

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
AT GANDHINAGAR**

**PETITION NO. 1680 OF 2017**

**AND**

**I.A. NO. 16 OF 2017**

**In the matter of:**

**Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 17 of the PPA dated 26.02.2007 executed between Essar Power Gujarat Ltd. (EPGL) and Gujarat Urja Vikas Nigam Limited with respect to 1200 MW Salaya-I Thermal Power Project being implemented by EPGL.**

**AND**

**REVIEW PETITION NO. 1866 of 2020**

**In the matter of:**

**Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 seeking review of Order dated 23.12.2019 in Petition No. 1680 of 2017.**

**AND**

**IA No. 46/2025 & IA No. 16/2017 in Petition No. 1680/2017**

**In the matter of:**

**IA seeking interim payment.**

**Petitioner : Essar Power Gujarat Limited (EPGL),  
Represented by : Ld. Sr. Advocate Buddy Ranganadhan with Adv. Abhishek Munot, Adv. Samikrith Rao, Adv. Ms. Shetali Tripathi, Adv. Nisarg Desai, Ad. Gaurav Ray and Bhaven Bhatt**

**V/s.**

**Respondent : Gujarat Urja Vikas Nigam Limited (GUVNL),  
Represented by : Ld. Adv Anand Ganesan with Kishan Vadodaria**

**CORAM:**

**Anil Mukim, Chairman**

**Mehul M. Gandhi, Member**

1. The matter was listed for hearing on 10.07.2025.
2. At the outset, Ld. Sr. Adv. Buddy Ranganadhan, on behalf of the Petitioner, submitted the judgment dated 16.04.2025 in Appeal No. 842 of 2023 by Hon'ble APTEL holds that the EPGL is entitled to full economic restitution by way of carrying cost on the belated payment of Change in Law compensation for the period April 2019 to March 2021, computed till the date of payment of complete due to EPGL.
  - 2.1. He submitted that the Petitioner's submissions are twofold, (i) interest on the principal amount for April 2019 to May 2023 i.e. until payment was made and, (ii) interest on the delayed payment of interest for April 2019 to March 2021. This is based on the principle of restitution with an aim to put the Petitioner back in the same position they would have been in had the GST payments been made on time.
  - 2.2. He submitted that, according to the Hon'ble APTEL's judgment dated 16.04.2025, the Petitioner would be required to produce documentary evidence to establish rate of interest, whether compound or simple and rest. He contended that according to the practice of EPGL's lenders, interest was debited on a monthly basis and therefore, effectively EPGL was liable to pay and paying interest on a compound basis with monthly rests.
  - 2.3. He submitted that GUVNL had itself before the Commission vide additional reply dated 19.11.2019 admitted that '*in future if it comes to the notice of*

*the respondent that there has been certain reduction in taxes/ duties leading to reduction in the cost to the Petitioner, Respondent shall be entitled to claim the adjustment in tariff towards such reduction of taxes/ duties from the date of implementation by the appropriate authority along with carrying cost, i.e. equal to delay payment rate as per PPA.'*

2.4.He further submitted that under the Working Capital Facility Agreement executed by EPGL with consortium of lenders for various fund based and non-fund based financial assistance to meet EPGL's working capital requirements, EPGL is liable to repay the loans/ borrowings, on Compounding basis with Monthly rest.

2.5.He submitted that in the said Working Capital Facility Agreement, it is specified that '*...all interest payable pursuant to the agreement shall accrue from day to day and shall be calculated on the respective daily balance of such account and be debited on the last working day of the month of quarter according to the practice of the Lenders.'*

2.6.He submitted that the application of compound interest with monthly rests simply means that interest amount outstanding at the end of every month gets added to the principal amount and interest is then calculated on that cumulative amount.

2.7. He submitted that 'Outstanding' is defined in the Working Capital Facility Agreement as, '*Outstanding (s) means, in relation to any Lender, at any time, the aggregate of all obligations of the Borrower, of every kind and description, direct or indirect, absolute or contingent, primary or secondary,*

*due or becoming due, now existing or hereafter arising, regardless of how they arise under or in respect of the Working Capital Facilities.'*

2.8. He submitted that a statement from Indian Overseas Bank dated 02.04.2019 is submitted to illustrate the practice of lenders in calculating interest under the working capital facility on daily outstanding balance with monthly rests and debited thereto on the last day of every month. This statement shows that the interest amount increases over time, indicating that it is calculated on the total outstanding amount at month-end, proving a compound interest basis.

2.9. He further submitted that GUVNL itself is charged compound interest on a monthly rest basis by its own bankers, which is supported by the document enclosed with the submission. This document details GUVNL's Working Capital Arrangement. He submitted that GUVNL has already recovered Late Payment Surcharge from the Petitioner, calculated at SBAR plus 2% as a penalty for short supply. GUVNL justified this penalty rate by citing the methodology its banks use for recovering interest under its own capital working arrangement.

2.10. He submitted that this practice also aligns with the RBI Circular dated 14.08.2003 which is enclosed with the submission. He submitted that Clause 11 of this Circular provides that *'The banks were required to switchover to the system of charging interest on monthly rests with effect from April 1, 2002. While switching over to the new system the banks were to follow the under noted instructions in regard to switchover to the system of charging monthly interest on loans and advances: i. Banks had option to compound*

*interest at monthly rests effective either from April 1, 2002, or July 1, 2002 or April 1, 2003.....'*

2.11. He submitted that EPGL was required to achieve Normative Annual Availability of 80% under the PPA and 90% under the SPPA. Accordingly penalty was levied by GUVNL under the PPA and SPPA for shortfall in achieving Normative Annual Availability.

2.12. He further submitted that during the relevant period (April 2019 to March 2021), GUVNL itself applied very same rate of interest i.e. SBAR + 2% with monthly compounding on the outstanding penalty amounts payable by EPGL for shortfall in Normative Availability under PPA and Supplement PPA. He submitted that GUVNL raised penalty demands after each contract year, when EPGL could not meet the availability thresholds and GUVNL started deducting penalty amounts directly from EPGL's energy bills and levied interest at SBAR + 2%, compounded monthly.

2.13. He submitted that during the same period, EPGL was entitled to Change in Law compensation along with interest, which undisputedly was not paid by GUVNL. Had GUNL paid EPGL the sums towards Change in Law compensation, it would have been in a position to make payment of the penalty amounts, rather than pay GUVNL interest on compounding basis, for delay in making the said payments.

2.14. He submitted that the principal Change in Law amounts later paid by GUVNL on 12.05.2023, were in fact only set-off against the outstanding penalty dues. Had GUVNL paid such compensation, along with applicable

interest, in time, EPGL could have extinguished its penalty dues to GUVNL, and avoided interest outflows altogether.

2.15. He submitted that Petitioner had, vide letter dated 10.04.2023, requested GUVNL to offset a penalty amount against a Goods and Services Tax (GST) payment. Had this request been granted, the Petitioner argued, their payable penalty and Late Payment Surcharge (LPS) would have decreased. Furthermore, GUVNL would have avoided incurring interest on the GST payment. However, GUVNL rejected this request in their letter dated 08.05.2023. He submitted that in terms of conduct of parties in terms of documents, the Petitioner gave the opportunity for set off vide the said letter dated 10.04.2023 but the Respondent did not take that opportunity and therefore, now the Respondent cannot deny payment of interest.

3. Ld. Adv Anand Ganesan, on behalf of the Respondent, submitted that the Hon'ble APTEL vide judgment dated 16.04.2025 held that the onus is on EPGL to show the actual cost incurred, the nature of interest actually paid, etc. to claim interest. He submitted that EPGL has failed to provide or adduce any documents or information regarding the actual interest paid and the rate of interest at which they have availed the loan, if any.

3.1. He submitted that Hon'ble APTEL further held that the carrying cost ins only limited till the payment of the principal amount by GUVNL. Therefore, interest does not accrue for the further period after the payment of the principal amount on 12.05.2023 by GUVNL and therefore, question of payment of interest post May 2023 does not arise and not under the ambit

of present limited remand proceedings in term of the remand order of the Hon'ble APTEL.

3.2.He submitted that according to the RBI circulars dated 14.08.2003 r/w 03.03.2016 monthly rests refers to interest calculated on the outstanding principal balance each month, which is separate from compounding interest. He submitted that the RBI discourages concept of compounding, which is adding unpaid interest to the principal and subsequently levying interest on this new, larger sum.

3.3.He submitted that reliance on RBI circulars dated 14.08.2003 r/w 03.03.2016 by EPGL does not in any way act as a documentary proof to showcase as to what is the actual rate of interest which was payable by EPGL with regard to its claim in the present case. He submitted that the said RBI circulars are general guidelines based on which the commercial bank has to charge interest on advances in terms of the Terms and Conditions as specified in the said circulars. He submitted that in terms of the remand order dated 16.04.2025 of the Hon'ble APTEL, EPGL is to produce documentary proof as to show what rate of interest they paid for borrowing month for paying the GST and EPGL has failed to do so in their affidavit.

3.4. He submitted that Late Payment Surcharge is a penal provision for the default on the part of either party to pay the amounts due and payable at present. In case there is a default or delay in the payment of any bill duly raised by EPGL under the PPA that is payable, the LPS provision would attract as a penal provision. However, Change in Law does not attract LPS, for the period till the tariff is adjusted by this Commission for such change in law.

Only after the change in law is approved, the supplementary bill is raised and if there is any delay in payment of supplementary bill, the LPS provision is attracted as a penal measure. However, for the relevant period, the question of LPS does not arise, as there is no default of GUVNL, as the approval of change in law is mandatory requirement for EPGL to even raise an invoice under the PPA. He submitted that restitution cannot be a means for profit or undue gain. The principle of restitution itself requires that a party cannot profit and that the other party not put to undue loss. To further this argument, reference of Hon'ble Supreme Court judgment in MSEDCL v. MERC (2022) 4 SCC 657 was taken. He further highlighted that the Hon'ble APTEL, referencing Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd. (2023) 2 SCC 624, has stated that the Appellant shouldn't be permitted to unjustly enrich themselves through restitution. For example, if they borrowed money at simple interest to cover dues resulting from a change in law, compensating them with compound interest would constitute unjust enrichment at GUVNL's expense.

3.5. He submitted that remand order dated 16.04.2025 of the Hon'ble APTEL held that the extent of loss suffered by the Appellant due to Respondent GUVNL's delayed compensation for a change in law is a question of fact. This requires consideration based on documentary evidence. The onus is on the Appellant to provide documentary proof that they paid compound interest for borrowing money to cover GST, and therefore are entitled to the same rate of compound interest as compensation for the loss from delayed change-in-law compensation. However, the Petitioner has failed to furnish any records. He submitted that the Petitioner's sole claim is for interest at SBAR plus 2% as per the PPA's Late Payment Surcharge provision. This argument was

presented before the Hon'ble APTEL based on which the matter was remanded back to this Commission due to lack of any material on records. However, the same has been presented to this Commission, again, without any supporting documentary evidence.

3.6. He further submitted that while the Petitioner provided an illustration for interest calculation, a method commonly used by banks, they failed to produce any documentation supporting their claim of paying compounding interest on funds borrowed for GST payments under the Change in Law. He submitted that the Indian Overseas Bank statement, presented by the Petitioner to justify their entitlement to compound interest, covers the period of October 2018 to March 2019, which is not relevant to the current case. Furthermore, no clarification was provided regarding the debits shown in the statement, specifically whether they pertained to compound interest paid on money borrowed for GST.

4. Ld. Sr. Adv. Buddy Ranganadhan, on behalf of the Petitioner, submitted that compounding fundamentally involves levying interest on both the principal and outstanding accrued interest. He submitted that monthly rest refers to the period at which the principal and accumulated interest are compounded. To further this point, he cited an RBI Circular dated 14.08.2003 which granted banks the option to compound interest at monthly rests.

4.1. Addressing Respondent's argument that the liability to pay GST only arose upon the Commission's approval, He submitted that court judgments take effect from the cause of action, not the judgment date. He submitted that

the Respondent's claim that the Petitioner could not have borrowed money for GST payments and thus was not liable for any interest is invalid.

4.2.Regarding the Respondent's argument that the Hon'ble APTEL's remand judgment required the Petitioner to demonstrate actual cost, he submitted that the PPA provides for a Late Payment Surcharge rate. He submitted that while the Petitioner could have used this argument, it was already presented to and rejected by the Hon'ble APTEL, which is why the Petitioner did not raise it again before this Commission.

4.3.He submitted that working capital is not a term loan credited to an account, but, it is a limit the Petitioner can draw upon from the bank. He submitted that GST is a revenue expenditure, meaning it would be paid from running revenue, which can only originate from either tariff collections or working capital. As working capital represents the difference between payables and receivables, the question of an actual loan taken for payment of GST does not arise.

4.4.He further submitted that the Respondent's argument distinguishing between Late Payment Surcharge levied on unpaid bills and carrying cost arising from un-raised bills was previously presented to and rejected by the Hon'ble APTEL. He submitted that the court noted the restitutionary principle dictates that the consequences of a change in law should relate back to the date the law changed. This means the affected party, having suffered an economic disadvantage, should be restored to their position as of that date. Consequently, they must be compensated for the loss incurred from the date the change in law occurred, not from the date a supplementary bill is subsequently raised.

5. Ld. Adv Anand Ganesan, on behalf of the Respondent, submitted that the Petitioner has claimed interest at the rate of Late Payment Surcharge and not provided any documentary evidences of actual cost incurred for payment of GST, to which Ld. Adv. Buddy Ranganadhan, on behalf of the Petitioner, submitted that the claim is interest at the rate of SBAR plus 2%.
6. Heard. We note the Petitioner argued that delay by GUVNL in GST payment made the Petitioner liable for compounding interest on a monthly rest basis at SBAR plus 2%. This rate aligns with the penalty GUVNL levied on the Petitioner for power supply shortfalls and failure to maintain normative availability, as well as the methodology GUVNL's bankers use for working capital borrowings. We also note the Petitioner argued that GST is revenue expenditure which is payable from running revenue derived from either tariff collections or working capital. It is submitted that since working capital represents the difference between payables and receivables, the notion of an actual loan taken for payment of GST is inapplicable.
7. We note that the Respondent submitted that Hon'ble APTEL vide judgment dated 16.04.2025 held that the onus is on EPGL to show the actual cost incurred, the nature of interest actually paid, etc. to claim interest. He submitted that EPGL has failed to provide or adduce any documents or information regarding the actual interest paid and the rate of interest at which they have availed the loan, if any.

8. We note that the Hon'ble APTEL in judgment dated 16.04.2025 has stated that;

*“The Appellant is held entitled for payment of interest for the period April, 2019 to March, 2021 on belated payment of compensation on account of change in law. The GERC shall, after giving both parties a reasonable opportunity of being heard, and after permitting the Appellant to adduce documentary evidence on this particular issue, pass orders afresh determining the interest to which the Appellant is entitled to for the period April, 2019 to March, 2021, whether it be simple or compound; the rate of interest; and, in case they are held entitled to compound interest, the periodic rests at which such interest should be compounded ie quarterly or half yearly or yearly rests.”*

9. Accordingly, the Appellant is given liberty to submit the relevant documents, if any, in support of his argument and both the parties may file any additional submission in support of their arguments, latest by 22.07.2025, as per oral directions.

10. We keep the matters reserved for order thereafter.

11. Order accordingly.

Sd/-  
**(MEHUL M. GANDHI)**  
**MEMBER**

Sd/-  
**(ANIL MUKIM)**  
**CHAIRMAN**

Place: Gandhinagar  
Date: 18/07/2025