

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 243/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shi A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 19th June, 2017

In the matter of

Default in payment of RLDC Fees and Charges, Unscheduled Interchanges (UI) charges and Deviation charges in excess of the drawal schedule by Vandana Vidyut 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.

Vandana Vidyut Limited
Vandana Vidyut Bhawan, M.G.Road,
Raipur, Chhattisgarh-492 001

....**Respondent**

Member-Secretary
Western Regional Power Committee
F-3, MIDC Area, Marol,
Andheri (East), Mumbai-400 093

Chief Operating Officer,
Central Transmission Utility (CTU)
Power Grid Corporation of India Ltd.
Saudimini Plot No.2, Sector-29,
Gurgaon, Haryana-122 001

....**Proforma Respondent**



The following were present:

Shri S.S. Barpanda, WRLDC
Ms. Pragya Singh, WRLDC
Shri M.G. Ramchandran, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Shri Nishant Menon, Advocate, VVL
Shri Abhishek Birthray, Advocate, VVL

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) read with Regulation 25A of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission System) Regulations, 2008 as amended from time to time (2008 Open Access Regulations) for default in payment of Deviation Charges in excess of the drawl schedule by the Respondent, Vandana Vidyut Limited. The Petitioner has made the following prayers:

- '(a) Direct Respondent No. 3 (CTU) to undertake physical disconnection of the generating station of the Respondent No. 1 from the regional grid;
- (b) Allow the petitioner to de-register Respondent No. 1 as a 'user' of WRLDC in views of its persistent failure in making payment of WRLDC fees and charges and so as to enable the petitioner (WRLDC) to recover the approved fees and charges from the remaining users;
- (c) Initiate appropriate action against Respondent No. 1 under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014 and for persistent default in payment of WRLDC charges stipulated under CERC (RLDC Fees and Charges and related matters) Regulations, 2015.
- (d) Pass any such further order or orders as may be deemed just and proper in views of the facts and circumstances of this case."



2. The Petitioner has submitted that the Respondent No. 1 is a generating company having an installed capacity of 270 MW (2X135 MW) at Raipur, Chhattisgarh. The COD of the first unit of the generating station was declared on 10.4.2014. 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 Transmission System) Regulations, 2008 (Open Access Regulations) through the interim connectivity granted by CTU through LILO of 400 kV Korba-Birisingpur one ckt. at the Respondent`s generating bus.

3. The Petitioner has submitted that as per Regulation 10 of the 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 the net outstanding dues as on 28.8.2016 against the Respondent No. 1 stood at ₹ 9. 64 crore. However, due to non-payment of the UI charges, the Petitioner has not been able to close the earlier UI accounts of the Respondent. Accordingly, the Respondent No. 1 is liable to pay normal interest of Rs. 2.42 crore as on 11.9.2016 in terms of Regulation 10 (3) of the Deviation Settlement



Regulations. The Petitioner has submitted the summary of UI/DSM bills issued by WRPC to the Respondent No. 1 from its first day of being a WR Pool Member and the amount paid by the Respondent No. 1 to the UI/DSM pool account, outstanding dues and normal interest as on 11.9.2016 as under:

Regulations	Period	Amount as per weekly bills issued by WRPC (in ₹)	Amount paid by the respondent (in ₹)	Outstanding amount as on 11.9.2016 (in ₹)
UI Charges Regulations	29.10.2012 to 16.2.2014	1,33,64,326	30, 59, 899	1,03,04,427
Deviation Settlement Regulations	17.2.2014 to 28.8.2016	16,11,99,381	7,50,53,843	8,61,45,538
Total		17,45,63,707	7,81,13,742	9,64,49,965
Normal interest	Calculated upto 30.6.2016			2,41,97,105
Grand Total		17,45,63,707	7,81,13,742	1,206,47,070

5. The Petitioner has submitted that as on August, 2016, an amount of ₹ 22,70,610 is outstanding against the Respondent towards fees and charges for WRLDC. The Petitioner vide its letters dated 27.5.2014, 1.8.2014, 9.8.2014, 29.10.2014, 18.2.2015, 6.4.2015, 7.7.2015, 26.10.2015 and 2.8.2016 requested the Respondent No. 1 to liquidate the outstanding dues. The Petitioner has submitted that the issue of non-payment of UI/DSM charges by the Respondent was discussed in various meetings of Western Regional Commercial Committee and Western Regional Power Committee and despite repeated requests, the Respondent No. 1 is not liquidating the outstanding UI/DSM dues.

6. The Petitioner has submitted that the Respondent No. 1 has also not opened the LC in clear violation of Regulation 10 (4) of the Deviation Settlement Regulations. The

Commission vide order dated 24.11.2015 in Petition No. 123/MP/2015 had directed the Respondent No. 1 to liquidate the entire UI/Deviation charges, RLDC fees and charges, and open the LC for required amount as per the Deviation Settlement Regulations immediately failing which WRLDC would be at liberty to invoke Regulation 25A of the Open Access Regulations . However, no affirmative action has been taken by the Respondent No. 1 in liquidating the outstanding UI/DSM charges and WRLDC Fees and Charges.

7. The Petitioner has submitted that in the 40th Meeting of the Standing Committee (SCM) on Power System Planning in Western Region held on 1.6.2016 at New Delhi, the matter regarding progress of dedicated line under construction by generation developers, who are connected through interim arrangements, was discussed. In the said meeting, it was decided that the interim connectivity granted to the Respondent No. 1 would be opened by CTU after notice to the Respondent No. 1. Accordingly, the Petitioner and CTU informed the Respondent No. 1 vide their letters dated 2.8.2016 to clear all outstanding dues and open the LC failing which the existing interim LILO connectivity would be disconnected.

8. Notice was issued to the Respondent No. 1 to file its reply. The Respondent in its reply dated 24.3.2017 has submitted as under:

- (a) Due to severe financial crisis, cancellation of allotment of the coal block by the Hon`ble Supreme Court, inadequate and irregular supply of coal, market slowdown, lack of long term PPAs, non-availability of adequate

infrastructure/power corridor for supply of power particularly, to Southern Region from Western Region and non-release of working capital by the bankers, the Respondent could not make payment of outstanding UI/DSM charges.

(b) 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.

(c) Pursuant to the Commission direction dated 24.11.2015 in Petition No. 123/MP/2015, the Respondent approached its bankers for immediate disbursement of funds to enable it to pay the outstanding UI/DSM charges. However, the banks did not release working capital as on date.

(d) RBI had issued notifications allowing flexible restructuring of the existing loans, which are not adhered to by the lenders banks while rejecting the proposal submitted by the Respondent. Aggrieved by the said notifications, the Respondent has filed the appeal before the Hon`ble High Court of Chhattisgarh which is pending for disposal.

(e) Banks have proceeded against the Respondent under Section 13 of the Securitization and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and this matter is also *sub judice* before the Debt Recovery Tribunal at Jabalpur.

(f) In the Joint lender forum meeting held on 15.6.2015, the Respondent has submitted fresh proposal for scheme for sustainable structuring of stress assets which is under consideration by the lender banks.

(g) The Respondent, vide its letter dated 4.4.2014, sought clarification/confirmation regarding prevailing/applicable DSM rates for the period from 10.3.2014. However, no response has been received from the Petitioner in this regard.

(h) Bill summary submitted by the Petitioner for the period 16.3.2015 to 22.3.2015 shows that the Respondent was injecting power into the grid. However, the unit of the Respondent was not in operation at that time and same was brought to the notice of the Petitioner vide letter dated 11.4.2015, but no response has been received from the Petitioner. Therefore, the outstanding amount as claimed by the Petitioner needs to be justified and the same are subject to reconciliation/adjustment.

9. During the course of hearing, the representative of the Petitioner submitted that the Respondent No. 1 has not been paying the outstanding UI/deviation charges and therefore, WRLDC be allowed to de-register Respondent No. 1 from the list of users. The representative of the Petitioner further prayed that suitable action under section 142 be initiated against Respondent No. 1 for its failure to comply with the directions of the Commission. Learned counsel for the Respondent No. 1 submitted that non-payment of UI/deviation charges by the Respondent is neither deliberate nor willful, but is on account



of the reasons beyond the control of the Respondent No. 1. Learned counsel requested for six months time to explore the possibility of sourcing of funds to discharge the outstanding liability towards deviation/UI and other charges. Learned counsel for CTU submitted that the interim LILO arrangement connecting the generating stations of the VVL to the grid has been opened as decided in the Standing Committee Meeting held on 1.6.2016. Learned counsel further submitted that transmission charges are outstanding against Respondent No. 1 and PGCIL will take necessary steps to recover the outstanding dues in accordance with the BPTA and relevant regulations.

Analysis & Decision

10. The Petitioner has submitted that the Respondent No. 1, Vandana Vidyut Limited has been persistently defaulting in payment of deviation charges in violation of Regulation 10 of the DSM Regulations. As on 11.9.2016, an amount of ₹12,06,47,070 was outstanding UI/deviation charges along with interest against the Respondent No. 1. The Petitioner has further submitted that the RLDC Fees and Charges to the tune of ₹22,70,510 were also outstanding for the period January, 2015 to August, 2016. Even though, the Commission vide its order dated 24.11.2015 in Petition No. 123/MP/2015 had directed the Respondent to liquidate the outstanding UI/deviation charges and RLDC fees and charges and open the LC immediately, no affirmative action has been taken by the Respondent to liquidate the UI/DSM charges and RLDC fees and charges. The Petitioner has further submitted that Respondent No. 1 has been drawing power from the grid under Deviation Settlement Mechanism for feeding its station auxiliaries by way of



remaining connected to the Grid. As the Petitioner is not injecting any power for sale through Short Term Open Access, Regulation 25A of the Open Access Regulations cannot be invoked. Accordingly, the Petitioner has sought indulgence of the Commission for initiation of action against the Respondent under Section 142 of the Act.

11. Respondent No. 1 has submitted that having made a huge investment of money and time in the project, it is in the interest of Respondent No. 1 to start the project at the earliest and clear all the dues including payment of UI/DSM and other statutory charges. Respondent No. 1 has further submitted that it has been making constant efforts to revive the power plant and start generation of power within next few months. Respondent No. 1 has undertaken to pay the UI/deviation charges at the highest priority as and when the power plants resume operations and/or funds are available with Respondent No. 1. Respondent No. 1 has also disputed the UI/deviation bills raised by the Petitioner and has submitted that vide its letters dated 4.4.2014, 28.4.2017 and 30.7.2014, it has sought certain clarifications with regard to the billing and calculation of the deviation charges and additional deviation charges to which the petitioner has not replied. The Respondent No. 1 has prayed that the Petitioner be directed to reconcile the disputed bill as notified by Respondent No. 1 from time to time. Respondent No. 1 has further submitted that if the reliefs sought by the Petitioner are granted or any adverse order is passed against Respondent No. 1 at this juncture, it shall cause irretrievable loss and injury and undue hardship to the Respondent.

12. On consideration of the submission of the parties, we notice that after the declaration of COD of the first unit of the generating station, the Respondent No. 1 has been selling power through STOA bilateral/Power Exchange through the interim connectivity granted by CTU, pending construction and commissioning of the dedicated transmission line by Respondent No. 1. On account of the stressed financial condition of the company, Respondent No. 1, is not generating any power and has been drawing power from the grid under deviation settlement mechanism for feeding its auxiliaries. Be that as it may, the fact remains that the Respondent No. 1 is drawing power from the grid through deviation settlement mechanism and is therefore liable to pay deviation charges. The Respondent No. 1 is statutorily obligated to settle the deviation charges including additional deviation charges in a time bound manner in terms of Regulation 10 of the DSM Regulations. Respondent No. 1 is also required to open the LC for the specified amount in terms of Regulation 10 (4) of the DSM Regulations. Respondent No. 1 has neither cleared the deviation charges nor opened the LC, nor paid the RLDC fees and charges. Respondent No. 1 has therefore failed to comply with the statutory provisions of the DSM Regulations despite being directed in uncertain terms by this Commission vide order dated 24.11.2015 in Petition No. 123/MP/2015. Further, Respondent No. 1 is liable to bear the RLDC Fees and Charges for being connected to the grid. However, Respondent No. 1 has not paid the RLDC Fees and Charges and accordingly, violated the provisions of the RLDC Fees and Charges Regulations. Respondent No. 1 has, accordingly, failed to comply with the provisions of the Regulations and the directions of the Commission. However, considering the difficulties faced by the Respondent No. 1 and after taking into account the submission made during the hearing, we are inclined to grant time till



31.7.2017 to enable the Respondent No. 1 to liquidate the entire outstanding UI/deviation charges including additional deviation charges, interest thereon and RLDC fees and charges. If the Respondent No. 1 fails to comply with this direction, the Commission shall initiate action under Section 142 of the Act suo-motu for non-compliance of the Regulation/directions of the Commission.

13. The Petitioner has sought direction to CTU to undertake physical disconnection of the generating station of Respondent No. 1 from the regional grid. We have noticed that the matter was discussed in the 40th Meeting of the Standing Committee on Power System Planning in Western Region held on 1.6.2016, wherein it was decided that the interim connectivity provided to Respondent No. 1 be opened. The relevant portion of the minutes of the meeting dated 1.6.2016 is extracted as under:

“17.9 There was no representation from M/s VVI. POSOCO informed that M/s VVL has not been paying the deviation charges and other charges, for which they have filed petition in CERC. CERC has directed M/s VVL to clear the outstanding dues and has directed WRLDC to invoke the provision 25A of the Open Access in inter-State Transmission Regulations. As per the provision of 25A, M/s VVL cannot apply for short term open access. However, M/s VVL has not cleared their outstanding dues till date. M/s VVL is intermittently drawing power through the LILO connectivity provided and is not paying any charges for the same. CTU informed that M/s VVL has not been attending the Joint Coordination Committee meetings wherein the progress of IPPs are reviewed and they have not submitted any progress report for the generation project. The issue was discussed and the committee decided that, in view of no progress report available for dedicated transmission line of M/s VVL, the interim connectivity provided to M/s VVL being used by them for intermittently drawing power and non-payment of the deviation charges and other charges my M/s VVL, the interim connectivity provided to M/s VVL be opened. CTU to give notice to M/s VVL and apprise CERC regarding the case of M/s VVL.”

Pursuant to the above decision, the interim connectivity has been opened w.e.f 22.4.2017 as no progress has been made on the dedicated transmission line to be executed by Respondent No. 1. Since, the interim connectivity has already been disconnected,- no direction is therefore required to be issued on this prayer of the Petitioner.

14. The Petitioner has further prayed that they be allowed to de-register Respondent No. 1 as a 'user' of WRLDC in views of persistent failure in making payment of WRLDC fees and charges and to enable WRLDC to recover the approved fees and charges from the remaining users. Since, we have allowed time till 31.7.2017 to Respondent No. 1 to liquidate the outstanding dues, and if Respondent No. 1 fails to liquidate the outstanding dues by 31.7.2017, WRLDC shall take necessary steps to de-register Respondent No. 1 as a 'User' of WRLDC.

15. WRLDC is directed to place on record the latest position regarding the outstanding UI/deviation charges and RLDC fees and charges against the Respondent No. 1 in the first week of August, 2017.

16. 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

