

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 337/2010

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Order: 18.5.2015

In the matter of

Petition under Regulation 21 (Sharing of Inter-State transmission charges and losses) Regulations, 2010 read with Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 to remove the difficulties arising on account of billing, collection and disbursement of transmission charges activity entrusted to the petitioner.

And

In the matter of

Power Grid Corporation of India Ltd. (PGCIL)
Saudamini, Plot No. 2, Sector-29,
Gurgaon-122 001 (Haryana)

....Petitioner

Vs

- 1) Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002
- 2) Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, VidyutMarg,
Jaipur-302005
- 3) Punjab State Transmission Corporation Ltd.,
(PSEB Building), The Mall, Patiala-147001
- 4) PTCUL & Uttarakhand Power Corporation Ltd,
Koulagarh Power House, FRI Complex,
Dehradun-248006
- 5) Himachal Pradesh State Electricity Board,
Kumar house, Vidyut Bhawan,
Shimla-171004



- 6) Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan, Sector-6,
Panchkula-134109
- 7) Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14-Ashok Marg,
Lucknow- 226001
- 8) Power Development Dept.,
Govt. of Jammu & Kashmir,
SLDC Building, 1st Floor,
Gladani Power House, Narwal, Jammu
- 9) Electricity Department,
UT Chandigarh, Sector 9-D,
UT Chandigarh-160019
- 10) Bhakhra Beas Management Board,
SLDC Complex, Industrial Area Phase-I,
Chandigarh
- 11) Northern Railway,
3rd Floor, Electrical Department,
Baroda House, New Delhi
- 12) NTPC Limited,
NTPC Bhawan, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi-110003
- 13) NHPC Ltd,
N.H.P.C. Office Complex, Sector-33,
Faridabad- 121003, Haryana
- 14) Sutlajjal Vidyut Nigam Ltd.,
Nathpa Jhakri Hydro Power Station,
Tehsil, Rampur,
Himachal Pradesh-172201
- 15) Tehri Hydro Development Corporation Ltd.,
Bhagarath Bhawan, Bhaghirathpuram,
Tehri (Garhwal)
Uttrankhand-249 001

- 16) West Bengal State Electricity Board,
Vidyut Bhawan, Bidhan Hagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
- 17) Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800021
- 18) Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834002
- 19) Damodar Valley Corporation,
VIP Road, Bidhannagar,
Kolkata-700054
- 20) Orissa Power Transmission Corporation Ltd.,
Janpath, Bhubaneswar-751022
- 21) Energy & Power Department,
Govt. of Sikkim, Kaji Road,
Gangtok-737101
- 22) Assam State Electricity Board,
Bijulee Bhawan, Paltan Bazar,
Guwahati- 781 001
- 23) MEECL,
Short Round Road, Meter Factory,
Shillong-793001
- 24) Electricity Department,
Kohima-797001
- 25) Electricity Department.
Govt. of Manipur,
Imphal-795001
- 26) Power & Electricity Department,
Govt. of Mizoram, Khatla,
Aizawl- 796001

- 27) TSECL,
Bidyut Bhawan, Govt. of Tripura,
Agartala-799001
- 28) Department of Power,
Govt. of Arunachal Pradesh,
Itanagar-791111
- 29) NEEPCO,
Brookland Compund, Lower New Colony,
Shillong- 793 003, Meghalaya
- 30) MSETCL,
'Prakashganga', C-19, E-Block,
Bandra Kurla Complex, Bandra (E),
Mumbai-51
- 31) Gujarat Energy Transmission Corporation Ltd.,
Sardar Patel Vidyut Bhawan, Race Course,
Vadodara-390007
- 32) Chhattisgarh State Power Transmission Co. Ltd,
Danganiya, Raipur-492013
- 33) Madhya Pradesh Power Transmission Company Ltd,
MPPTCL, Nayagaon,
Jabalpur-482008
- 34) NPCIL,
16th Floor, Centre-I, World Trade Centre,
Cuffe Parade, Colaba,
Mumbai-400005
- 35) Jindal Power Limited,
O.P. Jindal Super Thermal Power Plant Village,
Chattisgarh-496107
- 36) Lanco Amarkantak Power Pvt. Ltd.,
Plot No. 397 Phase-III, Udyog Vihar,
Gurgaon-122016
- 37) Electricity Department,
Administration of Dadra Nagar Haveli,
Silvassa, D.N.H-396230

- 38) Electricity Department,
Administration of Daman & Diu
Moti Daman, Daman & Diu
- 39) Goa Electricity Department,
Government of Goa,
Vidyut Bhawan, 3rd Floor,
Panaji, Goa
- 40) APTRANSCO,
Vidyut Soudha,
Hyderabad-500082
- 41) KPTCL,
Cauvery Bhavan,
Bangalore-560009
- 42) KSEB,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004
- 43) TANTRANSCO,
144, Anna Salai,
Chennai-600002
- 44) Electricity Department,
Govt. of Pondicherry,
Pondicherry – 605 001.
- 45) Lanco- Kondaplalli Power Ltd.,
Plot No.4, Software Units Layout, Hitech City,
Madhapur, Hyderabad – 500 081.
- 46) NLC Ltd.,
Corporate Office,
Nayveli-607801
- 47) PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi-110066
- 48) Tata Power Trading Co. Ltd.,
Tata Power Mahalaxmi Receiving Station,
Senapati Bapat Marg, Lower Parel,
Mumbai- 400013

- 49) NTPC Vidyut Vyapar Nigam Ltd.,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003
- 50) RPG Power Trading Company Limited,
6th Floor, Agrawal House,
2, ST. Georges Gate Road,
Kolkata-700022
- 51) GMR Group,
25/1, Skip House, Museum Road,
Bangalore—560025
- 52) Adani Power Ltd.,
Shikhar, NR. Mithakhali Circle,
Navrangpura,
Ahmedabad-380009.

Parties present:

Shri Pradeep Mishra, Advocate, PGCIL
Ms. Manoj Kumar Sharma, Advocate, PGCIL
Shri N.K.Jain, PGCIL
Shri M.M.Mondal, PGCIL
Shri S.K Tyagi, Northern Railways
Shri K.P. Singh
Shri Suraj Das Gupta
Shri Sandeep Sharma

ORDER

This petition has been filed by Powergrid Corporation of India Limited (PGCIL), under Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter “Sharing Regulations”) for removal of difficulties arising on account of billing, collection and disbursement of inter-State Transmission Charges which has been entrusted to the petitioner under the Sharing Regulations.

2. The petitioner has submitted that as per the Sharing Regulations, recovery of transmission charges of the ISTS licensee is based on the usage of the ISTS network and a composite Point of Connection (PoC) charge is assigned to each zone. The PoC charges so arrived for each zone are payable by the Designated ISTS Customers (DICs) in that zone. The petitioner has submitted that under the Sharing Regulations, the petitioner has been entrusted with the responsibility for raising the bills and collection of PoC charges on behalf of all ISTS licensees and thereafter, disbursement of the collected transmission charges amongst the eligible ISTA licensees (hereinafter referred to as 'BCD activity'). The petitioner has submitted that the sharing mechanism under the Sharing Regulations apart from being an intricate exercise also throws up a host of challenging tax related issues and the petitioner being entrusted with the BCD activity is particularly, impacted in this regard.

3. The petitioner has submitted that being a commercial organization, the petitioner is subject to all provisions of the Income Tax Act, 1961 and Finance Act, 1994 with regard to service tax and no special dispensation is provided for the petitioner. The petitioner has further submitted that at the stage of draft Sharing Regulations, the petitioner had raised the queries regarding Tax Deducted at Source (TDS). However, in the Statement of Reasons issued on 11.6.2010, the Commission after consultation with the Income Tax experts had clarified that "considering the materiality of the amount of TDS to be deducted from the other transmission licensees and annual tax liability of the CTU which is more than 2.5%, it may not hamper the cash flow of the CTU. Moreover,

CTU can apply for TDS exemption under the provisions of Section 197 of the Income Tax Act.”

4. The petitioner has submitted that after examination of the issues in consultation with concerned tax experts, the following difficulties have emerged:

(a) The premise that TDS is deducted by all the beneficiaries @ 2% under Section 194 (c) of the Income Tax Act which was the basis of Commission’s decision is not aligned to reality as TDS is actually deducted by a set of beneficiaries @ 10%. The petitioner approached the Tax authorities under Section 197 of the Income Tax Act for allowing deduction of TDS @ Nil or utmost @ 2%. However, the Tax authorities have refused to grant any certificate for lower deduction. Moreover, there is no provision in the Income Tax Act for deduction/rate of deduction of TDS on transmission charges and the views of Tax authorities vary from one jurisdiction to another. Transactions by the petitioner during disbursement of the transmission charges to other ISTS licensees also call for TDS and the debate for applicable rate of TDS would once again surface and may lead to litigation.

(b) TDS is deducted on the gross billing whereas the petitioner is liable to pay the income tax on its profits quarterly/annually and therefore, there is bound to be difference between the TDS pool and its quarterly/annual tax liabilities. If the TDS rate does not exceed 2% as per Section 194(c) of the Income Tax Act, the differential impact is expected to be within tolerance limit. Since some of the State,

IT authorities are insisting on deduction of tax @ 10%, there will be significant differential impact between TDS pool and the IT liability of the petitioner leading to substantial cash flow risks. The risk can be mitigated if Central Board of Direct Taxes (CBDT), Ministry of Finance is persuaded to undertake some procedure to streamline the system of TDS on the billing of transmission charges.

(c) The petitioner had raised the issue of service tax during the process of making the Sharing Regulations that service tax will be applicable if the billing is done by CTU as an agency of other licensees. The Commission in the Statement of Reasons issued on 11.6.2010 had clarified that “the Regulation stipulates signing of a Revenue Sharing Agreement between the CTU and the Transmission Licensees. In this set-up, CTU shall only bill for the transmission service which are exempted from service tax.” The clarification does not fully meet the attendant issues regarding service tax which remain unresolved. The two service activities envisaged under the Sharing Regulations are transmission service and BCD activity. Presently, transmission service is exempted from service tax. However, BCD activity being undertaken by the petitioner is a distinct activity which is not exempted from service tax. BCD activity falls under Business Support Services and shall be under the ambit of taxable service and as such shall be liable for service tax. A suitable methodology for reimbursement of the service tax on BCD activity to the petitioner needs to be provided for in the Sharing Regulations.

(d) Since the PoC represents a composite charge of all ISTS licensee's transmission charges, in the event of default/partial payment of PoC by any DIC, there is no mechanism to establish default against the dues of any particular ISTS licensee. The continuance of the payment security mechanism may be ensured which is presently in the form of Tri-partite Agreement between Government of India, State Government and Reserve Bank of India (RBI).

5. The petitioner has submitted two possibilities to resolve the taxation issues in relation to TDS as under:

(a) Option A: As per the Sharing Regulations, transmission accounts are to be generated by RPCs which will state the total transmission charges to be paid by each DIC towards use of ISTS. The transmission charges to be paid by the DICs shall be apportioned to each ISTS licensee in proportion to their Yearly Transmission Charges. The petitioner in its capacity as CTU is prepared to act as an authorized agency on behalf of the ISTS licensees, to bill the aforesaid amount to the DICs and also to assist ISTS licensees in collecting the same. The amount shall be directly paid by the DICs to ISTS licensees. This will facilitate clean accounting and mitigate a host of tax related issues.

(b) Option B: The Commission may take up the matter with Ministry of Finance to resolve the tax related issues.

6. The petitioner has prayed for removal of difficulties which are arising on account of the BCD activity entrusted to the petitioner and examine the possibility of implementing Option A or Option B.

7. The petition was heard on 8.3.2011 and notices were issued to the respondents. It was submitted during the hearing that the petitioner had approached Central Board of Direct Taxes for considering the applicability of Sections 194C, 194I and 194J of the Income Tax Act, 1961 to the electricity transmission charges on the ground that since transmission is not covered under Chapter XVII of the Income Tax Act, 1961, no deduction of tax at source should be made on payment of transmission charges. The petitioner vide its affidavit dated 11.5.2011 placed on record the copy of the letter dated 23.2.2011 written to Central Board of Direct Taxes. Chairperson of the Commission also vide DO dated 13.5.2011 took up the matter with Secretary, Department of Revenue, Ministry of Finance with copy to Chairman, Central Board of Direct Taxes urging to issue necessary exemption/clarification regarding TDS on payment of transmission charges.

8. Replies to the petition have been filed by Bihar State Electricity Board (BSEB), Grid Corporation of Odisha Limited (GRIDCO), Jharkhand State Electricity Board (JSEB), Maharashtra State Electricity Company Limited (MSETCL). BSEB, GRIDCO and JSEB have submitted that small change in the Option A may be made to the extent that the bill for the apportioned amount to DICs may also be prepared by the ISTS licensees on the strength of the transmission accounts generated by RPCs. The

respondents have further suggested that decision on the matter may be taken after hearing RPCs. MSETCL has submitted that the rate at which income tax is to be deducted from the transmission charges should be Nil or needs to be uniform. MSETCL has further submitted that at present transmission services are exempted from service tax and therefore, BCD activity coming under the Business Support Service, expenditure identified against the BCD activity is to be considered for levying the service tax and not on the quantum of transacted amount. MSETCL has also submitted that in case service tax is made applicable on quantum of transacted amount i.e. transmission charges, the same should be reimbursed to the petitioner by suitable amendment to the Sharing Regulations.

9. During the hearing of the petition on 13.8.2013, the Commission directed the petitioner to file the current status of tax deducted at source and its financial implications. The petitioner vide its affidavit dated 11.9.2013 placed on record the steps taken by it to get exemption/clarifications from the Ministry of Finance. The petitioner has submitted that Hon'ble Finance Minister vide its letter dated 23.11.2011 addressed to Hon'ble Minister of Power, advised that option is available to the petitioner to apply for no deduction/lower deduction under the Income Tax Act, 1961. The petitioner has submitted that in actual practice, the applications made by the petitioner were getting continuously rejected by the assessing authorities. The petitioner has further submitted that out of 42 DICs, TDS was being deducted @ 2% by 19 DICs and @ 10% by 23 DICs. The petitioner has submitted that if all DICs continued to deduct TDS @ 10% and if the same were deposited in the name of the petitioner alone, the problem of mismatch

of the cash flow of the petitioner would be further aggravated. The petitioner has also sought certain directions to DICs for timely submission of TDS certificates and uploading the same in the system to ensure that TDS appears in Form 26AS after quarterly return of TDS is filed.

10. During the hearing of the petition on 1.4.2014, learned counsel for the petitioner reiterated the difficulty being faced by the petitioner in the matter of TDS in respect of the transmission charges being recovered by the petitioner on behalf of other ISTS licensees and submitted that the DICs be directed to pay the transmission charges directly to the ISTS licensees pending resolution of the issues. The Commission suggested that the petitioner should raise consolidated bills on the DICs, clearly indicating therein the amount of transmission charges payable to PGCIL and other transmission licensees and accordingly, the DICs should pay the transmission charges to each of the licensees. The petitioner was directed to convene a meeting of all DICs to resolve the dispute regarding deduction of TDS.

11. The petitioner has submitted that in compliance with the directions of the Commission, the petitioner convened a meeting of all DICs on 16.5.2014. In the said meeting, various options were deliberated including the option of applicability and implementation of amended provisions of Rule 37BA of Income Tax Rules, 1962. Since no consensus could be reached, it was finally decided that the petitioner would work out an Operating Procedure in line with the amended provisions of Rule 37BA and circulate to all DICs for their consideration and acceptance. Accordingly, the petitioner prepared a draft Operating Procedure under which a DIC is required to issue separate TDS

certificate to each licensee and circulated the same among various licensees vide letter dated 3.7.2014. The petitioner vide its affidavit dated 13.10.2014 has submitted that only 9 DICs, namely, BSES Rajadhani Ltd, Tata Power Delhi Distribution Company Limited, West Bengal State Electricity Distribution Company Limited, Lanco Kondapalli, Arunachal Pradesh, Power Trading Corporation of India Ltd, Heavy Water Board (WR), Grid Corporation of Odisha Ltd, and Rajasthan Discoms have responded to the Operating Procedure. Out of 9 DICs, six DICs have accepted the Procedure while two DICs, namely Lanco Kondapalli and Heavy Water Board (WR)] have not accepted the Procedure and GRIDCO has given conditional acceptance for raising party-wise bill which is in violation of the Sharing Regulations. The petitioner has submitted that responses from the DICs who have not responded should be treated as deemed acceptance. The petitioner has prayed for further directions for implementing the Operating Procedure as per the amended provisions of Rule 37BA of Income Tax Rules, 1962 in the interest of CTU and DICs to comply with the provisions of Sharing Regulations and provisions of Income Tax Act, 1961.

Analysis and Decision

12. Under Regulation 10 of the Sharing Regulations, Monthly Transmission Accounts applicable for various DICs in each region shall be prepared by the respective RPCs. Regulation 11(1) of Sharing Regulations provides that CTU shall be responsible for raising the transmission bills, collection and disbursement of the transmission charges to ISTS transmission licensees. Therefore, the petitioner in its capacity as CTU has been entrusted with the BCD activity as part of its regulatory function under the provisions of the Sharing Regulations. The BCD activity is being performed by the

petitioner in accordance with the Billing, Collection and Disbursement Procedure prepared in accordance with Regulation 12(9) of Sharing Regulations and approved by the Commission.

13. The sharing mechanism under the Sharing Regulations has been implemented with effect from 1.7.2011. CTU has been discharging the functions of billing and collecting the transmission charges from the DICs on behalf of all ISTS licensees. TDS Certificates are being issued in the name of CTU. Ever since the BCD activity is handled by CTU, difficulties have been experienced by CTU in giving credit of TDS to other ISTS licensees under Section 199 of the Income Tax Act, 1961 read with Rule 37BA of the Income Tax Rules, 1962. Further, on account of composite billing and collection of transmission charges by CTU on behalf of all ISTS licensees, TDS deducted by the DICs in accordance with the directions of Income Tax authorities in various tax regions far exceeds the tax liability of CTU. It has been brought to our notice that the Tax Authorities have been compelling the DICs to deduct TDS on the gross transmission charges under various Sections of the Income Tax Act, 1961 viz. either under Section 194J as a 'technical service' or under Section 194-I as 'rent' or under Section 194C as income under 'works contracts'. The Commission directed the petitioner to take up the matter with Ministry of Finance and Central Board of Direct Taxes for clarification in the matter so that either TDS is not applied in case of transmission charges or TDS is applied uniformly at a lower rate throughout the country. The Commission also took up the matter with Secretary, Department of Expenditure, Ministry of Finance, Government of India and Chairman of Central Board of Direct

Taxes for issue of instructions to all subordinate tax authorities under Section 119 of the Income Tax Act, 1961 to not insist on TDS on transmission charges. The petitioner has placed a letter dated 23.11.2011 from Hon'ble Minister of Finance addressed to Hon'ble Minister for Power in which it has been clarified that exemption to the transmission charges altogether from the purview of TDS is not feasible under the existing provisions of Income Tax Act, 1961. It has been further clarified that option to apply for certificate for reduction or deduction is available to which CTU can take recourse. The petitioner in its affidavit dated 11.9.2013 has submitted that the applications made by the petitioner for no deduction or lower deduction of TDS are being continuously rejected by the assessing authorities. Considering the difficulties faced by the petitioner, the Commission during the hearing on 1.4.2014 suggested that the petitioner should raise consolidated bills on the DICs, clearly indicating therein the amount of transmission charges payable to the PGCIL and other transmission licensees and accordingly, the DICs should pay the transmission charges to each of the licensees and further directed the petitioner to convene a meeting of all DICs to resolve the dispute regarding deduction of TDS.

14. From the above, it emerges that the petitioner is facing two difficulties with regard to TDS. Firstly, TDS is being deducted at different rates by various assessing authorities. Secondly, there is difficulty in giving the credit of TDS to the other ISTS licensees as the TDS is being raised in the name of CTU. As regards the first issue, it has been clarified in the letter of Hon'ble Minister of Finance that transmission charges cannot be altogether exempted from the purview of TDS under the Income Tax Act,

1961, but there is provision for no deduction/lower deduction available to which recourse can be taken by CTU. Section 197 of the Income Tax Act, 1961 which deals with issue of certificate for deduction of income tax at lower rate is extracted as under:

“197. Certificate for deduction at lower rate

(1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of Sections 192, 193, 194, 194A, 194C, 194D, 194G10, 194H , 194-I, 194J, 194K, 194LA and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(2A) The Board may, having regard to the convenience of assesseees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.”

From the above, it is apparent that it is at the discretion of the assessing officers to allow deduction at a lower rate or no deduction of TDS on the basis of an application made by the assessee. The petitioner has submitted that out of 42 DICs, TDS is being deducted @ 2% by 19 DICs and @ 10% by 23 DICs. Since income-tax is being paid by CTU at corporate level, there is a need for uniform deduction of TDS by all assessing officers. The petitioner may approach the Central Board of Direct Taxes in this regard for clarification or appropriate provisions in the rules with regard to the rate of TDS in respect of transmission charges.

15. The second issue is the credit of TDS to other ISTS licensees. In this connection Section 199 of the Income Tax Act, 1961 provides as under:

“199. Credit for tax deducted.-(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of Section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.”

Rule 37 BA of the Income Tax Rules deals with the procedure for giving credit for tax deducted at source for the purposes of Section 199 of the Income Tax Act, 1961. The said rule is extracted as under:

“Credit for tax deducted at source for the purposes of Section 199.

37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

(2)(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee :

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.

(3) (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of—

- (i) information relating to deduction of tax furnished by the deductor to the me-tax authority or the person authorised by such authority; and
- (ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.”

Clause 2(i) has been substituted through IT (Eighth Amendment) Rules, 2011 and has come into effect from 1.11.2011. The amended provision provides for giving credit of TDS to any person other than the deductee if any part of the income on which tax has been paid is assessable in the hand of such person. For this purpose, the deductee has to file a declaration to that effect to the deductor and the deductor reports the tax deduction in the name of the other person to the income tax authority. Moreover, the declaration by the deductee shall contain (i) the name, address, permanent account

number of the person to whom credit is to be given, (ii) payment or credit in relation to which credit is to be given and (iii) reasons for giving credit to such person. The deductor shall issue certificates for TDS in the name of the persons included in the information to income tax authorities i.e. the deductee as well as the other person or persons to whom the credit of TDS is to be given.

16. In the light of the provisions of Section 199 of the Income Tax Act, 1961 and Rule 37BA of the Income Tax Rules, 1962 as amended vide IT (Eighth Amendment) Rules, 2011, the petitioner has prepared an Operating Procedure to be followed by all DICs for deduction of TDS in respect of PGCIL and other ISTS licensees:

- “1. Respective Regional Power Committees issue monthly Regional Transmission Accounts (RTA) and forward this to Powergrid for collection of POC transmission charges.
2. Powergrid will initiate monthly RTA statement of account for the net payable by each DIC showing the share of each of the ISTS Licensees.
3. DICs will release payments to PoC bank account as per the existing practice.
4. The CTU will disburse the amount (Net of TDS) to ISTS licensees based on their pre-determined share of PoC transmission charges fixed by NLDC.
5. Beneficiaries shall file quarterly TDS Return by giving reference to individual share of TDS of each ISTS licensee. TDS certificates will be issued in the name of each ISTS licensee individually.”

17. The petitioner circulated the above draft Procedure among all DICs vide its letter dated 3.7.2014 and 7.8.2014. The petitioner has submitted that only 9 DICs out of 42 DICs have responded. Tata Power Delhi Distribution Company limited, BSES Rajdhani Power Limited, GRIDCO, Rajasthan Discoms Power Purchase Centre, Government of Arunachal Pradesh, PTC India Limited and West Bengal State Electricity Distribution

Company Limited have conveyed their acceptance. Some of the DICs like TPDDCL, BRPL, WBSEDCL have submitted that CTU should provide the declaration in terms of Rule 37BA (2)(ii) of the Income Tax Rules alongwith the invoice of transmission charges. TPDDCL and BRPL have submitted that CTU shall provide an indemnity bond for any loss or demand which may arise in future due to non-deduction of TDS by the DICs in the name of PGCIL. While TPDDCL has submitted that it will issue quarterly TDS certificates on consolidated basis directly ISTS licensees, WBSEDCL has submitted that all certificates issued in the names of different ISTS licensees will be collected by PGCIL and despatch it to individual ISTS licensees. Heavy Water Board, Department of Atomic Energy and Lanco Kondapalli Power Limited have conveyed their non-acceptance and requested for dropping the proposal. In respect of DICs which have not responded, CTU has submitted that their no response may be treated as deemed acceptance of the Operating Procedure.

18. We are of the view that the procedure is in accordance with the provisions of the Income Tax Rules, 1962 as amended and it will be in the interest of the CTU, all DICs and the other ISTS licensees whose transmission charges are included in the PoC mechanism. This will simplify the procedure of issue of TDS certificates as the CTU would not be required to issue separate TDS certificates to ISTS licensees. We also do not find any merit in the objection made by Lanco Kondapalli and Heavy Water Board since the PoC charges are composite charges and are to be borne on the basis of the approved injection charges and approved withdrawal charges and the Reliability Support Charges to be borne by each DIC determined in accordance with the provisions of Sharing Regulations. We are also not in agreement with TPDDCL and BRPL that the

petitioner should submit an indemnity bond to the DICs with regard to the loss or demand which may arise in future due to non-deduction of TDS by the DICs in the name of PGCIL, as it is the responsibility of DICs to correctly deduct the tax at source in accordance with the bill raised by CTU. As regards the Operating Procedure, we are of the view that the following stages may be added in the Detailed Operating Procedure:

“2A. PGCIL shall furnish with each bill a declaration containing the names, address, and PAN number of the ISTS licensees, the amount of transmission charges to be paid to each licensee and basis that such income is assessable in the hands of the ISTS licensees(relevant regulation may be quoted).

2B. For this purpose, PGCIL shall devise a format containing the above details and the provisions of Section 199 of Income Tax Act, 1961, Rule 37BA of Income Tax Rules and the relevant provisions of Sharing Regulations which shall be issued alongwith monthly bills.

2C. PGCIL shall create a page on its website where all the above information is available to the DICs along with details of monthly bills raised on them.

2D. The DICs shall report the tax deduction in the names of the ISTS licensees to the Income Tax Authorities in terms of proviso to Rule 37BA(2)(i) of the Income Tax Rules, 1962 as amended from time to time.

6. DICs shall submit the quarterly TDS certificates in respect of all ISTS licensees to CTU who shall in turn issue these certificates to the respective ISTS licensees.

7. CTU shall coordinate with the DICs and ISTS licensees to facilitate smooth handling of TDS related issues.”

19. The petitioner is directed to modify the procedure in the light of the above and post the modified procedure on its website for the information of all DICs and ISTS licensees. The CTU shall examine whether the above procedure requires any changes in the TSA or in the BCD Procedure or any other document and if so, submit the draft amendment for consideration of the Commission. The Procedure should be implemented by CTU with effect from 1.7.2015. The petitioner shall also examine whether approval of any authority under the Income Tax Rules, 1962 is required to give effect to the modified procedure and if so, the petitioner shall take necessary steps in this regard.

20. As regards the service tax, presently transmission charges are exempt from payment of service tax. If the service tax is imposed on transmission charges in future, the same shall be dealt with in terms of the extant regulations. As regards the service tax on BCD activity, it is noted that the petitioner is discharging the BCD activity as part of its regulatory function as CTU and is not charging any fee for its services for this purpose. If in future, service tax is levied on BCD activity, the petitioner is granted liberty to approach the Commission with all relevant details.

21. The petitioner has also raised the issue of devising a mechanism for default against the dues of any particular ISTS licensees. It is noted that the Transmission

Service Agreement contains the provisions of Payment Security mechanism and the instances of default shall be dealt with in accordance with the provisions of Transmission Service Agreement by the petitioner.

21. Petition No.337/2010 is disposed of in terms of the above.

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson