

MONDAY | 28 JULY 2025
Case Update

APTEL Allows Reliance Subsidiary Rosa Power's Claim for LPS on Delayed Carrying Cost Payments



In a key ruling underlining the enforceability of power purchase agreements, the Appellate Tribunal for Electricity (“**APTEL**”) on 28.07.2025 allowed the appeal filed by Rosa Power Supply Company Limited (“**Rosa Power**”) challenging a decision by Uttar Pradesh Electricity Regulatory Commission (“**UPERC**”) wherein invoice raised towards Late Payment Surcharge (“**LPS**”) was set aside. Setting aside UPERC’s decision, APTEL has directed the distribution licensee, i.e., Uttar Pradesh Power Corporation Ltd. (“**UPPCL**”) to make payments due under the invoice along with carrying cost on the same rate to Rosa Power within 1 month.

The dispute pertained to invoice raised by Rosa Power to UPPCL claiming LPS for non-payment of dues within the period of 30 days as per the Power Purchase Agreement (“**PPA**”). The UPERC, while setting aside the invoice, held that the same is not in accordance with the UPERC (Terms and Generation of Tariff) Regulations, 2014 (“**Tariff Regulations 2014**”) which prescribes 60 days trigger period for levy of LPS. UPERC also held that the Tariff Regulations 2014 have an overriding effect over the terms of the PPA executed between Rosa Power and UPPCL.

Rejecting the view taken by UPERC, APTEL clarified that LPS is not a part of tariff and is a separate charge, incidental in nature, only applied when the procurer fails to make payment as per the invoice by the due date. Further, relying on Hon’ble Supreme Court’s decision in Gujarat Urja Vikas Nigam Limited v. Renew Wind Energy (Rajkot) (P) Ltd. 2023 SCC OnLine SC 411, APTEL went on to hold that any regulations issued by an Electricity Commission in exercise of delegated legislative power can be applied to the PPAs executed post the issuance/notification of such regulations and cannot be applied to already executed contracts, unless the regulations expressly provide so. Additionally, it was observed by APTEL that in the light of settled law, interest on delayed payment is a legitimate claim of the party deprived of the use of money. As PPA is a creation of parties, their rights/obligations flow from the terms and conditions stipulated therein. In the facts of the case, as the PPA was executed at the time when UPERC (Terms and Conditions for Generation Tariff) Regulations, 2004 were in force, and was compliant to the norms specified thereunder and hence, APTEL concluded that such terms will not be affected by subsequent Tariff Regulations 2014 and will bind the parties for entirety of the term of the PPA.

Holding the UPERC’s decision to be grossly erroneous, APTEL has allowed the claim of Rosa Power qua LPS and has held that Rosa Power is entitled to carrying cost on the pending dues at the rate of LPS provided under PPA. UPPCL has been directed to make good of the amounts to Rosa Power within a period of 1 month.

This ruling marks an important precedent for generators seeking timely payment under long-term PPAs and reinforces the binding nature of contractual provisions on tariff components. Additionally, the Judgment stresses that a contract is a creation of the parties to it, and the terms thereunder are reached upon after due deliberations and negotiations, based on existing law.

Click [here](#) to read the final order.

Rosa Power Supply Co. was represented before the Appellate Tribunal For Electricity by Shri Venkatesh (Founding Partner), Suhael Buttan (Partner), Vineet Kumar (Senior Associate) and Surbhi Kapoor (Senior Associate) of the SKV Law Offices Team.