

**Central Electricity Regulatory Commission
New Delhi**

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

**Date of Hearing: 15.11.2011
Date of Order : 6.2.2011**

Petition No. 129/MP/2011

In the matter of

Subject: Reimbursement of one time registration fees and annual charges (Market Operation Charges and System Operation Charges) levied by POSOCO/PGCIL to Generating stations of petitioner as per Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009

And in the matter of

NHPC Limited

...Petitioner

Vs

1. West Bengal State Electricity Distribution Company Ltd. Kolkata.
2. Damodar Valley Corporation, Kolkata
3. Department of Power, Govt. of Sikkim, Sikkim
4. Jharkhand State Electricity Board, Ranchi
5. Bihar State Electricity Board, Patna
6. Grid Corporation of Orissa Ltd, Bhubaneswar
7. Punjab State Power Corporation Ltd. Patiala
8. Haryana Power Utilities, Haryana
9. BSES Yamuna Power Ltd. Delhi
10. Uttar Pradesh Power Corporation Ltd., Lucknow
11. BSES Rajdhani Power Ltd., New Delhi
12. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
13. North Delhi Power Ltd., New Delhi
14. Uttarakhand Power Corporation Ltd., Dehradun
15. Jaipur Vidyut Vitaran Nigam Limited, Jaipur
16. Himachal Pradesh State Electricity Board, Shimla
17. Jodhpur Vidyut Vitaran Nigam Limited, Jodhpur
18. Chief Engineer & Secretary, Engineering Department, Jammu

19. Ajmer Vidyut Vitaran Nigam Limited, Ajmer
20. Power Development Department, Jammu
21. Assam State Electricity Board, Guwahati
22. Chief Engineer (Power), Electricity Department, Kohima
23. Chief Engineer (Power), Department of Power, Arunachal Pradesh
24. Chief Engineer (Power), Electricity Department, Aizwal
25. CMD, Tripura State Electricity Corp. Ltd. Agartala
26. The Chairman, Meghalaya State Electricity Board, Shillong
27. The Chief Engineer (Power), Electricity Department, Imphal

... Respondents

Petition No. 140/MP/2011

In the matter of

Subject: Petition under section 29 of the Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009 read with Regulations 24, 111, 114, & 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 for making appropriate provision in the RLDC Charges Regulations for billing of RLDC Charges directly by POSOCO to the long term customers of the power stations.

And in the matter of

NTPC Limited

...Petitioner

Vs

1. Power System Operation Corporation Ltd.
2. Uttar Pradesh Power corporation Ltd., Lucknow
3. Jaipur Vidyut Vitran Nigam Ltd., Ajmer
4. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
5. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
6. North Delhi Power Limited, Delhi
7. BSES Rajdhani Power Limited, Delhi
8. BSES Yamuna Power Limited, Delhi
9. Haryana Power Purchase Centre, Panchkula
10. Punjab State Power Corporation Limited, Patiala
11. Himachal Pradesh State Electricity Board, Shimla
12. Power Development Deptt. Govt. of J&K, Srinagar
13. Power Department (Union Territory of Chandigarh), Chandigarh
14. Uttarakhand Power Corporation Ltd., Dehradun
15. Madhya Pradesh Power Trading Co. Ltd., Jabalpur
16. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
17. Gujarat Urja Vikas Nigam Ltd., Vadodara
18. Chhattisgarh State Power Distribution co. Ltd., Raipur
19. Electricity Department, Govt. of Goa, Panaji, Goa
20. Electricity Department, Administration of Daman & Diu, Daman

21. Electricity Department, Administration of Dadra & Nagar Haveli, Silvassa
 22. West Bengal State Electricity Distribution Co. Ltd., Kolkata
 23. Bihar State Electricity Board, Patna
 24. Jharkhand State Electricity Board, Ranchi
 25. GRIDCO Ltd., Bhubaneswar
 26. Power Department, Govt. of Sikkim, Gangtok
 27. Eastern Power Distribution Company Ltd. Visakhapatnam
 28. Southern Power Distribution Company Ltd. Tirupati
 29. Northern Power Distribution Company Ltd. Warangal
 30. Central Power Distribution Company Ltd. Hyderabad
 31. Electricity Department, Govt. of Puducherry, Puducherry
 32. Tamilnadu Generation and Distribution Corporation Limited, Chennai
 33. Kerala State Electricity Board Thiruvananthapuram
 34. Bangalore Electricity Supply Company, Bangalore
 35. Mangalore Electricity Supply Company, Mangalore
 36. Chamundeswari Electricity Supply Corporation Mysore
 37. Gulbarga Electricity Supply Corporation, Gulbarga
 38. Hubli Electricity Company, Hubli
 39. Assam State Electricity Board, Guwahati
- ...Respondents**

Petition No. 165/MP/2011

In the matter of

Subject: Miscellaneous Petition under section 29 "Power to Relax" of the Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009 for recovery of System Operation Charges (RLDC Charges) for the period 2009-14.

And in the matter of

Powerlinks Transmission Limited (PTL)

...Petitioner

Vs.

- 1) Power Grid Corporation of India Ltd, Haryana
- 2) Rajasthan Rajya Vidyut Prasaran Nigam Ltd, Jaipur
- 3) Ajmer Vidyut Vitran Nigam Ltd, Jaipur
- 4) Jaipur Vidyut Vitran Nigam Ltd, Jaipur
- 5) Jodhpur Vidyut Vitran Nigam Ltd, Jaipur
- 6) Punjab State Electricity Board, Patiala
- 7) Haryana Power Purchase Centre, Haryana
- 8) Uttar Pradesh Power Corporation Ltd, Lucknow
- 9) Power Development Department, Jammu
- 10) Delhi Transco Ltd, New Delhi
- 11) Himachal Pradesh State Electricity Board, Shimla

- 12) Chandigarh Administration, Chandigarh
- 13) Uttarakhand Power Corporation Ltd, Dehradun
- 14) Northern Central Railway, Allahabad
- 15) BSES Yamuna Power Ltd, New Delhi
- 16) BSES Rajdhani Power Ltd, New Delhi
- 17) New Delhi Municipal Council, New Delhi
- 18) North Delhi Power Ltd, New Delhi
- 19) West Bengal State Electricity Board, Kolkata
- 20) Damodar Valley Corporation, Kolkata
- 21) Bihar State Electricity Board, Patna
- 22) Grid Corporation of India Ltd, Bhubaneswar
- 23) Power Department, Government of Sikkim, Gangtok
- 24) Jharkhand State Electricity Board, Ranchi

...Respondents

Petition No. 171/MP/2011

In the matter of

Subject: Reimbursement of registration fees and annual charges on monthly basis (Market Operation Charges and System Operation Charges) levied by POSOCO/PGCIL on generating stations as per Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009 dated 18.9.2010 and amended on 28.3.2011.

And in the matter of

SJVN Limited

..... ..Petitioner

Vs.

1. The Chairman, Punjab State Electricity Board, Patiala .
2. Managing Director, Haryana Power Generation Corporation Ltd., Haryana
3. The Chairman, Haryana Vidyut Prasaran Nigam Ltd., Haryana
4. The Chairman, Delhi Transco Limited, New Delhi
5. Chief Operating Officer, North Delhi Power Limited, New Delhi
6. Director & Chief Executive Officer, BSES Rajdhani Power Limited, New Delhi
7. Chief Executive Officer, BSES Yamuna Power Limited, New Delhi
8. The Chairman, Jaipur Vidyut Vitran Nigam Ltd., Jaipur
9. The Chairman, Ajmer Vidyut Vitaran Nigam Ltd., Jaipur
10. The Chairman, Jodhpur Vidyut Vitaran Nigam Ltd., Jaipur
11. The Chairman, Himachal Pradesh State Electricity Board Limited, Shimla
12. The Principal Secretary, Power Development Department, Jammu (J&K)
13. Chief Engineer, Engineering Department, Chandigarh
14. The Chairman, U.P. Power Corporation Ltd., Lucknow
15. Chairman & Managing Director, Uttaranchal Power Corporation Ltd., Dehradun
16. The Principal Secretary (MPP & Power), Shimla

... Respondents

Petition No. 180/MP/2011

In the matter of

Subject: Petition under section 29 of the Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009 read with Regulations 24, 111, 114, & 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 for making appropriate provision in the RLDC Charges Regulations for billing of RLDC Charges directly by POSOCO to the long term customers.

And in the matter of

Power Grid Corporation of India Limited (PGCIL)

...**Petitioner**

Vs.

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd. Bhubaneswar
4. Damodar Valley Corporation, Calcutta
5. Power Deptt. Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Assam
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh,
10. Power & Electricity Department., Mizoram, Aizwal
11. Electricity Department, Imphal
12. Department of Power, Govt. of Nagaland, Kohima
13. Tripura State Electricity Corporation Limited, Tripura
14. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd., Rajasthan
16. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd, Rajasthan
18. Himachal Pradesh State Electricity Board Vidyut Bhawan, Shimla
19. Punjab State Electricity Board, Patiala
20. Haryana Power Purchase Centre, Panchkula (Haryana)
21. Power Development Deptt., Jammu
22. Uttar Pradesh Power Corporation Ltd. Lucknow
23. Delhi Transco Ltd., New Delhi
24. Chandigarh Administration, Chandigarh
25. Uttarakhand Power Corporation Ltd., Dehradun
26. BSES Yamuna Power Ltd, New Delhi
27. BSES Rajdhani Power Ltd, New Delhi
28. North Delhi Power Ltd, Pitampura, New Delhi

29. NDMC, Mezzanine Floor, New Delhi
 30. North Central Railway, Allahabad
 31. Karnataka Power Transmission Corporation Ltd.
 32. Bangalore Electricity Supply Company Limited (BESCOM), Karnataka
 33. Gulbarga Electricity Supply Company Limited (GESCOM), Karnataka
 34. Hubli Electricity Supply Company Limited (HESCOM), Karnataka
 35. Mangalore Electricity Supply Company Limited (MESCOM), Karnataka
 36. Chamundeswari Electricity Supply Corporation Limited (CESC), Karnataka
 37. Transmission Corporation of Andhra Pradesh Ltd. Hyderabad
 38. Eastern Power Distribution Company of Andhra Pradesh Limited
 39. Southern Power Distribution Company of Andhra Pradesh LTD
 40. Central Power Distribution Company of Andhra Pradesh Limited
 41. Northern Power Distribution Company of Andhra Pradesh Ltd
 42. Kerala State Electricity Board, Thiruvananthapuram
 43. Tamilnadu Electricity Board, Chennai
 44. Electricity Department, Govt. of Pondicherry
 45. Electricity Department, Govt. of Goa
 46. Madhya Pradesh TRADECO (Erstwhile Madhya Pradesh Electricity Board), Jabalpur
 47. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd., Indore
 48. M/s Jindal Power Ltd. International Home Deco Park, Noida
 49. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 50. Gujarat Urja Vikas Nigam Ltd. Baroda
 51. Electricity Department, Daman
 52. Electricity Department, Silvassa
 53. Chhattisgarh State Electricity Board, Raipur, Chhattisgarh
- ... Respondents**

Petition No. 198/MP/2011

In the matter of

Subject: Petition under section 29 of the Central Electricity Regulatory Commission (Fee and Charges or Regional Load Despatch Centre and other related matters) Regulations, 2009 read with Regulations 24, 111, 114, & 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for making appropriate provision in the RLDC Charges Regulations for billing of RLDC Charges directly by POSOCO to the long term customers of the power stations.

And in the matter of

NTPC SAIL Power Company Private Limited (NSPCL)
Vs.

...Petitioner

1. Power System Operation Corporation Ltd., (NLDC), New Delhi
2. Power System Operation Corporation Ltd. (WRLDC), Mumbai
3. Electricity Department, Silvassa
4. Electricity Department, Daman

5. Chhattisgarh State Power Distribution Co. Ltd., Raipur
6. Steel Authority of India Limited (SAIL), New Delhi/
Bhilai Steel Plant (BSP), Bhilai

..Respondents

Parties present:

Shri R.B. Sharma, Advocate for BSEB, JSEB, GRIDCO & BSES
Shri G. Basu, NSPCL
Shri S.D. Jha, NSPCL
Ms. Nita Jha, PTL
Shri Ajay Bagri, PTL
Shri Arvind Singh, PTL
Shri Arun Kumar, PGCIL
Shri Jyoti Prasad, NRLDC
Shri R.K. Bansal, POSOCO
Shri S.K. Meena, NHPCL
Shri Amrik Singh, NHPCL
Shri V.K. Padha, NTPC
Shri Naresh Anand, NTPC
Shri Sanjay Agarwal, NTPC
Ms. Shilpa Agarwal, NTPC
Shri M.M. Mondal, PGCIL
Shri Rajeev Gupta, PGCIL
Shri Nitin Garg, UPPCL
Shri Manoj Dubey, MPPTCL

ORDER

The petitioners, NHPC Limited, NTPC Limited, Power Links Transmission Limited (PTL), SJVN Limited, Power Grid Corporation India Limited (PGCIL) and NTPC-SAIL Power Company Private Limited (NSPCL) have filed these petitions seeking appropriate provision in the Central Electricity Regulatory Commission (Fee and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009 (hereinafter referred to as "RLDC Regulations) for billing of Regional Load Despatch Centre charges (hereinafter referred to as "RLDC charges") directly by POSOCO to the long term customers/beneficiaries of the power stations and the

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transmission licensees or to allow the petitioners to bill and recover the RLDC charges from the long term customers/beneficiaries of the power stations and the transmission licensees. Since the issues raised in these petitions are the same, the petitions are being disposed through this common order.

Petition No.129/2011

2. The petitioner, NHPC Ltd, has submitted that the Power System Operating Company has been created as per the directions of the Government of India and is entitled to levy and collect the registration fees and charges from the users and power exchanges as specified in the RLDCs regulations. The annual charges of ERLDC, NRLDC and NERLDC have been determined by the Commission vide orders dated 8.3.2011, 11.3.2011 and 18.3.2011 respectively, in accordance with Regulation 10 of RLDC Regulations for the period 2009-2014. The charges have been apportioned between System Operation Charges (SOC) and Market Operation Charges (MOC) in the ratio of 80:20. While 45% of the SOC charges shall be borne by the generating company, the MOC has to be equally shared by all the users except inter-State transmission licensees. It has been submitted that the charges levied by POSOCO is not for new activities undertaken but is merely on account of transfer of responsibilities to an independent agency from the Central Transmission Utility in terms of Sections 26 and 27 of the Electricity Act, 2003 (the 'Act'). Earlier functions such as scheduling, dispatch, metering, data collection, energy account and settlement, loss calculation and apportionment and monitoring of grid operation, etc, were being carried out by the Central Transmission Utility and the associated charges were recovered from the beneficiaries and not loaded to the generating stations companies. The above functions

which are statutory in nature are now being carried out in Regional Load Despatch Centre (RLDC) on behalf of the respondents/beneficiaries. The O&M expenses for the existing stations under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (2009 Regulations) are based on the average of normalized actual O&M expenses of the period 2003-04 to 2007-08 and escalated further to determine the normative O&M expenses for the tariff period 2009-14. The normative O&M expenses claimed by the petitioner through tariff petitions and allowed by the Commission do not capture the RLDC charges. The RLDC charges are, therefore, new and additional cost incidental to the petitioner by virtue of the RLDC fee and charges regulations. It has also been submitted that the RLDC charges do not cover the statutory taxes, levies, duties, cess and other charges imposed by Central and State governments or local bodies and regulatory authorities. The petitioner has prayed for in-principle approval for reimbursement of one time registration fee and annual charges (SOC and MOC) and the statutory taxes, levies, duties, cess and other charges imposed by Central and State governments or local bodies and regulatory authorities.

3. Assam Power Distribution Company Limited (APDCL), in its reply dated 29.8.2011, has submitted that by virtue of section 28(4) of the Act and definition of 'User' in the RLDC Regulations, the generating companies and the licensees engaged in inter-State transmission of electricity are liable to pay RLDC charges to RLDC/NLDC. Norms for O&M expenses specified in the 2009 regulations have been fixed on average basis based on normalized actual O&M expenses of preceding five years with escalation to accommodate unforeseen expenditure. Both the Act and the RLDC

Regulations do not provide for reimbursement of RLDC charges. The petitioner is earning profit in the power system operation business by using the service of RLDC, so it is obliged to pay the necessary charges and it is not entitled to seek reimbursement from the beneficiaries.

4. The petitioner, in its rejoinder dated 26.9.2011, has submitted that the generating companies are using the RLDC services only as per the requirement of the beneficiaries while doing scheduling, dispatch, metering and other grid related operations. Even the power purchase agreement between the generating companies and beneficiaries is for sale of power at ex-bus and after ex-bus, every service used by the generating companies are for the beneficiary only. Accordingly, the petitioner is seeking permission to bill the respondent beneficiaries for SOC and MOC as and when received from the concerned RLDCs. The petitioner has further submitted that the escalation factor on O&M expenses has been provided to take care of rising prices of commodities and labour and not for any unforeseen expenditure. In most of the cases, the actual O&M expenses are much higher than the O&M expenses allowed even after giving effect to the escalation factor. The fees and charges levied by the RLDCs cannot be borne through O&M expenses which will lead to heavy financial burden on the petitioner.

Petition No. 140/2011

5. The petitioner, NTPC Limited (NTPC), has submitted that pursuant to the determination of the fees and charges of the RLDCs in accordance with the RLDC Regulations, NTPC stations are liable to pay annually about ₹ 55 crore as RLDC charges and one time registration fee of approximately ₹ 3 crore. The RLDC charges are of a recurring nature and are a financial out flow to the petitioner on a year to year basis. The tariff of NTPC stations is determined on ex-bus basis by the Commission and accordingly Power Purchase Agreements (PPAs) are entered into between the petitioner and the beneficiaries for sale of electricity on ex-bus basis. As per the PPAs, the Bulk Power Customers are required to pay the transmission charges directly and the petitioner is not responsible for the same. Accordingly, prior to 1.4.2009 RLDC charges were paid directly by the beneficiaries as per the regulatory provisions and as per the PPAs. The RLDC fee and charges regulations were notified on 18.9.2009 and these regulations specified the parameters for determination and recovery of the RLDC fee and charges. As per these regulations all the users are required to pay the fees and charges as specified to Power System Operation Company (POSOCO). The petitioner has also submitted that the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, (hereinafter referred to as "2010 sharing regulations") provide for direct recovery of transmission charges from long term customers. However, the RLDC Regulations do not provide for direct recovery of RLDC charges from the beneficiaries. The petitioner has requested to make appropriate provisions in the RLDC Regulations for billing RLDC charges directly by the POSOCO to the long term costumers of the power stations as has been done in the case of transmission charges in the 2010 sharing regulations. The petitioner has also

requested, in the mean time to bill and recover the RLDC charges paid by it from the beneficiaries of the respective power stations in proportion to fixed charges billed during the period. The petitioner has also submitted that the Commission is empowered to amend, vary or relax the RLDC Regulations under Regulation 29 read with Regulations 24, 111, 114 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as “conduct of business regulations”).

6. Grid Corporation of Orissa Limited, Bihar State Electricity Board and BSES Rajdhani Power Limited in their affidavit dated 17.10.2011, 25.10.2011 and 10.10.2011 respectively have made similar submissions. It has been submitted that Section 28(4) of the Act required the RLDCs to levy and collect such fee and charges from the generating companies or licensees engaged in the inter-State transmission of electricity as specified by the Commission. Accordingly, the Commission has made the generating companies liable for paying the RLDC fees and charges in the RLDC Regulations. The petitioner's request to amend the regulations and make appropriate provision in the RLDC Regulations for billing of RLDC charges directly by POSOCO to the long term customers of the power stations is illegal, void and ultra vires to the enabling Act. RLDC facilitates the generating stations to operate in an integrated mode for which they will be charged by the POSOCO. The payment of RLDC fees and charges are integral part of operation of generating station in an integrated mode and hence the petitioner is required to pay these charges from the O&M expenses allowed by the Commission in the 2009 regulations. As the tariff is a complete package, its

reasonability is required to be examined in its totality and hence NTPC's request for amendment of the RLDC Regulations is liable to be dismissed. The present tariff norms including the earlier ones were very liberal and the petitioner has derived huge profits. The respondents have requested to introduce the concept of trueing up exercise and undertake the annual revision of tariff based on the audited information so that all the parties are assured that the cost of electricity is reasonable.

7. POSOCO in its reply has submitted that in terms of the provision of the Act, Indian Electricity Grid Code and RLDCs Regulations, POSOCO is entitled to levy and collect fee and charges from the users including generating companies as may be specified by the Commission. Many of the State Electricity Regulatory Commissions have passed orders providing for payment of SLDC fees and charges by generators under their jurisdiction. In support POSOCO has extracted from the tariff order dated 20.3.2009 passed by Andhra Pradesh Electricity Regulatory Commission. It has been further submitted that the Act envisages unbundling of the state power utilities into separate generation, transmission and distribution entities, clearly demarcating the role of entities. Any direct billing by RLDCs to a generator's customers would be a retrograde step and it would seek to levy fees and charges from one entity (DISCOM) for services provided to both generator and DISCOM. As the RLDCs are providing direct services to the generating stations for its installed capacity, the generating stations are required to pay directly to the RLDCs in terms of the provisions of the Act and the regulations. The petitioner's prayer for amendment, vary or relax the RLDC Regulations is not maintainable.

8. Madhya Pradesh Power Trading Company Limited (MPPTCL) in its reply has submitted that if present petition is allowed in the manner sought by the petitioner, it will lead to amendment of the regulations without following due procedure of law as envisaged under section 178 of the Act. It has been further submitted that the exercise of "Power to Relax" provision would upset the equilibrium and balance set by the Commission under section 61(d) of the Act. Moreover, since the generators and the transmission licensees are using services of RLDCs, they are liable to RLDC fees and charges. There are other generators like NHDC, DVC etc which are similarly placed and any order relating to amendment in the regulation or relaxation of the regulation may affect their interest without hearing them. There is no provision in 2009 regulations, pertaining to RLDC charges which can be relaxed and therefore RLDC charges cannot be allowed in tariff as a pass through. The ultimate beneficiaries in case of merchant generation are not known and hence the billing and collection of RLDC charges from the beneficiaries of these stations would not be feasible.

9. BSES Yamuna Power Limited (BYPL) in its reply has submitted that the definition of 'user' in the RLDC Regulations clearly states that all generating stations, transmission licenses and distribution licensees shall be considered as users. NTPC is a user and is therefore obliged to pay the RLDC fees and charges. Moreover, RLDC is performing all the market operation functions for the generators and being the user the petitioner is liable to pay the charges as well. Regarding NTPC's submission that under provision 2.1.6 of the BCD Procedure approved by the Commission under the 2010 sharing regulations has permitted PGCIL to bill and recover RLDC charges from beneficiaries,

BYPL has submitted that as per Regulation 2(l) of the 2010 sharing regulations, generators are liable to pay the system operation charges as per the RLDC Regulations.

10. UPPCL, in its reply to has submitted that the registration fee ensures the entitlement of the generating company to use the services of RLDCs and hence it is the onus of the generating company to bear the registration fee and the same cannot be passed on to the beneficiaries. The payment of RLDC charges is the liability of the generating company and the transmission licensee and it cannot be passed on to the beneficiaries. UPPCL has further submitted that there should not be any duplicacy in recovery of the RLDC charges which has already been recovered by PGCIL. The recovery of new charges due to formation of POSOCO should not be more than the earlier charges of PGCIL.

11. Ratnagiri Gas and Power Private Limited submitted that since the determination of tariff is on cost plus basis, the RLDC charges should be allowed as pass through.

12. The petitioner has filed rejoinder to the replies of BYPL, GRIDCO, POSOCO, UPPCL and BSEB. The petitioner has submitted that while formulating the norms for tariff determination during 2009-14, the Commission has not considered the RLDC fees and charges in the base data considered for working out the norms for O&M expenses as these charges were being borne directly by the beneficiaries prior to 1.4.2009. Since, they are not part of the O&M expenses, they need to be reimbursed separately. In reply

to POSOCO's submission, the petitioner has submitted that direct billing to beneficiaries shall not hamper RLDC functions vis-a-vis their statutory responsibilities and hence there shall not be any conflict of interest. In response to BYPL's reply, the petitioner has submitted that paras 11, 14 & 24 of Commission's order dated 2.6.2011 read with para 2.1.6 of Billing, Collection and Disbursement procedure makes it clear that the Commission has permitted PGCIL to bill and recover the RLDC charges from the beneficiaries. The petitioner has sought similar dispensation in the present petition.

Petition No. 165/2011

13. The petitioner, Power Link Transmission Limited (PTL), has submitted that in terms of the RLDC Regulations, all users are required to pay the RLDC charges as determined by the Commission for the control period of 5 years starting from 1.4.2009. As per the RLDC Regulations, the term 'users' has been defined to include inter-State transmission licensees. The petitioner, being an inter-State transmission licensee is liable to pay RLDC charges and one time registration fees under RLDC Regulations. These charges are recurring in nature and are impacting its operation and maintenance expenses. RLDC fees and charges are not included in the O&M norms under the 2009 regulations and these charges are over and above the norms fixed by the Commission. The petitioner has requested that appropriate provisions may be made in the RLDC Regulations for billing the RLDC charges directly by POSOCO to the DIC's (Designated ISTS Customers) or to allow the petitioner to bill and recover the RLDC fees and charges and other expenses from the DICs. The petitioner has also requested to allow it to recover the RLDC charges paid/payable, alongwith one time registration

fees, reimbursement of publication expenses, other expenditure and pre-incorporation expenses etc. from the DIC's till amendments are made to the RLDC Regulations.

14. The UPPCL, BSEB, BRPL and POSOCO in their replies have reiterated their submissions made in Petition No.140/2011. Ratnagiri Gas and Power Private Limited submitted that since the determination of tariff is on cost plus basis, the RLDC charges should be allowed as pass through.

15. The petitioner has submitted that reimbursement of RLDC charges will not result any extra profit to petitioner. On the other hand, if the reimbursement is disallowed, it would result in loss to the petitioner as these charges are not included in O&M norms of 2009 regulations. The petitioner has also submitted that the petitioner is not in a position to absorb any additional liability as the O&M expenses allowed in the prevailing 2009 regulations are bare minimum. It has also been submitted that once the O&M norms are fixed, the petitioner has been bearing the additional impact due to inflation, etc., however, any additional liability on account of non-inclusion of the RLDC charges at the time of fixation of the O&M expenses norms and the consequent impact on the financial condition of the petitioner needs to be addressed by the Commission.

Petition No. 171/2011

16. The petitioner, SJVN Limited has submitted that as per the RLDC Regulations and orders of the Commission, it has to pay the RLDC charges annually and one time registration fee. RLDC fees and charges are not included in the O&M norms under the 2009 regulations and it is leading to under recovery of O&M expenses and negatively

impacting its financial status. The petitioner has requested approval of the Commission for allowing reimbursement of the actual registration fee, annual charges (System Operation Charges and Market Operation Charges), taxes, duties etc. from the beneficiaries.

17. UPPCL has reiterated its submission made in reply to Petition No. 140/2011. The petitioner has not filed any rejoinder.

Petition No. 180/2011

18. The petitioner, Power Grid Corporation of India Limited (PGCIL) has submitted that it is liable to pay the RLDC charges under RLDC Regulations. These charges are recurring in nature and shall be impacting its annual operations and maintenance on year to year basis. The RLDC charges are not covered in the norms for O&M expenses in the 2009 regulations. The RLDC Regulations are applicable since 1.4.2009. The RLDC assets were transferred to POSOCO on 1.10.2010 as per the Ministry of Power's directions. Thus, during the period 1.4.2009 to 30.9.2010, the RLDCs were under the control of the petitioner and therefore the RLDCs charges could not be billed to itself for this period. RLDC charges are to be paid by PGCIL for the period 1.4.2009 to 30.9.2010 and the RLDC charges has not been recovered from the beneficiaries. The petitioner has requested for an authorization of the Commission to recover these charges from the beneficiaries, in case payment is to be made by it. Alternatively, the petitioner has requested that the billing for this period may be revised by POSOCO by excluding the petitioner's portion. The petitioner has also requested for appropriate provisions in the RLDC Regulations for billing the RLDC charges directly by POSOCO to the DICs. In the

meantime, it may be allowed to bill and recover the RLDC charges and other expenses from the DICs.

19. Replies to the PGCIL have been filed by UPPCL and MPPTCL, who have reiterated their respective replies made in response to Petition No. 140/2011.

20. The petitioner, PGCIL in response to reply filed by UPPCL has submitted that since RLDC charges are not included in the O&M norms of 2009 regulations, the same should be reimbursed or may be billed directly to the long term customers. The Commission is fully empowered to amend vary or relax the RLDC Regulations under Regulation 29 of the RLDC Regulations read with regulation 24, 111, 114 & 115 of the conduct of business regulations and grant the relief as prayed in the petition. It was further submitted that one time registration fees, pre-incorporation expenses and other expenses related to the petition may be allowed as these are extra burden on the petitioner.

Petition No. 198/2011

21. The petitioner, NTPC-SAIL Power Company Private Limited (NSPCL) has submitted that as per the RLDC fee and charges regulations, it has become mandatory for Bhilai Expansion Power Project (2 x 250 MW) of NSPCL to pay the RLDC charges. The control area of Bhilai Expansion Power Project of NSPCL has been shifted to WRLDC w.e.f 1.8.2011 from Chhattisgarh SLDC and therefore the petitioner is liable to pay about ₹0.51 crore annually as RLDC charges in addition to one time registration fee

of ₹0.10 crore. As per the PPAs signed by NSPCL with SAIL and its various Bulk Power Customers, the charges for transmission of power are to be paid by the Bulk Power Customers directly to CTU and other concerned agencies and NSPCL is not responsible for payment of the same. The petitioner has submitted that the 2010 sharing regulations provide for direct recovery of transmission charges from long term customers but RLDC Regulations do not provide for direct recovery of RLDC charges from the long term customers. The petitioner has requested that appropriate provisions may be made in the RLDC fee and charges regulations for billing of RLDC charges directly by POSOCO to the long term customers of the power station as has been done in the case of transmission charges.

22. None of the respondents have filed any reply to the petition.

23. The petitions were heard on 15.11.2011. The representative of NTPC submitted that since there is no provision in the RLDC Regulations for reimbursement of the fees and charges the petitioner has approached the Commission for relaxation of the provisions. The representative of NTPC has submitted that since the PPS provides for recovery of charges from the beneficiaries the Commission may consider the reimbursement of RLDC fees and charges from the beneficiaries. The representative of PGCIL submitted that since the RLDC fees and charges are not factored in the norms for O&M expenses in 2009 regulations, the same should be reimbursed by the beneficiaries. The representative of PTL has submitted that norms for O&M expenses

in 2009 regulations do not capture the RLDC fees and charges and therefore, it should be reimbursed being an additional cost to the inter-State transmission licensee.

24. Learned Counsel for BSEB, JSEB and GRDICO submitted that as per section 28(4) of the Act, the Regional Load Despatch Centre can levy and collect such charges only from the generating companies and from the distribution companies. Any regulation in conflict with the Section 28(4) of the Act will be ultra vires of the parent Act. The learned counsel further submitted that it is a settled principle of law that what cannot be done directly cannot be done indirectly. The petitioners have approached the Commission for reimbursement of the RLDC fees and charges by relaxation of the provisions of the regulations which are not otherwise admissible to them. He submitted that the prayers of the petitioners be rejected. The representative of MPPTCL submitted that the 'Power to Relax' provided in Regulation 29 of RLDCs fees and charges regulations can only be invoked if there is some provision in the regulation to provide for reimbursement of such charges. The representative of POSOCO submitted that the expenditure should be reimbursed by the generating company and the interest of transmission licensees who are the users of the RLDC system.

25. We have heard the petitioners and the respondents and considered the materials on record. The following two issues arise for our consideration:

- a) Whether the generating stations and transmission licensees are liable to pay RLDC fees and charges under the Act and RLDC Regulations or should the charges be directly recovered from the beneficiaries?

- b) Whether the RLDC fees and charges shall be passed on through tariff to the beneficiaries?

Issue No.1

26. Section 28(4) of the Act which deals with the functions of Regional Load Despatch Centres provides as under:

“Section 28. (Functions of Regional Load Despatch Centre): --- (1) *The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.*
(2) *The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.*
(3) *The Regional Load Despatch Centre shall -*
(a) *be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;*
(b) *monitor grid operations;*
(c) *keep accounts of quantity of electricity transmitted through the regional grid;*
(d) *exercise supervision and control over the inter-State transmission system; and*
(e) *be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.*
(4) *The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.*”

27. The Act designates the Regional Load Despatch Centre (RLDC) as the apex body for integrated operation of the power system in the region and for that purpose, RLDC has been vested with the multifarious functions as stipulated in sub-sections (3) and (4) of section 28 of the Act. Further, section 28(4) of the Act enables the RLDCs to levy such fees and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission. The Central Government in exercise of powers conferred by section 176(2)(d) of the Act has made the National Load Despatch Centre Rules, 2004 which has come into effect from 2.3.2005. Rule 3(2)(k) of the said Rules provides that the National Load Despatch

Centre shall levy and collect such fees and charges from the generating companies or licensees involved in the power system as may be specified by the Central Commission.

28. In exercise of the powers vested under section 28(4) of the Act and Rule 3(2)(k) of the National Load Despatch Centre Rules, the Commission has specified the Central Electricity Regulatory Commission (fees and charges of Regional Load Despatch Centre and other matters) Regulations, 2009 which came into effect from 26.9.2009. Regulation 10 of the RLDC Regulations provides as under:

“10. Annual Charges. The annual charges shall be determined separately for each Regional Load Despatch Centre and National Load Despatch Centre. Annual charges of NLDC shall be apportioned to RLDC on the basis as stated in clause 3 of Regulation 18. Annual charges of RLDC shall be collected in the form of system operation charges and market operation charges.”

Annual charges are collected in the form of system operation charges and market operation charges in the ratio of 80:20. The RLDC Regulations further provides that the system operation charges shall be collected from the users as per the following norms:

- (a) Inter-State transmission licensees: 10%
- (b) Generating stations and sellers : 45%
- (c) Distribution licensees and buyers : 45%

Market Operation Charges shall be collected equally from all the users except the inter-State transmission licensees.

Regulation 24 of the RLDC Regulations further provides that all users whose scheduling, metering and energy accounting is to be coordinated by RLDC shall register themselves with the concerned RLDC and pay a onetime registration fee of ₹ 10 lakh.

29. Thus, all users are required to pay annual charges consisting of system operation charges and market operation charges and onetime registration fee. The term “user” has been defined in Regulation 3(25) of the RLDC Regulations as under:-

“user’ means the generating companies, distribution licensees, buyers, sellers and inter-state transmission licensees, as the case may be, who use the inter-State transmission network or the associated facilities and services of National Load Dispatch Centre and Regional Load Dispatch Centre.

Note: *A generating station or each stage of the generating station, where its scheduling, metering and energy accounting is done separately for each stage, shall be considered as a user for the purpose of sharing of Market Operation Charges in accordance with Regulation 23 and for registration and payment of Registration fees in accordance with Regulation 24 of these Regulations.”*

30. As per these regulations the generating companies, inter-State transmission licensees, distribution licensees, sellers and buyers are liable to share the System Operation charges along with a one-time application fee of ₹ 10 lakh, whereas the Market Operation charges shall be recovered from all users except the inter-state transmission licensees. In so far as the generating companies are concerned, it has been clarified in the ‘Note’ that each generating station or each stage of the generating station whose scheduling, metering and energy accounting is done separately for each stage shall be considered as a user for the purpose of Market Operation charge and registration fee. The term ‘generating station’ has not been defined in the RLDC Regulations. However, it has been defined in section 2(30) of the Act as “any station for generating electricity...”. Thus generating station would include the generating stations owned and controlled by the Central Government, generating stations with a composite scheme for generation and supply of electricity in more than one state, merchant power plants and IPPs whose scheduling, metering and energy accounting is being done by

the RLDCs. The term 'distribution licensee' has been defined in section 2(17) of the Act as "a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply." The term 'buyer' has been defined in Regulation 3(1)(4) of RLDC Regulations as "a person buying power through medium term or long term access whose scheduling, metering and energy accounting is coordinated by the Regional Load Despatch Centre". The term 'seller' has been defined in Regulation 3(1)(22) as "a person supplying power through medium term or long term access whose scheduling, metering and energy accounting is coordinated by the Regional Load Despatch Centre". It emerges from the above that all those whose scheduling, metering and energy accounting is being coordinated by the RLDC for long term and medium term access are required to pay the annual charges and onetime registration fee to the concerned RLDC for the services rendered.

31. As per Regulation 24 of the RLDC Regulations, the users are required to register themselves with the concerned RLDC. After scrutinizing the application and being satisfied with the correctness of the information furnished, concerned RLDC shall register the applicant in the register and duly intimate to the applicant about its acceptance. Appendix IV of the RLDC Regulations requires the users to furnish the user details of the relevant user category. Thus, registration fee is in the nature of eligibility fee paid to RLDCs by all users and to NLDC by the Power Exchanges for availing the services of RLDC and NLDC. Accordingly, this fee has been kept as a onetime fee.

32. Annual charges are recurring in nature and consist of system operation charge and market operation charge for the services rendered on continuous basis by the RLDCs to the users. System Operation charges and Market Operation charges have been defined in the RLDC Regulations as under:

*“(15) ‘**market operation function**’ includes functions of scheduling, despatch, metering, data collection, energy accounting and settlement, transmission loss calculation and apportionment, operation of pool account and congestion charge account, administering ancillary services, information dissemination and any other functions assigned to the RLDCs/NLDC by the Electricity Act 2003 or by CERC regulations and orders;*

*“(24) ‘**system operation function**’ includes monitoring of grid operations, supervision and control over the Inter-State Transmission System, real-time operations for grid control and dispatch, system restoration following grid disturbances, compiling and furnishing data pertaining to system operation, congestion management, black start coordination and any other function(s) assigned to the RLDC by the Electricity Act 2003 or by CERC regulations and orders;”*

Thus RLDCs have been rendering the system operation and market operation functions to all users except the transmission licensees which are rendered only system operation functions and accordingly, RLDC Regulations allow the RLDCs to collect the system operation charges and market operation charges from the users for the services rendered.

33. The petitioners are NTPC, NHPC, SJVNL, PGCIL, PTL and NSPCL and their tariff is determined by the Commission. The generators are supplying power to the distribution companies by utilizing the transmission systems of PGCIL and PTL. In the process the generators are utilizing services of RLDCs in the matter of system operation and market operation and the transmission licensees are utilizing the services of RLDC in the matter of system operation only. The respondents, POSOCO, BSEB, BYPL, BRPL, GRIDCO and MPPTCL have submitted that generating stations and

transmission licensees are liable to pay the RLDC fees and charges in accordance with the provisions in the Regulations and the Act. All petitioners except PTL have requested to make provision for direct recovery of the RLDC fees and charges from the beneficiaries. The Act provides for payment of RLDC fees and charges by the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Commission. The RLDC Regulations which have been specified by the Commission after detailed deliberation and stakeholder consultation provide for payment of fees and charges by the users of the RLDC systems. Users include generating companies, distribution licensees, buyers, sellers and inter-State transmission licensees who use the inter-State transmission network or the associated facilities of NLDC or RLDC. The users are liable to pay the RLDC fees and charges in accordance with the provisions of the Act and RLDC Regulations. All the generators are not supplying power to the distribution companies. There are merchant plants which do not have identified beneficiaries. Even a generating station which has identified beneficiaries may choose to sell part of its power on merchant basis. In such cases, direct recovery from the beneficiaries is not possible. MPPTCL and POSOCO have correctly pointed out that if the provision for direct recovery from beneficiaries is made, there would be difficulty in case of merchant generators whose beneficiaries are not identified. Considering the provisions of law and difficulties visualized in case of merchant generators, we are of the view that the direct recovery of RLDC fees and charges from the beneficiaries cannot be allowed. Therefore, the prayers of the petitioners to amend or relax the provisions of RLDC Regulations for direct recovery of RLDC fees and charges from the beneficiaries are rejected.

Issue No.2

34. Next issue is whether the RLDC charges paid by the petitioners shall be allowed as a pass through in tariff. The petitioners have submitted that the RLDC charges are not included in the base data considered for working out the norms for O&M expenses provided in the 2009 regulations as these charges were being directly paid by the beneficiaries prior to 1.4.2009. The respondents such as BSEB, BYPL, BRPL, UPPCL, MPPTCL and GRIDCO have submitted that the charges should not be made a pass through in tariff as it would be an additional liability to the distribution companies. It has been argued that the generating companies and transmission licensees should bear the RLDC fees and charges from their profit.

35. We have considered the submission of the parties. As already pointed out, the petitioners before us are the generating companies and inter-State transmission licensees whose tariff is being determined by the Commission. Prior to the notification of the RLDC Regulations, all the beneficiaries were paying the RLDC charges to PGCIL in the form of ULDC charges as determined by the Commission. Therefore, while fixing the norms for the 2009 regulations, RLDC fees and charges were not factored in the norms for O & M expenses. As a result, these expenditures are an additional cost to the generators and transmission licensees whose tariff is being determined by the Commission. Moreover, the market operation function and system operation functions carried out by the RLDCs are for the benefit of the distribution companies and the

ultimate consumers. Section 61(d) of the Act provides that the tariff should be guided by the principle of "safeguarding the consumer interest and at the same time recovery of the cost of electricity in a reasonable manner". If the RLDC fees and charges which are not factored in the 2009 regulations are not reimbursed, the generating companies and the transmission licensees will not be able to recover the cost in a reasonable manner. Therefore, the generating companies and transmission licensees are entitled to reimbursement of the RLDC fees and charges from the beneficiaries as part of reasonable cost of electricity supplied to the beneficiaries. In our view, the system operation charges, market operation charges, proportionate share of NLDC charges and the registration charges etc. which are charged to the generating companies and inter-State transmission licensees whose tariff is being determined by the Commission shall be recovered from the beneficiaries.

36. A related question arises as to the manner of reimbursement of the RLDC fees and charges by the beneficiaries. These charges cannot be allowed as a part of O & M expenses as this would require retrospective revision of the norms for O & M expenses. In our view, RLDC fees and charges should be allowed as a pass through in the same manner as the filing fees and publication expenses. Accordingly, we direct the staff of the Commission to submit the draft amendment to the 2009 regulations to incorporate the provision for reimbursement of RLDC fees and charges.

37. PGCIL has submitted that the RLDC Regulations was effective from 1.4.2009. However, the RLDC assets were transferred to POSOCO with effect from 1.10.2010 as per the order of the Ministry of Power, Government of India. For the period from 1.4.2009 to 30.9.2010, the RLDC assets were operated by PGCIL. Since billing for this period was to be done by PGCIL, it could not bill the system operation charges and market operation charges payable to itself. To this extent, the fees and charges of each of the RLDCs have remained unrecovered. PGCIL has prayed that it may be authorized to bill and recover from the beneficiaries for the under-recovery of fees and charges for the period 1.4.2009 to 30.9.2010. Alternatively, the billing for the said period may be revised by POSOCO by excluding the petitioner's portion so that 100% charges are passed on to the beneficiaries.

38. RLDC Regulations came into force with effect from 1.4.2009. The Regulations provided for a five year control period for determination of the fees and charges for RLDCs. However, RLDCs and NLDC remained under the control and jurisdiction of PGCIL till 30.9.2010 after which the jurisdiction over RLDCs and NLDC vested in POSOCO. The Commission has determined the fees and charges for NLDC and RLDCs in various orders of the Commission for the control period 2009-14. As regards the recovery of charges, the Commission had directed as under in its order dated 14.2.2011 in Petition No.83/2010:

"9. Considering the fact that the separation of POSOCO from PGCIL is in transition, we have decided that charges of POSOCO i.e. NLDC and RLDCs for the tariff period 2009-14 shall be determined by the Commission based on the petitions filed in accordance with the provisions of Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009. However, PGCIL shall bill the beneficiaries/users

upto the date of transfer of assets to POSOCO and after the transfer, billing shall be made on the beneficiaries/users by NLDC and RLDCs as the case may be."

Accordingly, PGCIL has billed the RLDCs fees and charges to the beneficiaries till 30.9.2010. As regards the share of PGCIL in the RLDC fees and charges in its capacity as a transmission licensee, PGCIL has not billed to itself. In view of our decision that the RLDC fees and charges shall be reimbursed by the beneficiaries, PGCIL is entitled to recover the charges from the beneficiaries after suitable provisions are made in the 2009 regulations.

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

sd/-
(M. DEENA DAYALAN)
MEMBER

sd/-
(V.S. VERMA)
MEMBER

sd/-
(S. JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON