



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

O. P. No. 43 of 2022

Dated 15.12.2023

Present

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

Between:

M/s. Pemmasani Solar Power Private Limited,
Registered office at Plot No.1-60/30/99/136,
Anjaiah Nagar, Gachibowli, Hyderabad 500 032.

... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad, Telangana 500 063.
2. The Chief General Manager
Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad, Telangana 500 063
3. Telangana State Power Coordination Committee (TSPCC)
Vidyut Soudha, Hyderabad 500 082.

... Respondents

(Respondent No.3 deleted from the array of the petition by the Commission)

The petition came up for hearing on 25.04.2022, 23.05.2022, 13.06.2022, 11.08.2022, 01.09.2022, 22.09.2022, 17.10.2022, 21.11.2022, 12.01.2023 and 24.04.2023. Sri. P. Soma Sekhara Naidu, Advocate representing Sri. Srinivasa Rao Pachwa, counsel for petitioner appeared on 25.04.2022, 11.08.2022, 22.09.2022, 17.10.2022, 12.01.2023 and 24.04.2023. Sri. Srinivasa Rao Pachwa, counsel for petitioner appeared on 23.05.2022 and 01.09.2022. There is no representation for petitioner on 13.06.2022 and 21.11.2022, Sri. M. Eshwardas, DE / IPC for respondents

has appeared on 25.04.2022 and Sri. Mohammad Bande Ali, Law Attaché for respondents has appeared on 23.05.2022, 13.06.2022, 11.08.2022, 01.09.2022, 22.09.2022, 17.10.2022, 21.11.2022, 12.01.2023 and 24.04.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Pemmasani Solar Power Private Limited (petitioner) has filed a petition under Section 86(1)(f) of the Electricity Act, 2003 (Act, 2003), seeking payment of interest (late payment surcharge, LPS) for the payments made for the energy delivered to respondent No.1 in respect of its 10 MW solar power plant near 132/33 kV Makthal substation, Mahabubnagar District. The averments in the petition are extracted below:

- a. It is stated that the petitioner is a company incorporated under the provisions of the Companies Act, 2013 inter-alia engaged in the business of generation and sale of electricity, and it is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 (Electricity Act). The petitioner has set up a solar power project of 10 MW capacity near 132/33 kV Makthal SS, Mahabubnagar District, Telangana (Project). The said project was set up in view of selection of the petitioner as a successful bidder through an open competitive bidding process conducted by the respondents.
- b. It is stated that the respondent No.1 and 2 is a distribution licensee operating in the state of Telangana. Although the respondents No.1 and 2 are one and same the second respondent has been made as a party to the present proceedings as the said authority has executed the power purchase agreement (PPA) on behalf of the distribution licensee and also involved in the process of settlement of bills submitted by the petitioner. The respondents No.1 and 2 hereinafter collectively referred to as 'TSSPDCL' or 'respondent'.
- c. It is stated that the third respondent is Telangana Power Co-ordination Committee which is coordinating the affairs of distribution licensees in the state of Telangana and it is also involved in coordinating between the distribution licensee and the petitioner in receipt and settlement of monthly tariff bills. Therefore, the third respondent has also been made as a party to the present proceedings.
- d. It is stated that the authorised representative of the first respondent has floated a tender for procurement of 500 MW solar power through E-procurement

platform in the year 2014. The petitioner has submitted its bid and it has been selected as the successful bidder in the open competitive bidding process and has set up the solar power project of 10 MW capacity near 132/33 kV – Makthal SS, Mahabubnagar District, Telangana. The petitioner and TSSPDCL have entered into a PPA on 11.03.2015 in accordance with the provisions of the Act, 2003. The said PPA is valid for a period of 25 years from the date of commercial operation. The petitioner achieved commercial operation date on 24.02.2016.

- e. It is stated that the entire capacity generated in the project shall be delivered by the petitioner to TSSPDCL at the interconnection point of designated sub-station of Transmission of Corporation of Telangana Limited or TSSPDCL. The petitioner has been generating and delivering the electrical energy to TSSPDCL in terms of the PPA. The PPA contains provisions in detail in respect of generation, supply, billing and other matters that govern the understanding between the petitioner and TSSPDCL.
- f. It is stated that Article 5 of the PPA deals with billing and payment. The petitioner shall furnish a bill to TSSPDCL the tariff calculated as provided for in Article 2 for the delivered energy in a billing month on or before the 5th working day following the Meter Reading Date. The term Billing Month is defined in Article 1.9 of the PPA as *'the period commencing from 25th of the calendar month and ending on the 24th of the next calendar month'*. There are clear provisions for meter reading in the PPA. The petitioner has been submitting the monthly tariff bills in accordance with Article 5.1 of the PPA.
- g. It is stated that upon submission of bill TSSPDCL shall make payment for the eligible bill amount by the due date of payment as agreed in Clause 5.5 of PPA. The term due date of payment according to Article 1.19 of the PPA 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 DISCOMs 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 holiday, the next working day shall be considered as last date'*.

- h. It is stated that TSSPDCL shall pay the bills of the petitioner promptly as agreed in Article 5.6 of the PPA. Further, in terms of Article of Article 5.6 of the PPA, TSSPDCL shall notify the petitioner in respect of any disallowed amount on account of any dispute as to all or any portion of the bill. However, TSSPDCL never raised any dispute in respect of the bills submitted by the petitioner. Therefore, it is submitted that there is no billing disputes in so far as the bills submitted by the petitioner to TSSPDCL so far.
- i. It is stated that although the petitioner has been submitting monthly tariff bills in terms of the PPA, TSSPDCL did not adhere to the payment mechanism agreed by it in the PPA. There are continuous delays in payment for the bills raised. Although TSSPDCL is required to furnish an irrevocable revolving Letter of Credit in favour of the petitioner before 30 days prior to the due date of first monthly bill, TSSPDCL failed and neglected to furnish the same. Article 5.2 of the PPA deals with prompt payment rebate and interest in the event of delays in payment of the bills. Article 5.2 of the PPA deals as under:
- “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 reduced, such a reduced rate is applicable from the date of reduction”.*
- j. It is stated that although there are continuous delays by TSSPDCL in payment of the bills raised by the petitioner, the interest as agreed in Article 5.2 of the PPA was not paid by TSSPDCL to the petitioner. The petitioner repeatedly requested the respondents to pay the interest in respect of the payments made beyond due date of payment. Although the officers of the respondents promised to consider and release the interest as agreed in the PPA, the same was not paid by them. Therefore, the petitioner vide its letter dated 19.01.2022 requested the respondents to pay the said interest.
- k. It is stated that the petitioner in its letter dated 19.01.2022 clearly explained the delay on the part of the respondents in payment of the bills submitted by the petitioner in respect of the energy delivered and the details of delays corresponding to each bill. The petitioner has also stated the Prime Lending Rate of the State Bank of India applicable from time to time and a letter issued by State Bank of India containing the prime lending rate has also been enclosed

to the said letter. Accordingly, the petitioner has claimed a sum of Rs.13,39,567/- in respect of bills submitted during the calendar year 2017. The interest payable against the bills submitted during the calendar year 2018 is Rs.55,27,622/-. The interest accrued on account of delay in respect of the bills submitted during the calendar year 2019 is Rs.97,16,358/-. The interest accrued on account of delay in payment of the bills during the calendar year 2020 is Rs.78,31,856/- and the said interest for the calendar year 2021 is Rs.74,29,967/- total amounting to Rs.3,18,80,712/-. It is stated that the said interest amount is due and payable by TSSPDCL in terms of Article 5.2 of the PPA. Although the respondents acknowledged receipt of the said letter dated 19.01.2022, they have neither issued any reply nor paid the same till this date.

- I. It is stated that although the respondent is under obligation to provide payment security by way of opening a revolving letter of credit (LoC) in terms of Article 6(c) of the PPA, the same has not been opened till this date. The petitioner reserves its rights to seek implementation of the same in separate proceedings. It is also further pertinent to submit that the Government of India, Ministry of Power in its notification dated 22.02.2021 issued under Section 176 of the Act, 2003 categorically ruled that late payment surcharge shall be payable on the payment outstanding after the due date at the base rate of late payment surcharge applicable for the period for the first month of default. It was further directed that the rate of late payment surcharge for the successive months of default shall increase by 0.5% for every month of delay provided that the late payment surcharge shall not be more than 3% higher than the base rate at any time. It was provided that the rate at which late payment surcharge shall not be higher than the rate specified in the agreement for purchase or transmission of power if any. It is further provided in the said notification that if a distribution licensee has any payment including late payment surcharge outstanding against a bill after the expiry of seven (7) months from the due date of the bill which shall be debarred from procuring power from a power exchange or grant of short-term open access till such bill is paid. Therefore, it is abundantly clear that the Government of India has also realised the importance of payment of bill amount to the generators in timely manner and liability of the Distribution Licensee to pay late payment surcharge or interest. The interest

agreed in the PPA is less than the interest specified in the said notification and hence, the petitioner is claiming interest in terms of the PPA.

- m. It is stated that the petitioner has set up the generating station investing substantial amounts by sourcing the funds by way of loans from the banks and other sources. The petitioner is under obligation to clear the loans and also required to incur maintenance and other regular overheads. The respondents are also neglecting the payment of monthly tariff bills continuously. As on date the respondents are in due of payment of more than 12 monthly tariff bills of the petitioner. The petitioner reserves its rights to initiate any other proceedings for recovery of any other amounts that it may be entitled including monthly tariff bills and interest thereon in separate proceedings.
- n. It is stated that in spite of several requests and also written communication by the petitioner, the respondents failed to pay the interest in terms of the PPA as stated supra. Therefore, the petitioner has no other option and is constrained to file the present petition praying the Commission to direct the respondents to pay the outstanding interest amounts and further interest thereon.
2. The petitioner has sought the following prayer in the petition for consideration.
- “a. *Direct the respondents to pay an amount of Rs.3,18,45,370/- being the outstanding interest amount payable by the respondents to the petitioner on account of delay in payment of the monthly bills for the monthly bills submitted from 24.01.2017 to 17.12.2021.*
- b. *Direct the respondents to pay interest at the rate of Prime Lending Rate of State Bank of India from the date of this petition till the date of realization of the amount mentioned in Prayer (a) above.*
- c. *Direct the respondents to pay the costs incurred by the petitioner in the petition.”*
3. The respondents have not filed its counter affidavit to the petition despite giving ample opportunity, but the respondent No.1 has filed an affidavit on 25.10.2022 stated as extracted below:
- a. It is stated that on 30.09.2022 during the course of hearing on submission made on behalf of respondents stating that respondent N. 1 has made arrangement for payment of amount due, in 12 to 48 instalments through Power Finance Corporation Limited (PFC) and Rural Electrification Corporation Limited (REC) and that the respondent has passed on required information of all the petitioners including the petitioner herein who filed similar petitions that

outstanding dues along with bank details to PFC and REC for arranging payment of agreed amount as per PPA directly to the petitioners.

- b. It is stated that respondent No.1/TSDISCOMs have entered into loan agreement with REC Limited and PFC limited facilitating financial assistance for clearance of dues.
- c. It is stated that the Commission directed this respondent to file specific affidavit indicating the amount that is to be paid by the said corporations on behalf of respondents as per the agreement.
- d. It is stated that payments are being arranged to the petitioners in 12 equal instalments and out of which 3 instalments have already been paid. Balance 9 instalments will be paid on 5th of every month.
- e. It is stated that the late payment surcharge is under reconciliation and the same is in process. The details of monthly bills covered in the financial assistance scheme extended by PFC and REC is submitted below:

Name of the petitioner (s)	Amount covered under REC/PFC payments to be made in 12 instalments (Rs)	Installments already paid (Amount in Rs./Date of Payment) 22.09.2022/23.09.2022/06.10.2022		
M/s Pemmasani Solar Power Private Limited	9,48,36,816	7903068	7903068	7903068"

4. The respondent No.1 has filed a common additional submissions in support of its case, which is extracted below:
 - a. It is stated that the petitioner, in the subject Petition (Petition filed under the Section 86(1)(f) of the Electricity Act 2003) has prayed the Commission to issue directions to the Respondents for payment of outstanding sums to it under the bills raised by it along with Late Payment Surcharge (LPS) for the period April 16 to March 22 in terms of the provisions of the PPA subsisting with it.
 - b. It is stated that as per the law settled by the Hon'ble Supreme Court in several Electricity matters, the rights and obligations of the Parties shall have to be read together with the statutory provisions and the claims of the petitioner have to be examined in accordance with statutory provisions/law settled also.
 - c. It is stated that the Case law, (2016) 3 SCC 468 (APPCC Vs LANCO Kondapalli Power Ltd., Hon'ble Supreme Court's judgment dated 16th October 2015 in Civil Appeal No.6036 of 2012 & batch), wherein it was held, as extracted below:

“

30. We hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.
... .. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect its judicial power under clause (f) of subsection (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions, which may be administrative or regulatory.
... ..”

- d. It is stated that in terms of the aforesaid case law, the principles of Limitation Act, 1963 shall apply to the claims sought to be adjudicated by this Commission under Section 86(1)(f) of the Electricity Act,2003.
- e. It is further stated that the Article 55 of the first Schedule of the Limitation Act 1963 has stipulated that in case of breach of Contract, the limitation period for filing a Suit is 3 years from the date of cause of action.
- f. It is stated that since the petitioner’s claims are pertaining to the period from (September 2017) to (March 2022) and the petition was filed before the Commission on as per list enclosed, therefore the outstanding claims beyond 3 years prior to the date of filing of the Petition ought to be rejected since these were barred by time in terms of the law settled by the Hon’ble Apex Court.
- g. It is also stated that the Hon’ble Apex Court also held in a catena of the judgments that “*exchange of Communications do not extend the period of limitation provided by law*”.
- h. It is further stated that the Commission is requested to examine clauses on delayed payment surcharge in different PPA’s which is conflicting with the present method of interest rates. The attention of Hon’ble Commission is drawn to the fact that from 2016 all the banks have switched over to MCLR i.e., Marginal Cost of Fund Based Lending Rate.

In certain PPA’s clause 5.2 Clause - “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, DISCOM shall pay interest at prevailing SBI bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction”.

In certain PPA’s 5.2 Clause – “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.”

And in certain PPA's 5.3 Clause - "For default in payment beyond 30 days from the date of billing, a surcharge at the rate of nationalized bank rate (Prime Lending Rate) per month or part thereof shall be levied on the billed amount."

- i. It is stated that the application of the different rates to different generators is totally ambiguous and contrary to the present system of applying interest rates by the lenders (MCLR).
- j. It is stated that the "change in law" means any change or amendment to the provisions of electricity law in force, regulations, directions, notifications issued by the competent authorities and Government of India (GoI), Government of Telangana (GoTS) including the erstwhile Government of Andhra Pradesh (GoAP) from time to time.
- k. It is stated that the change in method of lending is subservient to the change in law article, therefore the Commission is requested to examine and give standard rate of interest i.e., MCLR to be applied to all the generators. Therefore, there will be uniformity and aligned to the present method of lending.
- l. In light of the above, the Commission is prayed to examine the claims of the petitioner duly taking into account the law settled by the Hon'ble Supreme Court in the interest of justice in respect of time barred debts.
- m. It is requested to examine the application of uniform Delayed Payment Surcharge i.e., MCLR to all the solar generators aligning with the present method of interest application envisaged by RBI w.e.f. 01.04.2016.
Hence it is prayed that the Commission may be pleased to pass appropriate orders."

5. The Commission has heard the parties to the present petition from time to time and it was ultimately reserved for orders on 12.01.2023. Subsequent to reserving the matter for orders by the Commission, the respondent has filed common additional submissions in this matter as well as in other similar matters on 28.01.2023 raising several contentions, which required an examination by the Commission and also the submission of the petitioner on the same for ascertainment and for a detailed hearing. Even though the respondent did not seek reopening the matter, but due to various averments made in the common additional submissions by the respondent, the Commission opined that the matter required for reopening for fresh consideration and accordingly the Commission de-reserved the matter and posted it for hearing on

24.04.2023. The Commission has heard the parties and also considered the material available to it. Record of proceedings on various dates including that of 24.04.2023 are extracted for ready reference.

Record of proceedings dated 25.04.2022:

“... The advocate representing the counsel for petitioner stated that the matter is coming up for filing counter affidavit. The officer present on behalf of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. He also stated that he needs further time to file counter affidavit in the matter. Accordingly, the matter is adjourned.”

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 though the issue raised is similar to the earlier batch of cases, but it does not involve original payment, so it is distinctive of the other matters. Accordingly, the time is granted for filing counter affidavit and the matter is adjourned.”

Record of proceedings dated 13.06.2022:

“... There is no representation for the petitioner. The representative of the respondents sought further time for filing counter affidavit. Considering the request of the representative of the respondents, the time is granted for filing counter affidavit and the matter is adjourned.”

Record of proceedings dated 11.08.2022:

“... The counsel for petitioner stated that no counter affidavit is filed in the matter. The representative of the respondents sought further time for filing counter affidavit. The Commission observed as to whether there is necessity to impose costs for non-filing of the counter affidavit. The representative of the respondents pleaded for one more chance to file counter affidavit in the matter. Considering the request of the representative of the respondents, the time is granted for filing counter affidavit. Upon filing of the counter affidavit, the counsel for petitioner is at liberty to file rejoinder, if any by duly serving the same on the respondents. The matter is adjourned.”

Record of proceedings dated 01.09.2022:

“... The counsel for petitioner stated that the petition is filed for payment of interest alongwith late payment for the amount due. The Commission had required the licensee to file counter affidavit, but the same is not filed sofar. The representative of the respondents sought further time to file counter affidavit. The Commission noticing that sufficient time had been given already, expressed its displeasure for the action of the licensee in filing the counter affidavit. As such, the Commission required the licensee to pay costs of Rs.5,000/- to an organization to be informed by the office of the Commission.

Upon such payment, the time for filing counter affidavit stands extended. The matter is adjourned.”

Record of proceedings dated 22.09.2022:

“... The counsel for petitioner stated that the counter affidavit is yet to be filed in the matter. The representative of the respondents stated that the matter has been discussed by the licensees and arrangements have been made for payment of the amounts through PTC India Limited, which will be financing the amounts due by the licensees. The amounts will be directly paid by the PTC India Limited to the generators and arrangements have been made for payment in instalments. The advocate representing the counsel for petitioner emphasises that no intimation has been made to them, to which the Commission desired that the licensees shall cause intimation of the action taken towards payment due. The representative of the respondents has agreed to do so. Accordingly, the matter is adjourned for reporting the developments in the matter.”

Record of proceedings dated 17.10.2022:

“... The counsel for petitioner stated that the issue raised in the petition is with regard to payment of interest as also late payment charges on the amount due in respect of 10 MW solar power project of the petitioner. The petitioner has raised the bills in a timely manner, but the respondents made payments contrary to the conditions in the PPA. He has pointed out the relevant conditions in the PPA. He also stated that the interest is payable on the prime lending rate applicable at the relevant time. Even though, presently the rate is at a reduced level, the respondents are bound to pay the same to the petitioner at the applicable rate only. The petitioner had made request and represented the matter also, but no response is received by the petitioner from the respondents. The representative of the respondents sought time, stating that he is not ready with the matter as he was under the impression that the matter is connected to the batch of cases on payment of energy charges to the solar projects. In view of the request of the respondent, the matter is adjourned.”

Record of proceedings dated 21.11.2022:

“... The representative of the respondent stated that necessary statement towards amount due is already filed. There is no response to the said statement from the petitioner. Considering that the matters on payment aspect have been adjourned, this matter is also adjourned.”

Record of proceedings dated 12.01.2023:

“... The advocate representing the counsel for petitioner stated that the main prayer is with regard to late payment charges. The matter is distinguishable from the other batch of cases for the reason that the charges are being demanded for an earlier period and such amount is not with reference to the current dues as is involved in other cases. The respondent has failed to pay the charges as it has made the principal amount payment belated day beyond the stipulated time in the PPA. Consequently, it ought to have paid the late payment charges, but failed to do so. No submissions are made despite granting time.

The Commission may consider the submissions in the petition as also the arguments rendered in earlier batches of cases, which squarely apply to this case also. The representative of the respondent has pointed out the payments are being effected, but did not make any written statement on the same. Since, substantially the issue has been decided by the Commission as also several other petitions are being considered now, this matter requires no further hearing and is accordingly reserved for orders.”

Record of proceedings dated 24.04.2023:

... .. The advocate representing the counsel for petitioner stated that the main issue in this petition is with regard to interest due alongwith late payment surcharge. The details were earlier not forthcoming from the respondents. Moreover, the petitioner has claimed the bills towards power supply and the same have been honoured but in a belated manner as such interest is liable to be paid for the same and further as the amount is paid belatedly, as per the provisions of the PPA the respondent is liable to pay late payment surcharge also. One contention that has been raised by the respondent is that the claims are beyond the period of limitation, which cannot be accepted as it is a continuous process as and when the payment gets delayed. The respondent cannot contend that the limitation has expired.

The advocate representing the counsel for petitioner stated that even if the contention is to be accepted insofar as limitation is concerned the claims would survive for the reason that the Hon'ble Supreme Court in suo motu proceedings in W.P.No.3 of 2020 had extended the limitation period for the issues where the limitation had expired between 15.03.2020 to 28.02.2022 by its orders from time to time. It is also made clear there that the limitation would start running from 01.03.2022 and would be expiring after 90 days. It is also submitted that the Hon'ble Supreme Court had occasion to consider the issue of limitation in the matters of A.P. Power Coordination Committee Vs. Lanco Kondapalli Limited reported in 2016 (3) SCC 468, which is not applicable to the facts of the case. Reliance is also placed by the respondents in the matter of Power Company of Karnataka Limited Vs. Udupi Power Corporation Limited reported in 2020 SCC On Line APTEL 94, which is of no help to the respondent. In fact, the said appeal would support the contents of the petitioner that the respondent is bound to pay the LPS. The Commission has extensive power on regulation in respect of PPAs executed and it can pass such necessary orders.

The advocate representing the counsel for petitioner stated that the respondents have committed themselves to release the payments in 9 or 12 instalments upto 36 instalments of the amounts due through an affidavit filed by the respondents. They now cannot contend different aspects contrary to their own submissions that arrangements have been made for liquidating the arrears of amounts due. The Commission may consider the approbating and reprobating of submissions made by the respondents. The Commission may not consider the arguments raised now in the additional submissions in view of the specific affidavit submitted by the respondents earlier.

The representative of the respondents stated that the aspect of LPS cannot be agitated as there was no issue on the same. Therefore, the respondents have specifically adverted to in the additional submissions pointing out the provisions in the PPA alongwith the relevant law. In the contentions raised by the petitioner, the amounts have been quantified only for a specific period and

nothing is made out for a period prior to the period mentioned in the PPA or the petition. In any case as the respondents have made arrangement for payment of the principal amount, payment of interest or late payment surcharge would not arise. One specific issue that requires consideration is that of change of applicability of interest rate which was mentioned as prime lending rate, which has been changed by the banking regulator for consideration of interest as marginal cost lending rate (MCLR), which needs to be examined, as it stands contrary to the provisions of PPA. Therefore, the Commission may consider refusing the said prayer.

The advocate representing the counsel for petitioner stated that the amounts due is a continuous exercise and every month when the amount is becoming due it will attract not only interest but also late payment surcharge unless the respondents have disputed the bill and communicated the same before the due date. Inasmuch as, the Government of India had notified the late payment surcharge rules. Such rules have been held to be part of the agreement on and from the date of their notification. Therefore, the respondent could not have raised the contention with regard to applicability of the late payment surcharge and as also question of limitation attracting it. The counsel for petitioner referred to several provisions and judgements rendered by the Hon'ble ATE as also the Hon'ble Supreme Court on the question of limitation, continuity of liability and treatment of modifications made by the government policies as change in law. The contention that the calculation of interest based on prime lending rate has been changed to MCLR do constitute a change in law and the licensee should have taken steps to amend the agreement.

The advocate representing the counsel for petitioner stated that the Commission may not consider any of the submissions made by the licensee as the law is settled against them. Also, the Commission had already disposed of a batch of cases on the similar subject. Therefore, there is nothing further to be considered for deviation from the earlier decision of the Commission.

The Commission felt it appropriate that the parties to the petition may consider undertaking conciliation of the matter towards LPS amount amicably. In view of the submissions made by the parties, the matter is reserved for orders.

6. The Commission is of the view that the Telangana State Power Coordination Committee (TSPCC/3rd respondent) is neither a statutory body nor is a recognized under the Act, 2003 or the regulations made thereof by the Commission. The said Committee has been created by the Government vide G.O.Ms.No.21 dated 12.05.2014, as referred by the petitioner, is only to coordinate the power procurement and allied activities to have a single window to favour generators. It is also relevant that just because correspondence is being done by the TSPCC, it has no statutory authority to contest or defend for the lapses or omissions committed by 1st respondent. As such it need not be a party to the proceedings before the Commission. Hence, the Commission dropped 3rd respondent viz., TSPCC from the array of the respondents, accordingly.

7. Though the Commission was considerate and magnanimous in granting time for filing the counter affidavit, the respondent has failed to respond to the petition as also did not place any information either acceding to or refusing the claims made by the petitioners. 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. From the pleadings it is noticed that the petitioner is having a long-term Power Purchase Agreement with the respondent vide PPA dated 11.03.2015 for setting up of the Solar Power Project of 10 MW capacity near 132/33 kV Makthal substation, Mahabubnagar District for sale of Solar Power to the respondent for a period of 25 years from the Date of Commercial Operation (i.e., 24.02.2016) at tariff of Rs.6.84 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 –

- 5.1 *For the Delivered Energy, the Solar Power Developer (petitioner) shall furnish a bill to the DISCOM (respondent) 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 *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)]*
- 5.3 *The respondent shall pay the bill on a monthly basis;*
- 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;*
- 5.5 *The respondent shall make payment for the eligible bill amount by the due date of payment;*
- 5.6 *The respondent shall pay the bills of petitioner promptly;*
-
- 11.4 *... .. any party may approach the TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003;*

9. Prima facie, the prayer in this petition is with regard to action of the respondent in not making the payment in accordance with the provisions of the PPA. The petitioner has identified an amount of Rs.3,18,45,370/- being the outstanding interest amount at the rate of Prime Lending Rate of State Bank of India payable by the respondents to

the petitioner on account of delay in payment (LPS) of the monthly bills from 24.01.2017 to 17.12.2021 in terms of Article 5.2 of the PPA.

10. 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 is no dispute on the amounts payable by the respondent to the petitioner. 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 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*". Further, as the PPA provides for payment of interest, it is bounden duty of respondent to pay the interest in terms of the PPA.

11. Therefore, the Commission is inclined to grant the relief as prayed for in the original petition, for the payment of outstanding interest claim as per Clause 5.2 of the PPA.

12. In the light of the above, the petition stands allowed and the respondent shall comply with this order in accordance with the provisions of the PPA within a period of four (4) weeks from the date of receipt of this order.

13. The original petition is disposed of on the above terms and in the circumstances without any costs

This order is corrected and signed on this the 15th day of December, 2023.

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

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