

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 Order: 11.1.2013**

**In the matter of**

Review of the order dated 5.11.2012 in Petition No.172/SM/2012 regarding 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.

**In the matter of:**

Suo Motu review by the Commission

**And in the matter of**

North Eastern Electric Power Corporation Ltd, Shillong .....**Respondent**

North Eastern Regional Load Despatch Centre, Shillong .....**Proforma Respondent**

**ORDER**

The Commission by its order dated 22.8.2012 directed the respondents including North Eastern Electric Power Corporation Ltd, Shillong (NEEPCO) to show cause 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 Regulation 10(4) of the UI Regulations for not opening the Letter of Credit for the amount required under the regulations. In its reply dated 14.9.2012, it was submitted by NEEPCO that LC for ₹31.64 lakh had been opened in favour of NERLDC and therefore, there was no default on its part in opening of LC during 2012-13. The Commission after considering the replies filed by NEEPCO came to the conclusion that NEEPCO had opened the LC for an insufficient amount whereas it

was required to open LC for an amount of ₹34.80 lakh during 2012-13 calculated with reference to the UI amount of ₹31.60 lakh during 2011-12. Accordingly, a penalty of ₹90,000 was imposed on NEEPCO for non-compliance of the Regulation 10(4) of UI Regulations.

2. The respondent NEEPCO has by its letter dated 4.12.2012 addressed to Secretary of the Commission has brought to our notice that since the average payable weekly liability of NEEPCO during the financial year 2010-11 was ₹8.91 lakh, it had opened LC for ₹9.8 lakh in 2011-12. However, as the average weekly payable liability of NEEPCO during the week for the year 2011-12 (from 17.10.2011 to 23.10.2011) was ₹31.64 lakh, which is more than 50% of the previous financial year's average payable weekly liability, NEEPCO had opened LC for ₹31.64 lakh in terms of the 'illustration' given under the provisions of Regulation 10(4) of the UI Regulations. NEEPCO has also submitted that in response to the Commission's order dated 22.8.2012, submissions were filed bringing to the notice of the Commission of the fact that the requisite amount of LC as worked out, was opened in favour of NERLDC and no communication was received by NEEPCO from NERLDC till the issuance of order dated 22.8.2012 by the Commission as regards insufficient amount of LC. In the circumstances, the respondent NEEPCO has prayed that the order dated 5.11.2012 may be reviewed and NEEPCO may be exempted from payment of the said penalty.

3. The matter has been examined. Regulation 10(4) provides as under:

"All regional entities which had at any time during the previous financial year failed to make payment of Unscheduled Interchange charges including Additional Unscheduled Interchange charges within the time specified in these regulations shall be 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 date these Regulations come into force.

Provided that if any regional entity fails to make payment of Unscheduled Interchange Charges including Additional Unscheduled Interchange Charges by the time specified in these regulations during the current financial year, it shall be required to open a Letter of Credit equal to 110% of weekly outstanding liability in favour of respective Regional Load Despatch Centre within a fortnight from the due date of payment.

Provided further that LC amount shall be increased to 110% of the payable weekly UI liability in any week during the year, if it exceeds the previous LC amount by more than 50%.

**Illustration:**

If the average payable weekly UI liability of a regional entity during 2009-10 is ₹20 crore, the regional entity shall open LC for ₹22 crore in 2010-11. If the weekly payable liability during any week in 2010-11 is ₹35 crore which is more than 50% of the previous financial year's average payable weekly liability, the concerned regional entity shall increase the LC amount to ₹ 35 Crore by adding ₹13 Crore

4. The weekly payable UI liability of NEEPCO during the week 17.10.2011 to 23.10.2011 of the year 2011-12 was ₹31.64 lakh which was more than 50% of the previous financial year's average payable weekly liability. In terms of the Regulation 10(4) of the UI Regulations, the respondent NEEPCO should have been opened LC for ₹34.80 lakh (i.e.110% of ₹31.64 lakh). However, the respondent NEEPCO had opened LC for ₹31.64 lakh in terms of the 'illustration' given under Regulation 10(4) of the UI Regulations. This fact was brought to the notice of the Commission by the respondent NEEPCO, vide its reply dated 14.9.2012 which admittedly had been overlooked by the Commission at the time of passing the order dated 5.11.2012. Since NEEPCO has opened the LC for a lesser amount on the basis of its bona fide understanding of the Regulation 10(4) of UI Regulations in the light of the Illustration thereunder, we are of the view that NEEPCO cannot be held liable for non-compliance of the UI Regulations. Accordingly, we withdraw the penalty of ₹90,000 imposed on NEEPCO in our order dated 5.11.2012. It is however made clear that the respondent NEEPCO shall revise the LC amount to ₹34.80 lakh in terms of the second proviso to Regulation 10(4) of the UI Regulations and submit the same within a period of 15 days from the date of this order.

5. We direct the staff of the Commission to examine and submit the proposal for amendment of the the Illustration under Regulation 10(4) of the UI Regulations in line with the main regulation. In this case, since there is a conflict between the second proviso under Regulation 10(4) and the Illustration thereunder, the provisions of the second proviso will prevail. Accordingly, RLDCs while calculating the liability of the entities to open the LCs shall be strictly guided by the main provision of the Regulation 10(4) of UI Regulations, pending amendment to the UI Regulations.

**Sd/-**  
**(V.S.Verma)**  
**Member**

**Sd/-**  
**(S.Jayaraman)**  
**Member**

**Sd/-**  
**(Dr. Pramod Deo)**  
**Chairperson**