

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 67 of 2025
Date of Hearing : 03.02.2026
Date of Order : 22.04.2026

In the Matter of
Petition under Section 86(1)(f) of the Electricity Act, 2003, inter-alia, seeking Carrying Costs/ interest on the tariff differential amount on account of the Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025 passed by the Hon'ble Commission.

Petitioner

M/s. Star Wire (India) Vidyut Private Ltd.

Respondent

Haryana Power Purchase Centre (HPPC), Panchkula

Present on behalf of the Petitioner

1. Mr. Raunak Jain, Advocate
2. Mr. Varun Todi, Director

Present on behalf of the Respondent

1. Mr. Lovepreet Singh, Advocate
2. Ms. Aerika Singh, Advocate
3. Mr. Gaurav Gupta, Xen, HPPC

Quorum

Shri Nand Lal Sharma
Shri Mukesh Garg
Shri Shiv Kumar

Chairman
Member
Member

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Star Wire (India) Vidyut Private Ltd., seeking carrying Costs/ interest on the tariff differential amount on account of the Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025 passed by the Hon'ble Commission.
2. **Petitioner's submissions: -**
 - 2.1 That the Petitioner herein, Star Wire (India) Vidyut Private Ltd. ("SWIVPL") is a 9.9 MW biomass-based power project in the State of Haryana. The power plant of the Petitioner was commissioned on 03.05.2013 i.e. during the Year 2013-14.
 - 2.2 That the Respondent has entered into a Power Purchase Agreement ("PPA") dated 22.06.2012 with the Petitioner for purchase of power for a period of 20 (twenty) years as per tariff determined by the Hon'ble HERC.
 - 2.3 That HPPC failed to make the payment of Carrying Costs/ interest as per invoice dated 28.03.2025 raised by the Petitioner. HPPC also failed to take any action on the letters

dated 07.04.2025, 25.04.2025 and 05.05.2025 sent by the Petitioner claiming Carrying Costs.

2.4 That on a letter sent by the Ministry of Power through its Secretary raising a number of issues relating to periodic annual tariff revisions, the Hon'ble APTEL suo-moto took up proceedings, being OP No.1 of 2011, and issued notices to all State Commissions and to the Forum of Regulators inviting their responses. The Full Bench of the Hon'ble APTEL vide its Judgement dated 01.11.2011 in OP No. 1 of 2011 reported in 2011 ELR APTEL 1742, issued directions to the State Commissions, including the Hon'ble HERC, regarding timely determination of tariff for the ensuing financial year. Inter-alia, in para 65 of the judgement, the Hon'ble APTEL issued the following directions:-

“65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

- (i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.
- (ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011- 12 should be decided before 1st April, 2011.
- (iii) In the event of delay in filing of the ARR, trueing- up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.

2.5 That the Petitioner has submitted that on 22.06.2012, a PPA was executed between the Respondent HPPC and the Petitioner for purchase of power for a period of 20 (twenty) years as per tariff determined by Hon'ble HERC. As per Article 3.6 (b) of the PPA, it has been agreed between the parties as under:-

“3.6 (a)

(b) In case the payment of bills of the Company are made through LC or RTGS on presentation, rebate of 2% shall be allowed. Where payments are made other than through letter of credit within a period of one month from the date of presentation of bills by the company a rebate of 1% shall be allowed. In case the payment of any bill is delayed beyond 60 days from the day of billing, a late payment surcharge at the rate of 1.25% shall be payable to the Company by HPPC/ Discoms for the actual period of delay.”

2.6 That the petitioner has submitted vide order dated 27.01.2021 in Case No. HERC/PRO – 51 of 2020, inter-alia, the Hon'ble HERC allowed HPPC to recover Carrying Cost/ interest from the Petitioner @ 1.25% as specified under Article 3.6 (b) of the PPA, on

the excess amount paid by HPPC to the Petitioner towards reimbursement of MAT / Corporate Tax as per principles of natural justice and restitution. The relevant portion (internal pgs. 40 & 41 of the order) is extracted for convenience as under:-

“The Commission has examined the facts and circumstances of the case together with the judgements cited by the Petitioner. The Commission observes that although express provision in the PPA does not exist for levy of interest on excess payments, but, principle of natural justice demands that HPPC should be restituted to the position at which it would have been in case excess payment was not reimbursed. The interest is not in the nature of penalty but it is the carrying cost of money utilized by the generator by claiming excess amount of tax for reimbursement. As regards the submission of the Petitioner that the rate of interest should be as allowed in the Order dated 17.06.2020 (HERC/PRO-21 of 2020) i.e. 8.65% per annum, it is observed that the same was applicable only for the period from March, 2020 to June, 2020 that too in view of COVID-19 pandemic, whereas the Petitioner has been utilizing the excess money so reimbursed by HPPC, since the FY 2018-19.

In view of the above, the Commission answers the issue framed above in affirmative i.e. HPPC was right in levying interest @ 1.25% per month, amounting to Rs. 8,78,791/- (Rupees Eight Lacs Seventy-Eight Thousand Seven Hundred & Ninety-One) on account of excess amount paid by HPPC to the Petitioner towards reimbursement of MAT / Corporate Tax.”

[Emphasis supplied by underlining]

In the same order, though the Petitioner had claimed interest on the amounts illegally deducted by HPPC, the Hon'ble Commission while partly allowing the petition, held the Petitioner to be entitled to interest only if the refund were not made within a period of 30 days.

- 2.7 That the Petitioner has assailed the said order before the Hon'ble APTEL in A. No. 379 of 2022 on various grounds, including on the ground that HERC allowed HPPC to recover the Carrying Cost/ interest while denied the same to the Petitioner. The said appeal is presently pending adjudication and without prejudice to the rights and contentions of SWIVPL in the said pending proceedings. However, the Petitioner is only placing the said order on record to show that this Hon'ble Commission has, in the past, applied the LPS rates specified under the PPA to award Carrying Costs/ interest to HPPC despite there being no specific provision.
- 2.8 That the Hon'ble HERC, on 30.04.2021, notified the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (“HERC RE Regulations, 2021”). As per Regulation 7(1):-
- “The Commission shall determine the indicative tariff on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under the Regulations.”

- 2.9 That the petitioner has challenged the constitutional validity and vires of the HERC RE Regulations, 2021 in CWP No. 1055-2022 (O&M) before the Hon'ble High Court of Punjab & Haryana and the same is presently pending adjudication. The present petition is without prejudice to the challenge laid by the Petitioner to the said Regulations, which is pending before the Hon'ble High Court. The present petition is being filed since the said Regulations have, not till date, been stayed by the Hon'ble High Court, although the Petitioner's stay application is also pending consideration. The present petition is also without prejudice to the contention of the Petitioner therein that the said Regulations ought to be stayed.
- 2.10 That on 28.07.2023, Hon'ble HERC passed the ex-parte Tariff Order dated 28.07.2023 in Case No. HERC / Petition No. 40 of 2023 Suo Motu, inter-alia, determining the Fuel Cost for renewable energy projects set up / to be set up in the State of Haryana, payable by the Respondent HPPC for the FY 2023-24. The Petitioner has assailed the said order before the Hon'ble APTEL in A. No. 298 of 2024 on various grounds, including on ground that the ex-parte tariff order has been passed without any public consultation process or hearing, contrary to provisions of Sections 64(2) and (3) and 86(3) of the Act. The said appeal is presently pending adjudication. However, the scope of the present petition filed by the Petitioner for Carrying Costs, relief(s) sought, grounds and submissions are entirely different and without prejudice to the rights and contentions of SWIVPL in the said pending appeal.
- 2.11 That the Petitioner, on 13.04.2024 was constrained to approach the Hon'ble Commission by filing a petition bearing HERC/Petition No. 24 of 2024 inter-alia, seeking determination of Fuel Cost for Biomass based Renewable Energy power plants for FY 2024-25.
- 2.12 That between the time of filing the above petition and its hearing before the HERC on 24.07.2024, the HERC initiated the exercise of getting an independent State specific study for determination of the fuel cost for biomass based Renewable Energy power plants for the FY 2024-25. Consequently, vide its Order dated 26.07.2024, the Hon'ble Commission was pleased to dispose of HERC/Petition No. 24 of 2024 filed by the Petitioner. While dismissing the said petition as infructuous, the Hon'ble Commission observed as under:-
- "9.
- Accordingly, the process of getting an independent State specific study for determination of the fuel cost for biomass based Renewable Energy power plants for the FY 2024-25, has already been initiated and upon the receipt of the report, the same shall be made available on the website of the Commission. The petitioner has averred that the present case can be taken up along with the suo-moto proceedings which the Commission may initiate for determination of fuel cost of biomass for the FY 2024-25.

The Commission is of the considered view that the main contour of the present petition i.e. to get an independent State specific study, is already under its consideration. Therefore, keeping alive of the present petition and merging of the same with the future suo-moto proceedings to be initiated by the Commission for determination of fuel cost of biomass for the FY 2024-25, does not stand to logic. In any case, the study report shall be hosted on the website of the Commission inviting comments/ suggestions/ objections of all the intervenors including the petitioner herein.”. Copy of the Order dated 26.07.2024 in HERC/Petition No. 24 of 2024 passed by the HERC is marked and annexed as Annexure P-8.

- 2.13 That the Petitioner vide its letter dated 08.10.2024, wrote to the Hon'ble Commission and stated that even after lapse of two months, till date, neither any independent State specific study/ report had been published, nor the fuel cost was determined for FY 2024-25. The Petitioner also pointed out that it is facing gross under-recovery of fuel costs for FY 2024-25 and great financial hardship as the same are non-aligned to the prevailing cost of fuel, thereby causing huge financial losses to the Petitioner. The Petitioner further invoked the provisions of Regulation 7(1) of the HERC RE Regulations, 2021 which mandates the Commission to determine the fuel costs for the ensuing year on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control Period and requested the Hon'ble Commission to determine the fuel costs for FY 2024-25 in a time bound and most urgent manner.
- 2.14 That the Hon'ble Commission issued a Public Notice dated 09.01.2025, inviting the general public / stakeholders to file their written comments / objections /suggestions on the draft order for determination of fuel cost for the renewable energy projects for FY 2024-25. The same was numbered as HERC / Petition No. 1 of 2025 (Suo Motu).
- 2.15 That after hearing all the stakeholders, Hon'ble HERC issued the final order in HERC / Petition No. 1 of 2025 (Suo Motu). Vide its Order dated 26.03.2025, Hon'ble HERC determined the Fuel Cost upwards for the renewable energy projects, including the Petitioner herein, for FY 2024-25 w.e.f. 01.04.2024. It is to be noted that the Fuel Cost of Rs. 4384 per MT for the existing biomass-based projects (Water Cooled - TG, Biomass) was determined against the earlier Fuel Cost of Rs. 3411 per MT which was approved for FY 2023-24. Hence, there was an increase of Rs. 973 per MT in the Fuel Cost for FY 2024-25 from the previous financial year, which was applicable w.e.f. 01.04.2024. It was also added that the fuel cost determined herein shall continue to be in force till such time the Commission amends or re-determines the same. In such cases, say for the FY 2025-26, the fuel price escalation clause as provided in the RE Regulations in vogue shall prevail subject to adjustments vis-à-vis those determined by the Commission.

- 2.16 That the Petitioner on 28.03.2025, raised an invoice to HPPC claiming an amount of Rs. 9,49,34,517/- (Principal Rs. 9,02,77,410/- and Carrying Cost/Interest Rs. 46,57,107 /- as on 31.03.2025) towards tariff difference of energy charges for the period of April, 2024 to February, 2025 on account of the Order dated 26.03.2025 passed by the Hon'ble HERC.
- 2.17 That the Petitioner Vide its e-mail dated 07.04.2025, requested HPPC to make the payment of Rs. 9,49,34,517/- (Principal Rs. 9,02,77,410/- and Carrying Cost/Interest Rs. 46,57,107 /- as on 31.03.2025) towards tariff difference of energy charges for the period of April, 2024 to February, 2025 on account of the Order dated 26.03.2025 passed by the Hon'ble HERC.
- 2.18 That the Petitioner Vide its e-mail dated 25.04.2025, requested HPPC to make the payment of Rs. 9,69,43,607/- (Principal Rs. 9,02,77,410/- and Carrying Cost/Interest Rs. 66,66,197/- as on 25.04.2025), payable by HPPC due to tariff difference on account of the Order dated 26.03.2025 passed by the Hon'ble HERC along with Carrying Costs.
- 2.19 On 02.05.2025, HPPC made a payment of Rs. 8,92,84359/- to the Petitioner without any Carrying Costs/ interest on the tariff differential amount. HPPC further deducted an amount of Rs. 9,02,774/- on account of alleged rebate of 1% for early payment.
- 2.20 That the Petitioner Vide its letter dated 05.05.2025, acknowledged receipt of Rs. 8,92,84359/- from HPPC on 02.05.2025 towards the tariff difference on account of the Order dated 26.03.2025 passed by the Hon'ble HERC. However, the Petitioner pointed out that it is the normal practice to allow Carrying Cost from the date when the tariff became due and payable and that the total amount payable by HPPC as on 05.05.2025 is Rs. 9,71,86,256/- including Carrying Cost/Interest. Hence, there is an outstanding of Rs. 79,15,068/- which is yet to paid by HPPC.
- 2.21 That the timely determination of tariff (energy charges) for the ensuing financial year is imperative for the generating companies such as the Petitioner, for the reason that the Petitioner is obliged to source biomass fuel at the prevailing market prices and incur the necessary costs at the relevant point of time in order to meet its obligations and supply power to HPPC under the PPA.
- 2.22 That the Petitioner has incurred far higher Fuel Cost during FY 2024-25, than what was being paid to the Petitioner as per the earlier Order dated 28.07.2023 for FY 2023-24, which is corroborated by the Hon'ble Commission in its Order dated 26.03.2025 in HERC / Petition No. 1 of 2025 (Suo Motu). The Petitioner has been compelled to bear the additional expense towards higher fuel costs from the loans it has taken, so as to meet its obligations under the PPA. What is even more appalling is that HPPC, on 02.05.2025 not only made payment of Rs. 8,92,84359/- to the Petitioner without any Carrying Costs/ interest on the tariff differential amount, but also further deducted an

amount of Rs. 9,02,774/- on account of alleged rebate of 1% due to early payment. This shows that HPPC is unduly benefitting by denying the Carrying Costs and the same time availing rebate of 1% due to alleged early payment when the same is inapplicable in the present case. Hence, the Petitioner is entitled to be compensated by way of Carrying Costs/ interest as per the actual loan cost incurred by the Appellant. The same is payable upto the date of the amount being actually paid by HPPC. Details of loans availed by the Petitioner during FY 2024-25 and loan cost is annexed.

- 2.23 That for the reason that the principle, *actus curiae neminem gravabit* meaning that an act of Court shall prejudice no man, has been widely accepted and applied across several judgements and is also squarely applicable in the present case. The Hon'ble Supreme Court in *Atma Ram Mittal v. Ishwar Singh Punia* 1988 INSC 234 found as under:-

"It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" — an act of court shall prejudice no man."

- 2.24 That despite the Petitioner having approached the Hon'ble HERC much earlier on 13.04.2024, praying for determining the Fuel Cost for FY 2024-25, which culminated into the Hon'ble HERC passing the Order dated 26.03.2025 in HERC / Petition No. 1 of 2025 (Suo Motu), applicable w.e.f. 01.04.2024, the Petitioner cannot be denied the Carrying Cost/ interest on the tariff differential amount on account of the order being passed on 26.03.2025. If said order was passed in April, 2024 itself; the Petitioner would not have been compelled to bear the higher fuel costs from its own pocket and would rather have been able to bill the same to HPPC and receive the additional expense from HPPC w.e.f. 01.04.2024. Therefore, the Petitioner is entitled to bona fide compensation for the "time value of money".

- 2.25 That for the reason that the Hon'ble Appellate Tribunal in the case of *Essar Power Gujarat Limited Vs. Gujarat Electricity Regulatory Commission & Anr.* (Judgment dated 16.04.2025 in Appeal No. 842 of 2023), has, inter-alia, laid down that Carrying Cost/ interest is a measure of restitution. Although the said judgement was rendered in the context of a Section 63 proceeding, it has been held that Carrying Cost/ interest is the only manner through which a generator can be restored to the same economic position. It is also to be noted that the Carrying Cost is payable from the date when the additional expenditure is incurred by the affected party. Hence, in the present case, the Carrying Cost is applicable from the date when the Petitioner has incurred the legitimate additional expenditure on account of the higher fuel costs during FY 2024-25 and not from the date when such higher determination was made i.e. 26.03.2025.

- 2.26 That for the reason that, even in case of Section 62 proceedings relating to generating business, inter-alia, if a claim is not approved within a reasonable time but approved after a gap of time and the generator is compelled to bear the additional expense in the interregnum, the generator is entitled to carrying cost on his claim of legitimate expenditure, as held by the Hon'ble Appellate Tribunal in its Judgment dated 15.2.2011 in Appeal No. 173 of 2009 in the matter of Tata Power Company Ltd. Vs. MERC (para 42), and subsequently reiterated in Judgement dated 13.09.2022 in Appeal Nos. 202 & 203 of 2010 in the matter of Reliance Infrastructure Limited Vs. MERC & Ors. (para 11.5), as reviewed vide Order dated 02.01.2013 in Review Petition No. 13 of 2012.
- 2.27 For the reason that, in the Order dated 26.03.2024, the Hon'ble Commission while determining the Fuel Cost for FY 2024-25, also added as under:-
"It is added that the fuel cost determined herein shall continue to be in force till such time the Commission amends or re-determines the same. In such cases, say for the FY 2025-26, the fuel price escalation clause as provided in the RE Regulations in vogue shall prevail subject to adjustments vis-à-vis those determined by the Commission."
Therefore, the Hon'ble Commission thought it prudent to apply the fuel price escalation as provided in the HERC RE Regulations in vogue, if at all the determination of fuel cost for FY 2025-26 is delayed, subject to adjustments. Applying the same principle, the Petitioner neither received the benefit of fuel price escalation from HPPC during FY 2024-25 till the same was determined vide the Order dated 26.03.2025, nor received the Carrying Cost/ interest w.e.f. April, 2024. Hence, the Petitioner is entitled to be compensated by way of Carrying Cost/ interest on the tariff differential amount on account of the Order dated 26.03.2025 passed by the Hon'ble HERC.
- 2.28 That the following main prayers have been made: -
- a) Hold and declare that the Petitioner is entitled to be compensated by way of Carrying Costs/ interest for the tariff differential amount on account of the Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025 passed by the Hon'ble Commission;
 - b) Direct the Respondent HPPC to pay the outstanding amount of Rs.79,15,068 towards Carrying Costs/ interest as on 05.05.2025 to the Petitioner as per the actual loan cost incurred by the Appellant, without any rebate;
 - c) Direct the Respondent HPPC to pay the Carrying Costs/ interest, till such time the payment is actually made by HPPC;
 - d) Award the cost of the present litigation in favour of the Petitioner and against HPPC; and
 - e) Pass such further order(s) as this Hon'ble Commission may deem fit in the interest of justice, equity and good conscience.

3. **The respondent's (HPPC) reply: -**

3.1 That the Petition is predicated on frivolous and without cause of action, since the same has been filed on wholly untenable grounds. The Petitioner seeks to create an artificial cause of action by alleging entitlement to carrying costs/interest on tariff differential amount, despite the fact that all bills raised by the Petitioner pursuant to the Order dated 26.03.2025 have been duly settled by HPPC without any delay.

3.2 That so far as the aspect of carrying cost is concerned, it is well trite that the same is not a mandatory relief, more particularly, in the present facts and circumstances. Instead, the grant of interest is discretionary and the same has been rightly and validly exercised in the present facts and circumstances while passing the Order dated 26.03.2025.

3.3 That Section 34 of the Civil Procedure Code deals with the provision of granting interest as under:

“(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 1 [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit : ...”

As per the said provision, where and in so far as a decree for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged. It is well settled that the use of the word 'may' in Section 34, CPC confers a discretion on the Court to award or not to award interest or to award interest at such rate as it deems fit. Such discretion is expected to be exercised judiciously and reasonably considering the peculiar facts and circumstances of the case.

3.4 That the claim of the Petitioner is also vitiated in view of the fact that it is premised on a retrospective application of the revised fuel cost. The Hon'ble Commission, in its Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025, has categorically stipulated that the newly determined fuel cost shall be effective from 01.04.2024 onwards, which was an additional benefit granted to the Petitioner. The Hon'ble Commission, allowed revised fuel cost, after invoking their power to relax under Regulation 73 of the HERC RE Regulations, 2021. Hon'ble Commission's discretionary power to relax regulations, if granted, should be interpreted narrowly, and no further benefits beyond the explicit relaxation should be presumed or granted. The Hon'ble Commission can use its authority to provide a specific, but limited, advantage in certain situations, but it doesn't

imply a broader, unspecified concession. The relaxation provides a distinct, defined benefit. Once the explicit relaxation is granted, no additional benefits beyond what was specifically provided can be inferred or assumed to be included. In that view, the claim of carrying cost cannot be held as a consequential claim in the instant case and is therefore, untenable.

- 3.5 That further, the Hon'ble Commission, as a ground for exercise power of relaxation, has stated that the delay in determination of the fuel cost cannot be attributed to the generators. Applying the same rationale, the said determination cannot even be attributed to the Purchaser. In that view, to balance the equities, the Hon'ble Commission has rightly considered revision of fuel cost w.e.f. 01.04.2024 without any carrying cost/interest. In peculiar circumstances forming the very basis for retrospective application of fuel cost in the instant case, the additional liability of carrying cost on the Respondent shall be unjustified and unreasonable.
- 3.6 That furthermore, as is evident from a perusal of the order dated 26.03.2025, the Hon'ble Commission adopted a liberal view and granted fuel cost as Rs. 4384/MT, for a distance up to 50km. The said fuel cost was already an incentivised benefit to the Petitioner as the revised fuel cost, as granted, was higher than the cost assessed, in the CDLU Report. In such circumstances, the order dated 26.03.2025, justly and rightly does not allow any grant of carrying cost for the differential tariff.
- 3.7 That it is respectfully reiterated that Answering Respondent has ensured compliance with the directions of the Hon'ble Commission in letter and spirit. Immediately upon receipt of the invoices raised by the Petitioner pursuant to the Order dated 26.03.2025, HPPC released payments without demur.
- 3.8 That the Respondent further submits that the present claim for carrying costs /interest on tariff differential amount is an afterthought and an attempt to reargue issues already adjudicated. This contention was never raised by the Petitioner before the Hon'ble Commission in Case No. HERC/Petition No. 1 of 2025, despite having full opportunity. The Petitioner chose not to press such a claim in those proceedings, and therefore, is now estopped in law from raising the same by way of a subsequent petition.
- 3.9 That the Electricity Act, 2003, the Power Purchase Agreement executed between the parties, as well as the tariff framework laid down by the Hon'ble Commission, do not envisage or confer any right upon the Petitioner to claim carrying costs /interest on tariff differential amount in the circumstances pleaded. In the absence of any such express statutory or contractual provision, the Petitioner's claim is wholly without legal foundation.
- 3.10 That the carrying costs or interest is compensatory in nature and can only be claimed where delay or withholding of legitimate dues is attributable to the paying party. In the

present case, there has been no delay whatsoever on the part of HPPC in settling the amounts payable. On the contrary, the Respondent has acted expeditiously and in compliance with the tariff order. Accordingly, the very basis of the claim is non-existent.

- 3.11 That the claim advanced by the Petitioner is also contrary to the settled principle that tariff orders operate prospectively unless specifically directed otherwise. Entertaining such claims would not only defeat the finality of tariff determination but would also create uncertainty in the regulatory framework, which is neither intended by the statute nor permissible in law.
- 3.12 That in view of the above submissions, it is respectfully prayed that the present Petition be dismissed at the threshold as misconceived, devoid of merit and not maintainable, with such further directions as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case. However, without prejudice to the foregoing, in the alternative, if the Hon'ble Commission is inclined to grant any interest, the same shall be reasonable interest i.e. lowest of interest specified in Regulations, actual carrying cost or prevailing market rate as against the exorbitant LPS claimed by the Petitioner.
- 3.13 That the invoice dated 28.03.2025 raised by the Petitioner upon HPPC has been erroneously issued insofar as it seeks carrying costs /interest, despite there being no such entitlement under the applicable framework or in the Commission's order dated 26.03.2025. It is further relevant that while exercising its powers to relax, the Hon'ble Commission has consciously not allowed any carrying cost and thus, the same ought to not have been raised by the Petitioner. Therefore, the Petitioner's attempt to raise an invoice for carrying costs or interest is in clear contravention of the express directions of the Hon'ble Commission and is wholly untenable.
- 3.14 That the Hon'ble Commission, vide Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025, has unequivocally stipulated that the revised fuel cost shall be applicable with effect from 01.04.2024. This determination was itself an additional benefit conferred upon the Petitioner, granted pursuant to the Hon'ble Commission's exercise of its discretionary power to relax under Regulation 73 of the HERC RE Regulations, 2021.
- 3.15 That the exercise of a regulatory relaxation must be construed strictly and confined to the specific benefit expressly granted. The invocation of such discretionary powers cannot, by implication, be stretched to confer further benefits which were neither contemplated by the regulations nor granted in the Commission's order. The relaxation in the present case was clear, precise and limited - the Petitioner was allowed a higher revised fuel cost of Rs. 4,384/MT, for a distance up to 50 km, notwithstanding that the cost so determined exceeded the benchmarked figures assessed in the CDLU Report. Accordingly, the benefit under the relaxation has already been fully extended to the Petitioner, and any further claim, particularly for carrying cost, finds no basis in either

the order of this Hon'ble Commission or the governing regulations. Once the explicit relaxation has been exercised and implemented, no ancillary or consequential claims can be presumed to flow therefrom.

The demand for carrying cost, therefore, is wholly untenable. It is devoid of legal foundation, lacks regulatory or contractual support and is contrary to the express tenor of the Commission's order dated 26.03.2025. In fact, the present claim appears to be an afterthought, raised belatedly and with the sole intent of securing an unwarranted financial windfall at the expense of the Respondent. Such speculative and opportunistic claims, being neither contemplated under the applicable framework nor grounded in law, deserves to be rejected outright by this Hon'ble Commission.

- 3.16 That the benefit arising from the relaxation has already been fully extended to the Petitioner, and any further demand, particularly for carrying cost, finds no foundation either in the order of this Hon'ble Commission or within the governing regulatory framework. Once such discretionary relaxation has been specifically exercised and implemented, its scope stands exhausted, and no ancillary, consequential or implied entitlements can be presumed to accrue therefrom.
- 3.17 That the process of determining the fuel cost entails conducting studies for the assessment of the same, including, inter alia, the preparation of the detailed report and stakeholders' consultation thereafter for the purpose of conducting a detailed analysis and arriving at an appropriate and reasonable fuel cost. These steps are integral to the regulatory mechanism and are designed to ensure accuracy, fairness and transparency in the determination process. Inevitably, such an exercise requires the involvement of multiple stakeholders, collection of data, verification of figures and application of technical expertise. The time taken in carrying out these necessary procedural formalities cannot, therefore, be attributed as a lapse or default on party of any involved party including the Respondent. The delay, if any, was only a natural consequence of the procedural safeguards and steps mandated for a just and proper ascertainment of the correct cost, and cannot be construed as conferring any additional rights or liabilities, which is prejudicial to the buyer.
- 3.18 That the present claim for carrying costs or interest on the tariff differential amount is manifestly an afterthought and a transparent attempt to re-agitate issues that have already been conclusively adjudicated by the Hon'ble Commission. The Petitioner, despite having full opportunity to raise this claim in Case No. HERC/Petition No. 1 of 2025, chose not to do so. Having failed to assert this entitlement at the relevant stage, the Petitioner is now estopped, both in law and equity, from raising it through a subsequent petition.

- 3.19 Furthermore, it is submitted that neither the Electricity Act, 2003, nor the Power Purchase Agreement executed between the parties, nor the tariff framework determined by the Hon'ble Commission, envisages or confers any right upon the Petitioner to claim carrying costs or interest on the tariff differential. HPPC has, at all material times, acted in full compliance with the Commission's orders, releasing all lawful payments due to the Petitioner promptly. There is, therefore, no basis for the Petitioner's belated and speculative claim, which is wholly devoid of legal foundation, and deserves to be rejected in its entirety.
- 3.20 That the Petitioner has not provided any proof of the actual fuel cost incurred by them, which has been a specific objection raised by the Respondent in various ongoing/decided litigations between the parties on the issue of the fuel cost. The reference to previous generic order to contend that the Petitioner had been paid lesser fuel cost is incorrect, unjust and unacceptable. In view thereof, the contention of the Petitioner that they had been compelled to bear additional expense from the loans is denied as the same is without any substance. Further, the deduction of early payment rebate is in accordance with the terms of the PPA, which is binding on all concerned. The same cannot be a basis for grant of any additional relief, which is not stipulated either under the terms of PPA or the Order dated 26.03.2025. The details of the loans appended is a self-prepared tabular statement, which has no credence in the eye of law. Even otherwise, the self-prepared tabular loan statement does not substantiate the factum of higher fuel cost being expended by the Petitioner, more so, when no invoices and corroborating proof of payment have been placed on record for the commensurate time. In any case, the grievance of the Petitioner as regards the actual fuel cost being higher than the generic cost, cannot form the subject matter of the instant Petition which is limited to grant of carrying cost on the revised fuel cost. The said grievance does not even justify entitlement to relief as sought by the Petitioner.
- 3.21 That the principle of law referred to by the Petitioner is equally applicable to the Respondent. Detailed submissions on this aspect have been elucidated in the preliminary submission above and the same shall be read as part of instant reply. The judgment referred in this sub-para is way distinct from the present facts and circumstances. The said judgment has been passed on the issue whether the premises which was not ten years' old on the date of the suit and was exempted from the operation of the new Rent Act, wherein specific provisions with respect to applicability had been specified, could be governed by it, if ten years expired during the pendency of the litigation. The Hon'ble Apex Court, in the said case, considering the delay owing to the pendency of the litigation held that the view of the High Court in holding that the suit under the Act is not maintainable and the Jurisdiction of the Civil Court stands barred is

incorrect. The judgment therefore, allows relief considering the principle of *actus curiam neminem gravabit*, in a manner that is not prejudicial or adversarial to any party. In the instant case however, the claim of the Petitioner if allowed, will be prejudicial to the interest of the Answering Respondent and is therefore inequitable. Suffice to state that the delay in determining the fuel cost, if any, cannot be attributed to any concerned party and the Petitioner has already been duly compensated and incentivized with exercise of power of relaxation by this Hon'ble Commission while passing order dated 26.03.2025. The Petitioner has no vested or conferred right to claim carrying cost. Neither the provisions of the Electricity Act, 2003, nor the terms of the PPA, contemplate or recognize any such entitlement. Consequently, the present claim for carrying cost is misconceived, devoid of legal foundation and liable to be rejected outright.

- 3.22 That the judgment passed in the case of *Essar Power Gujarat Limited Vs. Gujarat Electricity Commission and anr.*, relates to adjudication of change in law claims, which are governed by the specific terms of the PPA. However, in the said judgment as well, the Hon'ble APTEL duly observed the ratio of law laid down in *CITI Bank vs. Hiten P. Dalal (2016) 1 SCC 411*, which states "The law on restitution vests expansive power in the court but such power has to be exercised to ensure equity, fairness and justice for both the parties. The court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. In the context of restitution, the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties. The operative relief allowed to the Essar power in the said case also states that the restitution has to be made after verification of the documentary 'evidence' as regards the borrowings made and the interest paid thereon. The contentions raised in the present petition are unsubstantiated and fails to meet the standards of credible evidence to establish the claim of the Petitioner. In view thereof, without prejudice to the contention of the Respondent to the effect that the referred judgment has no applicability on the facts of the instant case, the referred judgment fortifies the alternative argument of the Respondent to the effect that no claim for payment of exorbitant carrying cost without actual proof can be allowed in favour of the Petitioner.
- 3.23 That the reliance of the Petitioner on the referred judgments is also misplaced as the said judgments have been passed in wholly different facts and circumstances. The said judgments are predicated on the issue of carrying cost on revenue gap decided on true up of ARR. The issues involved in those cases were largely based on the fact that there were errors on the part of the State Electricity Commission in making assessment under the True up petition, which was subsequently revised. In view thereof, the claim for

deferred payment was raised along with the carrying cost. While deciding the said issue, it was observed that the Commission has taken a casual approach in making projections. In view thereof, the Hon'ble APTEL allowed carrying cost on the deferred payment. In the facts of the present case, however, none of the concerned parties and even the Hon'ble Commission cannot be held to be in error in making any assessment of the fuel cost and the alleged delay cannot be attributed to any concerned party. Thus, the exercise of limited power of relaxation by the Hon'ble Commission in the instant case is equitable, just and reasonable.

- 3.24 That the reliance placed upon by the Petitioner in the order passed in Petition No. 51 of 2020 is of no avail in the instant case. In the said case the claim of reimbursement towards MAT/Corporate Tax was a consequence of the default and malafides of the Petitioner in refusing to make the payment of excess amount paid to them by the Respondent. It was specifically submitted before the Hon'ble Commission that the Petitioner although bound to refund the excess amount reimbursed towards MAT/Corporate tax, wrongly refuted the same and the refusal continued for years, which reflects the malafides of the petitioner. As such, the allowance of carrying cost of LPS rates in the referred matter, is based on wholly distinct conspectus, which cannot be applied to present facts and circumstances.
- 3.25 That the contents of sub-para H, are admitted only to the limited extent that the Hon'ble HERC passed its Order dated 26.03.2025. However, beyond this, the assertions of the Petitioner are wholly misconceived and untenable. As has already been submitted in the foregoing paragraphs, the Petitioner has been duly extended incentivized benefits, wherein the Hon'ble Commission, after invoking its power to relax under Regulation 73 of the HERC RE Regulations, 2021, revised the fuel cost with effect from 01.04.2024. The Hon'ble Commission, in its wisdom, consciously refrained from granting any carrying cost or interest, thereby clearly indicating that no such benefit was either contemplated or permissible in the peculiar circumstances forming the basis for the retrospective application of the revised fuel cost. In such a situation, fastening an additional liability of carrying cost upon the Respondent would not only be unjustified but also wholly unreasonable and contrary to the express tenor of the Commission's Order.
- 3.26 It is further submitted that the Respondent has ensured strict and complete compliance with the directions of the Hon'ble Commission, both in letter and spirit. Immediately upon receipt of the invoices raised by the Petitioner pursuant to the Order dated 26.03.2025, HPPC released the admissible payments. The legal character of carrying costs or interest is compensatory in nature, such relief can only be awarded where there exists demonstrable delay, wrongful withholding or default on the part of the paying party in settling amounts lawfully due. In the present case, there has been no such delay or

withholding attributable to HPPC. Accordingly, the very foundation of the Petitioner's present claim stands vitiated. The demand for carrying cost is devoid of any legal basis, contractual entitlement, or regulatory support, and is clearly an afterthought engineered only to extract an unwarranted financial windfall.

4. **Petitioner's rejoinder dated 17.12.2025**

l) *Entitlement of the generator to claim carrying cost on his legitimate expenditure -*

4.1 That vide Order dated 26.03.2025 in Case No. HERC/Petition No. 1 of 2025, Hon'ble HERC approved the Fuel Cost for biomass plants for FY 2024-25 w.e.f. 01.04.2024. Petitioner was compelled to bear the higher fuel costs from its own pocket for the period of supply beginning 01.04.2024, while the payment of differential tariff has been made by HPPC only on 02.05.2025 i.e. after expiry of FY 2024-25.

4.2 That fuel cost determined by the Hon'ble Commission for FY 2023-24 was Rs. 3411/MT was ultimately revised to Rs. 4175/MT for FY 2024-25 only on 26.03.2025, w.e.f. 01.04.2024.

4.3 That the Petitioner suffered loss due to loan availed to offset the impact of additional fuel cost. The Ledger Accounts in respect of the loans availed by it during the relevant period (FY 2024-25), are attached. Therefore, the Petitioner is entitled to bona fide compensation for the "time value of money" amounting to Rs. 79,15,068/- as on 05.05.2025 alongwith interest upto date of payment of the amount due. In the above context, it is no longer *res integra* that, developers are entitled to interest on the differential amount due to them as a consequence of redetermination of tariff or time taken in such determination. Hon'ble APTEL in the case of *Lanco Amarkantak Power Limited Vs. Haryana Electricity Regulatory Commission & Ors.* (Judgement dated 22nd May, 2019 in A. No. 308 of 2017), involving HPPC itself, considered the following issue:-

"92. the only issue which arises for our consideration in the instant Appeal is:-

Whether the State Commission erred in law in not directing payment of interest on the outstanding differential amount payable by the Respondents to the Appellant?"

While answering the above issue, Hon'ble APTEL returned the following relevant findings:-

"93. Our findings and analysis

i)

...

iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to

compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.

.....

viii) The Respondent No.3 has however submitted that the interest was not claimed by the Appellant in their earlier proceedings. The Appellant have submitted that it cannot have and did not claim interest in the tariff application filed before the State Commission as the said proceedings was for tariff determination only and not for recovery of amount as such the scope of proceedings and the order was limited to determination of tariff.

....”

Hence, the same question regarding entitlement of the generator to claim carrying costs on its legitimate expenditure incurred at the relevant time, but approved after some time by the regulatory process, has been answered in favour of the generator and against HPPC. The very same submissions of HPPC regarding Section 34 of the CPC, discretion in the manner of grant of interest, no provision in regulations or the PPA for grant of carrying costs/ interest on tariff differential amount etc., which are once again raised by the HPPC in its present reply, have already been considered and squarely rejected by the Hon'ble APTEL. No appeal was preferred by HPPC against the said judgement, which became final and binding on HPPC. Hence, HPPC cannot be permitted to rely on the same rejected submissions.

- 4.4 That the Hon'ble HERC also passed the Order dated 09.09.2019 in Case No. HERC/PRO-5 of 2014 to give effect to the above judgement dated 22.05.2019 passed by the Hon'ble APTEL, and awarded interest on the tariff differential amount to the generator. Hence, there cannot be discrimination in the matter of granting the Carrying Cost/ interest on the tariff differential amount.
- 4.5 That the case of the Petitioner is squarely covered by the Judgment dated 15.02.2011 in Appeal No. 173 of 2009 in the matter of *Tata Power Company Ltd. Vs. MERC* (para 42), and subsequently reiterated in Judgment dated 13.09.2022 in Appeal Nos. 202 & 203 of 2010 in the matter of *Reliance Infrastructure Limited Vs. MERC & Ors.* (para 11.5), as reviewed vide Order dated 02.01.2013 in Review Petition No. 13 of 2012. The principle of law laid down, in case of Section 62 proceedings relating to generating business, *inter-alia*, is, if a claim is not approved within a reasonable time but approved after a gap of time and the generator is compelled to bear the additional expense in the interregnum, the generator is entitled to carrying cost for deferred recoveries. The above judgements are rendered specifically in the context of Section 62 tariff under the Electricity Act, considering the principles of interest even under the Code of Civil Procedure.

4.6 That Hon'ble CERC in its Order dated 08.08.2023 (Petition No. 640/MP/2020, filed by HPPC), held that the entitlement of PPCL to the interest on the Differential Tariff has to be linked to the date of determination of tariff under Tariff Regulations, 2014 i.e. the date of the Tariff Order (para 18). Further, Hon'ble CERC specifically rejected the contention of HPPC that PPCL is claiming carrying cost retrospectively (the same contention raised by HPPC herein), and held that the tariff for the control period 2014-19 for PPCL came to be determined only vide Tariff Order dated 26.11.2019, hence, PPCL is entitled to claim of carrying cost on the Tariff Differential amount (para 33). The same principle also is applicable in the present case.

II) *Retrospective determination of the Fuel Cost for FY 2024-25 as alleged by HPPC:-*

4.7 That it is trite law that though the tariff order can be made some time after commencement of the financial year, it may be made effective from the date of commencement of the financial year. The Hon'ble Tribunal in a number of cases has held that, in the event of a tariff order being delayed, it could be made effective from the date the tariff order commences or by annualization of the tariff, so that the deficit is made good for the remaining part of the year or it can be recovered after truing up exercise by loading it in the tariff of the next year. Thus, law empowers the Commission to specify the date from which the tariff was to commence or the date when it will expire; and it was neither Section 62 nor Section 64 of the Act that constituted a bar to retrospectivity of a tariff order.

4.8 That even prior to the Petitioner having filed Petition No. 24 of 2024 on 13.04.2024 before the HERC, it had sent letters and requests dated 25.04.2023, 06.06.2023 & 07.07.2023 to this Hon'ble Commission to conduct a detailed study to determine the appropriate biomass price for FY 2023-24 aligned to the prevailing market conditions and taking into account necessary factors such as distance of the power plant from the nearest paddy growing areas and transportation costs.

4.9 That the proceeding in which the Suo Moto Fuel Cost Determination was passed (Case No. HERC/Petition No. 1 of 2025), was initiated suo-moto by the Commission. Therefore, there is no question of the Petitioner having an opportunity to have made its claim for carrying Cost. In point of fact, the Petitioner had moved its own petition for determination of fuel cost for FY 2024-25. In Reply thereto, HPPC had itself pleaded that the Petitioner's petition was infructuous since the Commission had already suo moto commissioned a State Specific Study for Fuel Cost Determination. The HPPC cannot on the one hand oppose the maintainability of the Petitioner's petition and then contend that the Petitioner ought to have claimed carrying cost in a suo moto proceeding. it is respectfully submitted that when the intention of the Hon'ble

Commission was to give effect to the tariff order dated 26.03.2025 from the date of the commencement of the financial year i.e. 01.04.2024 then, by necessary implication, the claim of the Petitioner for the carrying costs on the approved legitimate expenditure is founded well within the four corners of law.

4.10 That, in the present case, there are no provisions for filing true-up petitions before this Hon'ble Commission. Hence, there is no other manner specified to claim carrying costs on the deferred recoveries by the generators in instances such as determination of tariff after commencement of the financial year.

III) *Petitioner did not claim carrying costs on the tariff differential amount in the Tariff Order dated 26.03.2025:-*

4.11 That the Petitioner had approached the Hon'ble HERC much earlier on 13.04.2024 itself by filing a petition bearing HERC/Petition No. 24 of 2024, praying for determining the Fuel Cost for FY 2024-25. The said petition was disposed by the Hon'ble Commission observing that it had already initiated the exercise of getting an independent State specific study. HPPC had itself opposed the maintainability of the said petition, inter alia, on the ground that the Commission had initiated a suo-moto proceeding for the same purpose. HPPC cannot on the one hand oppose the maintainability of the Petitioner's petition and then on the other hand contend that the Petitioner ought to have made a prayer for carrying cost in a suo moto proceeding. The Hon'ble HERC passed the Order dated 26.03.2025 applicable w.e.f. 01.04.2024 in *suo motu* proceedings and not on the basis of a petition filed by any party. There were no claims preferred or reliefs sought from the Hon'ble HERC, so to say, by any aggrieved party. Also, no one could predict the time taken in the tariff proceedings at the relevant time. In such circumstances the question of claiming or pressing for carrying costs on unknown tariff differential amount, does not arise.

4.12 That Case No. HERC/Petition No. 1 of 2025 was initiated by the Hon'ble HERC, *suo motu*, for determination of fuel cost for the FY 2024-25 only, and not for recovery of amount, as such, the scope of proceedings and the order was limited to determination of tariff. The submission of HPPC that Petitioner never raised the contention of carrying cost during the *suo motu* proceedings, is liable to be rejected and contrary to the settled proposition of law which is already extracted earlier and relied upon, and not repeated herein for the sake of brevity.

4.13 That HPPC has pointed out that though the Petitioner has mentioned the letter dated 08.10.2024, but has annexed another letter dated 08.01.2024; the same is a bonafide mistake. The Petitioner is placing on record herewith, a copy of the letter dated 08.10.2024 sent by the Petitioner to the Hon'ble Commission.

4.14 That as regards the contention of HPPC regarding placing all the invoices/ proof of actual payment to illustrate the higher fuel cost incurred by the Petitioner, it is respectfully submitted that the Petitioner's tariff is determined by the Hon'ble Commission on the basis of Generic/normative Tariff, including the Fuel Cost. It is trite law that, in a normative tariff determination, the actuals are not required to be considered. Once, the tariff has been fixed on the basis of normative parameters; the same should not be opened, even if, there is, any variation between normative and actual.

On the above principle, all the judgements relied upon by HPPC, claiming interest being compensatory in nature and should be on actuals, are in fact, situations where the actual cost was being reimbursed. If in a normative tariff determination, actual costs are not being reimbursed, then Time Value of Money i.e. compensation will also have to be on normative basis. Pre the present determination, the Petitioner was entitled only to the normative fuel cost, irrespective of its actuals. Post the subject determination, once again the Petitioner is entitled to its fuel cost on normative basis, irrespective of its actuals. Hence, the only differential that the Petitioner is entitled to is the current normative number minus the earlier normative number irrespective of the actuals in either year. Therefore, the petitioner is entitled in law to be compensated for the differential, equally, on a normative basis for the difference in the respective norms. This is because if in normative tariff determination, the Hon'ble Commission has not, cannot and will not, consider(ed) the actuals for the purpose of the principle, then equally the interest compensation for Time Value of Money will also have to be on normative basis. Therefore, the quantum on which the interest is receivable would be the difference in the normative numbers. However, since there is no normative rate of interest which is defined, the rate of interest, therefore, ought to be on the basis of actual lending on the normative quantum and the actuals for the purpose of the quantum cannot be looked into in normative tariff determination. It is reiterated that generic tariff order is based on normative parameters only, and once the tariff is determined on adopting normative approach, there can be no comparison with actual parameters.

Proceedings in the Case

5. The case was heard on 29.09.2025, 17.12.2025 and finally on 03.02.2026, in the court room of the Commission. During the course of the proceedings, the Petitioner as well as the Respondent primarily reiterated the averments and submissions set out in their Petition/reply/rejoinder/written submissions, which for the sake of brevity are not reproduced herein but shall be read as part of the record.

Commission's Analysis and Order

6. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the them. The primary issue is whether the generator is entitled to the "Time Value of Money" for legitimate expenditure incurred at the relevant time but approved subsequently, on the basis of 'principle of restitution'.
7. The Petitioner has submitted that it is entitled to carrying cost/ interest on the tariff differential amount for the period between effective date of incurring additional expenditure and the date of actual payment by HPPC. This claim is founded on the principles of restitution and Time Value of Money even in the absence of the explicit provisions in the PPA and/or regulations. The Petitioner has further relied upon Article 3.6(b) of the PPA dated 22.06.2012, executed between the parties, which provides for rebate on early payment and levy of late payment surcharge at the rate of 1.25% per month for the actual period of delay.
8. Per contra, the Respondent, HPPC, has strongly opposed the grant of carrying cost/interest, contending that such relief is not mandatory under Section 34 of the Code of Civil Procedure, 1908, and is not supported by any provision under the PPA or the governing regulations. It has also been submitted that the issue of carrying cost was never raised by the petitioner during the suo-motu proceedings, that there has been no delay on the part of HPPC in making payment of the tariff differential amount, and that the Petitioner has failed to submit complete invoices or proof of actual payments to substantiate the alleged higher fuel cost incurred.
9. In order to examine the same, the Commission has framed the following issues for consideration and decision in the matter:-
 - a) Whether the petitioner is entitled to carrying cost in respect of tariff determined on 26.03.2025 applicable for the period w.e.f. 01.04.2024?
 - b) Period for which the carrying cost is admissible, if any?
 - c) Rate of interest to be allowed?

After hearing the learned counsel for the parties and going through the record of the petition, the findings of the Commission on the issues are as under:-

Issue (a):

Whether the petitioner is entitled to carrying cost in respect of tariff determined on 26.03.2025 applicable for the period w.e.f. 01.04.2024?

The Commission has duly considered the submissions advanced by the parties. The Petitioner has asserted its entitlement to carrying cost on the tariff differential amount on the basis of the well-established principles of restitution and time value of money. Per

contra, the Respondent has disputed such entitlement on the grounds of absence of any express contractual or statutory provision, as well as on certain procedural objections.

The Petitioner has placed reliance upon a catena of judgments rendered by various judicial fora, wherein it has been consistently held that generating companies are entitled to interest/carrying cost on differential amounts arising on account of re-determination of tariff. It has been unequivocally settled that such interest does not partake the character of a penalty, but is compensatory in nature, representing the loss occasioned due to denial of legitimate dues at the relevant point of time. The petitioner has relied on the following judgments:

- (A) *Essar Power Gujarat Limited Vs. Gujarat Electricity Regulatory Commission & Anr.* (Judgment dated 16.04.2025 in Appeal No. 842 of 2023) [relevant pages – 2, 3, 20, 53-58, 70, 80, 91-97]
- (B) *Lanco Amarkantak Power Limited Vs. Haryana Electricity Regulatory Commission & Ors.* (Judgement dated 22.05.2019 in A. No. 308 of 2017) [relevant paras 1-2, 93 (iii) to (viii)]
- (C) *Tata Power Company Ltd. Vs. MERC* (Judgment dated 15.2.2011 in Appeal No. 173 of 2009) [relevant paras 38-42, 43(1), 43(6)]
- (D) *Reliance Infrastructure Limited Vs. MERC & Ors.* (Judgement dated 13.09.2022 in Appeal Nos. 202 & 203 of 2010) [relevant paras 10, 11.4 -11.5]
- (E) *Reliance Infrastructure Limited Vs. MERC & Ors.* (Order dated 02.01.2013 in Review Petition No. 13 of 2012 in Appeal No. 203 of 2010) [relevant paras 2, 5, 13-15]
- (F) *Haryana Power Purchase Centre Vs. Pragati Power Corporation Limited & Ors.* (Order dated 08.08.2023 in Petition No. 640/MP/2020) [relevant para 33]

The Commission further deems it appropriate to advert to its own Order dated 26.03.2025 passed in Suo Motu Petition No. 1 of 2025, wherein, invoking its power to relax under Regulation 73 of the HERC RE Regulations, 2021, it was categorically held that the fuel cost and tariff determined therein shall be applicable retrospectively w.e.f. 01.04.2024, owing to delay not attributable to the generators. The relevant excerpt of the ibid order is reproduced hereunder: -

“15.2

.....

- d) *Regarding the applicability of fuel cost for the FY 2024-25 w.e.f. 01.04.2024, the Commission observes that Regulations 9.1 of the HERC RE Regulations, 2021 provides that fuel cost component determined on annual basis shall be applicable prospectively, from the date of the order. However, the Commission*

in its order dated 26.07.2024, while disposing off Petition No. 24 of 2024 filed by M/s. Star Wire (India) Vidyut Pvt. Ltd., decided as under:-

“9.

.....the process of getting an independent State specific study for determination of the fuel cost for biomass based Renewable Energy power plants for the FY 2024-25, has already been initiated and upon the receipt of the report, the same shall be made available on the website of the Commission. The petitioner has averred that the present case can be taken up along with the suo-moto proceedings which the Commission may initiate for determination of fuel cost of biomass for the FY 2024-25.

The Commission is of the considered view that the main contour of the present petition i.e. to get an independent State specific study, is already under its consideration. Therefore, keeping alive of the present petition and merging of the same with the future suo-moto proceedings to be initiated by the Commission for determination of fuel cost of biomass for the FY 2024-25, does not stand to logic. In any case, the study report shall be hosted on the website of the Commission inviting comments/ suggestions/ objections of all the intervenors including the petitioner herein.”

Owing to delay in determination of the fuel cost for the FY 2024-25, for the reasons not attributable to the generators, the Commission considers it appropriate to invoke its power to relax, enshrined under regulation clause 73 of the HERC RE Regulations, 2021 and decides that the fuel cost and tariff determined in the present order shall be applicable w.e.f. 01.04.2024.”

(page 20-21 of the order dated 26.03.2025)

Once it stands acknowledged that the tariff determined subsequently was, in fact, applicable from an earlier date, it necessarily follows that the generator becomes entitled not only to the differential tariff but also to carrying cost thereon. The Petitioner, during the intervening period commencing from 01.04.2024, was constrained to incur higher fuel cost and corresponding working capital requirements, thereby financing the supply of electricity without commensurate recovery. The State Commission has accordingly redetermined tariff and has given enhanced tariff from the date of commencement of supply. Whereas, HPPC has made payment of only the principal differential amount on 02.05.2025 i.e. much after 01.04.2024 and that too after deducting Rebate of 1% from the payable amount. No carrying cost/interest was paid.

It is trite law that carrying cost/interest is not in the nature of penalty or punishment, but constitutes a normal accretion on capital, essential to restore the affected party to the same economic position as if timely payment had been made. The concept of Late Payment Surcharge (LPS), being penal in nature, is distinct and cannot be equated with carrying cost.

The doctrine of restitution mandates that once a party is found entitled to reimbursement, such restitution must include compensation for the time value of money. Denial of carrying cost would result in incomplete restitution and unjust enrichment of the Respondent at the cost of the Petitioner. Even in the absence of an express provision in the contract or regulations, carrying cost is payable as it flows from settled principles of equity and restitution, which require that no party should suffer on account of delayed recovery of legitimate dues. The objection of the Respondent regarding maintainability on the ground of constructive res judicata is devoid of merit. Tariff determination proceedings are distinct from recovery proceedings, and the cause of action for claiming carrying cost arises only upon crystallization and delayed payment of the differential amount.

Further, the contention regarding absence of actual invoices is also untenable. The tariff in the present case is determined on a normative basis, and therefore, entitlement to differential tariff and consequential carrying cost cannot be made contingent upon production of actual expenditure records.

The Commission is guided by the settled principle that money not paid in time loses its real value. Denial of carrying cost for the interregnum period would leave the Petitioner uncompensated for effectively financing the Respondent's power procurement during such period.

As held by several authorities, cited and relied by the Petitioner hereunder, the principles of equity and restitution demand that the paying party should not only pay back the principal amount but also the interest thereon to the recipient from the date of incurrance of expenditure. In the present case, though the Tariff Order for FY 2024-25 was passed in March, 2025; still the Petitioner would be entitled to carrying cost on the already approved expenditure w.e.f. 01.04.2024 onwards.

On maintainability, we find the Respondent's plea of constructive res-judicata misplaced. As held by the Hon'ble APTEL in Lanco Amarkantak Power Limited v. HERC (Appeal

No. 308 of 2017), tariff determination proceedings are distinct from recovery proceedings. The Petitioner correctly stated that Case No. 1 of 2025 was a suo-motu exercise limited to the determination of fuel cost; the occasion to claim interest on the resulting differential amount only arose once the principal amount was quantified and its payment delayed in terms of real money value. Further, the Hon'ble Supreme Court in BESCO v. Hirehalli Solar has held that interest/Late Payment Surcharge can be directed even if not specifically pleaded which is rooted in the principle of restitution. The core of the Petitioner's claim rests on the "Principle of Restitution," which is an established legal doctrine aimed at restoring a party to the same economic position they would have occupied had the entitlement been paid at the appropriate time. It is a well-settled principle in electricity jurisprudence that carrying cost is not a penalty but a compensatory accretion on capital to safeguard the interest of the receiving party. The Petitioner was compelled to meet its supply obligations from 01.04.2024 onwards while receiving a tariff based on outdated fuel norms, effectively financing the Respondent's power procurement for the interregnum period.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the petitioner is entitled to carrying cost in respect of tariff determined on 26.03.2025 applicable for the period w.e.f. 01.04.2024.

Issue (b):

Period for which the carrying cost is admissible, if any?

The Petitioner contended that they are entitled to carrying costs/interest on the unpaid interest amount starting from 01.04.2024 until the differential amount was paid. Furthermore, they claimed interest from the date that differential amount was settled until the date the entire interest amount is fully discharged at their actual borrowing costs. This is based on the argument that the delay in determination forced them to bear higher fuel costs through loans, depriving them of the "time value of money"

In this regard, the Commission takes note of the judgement of Hon'ble Appellate Tribunal for Electricity (APTEL) dated 23.12.2025 (Appeal No. 431 of 2022 in the matter of M/s. Korba Power Ltd. Vs. HERC & ors.), wherein it has been categorically held that the carrying cost is payable till the payment of entire interest amount. The relevant excerpt of the order is reproduced hereunder:-

"We hold the appellant entitled to the interest on the differential tariff from the date it became due i.e. 12.07.2016 and on the differential O&M expenses from the date it became due i.e. 31.10.2018 till the date of payment of the entire interest amount. Any

amount of interest which had remained unpaid as on the date of payment of principal amount by the 3rd respondent shall also carry interest at the rate allowed by the Commission till the date entire interest amount stands paid. However, we affirm the rate of interest as granted by the Commission vide the said impugned order.”

In light of the aforesaid settled position, it is evident that carrying cost cannot be restricted merely up to the date of payment of the principal amount, but must extend till the date on which the entire amount, including interest, stands fully paid, so as to ensure complete restitution.

In view of the above discussion, the Commission decides that carrying cost shall be admissible on the monthly differential amounts arising out of the revised tariff for the period from April, 2024 to February, 2025, till the date of actual payment of the carrying cost. The rebate of 1% (Rs. 9,02,774/-) deducted from the differential payment by the respondent is not admissible, as the prompt payment discount is applicable only in cases of prompt payment of regular bills and cannot be extended to arrears arising on account of retrospective tariff revision.

It is, therefore, directed that the differential amount shall carry interest on a month-to-month basis, and the liability shall continue to accrue till full payment of both principal and carrying cost. The payment made by the Respondent on 02.05.2025 shall be duly adjusted, and thereafter, carrying cost for subsequent periods shall be computed on the reducing balance.

Issue (c):

Rate of interest to be allowed?

The Commission has considered the submissions of the Petitioner, who has prayed for allowance of interest at the rate corresponding to its actual borrowing costs incurred during FY 2024-25, in order to offset the financial impact of additional fuel cost. In support thereof, the Petitioner has placed on record its Loan Ledger Accounts evidencing interest rates ranging between 10% and 15.30%. The Petitioner has further relied upon the Commission's earlier Order dated 27.01.2021, wherein carrying cost/interest was awarded by applying the Late Payment Surcharge (LPS) rates specified under the PPA.

Per contra, the Respondent (HPPC) has contended that, in the event interest is allowed, the same ought to be restricted to a reasonable rate, being the lowest among the rate

specified in the applicable Regulations, the actual carrying cost, or the prevailing market rate.

In order to examine the rival contentions, the Commission has perused Article 3.6(b) of the PPA dated 22.06.2012, executed between the parties, which provides for rebate on early payment and levy of late payment surcharge at the rate of 1.25% per month for the actual period of delay. The relevant clause is reproduced hereunder:-

“b) In case the payments of bills of the Company are made through LC or RTGS on presentation, rebate of 2% shall be allowed. Where payments are made other than through letter of credit within a period of one month of presentation of bills by the Company a rebate of 1% shall be allowed. In case the payment of any bill is delayed beyond 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be payable to the Company by HPPC/Discoms for the actual period of delay.”

The above-mentioned clause of the PPA, is intended to ensure timely payment of invoices raised by the generator and operates in the nature of a deterrent against delay. The Commission is of the considered view that the said provision, being penal in character, cannot be applied for determination of carrying cost, which is compensatory in nature.

The Commission has also examined the submission of the petitioner for allowance of the actual rate of its borrowings based on bank ledgers showing interest between 10% and 15.30%.

In this regard, the Commission has examined Regulation clause 16 of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021) provides the followings in respect of 'Interest on Working Capital':-

“Interest on Working Capital, for the purpose of tariff determination, shall be computed at the average Marginal Cost of funds based lending rate (MCLR) (one year tenor) of SBI prevailing during the last available six months plus an appropriate margin not exceeding 200 basis points i.e. 2%.”

In line with the regulations reproduced hereinabove, the Commission in its order dated 26.03.2025, while determining the levelized tariff for the FY 2024-25, has considered the interest rate on working capital loans as 9% p.a.

The Commission is of the view that benchmark lending rates such as MCLR inherently reflect the cost of capital along with an appropriate risk-adjusted margin, and therefore provide a reasonable and objective basis for determination of carrying cost. While the Petitioner has claimed higher interest rates based on its actual borrowings, adoption of such rates would not be appropriate in a regulated tariff framework, particularly when the burden of such cost is ultimately passed on to consumers and the tariff is determined on the basis of norms specified in the regulations and not on the basis specific to the project.

Accordingly, in order to balance the principles of restitution with consumer interest and regulatory consistency, the Commission deems it appropriate to adopt the normative rate of interest as considered in the tariff determination.

In view of the above discussion, the Commission, in order to balance the equity on both the sides and to protect the interest of the electricity consumers in Haryana, who bear the ultimate burden of any costs / additional cost associated with power purchase, after due deliberations decides that the applicable interest rate shall be 9% p.a. Any delay in the payment of carrying cost so allowed, beyond the period of thirty days from the date of issue of this order, will attract late payment surcharge @ 1.25% per month as per Article 3.6.b of the duly executed PPA between the parties.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22.04.2026.

Date: 22.04.2026
Place: Panchkula

Sd/-
(Shiv Kumar)
Member

Sd/-
(Mukesh Garg)
Member

Sd/-
(Nand Lal Sharma)
Chairman