

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 4/RP/2016

**In
I.A. No. 37/2015**

**In
Petition No. 116/MP2015**

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Hearing: 8.3.2016

Date of order: 21.3.2016

In the matter of

Petition for review of the order dated 6.4.2015 in Petition No. 116/MP/2015 for 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

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

....Review Petitioner

Vs

Western Region Load Despatch Centre
F-3, MIDC Area, Marol,
Andheri (East), Mumbai

.....Respondent

The following were present:

Shri Alok Shanker, Advocate, EPMPPL
Ms. Pragma Singh, WRLDC

ORDER

This review petition has been filed by the petitioner, Essar Power MP Limited (EPMPPL) for recall of the order dated 24.11.2015 issued in I.A. No. 37/2015 in Petition No. 116/MP/2015 and for grant of reasonable time to the petitioner to clear the outstanding UI dues/deviation charges.

2. Brief facts of the case are that Petition No.116/MP/2015 was filed by the Western Regional Load Despatch Centre (WRLDC) under Regulation 10 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (DSM Regulations) *inter alia* seeking direction to Essar Power MP Limited to clear the outstanding dues on account of the UI/deviation charges and to open the letter of credit. WRLDC had submitted that on as 20.2.2015, an amount of Rs. 22.22 crore was outstanding against EPMPPL on account of UI/deviation charges. WRLDC had further submitted that the petitioner had failed to open LC in accordance with Regulation 10 (4) of the DSM Regulations. The Commission after considering the submissions of WRLDC and EPMPPL, in order dated 14.9.2015, allowed 60 days time to EPMPPL to liquidate the outstanding UI/deviation charges. Relevant para of the order dated 14.3.2015 is extracted as under:

“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 and 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 date 2.9.2015 in Petition No. 142/MP/2012.”

3. Subsequently, EPMP, the petitioner herein, filed I.A. No. 37/2015 seeking extension of time for compliance with the order dated 14.9.2015. The Commission vide order dated 24.11.2015 rejected the request of EPMP and directed EPMP to liquidate the outstanding UI/deviation charges. Relevant portion of the said order dated 24.11.2015 is extracted as under:

“6. We have considered the submission of the Applicant. The reasons for seeking time are financial crisis and non-availability of fuel to run the plant of the Applicant Company. The Commission vide order dated 14.9.2015 allowed a time period of 60 days to the Applicant to liquidate the entire UI/deviation charges and open the LC for required amount as per the Deviation Settlement Regulations. However, the Applicant did not comply with the Commission`s directions. In our view, the Applicant has not only failed to comply with the provisions of the Regulations, but also has not complied with the directions of the Commission. It is further noted that the outstanding deviation charges have accrued against the Applicant in the course of its injection of power under short term open access for selling through the Power Exchange/bilateral trade which was facilitated by WRLDC through interim connectivity granted by CTU through the LILO of 400 kV Vindhyachal-Korba transmission line ckt-I. In other words, the Applicant has earned revenue from sale under short term bilateral and collective which was facilitated by WRLDC through interim connectivity granted by CTU through the LILO of 400 kV Vindhyachal-Korba transmission line ckt-I. In other words, the Applicant has earned revenue from sale under short term bilateral and collective transactions and should have settled the deviation charges from the said revenues. Therefore, reliance by the Applicant on various factors as enumerated in the IA as the reasons for non-payment of UI/DSM charges cannot be accepted. Accordingly, the Applicant`s prayer to grant time to liquidate the outstanding UI/deviation charges and open the LC for as per schedule given in the IA is rejected.

7. We direct the Applicant to liquidate the entire UI/deviation charges and open the LC for required amount as per the Deviation Settlement Regulations immediately as directed by the Commission in order dated 14.9.2015 failing which WRLDC is at liberty to invoke the Regulation 25A of the Open Access Regulations.”

4. EPMP has filed the present Review Petition seeking review of the order dated 24.11.2015 in I.A. No. 37/2015 in Petition No. 116/MP/2015 on the following two points:

(a) The power plant of EPMPPL has been shut down since October, 2014 for want of fuel and no short term injection has taken place from the generating station. Therefore, the observation of the Commission in para 6 of the order dated 24.11.2015 that “the Applicant has earned revenue from sale under short term bilateral and collective transaction and should have settled the deviation charges from the said revenue” is an error apparent on the face of record.

(b) As per Corrigendum dated 17.2.2014 of Regulation 10 (4) of the DSM Regulations, the LC amount to be established is equal to 110% the weekly average liability which in the present case is Rs. 56 lakhs and accordingly, the petitioner has opened an LC of Rs. 62 lakhs. However, WRLDC is demanding LC for Rs. 12.1 crore based on the maximum weekly liability of last year (2014-15) whereas the DSM Regulations stipulates it to be for the current financial year (2015-16). This is an error as the issue has not been dealt with while passing the order.

5. EPMPPL has submitted that any order which affects the substantial rights and obligations of the parties must be well reasoned. EPMPPL has further submitted that in the event the reason given is based on incorrect understanding of law or facts, then the whole order is vitiated and is required to be corrected by exercising the power of review.

6. During the hearing, learned counsel for the petitioner submitted that in para 6 of the order dated 24.11.2015 in I.A. no. 37/2015, it has been acknowledged that on account of non-supply of coal, the power plant has not been generating electricity. However, the reasoning with which the application for extension of time was rejected

gives the impression that the petitioner is generating and selling power but is not paying the UI/deviation charges. Learned counsel submitted that the coal allocation for the plant has been cancelled and the petitioner is trying to revive the plant through alternative arrangement. Learned counsel submitted that the petitioner is not denying its liability but requires time to make payment after its plant becomes operational. Learned counsel for the petitioner submitted that as per Para 13 of the order dated 14.9.2015 in Petition No. 116/MP/2015 the Commission had directed that if EP MPL failed to liquidate the outstanding UI/deviation charges and/or to open the LC for the required amount, EP MPL would be denied Short Term Open Access in terms of Regulation 25 (A) of the Open Access Regulations. Learned counsel submitted that EP MPL would face difficulty in selling its power under short term, since, it would be denied Open Access for its failure to liquidate the outstanding UI/deviation charges within a period of 2 months. Learned counsel requested that permission be granted for sale of power through Short Term Open Access so that EP MPL would be in a position to generate revenue and settle the outstanding UI/deviation charges. Learned counsel requested that the schedule of payment submitted in para 26 of the I.A. No. 37/2015 be approved to enable the petitioner to liquidate its outstanding UI/deviation charges.

Analysis and Decision

7. We have considered the submissions made in the review petition and the submissions made by the learned counsel for the petitioner during the hearing. The petitioner has sought review of the impugned orders on the ground of errors apparent on the face of the order. The first point of review is that the observation of the

Commission in Para 6 of the order dated 24.11.2015 that the petitioner has been selling power under bilateral/short term and has earned revenue is not correct as the petitioner's power plant has been shut down since October, 2014 for want of fuel and no short term injection has taken place from the generating station and therefore, the petitioner is not earning any revenue to pay the UI/deviation charges. We have gone through the case records of Petition No. 116/MP/2015 and I.A. No. 37/2015 and the orders issued in these petitions. In para 6 of the order dated 24.11.2015, the Commission had observed that the outstanding deviation charges had accrued against EPMPPL in the course of its injection of power under Short Term Open Access for selling through Power Exchange/bilateral trade which was facilitated by WRLDC through short term connectivity granted by CTU through the LILO of 400 kV Vindhyachal- Korba. This observation of the Commission has been made on the basis of the submission of WRLDC in Petition No. 116/MP/2015. The relevant extract from the said petition is as under:

"2. Respondent No. 1, Essar power MP Ltd. is a generating company having an ultimate installed capacity of 1200 MW (2*600MW) located at MAHAN, Singrauli, Madhya Pradesh. The commissioning activities of its first unit of 600MW commenced from 8.2.2012 and it also started drawal of power through UI for commissioning activities as per the Central Electricity Regulatory Commission (Connectivity, long term access, medium term open access in inter-State Transmission System and related matters) Regulations, 2009. Unit #1 was synchronized with the grid on 30.12.2012 and declared the commercial operation (CoD) w.e.f. 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 Open Access Regulations through the interim connectivity granted by the CTU through LILO of 400 kV Vindhyachal- Korba one ckt. at the respondent's generation bus. That the present petition has been filed against the violation of Regulation 10 of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 read with Regulation 25 A of the Central Electricity Regulatory Commission (Open Access in ISTS)(Second Amendment) Regulation, 2003."

Further, WRLDC in Para 7 of the said petition has given the details of the outstanding deviation charges against EPMPPL as under:-

“7. The summary of UI/DSM bills issued by Respondent no. 2(WRPC) to Respondent no. 1 from its first day of being a WR UI Pool member, the amount paid by respondent no 1 to the UI/DSM pool account, outstanding dues and normal interest as on 20.2.2015 are given below:

Regulation	Period	Amount as per weekly bills issued by WRPC (in Rs.)	Amount paid by Respondent No. 1 (in Rs.)	Outstanding amount as on 20.2.2015 (in Rs.)
Unscheduled Interchange charges and related matters (Amendment) Regulation, 2010	6.2.2012 to 16.2.2014	14,15,45,365/-	14,34,79,654/-	16,65,711/-
Deviation Settlement Mechanism and related matters Regulation, 2014	17.2.2014 to 1.2.2015	36,32,88,349/-	15,81,32,255/-	20,51,56,094/-
Total		50,84,33,714/-	30,16,11,909/-	20,68,21,805/-
Normal interest	Calculated up to 31.12.2014			1,53,72,287/-
Grand total		50,84,33,714/-	30,16,11,909/-	22,21,94,092/-

8. In response to the above paras, EPMPPL vide its affidavit dated 16.6.2015 has submitted as under:

“Para 2: Contents of paragraph 2 need no reply.

Para 7: A review of Annexure-I and Annexure-II would make it clear that the delay in payment of UI Charges is only when the answering respondent is not able to operate the generating station for the reason of non-availability of fuel. It is submitted that reasons therefore are entirely beyond the control of the generating company. While there is no dispute that the payment of UI charges must be given highest priority, the answering respondent is making all reasonable efforts possible to raise finances and liquidate all present and past liabilities.”

9. It is evident from the above that EPMPPL has neither denied the allegations that it was selling power through STOA bilateral/power exchange for which the UI/deviation charges have become outstanding against it nor denied the amount of UI/deviation

charges outstanding against it. The UI/deviation charges for which the petition was filled by WRLDC pertain to the period from 6.2.2012 to 1.2.2015. After accounting for the part payments made by EPMPL, the outstanding dues as on the date of the filing of the petition (15th March, 2015) was Rs. 22,12,94,092/- including the interest of Rs. 1,53,72,287/-. Since the deviation charges pertain to the period 6.2.2012 to 1.2.2015 during which period EPMPL had draw start up power for commissioning activities and after COD, had sold power through STOA bilateral/ Power Exchange, the observation of the Commission in Para 6 of the order is based on undisputed facts. Therefore, there is no error apparent on the face of the order.

10. The second point on which review has been sought is that the Commission has not dealt with the issue whether the amount of LC demanded by WRLDC or the amount of LC opened by EPMPL is in accordance with the DSM Regulations. The petitioner has submitted that as per the Corrigendum dated 17.2.2014, the LC to be established is equal to the weekly average liability for the current financial year whereas WRLDC has calculated the LC on the basis of the average weekly liability for the previous financial year. We have carefully gone through the Corrigendum dated 17.2.2014 issued to the DSM Regulations. The said corrigendum does not deal with the Letter of Credit (LC) at all.

11. Let us examine the pleadings in the Petition No. 116/MP/2015 to see whether the petitioner had ever raised any dispute with regard to the computation of deviation charges. WRLDC in Petition no. 116/MP/2015 had placed on record a copy of the letter

dated 29.10.2014 (Page 45 of the Petition No. 116/MP/2015) in which the amount of LC to be opened by EPMPPL was conveyed as under:

“It has been observed that the weekly payable liability of M/s Essar Power MP Ltd. In 21st week (18-24.8.2014) DSM account has exceeded the previous LC amount by more than 50%. As per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 issued on 6.1.2014, Clause No. 10(4), the LC amount has been enhanced to Rs. 12.17 crores. You are therefore requested to open an LC for Rs. 12.17 crores in favour of “Power System Operation Corporation Limited” Western Regional Load Despatch Centre, Mumbai.”

WRLDC in Para 10 of the petition had referred to the letter dated 29.10.2014 and had submitted that EPMPPL had not opened LC for the required amount. In reply to contention of WRLDC, the petitioner made its submissions as under:

“Para 10: The answering respondent in compliance with the provisions of the UI Regulations and order of this Hon’ble Commission has opened the LC in terms of the Regulation. The details of the LC have already been intimated to this Hon’ble Commission.”

12. In the above reply, the petitioner has never disputed that computation of LC amount by WRLDC was not in accordance with the DSM Regulations nor had disclosed the amount of LC opened by it. In other words, the petitioner had not raised any dispute with regard to the computation of LC amount by WRLDC and therefore, adjudication of the dispute with regard to compliance of DSM Regulations for computation of LC amount did not arise while passing the order dated 14.9.2015. In the IA, the petitioner had only sought time for payment of UI/deviation charges and did not raise the issue of regarding computation of deviation charges by WRLDC. Therefore, there was no occasion for the Commission to go into the said issue. In view of the above discussion, there is no error in the impugned order on this account.

13. Since the petitioner has now raised the issue of computation LC, the Commission considers it appropriate to examine the provisions of Regulation 10(4) of DSM Regulations. LC for deviation charges are regulated in accordance with Regulation 10 (4) of the DSM Regulations. The said regulation is extracted as under:

“10 (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%.

Illustration: If the average payable weekly liability for Deviation 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 of Rs 30 Crore, the concerned regional entity shall increase the LC amount to ₹38.5 Crore (1.1*₹35.0) by adding ₹16.5 Crore.”

It is apparent that as per the regulation, all regional entities which at any time during the previous financial year failed to make payment of charges for deviation including additional charges for deviation within time specified in the regulations, shall be required to open letter of credit equal to 110% of its average payable weekly liability for deviation in the previous financial year. The Proviso to Regulation 10 (4) provides that the 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%. There is no provision in the above regulation which supports the contention of the petitioner that LC to be established shall be equal to 110% of the average weekly deviation charges for the current year.

14. In view of the above, we do not find any error in the impugned order and therefore, the review petition is dismissed at the admission stage.

15. As regards the submission of the learned counsel for the petitioner during the hearing that the window for sale of power through short term open access has been closed on account of invocation of Regulation 25 A of Open Access Regulation, we are of the view that the said decision has been taken on account of the non-payment of UI/deviation charges by the petitioner beyond 90 days of its falling due. If the petitioner intends to sell power through STOA, the petitioner should settle the outstanding UI/deviation charges in terms of our orders dated 14.9.2015 and 24.11.2015.

16. Review 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