

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 194/SM/2013

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

Date of Order: 4.9.2015

In the matter of

Default in payment of Unscheduled interchanges (UI) charges for the energy drawn in excess of the drawal 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
- ... Respondents**

The following were present:

Shri Arif Sikandar Mir, Additional Advocate General, Power Development Department, Jammu and Kashmir
Ms. Paulami Ghose, NRLDC
Ms. Supriya Singh, NRLDC

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 that 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. Northern Regional Load Despatch Centre (NRLDC) reported that net outstanding UI charges including surcharge as on 20.8.2013 against Power Development Department, Jammu and Kashmir was ₹ 74.07 crore. Since non-payment of UI charges amounted to violation of UI Regulations, the Commission vide order dated 8.10.2013 directed the first respondent to liquidate the outstanding UI dues by 25.10.2013. If the UI dues were not liquidated by the stipulated date, Respondent Nos. 1 and 2 were directed 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 UI Regulations.

3. Aggrieved by the Commission`s order dated 8.10.2013, Respondent No. 1 filed Writ Petition No. 6599/2013 along with CMA No.14362/2013 before the Hon`ble High Court of Delhi raising the issue of jurisdiction of the Commission over PDD, J&K . Hon`ble High Court vide order dated 21.10.2013 directed the Respondent No. 1 to pay the outstanding UI dues and stayed the order dated 8.10.2013 till the next date of hearing. The relevant portion of said order dated 21.10.2013 is extracted as under:

“3. The learned counsel for the Petitioner, on instructions from the Petitioner, undertakes to make the payment of the unscheduled interchange charges within in period of three weeks from today i.e by 11th November, 2013.

4. * * * * *

5. Subject to payment of the unscheduled interchange charge with the concerned authority within three weeks from today, the operation of the impugned order shall be stayed till the next date of hearing.”

4. In compliance with the direction of the Hon`ble High Court, Respondent No. 1 paid ₹ 72 crore on 26.11.2013. During the hearing of the Writ Petition on 14.11.2014, it was brought to the notice of the Hon`ble High Court that as on 17.7.2014, ₹ 51.36 crore including interest was outstanding against the Respondent No.1 towards UI charges. Hon`ble High Court directed the Respondent No. 1 to continue to pay the outstanding UI charges. Hon`ble High Court further granted liberty to Respondent No. 1 to file reply to the show cause notice thereafter the Commission would pass appropriate speaking order . Hon`ble High Court also made it clear that the order to be passed by the Commission on the basis of the show cause notice shall not be given effect to without the permission of the court, if it is against Respondent No. 1.

5. The present petition was heard by the Commission on 15.1.2015. Since Respondent No. 1 had not filed any reply to the show cause notice, the Commission granted another opportunity to the respondents to file reply to the show cause notice along with the details of payment made in respect of UI charges. On the request of Respondent No. 1 made during the hearing on 10.2.2015, time for filing the reply was extended.

6. Respondent No. 1 vide its reply dated 20.5.2015 has submitted that Respondent No. 1 has filed Writ Petition in the Hon`ble High Court of Delhi in which it has pleaded that in view of Section 1(2) of the Electricity Act, 2003, the Commission does not have the legislative mandate to adjudicate matter pertaining to the respondents. Respondent No. 1 has further submitted that in compliance of the direction of the Hon`ble High Court, the entire amount towards UI charges has been paid except ₹ 2.34 crore which would be paid shortly.

7. The Hon`ble High Court vide order dated 4.8.2015 has directed the Respondent No. 1 to pay the outstanding UI dues within a period of six weeks. Hon`ble High Court has permitted the Commission to pass final order in the petition.

8. The Commission has considered the submissions of Respondent No.1. In the Hon`ble High Court of Delhi, the Respondent No. 1 has challenged the jurisdiction of the Commission to adjudicate the matter in view of Section 1 (2) of the Electricity Act, 2003 which provides that the provisions of the Act are applicable to whole of India except the State of Jammu and Kashmir. The issue of jurisdiction is therefore *sub-judice*. Respondent No. 1 has liquidated the substantial amount of outstanding UI charges in compliance with the direction of the Hon`ble High Court and has committed to pay the balance amount of ₹ 2.31 crore. Hon`ble High Court has permitted six weeks time to Respondent No. 1 to liquidate the balance amount. In view of the directions of the Hon`ble High Court to Respondent No. 1 to pay the outstanding UI dues, the Commission is of the view that no further direction is required to be issued in the matter. It is, however, clarified that the UI dues and Deviation charges which accumulated against Respondent No.1 after 17.7.2014 shall be dealt with in accordance with law. Accordingly, the petition is disposed of.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson