

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

SUO MOTU PETITION NO.6/SM/2020

**CORAM:
Shri P K Pujari, Chairperson
Shri I S Jha, Member**

Date: 3rd of April 2020

IN THE MATTER OF:

Implementation of the directions of the Government of India dated 28.03.2020 under section 107 of the Electricity Act, 2003 to Central Electricity Regulatory Commission regarding reduction of Late Payment Surcharge

IN THE MATTER OF:

The Commission on its own Motion

VS

1. All Central Government Generating Companies
2. All Other Generating Companies having Inter-State Generating Stations
3. Powergrid Corporation of India Limited
4. All Inter-State Transmission Licensees
5. All Beneficiaries of Respondent No.1 and 2
6. All Long term customers of Respondent No. 3 and 4

... Respondents

ORDER

Ministry of Power, Government of India vide its letter No. 23/22/2019-R&R Part-4 dated 28.3.2020 has issued the following directions under Section 107 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to the Central Electricity Regulatory Commission with regard to the Late Payment Surcharge to be charged by the generating companies and transmission licensees on account of the unprecedented

situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishment etc.:

*“To,
The Chairperson
Central Electricity Regulatory Commission
Chanderlok Building, Janpath
New Delhi*

Subject: Consequential order to give effect to the directions of Government of India to the Central Electricity Regulatory Commission (CERC) under Section 107 of the Electricity Act, 2003 regarding reduction of Late Payment Surcharge (LPS)

Sir,

1. We are in receipt of representations from power distribution companies and State Governments requesting to waive payment of Late Payment Surcharge in view of the force majeure situation arising due to severe restrictions placed on movement of public and opening of offices and establishments etc. by the State Governments and vide order dated 24.03.2020 of Ministry of Home Affairs (MHA), Government of India. It has been informed that the consumers of the power distribution companies (discoms) are unable to pay their dues because of this unprecedented situation which is likely to continue for sometime. This will affect the liquidity position of the discoms thereby reducing their ability to make timely payments to the generating companies (gencos) and transmission companies (transcos).

2. The matter has been examined in the Ministry of Power. The Ministry acknowledges the gravity and unprecedented nature of the situation. Payments received in the month of March 2020 account for a large share of the annual revenues of these companies. Extremely low receipt due to non-payment or delayed payment by consumers, the cash flow in the system may be impeded. To mitigate the problem, some relief requires to be granted to the discoms to make payments to generating companies and transmission licensees.

3. CPSU gencos/transcos are being advised not to use coercive means for recovering the dues and continue supply/transmission of electricity since it is an essential service, as also recognized by MHA vide its order dated 24.03.2020. RBI has also provided a three-month moratorium on repayments of outstanding loans and interest on working capital.

4. *In view of the above, using powers under section 107 of the Electricity Act, 2003, the following directions are issued to Central Electricity Regulatory Commission in public interest:*

i. The Commission may specify a reduced rate of Late Payment Surcharge (LPS) for payment which become delayed beyond a period of 45 days (from the date of presentation of the bill) during the period from 24th March 2020 to 30th June 2020 to generating companies and licensees treating the restrictions placed by the Central Government vide order dated 24.03.2020 to contain COVID-19 as an event of force majeure. The reduced LPS shall be applicable for such delayed payments till 30th June 2020. The LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment.

ii. For generating companies and transmission licensees whose tariff was determined under section 63 by the Central Commission, discoms may claim the relief from its obligations regarding the rate at which LPS is to be paid, as per the force majeure provisions given in the respective power purchase agreement.

5. *This issues with the approval of Minister of State (Independent Charge) for Power and New and Renewable Energy, Government of India.*

Yours faithfully,

*Sd/-
(Ghanashyam Prasad)
Chief Engineer (RR & OM)”*

2. The Commission has considered the above directions of the Government of India issued under Section 107 of the Act. This Commission determines the tariff of the generating companies covered under section 79(1)(a) and (b) of the Act and tariff of the inter-State transmission licensees under section 79(1)(d) of the Act in accordance with the tariff regulations framed under section 61 read with section 178 of the Act. Further, this Commission also adopts the tariff of the generating companies and inter-State transmission licensees under Section 63 of the Act where the tariff has been discovered through competitive bidding in accordance with the Guidelines issued by Government of India under Section 63 of the Act.

3. As regards the generating companies and transmission licensees whose tariff is determined by this Commission under Section 62 of the Act, the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter “2019 Tariff Regulations”) provides for rebates and late payment surcharge as under:

“58. Rebate. (1) *For payment of bills of the generating company and the transmission licensee through letter of credit on presentation or through National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) payment mode within a period of 5 days of presentation of bills by the generating company or the transmission licensee, a rebate of 1.50% shall be allowed.*

Explanation: *In case of computation of ‘5 days’, the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5th day is official holiday, the 5th day for the purpose of Rebate shall be construed as the immediate succeeding working day (as per the official State Government’s calendar, where the Office of the Authorised Signatory or Representative of the Beneficiary, for the purpose of receipt or acknowledgement of Bill is situated).*

(2) *Where payments are made on any day after 5 days and within a period of 30 days of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed.*

59. Late payment surcharge: *In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary or long term customers as the case may be, beyond a period of 45 days from the date of presentation of bills, 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.*

4. The beneficiaries of the generating stations and long term customers of the inter-State transmission systems avail rebates under Regulation 58 of the 2019 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the timeline specified in the said regulations. On the other hand, as per Regulation 59 of the 2019 Tariff Regulations, a late payment surcharge (LPS) of 1.5% per month is payable by the beneficiaries and long term customers to the

generating companies and transmission licensees, as the case may be, if the payment is delayed beyond 45 days from the date of presentation of bills.

5. As per the directions issued by Government of India under Section 107 of the Act, the Commission is required to specify a reduced rate of LPS where payment to generating companies and inter-State transmission licensees is delayed beyond a period of 45 days from the date of presentation of the bill during the period from 24th March 2020 to 30th June 2020 by treating the restrictions placed by the Ministry of Home Affairs, Government of India vide order dated 24.03.2020 to contain COVID-19 as an event of force majeure.

6. The Commission also observes that the Reserve Bank of India has permitted lending institutions and banks to grant a moratorium of three months on repayment in respect of all term loans and has clarified that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Similarly, in respect of working capital facilities, the Reserve Bank of India has permitted lending institutions and banks to defer the recovery of interest on such facilities, but has clarified that accumulated accrued interest shall be payable after the deferment period from 01.03.2020 up to 31.05.2020. The relevant portion of the RBI circular No. RBI/2019-20/186 DOR.No.BP.BC.47/21.04.048/2019-20 dated 27th March, 2020 is extracted below:

“(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments¹ falling due between March 1, 2020 and

May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 up to May 31, 2020 ("deferment"). The accumulated accrued interest shall be recovered immediately after the completion of this period."

7. Thus, generating companies and inter-State transmission licensees can opt for moratorium on payment of installments of term loan and defer the payment of interest in respect of working capital facilities during the period from March 1, 2020 up to May 31, 2020 ("deferment"), but the interest accrued is not waived. Further, in case of working capital facilities, accumulated accrued interest shall be recovered immediately after the completion of this period. The interest rate applicable will be the lending rate of the lending institutions or banks. Thus, the generating companies and the transmission licensees will have to incur the cost of working capital facilities even during the deferment period.

8. Therefore, generating companies and inter-State transmission licensees regulated by this Commission shall be required to continue to discharge their debt service obligations and arrange for working capital for day to day operation of their generating stations and transmission assets. Clauses (3) and (4) of Regulation 34 of 2019 Tariff Regulations relating to computation of the rate of interest on working capital are extracted as under:

"(3) Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1st April of the year during the tariff period 2019-24 in which the generating station or a unit thereof or the transmission system

including communication system or element thereof, as the case may be, is declared under commercial operation, whichever is later:

Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial years during the tariff period 2019-24.

(4) Interest on working capital shall be payable on normative basis notwithstanding that the generating company or the transmission licensee has not taken loan for working capital from any outside agency.”

9. “Bank rate” has been defined in Clause (7) of Regulation 3 of the 2019 Tariff Regulations as under:

(7) ‘Bank Rate’ means the one year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points;”

10. Therefore, Commission is of the view that in the given situation, the provisions of 2019 Tariff Regulations with regard to interest on working capital should be adopted as the normative rate of LPS in place of the penal rate of LPS specified under Regulation 59 of the 2019 Tariff Regulations, for delayed payments falling due beyond 45 days, during the period from 24.03.2020 and 30.06.2020. As per the MCLR historical data from website of State Bank of India, one year MCLR as on 10.03.2020 is 7.75%. By adding 350 basis points, the Bank Rate as per Clause (7) of Regulation 3 of 2019 Tariff Regulations works out to 11.25% per annum.

11. It would be pertinent to mention in this context that the direction under section 107 stipulates requirements for reduced rate of LPS and that the LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment. Given that the Commission follows normative approach for the purpose of interest on working capital irrespective of the actual loan

taken by the generating company or the transmission licensee (reference clause (4) of Regulation 34 of the 2019 Tariff Regulations), the Commission is of the view that providing normative LPS rate would satisfy the requirements of direction under section 107 of the Act.

12. The Commission is vested with the power to relax any of the provisions of the 2019 Tariff Regulations on its own motion or on an application made by an interested person. Regulation 76 of the 2019 Tariff Regulations is extracted as under:

***“76. Power to Relax:** The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.”*

13. Keeping in view the directions issued by the Government of India under section 107 of the Act and to address the difficulties faced by the distribution companies (beneficiaries of the generating stations and long term customers of inter-State transmission systems) on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishments etc., the Commission in exercise of its powers under Regulation 76 of the 2019 Tariff Regulations relaxes the provisions of Regulation 59 of 2019 Tariff Regulations to provide that if any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falls between 24.03.2020 and 30.06.2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 12% per annum that translates into 1% per month.

14. It is clarified that if the period of 45 days beyond the due date of the presentation of the bill by the generating companies or inter-State transmission licensees, as the case may be, falls before 24.03.2020 or after 30.06.2020, the concerned distribution company shall be liable to pay the LPS as per Regulation 59 of the 2019 Tariff Regulations.

15. It is further clarified that the beneficiaries of the generating stations and long term customers of the inter-State transmission systems will continue to avail rebates under Regulation 58 of the 2019 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the timeline specified in the said regulations.

16. As per the directions issued under Section 107 of the Act, the generating companies whose tariff has been determined under Section 63 of the Act by this Commission, relief on the Late Payment Surcharge for payment which become delayed beyond 45 days (from the date of presentation of the bill) during the period from 24.03.2020 to 30.06.2020 may be claimed in terms of the force majeure provisions of the respective power purchase agreements (PPAs).

17. Similarly, in cases of inter-State transmission licensees whose tariff has been adopted under Section 63 of the Act by the Commission, Late Payment Surcharge shall be governed in accordance with the provisions of Transmission Service Agreements (TSAs) read with Central Electricity Regulatory Commission (Sharing of Transmission

Charges and Losses) Regulations, 2010 as amended from time to time and the procedures issued there-under.

18. Petition No.6/SM/2020 is disposed of in terms of the above.

Sd/-
(I S Jha)
Member

Sd/-
(P K Pujari)
Chairperson