

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN
UNIT-VIII, BHUBANESWAR-751 012

*** **

Present : Shri B.K. Das, Chairperson
Shri S.K. Jena, Member
Shri K.C. Badu, Member

Case No. 115 of 2004

In the matter of : Clarification to the supplementary order dt.20.07.2006 of the Commission passed in Case No.115/2004 pertaining to the approved Business Plan of WESCO, NESCO, SOUTHCO & CESCO

- 1) Western Electricity Supply Company of Orissa Ltd. (WESCO), At/P.O. Burla, Dist. Sambalpur
- 2) Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO), At/P.O. Courtpeta, Berhampur, Dist. Ganjam
- 3) North-Eastern Electricity Supply Company of Orissa Ltd. (NESCO), At/P.O. Januganj, Dist. Balasore
- 4) Central Electricity Supply Company of Orissa Ltd. (CESCO), 2nd Floor, IDCO Towers, Bhubaneswar, Dist. Khurda

... **Petitioners**

- Vrs. -

- 1) Grid Corporation of Orissa Ltd. (GRIDCO), Janpath, Bhubaneswar.
- 2) Government of Orissa, Dept. of Energy, Bhubaneswar ... **Respondents**

For the petitioners : Mr. P.K. Pradhan, CEO, WESCO, Mr. A.K. Bohra, CEO, SOUTHCO, Mr. B.P. Mohapatra, SGM (F), CESU, Mr. P.K. Mohanty, DGM (F), NESCO,

For the Respondents : Mr. R.C. Mishra, SGM (F), GRIDCO, Mr. S.C. Mohanty, Law Officer, Deptt. of Energy, GoO

Date of Hearing : 04.08.2008

Date of Order : 01.12.2008

ORDER

The Commission had issued a clarificatory order dtd.20.07.2006 in Case No.115 of 2004 on the approved Business Plan of WESCO, NESCO, SOUTHCO & CESU for the period 2003-04 to 2007-08. In the above order Commission had clarified that the period of repayment and moratorium of GRIDCO's loan as well as the BST outstanding

amount to be securitized. Thereafter the three DISTCOs, viz, WESCO, NESCO & SOUTHCO made the following submissions on 12.10.2006: -

- i) Moratorium period and repayment period for servicing of the securitized amount in line with the order for sale of CESCO Utility through an addendum to this order dated 01.03.2005 & 20.07.2006 on the Business Plan of the Petitioner Company.
 - ii) The BST outstanding of the DISCOMs are to be reduced by Rs.480 crore in proportion to the energy drawal.
 - iii) The GOO/GRIDCO may be directed to issue the Tax free Bonds in line with the recommendations of the Ahluwallia Committee and Discoms would pay the settlement amount in one time by availing loan from the Bank. Otherwise, it may be directed to securitise the balance amount of the NTPC Bonds on same terms and conditions of the securitization of the BST outstanding.
 - iv) Truing up exercise may be carried on for all the licensees before deciding the repaying capability of the licensees.
 - v) Discoms are to be allowed to retain the surplus amount after meeting the repayment of the securitized installments.
 - vi) Till the Hon'ble Commission pass order to recover the above mentioned regulatory assets, the Discoms ought to be allowed moratorium in repayment of the securitized amount.
 - vii) Petitioner craves leave and reserves their right to make further submissions.
2. On 15.09.2006, GRIDCO requested the Commission to clarify the following items: -
- i) The Commission had approved the securitization of outstanding dues and its payment to GRIDCO in 120 equal installments commencing from FY 2006-07 i.e. effective from 01.04.2006 and disallowed any moratorium for repayment. GRIDCO submits that the amount outstanding on both BST and loan determined for the purpose of securitization should be as on 31.03.2006 instead of 31.03.2005.

- ii) The BST outstanding to be securitised for payment effective from 01.04.2006 shall also include the DPS payable by DISTCOs upto 31.03.2006.
 - iii) Additional interest burden on GRIDCO over and above the rate of 8.5% on PFC and REC loan allowed by the Commission should also be included for the purpose of securitization.
 - iv) The instruments of securitization and its structuring should be spelt out in the securitization order.
 - v) Regarding Bond of Rs.400 cr. issued by the three DISTCOs, (WESCO, NESCO & SOUTHCO) to GRIDCO, the State Govt. has rejected the proposal of resecuritisation of the same at 8.5% tax free, hence this needs to be addressed in the securitization order.
3. On 16.11.2007, the Commission heard both GRIDCO & DISTCOs and passed the following directions to be complied before 10.12.2007: -
- i) The statement of undisputed amount of outstanding BST dues as accepted by both the parties.
 - ii) The statement of disputed outstanding of BST dues and their present status as stated by DISTCOs and GRIDCO.
 - iii) The present status of adjustment of OHPC dues of Rs.46 crore of BST bill.
 - iv) The DPS calculation statement in line with the Commission's order from time to time.
 - v) Present status of reconciliation of outstanding of energy dues with the Govt. department.
 - vi) Present status of redemption of NTPC/GRIDCO bond of Rs.400 crore by DISTCOs along with the interest thereon including claims and counter claims of both the parties with details of calculation.
4. On 31.12.2007, GRIDCO filed its submission on the orders dtd. 16.11.2007 where in it is requested to exclude the NTPC Bond from the purview of consideration of Business Plan order on the following ground:-

- i) Securitisation of NTPC Bond under one time settlement scheme has been rejected by Govt. of Orissa.
 - ii) DISTCOs (WESCO, NESCO & SOUTHCO) made unilateral and arbitrary adjustment of Bond outstanding in their annual account for the FY 2006-07 by majority of votes comprising REL nominees without rendering payments to GRIDCO.
 - iii) The Board of Directors had decided to file appropriate petition before the Company Law Board under Companies Act, 1956 seeking appropriate directions and relief on certain issues including recovery of defaulted bond amount.
5. The DISTCOs (WESCO, NESCO & SOUTHCO) on 31.12.2007 submitted item wise reply to the direction of the Commission dtd.16.11.2007.
6. On 09.05.2008, the Commission heard GRIDCO, DISTCOs and observed the following:-
 - i) From the records it is found that WESCO, NESCO & SOUTHCO have not fully complied with the directions of the Commission passed in order dtd.16.11.2007.
 - ii) The parties in oral submission had stated that the meeting held on 15.03.2008 failed to reconcile dues payable to GRIDCO by the DISTCOs.
 - iii) The Commission therefore directed the following: -
 - a. All parties to submit each of their DISTCO specific issues in details in a tabular form within two weeks so as to reconcile the matter among the parties.
 - b. Department of Energy, Govt. of Orissa is directed to call for a meeting to settle the arrear dues of all its departments/ offices/ panchayats/ municipalities/ co-operatives and PSUs etc. payable to DISTCOs.
7. Further the Commission in a hearing on 12.05.2008 in Case No.29, 30 & 31 of 2007 (Truing up Exercise) directed the following:-

- a) In regard to DPS and BST, WESCO, NESCO & SOUTHCO will file their submissions on each of the issues, with the Commission. There shall be a meeting in the office of the Commission attended by the authorized representatives of GRIDCO and the above mentioned DISCOMs and Director (Tariff) in association with JD (FA) for the purpose of reconciliation. The aforesaid meeting shall be held preferably in the month of June, 2008.
8. On 13.06.2008, CESU filed a petition and submitted the following: -
- i) The Commission may direct rectification of differential opening balance of Rs.2,19,725/- which shall be incorporated in the accounts of GRIDCO.
 - ii) The Commission may set aside the claim of year-end adjustment of Rs.12,80,14,659.00 for the FY 2000-01 towards BST bills.
 - iii) The Commission may direct the difference in opening balance of Rs.23.06 crore due to adjustments made by CESCO (now CESU) be accepted by GRIDCO.
 - iv) The Commission may direct withdrawal of differential amount in the loan and interest account by GRIDCO.
 - v) The Commission may direct waiver of entire DPS charged by GRIDCO.
9. On 02.08.2008, the Govt. of Orissa submitted compliance to the directions of the Commission dtd.09.05.2008 wherein it was mentioned that
- i) The concerned Heads of Officers/DDOs would reconcile their outstanding electricity dues with the Divisional Officers of Discoms and ensure clearance of undisputed arrear electricity dues at the earliest.
 - ii) DISCOMs would furnish the list of arrear outstanding dues of Govt. offices, urban local bodies, Co-operatives, PSUs under various Departments whose outstanding Electricity dues is more than Rs.10,000. Energy Department would forward the list to the Finance Department for withholding the salary bill in respect of their establishment from Treasuries.

- iii) All Departments would be intimated to take all out efforts for 100% payment of current energy dues in time to prevent the disconnection of power supply.
10. The treatment of outstanding BST dues as approved in the supplementary order dtd.20.07.2006 of the Commission pertaining to approved business plan is extracted below: -

“The Commission had directed that the amount of BST to be securitized for each DISTCO will be the date preceeding when each company started paying 100% BST bill of GRIDCO. On review, the Commission finds that the three Reliance managed companies have been paying monthly BST dues and have opened LC for payment of BST in February, 2004. So in view of the above, for the purpose of securitization we are considering 31.03.2005 as cut off date for all the DISTCOs for determination of liabilities.”

Regarding GRIDCOs request to consider the securitization date as on 31.03.2006, Commission is of the opinion that it would not make any difference. Since the DISTCOs started paying 100% of their BST bill during 2005-06. Hence Commission stands by the cut off date of 31.03.2005 mentioned in business plan order.

Restructuring of liabilities

11. In the business plan order in Case No.115 of 2004 dt.28.02.2005 and its clarification order dt.20.07.2006 approved by the Commission, the issue of restructuring of liabilities of GRIDCO has been spelt out. The order also includes action plan for repayment of securitized BST dues, treatment of NTPC dues and payment of GRIDCO loan availed for creation of distribution assets from PFC/REC and counterpart funding of IBRD loans.

Every year in the tariff order the Commission addresses this issue and directs the DISTCOs to service the liabilities of GRIDCO. In this connection an extract of para 410 to 413 of BST order 2008-09 relating to receivables from DISTCOs is given below: -

“410. Receivables from DISTCOs: The receivable position of GRIDCO from the DISTCOs excluding DPS are depicted in table below:

Table – 48

Total Receivables from the DISTCOs excluding DPS if any as on March 31, 2005

(Rs. in Crore)

Loan Balance	WESCO	NESCO	SOUTHCO	CESU	TOTAL
Principal	138.46	94.94	134.36	307.61	675.07
Interest	60.31	41.05	58.43	162.86	322.65
Total	198.77	135.69	192.79	470.47	997.72
Outstanding BSP dues	169.59	277.89	126.31	718.30	1292.09
Total Receivables from DISTCOs	368.36	413.58	319.10	1188.77	2289.81

411. *Regarding delayed payment surcharge the matter has been heard by the Commission in which direction has been issued by Commission both to the GRIDCO and DISTCOs to furnish a joint reconciliation statement of the DPS, computed in line with the orders of the Commission. The information is yet to be received.*

412. *Pending final order on the DPS, the Commission considers the figures of receivable without DPS.*

413. *The serving of liabilities of GRIDCO shall have to be carried out in accordance with the direction mentioned in order dated 20.07.2007 in Case No. 115 of 2004.”*

12. As per the direction of the Commission on 12.05.2008 (Case Nos.29, 30 & 31 of 2007 regarding truing up exercise) the reconciliation task was carried out and meetings held comprising of officers of OERC, GRIDCO and DISTCOs in June, 2008 and signed joint reconciliation statement in the same month. The following issues cropped up during discussion: -

i) Outstanding BST dues

Both GRIDCO and DISTCOs agreed to a common figure of outstanding BST dues from 01.04.1999 to 31.03.2005.

ii) Opening Balance and DPS

The opening balance figure of BST dues and DPS (Delayed Payment Surcharge) there as on 01.04.1999 was not agreed to by both the parties.

iii) Cut off date

Regarding computation of DPS, SOUTHCO and WESCO disagree to the cut off dates considered by GRIDCO towards commencement of full payment of BST dues.

13. A summary of the joint reconciliation between DISTCOs and GRIDCO is depicted as under. The details of the signed reconciliation statements are placed in Annexure-I to this order.

(Rs. in Cr)

	WESCO		NESCO		SOUTHCO		CESU	
	As per GRIDCO	As per WESCO	As per GRIDCO	As per NESCO	As per GRIDCO	As per SOUTHCO	As per GRIDCO	As per CESU
1. Opening Balance of BST dues as on 01.04.1999	46.18	41.05	41.66	22.06	26.50	22.81	80.16	80.16
2. BST bill 01.04.1999 to 21.03.2005	2663.09	2663.09	1861.41	1861.41	1147.52	1147.52	3056.18	3056.18
3. Payment including adjustment	2544.68	2544.68	1666.58	1666.58	1100.33	1100.33	2450.98	2450.98
4. DPS outstanding	127.47	56.17	87.20	87.20	48.02	31.53	526.41	526.41

The unresolved issues like opening balance, DPS thereof and cut off date etc. are addressed as under: -

Opening Balance

14. The issue of unreconciled opening balance figure of BST dues as on 01.04.1999 (the date when GRIDCO distribution is vested on DISTCOs) has been examined as under.

The differential amount is the loss for the period from 26.11.1998 to 31.03.1999 when GRIDCO was vested with both transmission and distribution business. This is as per the audited accounts of DISTCOs (WESCO, NESCO & SOUTHCO) finalized by GRIDCO as mandated in the transfer notification dt.25.1.1998. GRIDCO stated that the above loss has been retained by itself and not transferred to DISTCOs. GRIDCO agreed that the loss is a separate item and in no way

related to outstanding BSP dues. Therefore, it is not prudent to adjust the same against the opening balance of BST dues. DISTCOs (WESCO, NESCO & SOUTHCO) have arrived the opening balance figure by deducting the loss appeared in profit & loss account and Balance Sheet.

15. Provision 4, Schedule ‘C’ Part-I (Distribution undertaking forming part of WESCO and Terms and Conditions thereof) of Transfer notification of Govt. of Orissa vide No.16019 dt.25.11.1998, states the following: -

“For the purposes of certainty and to facilitate the finalization of the respective accounts in detail of Gridco and Wesco, the Wesco shall continue as wholly owned subsidiary of Gridco till the end of the accounting year of Gridco on 31 March, 1999. The opening balance sheet of WESCO as on the Appointed Date shall be prepared as per the books of accounts of GRIDCO namely balance sheet of GRIDCO as at 31.03.1998 and the operation during the period after 31.03.1998 till appointed date. The operation of GRIDCO and WESCO with effect from the appointed date till 31.03.1999 shall be to the account of GRIDCO and shall be subject to year end adjustment as on 31.03.1999, as specified in this schedule. The balance sheet and annual accounts of GRIDCO and WESCO as at 31.03.1999 and the opening balance sheet of GRIDCO and WESCO as at 01.04.1999 shall be finalized after making all the adjustments as per this and so as to reflect the provisional balance sheets of WESCO as contained in the schedule. Notwithstanding the transfer on the Appointed Date, GRIDCO shall be responsible to finalise the accounts of WESCO for the year ending 31.03.1999 and get the same duly audited in accordance with law.”

16. The above provision of transfer notification made it clear that GRIDCO is responsible to finalise the accounts along with the audit of DISTCOs till 31.03.1999. Regarding transfer of operational losses the relevant extract of item 12 of the notes to the account for the financial year 1998-99 as finalized by GRIDCO is reproduced below: -

“The loss for the period from 26.11.198 to 31.03.1999 of Rs.62.94 crores of 4 Distribution Companies as detailed below finalized and borne by GRIDCO in terms of the provisions of Transfer Notification dtd.25.11.1998.

Sl	Name of the Company	Rs. in Crores
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No.		
1	CESCO	34.52
2	SOUTHCO	19.60
3	WESCO	3.69
4	NESCO	5.13
	TOTAL	62.94

The Board of Directors of GRIDCO approved the final accounts of WESCO, NESCO & SOUTHCO in their adjourned 57th Meeting held on 18.06.2001. The approved accounts were sent to respective DISTCOs for authentication.”

The statutory Auditor of GRIDCO in annex-II (15.ii) of the audit report for the period upto 31.03.1999 commented the following: -

“Note No.2 : Regarding the transfer of values of assets and liabilities to four Distribution companies as on 26.11.1998 vide Transfer Scheme Notification No.750/98 Dt.25.11.98 of the State Govt. having been allocated as set out in Transfer Scheme Rules.”

Further in item 15.v the relevant extract of the comments of the Statutory Auditor is reproduced below: -

“Note No.12 & 13 : Regarding transfer of working results of the four Distribution companies, in our opinion, no cognizance need to be taken of the losses as per the audited accounts of Southco, Nesco and Wesco as the same are not prepared in accordance with the Transfer Notification.”

In view of the above the Commission accepts the audited figures of opening balance finalized by GRIDCO for the purpose of securitization.

DPS on opening balance

17. The issue of charging DPS on opening balance figure is also examined. GRIDCO calculated DPS on opening balance figure as on 01.04.1999 whereas DISTCOs did not calculate the DPS on opening balance figure. Commission is of the opinion that since the opening balance figure pertains to the GRIDCO period of operation of distribution business, it will not be proper to levy DPS on the above. **The Commission therefore excludes the opening balance figure for the purpose of computation of DPS.**

18. Computation of DPS for operation after 01.04.1999 on outstanding BST dues

It is revealed from the joint reconciliation statement that the quantum of DPS computed by NESCO and CESCO (Now CESU) are in agreement with the figure computed by GRIDCO. But WESCO & SOUTHCO disagreed to the cut off dates adopted by GRIDCO for calculation of DPS.

WESCO

As per business plan order dt.28.02.2005 and subsequent clarification order dt.20.07.2006 of OERC, DPS shall be calculated up to the date when DISTCOs have started making 100% payment of their BST bill. WESCO contended that they were paying the monthly bill in full regularly since May, 2002. The shortfall in any month after May, 2002 was made good by the excess payment in subsequent months. The overall excess payment during FY 2002-03 and 2003-04 were to the tune of Rs.20.04 crore and Rs.28.58 crore respectively over and above the monthly BST bill. GRIDCO served the year end adjustment bill for 2002-03 (which is disputed by WESCO and subjudice) during February, 2004 and the same has been revised and served during April, 2005 which is included by GRIDCO in the outstanding of 2002-03 for their DPS calculation. WESCO in support of the claim furnished a statement of BST outstanding from April, 1999 till March, 2008 from where it is revealed that WESCO had paid more than the billing amount during the disputed period although in some months there are defaults.

However, GRIDCO contended that even after May, 2002 claimed by WESCO, there are breaks in clearance of the monthly bill and the last partly paid monthly bill (within due date) was December, 2003. Therefore the cut of date shall be January, 2004. Accordingly DPS as calculated by WESCO is Rs.56.17 crore as against an amount of Rs.127.48 crore claimed by GRIDCO. The huge difference of the DPS amount as calculated by WESCO and GRIDCO is due to the fact that, the number of days consider by GRIDCO for calculation of DPS on the defaulted amount are much more than that of WESCO due to adoption of different cut off dates by both the parties.

SOUTHCO

SOUTHCO reckoned the cut off date from 07.11.2002, whereas GRIDCO has considered the same from 07.02.2004. SOUTHCO in support of the claim furnished a statement of billing and collection for the disputed period of October,

2002 to January, 2004 (16 months). SOUTHCO started payment of full BST dues from October 2002 onwards and defaulting in some months thereafter. The default in some months was made good by paying excess amount in subsequent months. On the whole SOUTHCO during the disputed period paid the BST dues more than the BST billing.

Commission's Observations

19. After getting details from both the parties Commission is of the opinion that there is no disagreement over the manner of calculation of DPS. Only the parties disagree to the cut off dates. In the Business Plan order, it was mentioned that, the amount to be securitized for each DISTCOs will be the date preceding when each company started paying 100% BST bill of GRIDCO. On review the Commission finds that the three Reliance managed companies have been paying for monthly BST dues and already open LC for payment of BST in February, 2004. From the details provided by both WESCO and SOUTHCO it is also revealed that after 7th February, 2004 (BST bill of December, 2003) there is no break in payment of BST dues. Hence, the Commission has considered February, 2004 (BST bill of December, 2003) as cut off date while computing the additional DPS on the period of dispute i.e. between the dates from which SOUTHCO and WESCO claimed to meet their 100% of the current BST and February, 2004 (BST bill of December, 2003) as accepted by the Commission. Hence the Commission directs to calculate the DPS of the defaulting months only on the unpaid balance during that months for a period of 30 days. If the defaulting amount is not recouped through excess payment in subsequent month then DPS on the balance amount, which still remain unpaid, has to be calculated @2% per month for 30 days and so on. **Based on the above principle the final amount of DPS is arrived at which shall be taken into consideration for the purpose of securitization. The details of the calculation are placed in Annexure-II to this order.**

	<u>Rs. in Crore</u>
WESCO	58.72 (56.17+2.55)
NESCO	87.20
SOUTHCO	32.02 (31.53+0.49)
CESU	526.41

20. The total securitization amount as on 31.03.2005 is depicted as under: -

A. Loan Balance	WESCO	NESCO	SOUTHCO	CESU
Principal	138.46	94.64	134.36	307.61
Interest	60.31	41.05	58.43	162.86
Sub-total (A)	198.77	135.69	192.79	470.47
B. Outstanding BST dues with DPS				
Opening balance as on 01.04.99	46.18	41.66	26.50	80.16
Arrear from 01.04.99 to 31.03.05	118.41	194.83	47.19	605.20
DPS on above	58.72	87.20	32.02	526.41
Sub-total (B)	223.31	323.69	105.71	1211.77
Grand Total (A+B)	422.08	459.38	298.50	1682.24

21. The principal and interest on loan outstanding as on 31st March, 2005 have been reconciled between WESCO, NESCO & SOUTHCO. But reconciliation statement between GRIDCO and CESU is yet to be finalized.
22. In absence of the reconciliation between CESU & GRIDCO as stated in above para, Commission accepts the audited figure of GRIDCO provisionally, till the final reconciliation.
23. **In line with our order dtd.20.07.2006, the Commission directs that the DISTCOs shall pay the outstanding loans including interest alongwith securitized BST dues as on 31.03.2005 in 120 monthly installment (maximum) within 2015-16.**
24. The security mechanism for payment of the amount shall be through escrow.
25. The distribution companies are directed to pay the current BSP and transmission charges at the first instance. The Commission also desires that DISCOMs should meet their normal salary, Repair & Maintenance expenditure as per the approved

figure of the Tariff Order applicable from time to time. Besides above the DISCOMs must generate enough cash to pay towards the monthly installment of the securitized amount to GRIDCO failing which DPS as applicable will be levied.

26. The Commission vide order dtd.20.07.2006 had directed the following:

“We order that the DISTCOs shall repay the outstanding loans including interest along with the securitized BST dues as at 31st March, 2005 in 120 monthly (maximum) equal installments starting from the FY 06-07 ending in 2015-16. They shall also continue to pay the monthly BST dues regularly through LC as per the bulk supply arrangement.”

In case of default of monthly dues by the DISTCOs they shall be liable to pay the delayed payment surcharge @ 1.25% per month as has been approved for default in payment in BST bills by DISTCOs to GRIDCO.

The status of the order of the Commission remains unaltered and the Commission directs that the DISTCOs shall pay the installment amount of the securitized amount to GRIDCO in time otherwise GRIDCO shall levy DPS at the rate of 1.25% per month on the defaulted amount of installment fixed by the Commission. In case of excess payment over and above the installment amount for any month, such excess would be treated as advance payment against subsequent installment for the purpose of computation of DPS. However, there will be no DPS on the DPS amount finalized for the purpose of securitization. The number of installments fixed by the Commission vide order dtd.20.07.2006 DISTCOs for liquidating the outstanding BSP dues (excluding DPS), loan and interest shall remain unaltered. In addition to above, the DISTCOs shall pay the DPS amount before 2015-16.

27. If the DISTCOs generate any cash surplus after adjusting the permitted expenditure from Escrow account in the manner stated in para 25 above Commission directs that such excess shall be transferred to GRIDCO to reduce the liabilities. In such a situation the number of monthly installment shall stand reduced.

28. Re-securitisation of NTPC Bond

We have passed appropriate order in para 379 to 391 of the RST order 2008-09. Final decision will be taken after pronouncement of the judgement of Hon'ble Supreme Court of India in this matter vide CA No.759/2007.

Accordingly the case is disposed of.

Sd/-
(K C BADU)
MEMBER

Sd/-
(S K JENA)
MEMBER

Sd/-
(B K DAS)
CHAIRPERSON