



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.No.44 of 2022

&

I.A.No.37 of 2022

Dated 08.08.2022

Present

Sri. T.Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Neo Solren Private Limited,
Regd. Office at, Mahindra Towers,
Pandurang Budhkar Marg,
Near Doordarshan Kendra, Worli,
Mumbai City, Maharashtra 400 018.

... Petitioner.

AND

- 1) Northern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.2-5-31/2, Vidyut Bhavan,
Nakkalagutta, Hanamkonda,
Warangal, Telangana 506 001.
- 2) Telangana State Power Coordination Committee,
TSTRANSCO, Vidyut Soudha,
Hyderabad 500 082.

... Respondents 1 & 2.

(2nd respondent is deleted by the Commission on the ground that it is neither a statutory body nor is recognized authority under the Electricity Act, 2003 or the regulations made thereof by the Commission)

The petition came up for hearing on 23.05.2022 and 13.06.2022. Sri Nitish Gupta, Advocate representing M/s Hemant Sahai Associates for petitioner and Sri Mohammad Bande Ali, Law Attaché are present on 23.05.2022 and 13.06.2022. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Neo Solren Private Limited (petitioner) have filed a petition on 22.03.2022 under Section 86(1)(b), (e) & (f) of the Electricity Act, 2003 (Act, 2003) and the provisions of power purchase agreement (PPA), seeking release of payments due to the petitioners by the respondent and consequently payment of future bills in a timely manner in accordance with PPA.

2. The averments of the petition are extracted below:
 - a. It is stated that M/s Neo Solren Private Limited (petitioner) is a generating company within the meaning of Section 2(28) of the Act, 2003 (Act, 2003), engaged in the business of generation and sale of solar energy. The petitioner owns and operates a solar power based generating plant of 42 MW capacity in the State of Telangana. The entire energy from the project is being off-taken by TSNPDCL.
 - b. It is stated that Northern Power Distribution Company of Telangana Limited (TSNPDCL/respondent) is a government company entrusted with the function of distribution of electricity in certain districts of the State of Telangana.
 - c. It is stated that the Government of Telangana (GoTS) vide letter dated 18.03.2015 had directed the Chairman & Managing Director of Transmission Corporation of Telangana Limited (TSTRANSCO) and the Chairman of Telangana State Power Coordination Committee (TSPCC) to initiate the process of floating tender on behalf of Telangana State Electricity Distribution Companies (TSDISCOMs) for the purchase of 2000 MW solar power. Further the CMD, TSTRANSCO and the Chairman, TSPCC vide letter dated 31.03.2015 had instructed the Southern Power Distribution Company of Telangana Limited (TSSPDCL) to initiate the process of floating tenders on behalf of TSDISCOMs for purchase of 2000 MW solar power.
 - d. It is stated that on 01.04.2015, the TSSPDCL on behalf of TSDISCOMs issued the Request for Selection (RFS) for procurement of 2000 MW solar power through e-procurement platform as per the directions of Energy Department, GoTS.

- e. It is stated that the petitioner were selected as the successful bidders through an open competitive bidding process conducted by the authorized representative of the TSDISCOMs and was issued a Letter of Intent dated 31.12.2015. In terms of the aforesaid Letter of Intent, the petitioner entered into a Power Purchase Agreement (PPA) dated 24.02.2016 with respondent for setting up the project in the State of Telangana and commissioning the same for supplying electricity for a period of 25 years from the date of commercial operation at a tariff rate as defined under the PPA i.e., Rs.5.5949 per unit.
- f. That the relevant provisions of the PPA executed between the petitioner and respondent are as under:

**“ARTICLE 1
DEFINITIONS**

1.17 “Delivered Energy” means with respect to any Billing Month, the kilo Watt hours(kWh) of electrical energy generated by the Project and delivered to the DISCOM at the Interconnection Point, as measured by the energy meters at the Interconnection Point during that Billing Month at the designated substation of TSTRANSCO or the DISCOM.

1.18

1.19 "Due Date of Payment" means the date on which the amount payable by the DISCOM to the solar power developer hereunder for Delivered Energy, if any, supplied during a billing month becomes due for payment, which date shall be thirty (30) days from the meter reading date provided the bill is received by DISCOM within 5 working days from meter reading date, and in the case of any supplemental or other bill or claim, if any, the due date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of the DISCOM. If the last date of payment falls on a statutory holiday, the next working day shall be considered as last date.

1.20 "Scheduled Commercial Operation Date (SCOD) or Scheduled date of Commercial Operations" means the date whereupon the SPD is required to start injecting power from the power project to the Delivery Point i.e., shall mean twelve (12) months from the Effective Date for

projects connecting at 33 kV level and shall mean fifteen (15) months from the Effective Date for projects connecting at 132 kV or 220 kV level.

ARTICLE 2

PURCHASE OF DELIVERED ENERGY AND TARIFF

2.1 Entire Delivered Energy, as mentioned in Schedule 1, at the Interconnection Point for sale to the DISCOM shall be purchased at the Tariff as provided in Clause 2.2 limited to the contracted capacity of the Project after the Date of Commercial Operation. Title to the Delivered Energy purchased shall pass from the Solar Power Developer to the DISCOM at the Interconnection Point.

Provided that the units of energy delivered by the SPD prior to the COD of the Project shall be purchased by the DISCOM at tariff as provided in Clause 2.2.

2.2 The DISCOM shall pay a Tariff of Rs.5.5949 per unit to the Solar Power Developer as per the tariff agreed by the Solar Power Developer vide letter dated 21.12.2015 and shall be inserted as schedule 5 of this PPA. This Tariff shall be the Tariff for the entire term of the Agreement.

ARTICLE 3

INTERCONNECTION FACILITIES, SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

3.8.5 The solar power developer shall commission the Project within timelines specified in this agreement, i.e., fifteen (15) months from the effective date for projects connected at 132 kV or 220 kV, and any delay in commissioning of the project shall be subject to the penalties stipulated in Clause 10.5 of this Agreement. After commissioning of the project, the SPD shall invariably register the project with SLDC.

ARTICLE 5

BILLING AND PAYMENT

5.1 For the Delivered Energy, the solar power developer shall furnish a bill to the DISCOM calculated at the tariff provided for in Article 2, in such form as may be mutually agreed upon between the DISCOM and

the solar power developer, for the billing month on or before the 5th working day following the Meter Reading Date.

5.2 The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, the DISCOM shall pay simple interest at prevailing base prime lending rate of State Bank of India and in case this rate is increased/reduced, such an increased / reduced rate is applicable from the date of such notification.

... ..

5.4 Letter of Credit: Before 30 days prior to the due date of first monthly bill of the generating unit, the DISCOM shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the solar power developer by a scheduled bank for one month's billing value. Provided that any increase in the delivered energy on account of commissioning of additional capacity after the first month's billing or in subsequent billing months, the DISCOM shall revise the revolving letter of credit in favour of the solar power developer covering the latest previous month billing upto achieving of COD.

ARTICLE 10 EVENTS OF DEFAULT AND TERMINATION

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10.2 DISCOM Event of Default

10.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure event or a breach by the solar power developer of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting DISCOM ("DISCOM Event of Default"):

- (i) DISCOM fails to pay (with respect to payments due to the solar power developer according to Article 5), for a period of ninety (90) days after Due Date of Payment and the

solar power developer is unable to recover the amount outstanding to the solar power developer through the Letter of Credit, or

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ARTICLE 11 DISPUTE RESOLUTION

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11.4 Failure to resolve the dispute in terms of Clauses 11.1 to 11.3 or even otherwise, any party may approach the TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003.

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A bare perusal of the aforementioned provisions of the PPA makes it clear that the following has been agreed between the petitioner and TSNPDCL -

- i. The petitioner is under an obligation to sell the entire quantum of 42 MW of energy to the TSNPDCL on payment of Tariff for the energy supplied at the Delivery Point.
- ii. The tariff i.e., Rs.5.5949 per unit shall be firm for the entire term of the PPA and will not vary.
- iii. The billing is required to be carried out on a monthly basis.
- iv. The TSNPDCL is under an obligation to make payments towards the invoices raised by the petitioner within a period of 30 (thirty) days from the meter reading date. Further, in case of supplemental or other bill or claim, the due date of payment is 30 (thirty) days from the date of presentation of such bill or claim to the designated officer to TSNPDCL.
- v. If the payment of bill is delayed beyond "Due Date of Payment" TSNPDCL is obligated to pay late payment surcharge as specified in Article 5.2.
- vi. In case of any dispute with respect to a bill raised by the petitioner, TSNPDCL is required to notify the petitioner of such dispute.

- vii. TSNPDCL was also required to open an irrevocable revolving Letter of Credit for one month's billing value in favour of the petitioner, 30 days prior to the scheduled COD of the Project.
- viii. If the TSNPDCL fails to make payments for a period of ninety (90) days after the Due Date of Payment for the energy supplied by the petitioner and the petitioner is unable to recover the outstanding amount through the Letter of Credit, the event will qualify as a 'DISCOM Event of Default'.
- g. The SCOD of the Project was 23.05.2017. However, the Project was synchronized with the grid in phases i.e., 33 MW on 13.10.2017, 5 MW on 26.10.2017 and 4 MW on 06.11.2017 and as such, the COD was declared on 06.11.2017. Notably, GoTS had earlier granted an extension of SCOD upto 30.06.2017 to the solar power projects in the State who had concluded PPAs with TSDISCOMs, which was also approved by the Commission by way of its letter dated 18.08.2017, with a direction to file a petition for amending the penalties and refixation of tariff.
- h. It is stated that subsequently the petitioner filed a petition bearing O.P.No.8 of 2018 and I.A.No.3 of 2018 seeking extension of time for SCOD for 167 days. By way of order dated 28.08.2018, the Commission approved the extension in SCOD for the project upto 31.10.2017. The relevant extracts of the order dated 28.08.2018 are reproduced hereinbelow:

“The delay in reaching the SCOD relating to 38 MW only up to 31.10.2017 (161 days) is condoned. The remaining 4 MW was synchronized to the grid on 06.11.2017. Thus, there is a delay of six days in reaching the extended SCOD, i.e., 31.10.2017, for which the petitioner is liable to pay the penalty for six days as per Clause 10.5 of PPA. The petition is allowed on the same tariff as approved by the Commission.”
- i. It is stated that the capacity of 38 MW was commissioned before 31.10.2017 and the remaining 4 MW was commissioned on 06.11.2017, with a delay of 6 days. Accordingly, TSNPDCL by way of its letter dated

25.09.2018, requested the petitioner to pay an amount of Rs. 2,40,000/- for delay in synchronization of 4 MW from the project. Pursuant thereto, the aforesaid amount was duly paid by the petitioner by way of its letter dated 28.09.2018 to TSNPDCL.

- j. It is stated that pursuant to the execution of the PPA, the entire capacity of the Project was commissioned on 06.11.2017. It may be mentioned here that the petitioner invested huge amounts in setting up the project on the basis that TSNPDCL would pay tariff as specified in the PPA.
- k. It is stated that in pursuance of the above extension in SCOD, the PPA was amended by First Amendment dated 25.01.2019, whereunder, it was recorded that the SCOD of the project was duly extended upto 31.10.2017 and accordingly, various relevant Clauses of the PPA were amended.
- l. It is stated that in pursuance of the above extension in SCOD, the PPA was amended by First Amendment dated 25.01.2019, whereunder, it was recorded that the SCOD of the Project was duly extended upto 31.10.2017 and accordingly, various relevant Clauses of the PPA were amended.
- m. It is stated that in consonance with the terms of the PPA, TSNPDCL purchased 'Delivered Energy' from the petitioner and in lieu of the same, the petitioner duly raised invoices on TSNPDCL in terms of Article 5 of the PPA. The said invoices/ bills were strictly raised in accordance with the Tariff mentioned under Article 2 of the PPA. Further, the said invoices were to be remitted to the petitioner on the respective due dates of payment, as defined under the respective PPAs and in terms of Article 5.5 of the PPAs.
- n. It is stated that since the commissioning of the Project, the entire quantum of power generated by the project has been supplied to TSNPDCL in terms of the PPA. Till the date of filing of the present petition, the entire electricity generated from the project has been supplied by the petitioner to TSNPDCL, which has been further sold to the consumers by TSNPDCL. It is stated that despite the petitioner fulfilling its obligations under PPA in a timely manner, TSNPDCL has been repeatedly acting against the mandate of the Act, 2003 the

objectives of the National Electricity Policy, National Tariff Policy and in contravention of the provisions of the PPA.

- o. It is stated that in terms of the provisions envisaged in the PPA, the petitioner has been issuing monthly invoices to TSNPDCL/TSPCC for the energy supplied. As per Article 5.5 of the PPA, TSNPDCL/TSPCC is under a mandate to pay for the energy purchased from the petitioner within the due date. The Due Date, in terms of the PPA, is the date on which the amount payable by the TSNPDCL to the petitioner for energy supplied during a billing month becomes due, which is 30 days from the meter reading date provided the bill is received by TSNPDCL within 5 working days from the meter reading date or 30 days from the date of presentation of such bill or claim to the officer from TSNPDCL. Further, the petitioner is entitled to Late Payment Surcharge (LPS) in terms of Article 5.2 of the PPA, which provides that in case of delay in payment for the energy purchased by TSNPDCL beyond the 30 days, TSNPDCL shall pay interest at the prevailing SBI bank rate on the outstanding amount. Considering that TSNPDCL has failed to make payments since January 2021, TSNPDCL is liable to pay LPS on the outstanding invoices to the petitioner. While the petitioner has time and again requested TSNPDCL to comply with its contractual obligation to clear outstanding invoices including LPS payable thereon, TSNPDCL has, acting in high-handed manner, completely ignored such request.
- p. It is stated that the details of monthly bills for the period between January 2021 to January 2022 that are currently overdue and unpaid, are set out below:

Sl. No.	Invoice No.	Invoice month	Principle due amount	Due Date	Delay in making payment	Late payment Surcharge (as on 31.10.2021)
1	NSPL/2020-21/Inv 10	Jan, 21	3,05,15,074	25.02.2021	378	38,08,030
2	NSPL/2020-21/Inv 11	Feb, 21	3,77,84,941	05.04.2021	339	42,28,756
3	NSPL/2020-21/Inv 12	Mar, 21	3,76,93,051	26.04.2021	318	39,89,990
4	NSPL/2021-22/Inv 01A	Apr, 21	63,71,123	03.06.2021	280	5,93,824

Sl. No.	Invoice No.	Invoice month	Principle due amount	Due Date	Delay in making payment	Late payment Surcharge (as on 31.10.2021)
5	NSPL/2021-22/Inv 01B	Apr, 21	3,38,38,190	03.06.2021	280	31,53,905
6	NSPL/2021-22/Inv 02	May, 21	3,99,47,210	28.06.2021	255	33,90,861
7	NSPL/2021-22/Inv 03	Jun, 21	3,69,82,289	05.08.2021	217	26,93,375
8	NSPL/2021-22/Inv 04	July, 21	2,73,14,302	03.09.2021	188	17,23,420
9	NSPL/2021-22/Inv 05	Aug, 21	3,05,87,318	02.10.2021	159	16,32,231
10	NSPL/2021-22/Inv 06	Sep, 21	2,85,88,820	30.10.2021	131	12,51,799
11	NSPL/2021-22/Inv 07	Oct, 21	3,33,98,196	27.11.2021	103	11,49,813
12	NSPL/2021-22/Inv 08	Nov, 21	2,92,13,211	30.12.2021	70	6,83,509
12	NSPL/2021-22/Inv 09	Dec, 21	3,16,46,992	02.02.2022	36	3,80,804
12	NSPL/2021-22/Inv 10	Jan, 22	2,81,31,157	02.03.2022	8	75,222
Total			43,20,11,874			2,87,55,540

- q. It is stated that the petitioner has issued various communications to the respondents regarding its concern of non-payment by TSNPDCL seeking payment of unpaid energy invoices and the LPS applicable thereon. However, TSNPDCL has neither made payments nor responded to the communications made by the petitioner.
- r. It is stated that the TSNPDCL has not even paid the LPS on the delayed payments prior to January 2021 and therefore, is liable to pay Rs.10,99,70,934/-. A table showing total LPS payable on the delayed payments received for invoices raised for the period between November 2017 upto December 2020 (calculated upto 10.03.2022) is provided below.

Sl. No.	Month	Principle amount as per Invoice	Due Date	Date of Receipt of Payment	No. of Days Delay	LPS Amount
1	Nov-17	4,87,93,123	24.02.2018	16.03.2018	20	3,66,283
2	Dec-17	3,11,97,162	25.02.2018	22.03.2018	26	3,04,450
3	Jan-18	3,46,74,952	19.03.2018	02.06.2018	75	9,54,749
4	Feb-18	3,94,70,901	16.04.2018	19.06.2018	64	9,27,404

Sl. No.	Month	Principle amount as per Invoice	Due Date	Date of Receipt of Payment	No. of Days Delay	LPS Amount
5	Mar-18	3,62,90,759	14.05.2018	10.08.2018	88	11,72,440
6	Apr-18	69,02,988	11.06.2018	29.10.2018	140	3,56,119
7	Apr-18	3,39,17,403	11.06.2018	29.10.2018	140	17,49,766
8	May-18	4,08,67,388	07.07.2018	18.12.2018	164	24,69,734
9	Jun-18	3,82,84,782	06.08.2018	11.06.2019	309	43,59,273
10	Jul-18	2,49,52,135	27.08.2018	13.06.2019	290	27,16,023
11	Aug-18	2,77,59,656	08.10.2018	22.07.2019	287	29,90,361
12	Sep-18	3,67,92,062	09.11.2018	21.08.2019	285	39,35,743
13	Oct-18	3,75,67,516	03.12.2018	01.10.2019	302	42,73,948
14	Nov-18	3,91,55,348	26.12.2018	01.10.2019	279	41,00,370
15	Dec-18	2,52,60,974	25.01.2019	29.10.2019	277	26,45,551
16	Jan-19	3,55,37,686	25.02.2019	28.11.2019	276	37,08,382
17	Feb-19	3,92,86,269	28.03.2019	20.12.2019	274	40,69,842
18	Mar-19	3,99,14,017	25.04.2019	28.01.2020	278	41,95,237
19	Apr-19	75,96,755	27.05.2019	26.02.2020	275	7,89,854
20	Apr-19	3,92,89,626	27.05.2019	26.02.2020	275	40,85,045
21	May-19	4,13,65,334	25.06.2019	08.04.2020	288	45,04,175
22	Jun-19	3,98,92,756	26.07.2019	30.04.2020	279	42,08,085
23	Jul-19	3,16,43,635	26.08.2019	26.05.2020	274	32,78,107
24	Aug-19	2,85,33,990	25.09.2019	26.06.2020	275	29,66,753
25	Sep-19	2,87,39,938	26.10.2019	15.07.2020	263	28,37,065
26	Oct-19	2,82,69,911	25.11.2019	15.07.2020	233	24,72,339
27	Nov-19	3,17,17,488	26.12.2019	15.07.2020	202	24,04,794
28	Dec-19	3,21,40,463	27.01.2020	15.07.2020	170	19,75,978
29	Jan-20	3,03,03,097	25.02.2020	29.07.2020	155	16,98,634
30	Feb-20	3,92,97,459	27.03.2020	28.08.2020	154	21,88,599
31	Mar-20	3,98,99,470	03.05.2020	31.12.2020	242	34,12,552
32	Apr-20	77,18,724	30.05.2020	25.03.2021	299	8,15,668
33	Apr-20	3,41,04,272	27.05.2020	25.03.2021	302	36,40,094

Sl. No.	Month	Principle amount as per Invoice	Due Date	Date of Receipt of Payment	No. of Days Delay	LPS Amount
34	May-20	4,07,73,393	26.06.2020	25.03.2021	272	39,19,608
35	Jun-20	3,34,14,981	06.08.2020	25.03.2021	231	25,69,429
36	Jul-20	3,15,44,046	26.08.2020	25.03.2021	211	22,15,559
37	Aug-20	2,39,11,484	25.09.2020	05.05.2021	222	17,67,026
38	Sep-20	2,87,30,930	26.10.2020	30.07.2021	277	26,49,189
39	Oct-20	2,64,91,564	05.12.2020	13.10.2021	312	27,51,348
40	Nov-20	2,87,50,239	28.12.2020	31.12.2021	268	35,21,865
41	Dec-20	3,00,16,755	25.01.2021	05.03.2022	404	40,03,495
Total						10,99,70,934

Establishment of Payment Security Mechanism

- s. It is further stated that Article 5.4 of the PPA stipulates the requirement of TSNPDCL to institute a payment security mechanism in the form of a revolving Letter of Credit equivalent to one month's generation, which can be invoked by the petitioner if TSNPDCL / TSPCC fails to make timely payment of the monthly invoice, which TSNPDCL / TSPCC has failed to open. Such non-compliance by TSNPDCL of unequivocal obligation is not just in contravention of the terms of the PPA but is also against directives of the MoP, GoI dated 28.06.2019, 17.07.2019, 23.07.2019 and 09.08.2019. Failure of TSNPDCL in opening of LC is in clear violation of PPA and has also led to an in-turn failure for the petitioner to secure its payments.
- t. It is stated that it is imperative to mention that the TSNPDCL has not replied to any of the communications issued by the petitioner seeking release of its payments and have not provided a single reason for their current action of non-payment for more than a year. It is this reluctant, non-responsive, and obtuse approach of TSNPDCL that has left the petitioner clueless about its own state of finances. TSNPDCL has deprived the petitioner of the knowledge of the reason of such repeated defaults and non- payments, making it almost impossible for the

petitioner to assure of payments to its lenders or apprise them of the current scenario.

- u. It is stated that TNSPDCL has been arbitrarily and illegally not making payments towards LPS invoices raised by the petitioner since November 2017. Since there is a continuous breach of contractual obligations arising out of the PPA, the same has resulted in a continuing cause of action in favour of the petitioner. Further, TNSPDCL has now completely stopped making payments to the petitioner, therefore, the cause of action for filing the present petition is still continuing.
- v. It is stated that in view of the factual scenario detailed hereinabove, the petitioner respectfully submits as follows:
 - i. That the unlawful and illegal act of TNSPDCL of not honoring its contractual and legal obligation of making due and complete payments qua the power supplied by the petitioner through the PPA and utilized by TNSPDCL (and having recovered such amounts from its end consumers) is arbitrary and unsustainable in law and is a clear violation of the terms of the PPA.
 - ii. That in order to protect the rights of the parties, the PPA stipulates a cut-off date by which TNSPDCL is required to make payments for the energy supplied from the Project. Further, Article 5.2 of the PPA specifically provides that in case payments are not made in a time bound manner in line with the provisions of the PPA, TNSPDCL is obligated to pay LPS on delayed payments. However, in total disregard to the said provisions, and despite repeated requests and communications issued by the petitioner, TNSPDCL arbitrarily and illegally continues to withhold payments towards the invoices. Notably, TNSPDCL has not disputed any invoice raised by the petitioner. As such, the invoices have attained finality, and TNSPDCL is bound to make payments for the said invoices. In the present case, TNSPDCL is clearly misusing its dominant position in withholding payments legally admitted and due to the petitioner without any basis whatsoever.
 - iii. That TNSPDCL executed the PPA, on its own volition, being aware of the obligations envisaged, to meet its energy

requirement and also to fulfill its mandatory renewable purchase obligation. The parties have since acted upon the PPA and have taken respective burden and benefit thereof. The petitioner has been providing uninterrupted supply of power from its solar power project to TSNPDCL and raising invoices against such supply, while TSNPDCL has been off taking the power for supply to its consumers. It is a settled law that once a contract has been executed, acted upon and taken benefit of by the parties, the same is binding in law on the parties. In view thereof, TSNPDCL must be pinned to its obligations under the PPA. TSNPDCL's conduct is not only arbitrary and unfair but also demonstrates its high handedness.

- iv. That while the respondents have not been making any payments to the petitioner for the energy invoices raised since January 2021, they are recovering the tariff for the energy procured from the Project from the ultimate consumers. Pertinently, the cost of procurement of power from the petitioner has been accounted for in the tariff being charged by TSNPDCL from its consumers. Despite recovering these amounts, payments to the petitioner are being withheld. This action not only amounts to unjust enrichment of TSNPDCL but is also contrary to TSNPDCL's legal obligation to remit such monies to the petitioner. It is submitted that this is not only a fraud on the consumers bearing the burden of this cost, but is also illegal, unfair and arbitrary.
- v. That, it is a settled law that as a party to the contract, TSNPDCL is bound to discharge its functions as per the contract that it has entered into, till the same is varied, modified, or set aside. A party to a contract cannot state that it will not follow the terms of the contract as it is bound by the same. In this case, TSNPDCL being "State" under Article 12 of the Constitution, is expected to behave as a model employer, however, unfortunately, it has acted completely contrary to the said standards.
- vi. That the intent behind a Clause of 'Late Payment Surcharge' is essentially to compensate the non-defaulting party as per the

'time value of money', whereby, it becomes an obligation of the defaulting party to put the non defaulting party in a position where the defaulting party would have made timely payments to the non-defaulting party for the bills raised by the non-defaulting party. The concept of 'Time Value of Money' states that money that is available at the present time is worth more than the same amount in the future, due to its potential earning capacity or the inflation that decreases the value of the money. The actual time value of money gets lost if the payment of LPS is delayed or not paid at all. Thus, to do justice to the intention of LPS, and the concept of 'Time Value of Money', in case of delay in the payments of LPS, the same should be paid along with an interest so as to put the non defaulting party in a position had the LPS payment been received by it on time.

- vii. That Clause 5.2 of the PPA provides that in case of delay in payment for the energy purchased by TSNPDCL beyond the time period specified in the PPA, TSNPDCL shall pay interest at the prevailing SBI bank rate on the outstanding amount. However, despite the petitioner's repeated requests, TSNPDCL has failed to comply with its contractual obligation of paying LPS on delayed payments.
- viii. That TSNPDCL, which is an instrumentality of State under Article 12 of the Constitution of India, is duty bound to act in a fair and reasonable manner and within the four walls of the powers and functions conferred on them. That while on the one hand, the GoTS has invited private investments into the State for development of the renewable energy sector by offering incentives under the State Solar Policy, on the other hand, TSNPDCL, by the aforesaid actions, has clearly and consistently been acting in complete disregard of the aim and objective of the GoTS as well as its own responsibilities in the capacity of being a 'State Instrumentality' and a distribution licensee under the Act. Its aforesaid high-handed actions have resulted in a destabilized regulatory environment. The petitioner

submits that it has hitherto patiently and amicably engaged with TSNPDCL in an attempt to resolve the abovementioned issues.

- ix. That the respondents have financially strangled the petitioner from all sides. The non-payment/delayed payment of dues by the respondents has a cascading effect which not only adversely impacts the Solar Project of the petitioner, thereby causing tremendous loss to the investors for no fault of theirs, but also the banks and financial institutions which have financed the Project, including through public money. It is pertinent to note that financing documents have strict payment schedules which the petitioner is bound to abide by. Due to the non payment of the outstanding amount by payments by TSNPDCL/TSPCC, even the operational expenditure of the petitioner may not be sufficiently realized, and the petitioner faces challenges in keeping the Project afloat.
- x. That not only is TSNPDCL not honoring the terms of payments as provisioned under the PPA but has also failed to open a Letter of Credit (as it is obliged under the contractual terms of the PPA) in order to secure the payments in favor of the petitioner herein, which are the mutually agreed terms of the PPA. It is stated that such act is against the settled principles of reciprocal promise under the Indian Contract Act, 1872. It would not be out of place to mention that such non-opening of Letter of Credit is for ulterior motives, including the reason for not enabling the petitioner to utilize such Letter of Credit towards the pending payments.
- xi. That the petitioner is constrained to approach this Hon'ble Commission for the reasons including failure on part of respondents to not to pay any heed to multiple reminders as issued by the petitioner to the respondents from time to time, and it is the undue, unlawful and defying act(s) of the respondents that not only are they unduly enriching themselves with the payments as due upon the petitioner, but also are refusing to respond to several reminders and requests of the petitioner to make such payments and open the Letter of Credit.

- xii. That the petitioner is also constrained to approach this Commission since the lack of payments for a prolonged period of 13 months has cumulatively created an outstanding of Rs.43,20,11,874/- (for the period from January 2021 to January 2022) which in turn is creating a financial stress/distress on the petitioner and which will shortly lead to the petitioner being pushed to a financially adverse position, including where it will not be able to honor its financing agreements.
- xiii. That the Hon'ble Appellate Tribunal for Electricity (hereinafter, "Hon'ble APTEL") has on various occasions taken cognizance of the untimely payment of legitimate dues of generators. In this regard, the Hon'ble APTEL in its Judgment dated 20.09.2021 passed in Appeal No. 386 of 2019 titled 'Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission & Anr.' has held as under:

"44. We are deeply disturbed over the manner in which the appellant has been warding off its creditors depriving them of timely payments of their legitimate dues. This is reflective of financial mis-management on the part of the appellant but, more gravely, a conduct not expected of a distribution licensee. The MERC seems to have been playing along believing the promises held out through payment-plans without insisting on scrupulous adherence thereto. This has been leading to unnecessary litigation adding to the cost for all stakeholders. The Commission, as the sector regulator, equipped as it is with the requisite powers, can do better. If the reasons for the mess indicated in the additional affidavit dated 29.07.2021 (mentioned earlier) are any pointer, it is the duty of the regulator to effectively deal with some of the issues that statedly plague the food chain and are attributable to actions (or inaction) of the regulatory authority including certain disalloiuances, delayed implementation of the tariff orders, approvals of gains and losses in MYT Order instead of

True up; belated approval of the final true up etc. It is the obligation of the State Commission to ensure, by issuing appropriate directions and enforcement thereof to the logical end, that the Distribution licensee conducts itself in such a manner that it lives up to the objectives of the Electricity Act by maintaining financial discipline, adopting efficient systems, aiding in recovery of the cost of electricity in a reasonable manner and conduct of its business of distribution and supply on commercial principles which only would safeguard the consumers' interest.

45. We direct the State Commission to examine the financial affairs of the appellant and take appropriate measures in such regard in accordance with law so as to bring about financial discipline in a time-bound manner, bearing in mind the observations recorded above."

It is thus submitted that this Hon'ble Commission ought to take due cognizance of the illegal and arbitrary conduct of TSNPDCL regarding delayed payment of outstandings, leading to financial stress on the petitioner.

- xiv. That in absence of the payments of tariff under the PPA which are the only source of revenue for the petitioner, it is being pushed to a financially unstable and unsustainable position, which will not only cause an irreparable financial harm but also a severe reputational loss to it. It is also not out of place to mention that the Project of the petitioner is funded by the financial institutions / banks for which the petitioner has a monthly debt servicing obligation in terms of its respective financing agreements, which are currently being made by the petitioner with grave difficulty (in absence of any payments towards PPA Tariff from TSNPDCL).
- xv. That, in these circumstances, promissory estoppel will bind TSNPDCL, since the petitioner has altered its position based on the contractual promises made by TSNPDCL under the PPA, and if TSNPDCL does not perform these obligations; immense and irreparable losses would be caused to the petitioner.

- xvi. That, the key objectives of the Act, 2003 the National Electricity Policy and the National Tariff Policy inter alia includes promoting the generation and co-generation of energy from wind and other sources of renewable energy. By withholding the legitimate dues of the petitioner under the PPA, TSNPDCL is, in effect, acting as a catalyst in discouraging private participation in the power sector in the State of Telangana. Thus, non-payment by TSNPDCL is against the spirit of the Act, 2003 the National Electricity Policy and the National Tariff Policy.
- xvii. That non-payment of the outstanding dues has increased the overall cost of the Project as there is a constant infusion of funds and refinancing of loans due to non-repayment of existing loans. Therefore, if the petitioner is not allowed to claim appropriate relief from TSNPDCL, the same will have an adverse impact on the Project and will make the whole project unviable.
- xviii. That the failure of the petitioner to meet its financial obligations under the appropriate agreements would not only impact the Project but would also have cascading effects on the entire financial arrangement, including penal consequences on the petitioner. Accordingly, such circumstances will also hamper the ability of the petitioner to raise financing for its future businesses and adversely affect the petitioner's rights to carry on its trade and business.
- xix. That the funding from the lenders to set up the Project was obtained by factoring in the Tariff and the timely payment of the same by the respondents, at the time of bidding and execution of the PPA. The aforesaid actions of the respondents in delaying the legitimate payment of power sale under the PPA would necessarily affect the servicing of loans granted by the Lenders, which consist of public money, and the same will have a cascading effect on the public ex-chequer as well.
- xx. That it is a settled principle of law that cancelation of financial facilities involves civil consequences and the same- casts a slur on the reputation of the affected person. In the present case, the

arbitrary and malafide acts of TSNPDCL threatens the hard-earned reputation of the petitioner. The aforesaid actions will affect the business of the petitioner in great respect and the petitioner will be subjected to a negative reputation only due to arbitrary and malafide acts of TSNPDCL.

- xxi. That for the reasons stated above, the actions of the TSNPDCL are arbitrary and unlawful, and the petitioner has no other alternative or effective remedy except to approach this Hon'ble Commission.
- w. It is submitted that since the respondent has an outstanding amount of more than 12 months, in order to prevent any further financial difficulty to the petitioner, the relief as sought under the present petition should be allowed by the Commission on an urgent basis.
- x. The petitioner has sought the following prayer in the petition for consideration.
- “i) Hold and declare that the act of non-payment of the timely and complete payments (leading to an outstanding amount of Rs.43,20,11,874/- for invoices raised for period between January 2021 upto January 2022 is in direct contravention of the provisions of the PPA which is unlawful and unsustainable;
- ii) Direct the respondent to immediately pay an amount of Rs.43,20,11,874/- in terms of the invoices raised by the petitioner from January 2021 till January 2022 along with Late Payment Surcharge of Rs.2,87,55,540/- as calculated upto 10.03.2022 in terms of Article 5.2 of the PPA;
- iii) Direct the respondent to pay the due Late Payment Surcharge of Rs.10,99,70,934/- as calculated upto 10.03.2022, for the energy invoices raised upto December 2020;”
- iv) Direct the respondent to made all future payments of valid invoices in a timely and complete payments in future as per the mutually agreed terms of the PPA;
- v) Direct TSNPDCL to open an irrevocable revolving Letter of Credit in favour of the petitioner, in terms of Article 5.4 of the PPA.

- vi) Grant pendent-lite interest at the rate of interest as per Article 5.2 of the PPA to the petitioner on the amounts payable by the respondent in terms of prayers (a) and (b) above from date of filing of the present petition till date of issuance of order;
- vii) Grant interest at the rate of interest as per Article 5.2 of the PPA to the petitioner on the amounts payable by the respondent in terms of prayers (a) and (b) above from the date of issuance of order till date of payment by the respondent;
- viii) Direct TSNPDCL to pay litigation expenses which shall incur upon the petitioner due to the adjudication of the present petition;”

5. The petitioner along with the original petition has also filed an Interlocutory Application (I.A.) on 22.03.2022 under Section 94(2) of the Electricity Act, 2003 read with Clause 24 of the Conduct of Business Regulations, 2015 and the averments of it are similar/identical to the pleadings of the original petition. The applicant/petitioner prayed the following relief in the application.

“Direct the respondents to pay in the interim, 75% of the total outstanding dues i.e., Rs.32,40,08,906/-.”

6. The Commission has heard the parties to the present petition and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 23.05.2022:

“... .. The counsel for petitioner stated that the matter is coming up for the first time for filing counter affidavit. The representative of the respondents stated that he needs time for filing counter affidavit in the matter. It is stated that the issue raised is similar to the earlier batch of cases, but is listed for the first time. Accordingly, the time is granted for filing counter affidavit and the matter is adjourned.”

Record of proceedings dated 13.06.2022:

“... ..The counsel for petitioner stated that on the earlier date of hearing an opportunity had been given to the respondents to file counter affidavit, but the same is not filed. Moreover, the Commission had already considered the issue

and reserved its order in similar matters. The representative of the respondents sought time for filing counter affidavit. Since the Commission had already considered the issue and similar matters are awaiting orders of the Commission, this matter is also reserved for orders.

7. Though the Commission was considerate and magnanimous in granting time for filing the counter affidavit but, the respondent has failed to respond to the petition and also did not place any information either acceding to or refusing the claims made by the petitioner. The Commission being constrained not to give further time, even attempted to put the respondent on terms, yet the respondent did not adhere to the observations of the Commission. Thus, the Commission has no other option but to proceed with the matter to decide the same.

8. The petitioner have also filed Interlocutory Application as mentioned supra, however, the Commission is now proceeding to decide the matter itself and as such, would not dwell into the prayer made in the Interlocutory Application.

9. The Commission notes that the Telangana State Power Coordination Committee (TSPCC), who was arrayed as 2nd respondent of the petition, is an Apex Committee put in place by Government vide G.O.Ms.No.21, Energy (Power-II) Department, dated 12.05.2014 as an institutional arrangement for power trading by DISCOMs in Telangana State to carryout functions like examining all commercial issues related to bulk supply and all legal issues related to IPPs and other generators and advise the DISCOMs suitably, etc. Intrinsically, the functions of TSPCC are not statutory in nature. As such it is neither a statutory body nor is recognized authority under the Act, 2003 or the regulations made thereof by the Commission. It is also relevant to state that just because correspondence is being done by TSPCC, it has no authority to contest or defend for the lapses or omissions committed by the DISCOM, which is in agreement with the petitioner. Therefore, TSPCC cannot be a party to the proceedings. Accordingly, the Commission decided to strike-off the said party from the array of respondents.

10. From the pleadings it is noticed that the petitioner is having a long-term Power Purchase Agreement with the respondent vide PPA No.218/2015 dated 31.03.2015 r/w its Amendments dated 23.01.2016 and 08.11.2016 (PPA) for setting up of the Solar

Power project of 50 MW capacity connected to at 220/132 kV Tandur substation in Vikarabad District for sale of Solar Power to the respondent for a period of 25 years from the Date of Commercial Operation (i.e., 06.11.2017) at a tariff of Rs.5.5949 per unit upto 25% CUF calculated on annual basis (the parties thereto, intending to legally bound and agrees the terms and conditions of the PPA). The terms & conditions of the PPA stipulates that –

- a) 5.1 For the Delivered Energy, Solar Power Developer (petitioner) shall furnish a bill to the DISCOM (respondent) for the billing month on or before the 5th working day following the Meter Reading Date;
- b) 5.2 Any payment made beyond the Due Date of Payment, the respondent shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India; [Late Payment Surcharge (LPS)]
- c) 5.3 The respondent shall pay the bill on monthly basis;
- d) 5.4 The respondent shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month's billing value;
- e) 5.5 The respondent shall make payment for the eligible bill amount by the due date of payment;
- f) 5.6 The respondent shall pay the bills of petitioner promptly;
- g) 11.4 any party may approach TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003;

11. Prima facie, the prayer in this petition is about action of the respondent in not making the payment in accordance with the provisions of the PPA. The petitioner has identified the outstanding amount due against monthly bills for the period from January 2021 to January 2022 as Rs.43,20,11,874/- and an amount Rs.10,99,70,934/- towards LPS for monthly bills raised between November 2017 till December 2020 in terms of Article 5.2 of the PPA payable by respondent.

12. The petitioner further contends that the respondent is yet to open the Letter of Credit as provided in Clause 5.4 of Article 5 of the PPA, as such, it is alleged that the

payments are delayed. Therefore, the prayer is sought not only for release of payments due along with interest thereon for late payment and interest for the payment made beyond the 'Due Date of Payment' but also for directions to the respondent for opening of irrevocable revolving Letter of Credit in favour of petitioner and for making all future payments in a timely manner, though there is no mention of the amount for subsequent period.

13. The Commission is of the view that in the absence of any contest made by the respondent as to the veracity of the claims made by the petitioner, there shall not be any dispute on the amounts payable by the respondent to the petitioners. However, as per the provisions of the PPA, when the petitioner has complied with its part to the PPA by delivering the electricity energy to the respondent, the respondent is bound to make payment for the same without any demur. Further, in terms of the PPA such occurrence and continuation of event of non-payment of dues by the respondent to the petitioner and when the petitioner is unable to recover the outstanding amount, shall constitute "DISCOM (respondent) Event of Default".

14. The Commission takes judicial notice of a decision rendered by the Hon'ble APTEL in the matter of *Bangalore Electricity Supply Company Ltd. Vs. Devangere Sugar Company Limited* [Appeal No.176 of 2009]. The observations made by the Hon'ble APTEL are extracted below:

"23. Besides this, there is one more breach. Under Clause 6.6, the Corporation (Appellant) shall establish and maintain transferable, sustainable and irrevocable revolving Letter of Credit (LOC) in favour of the company (respondent).

... ..

25. In the instant case, admittedly, neither the amount due were paid in time, nor the penal interest was paid as per Clause 6.3 of the contract, nor the LOC was established within the stipulated time as per Clause 6.6 of the Contract.

26. In every Power Purchase Agreement (PPA), the opening of a LOC is a vital part of the contract. It is fundamental financial obligation cast upon the Appellant by the contract to honour the same. In other words, to open an LOC forms an integral part of the contract. It is, therefore, clear that there is a failure on the part of the Appellant to honour its obligation under the contract. "

15. In the present case, the Clause 5.4 of the PPA stipulates opening of irrevocable revolving Letter of Credit in favour of petitioner by the respondent and the same is not complied with according to the pleadings. In the absence of any statement from the respondent as to the reasons or compliance of providing Letter of Credit in terms of the PPA, the Commission has no other option to infer that the respondent did not provide Letter of Credit to the petitioner, which it is required to comply with.

16. Therefore, the Commission is inclined to grant the relief as prayed for in the original petition, both for the billed amount and interest claims and directs the respondent to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month's billing value as per Clause 5.4 of the PPA.

17. In the light of the above, the petition stands allowed and the respondent shall comply with this order within forty five (45) days from the date of receipt of this order. While complying with the order, the respondent would ensure that the amounts are settled completely upto date and shall endeavour to make payment for the eligible amount against the bills raised by the petitioner promptly in accordance with the provisions of the PPA.

18. The original petition is disposed of on the above terms and in the circumstances without any costs. Since the original petition is itself being disposed of, the Interlocutory Application would not survive and accordingly stand closed.

This order is corrected and signed on this the 8th day of August, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

// CERTIFIED COPY //