

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 116/MP/2015

Coram:
Shri Gireesh B.Pradhan, Chairperson
Shri A.K.Singhal, Member
Shi A.S.Bakshi, Member
Dr. M.K.Iyer, Member

Date of Hearing: 03.9.2015

Date of Order: 14.9.2015

In the matter of

Default in payment of Unscheduled interchanges (UI) charges and Deviation charges in excess of the drawal schedule by Essar Power MP Limited and default in opening of Letter of Credit towards the non-payment of UI and DSM charges.

**And
In the matter of**

Western Regional Load Despatch Center
F-3, MIDC Area, Marol,
Andheri (East), Mumbai

Petitioner

Vs.

Essar Power MP Limited
Thane Road, Near Chunkumari Stadium
Waidhan, Distrcit Singrauli,
Madhya Pradesh-486 886

Respondent

Member-Secretary
Western Regional Power Committee
F-3, MIDC Area, Marol,
Andheri (East), Mumbai

Proforma Respondent

The following were present:

Ms. Pragya Singh, WRLDC
Ms. Abilia Zaidi, POSOCO



Shri Alok Shankar, Advocate, EPMPPL

ORDER

This petition has been filed by the Western Regional Load Despatch Centre under Regulation 10 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (Deviation Settlement Regulations) for default in payment of Unscheduled Charges/Deviation Charges in excess of the drawl schedule by the respondent, Essar Power MP Limited. The petitioner has made the following prayers:

- '(a) Direct Respondent No. 1 to clear the outstanding dues of the UI/Deviation charges of Rs. 20, 68,21, 805/- as on 20.2.2015 within the next 15 days;
- (b) Direct Respondent No. 1 to pay interest as per Regulation 10.2 of the CERC (Deviation Settlement Mechanism and Related matters) Regulations, 2014 of Rs.1,52,72,287/- as on 31.12.2014 within the next 15 days.
- (c) Direct Respondent No. 1 to open Letter of Credit as per the advice given by the petitioner on immediate effect;
- (d) Direct Respondent No. 1 to pay the monthly bills of DSM charges being issued by the Respondent No. 2 (WRPC) on respondent in future, regularly within the stipulated period of 10 days of the issue of the Deviation Charges;
- (e) Issue appropriate directions under Regulation 25A of the CERC (Open Access in inter-State Transmission) Regulations, 2008 and any amendment thereof;
- (f) Take appropriate action against the Respondent No. 1 under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014
- (g) The Hon`ble Commission may pass any or such further orders or orders as may be deemed just and proper in the facts and circumstances of this case."

2. The petitioner has submitted that the respondent is a generating company having an installed capacity of 1200 MW (2X600 MW) at Mahan, Singrauli, Madhya



Pradesh. The COD of the first unit of the generating station was declared on 29.4.2013. After declaration of COD of the first unit, in the absence of permanent connectivity, the respondent has been selling power through STOA bilateral/Power Exchange and the same has been facilitated by WRLDC as per the provisions of the Central Electricity Regulatory Commission (Open Access in inter-State in Transmission) Regulations, 2008 (Open Access Regulations) through the interim connectivity granted by CTU through LILO of 400 kV Vindhyachal-Korba one ckt. at the respondent's generating bus.

3. The petitioner has submitted as per Regulation 10 Deviation Settlement Regulations, the respondent is required to pay the deviation charges within 10 days of the issue of the deviation 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. The petitioner has further submitted that as per Regulation 10 (4), all regional entities are required to open Letter of Credit (LC) equal to 110% of its average payable weekly liability for deviations.

4. The petitioner has submitted that net outstanding dues as on 20.2.2015 against the respondent stood at ₹ 22.22 crore. The petitioner has submitted that the issue of non-payment of UI/DSM charges by the respondent was discussed in the various meetings of Western Regional Commercial Committee and Western Regional Power Committee. The petitioner has submitted that the respondent is not liquidating the outstanding UI/DSM dues despite repeated requests.

5. The petitioner has submitted that the respondent has also not opened the LC as



per the provisions of Regulation 10 (4) of the Deviation Settlement Regulations which is clear cut violation of the said Regulations.

6. The matter was heard on 19.5.2015. The Commission directed the respondent to open LC within a week. During the next hearing on 18.6.2015, learned counsel for the respondent submitted that in compliance of the Commission`s direction, the respondent has opened LC and requested for time to file reply and detailed plan for liquidation of outstanding dues of UI/DSM.

7. The respondent in its reply dated 16.6.2015 has submitted that due to frequent sabotage and de-allocation of coal block by the Hon`ble Supreme Court, liability of UI charges of the petitioner has increased. The respondent has submitted that since the generating station has been shut down, it has not been able to settle the UI/Deviation charges in terms of Deviation Settlement Regulations. Notwithstanding the difficulties being faced in operation of the generating station, the respondent has been making efforts to clear all outstanding dues and kick-start the operation of the generating station. The respondent has submitted that it has incurred an accumulated loss of around ₹ 171 crore during the year 2014-15 which is beyond its control. However, it is trying to meet its obligations and has been paying the petitioner from time to time and has paid ₹ 14.62 crore and ₹ 15.8 crore towards UI charges during the years 2013-14 and 2014-15 respectively. The respondent has requested to direct the petitioner not to encash the LC for recovery for the past dues and it is making all efforts to liquidate the entire liability as soon as reasonably practicable.

8. During the course of the hearing on 3.9.2015, the representative of the petitioner submitted that as per the provisions of the Deviation settlement Regulations, the respondent is required to open LC for an amount of ₹12.17 crore. However, the respondent has opened LC for an amount of ₹ 62, 80,900/- only and sought suitable directions to the respondent.

9. We have considered the submissions of the petitioner and the respondent. The petitioner has requested to issue appropriate directions to the respondent to clear outstanding UI/deviation charges, and open the LC as per the Deviation Settlement Regulations. The petitioner has further prayed for issue of direction under Regulation 25A of Open Access Regulations and initiate action under Section 142 of the Act.

10. Regulation 10 of the Deviation Settlement Regulations provides for the schedule of payment of deviation charges and payment security for settlement of deviation dues as under:

“(1) The payment of Deviation shall have a high priority and the concerned constituent shall pay the indicated amounts within 10 (ten) days of the issue of statement charges for Deviation including Additional charges for Deviation by the Secretariat of the respective Regional Power Committee into the “Regional Deviation Pool Account Fund” of the concerned region.

(2) If payments against the charges for Deviation including Additional charges for Deviation 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 charges for Deviation shall be made within 2 working days of receipt of the payments in the “Regional Deviation Pool Account Fund” of the concerned region.

Provided that –

(i) in case of delay in the Payment of charges for Deviations into the respective Regional Deviation Pool Account Fund and interest there on if any, beyond 12 days from the date of issue of the Statement of Charges for Deviations the regional entities who have to receive payment for Deviation or interest thereon shall be paid from the balance available if any, in the Regional Deviation Pool Account Fund of the region. In case the balance available is not sufficient to meet the payment to the Regional Entities, the payment from the Regional Deviation Pool Accounts Fund shall be made on pro rata basis from the balance available in the Fund.

(ii) the liability to pay interest for the delay in payments to the “Regional Deviation Pool Account Fund” shall remain till interest is not paid; irrespective of the fact that constituents who have to receive payments have been paid from the “Regional Deviation Pool Account Fund” in part or full.

(4) All regional entities which had at any time during the previous financial year failed to make payment of Charges for Deviation including Additional Charges for Deviation 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 liability for Deviations in the previous financial year, in favour of the concerned RLDC within a fortnight from the date these Regulations come into force. Provided that –

(i) if any regional entity fails to make payment of Charges for Deviation including Additional Charges for Deviation 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.

(ii) LC amount shall be increased to 110% of the payable weekly liability for Deviation in any week during the year, if it exceeds the previous LC amount by more than 50%.

11. As per the above provisions of the Deviation Settlement Regulations, payment of deviation charges enjoys highest priority and is required to be paid within 10 days of the issue of the UI statement by the Regional Power Committee. In case of delay beyond 12 days of issue of the statement, the defaulting entity is liable to pay interest 0.04% per day. According to the petitioner, as on 20.2.2015 an amount of ₹ 22.22 crore is outstanding against the respondent towards deviation charges. As per clause (4) of Regulation 10 of the Deviation Settlement Regulations, all the regional entities

which had any time during the previous financial year failed to make payment of charges for deviation are 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. The petitioner has submitted that the respondent has opened LC for ₹ 62,80,900/- against the requirement of ₹ 12.17 crore. In our view, the respondent has seriously failed to comply with the Deviation Settlement Regulations.

12. Learned counsel for the respondent submitted that on account of circumstances beyond the control of the respondent, payment could not be made and LC could not be opened. Learned counsel sought time of one year for making payment of past dues.

13. Considering the submission of the parties, we allow a time period of 60 days to the respondent to liquidate the entire UI/deviation charges and open the LC for required amount as per the Deviation Settlement Regulations. In case, the respondent fails to liquidate the outstanding UI/deviation charges and/or to open the LC for the required amount, the respondent shall be denied short term open access in terms of Regulation 25A of the Open Access Regulations. WRLDC shall keep in view the default trigger date as clarified by the Commission in its order dated 2.9.2015 in Petition No. 142/MP/2012.

14. The petitioner has prayed for initiation of action under Section 142 of the Act against the respondent. Since we have allowed two months time to the respondent to take necessary action to liquidate the outstanding dues and open the LC for the



required amount, there is no requirement for taking action under Section 142 of the Act at this stage.

15. The petition is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson

