

# **Delhi Electricity Regulatory Commission**

**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17**

F.17(47)/Engg./DERC/2009-10/2147/

## **PETITION No. 09/2009**

**In the matter of : Unprecedented load shedding by BRPL in June, 2009 in Delhi and Show-Cause Notice dated 06.08.2009.**

**And**

**In the Matter of :**

1. M/s BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019.
2. Sh. Arun Kanchan,  
Chief Executive Officer,  
BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019.

**Coram :**

**Sh. Berjinder Singh, Chairman & Sh. Shyam Wadhera, Member.**

### **Appearance:**

1. Sh. V.P. Singh, Advocate on behalf of BRPL
2. Sh. Aashish Gupta, Advocate for BRPL,
3. Sh. Dushyant Manocha, Advocate for BRPL,
4. Sh. Antim Singh, Advocate for BRPL,
5. Sh. R.C. Natrajan, BSES,
6. Sh. Raj Arora, Head Legal, BRPL
7. Sh. P.R. Kumar, BSES
8. Sh. H.N. Mithram, HOD(SO), BRPL
9. Sh. Harsh Sharma, Addl. V.P. BRPL
10. Sh. Sunil Kakkar, DGM, BRPL
11. Sh. Mukesh Dadhich, Sr. Manager, BRPL,
12. Sh. Sai Krishna, Sr. Manager, BRPL
13. Sh. V. VenuGopal, DGM(SO), SLDC
14. Sh. Deepak Sharma, JE(SO), SLDC
15. Sh. B.D. Prasad, G.M. Comml. DTL
16. Sh. S.K. Sharma, A.M.(T), IPGCL/PPCL.
17. Sh. S.L. Diwan,
18. Er. S.K. Bhatia ,
19. Sh. S.R. Abrol,
20. Sh. Ved Kumar,
21. Sh. H.K. Awasthi,
22. Flt. Lt. (Retd.) I.D. Sharma,

23. Sh. Rajender Singh,
24. Sh. Jagdish Lal Munjal,
25. Sh. S.P. Mehra,
26. Sh. Sameer Nayyar,
27. Sh. K.K. Seth,
28. Lt. CDR Lekh Raj (Retd.),
29. Sh. Rajiv Kakria,
30. Sh. S.M. Anand,
31. Sh. H.R. Vaish,
32. Sh. Rajan Gupta,
33. Sh. Prakash Khattar,

### **ORDER**

(Date of Hearing: 25.9.2009)

(Date of Order: .10.2009)

1. In the month of June, 2009, unprecedented load shedding took place in the area serviced by BSES Rajdhani Power Ltd (BRPL). There was all round criticism of the power outages. Citizens groups as well as consumer activists lodged complaints against BRPL at different for a including the Government. The Public Grievance Cell of Govt. of Delhi was also flooded with complaints of load shedding in BRPL area. The Govt. also expressed concern over the extent of the problem. Appreciating the public sentiments on the issue, the Commission took suo moto cognizance of the media reports on the issue and all the three Discoms (i.e. BRPL, BYPL and NDPL) along with SLDC (State Load Despatch Centre) were directed by the Commission to explain full facts in this regard and furnish details about the load shedding done in various areas of Delhi in the month of June 2009. The Commission also directed them to appear before it for a hearing on 20.07.2009.
2. SLDC vide its letters dated 15.7.2009 & 16.7.2009 submitted information on load shedding resorted to by various Discoms on hourly basis for the month of June, 2009. A hearing was held in the Commission on 20.7.2009 wherein submissions were made by various stakeholders and also a presentation was made by SLDC on the load shedding by various Discoms in Delhi in June, 2009. From the facts brought out during the course of hearing it was clear that the three distribution companies had real time information from their SCADA systems and the website of DTL/SLDC, of their respective load shedding, overdrawal from the grid and grid frequency. The three distribution licensees put together claimed to have done total load shedding of 32.655 MUs on account of shortage of power, in June,09. However, out of the total load shedding of 32.655 MUs, as mentioned above, M/s BRPL alone had claimed to have done load shedding to the tune of 24.075 MUs which was considered by the Commission to be excessive and

unreasonable. It also became clear during these proceedings that the main reason for the extensive loadshedding by BRPL was that adequate power had not been arranged in advance. For meeting the shortage of power during summer, BRPL mainly depended on overdrawal from the Grid. However, in spite of BRPL making overdrawals from the Grid far in excess of that permitted under the Indian Electricity Grid Code (IEGC)/ Delhi Grid Code (DGC) and DERC orders, power proved to be inadequate resulting in extensive load shedding. Even when it was known that power was proving to be inadequate, BRPL did not make any serious effort to procure power on a day ahead basis from the power exchange even though power was available on the exchange. All this resulted in massive load shedding and serious inconvenience, discomfort and hardship to the consumers of BRPL area. The Govt. of Delhi which is the main custodian of public interest also expressed concern, time and again, on the issue of extensive load shedding during the month of June, 2009. In letter dated 03.08.2009, the Govt. of Delhi requested DERC "to examine the issue and if the deficiency of service is established (which appears to be the case) then exemplary and suitable penalty is imposed on the DISCOMS concerned."

3. Accordingly, a show cause notice dated 6.8.2009 was issued to BRPL to explain the reasons for the unprecedented load shedding and to show cause as to why action be not taken against them:
  - (i) As per the provisions of Section 142 of the Electricity Act for failure to maintain Grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/SGC provisions;
  - (ii) And Sh. Arun Kanchan, CEO for his failure to exercise due diligence which led to the unprecedented load shedding in the area of BRPL, under Section 149 of the Electricity Act;
  - (iii) As per the provisions of Section 24(1) of the Electricity Act, 2003 for suspension of distribution license.
4. Considering the seriousness of the issue, the Commission decided to hear the views of all stakeholders including the public. BRPL filed its reply to the Show Cause Notice vide its letter dated 13.08.2009. A copy of the same was sent to SLDC for verification of figures of load shedding, overdrawal from the grid in violation of the provisions of IEGC/SGC etc. and also offer its comments on other issues raised by BRPL and relating to SLDC. SLDC filed its reply through letter dated 22.09.2009, a copy of which was sent to BRPL for its comments.

5. BRPL submitted its reply in response to the show cause notice vide letter dated 13/08/2009. The gist of its submission is as under:
- a) that the Commission did not have the jurisdiction to initiate the present proceedings as per the provisions of Section 142 of the Electricity Act, 2003 for failure to maintain grid discipline and indulging in persistent overdrawal from the grid in violation of Indian Electricity Grid Code and Delhi Grid Code. The Commission did not have the jurisdiction to examine any violation of IEGC and Delhi Grid Code as the IEGC and DGC separately envisage a separate self contained procedure for compliance with the rules set out in the IEGC and DGC respectively. It is only when the mechanism under the Code fails, the matter is reported to the CERC and in the case of DGC when the mechanism under the Code fails, the matter is reported to DERC for appropriate action. Thus the provisions of the IEGC and DGC cannot be enforced by this Commission as it is not the appropriate Commission to do so in terms of IEGC and DGC respectively.
  - b) that the demand of electricity in its area rose to unprecedented levels in the month of June, 2009 as compared to the demand during the same period in previous years. The company, for the purpose of forecasting of its demand, relied heavily on the data from SLDC. The company made all efforts to arrange power as per SLDC projected demand in the month of June, 2009 which stood at 1754 MW. However, the actual unrestricted demand touched 1880 MW in its area of supply out of which BRPL was able to meet 1822 MW.
  - c) that the reasons for the shortfall in the availability of power were like non-availability of power from DVC and non supply of power from Uttarakhand Power Corporation Ltd. and RETL. RETL, on behalf of BRPL, had applied for open access for supply of 72 MW of round the clock power during June 09. However, the power could not reach BRPL because of transmission corridor constraints. Also, BRPL had entered into a banking arrangement with UPCL regarding supply of 143 MUs under which UPCL was under an obligation to return about 100 MW-200 MW of power to BRPL from 1.4.09. However, UPCL stopped the return of power after 17<sup>th</sup> June despite repeated request from BRPL and no power was returned by UPCL from 18<sup>th</sup> June to 24<sup>th</sup> June and on 28<sup>th</sup> June and 29<sup>th</sup> June. BRPL is claimed to have received only 25.7 MUs of power from UPCL against 72 MUs as envisaged in the agreement.
  - d) that it had also tied up with Rajasthan for supply of power in June 09. However Govt. of Rajasthan directed its SLDC for withdrawal of open access because of

scarcity of power in the State of Rajasthan which affected the power availability of BRPL.

- e) that there was unprecedented rise in temperature in the month of June, 2009 compared with the previous years and this coupled with lack of monsoon further disturbed the forecast of BRPL. Also peak demand sustained for a period of several days, further worsening the situation.
  - f) that the transmission constraint and the non availability of transmission corridors prevented the power coming to its periphery.
  - g) that the transformer failure at Mandola and the breakdowns in Nazafgarh grid resulted in non-supply in its area.
  - h) that they did not get the entire capacity allocated to them from the Central Generation stations as also the Delhi Generating stations due to forced outages at these generating stations.
  - i) that NDPL violated the provisions of Inter Discoms Transfer and did not return power to the respondent when it required and instead chose to bank power outside Delhi.
  - j) that load shedding in greater proportions was resorted to during DVB times.
  - k) that section 149 of the Act deals with the provisions by which the person in-charge of the company as well as the company are deemed to be guilty only when they have committed an offence which is punishable under law. Sections 135 to 141 and sections 146 and 150 deal with the offences under the Act and that the show cause notice of the Commission sets up no violation of said sections which can give rise to the offence. Hence no case can be made out against the company and the CEO.
  - l) that no case has been made out in the Show Cause Notice for any of the violations as set out therein and in absence of any violation there is no question of default as required under section 24(1) of the Act.
6. In its reply dated 22.09.2009 (copy enclosed as **ANNEX-1**)(and earlier letter dated 10.08.2009) SLDC submitted as under:
- i. that, BRPL recklessly over-drew electricity from the regional grid at frequency between 49.2 Hz & 49.5 Hz beyond its permissible limit and at frequency below

49.2 Hz during the month of June, 2009. SLDC compiled the block-wise & date-wise details of over-drawls by BRPL during the said period based on SEM readings which are given at **ANNEX 2&3**. SLDC's letter dated 10.8.2009 is placed at **ANNEX-4**.

- ii. That the time-block-wise data of over-drawl beyond specified limit by BRPL at frequency between 49.2 Hz & 49.5 Hz and overdrawl at frequency below 49.2 Hz during June 2009 revealed that BRPL over-drew from the regional grid during 672 time-blocks of 15 minutes each in violation of IEGC/DGC and the Commission's orders.
- iii. That with regard to the BRPL's reply dated 13.8.09 to the show cause notice :
  - a) with reference to point 12 of BRPL's submission, it is to mention that SLDC vide its numerous messages had advised all utilities including BRPL to restrict their drawal in view of prevailing low frequency at that time.

Indian Electricity Grid Code stipulations have to be adhered to by all Stakeholders in Power Sector. As far as low frequency is concerned, the stipulations are as under:

*"Provided that the States, through their SLDCs, shall always endeavour to restrict their net drawal from the grid to within their respective drawal schedules, whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.2 Hz, requisite load shedding shall be carried out in the concerned State(s) to curtail the over-drawal "*

The relevant provisions of Delhi Grid Code stipulates:-

"Users shall endeavour to restrict their actual drawal within their respective drawal schedules whenever the system frequency is below 49.5 Hz:

Provided that, in case of frequency falling below 49.0 Hz., the SLDC shall direct the concerned Users to effect manual load shedding to curtail over-drawal:

Provided further that such directions shall include the time period or the system conditions until which the issued directions shall be applicable.

In case of certain contingencies and/or threat to system security, the State Load Despatch Centre may direct Users to decrease their drawals and such Users shall act upon such directions immediately:

Provided that any non-compliance with such directions shall be dealt with as per provisions of Regulation 35 of these Regulations.

Users shall make arrangements that will enable manual disconnection to take place as instructed by the SLDC."

The licensees do know on real time basis overdrawal of the State as a whole and individual Distribution Licensee's overdrawal. In case, Delhi State as a whole overdraws beyond stipulation, the individual utilities have to curtail their overdrawal.

- b) with regard to point 30 – 41 of BRPL submission, it is to be stated that during the month of June 2009, out of the load shedding to the tune of 27MUs in BRPL, the load shedding due to shortage of power arrangement was 24MUs whereas the load shedding due to constraints in transmission system was only 1.2MUs. i.e. 0.1% of the total consumption of BRPL areas as per the details provided by the company. It is also to be noted that the load shedding in BRPL areas was predominately high during the period 19.06.2009 to 29.06.2009 which is evident from the data provided hereunder :-

Dates	Actual drawal (MUs)	Schedule Drawal (MUs)	OD (+) / UD (-) (MUs)	Shedding (Low freq / TTC Violation etc. due to non availability of power (MUs)	Transmission constraints in DTL (MUs)	Shedding due BRPL Constraints (MUs)	Total load shedding in BRPL area (MUs)	Total load shedding in %age of actual drawal %	Load shedding due to DTL constraints in % consumption of BRPL
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	29.204	36.544	-7.340	0.000	0.000	0.096	0.096	0	0.0
2	32.544	35.035	-2.491	0.000	0.000	0.012	0.012	0	0.0
3	34.343	35.064	-0.722	0.000	0.000	0.025	0.025	0	0.0
4	34.691	34.115	0.576	0.114	0.087	0.131	0.332	1	0.3
5	35.933	34.243	1.690	0.035	0.026	0.172	0.233	1	0.1
6	34.311	36.886	0.000	0.224	0.000	0.257	0.481	1	0.0
7	31.521	36.808	-5.287	0.118	0.000	0.032	0.150	0	0.0
8	33.344	37.831	-4.487	0.000	0.000	0.000	0.000	0	0.0
9	33.661	36.891	-3.230	0.067	0.000	0.002	0.069	0	0.0
10	32.060	35.343	-3.283	0.148	0.000	0.424	0.572	2	0.0
11	32.391	33.851	-1.460	0.223	0.000	0.218	0.441	1	0.0
12	32.921	33.976	-1.055	0.085	0.231	0.000	0.316	1	0.7
13	32.782	35.007	-2.225	0.000	0.036	0.000	0.036	0	0.1
14	30.204	33.282	-3.078	0.000	0.000	0.000	0.000	0	0.0
15	33.669	35.382	-1.713	0.000	0.000	0.021	0.021	0	0.0
16	31.379	33.173	-1.794	0.004	0.062	0.069	0.135	0	0.2
17	33.513	35.007	-1.495	0.334	0.000	0.004	0.338	1	0.0
18	32.581	32.355	0.225	0.590	0.000	0.000	0.590	2	0.0
19	32.011	32.097	-0.086	2.574	0.000	0.005	2.579	8	0.0
20	35.828	32.027	3.801	0.382	0.000	0.030	0.412	1	0.0

21	32.155	32.954	-0.798	0.295	0.094	0.040	0.429	1	0.3
22	33.994	31.892	2.102	2.917	0.000	0.000	2.917	9	0.0
23	35.864	33.391	2.473	2.990	0.000	0.035	3.025	8	0.0
24	36.323	33.624	2.699	2.535	0.000	0.017	2.552	7	0.0
25	36.209	33.133	3.076	3.534	0.000	0.040	3.574	10	0.0
26	36.673	33.925	2.748	2.964	0.000	0.023	2.987	8	0.0
27	38.177	33.397	4.780	2.060	0.192	0.000	2.252	6	0.5
28	37.116	33.204	3.911	1.016	0.475	0.007	1.498	4	1.3
29	39.478	34.525	4.952	0.629	0.020	0.026	0.675	2	0.1
30	37.455	34.825	2.630	0.218	0.020	0.000	0.238	1	0.1
<b>Total</b>	<b>1022.333</b>	<b>1029.788</b>	<b>-4.880</b>	<b>24.056</b>	<b>1.243</b>	<b>1.686</b>	<b>26.985</b>	<b>3</b>	<b>0.1</b>

c) it is pertinent to note that the Power Exchanges are especially created for meeting such eventualities like the spikes in demand etc. that occurred during the period 19.06.2009 to 29.06.2009 (during the crisis period during June 2009). The other states in Northern Region could muster much more Power to reduce load shedding in states. It is to add that once the Power enters into Northern Region, there is no crisis to reach the individual states and discoms. The details of power purchased by other states in northern region from the power exchanges vis-à-vis Delhi utilities for the month of June 2009 are given hereunder :-

Date	Details of energy imported by the States in Northern Region through IEX in MUs	Power purchased by Delhi discoms from IEX in MUs				
		BRPL	BYPL	NDPL	NDMC	Total
1	0	0	0	0	0	0
2	0	0	0	0	0	0
3	0.23096	0	0	0.23096	0	0.23096
4	0.16	0.16	0	0	0	0.16
5	0	0	0	0	0	0
6	4.4332	0	0	0	0	0
7	6.5797	0	0	0	0	0
8	7.2006	0	0	0	0	0
9	7.2916	0	0	0.0916	0	0.0916
10	10.4098	0	0	0	0	0
11	11.17043	0	0	0	0	0
12	7.1908	0	0	0	0	0
13	8.01129	0	0	0	0	0
14	13.1775	0	0	0	0	0



15	10.27993	0	0	0	0	0
16	11.9525	0	0	0	0	0
17	0.983	0	0	0.983	0	0.983
18	11.8978	0	0	0.05	0	0.05
19	7.5056	0	0	0	0	0
20	12.4338	0	0	0.04	0	0.04
21	19.0565	0	0	0	0	0
22	16.1131	0	0	0	0	0
23	15.6286	0	0	0	0	0
24	13.7273	0	0	0	0	0
25	16.15265	0	0	0	0.0328	0.0328
26	18.11796	0	0	0	0	0
27	24.74931	0	0	0	0	0
28	15.0968	0	0	0	0	0
29	18.5847	0	0	0	0	0
30	13.9245	0	0	0	0	0
<b>Total</b>	<b>302.05993</b>	<b>0.16</b>	<b>0</b>	<b>1.1646</b>	<b>0.0328</b>	<b>1.3574</b>

The above data clearly disproves the utility's claim that transmission corridor constraints and constraints in STU's system, prevented them to bring needed power to Delhi.

- d) with regard to point 42-43 of the submissions regarding sale of surplus power by NDPL, it is once again reiterated that as per scheduling methodology of surplus capacity by virtue of allocation, it can not be traded by a utility in any form i.e. either through banking or through direct sale. As per the scheduling methodology, the actual demand of utility as per the SEM data is compared with that of availability arising out of allocation out of Central Sector Stations and State Generating Stations for inter discom transfer of surplus power by virtue of allocation.
- e) with regard to point-52 of the submissions, the utility's stand is not as per the aim of Reforms undertaken in Power Sector in Delhi. The basic aim of Power Reforms undertaken in Delhi was to reform the power sector in all aspects including power supply position. As such, the utility can not escape by merely saying that the load shedding was not unprecedented and had been occurring in pre reform time also.
- f) with regard to point 48-51 of the submission, it is a well known fact that in the present scenario, Delhi's power requirement can not be met through availability from Generating Stations within Delhi and allocation from Central Sector Stations. It is the prime responsibility of distribution licensees to make good the shortages by way of

entering into bilateral arrangements with surplus states / maximum use of day ahead power market such as power exchanges etc. The allocation from unallocated quota is not the right of any constituent. Even when, the country as a whole was reeling under severe power crisis due to drought like situation, the Central Govt. has come to the rescue of Delhi by allocating additional 6% allocation from unallocated quota amounting about 100Mw power during morning and evening peak hours from 29.06.2009 to 29.07.2009.

- g) as far as demand projections are concerned, occasional vast deviation can not be ruled out due to abnormal weather conditions. It is the responsibility of Distribution Licensees to arrange sufficient power on day to day basis depending upon the weather conditions and using the day ahead market available in Power Sector i.e. Power Exchanges etc. At the Government level, Secretary (Power) GNCTD, in the weekly review meeting has been regularly advising the licensees to arrange sufficient power to avert crisis.

7. In preparation for the public hearing, gist of the Show Cause Notice dated 6.8.2009 and copies of reply of BRPL dated 13.08.2009 were sent to all Stakeholders including consumer representatives. The public hearing was held on 25.09.2009. During the hearing, the consumer representatives submitted as under:

- i) Shri G.M. Chopra, Senior Citizens' Forum, Greater Kailash-II, New Delhi has emphasized upon the sharing of responsibility both by consumers as well as Discoms in dealing with the menace of load shedding.
- ii) Sh. Rajiv Kakria, Chairman, E-Block, Resident Welfare Society, GK-I submitted that Delhi Govt. being a shareholder is the bigger culprit in the malfunctioning of Discoms. He also took strong exception to the BRPL plea that DERC does not have power for conducting such a hearing. He emphasized upon bringing in of competition in the Electricity Distribution System in Delhi to avoid any monopoly such as being resorted to by BRPL. He also questioned BRPL's power purchase estimates and asked DERC to levy penalty of at least 10 times for its recent act of load shedding and suggested that it should leave the distribution business in Delhi and hand it over to the Government.
- iii) Sh. H.R. Vaish, Convenor, Citizen Alliance for Promotion of Responsive Governance, Malviya Nagar emphasized that the consumers should get uninterrupted quality power from BRPL or otherwise it should leave the distribution business in Delhi. He also submitted that there was a huge variation in the figures

of load shedding reported by BRPL and that the same should be verified from an agency like DTL. He also criticized the inability of BRPL to handle the marginal increase in power demand and also asked the DERC to probe its equipment purchased at exorbitant costs.

- iv) Shri H.K. Awasthi, from VOICE Society requested the Commission to examine the wrong doings of BRPL. He also pointed out that it is the sole responsibility of BRPL for making sufficient power available for its consumers and that it should not pass on the buck to others. He criticized the arrogant attitude of the BRPL and the plea of BRPL in comparing the power scenario in DVB times which is irrelevant.
- v) Lt. Cdr. Lekhraj(Retd.) from Civil Supplies CGHS, Dwarka submitted that the power situation in their area was quite grave in June. He also informed that there was an increase of load shedding to the tune of 5-12 times in the month of June and shedding ranged from 15-16 hrs. He also submitted that the number of break downs have increased multiple times and no satisfactory response is given by BRPL for its grievances. He asked the Commission that in view of the worsening situation, BRPL should be penalized heavily.
- vi) Flt. Lt. (Retd.) I. D. Sharma, General Secretary, Arjun Nagar House Owner's Welfare Association, informed that there was a meeting held on 26.6.09 along with CEO of BSES with Chief Minister of Delhi where the massive load shedding was brought to the knowledge of all concerned. He informed that area like Safdarjung Enclave faced load shedding for about 9 hrs. and no satisfactory reply was received from BRPL. He informed that the consumers of the area were fed up with BRPL and stringent action should be taken by DERC against BRPL. He also said that BRPL's plea on DERC's non-jurisdiction on the current issue as mentioned in its reply to show cause notice is unfortunate.
- vii) Shri S.L. Diwan, Greater Kailash-II submitted that monopoly of any Discom should be removed and informed that there were lot of problems in its area including that of inflated billings. He informed that the consumers were suffering heavily on account of load shedding and the bungling by BSES should be investigated by third party like CBI and the distribution business should be brought back under Delhi Govt.
- viii) Shri Jagdish Lal Munjal & Shri S.P. Mehra from Greater Kailash-III submitted that the whole purpose of privatization has been defeated by company like BRPL. A load shedding to the tune of 70% is shocking and its comparison with DVB times is totally out of place. They also further submitted that BSES is making profits at the

cost of consumers and also suggested that they should not continue as a licensee and should leave the distribution business in Delhi. Theft of electricity was taking place with the connivance of staff of BRPL and offenders in this regard are not penalized.

- ix) Shri Sameer Nayyar, Secretary, Delhi Factory Owner's Federation submitted that load shedding as a whole affected the industry which is already reeling under heavy recession. There was no proper planning by BSES which has resulted in such an inconvenience to the industry. He asked the Commission to take suitable action against the BSES.
  - x) Shri K.K. Seth from Udyog Nagar Factory Association, emphasized upon the energy audit to be done even in '0%' loss areas and informed that heavy load shedding was being done in such areas. He also suggested for proper education of RWAs by Discoms.
  - xi) Shri Sarabjit Roy from Defence colony informed that there was regular power cut of 7-8 hrs. in Dwarka and BSES helpline was not working at all. Even the cell numbers of Senior Officers of BRPL were normally switched off. He also submitted that on certain occasions, power could not be made available to the consumers despite its availability because of the breakdown in the distribution network of BRPL. He also informed the poor condition of the distribution network of BRPL despite huge Capex allowed to BRPL.
  - xii) Shri S.K. Bhatia (MIE) from Subhash Nagar suggested that all kind of power purchases should be made by Govt. with the ceiling price so that the BSES is not left with any excuse for procurement of power.
  - xiii) Shri Rajinder Singh Solanki from Delhi Gram Sudhar Mahasabha, Narayana Village brought to the knowledge the massive load shedding being faced by a number of villages in BRPL area and informed that the people in villages in BRPL area were fed up with the working of BRPL and wanted them out from Delhi.
8. During Public Hearing, Sh. V.P. Singh, Advocate appeared on behalf of BRPL. He generally reiterated the stand taken by BRPL in its aforementioned reply dated 13.08.2009. During the course of hearing, BRPL's Advocate Sh. V P Singh sought permission from the Commission to put forth his arguments in writing. The Commission granted this prayer of Sh V P Singh. A written submission dated 29 Sept 2009 was filed accordingly by BRPL. The gist of main submissions made on behalf of BRPL during the course of Public Hearing and in its reply dated 29.9.2009 is as under :

- i) The Commission does not have the jurisdiction to initiate the present proceedings because the appropriate authority exercising jurisdiction in matters relating to non-compliance of IEGC provisions is the CERC.
- ii) BRPL has duly complied with the messages received from SLDC and RLDC.
- iii) In the Show Cause Notice no case for any specific violation has been made out.
- iv) It was for the first time during the course of Public Hearing that the Commission required BRPL to respond to specific instances of Grid indiscipline which amounted to the expansion of the scope of Show Cause Notice which is un-permissible in law.
- v) Every Discom in Delhi had over drawn from the Grid during the month of June, 2009 and the Commission should call for the data from other Discoms also. An action solely against BRPL would amount to BRPL only being held responsible for the over drawl by the Delhi sector as a whole whereas other utilities in Delhi sector are equally responsible for any Grid indiscipline.

## 9. **Commission's views/findings**

### a) **Regarding violations under sections 142 & 149**

- (i) Regarding the jurisdiction issue raised by BRPL, the Commission has examined Section 142 of the Electricity Act, 2003 which says that:

*In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.*

- (ii) It is clear from the above that whenever there is any violation of the provisions of this Act or the Rules or Regulations made thereunder or any direction issued by

the Commission, section 142 gives jurisdiction to the Commission to impose penalty after giving such person an opportunity of being heard in the matter.

- (iii) The violation of grid discipline has to be seen in the light of various provisions of Delhi grid code. The Delhi Grid Code (State Grid Code) specified by the Commission in exercise of powers under Section 181 of the Electricity Act, 2003 (the Act), as applicable from 31.3.2008, lays down at para 24 that the users shall endeavor to restrict their net drawl from the grid to their respective drawl schedule whenever the system frequency is below 49.5 Hz. However, manual load shedding shall be carried out to curtail over-drawl when the grid frequency falls below 49 Hz. The limit of 49.0 Hz. was modified to 49.2 Hz in IEGC vide amendment dated 30.3.2009 and the same is applicable under DGC as well.
- (iv) CERC brought out a regulation dated 30.03.09 on UI charges & related matters which came into force on 01.04.09. Regulation 7 of these regulations provided a limit on UI volume and consequences of crossing these limits.
- (v) In synchronism with the modifications effected by CERC, DERC also issued an order dated 21.4.2009 about the mechanism for UI charges for the Intra State system in Delhi & laid down the limits of overdrawl by various constituents for the purpose of calculation of UI charges and also for invoking of penal provisions. Paras 2 & 3 of the said order are reproduced below:

*“The Commission has examined the above notification. The Commission is of the view that there is a necessity to modify the UI charges for the Intra-State System of Delhi to be in synchronism with the modification effected by the CERC, as otherwise, there could be mismatches in the UI charges payable/receivable from the regional pool and the UI charges payable/receivable from the Intra-State pool. To minimize any such mismatches, the Commission hereby decides to adopt the unscheduled inter-change charges, additional unscheduled inter-state Charges as notified by the CERC. Accordingly, the limits on over-drawal by the beneficiaries shall be as follows:*

S.No.	Name of the Utility	Over drawal		
		% of its scheduled drawal	MW	3% on daily aggregate basis
1.	BRPL	12%	57	3%
2.	NDPL	12%	38	3%
3.	BYPL	12%	35	3%
4.	NDMC	12%	17	3%
5.	MES	12%	3	3%
<b>TOTAL</b>			<b>150</b>	

*All the above limits shall be applicable simultaneously and for the purpose of calculation of UI charges, additional UI charges and invoking of penal provisions as per the Act/Rules/Regulation/ orders/IEGC/State Grid Code,*

*the least of the three parameters indicated in the above table shall be considered."*

- (vi) The overdrawals done in violation of the State Grid Code and the particulars of overdrawals have been in the knowledge of BRPL in real time from its own SCADA system and the website of DTL/SLDC. SLDC vide its numerous messages has been asking all utilities including BRPL to restrict their drawal whenever the frequency was below 49.5/49.2 Hz.
- (vii) From the submissions of various stakeholders, it is evident that there was massive load shedding in BRPL's area in the month of June, 09 and people had to suffer inconvenience and harassment on that account in the sweltering heat of June 09. The Commission also notes the grave resentment expressed by various public representatives against the massive load shedding & the unconcerned attitude of BRPL.
- (viii) BRPL has justified its stand by only stating that it made all efforts but due to unavoidable circumstances it had to over draw from the Grid. The Commission feels that the reasons for over drawl narrated by BRPL cannot justify the eating into other constituents' share in the region by overdrawing from the Grid and that too when the frequency was low, thereby endangering the Grid in violation of the provisions of the Grid Code.
- (ix) BRPL is expected to take all necessary steps to arrange sufficient power well in advance in its area of supply considering all eventualities and to avoid over drawl from the grid when the frequency is below 49.5 Hz. A responsible distribution utility is supposed to have a proper contingency plan and cannot act irresponsibly endangering Grid safety and appropriating to itself the share of other constituents.
- (x) Further, referring to the SLDC's reply dated 22.9.09, it is evident that the SLDC has been continuously reminding the Utilities of the precarious position of the grid through its various messages addressed to them.
- (xi) The Commission also during various meetings with the respondent had been consistently and continuously reminding the respondent to arrange sufficient power to meet the demand in its area of supply for the summer. The CEO of BRPL had been repeatedly informed in various meetings by the Chairman of the Commission himself that BBC's long term weather forecast had predicted a very severe summer 2009 and therefore adequate power arrangements be made for the summer. CEO BRPL had been assuring the Commission that the

needful had been and would be done. Instead of arranging adequate power in advance, BRPL chose to rely mainly on overdrawals from the Grid as a source of power. The excessive overdrawals of BRPL were in violation of the Delhi Grid Code and endangered Grid safety. Even then the power did not prove adequate and BRPL had to resort to massive load shedding.

(xii) BRPL in its reply has no doubt pointed out certain measures to meet the situation of shortage of power. However in the light of the situation that emerged, the Commission feels that the measures taken were inadequate, insufficient and ineffective. It is also observed that the banking arrangements were carelessly executed by BRPL as these did not have a penalty clause for non supply. The power from DVC was on a best effort basis only and could not have been depended upon too much.

(xiii) Also, the contention of BRPL that NDPL did not offer power in Inter Discom Transfer is correctly refuted by SLDC in its reply dated 22.9.2009 that no such violation was resorted to by NDPL. There is no way that power purchased by NDPL in inter-DISCOM transfer, at regulated rate, could have been sold or banked outside Delhi. It would be against the laid down procedure and SLDC would not allow it. BRPL has totally failed to prove any violation on the part of NDPL.

(xiv) It is also observed that significant power was available through Energy Exchange and even though other constituents in Northern region could arrange power from it, BRPL did not care to arrange power from the energy exchange even as a last resort when other arrangements had failed. BRPL simply chose to overdraw from the Grid in utter violation of the Grid Code. Even that proved totally inadequate as the shortage was much too large.

(xv) Further the contention of BRPL that it relied upon the estimates of SLDC has no merit as BRPL failed to arrange power even to the extent of SLDC's projection as is evident from the submissions made by SLDC. Also, the whole and sole responsibility to arrange power in its area of supply lies with the respondent only as per various provision of the Act, Regulations & Grid Code, a fact underlined by SLDC also. If the utility chooses to rely on a wrong projection made by some agency, the responsibility is of the utility only.

(xvi) M/s. BRPL has raised a technical objection by stating that the Commission is widening the scope of Show Cause Notice by asking them to respond to



specific instances of Grid violation pointed out by SLDC. This objection is untenable because original Show Cause Notice has been issued specifically for failure to maintain Grid discipline and instances of Grid indiscipline are in the knowledge of the DISCOMS in real time from their own SCADA systems and the website of DTL/SLDC. BRPL cannot, therefore, claim lack of knowledge about it. This issue also came up during the hearing before the Commission on 20.07.2009 as mentioned in para-2 above. When full facts regarding the violations of grid discipline were in the knowledge of BRPL and these were also discussed in the hearing before the Commission on 20.07.2009, which formed the basis for issuing the instant show cause notice, there can be no question of expanding the scope of the show cause notice.

(xvii) Additionally, M/s BRPL has also mentioned that there are other distribution licensees of Delhi who have also indulged in Grid violation and overdrawal during the same period and only they are being singled out as per the Show Cause Notice. There is no merit in this argument as M/s. BRPL has to answer for its acts of omission and commission and it is not for them to raise issues that other players in the Sector are also indulging in violation of Grid Code. Violation of Grid Code by other DISCOMS in Delhi is a separate issue altogether and the Commission may take appropriate action as and when considered necessary. The reasons why, for the present, only BRPL is being proceeded against, are clearly mentioned in paras 2 & 3 above.

(xviii) In the light of the above discussions, the Commission holds BRPL guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC.

(xix) Regarding the question of penalty that may be imposed on BRPL in the present proceedings, the instances of over draws are as many as 345 at frequency between 49.2 Hz. & 49.5 Hz. when the respondent was over drawing beyond its permissible limit of 57 MW as given in **ANNEX-2**. The other 327 nos. of instances when the respondent was over drawing at frequency below 49.2 Hz. are contained in Annexure-3 attached to this order. Section 142 of the Act

empowers the Commission to impose a penalty not exceeding Rs. 1.00 lakh for each such contravention. The Commission is of the view that the circumstances warrant and justify that penalties be imposed on BRPL for each contravention at frequency between 49.2 and 49.5 when it was over drawing beyond its permissible limit of 57 MW for each time block of 15 Mins. and also overdrawing of any kind when the frequency was below 49.2 Hz. as it endangered the grid security and stability. The overall conduct of BRPL & its CEO is one of utter disregard of their duties including their duty to maintain Grid Discipline. The discussion made in the foregoing paragraphs clearly indicate that BRPL overdrew from the Grid in violation of IEGC/DGC provisions and knowingly endangered Grid safety & security. BRPL did not arrange adequate power as per its requirement and depended on the Grid as a source of power and overdrew recklessly in violation of the IEGC/DGC rules despite repeated messages from SLDC of various types, namely, A, B & C. It is also clear that BRPL and its CEO did not care to arrange power from the power Exchange even though other Northern States were making extensive purchases in the power Exchange. It will not be out of place to mention that all power purchase cost is a pass through in the ARR and thus there was no constraint of any type in procuring power from the power exchange in case regular arrangement for procuring power had not materialized. The total apathy displayed by the BRPL towards its duties as enjoined upon it under the Act, IEGC/DGC rules and also under various directions/orders of the Commission makes it a fit case for imposition of penalty for each violation of 15 minutes time block. However, this being the first proceeding of its kind against the Respondent (although violations have been taking place earlier also), the Commission is taking a lenient view of the matter and is restricting the quantum of penalty to Rs.25,000/- for each violation of time block of 15 minutes.

As per CERC Regulation on UI charges dated 30.03.09, definition of time block given at 2(n) on page 3 specifies that the time block means the block of 15 minutes for which specified electrical parameters and quantities are recorded.

DERC in its order dated 21.04.2009 has further specified the overdrawl limits in time block of 15 minutes for Utilities in Delhi and has further stated that these limits would be applicable for the purpose of calculation of various charges and for invoking of penal provisions.

Also CERC has imposed penalty of Rs.1 lakh for each contravention of overdrawl during 15 minutes time block in its orders in the cases against AP Transco, Tamil Nadu Electricity Board, Karnataka Power Transmission Corporation Ltd. etc.

(xx) Accordingly, the Commission is satisfied that penalty of Rs.25,000/- for each of these 672 violations shall meet the ends of justice. The Commission directs accordingly. Thus for the 672 contraventions, BRPL shall pay a total penalty of Rs.1,68,00,000 @ Rs. 0.25 lakh for each contravention. The penalty shall be deposited with the Commission latest by 15.11.2009.

(xxi) In terms of sub-section (1) of section 149 of the Act, where an offence under the Act has been committed by the Company, every person who at the time the offence was committed, was in-charge and was responsible to the company for the Conduct of its business as well as the company, are deemed to be guilty of the offence committed and such person is liable to be proceeded against and punished accordingly.

(xxii) After considering the evidence/arguments placed before it, the Commission holds that the CEO of BRPL is responsible for management and affairs of BRPL. Section 146 of EA 2003 reads as under :

***“Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:***

***[provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121]”***

(xxiii) From the above, It is clear that the CEO, BRPL has violated the directions of the Commission and provisions of the Delhi Grid Code. Such violations constitute an offence within the meaning of Section 146 of EA. 2003. Therefore, the provisions of section 149 are attracted. From the facts placed on record, it is obvious that the CEO of BRPL made no effort for curtailment of over drawl during the period in question at frequency below 49.5 hz. Under these circumstances, it can not be said that non compliance of the grid code was committed by BRPL without the knowledge of its CEO or that the CEO exercised due diligence to ensure compliance of the provisions of the Delhi Grid Code.

(xxiv) The offence of contravention of provisions of grid code against BRPL is established as already discussed. As a natural corollary, guilt of the CEO of BRPL, by applying the deemed provisions of section 149, also gets established. Thus he is also deemed to be guilty of non-compliance of the provisions of the grid code alongwith BRPL.

(xxv) The CEO of BRPL is also therefore, liable to be levied a penalty of Rs.1,00,000/- for each violation in terms of Section 142/149 of Electricity Act, 2003. The overall conduct of BRPL and its CEO is of utter disregard to their duties including their duty to maintain Grid Discipline. The discussion made in the foregoing paragraphs clearly indicates that they have knowingly endangered the Grid safety. However, this being the first proceeding of its kind against the CEO and also considering the fact that it is a personal penalty on the CEO, the Commission takes a lenient view and restricts the penalty payable by the CEO to Rs.1,00,000/-. Thus a penalty of Rs.1,00,000 is levied on Shri Arun Kanchan, CEO, BRPL in his personal capacity. It is directed that BRPL shall recover this amount of penalty from its CEO and deposit the same with the Commission by 15.11.09.

**b) Regarding issues relating to Suspension of License under Section 24(1)**

- i. Apart from issuing show-cause u/s 24(1) on the issue of load shedding, the Commission also decided to ascertain the actual quantum of load shedding and verify BRPL's claims that the load shedding was 24 MUs only. A team of officers of DERC visited the site of SCADA System of BRPL at Balaji Estate on 05.08.2009, 06.08.2009, 07.08.2009 & 13.08.2009 etc. and subsequently examined BRPL's replies dated 7.8.2009, 10.8.2009, 12.8.2009 etc. It was seen that BRPL made all out efforts to block this enquiry by resorting to all kinds of subterfuge & non-cooperation. It was observed:
  - a. Earlier BSES officials were insisting that they had the data for the past 20 days only. However later on when DERC team confronted them that they must have some back up policy of archiving the historical data, as is the industry practice, they agreed that they have the previous six months data. However, this also may not be true as SLDC is having SCADA data since 2002 and even NDPL is having this data for full one year.
  - b. Initially, BRPL informed that their SCADA Centre was down for the period from 22.06.2009 to 24.06.2009. Later, on being told as to how their system went out of order at 0000 hrs on 21/22.6.2009 and became functional at 0000hrs on 24/25.6.2009, they admitted that they have data for this period also, except for a short duration of 10-12 hours on 24.06.2009.

- c. BRPL insisted that they had no centralized record of LT breakdown and back feeding arrangement. However, on 25.08.2009 when BRPL was specifically requested to furnish complete LT break down data, they furnished only LT cable faults and did not give the complete fault reports like transformer DD fuse blown, Jumper broken, birdage (fault due to birds)
  - d. During the course of the visit of DERC team BRPL was asked to provide complete information indicating the details for load shedding, HT break down, LT break down etc., for the month of June 2009 so that the Commission could take a view on the events in the month of June 2009 resulting in massive inconvenience of the general public residing in BRPL area. BRPL did not provide such information.
  - e. Though BRPL always claimed that they were complying with the directions given by the Commission, yet in effect they were always trying to skirt the issue, give evasive reply on this entire issue relating to checking of quantum of load shedding for the month of June, 2009.
- ii. BRPL was totally non-cooperative in the Commission's effort to verify its claim that the load shedding in June 2009 was only 24 MUs and was not prepared to fully share their SCADA data with the Commission. The Commission's officials were unable to find out the quantum of load shedding from the licensee's SCADA due to complete non-cooperation and stalling tactics of BRPL. Therefore, the Commission has ordered a formal investigation into this aspect under section 128 of EA 2003 and decided to assign this task along with the task of Security Audit of SCADA System of BRPL and verification of load shedding data from SCADA system with their MIS System maintained separately, for the month of June, 2009, to a Committee of experts U/S 128 of Electricity Act, 2003.
- iii. During the course of hearing on the show cause notice on the issue of load shedding and the suspension of license on 25.09.09, the representatives of RWA's expressed their deep anguish and anger over large scale load shedding resorted to in BRPL area during June, 2009. Some of the RWAs stated that the load shedding continued at a stretch for more than 9 hours. In the extreme heat of June such outages were simply intolerable. They also stated that such long outages put heavy financial burden on them in terms of power arrangements through inverters/generators. Also, it affected the studies of the children in their family who were preparing for some examination or the other. The consumer representatives also made a point that many a time it appeared that there was power available in the system but the weak network of the BRPL was unable to withstand the increased load especially in Dwarka area. Many of the

stakeholders questioned the wisdom and the intention of M/s BRPL in not arranging required power from power exchanges whereas States like Rajasthan were buying power on a large scale. The State of Rajasthan bought 1100 MW of power in June, 2009 whereas M/s BRPL hardly bought anything from the power exchange. RWAs also stated that if they were willing to pay the cost of power why they had been denied power. During the course of hearing on 25.09.09, M/s BRPL tried to put the blame for the load shedding basically on the following:

- a. The unrestricted use of electricity by the consumers.
- b. Failure of the Govt. to issue any directions to consumers for limiting the use of electricity.
- c. Failure of the Central Govt. to provide additional power from unallocated quota, in time.
- d. Failure of NDPL to sell power to BRPL.

In nutshell, M/s BRPL tried to blame everybody in the system except themselves. They also tried to put blame on SLDC saying that they have based the demand forecasting on the projection done by SLDC. However, the Delhi Grid Code and the Electricity Act put primary responsibility for demand forecasting and arranging power on the respective distribution licensee. Section 8.5 of the Delhi Grid Code reads as under :

“ The STU may, for the purpose of preparing the transmission system planned under these regulations, seek such information as may be required by it, including generation capacity addition, system augmentation and long-term load forecast and all applications for open access :

Provided that the Distribution Licensees shall have the primary responsibility for developing long-term load forecasts for their respective license areas. The Distribution Licensee may use consistent data and methods in its load forecasting exercise, and be guided by applicable provisions and submissions of sales/demand forecast under the MYT Regulations and License Conditions issued by the Commission, with appropriate reasoning/explanation for deviation, if any:

Provided also that the STU shall consider, but not be bound by the information provided under this Regulation in preparing the transmission system plan.”

The distribution licensee cannot avoid the responsibility by merely saying that they relied on the projection of some other agency. It is not a question whether the demand forecasting was correct or not. What is important is that **when some of the**

**contracted power did not materialize, what prevented M/s BRPL from buying power from the power exchange when others were procuring power from the power exchange.** Some of the contracted power like from DVC was rather infirm being on best effort basis. In respect of some of the contracts like the banking contract with Uttarakhand, there was no proper penalty clause for failure to supply. Making such like arrangements cannot be said to be proper and adequate but only excuses for the careless attitude of the BRPL. SLDC also in its reply dated 22.9.09 has clearly stated that the northern region was able to muster good amount of power to reduce load shedding in other states.

- iv. It is pertinent to note that the Power Exchanges are especially created for meeting such eventualities like the spikes in demand etc. that occurred during the period 19.06.2009 to 29.06.2009 (during the crisis period in June 2009). The other states in Northern Region could muster much more Power to reduce load shedding in those states. It is to add that once the Power enters into Northern Region, there is no difficulty in its reaching the individual states and DISCOMS.
- v. BRPL in para 52 of its reply has stated that the load shedding in June, 2009 was not unprecedented. This is not a like to like comparison. First, the actual quantum of load shedding by BRPL in June 2009 is not known and is under investigation as mentioned above. Second, DVB period cannot be compared with the period after unbundling. SLDC has also commented on this para of BRPL's reply as under :

"With regard to point-52 of the submissions, the utility's stand is not as per the aim of Reforms undertaken in Power Sector in Delhi. The basic aim of Power Reforms undertaken in Delhi was to reform the power sector in all aspects including power supply position. As such, the utility can not escape by merely saying that the load shedding was not unprecedented and had been occurring in pre reform time also."
- vi. The Commission has considered all the evidence placed before it by M/s BRPL as well as by other stakeholders and has also considered the inputs provided during the public hearing on 25.09.09. The following position emerges:
  - a) BRPL claims to have resorted to load shedding in its areas to the tune of about 24 MUs (as claimed by them) in the month of June, 09. This load shedding was basically on account of failure of M/s BRPL to arrange adequate power to meet the requirements of all consumers in their area. This failure is to be seen in the light of the fact that during the period of load shedding enough power

was available in the open market in power exchange and the licensee made no serious attempt to purchase the same.

- b) It was also confirmed by SLDC that power to the tune of about 1100 MW was picked up by Rajasthan from exchange during the same period. BRPL also did not pay heed to the advice of DPPG (Delhi Power Procurement Group) who cautioned them on shortage of power on day ahead basis and advised BRPL to arrange additional power as it was heavily overdrawing from the grid consistently. It also did not act on the direction of the Commission to make sufficient arrangement for power for forth coming summer months as discussed during meeting held on 24.03.09. It is clear that BRPL failed to make necessary arrangement for adequate power and consequently resorted to heavy load shedding.
- c) It is observed that though NDPL was surplus on some days after meeting its demand, BRPL did not take this surplus power because they were not willing to pay the marginal power cost to NDPL (other than regulated) to get this power.
- d) BRPL also failed to maintain their distribution networks as frequent break downs occurred in its' areas of supply that led to disruption of supply to their consumers. As submitted by BRPL, about 1000 hours of feeder wise load shedding was resorted to in its area on account of upkeep and maintenance of its distribution network. Arrangement of adequate power and proper system for attending the frequent break downs could have averted these events.
- e) SLDC informed that they had cautioned BRPL regarding shortage of power on day ahead basis and advised them to arrange additional power as they were overdrawing power from Grid consistently but BRPL made no effort to procure the power neither from NDPL nor from any outside agency such as power exchange etc. SLDC further added that during that period Rajasthan purchased approx. 1100MW of power to meet their peak demand and similarly BRPL could have also arranged power.
- f) The Commission also notices with anguish that M/s BRPL has ignored its advisories and caution on the issue of arranging adequate power for meeting summer demand. In several meetings held with M/s BRPL, the Commission has been continuously impressing upon the distribution licensee that the summer is going to be bad and that they should arrange adequate power. Infact finding that its advisories are not being taken seriously, the Commission convened a meeting on 24.03.09 of all the Discoms and again directed them to make adequate arrangement for power. However, it seems BRPL did not make serious attempt to meet the challenge. That is why it is noticed from their reply that they are tying up power at the 11<sup>th</sup> hour from outside the State



and when they are unable to get open access, they are putting the blame on transmission constraint, forgetting that open access has to be applied for three months in advance. Thus, arranging power at 11<sup>th</sup> hour from outside State without corridor being available is a casual way of dealing with the situation. Further, not complying with the directions of the Commission for arranging adequate power to meet the summer requirement, goes against the terms and conditions of the license of distribution granted to BRPL as mentioned in Clause 4.1 of the license conditions, reproduced as under :

***“ The Licensee shall comply with the Regulations, Orders and Directions issued by the Commission from time to time and shall also act, at all times, in accordance with the terms and conditions of this License, except where the Licensee obtains the prior written approval of the Commission for any deviation therefrom.”***

- vii. The above discussion clearly indicates that the case of the M/s BRPL is squarely covered under the following sub-clauses of Section 24(1) of the Electricity Act, 2003 namely,
- a) Persistent failure on the part of the distribution licensee to maintain uninterrupted supply of electricity conforming to standards regarding quality of supply of electricity; or
  - b) Inability to discharge the functions or perform the duties imposed upon it by this Act; or
  - c) Persistent default in complying with directions of the Appropriate Commission; or
  - d) Breach of the terms and conditions of the licensee.
- viii. It will not be out of place to mention that condition 13.1 of the license also states *“Subject to the relevant provisions of the Electricity Act, 2003, if at any time the Commission is of the opinion that circumstances exist which render it necessary for it in the public interest to do so, it may suspend the License of the Licensee.”*
- ix. However, as mentioned above, since the quantum of load shedding claimed to have been done by M/s BRPL amounting to 24.075 MUs still remains unverified and that investigation under Section 128 of the Electricity Act, 2003 is still in progress, the Commission is unable to pass a final order because the final order can be passed only after report of the expert committee constituted under Section 128 of the EA, 2003 is available. This was made clear to M/s. BRPL and other stakeholders during the course of hearing on 25.09.2009. Pending the ascertainment of actual quantum of load shedding and the report of the committee under Section 128, **the Commission makes an interim order in**

**respect of the show cause relating to Section 24(1). As per this interim order, the following directions are issued to M/s BRPL.**

- a) The Distribution Licensee shall endeavour to maintain uninterrupted power supply in its respective area. The Distribution Licensee shall inform the consumers in advance, about the anticipated disruption in power supply due to any reason (including maintenance schedule, breakdowns, load-shedding etc.), except Force-majure events which are beyond the control of the Licensee. The Licensee shall ensure that the electricity which could not be served due to any reason what-so-ever (including maintenance schedule, breakdowns, load-shedding etc.) shall not exceed 1% of the total energy supplied in units (kwh) by them in any particular month, except in the case of force-majeure events which are beyond the control of the licensee. Reports/data regarding disruption in power supply, in the format prescribed in **ANNEX-5** shall be submitted to the Commission on a weekly basis. For every week ending Sunday, the report of the previous week shall be submitted by the next Wednesday. For the last complete week of the month, the report shall be till the end of the month and for the next month, information for part of the week in the beginning of the month, shall be included in the information for the first complete week of the month.

In case the disruption in power supply exceeds the limit prescribed above, for any particular month, the licensee shall be liable to a penalty which may extend upto Rs. 5 Lakh for every two Lakh kWh units un-served. The penalty shall be imposed by the Commission after giving the licensee an opportunity of being heard.

The data furnished by the DISCOM to the Commission regarding disruption of supply, shall be verifiable in the manner prescribed in **ANNEX 5**. Failure of the DISCOM to get the data so verified when required by the Commission, shall be treated as a violation of these directions for which penalty shall be leviable under Section 142 of the Electricity Act, 2003 and each day of the period for which the DISCOM does not get the data verified, shall be treated as one violation. If the data, including the actual data in the Call Centre or SCADA etc. is found manipulated, erased etc., the same shall also be treated as a violation of these directions for which penalty shall be leviable under Section 142 of the Electricity Act, 2003. In that case, each 15 minutes time block of the period for which the data is found manipulated/erased, shall be treated as one violation. The reason for taking the fifteen minutes time block as one violation is that IEGC has prescribed fifteen minutes as the time block

to be followed by various constituents in the power sector in the country for all operational purposes. 'Delhi Grid Code' notified by the Delhi Electricity Regulatory Commission has also prescribed fifteen minutes time block as the basic unit for all operational purposes. Fifteen minutes time block is considered as the basic unit for which any planning, scheduling or dispatch is done in the power sector in the country. The sale and purchase of electricity in the power exchange and requisition/declaration of transmission corridor availability by the Regional Load Dispatch Centre, is calculated on fifteen minutes time block basis. The scheduling/dispatch, the average frequency considered for the purpose of calculating Unscheduled Interchange (UI), the penalties levied by the CERC on various SLDCs (Delhi, Rajasthan, J&K, Punjab, etc.) for over-drawl from the regional grid, etc. are all calculated on fifteen minutes time block basis.

- b) BRPL shall endeavor to strengthen distribution network to withstand the peak demand and no load shedding should be carried out on account of transmission constraints of distribution network. The Licensee to submit a detailed assessment of its distribution network capacity. They are also directed to furnish physical location/data of Commissioning etc. of all its capital assets claimed to have been put in place from 2002-09. This is to be done within two months.
- c) The Distribution Licensee is directed to install a terminal of its SCADA system in the premises of DERC within two months of this order so that the Commission can keep a watch over the load shedding.
- d) Long term PPA's should be made to minimize the power cost and open access should also be sought well within time.
- e) All agreements for banking arrangements must have penal clause so that these can be legally enforced and can act as a deterrent against default.
- f) It is the considered view of the Commission that not having separate CEOs is also adversely impacting the performance of the Distribution Licensee. The Commission has been giving directions to appoint separate CEOs for M/s BRPL and M/s BYPL. The Commission has already issued a show-cause notice for imposing penalty for not having appointed separate CEO for M/s BRPL. M/s BRPL would do well to appoint a separate CEO forthwith without waiting for outcome of the penalty proceedings which have been proposed against them in this regard.

- g) The licensee is directed to extend full cooperation in matters relating to investigation u/s 128 of Electricity Act 2003 which is presently underway on the issue of load shedding for June 2009.

The Commission shall review the issue relating to Section 24(1) of the Electricity Act, 2003 after the receipt of the findings of the committee constituted u/s 128 of EA, 2003.

10. Member, Shri Shyam Wadhera has not agreed with certain portions of this Order and his views on the same are set out in para 11-16 below. This order is passed by virtue of the Chairman exercising his right of a second or casting vote as per provisions of Section 92(3) of the Electricity Act, 2003.

(Shyam Wadhera)  
Member

(Berjinder Singh)  
Chairman

11. (i) As a consequence of unprecedented load shedding which took place in Delhi in the month of June 2009, the Commission initiated suo moto action to inquire into the reasons for the same and to initiate remedial action. A hearing was conducted by the Commission on 20.07.2009 wherein the distribution licensees, SLDC, DTL and Govt. of NCT were invited to participate. The hearing brought out that out of the total load shedding of 32.655 MUs reported to SLDC by the distribution companies, 24.075 MUs was reported from the areas served by BRPL alone. Accordingly, a show cause notice dated 6.8.2009 was issued to BRPL as detailed below:-

*“Sub: Show Cause Notice*

*During the course of hearing conducted on 20<sup>th</sup> July, 2009 on the issue of unprecedented load shedding in Delhi during the month of June, 09 and as per the details provided by SLDC, the Commission has observed that all the three distribution licensees put together have done total load shedding of 32.655 MUs. It is further observed by the Commission that out of the total load shedding of 32.655 MUs as mentioned above, M/s BRPL alone has done the load shedding to the tune of 24.075 MUs. This quantum of load shedding is by any standards unprecedented and alarming.*

*2. M/s BRPL are hereby required to explain the reasons for this unprecedented load shedding and to show cause as to why proceedings should not be initiated against them:*

*(i) as per the provisions of Section 142 of the Electricity Act for failure to maintain Grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/SGC provisions;*

*(ii) and Sh. Arun Kanchan, CEO for his failure to exercise due diligence which has led to the unprecedented load shedding in the area of BRPL, under Section 149 of the Electricity Act;*

*(iii) as per the provisions of Section 24(1) of the Electricity Act, 2003 for suspension of distribution license.*

*3. You are hereby directed to file your reply to the above on or before 13-08-2009. The Commission will hear this matter at 11.00 AM on 18-08-2009."*

**(ii)** A perusal of the first paragraph of the above show cause notice indicates that the primary consideration for issuing the same is the disproportionately large quantum of load shedding in the areas served by M/s BRPL as compared to the load shedding in areas served by other distribution licensees.

**(iii)** However, a perusal of paras 6(i) and (ii) of the Order reveals that the main consideration has now changed from the excessive quantum of load shedding as spelt out in para 1 of the show cause notice, to the fact that there were 672 instances of overdrawl by BRPL at frequency between 49.2 Hz and 49.5 Hz and at frequency below 49.2 Hz during the month of June, 2009. Para 6(i) of the Order further mentions that "BRPL recklessly over-drew electricity from the regional grid at frequency between 49.2 Hz & 49.5 Hz beyond its permissible limit and at frequency below 49.2 Hz during the month of June, 2009". The Order at para 9(a) (xviii) "holds BRPL guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC." Para 9(a) (xx) goes on to levy a penalty of Rs.1,68,00,000/- on M/s BRPL based on above instances of overdrawl by the distribution licensee.

**(iv)** Details of overdrawal by each of the distribution licensees in Delhi are contained in SLDC letter dated 10.08.09 (Annexure-4). A perusal of the same indicates that the instances of overdrawal by all distribution licensees are significant and of comparable magnitude.

**(v)** The present proceedings were initiated in respect of BRPL only, primarily on account of the fact that 24.075 MU of the total reported load shedding of 32.655 MU

in Delhi during the month of June, 2009 was in the areas served by BRPL alone. The Order imposes a penalty on BRPL for Grid Code violation viz. overdrawal when frequency was between 49.2 and 49.5 Hz. as also when the frequency was below 49.2 Hz.

**(vi)** The Commission will need to take a view as to whether this penalty should be confined to BRPL alone or extended to other distribution licensees as well. The Order is silent on this aspect.

12. **(i)** As far as the proceedings under Section 24 (1) are concerned, it would be necessary to consider the various provisions of this Section which are reproduced below and proceed in accordance with the same:-

*“24. Suspension of distribution license and sale of utility*

*(1) If at any time the Appropriate Commission is of the opinion that a distribution licensee –*

*(a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or*

*(b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or*

*(c) Has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or*

*(d) Has broken the terms and conditions of licence,*

*And circumstances exist which render it necessary for it in public interest so to do, the Appropriate Commission may; for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of the licence:*

*Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to*

*make representations against the proposed suspension of licence and shall consider the representations, if any, of the distribution licensee."*

**(ii)** During the hearing on 25.09.09 the Commission had specifically indicated that it did not intend to pass final Order in respect of the proceedings under Section 24(1) and accordingly advised the parties to restrict their submissions to the issue of violations of IEGC and DGC.

**(iii)** I am, therefore, not in agreement with the observations at paras 9(b) i) & ii) which are pre-mature since an opportunity has not been afforded to the parties to be heard in the matter. In my view, this should be the subject of a separate hearing. I am also not in agreement with the paras 9(b) vii) & viii) which pronounce a verdict without hearing the matter.

13. **(i)** The interim directions contained at Para 9(b) ix) (a), (b), (d) and (e) are of a general nature and could be issued as general directions to all distribution licensees.

**(ii)** As regards sub-para (c) of the above, it may be mentioned that the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2006 lay down the responsibilities of various constituents of the regional and state grids for regulating the connectivity to the grid. Clauses 6(4) (c) and (d) as well as clause 6(5) of the Regulations specifically lay down the General Connectivity Conditions in respect of exchange of data between the utilities and the respective load despatch centres. The same are reproduced below:

*"6(4)(c) Participate in contingency operations such as load shedding, increasing or reducing generation, is landing, black start, providing start-up power and restoration as per the procedure decided by the Appropriate Load Despatch Centre;*

*6(4)(d) furnish data as required by Appropriate Transmission Utility or Transmission Licensee, Appropriate Load Despatch Centre, Appropriate Regional Power Committee, and any committee constituted by the Authority or appropriate Government for system studies or for facilitating analysis of tripping of disturbance in power system;*

6(5) *The requester and user shall make arrangements for integration of the controls and tele-metering features of his system into the Automatic Generation Control, Automatic Load Shedding, Special Protection System, Energy Management Systems and Supervisory Control and Data Acquisition System of the respective state or region."*

**(iii)** Part IV of the above CEA Regulations deals with Grid Connectivity Standards applicable to the Distribution Systems and Bulk Consumers. These also need to be complied with.

**(iv)** Accordingly, distribution utilities need to ensure full data transfer from their SCADA to the SLDC, which is responsible for real time operations in terms of the provisions of Section 32 of the Electricity Act, 2003 which is reproduced below:

**"32. Functions of State Load Despatch Centres**

*(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

*(2) The state Load Despatch Centre shall –*

*(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*

*(b) Monitor grid operations;*

*(c) keep accounts of the quantity of electricity transmitted through the State grid;*

*(d) exercise supervision and control over the intra-State transmission system; and*

*(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

*(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission."*



**(v)** Section 33 of the Electricity Act, 2003 gives wide powers to the SLDC to ensure compliance with directions issued by it in the interest of real time operation of the grid. This clause provides that any issue regarding any directions of the SLDC shall be referred to the State Commission for decision, provided that pending such decision, directions of SLDC shall be complied with. The full text of this Section is reproduced below:

**“33. Compliance of directions**

*(1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.*

*(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under sub-section (1).*

*(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.*

*(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision;*

*Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.*

*(5) If any licensee, generating company or any other person fails so comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs.”*

**(vi)** In view of the above requirements of the Electricity Act, 2003 and the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2006, installation of a SCADA terminal in the premises of DERC is not required.

14. **(i)** The hearing held on 25.09.2009 on the subject of show cause notice dated 6-8-2009 was concluded immediately after the lunch adjournment in the absence of the Member, who had to leave immediately after the adjournment under special circumstances. The respondents were directed to file written submissions by 29.09.2009 in respect of their balance contentions. The reply dated 29-09-2009 submitted by M/s BRPL contains certain claims which need to be expressly accepted or rejected by SLDC.

**(ii)** The Order is incomplete to the extent that it does not contain the observations of the SLDC on the written submissions filed by M/s BRPL on 29.09.2009, particularly with respect to (i) its claims at para B(1) that it had complied with the directions received from SLDC from time to time and; (ii) the instances of simultaneous intra-state power purchase and banking by NDPL as claimed by M/s BRPL at para F(2).

**(iii)** The clarifications of SLDC on the above aspects would have added value to the proceedings and the Order to that extent is passed without the benefit of knowledge of the full facts of the case.

15. It is also noticed from the table at Para 6(b) of the Order that the scheduled drawal of M/s. BRPL has been considerably reduced between 18.06.2009 and 28.06.2009 while there was a significant increase in actual drawal. The reasons for the above required further analysis which could not be undertaken on account of the fact that the hearing on 25.09.2009 was short closed.

16. Any further proceedings under Section 24(1) should be undertaken only after hearing the parties on all issues.

(SHYAM WADHERA)  
MEMBER

**Chairman's additional views**

17. BRPL's overdrawals from the grid and load shedding are connected as both arise from BRPL not making adequate arrangement for power. It is not that at the time of issue of the show cause notice, the emphasis was on load shedding and now it has shifted to violation of grid discipline. Both issues are important part of Show Cause notice and have been suitably dealt with in the order. The reasons why show cause notice was issued only in the case of BRPL are also mentioned in the order.

18. During the proceedings, BRPL and the other stakeholders were informed that in respect of section 24(1), final order cannot be passed at this stage as the formal investigations u/s 128 into the quantum of load shedding by BRPL, have been separately ordered by the Commission and that investigation is likely to take some more time. However, the Commission made it clear that in the meanwhile, the Commission would pass an interim order in respect of some of the urgent issues which had emerged. No one was advised to restrict their submissions in any manner whatsoever. The entire proceedings of the hearing have been recorded. An opportunity of being heard would definitely be given again to all stakeholders before passing the final order u/s 24(1).

19. Installation of a SCADA terminal in the Commission is a decision of this Commission taken on 28.08.2009 by the then two Members and the Chairman, including the Member writing the dissent order. Its implementation need not have been objected to.

20. In the pre-lunch session, counsel for BRPL stated that they had not got sufficient time to prepare a rejoinder to SLDC's reply dated 22.09.2009. They were allowed to file the re-joinder by 29.09.2009 and the same was filed and has been considered while passing this order. When the Court re-assembled after lunch, the counsel for BRPL stated that they had finished their arguments. SLDC stated that they had nothing to say beyond what is contained in their reply dated 22.09.2009. Accordingly, proceedings were declared concluded and the judgement was reserved.

21. I agree with the Member's view that the directions of the Commission contained in paras 9(b) ix(a),(b)(d)&(e) need to be issued to the other DISCOMS as well. It is so directed.

(BERJINDER SINGH)  
CHAIRMAN