

CENTRAL ELECTRICITY REGULATORY COMMISSION
7th Floor, Core-3, Scope Complex, Lodi Road, New Delhi 110 003
(Tele No.24361051 FAX No.24360010)

No.L-7/7(6)/99-CERC

New Delhi the 21st May, 2007

To

All Central/State Power Sector Utilities
Regional Power Committees
Regional Load Despatch Centres

Subject: Discussion Paper titled “Remedy for Default in Payment of Dues by Power Utilities”.

I am directed to refer to the Commission’s letter of even number dated 4th May, 2007 and to state that the last date for submission of suggestions/comments on the Discussion Paper has been extended to 8th June, 2007.

2. The suggestions/comments may be forwarded accordingly.

Sd/-
(K.S. Dhingra)
Chief (Law)

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7th Floor, Core-3, Scope Complex, Lodi Road, New Delhi 110 003
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No.L-7/7(6)/99-CERC

New Delhi the 4th May, 2007

To

All Central/State Power Sector Utilities
Regional Power Committees
Regional Load Despatch Centres

Subject: Discussion Paper titled “Remedy for Default in Payment of Dues by Power Utilities”.

The Commission has prepared a Discussion Paper titled “Remedy for Default in Payment of Dues by Power Utilities” to lay down the rules and procedure and to provide for appropriate remedies in case of default by the State Utilities in payment of dues of Central Power Sector Utilities. A copy of the Discussion Paper is annexed to this notice. The Discussion Paper is also available on the website of the Commission www.cercind.gov.in and can be downloaded.

2. Notice is hereby given that suggestions/comments on the Discussion Paper may be sent to the undersigned latest by 25.5.2007. It is made clear that the suggestions and comments received in the Commission’s office after the specified date shall not be considered.

Sd/-
(K.S. Dhingra)
Chief (Law)

**No.L-77(6)/99-CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

DISCUSSION PAPER

**REMEDY FOR DEFAULT IN PAYMENT OF
DUES BY POWER UTILITIES**

1. Default in payment of dues has been a major issue in the Indian power scene, which has not only eroded the financial health of State utilities, but has also affected the Central utilities and has discouraged the much-needed private investment in the sector. It has two aspects : defaults by consumers at the retail level, and defaults by utilities at bulk supply level. This paper addresses the latter, the former coming under the purview of the State Electricity Regulatory Commissions.

2. Because of their own financial sickness and other factors, many of the State Electricity Boards were frequently defaulting in payment of dues to the Central generating companies, the POWERGRID, the coal companies and the Railways, the outstanding amounts having reached alarming levels in the late Nineties. The measures taken by the Central Undertakings to realize dues from the State Electricity Boards, were many a time frustrated by various socio-political factors and technical limitations. A solution was ultimately found through the so-called "Tripartite Agreements", under which the SEBs' outstanding liabilities were securitized through State Government bonds guaranteed by RBI. Provisions were also made in these agreements to discourage the State utilities from defaulting in future payment of their dues to the Central Undertakings. The Tripartite Agreements are thus instruments to induce a fiscal discipline in the State utilities, and secure timely payment of dues to Central Undertakings. The mechanism has been very effective, largely due to the financial leverage that the Central Government has over the States through Central Plan Assistance, etc.

3. The present Tripartite Agreements, however, do not provide a coverage for payment of dues to private companies which are now entering the area of generation and transmission. It is also to be seen how all due payments would be ensured from the numerous intra-State utilities which would emerge after unbundling of the SEBs. Another area of serious concern is defaults in the payment of Unscheduled Interchange (UI) charges and Reactive energy charges which the States have to make to regional pool accounts (operated by the RLDCs on behalf of the respective Regional Power Committees). As such, a detailed discussion is now called for, although defaults in payments to Central Undertakings in the last 3 – 4 years have been insignificant, thanks to the Tripartite Agreements.

4. The past discussions on the subject have mainly centered around defaults in payments to the Central generating companies. The last order in this respect was issued by the Commission on 11.1.2002, in the matter of “Regulation of power supply to the beneficiaries in case of non-payment of dues of Central Power Utilities”. The generic procedure for regulation of power supply on commercial grounds was specified therein, which was initially to remain in force for a period of one year. Its validity has been extended by the Commission from time to time, and it is still operative. A draft regulation on “Generic Procedure for Curtailment of Power Supply” was issued by the Commission on 19.5.2005 soliciting objections/suggestions/comments through a public notice, with the objective of formalizing the procedure specified earlier. However, it has not yet been finalized as some issues remained unresolved.

5. The main reason for the above stalemate was that in the past discussions, the focus was on physical curtailment of supply to the defaulting SEB, which is not a practical proposition in an interconnected power system. The regional grids have developed into meshed networks over the years, in which each State has multiple interconnections. Snapping of one or two of these interconnections only causes a redistribution of power flow over the remaining links, and not in a reduction of total net power drawal by the State. If stretched too far, the measure may cause the remaining links to trip off on overload, and the entire State may be totally isolated from the regional grid. This would have the following implications :

- i) The State would stop receiving power from other generating companies as well, though there may not be any default in payments to them.
- ii) The supply curtailment may be much greater than what was intended.
- iii) In case any inter-State generating station is located within the defaulting State, it would become captive to the State, unless it also trips off.
- iv) There may be an unintended black out in the State.
- v) The regional grid itself may be severely weakened/jeopardized by opening of the multiple interconnections.

6. In view of the above and the actual experience in the past, the approach is considered unworkable, except in case of tail-end States like Kerala and Mizoram. A more practical measure would be to resort to tripping of a radial feeder, which supplies power to an important area of the State, e.g. NOIDA. However, the scope for this also is limited, since with increasing intra-State interconnections, all such radial feeders would be under the control of the defaulting State only. There could also be some links opening of which may cause a serious voltage problem locally, inducing the defaulting SEB to pay up. However, such coercive measures are not desirable, and should not be banked upon. Besides, a better alternative is now available, as discussed below.

7. In case of a default in payment by an SEB to a generating company, the required supply curtailment can be easily effected by a restriction in the schedule (rather than a physical curtailment). For example, an SEB may be entitled to receive 300 MW from a Central station as per its standing percentage share in the station's available output capability, but it may be told that it can requisition only 200 MW. The SEB would thus lose the benefit of comparatively cheap power of the Central station till it pays up. On the other hand, the generating company would be free to sell and schedule the 100 MW of released capacity to any other party, and thus avoid the future revenue loss due to continuing default by an SEB.

8. The above mechanism was not available before implementation of Availability tariff, but is now available for all Central generating stations and privately-owned inter-State generating stations. It would also be available for the intra-State generating stations, as and when intra-State ABT is implemented in the respective State. In the

event of a payment default by an SEB/utility/DISCOM continuing even after a notice, the affected generating company would have to inform the nodal RLDC/SLDC about the default on an affidavit, and advise the extent to which the schedule for the defaulting party is to be restricted. The nodal RLDC/SLDC would then have to verify that such a default does exist, issue a 2 – day notice to the defaulter, and then apply the required supply curtailment in the day-ahead scheduling, without resorting to opening of any transmission line. Once this has been done, further building up of the payment default would stop, and there would be a perpetual pressure on the defaulter to clear the outstanding dues. Besides, the affected generating company could sell the plant capacity rendered surplus to anybody else during the curtailment period, could use it to supply power to the grid as UI, or could back it down and save on fuel cost. These options would enable the generating company to cut off any further loss on account of defaulter's misdemeanour. As a consequence, it would no longer be necessary to arrange for any escrow accounts and Government guarantees for assuring payments to the generating stations. For enhanced effectiveness of the proposed scheme, the generating companies may move to a system of weekly billing and realization through revolving letter of credit, so that any default gets thrown up quickly, and remedial action is initiated before the situation becomes intractable.

9. However, there is one loop-hole in the above scheme, which must also be plugged. When the schedule for an SEB is curtailed, but without applying any physical restriction on the power it may draw from the regional grid, it can still overdraw (with the reduced schedule as the new datum) and thus make up for the deficit. Such overdrawal would now get accounted as U.I., for which the SEB must pay into the regional UI account. There has to be a compulsion to pay the UI charges. In other words, the payment security mechanism (PSM) is no longer required for the generating companies, but is now required for the UI charges. The PSM would need to be strong enough to have a hold on the SEBs. Appropriation from Central Plan Assistance, etc. (as envisaged in Tripartite Agreements) appears to be the only means through which UI payment defaults by SEBs could be captured with a certainty.

10. The two points emerging from the above discussion are : (a) physical curtailment of power supply to states is difficult/ineffective/undesirable, and (b) default in payments to

generating companies can be taken care of by curtailment of schedules, provided payment of UI charges is ensured. That leaves us with the coverage of payments to the transmission companies for the transmission / wheeling charges and fee for RLDCs and ULD&C schemes. The problem in their case is that these services cannot be diverted to another party, unlike generation which can be diverted by rescheduling. The investment in these facilities by the transmission companies shall still have to be serviced by the States for whom it was built. Besides, since the State would continue to be a part of the regional interconnection, and power would continue to flow through parallel paths as per laws of physics, the transmission companies and RLDCs would inevitably continue to serve the State in spite of its payment default. Under these circumstances, the only recourse is to mandate that these payments are compulsory, and any default, once established, shall automatically qualify for appropriation from Central Plan Assistance, etc.

11. The above provision would also address the issue of “buy out” liability of POWERGRID which has recently arisen in case of private sector participation in transmission, both in JV and IPTC routes. Once the payment of applicable transmission charges by all beneficiary States is assured, there would be no need to provide for private companies’ exit on this account.

12, Detailed rules and procedure are proposed to be specified by the Commission in due course after finalization of the overall approach, depending on the responses from the stake holders and others on this discussion paper. One issue on which further deliberation is required is whether any restrictions on sale of power should be imposed on a party which has defaulted in payment of UI charges, Reactive charges, transmission charges and RLDC/ULD&C fee, and/or whether the proceeds of such sale should be appropriated for discharging outstanding liabilities on the above accounts.