

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 35/MP/2014**

**Coram:**

**Shri Gireesh B.Pradhan, Chairperson**

**Shri A.K.Singhal, Member**

**Date of Hearing: 17.4.2014**

**Date of order: 04.2.2016**

**In the matter of**

The notice of demand under Section 156 of the Income Tax Act, 1961 received from the Deputy Commissioner of Income Tax, New Delhi and Regulation 21 of the CERC (Power System Development Fund) Regulations, 2010 and Regulations 64 of the CERC (Power Market) Regulations, 2010, for removal of difficulties and under Regulation 14 of the CERC (Measures to relieve Congestion in real time operations) Regulations 2009, Regulation 12 of the CERC (Unscheduled Interchange Charges and related matters) Regulations, 2009 and under Part 7 Regulation 4 of CERC (Indian Electricity Grid Code) Regulations 2010 power to relax

**And**

**In the matter of**

Power System Operation Corporation Ltd.  
B-9, Qutab Institutional Area, Katwaria Sarai  
New Delhi-110 016

**....Petitioner**

**Vs**

1. Northern Regional Power Committee  
18-A, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110 016

2. Eastern Regional Power Committee  
14 Golf Club Road,  
Tollygunge, Kolkata-700 033

3. Western Regional Power Committee  
F-3, MIDC Area, Marol,  
Opp. SEEPZ, Central Road, Andheri (East)  
Mumbai-400 093

4. Southern Regional Power Committee

No.29, Race Course Cross Road  
Bangalore-560 009

5. North Eastern Regional Power Committee  
Meghalaya State Housing Finance  
Co-operative Society Ltd. Building,  
Nongrim Hills, Shillong-793 003.

6. Secretary, Central Electricity Authority  
Sewa Bhawan, R.K.Puram,  
New Delhi-110 066

### **ORDER**

The petitioner, Power System Operation Corporation Limited, has filed the present petition with the following prayers:

"(a) The Hon`ble Commission may declare, that the surplus in the Regulatory Pool Accounts is not the income of POSOCO (POWERGRID for the period up to 30.9.2010) and further declare that NLDC/RLDCs are only nodal agency operating and maintaining the Regulatory Pool Account as an agent on behalf of the Hon`ble Commission. The money collected under these functions be considered as a part of income exempted under Section 10 (46) of the Income Tax Act, 1961;

(ii) Without prejudice to the relief prayed above in the event that the petitioner is required to make the payment of ₹ 879.20 crore or any other sum as levied by the Revenue Department on the money collected under regulatory function, the same may be paid from the PSDF;

(iii) The Hon`ble Commission may also consider evolving a comprehensive framework for the removal of the difficulty, by formation of a separate entity with a new PAN number to deal with all the Regulatory Funds already created and to be created in future and settlement thereof, or any other such mechanism as may be considered appropriate in the opinion of the Hon`ble Commission;

(iv) Pass any such order/s that the Hon`ble Commission may deem fit in the circumstances of the case."

2. The Commission in its order dated 13.3.2014 disposed of prayers (i) and (ii) as under:

"11. The demand notice has been issued by IT Department treating the funds in the regulatory accounts maintained by NLDC/RLDCs before their transfer to the PSDF as income of NLDC/RLDCs. In this connection, it is

clarified in the light of the discussion in the preceding paras that the funds accruing in the different regulatory accounts are never intended to be income of NLDC/RLDCs and the expenditures from these funds are to be made strictly for the purpose specified in the respective regulations after regulatory approval by this Commission. NLDC/RLDCs are mere custodian of these funds till the balance amounts are transferred to the PSDF which has been exempted under section 12A of the Income Tax act, 1961. The petitioner is directed to take up the matter with the competent authorities under the Income Tax Act, 1961 including any legal remedy available for withdrawal or setting aside of the demand notice from IT Department.

12. The petitioner has prayed for a direction that in the event it is required to make payment of Rs.879.29 crore as per the demand notice of the IT Department, it may be allowed to pay the same from PSDF. We are of the view that since as per the decision of Ministry of Finance, monies available in PSDF will be transferred to the Public Account of India and will be maintained and operated by the Monitoring Committee constituted in accordance with the Ministry of Power, Government of India OM 29/9/2010-R&R (Vol. II) dated 10.1.2014, the petitioner is advised to take up the matter with the Monitoring Committee.

13. On the prayer (iii) of the petition, the Commission would like to take a decision after hearing all parties. Accordingly, notices are issued to all respondents and Ministry of Power to file their responses by 25.3.2014. The petitioner is directed to serve copy of the petition on the respondents and Ministry of Power immediately, if not already served.”

3. Meanwhile, the petitioner filed IA No. 15/2014 to bring on record the steps taken by the petitioner since the issue of the order dated 13.3.2014 in Petition No.35/MP/2014 and seeking intervention of the Commission towards resolution of the issue. The Commission disposed of the IA, vide order dated 28.3.2014 reiterating the decisions in order dated 13.3.2014.

4. During the hearing on 17.4.2014, the representative of the petitioner submitted that CIT (Appeal) in order dated 31.3.2014 in Appeal No. 130/13-14 deleted the amount of ₹ 1973.33 crore pertaining to the surplus lying in Regulatory Pool Accounts which was earlier considered as the income of POSOCO. As regards prayer (iii), the representative of the petitioner requested the Commission to consider evolving a comprehensive framework

for removal of difficulties by formation of a separate entity with a new PAN No. to deal with regulatory funds already created or to be created in future.

The Commission in the Record of Proceedings directed as under:

“3. The Commission directed the representative of the petitioner to prepare a comprehensive proposal containing both short term and long term solutions to the problem after consultation with the tax experts and submit the proposal within a period of one month. The Commission further directed the staff to examine the said proposal of POSOCO and submit the same for consideration by the Commission.”

5. The petitioner, vide its affidavit dated 28.1.2016, has submitted as under:

“6. In the meanwhile, CIT (Appeals) gave relief to POSOCO in respect of the said tax notice vide order dated 3.4.2014. An appeal against the said order with the Income Tax Appellate Tribunal (ITAT) was filed by the Income Tax Authorities. The appeal is still pending before the ITAT.

7. It is submitted that till final order in the tax matter is issued and finally resolved, we may maintain status quo with respect to the working of the Regulatory Pool Accounts. Once the appellate authority finally adjudicates the issues, we may consider evolving a mechanism on the basis of the final stand of the authorities.

8. This proposal may please be considered by the Commission and the matter be disposed of.”

6. From the above affidavit, it appears that the petitioner is not interested to pursue prayer (iii) of the petition till the appeal in the tax matter is disposed of. Taking note of the submission of the petitioner, the petition is disposed of without any further directions.

Sd/-  
**(A.K.Singhal)**  
Member

sd/-  
**(Gireesh B.Pradhan)**  
Chairperson