

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shi A.S.Bakshi, Member

Dr. M.K.Iyer, Member

Date of Hearing: 06.10.2015

Date of Order: 02.11.2015

Petition No. 17/SM/2014

In the matter of

Default in payment of Unscheduled interchanges (UI) charges/Deviation Settlement Charges for the energy drawn in excess of the drawal schedule by Uttar Pradesh Power Corporation Limited.

And

In the matter of

1. Uttar Pradesh Power Corporation Ltd,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 007
2. Chairman cum Managing Director,
Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,
Lucknow-226 007
3. Director (Finance)
Uttar Pradesh Power Corporation Ltd,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 007

..Respondents



Petition No. 155/MP/2015

In the matter of

Default in payment of Deviation Settlement Charges for the energy drawn in excess of the drawal schedule by Uttar Pradesh Power Corporation Limited and default in opening Letter of Credit towards the non-payment of deviation charges.

And

In the matter of

Northern Regional Load Despatch Centre
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwaria Sarai, New Delhi-110 016

...**Petitioner**

Vs.

Chairman cum Managing Director,
Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,
Lucknow-226 007

.....**Respondent**

Member-Secretary
Northern Regional Power Committee
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwaria Sarai, New Delhi-110 016

Proforma Respondent

The following were present:

Shri H.K. Chawla, NRLDC
Ms. Supriya Singh, NRLDC
Shri S.K.Agarwal, Director (Finance), UPPCL
Shri S.C.Srivastava, Advocate, UPPCL

ORDER

Petition No. 17/SM/2014

Northern Regional Load Despatch Centre (NRLDC) had reported that the net outstanding deviation settlement charges as on 8.10.2014 against UPPCL is ₹ 868.88 crore excluding the amount of ₹ 371.25 crore covered under the directions of the Hon'ble



High Court of Allahabad, in addition to ₹162.72 crore on account of interest thereon. Accordingly, the Commission vide order dated 22.12.2014 had observed and directed the Uttar Pradesh Power Corporation Ltd. as under:

“6. It is noted that during the hearing on 7.1.2014 in Petition No. 143/MP/2013, Shri S.K. Agarwal, Director (Finance), UPPCL had assured that all outstanding dues would be liquidated in equal monthly installments by 31.3.2014 and balance outstanding amount including current amount would be paid by 31.7.2014.

7. Despite the commitment of Director (Finance), UPPCL to liquidate the entire outstanding amount of UI and to pay the current UI charges/deviation settlement charges, UPPCL has not been honoured the commitment. The conduct of UPPCL including its Managing Director and Director (Finance) is in violation of the regulations of the Commission as well as order of the Commission.

8. In view of the above, the Commission *prima facie* is of the view that contravention of the regulations and order of the Commission has been committed and accordingly the respondents are directed to show cause, latest by 20.1.2015 as to why action under Section 142 of the Electricity Act, 2003 should not be taken against them for non-compliance of the provisions of the Deviation Settlement Regulations and the Commission's direction in regard to timely payment of UI/Deviation settlement charges.”

2. The matter was heard on 6.2.2015. During the hearing, Shri S.K. Agarwal, Director (Finance) submitted that pursuant to the Financial Restructuring Plan, UPPCL had made payment of ₹ 635 crore. However, entire outstanding UI charges could not be liquidated due to shortage of funds and proposed to make payment of ₹100 crore during the months of February and March 2015 and thereafter ₹200 crore every year starting from the month of April, 2015. Accordingly, UPPCL vide its affidavit dated 27.2.2015 submitted its payment plan of outstanding UI dues and interest thereon. In the next hearing on 16.4.2015, the representative of NRLDC submitted that as per the payment plan, UPPCL has liquidated ₹100 for the month of February and March 2015 on 27.3.2015 and for the month of April, 2015, ₹ 100 crore has been liquidated on 11.4.2015.

The representative of NRLDC further submitted that as on 15.4.2015, an amount of ₹586 crore including interest ₹25 crore is outstanding against UPPCL on account of Deviation charges. The Commission directed NRLDC to file separate petition in this regard. Accordingly, NRLDC filed petition seeking direction to UPPCL to pay deviation charges.

3. In the next hearing on 9.6.2015, learned counsel for UPPCL submitted that UPPCL is complying with the Commission's direction. Learned counsel further submitted that ₹185 crore has been paid for the month of May, 2015 on 3.6.2015 and for the month of June, payment would be made by 25.6.2015.

Petition No. 155/MP/2015

4. This petition has been filed by the Northern Regional Load Despatch Centre under Regulation 10 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (Deviation Settlement Regulations) for default in payment of Unscheduled Interchange (UI) and Deviation Charges in excess of the drawl schedule by the respondent, Everest Power Private Limited and default in opening Letter of Credit towards the non-payment of UI Charges and Deviation Charges.

. The petitioner has made the following prayers:

(a) Direct Respondent No. 1 to clear the outstanding dues of the total Deviation charges of Rs.637.28 crore due as on 27.4.2015 within the next 15 days;

(b) Direct Respondent No. 1 to pay interest as per Regulation 10.2 of the CERC (Deviation Settlement Mechanism and Related matters) Regulations, 2014 within the next 15 days;

(c) Direct Respondent No. 1 to open Letter of Credit as per the advice given by the petitioner with immediate effect;

(d) Direct Respondent No. 1 to pay the weekly bills of DSM charges being issued by the Respondent No. 2 (NRPC) on respondent in future, regularly within the stipulated period of 10 days of the issue of the Deviation Charges;

(e) Issue appropriate directions under Regulation 25A of the CERC (Open Access in inter-State Transmission) Regulations, 2008 and any amendment thereof;

(f) Take appropriate action against the Respondent under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014

(g) The Hon`ble Commission may pass any or such further order or orders as may be deemed just and proper in the facts and circumstances of this case.”

5. The petitioner has submitted that as per Regulation 10 of 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 in the previous financial year.

6. The petitioner has submitted that net outstanding dues as on 27.5.2015 against the respondent stood at ₹ 636.28 crore which included ₹25.25 crore interest. The petitioner has submitted that the issue of non-payment of UI/DSM charges by the respondent was discussed in the various meetings of NRPC and OCC. The petitioner has also submitted that the respondent is not liquidating the outstanding UI/DSM dues despite repeated requests.

7. The petitioner has submitted that the respondent has also not opened the LC as per

the provisions of Regulation 10 (4) of the Deviation Settlement Regulations which is clear cut violation of the said Regulations.

8. The matter was heard on 18.8.2015. During the hearing, the representative of the petitioner submitted that in the month of August 2015, UPPCL has paid ₹ 40 crore and during the last four months i.e. from April to August 2015 has deposited only ₹440 crore. The Commission directed the Director (Finance) of UPPCL to be present on the next date of hearing to apprise the Commission about the steps taken to liquidate the outstanding UI dues and deviation charges.

9. Both petitions (Petition Nos. 17/SM/2014 and 155/MP/2015) were heard on 6.10.2015. During the hearing, Shri S.K.Agarwal, Director (Finance) submitted that due to financial stringency, UPPCL could not liquidate the outstanding UI dues and deviation charges. Shri Agarwal assured the Commission that UPPCL will liquidate ₹100 crore every month towards outstanding UI and current dues. Shri Agarwal sought permission of the Commission to withdraw the affidavit dated 17.2.2015 in Petition No. 17/SM/2014 depositing of ₹200 crore per month and to file new affidavit for depositing of ₹100 crore per month towards outstanding UI dues/deviation charges. The Commission directed Shri Agarwal to file an affidavit in this regard.

10. Shri Agwaral, Director (Finance), UPPCL vide its affidavit dated 20.10.2015 has submitted as under:

“6. That an amount of Rs. 100 crore towards liquidation of the outstanding amount against UI charges/Deviation settlement charges against UPPCL will be deposited every month till the liquidation of the outstanding amount, starting from the month of October, 2015. An amount of Rs. 100 crore was deposited on 1.10.2015 for the

month of October, 2015. In addition, UPPCL will also deposit the amount payable for the current period towards UI charges/Deviation settlement charges.”

11. We have considered the affidavit filed by Shri S.K.Agarwal pursuant to our direction. Shri Agarwal has explained that on account of the financial situation of UPPCL, the outstanding UI dues/deviation charges could not be liquidated in time. Shri Agarwal has given a commitment to liquidate the outstanding amount against UI charges/deviation charges @ ₹100 crore per month in suppression of his earlier affidavit dated 17.2.2015 to liquidate ₹ 200 crore per month. We allow the request of Shri Agarwal and it is directed that UPPCL shall liquidate the outstanding UI/deviation charges @ ₹100 crore per month in addition to the current deviation settlement charges till the same is finally liquidated.

12. The petitioner has also requested to issue appropriate directions to the respondent to open the LC as per the Deviation Settlement Regulations. The petitioner has further prayed for issue of direction under Regulation 25A of Open Access Regulations and initiate action under Section 142 of the Act. We direct UPPCL to open the LC for required amount as per the Deviation Settlement Regulations within a period of 60 days from the date of issue of this order.

13. The Commission in its order dated 2.9.2015 in Petition No. 142/MP/2012 has directed as under:

“55. It is to be noted that while RPS Regulations can be invoked for default on the part of a regulated entity to pay the dues of generating companies and transmission licensees, Regulation 25A can be invoked for wilful and consistent default in paying UI/deviation charges, transmission charges, reactive energy charges, congestion charges, and fees and charges for NLDC/RLDCs. Therefore, only in case of default in payment of transmission charges, both Regulation 25A of Open Access Regulations and RPS Regulations can be invoked. In our view, when regulation of power supply under RPS

Regulations is resorted to for default in payment of transmission charges, Regulation 25A should be invariably invoked as otherwise the defaulting entity would defeat the regulation of power supply by scheduling under short term open access. Therefore, the „wilful and consistent“ default will be construed differently in both cases. **In our view, default in payment for a period of 90 days from the due date of payment of UI/deviation charges, transmission charges, reactive energy charges, congestion charges and RLDC fees and charges shall be considered as trigger point for invocation of Regulation 25A of Open Access Regulations to deny short term open access to the defaulting entity.** However, where a transmission licensee resorts to regulation of power supply, denial of open access under Regulation 25A of Open Access Regulations shall be triggered from the date of commencement of regulation of power supply under RPS Regulations. As regards the second issue as to whether NLDC/RLDCs will be required to approach the Commission for invoking Regulation 25A of Open Access Regulations on case to case basis, it is clarified that NLDC/RLDCs shall be guided by the principle of default trigger date as clarified above and shall not be required to approach the Commission for specific directions in this regard on case to case basis.”

In the light of the above directions, NRLDC is at liberty to invoke the provisions of Regulation 25A of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 if the default continues for a period of 90 days.

14. The petitioner has prayed for initiation of action under Section 142 of the Act against the respondent. In view of our direction in para 13 above, there is no requirement for taking action under Section 142 of the Act against UPPCL at this stage.

15. The petitions are disposed of in terms of the above.

Sd/-	sd/-	sd/-	sd/-
(Dr. M.K.Iyer) Member	(A.S.Bakshi) Member	(A.K.Singhal) Member	(Gireesh B.Pradhan) Chairperson