

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Miscellaneous Petition No. 212/2012

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

Date of Hearing: 20.9.2012

Date of Order: 4.10.2012

In the matter of

Miscellaneous Petition under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 4 and Chapter III of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010.

AND

In the matter of

Non-payment of dues by Meghalaya Energy Corporation Ltd

AND

In the matter of

North Eastern Electric Power Corporation Ltd, New Delhi

.... Petitioner

Vs

Meghalaya Energy Corporation Ltd, Shillong

.... Respondents

Present

1. Shri A.G.West, NEEPCO
2. Ms. Debjani Dey, NEEPCO



ORDER

The petitioner, North Eastern Electric Power Corporation Ltd (NEEPCO), has filed this application praying for the following reliefs:

- (i) Direct the respondent to immediately clear the outstanding dues amounting to ₹197.82 crore and to make payments regularly against monthly energy bills raised by the petitioner from time to time; and*
- (ii) Issue any such directions or orders as may be considered appropriate to ensure that the respondent has sufficient disincentive in not making payment on due dates.*

2. The petitioner has been supplying power from its generating stations and has been raising bills and collecting Capacity charges and Energy charges on monthly basis for the electricity supplied, in terms of Regulation 32 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

3. The petitioner has submitted that it has been supplying power to the respondent from its generating stations and the respondent has with effect from April, 2012 stopped payment of its bills, which include both arrear bills raised with effect from April, 2009, based on the tariff orders passed by this Commission pertaining to the tariff period 2009-14 and the current monthly bills (including late payment surcharge and arrear bills calculated till 30.6.2012). The petitioner has also submitted that the total outstanding dues from the respondent is ₹197.82 crore as on 31.8.2012. It has further submitted that despite regular follow up and concerted efforts by the petitioner including meetings convened by the Ministry of Power, Government of India, wherein the respondent agreed to make payments, the outstanding dues have not



been liquidated by the respondent. Copies of the record of the meetings have been collectively enclosed as Annexure-I to this petition.

4. The petitioner has submitted that due to the non-payment of outstanding dues, notice to the respondent for regulation of power supply to the extent of 15% of the allocated share of the respondent from the generating stations of the petitioner was issued to the respondent with effect from 9.1.2012. It has also submitted that subsequently, based on the written assurance by the respondent vide its letter dated 30.4.2012 for payment of ₹8.00 crore per month for clearance of outstanding dues and for withdrawal of the power regulation imposed by the petitioner, the regulation of power supply as above was withdrawn by the petitioner with effect from 3.5.2012. The petitioner has submitted that despite the assurance, the respondent has defaulted in the payment of outstanding dues and regulation of power supply has been resorted to by the petitioner with effect from 20.7.2012 and the same is continuing. The petitioner has also submitted that the quantum of power regulated is 0.44 MU/day (approx) and the same is being sold by the petitioner through power exchange. It has further submitted that with this nominal quantum of power sold, the recovery and adjustment of outstanding dues of the respondent, which works out to ₹1.00 crore per month (approx), is negligible and the total amount adjustment against the said dues, based on the said adjustment was only ₹5.45 crore. The petitioner has pointed out that at this rate of adjustment, the outstanding dues of the respondent could never be recovered by regulation and trading of regulated power. The petitioner has submitted that non-payment of dues is



causing tremendous hardship and is seriously affecting the financial health and hampering the projects of the petitioner under execution. Hence, the present petition.

5. Heard the representative of the petitioner. Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 provides with the inherent power to the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission. In this background, we examine the prayer of the petitioner in the subsequent paragraphs.

6. Regulation 4 of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 provides with the procedure for regulation of power supply by generating company or the transmission company as the case may be, in case of outstanding dues or in case the required letter of credit or any other agreed payment security mechanism is not maintained as per Agreement. The relevant portion is extracted as under:

"4. In case of the outstanding dues or in case the required Letter of Credit or any other agreed Payment Security Mechanism is not maintained as per the Agreement, the generating company or the transmission licensee, as the case may be, may serve a notice for regulation of power supply, on the Defaulting Entity, for reducing the drawl schedule in the case of the generating company or with-drawl of open access/access to Inter State Transmission System in the case of the transmission licensee. Such notice may be served on or after the default trigger date and shall include the following details:

(a) The amount of outstanding dues against the Defaulting Entity or the duration of non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism, as the case may be;

(b) Quantum and duration of reduction in drawl schedule of Defaulting Entity in case the Regulating Entity is a Generating company or the quantum and duration of denial of medium-term open access and/or long-term access, as the case may be, in case the Regulating Entity is a Transmission licensee

Provided that in case the Regulating Entity is a Generating company, such notice shall also include the following additional details:

(i) Source(s) of power from which reduction/diversion is to be made in case of regulation of power supply and quantum along with duration of reduction of drawl schedule/ diversion of power from each of them ; and

(ii) Whether reduction of drawl schedule of Defaulting Entity is likely to cause reduction in generation or the excess power available consequent to regulation is to be sold to any other entity, whether directly or through trader; an

(iii) In case of diversion of power, the particulars of the person to whom power is to be diverted and the price agreed to be charged from such person, if determined in advance.

Provided further that in case of sale through Power Exchange or otherwise, the price may be intimated as and when such price is discovered."

7. It is observed that the provisions of the above regulations provides with the procedure for reduction in the drawl schedule of the defaulting entity by the generating company, in case of any outstanding dues against it. This provision enables the petitioner to regulate the quantum of power supplied to the respondent (defaulting entity) as huge amounts are outstanding against it. That being so, the basis upon which the petitioner has reduced only 15% from the drawl schedule of respondent is not clear, specially considering the fact that huge amounts are outstanding against the respondent.

8. Considering the factors in totality and keeping in view the intent and purpose of above said regulations, we are of the view that the reduction in the drawl schedule of the respondent effected by the petitioner, should be commensurate with the dues outstanding against the respondent. Additionally, the petitioner may take up the matter with the State Government of Meghalaya for payment of outstanding dues by the respondent. The petitioner is at liberty to

approach the Government of India for appropriation of the outstanding dues from the Central Plan Assistance earmarked for the State of Meghalaya in terms of the Tripartite Agreement for securitization of dues.

9. Petition No.212/MP/2012 is disposed of accordingly in the admission stage.

Sd/-
[V.S. VERMA]
MEMBER

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[Dr. PRAMOD DEO]
CHAIRPERSON

