

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 213/MP/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 28.11.2011
Date of Order : 26.12.2011**

In the matter of

Miscellaneous petition under Regulation 25A of CERC (Open Access in Inter State Transmission Regulations, 2008 and Regulation 7(L) of CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 read with Regulation 111 of CERC (Conduct of Business) Regulations 1999 in the matter of non-payment of transmission charges by the beneficiaries to the petitioner.

And

In the matter of

Power Grid Corporation of India Ltd

.....**Petitioner**

V/s

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd., Bhubanewshwar
4. Damodar Valley Corporation, Calcutta
5. Power Department., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Itanagar
10. Power & Electricity Department., Govt. of Mizoram, Aizwal
11. Electricity Department, Govt. of Manipur, Imphal
12. Department of Power, Govt. of Nagaland, Kohima
13. Tripura State Electricity Corporation Ltd., Agartala
14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
16. Jaipur Vidyut Vitran Nigam Ltd., Jodhpur
17. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
18. Himachal Pradesh State Electricity Board, Shimla
19. Punjab State Electricity Board, Patiala
20. Haryana Power Purchase Centre, Panchkula

21. Power Development Department Govt. of Jammu & Kashmir, Jammu
22. Uttar Pradesh Power Corporation Ltd., Lucknow
23. Delhi Transco Ltd., New Delhi
24. Chandigarh Administration, Chandigarh
25. Uttarakhand Power Corporation Ltd, Dehradun
26. BSES Yamuna Power Ltd., New Delhi
27. BSES Rajdhani Power Ltd., New Delhi
28. North Delhi Power Ltd, New Delhi
29. NDMC, New Delhi
30. North Central Railway, Allahabad
31. Karnataka Power Transmission Corporation Ltd, Bangalore
32. Bangalore Electricity Supply Company Ltd. Bangalore
33. Gulbarga Electricity Supply Company Ltd., Gulbarga
34. Hubli Electricity Supply Company Ltd., Hubli
35. Mangalore Electricity Supply Company Ltd. Mangalore
36. Chamundeswari Electricity Supply Corporation Ltd, Mysore
37. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
38. Eastern Power Distribution Company of Andhra Pradesh Ltd., Visakhapatnam,
39. Southern Power Distribution Company of Andhra Pradesh Ltd., Tirupati
40. Central Power Distribution Company of Andhra Pradesh Ltd., Hyderabad
41. Northern Power Distribution Company of Andhra Pradesh Ltd., Warangal
42. Kerala State Electricity Board, Thiruvananthapuram
43. Tamil Nadu Electricity Board, Chennai
44. Electricity Department, Govt. of Pondicherry, Pondicherry
45. Electricity Department, Govt. of Goa, Panaji, Goa
46. Madhya Pradesh Trade Co., Jabalpur
47. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
48. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
49. Gujarat Urja Vikas Nigam Ltd., Baroda
50. Electricity Department, Administration of Daman & Diu, Daman
51. Electricity Department, Administration of Dadra Nagar Haveli, Silvassa
52. Chhattisgarh State Electricity Board, Raipur,
53. Powerlinks Transmission Ltd., New Delhi
54. Jaypee Powergrid Ltd., New Delhi
55. Reliance Power Transmission Ltd., Gurgaon
56. Lanco Kondapali Power Ltd., Hyderabad
57. M/s Torrent Power Generation Ltd. Surat
58. PTC India Ltd, Bhikaji Cama Palace, New Delhi
59. M/s Jindal Power Ltd., Gurgaon
60. M/s Heavy Water Board, Mumbai
61. M/s Adani Power Ltd., Ahmedabad
62. AD Hydro, Noida
63. Lanco Anpara Power Private Ltd., Gurgaon
64. Everest Power Private Ltd., New Delhi
65. Tamil Nadu Generation & Distribution Co, Chennai

..Respondents

The following were present:

1. Shri R.N. Nayak, PGCIL
2. Shri Rakesh Prasad, PGCIL
3. Shri T.S.P. Rao, PGCIL
4. Shri M.M Mondal, PGCIL
5. Shri S.S. Raju, PGCIL
6. Shri R.P. Padhi, PGCIL
7. Shri Arun Kumar, PGCIL
8. Shri N.K. Jain, PGCIL
9. Shri V.V. Sharma, NRLDC
10. Shri Rajiv Porwal, NRLDC

ORDER

This petition has been filed by Power Grid Corporation of India Limited seeking directions to (a) National Load Despatch Centre (NLDC) or Regional Load Despatch Centres (RLDC) not to grant open access for sale of electricity from entities and associates of such entities who have defaulted in payment of transmission charges to the petitioner till the outstanding dues are cleared (b) all the trading licensees not to enter into any transaction to purchase electricity from such entities and their associates. The petitioner has also sought appropriate directions and orders to remove difficulties of transmission licensees to effect the regulation of power supply by invoking Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 ensure that the beneficiaries have sufficient disincentive for not making payment by the due date.

2. It has been submitted that the petitioner has been raising bills and collecting transmission charges for its network as per Regulation 32 of the CERC (Terms and Conditions of Tariff) Regulations, 2009 and the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to "Sharing Regulations"). After notification of the Sharing Regulations, the petitioner has been entrusted with the responsibility of raising the bills and collection of PoC charges on behalf of all the ISTS Licensees and distribution of the collected transmission charges amongst the eligible ISTS licensees. The petitioner raised the first bills for the month of July 2011 in August 2011 and the bills for the months of August, September and October, 2011 have been raised in the subsequent months as per the methodology specified in the Sharing Regulations. The petitioner has further submitted that some of the beneficiaries are releasing only part payment or not paying at all, despite regular follow up and concerted efforts by the petitioner and allowing payment of previous dues in installments. Despite best efforts by the petitioner, the dues have not been liquidated by some of the beneficiaries.

3. The petitioner has further submitted that notices were issued to the defaulting entities for regulation of power supply as provided in Central Electricity Regulatory Commission (Regulation of Power Supply) Regulation, 2010 (hereinafter referred to as "power supply regulations") in the month of September and October 2011 to recover the dues considering the huge revenue requirements of the petitioner to meet investment obligations. These notices were subsequently withdrawn on receipt of some payments and on commitments to liquidate the balance dues shortly. These commitments were

either not honoured or partially honoured. The petitioner has also submitted that there are certain practical difficulties in operationalisation of power supply regulations and the difficulties given below need to be deliberated with all stake holders and resolved:

- (a) identifying the cheapest source of power supply
- (b) prior consultation with generators
- (c) estimating the price etc.
- (d) involvement of SLDC

4. As a consequence of non-payment of transmission charges, the outstanding amount has accumulated. As on 18.11.11, the outstanding dues of DICs, beyond 60 days has gone upto ₹ 45378 lakh and continuation of such trend would affect the financial health of not only the petitioner but all the ISTS licensees. To discourage the incidence of non-payment of transmission charges, Regulation 25A of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 as amended on 29.5.2009 (hereinafter referred to as "Open Access Regulations") provides as follows:-

"25A Short-term Open Access Not To Be Granted-

When so directed by the Commission, the National Load Despatch Centre or the Regional Load Despatch Centre, as the case may be, shall not grant short-term open access to entities and associates of such entities, who consistently and willfully default in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charges and fee and charges for National Load Despatch Centre or Regional Load Despatch Centre including the charges for the Unified Load Despatch and Communication Scheme."

5. The petitioner has further submitted that in addition to Regulation 25A of the Open Access Regulations, Regulation 7(1) of the Central Electricity Regulatory

Commission (Procedure Terms and Conditions for grant of trading license and other related matters) Regulations, 2009, (hereinafter "Trading Licence Regulations") provides as under:-

"The licensee shall not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional Load Centre or the Unified Load Despatch and communication Scheme or any other payment levied by the Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission."

6. The petitioner has requested for appropriate regulations or directions to all the beneficiaries to discharge their payment related obligations ahead of other regulated obligations, as the default in payment of such dues affects the grid operations. The Petitioner and other ISTS licensees cannot be expected to discharge their obligations without the full payment of dues by the beneficiaries. The beneficiaries should pay all the transmission related charges like transmission tariff, license fee, petition filing fee, publication expenses, forest lease charges, land lease charges, BCD charges (if any), RLDC fee and charges for POSOCO and Non-POSOCO assets etc. before paying any other regulated payment.

7. The petitioner has also requested for amendment of Regulation 25A of the Open Access Regulations so that the NLDC or RLDCs shall not grant short-term open access, including transactions through Power Exchanges to entities and its associates consistently and willfully defaulting in payment of transmission charges, UI charges etc, when so directed by the Commission. The petitioner has suggested that Regulation 7(1) of the Trading Licence Regulations should be amended to include that the licensees

shall not sell electricity to the entities their associates who default in payment of transmission charges etc.

8. During the hearing of the petition on 28.11.2011, Shri R N Nayak, CMD of the petitioner's company submitted that the total outstanding transmission charges is more than ₹ 1600 crore and out of this ₹ 678 crore are pending for more than 60 days. The petitioner is a listed company and its cash flow and debtor position is constantly being analysed by the lenders, credit rating agencies, investors, etc. It is obliged to maintain receivable not exceeding 3 months as per the agreements with the World Bank, ADB etc. and failure to do so will be considered as a default. He also submitted that out of 62 DICs, 21 DICs have defaulted in making payments, 3 have not opened LCs, 30 utilities have not signed TSA as required under PoC regime and 4 utilities (GRIDCO, Bihar, Maharashtra and West Bengal) have filed court cases.

9. Shri Nayak submitted that robust transmission is an enabler and fundamental building block for functioning of a competitive electricity market in India. Transmission is an indivisible, non-transferable and pooled public service. The common and collective service such as transmission, system operation, and deviation settlement etc are pooled and de-pooled. Default in payment of the pool has the propensity to disrupt the entire electricity sector. Therefore pool payment should have priority over one-to-one and bilateral settlement. He further submitted that a strong payment security mechanism has been one of the key success factors for short term open access mechanism and power

exchanges introduced by the Commission. He urged the Commission to issue suo motu directions to the concerned entities in case of default in payment of transmission charges and to authorize NLDC/RLDCs to deny short term open access and open access for collective transactions in the power exchanges to the defaulting DICs based on the payment due statement from CTU.

10. We have considered the submission of the petitioner. Non-payment of transmission charges or partial payment of transmission charges by the DICs for the transmission services availed by them is a matter of grave concern as it will sooner or later cripple the financial viability of the petitioner and other inter-State transmission licensees. It will bring to a standstill the entire regulatory mechanism which has been evolved and put in place in order to supply safe, reliable and quality power to the consumers and will act as a dampener to the investment in the transmission sector which the country needs keeping in view the power requirement in future. This Commission which has been vested with the function to regulate the inter-State transmission of electricity has the mandate of the Parliament to ensure that inter-State transmission is regulated in a smooth and efficient manner and is not crippled on account of non-payment or partial payment of transmission charges. We direct all DICs to make timely payment of transmission charges and other charges to the petitioner in accordance with the bills raised by the CTU. Our direction will not be applicable in the case of Odisha and West Bengal where the High Courts have allowed the DICs in those States to pay at the old rates till the disposal of the writ petitions.

11. We direct issue of notices to all respondents to file by 10.1.2012 their responses to this petition including their payment position of transmission charges as on 31.12.2011. Since invocation of Regulation 7(1) of the Trading Licence Regulations and Regulation 25A of the Open Access Regulations will affect the interests of inter-State traders and power exchanges, we direct the petitioner to implead them in this petition. The inter-State traders and the Power Exchanges may file their submission if any by 10.1.2012.

12. The petition shall be listed for hearing on 17.1.2012.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

sd/-
(Dr. Pramod Deo)
Chairperson