

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.40/2012 (Suo-motu)

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri A.S.Bakshi, Member (EO)

DATE OF HEARING: 14.6.2012

DATE OF ORDER: 27.6.2012

In the matter of

Default in payment of Unscheduled interchanges (UI) charges for the energy drawn in excess of the drawn schedule by Power Development Department, Jammu and Kashmir.

And

In the matter of

1. Power Development Department, Jammu and Kashmir...
2. Secretary, Power Development Department, Jammu and Kashmir
3. Chief Secretary, Government of Jammu and Kashmir

Respondents

Following were present:

Shri Deepak Pathak, Advocate, J & K
Shri H.K.Chawala, NRLDC
Miss Jyoti Prasad, NRLDC

ORDER

It was noticed from the report of Northern Regional Load Despatch Centre that an amount of ₹ 330.38 crore including surcharge was outstanding



against Power Development Department, Jammu and Kashmir towards UI payment as on 30.11.2011. The Commission in its order dated 19.3.2012 had directed the Power Development Department and its Secretary and Chief Secretary (Respondent Nos. 1,2 and 3, respectively) to show cause as to why action under Section 142 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') shall not be initiated against them for non-compliance of the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (hereinafter referred to as 'UI regulations').

2. The Commission in its order dated 19.3.2012 had further observed as under:

7. The First and Second respondents have not complied with the directions of the Commission's orders dated 15.6.2010 in Petition No. 259/2009 (Suo motu) and 25.10.2011 in Petition No. 155/2011 (suo-motu). Notice is issued to Respondent Nos. 1, 2 and 3 as to why they will not be held personally liable for the penalty for non-compliance with the directions of the Commission and as to why their Cadre Controlling Authority should not be directed to make a entry in the service records as regards the non-compliance of the directions of the Commission.

3. During the course of hearing on 17.5.2012, learned counsel for the respondents had submitted that on account of shifting of Secretariat office from Jammu to Srinagar, the respondents could not file their reply to the show cause notice. Learned counsel had further submitted that the respondents are in the process of finalizing a payment plan for outstanding UI dues and reply to the show cause notice. Accordingly, the respondents were allowed to file the reply by 7.6.2012.

4. The respondents in their reply affidavit dated 7.6.2012 have submitted that payment of ₹ 72.80 crore towards UI has already been made on 4.1.2011 to UI Pool account. The respondents have further submitted that on account of phases of revision brought about in tariff in the past few years, the State of J & K has been earnestly trying to make budgetary adjustments in order to meet the said revisions and on account of the same, there has been inadvertent delay in depositing the UI charges. The respondent has requested to waive/withdraw the penalty of ₹ one lakh each imposed on the Power Development Department and its Secretary vide order dated 25.10.211 in Petition No. 155/2011. It has been further submitted that there was never any willful or deliberate non-compliance of the orders of the Commission. The State of Jammu and Kashmir and its officer hold the Commission in the highest regard. The respondents have given assurance to the affect that every efforts would be made to carry out Commission`s directions/orders.

5. During the course of hearing, the learned counsel for the respondents submitted that part payment in respect of UI charges has already been made and the default in payment is not willful and deliberate. He requested to take a lenient view and extend the time for payment of outstanding UI dues of ₹ 637.185 crore as on 6.5.2012 in equated monthly installments by 31.3.2013 for which a request had already been made to the Finance Department of

Government of Jammu and Kashmir.

6. We note that the payment of ₹ 72.80 crore was made on 4.1.2012, prior to issue of our notice on 19.3.2012 in the present proceedings. After issue of notice, the respondents have not made any payment, even though the outstanding UI dues against Power Development Department, Jammu and Kashmir are increasing.

7. We are constrained to note that the respondents are not paying attention to the payment of outstanding UI charges that it deserves. It is clarified that any constituent utility drawing power from the grid over and above its schedule is getting the power at the cost of other constituents. Consequently, it is under obligation to make prompt payment for consuming the power, which legitimately belongs to other constituents. By not making prompt payment for the power drawn under UI, respondents have not only deprived the other constituents of their legitimate UI dues, but has created impediments in the operation of the commercial mechanism. We expect the respondents to consider the UI mechanism in correct prospective and liquidate the UI dues by the due date as per Regulation 10 of the UI Regulations.

8. Learned counsel for the respondents during the hearing requested for time till July , 2012 to submit a payment plan for liquidation of the outstanding

UI dues. We note that as on 6.5.2012, the outstanding UI dues pending against PDD, J & K is ₹ 637.12 crore. We allow the respondents to file a payment plan by 5.7.2012.

9. We direct the Second respondent to appear before us on the next date of hearing with a firm payment schedule for liquidation of outstanding UI dues.

10. The petition shall be listed for hearing on 10.7.2012

Sd/-
(A.S.BAKSHI)
MEMBER (EO)

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON