

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.41/2012 (Suo-motu)**

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

**Date of Hearing: 26.4.2012  
Date of Order : 21.5.2012**

**In the matter of**

Default in payment of Unscheduled interchanges (UI) charges for the energy drawn in excess of the drawn schedule by Uttar Pradesh Power Corporation Ltd.

**And  
In the matter of**

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Chairman-cum-Managing Director, Uttar Pradesh Power Corporation Ltd., Lucknow.

**Respondents**

**ORDER**

As per Regulation 10 of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (hereinafter referred to as '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.

2. From the report submitted by Northern Regional Load Despatch Centre



(NRLDC) on payment status of UI charges in the NR UI pool account as on 30.11.2011, it was noticed that an amount of ₹895.33 crore was outstanding against the Uttar Pradesh Power Corporation Limited (UPPCL) on account of UI drawal. The said amount included an amount of ₹160.39 crore from 7.4.2008 to 31.3.2009 which was covered under the interim order dated 2.5.2008 in Writ Petition No. 3014 (MB) of 2007 of the Hon'ble High Court of judicature at Allahabad, Lucknow Bench and an amount of ₹203.45 crore from 1<sup>st</sup> week of 2009-10 till 5<sup>th</sup> week of 2010-11 which was covered under the interim directions of the Hon'ble High Court dated 12.11.2009 in W.P. No. 10169 (MB)/2009. After accounting for the UI dues covered under the interim orders of the Hon'ble High Court, the net UI dues payable by UPPCL as on 30.11.2011 was ₹527.49 crore.

3. As the huge arrears due from the respondent on account of non-payment of UI charges were matters of serious concern, the Commission in its order dated 19.3.2012 directed as under:

*"6. 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."*

4. The respondent, Uttar Pradesh Power corporation Ltd, vide affidavit dated 12.4.2012, has submitted as under:

(a) Although the respondent has challenged the frequent increase in UI by way of writ petitions, it has nevertheless paid UI charges

since its inception. As per its calculation, the respondent has paid over ₹5000 crore towards UI;

- (b) Since UI is not a pass through expenditure and the same cannot be recovered as tariff from the consumers, the respondent has to suffer acute financial hardship. The current revenue is hardly sufficient to meet financial commitments including payment of UI charges and the respondent has to resort to borrowings from the banks;
- (c) The financial restructuring has been approved by the banks and the Government of Uttar Pradesh. The respondent is likely to get financial assistance from banks and also some additional support from the Government of UP to come out of the present financial crisis;
- (d) The respondent proposes to make immediate payment of ₹50 crore to NRLDC. From the month of May 2012 onwards, respondent will ensure the payment of ₹50 crore every month towards UI dues in addition to UI charges which may fall due on weekly basis.

5. The second respondent in its reply dated 23.4.2012 has adopted the reply filed by the first respondent in its affidavit dated 12.4.2012 and has

submitted that in view of the facts as enumerated in the said reply, no adverse action be taken against the second respondent.

6. We have considered the submissions of the respondents. The respondents have explained the poor financial condition of UPPCL as the main reason for their failure to clear the UI dues in time. Being fully aware of the financial constraints of UPPCL, the respondents should have curtailed overdrawal from the grid to the level they could have paid for. We are constrained to observe that the explanations of the respondents do not justify their actions either for overdrawal from the grid in excess of the schedule or for their failure to pay the UI charges in time. In this connection, it is pertinent to extract the directions of the Hon'ble High Court in its order dated 12.11.2009 in WP No. 10169(M/B) of 2009:

*"Under the circumstances we direct as an interim measure that the petitioner shall not be compelled to make the payment of 40% of the charges over and above prescribed UI charges which shall be deposited at ₹7.35/kWh. We were informed that the petitioner has already deposited certain amount towards UI charges. We therefore, direct that the petitioner shall continue to deposit the UI charges but they shall not be compelled to deposit the additional 40% charges of the UI rate anymore till the next date of listing."*

The Hon'ble High Court had directed the petitioner to continue to deposit the UI charges, while granting interim relief in the matter of additional 40% charges. Non-payment of the UI charges by the petitioner is therefore in violation of the order the Hon'ble High Court, apart from being non-compliance with the provisions of the UI regulations.

7. The first respondent has proposed a plan for liquidation of its UI liabilities including payment of outstanding UI charges @ ₹50 crore per month starting from May 2012. As per the information received from the Northern Regional Load Dispatch Centre, the total UI outstanding including surcharge was about ₹680 crore (approx) as on 24.4.2012, excluding the UI dues covered under the orders of the Hon'ble High Court as mentioned in para 2 above. Going by the action plan of UPPCL, it would take at least 13 to 14 months to liquidate the outstanding UI dues, provided the current dues are cleared on month to month basis.

8. Considering the assurances given by the respondents to liquidate the outstanding UI dues in installments, we allow the respondents to take necessary action to the deposit the outstanding UI dues of ₹680 crore (subject to adjustment of any payment already made) in six equal monthly installments, starting from the month of June, 2012 onwards in addition to the current UI dues. Such payments shall be made before the last day of the month. The Commission also allows a flexibility to make the payment on different dates within same month with the condition that the amount of at least ₹113.34 crore per month is paid before the last day of the particular month. This shall be in addition to the timely payment of current UI dues, if any, as per the weekly UI charge statements issued by NRPC's Secretariat.

9. The payment through installments as permitted above will, however, not entail any relaxation in provisions of the Grid Code with regard to computation and payment of interest for the delay in payment of UI charges. It is clarified that this relief has been granted as one time relaxation and should not be quoted as precedent in future.

10. NRLDC is directed to apprise the Commission in the first week of every month starting from July 2012 about the UI payment status of UPPCL.

11. In view of the above the notices are discharged against the respondents and the petition is disposed of accordingly.

sd/-  
**(M.DEENA DAYALAN)**  
MEMBER

sd/-  
**(V.S.VERMA)**  
MEMBER

sd/-  
**(S.JAYARAMAN)**  
MEMBER

sd/-  
**(Dr. PRAMOD DEO)**  
CHAIRPERSON