

**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 M.Deena Dayalan, Member

**DATE OF ORDER: 19.3.2012**

**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**

**ORDER**

Regulation 10 of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (hereinafter referred to as 'the UI Regulations) provides for the schedule of payment of unscheduled interchange charges and payment security for settlement of UI dues as under:

*"(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."*

2. As per the above provision of the UI regulations, payment of UI charges which enjoys highest priority shall be made within 10 days of the issue of the UI statement by the Regional Power Committee and for delay beyond 12 days, the defaulting entity shall be liable to pay interest 0.04% per day.

3. Northern Regional Load Despatch Centre has reported that a sum of ₹ 330.38 crore including surcharge is outstanding against Power Development Department, Jammu and Kashmir towards UI payment as on 30.11.2011.

4. From the above facts, it emerges that the respondents have not complied with the provisions of the UI Regulations. The respondents are directed to show cause, latest by 30.3.2012, as to why action under Section 142 of the Electricity Act, 2003 should not be taken against them for non-compliance of the provisions of the UI Regulations in regard to timely payment of UI charges.

5. The Commission in its order dated 15.6.2010 in Petition No. 259/2009

(Suo motu) had observed as under:

*"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.*

6. Subsequently, Commission vide its order dated 25.10.2011 in Petition No. 155/2011 (suo-motu) had further observed as under:

"4. *From the report of NRLDC, regarding UI charges, it is evident that an amount of ₹ 276.79 crore including surcharge is still outstanding against the first respondent on account of arrears of UI drawl as on 17.10.2011.*

5. *We note with concern that some of the constituent States have not understood the UI mechanism in its correct prospective. 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, the first respondent has not only deprived the other constituents of their legitimate UI dues, but has created impediments in the operation of the commercial mechanism. The respondents have therefore, clearly violated the provisions of Regulation 10 of the UI regulations. The respondent has not complied with the direction of the Commission as per the order dated 26.7.2011. 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.*

6. *The second respondent did not appear before the Commission on 20.10.2011 as directed nor had he filed any affidavit listing the reasons for his*

*non-appearance. Therefore, a clear-cut case of violation of Section 142 of the Act has been made out against the second respondent for non-compliance with the order of the Commission. Accordingly, we impose a penalty of ₹ one lakh on the second respondent which he will be personally liable to pay for non-compliance of the order of the Commission."*

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 an entry in the service records as regards the non-compliance of the directions of the Commission.

8. The matter shall be listed on 12.4.2012 for further directions.

9. Officer-in-charge of NRLDC or his representative shall assist the Commission in the proceedings.

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