

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 78/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Shri A.S. Bakshi, Member

Date of Order : 14.9.2015

In the matter of

CERC order dated 3.2.2014 in Petition No. 78/MP/2013-Prayer for further directions to the Respondent beneficiaries/DICs to perform the obligations under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010.

And

In the matter of

Power Grid Corporation of India Limited
'Saudamini', Plot No. 2, Sector-29,
Gurgaon-122 001

...Petitioner

Vs

1. BSES Yamuna Power Ltd.,
2nd Floor, B Block,
Shakti Kiran Building,
Near Karkardooma Court, New Delhi

2. BSES Rajdhani Power Ltd.,
BSE Bhawan, 2nd Floor,
B-Block, Behind Nehru Place Bus Terminal,
Nehru Place, New Delhi

3. Bihar State Electricity Board
Vidyut Bhawan, Bailey Road,
Patna-800 021

4. Grid Corporation of Odisha Ltd,
Shahid Nagar, Bhubanewshwar-751 007



5. West Bengal State Electricity Board,
Bidyut Bhawan, Bidhan Hagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
6. Jharkhand State Electricity Board,
Engineering Bldg, HEC, Dhurwa,
Ranchi-834 004
7. Meghalaya State Electricity Board,
Short Round Road, Lumjingshai,
MEECL, Shillong- 793 001
8. Government of Arunachal Pradesh,
Vidyut Bhawan, Itanagar,
Arunachal Pradesh- 793 001
9. Power & Electricity Dept.,
Govt. of Mizoram,
Mizoram, Aizwal
10. Electricity Department,
Govt. of Manipur, Keishampat,
Imphal
11. Department of Power,
Govt. of Nagaland,
Kohima, Nagaland
12. Jaipur Vidyut Vitran Nigam Ltd,
Vidyut Bhawan, Janpath,
Jaipur- 302 005
13. Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla
14. Power Development Department
Govt of Jammu and Kashmir
SLDC Building, 1st Floor,
Gladani Power House, Narwal, Jammu
15. Uttar Pradesh Power Corporation Ltd,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 007



16. Uttarakhand Power Corporation Ltd,
Urja Bhawan, Kanwali Road,
Near Balli Wala Chowk, Dehradun

17. Jaiprakash Power Ventures Limited
18. A Block, Sector- 128,
Noida, U.P.-201 304

18. Punjab State Power Corporation Ltd.,
Shed No.- T-1 A, Thermal Design,
Near 22 No. Phatak, Patiala

19. Adani Power Limited
3RD Floor, Achalraj, Opposite Mayors
Bungalow, Law Garden, Ahmadabad,
Gujarat - 380 006

20. Himachal Sorang Power Pvt. Ltd
D-7, Sector-I, Lane-I, 2ND Floor,
New Shimla, Shimla, H.P - 171 009

21. Madhya Pradesh Tradeco (MPTRADECO)
(Erstwhile Madhya Pradesh Electricity Board)
Shakti Bhawan, Rampur , P.O. Box 34,
Jabalpur - 482 008

22. Maharashtra State Electricity Distribution Co Ltd
Prakashgad, 4th Floor
Bandra (East), Mumbai - 400 052

23. Gujarat Urja Vikas Nigam Ltd Vidyut Bhawan,
Race Course Baroda - 390 007

24. Electricity Department,
Administration of Daman & Diu Daman-396 210

25. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa - 396 230

26. PTC INDIA Ltd.
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110 066



27. Lanco Anpara Power Private Limited,
Plot No. 397, Udyog Vihar, Phase 3,
Gurgaon, Haryana - 122016

28. Bharatiya Rail Bijlee Company Ltd.
Nabinagar Thermal Power Project
Jain Bungalow, Dalmia Nagar, Dehri-one-Sone
District Rohtas, Bihar-821 305

29. Corporate Power Ltd.
6th Floor, Landmark Building
Wardha Road,
Nagpur-440 010, Maharashtra

30. Lanco Budhil Hydro Power Pvt. Ltd.
Lanco House, Plot No. 397
Udyog Vihar, Phase-III
Gurgaon-122 016, Haryana

Following were present:

Shri N.K. Jain, PGCIL
Shri V.Srinivas, PGCIL

ORDER

The petitioner, Power Grid Corporation of India Limited, has filed the present petition with the following prayers, namely:

“(a) To issue notice under Section 142 of Electricity Act 2003 to all the Chief Executive Officer of the defaulting DICs why action cannot be taken against them for violating the Sharing Regulations and for not complying with CERC orders dated 3.2.2014.

(b) To issue directions to all the DICs availing services of ISTS network to make timely payment of the transmission charges including surcharge and establish letter of credit in compliance with the extant Regulations at first place, irrespective of pendency of any case disputing PoC mechanism etc so that viability of ISTS network is not disturbed. Hon'ble Commission may also allow enhancement of LC value to 150% / 250% of average billing in case of DICs with signed TPA / without signed TPA respectively.



(c) To make the payment mechanism more stringent to avoid non-payment situation in future to ensure sustainability of Transmission system provider

(d) Pass such orders as this Hon'ble Commission may deem fit and just and proper in the circumstances keeping in view the importance of sustainability of ISTS network for ensuring healthy grid conditions.”

2. The petitioner has submitted that PGCIL in its capacity as the Central Transmission Utility has been authorized to raise bills for transmission charges based on the Point of Connection (PoC) mechanism to various designated ISTS Customers (presently 76), collect transmission charges and disburse them to various ISTS Transmission Licensees (presently 17). The petitioner has submitted that in terms of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and Losses) Regulations, 2010 (hereinafter referred to as 'Sharing Regulations'), the monthly bills for transmission charges are to be paid within 60 days from the date of the billing and all the beneficiaries of the transmission services have to comply with the provisions of the Sharing Regulations. The petitioner has submitted that Sharing Regulations also provide for Delayed Payment Surcharge for payments made beyond 60 days. In the event of payment being made within 60 days of billing, an attractive rebate on the payment is also allowed. In addition to the above obligation to make payment, the beneficiaries are required to establish a Letter of Credit (LC) as Payment Security Mechanism (PSM) in favour of the petitioner as per the provisions of the Sharing Regulations.

3. The petitioner has submitted that despite its serious efforts, a number of beneficiaries are defaulting in making payment of transmission charges and opening the Letter of Credit. The petitioner had filed Petition No. 78/MP/2013 seeking directions



to the DICs to comply with the provisions of the Sharing Regulations. The Commission vide order dated 3.2.2014 considering the difficulty being faced by the CTU observed as under:

"Non-payment of transmission charges or partial payment of transmission charges by the DICs for the transmission services availed by them is a matter of grave concern as it will cripple the financial viability of the petitioner and other Inter-State Transmission Licensees. It will bring to a standstill the entire regulatory mechanism which has been evolved and put in place in order to supply safer, reliable and quality power to the consumers and will act as a dampener to the investment in the transmission sector which the country needs keeping in view the power requirement in future. This Commission has been vested with the function to regulate the inter-state transmission of electricity and has the mandate of the Parliament to ensure that Inter-State transmission is regulated in a smooth and efficient manner and is not crippled on account of non-payment or partial payment of transmission charges.

We direct all DICs to make timely payment of transmission charges and other charges to the petitioner in accordance with the bills raised by the CTU and provide requisite payment security mechanism in compliance with the Sharing Regulations so that viability and sustainability of ISTS network is not disturbed. We also direct the DICs mentioned in para 19 above to liquidate the outstanding amount at the earliest, preferably by 31.03.2014."

4. The petitioner has submitted that pursuant to the Commission`s directions, PGCIL requested the defaulting DICs to comply with the directions of the Commission. The petitioner has submitted the status of outstanding dues (POC) and opening of LC of DICs as on 22.4.2014 as under:

(₹ in crore)

DIC Name	POC Dues > 60 days		Letter of Credit		
	Dues ** as on 23.1.2014	Dues as on 22.4.2014	Required	Available	Validity
Bihar	292.94	158.57	36.10	11.00	Apr'14 -Jan'15, Undervalue
Odisha	71.94	19.64	22.50	22.50	31.07.14
BRPL	15.15	30.20	45.66	22.77	31.03.15
BYPL	32.31	18.25	42.08	19.00	30.09.14, Undervalue
Himachal Pradesh	17.61	3.66	21.19	21.67	31.05.14



Himachal Sorang	12.32	17.06	3.36	Nil	Expired on 27.12.13
Jammu & Kashmir	71.24	83.99	27.14	Nil	Not opened
Lanco Budhil	2.23	0.66	1.75	1.75	25.10.14
Lanco Kondapalli	3.21	Nil	-	-	LTA relinquished
Corporate Power	10.09	18.89	-	-	MTOA cancelled.
Meghalaya	12.62	12.06	4.13	Nil	Expired in Dec,2010.
Total	541.66	362.98	203.91	98.69	

**as per Para 19 of the Commission`s order dated 3.2.2014.

5. The petitioner has submitted that Bihar and Meghalaya have agreed to make outstanding dues in installments. However, they are not making payment regularly. The petitioner has submitted that certain DICs have liquidated outstanding dues and availing rebates for early payments as per the provisions of the Sharing Regulations. However, they are not paying surcharge on the outstanding dues and not opening the LC which is clear cut violation of the provisions of the Sharing Regulations. The petitioner has submitted the status of outstanding surcharge dues as under:

(₹ in crore)

DIC Name	POC Surcharge Dues as on 22.4.2014	
	Total	>60 days
<i>Bihar</i>	<i>55.10</i>	<i>43.47</i>
<i>Odisha</i>	<i>23.20</i>	<i>19.43</i>
<i>Jharkhand</i>	<i>5.37</i>	<i>5.37</i>
<i>West Bengal</i>	<i>8.40</i>	<i>8.40</i>
Total	92.07	81.97

6. The petitioner has submitted that as per clause 3.6.3 of Billing, Collection and Disbursement (BCD) Procedure approved under Sharing Regulations, the term of LC shall be 12 months which shall be renewed annually. The LC shall be for an amount equal to 1.05 times the average of first bill amount for a DIC where tripartite agreement



with Govt of India exist and for an amount equal to 2.10 times the average of first bill amount for a DIC where such Tripartite agreement with Govt of India does not exist. BCD Procedure further provides that if such LC amount falls short of the requirement, the concerned DIC shall restore such shortfall within seven days. In case of drawal of LC by CTU, the same shall be reinstated by DICs within 7 days. According to the petitioner, despite repeated reminders, certain utilities i.e BRPL, BYPL, JVPL, etc. are not opening the LC as 210% of average billing and certain other DICs, namely Meghalaya, BRPL, etc., are yet to extend the LC. The petitioner has submitted that BYPL, UP, JVPL, etc. are opening LCs only for a period of three months to six months only which are subsequently extended on the request of the petitioner.

7. The petitioner has submitted that LC value to be renewed at the end of the year is exceeding the stipulated 105% / 210% of average billing in view of increasing bills of DICs which is causing shortfall in requirement of LC as payment security mechanism. The petitioner has requested to enhance the LC value requirement to atleast 150% / 250% of average billing. According to the petitioner, as on 22.4.2014, the following DICs have defaulted to open the LC:

(₹ in crore)

DIC Name	Letter of Credit		
	Required	Available	Validity
Jharkhand	10.62	8.70	1.1.2015, Undervalue
BRBCL	3.06	Nil	Not opened
Mizoram	1.52	1.33	4.5.2014, Undervalue
Manipur	2.21	Nil	Expired on 31.3.2014
Arunachal Pradesh	2.48	Nil	Expired on 31.3.2014
Nagaland	1.86	Nil	Expired on 21.3.2014
JPVL	29.00	17.14	30.9.2014, Undervalue



JVVN	19.00	16.00	28.2.2015, Undervalue
Lanco Anpara	3.34	1.85	26.3.2015, Undervalue
Uttarakhand	13.92	Nil	Expired on 31.3.2014
Gujarat	102.56	75.09	Jul'14-Jan'15, Undervalue.
Maharashtra	107.38	92.02	31.3.2015, Undervalue
Daman & Diu	6.69	5.50	2.10.2014, Undervalue
Madhya Pradesh	92.00	64.12	30 6.2014, Undervalue
PTC (Amarakantak)	11.63	10.71	27.7.2014, Undervalue
APL Mundra	75 40	6.72	April 14-Jun14, Undervalue
DNH	13.85	7.88	August 15-February15
Total LC ->	496.52	307.06	

8. The petitioner has submitted that PGCIL has taken various foreign currency loans to fund its transmission projects of national importance from various multilateral lending agencies , namely World Bank, ADB., etc., at very low interest rate with a view to reduce the cost of transmission project and its benefit is passed on to the DICs. However, the lending agencies, as part of their terms and conditions for granting loan and credit, have fixed certain covenants with regard to maintaining the LC and also maintaining trade receivables at a level not exceeding 3 months of average billing. In case LC of requisite value is not provided or the receivables are not liquidated by the DICs, the petitioner would be at the verge of non-compliance of the loan covenants which would affect the credibility of the petitioner to arrange such loan for the future projects. Therefore, unless immediate remedial action in the form of directions from the Commission to defaulting DICs is issued, it would be very difficult for the petitioner to comply with the covenants of the said loans to avoid default.

9. The matter was heard on 10.6.2014. None was present on behalf of the respondents. No reply has been filed the respondents. During the course of hearing, the representative of the petitioner explained the difficulties faced by PGCIL due to default



in payments and non-opening of requisite LCs by DICs. The representative of the petitioner requested the Commission to direct the defaulting DICs to comply with the provisions of the Sharing Regulations.

10. The petitioner, vide its affidavit dated 16.6.2014 and 3.7.2014, has suggested the remedial measures to recover the outstanding dues towards transmission charges which are briefly discussed as under:

(a) As per Regulation 25A of the Central Electricity Regulatory Commission (Open Access in Inter-State in Transmission) Regulations, 2008 (Open Access Regulations), defaulting DICs shall not be granted short term open access for bilateral transaction (including transactions through Power Exchanges) when so directed by the Commission. The above provision may act as a deterrent to the DICs from defaulting in payment; however, the same can be enforced only with the permission of the Commission. Reporting the minor payment default cases to the Commission every time is not possible to enforce the Open Access Regulations. Regulation 25A of the Open Access Regulations should be amended as under:

“On the request from CTU, National Load Despatch Centre or the Regional Load Despatch Centers, as the case may be, shall not grant short term open access to the entities and associates of such entities who have defaulted in payment of transmission charges beyond 90 days from the date of bill and/or have not established requisite LCs within 30 days of giving notice for the same by CTU.”



(b) Grant of fresh LTA/MTOA to an existing DIC: In case of defaulting DICs, CTU should withhold grant of fresh LTA/MTOA till clearance of all the dues and providing requisite LC by the defaulting DIC.

(c) The value of LC, towards payment security mechanism should be enhanced to atleast 150% / 250% of average billing for the DICs with/ without signed TPA respectively.

(d) Adjustment of surcharge dues against STOA credit/any other credits of a defaulting DIC. As per Sharing Regulations, DICs are required to make payment within 60 days and pay surcharge @ 1.5% per month thereof from 3 days beyond today. If CTU deducts the surcharge from any credits due to them, the DIC does not admit the same which leads to problem in realization/reconciliation. There is no tool available with CTU to realize dues against surcharge except invoking the regulation of power supply for non-payment of transmission charges. However, it is not feasible and practicable to implement regulation of power supply on the above account at all times due to various reasons. Therefore, the surcharge dues of a defaulting DIC should be adjusted first against STOA Credit/ any other credit amount due to them.

11. During the course of the hearing on 12.5.2015, the petitioner was directed to file the latest status of the outstanding dues by 29.5.2015. However, the petitioner has not filed the present status of outstanding dues so far. Therefore, the Commission proceeds to dispose of the matter in the light of the material on record.



Analysis and Decision

12. We have considered the submissions of the petitioner. The petitioner has requested to initiate action under Section 142 of the Act against DICs for non-compliance of the provisions of the Sharing Regulations and the Commission`s direction. According to the petitioner, the DICs are required to pay surcharge on delayed payment @ 1.5% per month. However, DICs are not liquidating the surcharge on delayed payments. As per Regulation 35 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, DICs are required to pay late payment surcharge @ 1.25% per month beyond a period of 60 days from the date of billing. However, the Commission in the 2014 Tariff Regulations has increased the late payment surcharge from 1.25% to 1.5% per month. Regulation 45 of the 2014 Tariff Regulations extracted as under:

“45. Late payment surcharge: In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary of long term transmission customer/DICs as the case may be, beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be.”

13. The petitioner has submitted that DICs are not making payment towards outstanding transmission charges and not opening the LC as per the provisions of the Sharing Regulations. Clause 3.6.3 of the Billing, Collection and Disbursement Procedure approved under Sharing Regulations provides that LC shall be restore within seven days from drawl by CTU which is extracted as under:



“3.6.3. The Letter of Credit shall have a term of twelve (12) Months and shall be for an amount equal to one point zero five (1.05) times the average of the First Bill Amount for different months of the Application Period, as computed by the Implementing Agency (IA) for the DIC, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist.

Provided that where such tripartite agreement does not exist, the DIC shall open the Letter of Credit for an amount equal to two point one times (2.10) the average First Bill amount for different months of the Application Period, as computed by the Implementing Agency for that DIC.

Provided that the CTU shall not make any drawl before the 30th day after Due Date. Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in this Clause 3.6.3, the concerned DIC shall restore such shortfall within seven (7) days.”

14. Clause 3.7.1 of Billing, Collection and Disbursement Procedure approved under Sharing Regulations empowers the CTU to resort the provisions of Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 (Power Supply Regulations) for non-payment of transmission charges beyond 30 days and non-opening of LC by DIC. Relevant portion is extracted as under:

“3.7.1 If the payment by a DIC against any Bill raised under Billing, Collection and Disbursement (BCD) procedure is outstanding beyond thirty (30) days after the due date or in case the required Letter of Credit or any other agreed payment security mechanism is not maintained by the DIC, the CTU is empowered to proceed under the provisions of CERC (Regulation of Power Supply) Regulations, 2010 and any subsequent amendments there to.”

Further, clause 12.5 of the TSA provides as under:

"12.5 If payment by a DIC against any invoice raised under Billing, Collection and Disbursement procedure is outstanding beyond thirty (30) days after the due date or in case the required Letter of Credit or any other agreed payment security mechanism is not maintained by the DIC, the CTU is empowered to undertake Regulation of Power Supply on behalf of all the ISTS Licensees so as to recover charges under the provisions of CERC (Regulation of Power Supply) Regulations, 2010 and any amendment thereof."

15. Thus a statutory mechanism is available to the petitioner to invoke the regulation of power supply in case of non-payment of transmission charges and non-opening of



LC. The petitioner should make full use of the said provisions instead of approaching the Commission under Section 142 of the Act.

16. The petitioner has submitted that as on 22.4.2014, out of 76 DICs, 11 DICs have outstanding aggregating ₹ 362.09 crore for more than 60 days and Bihar, Odisha, Jharkhand and West Bengal have outstanding surcharge as on 22.4.2014 aggregating ₹ 81.97 crore for more than 60 days. The petitioner has submitted that against the total LC requirement of ₹ 496.05 crore, LCs aggregating of ₹ 307.06 crore have been opened by DICs, leaving a shortfall of ₹ 161.09 crore. The petitioner has not submitted the present status of outstanding dues despite being directed to place the same on record. The payment of transmission charges is a bilateral issue between the petitioner and DICs and any default on the part of the any beneficiaries should be dealt with in accordance with the provisions of the Transmission Service Agreement, Sharing Regulations, BCD Procedure made thereunder and the Power Supply Regulations.

17. The petitioner has suggested for amendment to Regulation 25A of the Open Access Regulations so that NLDC or RLDCs on the request of CTU, may curtail short term open access without taking permission of the Commission. According to the petitioner, the provision made in Regulation 25A may act as a deterrent to the DICs who are defaulting in payment, however, the same can be enforced only with the permission of the Commission. The petitioner has submitted that reporting of minor payment default cases to the Commission every time is not practicable to enforce the said regulations and therefore, Regulation 25A of the Open Access Regulations should be amended to



provide for “on the request of CTU”. In our view, such a suggestion cannot be accepted as Regulation 25A is also applicable in case of reactive energy charges, RLDC fees and charges, etc. besides the transmission charges. The petitioner has made similar plea in Petition No. 142/MP/2012. The Commission vide order dated 2.9.2015 has decided the issue as under:

“(c) During the period of regulation of power supply, for defaults in payment of transmission charges, STOA to the regulated entity shall be denied by NLDC/RLDCs under Regulation 25A of Open Access Regulations from the date of commencement of regulation of power supply. When Regulation 25A is invoked independent of regulation of power supply, default trigger date for invoking Regulation 25A of Open Access Regulations shall be 90 days from the due date of payment of various charges covered under the respective Regulations. NLDC/RLDCs shall deny short term open access to the defaulting entity on occurrence of the default trigger dates as mentioned above without having to approach the Commission on the basis of the request of concerned RLDC or Central Transmission Utility, as the case may be.”

In view of the above, the petitioner is at liberty to approach the concerned RLDC for denial of short term open access to an entity who is in default of payment of transmission charges.

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

Sd/-
(A.S.Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

