

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri R.Krishnamoorthy, Member
4. Shri S.Jayaraman, Member

**Petition No152/2008
(Suo motu)**

In the matter of

Maintenance of Grid Discipline – Compliance of provisions of the Indian Electricity Grid Code.

And in the matter of

1. Uttar Pradesh Power Corporation Limited, Lucknow
 2. Shri Awanish Awasthi, Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow
- ...Respondents**

The following were present:

1. Shri D.D. Chopra, Advocate, UPPCL
2. Shri Ashok Kumar, UPPCL
3. Shri S.P. Gupta, UPPCL
4. Shri V.P. Trivedi, UPPCL
5. Shri S.R. Narasimhan, NRLDC
6. Shri V.K. Agrawal, NRLDC

**ORDER
(Date of Hearing: 16.12.2008)**

It was reported by Northern Regional Load Despatch Centre (NRLDC) that Uttar Pradesh Power Corporation Ltd., the first respondent, was over-drawing power at frequency below 49.5 Hz on a number of occasions during the month of October 2008. NRLDC brought certain specific instances of over-drawal by the first

respondent at frequency below 49.0 Hz. This act of the first respondent was considered to be in violation of provisions of para 5.4.2 of the Indian Electricity Grid Code (IEGC). Accordingly, a notice dated 27.11.2008 under Section 142 of the Electricity Act, 2003 (the Act) was issued to the first respondent directing it to explain over-drawals on 13.10.2008 and 14.10.2008 at frequency below 49.0 Hz, as per details extracted below:

Time Block	System Frequency (Hz.)	Uttar Pradesh Power Corporation Ltd			
		Schedule (MW)	Drawal (Avg. MW)	Over-drawal (MW)	Percentage of over-drawal
13.10.2008					
88	49	2965	3871	906	30.55
89	49	3053	4318	1265	41.43
90	49	3082	4347	1265	41.04
91	49	3132	4433	1301	41.53
92	49	3122	4446	1323	42.37
93	49	3180	4471	1291	40.59
14.10.2008					
89	49	2840	4295	1455	51.23
90	49	2836	4328	1492	52.61
91	49	2882	4245	1363	47.29
92	49	2961	4207	1246	42.08
93	49	3083	4208	1125	36.49
94	49	3092	4211	1119	36.19
95	49	3096	4156	1060	34.23
96	49	3096	4297	1201	38.74

2. Simultaneously, notice under Section 149 of the Act was issued to the second respondent, who is in charge and person responsible for the conduct of business of the first respondent.

3. A common reply dated 8.12.2008 has been filed by the second respondent on behalf of both. In the reply, the factum of over-drawals on 13.10.2008 and 14.10.2008 at frequency below 49.0 Hz has been admitted. It has, however, been stated that over-drawals were not deliberate or on account of carelessness on their part but were for the reasons beyond their control. The primary reason narrated is the lower allocation of power to the State of Uttar Pradesh by the Central Government from the central generating stations. They have stated that they are pursuing their case with the Central Government for higher share from unallocated power available with the Central Government, and are hopeful of some relief, which according to them, will minimize the need for over-drawal. In addition, the following factors are also said to have contributed to over-drawal during the month of October 2008, namely –

- (a) Adverse weather conditions, including extreme humidity,
- (b) Obligation to make continuous and uninterrupted power supply of more than 800 MW to Taj Trapezium Zone in accordance with directions of Hon'ble Supreme Court, and
- (c) Unforeseen shortfall of supply of power to the extent of 160 MW from Himachal Pradesh with whom bilateral agreement for supply was entered into in April 2008.

4. In the cause shown, it has been stated that because of the special efforts made, it was possible for the respondents to restrict over-drawal from 20.11.2008 to 30.11.2008 and from 1.12.2008 to 7.12.2008.

5. In the reply, the second respondent has tendered an unconditional apology for the contraventions of the provisions of the Act, orders and directions issued by the Commission, which have been termed as “unintentional”.

6. This petition was heard on 16.12.2008 when it was conceded on behalf of the respondents that there had been defaults, especially on 13.10.2008 and 14.10.2008. It was brought out that remedial measures taken subsequently had resulted in tremendous improvement from 19.11.2008 onwards. Therefore, it was urged that the Commission should take a lenient view.

7. The constraints faced by the State could not be the justification for over-drawal of shares of other beneficiaries, and also endangering the security and safety of the Grid. The obligations under the law have to be discharged by the first respondent through legal means and not by depriving the other States of their legitimate entitlements. Further, in the affidavit as also during the hearing on 16.12.2008, over-drawal at frequency below 49.0 Hz on 13.10.2008 and 14.10.2008 was admitted. Thus, the offence of non-compliance of the provisions of the IEGC by the first respondent has been proved to the hilt.

8. In the context of notice issued to the second respondent, the Commission directed him to place on record the instructions issued by him to restrain over-drawal. Consequent to these directions, an affidavit dated 26.12.2008 has been filed by the second respondent. There are procedural defects noticed in the affidavit,

which the office has brought to the notice of the second respondent. As the defects noted are of technical nature, the matter is being examined in the light of the documentary evidence filed by the second respondent, along with his affidavit.

9. From the evidence filed, it is gathered that the Chief Engineer (Power Systems), who is responsible for implementing schedule of supply, informed the second respondent vide office note dated 13.10.2008 that there was an urgent need for reduction of supply to different categories of consumers to minimize overdrawals. On this recommendation, the second respondent, by his note dated 26.11.2008 recorded as under:

“O.D. Na Ho Yeh Sunishchit Kar Lein”

10. Consequently, Chief Engineer (Power Systems) conveyed this decision to his Superintending Engineer on 26.11.2008 itself.

11. Thereafter, Chief Engineer (Power Systems) vide fax message dated 4.12.2008 brought out that in the prevailing circumstances, implementation of the second respondent's earlier decision was not only difficult but was impossible. On this again, the second respondent recorded on the same day as under:

“Avlokit. Lekin O.D. kee isthiti na bane yeh avashya sunishchit kar lein”

12. In terms of sub-section (1) of Section 149 of the Act, where an offence under the Act has been committed by a company, every person who at the time the

offence was committed was in charge of and was responsible to the company for the conduct of its business, as well as the company, are deemed to be guilty of having committed the offence and such person is liable to be proceeded against and punished accordingly. Proviso to sub-section (1) provides that the person referred to in sub-section (1) shall not be liable to any punishment if he proves that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of the offence.

13. The second respondent in its affidavit has nowhere stated that he had no knowledge of over-drawal below frequency of 49.0 Hz on 13.10.2008 and 14.10.2008. Also, the affidavit does not point out that he exercised due diligence to prevent the said over-drawal. From the evidence placed on record, it does not follow that the second respondent made any efforts or issued any directions for curtailment of over-drawal on 13.10.2008 and 14.10.2008 at frequency below 49.0 Hz. Under these circumstances, it cannot be said that non-compliance of the provisions of the IEGC was committed by the first respondent without the second respondent's knowledge or that he exercised due diligence to ensure compliance of provisions of the IEGC. Therefore, his case does not fall within the scope of proviso to sub-section (1) of Section 149 of the Act.

14. The offence of non-compliance of the provisions of the IEGC against the first respondent is established beyond an iota of doubt as already discussed in para above. As a natural corollary, guilt of the second respondent by applying the

deeming provisions of Section 149 also gets established. Thus, he is also deemed to be guilty of non-compliance of provisions of the IEGC, along with the first respondent.

15. In the light of above discussion, we impose penalty of Rs. one lakh on the first respondent for overdrawing electricity on 13.10.2008 and 14.10.2008 at frequency below 49.0 Hz and in violation of the provision of the IEGC. The amount shall be deposited latest by 31.1.2009.

16. As regards the second respondent, he is directed to personally appear before the Commission on 5.2.2009 for a hearing on the question of penalty.

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[R. KRISHNAMOORTHY]
MEMBER

Sd/-
[BHANU BHUSHAN]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

New Delhi, dated 9th January 2009