.12.2021 only. Further, the onus to calculate the availability and thereafter get it verified and certified from UPSLDC lay with OCBTL. Therefore, any alleged delay on the part of UPSLDC cannot form the basis to grant OCBTL any relief qua LPS, especially when OCBTL has itself failed to establish any proactive steps taken by it or steps taken by it to pursue the issue with UPSLDC.

OCBTL's reliance on Regulation 33.1.3 of the UPERC (Multi Year Transmission Tariff) Regulations, 2019 is misplaced

54. UPPCL has submitted that Regulation 33.1.3 of the Uttar Pradesh Electricity Regulatory Commission (Multi Year Transmission Tariff) Regulations, 2019 provides that the Transmission Licensee shall raise the bill for transmission charges for a month based on its estimated Transmission System Availability Factor for a Calendar Month (TAFM), and adjustments, if any, shall be made on the basis of the TAFM to be certified by the SLDC within 30 days from the last day of the relevant month.

55. According to UPPCL, above mentioned Regulation also reinforces the requirement of TAFM being certified by UPSLDC. In any case, the time frame stipulated for adjustments in transmission bills is 30 days from the last date of the relevant month and, therefore, the time frame for adjustments for transmission bills for the period April 2021 to November 2021 had already expired by the time OCBTL got the TAFM verified/ certified by UPSLDC. Accordingly, Regulation 33.1.3, in no manner, supports the case of OCBTL and, on the contrary, highlights and buttresses UPPCL's submission that verification and certification of TAFM by UPSLDC is a mandatory requirement for raising invoices for transmission charges.

OCBTL's claim for LPS is untenable

56. UPPCL has submitted that OCBTL's claim for LPS is untenable due to its non-compliance with the invoicing procedures stipulated under the TSA. Article 10.8.1 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."

57. UPPCL has submitted that due to OCBTL's failure to provide the necessary documentation, including UPSLDC certification, UPPCL could not verify and process the invoices within the stipulated timeframe. Therefore, the alleged delay in payment was directly attributable to OCBTL's procedural lapses and not to any fault on the part of UPPCL, thereby negating OCBTL's claim for LPS.

Refund of rebate

58. UPPCL has disputed OCBTL's contention regarding refund of rebate and submitted that all payments were made within the stipulated timelines under Article 10 of the TSA, after duly considering and factoring in all necessary documentation and certifications received from OCBTL and UPSLDC. Since UPPCL's payments were timely and compliant with the TSA, there is no basis for OCBTL's claim for refund of rebate. The rebate was applied in accordance with Article 10.7 of the TSA and, as UPPCL met the stipulated conditions, no refund is due.

59. UPPCL has further submitted that since OCBTL's basis for claiming refund of rebate is the alleged outstanding LPS amounts, and OCBTL's claim for LPS is itself not tenable in terms of the foregoing submissions, the claim for refund of rebate also falls. In this regard, UPPCL relied upon the well-settled legal principle *sublato fundamento cadit opus*, meaning that in case the foundation is removed, the superstructure fails. Therefore, once OCBTL's claim for LPS is found to be untenable, the claim for refund of rebate also falls.

60. UPPCL has submitted that the Commission may direct reconciliation of payment records between the parties to resolve the present dispute amicably. Such reconciliation would demonstrate that any delay in payment was a consequence of OCBTL's failure to adhere to the agreed invoicing procedures and timelines stipulated in the TSA and not a default on the part of UPPCL.

61. It is further submitted that it has already established a Letter of Credit (LC) in favour of OCBTL, as mandated under Article 10.11.1 of the TSA. Accordingly, OCBTL's prayer for establishment of LC, i.e., prayer (e) of the Petition, has become infructuous.

Rejoinder filed by Petitioner dated. 04.04.2025 against UPPCL Reply dated. 19.03.2025

62. As per Article 10.5.1 of the TSA, the Petitioner had also started raising invoices for Element Nos. 2 to 8 of LOT-1 of the Project to the Respondent No. 1 for recovery of the MTC from 09.04.2021. The Petitioner was also submitting the availability data to the UPSLDC for each month starting from the date of COD of 09.04.2021.

63. The Petitioner had submitted the availability data to the UPSLDC for the period from April 2021 to November 2021 (each month). This data was necessary to determine the TAFM. Despite Petitioner's timely submissions, UPSLDC delayed the issuance of the availability certification, impacting the invoicing process. Therefore, no fault can be attributed to the Petitioner, for the delay by UPSLDC in issuing the availability certification. The details of availability data sent to UPSLDC is as under:

Month	Date of submission	Monthly Availability
April-2021	05.05.2021	96.05%
May-2021	05.06.2021	95.09%
June-2021	03.07.2021	99.72%
July-2021	05.08.2021	98.95%
August-2021	04.09.2021	99.99%
September-2021	05.10.2021	99.99%
October-2021	03.11.2021	99.91%
November - 2021	06.12.2021	100.00%

64. It is also submitted that Regulation No. 33.1.3 of the UPERC MYT Regulations, 2019 specifically provides for adjustments to the transmission bills for a particular month to be adjusted in the subsequent months based on actual availability of previous month. Accordingly, UPPCL cannot be absolved from its liability to verify and certify the invoices based on the estimated TAFM. The timeframe for certifying the availability by UPSLDC has been specified as 30 days in UPERC Tariff Regulations, 2019. It was the responsibility of UPSLDC to certify the availability within 30 days to enable the Petitioner to provide certified availability to UPPCL.

65. Regulation 33.1.3 of UPERC MYT Regulation 2019 is reproduced as under:

"33.1.3 The transmission charge payable for a calendar month for a Transmission System or part thereof shall be:

....

The Transmission Licensee shall raise the bill for the transmission charge for a month based on its estimated TAFM. Adjustments, if any, shall be made on the basis of the TAFM to be certified by the SLDC within 30 days from the last day of the relevant month."

66. The Petitioner has submitted that as regards the objection by UPPCL, that the invoices raised by the Petitioner were not supported by documents in view of Article 10.5.1(b) of the TSA, it is submitted that UPPCL never raised any objection to the invoices raised by the Petitioner and this is for the first time that UPPCL has raised such untenable contentions in order to avoid payment of LPS to the Petitioner. It is further submitted that the invoices raised by the Petitioner were based on the TAFM and that any adjustments to the invoices (raised on the basis of TAFM) after the grant of availability certification by UPSLDC could be adjusted in the subsequent invoices. Therefore, UPPCL were obligated to make the payment of the invoices raised by the Petitioners as per timelines specified by Article 10 of the TSA.

67. Articles 10.9.1, 10.9.2 and 10.9.8 of the TSA provide as follows:

***"10.9.1** If either Party does not question or dispute an Invoice within thirty (30) days of receiving it, the Invoice shall be considered correct, complete and conclusive between the Parties.*

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

***10.9.8** For the avoidance of doubt, it is clarified 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, of the lower of (a) an amount equal to simple average of*

last three (3) months Invoices (being the undisputed portion of such three months Invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Invoice has been raised based on the Allocated Project Capacity and in accordance with this Agreement."

68. Therefore, in view of Article 10.9.1 of the TSA, as UPPCL had not questioned or disputed the Invoices raised by the Petitioner till date, therefore, the same shall be considered to be correct, complete and conclusive. UPPCL cannot be now permitted to raise any objections through its reply to belatedly raise any frivolous objections to the Invoices raised by the Petitioner, which in any case were correct and complete in all aspects.

69. Further, the Article 10.9.2 of the TSA also provides that in case of any dispute with respect to the Invoice, the Party has to serve an 'Invoice Dispute Notice' on the other Party, but no such Invoice Dispute Notice has ever been received by on the Petitioner.

70. Importantly, as per Article 10.9.8. of the TSA, UPPCL was under an obligation to make the payment of the lower of **(a)** an amount equal to simple average of last three (3) months Invoices (being the undisputed portion of such three months Invoices) or **(b)** Monthly Invoice which is being disputed. UPPCL failed to even make any payment in accordance with Article 10.9.8 of the TSA and therefore is liable to make the payment of the LPS and refund the unlawfully deducted rebate amount to the Petitioner.

71. The contention that invoicing procedure as prescribed by the TSA were not complied by the Petitioner, is totally false. It is submitted that the Petitioner has duly complied with all the invoicing procedures and has raised invoices which are complete in all regards and comply with the timelines prescribed by the TSA.

72. As regards unlawful deduction of rebate by UPPCL, it is submitted that as per Article 10.7 of the TSA, rebate can be availed by the party only when payment is made in full i.e. all outstanding payments are cleared. However, since UPPCL has not made payment of LPS for delayed payment of transmission charges from April 2021 to November 2021, UPPCL cannot avail rebate. Accordingly, the Petitioner is entitled to refund the rebate amount of Rs. 0.44 Cr, which UPPCL has illegally availed. This is further substantiated by Article 10.6.4 of

the TSA, which provides that all payments made by the LTTCs shall be appropriated by Transmission Service Provider ("TSP") in the order of priority as mentioned therein.

73. The Petitioner has submitted that the LC dated 18.03.2025 established by UPPCL was in direct contravention of the provisions of Article 10.11.1 of the TSA, which specifically mandated the conditions for the establishment of an LC. The existing draft specifically records this as an additional submission in the present Rejoinder.

74. The Petitioner has further submitted that UPPCL breached Article 10.11.1 of the TSA in two ways: a. **No draft LC:** Article 10.11.1(b) required UPPCL to give the Petitioner a draft of the proposed LC at or before Financial Closure. It did not. b. **Drawal limits:** The LC capped each encashment at ₹2,02,05,716.67, contrary to Article 10.11.1(c)(ii). Since the TSA allows the TSP only one drawal a month, this cap limited the TSP to ₹2.02 crore a month instead of the ₹10.10 crore the TSA contemplates.

Hearing dated. 08.10.2026 along with Written Submissions of the Petitioner dated. 23.10.2026

75. Sh. Sourav Roy, learned Counsel appearing on behalf of the Petitioner, submitted that the dispute pertains to the delay in payment of Monthly Transmission Charges for Elements 2 to 8 of LOT-1 for the period from April 2021 to November 2021 and the consequential claim for LPS. He submitted that the Petitioner had declared the Deemed COD, raised the monthly invoices and furnished the availability data during the relevant period, whereas the payments were released only subsequently in February/March 2022.

76. He further submitted that, under the scheme of Article 6 of the TSA, the relevant requirement is the declaration by the TSP and there is no separate requirement of subsequent "acceptance" of COD by the LTTCs. He referred to the notices/communications issued by the Petitioner prior to commissioning and submitted that the Petitioner had itself declared the Deemed COD vide its letter dated 02.04.2021. He further submitted that the COD of Elements 2 to 8 was ultimately determined as 16.04.2021 and that the subsequent acceptance of the said COD could not postpone the Petitioner's entitlement to MTC.

77. It was further submitted that, despite the Petitioner furnishing the availability data during the relevant months, UPSLDC issued the Availability Certificate only subsequently. Sh. Roy contended that UPSLDC had waited for acceptance/intimation of COD by the LTTCs, although such acceptance was not contemplated as a condition under the TSA. He further referred to UPPCL's communication dated 06.07.2023 to contend that the subsequent acceptance/intimation of COD was being treated as the basis for considering presentation of the bills, which, according to the Petitioner, was contrary to the contractual mechanism.

78. Sh. Roy accordingly submitted that the subsequent delay in issuance of the Availability Certificate could not deprive the Petitioner of the transmission charges payable for the relevant period or the consequential LPS for delayed payment. The remaining detailed submissions concerning the relevant provisions of the TSA, availability certification, invoicing, LPS, rebate, LC and reconciliation were subsequently placed on record by the Petitioner through its Written Submissions and are recorded separately in below paras.

79. The Petitioner submitted that the controversy lies in a narrow compass. UPPCL (Respondent No. 1) does not dispute that the MTC Invoices for April 2021 to November 2021 were raised from May 2021 onwards, or that payment against them was released only in the months of February 2022 and March 2022. Its sole defence is that, strictly in terms of the TSA, it was not obliged to make payment unless the invoices were accompanied by the availability certificate of UPSLDC, which was issued only on 11.01.2022. UPSLDC, for its part, has sought to justify the time taken by it in certifying availability and, at the hearing, disputed the validity and/or existence of certain contemporaneous communications. Each of these contentions is dealt with in its Written Submissions and is being listed below.

A. The Commercial Operation Date of Elements 2 to 8 is 16.04.2021 as decided by the Commission in its Order dated 03.10.2022 passed in Petition No. 1824 of 2022, which was upheld by the Hon'ble APTEL vide its judgment dated 29.09.2026 in Appeal No. 452 of 2022

80. The Petitioner submitted that the Commission's Order dated 03.10.2022 in Petition No. 1824 of 2022 has already fixed the COD of Elements 2 to 8 as

16.04.2021. UPPCL and the LTTCs (Respondent Nos. 1 to 6) challenged that Order before the Hon'ble APTEL in Appeal No. 452 of 2022, without obtaining a stay.

81. The Hon'ble APTEL dismissed the Appeal by judgment dated 29.09.2026. According to the Petitioner, the COD of 16.04.2021 is therefore final between the Petitioner, the LTTCs, UPPCL and UPSLDC.

82. The Petitioner submitted that its LPS claim is computed on a COD of 16.04.2021. The contention that COD runs from a later "acceptance" by an LTTC, rather than from its declaration or achievement, contradicts the Commission's findings as upheld by the Hon'ble APTEL, and cannot be re-agitated

B. The contractual framework: Monthly Transmission Charges are payable on the Due Date, and Late Payment Surcharge follows by operation of the TSA

83. The Petitioner has submitted that Article 10.1 of the TSA places the obligation to pay upon the LTTCs from the date of COD and provides as under:

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

84. The Petitioner has further submitted that the "Due Date" is defined in Article 1.1 of the TSA as:

"the thirtieth day after the date on which any Invoice is received and duly acknowledged by the Long Term Transmission Customer ... and by such date, the Invoice is payable by the Long Term Transmission Customer".

85. The Petitioner has submitted that Articles 10.6.1 and 10.6.3 of the TSA require the amount payable under an invoice to be paid on or before the Due Date.

86. The TSA provides a complete mechanism in relation to raising of invoices, their payment, dispute, adjustment and reconciliation. According to the Petitioner, an invoice is required to be paid on the Due Date; a party wishing to dispute the invoice is required to follow the Invoice Dispute mechanism under Article

10.9; and any variation requiring subsequent adjustment can be dealt with through Supplementary Bills and periodic reconciliation under Articles 10.10 and 10.13 of the TSA.

87. On this basis, the Petitioner has submitted that nowhere does the TSA make a certificate of UPSLDC a condition precedent to payment or postpone the Due Date until such certificate is issued.

C. The Petitioner invoiced and furnished availability data contemporaneously and on time from April 2021 to November 2021 but UPPCL made payment for these periods only from 25.02.2022

88. The Petitioner has submitted that the fact of delay in payment is not in dispute. According to the Petitioner, the question which arises is whether UPPCL can be absolved from the contractual consequence of such delay on the ground that the availability certificate of UPSLDC had not been issued when the MTC Invoices were raised.

89. UPPCL's contention that, strictly in terms of the TSA, it was not obliged to make payment unless the bills were accompanied by the availability certificate of UPSLDC is misconceived for the following reasons.

Firstly, that Article 10.5.1(b) provides:

"b. Each Monthly Transmission Charge Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as Long Term Transmission Customers may reasonably require / request, from time to time."

90. Article 10.5.1(b) neither prescribes a certificate of UPSLDC as an essential enclosure to an invoice nor defers the Due Date pending issuance of such certificate. It was further submitted that UPPCL has not pointed out any request made by it under Article 10.5.1(b), during May 2021 to December 2021, requiring the Petitioner to furnish UPSLDC's availability certificate as supporting documentation. According to the Petitioner, if UPPCL considered such certificate indispensable for processing the concerned invoices, it ought to have sought the same when the invoices were received.

91. **Secondly**, Schedule 5 itself is built upon payment on the basis of availability, with adjustment thereafter. Clause 1.1(f) provides that:

"The Transmission Charges shall be payable based on the Allocated Project Capacity at Target Availability ..."

92. Target Availability is 98% under Article 8.2. Further, under Clause 1.2.1 of Schedule 5, the MTC for any month is computed on the Cumulative Availability:

"from the first day of the Contract Year ... upto and including upto the end of the month" after deducting the MTC payable for the preceding months of the Contract Year.

93. Any variation between the availability reflected in an invoice and the availability ultimately certified could thus be corrected in subsequent invoices of the same Contract Year and further through the Supplementary Bill and reconciliation mechanism under Articles 10.10 and 10.13 of the TSA.

94. **Thirdly**, the regulatory framework under Regulation 33.1.3 of the UPERC (Multi Year Transmission Tariff) Regulations, 2019 is also based upon billing on estimated TAFM followed by adjustment on the basis of the TAFM subsequently certified by SLDC. The Petitioner clarified, however, that its principal argument is based strictly upon the TSA and that Regulation 33.1.3 has been referred to only to demonstrate that, even under the regulatory framework, certification by SLDC furnishes the basis for subsequent adjustment.

95. Failure of UPSLDC to issue the certification within the contemplated period cannot convert an invoice payable on estimated availability into an invoice not payable at all.

96. **Fourthly**, insofar as UPPCL's objection to the invoices is concerned, UPPCL did not invoke the Invoice Dispute mechanism contemplated under Article 10.9 of the TSA in respect of the concerned MTC Invoices. The Petitioner submitted that an objection which was not raised in the contractually prescribed manner cannot subsequently be relied upon for withholding the entire payment.

97. **Fifthly**, the Petitioner submitted that the principle invoked by UPPCL, namely, that where a thing is required to be done in a particular manner it must be done in that manner or not at all, applies equally to UPPCL. According to the Petitioner, the TSA itself prescribes the manner in which an invoice may be disputed and UPPCL did not follow that course.

98. **Sixthly**, the contemporaneous record shows that the real reason for withholding payment was not merely the absence of an availability certificate, but the absence of "acceptance" of COD by the LTTCs. In this regard, the Petitioner relied upon UPPCL's e-mail dated 06.07.2023, wherein UPPCL stated:

> *"... It is quite clear that COD of concern element (LOT 1 element 2 to 8) was declared on 01.12.2021 and* ***bill presentation can not be considered prior official intimation of the same COD i.e. 07.12.2021****. ..."*

99. The Petitioner has submitted that UPPCL thereby treated the acceptance of COD by PVVNL, communicated internally on 07.12.2021, as the trigger for "bill presentation". Such premise is unsustainable since Article 10.1 makes MTC payable *"from the date on which an Element(s) has achieved COD".*

100. The Petitioner has contended that having taken from April 2021 to December 2021 to "accept" a COD which ultimately stands fixed as 16.04.2021, the LTTCs cannot rely upon their own delay to postpone the Due Dates of the invoices for the months which followed COD. According to the Petitioner, no party may take advantage of its own default.

101. UPPCL was not in any doubt regarding commissioning of the Elements during the relevant period. As pleaded by UPPCL and the concerned LTTCs themselves in Petition No. 1824 of 2022, UPSLDC on 23.07.2021, in response to communications from UPPCL, had intimated the dates upon which Elements 2 to 8 completed seventy-two hours of continuous energisation.

102. The Petitioner has further relied upon UPSLDC's letter dated 23.12.2021, which records that SE (SPATC), UPPCL had written to UPSLDC on this subject on 28.06.2021 and 19.07.2021. According to the Petitioner, despite the same, UPPCL neither made payment nor took timely steps to secure the certification which it now states were indispensable for processing the MTC Invoices.

D. The delay in certification is attributable to UPSLDC and cannot be to the detriment of the Petitioner

103. The letter dated 16.12.2021 relied upon by UPPCL was not the first request for certification but was issued after the monthly requests made by the Petitioner had failed to elicit an availability certificate from UPSLDC.

104. After receiving the letter of PVVNL from UPPCL on 17.12.2021, UPSLDC raised its query on 23.12.2021, certified the monthly availability on 30.12.2021 and cumulative availability on 11.01.2022. According to the Petitioner, this chronology demonstrates that the preceding months were not occupied in verification of availability data but in waiting for "acceptance" of COD.

105. UPSLDC was itself the source of the seventy-two-hour energisation data from which the date of COD was derived. As the designated system operator, UPSLDC exercises operational control over grid connectivity and is required to accord the necessary permissions and operational coordination for first-time charging and integration of a transmission element with the State Grid. In the absence of such approval and operational coordination, the concerned Elements could not have been connected or charged.

E. The insistence upon "acceptance" of COD has no basis in the TSA

106. The Petitioner relied upon UPSLDC's letter dated 23.12.2021, wherein UPSLDC sought clarification whether *"this COD declared by PVVNL may be used for availability verification so that availability of OCBTL may be verified".*

107. The TSA contemplates declaration/achievement of COD upon occurrence of the events specified therein and does not require subsequent "acceptance" of COD by the Lead LTTC as a condition for verification of availability. UPSLDC is not a party to the TSA and that commercial acceptance of COD by a purchaser had no bearing upon the technical exercise of determining availability.

108. The Petitioner further referred to the definition of "Availability" under Article 1.1 of the TSA, which provides *"the time in hours during that period the Project is capable to transmit electricity at its Rated Voltage".*

109. Availability is thus a question of fact ascertainable from outage records. According to the Petitioner, such records are maintained by UPSLDC, under whose directions the TSP operates the Project in terms of Article 7.1.2 and to whom unscheduled outages are reported under Article 7.3.1.

110. The "acceptance" which eventually followed fixed the COD at 16.04.2021 and that UPSLDC itself thereafter certified availability of the concerned Elements from April 2021 onwards. Waiting for commercial "acceptance" of COD therefore served no technical purpose insofar as verification of availability was concerned.

F. The belated challenge by UPSLDC to the contemporaneous record is untenable

111. The Petitioner has submitted that, during the final hearing, UPSLDC disputed the validity and/or existence of: (i) the Petitioner's letter dated 21.09.2020 under Article 6.1.1 of the TSA; (ii) the letter dated 16.03.2021; (iii) the letter dated 02.04.2021 declaring COD; and (iv) the e-mails and availability data appearing at pages 241 to 249 of the Petition.

112. The written Reply of UPSLDC does not dispute the authenticity of the aforesaid documents. The Reply only raises a contention concerning receipt of the notice under Article 6.1.1 and communication of COD.

113. A bare oral challenge concerning these contemporaneous documents, raised for the first time at the final hearing, several years after their issuance and unsupported by corresponding pleadings in the Reply, ought not to be entertained. While referring Order VI Rule 4 of the Code of Civil Procedure, 1908 Petitioner has submitted that UPSLDC had not furnished material particulars in support of such challenge and could not raise such allegations for the first time during final hearing without placing the requisite particulars on record.

114. The contemporaneous record of the concerned utilities supports the communications in question. The letters dated 21.09.2020 and 16.03.2021 had been narrated by UPPCL and the concerned LTTCs in their own reply in Petition No. 1824 of 2022, while UPPTCL had responded to the letter dated 16.03.2021 by its letter dated 05.04.2021.

115. UPSLDC was itself the source of the seventy-two-hour continuous energisation data from which the date of COD was derived. According to the Petitioner, UPSLDC did not object at the relevant time to COD on the ground of absence of prior intimation and has raised such contention subsequently.

116. It is submitted that its letter dated 02.04.2021 is expressly referred to in the letter of PVVNL dated 01.12.2021, which UPSLDC itself placed on record with its Reply. UPPCL's letter dated 07.12.2021 also records 09.04.2021 as the deemed COD declared by the Petitioner.

117. With regard to the e-mails containing availability data, the said e-mails were addressed to the official e-mail addresses of UPSLDC and that UPSLDC itself acknowledges having verified the "data submitted by the Petitioner".

118. UPSLDC has itself ultimately certified availability of the concerned Elements for April 2021 to November 2021. Having certified availability of the Elements from April 2021, UPSLDC cannot now question their commissioning during April 2021. UPSLDC bears no payment obligation under the TSA and its stance cannot afford a defence to UPPCL against the Petitioner's claim for LPS.

G. Late Payment Surcharge is payable and its quantum has not been disputed

119. The Petitioner has submitted that the LPS has been computed at 1.25% per month on simple rate basis from the respective Due Dates, on the footing of COD being 16.04.2021, and by appropriating payments received first towards LPS as mandated by Article 10.6.4. The Petitioner quantified LPS at **Rs. 6,55,59,073/- as on 31.07.2024**.

120. UPPCL has not disputed the arithmetic of the computation in its Reply and that its objection is confined to the liability to pay LPS.

121. UPPCL's earlier objection that the impact of liquidated damages ought to be incorporated in the computation stands foreclosed by the finding in the Commission's Judgment dated 24.06.2024 passed in Petition No. 1920 of 2022 that UPPCL is not entitled to levy liquidated damages.

H. Refund of the Rebate availed by UPPCL

122. Petitioner's claim for refund of rebate is consequential to its claim for LPS. It relied upon Article 10.6.4 of the TSA, which requires payments to be appropriated first *"towards Late Payment Surcharge, payable to the TSP, if any"* and only thereafter towards earlier unpaid and then current invoices.

123. If LPS remained outstanding, payments made by UPPCL were required to be appropriated in accordance with the contractual priority under Article 10.6.4 and the entitlement of UPPCL to rebate would fall to be determined accordingly. The Petitioner therefore maintained its claim for refund of the rebate amount of **Rs. 0.44 crore** availed by UPPCL.

I. Letter of Credit

124. The Petitioner has submitted that maintenance of the LC in accordance with Article 10.11.1 of the TSA is a continuing contractual obligation. Although UPPCL

furnished an LC on 18.03.2025, the Petitioner submitted that the same is required to conform to the conditions stipulated under Article 10.11.1 of the TSA.

J. Reconciliation

125. The Petitioner has submitted that the request of UPPCL for reconciliation cannot alter the fundamental dates governing levy of LPS, namely, the invoice date, Due Date and actual date of payment. These dates are fixed and ascertainable from contemporaneous records and constitute the basis for determining applicability and computation of LPS under the TSA.

126. Reconciliation under Article 10.13 is merely an accounting exercise intended to verify and adjust amounts payable, if any, and cannot retrospectively modify the chronology of invoicing or payments so as to extinguish or reduce an LPS liability which has already accrued. UPPCL has neither disputed the relevant invoice/payment dates nor identified any error in the computation of LPS.

127. The Petitioner and UPPCL have already carried out reconciliation of Transmission Charges billed and payments received from the date of COD up to **31.03.2026**, wherein the remark column records:

"UPPCL has not factored in the amount of LPS in its books whereas OCBTL has filed application before Hon'ble UPERC for approval of LPS on account of delay in payment of transmission charges in case no 2135 of 2024 same shall be reconciled after the receipt of order."

Hearing dated. 08.10.2026 along with Written Submissions of UPPCL dated. 29.10.2026

128. Sh. Abhishek Kumar, Learned Counsel, appearing on behalf of UPPCL submitted that the LC established in favour of the Petitioner substantially met the payment-security requirement under the TSA. Although each presentation under the LC was capped at approximately Rs. 2.02 crore, the drawal mechanism permitted an aggregate monthly drawal of approximately Rs. 10.10 crore.

129. He submitted that UPPCL's principal case was that there had been no delay attributable to UPPCL in making payment of the MTC. The TSA contains a self-contained mechanism governing computation, invoicing and payment of MTC, and the invoices were required to be supported by Availability duly verified and certified by UPSLDC. The payment was processed after the requisite cumulative Availability and supporting documents became available.

130. He further referred to Article 10.5.1(b), Schedule 5 and Schedule 9 of the TSA and submitted that computation of MTC was linked with actual and cumulative Availability and that the Transmission System Availability Factor was required to be verified and certified by UPSLDC. Accordingly, an invoice unsupported by the requisite certified Availability could not be treated as a complete invoice for the purpose of payment and consequential LPS. He also referred to UPPCL's communication dated 06.07.2023 and submitted that the stand taken therein was consistent with UPPCL's case in the present proceedings, namely, that the bills were to be considered for processing upon submission of the requisite supporting documents in terms of Article 10.5.1(b) of the TSA.

131. He also opposed the Petitioner's reliance upon the UPERC MYT Regulations, 2019 for billing on estimated/provisional TAFM. The billing and payment mechanism under the TSA is self-contained and that only the prescribed procedure for calculation of transmission-system Availability had been incorporated into the TSA. A separate mechanism of provisional billing could not be imported into the TSA. The remaining detailed submissions concerning the contractual billing mechanism, certified Availability, applicability of the 2014/2019 Regulations, Due Date, LPS, rebate, limitation and LC were subsequently placed on record by UPPCL.

132. UPPCL's case rests essentially on the contention that: certified Availability is part of the TSA mechanism for determining MTC; an incomplete invoice cannot trigger the Due Date or LPS; the delay in obtaining certified Availability is not attributable to UPPCL; and OCBTL's reliance on the COD provisions and Regulation 33.1.3 of the 2019 Regulations does not answer UPPCL's case.

Re: Certified Availability is a condition of a complete Monthly Transmission Charge Invoice under the TSA

133. UPPCL pointed out that OCBTL itself pleads that availability data "was necessary to determine the TAFM" and says in its Rejoinder that UPSLDC had to certify Availability so that the Petitioner could provide certified availability to Respondent No. 1. On UPPCL's reading, OCBTL therefore does not dispute that certification is part of billing; it disputes only who bears the consequence of the delay. Since the TSA does not provide for billing on an estimated TAFM, and Schedule 9 requires Availability to be calculated by the licensee and "got verified and certified by the

SLDC", while Schedule 5 computes MTC on Cumulative and actual Availability, UPPCL maintained that certified Availability was needed to determine and verify the amount payable.

Re: No Due Date, and hence no LPS, arises on an invoice that is not complete in terms of the TSA

134. The Due Date is the thirtieth day after the date on which the Invoice is received and duly acknowledged by the LTTC, or the next Business Day if such day is not a Business Day, and that Articles 10.6.1 and 10.6.3 require payment on or before such Due Date.

135. Article 10.8.1 provides for LPS only on an "amount due" that remains unpaid for thirty days after the Due Date. LPS therefore presupposes: (i) an amount due under an invoice which complies with the TSA; (ii) a Due Date computed with reference to its receipt and due acknowledgment; and (iii) non-payment beyond the period prescribed under Article 10.8.1.

136. OCBTL has computed LPS from the dates of its invoices. Such computation proceeds on the assumption that every invoice was received and duly acknowledged on the date on which it was raised, whereas the contractual definition of Due Date does not itself support such assumption.

137. In support of its contention, UPPCL has relied upon the Order dated 27.04.2023 passed by the Hon'ble CERC in *MB Power (Madhya Pradesh) Limited v. UPPCL & Ors.*, Petition No. 202/MP/2021. In the said case, the Hon'ble CERC noted that MB Power had accepted reconciliation of LPS as per the acknowledgment dates of UPPCL, without protest or reservation, and observed that "there is merit in the contention of UPPCL" that incomplete invoices could not have been cleared without duly verifying them.

138. The Due Date under the PPA considered in the above-mentioned matter was similarly the thirtieth day after the bill is "received and duly acknowledged" by the procurer. The formulation is similar to Article 1.1.1 of the present TSA and, therefore, the LTTC is entitled to verify completeness of an invoice before payment, with Due Date and LPS following from the date upon which the invoice is received and duly acknowledged.

Re: The delay in certification of Availability is attributable to OCBTL, and UPSLDC's delay cannot defeat UPPCL's objection

139. The onus to calculate Availability and have it verified and certified by UPSLDC lay upon OCBTL under Schedule 9. The core contention regarding the cumulative Availability being certified on 11.01.2022 after OCBTL's letter dated 16.12.2021 already forms part of UPPCL's earlier Reply and is not repeated herein.

140. In response to OCBTL's reliance upon the monthly e-mails sent to UPSLDC between 05.05.2021 and 06.12.2021, UPPCL has submitted that it does not dispute that such e-mails were sent. According to UPPCL, however, each such e-mail submits monthly outage and availability details with a request to UPSLDC to verify the same and issue the availability certificate. UPPCL contended that the said correspondence itself demonstrates OCBTL's understanding that verification and certification by UPSLDC were required. According to UPPCL, sending availability data is not equivalent to getting such data verified and certified.

141. UPPCL has submitted that OCBTL relies upon its letters dated 21.09.2020 and 16.03.2021, which were placed on record with the Petitioner's Rejoinder to UPSLDC's Reply. According to UPPCL, its case nevertheless remains that the contractual onus to secure certification was upon OCBTL and that UPPCL cannot be made liable for LPS on account of the time taken in certification.

142. UPPCL's case is that the Due Date follows receipt of a complete Invoice and LPS follows default after such Due Date. the bills were presented with complete supporting documents on 18.01.2022 and verified on 28.01.2022, ten days later.

Re: Article 6.2.1 and the Order dated 03.10.2022 do not answer UPPCL's case

143. UPPCL contended that Article 6.2.2 has no application to Elements 2 to 8 of LOT-I since, the said Elements achieved COD and not deemed COD and were therefore required to obtain certification from UPSLDC for their "Actual Availability".

144. Article 6.2.2 deems Availability equal to Target Availability only "till the actual charging of the Element".

145. UPPCL further submitted that OCBTL's own letter records that the Elements were charged between 30.03.2021 and 02.04.2021. Therefore, according to UPPCL, after charging, MTC was required to be computed on actual and cumulative Availability under Schedule 5, certified in terms of Schedule 9.

Re: Regulation 33.1.3 of the 2019 Regulations does not permit billing without SLDC-certified Availability

146. UPPCL has submitted that the TSA is a self-contained billing and payment mechanism. It was executed on 15.10.2018 and, through Schedule 9, incorporates only Annexure-B of the 2014 Regulations, which sets out how Availability is calculated. The proviso to Regulation 16.3 of the 2014 Regulations already allowed billing on estimated TAFM subject to later adjustment, yet the parties chose not to incorporate it.

147. A billing mechanism the parties did not adopt cannot now be read into the TSA, still less through the 2019 Regulations, which did not exist when the TSA was signed. The 2019 Regulations are also not meant for an arrangement like this one. They deal with ARR, APR, tariff and true-up (Regulations 1.3 and 29.1), whereas for Section 63 projects the Commission simply adopts the quoted transmission charges (second proviso to Regulation 30.1; Regulation 30.11) and determines no ARR. Since Regulation 33.1.3's formula starts from ARR and applies the ratio of TAFM to NATSAF, its last sentence on estimated billing cannot be detached and attached to the separate formula in Schedule 5 of the TSA. UPPCL accordingly contended that OCBTL, a Section 63 project governed by the TSA, cannot selectively import that one sentence from regulations framed for Section 62 tariff determination while disregarding the rest of that framework.

Re: Articles 10.9.1, 10.9.2 and 10.9.8 neither deem the invoices correct nor require part payment

148. UPPCL further submitted that Article 10.9 covers disputes about "any item or part of an item set out in any Invoice", whereas UPPCL disputes no particular item. Its objection is that, without certified Availability, the invoices were incomplete under Article 10.5.1(b), Schedule 5 and Schedule 9, and Article 10.9.1 cannot override those requirements or stand in for the certification they demand. UPPCL denied that the objection is an afterthought, relying on its letters dated 06.07.2023 and 25.07.2024, both written before the Petition, which questioned the supporting documents and sought reconciliation. Citing Article 18.18 of the TSA, it added that a waiver must be in writing and executed by an authorised representative, and that a failure to insist on performance, or any indulgence, is

not a waiver. Any silence or delay in objecting therefore did not waive its right to insist on compliance with Article 10.5.1 and the related provisions.

Re: LPS arises only under Article 10.8.1, and neither its nature, Article 10.6.4, belatedness nor hardship enlarges it

149. UPPCL has submitted that it does not dispute the general proposition that LPS compensates for delayed payment. According to UPPCL, however, the question in the present proceedings is whether LPS became contractually payable on the concerned invoices at all.

150. Article 10.8.1 attaches LPS only to an "amount due" which remains: "unpaid for thirty (30) days after the Due Date".

151. The judicial decisions relied upon by OCBTL concerning the nature and purpose of LPS do not determine whether, in the present factual circumstances, an amount had become due and remained unpaid beyond its Due Date. Article 10.6.4 only determines the order in which payments are appropriated. The first item in the order of appropriation is *"Late Payment Surcharge, payable to the TSP, if any".* The words "if any" necessarily presuppose that LPS has already become contractually payable. Article 10.6.4, does not itself create a liability to LPS; such liability, if any, must independently arise under Article 10.8.1.

Re: UPPCL is entitled to the rebate having paid in time, and reconciliation of the payment records is warranted

152. UPPCL has reiterated that OCBTL's claim for refund of rebate is consequential to its claim for LPS. The basic contention of UPPCL that the rebate was availed in accordance with Article 10.7 and that the claim falls if LPS is not payable already forms part of its earlier Reply and is not repeated.

153. UPPCL has further submitted that Article 10.7.1(b) allows a rebate of 1% on a Monthly Transmission Charge Invoice paid in full within the Due Date. The Due Date is the thirtieth day after the date upon which the Invoice is received and duly acknowledged by the LTTC. The relevant invoices became complete only when presented with SLDC-certified Availability and were thereafter paid within the period permitted under the TSA.

154. Article 10.7.1 conditions rebate upon payment in full of the concerned Invoice within the Due Date and does not expressly make the entitlement to rebate conditional upon prior discharge of LPS or any other independent amount.

155. UPPCL has referred to the proviso to Article 10.7.1 and submitted that the TSA provides the TSP a separate contractual remedy for non-payment within the Due Date. According to UPPCL, Article 10.7.1 does not provide for reversal of a rebate which has otherwise been earned under the said Article.

156. With regard to reconciliation, the payment records should be reconciled, particularly concerning the date from which bills are treated as presented and the appropriation of payments. However, UPPCL's original request for reconciliation already stands recorded in its earlier Reply and is therefore not reiterated further.

Re: Prayer (e) is infructuous as the Letter of Credit stands established

157. UPPCL has submitted that the LC established on 18.03.2025, valid till 05.03.2026, was renewed on 13.03.2026 on the same terms and is now valid till 05.03.2027. UPPCL contended that the LC, which is irrevocable, opened in OCBTL's favour through a scheduled bank and renewed annually, therefore satisfies Article 10.11.1 of the TSA and provides the payment security the TSA contemplates. Since OCBTL has not pleaded that it was ever unable to draw on the LC or that the bank refused any presentation, UPPCL submitted that Prayer (e), seeking a direction to establish an LC, has become infructuous.

Re: In the alternative, the claim for LPS on the invoices for April to July 2021 is barred by limitation

158. Without prejudice to its main case, UPPCL argued in the alternative that the LPS claim for April to July 2021 is time-barred. Relying on *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.*, (2016) 3 SCC 468, it submitted that the Commission cannot allow a claim that would be time-barred in an ordinary suit. Since the TSA prescribes no limitation period for LPS, Article 113 of the Limitation Act, 1963 applies, giving three years from accrual (*PCKL v. Udupi Power Corporation Ltd.*, APTEL, Appeal No. 10 of 2020, judgment dated 02.11.2020). Under Article 10.8.1, the right to LPS accrues thirty days after the Due Date, excluding the day of accrual under Section 12(1). On OCBTL's own invoice and Due Dates (without admitting them), the three-year period for those

four months expired between 04.07.2024 and 04.10.2024, before the Petition was filed on 05.10.2024.

159. UPPCL accordingly prayed that the Commission: (i) dismiss the LPS claim for April to November 2021, because without SLDC-certified Availability the invoices were incomplete and no Due Date or LPS liability arose; (ii) in the alternative, reject the April to July 2021 claim as time-barred; (iii) reject the claim for refund of the Rs. 0.44 crore rebate, since the invoices were paid within the period allowed by Article 10.7.1 and that claim in any case depends on the LPS claim; and (iv) dispose of the prayer for an LC as infructuous, since an LC has been established under Article 10.11.1 and renewed on 13.03.2026 up to 05.03.2027.

Hearing dated. 08.10.2026 along with Written Submissions of UPSLDC dated. 02.11.2026

160. Sh. Divyanshu Bhatt, Learned Counsel appearing on behalf of UPSLDC submitted that, insofar as the allegations regarding delay in issuance of Availability Certificates are concerned, the Petitioner was first required to establish compliance with Article 6.1.1 of the TSA. Counsel referred to the requirement of sixty (60) days' advance written notice to SLDC and other concerned entities before the intended connection of an Element and submitted that UPSLDC had not received such advance notice from the Petitioner.

161. Learned Counsel further submitted that the letter dated 02.04.2021, whereby the Petitioner declared Deemed COD of Elements 2 to 8 of LOT-1 from 09.04.2021, could not by itself constitute the sixty-day advance notice contemplated under Article 6.1.1. It was further submitted that the earlier communications dated 21.09.2020 and 16.03.2021 relied upon by the Petitioner had been brought on record with the Rejoinder and UPSLDC disputed having received the same, there being, according to UPSLDC, no acknowledgment or proof of delivery demonstrating their receipt by UPSLDC.

162. He accordingly submitted that the declaration of Deemed COD and compliance with the advance-notice requirement under Article 6.1.1 were distinct matters and that the Petitioner could not attribute the delay in availability certification to UPSLDC without first establishing due communication of the requisite notice.

163. UPSLDC further submitted that the present dispute, insofar as it concerns UPSLDC, requires consideration of whether the Petitioner duly complied with the

requirements stipulated under the TSA, particularly Article 6.1.1, before seeking to attribute any delay in certification of availability to UPSLDC. The detailed submission is listed subsequently:

I. Failure of the petitioner to establish compliance with article 6.1.1 of the TSA

164. UPSLDC submitted that Article 6.1.1 of the TSA expressly requires the Transmission Service Provider ("TSP") to give the RLDC/SLDC, CTU/STU, the Long-Term Transmission Customers and other concerned agencies, as applicable, at least sixty (60) days' advance written notice of the date on which it intends to connect an Element of the Project. The relevant provision reads as follows:

> *"**ARTICLE:6***
> *6 CONNECTION AND COMMISSIONING OF THE PROJECT*
> *6.1 Connection with the Inter-Connection Facilities:*
> *6.1.1 The TSP shall give the RLDC/SLDC/, CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which shall not be earlier than its Scheduled COD or Scheduled COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees."*

165. UPSLDC relied upon the judgment of the Hon'ble Supreme Court in *Nabha Power* Limited *v. Punjab State Power Corporation Limited*, (2018) 11 SCC 508, and submitted that a commercial contract must be interpreted as a whole and so as to give efficacy to its provisions. Applying the said principle, the sixty (60) days' advance-written-notice requirement under Article 6.1.1 cannot be disregarded while giving effect to other provisions governing connection and commissioning of the Project. The Petitioner cannot selectively rely upon provisions of the TSA while ignoring the express obligation imposed by Article 6.1.1.

166. It was also submitted that the communications dated 21.09.2020 and 16.03.2021 were not placed on record along with the original Petition and were annexed for the first time with the Rejoinder filed by the Petitioner. Consequently, according to UPSLDC, it had not been afforded an opportunity in its original Reply to specifically respond to or controvert the said documents.

167. In this regard, UPSLDC relied upon the judgment of the Hon'ble Supreme Court in *M.S.M.* Sharma *v. Sri Krishna Sinha*, AIR 1959 SC 395, and submitted that a factual plea introduced for the first time through a subsequent pleading ought

not to be relied upon to the prejudice of the opposite party without affording such party an effective opportunity to respond to the same.

168. Without prejudice to the above, UPSLDC specifically disputed having received the communications dated 21.09.2020 and 16.03.2021. UPSLDC submitted that the Petitioner has not placed on record any acknowledgement of receipt, proof of delivery or other documentary evidence establishing that the said communications were duly served upon or received by UPSLDC.

169. Without prejudice, UPSLDC submitted that even the contents of the communication dated 21.09.2020 do not, by themselves, establish compliance with Article 6.1.1 in respect of the date subsequently claimed by the Petitioner. According to UPSLDC, the letter dated 21.09.2020 indicated that the Elements of LOT-1 would be ready for charging/commissioning by 21.11.2020, whereas the Petitioner subsequently declared Deemed COD of Elements 2 to 8 of LOT-1 with effect from 09.04.2021 vide its letter dated 02.04.2021.

170. UPSLDC, therefore, contended that a communication indicating readiness by 21.11.2020 cannot, without further examination, be treated as compliance with the sixty (60) days' advance-written-notice requirement for the date of 09.04.2021. UPSLDC further submitted that the communication dated 16.03.2021, which according to the Petitioner communicated readiness of interconnection facilities, also does not establish compliance with the advance-notice requirement in respect of 09.04.2021.

171. With regard to the Petitioner's letter dated 02.04.2021 declaring Deemed COD of Elements 2 to 8 from 09.04.2021, UPSLDC submitted that the said communication is required to be distinguished from the advance notice contemplated under Article 6.1.1. According to UPSLDC, even assuming that the letter dated 02.04.2021 was duly communicated to UPSLDC, it was issued only seven days before 09.04.2021 and, by itself, could not constitute sixty (60) days' advance written notice.

172. With regard to the letter dated 05.04.2021 issued by UPPTCL in response to the Petitioner's communication dated 16.03.2021, UPSLDC submitted that correspondence exchanged between the Petitioner and UPPTCL does not, by itself, establish receipt of the communication dated 16.03.2021 by UPSLDC.

II. Declaration of Deemed COD and certification of availability are distinct requirements

173. UPSLDC has submitted that the Petitioner has relied upon Articles 6.2.1 and 6.2.2 of the TSA in relation to the declaration of Deemed COD of Elements 2 to 8 of LOT-1 and has also relied upon the continuous energisation of the Elements and the availability of operational data with UPSLDC.

174. The declaration of Deemed COD and verification of transmission system availability are distinct matters. The former concerns compliance with contractual requirements governing connection, commissioning and COD, whereas the latter concerns verification of the relevant availability data on the basis of the applicable framework and operational records.

175. UPSLDC further submitted that the existence of operational data concerning continuous energisation does not, by itself, constitute acceptance or adjudication by UPSLDC of the Petitioner's contractual claim regarding Deemed COD.

176. Issuance of an Availability Certificate concerns verification of transmission system availability and should not, without examination of the applicable contractual provisions and facts, be treated as determination by UPSLDC of every contractual dispute between OCBTL and the LTTCs under the TSA.

III. UPSLDC acted in the discharge of its functions and did not deliberately delay issuance of availability certificates

177. UPSLDC has submitted that its role in the present matter was confined to discharge of its functions relating to verification and certification of transmission system availability on the basis of the relevant operational records and information available to it.

178. UPSLDC's earlier Reply already records that PVVNL's letter dated 01.12.2021 was forwarded to UPSLDC and that UPSLDC thereafter issued its communication dated 23.12.2021, monthly availability certification dated 30.12.2021 and cumulative availability certification dated 11.01.2022. UPSLDC also earlier placed on record that UPPTCL, through e-mail dated 06.01.2022, requested verification of cumulative system availability, which UPSLDC provided on 11.01.2022. Accordingly, the detailed chronology is not reiterated.

179. In response to the Petitioner's contention that UPSLDC already possessed operational data concerning energisation of the Elements, UPSLDC has submitted that possession of operational records is distinct from verification required for issuance of an Availability Certificate. Availability of certain operational data does not, by itself, resolve every issue concerning the basis upon which certification was required to be issued.

IV. No contractual liability, including liability for LPS, can be fastened upon UPSLDC, which is not a party to the TSA

180. UPSLDC has submitted that, insofar as the Petitioner seeks to attribute consequences arising out of delayed payment of MTC to UPSLDC, UPSLDC is not a party to the TSA and therefore cannot be saddled with contractual liability arising thereunder.

181. In this regard, UPSLDC relied upon the judgment of the Hon'ble Supreme Court in Cox *and Kings Ltd. v. SAP India Pvt. Ltd.*, (2024) 4 SCC 1, on the doctrine of privity of contract. UPSLDC submitted that contractual obligations or liabilities cannot ordinarily be imposed upon a person who is not a party to the contract merely because such person performs functions connected with the subject matter of the contract.

182. Applying the said principle, UPSLDC submitted that merely because Article 6.1.1 refers to RLDC/SLDC as an entity to whom advance notice is required to be given, or because UPSLDC performs operational functions concerning the Project, the same does not make UPSLDC a party to the TSA or render it liable for payment obligations assumed by the contracting parties.

183. Without prejudice, UPSLDC submitted that the Petitioner cannot merely rely upon the date of issuance of the Availability Certificates to presume that UPSLDC was responsible for the entire delay in payment. The Petitioner would have to establish a direct causal connection between any delay actually attributable to UPSLDC and the period of delayed payment for which LPS is claimed, as well as identify the specific obligation allegedly breached by UPSLDC.

184. UPSLDC accordingly submitted that no contractual or legal basis has been established for fastening liability upon it for the consequential claim of LPS.

Commission's View

185. The Commission has examined the submissions made during the hearing and on record by the parties. The principal dispute concerns the Petitioner's entitlement to LPS under Article 10.8.1 of the TSA on account of delay in payment of Monthly Transmission Charges for the period from April 2021 to November 2021 in respect of Elements 2 to 8 of LOT-1. The consequential issues relating to refund of rebate is also required to be considered. Further, regarding maintenance of LC, it is pertinent to mention that after filing the present petition, UPPCL has already established an LC on 18.03.2025 and renewed it on 13.03.2026 (valid till 05.03.2027). Therefore, prayer in this regard has become infructuous and hence, not considered by the Commission in these proceedings.

186. Upon consideration of the pleadings and submissions of the parties, following issues arise for consideration for applicability of LPS:

I. Whether the claim for LPS on the Monthly Transmission Charge invoices for April 2021 to July 2021 barred by limitation under Article 113 of the Limitation Act, 1963?

II. Whether Late Payment Surcharge under Article 10.8.1 of the TSA is attracted on the Monthly Transmission Charge invoices raised by the Petitioner for the period April 2021 to November 2021, notwithstanding that such invoices were not accompanied by the Transmission System Availability certified by UPSLDC?

III. Whether UPPCL is liable to refund or reverse the rebate of Rs. 0.44 crore after giving effect to Articles 10.6.4 and 10.7 of the TSA?

Issue No. I: Whether the claim for LPS on the Monthly Transmission Charge invoices for April 2021 to July 2021 barred by limitation under Article 113 of the Limitation Act, 1963?

187. UPPCL has raised the plea of limitation for the first time in its Written Submissions dated 29.10.2026. It contends, as an alternative to its main case, that the claim for LPS on the Monthly Transmission Charge invoices for April 2021 to July 2021 is barred by limitation. The plea was not been taken in UPPCL's Reply dated 19.03.2025, and it was not argued during the hearings. The Petitioner has therefore had no opportunity to respond to it. Ordinarily, the Commission would not consider a plea raised for the first time in written submissions, because the

opposite party has had no chance to answer it. However, under Section 3 of the Limitation Act, 1963, a claim filed after the prescribed period must be dismissed even if limitation has not been set up as a defence. The Commission has therefore examined the plea, confining itself to the limited material already on record.

188. UPPCL has relied upon Article 113 of the Limitation Act, 1963 and has submitted that the right to claim LPS under Article 10.8.1 accrued upon expiry of thirty days after the respective Due Dates. UPPCL has also relied upon *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.*, (2016) 3 SCC 468 in support of the applicability of the law of limitation to claims before the Commission. The Hon'ble Supreme Court has indeed treated limitation as applicable to adjudicatory claims before the Electricity Regulatory Commissions.

189. Article 113 of the Limitation Act applies, giving three years from the date on which the right to sue accrues. Under Article 10.8.1 of the TSA, LPS becomes payable on an amount that remains unpaid for thirty days after the Due Date. UPPCL's own computation, in its written submissions, puts the three-year period for the April to July 2021 invoices as expiring between 04.07.2024 and 04.10.2024. On that computation, the right to LPS on these invoices accrued between July 2021 and October 2021.

190. Under Article 10.8.1 of the TSA, LPS accrues at 1.25% per month for as long as the amount remains unpaid. However, mere accrual of an entitlement to money does not by itself give rise to a cause of action. There must not only be an entitlement to money but also a difference or dispute. A dispute arises only when a claim is made by one side and denied or repudiated by the other. Mere failure to pay may not give rise to a cause of action. The relevant point is the "breaking point", that is, when the claim is asserted and then denied, or not responded to. Therefore, the right to adjudication of the claim for LPS before the Commission arose only when a dispute regarding LPS came into existence.

191. In the present case, UPPCL released payment of the principal MTC for April 2021 to November 2021 only in February and March 2022, without paying the LPS that had accrued on account of the delay. When UPPCL discharged the principal while withholding the LPS, it denied the LPS liability for the first time, and that is the breaking point. On the information available on record, the date on which a difference or dispute regarding LPS can be said to have arisen is therefore

February 2022. Three years from February 2022 expire only in February 2025. The Petition was filed on 05.10.2024, well within that period.

192. Accordingly, the Commission holds that the claim for LPS on the Monthly Transmission Charge invoices for April 2021 to July 2021 is not barred by limitation. UPPCL's alternative plea is rejected, and the Issue is answered accordingly.

Issue No. II: Whether Late Payment Surcharge under Article 10.8.1 of the TSA is attracted on the Monthly Transmission Charge invoices raised by the Petitioner for the period April 2021 to November 2021, notwithstanding that such invoices were not accompanied by the Transmission System Availability certified by UPSLDC?

193. The Commission observes that while the Petitioner contends that the liability towards MTC arose from the COD of the concerned Elements and that subsequent certification of Availability by UPSLDC could only result in adjustment of the transmission charges, UPPCL contends that Transmission System Availability duly verified and certified by UPSLDC was necessary for completion and verification of the MTC invoices in terms of Article 10.5.1(b), Schedule 5 and Schedule 9 of the TSA. UPSLDC, on the other hand, has submitted that it is not a party to the TSA and that its role is limited to verifying and certifying transmission system availability. It contended that it never received the sixty days' advance notice required under Article 6.1.1 of the TSA. It disputed receipt of the Petitioner's letters dated 21.09.2020 and 16.03.2021 and said that the letter dated 02.04.2021 could not amount to such notice.

194. At the outset, the Commission considers it appropriate to examine whether the LTTCs' acceptance/ intimation of COD has any bearing on the applicability of LPS. The question arises because UPSLDC issued the transmission system availability certificate only after the LTTCs had communicated the COD to it. Article 10.1 of the TSA requires the LTTCs to pay MTC to the TSP every month "from the date on which an Element(s) has achieved COD". The obligation to pay therefore arises when COD is achieved. It does not depend on any later acceptance or intimation of COD by the LTTCs, or on a certificate from a third party.

Further, regarding sixty days' advance notice required under Article 6.1.1 of the TSA, the COD of Elements 2 to 8 of LOT-1 was determined by the Commission as

16.04.2021 by Order dated 03.10.2022 in Petition No. 1824 of 2022. Hon'ble APTEL dismissed Appeal No. 452 of 2022 against that Order by judgment dated 29.09.2026. That COD is now final and binds the parties to these proceedings. The obligation to pay MTC for these Elements therefore arose from 16.04.2021.

For the same reason, UPSLDC's submissions on Article 6.1.1 (60 days' advance notice) do not affect this issue. Whether requirement of mandatory notice was met before charging and declaration of COD is irrelevant now as COD was finally decided as 16.04.2021 vide Commission's Order dated 03.10.2022 in Petition No 1824 of 2022. So, it cannot be reopened at this stage, directly or indirectly, through a dispute over LPS. In any case, Article 6.1.1 deals with notice of the intended date of connection, however it says nothing about when MTCs becomes payable, or regarding certification of availability for elements that were in fact energised and operating under UPSLDC's operational control.

195. Further, in order to deal with the contention of the parties, it would be imperative to first examine the relevant provisions of the TSA, which provide as under:

1.1 *"Due Date" in relation to any Invoice shall mean the thirtieth day after the date on which any Invoice is received and duly acknowledged by the Long Term Transmission Customer (or, if that day is not a Business Day, the immediately following Business Day), and by such date, the Invoice is payable by the Long Term Transmission Customer;*

Article 10.5.1(b):

"b. Each Monthly Transmission Charge Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as Long Term Transmission Customers may reasonably require / request, from time to time."

"10.6 Payment of Invoices:

10.6.1 *Pursuant to Article 10.4, any amount payable under an Invoice shall be paid in immediately available and freely transferable clear funds, for value on or before the Due Date, to such account of the TSP or Long Term Transmission Customers as shall have been previously notified to Long Term Transmission Customers or the TSP, as the case may be."*

10.6.3 *The Long Term Transmission Customers shall pay the amount payable under the Monthly Transmission Charge Invoice and the Supplementary Bill on the Due Date to such account of the TSP, as shall have been previously notified by the TSP to the Long Term Transmission Customers in accordance with Article 10.6.6 below."*

"10.10 Payment of Supplementary Bill

10.10.1 *Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:*

i. adjustments (if any) required by the Regional Energy Account ; or

ii. *quarterly or annual reconciliation as per Article 10.13 ; or*

iii. Change in Law as provided in Article 12,

and such Bill shall be paid by the other Party."

"10.13 Quarterly and Annual Reconciliation

10.13.1 *Parties acknowledge that all payments made against Monthly Bill(s) and Supplementary Bill(s) shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account Regional Energy Account, adjustments in Transmission Charges payments, Rebates, Late Payment Surcharge, Incentive, Penalty, or any other reasonable circumstance as may be mutually agreed between the Parties."*

"Schedule : 5

Computation of Transmission Charges

1.1 (a). The Monthly Transmission Charges to be paid by the Long Term *Transmission Customers to the TSP for providing Transmission Service for any Contract Year during the term of the Agreement shall be in accordance with this Schedule.*

1.1 (f). *The Transmission Charges shall be payable based on the Allocated Project Capacity at Target Availability and Incentive for Availability beyond the Target Availability as provided in this schedule shall be admissible for payment. In case of Availability being lower than the Target Availability, the Transmission Charges shall be payable on proportionate basis as provided in this Schedule. In case of the Availability being lower than the level as specified in Article 10.4, the TSP shall pay a penalty as per the provisions in*

this Schedule. This penalty payable by the TSP shall be apportioned in favour of the Long Term Transmission Customer(s) in the ratio of the Transmission Charges paid or actually payable to the TSP then existing at the end of the relevant Contract Year.

g. *The Availability shall be calculated as per the procedure specified in Annexure B of the Uttar Pradesh Electricity Regulatory Commission (Multi Year Transmission Tariff) Regulations, 2014 as notified by UPERC and as attached herewith."*

"Schedule : 9

Annexure B of UPERC (Multi Year Transmission Tariff) Regulations, 2014

Procedure for Calculation of Transmission System Availability

(1) *Transmission System Availability factor for a Calendar Month (TAFM) shall be calculated by the respective Transmission Licensee, got verified and certified by the SLDC and separately for each A.C. transmission system and grouped according to sharing of transmission charges."*

196. From above, the "Due Date" is defined in Article 1.1 of the TSA as the thirtieth day after the date on which an Invoice is "received and duly acknowledged" by the LTTC. Articles 10.6.1 and 10.6.3 require payment on or before the Due Date. The definition fixes the start of the Due Date by reference to receipt and acknowledgement of the invoice. It does not refer to verification, approval or acceptance of the invoice by the LTTC, or to any certificate from UPSLDC. "Duly acknowledged" refers to acknowledging receipt of the invoice. If it were read to mean the LTTC's acceptance that the invoice is correct or complete, the LTTC could postpone the Due Date indefinitely, and with it its own liability for LPS, simply by withholding acceptance. That reading would defeat Articles 10.6 and 10.8 and cannot be accepted. Moreover, in the present case, UPPCL has not disputed that it received the invoices for April 2021 to November 2021. Its own case is that the invoices raised between May 2021 and December 2021 were received but could not be verified for want of certified Availability.

197. UPPCL relies mainly on Article 10.5.1(b), which provides that each MTC invoice shall include detailed calculations "together with such further supporting

documentation and information as Long Term Transmission Customers may reasonably require/request, from time to time."

198. The Commission observed that Article 10.5.1(b) does not list an SLDC availability certificate as a mandatory enclosure. Any further documentation is linked to what the LTTCs "may reasonably require/request". The obligation to supply it therefore arises on a request. It does not say that, without such documentation, the Due Date would be deferred or the invoice would cease to be payable.

199. Further, Schedule 9 of the TSA provides that Transmission System Availability "shall be calculated by the respective Transmission Licensee, got verified and certified by the SLDC". Schedule 5 computes MTC on the basis of Availability. The Commission accepts that certification by UPSLDC is part of the contractual mechanism for finally determining Availability and the amount of MTC, however whether certification is a condition precedent to *payment* is an alien proposition. Schedule 9 lays down the procedure for calculating and certifying Availability. It does not suspend the payment obligation under Article 10.1 until certification is issued.

200. The scheme of Schedule 5 itself shows that the TSA expects payment to continue while Availability is being finally settled:

- Under Clause 1.1(f), Transmission Charges are payable on the Allocated Project Capacity at Target Availability.
- Under Clause 1.2.1, the MTC for a month is computed on Cumulative Availability from the first day of the Contract Year to the end of that month, less the MTC paid for the preceding months of that Contract Year. Each invoice therefore corrects the payments for earlier months of the same Contract Year.
- Articles 10.10 (Supplementary Bill) and 10.13 (reconciliation) provide further means of correcting any variation.

Under this scheme, any difference between the availability claimed in an invoice and the availability later certified is to be adjusted, not used as a reason to withhold the entire payment. The Commission has reached this conclusion on the terms of the TSA alone. It therefore does not need to decide whether Regulation 33.1.3 of the UPERC (MYT) Regulations, 2019 can be imported into the TSA. The Commission notes that the regulatory framework follows the same principle: billing on estimated availability, adjusted against SLDC certification.

201. Further, the TSA contains a complete mechanism for invoices that an LTTC wishes to question. The relevant provisions, which are required to be examined, are reproduced below:-

"10.9.1 If either party does not question or dispute an invoice within 30 days of receiving it, the invoice shall be considered correct, complete and conclusive between the parties."

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

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

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

"10.9.7 If a Dispute regarding a Monthly Transmission Charge Invoice or a Supplementary Invoice is settled pursuant to Article 10.7 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues the Invoice Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 10.9.5 or settled by Dispute resolution mechanism, along with interest (at the same rate as Late Payment Surcharge) or Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable."

202. Under Article 10.9.1, an invoice not questioned or disputed within 30 days of receipt is considered correct, complete and conclusive. Under Article 10.9.2, a party disputing an invoice must serve an Invoice Dispute Notice setting out the disputed item, its own estimate and the supporting material.

UPPCL argues that Article 10.9 applies only to disputes over a particular item, whereas its objection was that the invoices were incomplete. The Commission is not persuaded. An objection that an invoice cannot be processed because it lacks certified Availability is an objection to the invoice. The Availability on which the MTC was computed is itself an item of the invoice. Article 10.9.1 expressly uses the word "complete": an invoice not questioned within 30 days is considered "correct, complete and conclusive". The TSA therefore expects objections about completeness to be raised within the same mechanism and timeline.

Even if we consider that invoice dispute was invoked by UPPCL then also Article 10.9.7 specifically contemplates the consequence of an invoice dispute being subsequently resolved in favour of the invoicing Party. In such an event, the amount found payable is required to be paid along with LPS at the stipulated rate for the period prescribed therein.

203. Although the issue has been discussed in detail and decided above, the Commission considers it necessary to record what actually caused the delay in payment. UPPCL's own communication dated 06.07.2023 states that bill presentation "can not be considered prior official intimation of the same COD i.e. 07.12.2021." This shows that the invoices were withheld because the Lead LTTCs i.e. PVVNL had delayed the intimation of COD and subsequent acceptance of the COD by UPPCL on behalf of all LTTCs'. UPSLDC's letter dated 23.12.2021 confirms this. In that letter, UPSLDC sought clarification on whether the COD declared by PVVNL could be used for availability verification. Once the clarification was received, it certified monthly Availability on 30.12.2021 and cumulative Availability on 11.01.2022, although the Petitioner had been submitting the monthly data since May 2021. UPPCL had written to UPSLDC on 28.06.2021 and 19.07.2021, and UPSLDC confirmed on 23.07.2021 the dates on which Elements 2 to 8 completed subsequent to seventy-two hours of continuous energisation. UPPCL/UPSLDC was therefore aware during the relevant period that the Elements had been commissioned. The TSA does not make the delay on the part of LTTCs' acceptance of COD a condition for non-payment of MTC. Further, it is a fact that

the COD of 16.04.2021 was intimated by Lead LTTC i.e PVVNL on 01.12.2021 and subsequently accepted by UPPCL on behalf of LTTCs' on 07.12.2021. So, the LTTCs cannot rely delay on their own part in accepting the COD as the reason to postpone the Due Dates of the invoices.

204. In view of the above, the Commission holds that:

(i) Under the TSA, certification of Transmission System Availability by UPSLDC is part of the mechanism for finally determining Availability and adjusting MTC. It is not a condition precedent to an MTC invoice becoming payable.

(ii) The delay in payment is attributable to the LTTCs' insistence on accepting the COD before processing the invoices, which the TSA does not require. It is not attributable to the Petitioner.

(iii) LPS under Article 10.8.1 of the TSA is therefore attracted on the MTC payable for Elements 2 to 8 of LOT-1 for April 2021 to November 2021 till the actual payment is made by LTTCs as per provisions of TSA.

Issue No. III: Whether UPPCL is liable to refund or reverse the rebate of Rs. 0.44 crore after giving effect to Articles 10.6.4 and 10.7 of the TSA?

205. The Petitioner has also sought refund of rebate amounting to Rs. 0.44 crore. Article 10.7.1 of the TSA provides:

"10.7 Payment of Rebate:

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

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

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

206. The Petitioner has contended that Article 10.6.4 specifically provides for the manner in which payments made by the LTTCs are to be appropriated, namely,

first towards *"Late Payment Surcharge, payable to the TSP, if any"*, thereafter towards earlier unpaid Monthly Transmission Charge Invoices and thereafter towards the current Monthly Transmission Charge Invoice. According to the Petitioner, since LPS remained outstanding, the payments made by UPPCL could not have been treated as payment of the relevant invoices **"in full"** within the Due Date, which is a mandatory condition for availing rebate under Article 10.7.1.

207. The Commission observes that the entitlement to rebate under Article 10.7.1 is conditional upon payment of the relevant invoice "in full" within the period stipulated therein. The expression "in full" is significant and cannot be read independently of the contractual mechanism for appropriation of payments contained in Article 10.6.4. Once LPS had become payable under Article 10.8.1, any payment subsequently received was required to be appropriated first towards such outstanding LPS and thereafter in the sequence prescribed under Article 10.6.4. Thus, merely making a payment equivalent to the amount reflected in a subsequent/current invoice would not, by itself, amount to payment of such invoice "in full", if a part of that payment was contractually liable to be appropriated towards the outstanding LPS or earlier unpaid dues.

208. The Commission further observes that rebate is an incentive available only upon fulfillment of the conditions expressly stipulated in Article 10.7.1. Where, after applying the contractual appropriation under Article 10.6.4, the amount of the relevant invoice remained unpaid, wholly or partly, as on the Due Date, such invoice cannot be regarded as having been paid "in full within the Due Date". UPPCL could not, therefore, have availed rebate in respect of such invoice. Any other interpretation would permit an LTTC to retain the benefit of rebate notwithstanding its failure to discharge the entire amount contractually due within the stipulated period, which would be contrary to the express requirement of Article 10.7.1.

209. Accordingly, the Commission holds that UPPCL was not entitled to avail **rebate** in respect of those invoices which were not paid "in full" within the period prescribed under Article 10.7.1, after giving effect to the order of appropriation stipulated under Article 10.6.4. The rebate so availed by UPPCL is, therefore, liable to be reversed and the corresponding amount refunded/adjusted in favour of the Petitioner.

210. Accordingly, the Petition is disposed of in terms of the findings and directions contained hereinabove.

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

Place: Lucknow
Dated: 19 .11.2026