

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Bhanu Bhushan, Member
2. Shri R.Krishnamoorthy, Member**

**Petition No. 131 /2007
(Suo-motu)**

In the matter of

Default in payment of Unscheduled Interchanges (UI) charges for the energy drawn in excess of the drawal schedule

And in the matter of

Uttar Pradesh Power Corporation Limited

..... Respondent

ORDER

In accordance with the regulations of the Commission and the Indian Electricity Grid Code (hereinafter referred to as "IEGC"), all regional constituents are required to pay Unscheduled Interchange (UI) charges for the energy drawn by them in excess of their respective drawal schedules. From the report on payment of UI charges payable/receivable into/from NR UI pool account as on 30.9.2007 submitted by Member-Secretary, Northern Regional Power Committee (hereinafter referred to as "NRPC") vide his letter dated 4.10.2007, it was revealed that the principal amount of Rs.577.99 crore was outstanding against the respondent on account of UI drawal for the period up to 2.9.2007. This amount would get further inflated after addition of interest on the outstanding principal and also on account of over-drawals for the period subsequent to 2.9.2007.

2. As the huge arrears due from the respondent on account of non-payment of UI charges were matters of serious concern, the Commission in

its order dated 5.11.2007 directed the respondent to show cause, as to why action under appropriate provisions of the Electricity Act, 2003 should not be initiated for recovery of the outstanding UI dues along with interest, apart from recommending to the Central Government for appropriating the outstanding UI dues from the Central Plan Assistance earmarked for the State of Uttar Pradesh. The respondent has submitted its reply to the show cause notice vide affidavit dated 25.11.2007, wherein it has explained the following reasons for mounting arrears of UI charges:

- (a) The arrears of UI charges against the respondent are mainly on account of huge gap between the demand and supply of power resulting in over-drawals, which have further piled up on account of hike in UI charges from Rs.5.70/kWh to Rs.7.45/kWh.
- (b) The respondent has all bonafide intention to pay the UI charges and shall make best endeavour to liquidate the outstanding dues. It is stated to have made a payment of Rs. 120 crore during September-November 2007 and has planned to make payment of another Rs.30 crore and Rs.50 crore during November and December 2007 respectively. It has been further stated that the respondent had requested Member-Secretary, NRPC to consider its proposal for liquidation of outstanding dues in 12 monthly instalments starting October-November 2007.
- (c) The respondent had filed Writ Petition No.3014/2007 before Hon'ble Allahabad High Court, Lucknow Bench against the hike in UI ceiling rates from Rs.5.70/kWh to Rs.7.45/kWh. During the course of hearing, counsel for NRLDC raised the question of outstanding arrears of UI charges. The Hon'ble High Court has

issued direction to furnish the exact amounts of arrears against the respondent on the UI ceiling rates of Rs.4.20/kWh, Rs.5.70/kWh and Rs.7.45/kWh.

- (d) The allocation of powers from the central generating stations to constituent units of Northern Region is not based on demand and supply gap and other relevant factors which is the main reason for over-drawal by States facing shortages and means of earning surplus by other States.
- (e) Central Advisory Committee in its 8th meeting discussed the remedial measures for default in payment of dues by power utilities and the idea to resort to appropriation from the Central Plan Assistance to recover the outstanding UI dues was not found to be a desirable solution.
- (f) The generators have benefits of variation to the extent of 5% of schedule in 15 minutes slot and overall 1% of schedule in a day. The corresponding benefit is not available to the utilities.

4. The respondent has submitted that in view of the facts as enumerated above, no adverse action be taken by the Commission against it.

5. We have considered the reasons adduced by the respondent. We are constrained to observe that the explanation of the respondent does not justify its actions either for over-drawal from the grid in excess of its schedule or its failure to pay the UI charges. It is worth noting that as per the latest information received from the Northern Regional Load Dispatch Centre, the

arrears of UI charges against the respondent have reached the alarming level of Rs.767 crores which calls for urgent remedial action.

6. The respondent has stated that a huge gap between the demand and supply of power exists in its State, but is silent about its own role and responsibility in the matter. We must point out that it is the respondent itself who is primarily responsible for planning to meet the demand of consumers in the State, and existence of such demand–supply gap is indicative of inadequate planning and action over many years. Even today, there is little evidence of adequate concrete action. In any case, existence of a demand – supply gap does not entitle the respondent to resort to unchecked overdrawal from the grid, and then not to pay for the energy overdrawn.

7. The Commission is painfully aware about the hardships being faced by the consumers in the State of UP due to poor quality of supply and frequent load-shedding. However, these are primarily due to the above mentioned failure on the part of the concerned State organizations, which fall within the jurisdiction of the State Commission. This Commission, due to its jurisdiction over the inter-State transmission of electricity as provided in the Electricity Act,2003, is primarily concerned about the respondents' irresponsible actions and attitude, which pose a perpetual threat to the security of the entire inter-State power system.

8. On the one hand, its over-drawals add to the overall shortage in the grid, and cause the frequency to decline further, taking the grid to a situation of imminent collapse. The other States being more concerned about grid security then reduce their drawal (by load-shedding in their States) and save

the grid from collapsing. But in the process, the consumers in those States suffer, for no fault of their State utilities. The respondent is still unmindful of this aspect, and by pleading that no action be taken against it, has indirectly been seeking a licence to continue with its unchecked overdrawals.

9. On the other hand, non-payment of UI charges amounts to making no payment at all for the energy drawn in excess of the schedule. This is because in the overall scheme in operation at the inter-State level, State utilities pay to the generating companies for scheduled energy, and any energy overdrawn is paid for through UI mechanism only. If UI amounts are not paid, it amounts to abstraction of energy from the grid and not paying for it, in other words, nothing short of a theft. It also means that the States which have under-drawn at that time (due to load-shedding, etc, as mentioned earlier) get no compensation. This is grossly unfair, since those States still have to pay to the generating companies for scheduled energy. Thus they pay for more energy than they actually receive. The respondent is unmindful of this aspect as well, and is refusing to take any responsibility for causing such loss to other States, which are in a way helping the respondent in tiding over difficulties caused by its own failure. By pleading for no adverse action, the respondent is in effect again seeking a licence to perpetuate this situation.

10. The respondent has, from time to time, been raising the matter of allocation of power from Central generating stations to the constituents of Northern Region, which he considers inequitable. We have already said in previous orders that this is within the purview of the Central Government and this Commission has little role in the matter. Further, energy scheduling has to be done according to entitlements as per the notified allocations, and

inequity, if any, does not entitle the respondent to overdraw and then dilly dally in paying for it.

11. The scheme of unscheduled interchange (UI) is now well established, having been in operation since 2002-2003, and its advantages and efficacy are well known. The UI rate (i.e. their relationship with frequency) is notified in advance, and is known upfront to all concerned. The respondent has time and again tried to destabilize the mechanism, raising extraneous issues (may be to cover up its own difficulties), and has objected to raise in UI ceiling rate which has been inevitable with the rise in diesel price. The Commission views these as tactics to get a relief in payment of UI charges which are overdue. The Commission has already replied to the respondent's objections in the concerned orders dated 5.4.2007, 26.4.2007 and 31.12.2007, and no repetition is considered necessary here.

12. Being fully aware of its financial constraints, the respondent should have curtailed its overdrawals to the level it could have paid for. Further, clause 6.4 of the Indian Electricity Grid Code (IEGC) provides as follows:

“5. The SLDCs/STUs shall regularly carry out the necessary exercises regarding short-term and long-term demand estimation for their respective States, to enable them to plan in advance as to how they would meet their consumers' load without overdrawing from the grid.”

It is apparent that the respondent has not complied with this provision, and has perhaps not been taking it seriously.

13. Over the last six months (October 2007 – March 2008), the respondent has paid a total UI amount of Rs.190 crores, while the UI charges for overdrawal during this period are about Rs.360 crores. The principal UI

amount overdue has accordingly gone up from Rs.597 crores as on 30.9.2007 to Rs.767 crore as on 31.3.2008, in spite of the respondent's "proposal" to liquidate the dues in 12 monthly installments from October – November 2007.

14. The Commission had suggested, for recovery of long-standing UI dues, which the State utilities are otherwise unable to liquidate, appropriation from the Central Plan Assistance in order to avoid physical curtailment of power to a State, which could imperil grid security. However, since the suggestion has not yet been accepted, the Commission has presently no alternative but to revert to physical curtailment of supply, even if it jeopardizes the grid security, since allowing continued UI payment default would only encourage total anarchy in grid operation, which this Commission can not allow.

15. The respondent has mentioned that certain benefits available to generating companies are not available to utilities. This is a total misconception. While the generators can be pulled up for gaming in case of deviations beyond certain limits, there are no similar restrictions on the utilities like the respondent. There is therefore no merit in the point raised.

16. We have also perused the order dated 5.11.2007 passed by the Hon'ble High Court, Lucknow Bench in writ petition 3014/2007 and find that the direction to submit the UI dues calculated on the ceiling rates of Rs. 4.20/kWh, Rs. 5.70/kWh and Rs. 7.45/kWh has been issued on the basis of the submission of the counsel for NRLDC that UI dues have not been deposited by the respondent after vacation of interim stay on the Commission's regulations by the Hon'ble Supreme Court. There is no

indication in the said order to allow the respondent to withhold the outstanding UI dues.

17. We express our disappointment and dissatisfaction at the way the respondent has performed to date, in spite of its categorical statement in its reply dated 25.11.2007 that it has all bonafide intention to pay the UI charges and it shall make best endeavour to liquidate the dues. We can no longer depend on such assurances, and therefore direct the respondent to take necessary action to liquidate the entire principal UI arrears in six (6) equal monthly installments by paying Rs.128 crores every month, starting from May 2008. Such payments shall be made before the last day of the month. The Commission also allows a flexibility to make the payment on different dates within the same month in installments with the condition that the amount of at least Rs.128 crores per month is paid before the last day of the particular month. This shall be in addition to the timely payment of current UI dues, if any, as per the weekly UI charge statements issued by NRPC Secretariat. If the respondent fails to comply with the above directions, the Commission may be constrained to direct the NRLDC to physically curtail the supply to the respondent, without any further proceedings.

18. The payment through installments as permitted above will, however, not entail any relaxation in provisions of the Grid Code with regard to computation and payment of interest for the delay in payment of UI charges. It is further clarified that the foregoing is without prejudice to the other provisions in Commission's regulations and IEGC.

19. NRLDC is directed to apprise the Commission in the first week of every month starting from June 2008 about the UI payment status of the respondent, as also of any other persistent UI defaulter. NRLDC shall also draw up, in consultation with Member Secretary, NRPC, a practicable scheme for physical curtailment of supply to the respondent, for enforcement in case necessary, and submit the same to the Commission by 15th May 2008.

Sd/-

**(R. KRISHNAMOORTHY)
MEMBER**

Sd/-

**(BHANU BHUSHAN)
MEMBER**

New Delhi dated the 11th April 2008