

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 26/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 30th December, 2023

In the matter of

Petition under Section 79 including Sections 79(1)(b), 79 (1)(f) and 79 (1)(k) of the Electricity Act 2003, with respect to the Power Purchase Agreement (PPA) dated 01.11.2013 executed between the Petitioner (DB Power Ltd.) and the Respondent No. 1 (PTC), and the Power Purchase Agreement dated 01.11.2013 executed between Respondent No. 1/ PTC and Respondent No.2 to 5 seeking payment of the outstanding dues towards Late Payment Surcharge on account of delayed reimbursement of transmission charges/ Point of Connection Charges (POC) paid by the Petitioner to PGCIL on behalf of Respondents, in terms of the aforesaid PPA.

And

In the matter of

DB Power Limited,

3rd Floor, Naman Corporate Link,
Opposite Dena Bank, C-31, Block G,
Bandra Kurla Complex
Bandra (E), Mumbai 400 051,

...Petitioner

Versus

1. PTC India Limited,

2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi-110066.

2. Rajasthan Rajya Vidyut Prasaran Nigam Limited,

RVPN IT Center,
Chambal Power House Campus,
Hawa Sarak,
Jaipur-302006

3. Jaipur Vidyut Vitran Nigam Limited,



Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005

4. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Makarwali Rd,
Panchsheel Nagar, Ajmer,
Rajasthan 305004

5. Jodhpur Vidyut Vitran Nigam Limited,
New Power House Premises,
Light Industrial Area,
Basni - 342003

....Respondents

Parties present:

Shri Buddy Ranganadhan, Advocate, DBPL
Ms. Supriya Rastogi, Advocate, DBPL
Ms. Lavanya Panwar, Advocate, DBPL
Shri Hemant Singh, Advocate, DBPL
Shri Ravi Kishore, Advocate, PTCIL
Shri Keshav Singh, Advocate, PTCIL
Shri Dhruv Tripathi, PTCIL
Ms. Swapna Seshadri, Advocate, Rajasthan Discoms
Ms. Shivani Verma, Advocate, Rajasthan Discom

ORDER

The Petitioner, D. B. Power Limited, has filed the present Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 (in short 'the Act') seeking appropriate directions upon the Respondent No.1, PTC India Limited (PTCIL) for releasing the payment of Rs.20,39,79,703/- outstanding as on 30.11.2022 towards the Late Payment Surcharge (LPS) accrued in favour of the Petitioner on account of the delayed reimbursement of transmission charges/Point of Connection (POC) charges paid by the Petitioner to Power Grid Corporation of India Limited (PGCIL) on behalf of the Respondents, along with interest. The Petitioner has made the following prayers:

“(a) Direct the Respondents to make payment of Rs 20,39,79,703 to the Petitioner towards the Late Payment Surcharge, calculated as on 30.11.2022, as detailed in ANNEXURE P-14 hereto, along with further interest;



(b) *In the interim, direct the Respondents to release 80% of the amount mentioned in prayer (a), subject to outcome of the petition; and*

Submissions of the Petitioner

2. The Petitioner has mainly submitted as under:

(a) The Petitioner has set up a 1200 MW coal based Thermal Power Plant (2 units x 600 MW each) at Village Badadarha, Janjgir Champa, in the State of Chhattisgarh. The Petitioner is supplying 311 MW power to Rajasthan Discoms through PTCIL under the long term PPA, apart from supplying power to other State Discoms under the Long and Medium Term PPAs.

(b) On 28.5.2012, Respondent No. 2 RVPN initiated a bidding process for procurement of 1000 MW power ($\pm 10\%$) at delivery point for a period of 25 years on Case-I bidding process, as per the terms and conditions outlined in the Request for Proposal Document ("RFP") on behalf of Respondents 3 to 5, namely, Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited (hereinafter referred to as the Rajasthan Discoms) for meeting their Base load requirement of power.

(c) PTC India Limited (hereinafter referred to as the PTCIL), on behalf of the Petitioner, submitted the bid for 311 MW capacity at Interconnection Point. Subsequently, an additional 99 MW power was offered by the Petitioner at the same terms & conditions of the RFP and quoted tariff in its bid vide its letter dated 24.9.2013. The aforesaid bid of PTCIL, including additional power, was accepted by the Procurer(s) and a Letter of Intent ("LoI") dated 27.9.2013 was issued in favour of the PTCIL for the supply of 410 MW (311 MW + 99 MW) capacity from the Project. Pursuant to the Letter of Intent, PTCIL on 1.11.2013 signed a PPA with the Rajasthan Discoms (hereinafter referred to as "the Procurer(s) PPA"). PTCIL entered into a Power Purchase Agreement (hereinafter referred to as "PTC-PPA") with the Petitioner on a back-to-back basis to enable PTCIL to fulfil its duties and obligations under the said agreement. The provisions of the Procurer(s)-PPA are *mutatis-mutandis* applicable upon the PTC-PPA unless there is a specific deviation thereunder.

(d) The Petitioner executed a Bulk Power Transmission Agreement dated 24.2.2010 with CTUIL for the grant of a 705 MW LTA. On 10.8.2013, the



Petitioner signed a Transmission Service Agreement (“the TSA”) with PGCIL, for transmission of the contracted capacity of power to PTCIL/ Procurer(s). As per the TSA, the Designated Inter-State Customer (“DIC”) is required to pay the POC charges/ transmission charges to the Implementing Agency i.e., CTUIL/ PGCIL, within the due date.

(e) As per Article 4.4 of Schedule 4 of the Procurer(s)-PPA and Article 5.2(e) of the PTC-PPA, the payment of transmission / POC charges is the liability of the ultimate beneficiary, which in the present case are the Respondents. The said Articles further provide that the Petitioner will claim reimbursement of the aforesaid POC charges from the Respondents, once the same are paid to the CTUIL/ PGCIL. Accordingly, the Petitioner made payment of the transmission / POC charges to PGCIL on behalf of PTCIL/ Procurer(s) and, thereafter, claimed the reimbursement of the same in terms of the PPA(s). Further, in the event of delay in payment of such transmission charges beyond the due date as stipulated in the TSA, the Petitioner is liable to bear the delayed penalty.

(f) On account of the fact that the provisions of the Procurer(s) PPA shall be *mutatis-mutandis* applicable upon the PTC-PPA, the provisions of the billing and payments, including the LPS and supplementary bills, etc., under the Procurer(s) PPA shall also be applicable upon the PTC-PPA, as also provided under Article 6 of the PTC-PPA. Article 8 of the PPAs, in respect of the charges/ claims to be paid thereunder, provides for a due date as to when the same becomes due, and also has a provision of the delayed interest/ LPS in case of delay in making payment of such claims.

(g) The absence of any due date and interest thereof in case of delay, on the reimbursement charges is resulting in an absurd corollary, whereby the aforesaid charges are allowed to remain outstanding for an indefinite time period without any consequences of the same. The aforesaid would be completely contrary to the principles of the time value of money as settled by the Hon'ble Supreme Court and APTEL in various judgments. Further, it cannot be ignored that the general principle behind the concept of the LPS/delayed interest under the PPAs is to ensure that the generators are compensated for the time value of money in the event of delay in recovery of their legitimate dues under the said



PPAs. In other words, delayed interest is a principle based on the concept of the time value of money or the monies denied at the appropriate time and paid after a lapse of time.

(h) The principle of the time value of money is also enshrined under the commercial principles provided in Section 61(b) of the Act. It is settled law that the aforesaid commercial principles contained under Section 61 of the Act duly apply to a PPA under Section 63 as well. Therefore, the payment of delayed interest on delayed/ non-payment of POC charges to the Petitioner under the PTC-PPA cannot be denied or ignored in any manner whatsoever. Therefore, the Petitioner is entitled to receive the LPS on account of the delay in reimbursement of POC charges in terms of the provisions provided under the Procurer(s)-PPA, which are *mutatis-mutandis* applicable to the PTC-PPA.

(i) The Petitioner has paid the transmission / POC charges to PGCIL, on behalf of PTCIL/ Procurer(s), regularly starting from August 2015, and thereafter submitted the said bills to PTCIL/ Procurer(s) for reimbursement of the same. However, beginning from January 2019, PTCIL/ Procurer(s) started defaulting in making timely reimbursement of the transmission charges/ POC paid by the Petitioner on their behalf, thereby entitling the Petitioner to claim LPS/interest. Accordingly, the Petitioner started raising supplementary bills for the LPS on delayed reimbursement of transmission/POC charges. The Petitioner raised supplementary bills upon PTCIL/ Procurer(s) towards LPS on the outstanding amounts on the basis of Regulation 59 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 and Clause 3.4 of CTUIL's BCD Procedure. As per the aforesaid provisions, the due date of the bill is provided as 45 days from the date of the bill, and the LPS is payable @ 1.50% per month on the outstanding amount. Therefore, the LPS claim due to delayed reimbursement of the transmission/POC charges is significantly lesser than the claim which would have accrued if the LPS on outstanding dues were to be calculated as per the provisions of the PPA.

(j) The Petitioner vide its letters dated 22.10.2019, 5.11.2019, and several reminder letters requested PTCIL to release the outstanding payments towards transmission/POC charges already paid by the Petitioner to PGCIL on its behalf,



along with LPS accrued thereon. However, although PTCIL did not dispute the outstanding as against reimbursement of POC charges, it refuted the demands for LPS, stating that POC bills are in the nature of reimbursement and that no surcharge is applicable on the POC bills.

(k) On 28.8.2020, the Petitioner, in line with the Notification of the Ministry of Power (MoP) on Atma Nirbhar Bharat dated 13.5.2020 for payment of the LPS. However, despite repeated reminders, PTC did not release the LPS accrued as against it on account of the delayed payment of the reimbursements qua POC/ transmission charges in terms of the PPA(s), in complete disregard of the contractual terms and the directions of the MoP. Accordingly, the Petitioner once again wrote reminder letters and raised supplementary invoices towards the LPS amount. In order to facilitate effective resolution of the issues, a meeting through video conferencing was held on 25.5.2021 between Respondent No. 1 and the Petitioner to discuss the issues related to the Letter of Credit, POC charges and reconciliation of accounts.

(l) Subsequently, the Petitioner vide an email dated 22.9.2021, requested PTCIL to send editorial changes along with the discussions held with the CFO of the Petitioner company, the POC charges that have been cleared since then, and the LPS on the energy reconciliation done and as agreed till the end of September 2021.

(m) In the meanwhile, the Petitioner, in view of the accumulated outstanding, *inter alia*, towards transmission/ POC charges, wrote various reminder letters to PTCIL requesting the release of payments and raised Supplementary invoices towards the LPS. accruing as against Respondents on account of the continuous delay in making payment of reimbursement qua POC/ transmission charges. Although certain delayed payments were made as against the POC bills. However, despite repeated reminders, no payments were released to the Petitioner as against LPS accrued qua POC/ transmission charges, which is not only in clear violation and gross disobedience of the contractual terms as agreed between the parties under the PPA, but also in violation of the MoP notification dated 13.5.2020.

(n) In terms of Regulation 13(2) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, which came into force from 1.11.2020 (the Sharing Regulations), payment of POC charges is the liability of the ultimate beneficiary. Accordingly, as on 9.2.2022, PTCIL has made payment of the PoC dues accumulated till the month of June 2021. However, nothing has been paid as against the claim of LPS qua PoC reimbursement, to the Petitioner. As such, as on date, there is an outstanding of Rs. 20,39,79,703/- towards LPS qua PoC Bills for the months of January 2019 to June 2021, as against PTCIL/ Procurer(s), in terms of the provisions of the PPA(s).

(o) PTCIL, qua reimbursement of POC charges, is attempting to take benefit of its own default, by, on the one hand, delaying the aforesaid reimbursement contrary to the spirit of the PPAs, while, on the other hand, denying the payment of LPS indefinitely to the Petitioner which is ingrained under the aforesaid PPAs, and that too without payment of any LPS, which is contrary to the principle of time value of money.

(p) Accordingly, when the overall scheme of the PPAs in question already provides for a due date and delayed interest for recovery of other claims based on the principle of time value of money read with the terms of the PTC-PPA, the same ought to be applied for the recovery of PoC reimbursement claims of the Petitioner from PTCIL/ Procurer(s) under the said PPAs.

Hearing dated 20.4.2023.

3. The Commission admitted the Petition, and notices were issued to Respondents to file their respective replies. Replies and rejoinders have been filed by the parties.

Reply of the Respondents

4. The Respondents, Rajasthan Discoms, in their joint reply dated 28.6.2023, have mainly submitted as under:



(a) As per the provisions of Article 4 and Schedule 4 of the Procurer-PPA, it is clear that the transmission charges/wheeling charges payable to the CTUIL/STU are to be reimbursed by PTCIL, and such charges consequent to having been paid by PTCIL are to be reimbursed by the Procurers. In case of delay in payment of the monthly bill by the Procurer beyond its due date, LPS shall be payable by the Procurer to the seller.

(b) On 1.11.2013, PTCIL and the Petitioner entered into a PPA on a back-to-back basis with the Procurer-PPA. The PTC-PPA does not provide for any time frame for releasing the payment towards reimbursement of the monthly transmission charges. Article 5.2 (e) of the PTC-PPA specifies that “the monthly transmission charges paid by the Procurer(s) to PTCIL and as provided in Article 4.4 of the Schedule 4 of the Procurer(s)-PPA shall be received by PTCIL and reimbursed to company if the same has been paid by the company to CTUIL.” From the above provision of the PTC-PPA, it is clear that the reimbursement by PTCIL for monthly transmission charges was as provided in Article 4.4 of Schedule 4 of the Procurer-PPA to the company.

(c) In addition to capacity charges and energy charges, PTCIL shall reimburse the transmission charges to the Petitioner in case the same has been paid by the Petitioner to PGCIL.

(d) In the present Petition, the entire case of the Petitioner against PTCIL is that PTCIL has delayed in reimbursing the transmission charges to the Petitioner. Since PTCIL has failed to carry out its contractual obligations, PTCIL is liable to pay the LPS and interest.

(e) It was the liability of PTCIL to reimburse the transmission charges to the Petitioner. The Petition is silent on any delay on the part of the Rajasthan Discoms to make good the transmission charges. It is relevant to note that even hypothetically if there were any delay on the part of the Rajasthan Discoms, the same under the scheme of the Procurer-PPA would not attract a levy of any LPS. Also, if there were any delay on the part of the Rajasthan Discoms, the LPS would be applicable from the date of receipt of bills from PTCIL as the Rajasthan Discoms are contractually bound by the PPA executed with PTCIL.



(f) The payment of transmission charges was the sole responsibility of the Petitioner and was not dependent on receipt of the payment from PTCIL. The LPS charged by the PGCIL was on account of the default of the Petitioner, and the Rajasthan Discoms cannot be held liable for the same.

(g) As per the PTC-PPA, the due date has been defined as, “the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer(s) or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer(s).”

(h) As per Article 4.2.1 of the Schedule 4 PTC-PPA, the due date only pertains to Monthly Bills and Supplementary Bills and does not cover reimbursement of transmission charges. In view thereof, LPS is not at all attracted towards delay in reimbursement of the transmission charges as per Article 8.3.5 of the PTC PPA.

(i) It is also clear from the express language of Article 8.3.5 that LPS would be payable by the Procurer in the event of delay of payment of the monthly bill beyond its due date. In other words, there can be no incidence of the LPS on the Procurers when no such monthly bill towards transmission charges has been raised by the Petitioner on the Rajasthan Discoms.

5. PTCIL, in reply dated 16.5.2023, has mainly submitted as under:

(a) As per the PTC-PPA, the Petitioner and the PTCIL had agreed that both the parties would abide by and adhere to the rights and obligations of PTCIL under the Procurer-PPA on back-to-back basis and accordingly, the terms of the Procurer-PPA was incorporated in PTC-PPA except to the extent mentioned specifically in the PTC-PPA.

(b) It is an accepted fact that the PTC-PPA and the Procurer-PPA are on a back-to-back basis. This has been acknowledged specifically by the Petitioner in Para 13 of the Petition, wherein the Petitioner has acknowledged that *PTCIL* entered into a Power Purchase Agreement (“PTC-PPA”) with the Petitioner on



the back-to-back basis to enable PTCIL to fulfil its duties and obligations under the said agreement. The provisions of Procurer(s)-PPA are mutatis-mutandis applicable upon the PTC-PPA unless there is a specific deviation thereunder”.

(c) The rights and obligations of the PTCIL were as per the Procurer-PPA except to the extent specified in the PTC-PPA. The PTC-PPA had provisions for the payment of tariff by PTCIL to the Petitioner as specified in Article 5.2 (e) of the PTC-PPA.

(d) From the provision of PTC-PPA and Procurer-PPA, it emerges that the tariff payable was the sum of capacity and energy charges minus PTCIL trading margin, and the payment of the RLDC/SLDC charges shall be the responsibility of the Procurer(s). The monthly transmission charges paid by the Procurer (s) to PTCIL and as provided in Article 4.4 of Schedule 4 of the Procurer (s)- PPA shall be received by PTCIL and reimbursed to the company if the same has been paid by the company to CTUIL. Thus, the responsibility to pay the transmission charges was that of the Procurer, and PTCIL was to reimburse the same to the company/Petitioner after receiving the same.

(e) Further, as per Article 6.4, “PTC shall make payment to the company for power supplied within due date (i.e. due date as per the Procurer(s)- PPA).” Thus, the PTC-PPA had specific provision with regard to the payment of tariff by PTCIL for the power supplied by the Petitioner to Respondent Nos. 2 to 5 through Respondent No.1. PTCIL had always complied with the provisions of the PPA with regard to the payment to the Petitioner for the power supplied.

(f) The PTC-PPA does not provide for any time frame for releasing the payment towards reimbursement of monthly transmission charges. As per Article 4 of the PTC PPA, the due date does not cover the reimbursement of the transmission charges, and hence, the surcharge is not applicable as per the agreement.

(g) From the details of bills raised by the Petitioner regarding reimbursement of the PoC charges and payment by PTCIL, it can be observed that from almost till the end of the year 2019, the reimbursement was done.

(h) On perusal of the details of the bills raised by the PTCIL on Rajasthan Discoms and payment received by PTCIL it can be observed that there had been considerable delay in reimbursement of PoC charges by Rajasthan Discoms. The Rajasthan Discoms reimbursed the amount with substantial delay, and a huge amount remained outstanding. PTCIL followed up with Respondent No.2, RUVNL, for payment of the POC charges.

(i) For any delay in payment of energy bills, PTCIL has been raising the LPS invoices on the Rajasthan Discoms and accordingly, payment has been made by them. However, PTCIL never raised any invoice towards the LPS charges in respect of the POC on Rajasthan Discoms as no LPS was payable on PoC charges as per provisions of the PTC-PPA and the Procurer-PPA.

(j) The issue of reimbursement of the transmission charges is as per the Procurer-PPA, as no deviation on this issue has been mentioned in the PTC-PPA. Further, Article 5.2 (e) of the PTC-PPA specifically mentions that the monthly transmission charges shall be reimbursed by PTCIL as provided in Article 4.4 of Schedule 4 of the Procurer-PPA.

(k) The provisions of the Procurer-PPA regarding reimbursement of the transmission charges as provided in Article 4.4 of Schedule 4 have been incorporated mutatis mutandis in PTC-PPA. That being so, it was ultimately the liability of the Procurer(s) i.e. Respondent Nos.2 to 5, to reimburse the PoC charges to the Petitioner.

(l) As far as the delay in reimbursement is concerned, on receipt of a bill from the Petitioner along with proof of the payment of POC charges to CTUIL, the PTCIL used to raise identical bills on Respondent Nos. 2 to 5 and claimed reimbursement after making reimbursement to the Petitioner. However, Respondent Nos.2 to 5 delayed the reimbursement of the POC charges. Respondent No.1, through various letters, had followed up with Respondent Nos.2 to 5 to make the payment of the PoC charges at an early date.

(m) PTCIL made prompt reimbursement to the Petitioner. However, as per the Procurer-PPA and back-to-back PTC PPA, no delayed payment surcharge is applicable, Respondents 2 to 5 made delayed reimbursement up to 2 to 3



months for the PoC bills while giving priority to the payment of all other charges like energy, etc. to reduce its LPS liability. PTCIL had clearly informed that due to non-reimbursement of timely PoC bills, it is not able to reimburse the Petitioner and made repeated requests to Respondents 2 to 5 for early reimbursement. However, no relief was received from them regarding the timely reimbursement of the PoC bills.

(n) As regards the payment of LPS, neither the PTC-PPA nor the Procurer-PPA had any provision for payment of the LPS. It was the responsibility of the Petitioner to make the payment to CTUIL towards the transmission charges and the PTCIL cannot be faulted for any delay on the part of the Petitioner to pay the POC charges.

(o) PTCIL, being a trader of electricity, was acting as an intermediary/conduit only and was entitled to trading margin on the tariff, i.e. the payment for the energy supplied. PTCIL was not entitled to any revenue whatsoever on account of payment of the POC charges. It was the total understanding of all the parties that the PoC charges were to be ultimately reimbursed by Respondent Nos. 2 to 5.

(p) The Statement of Objects and Reasons of the Act has recognized trading as a distinct activity. The term trading has been defined under Section 2(71) of the Act. The APTEL, in a plethora of cases, has held that a trading licensee acts as a conduit between the generating company and distribution licensee, namely, in the cases of PTC India Ltd. v. Uttarakhand Electricity Regulatory Commission and Others [reported as (2011) ELR (APTEL) 81], Lanco Power Ltd. v. Haryana Electricity Regulatory Commission and Other [reported as (2011) ELR (APTEL) 1714], PTC India Ltd. v. Uttarakhand Electricity Regulatory Commission and Others [reported as (2016) ELR (APTEL) 1176]:

(q) In the present case, electricity generated by the Petitioner is being supplied to the Respondent Discoms. The PTCIL merely facilitates the supply of electricity and in return, charges the prescribed trading margin.

(r) The arrangement between the parties could be given no other interpretation in view of the fact that the PTCIL is playing only the role of a trader without assuming any of the risks. The interpretation sought to be given to this arrangement by the Petitioner is not only contrary to the language of the agreements and the understanding of the parties, but also contrary to the business common sense.

(s) It is well settled that in addition to the words in a commercial instrument, the Court must also consider the commercial purpose of the instrument and, in considering that purpose, must rely upon its own experience of contracts of a similar nature. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Satya Jain v. Anis Ahmed Rushdie [(2013) 8 SCC 131].

Rejoinder of the Petitioner

6. The Petitioner in its rejoinder to the reply of Rajasthan Discoms dated 10.7.2023 has submitted as under:

(a) In terms of the TSA dated 10.8.2013, executed with PGCIL for transmission of the contracted capacity of power to Respondents, the Designated ISTS Customer is required to pay the PoC / transmission charges to the implementing agency within the due date. Therefore, the payment of the transmission charges is the liability of the ultimate beneficiary, which in the present case is the Rajasthan Discoms. The same is forthcoming from the Article 4.4 of Schedule 4 of the Procurer(s)-PPA and Article 5.2(e) of the PTC-PPA.

(b) From a perusal of the provisions of the PPAs and the TSA with respect to the liability of the transmission charges, it becomes clear that Respondents 2 to 5 are the ultimate beneficiaries, and as such. are liable to bear the transmission charges. However, in terms of the contractual understanding, the said charges are paid by the Petitioner on behalf of the Rajasthan Discoms, which are thereafter reimbursed to the Petitioner by the intermediary, i.e., PTCIL on receipt of such charges from the Discoms, i.e., the ultimate procurers/ beneficiaries. It is clear from the contractual scheme of the PPAs



that although the PTCIL has a bigger role than merely being an intermediary between the Petitioner and Respondents 2 to 5, however, it's the ultimate responsibility of the Respondents 2 to 5 to ensure timely reimbursement of the transmission charges to the Petitioner.

(c) Therefore, although PTC cannot be completely absolved from the responsibility to ensure timely payment of the bills of the Petitioner, irrespective of the distribution licensees making payment of such bills, especially in light of the fact that PTCIL, as a trader collects trading margin on the transactions. However, the aforesaid responsibility is not *inter-se* between the Petitioner and PTCIL alone and the Respondents 2 to 5 are equally responsible for the same being the ultimate beneficiary in terms of the contractual scheme as forthcoming from the combined reading of the provisions of the PPAs. Accordingly, as per the contractual scheme, both PTCIL and the Discoms are jointly and/ or severally responsible/ liable for the timely reimbursement of the transmission charges to the Petitioner.

(d) Article 8 of the PPAs, in respect of the charges/ claims to be paid thereunder, provides for a due date as to when the same becomes due and also has a provision of delayed interest/ LPS in case of delay in making payment of such claims.

(e) Accordingly, the LPS on delayed payment of PoC charges shall be as per the provisions of the Procurer-PPA, which state that in the event of any delay in payment of bills beyond the due date i.e., 30 days from the date of the bill, LPS will be payable by such Procurer(s) to the seller at the rate of two per cent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest), raised vide supplementary bill.

(f) Rajasthan Discoms, in their replies, has shifted the whole sole burden of such liability of delay to the PTCIL. The aforesaid express admission on the part of Respondents 3 to 5 of the unreasonable delay, makes it clear that the Petitioner is suffering at the hands of the Respondents. Accordingly, the contention of Respondents 3 to 5 that there is no time frame for payment of

the reimbursement amount to the Petitioner and that there is no clause of payment of LPS on delay in payment of such amounts to the Petitioner is resulting in an absurd corollary, whereby the aforesaid charges are allowed to remain outstanding for indefinite time period without any consequences of the same.

(g) The Rajasthan Discoms have contended that interest is a substantive right which flows either from the statute or from the express provision of the contract. Accordingly, in line with the submissions of the Respondents, in the present case, reference can be made to the various judgments of the Hon'ble Supreme Court whereby it has been held that in the event of delayed payment or due amounts, the court has discretion to grant the interest on such amounts for such delay. Reference can be made to the judgments of the Hon'ble Supreme Court in the cases of *Irrigation Deptt., Govt. of Orissa v. G.C. Roy*, [reported in (1992) 1 SCC 508] and *Union of India v. Justice S.S. Sandhawalia* [reported in (1994) 2 SCC 240]. Therefore, the Petitioner is entitled to receive the LPS on account of the delay in reimbursement of POC charges in terms of the provisions already provided under the Procurer(s)-PPA, which are *mutatis-mutandis* applicable to PTC-PPA, detailed hereinbefore.

7. The Petitioner, in its rejoinder to the reply of PTCIL, dated 10.7.2023, has submitted as under:

(b) The payment of transmission charges is the liability of the ultimate beneficiary, which in the present case is the Respondents. The same is forthcoming from the Article 4.4 of Schedule 4 of the Procurer(s)-PPA and Article 5.2(e) of the PTC-PPA. The said Articles categorically provide that the transmission charges/ POC will be paid by the seller i.e., the Petitioner, and once the said charges are paid to CTUIL/ PGCIL, the same will be claimed by the Petitioner as reimbursement from the Respondents, which will be paid by PTCIL, on receipt of the same from the Respondents 2 to 5.



(c) PTCIL itself has admitted that there has been an unreasonable amount of delay in reimbursement of the transmission charges to the Petitioner in terms of the PPA(s), though it has shifted the whole sole burden of such liability of delay on the Respondents 2 to 5 (Discoms). The aforesaid express admission on the part of PTCIL of the unreasonable delay, makes it clear that the Petitioner is suffering at the hands of Respondents. Accordingly, the contention of PTCIL that there is no time frame for payment of the reimbursement amount to the Petitioner and that there is no clause of payment of the LPS on delay in payment of such amounts to the Petitioner is resulting in an absurd corollary, whereby the aforesaid charges are allowed to remain outstanding for an indefinite time period without any consequences of the same.

(d) It is a settled principle of law that monies denied to a party always carry a component of interest. Such recovery of interest on outstanding payment ensures that the affected party (generator in the present case) to the contract, who is denied payment of its dues, shall be restituted to the same economic position as it was, as and when such payment first became due. Hence, the recovery of interest applicable on the outstanding payment is necessary for compensating the generator on account of the enormous and inordinate delay in making payment so that the generator is compensated for the time value of money in the event of delay in recovery of the same.

(e) The principle of the time value of money is also enshrined under the commercial principles provided in Section 61(b) of the Act. It is settled law that the aforesaid commercial principles contained under Section 61 of the Act duly apply to a PPA under Section 63 as well. Therefore, the payment of delayed interest on delayed/ non-payment of PoC charges to the Petitioner under the PTC-PPA cannot be denied or ignored in any manner whatsoever.

(f) Therefore, the Petitioner is entitled to receive the LPS on account of the delay in reimbursement of POC charges in terms of the provisions already provided under the Procurer(s)-PPA, which are *mutatis-mutandis* applicable to PTC-PPA.

Hearing dated 19.7.2023

8. Vide Record of Proceedings for the hearing dated 19.7.2023, the Petitioner was directed to file the following information:

(a) Under which clause of the PPA, LPS bills have been raised on account of reimbursement of transmission charges by PTC India Limited. Timeline to reimburse the transmission charges as per the PPA?

(b) There is a gap in the bills for the reimbursement of transmission charges raised by the Petitioner to PTC invoice raised by PTC to Discoms. Furnish the month-wise detail of the date of bills raised by CTUIL, payment of transmission charges made to CTUIL, bills raised to PTC for reimbursement and date when it received the reimbursement from PTC as per the following table for the entire disputed period:

S. No.	Billing month	Date of Bill raised by CTUIL	Bill Amount	Bill due date	Date of payment by the Petitioner to CTUIL	Date Raising of reimbursement bills by the Petitioner to PTC	Bill amount	Date of receipt of the payment from PTC to the Petitioner

9. The Respondent PTC was directed to submit the following information:

(a) Month-wise detail of payment made to the Petitioner and the bills raised to the Rajasthan Discoms as per the following for the disputed period:

S. No.	Billing month	Date of reimbursement Bill raised by the Petitioner to PTC	Bill amount	Date of raising reimbursement bill to Rajasthan Discoms	Bill Amount	Date of receipt of payment by Rajasthan Discoms	Date of Payment remitted to the Petitioner

(b) Article 6.5 of the PTC-PPA provides that all payments including the tariff payment shall be released by PTC without linking it with the payment from the procurer. Clarify the process followed by PTC for reimbursement of the monthly transmission charges to the Petitioner.



(c) Whether Late Payment Surcharge is leviable to Rajasthan Discoms, if they have delayed in reimbursement of the transmission charges to the PTC.

Submissions of the Petitioner:

10. The Petitioner, vide its affidavit dated 14.8.2023, has submitted as under:

(a) With regard to the clause of the PPA regarding the raising of the LPS, there is no billing and payment provision under the PTC-PPA which deals with due dates, timelines, delayed interest, etc. As per recital G of the PTC-PPA, the provisions of the Procurer(s) PPA are *mutatis-mutandis* applicable on PTC-PPA, unless there is an express deviation/ bar stated in the Agreement. Accordingly, the provisions for Billing and Payment provided under the Procurer(s) PPA will be applicable to the PTC-PPA. However, the aforesaid provision neither specifically covers the billing with respect to reimbursement of transmission charges and timeline for such reimbursement, nor includes the delayed interest/ late payment surcharge in case of delay in reimbursement of transmission charges.

(b) If there is a delay in making payment of a principal amount, the said amount has to include the interest component for compensating for such delay. Since the interest is nothing but a barometer for the time value of money, which is an inherent part of the principal amount, as if the said principal accrues on the actual date of payment/ reimbursement.

(c) Therefore, applying the aforesaid principle of purposive interpretation, interest or late payment surcharge cannot be denied to the Petitioner based on an argument that (i) there is no provision for interest; or (ii) there is no timeline for payment of reimbursement bills, as interest entitlement has to be read into the right of the Petitioner to accept reimbursement of POC bills after a delay. As such, the intent and purpose behind Article 8 of the Procurer(s)-PPA, which provides for billing and payments including late payment surcharge etc., will be applicable.

(d) Regulation 59 of CERC (Terms and Conditions of Tariff) Regulations, 2019 and Clause 3.4 of CTUIL BCD Procedure, also provides for delayed



interest/ LPS. In terms of this, the Petitioner is entitled to the payment of LPS on any payment beyond the due date of 45 days from the date of the bill, and LPS is payable @ 1.50% per month on the outstanding amount. Accordingly, the Petitioner has raised the bills for delayed interest on the basis of whichever provision (i.e., PPA and Regulation) provides a lower rate of interest on delayed payments. Accordingly, the Petitioner has a legal and contractual right to recover the aforesaid delayed interest on the reimbursement.

(e) With regard to the gap in the bills for the reimbursement of transmission charges raised by the Petitioner to PTCIL and the invoice raised by PTCIL to Discoms, the details are as under:

S.No.	Billing month	Date of Bill raised by CTUIL	Bill Amount	Bill due date	Date of payment by the Petitioner to CTUIL	Date of Raising of reimbursement bills by the Petitioner to PTC	Bill amount	Bill due date (45 days)	Date of receipt of the payment from PTC to the Petitioner
1	Jan'19-Mar'19	21-06-2019	2,46,44,095	10-08-2019	12-07-2019	26-06-2019	2,46,44,095	26-08-2019	31-10-2019
2	Apr'19	07-05-2019	12,59,29,116	17-08-2019	04-07-2019	03-07-2019	12,59,29,116	18-08-2019	18-10-2019
3	Dec'19	07-01-2020	14,85,16,340	27-02-2020	18-03-2020	13-01-2020	14,85,16,340	02-05-2020	01-07-2020
4	Jan'20	06-02-2020	15,18,55,030	29-03-2020	04-07-2020	13-02-2020	15,18,55,030	18-08-2020	21-09-2020
5	Oct'19-Dec'19	03-04-2020	6,37,25,211	28-05-2020	04-07-2020	13-04-2020	6,37,25,211	18-08-2020	03-09-2020
6	Feb'20	05-03-2020	14,70,44,093	28-04-2020	13-07-2020	14-03-2020	14,70,44,093	27-08-2020	29-10-2020
7	Mar'20	08-04-2020	14,92,68,593	28-05-2020	24-07-2020	13-04-2020	14,92,68,593	07-09-2020	27-11-2020
8	Apr'20	08-05-2020	12,51,70,032	26-06-2020	24-07-2020	12-05-2020	12,51,70,032	07-09-2020	16-03-2021
9	May'20	05-06-2020	13,92,01,717	30-07-2020	28-07-2020	15-06-2020	12,96,28,055	11-09-2020	03-04-2021
10	Q4	18-06-2020	7,77,72,926	16-08-2020	30-07-2020	02-07-2020	7,77,72,926	13-09-2020	21-05-2021
11	Jun'20	06-07-2020	13,25,51,142	31-08-2020	30-07-2020	17-07-2020	11,46,68,260	13-09-2020	21-05-2021
12	Jul'20	06-08-2020	14,28,04,078	28-09-2020	21-08-2020	14-08-2020	12,90,02,259	05-10-2020	31-05-2021
13	Aug'20	08-09-2020	12,97,25,487	24-10-2020	09-09-2020	09-09-2020	12,96,96,932	24-10-2020	13-07-2021
14	Sep'20	07-10-2020	13,87,32,150	22-11-2020	08-10-2020	08-10-2020	12,69,41,797	22-11-2020	13-07-2021
15	Q1	09-10-2020	2,87,08,523	26-11-2020	12-10-2020	12-10-2020	2,87,08,523	26-11-2020	09-09-2021
16	Oct'20	08-11-2020	12,78,84,948	26-12-2020	10-11-2020	11-11-2020	12,78,84,948	25-12-2020	12-08-2021
17	Nov'20	09-12-2020	12,83,50,680	25-01-2021	11-12-2020	11-12-2020	12,83,50,680	25-01-2021	09-09-2021
18	Q2	20-01-2021	2,43,53,415	11-03-2021	25-01-2021	25-01-2021	2,43,53,415	11-03-2021	09-09-2021
19	Q3	04-06-2021	9,26,92,475	19-07-2021	04-06-2021	04-06-2021	9,26,92,475	19-07-2021	09-09-2021
20	Q1	02-12-2021	6,18,42,982	21-01-2022	06-12-2021	07-12-2021	5,67,78,755	20-01-2022	09-02-2022
21	CN	05-03-2021	-10,81,547						
22	CN	15-03-2021	-24,80,167						
23	CN	26-04-2021	-4,71,202						
24	CN	14-09-2021	-10,31,311						
Total			2,15,57,08,806				2,10,26,31,535		

Submissions of PTCIL:

11. PTCIL, vide its affidavit dated 23.8.2023, has submitted as under:

(a) As regards the applicability of Article 6.5 of the PTC PPA, it is not applicable in the present case as this Article is part of Article 6, which pertains to "Tariff, Payment Terms and Payment Security". On reading the complete Article 6, it is clear that the Article pertains to tariffs and related issues, i.e.,



Tariff payment and Trading Margin. Under Article 6.2, it is incumbent upon the Petitioner to have reviewed Article 4 of the Procurer-PPA. Article 6.3 provides for the methodology for raising invoices by the Petitioner on PTC who, in turn, would raise invoices on the Procurer(s). Article 6.4 provides that PTCIL shall make payment to the Petitioner for power supplied and also the methodology for charging rebates. Article 6.4 further provides that “However, in case the payment is released to the company after receipt on payment from Procurer, the amount paid to the company shall not be less than the amount received by PTC after adjusting its margin.” Thus, from a conjoint reading of the provisions in Article 6, it is evident that Article 6.5 pertains to payment(s) related to tariffs only and not to POC charges.

(b) PTCIL charges trading margin only in respect of the energy supplied by the Petitioner to Respondents 2 to 5 through PTCIL as per the provisions of Article 6.1 (i) of the PTC-PPA. PTCIL does not charge any margin on reimbursement of the POC charges and was reimbursing the POC charges to the Petitioner out of its own funds without any consideration. This was with the understanding that as per the scheme, the Procurer(s), i.e., Respondents 2 to 5, would also immediately reimburse the amounts to PTCIL.

(c) The transaction started in December 2016, and the Petitioner raised the first bill for the reimbursement of transmission charges on 7.12.2016, which was immediately paid on 9.12.2016. PTCIL continued to reimburse the POC charges to the Petitioner and raised bills on the Respondents 2 to 5.

(d) With regard to the process being followed as per the provisions of PTCIL PPA and Procurer(s) PPA, the Petitioner was required to pay the transmission charges to the CTUIL. After making the payment, the Petitioner was to raise the bill on PTCIL for reimbursement. PTCIL was required to reimburse the payment and, after paying to the Petitioner, was to claim payment from Respondents 2 to 5. In certain cases, the Petitioner had raised bills without making payment to PGCIL and raised bills on PTCIL. However, reimbursement was made to the Petitioner after the submission of information on payment by the Petitioner to PTCIL. Similarly, Respondent had also raised certain bills on Respondents 2 to 5 without reimbursing the amount to the

Petitioner. However, Respondents 2 to 5 made reimbursement to Respondent 1 after submission of proof of payment/information by PTCIL to them.

(e) Initially the Respondents 2 to 5 were making the payment without any delay. However, from August 2018, the Procurers started delaying in making payments to PTCIL in respect of bills already paid to the Petitioner. There was substantial delay and in some cases was more than 200 days. On account of this delay, PTCIL found it financially onerous to reimburse the payment to the Petitioner without getting payment from Respondents 2 to 5, and in July 2019, the total outstanding payment from Respondents 2 to 5 was more than Rs.60.00 crore. PTCIL had already made these payments to the Petitioner. PTCIL continued to follow up with Respondents 2 to 5 in respect of the outstanding payments towards POC charges

(e) Neither the PTC-PPA, nor the Procurer-PPA had any provision for payment of LPS, and accordingly, PTCIL never claimed any LPS on account of delay in receipt of payment towards the POC charges from Respondents 2 to 5.

(f) The details of payments made to the Petitioner and the bills raised to the Rajasthan Discoms are as under:

S. No.	Billing Month	Date of reimbursement Bill raised by the Petitioner to PTC	Bill Amount	Date of raising reimbursement bill to Rajasthan Discoms	Discom	Bill Amount	Date of receipt of payment from Rajasthan Discoms	Date of Payment remitted to the Petitioner
1	Jan'19 to Mar'19	26-Jun-19	24,644,095	1-Nov-19	JWNL	9,924,177	13-Nov-19	31-Oct-19
				1-Nov-19	JDWNL	8,031,511	14-Nov-19	
				1-Nov-19	AWN	6,688,407	8-Jan-20	
2	Apr'19	3-Jul-19	125,929,116	3-Oct-19	JWNL	50,711,654	4-Nov-19	18-Oct-19
				3-Oct-19	JDWNL	41,040,300	11/11/19,13/11/19,14/11/19	
				3-Oct-19	AWN	34,177,162	8-Jan-20	
3	Dec'19	13-Jan-20	148,516,340	21-May-20	JWNL	59,807,531	16/07/20 & 21/7/20	1-Jul-20
				21-May-20	JDWNL	48,401,475	21-Aug-20	
				21-May-20	AWN	40,307,335	20-Aug-20	
4	Oct'19 to Dec'19	13-Apr-20	63,725,212	21-May-20	JWNL	25,662,143	8-Sep-20	3-Sep-20
				21-May-20	JDWNL	20,768,047	27-Oct-20	
				21-May-20	AWN	17,295,023	1-Oct-20	
5	Jan'20	13-Feb-20	151,855,030	21-May-20	JWNL	61,152,020	26-Oct-20	21-Sep-20
				21-May-20	JDVNL	49,489,555	28-Oct-20	
				21-May-20	AWN	41,213,455	28/10/20 & 02/11/20	
6	Feb'20	14-Mar-20	147,044,098	21-May-20	JWNL	59,214,658	29-Dec-20	29-Oct-20
				21-May-20	JDWNL	47,921,672	21/12/20' 22/12/20 & 29/12/20	
				21-May-20	AWN	39,907,768	26/02/21 & 01/03/21	
7	Mar'20	13-Apr-20	149,268,594	21-May-20	JWNL	60,110,462	29-Dec-20	27-Nov-20
				21-May-20	JDWNL	48,646,635	29/12/20' 31/12/20 & 21/01/21	



				21-May-20	AWNL	40,511,497	1-Mar-21	
8	Apr'20	12-May-20	125,170,032	21-May-20	JWNL	50,405,971	23-Mar-21	16-Mar-21
				21-May-20	JDVVNL	40,792,913	17-May-21	
				21-May-20	AWNL	33,971,146	2-Apr-21	
9	May'20	15-Jun-20	129,628,055	6-Apr-21	JWNL	52,201,217	20-Apr-21	3-Apr-21
				6-Apr-21	JDWNL	42,245,783	18/05/21 & 19/05/21	
				6-Apr-21	AWNL	35,181,054	19-May-21	
10	Jan'20 to Mar'20	2-Jul-20	77,772,926	21-May-21	JWNL	31,319,157	25-May-21	21-May-21
				21-May-21	JDVVNL	25,346,197	26-May-21	
				21-May-21	AWNL	21,107,572	23-Jul-21	
11	Jun'20	17-Jul-20	114,668,260	21-May-21	JWNL	46,176,908	25-May-21	21-May-21
				21-May-21	JDWNL	37,370,386	26-May-21	
				21-May-21	AWNL	31,120,965	23-Jul-21	

S. No.	Billing Month	Date of reimbursement raised by the Petitioner to PTC	Bill amount	Date of raising reimbursement bill to Rajasthan Discoms	Discom	Bill Amount	Date of receipt of payment from Rajasthan Discoms	Date of Payment remitted to the Petitioner
12	Jul'20	14-Aug-20	129,002,259	21-May-21	JWNL	51,949,210	28-Jun-21	31-May-21
				21-May-21	JDWNL	42,041,836	6-Jul-21	
				21-May-21	AWNL	35,011,213	27-Jul-21	
13	Aug'20	9-Sep-20	129,696,932	21-May-22	JWNL	52,228,954	27-Jul-21	13-Jul-21
				21-May-21	JDWNL	42,268,230	11/08/21 & 12/08/21	
				21-May-21	AWNL	35,199,747	29-Jul-21	
14	Sep'20	8-Oct-20	126,941,797	21-May-21	JWNL	51,119,461	27-Jul-21	13-Jul-21
				21-May-21	JDWNL	41,370,332	12/08/21 & 13/08/21	
				21-May-21	AWNL	34,452,004	29/07/21 & 02/08/21	
15	Oct'20	11-Nov-20	127,884,948	21-May-21	JWNL	51,499,268	25-Aug-21	12-Aug-21
				21-May-21	JDWNL	41,677,705	23/09/21 & 12/11/21	
				21-May-21	AWNL	34,707,975	25-Aug-21	
16	Nov'20	11-Dec-20	128,350,680	21-May-21	JWNL	51,686,819	14-Sep-21	9-Sep-21
				21-May-21	JDWNL	41,829,487	09/12/21 & 14/12/21 & 20/12/21	
				21-May-21	AWNL	34,834,375	20-Oct-21	
17	Apr'20 to Jun'20	12-Oct-20	28,708,523	21-May-21	JWNL	11,560,922	14-Sep-21	9-Sep-21
				21-May-21	JDWNL	9,356,108	20-Dec-21	
				21-May-21	AWNL	7,791,493	20-Oct-21	
18	Jul'20 to Sep'20	25-Jan-21	24,353,415	21-May-21	JWNL	9,807,120	14-Sep-21	9-Sep-21
				21-May-21	JDVVNL	7,936,778	20-Dec-21	
				21-May-21	AWNL	6,609,517	20-Oct-21	
19	Oct'20 to Dec-20	4-Jun-21	92,692,475	9-Sep-21	JWNL	37,327,260	14-Sep-21	9-Sep-21
				9-Sep-22	JDVVNL	30,208,478	20/12/21 & 21/12/21	
				9-Sep-21	AVVNL	25,156,738	20-Oct-21	
20	Apr'21 to Jun'21	7-Dec-21	61,814,982	10-Feb-22	JWNL	24,892,893	14-Feb-22	9-Feb-22
				10-Feb-22	JDWNL	20,145,503	28-Mar-22	
				10-Feb-22	AWNL	16,776,586	22-Mar-22	
21	CN (DEVIATION BILL MAR-APR, SEP'21)	7-Dec-21	5064,227)	8-Dec-21	JWNL	(2,039,364)		
				8-Dec-21	JDWNL	(1,650,432)		
				8-Dec-21	AWNL	(1,374,431)		
	Grand Total		2,102,603,542			2,102,603,541		

12. The parties have also filed their respective written submissions and have reiterated the submissions made in the pleadings. Therefore, the same are not repeated herein the sake of brevity.



Analysis and Decision

13. We have considered the submissions made by the parties. The only issue that arises for our consideration is whether the Petitioner is entitled to the LPS on the delayed payment of PoC/Transmission charges under the provisions of the PTC-PPA read with Procurer(s)-PPA.

14. The Petitioner has submitted that upon reading the provisions of both the above agreements, especially Clause 4.4 of Schedule 4 of the Procurer(s)-PPA and Article 5.2(e) of the PTC-PPA, it is clear that the transmission charges paid by the Petitioner are required to be reimbursed by the Respondents. Thus, the above agreements recognizes the right of the Petitioner to claim the reimbursement of PoC charges, and once the agreements recognizes such a right, it cannot be rendered simply because in the billing provisions, there is no specific provision for raising an invoice for such reimbursement. Placing reliance on the judgment of Hon'ble Supreme Court in the case of DLF Universal Limited v. Director, Town and Country Planning Department, Haryana, [(2010) 14 SCC 1], it has been submitted by the Petitioner that it is a settled law that documents or contract have to be given a purposive interpretation. *Per contra*, the Respondents, PTC as well as Rajasthan Discoms have contended that neither the PTC-PPA nor Procurer(s)-PPA provides for an event where the LPS would be payable in case there is a delay in reimbursement of the transmission charges. It is stated that both the provisions of the above agreements provide that only upon delay in payment of the Monthly Bill or Supplementary Bill, the LPS would be payable, and since the payment of transmission charges is not a part of either of them, no LPS is payable upon them.



15. In order to examine the sole issue involved in the present case, as noted above, we may refer to the relevant provisions of PTC-PPA as well as the Procurer(s)-PPA.

PTC-PPA

(E)..... PTC and Company have agreed to entered into this Agreement and to abide by and to adhere to the rights and obligations of PTC under the Procure(s)-PPA on a back to back basis except to the extent anything mentioned otherwise herein under this Agreement for the purposes of Procurer(s)-PPA.

....

(G)The provisions of the Procurer(s)-PPA, signed between PTC and the Procurer(s) shall be applicable mutatis mutandis to this Agreement except to the extent of the deviating as expressly stated in this Agreement.

Admittedly, the Petitioner and PTC, under the PTC-PPA, have agreed that the provisions of the Procurer-PPA are *mutatis – mutandis* applicable upon the PTC-PPA unless there is a specific deviation thereunder. Further, as regards the reimbursement of POC/transmission charges is concerned, the relevant provisions of the PTC-PPA read as under:

“5.2 (e) The tariff payable by PTC to Company shall be sum of Capacity Charges and Energy Charges as per PTC minus PTC Trading Margin. The monthly transmission charges paid by Procurer(s) to PTC and as provided in article 4.4 of the Schedule 4 of the Procurer(s)-PPA shall be received by PTC and reimbursed to Company, if the same has been paid by Company to CTU.”

Schedule 4- Tariff

Scheduled 4 of Procurer(s)-PPA shall be amended to add following para in the beginning:

“The provisions of Schedule 4 of the Procurer(s)-PPA shall be applicable for calculating the tariff for making payments of purchase of power under this Agreement. Provided that the tariff payable under this Agreement by PTC to Company shall be sum of Capacity Charge and Energy Charge paid to PTC by Procurer(s), as per the provisions of Schedule 4 of the Procurer(s)-PPA minus PTC Trading Margin, excluding transmission charges paid by Procurer(s) to PTC in accordance with Clause 4.4 of the Schedule 4 of the Procurer(s)-PPA. The terms of Schedule 4 of the Procurer(s)-PPA shall be applicable to the Company in its totality without any deviations under this Agreement.”



The above provisions indicate that tariff under the PTC-PPA would include the sum of Capacity Charge and Energy Charge paid to PTC by the Procurer(s) under the Procurer(s)-PPA and would exclude the transmission charges paid by the Procurer(s) to the PTC as per Clause 4.4 of the Schedule 4 of the Procurer(s)-PPA. Moreover, Article 5.2(e) provides that the monthly transmission charges as paid by the Procurers would be received by PTC and reimbursed to the Company i.e. the Petitioner, if the same has been paid by the Company to CTUIL. Basis this, PTC has argued that the responsibility to pay for the transmission charges was that of the Procurers and PTC was to reimburse the same to the Petitioner only on the same it is received by PTC. However, we notice that Articles 6.4 and 6.5 provide as under:

“6.4. PTC shall make payments to Company for power supplied within Due Date. PTC will be entitled to rebate as per the Article 8.3.6 of the Procurer(s) – PPA.

However, in case the payment is released to the Company after receipt of payment from Procurer, the amount paid to the Company shall not be less than the amount received by PTC after adjusting its margin.

6.5. All payments including the tariff payment shall be released by PTC without linking it with the payment from Procurer....”

As per Article 6.5 of the PTC-PPA, PTC is required to release all payments, including the tariff payment, without linking it with payment from the Procurer. Pertinently, this article talks of “all payment” including the tariff payment. Hence, it is clearly not restricted to the payments related to “tariff” only thereby excluding the payment of transmission/PoC charges to the Petitioner on the reimbursement basis as argued by PTC. The provisions of Article 5.2(e), as quoted above, which provides for payment of monthly transmission charges by the Procurers to PTC and reimbursement by PTC to the Petitioner, have to be read in the context of a categorical obligation imposed upon PTC under Article 6.5, all the payment under the PTC-PPA to be released by it without linking it to the payment from the



Procurer(s). The affidavit of PTC, dated 23.8.2023, itself indicates the above being the correct position under the provisions of PTC-PPA and Procurer(s)-PPA whereby it has been stated as under:

“vi. The process being followed as per the provisions of PTC PPA and Procurer(s) PPA, the Petitioner was required to pay the transmission charges to CTUIL. After making the payment, the Petitioner was to raise the bill on PTC for reimbursement. PTC was required to reimburse the payment and after paying to the Petitioner was to claim payment from Respondent No. 2 to 5.....”

The only reason for departure from the above position, as indicated by PTC in its affidavit, is as under:

“vii. Initially the Respondent No. 2 to 5 were making the payment without any delay. However, from August, 2018, the Procures started delay in making the payment to PTC in respect of bills already paid to the Petitioner (Annexure R1/2 Pages 393-.95). From the table it can be observed that the delay was substantial and in some cases was more than 200 days.

viii. On account of this delay, PTC found financially onerous to reimburse the payment to the Petitioner without getting payment from Respondent No.2 to 5 and in July, 2019 the total outstanding of payment from the Respondent No.2 to 5 was more than Rs. 60.00 Crores. It is pertinent that PTC had already made these payments to the Petitioner. PTC continued to follow up with the Respondent No. 2 to 5 in respect of the outstanding payments towards POC charges (Annexure R1/3 Page 396-407).

ix. As the Respondent No. 2 to 5 delayed the payment, PTC founded a bit onerous to reimburse the POC charges to the Petitioner, more so when the outstanding from the Respondent No. 2 to 5 at some point of time was more than Rs. 60.00 Crores....”

16. Thus, the only reason put forth by PTC in delaying the payment of transmission/PoC Charges to the Petitioner is the corresponding delays by the Procurers and outstanding payments from them have piled up to the tune of Rs. 60 crore. In our view, the above approach of PTC is entirely misplaced inasmuch as delay on the part of Procurers to discharge their obligation under the Procurer(s)-PPA may entitle PTC to avail the appropriate remedies, including a legal recourse thereunder. However, it does not entitle PTC to also flout its obligations qua the Petitioner under PTC-PPA specifically when the liability to make all payments on its part was not predicated upon the payments from the Procurers.



17. Now, coming back to the core question as to whether the provisions of the PTC-PPA and Procurer(s) PPA provide for LPS on the delayed payment of transmission/PoC charges or not. It may be noted that Article 6.4 of the PTC-PPA, as already quoted above, provides that PTC shall make payment to the Company for power supplied within the Due Date. However, the PTC-PPA defines the Due Date as under:

“Due Date” shall mean thirtieth (30th) day after a Monthly Bill or Supplementary Bill is received and duly acknowledged by the PTC or if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by PTC;

18. Indisputably, the Due Date has been defined only in the context of a Monthly Bill or Supplementary Bills to be raised under the PTC-PPA. While these terms - Monthly Bills and Supplementary Bills - have not been defined in the PTC-PPA, by virtue of the applicability of the provisions of the Procurer(s)-PPA to the PTC-PPA, these terms have the same scope and meaning as specified in the Procurer(s)-PPA. Similarly, PTC-PPA also does not specifically deal with the LPS and adopts the corresponding provisions from the Procurer(s)-PPA. Accordingly, we may deal with both of these aspects while referring to the relevant provisions of Procurer(s)-PPA.

19. The Procurer(s)-PPA defines the “Monthly Bill” or “Monthly Invoice” and “Supplementary Bill” as under:

“Monthly Bill” or “Monthly Invoice” shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;

“Supplementary Bill” shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement.

20. While the term “Monthly Bill” or “Monthly Invoice” has been defined to mean a monthly invoice comprising Capacity Charges and Energy Charges, including



incentives and penalties as per Schedule 4, the term “Supplementary Bill” has been defined to mean a bill other than a Monthly Bill raised by any of the parties in accordance with Article 8 of the Agreement. Clearly, the scope of the term “Supplementary Bill” is much wider than the “Monthly Bill” and is expected to include all such bills, except Monthly Bill, which any party can raise in accordance with Article 8. The Article 8.8 of the Procurer(s) PPA further provides as under:

“8.8 Payment of Supplementary Bill

8.8.1 Either Party may raise a bill on the other Party (“Supplementary Bill”) for payment on account of:

- i) Adjustment required by the Regional Energy Account (if applicable);*
 - ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or*
 - iii) Change in Law as provided in Article 10,*
- and such Supplementary Bill shall be paid by other Party.”*

According to the above provision, either party may raise a bill on the other party for payment of (i) adjustment required by the Regional Energy Account, (ii) Tariff Payment for Change in parameters, pursuant to the provisions in Schedule 4, (iii) Change in Law as provided in Article 10. In this regard, what begs our consideration is the Sr. (ii) i.e. Tariff Payment for change in parameters pursuant to the provision in Schedule 4 and whether the claim of reimbursement of the transmission charges/PoC upon PTC/Procurers under terms of PTC-PPA and Procurer(s)-PPA respectively would fall within the scope of the Supplementary Bill or not. For ease of reference, we may quote the relevant clause of Schedule 4 of the Procurer(s)-PPA, which reads as under:

Schedule 4: Tariff

4.4 Transmission/Wheeling Charges and RLDC/SLDC Charges

4.4.1 The payment of Transmission Charges/Wheeling Charges to CTU/STU, from the Injection Point to Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer(s).



4.4.2 The payment of RLDC/ SLDC charges shall be the responsibility of the Procurer(s).

21. As already noted above, as per the provisions of the PTC-PPA and the Procurer(s)-PPA, while the Petitioner is entitled to raise a claim and receive the transmission charges from PTC on a reimbursement basis, PTC in turn, is entitled to raise a claim and receive the transmission charges from Rajasthan Discoms on a reimbursement basis. However, the pertinent question, as noted above, is whether the claim of the reimbursement of the transmission charges/PoC upon PTC/Procurers under terms of PTC-PPA and Procurer(s)-PPA, respectively, would fall within the scope of the Supplementary Bill, in particular, Article 8.8.1(ii) above. While the Respondents have argued that such a claim of reimbursement of the transmission charge cannot fall within the purview of Article 8.8.1(ii) above as it only relates to changes in parameters which have been detailed in Clauses 4.2.2 and 4.2.3 of the Schedule 4. However, we are not in agreement with the said submissions. In our view, the said clause has to be construed in the widest amplitude to cover all the residual claims under Schedule 4, including the claim of transmission charges payment on a reimbursement basis. It is pertinent to note under the scheme of the PPAs, only two kinds of Bill/Invoices have been envisaged, as can be seen from the definition of the “Invoice” or “Bill”, as reproduced below:

“Invoice” or “Bill” shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;

The provisions of the PPAs do not envisage any other categories than the above two for raising any claim on the other party/side. The argument of the Respondents that payment of the transmission charges being on a reimbursement basis does not fall within either Monthly Bill or Supplementary Bill does not find any merit with us as it would amount to creating a separate mechanism for raising a



claim by a party under the provisions of PPAs, which is neither envisaged nor provided for. In our view, the right to claim the payment of the transmission charges under the provisions of the PPAs, albeit on a reimbursement basis, has to be by way of a Supplementary Bill, covered under Article 8.8.1(ii). Even if these claims are not categorically made by the Petitioner under the said head, all such claims have to be treated at par with and in the nature of Supplementary Bills only. The argument of the Respondents, if accepted, would also lead to an absurd situation where the parties are allowed to keep the valid claims of the transmission charges of the other side to remain outstanding for the entire term of the PPA without any consequences thereof. Such a skewed interpretation of a commercial document cannot be accepted.

22. Having held that a claim of reimbursement of transmission charges under the provisions of the PPAs has to be considered a Supplementary Bill, there cannot be any dispute with regard to the entitlement of the LPS on the delayed payment against such claims as the Article 8.8.3 of the Procurer(s)-PPA clearly provides as under:

“8.8.3 In the event delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.”

Hence, in the present case, we hold that the Petitioner is entitled to LPS on the delayed payment of transmission charges by the Respondent, PTC, under the PTC-PPA.

23. As per Article 8.3.5 of the Procurer-PPA, the LPS on delayed payment beyond the due date i.e., 30 days from the date of the bill, is two per cent (2%) in excess of the applicable SBAR per annum on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest), raised vide



supplementary bill. However, we observe that in the present case, the Petitioner itself raised Supplementary Bills upon PTCIL towards LPS on the outstanding amounts on the basis of Regulation 59 of Tariff Regulations, 2019 and Clause 3.4 of CTUIL's BCD Procedure. Having held that the Petitioner is entitled to the LPS on the delayed payment of transmission charges by PTC under the PTC-PPA, computation of LPS on the basis of Regulation 59 of Tariff Regulations, 2019 read with Clause 3.4 of BCD Procedure cannot be permitted.

24. Moreover, it is also observed that in several instances, the Petitioner had raised the claims for reimbursement of transmission charges upon PTC (by way of debit notes) even prior to having paid such charges to CTUIL, which is clearly not in accordance with the scheme of reimbursement envisaged under the provisions of both the agreements. However, it is also noted that while computing LPS liability upon PTC, the Petitioner has considered the Due Date for payment by PTC only from the date of payment of transmission charges by the Petitioner to CTUIL, which indicates the correct approach as such Due Date cannot run from the date of Debit Note raised by the Petitioner without first paying such charges to CTUIL and furnishing the requisite proof of payment to PTC. It is also noted that the Petitioner, having raised the LPS claims as per the Tariff Regulations, 2019 read with Cl. 3.4 of CTUIL's BCD Procedure, the Due Date has been considered as 45 days from the date of payment of transmission charges/PoC charges by DBPL. However, having held that the Petitioner will be entitled to LPS only as per the provisions of the PPAs, the Due Date also needs to be worked out as per the provisions of the PPAs only and not as per the Tariff Regulations, 2019.

25. It is noticed that the Petitioner has also prayed for interest/carrying cost on the delayed payment of LPS. In this regard, we observe that the provisions of the PTC-



PPA and Procurer(s)-PPA provide for the calculation of LPS on the outstanding payment on a day-to-day basis and compounded with monthly rest for each day of delay. Thus, when the provisions of the agreements themselves provide for computation on the LPS on a compounding basis i.e. interest on interest, there cannot be any further award of interest/carrying cost on the delayed payment of LPS. Moreover, the provisions of agreements also provide that all payments made by the Procurer(s)/PTC shall be apportioned towards (i) LPS, if any, (ii) earlier unpaid Monthly Bill(s), if any and finally (iii) currently Monthly Bill. Having not done so and the Petitioner on its own volition, having chosen to deviate from the provisions of the PPAs and sought to apply the LPS mechanism as provided in the Tariff Regulations, we are not inclined to grant any carrying cost/interest on the LPS to the Petitioner. Consequently, the entitlement of the Petitioner towards LPS will be restricted for the period beyond the Due Date up to the date of Payment of transmissions/PoC charges by PTC and not beyond.

26. It is further noticed that the Petitioner, in its claims for LPS, has proceeded to compute the LPS for the period beyond the payment of transmission charges by PTC to the Petitioner and has prayed for interest/carrying cost on the delayed payment of LPS. In this regard, we observe that the provisions of the PTC-PPA and Procurer(s)-PPA provide for the calculation of LPS on the outstanding payment, on a day-to-day basis and compounded with monthly rest for each day of delay. Thus, when the provisions of the agreements themselves provide for computation on the LPS on a compounding basis i.e. interest on interest, there cannot be any further award of interest/carrying cost on the delayed payment of LPS. Moreover, the provisions of agreements also provide that all payments made by the Procurer(s)/PTC shall be apportioned towards (i) LPS, if any, (ii) earlier unpaid



Monthly Bill(s), if any and finally (iii) currently Monthly Bill. However, having not done so and having chosen, on its own volition, to deviate from the provisions of the PPAs by applying the LPS mechanism as provided in the Tariff Regulations, we are not inclined to grant any further carrying cost/interest on the LPS to the Petitioner. Consequently, the entitlement of the Petitioner towards LPS will be restricted for the period beyond the Due Date up to the date of Payment of transmissions/PoC charges by PTC and not beyond.

27. Accordingly, in view of our findings in the foregoing paragraphs, the Petitioner will re-compute its LPS claims as under:

- (i) The Petitioner shall be entitled to LPS for the delayed payment of transmission charges in respect of the PoC bills covered under this Petition as per the provisions of the PTC-PPA and Procurer(s)-PPA only.
- (ii) LPS shall be worked out as per rates and methodology prescribed under the PTC-PPA read with Procurer(s)-PPA.
- (iii) "Due Date", in respect of the Petitioner's claims of reimbursement of transmission charges, shall have the same meaning as per the provisions of the PTC-PPA and will be computed from the date on which the Petitioner paid the transmission charges to CTUIL and provided the requisite proof of payment to PTC.
- (iv) The Petitioner's entitlement to LPS shall be restricted up to the date of payment of transmission charges by PTC only and not beyond. The Petitioner will not be entitled to any further interest/carrying cost on its LPS claims.

The Petitioner will revise its LPS claims in accordance with the above within a month from the date of this order, and PTC will thereafter be liable to pay such amount within a month thereafter.



28. It is also beyond the dispute that both the agreements i.e. the PTC-PPA and Procurer(s)-PPA, are back-to-back in nature and as a result, the obligations of the payment of LPS in the event of delay in making payment of transmission charges to PTC, under the Procurer(s)-PPA also fall upon the Rajasthan Discoms. However, the Rajasthan Discoms have specifically pointed out that, unlike the Petitioner, PTC has not raised any Supplementary Bills for LPS upon them and, as such, no directions can be issued to them for payment of such charges. We agree with the aforesaid submission of the Rajasthan Discoms that in the absence of any bills raised upon them, we refrain ourselves from passing any direction of the payment upon the Rajasthan Discoms. However, we clarify that PTC is at liberty to take all actions available under the provisions of Procurer(s) PPA and law, in accordance with the findings rendered by us in the present order.

29. In view of the above observations and findings, Petition No. 26/MP/2023 stands disposed of.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

