

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri R. Krishnamoorthy, Member**

**Petition No. 55/2008  
along with IA No. 8/2008**

**In the matter of**

Default in payment of Unscheduled Interchange (UI) charges for the energy drawn in excess of the schedule,

**And in the matter of**

MP Power Trading Company Limited, Jabalpur                      ..... **Respondent**

**The following were present :**

None

**ORDER  
(DATE OF HEARING : 31.7.2008)**

After considering the report of the Executive Director (SO & NRLDC), PGCIL dated 24.3.2008 that the arrears of UI charges were outstanding against the respondent, among others, the Commission initiated suo motu proceedings for recovery of the outstanding dues. In the case of the respondent, an amount of Rs.197 crore was stated to be outstanding as on 24.3.2008, but the amount swelled to Rs.298.39 crore as on 30.4.2008.

2. On the above noted facts, it was proposed to recover the outstanding amount and by order dated 9.5.2008 a notice was issued to the respondent for recovery. The respondent, in its reply-affidavit dated 27.5.2008 explained that over-drawals from the grid were primarily because the State of Madhya Pradesh was facing acute shortage of power for the reason of outages of certain existing generating stations and delay in

commissioning of others. Further, delay in remission of UI charges was attributed to the acute financial crisis being faced by the respondent. The respondent stated that after arrival of the monsoon season, the demand for power in the State would come down as a result of which it would earn sufficient revenue during July to October 2008 to facilitate liquidation of UI dues.

3. On consideration of the reply of the respondent as contained in its affidavit dated 27.5.2008 and the fact that outstanding UI amount further grew to Rs.338.98 crore on 29.5.2008, the Commission, by order dated 4.6.2008, directed the respondent to take necessary action to liquidate the entire amount of UI arrears (principal) of Rs.338.98 crore in four equal monthly installments of Rs.85 crore per month starting from June 2008. The respondent was further directed to pay the interest on dues which got accumulated and remained outstanding till September 2008 in the month of October 2008. The respondent was also directed to make timely payment of current UI dues, if any, as per weekly UI statement issued by Western Regional Power Committee secretariat.

4. The respondent made an interlocutory application, being IA No.8/2008, praying for reconsideration and modification of the order dated 4.6.2008 and seeking permission for liquidation of outstanding dues, as on 30.6.2008 and interest thereon in four instalments during the months of July to October 2008, on the grounds similar to those given in its affidavit dated 27.5.2008 and alluded above, including its stringent financial state.

5. From the report dated 2.7.2008 of the General Manager, Western Regional Load Despatch Centre (WRLDC) furnished pursuant to the direction contained in the order dated 4.6.2008, it transpired that the respondent had not made any payment

during June 2008 in terms of the Commission's direction in the order dated 4.6.2008. Accordingly, the respondent was directed vide Commission's order dated 4.7.2008 to show cause as to why penalty under Section 142 of the Electricity Act, 2003 (hereinafter referred to as "the Act") for non-compliance of the directions of the Commission as per the order dated 4.6.2008, be not imposed on it and the matter was listed before the Commission on 31.7.2008, along with IA No.8/2008 filed by the respondent.

6. In the cause shown by the respondent vide its affidavit dated 23.7.2008, certain data has been placed on record, and it has been stated that after payment of an amount of Rs.52.41 crore on 24.7.2008, it has fully complied with the directions of the Commission. The respondent has accordingly prayed that no penal action be initiated against it. The details contained in the respondent's affidavit is given in the table hereunder:

S.No.	Particulars	Respondent's liability (Rs. in crore)
1	As per WRPC Website last updated on 18.7.2008	236.19
2	Credits received vide Bill No.WRPC/Comm-1/4/ABTUI/2008/6556 dated 22.7.2008	-15.36
	<b>Net payable (A)</b>	<b>220.83</b>
3	As per CERC's order dated 4.6.2008	
	Allowed to pay in Aug 2008	85.00
	Allowed to pay in Sept 2008	85.00
	<b>Total payable in Aug'08 &amp; Sept'08 (B)</b>	<b>170.00</b>
4.	Amount required to be paid in July 2008	50.83
	<b>C = (A - B)</b>	
5.	Amount paid in July 2008 to WRPC through RTGS	
	on 23.7.2008	44.31
	on 24.7.2008	8.10
	<b>Total Amount paid in July 2008 (D)</b>	<b>52.41</b>
<b>6</b>	<b>Balance to be paid in July 2008</b>	<b>Nil</b>
<b>7</b>	<b>Amount to be paid in Aug 2008 &amp; Sept 2008 (A-D)</b>	<b>168.42</b>

7. We note with great concern that at the hearing, none appeared on behalf of the respondent to assist the Commission. Therefore, we are taking a view on the show cause notice, based on available record.

8. Payment of UI charges is the consequence of implementation of ABT Scheme, in implementation of which Western Region took lead, and ABT was introduced in the Region with effect from 1.7.2002, considering its obvious merits. The Hon'ble Supreme Court in Central Power Distribution Company and others Vs Central Electricity Regulatory Commission and Another [(2007) 8 SCC 197] also took note that pre-ABT situation was seriously prejudicial to the public interest and observed that:

“ABT was introduced in regard to number of generating stations of NTPC and other Central Sector generating stations under the orders of CERC. Prior to the introduction of ABT, the fixed charges were payable by the purchasers based on the units of electricity actually drawn by them. The scheme of recovery of fixed charges based on drawal of electricity was not considered appropriate and rational particularly from the point of view of Grid safety and security. The scheme of fixed charges liability based on drawals allowed the purchasers of electricity to draw electricity from the Grid at their pleasure with no control. This led to the Grid frequency to vacillate from 48.5 Hz to 51.5 Hz, whereas Grid frequency was required to be maintained ideally at 50 Hz and at the most, it should be within optimum variations. The frequency exceeding the optimum variation was causing Grid collapse and blackouts in the entire region besides affecting the equipments of all generations, other electricity utilities and also the consumers. This has been a serious prejudice to public interest.”

9. The Hon'ble Supreme Court found that payment of UI charges contemplated in the ABT scheme, depending upon deviation from the schedule and grid conditions at the point of time of drawal, has been introduced “to bring about the effective discipline in the system” and that “the maintenance of Grid discipline envisaged under the Grid Code is regulated by the mechanism of ABT and UI charges”. The Hon'ble Supreme Court further noted that:

“11. It is thus clear from the above that UI charges are a commercial mechanism to maintain Grid discipline. UI charges penalise whosoever caused Grid indiscipline, whether generator (NTPC) or distributor, is subject to payment of UI charges who are not following the schedule. UI charges are not payable if the appellants maintain their drawal of electricity consistent with the schedule given by themselves. Therefore, there is no merit in the contention of the appellants that UI charges are by way of penalty.”

10. In the light of what has been observed by the Hon'ble Supreme Court, it needs no emphasis that timely payment of UI charges is a duty owed by every utility to other grid connected entities, since it contributes towards and induces grid discipline. Indiscriminate overdrawals by one utility of shares of another utility, accompanied by prolonged delays in making payment of UI charges indicate lack of adequate concern for other utilities whose share has been drawn.

11. From the facts available on record, it becomes crystal clear that the respondent has been over-drawing power recklessly, but without making payments for that, which resulted in accumulation of arrears to the extent of Rs.333.98 crore as on 29.5.2008. The respondent had not contemplated to make payments for the over-drawals resorted to by it till the onset of the monsoon. It appears that the respondent was foreseeing fall in demand and also earning UI through under-drawal by the arrival of monsoon season. It becomes apparent that the respondent intended to settle its UI account by adjusting UI charges to be earned in future. Even though the respondent has claimed that it has complied with the directions contained in the order dated 4.6.2008, by making payment during July 2008, the claim is far from the truth. It has not made any payment during June 2008 and made a payment of Rs.52.41 crore during July 2008 against the total amount of Rs.170 crore payable during these two months in accordance with order dated 4.6.2008. The Commission's order dated 4.6.2008 has a binding force and needs to be complied with, unless modified through appropriate judicial process. The financial stringency of the respondent cannot be considered as a mitigating factor to over-draw in the first instance and not make payments for that. These are the symptoms not only of grid indiscipline but also of financial indiscipline, when seen in the light of the fact that the respondent has earned revenue through sale of power over-drawn from the grid and this cannot be permitted.

12. Accordingly, from the facts on record, we are satisfied that the non-compliance of the Commission's directions by the respondent is willful and contumacious and hold it guilty on that count. Therefore, we direct imposition of a penalty of Rs.one lakh under Section 142 of the Act on the respondent.

13. Under Section 149 of the Act, the person incharge of and responsible for the conduct of business of the company guilty, as well as the company are deemed to be guilty of having committed the offence and such a person is also liable to be proceeded against and punished. Therefore, in exercise of power under Section 149 of the Act, we direct issuance of notice to Shri Pramod Vaishya, Managing Director of the respondent as to why the penalty of Rs.one lakh imposed on the respondent as aforesaid should not be recovered from him.

14. For the view we have taken, we do not find any force in support of the prayers made in IA No.8/2008 which accordingly stands dismissed.

15. List this petition on 12.8.2008 to hear Shri Pramod Vaishya, Managing Director of the respondent on the proposal contained in para 13 above.

**Sd/-**  
**(R. KRISHNAMOORTHY)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

**Sd/-**  
**(DR. PRAMOD DEO)**  
**CHAIRPERSON**

**New Delhi dated 5<sup>th</sup> August 2008**