

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri D.P. Sinha, Member**
3. **Shri G.S. Rajamani, Member**
4. **Shri K.N. Sinha, Member**

Petition No. 43/2000

In the matter of

Approval under Regulation 86 for fees and charges payable by the Respondents for operation and Maintenance of Eastern Region Load Despatch Centre for the years 1994-95 to 2001-2002.

And in the matter of :

| | | |
|--|-------|-------------|
| Power Grid Corporation of India Ltd. | | Petitioner |
| Vs | | |
| 1. Bihar State Electricity Board | | |
| 2. West Bengal State Electricity Board | | |
| 3. Grid Corporation of Orissa Ltd | | |
| 4. Damodar Valley Corporation | | |
| 5. Power Department, Gangtok | | Respondents |

The following were present:

1. Shri T.S.P. Rao, PGCIL
 2. Dr A.K. De Bhowmick, PGCIL
 3. Shri V.K. Dayal, Ch. Manager (SO), PGCIL
 4. Shri T.K. Srivastava, Ex. Engr., UPPCL
 5. Shri S. Mondal, CE (Comml.), DVC
 6. Shri T.K. Ghosh, SE(Comml.), DVC
 7. Shri S. Mishra, Dy. Manager (SO), PGCIL
 8. Shri Jagdish Singh, DGM(SO), PGCIL
 9. Shri V.Mittal, AGM (SO), PGCIL
 10. Shri R.P. Choudhary, GM(SO), PGCIL
 11. Shri Md. S. Mondal, DVC
 12. Shri K.K. Panda, Liaison Officer, GRIDCO
- Shri R.K. Mehta, Advocate, GRIDCO

**ORDER (DATE OF HEARING:
25.7.2002)**

Power Grid Corporation of India Ltd, in its capacity as the Central Transmission Utility (CTU) has filed the present petition praying the Commission

"to approve" the fees and charges payable by the respondents on account of services rendered by RLDCs for the period from 1994-95 to 2001-2002, based on CEA's letter dated 15.7.1998 [Enclosure 4 to the Petition]. According to the petitioner, the sharing of RLDC charges would be on actual entitlement of the constituents to be decided based on the global accounts prepared by Eastern Regional Electricity Board.

2. This petition was initially heard on 22.8.2000. The Commission in its order had observed that Section 55 (10) of the Electricity Supply Act 1948 which empowers the Commission to prescribe RLDC fees and charges came into force in December 1998 and therefore, *prima facie*, the Commission did not have the jurisdiction to specify the RLDC fees and charges for the prior period. The Commission, however, directed for payment of provisional charges from December 1998, till final determination of charges by the Commission, and sharing of RLDC charges based on the provisions contained in CEA's letter dated 15.7.1998. The Commission also directed the petitioner to make appropriate proposals for the Commission's consideration for payment of RLDC fees and charges for all regions.

3 Based on the petition filed by the present petitioner, (Petition No. 109/2000), in compliance with the above direction, the Commission has finally determined the RLDC fees and charges for the period from 1998-99 to 2003-04 in its order dated 22.3.2002. Therefore, so far as the present petition is concerned,

the question of determination of RLDC fees and charges for the period from 1994-95 to 1997-98 subsists.

4. Shri T.S.P. Rao, Additional General Manager (Law) appearing on behalf of the petitioner has submitted that in view of the order dated 19.6.2000 in Petitions No. 12/99, 13/99, 14/99 and 16/99, the Commission has jurisdiction to determine RLDC fees and charges for the period prior to its establishment. He specifically drew our attention to paragraph 26 of the order dated 19.6.2000 which is reproduced below:

"Accordingly, we decide that the Commission has jurisdiction to exercise the same powers as were exercisable by the Central Government on the question of determination of incentive for use of the inter-State transmission system, before its establishment. The Commission can therefore exercise jurisdiction for notifying incentive for the period prior to its establishment. While dealing with issue (a) above, we have already expressed our view to adopt the norms and principles notified by the Central Government".

5. We have considered the submission made on behalf of the petitioner. In our opinion, the Commission's decision referred to above is of no avail so far as the facts and circumstances of the present case are concerned. These observations were made by the Commission when the petitioner filed petition for approval of incentive, based on availability of the transmission system for the years 1997-98 and 1998-99. Prior to constitution of the Commission, the power to determine incentive was vested in the Central Government. So far as the incentive based on availability of transmission system is concerned, the

jurisdiction came to be vested in the Commission from the date of its constitution. The Central Government had not determined incentive for the period prior to constitution of the Commission. The issue was examined in the light of these facts and the observations in paragraph 26 of the order dated 19.6.2000, as reproduced above are to be viewed accordingly. However, so far as the present petition is concerned, CEA in its letter dated 15.7.1998 had already determined the RLDC fees and charges payable for the period prior to the constitution of the Commission. Therefore, in our opinion, the law laid down by the Commission in its order dated 19.6.2000 cannot be extended to the present petition.

6. Shri Rao further contended that the Commission has power to order payment of dues decided by CEA for the prior period. He was supported in his contention by Shri R.K. Mehta, Advocate who appears on behalf of GRIDCO in another matter and is present in the court. This issue had earlier arisen before the Commission in certain petitions (No.28/00, 53/00,54/00, 95/00) filed by National Thermal Power Corporation Ltd. (NTPC) wherein NTPC had sought directions to the respondents for payment of arrears pertaining to earlier periods. The Commission did not take a final view on this issue and the petitions were disposed of on other grounds. However, so far as the present case is concerned, the petitioner has not sought directions for recovery of arrears for the period from 1994-95 to 1997-98 but has sought "approval" of the Commission to RLDC fees and charges for the said years. We feel that the prayer made by Shri Rao orally does not flow from the petition and cannot be granted. In case the petitioner seeks

direction for recovery of arrears on account of RLDC fees and charges, it is required to file a fresh petition in accordance with law.

7. We, however, consider it appropriate to make certain observations on the issue raised before us. The respondents have been availing themselves of the services of the RLDCs. As a natural corollary, they should make payments for the services availed of. The only ground urged before us on behalf of the respondents is that it would not be possible for them to recover the arrears from the consumers. We do not find it to be an apposite or proper ground for refusal of payment of arrears when viewed in the light of the fact that a facility has already been availed of by the respondents. At this stage, we refrain from making any further observations on this issue, lest it should prejudice the case of any of the parties. We trust and hope that the respondents will consider the matter afresh and take a reasonable view on the question of payment of arrears.

In the light of the above discussion, the petition stands disposed of.

(K.N.SINHA)
MEMBER


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(G.S. RAJAMANI)


pjrSINHA)
MEMBER


OK BASU)
CHAIRMAN

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MEMBER

New Delhi dated the 29^m July 2002