

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

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

**Petition No. 132/2007
(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

Power Development Department, Govt. of J & K 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. Clause 5 of Annexure-1 of Chapter 6 of the IEGC stipulates that payment of UI charges shall have a high priority and concerned constituents shall pay the indicated amounts into the regional pool account operated by RLDC within ten days of the issue of statement by the Regional Power Committee (RPC) secretariat. Clause 1.5 of IEGC provides that the Member Secretary, RPC shall take up with the defaulting constituents for expeditious termination of non-compliance and in the event of inadequate response to his efforts, the non-compliance shall be reported to the Commission. The Commission, after due process, may order the defaulting constituent for compliance failing which may take action as considered appropriate.

2. 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.410.25 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 during the period subsequent to 2.9.2007.

3. 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 Jammu & Kashmir. As no reply was received, the Commission in its order dated 28.11.2007 directed personal service of the orders dated 5.11.2007 and 28.11.2007 to Shri Khurshid Ahmed, Principal Secretary, PDD, J&K at the State Government Secretariat at Jammu as well as Srinagar and also through the Resident Commissioner, J & K, at Delhi directing the respondent to file a response by 15.12.2007. Despite service of notice as aforesaid, the respondent has not considered it appropriate to submit a formal response to the orders of the Commission. This is a highly undesirable and unwarranted attitude.

4. As the outstanding UI dues had already mounted to Rs.593.315 crore as on 6.1.2008 which was a cause of serious concern, the Commission in its order dated 29.2.2008 directed as under:

“4. It is gathered from NRLDC that the weekly bill of PDD, J&K for UI is around Rs.10 crore, the monthly amount being over Rs.40 crore, while payments received are hardly about Rs.20 crore a month, and that too not regular. In order to ensure that the problem arising out of the huge UI arrears is not further compounded, the Commission hereby directs PDD, J&K to open a revolving LC for assuring regular payment of Rs.40 crore every month to the regional UI account, till liquidation of dues. Member-Secretary, NRPC is directed to coordinate with PDD, J&K regarding opening of the LC as above, and apprise the Commission about the progress.

5. In case there is no response from PDD, J&K even to this order, the Commission would be constrained to advise curtailment of power supply through opening of lines feeding power to PDD, J&K. While such an extreme measure should normally not be resorted to, it may be unavoidable in case PDD, J&K continues to fail in discharging its responsibility and liability, and no other remedial measure is materializing.

6. The Commission may also be constrained to impose other restrictions on PDD, J&K, in order to realize UI charges due, out of its earnings from electricity trading and barter/banking arrangements in case there is no positive development in the matter by 15.3.2008.”

5. No response from the respondent to the above directions has been received which only exhibits the recalcitrant approach of the respondent and its brazen disregard for institutions and rule of law in general. The continued overdrawal by the respondent from the grid is posing perpetual threat to the security of the entire inter-State power system. This Commission, being vested with the jurisdiction to regulate the inter-State transmission of electricity under the Electricity Act, 2003, feels concerned about the respondents' irresponsible actions and attitude and its adverse impact on the grid stability and commercial mechanisms in the electricity sector.

6. On the one hand, the over-drawals by the respondent add to the overall shortage in the grid, and cause the frequency to decline further, taking the grid to the danger 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 other States suffer, for no fault of their own. 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 (by resorting to load-shedding or other means) get no compensation. This is grossly unfair, since those States still have to pay to the generating companies for scheduled energy. In other words, the responsible States pay for more energy than they actually receive. The respondent is unmindful of the serious consequences of its actions and is refusing to take any responsibility for causing such loss to other States which are acting responsibly and preventing a grid collapse, besides unwittingly helping the respondent by letting it to meet higher consumer load.

7. The scheme of unscheduled interchange (UI) is now well established, having been in operation for more than five years, 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 by its actions has time and again tried to destabilize the mechanism.

8. 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 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.

9. Over the last seven months (October 2007 – April 2008), the respondent has paid a total UI amount of Rs.44.94 crore, while the UI charges for overdrawal during this period are about Rs.301 crore. As on 30.4.2008, outstanding UI charges payable by the respondent have reached the sum of Rs.666.68 crore.

10. The Commission had suggested, for recovery of longstanding 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. 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 lead to total anarchy in grid operation, which this Commission cannot allow.

11. We direct the respondent to take necessary action to liquidate the entire principal UI arrears in six (6) equal monthly installments by paying

Rs.111 crore every month, starting from June 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.111 crore 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 by opening of lines feeding power to the respondent, without any further proceedings.

12. Further, NRLDC is directed not to schedule the energy offered by the respondent for sale or bartering of energy for return in future with effect from 1.7.2008 unless the payment of UI charges as above starts in June 2008. However, sale of energy by the respondent through bilateral trade may be allowed by the Commission subject to fulfillment of condition that the entire sale proceeds shall be got pledged by the buyer to the NR UI pool account.

13. 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.

14. NRLDC is directed to apprise the Commission in the first week of every month starting from July 2008 about the UI payment status of the respondent.

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 June 2008.

15. We also direct the Secretary of the Commission to endorse copies of this order to Cabinet Secretary and Secretary (Power), Government of India, Chief Secretary, Government of J & K and Chairperson, J & K SERC for their kind information and remedial actions as considered appropriate.

Sd/-

(R. KRISHNAMOORTHY)
MEMBER

Sd/-

(BHANU BHUSHAN)
MEMBER

New Delhi dated the 13th May 2008