

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.178/SM/2012**

**Coram:**

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

**Date of Hearing: 25.09.2012**

**Date of Order : 11.01.2013**

**In the matter of**

Non-compliance of Commission`s directions and the provisions of the Electricity Act, 2003 and Central Electricity Regulatory Commission (Indian Grid Code) Regulations, 2010.

**And**

**In the matter of**

Shri Tarun Bajaj, Managing Director, Haryana Vidyut Prasaran Nigam Limited, Panchkula  
Shri S.B.Moudgil, Chief Engineer (System Operation and Commercial), State Load Despatch Center, Haryana. **Respondents**

**Following were present:**

1. Shri Amit Kapur, Advocate for respondents
2. Miss Apoorva Mishra, Advocate for respondents
3. Miss Deepika kalia, Advocate for respondents
4. Shri Joyti Prasad, NRLDC
5. Shri Rajiv Porwal, NRLDC

**ORDER**

The Commission by its order dated 17.8.2012 in Petition No. 125/MP/2012 had directed as under:

*" 20. ....We had indicated in our order dated 10.7.2012 that it would be the personal liability of the officers in charge of the STUs and SLDCs to ensure compliance with our directions to curtail overdrawal from the grid and comply with the messages of NRLDC. During the hearing, the officers of UPPTCL, PTCUL, HVPNL, RRVPNL and PSTCL have not denied overdrawal from the grid or non-compliance with the directions of the RLDCs. The officer in charge of PDD, Jammu and Kashmir did not appear despite*

*notice. We deprecate the attitude of the concerned officer towards the order of the Commission in the serious matter like grid discipline. We are of the view that these officers have not only failed to comply with our directions but have also failed to discharge their responsibility under the Act and the Grid Code. We direct the staff of the Commission to process the case for initiation of action under Section 142 of the Act against the officers in charge of STUs/SLDCs of the States of Uttar Pradesh, Uttarakhand, Haryana, Rajasthan, Punjab and Jammu and Kashmir for imposition of penalty for non-compliance with our directions and the provisions of the Act and the Grid Code."*

2. The Commission vide its order dated 7.9.2012 further directed as under:

*"5. We are of the view that SLDC is under a statutory obligation to comply with the Grid Code specified by the Commission and ensure compliance with the directions of NRLDC. Since STU is operating the SLDC in the State, it also becomes the responsibility of the Officer in-charge of the STU to ensure that the SLDC discharges its functions and comply with the orders of NRLDC and the Commission. Therefore, the respondents, who were in charge of STU and SLDC at the time of issue of direction of the Commission have failed to discharge their responsibility under the Electricity Act, 2003 and Grid Code.*

*6. In view of the above, the respondents are directed to show cause by 17.9.2012, as to why penalty should not be imposed on them under Section 142 of the Electricity Act, 2003 and the penalty amount should not be recovered from their salary for contravention of the provisions of the Act, Grid Code, directions of NRLDC and orders of the Commission."*

3. In response to the show cause notice dated 7.9.2012, the respondents have filed a joint reply vide affidavit dated 20.9.2012.

4. The respondents in their reply have submitted the following about the then prevalent power supply scenario in the State:

(a) During the months of May to September 2012, there was heavy demand of power for agricultural purposes in the State of Haryana. The peak load at any instance during the same period in 2011 was 6400 MW. Considering the above demand, the power utilities of Haryana had made an arrangement for 7200 MW from different sources. However due to outage of two units of Jamuna Nagar generating stations of HPGCL having a total capacity of 600 MW and one unit of Rajiv Gandhi Thermal Power plant and non-operation of the Jhajjar Power Limited due to non-availability of coal, there

was shortage of power in the State which was accentuated due to deficit of rainfall during the months of May to August 2012 to the extent of 73%.

(b) In order to meet the shortage of powers, Haryana Power Purchase Centre made the arrangement for augmenting power supply from various sources such as through power exchange, banking with other states and short term purchase during the months of May, June and July 2012. Since power supply still fell short of the requirement, load shedding was carried out from April to August 2012. In addition, HVPNL also opened the feeders during the months of May, June, July and August 2012 in 852,326,408 and 1003 lines respectively.

(c) On receipt of the overdrawal messages from NRLDC and on its own, HVPNL has issued the messages to the two distribution companies of Haryana during May to August 2012 to curtail overdrawal. HVPNL has held meetings with Haryana Discoms at various levels and conveyed the need to curtail overdrawal.

(d) HVPNL has installed Automatic Demand Management System in the form of Rotational Load Shedding Scheme, Under-frequency relays and DF/DT Relays. Reports of operation of Under-frequency and Rotational Load Shedding Schemes are regularly sent to NRPC Power Committee.

(e) In view of the paddy season, power requirements of the farmers in the State of Haryana increased. In a few instances, the farmers did not allow the staff of the power station to disconnect power which led to law and order situation.

5. The respondents have submitted that they have taken all steps within their command to control the overdrawal such as sending messages to the distribution companies of Haryana, opening of their transmission lines and sensitizing the issue in various meetings and following up with distribution companies of Haryana. Since 1.12.2011, the respondents have written a number of letters and issued directions to the distribution companies of Haryana to control their overdrawal from the Northern Grid. However, the distribution companies of Haryana in total violation of the directions of the respondents continued with the overdrawal and adopted adversary position in response to communication issued by HVPNL. During the course of hearing on 3.5.2012 in Petition No. 125/MP/2012 CERC had observed that the HVPNL should approach the State Commission, if the distribution utilities were not controlling their draws in spite of continuous instruction issued by the SLDC. Vide letter dated 25.5.2012, distribution companies of Haryana were directed by the respondents to take all possible measures to curtail overdrawal to the extent possible including arrangement of show term power procurements. In the Board of Directors meeting of HVPNL held on 24.7.2012, it was decided that distribution companies should restrict themselves to the power schedule and in case of excess drawl by distribution companies, HNPNL would be at liberty to open the lines to provide immediate relief. On 10.9.2012, HVPNL had filed a petition before Haryana Electricity Regulatory Commission (HERC) seeking directions to the Distribution companies of Haryana to comply with the provisions of Indian Electricity Grid Code and State Grid Code and to refrain from consistently overdrawing and heavily relying on the UI mechanism to meet their State control area capacity/energy requirement.

6. The respondents have submitted that they have acted in a manner so as to diligently implement the Commission`s directions in order dated 10.7.2012 and have not committed any violations of the provisions of Act, Grid Code and directions of NRLDC. The respondents have submitted that during the months of August and September, 2012, power utilities of Haryana have stopped the overdrawal and were actually underdrawing with the average underdrawal during the period as a percentage of the Central Generating Sector power was 3.25% for the month of August, 2012 and 0.22% up to 18.9.2012.

7. The respondents have relied on the Supreme Court judgment in Maksud Saiyed Vs. State of Gujarat and Another (2008) 5 SSC 668 and Appellate Tribunal for Electricity judgment dated 30.7.2009 in appeal No. 53/2009 in Bihar Electricity Board and another Vs. CERC and have contended that vicarious liability of a person by virtue of his position would arise only when a provision exists in that behalf in the statute and not otherwise. It has been submitted that when a company contravenes the Act, there is no automatic liability on anyone in the company unless the Commission is *satisfied* that he/she has *also separately* made a contravention. It has been submitted that apart from Section 149 of the Act, there is no other provision that seems to cast vicarious liability. Therefore, the respondents cannot be personally and individually held liable for any contravention of the provisions of the Act, Grid Code, directions of the NRLDC and orders of the Commission. It has been prayed that the respondents be discharged from the show cause notice while laying down suitable guidelines for inter-State grid or load management.

8. During the course of hearing on 25.9.2012, both respondents appeared in person. Learned counsel for the respondents submitted that the respondents did not deny overdrawal from the grid and non-compliance with the directions of NRLDC. Learned counsel submitted that SLDC, Haryana has taken all steps to control the overdrawal such as sending message to distribution companies of Haryana, opening of their transmission lines, sensitizing the issue in various meetings and following up the distribution companies of Haryana. These steps have been taken in spite of extreme socio political pressure for supply of power in the State of Haryana. Learned counsel submitted that the respondents have also filed the petitions before the State Commission seeking suitable directions to the distribution companies to control overdrawal from the grid and make alternative arrangement of power to meet the consumer demand. Learned counsel further submitted that the respondents have ensured loadshedding around 11% during the months of April 2012 to May 2012 in order to avoid overdrawal. In addition, the respondents have also resorted to opening of lines of Haryana Discom as per the details given in para 28 of the reply. Learned counsel submitted that Section 142 of the Act does not cast a vicarious liability on the officer- in-charge of the STU/SLDC for the failure of STU/SLDC to comply with the provisions of the Act or regulations and directions of the Commission. Learned counsel submitted that where the demonstrable conduct of the party shows compliance, it should be seen as distinct from non-compliance. Learned counsel submitted that since the respondents have taken all possible steps in their command to reduce overdrawal and comply with the provisions of the Grid Code, directions of the NRLDC and orders of the Commission, the notices against the respondents under section 142 of the Act be discharged.

9. In compliance with our directions during the hearing, the respondents vide affidavit dated 4.10.2012 have placed on record the copies of the Contingency Operation Procedures for the Power Systems in Haryana, Demand Management Procedure and the Operating Procedures in Haryana.

10. We have considered the submissions of the respondents. From the forgoing discussion, it has emerged that though NRLDC has been issuing A, B and C messages to HVPNL to curb overdrawal from the grid, the desired results have not been achieved. Some of the reasons advanced by the respondents are breakdown of generating units in the State and rainfall deficit in the months of April to July, 2012. In our view, these reasons do not justify continued overdrawal from the grid as the distribution companies of Haryana are expected to make advance planning to meet such contingencies. In any event, the shortfall in supply cannot be made up by overdrawal from the grid. It is emphasised that overdrawal from the grid leads to load generation imbalance and continued overdrawal by all or most constituents of the region has the portent of resulting in grid disturbance or grid failure.

11. Section 29 of the Electricity Act, 2003 provides that the directions of Regional Load Despatch Centre for ensuring stability of the grid operation shall be carried out by all concerned including the State Load Despatch Centre who shall ensure compliance of the directions by the licensees and generating companies within its jurisdiction. Section 29 of the Act provides as under:

*“29. Compliance of directions- (1) The Regional Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and achieving the maximum economy and efficiency in the operation of the power system in the region under its control.*”

(2) Every licensee, generating company, generating station, substation and any other person connected with the operation of the power system shall comply with the direction issued by the Regional Load Despatch Centres under sub-section (1).

(3) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.

....."

12. Further the Grid Code enjoins the following responsibilities on the State Load Despatch Centres:

**"5.4.2 Manual Demand Disconnection**

(a) As mentioned elsewhere, the constituents shall endeavour to restrict their net drawal from the grid to within their respective drawal schedules whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.2 Hz, requisite load shedding (manual) shall be carried out in the concerned State to curtail the over-drawal.

(b) Further, in case of certain contingencies and/or threat to system security, the RLDC may direct an SLDC to decrease its drawal by a certain quantum. Such directions shall immediately be acted upon.

(c) Each Regional constituent shall make arrangements that will enable manual demand disconnection to take place, as instructed by the RLDC/SLDC, under normal and/or contingent conditions.

(d) The measures taken to reduce the constituents' drawal from the grid shall not be withdrawn as long as the frequency/voltage remains at a low level, unless specifically permitted by the RLDC."

"6.4.7 . Provided that the States, through their SLDCs, shall always endeavour to restrict their net drawal from the grid to within their respective drawal schedules, whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.2 Hz, requisite load shedding shall be carried out in the concerned State(s) to curtail the over-drawal."

13. From the above provisions, it is clearly evident that it is the responsibility of the respondents as SLDC to comply with the directions of RLDC and take all measures necessary to maintain grid security. The respondents have mentioned in their reply that HVPNL had immediately forwarded the messages to overdrawing distribution



companies. The respondents should appreciate that the responsibility of SLDC does not end by forwarding the messages as it is mandated under sub-section (3) of Section 29 of the Act to ensure that directions issued by RLDCs are duly complied with by the licensee. The SLDC being the apex body and responsible for real time operation in the State, should have put in place well defined plan and procedure to restrict the load in case of low frequency conditions. Under such a state of affairs, it will not be required to pass messages of NRLDC to all 132 kV sub-stations. Instead clear instructions must be available with the concerned agencies to cut the load on pre-identified and selected substations. The SLDC should have a proper load management scheme rather than routinely conveying the messages to all 132 kV sub-stations in the State.

14. The respondents have submitted that action against the CEO of the companies can be taken only under Section 149 of the Act. According to the respondent, as per the direction of the Appellate Tribunal of Electricity in its Judgment dated 30.7.2009 in Appeal No. 53 of 2009 in Bihar State Electricity Board and others Vs. Central Electricity Regulatory Commission, the Commission has no power to take action under Section 149 of the Act. It is clarified that in the present case, action has been initiated under Section 142 of the Act and not under Section 149 of the Act. Section 142 of the Act provides as under:

*"In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees*

*for every day during which the failure continues after contravention of the first such direction."*

Under Section 142 of the Act, a person can be penalized for contravention of the order of the Commission. In our order dated 10.7.2012, we had specifically directed the respondents to ensure that overdrawal is curtailed and drawal by the distribution licensees is confined to their respective schedules. Therefore, the respondents can be penalized under section 142 of the Act if it is proved that they have not complied with the directions of the Commission.

15. Based on the submissions of the respondents, we have to consider whether the respondents have complied with our directions. We find that the respondents have opened the lines on several occasions during the months of May to August 2012. The respondents have issued the messages to the distribution companies to curtail overdrawal. The respondents have also filed petitions before the Haryana Electricity Regulatory Commission seeking directions to the distribution companies. The respondents are regularly monitoring the distribution companies. However, due to non-compliance of the directions by the distribution companies, the respondents have not been able to discharge their statutory responsibilities effectively. The respondents have requested the Commission to make the distribution companies parties to the proceedings and take appropriate action against them. We notice that the respondents have filed the petitions before the State Commission under 33(4) of the Act. Since the State Commission is seized with the problem, we do not consider it appropriate to make distribution companies parties in the proceedings. We direct the respondents to diligently pursue the matter before the State Commission for ensuring effective compliance by the distribution companies of Haryana. Considering the fact

that actions have been diligently taken by the respondents to comply with our directions, though with limited success, we are not inclined to impose any personal penalty on the respondents. We administer a strong warning to the respondents to take all possible measures permissible under the Act and Grid Code to ensure that no overdrawal by the distribution licensees of the State takes place in future. Accordingly, we discharge the notices under section 142 against the respondents.

16. Petition No. 178/SM/2012 is disposed of with above directions.

sd/-  
**(M.Deena Dayalan)**  
**Member**

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

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

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