

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 8/2009 (Suo-motu)

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member

DATE OF HEARING: 16.4.2009

DATE OF ORDER: 18.6.2010

In the matter of

Default in payment of Unscheduled Interchanges (UI) charges for the energy drawn in excess of the drawal schedule by Uttranchal Power Corporation Ltd.

And in the matter of

1. Uttranchal Power Corporation Ltd, Dehradun
 2. Shri S.Mohan Ram, Managing Director, Uttranchal Power Corporation Ltd, Dehradun
- ..Respondents**

Following were present:

1. Shri Shibasish Misha, Advocate for the respondent
2. Shri S.K.Mehta, UPCL
3. Shri T.Panda, UPCL
4. Shi Samara Lakra, NRLDC
5. Shri D.K.Jain, NRLDC
6. ShrinR.P.Agarwal, NRPC

ORDER

Northern Regional Load Despatch Centre (NRLDC) in its report dated 31.12.2008 submitted that a sum of Rs. 56.96 crore was outstanding against the first respondent on account of UI drawl as on 28.12.2008 as per details given hereunder:

(Rs. in crore

	Opening Balance	Current bills		Paid during the month	Disbursed to the constituent	Closing Balance
		Amount	Weeks			
July 2008	-0.90	10.34	11 to 13	9.72	3.58	3.30
August 2008	3.30	54.30	14 to 19	0.00	0.00	57.60
September 2008	57.60	27.02*	20 to 23	9.53	0.00	75.09
October 2008	75.09	-21.88	24 to 27	0.00	0.00	53.21
November 2008	53.21	-5.71	28 to 32	0.00	0.00	47.50
December 2008 (up to 8.12.2008)	47.50	12.94	33 to 36	3.48	0.00	56.96

* includes Rs. 1.14 crore of differential amount on account of revision and charges for weeks 20 to 23.

2. From the details furnished by NRLDC it transpired that the first respondent had, since July 2008 consistently defaulted in making payments and settling UI account. Considering the accumulation of arrears against the first respondent on account of UI charges as a matter of concern, the Commission, vide its order dated 9.1.2009, directed the first respondent to show cause, as to why action under Section 142 of the Electricity Act, 2003 (the Act) should not be taken against it for non-compliance of the provisions of the erstwhile Indian Electricity Grid Code (Grid Code), mandating timely payments of UI charges. Notice under Section 149 of the Act was also issued to the second respondent as the person in charge of and responsible for the conduct of business of the first respondent during the relevant period.

3. During the hearing on 17.2.2009 the learned counsel for first respondent submitted that payment of UI charges had been made and the first respondent was willing to pay interest for the late payment. The respondents

in their reply submitted that the first respondent was regularly making payment of bills received for over-drawl of power through UI till the period up to June 2008. Non payment from July 2008 was attributed to want of reconciliation of the accounts by NRLDC and it could not make full payment of bills for UI for the period from July to October 2008 due to cash flow problem.

4. Learned counsel for the first respondent also submitted that the respondent company had not deliberately delayed in payment of bills of UI charges. The track record of payment of UI charges for the period from December 2002 to March 2008 clearly justified its commitment and compliance of the UI regulations and provisions of law.

5. The learned counsel for the first respondent further submitted the following facts regarding non-payment/delay in the payment of interest :

(a)The respondent has received the interest charges due for the period from December, 2002 to March, 2004, on the delayed payment of UI under-drawal charges from the NRLDC in the year 2004.

(b)For the period from April, 2004 onwards the interest amount on this account has neither been paid nor credited to the respondent and thereby not adjusted against the UI

overdrawal charges. The interest amount due to the respondent is much more than the outstanding UI overdrawal charges.

(c) Such action on part of NRLDC amounts to complete violation of the provisions of IEGC. The respondent has prayed to issue directions to NRLDC for ensuring compliance of the provisions of IEGC and thereby give interest credits to the respondent on week to week basis for the last five years for the delays in payment of its UI under-drawals by NRLDC.

6. During the hearing of the case on 16.4.2009, the representative of the respondents highlighted that generally the first respondent was under-drawing from the grid and accordingly substantial amount was generally receivable by it. This remitted in accruing of interest on delayed payments made to the first respondent. According to him, interest receivable by the first respondent on account of delay in receipt of UI charges for the period from 2004-05 to 2008-09 had neither been paid nor was it adjusted against the UI charges payable by it. He further submitted that even up-to-date accounts of interest receivable were not made available. The representative of the respondent pointed out that payment to UI pool towards over-drawal while substantial amount was receivable from the pool by way of interest was objected to by the audit.

7. The representative of the Northern Regional Power Committee (NRPC) who was present at the hearing admitted that there was delay in computation of interest on delayed payment of UI charges. Assuring that the interest would be computed and communicated to all concerned on monthly basis in future, he expressed difficulty in making payment to the first respondent, unless the dues were realized by the pool. The Commission directed NRPC to submit the procedure for calculation of interest on delayed payment, which has since been submitted and is being separately examined by the Secretariat of the Commission.

8. NRPC vide its letter dated 1.5.2009 submitted the procedure and explained that interest payable and receivable for each constituent is calculated separately and net interest payable or receivable by that constituent is arrived at accordingly.

9. NRLDC vide its letter dated 11.2.2009 submitted that on account of payment made by the first respondent towards UI dues, the net outstanding against the respondent was reduced to 14.89 crore. as on 10.2.2009. As per the information given by NRLDC vide letter dated 18.3.2009, the outstanding UI amount was reduced to 14.70 crore. as on 17.3.2009. NRLDC has further intimated that Rs. 30.20 crore was outstanding against the first respondent as on 15.4.2009. The NRPC vide its letter dated 20.5.2009 has informed that a sum of Rs. 59.92 crore was receivable by the first respondent on account of

interest on delayed payment for the period from 2004-05 to 2007-08. Thus, a sum of Rs. 29.72 crore the net UI (principal + interest) was receivable as on 15.4.2009 on account of UI charges. Similarly as on 1.5.2009, the net receivable UI by the first respondent was 26.49 crore.

10. During the proceedings, the issue of procedure adopted by the RPCs for calculating the interest and the settlement of the dues came up for consideration. Action in this proceedings was withheld pending finalization of the larger issue of refinement of the procedure for calculating interest. It was noted that NRPC was maintaining separate accounts for principal UI and interest due to delay in payment of UI. The payment received under these separate accounts from the beneficiaries was also adjusted separately for the accounts, resulting in accumulation of interest dues due to non-payment of interest payable. Earlier there was no specific procedure in the regulations framed by the Commission to be followed for settlement of principal and interest dues on account of UI. To remove this difficulty, the Commission has amended the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 on 28. 4.2010, to make specific provision for sequence of settlement of the payment made in to the UI pool. The specific provisions are given below:

“9. Unscheduled Interchange Charges Accounting

- (1) *A statement of Unscheduled Interchange charges including Additional Unscheduled Interchange charges levied under these regulations shall be prepared by the Secretariat of the respective Regional Power Committee on weekly basis based on the data provided by the concerned RLDC and shall be issued to all constituents by Tuesday, for seven day period ending on the penultimate Sunday mid-night.*
- (2) *All payments on account of Unscheduled Interchange charges including Additional Unscheduled Interchange charges levied under these regulations and interest, if any, received for late payment shall be credited to the funds called the "Regional Unscheduled Interchange Pool Account Fund", which shall be maintained and operated by the concerned Regional Load Despatch Centres in each region in accordance with provisions of these regulations.*

Provided that the Commission may, by order, direct any other entity to operate and maintain the respective "Regional Unscheduled Interchange Pool Account Funds":

Provided further that separate books of accounts shall be maintained for the principal component and interest component of Unscheduled Interchange charges and Additional Unscheduled Interchange charges by the Secretariat of the respective Regional Power Committees.

- (3) *All payments received in the "Regional Unscheduled Interchange Pool Account Fund" of each region shall be appropriated in the following sequence:*
 - (a) First towards any cost or expense or other charges incurred on recovery of UI charges*
 - (b) Next towards over dues or penal interest, if applicable*
 - (c) Next towards normal interest*
 - (d) Lastly, towards UI and additional UI charges."*

11. As the general issue regarding modification of the procedure of calculation of interest on UI dues has been resolved, we proceed to take

up this issue for consideration by circulation. It is observed that the first respondent had made payment towards the principal UI after the show cause notice dated 9.1.2009 and reduced its liability. It was also to receive a much higher amount than payable on account of interest accrued resulting in net UI as receivable. It is apparent that the delay in settlement of the above dues is attributable to non-payment of interest by other constituents of the Region. We have no hesitation to conclude that in the above conspectus of factual position, there is a need to take a pragmatic view and desist from imposing any penalty on the respondent. Accordingly, we discharge the respondents from the notices issued.

12. During the proceedings of case, it was also noted that the calculation of interest was pending for a long period, due to which the settlement of receivable/payable amount due to interest on delayed payment could not be done. The first respondent had prayed to initiate action against NRLDC. During the hearing on 16.4.2009, the representative of the NRPC agreed that there had been some delay in computation of interest on delayed payment of UI charges. He assured that henceforth the interest would be computed and communicated to all concerned on monthly basis. He also submitted that huge amounts by way of surcharge were payable to the UI pool by some of the defaulting constituents of the region and hence it might not be possible to make payment to the first respondent, unless the dues were realized by the pool.

13. Keeping in view the submission made by Northern Regional Power Committee, no action is being taken against NRLDC. However, all the Regional Power Committees (RPCs) and Regional Load Despatch Centres (RLDCs) are directed to keep the calculation of interest due to delayed payment of UI dues, updated and ensure the settlement in accordance with the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009, amended from time to time.

14. Before parting, we wish to clarify that the view taken by us in the present case is based on facts circumstances pertaining to this case and should not be construed as tolerating any laxity on the part of State constituents in making timely payments to the UI pool account.

15. Accordingly, the proceedings started against the respondents vide the Commission`s order dated 9.1.2009 stand dropped.

Sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON