

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 172/SM/2012

**Coram:
Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member**

Date of Hearing: 25.9.2012

Date of Order : 5.11.2012

In the matter of

Default in opening of Letter of Credit in accordance with Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 by the regional entities during 2012-13.

**And
In the matter of**

1. Punjab State Power Corporation Limited, Chandigarh
2. Uttar Pradesh Power Corporation Limited, Lucknow, Uttar Pradesh
3. Department of Power Development , Government of Jammu & Kashmir, Srinagar
4. Haryana Vidyut Prasaran Nigam Limited, Panchkula
5. Himachal Pradesh State Electricity Board,
6. Chandigarh Administration, Chandigarh,
7. Everest Power Private Limited, Shimla
8. Jaypee Karcham Hydro Corporation Limited, Noida
9. Tamil Nadu Generation and Distribution Company Limited, Chennai
10. Simhapuri Energy Private Limited, Nellore, Andhra Pradesh
11. Meenakshi Energy Private Limited, Nellore, Andhra Pradesh
12. Kudankulam Nuclear Power Plant, Kudankulam, Tamil Nadu
13. Department of Power, Government of Arunachal Pradesh, Itanagar
14. Department of Power, Government of Manipur, Imphal
15. Meghalaya Electricity Corporation Limited, Shillong
16. Department of Power, Government of Mizoram, Aizwal
17. Department of Power, Government of Nagaland, Kohima
18. Tripura State Electricity Corporation Limited, Agartala
19. NEEPCO Limited, Shillong

...Respondents

20. Northern Regional Load Despatch Centre, New Delhi
21. Southern Regional Load Despatch Centre, Bangalore
22. Western Regional Load Despatch Centre, Mumbai
23. Eastern Regional Load Despatch Centre, Kolkata
24. North Eastern Regional Load Despatch Centre, Shillong

Proforma Respondents

Following were present:

Shri V.V.Sharma, NRLDC
Shri Rajiv Porwal, NRLDC
Miss Joyti Prasad, NRLDC
Shri Alok Kumar, NRLDC
Shri V.Balaji, SRLDC
Shri Vishal Gupta, Advocate, JPVL
Shri S.K.Goel, JPVL
Shri Ansul Garg, JPVL
Shri Padamjit Singh, PSPCL
Shri Vijay Gupta, HPPC
Shri Pawan Jaswal, HPCC
Shri Bhanu Prasad
Shri Kathuria, MPL
Shri Rahul Srivastava, Advocate

ORDER

The Commission vide its order dated 22.8.2012 had observed as under:

"2. As per clause (4) of Regulation 10 of the UI Regulations, all the regional entities which had at any time during the previous financial year failed to make payment of UI charges including Additional Unscheduled Interchange Charges within the specified time, are 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 due date of payment.

3. A chart showing the status of UI payment by the regional entities during 2012-13 is enclosed as **Annexure** to this order. It clearly emerges from the chart that the following regional entities which were required to open LC have not complied with the provisions of the UI Regulations.

- | | |
|-----------------------------------|--------------------------------|
| (a) Punjab | (i) Tamil Nadu |
| (b) Uttar Pradesh | (j) Simhapuri Energy Pvt. Ltd. |
| (c) Jammu & Kashmir | (k) Meenakshi Energy Pvt. Ltd. |
| (d) Haryana | (l) Kudankulam NPP |
| (e) Himachal Pradesh | (m) Arunachal Pradesh |
| (f) Chandigarh | (n) Manipur |
| (g) Everest Power Private Limited | (o) Meghalaya |
| (h) JKHCL, | (p) Mizoram |

(q) Nagaland
(r) Tripura

(s) NEEPCO Limited

The respondents are directed to show cause by 14.9.2012 as to why appropriate actions under section 142 of the Electricity Act, 2003 should not be taken against them for non-compliance of the provisions of 10(4) of the UI Regulations."

2. Reply to the show cause notice has been filed by the Punjab State Power Corporation Limited, Uttar Pradesh Power Corporation Limited, Tamil Nadu Generation and Distribution Corporation Ltd., Meenakshi Energy Private Limited, Simhapuri Energy Private Limited, North Eastern Electric Power Corporation Ltd., Haryana Power Purchase Centre, Everest Power Private Limited and Jaipraskash Power Venture Limited.

3. Punjab State Power Corporation Limited (PSPCL) in its reply dated 14.9.12012 has submitted that LC of ` 8.47 crore has already been opened on 26.7.2012 and for remaining amount, LC limit of PSPCL from the bank has already been exhausted and there is practical problem in opening of LC of such huge amount. PSPCL has requested that the present LC of ₹ 8.47 crore/week be allowed to be continued in view of the trend of UI billing of ₹ 4-5 crore/week and the restrictions imposed on UI by NRLDC. PSPCL has tendered an unconditional apology for non-payment of UI bills and non-enhancement of LC.

4. Uttar Pradesh Power Corporation Limited (UPPCL) in its reply has submitted that due to poor financial condition, LC could not be opened earlier. UPPCL has already applied to the different banks for opening of LC and a response from the banks is still awaited.

5. Tamil Nadu Generation and Distribution Corporation Ltd. in its reply dated 22.9.2012 has submitted that LC is for future drawal and it has consistently reduced the drawal under UI. TANGEDCO has requested to maintain a LC on the average weekly drawal during 2011-12 amounting to ₹ 6.5 crore.

6. Meenakshi Energy Private Limited (MEPL) in its reply dated 12.9.2012 has submitted that in compliance with Commission's direction dated 22.8.2012, it has opened the LC. MEPL has further submitted that it will strictly comply with the provisions of Electricity Act, 2003 and UI Regulations.

7. Simhapuri Energy Private Limited (SEPL) in its reply dated 11.9.2012 has submitted that in compliance with Commission's direction dated 22.8.2012, it has opened the LC. MEPL has further submitted that it will strictly comply with the provisions of Electricity Act, 2003 and UI Regulations.

8. North Eastern Electric Power Corporation Ltd. (NEEPCO) in its reply dated 14.9.2012 has submitted that in compliance with Commission's direction dated 22.8.2012, LC amounting to ₹ 31.64 lakh has been opened in favour of NRLDC. Therefore, there is no default on the part of NEEPCO in opening of LC during 2012-13.

9. Haryana Power Purchase Centre in its reply has submitted that the sanctioned limit of LCs has been exhausted and banks are not entertaining any new LC. However, the issue regarding sanctioning of LC limits is being taken up with the management of banks at higher level.

10. Everest Power Private Limited in its reply has submitted that in compliance with Commission`s direction dated 22.8.2012, LC has been opened in favour of NRLDC.

11. Jaiprakash Power Ventures Limited (JPVL) in its reply dated 21.9.2012 has submitted that since the start of the generation of power from the Karcham Wangtoo generating station in May 2011, JPVL is regularly paying UI charges payable by it. JPVL has further submitted as under:

(i) There has been no intentional or deliberate default in payment of UI charges for the year 2012-13;

(ii) The payment was delayed with due to misunderstanding or communication gap where JPVL understood that it is required to pay only the net amount of UI charges after the receivable by it are taken into account;

(iii) Once NRLDC clarified the informed JPVL that it is require to pay the UI charges irrespective of the receivables by it, JPVL immediately made the payment of the UI charges due in the weeks 2, 3, 6, 7 and 8 on 13.6.2012 in one go which clearly shows that there was no intention of defaulting and the payment got delayed due to misunderstanding and/or communication gap;

(iv) For the weeks 13 and 14 for the year 2012-13, the statement of UI after revision on the request of JPVL showed an amount receivable by it instead of being payable and therefore there cannot be any occasion of default in payment of UI charges for the said weeks.

12. JPVL has further submitted that NRLDC should immediately ask the defaulting State utilities to open LC even after single default by them and in the event they do not comply, the UI Regulations, 2009 should be enforced against them by filing a petition before Commission. This will ensure only the payment of net UI charges and will enable the proper enforcement of opening of LC by the defaulting entities. At present, the practice which is being followed is that the utilities are required to make the payment of UI charges by the stipulated time frame, whereas if the said utilities also have some receivables on account of UI, they are not paid the same due to default of payment of UI charges by some other utilities. Once the mechanism of LC is enforced strictly at the first instance of default by the utilities, especially against the State utilities who are persistently in huge amount of default, it will ensure that the UI receivables by the utilities can also be paid on time or can be easily set off by NRLDC against the payment which are required to be made to such utilities.

13. During the course of hearing, learned counsel for the JPVL and representative of PSPCL have requested to relax the provision of the UI Regulations with regard to opening of LC. Learned counsel for the JPVL submitted that the default which is being pointed out by NRLDC for the weeks 2, 3, 6, 7 and 8 in the year 2012-13 by its letter dated 14.8.2012, was not a default but the delay in payment was due to understanding of JPVL that the receivables by it will be adjusted/ off set against the said UI charges payable by it. Learned counsel pointed out that the statement issued by NRLDC covering UI transactions of JPVL up to 18.4.2012 shows receivables and JPVL had the understanding that the UI charges payable by it will be adjusted/ off set against the said receivables. However, on reminder of NRLDC to pay the UI charges, JPVL enquired about the said adjustment. NRLDC clarified at that time that the UI charges

due for payment are to be paid irrespective of the receivables. Learned counsel submitted that once the said clarification was received, JPVL immediately on 13.6.2012 made the payment for all the pending bills of UI for weeks 2, 3, 6, 7 and 8 in one go and the interest @ 0.04% per day has been paid by JPVL on said delayed payments. Learned counsel submitted that said default / delay were unintentional and not deliberate and JPVL should not be penalised for the same. In view of the above, the learned counsel prayed that since an unintentional delay in payment occurred only for the first time and the payments were made immediately after the clarification was received along with the interest amount, JPVL be exempted from opening the LC.

14. During the course of hearing, the representative of the SRDLC submitted that there was a delay of a single day in payment of the UI dues by Kudankulam NPP.

15. We have considered the submission of the respondents. Opening of the LC is a statutory requirement as it is a payment security mechanism for the energy once drawn from schedule under the UI mechanism. Non-opening of LCs has resulted in accumulation of arrears of UI dues and consequent accumulation of payables to the UI receivables entities.

16. As per information received from Regional Load Despatch Centres, Everest Power Private Limited, Simhapuri Energy Private Limited, Meenakshi Energy Private Limited have opened a Letter of Credit in terms of Regulation 10 (4) of the UI Regulations and therefore, proceedings initiated under Section 142 of the Act against them are dropped with the directions to comply with UI Regulations in future. However, Punjab, Tamil Nadu, Tripura, NEEPCO have opened LCs for insufficient amount. The

respondents Uttar Pradesh, Jammu & Kashmir, Haryana, Himachal Pradesh, Chandigarh Administration, Arunachal Pradesh, Nagaland, Manipur, Meghalaya and Mizoram have not opened the LC. With regard to JPVL, it has been submitted by the JPVL that by mistake receivables were considered to be adjusted/ off set against the payable amount. Since JPVL has made the payment along with interest after clarification by NRLDC, therefore, proceeding initiated against it under Section 142 of the Act is dropped. The JPVL is directed to comply with the UI Regulations in letter and spirit in future. With regard to Kudamkulam Nuclear Power Plant the default was reported once, only for a single day. Therefore, as a special case, the proceeding initiated against Kudamkulam Nuclear Power Plant, is dropped.

17. In our view, respondents, who have opened the LC for insufficient amount and who have not opened the LCs have clearly violated the provisions of Regulation 10 (4) of the UI Regulations and the order dated 22.8.2012. Accordingly, we impose a penalty of ₹ one lakh each on the Uttar Pradesh, Jammu & Kashmir, Haryana, Himachal Pradesh, Chandigarh, Arunachal Pradesh, Nagaland, Manipur, Meghalaya and Mizoram and ₹ 90,000/- each on Punjab, Tamil Nadu, Tripura and NEEPCO under Section 142 of the Act. The penalties shall be deposited within one month from the date of issue of the order.

18. The petition is disposed of with the above directions.

Sd/-
(V.S.Verma)
Member

sd/-
(S.Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson