THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Petition No. 2067/2024

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 Regulation 86(1)(f) of the Electricity Act, 2023 for adjudication of dispute between M/s Shree Cement Limited and Uttar Pradesh Power Corporation Limited.

AND

IN THE MATTER OF

M/s Shree Cement Limited
Bangur Nagar, Post Box No-33
Beawar – 305901, District-Ajmer, Rajasthan ..... **Petitioner**

VERSUS

Chief Engineer,
Power Management Cell
Uttar Pradesh Power Corporation Limited
SLDC Campus, Vibhuti Khand-II
Gomti Nagar, Lucknow ..... **Respondent**

THE FOLLOWING WAS PRESENT

1. Sh. Divyanshu Bhatt, Advocate, UPPCL
2. Sh. Shashwat Singh, Advocate, UPPCL
3. Sh. Abhayaditya Singh, Advocate, UPPCL

4. Sh. Amarjit Singh, VP, Shree Cement Ltd.
5. Sh. Nandan Rawat, Executive, Shree Cement Ltd.
6. Sh. Nakul Singh Rawat, EE, PMC-UPPCL
7. Sh. Pankaj Dubey, Consultant, PMC-UPPCL

ORDER

(DATE OF HEARING: 15.10.2026)

1. The instant Petition has been filed by the Petitioner under Regulation 86 (1) (f) of The Electricity Act, 2023 for adjudication of dispute between M/s Shree Cement Limited and Uttar Pradesh Power Corporation Limited.

2. The prayers of the Petition are as follows:

   (i) Direct the Respondent to pay the balance amount of ₹ 23,45,594/- to the Petitioner along with late payment surcharge in terms of the contract from the date of the order till the date of payment.

   (ii) Pass any other order that the Hon'ble Commission deems fit in the facts and circumstances.

BRIEF FACTS OF THE PETITION

3. The Petitioner has submitted that it is a Public Limited company incorporated and registered under the provisions of the Companies Act, 1956 and having registered address at Bangur Nagar, Post Box No-33, Beawar – 305901, Distt-Ajmer, Rajasthan and is involved in the businesses of cement manufacturing, power generation and inter-state trading of electricity. It also has a Category IV Inter State Trading License issued by Central Electricity Regulatory Commission vide its order dated 16.03.2010.

4. It was submitted that the Petitioner has a CTU connected merchant power plant of capacity 150 MW X 2 (300 MW) in the name of Shree Cement Limited TPS (SCL-TPS) in the state of Rajasthan which is already registered with NRLDC.

5. The Respondent i.e. Uttar Pradesh power Corporation Limited (UPPCL) acting as Distribution Licensee as per the Electricity Act, 2003 floated a Non RTC power

purchase tender for the period 1st May 2023 to 30th June 2023 vide its Tender Specification No.: 18/DEEP-Portal/PMC/2023-24 dated 17.04.2023 for which the due date of submission of bid was 24.04.2023.

6. The Petitioner acting as an inter-state trader for electricity, in compliance with the terms and conditions of the above-referred tender document submitted its bid within due date from its own generation sources namely:

   i) SCL power plant in Rajasthan connected with CTU in NR- Shree Cement Limited TPS

   ii) SCL Captive Power Plant in Rajasthan connected with STU in Rajasthan

7. The Petitioner has also asserted that along with its bids, it has also submitted an undertaking that since M/s Shree Cement Limited is quoting power from its own sources therefore there is no requirement of any agreement to be executed between Petitioner and its own generation sources.

8. After completion of the bidding process, the Respondent vide its Letter No.: 424/PMC/18/DEEP-Portal/LOI/Shree Cement dated 11.05.2023 issued LOI for supply of firm power to M/s Shree Cement Limited with details as here under:

Table 1 : Details for Supply of firm power issued in LOI

Period	Time Block (Hrs)	Source	Quantum (MW)	Tariff (₹/kWh)
May-23	00:00-06:00	SCL Captive Power Plant (21st May 2023 to 31st May 2023)	65	9.80
	19:00-24:00	SCL Power Plant (21st May 2023 to 31st May 2023)	65	9.80
		SCL Captive Power Plant (21st May 2023 to 31st May 2023)	65	9.80
Jun-23	00:00-06:00	SCL Power Plant (13th June 2023 to 30th June 2023)	285	9.80
		SCL Captive Power Plant (1st June 2023 to 30th June 2023)	65	9.80

Period	Time Block (Hrs)	Source	Quantum (MW)	Tariff (₹/kWh)
	19:00-24:00	SCL Power Plant (1st June 2023 to 12th June 2023)	65	9.80
		SCL Power Plant (13th June 2023 to 30th June 2023)	285	9.80
		SCL Captive Power Plant (1st June 2023 to 30th June 2023)	65	9.80

9. The LOI issued by UPPCL for purchase of firm power from M/s Shree Cement Limited clearly stated that *"Other Terms and Conditions **shall remain same as per RFP Document** of UPPCL Tender Spec. No. 18/DEEP-Portal/PMC/2023-24. Kindly acknowledge the receipt of LOI".*

10. The Petitioner vide its email dated 12.05.2023 acknowledged and conveyed its acceptance to the above referred UPPCL's LOI. Further, in order to comply with the terms and conditions of tender and LOI issued by UPPCL, the Petitioner submitted a Contract Performance Guarantee in the form of BG of ₹ 2,58,95,000/- dated 16.05.2023.

11. As per clause 20 of the above referred UPPCL's tender document, the seller shall raise weekly bills for supply of energy to UPPCL. Accordingly, Petitioner being the seller raised various Energy Bills to UPPCL including the Energy Bill No.: SPT/FY23-24/47 dated 01.07.2023 for energy supply period from 24.06.2023 to 30.06.2023 amounting to ₹ 18,76,01,559.

12. The Respondent while making the payment against the Energy Bill for the week 24.06.2023 to 30.06.2023, an amount of ₹ 18,51,06,173/- (after claiming 2% prompt payment rebate) was remitted to us after deducting an amount of ₹ 24,95,386/-.

13. The Petitioner has stated that after necessary deliberations it came to its notice that the deduction of ₹ 24,95,386/- by the Respondent was done on the basis of Clause 24 of the tender document no. 18/DEEP-Portal/PMC/2023-24. For the purpose of ease clause 24 is reproduced here under:

"24. PAYMENT OF LIQUIDATED DAMAGES FOR FAILURE TO SUPPLY THE INSTRUCTED CAPACITY:

(A) (i) Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.

(ii) In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.

(iii) In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to procure at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the procurer."

14. From the above Clause 24 of the tender document, it is clear that a seller is permitted to deviate up to 15% of the contracted energy for which Open Access is allocated on monthly basis. Same way the procurer is also permitted a deviation of 15%. Both the parties can exercise their right separately.

15. The Petitioner has submitted that its power plant i.e. "SCL power plant in Rajasthan connected with CTU in NR- Shree Cement Limited TPS" went into force outage from 19:00 hours of 18.06.2023 to 06:00 hours of 23.06.2023 owing to which the schedules were revised. The total shortage from the Petitioner's side in the month of June 2023 was 13.76% in 00:00 to 06:00 hours slot and 14.39% for 19:00 to 24:00 hours slot, which is well within the limit of 15% each prescribed under the contract. A representation regarding the same was sent to Respondent by the Petitioner vide its letter dated 31.08.2023.

16. After the representation of the matter, Respondent refunded the amount of ₹ 1,49,792/- (Rupees One Lac Forty-Nine Thousand Seven Hundred Ninety-Two only) on 16.09.2023 out of total wrongful deduction of ₹ 24,95,386/-. According

to the Petitioner, this was based on the presumed principle that a total surrender by both the parties cannot go beyond 15%. The same according to the Petitioner is not the correct interpretation. The contract provides a right of surrender of 15% to each of the parties as against a total surrender of 15% by both the parties. The same is very clearly captured in clause 24 of the contract.

17. Again, the Petitioner, vide its letter dated 10.11.2023, submitted its representation to the Respondent to return the balance amount of ₹ 23,45,594/- (i.e. ₹ 24,95,386 less ₹ 1,49,792/-) with a plea that in case no refund is granted, the Petitioner shall be left with no other option but to approach this Commission for appropriate directions on the matter. However, the Respondent did not officially reply to the Petitioner's communications, but the Petitioner understands that Respondent shall continue to calculate the liquidated damages for shortfall of supply on proportionate basis rather than going by the contractual terms and conditions.

18. The power procurement tender floated by the Respondent is based on the guidelines for short term procurement of power modified by the Ministry of Power vide resolution dated 30.03.2016 and amendment dated 23.02.2022. The Clause 6.4 (vi) (e) of the guidelines clearly defines for the Payment of Liquidated Damages for failure to supply instructed Capacity and same is reproduced here as under:

"e. Payment of Liquidated Damages for failure to supply the Instructed Capacity:

Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.

In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.

In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the Procurer."

19. The Petitioner has submitted that across country and as per standard industry practice, the deviation of 15% from monthly approved Open Access is calculated individually for both the parties and is not treated 15% as a whole. The interpretation of Respondent that levy of Liquidated Damages amount for deviation above 15% is to be charged on proportionate basis is a deviation from the Standard bidding Document/Guidelines of Ministry of Power and is also against the standard industry practice.

20. Clause 28 (i) of the UPPCL's tender document says that:

'All differences or disputes between the parties arising out of or in connection with this matter shall be settled through the statutory provisions under the Electricity Act 2003'. Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such disputes shall be adjudicated by Appropriate Commission.'

21. The Petitioner, as on date, has not received any balance payment from the Respondent and are left with no other option but to approach this Commission for adjudication of dispute in terms of the contract between Petitioner and Respondent and Electricity Act 2003.

22. The present dispute is between an Inter-State Trading Licensee providing power from its own generation source in a state and Distribution Licensee in another state, we believe that in terms of Electricity Act 2003, the Commission having jurisdiction over the Discom will have jurisdiction to decide any disputes arising there from i.e. UPERC.

23. The Petitioner has also placed a reliance on the Hon'ble APTEL Order dated 23.02.2011 in Appeal No. 200 of 2009 in the matter of M/s Pune Power Development Private Ltd. Vs Hon'ble KERC and others wherein the Hon'ble APTEL pronounced that the appropriate forum for resolution of such type of issues is the State Regulatory Commission which is reproduced as below:

"SUMMARY OF OUR FINDINGS:

37. (I) The present case involves a dispute between the Distribution Licensee of Karnataka, the Respondent and the Appellant which is an inter-State licensee. The Appellant is selling power to the Distribution Licensee Respondent in the State of Karnataka, thereby having a nexus to the State. Since the procurement of power by the Distribution Licensee from the Trading Licensee is being done in the State of Karnataka, the Appellant falls within the jurisdiction of the State Commission under Section 86(1)(b) of the Act. The procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee. There is no restriction on the location of the Trading Licensees to determine the jurisdiction of the State Commission. The supply of electricity, namely, the Appellant being at a different place does not oust the jurisdiction of the State Commission under Section 86(1)(f) to adjudicate upon the dispute between the licensees. Therefore, we hold that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86(1)(f) to adjudicate upon the dispute. The 1st point is answered accordingly."

INTERVENING PROCEEDINGS BEFORE THE COMMISSION

24. The Commission notes that the present Petition was initially filed by the Petitioner under Regulation 86(1)(f) and was dismissed in default vide Order dated 09.05.2024 owing to the non-appearance of the Petitioner. Subsequently, after dismissal of the aforesaid Petition, the Petitioner filed a fresh Petition No. 2096 of 2024 on the same/similar cause of action.

25. The matter (Petition No 2096 of 2024) was thereafter taken up for hearing on 20.08.2024. The Commission, vide Order dated 10.09.2024, observed that an earlier petition on the same issue had already been dismissed and, accordingly, dismissed the instant Petition with liberty to the Petitioner to file an appropriate recall application seeking recall of the Order dated 09.05.2024 passed in Petition No. 2067 of 2024.

26. Pursuant to the aforesaid liberty granted by the Commission, the Petitioner filed a recall application dated 09.10.2024 seeking restoration of Petition No. 2067 of 2024. The Commission, after considering the submissions made in the recall

application, allowed the same and recalled its Order dated 09.05.2024 vide Order dated 31.12.2024, thereby restoring Petition No. 2067 of 2024 to its original number.

UPPCL's Reply dated. 04.01.2025

27. UPPCL has submitted that the Petitioner has prayed in the captioned Petition as follows:

"Direct the Respondent to pay the balance amount of ₹ 23,45,594/- to the Petitioner along with late payment surcharge in terms of the contract from the date of the order till the date of payment."

28. Without prejudice to the merits of the claim of the Petitioner and its submissions regarding the legality, correctness and fairness of the interpretation of Clause 24 adopted by it, the amount claimed by the Petitioner to have been incorrectly or illegally deducted by UPPCL is completely and grossly incorrect and misleading.

29. In this regard, UPPCL drew the attention of the Commission to the Energy Charges Bill dated 07.07.2023 and the subsequently issued Revised Energy Charges Bill dated 14.09.2023. UPPCL submitted that while the Energy Charges Bill dated 07.07.2023 specified an amount of ₹23,03,956/- as penalty for shortfall in supply, the Revised Energy Charges Bill dated 14.09.2023 revised the said amount to ₹21,54,014/-. Accordingly, UPPCL submitted that the amount imposed as penalty on the Petitioner for deviation and shortfall in supply is ₹21,54,014/- and, therefore, the Petitioner's prayer seeking recovery of ₹23,45,594/- is factually incorrect and misleading.

The Interpretation of Clause 24 by UPPCL is fair and correct and is in line with the Commission's Regulations:

30. Clause 24(A)(i) clearly stipulates that:

"Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis."

31. UPPCL has submitted that a literal interpretation of the aforesaid clause establishes that actual scheduling is required to remain within the prescribed 15% deviation

limit and that this obligation is required to be met jointly by both the Seller and the Buyer. According to UPPCL, both parties are jointly responsible for ensuring that actual scheduling does not exceed the 15% limit. UPPCL further submitted that the said 15% deviation limit emanates from the Ministry of Power, Government of India Guidelines dated 30.03.2016 for short-term procurement of power by distribution licensees through tariff-based bidding.

32. UPPCL has submitted that Clauses 24(A)(ii) and 24(A)(iii) prescribe that whichever party crosses the 15% deviation limit or is responsible for the deviation exceeding the permissible limit, shall be liable to compensate the other party at the rate of 20% of tariff per kWh for the quantum of shortfall beyond the 15% deviation limit. UPPCL contended that the interpretation advocated by the Petitioner would dilute the overall 15% deviation limit prescribed under Clause 24(A)(i), which was never the intent of the contractual provisions.

33. UPPCL has submitted that, following the aforesaid interpretation, where actual scheduling deviates beyond 15% and such deviation is attributable to both parties, the penalty attributable to the deviation beyond the permissible limit is shared by the parties in proportion to their respective contribution towards such deviation. By way of illustration, UPPCL has submitted that if the total deviation is 20%, out of which 5% is attributable to UPPCL and 15% is attributable to the Seller, the excess deviation would be 5% beyond the permissible threshold of 15%. In such a case, the liability towards the excess deviation would be apportioned between UPPCL and the Seller in the ratio of their actual deviations. UPPCL has submitted that such methodology demonstrates the fairness of the approach adopted by it, since both parties bear the liability on a pro-rata basis and the Seller is not made solely liable.

34. The aforesaid methodology was followed in the case of the Petitioner as well. Referring to the penalty calculation sheet appended with the Revised Energy Charges Bill. UPPCL has submitted that for June, 2023, the total shortfall was 18.23%, out of which 3.97% was attributable to UPPCL and 14.26% was attributable to the Petitioner. Accordingly, for the excess deviation of 3.23% (18.23% - 15%), the share of UPPCL was computed as ₹8,31,043/- and the share

of the Petitioner was computed as ₹29,85,057/- in proportion to their actual deviations. Consequently, after adjusting the share attributable to UPPCL, the penalty levied upon and recovered from the Petitioner amounted to ₹21,54,014/-.

35. If the interpretation advanced by the Petitioner is accepted, no penalty would effectively be leviable for any deviation up to 15%, which, according to UPPCL, is unfounded and illogical. UPPCL has submitted that there is no incentive for a procurer to deviate or be responsible for shortfall in supply since it would reduce the procurer's own allocation of power. UPPCL contended that the Petitioner's interpretation would result in an unintended extension of the permissible limit and could potentially open floodgates of similar claims by other generators. According to UPPCL, acceptance of such interpretation would adversely affect demand forecasting, power procurement planning and increase procurement costs for meeting power requirements through short-term sources.

36. UPPCL has contended that the same methodology is uniformly followed for all generators/sellers and across different years. In support of its contention, UPPCL referred to the case of PTC during FY 2024-25, wherein:

    a. Total deviation: 21%
    b. Deviation due to UPPCL: 10%
    c. Deviation due to PTC: 11%

    d. Total Penalty: Rs. 8,74,424 /-
    e. Penalty levied on UPPCL: Rs. 4,13,707 /-
    f. Penalty Share on M/S PTC: Rs. 4,60,717/-

37. UPPCL has submitted that the above example demonstrates that the methodology adopted by it is fair, consistent and uniformly applicable to all sellers and is not selectively applied. The similar contractual provisions have also been interpreted in the same manner by utilities in other States including Gujarat and Rajasthan.

38. Without prejudice to the aforesaid submissions, UPPCL has disputed the Petitioner's claim for interest/late payment surcharge. UPPCL has submitted that Clause 23 of the Agreement pertains to delayed payments of bills and does not apply to deduction or recovery of compensation/penalty. According to UPPCL, compensation

for deviation is governed separately under Clause 24, which does not provide for payment of interest or late payment surcharge. Accordingly, UPPCL denied the Petitioner's claim in this regard.

39. In view of the above submissions, UPPCL prayed that the Petition be dismissed as being devoid of merit.

Rejoinder filed on UPPCL's Reply dated. 16.12.2025

Interpretation of Clause 24 of the Contract for Calculation of Compensation:

40. The Petitioner has submitted that the contention of the Respondent that the "actual scheduling needs to be within 15% deviation limit, and this obligation needs to be met jointly by both the buyer and the seller" is not correct. The Petitioner has further submitted that, had such been the intention of the parties, Clause 24(A)(i) would have specifically provided as under:

"Both the parties together would ensure that actual scheduling does not deviate by more than 15% of the contracted power."

41. The interpretation of Clause 24(A)(i) stands further elaborated and objectively clarified by Clauses 24(A)(ii) and 24(A)(iii), which explicitly provide that the permissible deviation available to each party, i.e., the Buyer and the Seller, is 15%, beyond which the defaulting party becomes liable to pay compensation at the rate of 20% of tariff per kWh.

42. Clause 24(A)(iii) specifically deals with penalization of the Seller and reproduced the same as under:

"In case deviation from seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the Open access charges to the extent not availed by the procurer."

43. The Petitioner has submitted that compensation can be levied only where the deviation attributable to the Seller exceeds 15% of the contracted energy and not otherwise.

44. The phrase "met jointly", relied upon by the Respondent, finds no mention in any provision of the contract and, therefore, the interpretation advanced by the Respondent is untenable. The Petitioner has submitted that commercial contracts are carefully worded and exhaustive in nature and nothing is left to implication or supposition. According to the Petitioner, Clause 24(A)(i) sets out the general principle relating to deviation, whereas Clauses 24(A)(ii) and 24(A)(iii) specifically elaborate the consequences of deviation and the compensation payable by each party.

45. The Petitioner further contended that acceptance of the Respondent's interpretation would result in consequences contrary to the express provisions of the contract. In support of the same, the Petitioner has furnished the following illustration:

"Initial surrender of power by UPPCL = 14% of the contracted power
Subsequent reduction by the generator owing to forced outage = 5% of the contracted power
Total shortfall of contracted power (14% + 5%) = 19%
Percentage of contracted power on which compensation is payable = 4%
Share of Buyer for calculation of compensation = 4 × 14/19 = 2.947% of contracted power
Share of Seller for calculation of compensation = 4 × 5/19 = 1.0526% of contracted power"

46. The Petitioner has submitted that, as per the Respondent's methodology, compensation becomes payable by both parties despite the fact that the Seller's deviation is only 5%.

47. Referring to Clause 24(A)(ii), the Petitioner reproduced the same as under:

"In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract."

48. The Petitioner has submitted that, in terms of the aforesaid provision, no compensation would be payable by the Procurer where the deviation attributable to the Procurer is less than 15%. However, under the methodology adopted by the Respondent, compensation would nevertheless become payable, which according to the Petitioner is contrary to the express wording of the contract.

Claim for Late Payment Surcharge:

49. The Petitioner has submitted that it is entitled to Late Payment Surcharge (LPS) in terms of Clause 23 of the Agreement, as the amount payable under the Energy Bill was deducted owing to the Respondent's allegedly incorrect interpretation of the contractual provisions and, therefore, such deduction amounts to delayed payment. The Petitioner has further submitted that the benefit of prompt payment availed by the Respondent on the deducted amount ought also to be withdrawn and refunded to the Petitioner.

Respondent's Reliance on Practices Followed in Other States:

50. The Petitioner has submitted that no evidence, relevant document, contract or invoice has been produced by the Respondent to substantiate its contention that similar compensation clauses have been interpreted in the same manner by the Discoms of Gujarat and Rajasthan. The Petitioner has further submitted that different distribution licensees may incorporate different contractual provisions and, therefore, such reliance cannot be accepted unless the respective contractual provisions are identical in language and effect.

51. In view of the above submissions, the Petitioner has prayed that the Petition be allowed and the Respondent be directed to refund the amount deducted under the head of compensation.

<u>Hearing dated. 15.10.2026</u>

52. Sh. Amarjit Singh, VP, appearing on behalf of the Petitioner, submitted that pursuant to the contract executed between the parties for supply of power during May and June 2023, there was an outage in the Petitioner's generating station during the last week of June, resulting in interruption of power supply. He further submitted that revisions in schedule were also undertaken by UPPCL on account of lower demand. Referring to Clause 24 of the contract, he submitted that both the

Procurer and the Seller are entitled to revise/surrender the scheduled quantum up to 15% and compensation becomes payable only where the deviation attributable to a party exceeds the prescribed limit of 15%.

53. The learned representative of the Petitioner referred to Clause 24(A)(i), Clause 24(A)(ii) and Clause 24(A)(iii) of the contract and submitted that the contractual provisions separately provide a permissible deviation margin of 15% to each party. He submitted that, in the present case, the deviation by the Petitioner was 14.26% whereas the deviation by UPPCL was 3.97%, resulting in an aggregate deviation of 18.23%. However, since the deviation from the Petitioner's side did not exceed the threshold limit of 15%, no compensation is payable by the Petitioner under Clause 24(A)(iii). He further submitted that the Respondent has incorrectly apportioned compensation on a proportionate basis by taking into account the aggregate deviation of both the parties. According to the Petitioner, Clause 24 of the contract envisages compensation only when the deviation attributable to the concerned party exceeds 15% and, therefore, no compensation was payable by the Petitioner in the facts of the present case.

54. Sh. Divyanshu Bhatt, Learned Counsel, appearing on behalf of UPPCL, opposed the submissions of the Petitioner and, by referring to Clause 24(A)(i), Clause 24(A)(ii) and Clause 24(A)(iii) of the contract, submitted that the total deviation in the present case was 18.23%, comprising 14.26% attributable to the Petitioner and 3.97% attributable to UPPCL. He submitted that the interpretation advanced by the Petitioner would effectively imply that no compensation would be payable by either party so long as the individual deviation of each party remains below 15%, notwithstanding that the total deviation exceeds the permissible limit of 15%, which, according to him, would be an anomalous interpretation of the contractual provisions. He further submitted that once the aggregate deviation exceeded the permissible threshold of 15%, the compensation for the excess deviation was required to be computed in proportion to the contribution of each party towards the total deviation. He submitted that UPPCL had accordingly calculated and apportioned the compensation on a proportionate basis between the Seller and the Buyer in accordance with its interpretation of Clause 24.

55. In response, Sh. Amarjit Singh, VP, submitted that if there had been no deviation from the Procurer's side, the deviation attributable to the Petitioner would have remained below 15% and no compensation would have been payable. He submitted that under the methodology adopted by UPPCL, the Petitioner becomes liable to pay compensation despite its own deviation remaining within the contractual limit merely because of the Procurer's deviation, which, according to him, demonstrates the inconsistency in the Respondent's interpretation of Clause 24.

Commission's View

56. The Commission has carefully considered the pleadings, the submissions advanced by the parties and the material available on record. The principal issue for consideration is whether the permissible deviation of 15% under Clause 24 of Tender Specification No. 18/DEEP-Portal/PMC/2023-24 is to be applied separately to the deviation attributable to each party, as contended by the Petitioner, or to the deviation in actual scheduling under the contract, with the deviation beyond the permissible limit being apportioned between the parties in proportion to their respective contribution, as contended by UPPCL.

57. The Commission observes that Clause 24(A) provides a composite mechanism governing the permissible limit of deviation in scheduling, identification of the party responsible for such deviation and the compensation payable on account thereof. Accordingly, Clauses 24(A)(i), 24(A)(ii) and 24(A)(iii) of the contract are required to be read together harmoniously and not in isolation to give effect to the contractual framework.

58. Clause 24(A)(i) of the contract which prescribes the permissible limit of deviation, stipulates as under:

> *"Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis."*

In view of the above the Commission notes that Clause 24(A)(i) of the contract specifically casts an obligation upon both parties to ensure that the actual scheduling does not deviate by more than 15% of the contracted power as per the

approved open access on a monthly basis. In the present case, the contracted power was approved/allowed under the open access arrangement for supply during the specified 6-hour time block, as detailed in Table-1 under para 8 of this Order. Thus, the permissible deviation of 15% is required to be considered with reference to the actual scheduling of the contracted power approved under the open access arrangement for the specified time block and cannot be construed as a separate permissible deviation of 15% available independently to each party.

59. The Commission further observes that Clauses 24(A)(ii) and 24(A)(iii) of the contract, which deal with deviation attributable to the Procurer and the Seller respectively, are consequential provisions for identifying responsibility and determining the compensation payable on account thereof. If the interpretation advanced by the Petitioner is accepted, the Procurer and the Seller could each independently deviate up to 15%, resulting in the actual scheduling exceeding the permissible limit stipulated under Clause 24(A)(i) of the contract. Such an interpretation would dilute the scheduling discipline contemplated under Clause 24(A) of the contract and render the expression *"actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access"* largely redundant or otiose.

60. The Commission also considers it relevant that the power in question is procured by the UP DISCOMs for meeting their peak demand during the specified 6-hour time block and is arranged several months in advance. Such power may not necessarily be available subsequently through the power exchanges at the time of requirement. Therefore, permitting deviation in the manner suggested by the Petitioner may culminate into larger departure from the contracted power which will essentially defeat the purpose for which the power was procured for the specified time block.

61. At the same time, where the deviation beyond the permissible limit is attributable to both parties, the financial consequence cannot be imposed entirely upon one party. The compensation for such excess deviation must bear a rational nexus with the extent of deviation attributable to each party. Therefore, apportionment of the excess deviation in proportion to the respective contribution of the Procurer and

the Seller provides a reasonable and harmonious method of giving effect to Clause 24(A) of the contract.

62. In the present case, the deviation in actual scheduling during June 2023 was 18.23%, comprising 14.26% attributable to the Petitioner and 3.97% attributable to UPPCL. Thus, the permissible limit of 15% was exceeded by 3.23%. The methodology adopted by UPPCL apportions the compensation arising from such excess deviation in proportion to the respective contribution of the parties and also accounts for the deviation attributable to UPPCL. The Commission, therefore, finds the said methodology consistent with the scheme of Clause 24(A) of the contract and does not warrant interference.

63. Since the deduction towards compensation has been found to be in accordance with Clause 24 of the contract, no amount is refundable to the Petitioner on this account. Consequently, the claims towards Late Payment Surcharge and refund of prompt payment rebate on the disputed amount are also rejected.

64. Accordingly, the Petition is disposed of.

(Griesh Kumar Vaish)
Member (Law)

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 29 .10.2026