

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Coram

1. Shri D.P. Sinha, Member
2. Shri G.S. Rajamani, Member
3. Shri K.N.Sinha, Member

In the matter of

Regulation of power supply to the beneficiaries in case of non-payment of dues of Central Power Utilities

The following were present:

1. Shri K.K. Garg, GM (Comml), NTPC
2. Shri S.K. Agarwal, C.E,(Comml),NHPC
3. Shri Prashant Kaul, SM(Comml), NHPC
4. Shri R.K. Arora, XEN (Tariff), HVPN
5. Shri S.C. Mehta, XEN (ISP), RVPN Ltd.
6. Shri K. Krishna Murthy Naik, CEE (RA), KPTCL
7. Shri D.K. Shrivastava, EE, MPSEB
8. Shri Santosh Kumar, NREB
9. Shri A.Velayutham, MS, WREB
10. Shri T.D. Mohan Babu, SE, SREB
11. Shri P.K. Kumar, SE (O), NREB
12. Shri S.K. Sinha, AGM I/C, ERLDC, Powergrid
13. Shri B.Bhushan, Director (Operations), Powergrid
14. Shri R.P. Chaudhary, AGM (SO), Powergrid
15. Dr. A.K. De Bhowmick, DGM(SO), Powergrid
16. Shri S.R. Narasimhan, Manager, NRLDC
17. Shri Sekhar, Manager, NTPC.

ORDER (DATE OF HEARING 12-9-2001)

The Commission vide its order dated 21st June 2000 had prescribed an interim procedure for regulation of power supply in case of non-payment of dues of the central power utilities by the beneficiaries. The procedure for this purpose was to be finalised after hearing the interested parties. Accordingly, the interim procedure was circulated amongst Central/State Utilities and others, for their

views on the interim procedure. NLC, NTPC and PGCIL among the Central Utilities and APTRANSCO, DVC, Dept. of Power (Govt. of Tripura), GEB, GRIDCO, KSEB, MPSEB, RVPNL and UPPCL from among the state utilities have furnished their views on the draft procedure. In addition, EREB, NREB, SREB, WREB and ERLDC have also filed their comments on the subject. The matter was finally heard by the Commission on 12.9.2001.

2. A perusal of the responses received from different entities, including that from PGCIL reveals that they favour to limit the role of the Central Transmission Utility (CTU) assigned to it under the interim procedure and have argued for increased role for the Regional Electricity Boards (REBs) in the process of regulation. A suggestion has been made that the proposal for regulation initiated by a Central Utility should be prepared in consultation with the REBs. The utilities, have also expressed their concern for grid security during regulation of power supply on commercial grounds. UPPCL has suggested that regulation should start from the costliest source of generation, while some of the REBs have submitted that the issue of sharing of fixed charges during the period of regulation should be taken care of by the Commission while formulating the revised procedure. It has also been suggested that regulation of power supply should start only after the reconciliation of the amount due to the Central Utility. DVC is of the opinion that since the ultimate beneficiary of the regulation of power supply is likely to be the Central Utility at whose behest power supply is being regulated, loss, if any, as a result thereof should be borne by such an

utility. The question of round-the-clock regulation vis-à-vis the peak-time regulation has also been raised in the comments received and certain entities have expressed their views against the peak-time regulation earlier resorted to by NTPC . GRIDCO in its comments has stated that generation at the central generating station should not be reduced during the period of regulation since it could lead to increase in cost of generation for the reason that fixed charges would get apportioned to lower quantum of electricity generated. It has recommended that the power available as a result of regulation should be diverted to other beneficiaries willing to absorb the additional power. On the other hand, UPPCL has stated that in case the beneficiaries for the diverted power cannot be identified, the generation should be reduced to the extent of power becoming surplus. On the question of re-allocation of power becoming available as a result of regulation, NTPC has favoured that such re-allocation should be made by RLDC as a system operator and a neutral body, though WREB has stated that Member-Secretary of REB should re-allocate the shares on receiving instructions from the competent authority. Another issue that has been raised is regarding the “availability” of transmission system during the period of regulation.

3. We have carefully considered the comments made by the utilities on the draft procedure. The state utilities are generally not opposed to the concept of regulation of power supply in case of default in payment While prescribing the revised procedure for regulation of power supply, the comments and the issues

raised by the utilities have been duly considered and taken care of. Before proceeding with the technical, commercial and the procedural aspects of regulation of power supply, we propose to examine whether the existing legal framework supports prescription of procedure for regulation by the Commission.

4. It has also been brought to our notice that the state utilities have already entered into Bulk Power Supply Agreement with NTPC, one of the Central Utilities for supply of power. According to BPSA, NTPC has the option to discontinue/reduce supply of power to the state utilities whose bills remain unpaid for a period exceeding two months from the date of issue of bill.

LEGAL FRAMEWORK

5. Under the Electricity Regulatory Commissions Act 1998 (ERC Act), the Commission is vested, inter alia, with the function to regulate tariff of the utilities referred to in Clauses (a), (b), and (c) of Section 13. The power to prescribe procedure for regulation of power supply in case of default by the beneficiaries in payment of tariff is proposed to be considered in the light of these functions assigned to the Commission.

6. It is well settled that the term 'regulate' is of a wide import. In this context, the Hon'ble Supreme Court in K. Ramanathan vs. State of Tamil Nadu (AIR 1985 SC 660) held that the word 'regulate' is "of broad import having a broad meaning and is very comprehensive in scope". A similar view was expressed by Mathew,

J. in G.K. Krishan Vs. State of Tamil Nadu (AIR 1975 SC 583), laying down that the word regulation has no fixed connotation and that its meaning differs according to the nature of the thing to which it is applied. The Hon'ble Judge observed that "in modern statutes, concerned as they are with economic and social activities, 'regulation' must, of necessity receive a wide an interpretation".

7. In Sujatha Touring Talkies vs State of Karnataka (AIR 1986 Karn 21) a Full Bench of the Karnataka High Court after considering the dictionary meanings and the earlier decisions of the courts held that "it would, therefore, seem to be reasonable to deduce that the word 'regulate' is a word of broad import having wide meaning comprehending all facets not only specifically enumerated in the Act but also embraces within its fold the powers incidental to the regulation envisaged in good faith in the interest of general public".

8. In K. Ramanathan vs. State of Tamil Nadu (supra), the Supreme Court further held that "the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be read over the entire subject. It implies power to rule, direct and control and involves the adoption of a rule or guiding principle to be followed or making of rule with respect to the subject to be regulated".

9. Similarly, in Deepak Theatre, Dhuri vs. State of Punjab (AIR 1992 SC 1519), the Hon'ble Supreme Court held as under:

“..... The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats. The power to regulate may include the power to license or to refuse or to requiring taking out a license and may also include the power to tax or exempt from taxation, but not the power to impose a tax for the revenue in the rule making power unless there is valid legislation in that behalf. Therefore, the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be conducted

10. In *Harishankar vs. UP State Electricity Board* (AIR 1974 All 74) dealing with the term tariff, Allahabad High Court held that the term tariff includes within its ambit not only the fixation of rates, but also rules and regulations relating to it. In the *State of UP vs. Batuk Deo* (1978) 2 SCC 102, the Hon'ble Supreme Court has held that a power to do a thing necessarily carries with it the power to regulate the manner in which the things may be done. It is an incident of the power itself and indeed without it the exercise of the power may in practice be fraught with difficulties which will frustrate rather than further the objects of such power.

11. In *D.K.V. Prasad Rao vs Government of Andhra Pradesh* (AIR 1984 AP 75), Andhra Pradesh High Court dealt with the meaning of the expression 'regulation' appearing in AP Cinemas (Regulation) Act, 1955. It was stated that the word 'regulation' comprehends all facets not only specifically enumerated in the Act but also embraces within its fold the powers incidental to the regulation envisaged in good faith with an eye on the public welfare.

12. In the context of the above decisions and considering the scheme of the ERC Act, its objects and purposes and other relevant factors, the term "regulate the tariff" figuring in clauses (a), (b) and (c) of Section 13, has to be given a wider meaning, which will encompass all matters which need to be specified for ensuring that tariffs determined by the Commission are actually implemented and the objects for which the tariffs are determined are actually achieved. It is not merely a fixation of rate that is envisaged by the statutory provisions but also include the enumeration of consequences that would follow if the dues are not settled in time. Indeed transaction is complete only when the payments in accordance with the tariff are made. Absence of powers of supervision or control to ensure payment of dues would lead to an anomalous situation, which may render the functioning of the Commission to nugatory.

13. To conclude, the power to regulate tariff in the context of the ERC Act would include all activities which would effectively implement the tariff of the

utility qua the purchaser. The Commission has the power to prescribe measures to enforce its order on tariff through the regulatory mechanism, which may include regulation of power supply to the defaulting beneficiaries. As we have already noted, the state utilities have signed agreements with NTPC, a major central generation utility, providing for regulation of power supply in case of defaults in payment of dues. The terms in the agreements reinforce our conclusion on prescription of procedure for regulation of power supply and other related aspects.

TECHNICAL ASPECTS

14. We are of the view that regulation of power supply is an extraordinary step to be resorted to only in extreme conditions after exhausting all available avenues for recovery of dues. We are also aware that in an integrated grid, it is extremely difficult to control power flow for the purpose of curtailment of power supply to a specified beneficiary during the time of regulation in view of the fact that power would find alternative paths. It is also recognized that regulation will be successful only with the co-operation of the beneficiary who is getting regulated by proper reduction of its drawal from the grid. Opening of lines/ICTs in the process of regulation may have its impact on grid security during regulation of power supply. A reliable supply to essential services and sensitive installations also has to be ensured during regulation of power supply. The scheme with round the clock regulation of power supply will be more practical

from the point of view of implementation. The scheme for regulation will have to be formulated in such a manner that it does not cause spillage of water in case of hydro generating stations.

COMMERCIAL ASPECTS

15. The commercial aspect of regulation of power supply is another important issue which also needs to be addressed so that regulation does not have any adverse commercial impact on any other central or state utility in the region. We have, therefore, considered it appropriate to elaborately outline the commercial aspects to be enforced during the period of regulation of power supply.

PROCEDURE FOR REGULATION OF POWER SUPPLY

16. The procedure for regulation of power supply has been formulated considering these aspects. The generic procedure for regulation of power supply on commercial grounds is contained in Annexure "A" to this order, which shall be followed while regulating power supply on the ground of non-payment of dues by any of the beneficiaries.

17. The procedure given in Annexure 'A' shall come into force from the date of this order and shall supersede the interim procedure laid down in the Commission's order dated 21st June, 2000. This procedure shall remain in force for a period of one year, unless extended further, with or without modifications.

18. The technical and commercial issues involved in the process of regulation are also incorporated in Annexure "A", which are based on consideration of the issues, which were raised in the comments received or came up during the process of hearing.

19. The regulation of power supply shall be resorted to only when the billed dues for at least 2 months remain unpaid from the date of service of bills.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(D.P. SINHA)
MEMBER

New Delhi dated the 11th January, 2002

REGULATION OF POWER SUPPLY

(Annexure 'A' to the Commission's order dated 11th January, 2002)

GENERIC PROCEDURE FOR REGULATION OF POWER SUPPLY ON COMMERCIAL GROUNDS

1. For the purpose of this order, "regulation of power supply" means the discontinuance, stoppage or reduction of power supply by a Central Utility to a beneficiary in case of default by the latter in making payment of the billed dues and whose dues remain outstanding for a minimum period of 2 months from the date of service of bills.

2. The Central Utility proposing to regulate power supply (hereinafter referred to as regulating utility) of the beneficiary, who has defaulted in making payments and whose dues are outstanding (hereinafter referred to as the regulated utility) shall make a request to the RLDC, under intimation to Member-Secretary of the REB and the regulated utility at least 30 days in advance of the proposed date of commencement of regulation. In case of regulation by the transmission utility, the proposal shall be made in consultation with the generating utility(ies). The RLDC shall be responsible for the overall supervision of the regulation process. No discrimination shall be made among the utilities on the issue of regulation.

3. The regulating utility, prior to making request as aforesaid shall hold consultations with other state utilities and other agencies to identify the utilities, who are willing to absorb the regulated power becoming available consequent to

regulation. The proposal for regulation shall accordingly state the quantum of power to be regulated and the duration of regulations and as to whether the regulation of power supply to regulated utility would cause reduction in the generation at the Central Generating Station or whether the power becoming available consequent to regulation shall be diverted to other utilities within or outside the region.

4. In case of regulation by transmission utility, the regulation shall, as far as possible, be implemented concurrently with the regulation by the generating utilities.

5. On receipt of proposal for regulation, whether from the generating or transmission utility, the RLDC shall carry out necessary studies in consultation with the regulating utility and the CTU to evaluate the proposal.

6. The RLDC shall come out with a draft scheme of regulation, within five days of receipt of request for regulation from the regulating utility. If in the opinion of the RLDC the regulation proposed by the regulating utility, for any reasons cannot be carried out temporarily and in accordance with the request for regulation given by the regulating utility, it shall intimate the same to all concerned along with the reasons thereof within two days of receipt of the proposal of regulation.

7. The draft scheme of regulation shall be devised for implementation on round-the-clock basis, except, in case of hydro generating stations. The scheme shall:

- (a) Specify the different stages of regulation and duration of each stage. (First stage being self-regulation by the regulated utility)
- (b) Identify the generating stations whose generation would be reduced or whose power shall be diverted to other beneficiaries, along with the quantum of reduction/diversion of power during regulation.
- (c) Specify the transmission lines/ICTs (Inter Connecting Transformers), which are to be opened to give effect to physical regulation, as well as sequence of opening of these elements.
- (d) Outline the grid security measures and precautions to be taken during implementation of the scheme.
- (e) Ensure that no spillage of water shall normally take place on account of regulation in case of hydro generating stations.

8. The draft scheme so prepared by RLDC shall be forwarded to Member-Secretary, REB for his views/suggestions. The Member-Secretary, REB shall, independently or with the assistance of REB Secretariat and without taking the issue to any of the REB forum analyse the draft scheme for the effect of regulation on sensitive services/installations like Defence, Railways, etc. and its impact, if any, on international agreements and other sovereign obligations. He

shall communicate his views/suggestions to the RLDC, within five days of receipt of the draft scheme.

9. The RLDC shall, within two days of receipt of views/suggestions from the Member-Secretary, REB, finalise the scheme of regulation and communicate the scheme so finalised to all the beneficiaries and concerned utilities/agencies with a clear 15 days notice prior to commencement of regulation.

10. The temporary diversion of power during the period of regulation shall not be construed as “reallocation” of the shares of the Central Generating Station which is resorted to under normal times.

11. In case the regulating utility decides to withdraw or postpone the regulation, it shall communicate the same to the RLDC, Member-Secretary, REB, the regulated utility and all other beneficiaries utilities along with reasons therefor.

12. In the first stage, the RLDC shall at the commencement of regulation advise the regulated utility for regulating drawals on its own (self-regulation) according to the curtailed schedule as indicated at para 7(a) above.

13. In case the RLDC finds that the regulated utility is not responding to the advice issued as at para 12 above within a period of 24 Hrs., the RLDC shall issue instructions for implementing the next stage of scheme of regulation.

14. The RLDC, during period of regulation shall inform all concerned regarding the reduced security level of the regional grid and may issue suitable instructions to the constituents in this regard.

15. The RLDC shall keep the CTU and Member-Secretary, REB informed about the implementation of the scheme of regulation and its effects.

16. Prior approval of the Commission for regulation of power supply on commercial grounds shall not be necessary in each case, when the regulation is enforced in accordance with the procedure prescribed herein.

COMMERCIAL ASPECTS FOR REGULATION OF POWER SUPPLY

17. Regulation by Generating utility:

(a) The regulating utility shall in the first instance determine the quantum and duration of regulation.

(b) The regulating utility shall carry out negotiations with other utilities, within or outside the region for purchase of regulated power

(c) The request for regulation of power supply made to RLDC shall indicate

(i) The quantum of power supply to be regulated,

(ii) Duration of regulation,

- (iii) Utilities willing to purchase the regulated power
 - (iv) Rate(s) at which the regulated power shall be sold.
- (d) In case the regulating utility is unable to organise sale of regulated power, this fact shall be clearly stated in the request for regulation made to RLDC. In such a situation, the regulated utility, within a period of 15 days from the date of receipt of request for regulation of power supply, shall have a right to organise sale of regulated power to a utility within or outside the region in consultation with the RLDC with a view to examining the feasibility of delivering the regulated power to the concerned utility.
- (e) If regulation of power supply to the regulated utility results in reduction in generation of power, the fixed charges of Central Generating Station corresponding to the reduction in generation owing to regulation shall be borne by the regulated utility, subject to condition that no diversion of power is possible.
- (f) In case regulation is effected by diversion of power by a generating utility to other beneficiaries within the same region or to the utilities outside the region at a rate higher than the tariff fixed for the Central Generating Station, the profits accruing to the generating utility i.e. difference between the sale proceeds and notified tariff after making adjustments for the transmission charges, shall be distributed in the following manner:
- (i) From the profits accruing to the generating utility, reasonable trading charges, if incurred on account of involvement of a trader such as PTC, shall be allowed.

- (ii) From the remaining profits, 2/3rd shall be adjusted against the outstanding dues of the regulated utility and the balance 1/3rd shall be retained by the generating utility.
- (g) In case the regulation of power is done by diversion of power to other beneficiaries at a rate lower than the tariff fixed for the Central Generating Station, the regulated utility shall compensate the generating utility of the loss suffered, which shall be equal to the difference between notified tariff and sale proceeds of regulated energy.
- (h) The generating utility enforcing regulation of power supply shall have no claim for incentive corresponding to the quantum of generation reduced in the process of regulation.
- (i) If regulation by generating utility is effected by opening of lines/ICTs of the transmission utility, the outage time of such elements shall be treated as not attributable to the transmission utility and such elements shall be deemed to be available for calculation of overall “availability” of transmission system and for payment of incentive to the transmission utility.
- (j) The RLDC/REB/regulated entity shall have a right to ascertain the availability of generators during the period of regulation.

18. Regulation by Transmission Utility:

- (a) In case of regulation by the transmission utility, the regulation shall, as far as possible, be implemented concurrently with the regulation by the generating utility. In such a case, any payments received from the regulated utility shall be

shared by the generating utility and transmission utility in proportion to their outstanding dues.

(b) In case regulation by transmission utility is done independent of regulation by generating utility, the regulation shall be by diversion of regulated quantum of share of power to some other beneficiary, either at the same tariff or at a higher tariff as compared to the notified tariff of the Central Generating Station. Any profit earned shall be shared by the transmission utility and the defaulting beneficiary in the following manner :

- (i) From the profit accrued to the transmission utility, reasonable trading charges, if incurred on account of involvement of a trader such as PTC, shall be allowed.
- (ii) From the remaining profit, $2/3^{\text{rd}}$ shall be adjusted against the outstanding dues of the defaulting beneficiary and the balance $1/3^{\text{rd}}$ shall be retained by the transmission utility.
- (iii) The generating utility shall be totally neutral in this scheme as its generation shall not be affected in any manner.

(c) In case of regulation by the transmission utility where whole or part of the regulated power could not be sold, this would result in reduction of generation by the Central Generating Station. The fixed charges corresponding to loss of generation by the Central Generating Station shall be borne by the regulated utility.

(d) In case of opening of lines/ICTs at the instance of the transmission utility for regulation of power supply, the transmission utility shall have no claim for

incentive corresponding to the quantum of reduced “availability” of its transmission system on account of regulation.

(e) The RLDC/REB/regulated entity shall have a right to ascertain the availability of generators during the period of regulation.

Sd/-
(K.N. SINHA)
MEMBER

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(D.P. SINHA)
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New Delhi dated the 11th January 2002.