CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 200/MP/2011
with
I.A.No.16/2012

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

Date of Hearing : 31.5.2012
Date of Order : 28.9.2012

In the matter of

Miscellaneous petition under Regulations 24 read with Regulation 111 of the Central Electricity Regulations Commission (Conduct of Business) Regulations, 1999 and Regulation 29, Power to Relax of the Central Electricity Regulations Commission (Fee and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009.

And
In the matter of

Power System Operation Corporation Limited, New Delhi **...Petitioner**

Vs.

(A) Users under the category of Distribution Licensees and Buyers

1. CMD, UPPCL, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow- 226001
2. Principal Secretary, Government of J&K, Civil secretariat, Srinagar, J&K.
3. CMD, Rajasthan Rajya Vidyut Prasaran Nigam Limited, Vidyut Bhawan, Vidyut Marg, Jaipur-302005
4. Chairman, Punjab State Electricity Board, The Mall,Patiala-147 001
5. Managing Director, Haryana Vidyut Prasaran Nigam Limited, Shakti Bhawan, Sector-6, Panchkula-134109.
6. CMD, Delhi Transco Limited, Shakti Sadan, Kotla Road, New Delhi-110 002
7. Chairman, Himachal Pradesh State Electricity Board, Kumar House, Vidyut Bhawan, Shimla-171004
8. Managing Director, Power Transmission Corporation of Uttarakhand Limited, 7-B, Lane No-1, Vasant Vihar Enclave, Dehradun - 248 001.

9. Chief Engineer, Electricity Department, UT Chandigarh, Sector 9-D, UT Chandigarh-160019
10. Chief Electrical Engineer, North Central Railway, GM Office Building, Allahabad, UP.
11. Executive Director, NRTS-I, Power grid Corporation of India Ltd., B-9, Qutab Institutional Area, New Delhi- 110016.

(B) Users under the category of Generating Stations and Sellers
1. General Manager, Singrauli Super Thermal Power Station, Shakti Nagar, UP-231222
2. General Manager, Rihand Super Thermal Power Station-I, Rihand Nagar, UP-231223
3. General Manager, Rihand Super Thermal Power Station-II, Rihand Nagar, UP-231223
4. General Manager, Dadri National Capital Power Project, Dadri Dhaulana Road, Distt. Gautam Buddh Nagar, UP-201008
5. General Manager, Firoz Gandhi Unchahar Thermal Power Project-I, Unchahar, Distt. Raibareilly, UP
6. General Manager, Firoz Gandhi Unchahar Thermal Power Project-II, Unchahar,, Distt. Raibareilly, UP
7. General Manager, Firoz Gandhi Unchahar Thermal Power Project-III, Unchahar, Distt. Raibareilly, UP
8. General Manager, Dadri Gas Power Project, Dhaulana Road, Distt. Gautam Buddh Nagar, UP-201008
9. General Manager, Auraiya Gas Power Project(Gas Fired, RLNG Fired, Liquid Fired), Dibiyapur, Distt Etawah, UP-206244
10. General Manager, Anta Gas Power Project (Gas Fired, RLNG Fired, Liquid Fired), Distt. Baran, Rajasthan-325209
11. Station Director, Narora Atomic Power Station, Narora, Distt. Bulandshahar, UP-202389
12. Station Director, Rajasthan Atomic Power Station-B, Anu Shakti Vihar, Kota, Rajasthan-323303
13. General Manager, Bairasiul Hydro Electric Project, NHPC Ltd.,Surangini, Distt. Chamba, HP-176317
14. General Manager, Salal Hydro Electric Project, NHPC Ltd, Jyotipuram, Distt. Udhampur, J & K-182312
15. General Manager, Tanakpur Hydro Electric Project, NHPC Ltd., Banbassa, Distt. Champawa, Uttrakhand- 262310
16. General Manager, Chamera-I Hydro Electric Project, NHPC Ltd., Khairi, Distt. Chamba, HP-176310
17. General Manager, Uri Hydro Electric Project, NHPC Ltd., Mohra, Distt. Baramulla, J&K-193122
18. General Manager, Chamera-II Hydro Electric Project, NHPC Ltd., Karian, Distt. Chamba, HP-176310
19. General Manager, Dhauliganga Hydro Electric Project, NHPC Ltd., Tapovan, Dharchula, Pithoragarh, Uttrakhand-262545

20. General Manager, Dulhasti Hydro Electric Project, NHPC Ltd., Chenab Nagar, Distt. Kishtwar, J&K- 182206
21. General Manager, Satluj Jal Vidyut Nigam Ltd. Power Project, Jhakri, Rampur, Distt. Shimla, HP-172201
22. General Manager, Tehri Hydro Development Corporation Ltd., Pragatipuram, Rishikesh, Uttrakhand- 249201

(C) Users under the category of Inter State Transmission Licensees
1. Executive Director, NRTS-I, Power Grid Corporation of India Ltd., B-9, Qutab Institutional Area, New Delhi- 110016
2. Director, Operations , Powerlinks Transmission Ltd., 10th Floor, DLF Tower-A, District Centre, Jasola, New Delhi-110044 … **Respondents**

Following were present:

Shri V.V.Sharma, NRLDC
Shri Rakesh Kumar, POSOCO
Miss Joyti Prasad, NLRDC
Shri Rahul Srivastava, Advocate for UPPCL
Shri Taruna A. Prasad, UPPCL
Shri Chandra Kant Shukla, SLDC, UP
Shri Kamal Kant, PETCUL
Shri Pankaj Jain, SLDC, RNPNL
Shri S.M.Siddiqui, THDC
Shri Deepak Sharma, SLDC, Delhi
Shri S.Vallinayagam, Advocate, TNEB
Shri Ravi Arya, MB Power Ltd.
Shri Abhishek Gupta, MB Power Ltd

ORDER

This petition has been filed by Power System Operation Corporation Limited (POSOCO) for invoking Regulation 29 “Power to Relax” for relaxation of Regulation 9 (2) of the Central Electricity Regulatory Commission (Fees and charges of Regional Load Despatch Centre and other related matters) Regulations, 2009 (hereinafter referred to as 'the RLDC Fees and Charges Charges Regulations') to allow the petitioner to utilize other income of the

National Load Despatch Centre (NLDC) and Regional Load Despatch Centres (RLDCs) a for meeting the shortfall in the Human Resource expenses subject to the truing up after expiry of the control period. The petitioner has further requested to allow NLDC and RLDCs to deposit the fees and charges collected against return on equity, depreciation, interest on loan and other income to LDC Development Fund after meeting the statutory tax requirements as per the provisions of the Income Tax Act, 1961.

2. The petitioner has submitted that in line with Regulation 16 of the RLDC fees and charges Regulations as amended vide notification dated 28.3.2011, the Human Resource (HR) expenses have been rationalized after considering 50% increase in employee cost on account of pay revision of the employees of the PSUs to arrive at the permissible HR expenses for the year 2009-10. The petitioner has further submitted that though Regulation 16 of the RLDC Fees and Charges Regulations allows only 50% increase in wage revision, the actual impact of wage revision is much higher after implementation of pay revision of the employees in the line with the Department of Public Enterprises guidelines issued by the Ministry of Power. The Commission in its various orders had approved HR expenses for the year 2011-12 as ₹ 62.65 crore for an approved manpower of 472 whereas the actual HR expenses of NLDC and RLDCs for the year 2010-11 are ₹ 78.52 crore with a manpower strength of 445 employees. It has also been submitted that as per accounting practice of POSOCO, the provisions were made in previous years

towards the wage revision of the executives and non-executives. These arrears were adjusted in the years 2009-10 and 2010-11. Similarly, the provisions were made towards the incentives Performance Related Pay (PRP) also and adjusted as per the actual in subsequent years. The petitioner has submitted the comparison of HR expenses approved by the Commission and the actual HR expenses as under:

(₹ lakh)

Petition No .and Date of Order	HR Expenses as per petitions	HR expenses as per CERC Orders	HR expenses as per actual for 2010-11
NLDC Petition No: 83/2010 Date of order : 14.02.2011	1306.15	1204.05	806.48
NRLDC Petition No: 91/2010 Date of order : 11.03.2011	1456.42	1256.13	1504.77
ERLDC Petition No: 95/2010 Date of order : 08.03.2011	1453.42	1275.65	1478.10
WRLDC Petition No: 92/2010 Date of order : 11.03.2011	1332.20	991.27	1368.97
SRLDC Petition No: 94/2010 Date of order : 17.03.2011	1328.01	943.74	1561.36
NERLDC Petition No: 100/2010 Date of order : 18.03.2011	593.85	1068.83	1132.93
Total	6264.69	7945.03	7852.61

3. The petitioner has submitted that the shortfall for meeting the expenses of existing manpower is ₹ 15.98 crores for the year 2010-11. Due to the shortfall in meeting the HR expenses of existing manpower, it would be difficult to deploy the extra manpower during the control period which has been approved by the Commission. The petitioner has submitted that the NLDC and RLDCs have other sources of income such as registration fee, application fee, short term open access charges for scheduling of bilateral and collective transactions under short term open access in accordance with Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulation, 2008, and income such sources is deposited to LDC Development Fund in accordance with Regulation 9(2) of RLDC Fees and Charges Regulations. The petitioner has submitted that in order to address the issue of meeting the shortfall in HR expenses without having to immediately revise the RLDC fees and charges, the petitioner be allowed meet the shortfall from other income and deposit the balance amount in LDC Development Fund. The amount so utilized shall be deposited in the LDC Development Fund after truing up exercise in accordance with Regulation 5 of RLDC Fee and Charges Regulations. The petitioner has prayed for invoking Regulation 29 "Power to Relax" for relaxation of Regulation 9(2) of RLDC Fees and Charges Regulation in order to allow RLDCs and NLDC to deposit the receipts from other income in the LDC Development Fund after meeting the shortfall in HR expenses subject to truing up after the control period.

4. The petitioner has submitted that the charges on account of return on equity, depreciation, interest on loan and other income of NLDC and RLDCs are required to be transferred to LDC Development Fund in accordance with Regulation 9 of RLDC Fees and Charges Regulations. Transfer of income of RLDCs and NLDC to the LDC fund is being done after payment of income tax. During the audit of accounts of POSOCO for the financial year 2010-11, the statuary auditors have made observations with respect to the absence of provisions in the RLDC Fees and charges Regulations regarding deduction of income tax before transferring money to the LDC Development Fund and have suggested for making appropriate provisions in the Regulations to take care of the tax liability. The petitioner has prayed that transfer to the LDC Development Fund may be allowed after meeting the statutory requirements of the Income Tax Act.

IA 16/2012

5. The petitioner has filed the Interlocutory Application 16/2012 invoking Regulation 29 for relaxation of Regulation 9(3) of RLDC Fees and Charges Regulations for utilisation of LDC Development Fund for activities under Corporate Social Responsibility (CSR) and Sustainable Development (SD) in accordance with the Department of Public Enterprises (DPE) Guidelines applicable to all Central Public Sector Enterprises (CPSEs). The petitioner has submitted that in accordance with the directives of DPE, all CPSEs (Holding as well as Subsidiaries), without exception, are required to sign Memorandum of Understakdings (MoUs) ; while the Apex/ Holding companies are mandated to

sign MoUs with their administrative Ministries/Departments, the Subsidiary companies are required to sign MoUs with their respective Apex/ Holding companies on the same lines as MoU signed between a CPSE and Government of India. Every year DPE notifies the guidelines on the MoUs which are to be followed by all the CPSEs. The guidelines also include mandatory activities under Corporate Social Responsibility (CSR), Sustainable Development (SD) and Research & Development (R&D) which have to be carried out by the CPSE or its subsidiary company by incurring a specified percentage of its profit after tax on such activities. The petitioner has submitted that POSOCO signed its maiden MoU with its Holding Company, PGCIL for 2011-12 in March, 2011. Since the POSOCO had commenced its operations from 1.10.2010, DPE had permitted exclusion of CSR, SD and R&D activities for 2011-12 and accordingly, these activities were not included in the MoU for 2011-12. However while approving the MoU for 2012-13, DPE has approved inclusion of CSR, SD and R&D activities. The petitioner has submitted that since all its income including profit are credited to the LDC Development Fund as per the RLDC Fees and Charges Regulations, it may be permitted to utilize the LDC Development Funds to meet the mandatory expenditure on CSR, SD and R&D under the MoU by invoking Regulation 29 “Power to Relax” for relaxation of Regulation 9(3) of RLDC Fees and Charges Regulations.

6. The IA has in effect amended the main petition by enlarging the scope of prayers to include the expenditure on CSR, SD and R&D activities. The IA is allowed and the prayers in the main petition are modified accordingly.

Replies of the Respondents

7. Replies to the petition have been filed by Uttar Pradesh Power Corporation Limited (UPPCL), NTPC Ltd, MP Power Trading Company Limited (MPPTCL) and Gujarat Urja Vikas Nigam Limited (GUVNL). The petitioner has also filed its rejoinder to the replies.

8. Gist of the replies of the respondents and the rejoinder of the petitioner are discussed as under:

(a) UPPCL has submitted that Interest on Working Capital (IWC) allowed under Regulation 17 of RLDC Fees and Charges Regulations includes O&M expenses excluding HR expenses for the month, HR expenses for the month, NLDC charges for the month and receivables for two months. If the payment of increased HR cost is made from the other income, then the proportionate interest on the sum @ short term PLR of SBI as on 1st April of the financial year should be reduced from IWC. As regards the income tax, UPPCL has submitted that the petitioner may be allowed to pay the income tax from the sum of Return on Equity (ROE), Interest on Loan (IOL), depreciation and other income and deposit the balance amount to the LDC Development Fund. In its supplementary affidavit, UPPCL has raised the issue whether O&M expenses can be trued up with respect to the actual expenditure on manpower.

(b)NTPC Ltd has submitted that under Regulation 9(3) of RLDC Fees and Charges Regulations, the charges collected towards registration fees, application fees, short term open access charges must be deposited in LDC

Development Fund for further capital investment and therefore the difficulty in meeting the HR expenses which are revenue in nature cannot be a ground for appropriation of LDC Development Fund. As regards the income tax, it has been submitted that the Commission may pass such order as deemed appropriate.

(c) MPPTCL has submitted that as per the Office Memorandum dated 26.9.2008 of Department of Public Enterprises, Government of India, revision of pay of the CPSE is subject to the affordability of the concerned CPSE to pay the same from its own resources and therefore, the impact of the pay revision should not be loaded to the beneficiaries. The respondent has submitted that if the prayers of the petitioner for utilization of LDC Development Funds to meet the extra HR expenses and income tax are allowed, it would cause grave prejudice to the beneficiaries.

(d) GUVNL in its reply affidavit dated 25.4.2012 has submitted that even though POSOCO is a wholly owned subsidiary company of PGCIL, by nature of its activities, it is a system operator and a statutory authority carrying out load dispatch function, unlike other PSEs carrying out their activities purely for commercial consideration. Therefore, POSOCO cannot be termed as PSE working for commercial benefits. GUVNL has also submitted that petitioner is not utilizing the society resources/benefits and putting society at disadvantageous position, and does not carry out activities purely on commercial consideration, and hence cannot be mandated to follow obligations under CSR and SD as per DPE guidelines. RLDC Fees and Charges

Regulations allows POSOCO to incur expenditure on R&D and therefore, expenditure on CSR and SD should be disallowed as it would put unwanted burden on the beneficiaries.

9. The petitioner in its rejoinder to the reply of UPPCL has submitted that Regulation 5 of RLDC Fees and Charges Regulations provides for truing up of annual charges of RLDCs after expiry of the control period which takes care of the apprehension of UPPCL. In its rejoinder to the reply of NTPC Ltd, the petitioner has submitted that unlike the provisions in the Tariff Regulations where HR expenses have been clubbed with O&M expenses, HR expenses have been kept separate in RLDC Fees and Charges Regulations considering the fact that functions discharged by the load dispatch centres are highly specialized and technical. The petitioner has further submitted that the apprehension regarding appropriation from the LDC Development Fund and consequent sub-optimal investments required to operate the grid is unfounded as the proposal of the petitioner is to utilize only a portion of other income of NLDC and RLDCs for meeting the shortfall in HR expenses as an interim arrangement and the amount so utilized will be deposited after truing up at the end of the control period. In reply to the submission of MPPTCL, the petitioner has submitted that relaxation of Regulation 9(2) of RLDC Fees and Charges Regulations would not prejudice the beneficiaries in any manner as there is no increase in the fees and charges of the beneficiaries in any manner. If the relaxation is allowed, the same will not have any effect on the LDC Development Fund as Regulation 5 of RLDC Fees and Charges

Regulations allows for truing up at the end of the control period. In reply to the objections of GUVNL, the petitioner has submitted that in addition to their statutory functions under the Act, the NLDC and RLDCs are also carrying out market operation related activities and the functions of Central Agency for registration of eligible entities, issuance of certificates, maintaining and settling accounts in respect of these certificates etc. under Renewable Energy Certificate (REC) Mechanism. The petitioner has further submitted that as per CSR guidelines, Corporate Social Responsibility is a company's commitment to operate in an economically, socially and environmentally sustainable manner and is beyond the statutory requirements and applies even to financial services and other sectors which have no specific geographical area or limited area. POSOCO being a PSE is mandated to follow the DPE guidelines as any other PSE. GUVNL has filed additional reply vide affidavit dated 9.6.2012. GUVNL has submitted that most of the activities entrusted to POSOCO by Hon'ble Commission is in the nature of statutory functions and not commercially driven market operation for profit making people. As mentioned in the Annual Accounts of POSOCO for the year 2010-11, the system operation assigned pursuant to RLDC Fees and Charges Regulations is not even subject to service tax which clearly establishes that POSOCO is not earning commercial benefits unlike any PSEs. GUVNL has submitted that though POSOCO is not working for any commercial benefits it is indirectly contributing to the Sustainable Development by the means of activities related to Renewable Energy and Energy Management and thus the guidelines of mandatory spending on CSR/SD are not mandatory to companies like POSOCO as a system operator.

10. During the hearing of the petition on 22.12.2011, the representative of the petitioner submitted that if POSOCO is not allowed to utilise the LDC Development Fund to meet the shortfall in HR expenses, it may have to borrow from banks for which interest has to be paid which would be an additional burden on the beneficiaries. He submitted that relaxation of Regulations is sought only to meet the cash flow problems which would be taken care by truing up at the end of the tariff period.

Analysis of the Issues

11. We have perused and considered the documents on record, the submission of the petitioner and the respondents. The petitioner has filed the petition for relaxation of Regulation 9 of RLDC Fees and Charges Regulations for the following:

(a) Utilisation of LDC Development Fund to meet the shortfall in HR expenses as an interim arrangement;

(b) To meet the statutory tax requirement from the RLDC Fees and Charges before depositing the same in the LDC Development Fund;

(c) Utilisation of LDC Development Funds to meet Corporate Social Responsibility and Sustainable Development and Research and Development as per the DPE Guidelines.

Each of the above is discussed in the subsequent paragraphs.

(A) Shortfall in HR expenses

12. Regulation 16 of the RLDC Fees and Charges Regulations as amended vide Notification dated 28.3.2011 provides for the admissibility of HR expenses in case of NLDC and RLDCs as under:

> *"16. Human Resource Expenses. - (1) Human resource expenses shall be derived on the basis of actual human resource expenses for the years 2004-05 to 2008-09, based on the audited balance sheets. The human resource expenses shall be normalized by excluding abnormal Human resource expenses, ex-gratia, VRS expenses, prior-period adjustments, claims and advances written-off, provisions, etc, if any, after prudence check by the Commission.*
>
> *(2) The normalized human resource expenses, after prudence check, for the years 2004-05 to 2008-09, shall be escalated at the rate of 5.17% to arrive at the normalized human resource expenses at the 2008-09 price years and then averaged to arrive at normalized average human resource expenses for the 2004-05 to 2008-09 at 2008-09 price level. The average normalized human resource expenses at 2008-09 price level shall be escalated at the rate of 5.72% to arrive at the human resource expenses for year 2009-10*
>
> *Provided that human resource expenses for the year 2009-10 shall be further rationalized after considering 50% increase in employee cost on account of pay revision of the employees of the Public Sector Undertakings to arrive at the permissible human resource expenses for the year 2009-10.*
>
> *Provided further that cost of anticipated increase in the manpower of each year of the control period shall also be considered after prudence check.*
>
> *(3) The human resource expenses for the year 2009-10 shall be escalated further at the rate of 5.72% per annum to arrive at permissible human resource expenses for the subsequent years of the control period."*

13. The petitioner has submitted that though the RLDC Fees and Charges Regulations allow 50% increase in employee cost on account of wage revision but the actual impact of the wage revision is much higher after implementation as per the DPE guidelines for wage revision. The actual HR

expenses of NLDC and RLDCs are higher over the approved expenditure by Rs.15.88 crore during 2010-11. The petitioner has submitted that the arrears on account of pay revision of executives and non-executives were adjusted in 2009-10 and 2010-11 and also the Performance related Pay (PRP) as per the actual is adjusted in subsequent years. As the petitioner has no other means to meet the extra HR expenses except by raising the loan from the market, the petitioner has submitted that it be allowed to meet the expenses from its other income and deposit the balance amount in the LDC Development Funds by relaxing Regulation 9(2) of the RLDC Fees and Charges Regulations. The shortfall in the LDC Development Fund would be made up at the time of truing up. The respondents have opposed the prayer of the petitioner on the ground that expenditure beyond what is permissible under the HR expenses as per the RLDC Fees and Charges Regulations should not be allowed.

14. The petitioner has been allowed the HR expenses in accordance with Regulation 16 of the RLDC Fees and Charges Regulations in case of NLDC and RLDCs in its orders in Petition Nos. 83/2010, 91/2010,92/2010,94/2010,95/2010 and 100/2010. The tariffs allowed under these petitions are subject to truing up in accordance with Regulation 5 of RLDC Fees and Charges Regulations. Regulation 5(1) of RLDC Fees and Charges Regulations provides as under:

> "(1) The Commission shall carry out truing up exercise along with the application for determination of fees and charges filed for the period after the expiry of the control period, for the fees and charges recovered up to 31.3.2014 and admitted by the Commission after prudence check at the time of truing up."

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Thus actual HR expenses admissible to the petitioner as per the Regulations will be decided after truing up in accordance with the above provision. We notice that the petitioner has included the arrears of wage revision during 2007-09 of its executives and non-executives during the years 2009-10 and 2010-11 when it was actually paid. It bears mention that during 2007-09, the petitioner was functioning as part of PGCIL which has claimed the ULDC charges for that period and therefore, the arrears of wage revision of the employees of POSOCO for the period 2007-09 is the responsibility of PGCIL. The Commission is separately considering the Petition No.101/2010 of PGCIL for reimbursement of the expenses towards wage revision of its employees and irrespective of the outcome of the said petition, the petitioner should settle the matter of arrears on account of wage revision with PGCIL for the period 2007-09. Leaving aside the arrears of wage revision for the period 2007-09, any additional legitimate HR expenses over and above that approved by the Commission in its various tariff orders as mentioned in para 3 of this order may be temporarily met by the petitioner out of the LDC Development Fund which will be recouped at the time of truing up.

15. Regulation 9 of the RLDC Fees and Charges Regulations provides for the following provisions with regard to creation and maintenance of LDC Development Fund:

> **"9. LDC Development Fund. -** (1) The Power System Operation Company shall create and maintain a separate fund called 'LDC Development Fund'.
>
> (2) The charges on account of return on equity, interest on loan, depreciation and other income of the Regional Load Despatch Centre and National Load Despatch centre such as registration fee, application fee, short-term open access charges, etc shall be deposited to the LDC development fund.

> (3) The Power System Operation Company shall be entitled to utilise the money deposited to the LDC development fund for loan repayment, servicing the capital raised in the form of interest and dividend payment, meeting stipulated equity portion in asset creation and margin money for raising loan from the financial institutions and funding R & D projects.
>
> (4) The LDC development fund shall not be utilized for any other revenue expenditure.
>
> 5) Any asset created by the Power System Operation Company out of the money deposited to the LDC development fund shall not be considered for computation of return on equity and interest on loan."

Regulation 9(3) as quoted above provides for utilization of LDC Development Fund for loan payment, servicing of interest for the capital raised, dividend payment, meeting stipulated equity portion in asset creation, margin money for raising the loan from the financial institution and funding of R&D projects. The said provision does not provide for utilization of LDC Development Funds for any other purpose. Keeping in view the difficulties faced by the petitioner to meet its legitimate HR expenses, we relax the provisions of Regulation 9(3) in exercise of our power under Regulation 29 of the RLDC Fees and Charges Regulations to permit temporary interest free advance to POSOCO management from the LDC Development Fund to meet the shortfall in actual HR expenses in terms of our directions in para 14 above. The advance shall be recouped after the truing up of expenditure is carried out by the Commission in terms of Regulation 5 of RLDC Fees and Charges Regulations.

(B) Payment of Income Tax

16. The petitioner has submitted that there is no provision in the RLDC Fees and Charges Regulations for deduction of any tax while transferring money to

the LDC Development Fund. The issue has been raised by the statutory auditors. Accordingly, the petitioner has prayed for transfer of income of RLDC and NLDC to the LDC Development Fund after meeting the statutory requirements of Income Tax. UPPCL has submitted that the prayer be allowed whereas NTPC has submitted that the Commission may issue directions as may be considered appropriate.

17. In para 3.3.3 of the Statement of Reasons to the RLDC Fees and Charges Regulations, the Commission has observed as under:

> "3.3.3 In these regulations, the rate of return on equity shall be computed by grossing up the base rate of 16% with the normal tax rate for the financial year 2009-10 applicable to the Power System Operation Company. The rate of return on equity with respect to the actual tax rate applicable to the Power System Operation Company in line with the provisions of the relevant Finance Acts of the respective year during control period shall be trued up at the end of the control period."

Accordingly, Regulation 12 of the RLDC Fees and Charges Regulations provide as under:

> **12. Return on equity. -** (1) Return on equity shall be computed in Rupee term on equity base determined in accordance with Regulation 8 of these regulations.
> (2) Return on equity shall be computed on pre-tax base rate of 16% to be grossed up as per the sub-clause (3) of this regulation.
> (3) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the financial year 2009-10 applicable to the Power System Operation Company:
>
> Provided that return on equity with respect to the actual tax rate applicable to the Power System Operation Company in line with the provisions of the relevant Finance Acts of the respective year during control period shall be trued up at the end of the control period.

18. The Commission has adopted a pre-tax return on equity in case of NLDC and RLDCs on the same line as the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, hereinafter 'Tariff

Regulations'. As per the approach adopted in case of Tariff Regulations, the beneficiaries shall pay tax on the return on equity by grossing up the base rate with the applicable tax rate. However, it shall be the responsibility of the generating company or transmission licensee to manage its tax portfolio and pay income tax on its taxable income. In the same manner, it is the responsibility of POSOCO to pay income tax on its income. Since advance tax is payable by the company on quarterly basis, it is appropriate that tax is deducted at source from the income of NLDC and RLDCs and the balance income is credited to the LDC Development Fund. Therefore, in exercise of our power under Regulation 29 of RLDC Fees and Charges Regulations, we relax the provisions of Regulation 9(2) to provide that the charges shall be deposited after deducting the income tax at applicable rates.

(C) Expenses on Corporate Social Responsibility and Sustainable Development and Research and Development activities

19. The petitioner has submitted that as per the directives of Department of Public Enterprises, Government of India making it mandatory for all CPSEs to enter into MoU with their administrative ministries and the subsidiary companies with their holding company to carry out mandatory activities under Corporate Social Responsibility (CSR), Sustainable Development (SD) and R&D by meeting the expenditure as a percentage of profit after tax of the CPSE. Accordingly, the petitioner has prayed for allowing the expenditure on these activities by relaxing Regulation 9(3) of RLDC Fees and Charges Regulations.

GUVNL has opposed the expenditure on the ground that NLDC and RLDC being load despatch centres and discharging statutory responsibilities under the Act cannot be termed as CPSE and therefore, expenditure on CSR and SD should not be allowed. As regards R&D, GUVNL has submitted that expenditure on this head has already been allowed under Regulation 9(3) of RLDC Regulations.

20. In view of the submission of the petitioner and the respondent, we first consider the legal status of the petitioner. Section 26 of the Act provides that the Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres. The National Load Despatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act. Similarly, section 27 of the Act provides that the Central Government shall establish a centre for each region to be known as Regional Load Despatch Centre which shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act. The Central Government has notified POSOCO to operate as the subsidiary company of PGCIL. POSOCO controls the NLDC and RLDCs. Even though POSOCO is discharging certain statutory responsibility under the Act, it has the liability of a company under the applicable laws. So long as it continues to be subsidiary of PGCIL which is a CPSE or continues as

an independent CPSE, it would be liable for Corporate Social Responsibility and Sustainable Development and R&D activities as per the guidelines of Department of Public Enterprises.

21. Department of Public Enterprises, Ministry of Heavy Industries& Public Enterprises, Government of India has issued the Guidelines for Memorandum of Understanding between the CPSE and Government Department/Ministry for the year 2012-13 vide Office Memorandum No.3(11)/2011-DPE(MoU) dated 31.10.2011. Para 1.1 of the OM provides for the applicability of the MoU as under:

> "1.1 Applicability:- All CPSEs (Holding as well as Subsidiaries) without exception are required to sign MoUs; while the Apex/Holding companies are mandated to sign MoUs with their administrative Ministries/Departments, the Subsidiary companies are to sign MoUs with their respective Apex/Holding companies on the same lines as MoU signed between a CPSE and Government of India. The MoU formats for all CPSEs, including the Subsidiaries, are attached. Those CPSEs who do not adhere to DPE's schedule for signing of MoU will have their MoU performance rated as "Poor".

Thus it is a mandatory requirement for a subsidiary company to enter into MoU with its Holding company as per the guidelines of DPE. Therefore, POSOCO which is a 100% subsidiary of PGCIL cannot escape the responsibility to sign MoU with PGCIL. In terms of the MoU, it is obligated to undertake CSR, SD and R&D activities.

22. Perusal of Regulation 9(2) of RLDC Fees and Charges Regulations shows that the NLDC and RLDCs have been authorized to utilize the money

deposited to the LDC Development Funds for funding R & D activities. However, there is no provision for expenditure on corporate social responsibility and sustainable development. In exercise of our power under Regulation 29, we relax the provisions of Regulation 9(2) of the RLDC Fees and Charges Regulations to allow expenditure on Corporate Social Responsibility and Sustainable Development strictly in terms of its MoU with PGCIL for the year 2012-13. The petitioner is directed to place on affidavit a copy of the MoU with PGCIL, the expenditure incurred on corporate social responsibility and sustainable development and the targets achieved as against the parameters of MoU by 30.6.2013.

23. We have relaxed Regulation 9(2) and 9(3) of RLDC Fees and Charges Regulations in paras 15, 18 and 22 of this order to grant immediate relief to the petitioner. We direct the staff of the Commission to process the case for appropriate modifications in the RLDC Fees and Charges Regulations.

24. Petition No.200/2011 and IA No.16/2012 are disposed of in terms of the above directions.

sd/-	sd/-	sd/-	sd/-
(M. Deena Dayalan)	**(V. S. Verma)**	**(S. Jayaraman)**	**(Dr. Pramod Deo)**
Member	**Member**	**Member**	**Chairperson**