

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 259/2009 (Suo-motu)

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri M.Deena Dayalan, Member

DATE OF HEARING: 13.4.2010

DATE OF ORDER: 15.6.2010

In the matter of

Default in payment of Unscheduled Interchanges (UI) charges for the energy drawn in excess of the drawal schedule by Jammu and Kashmir.

And in the matter of

Power Development Department, Govt. of J & K Srinagar..**Respondent**

Following were present:

1. Shri Neeraj Kumar, NRLDC
2. Mss. Anisha Chopra, NRLDC

ORDER

On noticing default in payment of Unscheduled Interchange (UI) charges by the respondent, the Commission initiated suo-motu proceedings vide order dated 5.11.2007 in Petition No. 132/2007, the respondent was directed to show cause, as to why action under appropriate provisions of the Electricity Act, 2003 (the Act) should not be initiated to recover UI dues, apart from recommending to the Central Govt. for apportioning the

outstanding UI dues from the Central Plan Assistance earmarked for the State of J&K.

2. By order dated 13.5.2008, the Commission directed the respondent to liquidate the entire principal UI arrears in 6 monthly instalments @ Rs. 111 crore per month, starting from June 2008. The Commission further directed that this amount would be in addition to current UI dues, if respondent failed to make payment, NRLDC should curtail its supply by opening lines.

3. Vide order dated 10.9.2008, respondent was again directed to show cause, as to why penalty under section 142 of the Act, be not imposed on it for non-payment of amount of Rs. 111 crore each in July and August 2008 by it, which amounts to non-compliance of specific direction of the Commission.

4. These proceedings culminated in imposition of penalty of Rs. one lakh vide order dated 10.10.2008. Further, in exercise of power under Section 149 of the Act, the Commission issued show cause notice to the Commissioner and Secretary, Power Development Department, Govt. of J&K. The Commission reiterated that the entire amount payable up to the month of October 2008, including arrears for the months of July, August and September 2008 shall be paid latest by 31.10.2008.

5. The Commission vide its order dated 10.12.2008 observed that there has been substantial compliance with the Commission's directions, though

belatedly and the respondent was directed to liquidate the entire amount of arrears, including the installment payable in November, 2008 and the interest for late payment of UI charges, latest by 31.1.2009. Accordingly, Member-Secretary, Northern Regional Power Committee (NRPC) was also directed to calculate the amount of interest payable by the respondent on account of delayed payment of UI charges and convey the same to the respondent who was directed to settle the arrears by 31.1.2009.

6. Subsequently, it came to the notice of the Commission that the outstanding interest on late payment of UI charges was not cleared as directed vide the Commission's order dated 10.12.2008 and that a sum of Rs. 317.20 crore was outstanding against the respondent (later modified by NRPC to Rs. 206.42 crore in May, 2009). The Commission, vide its order dated 16.2.2009 in suo-motu proceedings in Petition No. 29/2009 directed the respondent to show cause as to why penalty under Section 142 of the Act be not imposed on it for the default in complying with the above directions of the Commission.

7. The Commission vide its order dated 30.3.2009 observed that respondent was guilty of contravention and non-compliance with the directions of the Commission. The penalty of rupees one lakh was imposed on the respondent, which was deposited by the respondent. Shri Sandeep Naik, Secretary, Power Development Department, J&K was directed to appear before the Commission. In compliance, he appeared before the

Commission on 16.4.2009 and informed that the interest amount could be released in instalments after passing the State Budget. Subsequently, in letter No. CE/C&S/J/T-50II/235-38 dated 25.4.2009, Chief Engineer, Commercial and Survey Wing of the respondent Department intimated that outstanding interest amount would be paid in 12 equated monthly instalments, commencing from July 2009. On consideration of the totality of circumstances, Commission by its order dated 11.5.2009, concluded the suo motu proceedings initiated vide order dated 16.2.2009 with the following directions:

"In these suo motu proceedings, we cannot fix installments for payment of interest in the absence of the parties who are to receive the amount. At the same time, to an extent we appreciate the difficulties of the respondent. On consideration of the totality of circumstances, we feel that the entire amount of interest outstanding against the respondent should be settled latest by 30.9.2009. We direct accordingly. On equitable considerations, the respondent shall be liable to pay further interest @ 12% per annum, with effect from 1.10.2009, on the outstanding amount of interest as on 30.9.2009."

8. As per NRLDC submission, it was noticed that as on 30.9.2009, net outstanding amount against the respondent was Rs. 51.84 crore out of which a sum of Rs. 57.11 crore was towards interest [Principal UI was (-) Rs. 5.27 crore]. It also came to notice that the respondent had not made any payment since February 2009. However, the part of receivable UI (Rs. 150 crore) during June-September, 2009 was adjusted against the outstanding interest. Accordingly, the present proceedings were initiated vide order dated 13.11.2009 wherein the Commission observed that the respondent

had failed to comply with the directions in the Commission's order dated 11.5.2009. The respondent was directed therefore, to show cause, latest by 30.11.2009 as to why penalty under section 142 of the Act be not imposed on it for non-compliance of the directions of the Commission.

9. The respondent vide its affidavit dated 4.1.2010 has submitted that during 2008-09 it had paid Rs. 384 crore on account of UI charges and Rs. 150 crore was adjusted towards interest on UI charges for the UI receivable by J&K for under-drawal by the State during April to July, 2009. It was, further, submitted that it was very difficult for the Power Department of Govt. of J&K to under-draw or make payment during that financial year especially up to the end of February, 2010, due to financial problem. The respondent prayed for time to liquidate the liability of interest as soon as funds became available. It was also stated that as the power allocation from the unallocated quota was increased, the State expected to liquidate the UI charges through under-drawal in the ensuing months.

10. Commission vide its order dated 9.3.2010 directed the respondent to file, latest by 5.4.2010, a time bound programme as to how it proposed to liquidate its outstanding dues on account of UI charges. However, no reply has been filed by the respondent and none appeared during the hearing.

11. As per the report received from NRLDC on 12.5.2010, it is observed that no payment has been made by the respondent towards interest after the

order of the Commission dated 11.5.2009. However, Rs. 150 crore were adjusted from the UI receivable and Rs. 2.51 crore were adjusted from the receivables on account of interest on UI charges during first and second quarter of 2009-10. No payment has been made by the respondent since February 2009 except the above mentioned adjustment on account of receivable. The payment liability of the respondent towards principal as well as interest has increased to a total amount of Rs.255.85 crore (Rs. 196.18 crore as Principal UI and Rs. 59.67 crore towards interest) as on 1.5.2010.

12. The respondent in its reply has not denied its liability to pay principal amount and interest thereon on account of delayed payment of UI charges. Thus contravention of and non-compliance with the directions of the Commission is *writ large*. In fact, the respondent admits of non-compliance when it states that non compliance is not intentional but due to the financial constraints being faced by it, as narrated in the reply affidavit.

13. In view of the above, the next question which emerges for our consideration is the quantum of penalty. Before deciding the quantum of penalty, we proceed to examine whether any extenuating circumstance is available in favour of the respondent as a defence for the charge of contravention of the directions of the Commission.

14. The respondent became liable to pay UI charges as it had drawn electricity from the regional grid in excess of the schedule prepared by Northern Regional Load Despatch Centre. In accordance with the relevant provisions of the Indian Electricity Grid Code, 2006, the respondent was to settle UI account within 10 days after release of the energy accounts by Northern Regional Power Committee, since UI payments deserve highest priority. During the hearing, none was present on behalf of the respondent. Under these circumstances, there is no justification for taking a lenient view on account of the so called extenuating circumstances.

15. In view of the foregoing, we are satisfied that the respondent is guilty of contravention of and non-compliance with the directions of the Commission requiring it to settle the amount of interest by 30.9.2009. In exercise of power under Section 142 of the Act we impose penalty of rupees one lakh on the respondent which shall be deposited latest by 23.6.2010.

16. Before parting, we would like to emphasize that the imposition of penalty does not absolve the respondent of its liability to pay interest for the amount withheld by it for a long period. The regional entities whose shares were drawn by the respondent and who are entitled to interest have already made payments to the generating companies for the electricity over-drawn and consumed by the respondent. They deserve to be compensated as they had been deprived of the use of money. It is necessary to settle interest dues at the earliest because they do not earn any further

interest. Therefore, the issue of settlement of interest payment cannot be kept pending for long. In this connection, we draw the attention of the respondent to the Central Electricity Regulatory Commission (Unscheduled interchange charges and related matters) Regulations, 2009 (UI Regulations) which specify the schedule of payment of unscheduled interchange charges and payment security for settlement of UI dues, in addition to covering other commercial aspects. It provides that payment of UI charge always has a high priority and is mandated to be paid into a regional unscheduled interchange pool account operated by the RLDC within 10 days of issue of UI statement by the Regional Power Committee. It further provides that when payments against UI charge are delayed beyond 12 days from the date of issue of statement, the defaulting utility has to pay simple interest @0.04% for each day of delay. The interest so collected is to be paid to regional entities whose payment got delayed. The relevant extracts from the UI Regulations are as under:

"10. Schedule of payment of Unscheduled Interchange Charges and Payment Security

- (1) The payment of UI charges shall have a high priority and the concerned constituent shall pay the indicated amounts within 10 (ten) days of the issue of statement of Unscheduled Interchange charge including Additional Unscheduled Interchange charges by the Secretariat of the respective Regional Power Committee into the "Regional Unscheduled Pool Account Fund" of the concerned region.
- (2) If payments against the Unscheduled Interchange charges including Additional Unscheduled Interchange charges are delayed by the more than two days, i.e. beyond twelve (12)

days from the date of issue of the statement by the Secretariat of the respective Regional Power Committee, the defaulting constituent shall have to pay simple interest @ 0.04% for each day of delay.

- (3) All payments to the entities entitled to receive any amount on account of UI charges shall be made within 2 working days of receipt of the payments in the "Regional Unscheduled Interchange Pool Account Fund" of the concerned region:

Provided that in case of delay in the UI payment into the respective regional UI Pool Account and interest thereon if any, beyond 12 days from the date of issue of the Statement of UI chares then the regional entities who have to receive UI payment or interest thereon shall be paid from the balance available if any, in the regional UI Pool Account Fund of the region. In case the balance available is not sufficient to meet the payment to the constituents, then the payment from the regional UI Pool Account Fund shall be made on pro rata basis from the balance available in the Fund."

17. We direct Shri B. R. Sharma, Principal Secretary, Power Development Department, J & K to take necessary steps for liquidation of outstanding UI charges including interest, if any latest by 10.7.2010.

19. List for further directions on 13.7.2010.

Sd/-	sd/-	sd/-	sd/-
(M.DEENA DAYALAN)	(V.S.VERMA)	(S.JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON