

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri A.H.Jung, Member**

Review Petition No.123/2006

In the matter of

Review of the Commission's notification No. L-68(84)/2006-CERC dated 22.8.2006 in respect of amendment of Indian Electricity Grid Code.

And in the matter of

Northern Regional Load Despatch Centre Petitioner

Review Petition No.124/2006

In the matter of

Review of the Commission's notification No. L-68(84)/2006-CERC dated 22.8.2006 in respect of amendment of Indian Electricity Grid Code.

And in the matter of

Western Regional Load Despatch Centre Petitioner

Review Petition No.125/2006

In the matter of

Review of the Commission's notification No. L-68(84)/2006-CERC dated 22.8.2006 in respect of amendment of Indian Electricity Grid Code.

And in the matter of

Eastern Regional Load Despatch Centre Petitioner

Review Petition No.126/2006

In the matter of

Review of the Commission's notification No. L-68(84)/2006-CERC dated 22.8.2006 in respect of amendment of Indian Electricity Grid Code.

And in the matter of

North Eastern Regional Load Despatch Centre Petitioner

Review Petition No.127/2006

In the matter of

Review of the Commission's notification No. L-68(84)/2006-CERC dated 22.8.2006 in respect of amendment of Indian Electricity Grid Code.

And in the matter of

Southern Regional Load Despatch Centre ... Petitioner

The following were present:

1. Shri A. Roy, WRLDC
2. Shri S.K.Banerjee, ERLDC
3. Shri M.Hussain, NERLDC
4. Shri S.R.Narasimhan, NRLDC
5. Shri S.K.Soonee, NRLDC
6. Shri K.Ramakrishna, SRLDC

**ORDER
(DATE OF HEARING: 28.11.2006)**

These applications have been made under clause (f) of sub-section (1) of Section 94 of the Electricity Act, 2003 (the Act) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of the Commission's notification dated 22.8.2006, regarding amendment of the Indian Electricity Grid Code (the Grid Code).

2. Heard the representatives of the petitioners on admission.
3. Under Section 178, more particularly under clause (g) of sub-section (2) of Section 178 of the Act, the Commission is authorized to make regulations, to specify the Grid Code. The Grid Code made under Section 178 of the Act was notified in the Gazette on 17.3.2006, effective from 1.4.2006. Under the Grid Code as notified on 17.3.2006, the function of preparation of Regional Energy Accounts was assigned to the Regional Load Despatch Centres.
4. By notification dated 22.8.2006, presently sought to be reviewed, also promulgated by virtue of powers under Section 178 of the Act, certain provisions of the Grid Code were amended. The effect of these amendments is that with effect from 1.9.2006, the function of preparation of Regional Energy Accounts has been

assigned to the Regional Power Committee Secretariats. The applicants in all these applications feel aggrieved by transfer of function of preparation of Regional Energy Accounts from the Regional Load Despatch Centres to the Regional Power Committee Secretariats and accordingly seek review of the notification.

5. It is a fundamental principle of construction that rules/regulations made under the statute are treated as exactly if they were in the statute and are of same effect. The amendments to the Grid Code having been notified by the Commission in exercise of its legislative powers conferred under the Act have become part of the statute and partake the character of legislation. Clause (f) of sub-section (1) of Section 94 of the Act undeniably confers powers of review on the Commission on same basis as vested in a civil court under the Code of Civil Procedure (the Code). The powers of the civil court in regard to review are contained in Section 114 read with Order 47 of the Code. The civil court exercises power to review while performing its adjudicatory functions of settlement of civil disputes. The civil courts do not perform the legislative functions on the lines vested in the Commission under Section 178 of the Act. Therefore, for exercise of powers by the Commission under Clause (f) of sub-section (1) of Section 94 of the Act, a distinction has necessarily to be made between the power exercised in legislative capacity and that exercised in the judicial or quasi-judicial capacity. It follows that the powers conferred on the Commission by virtue of Clause (f) of sub-section (1) of Section 94 of the Act to review its decisions, directions and orders are limited to the adjudicatory functions of the Commission under the Act or an order made in exercise of quasi-judicial power. In this view of the matter, the provisions of the Grid Code including amendments thereof are beyond the scope of review under Clause (f) of sub-section (1) of Section

94 of the Act. A view similar to this was taken by the Commission earlier while disposing of the applications made by certain utilities for review of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, also made under Section 178 of the Act.

6. The Appellate Tribunal for Electricity has been consistently following this approach when it has been holding that the regulations made by the Commission under Section 178 of the Act are outside its appellate jurisdiction, they being statutory in nature, get incorporated in the parent statute.

7. The framework for the notification dated 22.8.2006 is contained in the majority opinion recorded in the Statement of Reasons of same date. The majority, inter alia, recorded that, the Regional Load Despatch Centres had accepted the position obtaining prior to 1.4.2006 when the Grid Code notified 17.3.2006 came into effect, without any demur for about 3 years after the Act came into force on 10.6.2003. It was further noted by the majority that while submitting comments on the draft Grid Code under which the function of preparation of Regional Energy Accounts was proposed to be assigned to the Regional Power Committee Secretariats, the Regional Load Despatch Centres had not suggested for entrusting the task to them and, therefore the suggestions submitted by them in response to the public notice on amendment of the Grid Code, was an act of after-thought. In the context of these observations, the representatives of the applicants have pointed out at the hearing that the position was wrongly recorded in the majority opinion. In support of their contention, the representatives of the applicants relied upon para 34 of the Commission's order dated 30.1.2004 in Petition No.48/2003 (Suo Motu).

8. We have perused the order dated 30.1.2004 *ibid*. We do not find that in those proceedings any of the Regional Load Despatch Centres pleaded for transfer of function of preparation of Regional Energy Accounts to them, being performed by the Regional Electricity Board Secretariats, the predecessors of the Regional Power Committee at that time. The observation in para 34 of the order dated 30.1.2004 was made in the context of representation received from PTC (India) Ltd. In this regard, an extract of para 28 of the order is reproduced below:

“28. PTC has expressed a view that in line with Section 28 (3) (c) of the Act, the Regional Load Despatch Centres should take over the function of commercial accounting and preparation of Regional Energy Account, at present being done by the Regional Electricity Boards and in case of disparity in Regional Energy Accounts it should be the responsibility of the nodal Regional Load Despatch Centre to resolve.”

9. In the light of above, the finding recorded by the majority in the Statement of Reasons, the correctness of which has been contested by the applicants, cannot be faulted.

10. In the Statement of Reasons dated 22.8.2006, it was also noted by the majority that performance of Regional Energy Accounting function by the Regional Power Committee Secretariats would not involve any extra cost. The applicants have contested the correctness of this finding also. In support thereof, Northern Regional Load Centre has placed on record a copy of the minutes of the first meeting by NRPC, circulated vide NRPC letter dated 3.7.2006. Similar evidence has been placed on record by other applicants as well.

11. On perusal of the document, it is revealed that the modalities of financing the expenditure of RPC Secretariats were discussed in the meetings. After deliberations,

it was decided that each member of RPCs except in case of North Eastern Region would contribute towards annual expenditure of RPC Secretariats. As regards North Eastern Regional Power Committee, it was reiterated that funding of the Secretariat should continue to be made by the Central Government as done in the case of erstwhile NEREB. The expenditure reimbursed is to be credited to the Consolidated Fund of India.

12. We have considered the submission made on behalf of the applicants in the light of the evidence now placed on record on behalf of the applicants. The observation by the majority is in the context of “extra” expenditure for preparation and maintenance of Regional Energy Accounts, whereas the decision relied upon by the applicants relates to reimbursement of the basic expenditure incurred by the Regional Power Committee Secretariats which was being funded by the Central Government. It still follows that no additional expenditure is involved in the preparation of the Regional Energy Accounts by the Regional Power Committee Secretariats. Accordingly, the finding recorded by the majority holds good.

13. Needless to mention, the Commission reserves the right to revisit the issue if and when necessary.

14. Accordingly, the applications for review made by the Regional Load Despatch Centers are not maintainable and are dismissed.

Sd/-
(A.H.JUNG)
MEMBER

New Delhi dated 6th December, 2006

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON