

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 157/2011 (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: 8.9.2011**

**DATE OF ORDER: 5.12.2011**

**In the matter of**

Default in payment of Unscheduled interchanges (UI) charges for the energy drawn in excess of the drawn schedule by Bihar State Electricity Board, Patna.

**And**

**In the matter of**

1. Bihar State Electricity Board, Patna
  2. Chairman-Cum-Managing Director, Bihar State Electricity Board, Patna
- ...Respondents**

**Parties present:**

1. Shri R.B.Sharma, Advocate, BSEB
2. Shri A.K.Bandyopadhyaya, ERLDC

**ORDER**

The Commission in its order dated 19.8.2011 had directed as under:

*"6. From the report of ERLDC, it follows that the first respondent has not complied with the provisions of UI Regulations. Accordingly, we direct the first respondent to file its reply showing the reasons for non-compliance of the UI Regulations on or before 30.8.2011. ERLDC is also directed to file the details of outstanding UI charges/receivables against the first*



*respondent and payment by it and adjustments by receivable towards UI charges during the months of February 2011 to July 2011, latest by 30.8.2011."*

2. During the course of hearing, the learned counsel appearing on behalf of the respondents submitted that the reply containing the reasons for non-compliance of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (hereinafter referred to as "the UI Regulations") has already been filed under affidavit dated 29.8.2011. The learned counsel further submitted that outstanding UI dues have already been liquidated and an amount of ₹ 9.95 crore is due to the first respondent as UI receivable.

3. Eastern Regional Load Despatch Centre (ERLDC) in its affidavit dated 30.8.2011 has submitted that a sum of ₹ 3.06 crore, ₹ 7.05 crore, ₹ 13.49 crore, ₹ 12.44 crore and ₹ 3.49 crore including surcharge was outstanding against the First Respondent towards UI payment during the months of February, March, April, May and June, 2011, respectively. Only ₹ 2.83 crore has been paid by the first respondent in the month of April, 2011. However, due to under-drawl, the first respondent has UI receivable during the months of May to August, 2011 and after adjustment of the receivable, first respondent has net receivable w.e.f July, 2011. ERLDC has further submitted that the net UI receivable against the first respondent was ₹ 285.09 lakh and ₹ 695.16 lakh during the months of July and August, 2011, respectively. ERLDC has also submitted that the first respondent has

not opened LC in terms of Regulation 10 (4) of UI regulations.

4. Learned counsel for BSEB further submitted that payment of UI charges is purely a commercial transaction and delay in payment of UI charges carries late payment surcharge till it is paid. The learned counsel requested the Commission to clarify when and at what stage the regulatory intervention would be invoked so that the utilities may manage their UI transactions and payments accordingly.

5. We have considered the submission of the learned counsel for BSEB. Regulation 10 of the UI Regulations provides 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 charges including Additional Unscheduled Interchange charges by the Secretariat of the respective Regional Power Committee into the "Regional Unscheduled Interchange Pool Account Fund" of the concerned region.*

(2) *If payments against the Unscheduled Interchange charges including Additional Unscheduled Interchange charges are delayed by 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 Fund and interest there on if any, beyond 12 days from the date of issue of the Statement of UI charges 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 Accounts Fund shall be made on pro rata basis from the balance available in the Fund.*

*Provided further that the liability to pay interest for the delay in payments to the "Regional UI Pool Account Fund" shall remain till interest is not paid; irrespective of the fact that constituents who have to receive payments have been paid from the "Regional UI pool account Fund" in part or full.*

*(4) All regional entities which had at any time during the previous financial year failed to make payment of Unscheduled Interchange charges including Additional Unscheduled Interchange charges within the time specified in these regulations shall be required to open a Letter of Credit (LC) equal to 110% of its average payable weekly UI liability in the previous financial year, in favour of the concerned RLDC within a fortnight from the date these Regulations come into force.*

*Provided that if any regional entity fails to make payment of Unscheduled Interchange Charges including Additional Unscheduled Interchange Charges by the time specified in these regulations during the current financial year, it shall be required to open a Letter of Credit equal to 110% of weekly outstanding liability in favour of respective Regional Load Despatch Centre within a fortnight from the due date of payment.*

*Provided further that LC amount shall be increased to 110% of the payable weekly UI liability in any week during the year, if it exceeds the previous LC amount by more than 50%.*

***Illustration:*** *If the average payable weekly UI liability of a regional entity during 2009-10 is Rs. 20 crore, the regional entity shall open LC for 22 crore in 2010-11. If the weekly payable liability during any week in 2010-11 is Rs. 35 crore which is more than 50% of the previous financial year's average payable weekly liability, the concerned regional entity shall increase the LC amount to Rs. 35 Crore by adding Rs. 13 Crore.*

*(5) In case of failure to pay into the "UI Pool Account Fund" within the specified time of 12 days from the date of issue of statement of UI charges, the RLDC shall be entitled to encash the LC of the concerned constituent to the extent of the default and the concerned constituent shall recoup the LC amount within 3 days.'*

6. It is evident from the above that payment of UI charges have the highest priority and the concerned constituent is required to pay the indicated amount within ten days of the issue of statement of UI by Regional Power Committee. The constituent is liable to pay the surcharge if the

payment is delayed beyond 12 days. Further, Regulation 10 (4) of the UI Regulations provides that the constituent who is a defaulter during the past year shall be required to open an LC which will be encashed by RPC if the payment is not made within 12 days. In other words, the defaulting constituent is obligated to open an LC which will be encashed if the payment is not made within 12 days. The provisions for payment of surcharge after 12 days of default will not make a defaulting entity immune from regulatory intervention. The surcharge is paid for retaining the legitimate dues of other constituents and payment of surcharge does not absolve the constituents from the charge of non-compliance of the UI Regulations. Regulation 1.5 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 provides that the Member-Secretary of RPC shall file monthly reports on status of UI payment and the Commission may initiate appropriate proceedings upon receipt of report of RPCs. Since, the UI status reports are submitted by the RPC on monthly basis, a defaulting constituent is liable for regulatory intervention at any time after the monthly report is received.

7. It is evident from the report of the ERLDC that UI dues were outstanding against BSEB from the months of February to June 2011. On account of underdrawl, the outstanding dues have been adjusted and UI receivable is due to the respondent. However, it cannot be denied that BSEB had violated provisions of Regulation 10 (1) of the UI Regulations for defaulting in payment of UI charges and Regulation 10 (4) of UI

Regulations for its failure to open the LC. Accordingly, we impose a penalty of ₹ one lakh on the first respondent under Section 142 of the Act which shall be deposited within 15 days from the date of issue of this order.

Sd/-

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sd/-

**(M.DEENA DAYALAN)**  
**MEMBER**

**(V.S.VERMA)**  
**MEMBER**

**(S.JAYARAMAN)**  
**MEMBER**

**(Dr. PRAMOD DEO)**  
**CHAIRPERSON**