

2. The six respondents were issued notices by the Commission to file their reply and hearing was fixed on 22.9.2005. The Commission heard the petitioner and respondents at length on 22.9.2005. The petition was admitted by the Commission after hearing the case for admission and the case was posted to 30.9.2005 for hearing on merits regarding interim relief as prayed by the petitioner.
3. The Commission heard the petitioner and the respondents on merits of the case on 30.9.2005. During course of hearing the following issues were raised by the Commission to be answered by the respondents: -

- a) *The exact role, function and tenure of Chief Executive Officer of three Distcos. Are they Directors in the respective board? Why their designation was changed from MD to CEO?*
- b) *The role of Central Procurement Group and procedure for procurement of materials.*
- c) *Implementation of energy audit and spot billing.*
- d) *Induction of manpower as against the vacant posts for the proper management of Distcos.*
- e) *Details about the procurement/installation of old and new meters.*
- f) *Investment approval from the Commission.*
- g) *Reasons for non-implementation of APDRP scheme.*
- h) *Distcos' support for establishment of Special Courts and police stations.*
- i) *R & M works are not being taken up for lines and sub stations although Commission has permitted requisite sums under this head while finalizing ARR of Distcos.*
- j) *Establishment of transparent process for procurement of materials through competitive bidding with due approval of the Distco Boards.*
- k) *Strengthening the Central Services office for coordinating the activities of the three Distcos.*
- l) *Non infusion of capital by the majority share holders after privatization of distribution business.*

Counsels of respondents sought for some time to answer these queries as no ready reference as well as instruction was available to them. The case was posted for 07.10.2005 as next date of hearing.

4. The Commission heard the Respondent No. 1 to 4 on 07.10.2005, on the replies filed by them against the queries raised by the Commission during the hearing on 30.9.2005. The learned Counsel for respondents argued that there is no ground for suspension of Licence of the Respondent No. 2 to 4 as they have not violated any provisions of Acts, Rules, Regulations or orders of the Commission. He also submitted that companies have taken prudent decision for appointment of directors,

CEOs and managers. Central Procurement Group (CPG) of REL, Mumbai has no role to play for finalization of tendering process for DISCOMs but it acts only as an agent to help the DISCOMs for procurement of the best materials at a reasonable rate. CPG never intervenes in the matter. The other respondents, GRIDCO and Govt. of Orissa in their written and oral submissions supported the prayer of the petitioner and argued for suspension of the licensees of Respondent No. 2 to 4 (WESCO, SOUTHCO and NESCO). The Commission was not satisfied with the replies forwarded by the Respondent No. 1 to 4 which were found to be quite inadequate and not supported by reasons, facts and figures. The Commission therefore framed following seven points for reply by the Respondent No. 1 to 4.

- i) *The discharge of obligations by the Distribution Companies to GRIDCO with regard to power procurement, loan covenants and payment of Rs.400 crores NTPC bonds has not been dealt with by REL or Distribution Companies in their reply to the queries made in the order dt.30.09.05. REL counsel Mr. Bhatt and Distribution Companies Counsel Mr. S.K. Mohanty submitted that they would take instructions in this regard and come up with requisite proposals.*
- ii) *The Commission raked up the question of the appointment of CEOs by the Distribution Companies. It was pointed out to REL that as per Section 269 of the Companies Act, each of the Distribution Companies should appoint a Managing Director or Whole-time Director or a Manager for day-to-day management of the Distribution Companies under the supervision of the respective Boards. Secondly, the Memorandum and Articles of Association of the distribution companies under Clause 29(A)(1) provides that a Director of the Company has to be in charge of the day-to-day management. It may be stated as to whether these two conditions are satisfied by appointment of CEOs. In reply, Mr. Bhatt clarified that they have appointed Managers and CEOs in compliance with the provisions of the Company Law and Articles of Association. It was pointed out to him by the Commission that the CEOs and the Managers of the Company are two distinct persons. The Manager of a particular business company also happens to be a CEO of another distribution company. It was not clear as to how the responsibilities between the CEO and the Manager are shared so that the functioning of the company is not affected by this dual arrangement. The functional division of responsibilities between the Manager & the CEO should be placed before the Commission. Mr. Bhatt stated that he would furnish requisite reply in this respect.*

It was further pointed out by the Commission that from 01.4.1999 till 25.6.04 one of the Directors of the Distribution Companies was appointed as Managing Director of the particular Company. This arrangement conformed to both the requirements of the Companies Law as well the Articles of Association. It was not clear why the present arrangement was made in preference to the previous one. Mr. Bhatta, and Mr. Mohanty, stated that they would furnish the reply clarifying the position.
- iii) *It appears from the submission of the Distribution Companies that in the 37th Board meeting of the three Distribution Companies held on 19.02.04,*

proposal was mooted by GRIDCO for infusion of capital into the Distcos through issue of equity share. This resolution was deferred till finalization of the Business Plan. As the Business Plan was finalized on 28.02.05, the plan of action of the majority shareholders for infusion of additional share capital needs to be stated in response to GRIDCO's proposal.

- iv) It was pointed out by the Distribution Companies that energy audit and spot billing are not done in full scale because of paucity of manpower. This was recorded in the last performance review meeting of Distribution Companies, copies thereof endorsed to the functionaries of the REL and Distcos. The Counsels of both the REL and Distribution Companies stated that they would file a plan of action, if time is allowed. The plan of action must indicate the requirement of manpower and men in position for better appraisal of the matter.*
- v) Regarding procurement of materials it was not clear about the role of Central Services Office & CPG and the process of evaluation. The entire process of procurement right from preparation of specification, tendering stages to placement of order need to be filed with the Commission specifying the financial powers of various functionaries of the Company. Regarding the issue raised by the petitioner for procurement of new meters at a cost of Rs.1100 per meter, the placement of order has to be kept in abeyance and all relevant papers are to be submitted to the Commission for scrutiny and clearance.*
- vi) Investment proposals above Rs.5 crore for a particular financial year have to come to the Commission for approval. This has not been done so far.*
- vii) The year wise expenditure on operation & maintenance against the permitted amount in the annual revenue requirement should be placed for information of the Commission. Posts lying vacant to be filled up and the plan of action for filling these posts need to be filed before the Commission.*

The Commission directed Respondent No. 1 to 4 to file their replies on the points raised on 30.9.2005 and points raised as above serving copies to petitioner, GRIDCO and Government of Orissa. . The next hearing was posted for 25.10.05.

5. The Commission heard the matter on 25.10.2005 from petitioner, respondents GRIDCO and Govt. of Orissa and Respondent No. 1 to 4. Counsel for Petitioner submitted that the replies filed by the Respondent 1 to 4 are evasive, vague and quite unsatisfactory. GRIDCO submitted that Respondent No. 1 to 4 have miserably failed to address the vital questions raised by the Commission and have filed the replies in a perfunctory manner. Govt. of Orissa also submitted that the replies submitted by the Respondent No. 1 to 4 are far from satisfactory. Both GRIDCO & Govt. of Orissa urged for taking immediate action under section 24 of the Electricity Act, 2003 for suspension of licence of Respondent No. 2 to 4. DISCOMs (Respondent No. 2 to 4) pleaded for withholding the suspension proceedings for sometime as they are in the process of arranging finance from Bank/Financial Institutions. They submitted further that M/s.REL as a majority shareholder never intervenes in day to day management of

the DISCOMs. Any dispute regarding mismanagement, oppression of minority shareholders or misuse of company funds can be brought to the notice of company Law Board.

Learned counsel for GRIDCO submitted that though they hold 39% of share in the DISCOMs and CMD of GRIDCO is the Chairman of DISCOM Board but he has no role to play in policy making process of Board as his function are non-executive in nature.

After going through the replies by Respondent No. 1 to 4 and arguments placed, the Commission observed that the replies were far from satisfactory. The Respondent No.1 to 4 have not filed any definite time frame for resolving the issues like clearing of Rs.400 crore NTPC Bond, liquidation of arrear BST bills of GRIDCO, PFC/REC dues, etc., role of CEOs, recruitment of manpower, transparent procurement procedure, role of CPG and other vital issues. The Commission, therefore, allowed another chance to the Respondent No. 1 to 4 to file their proper written replies to the queries as per the Commission's orders dated 30.9.05 and 07.10.05 and directed the following:

The Commission considers that the above issues are vital for disposal of this matter, and allows M/s. REL and Distcos another chance to file their proper written replies to the queries already made as per orders dtd.30.09.05 and 07.10.05.

Within the time permitted, the respondent Nos.1 to 4 are directed to :-

- (iii) resolve the issue of Rs.400 crore NTPC Bond to the satisfaction of the Commission*
- (iv) resolve the issue of appointment of CEOs and manpower of DISTCOs in compliance with provisions of the Company Law and Memorandum of Articles of Association*
- (v) come up with concrete plan with definite time frame for addressing balance issues/queries raised in the Commission's order dt.30.09.2005 and 07.10.2005.*

The respondents were directed to submit the above replies on or before 15.12.05. The next date of hearing was fixed for 04.01.2006.

6. Respondent No. 2 (WESCO), 3 (SOUTHCO) & 4 (NESCO) filed their replies on 15.12.2005 and the Commission directed them to serve these replies to the petitioner and other respondents by 19.12.2005. No reply was filed by the Respondent No. 1 (M/s. REL). The petitioners and other respondents were also directed to file their rejoinders, if any, by 31.12.2005. The next date of hearing was fixed on 04.01.2006.
7. On the date of hearing on 04.01.2006, Respondent No. 2 to 4 filed separate petitions for time which was objected by Counsel for the petitioner and GRIDCO respectively,

who were of the opinion that Respondent No. 2 to 4 have sole intention to prevent the Commission from deciding the case and adequate time has already been provided to them. After going through the arguments from either sides the Commission allowed time till 13.01.2006 for filing written replies to the points raised during the hearing and the case was posted to 16.01.2006.

8. During the hearing on 16.01.2006 learned Advocate of the petitioner argued against the replies of the Respondent No. 2 to 4. Representative of the Govt. of Orissa pointed out that REL has to change some of the condition mentioned in its reply like bank loan and appointment of Managing Director. Sr. Advocate of GRIDCO argued that in their replies respondents have filed some replies which are nothing new but what had been agitated earlier. The Counsels for Respondent No. 2 to 4 submitted that they have nothing new to add and they cannot do anything else than what they have narrated from time to time by way of affidavit. The arguments from both the sides were concluded and order was reserved.
9. The Commission on 27.01.2006 passed an order in the matter, after discussing the arguments adduced by the petitioner and respondents including GRIDCO and Govt. of Orissa. The Commission observed the following in the said order.

“26. The Commission finds tour de force in the submissions of the Petitioners, as also of GRIDCO and Government of Orissa regarding the acts of commissions and omissions of the three distribution companies which have adverse impact on their licensed businesses and regulatory commitments. The Commission has carefully gone through the materials in support of the allegations and the defences of Respondent Nos. 1, 2, 3 and 4. All the aforesaid defaults, misfeasance and malfeasance indicate that the affairs of the three distribution companies are not being carried on in the best interest of the company and also in the interest of the consumers and the general public. We summarize them as follows:-

- (ii) Apparent refusal of REL to renew shareholders agreement, resulting in abdication by majority shareholder of Distcos of their responsibilities in discharging their regulatory obligations.*
- (iii) Failure to appoint Managers / MDs for the three Distcos, viz., WESCO, NESCO and SOUTHCO.*
- (iv) Failure to resolve the issue of servicing Rs.400 crore NTPC bonds.*
- (v) Failure to evolve a convincing plan for meeting the outstanding PFC / REC, and IBRD loans and BST dues of GRIDCO.*
- (vi) Failure to mobilize counterpart funding in respect of APDRP scheme.*
- (vii) Non-infusion of capital.*
- (viii) Failure to take up full-scale energy auditing*
- (ix) Failure to introduce spot billing in entire areas of DISCOs.*

- (x) *Failure to recruit adequate manpower.*
 - (xi) *Failure to comply with Commission's orders dated 25.10.05, 03.10.05, 30.09.05.*
27. *Besides, the following serious allegations have been made by the Petitioner, Respondent No. 5 and 6 and the general public. The DISTCOs, during this inquiry, have not been able to rebut these allegations:-*
- (xii) *Failure in timely procurement of materials for different works*
 - (xiii) *Failure to attend to maintenance of lines, upgradation of transformers, power supply for LI load.*
 - (xiv) *Failure to procure materials in a transparent manner*
 - (xv) *Restricting power-supply through load-shedding to reduce the input energy*
 - (xvi) *Failure to attend to maintenance of lines, upgradation of transformers, power supply for LI load.*
 - (xvii) *Restricting power-supply through load-shedding to reduce the input energy.*
 - (xviii) *Failure to achieve the target in T&D and AT&C loss reduction as fixed by the Commission.*
 - (xix) *Non-redressal of consumer grievances.*
28. *In the circumstances, the Commission is of the opinion that the distribution licensees (Respondent Nos. 2, 3 and 4) are unable to discharge the functions or perform the duties imposed on them by or under the provisions of the Electricity Act, 2003 and have persistently defaulted in complying with the directions given by the Commission under the said Act. Prima facie, they have violated the terms and conditions of their respective licences, and it is necessary in public interest to suspend the licences of the said distribution companies and appoint an Administrator for each such licensee to discharge the functions of the licensee in accordance with terms and conditions of licence.*
29. *It is, therefore, ordered that notice be issued in terms of the Proviso to S.24(1) of the Electricity Act, 2003 to Respondent Nos. 2, 3 and 4 to file their representations by 01.3.2006 against the proposed suspension of the licences of the said Respondents, serving copies on the concerned parties. A copy of this order shall accompany the notice. The case is posted for hearing on 08.3.2006.*
30. *The Commission also finds that after hearing the petitioner, GRIDCO, Government of Orissa, the three distribution companies and REL and considering the stand taken by the distribution companies and REL and their failure to satisfactorily deal with the serious allegations made against them, it is necessary and imminent to make some interim orders to protect the interest of the consumers at large. At this stage, pending further hearing the Commission considers it appropriate to appoint Special Officers and few other persons to assist the Special Officer to oversee the operation of the three distribution companies to the Commission and to file a status report on the activities and management of the three distribution companies. The following officers are being appointed as the Special Officers for all the three*

distribution companies, namely, NESCO, SOUTHCO and WESCO. The Special Officer shall have all the powers which a director of a company under the Companies Act, 1956 can exercise to seek information, document and details of the operation and management of the Companies. The Special Officer is also authorised to demand from any officer or employee of the distribution companies any document or information as he considers appropriate and if so demanded the officer and employee shall duly provide the same to the Special Officer.

<i>Name of the Distribution Licensee</i>	<i>Name of the Special Officer</i>
<i>1. NESCO</i>	<i>Shri S.P. Ghosh, Ex-Director, Commercial, GRIDCO</i>
<i>2. SOUTHCO</i>	<i>Shri P.N. Bisoi, Ex-Senior General Manager, GRIDCO</i>
<i>3. WESCO</i>	<i>Shri D.K. Satapathy, Jt. Director (Engineering), OERC</i>

31. *The Special Officer is empowered to employ any auditor or any other person for the purpose of assisting him in consultation with the Commission. The distribution companies shall also provide to the Special Officer the report of all operations on weekly basis in such form as he may require and in particular give the details of the expenditure incurred or payments made or procurement of materials or disposal of assets of the value in excess of Rs.1,00,000/-. The Special Officer shall file a report on the distribution companies within a month of this order.*
32. *No money can be repatriated by Respondent No. 2, 3 and 4 to respondent No.1 (REL) without express approval of the Commission.”*

10. In pursuance to the Commission’s order dated 27.01.2006 three special officers appointed by the Commission joined in the respective distribution licensee areas of WESCO, SOUTHCO and NESCO.
11. In the meantime Respondent No. 2 (WESCO), No. 3 (SOUTHCO) and No. 4 (NESCO) preferred appeal before Hon’ble Appellate Tribunal for Electricity, New Delhi in Case No. 29, 30 & 31 respectively, challenging the legality and validity of the order dated 27.01.2006 passed by the Orissa Electricity Regulatory Commission in Case No. 35 of 2005. The appellants sought for the following relief before the Hon’ble ATE:
- i. To set aside the impugned order dated 27.1.2006 passed by the OERC in case No. 35 of 2005.*
 - ii. To set aside order dated 27.1.2006 issued by the OERC calling upon the appellant to show cause as to why its license should not be suspended under section 24 of The Electricity Act 2003.*
12. Hon’ble Appellate Tribunal for Electricity in their interim order dtd.8th February, 2006 in Appeal No. 29, 30 & 31 of 2006 admitted the appeal of the Respondent No. 2 to 4 and observed the following:

“It is noticed that proceedings were initiated at the instance of the first respondent. After submission of petition, after submissions of objections from time to time with respect of business which were carried on by DISCOMs, OERC issued certain directions. It is also true that there are some interim orders and directions from time to time by the OERC. It is also admitted that two or three orders of the Regulatory Commission are the subject matter of the appeal which are pending. As seen from para 28 & 29 of the order the Regulatory Commission has initiated action under Section 24 to suspend the license and had called upon the appellant in each of the appeal to submit their objections. In respect of para 28 & 29 the independent contentions are advanced by the appellant. With respect to this we are not expressing ourselves at this stage.

- “9. On a perusal of paras 30 & 31 we are of the view that it is not sustainable to contend on the part of counsel for Respondent No. 4 as well as respondent No.6, that it is just collection of information and collection of material with respect to the management of three DISCOMS. On the other hand the directions setout in para 30 and 31 substantially interfere with management of the three DISCOM Companies. Under Section 24 of the Act notice has been issued calling upon the appellant to show cause as to why license should not be suspended. Had an order of suspension been passed by commission, it will be well within its powers in appointing Administrator or Special Officers or any name they call, to take charge of the administration of the licensee. That is not so.*
- 10. Prima-facie, we are of the view that the appointment of Special Officers as ordered in paras 30 and 31 definitely interfere with the day to day administration of the three DISCOMs as well as their licensed business, which they are entitled to carry. As sought to be pointed out by Mr. Ramachandran and Mr. Mehta appearing for OERC and GRIDCO, we are not satisfied with their contentions. At the same time, we will not be justified in giving a blanket stay as prayed for.*
- 11. A prima-facie, case has been made out. Our attention is drawn to few of the provisions of the Act and there is time enough to consider the scope of those provisions of the Act.*
- 12. Pending appeal as a prima-facie case has been made out the order of the OERC appealed against in these three appeals is stayed pending further orders but it will not prevent the Special Officers appointed by the OERC from collecting information. At the same time it is made clear neither the Special officers nor their assistants could interfere with the functions of the three DISCOMS or its day to day business carried by them.*
- 13. Pending further proceedings the Regulatory Commission shall not also proceed further with regard to show Cause Notice issued to the three DISCOMs. Which are also under challenge with respect to interim order. Call on 28.02.2006.”*
13. Hon’ble Appellate Tribunal for Electricity in their interim order dtd.2nd June, 2006 in Appeal No. 29, 30 & 31 of 2006 & 75 of 2005 observed the following:

In the said order Hon’ble ATE observed and directed as follows:

- “14. Taking an overall view and in the best interest of all concerned being the better course available as of today, we issue the following directions in the above three appeals. These directions shall be with out prejudice to final*

orders or outcome in the pending appeals, before the Appellate Tribunal. These directions shall be in force until further orders that may be passed after watching the functioning of the special officers who have a proven record in the field of electricity in different states.

We order and direct as under:

- A. The existing three joint sector companies and its existing, Board will continue as independent company for the purpose of Indian Companies Act and other statutory provisions but subject to the directions set out herein.*
- B. The three Discoms WESCO, NESCO & SOUTHCO, the appellants in these three appeals shall be deemed for all purposes to be separate corporate entity but we place the entire day today management, affairs, control, finance, man power whatsoever to have been controlled by the three Discoms hitherto before shall forthwith be placed at the command, management, administration and control of Special Officers appointed by this order, whose name and details are set out in the Annexure to this order.*
- C. The Special Officers shall exercise all managerial, executive and administrative powers and full control in respect of three Discoms with respect to day to day management and with a power to take decisions, plan, to take policy decision concerning the three Discom companies, their electricity distribution business, day today activities and the Special Officers' decision shall be accepted and adopted by the three Companies as that of the respective Boards of the three Companies.*
- D. The Board of Directors of the Companies shall accept the said action or decision or functioning of the said Special Officers as that of theirs and pass necessary resolutions or minutes as may be required in law or under various statutory provisions such as the Companies Act, 1956. The Electricity Act, 2003, Income Tax Act and all other Central and State enactments covering the Distribution of Power.*
- E. The Special Officers shall take charge at the earliest and on their assuming charge, the existing three Discom Chief Executive Officers shall cease to exercise powers except as directed by the Special Officers and the Board of the respective Discoms shall exercise the powers and functions subject to and in conjunction with the orders of said Special Officers appointed by this Appellate Tribunal.*
- F. The Special Officers shall have the authority to appoint, remove, dismiss, suspend all employees including in other arrangements of the three Discoms and all levels and also post and transfer such number of officers for the three Discoms at such levels which he deems for effective day today control and management.*
- G. The Special Officers, as they deems fit and decide, delegate such power, to such other officer from time to time, alter the arrangement or withdraw delegation as he may consider appropriate from time to time.*
- H. There shall be a five member advisory committee for each one of the Discoms, consisting of the Special Officers a Representative of Reliance Energy, a Representative of Grid Corporation of Orissa and a Representative of consumers in the area of Discom as may be nominated by the Special Officers and their view shall receive due consideration.*

- G. *The Special Officers shall have the service of such consultations as they may consider appropriate and discuss with the above consultative committee, while dealing with the affairs of Discoms and the Special Officers shall give weightage to the views of the committee but it is their prerogative and responsibility to implement the projects or maintain the supplies or safeguard financial matters and implementation thereof in the interest of the joint venture partners of the Discoms, which may develop the commercial activity and increase the total earnings and consequently turn the corner within a short period.*
- J. *All personnel, employees upto the levels that may be indicated by the Special Officers shall report to and take instructions from the said Special Officers and their directions shall be carried out without any reservations.*
- K. *The Special Officers shall be the final disciplinary authority for all employees and they may take such actions as they deem fit for any act of commission or omission on the part of any personnel without reference to the Board of Directors or any other authority in the Discom. In other words, the Special Officers shall have full control in respect of all day today affairs, staff functioning and distribution carried on by the Discoms. The financial management of the Discoms shall be under the direct control of Special Officers and their set of officials for effective.*
- L. *The Special Officers shall endeavour to maintain fair relationship with the State authorities, GRIDCO, Reliance Energy and others with the objective of improvement and efficiency of Discoms and it is open to them to avail their services whenever required.*
- M. *This Appellate Tribunal hopes and persuades the State Government at all levels to extend full co-operation to the Special Officers so that three Discoms effectively distribute power, recover the dues, reduce the T&D loss and eliminate theft and undertake maintenance on a day to day basis.*
- N. *At the request of Special Officers, we would request the Government of Orissa in particular the Chief Secretary and Secretary (Power & Energy), to provide all assistance and also constitute as many Special Courts as requested under the Electricity Act, 2003 besides providing sufficient police strength in each local area to detect theft of electricity and to secure the property of Discoms and book the offenders.*
- O. *We also authorize Special Officers to appoint such number of Chief or other Executives in case if there is a requirement for the effective functioning at such salary and condition as they deem fit but duration of such appointment shall be for a limited period and for the development of power supply in the three Discoms.*
- P. *The GRIDCO shall allow relaxation from the existing escrow systems of receivables of the three Discoms to the extent of funds required to meet the payment of salary and wages to workers, statutory due payable with respect to employees from the date of this order. After payment towards bulk supply to the three Discoms, for the time being out of the balance that may remain with the GRIDCO, 10% shall be released at the written request of the Special Officers for the purpose of maintenance and for development of the existing infrastructure or replacement of the infrastructure wherever required and considered essential. In other respects, the escrow mechanism which is in force, in favour of GRIDCO,*

shall continue to be in force in letter and spirit as concluded between three Discoms and GRIDCO without further relaxation for the present. However, liberty is given to the parties herein and Special Officers to come forward for directions, if any, as and then required.

- Q. For the time being and as an interim measure the obligations between GRICO for payment towards bulk supply tariff, loan repayment and for relaxation of escrow three Discoms shall be considered as one unit and in respect of all other purposes they are separate corporate bodies and accounts of the three Discoms shall be maintained separately, subject to such adjustments or debit or credit between the Discoms as may be ordered by the Special Officers.*
- R. We fix honorarium of Rs. one lakh to each one of the Special Officers apart from their being provided with rent-free furnished accommodation, chauffeur driven car which is normally given to the Chairman-cum Managing Director of central public sector corporation. The salary and the honorarium that is to be paid to the Special Officers shall be part of the total remuneration payable to the employees and the same shall also be included in the relaxation of escrow agreement every month as provided herein.*
- S. We emphasize that the three Boards of the Discoms shall from time to time stand with and by the side of the Special Officers and pass appropriate resolutions as required to satisfy the statutory requirements of various enactments. For all purpose accounting shall be separate for each Discom.*
- T. The Special Officers shall file report after the expiry of three months from the date of this order and seek for further directions, if any, required besides filing the report with respect to the entire affairs of the three Discoms separately.*
- U. It is open to Special Officers to resign by giving six weeks notice ending with the month.*
- V. Liberty is given to the Special Officers as well as GRIDCO, Board of three Discoms to seek for additional directors, if any for the effective functioning of the three Discoms to serve the customers and at the same time realize dues and in the interest of the joint venture partners.*
- W. The two special officers may mutually agree for allocation of powers and work and they will be entitled to exercise full powers as per allocation.*
- X. No action shall be taken by any authority against the Special Officers without the leave of this Appellate Tribunal and everyone concerned with Discoms shall bestow attention to see that the three Discoms discharge their obligations to the satisfaction of everyone concerned and progressively march towards successful privatization in the State of Orissa as was originally thought of by the planners in the State of Orissa, who had a vision.*

Post the above appeals on 18 August, 2006 for further orders. So also all the other connected Appeals Nos. 74, 75, 76 & 77 of 2006.

ANNEXURE

Special Officer-I & II

Special Officer-I

- I. Shri V. D. Lulla
Ex. Member & Ex-officio Addl. Secretary to Govt of India
Central Electricity Authority, New Delhi.

Special Officer- II

- II. Shri Kallel Ranganatham
C.M.D. Northern Power Distribution Co. of AP. Ltd.
Warrangal, Andhra Pradesh.”

In pursuance to the above interim order dated 02.6.2006 of Hon’ble ATE two special officers assumed their task of managing affairs of the three distribution companies WESCO, SOUTHCO and NESCO.

14. The Hon’ble ATE disposed the Appeals No.29/06, 30/06 & 31/06 of the three distribution companies WESCO, SOUTHCO and NESCO in their order dated 13th Dec. 2006 and observed the following:

- “40. *In the light of the above discussions all the three points framed are answered in favour of the appellants and against the respondents.*
41. *Pending the appeal this Appellate Tribunal, with the consent of all the parties to this appeal, appointed two special officers for the three Discoms. The two Special officers in terms of our orders have been effectively carrying out the functions of three Discoms. As seen from their report there has been a progress and if the Special officers are allowed to continue, the Discoms might turn around the corner. However, there are many hurdles which the Special Officers had to face apart from innumerable petitions. Suffice to state that the Special officers have conducted themselves in a fair manner and within the limited resources, they have also functioned effectively even in the absence of cooperation from the expected corners.*
42. *We have allowed the appeal and consequently we revoke the orders appointing Special officers, as there is no warrant or justification for the continuance of Special officers any longer. The Special Officers are discharged and they are directed to hand back the charge of three Discoms to the respective company who were in management forthwith and send a report.*
43. *IA Nos. 35; 36 & 37 of 2006 filed in Appeal No. 29, 30 and 31 of 2006 are closed as they have become in fruituous.*
44. *In the result, all the three appeals are allowed subject to above observations and the impugned order is set aside but without cost.*
45. *For any valid reason, if the Commission proposes to continue or initiate fresh action under Section 24 of the Electricity Act 2003, it is always open to the Commission to act strictly in accordance with Section 24 and follow the procedure prescribed therein. We may also administer a caution that motivated petitions or complaint shall be examined by the Commission very*

carefully before exercise of statutory power, as anxiety alone will not save the statutory authority from the test of bias nor it will satisfy the requirements of fair action which a reasonable authority may act upon. There shall be an action, if at all, which shall be in conformity with the statutory provisions of The Electricity Act 2003, the relevant regulations governing and in conformity with the principles of natural justice.”

15. In view of the aforesaid order of the Hon'ble ATE. Dated 13 December 2006, the Commission recalled and discontinued the continuance of special officers appointed by it working in two DISCOMs i.e., NESCO and SOUTHCO. The post of Special Officer in WESCO was already vacant since 19.9.2006. In the mean time two Special Officers appointed by Hon'ble ATE also handed over the charge to the management of the NESCO, WESCO and SOUTHCO on 15.12.2006 as Hon'ble ATE revoked the orders of appointment of Special Officers in their said order dated 13.12.2006 (para 42) in the Appeal No. 29 to 31/2006.
16. Against the orders of the Hon'ble ATE dated 13.12.2006 OERC filed a Civil Appeal No. 946 of 2007 with Civil Appeal No. 2309 of 2007. The Hon'ble Supreme Court in its order dated. 5th Jan, 2009 allowed the appeal in part and quashed the order of Hon'ble Appellate Tribunal so far as it annuls the show cause notice issued by the Regulatory Commission under S. 24(1) of the Act.

The extract of the said order Hon'ble Supreme Court is quoted below:

“We have heard the learned Counsel for the parties and perused the record. In our view, in the facts and circumstances of the case, the Regulatory Commission was justified in issuing notice to the respondents calling upon them to file representations against proposed suspension of their licenses, but there was no warrant for appointment of Special Officer to over see their work. Therefore, the Appellate Tribunal had rightly annulled the appointment of the Special Officers. However, it could not have set aside the order of the Regulatory Commission in its entirety without properly appreciating that only show-cause notice had been issued to the respondents and final order was yet to be passed by the Regulatory Commission.

Accordingly, the appeal is allowed in-part. The impugned order of Appellate Tribunal is quashed so far as it annuls the show-cause notice issued by the Regulatory Commission under Section 24(1) of the Act. Now, it would be open to the respondents to file their representation/objection before the Regulatory Commission, which shall proceed to decide the matter in accordance with law without being influence by the observations made in the order impugned in these appeals.

Needless to say that we have not gone to the question as to whether while issuing notice under Section 24(1) of the Act proposing suspension of the licence, the Regulatory Commission could pass an order for appointment of Special Officer at this question is left to be decided in appropriate case.

Civil Appeal No. 2309 of 2007

In view of the order passed in Civil No. 946 of 2007, it is not necessary to pass any further order in this appeal, but we clarify that any observation made against the appellants in the impugned order shall not prejudice their cause before the Regulatory Commission.”

17. In pursuance of the Hon'ble Supreme Court's order dated 05.01.09 passed in Civil Appeal Nos. 946/2007 & 2309/2007 notices were issued to Respondent No. 1 to 6 to file representations/objections before the Commission by the next hearing date which was fixed on 28.02.2009.
18. On 28.02.2009 Respondent No. 1 to 4 during the hearing process pleaded for grant of time to file their representation/objections to the show-cause notice. Representatives of Govt. of Orissa and GRIDCO stated that they would file their reply after receiving the copies of the representation/objection filed by the Respondent No. 1 to 4. The Commission after considering the facts allowed Respondent No. 1 to 4 six weeks time for filing of representations and objections, the case was next posted on 15.4.2009.
19. During the hearing on 15.4.2009 Sr. Counsel for GRIDCO and representative of Dept. of Energy, Govt. of Orissa prayed for grant of time to respond to the objections filed by the Respondent No. 1 to 4 since those are voluminous in nature and requires thorough examination. Respondent No. 1 to 4 had no objection to such a request of the GRIDCO and Govt. of Orissa. The Commission allowed three weeks time to GRIDCO and Dept. of Energy, GoO for filing their replies. The Commission also directed Dept. of Energy, GoO to serve a copy of the report of the Task Force Committee headed by Shri Vivek Pattnaik and a copy of the minutes of the conciliation meeting headed by Shri V.K. Sood now M.D., WESCO, NESCO & Director, SOUTHCO, submitted before the Hon'ble ATE.

The case was further posted for 15.5.2009.
20. Respondent No.1 Reliance Infrastructure Limited (R-Infra) on 07.4.2009 filed their replies to the notice of the Commission dated. 17.01.2009. In its reply R-Infra submitted that it is not amenable to jurisdiction of the Commission since it is a separate corporate entity established under the provision of Indian Companies Act, 1913 and is separate and distinct from the DISCOMs. In the judgment order dated 13th December 2006 passed in Appeal No. 75 of 2005 by the Hon'ble ATE it has been held that the authority that issues licenses can exercise its powers against the licensees only. R-Infra would not fall within the jurisdiction of the Hon'ble Commission just because it holds shares in the distribution companies and regulatory power, of the

Commission could only be against the licensees and not against the shareholders. The said judgment and order of the Hon'ble ATE has become final. R-Infra not being a Distribution licensee in Orissa, no directions can be issued to R-Infra, on this short ground.

R-Infra further submitted that at the time of entering into the Shareholders Agreement dated 1st April, 1999 it invested a sum of Rs.117 crore in the DISCOMs. Since 2000 there has been no increase in the Retail Supply Tariff applicable to the consumers of the DISCOMs. R-Infra has since 1999 not earned any return on its investment of Rs.117 crore. Merely allowing an item as "Return on Equity" in the Tariff order but leaving a negative gap at the bottom which itself indicates that no return on equity is allowed. Such accumulated negative gap in case of NESCO and SOUTHCO is approx Rs.515 crore till 2005.

As regards the allegation that there is apparent refusal of R-Infra to renew Shareholders Agreement resulting in abdication by majority shareholder of the DISCOMs of their responsibility in discharging the regulatory functions, the shareholder agreement came to an end in 2004 by efflux of time. In any event the terms of shareholder agreement to the extent the same are relevant for the management of DISCOMs has been duly incorporated in the Articles of Association of the company. Any notice under Section 24 of the Electricity Act, 2003 can be issued only against licensee and there is no question of R-Infra replying for the same as the DISCOMs has filed their detailed replies.

R-Infra submitted to drop the present proceedings on the ground that the petition is motivated and the petitioner is neither consumer nor a purchaser of electricity in the licensee area.

21. DISCOMs (WESCO, NESCO and SOUTHCO) filed their replies on 07.04.2009 in response to the notice of the Commission. The reply of the DISCOMs is summarized as under:
 - (a) There can be no suspension of the respective licensee of the DISCOM under the provision of Section 24 of the Electricity Act, 2003, on a notice which is issued on 27.01.2006 and a period of more than three years has elapsed after the said order. The provisions relating to suspension of license u/s 24 in the circumstances mentioned in the said order do not survive.

- (b) None of the grounds mentioned in paragraphs 26 and 27 of the said order dtd.27.01.2006 exists in order to suspend the licence of the DISCOMs.
- (c) The default regarding renewal of Shareholders Agent relates to R-Infra which is a public Ltd. company, separate and distinct from the DISCOM.
- (d) Regarding failure to appoint managers/ M.D the process has been initiated for appointment of M.D. which would take sanction, especially in view of their respective balance sheets showing a negative net worth.

CEOs have been, however, appointed in due compliance of the provisions of the Companies Act, 1956. They are looking after day to day functioning of the company and their appointment were approved by the respective Boards of the three DISCOMs which were sufficiently represented by GRIDCO through their nominee directors.

- (e) Failure to resolve the issue of servicing Rs.400 crore NTPC bonds. - DISCOMs in lieu of the BST outstanding for the period 1st April, 1999 to Sept. 2000 issued bonds to GRIDCO aggregating an amount of Rs.400 crore (SOUTHCO Rs.130 crore, WESCO – Rs.103 crore and NESCO- Rs.167 crore) for a tenure of 7 years interest having rate of 12.5% per annum. The bonds were to be redeemed in three year at the rate of 30%, 30% and 40% between Sept. 2005 and Sept. 2007.

The bonds were assigned by GRIDCO to NTPC with a specific term that NTPC shall have a *pari passu* charge over all receivables from DISCOMs to GRIDCO. A tripartite agreement was signed between DISCOMs, GRIDCO and NTPC and the bonds were issued by three DISCOMs.

DISCOMs paid Rs.110.80 crore upto 2005 to NTPC towards servicing of the said bonds from the Escrow Account. GRIDCO, thereafter, did not permit relaxation of Escrow for the purpose of either servicing or payment towards the bonds denying DISCOMs to service these bonds in spite of the view of the specific condition thereof with regard to NTPC having a *pari passu* charge on the receivables of DISCOMs.

DISCOM from FY 2005-06 upto Dec, 2008 have paid in aggregate surplus amount of Rs.530 crore to GRIDCO after payment of the full amount BST bills and meeting net Salaries and Repair and Maintenance expenses. The said amount was not utilized by GRIDCO either towards servicing or towards

payment of NTPC bonds hence default is from GRIDCO side, of not complying with the security condition of ceding 1st charge on the receivables on *pari passu* based and not prorating the said surplus funds of Rs.530 crore to NTPC.

The Commission in different tariff orders have not allowed recovery of the full interest (12.5%) and has been allowing recovery of 8.5% interest which is unrealistic in view of the fact that during the period for FY 2000-01 to FY 2008-09 negative revenue gap has been left in the ARR.

- (f) Govt. dues to DISCOMs are lying to the tune of Rs.160 crore. The Commission has also not allowed it as regulatory assets consequently no recovery had been permitted. Since GRIDCO has already settled the issue with NTPC the issue of servicing of the bond no longer survives. As regards resecuritization of NTPC bonds the commission in its securitization order dated 01.10.2008 have observed that 'Final decision will be taken after pronouncement of the judgment of Hon'ble Supreme Court of India is this matter vide CA No.759/2007 which relates to RST for FY 2006-07'.
- (g) Failure to evolve a convincing plan for meeting the outstanding PFL/REC and IBRD loan and BST dues of GRIDCO.-

DISCOMs after several rounds of discussion with GRIDCO managed to reconcile the outstanding BST dues as directed in the Commission's Business Plan Order dated 28th Feb, 2005 and 20th July 2006. The Commission in its securitization order dtd. 01.12.2008 directed that dues upto 31st March 2005 and loans in respect of PFC and REC both along with interest taken by GRIDCO earlier to be securitized and repaid within 10 years in equal monthly installments starting from FY 2006-07 ending in FY 2015-16. (120 monthly installments)

- (h) As regards IBRD loan as per the Kanungo Committee recommendation it was decided that World Bank loan shall be passed on to the DISCOMs as 70% loan @ 13% interest per annum and balance 30% would be treated as grant. This recommendation needs to be implemented. The interest rate of 13% on the World Bank loan is also very high which needs to be revised. The Commission has been considering servicing of World Bank loan @ 70% in its

various tariff orders. However, Govt. of Orissa is yet to take decision to treat 30% of the amount as grant.

DISCOMs have proposed repayment of the principal amount through amortization of its Regulatory Assets. This issue is pending before the Commission.

- (i) Failure to mobilize counterpart funding in respect of APDRP Scheme. - As per the terms of APDRP programme (GoI O.M. dated 11.6.2003) only upon release of first 25% of APDRP amount upfront on approval of the project, the tie up of Central Plan Fund from financial institutions required to be done by the DISCOMs. On such tie up being done the FIs release matching funds.

Govt. of Orissa received the 50% of the project cost from GoI consisting of 50% grant and balance 50% as loan in 2004. However, contrary to the guidelines there was piecemeal release by GoO which carried on till 2006. Also GoI during the aforesaid period revised the APDRP Scheme to cover only the District Headquarters and Town as against the original plan to cover circles.

DISCOMs were required to tie up funding from FIs simultaneously with the release of such funds on account of GoO's initial proposed treatment of release of grant received from GoI. The REC required DISCOMs to provide security to the extent of 130% of the sanctioned amount by way of hypothecation of the existing assets of the respective DISCOMs and escrow on the receivables. The DISCOMs provided security to REC was in shape of rebate receivable from GRIDCO on prompt payment of full BST and security deposit. DISCOMs have utilized the following amounts under APDRP programme.

(Rs. in crore)

	APDRP payment received from GoO	Total amount spent.
NESCO	12.73	29.98
WESCO	10.95	33.66
SOUTHCO	13.25	19.31

- (j) Non infusion of capital - The net-worth of the DISCOMs is substantially negative and raising finance is extremely difficult. The Commission has also not revised tariff since the last eight years while BST has increase by 23% for

WESCO and 15% for NESCO. The cumulative gap between revenues and cost of NESCO & SOUTHCO approved by the Commission is Rs.514 crore. Assets of the DISCOMs to the tune of Rs.1500 crore remain hypothecated to GoO and GRIDCO and loan to tune of Rs.87 crore from REC cannot be availed by DISCOMs.

- (k) Failure to take up full energy auditing and Failure to introduce spot billing in entire areas of the DISCOMs - DISCOMs is finding it extremely difficult to carry out these activities especially in view of the fact that none of the expenses incurred or to be incurred has been permitted by the Commission while approving ARR. The receivables of the DISCOMs are escrowed to GRIDCO and it only allows relaxation for meeting salaries and urgent R&M.

DISCOMs have appointed M/s. Pricewater House Coopers (PWC) in providing assistance for preparing the terms of reference for energy audit. DISCOMs have accordingly planned to initiate a comprehensive energy auditing system across the DISCOMs to ensure that baseline data for loss reduction calculation are captured accurately. This proposed exercise is to be carried out in two phases and tendering for first phase has ready been over.

As regards spot billing the present position is as under

	WESCO	NESCO	SOUTHCO	Total
Total no. of Divisions	15	14	14	43
Total no. of Divisions covered under spot billing	15	11	9	35

DISCOMs have submitted plans in their ARR for seeking approval of such expenses to be incurred in the process which has not been approved.

There has been no failure by the DISCOMs in introduction of spot billing and it requires reasonable amount of time for completion of the work.

- (l) Failure to recruit adequate manpower.

DISCOMs in 2005-06 recruited approximately 1800 number of field staff and executives on their payroll. DISCOMs had at that time approximately over 1500 number of outsourced persons. DISCOMs have also proposed for creation of commercial cadre for revenue maximization and loss reduction. For the purposes of updating the bench mark for manpower requirements,

service regulations, the DISCOMs had appointed M/s. Nilachal Management Associate.

- (m) Failure to comply with the Commission orders dated 25.10.2005, 03.10.2005, 30.9.2005 - DISCOMs have complied with all the Orders of the Commission in furnishing replies which DISCOMs crave to refer to when produced.
- (n) Failure in timely procurement of materials for different works and failure to procure materials in a transparent manner - DISCOMs follow a detailed procedure for procurement of materials in timely manner by maintaining transparency. There are purchase committees in each DISCOMs. DISCOMS have been furnishing cost data to the Commission which are placed in the website. Special officers appointed by Hon'ble ATE have also outlined the procurement process for three DISCOMS.
- (o) "Failure to attend to maintenance of lines, upgradation of transformers, power supply to LI load".
- (p) "Restricting power supply through load shedding to reduce the input of energy".
- (q) "Failure to attend to maintenance of lines, upgradation of transformers, power supply for LI load".
- (r) "Restricting power supply through load-shedding to reduce the input energy".

DISCOMs have been providing reliable supply system though the price of electricity supply has not been revised for last 9 years. DISCOMs are under the direct supervision and periodic review of the OERC.

Reputed journal such as power line has given good review regarding quality of supply in Orissa and also ex-member of Orissa has commented well of the quality of supply in a magazine.

- (s) Failure to achieve the target in T&D and AT&C losses reduction as fixed by the Commission - DISCOMs have adhered to AT&C targets fixed by the Commission in FY 2005 and the variations between actual performance and the targets in FY 2006 are mainly attributable on account of the uncontrollable facts such as non maturing of industrial loads and natural calamities for six consecutive year.

The requisite support from the State administration has not been adequate pertaining to functioning of the special police station. Govt. Depts. and State owned PSUs have defaulted in paying their dues affecting collection efficiency and thereby AT&C targets.

- (t) Non-redressal of consumer grievances.

DISCOMs have taken several steps regarding redressal of consumer grievance such as formation of GRFs, Ombudsman and advertisements in print and electronic media. Special officers appointed by Hon'ble ATE have observed regarding complaint Handling Procedure and consumer service centre to be followed for the three DISCOMs.

In view of the above submission licence of DISCOMs is not liable to be suspended on the aforesaid ground under Section 24 of the Electricity Act, 2003. The notice dated 27.01.206 is therefore liable to be dropped.

22. GRIDCO on 15.5.2009 during the hearing informed that they have already filed their rejoinder on the replies of Respondent No. 1 to 4 and prayed for adjournment of the matter on the plea of non-availability of Sr. Advocate.

GRIDCO in its rejoinder to the reply filed by WESCO, NESCO, SOUTHCO and Reliance Infrastructure Ltd. (R-Infra) stated the following:

- a) The present proceeding of the Commission is alive in view of the orders of the Hon'ble Supreme Court dated 05.01.2009.
- b) The Shareholders Agreement was executed on 1st April 1999 amongst BSES (now Reliance Infrastructures Ltd., "RIL" in short), GRIDCO and the concerned Distribution Companies (DISCOMs) in order to regulate the arrangement between GRIDCO and BSES relating to the management and operation of the DISCOMs. The DISCOMs who are the parties to the Agreement are also obliged to approach the other parties to the Agreement namely, GRIDCO and RIL to renew the Shareholders Agreement for a further period since the objectives spelt out in the said agreement, are yet to be achieved. Therefore, it is not correct on the part of the DISCOMs to say that the alleged default relates to RIL and they are not dealing with the same. Such an approach is a clear abdication of responsibilities on the part of the DISCOMs in ensuring continued support from the investors (REL) in the interest of its distribution business.

- c) In the Order dtd. 28.02.2005 the Commission observed that the Shareholders Agreements could be extended for a further period as may be mutually agreed between parties to ensure continued interest of the investors in the business. The Commission also observed that the DISCOMs to take measures to increase necessary fund which could be either through loan or equity. DISCOMs have failed to take any steps to implement the said directions of the Commission.
- d) The Shareholders Agreement in Clause 25 provides that the Agreement shall, to the extent that it remains to be performed, continue in full force and effect notwithstanding completion/termination of the Agreement. The DISCOMs have failed to enforce the said provisions of the Agreement.
- e) As per the terms of provision of Shareholders Agreement read with Articles of Association of the DISCOMs, REL shall be responsible for the day to day management of business of the DISCOMs and shall have the right to appoint a M.D. in each DISCOM to manage the affairs of the company. The submission of the DISCOMs to say that appointment of the CEOs has been in due compliance of the provisions of the Companies Act, 1956 as there is no such provision under the Company Act for appointment of CEOs who are not member of the Board is not correct. Negative net worth of the company is not a ground for not appointing a Managing Director. It is a statutory requirement for appointment of M.D. or Manager or whole time Director who should be entrusted with substantial power of the management of the company.
- f) Failure of DISCOMs to resolve the issue of servicing Rs.400 crore NTPC Bond.

GRIDCO was not in position to discharge the amounts becoming due to NTPC for supply of power on account of non-payment of receivable by DISCOMs. NTPC agreed for payment by GRIDCO on its overdue amount in deferred manner in line with the proposal given by the DISCOMs to GRIDCO. In order to facilitate such payment DISCOMs issued secured, irrevocable and transferable debentures to GRIDCO (which was assigned in favour of NTPC Ltd.) DISCOMs were required to service the Bonds and pay the amount to NTPC in three annual installments beginning from 01.10.2005 with interest accrued thereon. The interest becoming due on the Bonds were required to be

discharged half yearly from the beginning. However, DISCOMs did not service the payment of the principal amounts failing due and also did not pay the entire interest amount.

The DISCOMs paid the interest amount partly and there was default in payment of principal as well as interest for following amounts.

(Rs. in crore)

DISCOMs	Principal	Interest
WESCO	30.90	2.51
NESCO	50.10	63.08
SOUTHCO	39.00	64.98

In view of the default on the part of the DISCOMs, NTPC adjusted the amount due to them from other amounts becoming due from NTPC to GRIDCO under the fallback arrangement mentioned in the subscription agreement NTPC proposed the following actions.

Accordingly, GRIDCO shall not to make any changes in the present escrow arrangement during the currency of the loan and to undertake to provide comfort of fallback as provided under NTPC bonds.

In the circumstances mentioned above and on account of transfer of Bonds by NTPC to GRIDCO, DISCOMs became liable to pay the amounts over due under the Bonds along with interest to GRIDCO, immediately after the bonds were transferred to GRIDCO.

The bonds existing in demat account of GRIDCO with NSDL have been arbitrarily and fraudulently redeemed by DISCOMs on 14.3.2008 by giving wrong advice to NSDL and after objection by GRIDCO, the DISCOMs have reissued the bonds in physical form on 05.7.2008.

The bonds are transferable and the same have been transferred by NTPC to GRIDCO on 31.3.2007. The unilateral adjustments against bond liabilities by an amount of Rs.530 core as made by DISCOMs are baseless and have no merit. The outstanding dues against bonds as on 31.3.2009 payable to GRIDCO are as follows:

(Rs. in crore)

	Principal	Interest	Total
WESCO	103.00	41.31	144.13
NESCO	167.00	125.70	292.70
SOUTHCO	130.00	113.73	243.73

For the default in payment against bonds GRIDCO has filed a petition before Company Law Board, ER, Kolkata U/S 117C (4) of the Companies Act, 1956 which is pending for disposal.

- g) DISCOMs are required to make payment of the dues of GRIDCO under various orders from the Commission. In securitization order dt. 01.12.2008 the Commission ordered to securitized the dues of the DISCOMs as on 31.03.2005 to be paid to GRIDCO in 120 monthly installment in the following manner w.e.f. 01.4.2006.

(Rs. in crore)

	Principal	Interest	BST dues with DPS	Total
WESCO	138.46	60.31	223.31	422.08
NESCO	94.64	41.05	323.69	459.38
SOUTHCO	134.36	58.43	105.71	298.50

Hon'ble Commission in the above order has observed that DISCOMs must generate enough cash to pay towards the monthly installment of the securitized amount to GRIDCO. Further, in various Tariff Orders the DISCOMs have been directed to pay the arrear dues of GRIDCO which has been factored in the ARR of GRIDCO. However, DISCOMs have failed to generate enough cash to pay the dues to GRIDCO and more so, have adjusted the excess payment over and above the current BST dues of GRIDCO unilaterally and arbitrarily against the bond liability in their accounts. This is in violation of various Tariff Order of the Commission.

- h) The submission of revised Business Plan and Turn-around Strategy for the control period 2008-09 to 2012-13 and findings of receivable audit pending before Hon'ble Commission have no relevance on the above matter and should not be linked for payment of outstanding dues to GRIDCO.
- i) Pending of receivable audits which relates to truing up of exercise in respect of ARR/Tariff of any year cannot be taken as ground for reply against the said notice dated 27.01.2006.
- j) DISCOMs have stated that due to negative net-worth raising of finance is extremely difficult. However, in absence of sufficient internal accruals because of poor performance, the other option available to the DISCOMs is to raise funds either by way of further issues of Share Capital Order or by way of borrowing from Banks and FIs.

- k) DISCOMs are out of the purview of Sick Industrial Companies (Special Provision) Act, 1985 (SICA) or under Sections 424A to 424L of the companies Act, 1956. Hence no revival package would be applicable to them and, therefore, it is the responsibility of DISCOMs to arrange loan from Banks/FIs, failing which it should approach the shareholders who are the promoters for additional equity contribution by way of further issue of share capital.
- l) DISCOMs have failed to implement full scale energy audit and introduction of spot billing in the entire area of DISCOMs.
- m) The plea taken by DISCOMs that the recoverable are escrowed to GRIDCO and the Commission has not been allowing the expenses towards this as pass through in tariff reflects the negative attitude of the DISCOMs.
- n) As regards failure to recruit adequate manpower the earlier reply has been reiterated.
- o) As regards failure in timely procurement of materials for different works and to procure materials in a transparent manner needs to be reviewed by the Commission.
- p) DISCOMs have failed to procure quality and reliable power supply to the DISCOMs of the State.
- q) The DISCOMs have failed to achieve the T&D loss and AT&C loss target. The AT &C losses during the period for FY 2003-04 to 2007-08 is given below:

DISCOMs	OERC Approval %	Actual Reduction %
WESCO	18.2	6.2
NESCO	20.0	15.2
SOUTHCO	17.0	1.9

- r) DISCOMs have not taken all possible steps to reduce the distribution loss and AT&C loss as per the targets fixed by the Commission. This has seriously affected the sector as much as GRIDCO being the bulk supply of power have been forced to procure costly power to meet the demand of the DISCOMs.
- s) The contention of the Respondent No.1 (RIL) is not tenable in law. The plea of RIL that it is not amenable to the jurisdiction of this Hon'ble Tribunal is of no meaning in as much as the RIL has chosen to participate in the proceeding

and has raised its objection/ representation in the matter of show cause notice dated 27.01.2006 issued by the Hon'ble Commission in the present proceedings.

Representative of Govt. of Orissa submitted a copy of the Vivek Pattnaik Task Force Committee Report before the Commission and assured to serve the copy of the same to the petitioner. Counsel for Respondent No. 1 to 4 prayed for some more time in order to respond to rejoinders of GRIDCO and Govt. He further informed that the minutes of the conciliation meeting headed by Shri V.K. Sood is not available with them and same be collected from the Hon'ble ATE.

The Commission allowed time to Govt. of Orissa to file their rejoinder on or before 16.6.2009 directed Respondent No. 1 to 4 to file their response on the rejoinders by GRIDCO and GoO on or before 23.6.2009.

The case was next posted for hearing on 29.7.2009 which was again rescheduled to 22.8.2009.

23. Government of Orissa filed its rejoinder to the reply filed by WESCO, NESCO, SOUTHCO and Reliance Infrastructure Ltd. (R-Infra) on 23.6.09 and stated the following:

- The contention of the Respondent No. 2 to 4 that notice of the Commission dated 27.01.2006 has lost relevance after the lapse of three years is fanciful, misconceived and stands no reason.
- The attempt of the Respondents 2 to 4 in their reply to dig into observations of the Commission in the said order with subsequent events are not tenable. The notice of the Commission dated 17.01.2009 calling upon respondents to show cause against the proposed suspension of their licenses is liable to be tested on the anvils of events that took place prior to 27.01.2006 which have already come on record before the Commission.
- Shareholders Agreement was executed on 1st April 1999 amongst BSES (now Reliance Infrastructures Limited, 'RIL' in short), GRIDCO and concerned Distribution Companies (DISCOMs) in order to regulate the arrangement between GRIDCO and BSES relating to the management and operations of the DISCOMs. It is, therefore, imperative upon the DISCOMs to approach other parties of the DISCOMs to renew the Shareholders Agreement after lapse of

the shareholders agreement since the objectives spelt out in the said Agreement are yet to be achieved. DISCOMs cannot abdicate itself of the responsibility by alleging that such default relates to RIL. The Commission in case No.115 of 2004 in order dated 28.02.2005 observed that 'Shareholders Agreement should be extended for a further period to be mutually agreed between GRIDCO and the DISCOMs to ensure continued interest of the investors in this business'. DISCOMs have failed to take any step to implement the direction of the Commission in the said order.

- The Commission in Case No.115 of 2004 in order dated 28.02.2005 also observed the following :
- As a sequel to such a comprehensive financial restructuring proposal, designed and approved by the Commission, the licensees should take effective measures to infuse necessary funds to rejuvenate the power sector in Orissa by dint of achieving targeted milestones fixed by the Commission. The investors must take appropriate steps to provide requisite financial support in this regard to the companies.
- DISCOMs should also infuse additional share capital to improve upon the debt-equity ratio that will go a long way in instilling confidence about their continued interest in the business.

DISCOMs have failed to infuse additional share capital.

- DISCOMs have failed to appoint Managers/ Managing Directors for the three DISCOMs as required under section 269 of the Companies Act. Shareholders agreement envisaged that the Managing Director and Directors nominated by REL shall be in-charge of the day to day affairs of the DISCOMs. This was done to ensure that the persons responsible for management and conduct of the affairs of the DISCOMs are part of the Board and, therefore, accountable to the Board in which GRIDCO nominee will also be represented. In order to avoid direct accountability to the Board and contrary to the provisions of shareholders agreement REL is continuing to nominate CEOs who are not members of the Board and vested with day-to-day control of the DISCOMs. Of late RIL have nominated Shri V. K. Sood as the M.D. of both WESCO & NESCO with a tenure of 2 years from November 2007. There has been no

appointment of M.D. for SOUTHCO so far and SOUTHCO is still managed by a CEO/Vice-President.

- Due the persistent failure to service of NTPC bonds of Rs.400crores by DISCOMs to GRIDCO, state Government had to intervene to forestall the threat of regulation of power by the NTPC and directed GRIDCO to negotiate with NTPC for onetime settlement of Bonds and allowed it to mobilize funds from banks/FIs to the extent required for such settlement. On settlement of bonds with NTPC, GRIDCO will get the Bonds transferred in its favour. The DISCOMs would be asked to arrange funds and pay to GRIDCO as per the original terms and conditions of the Bond failing which GRIDCO will recover the default amount of the Bonds from the DISCOMs through the escrow mechanism.

Accordingly, GRIDCO entered into a settlement with NTPC in regard to the claim of NTPC to the outstanding dues covered under the bond. Accordingly, GRIDCO settled the dues of NTPC covered under the bonds and NTPC transferred the Bonds in demat mode to GRIDCO on 31.3.2007.

In the circumstances mentioned above and on account of transfer of Bonds by NTPC to GRIDCO, DISCOMs became liable to pay the amounts over due under the Bonds along with interest to GRIDCO. Immediately after the bonds were transferred to GRIDCO, all the three DISCOMs were advised by GRIDCO to service the bonds as per the terms of the bond. DISCOMs are taking evasive and illegal action which is not in conformity with the agreements reached between the GRIDCO and DISCOMs. .

- The allegation by the DISCOMs that Rs.160 crore is due have remained un-reconciled and unpaid by different Government offices is not correct. However, the actual arrear dues now stands at Rs.124.44 crore. In this regard it is stated that Government have from time to time made adequate budget provision for payment of Electricity dues current & arrear. Further Government have issued a number of instructions to all subordinate offices to pay their electricity dues after proper reconciliation. Also instructions have been issued to DISCOMs to take recourse to disconnection treating the Govt. offices as any general consumer in case dues are not paid in time even after reconciliation. It is the responsibility of the DISCOMs to take steps for reconciliation of the dues and collection of the same in time.

- DISCOMs have failed to pay the annual inspection fees for inspection of their electrical installation resulting in those installations not being properly and regularly inspected. This is violation of the Indian Electricity Act, 1956 which is a rule now deemed to be in force under the Electricity Act, 2003. Due to non-inspection frequent accidents have occurred. The total inspection fees defaulted by the companies stand to be approximately Rs. 100 crore.
- DISCOMs have not given proper reply with regards to failure to evolve a convincing plan for meeting the outstanding PFC /REC and IBRD loans and BST dues.
- GRIDCO under the bulk supply agreement or under the loan agreement is not required to give any financial accommodation to DISCOMs in payment of the amount becoming due to GRIDCO. DISCOMs under the management and control of REL is/was to ensure due payment and discharge of all such amounts due to GRIDCO without asking for any accommodation.
- The Commission after reconciliation of dues payable by DISCOMs to GRIDCO ordered for securitization of dues upto 31.3.2005 to be paid by DISCOMs to GRIDCO in 120 monthly installments w.e.f. 01.4.2006.
- DISCOMs have failed to generate enough cash to pay the dues to GRIDCO and have adjusted the alleged excess payment over and above the BST dues of GRIDCO unilaterally and arbitrarily against the bond liability in their accounts. This is in violation of various Tariff Order of the Hon'ble Commission.
- As regards to withdrawal of 30% of World Bank loan as grant which has been linked to the performance of the DISCOMs in regards to achieving the benchmark T&D loss and collection efficiency, the DISCOMS having failed to adhere to the stipulation have construed it as withdrawal of the incentive recommended by the Kanungo Committee.
- DISCOMs did not take concrete steps for arranging counter part funding on their own for World Bank and APDRP loans and were depending upon either GRIDCO or Govt. for hypothecation of assets. DISCOMs lack

sincerity and propose to take advantage of the incentive available under the scheme to strengthen the distribution system.

- DISCOMs have stated that due to negative net worth they have failed to raise finance for CAPEX and other system improvement work. DISCOMs due to poor performance have insufficient internal accruals and they can raise capital through further issue of share capital or by way of borrowing from the Banks and FIs.
- DISCOMs have failed to introduce full scale energy auditing and spot billing in their entire area of operation. Even after 10 years of private sector participation in the Distribution business DISCOMs are not in a position to indicate separately the actual distribution losses for LT and HT category. Energy audit will not serve any purpose unless the above segregation is completed.
- As regards to failure to recruit adequate manpower, the DISCOMs have reiterated the earlier reply and they have failed to assess the manpower requirement to carrying on the business assigned. This has affected their collection efficiency, overall performance in the areas of reduction of T&D loss, Technical loss and consumer satisfaction.
- Failure in timely procurement of materials in a transparent manner need to be reviewed by the Commission in detail.
- DISCOMs have also failed to provide reliable power supply to the consumers of the State as many such incidents are being reported in the press every now and then.

24. The Commission on 22. 8.2009 heard all the parties concerned and passed on interim order and directed GRIDCO and GoO to submit their views on the following aspect.

After hearing of the parties and perusal of the case records we direct GRIDCO and DoE, GoO to submit their views on or before 30.9.2009 serving copy to the parties concerned on the following:

- (i) *In case the Commission decides to suspend the license of REL managed DISCOMs, which can also result in revocation of the License, what will be the plan of action of the Govt., having regard to the fact that a situation like that of CESU needs to be avoided?*
- (ii) *Whether Govt. is prepared to infuse capital by way of additional equity in cash and not by any conversion of debt into equity, thereby obligating REL to bring in an equal amount of equity into the DISCOMs for a comprehensive*

distribution network upgradation plan and improvements in efficiency and management?

- (iii) *What are the other alternatives that can be implemented to ensure continuous and steady supply of power to the consumers in the event of suspension or final revocation under Section 24(3) of the E.A., 2003.*

The Commission further directed the following.

After submission of the above by GRIDCO and DoE, the DISCOMs are directed to file their written note of submission on the above within 2 weeks i.e., on or before 15.10.2009. The submission may comprehensively cover their proposal/plan of action as to what firm steps they would take to improve their performance in the quality of supply of power, at affordable prices, reduce the AT&C losses and generally attain efficiency gains within a set time schedule.

25. Reply of Govt. of Orissa in response to the Commission order dated. 22.08.2009

- Regarding the issues (i) and (iii) raised by the Commission in the said order under Section 19 and 24 of the Electricity Act, 2003, the Commission has proceeded for suspension of licensee and replies have been filed by DISCOMs to the show cause notice.

In view of the provisions of the Electricity Act, 2003 with regard to suspension and revocation of license the Commission may take a decision on the matter purely based on the merit of the case.

- As regards the issue of infusion of capital by way of additional equity, the State Govt. is prepared to infuse the additional equity in cash through GRIDCO as the State Govt. is not a shareholder in the DISCOMs. The infusion of capital will be made by GRIDCO in cash by subscribing to the additional equity share capital of the three DISCOMs for investment in distribution network upgradation plan. This Commitment to infuse capital in the above measures is subject to similar commitment by REL to infuse their capital.

26. Reply of GRIDCO in response to the order of the Commission dated 22.08.2009.

- As regards to the issues raised in item No. (i) and (iii), GRIDCO does not envisage the situation like that of CESU as apprehended by the Commission in the said order. The Commission may decide the course of action in present proceeding based on merit of the case.
- GRIDCO with regard to the infusion of capital by way of additional equity refers to the following provisions of the Articles of Association of the DISCOMs:

If and to the extent that it is not possible to obtain debt finance by any reasonable means, then such further financing may be sought by issue of equity shares at a

price fixed by the auditors of the company as being a fair and reasonable price and why such issue of equity shares shall be offered on a preemptive basis to the existing shareholders in proportion to their respective shareholdings in the company.

GRIDCO submitted that they are ready to bring in additional equity in cash to the three Distribution Companies namely WESCO, NESCO and SOUTHCO to meet the fund requirement of the DISCOMs for a comprehensive Distribution network up gradation plan, being the 49% shareholder in each of the three DISCOMs. The Reliance Group of Companies who together hold 51% share in each of the DISCOMs shall bring in equity in proportion of to their shareholdings. The quantum of the equity to be infused to each of the DISCOMs should be decided by the Board of Directors of the DISCOMs.

However GRIDCO submitted that at present infusion of additional equity may not be feasible due to its liquidity problem. GRIDCO may therefore approach the State Govt. to consider extending financial support for distribution system improvement by way of equity investment in GRIDCO which in turn will invest the same amount in equity share capital of DISCOMs.

27. Reply of DISCOMs to the order dated 22.8.2009.

- DISCOMs submitted that as referred to in the Articles of Association of DISCOMs, the capital infusion in the form of equity or loan has to be based on business viability of the entity on a stand-alone basis and insisting on equity infusion either by one promoter or all shareholders as a necessary condition for sector revival may not work. Business viability alone is the major driver for capital infusion and therefore all stakeholders need to contribute a package which supports multiple interventions in the form of loan restructuring, equitable adjustment of sector surplus, investments and etc. Once business viability and its sustainability is in sight, attracting funds is a certainty in the prevailing market conditions and practices.
- DISCOMs in past have made efforts to arrange sanctions from the Banks/ FIs which could not materialize due to lack of collateral security.
- For the purposes of obtaining a loan for a one time settlement/swapping of the high cost NTPC bonds in accordance with the spirit of the Montek Singh Ahluwalia Committee recommendations, the DISCOMs had obtained an “in

principle sanction” letter to term loan proposal of DISCOMs aggregating Rs.450 crore from the Union Bank of India at interest rate of 9.75% per annum subject to compliance of certain terms and condition which includes the approval of this Hon’ble Commission, GRIDCO and GoO. However, GRIDCO did not accede to the terms and conditions of the term loan proposal. As a result the DISCOMs were unable to furnish the said accommodation letter from GRIDCO and the benefits under OTS scheme could not be availed.

- M/s Rural Electrification Corporation (REC) Ltd. on 21.08.2008 sanctioned loan in total of Rs.82.17 crore for three DISCOMs. The sanction stipulated hypothecation of assets equivalent to 150% of loan amount. Since all the assets of the DISCOMs stands hypothecated to GRIDCO in lieu of NTPC bonds DISCOMs could not release assets for hypothecation. GRIDCO was requested to release assets equivalent to Rs.41 crore to cede the first charge on assets on *pari passu* basis to REC so as to enable DISCOM to avail the System Improvement loan. GRIDCO did not accede to such request.

REC has again accorded its approval of Rs.58.74 crore loans against earlier sanctioned amount of Rs.82.17 crore and have stipulated hypothecation equivalent to 174% of the future assets. DISCOMs would not be in a position to discharge the above liability unless the Escrow is relaxed. The Commission in its order dated 12.4.2010 has ordered the priority of release of monthly obligation for repayment of principal and interest from the escrow account by the GRIDCO after employee cost and monthly R & M expenditure are met.

- In the second Business Plan order dated 20.03.2010 the Commission directed GRIDCO and recommended Govt. of Orissa to create first charge over the immovable assets as security to REF/PFC on the assets added after 31.03.2001 which amounts to Rs.413.23 crore upto 31.03.2008. This order shall provide the essential security comfort for hypothecation of existing assets and the escrow arrangement on the DISCOM’s revenue to Bank/ FIs shall enable the DISCOMs to raise more funds for the CAPEX programme.
- Thirteenth Finance Commission of Govt. of India has recommended investment of Rs.1000 crore for upgradation of distribution network in the State as sought by the State Govt. on the condition that Rs.500 crore would be given by Govt. of India and the remaining Rs.500 crore is contributed by the State Govt., GRIDCO and DISCOMs in equal proportion.

- DISCOMs have submitted a plan of Rs.3200 crore covering a period of five years as an integrated investment plan to the Govt. of Orissa. (subsequently revised Rs.2400 crore vide their Lr. No. 9230/En dtd. 21.10.2010.
- DISCOMs have been accorded sanction of rupee term loan of RS 20 crore, each to WESCO and NESCO for undertaking the capital expenditure programme.
- Active participation of all the stakeholders and support from Govt. of Orissa and GRIDCO is equally vital for the revival of the sector.

Commission's Observations

28. Hon'ble Supreme Court in its order date 5th Jan, 2009 held that the Regulatory Commission is competent to issue show-cause notice under Sec. 24(1) of the Electricity Act, 2003. Accordingly, the Commission issued notices under Sec. 24(1) to the respondent Nos. 1 to 4 to show-cause as to why, for having not fulfilled the license conditions and failure to address the issues raised in the Commission order dated 27.01.2006, the licensee of the Respondent No. 2 to 4 (WESCO, NESCO and SOUTHCO) should not be cancelled. The Commission heard the parties at length and has gone into the details of the submission/ replies and objections made by the petitioner and Respondent Nos. 1 to 6.

In order to arrive at a conclusion whether Reliance Infrastructure Ltd. (R-Infra) and the three licensees WESCO, SOUTHCO and NESCO have violated the license condition the issues raised in the Commission's order dated 27.01.2006 and the present status thereof are discussed below:

29. **Apparent refusal of REL to renew shareholders agreement resulting in abdication by majority shareholder of DISCOMs of their responsibilities in discharging their regulatory obligations**

29.1 Three separate shareholders agreement were signed between GRIDCO, BSES (now R-Infra) and the three respective companies (WESCO, SOUTHCO and NESCO) on 1st April, 1999 in pursuant to the acquisition agreement. GRIDCO transferred 51% of shares in each of the three companies respectively. After such transfer of shares the pattern of holding was as follows:

Investor (BSES)	51%
GRIDCO-	39% and
Trustees-	10%

29.2 The principal objectives of GRIDCO in selling majority stake to the investor were to improve the quality of service to customers, improve operational efficiencies and reduce losses, contribute to the increased economic growth in Orissa, attract private investment into the distribution business, reduce the need of funding by Govt. of Orissa, create opportunities for employment and provide a stable environment for employees. As regards management, the agreement spells out that the directors appointed by the investor including any managing director, if considered necessary, by the investor, shall be responsible for the day to day management of the business.

29.3 The financing of the companies would be done as per Shareholder agreement dtd.1st April, 1999 vide the relevant clauses thereof as indicated below:

8.1. If Wesco requires further financing, it shall use and the investor shall procure that it uses, all reasonable endeavours to obtain such finance from a third party lender on reasonable commercial terms without breaching covenants in Wesco's loan documentation at the time of such further financing provided always that nothing shall oblige a Shareholder to provide any guarantee or security in respect thereof.

8.2. If and to the extent that it is not possible to obtain debt finance in accordance with clause 8.1 or by any other reasonable means, then such further financing may be sought by an issue of ordinary share capital at a price agreed with the Auditors as being a fair and reasonable price. Any such issue of ordinary share capital shall be offered on a pre-emptive basis to the existing shareholders and subject to clause 3.2 shall include a right of renunciation by shareholders.

29.4 The termination of the agreement would be on following grounds:

15.1. The Agreement shall terminate automatically on whichever is the earlier of:

15.1.1. GRIDCO ceasing to hold any Shares; or

15.1.2. 1st April, 2004.

15.2. Termination of this Agreement shall be without prejudice to the provisions of clauses 9 and 27 which shall remain in full force and effect notwithstanding termination of this Agreement.

29.5 In pursuance to the above quoted clauses of the shareholder agreement the agreement already stands terminated since 1st April, 2004. There have already been quite a number of disagreements between the investors and GRIDCO. Regarding the renewal and continuation of the shareholder's agreement, the agreement at Clause 27.3 to 27.6 provides for resolution of dispute which is reproduced below:

27.3. Any dispute, question or difference arising between GRIDCO and the Investor in connection with this Agreement or otherwise in regard to the relationship of the parties pursuant to the terms of this Agreement, including the construction and scope of the Agreement, shall be first referred to the chief executives (by whatever name called) of the

investor and GRIDCO not by way of arbitration but with a view to amicable resolving the issue by discussion and conciliation.

27.4. *All and any disputes or differences arising out of or in connection with this Agreement which cannot be resolved in accordance with clause 27.3 within 20 business days of being referred pursuant to that clause, or the breach, termination or invalidity of this Agreement shall be submitted to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be three.*

27.5. *The place of the arbitration shall be Bhubaneswar, Orissa and the language of the arbitral proceedings shall be English.*

27.6. *The award of the arbitrators shall be final and binding on the parties, and shall expressly exclude all and any rights or appeal from such award, to the extent that such exclusion may be validly made.*

Parties or the Shareholders must work out a solution to their dispute over the renewal of this Agreement. This agreement governs the manner in which the shareholders desire to manage and steer the company. Such an agreement falls within the province of the Companies Act. Since, however, this has an impact on the DISCOMs and their functioning shareholders should resolve the disputes expeditiously as possible or find a suitable remedy for the same.

29.6 Respondent No.1 R-Infra (previously BSES) in its submission has stated that in any event the terms of shareholder agreement to the extent the same are relevant for the management of DISCOMs has been duly incorporated in the Articles of Association of the company. They have further contended that any notice under Sec. 24 of the Electricity Act, 2003 can only be issued against licensee and there is no question of R-Infra replying for the same as the DISCOMs has filed their detailed replies.

The Commission in this regard feels that R-Infra as a majority shareholder must display definite commitment to improve quality of supply, operational efficiency and reduce losses etc. In order that DISCOMs succeed, the approach has to be two pronged with support both towards efficient management of the company and financial support. R-Infra has not invested any additional equity other than what was paid for by way of buying the shares during initial acquisition of the companies.

29.7 In view of the above the Commission observes that both the shareholders i.e. R-Infra and GRIDCO, a state PSU have equal responsibilities in the management of the company and therefore, must work out mutually a satisfactory arrangement to ensure the health of the companies in every respect.

30. **Failure to appoint managers/MDs for the three DISCOMs viz. WESCO, NESCO and SOUTHCO**

30.1 DISCOMs have submitted that appointment of MD would take sometime especially in view of their respective balance sheets showing a negative net-worth. Govt. of Orissa and GRIDCO in their replies have objected to such stand taken by the DISCOMs. They are of the view that appointment of one of the Directors of the Board as Managing Director is the requirement under Section 269 of the Companies Act in order to ensure accountability. The person responsible for management and conduct of the affairs of the DISCOMs should be part of the Board, lately Shri V.K. Sood, has been appointed as MD for WESCO and NESCO and Director of SOUTHCO which is managed by V.P.

The Commission in this regard is of view that to attend to the day to day affairs of the company a fulltime Managing Director should be appointed for each of the Companies as required under the Companies Act, or in the alternate, the management structure should be so designed and restructured as to ensure responsibility and accountability for the proper delivery of services in the distribution of electricity.

31. Failure to resolve the issue of Rs.400 crore NTPC Bond

31.1 The three distribution companies WESCO, NESCO & SOUTHCO at the time of privatization which took place w.e.f. 01.4.1999 entered into two separate agreements with GRIDCO viz. (i) Bulk Supply Agreement, (ii) Loan Agreement.

31.2 As per the Bulk Supply Agreement the DISCOMs are required to make payment to GRIDCO for supply of electricity to DISCOMs which in other ways is the generation and transmission cost approved by the Commission from time to time. In addition to the above DISCOMs also entered into a loan agreement with GRIDCO on 28.10.1999 in which the DISCOMs undertook to pay GRIDCO the principal amount of loan along with the interest in accordance with the Schedule-1 of the Agreement. These loans are mainly PFC and REC loans which GRIDCO had availed for distribution network and was transferred to DISCOMs at the time of separation of distribution function from GRIDCO. The total amount of loan as per transfer notification amounts to Rs.116.96 crore, Rs.104.84 crore, Rs.105.66 crore for WESCO, NESCO & SOUTHCO respectively (Rs.327.46 crore).

31.3 The DISCOMs also defaulted in making payment falling due under BST and loan agreement because of shortage of collection of receivables. WESCO, NESCO & SOUTHCO then approached GRIDCO to convert the outstanding dues by issue of bonds to which GRIDCO agreed. The above outstanding amount pertained to the

period from April, 1999 to October, 2000. Accordingly, the DISCOMs issued the bonds of the following amounts to GRIDCO:

(Rs. in crore)				
	WESCO	NESCO	SOUTHCO	Total
BST	59.00	121.33	86.00	266.33
DPS	1.00	5.67	3.50	10.11
Loan with interest	43.00	40.00	40.50	123.50
Total amount of bonds issued	103.00	167.00	130.00	400.00

31.4 The three DISCOMs, namely, WESCO, NESCO and SOUTHCO issued secured non convertible and redeemable bonds of Rs.400 crore (WESCO – Rs.103 crore, NESCO – Rs.167 crore, SOUTHCO- Rs.130 crore) in favour of GRIDCO, to securitise the BST and loan installments payable by them to GRIDCO. These debentures were issued pursuant to the Subscription Agreement dt.25.9.2001 and Debenture Trust Deed dated 26.9.2001. The redemption of bond as provided in the Bond Subscription Agreement is secured in the following security clause:

“Fully secured by First Charge on the receivables of the Company ranking *pari passu* with the charges created in favour of GRIDCO and First Charge on the unencumbered assets of the company by way of hypothecation / pledge / mortgage.”

Thus, the bonds are secured by:-

- Mortgage of immovable property
- Hypothecation of immovable assets
- *Pari passu* first charge on the receivables of issuer companies.

31.5 The above bond carries interest @ 12.5% per annum payable half yearly in March and September and are to be redeemed in three annual installments due on 01.10.2005 (30%), 01.10.2006 (30%) and 01.10.2007 (40%). The bonds were assigned by GRIDCO in favour of NTPC by way of security for the amount due from GRIDCO to NTPC for the power purchases made by GRIDCO to supply to the three distribution companies. NESCO, WESCO and SOUTHCO defaulted in servicing the bond both in regard to payment of interest and also in regard to payment of principals as per the installment indicated above.

31.6 Since there was default on the part of WESCO, NESCO and SOUTHCO in redemption of Rs.400 crore NTPC bond GRIDCO has settled the bond with NTPC by

31.3.2007. Now it is the DISCOMs who are to pay to the GRIDCO. In the meantime GRIDCO has approached the company Court to settle the issue. The DISCOMs are now not showing the Rs.400 crore bond as liability in their Balance Sheet on the plea that such bond has already been redeemed by GRIDCO.

31.7 The issue in respect of the Rs.400 crore bond is divided in two parts :-

- (a) To settle the dispute between DISCOMs and GRIDCO regarding servicing of bond and interest thereof.
- (b) To cede the first charge of hypothecated immovable asset in favour of financial institution like REC and PFC so that DISCOMs can avail loan for urgent capital expenditure.

31.8 In respect of NTPC bond of Rs.400 crore the final settlement has been made for a total sum of Rs.603.50 crore through payment by the DISCOMs directly to NTPC as well as the payment made by GRIDCO in cash and through adjustment to NTPC as indicated below:-

<i>A. Original value of Bond</i>	<i>Rs.400 crore</i>
<i>Interest accrued from 01.10.2000 to 31.03.2007</i>	<i>Rs.295 crore</i>
<i>Total (A)</i>	<i>Rs.695 crore</i>
<i>B. Settlement</i>	
<i>1) Interest paid by DISCOMs directly to NTPC</i>	<i>Rs.110.80 Crore</i>
<i>2) NTPC adjusted the refund amount due to GRIDCO</i>	<i>Rs.276.70 Crore</i>
<i>3) Direct Payment by GRIDCO to NTPC</i>	<i>Rs.216.00 crore</i>
<i>Total (B)</i>	<i>Rs.603.50 crore</i>
<i>C. Interest relief (A-B)</i>	<i>Rs.91.50 cr. (Rs.695 cr. – Rs.603.50 cr.)</i>

31.9 It is observed from the above table that the interest actually paid to NTPC amounts to Rs.203.50 crore from 01.10.2000 to 31.3.2007 over a bond value of Rs.400 crore. The effective rate of interest as computed is arrived at 7.83% whereas the Commission has been allowing interest @8.5% in the ARRAs.

31.10 When there was default by the DISCOMs in paying the dues to NTPC in respect of Rs.400 crore NTPC bond along with interest and there was letter from the NTPC threatening to regulate supply of power, GRIDCO consequently approached the State Govt. State Govt., in order to avoid regulation of power to the State, directed GRIDCO to negotiate with NTPC for one time settlement of the bonds by availing loan from banks and financial institutions vide Govt. of Orissa letter No.1984/En. dated 08.3.2007. GRIDCO, with the approval of the Commission in their order dated 31.3.2007, availed loan of Rs.100 crore from Union Bank of India and Rs.70 crore

from OPTCL to pay the final settlement dues Rs.216 crore and accordingly settled the NTPC dues covered under the bonds on 31st March, 2007. On payment of the settlement amount, NTPC transferred the bonds to GRIDCO on 31st March, 2007. GRIDCO is holding these debentures in Demat form.

- 31.11 Pursuant to the direction of the State Govt. GRIDCO called upon the three DISCOMs to pay the defaulted amount under the bonds. Instead of making any payment, all the DISCOMs unilaterally made adjustment against such bond dues in default in their 2005-06 accounts which were approved by their respective Board on a majority of votes. GRIDCO has objected to the unilateral and arbitrary adjustment.
- 31.12 In view of the above position, the Board of Directors of GRIDCO decided to take legal action for redemption of the bonds along with interest and accordingly a petition has been filed before the Company Law Board, Eastern Region Bench, Calcutta on 5th February, 2008 under section 117(c)(4) of the Companies Act, 1956 with a prayer to direct the three DISCOMs (WESCO, NESCO & SOUTHCO) to make repayment of the aforesaid Debenture(s) along with interest due thereon in accordance with the Terms & Conditions of the Debentures.
- 31.13 The Company Law Board, Principal Bench, New Delhi in its Order dtd. 23.9.2009 has dismissed the petition regarding unilateral adjustment of bond from their books of account. Thereafter GRIDCO has filed this case in the High Court of Orissa in Company Appeal No.4, 5 & 6 of 2009 during November, 2009. The case is pending in High Court.
- 31.14 The Reliance managed three distribution companies had approached the Hon'ble ATE on a number of issues and the payment of interest on NTPC bond was one of them. GRIDCO has filed in the Hon'ble Supreme Court of India against the order of Hon'ble ATE. The matter has been registered in the Hon'ble Supreme Court of India (Civil Appeal filed No. 759 of 2007 by GRIDCO in BST matters). So far as the settlement of dispute regarding servicing of bond is concerned, there is no change in the status. Even though the matter is still pending in the Hon'ble Supreme Court and were pending in the Company Law Board, Eastern Region Bench, Kolkata, WESCO, NESCO and SOUTHCO in their audited accounts for the year 2006-07 and 2007-08 have not shown any liabilities towards the Bond, which were earlier appearing in the audited accounts upto the year 2005-06. In this connection the auditor RSB Associates, Chartered Accountant for the year 2006-07 has also objected to such

deliberate omission of the liabilities in the accounts for the year 2006-07 and 2007-08 onwards. The comment of the Chartered Accountant is as indicated below:-

“Refer to Note no. B.10 of Schedule – 20 for redemption of power Bond made during the year. GRIDCO has not agreed to the payment / adjustment effected by the Company in respect of Power Bonds on the ground that redemption of Power Bonds by way of adjustment is not in terms of the Subscription Agreement dated 25th September, 2001 and Bond Certificates. Resultantly, there is over/under statement of “Payable/Receivable – Bond and other Adjustment with GRIDCO”

31.15 The Commission in its Business Plan Order dtd. 20.3.2010 had directed that pending decision of the Apex Court while WESCO, NESCO and SOUTHCO should reflect the liability on account of NTPC bond in their books of accounts, GRIDCO should release assets worth Rs.413.23 core created after 31.03.2001 in order to enable the Reliance managed DISCOMs to approach financial institution for sanction of loan. Since the DISCOMs have not yet shown the liability on account of NTPC Bond, GRIDCO has not yet released a part of the assets hypothecated as directed by the Commission in its Business Plan order dtd.20.3.2010.

31.16 In light of the above developments the Commission would take a view in the matter once decided in Hon’ble High Court and Hon’ble Supreme Court. But what is important is that both GRIDCO and the DISCOMs should make every effort to resolve the issue mutually rather than prolonging the matter in litigation since both GRIDCO and R-Infra are both shareholders of the DISCOMs.

32. Failure to evolve a convincing plan for meeting the outstanding PFC/REC and IBRD loans and BST dues of GRIDCO

32.1 DISCOMS in their reply have stated that the Commission in its order dated 28th Feb, 2005 and 20th July, 2006 allowed securitization of dues as on 31.3.2005 to pay the dues of GRIDCO in 120 monthly installments over a period of 10 years from 01.4.2006. The Commission after further reconciliation process along with GRIDCO and DISCOMs in another securitization order dated 01.12.2008 ordered to pay the outstanding principal, interest and BST dues with DPS in 120 monthly installments w.e.f. 01.4.2006.

GRIDCO and Govt. of Orissa have stated that DISCOMs in violation to the Commission’s order to generate enough cash to pay towards the monthly installments of securitized amount to GRIDCO have failed to do so. DISCOMs have in fact unilaterally and arbitrarily adjusted the same against the NTPC bond liability.

- 32.2 Regarding IBRD loan DISCOMs have stated that Govt. of Orissa is yet to take a decision regarding treatment of 30% of the World Bank loan amount as grant. The Commission, however, is allowing servicing of 70% of the loan amount in the tariff orders.
- 32.3 The Commission in this regard notes with concern that DISCOMs have not been able to pay the securitized amount over and above the current BST as per our securitization order. 28th Feb, 2005, 20th July, 2006 and 1st Dec, 2008. They have defaulted by Rs.861.23 crore upto 2009-10. The position of payment by the DISCOMs upto 2009-10 is tabulated below:

(Rs. in crore)

Sl. No.	Particulars	WESCO	NESCO	SOUTHCO	REL Total
1.	BST				
	OB 01.4.1999	46.18	41.66	26.50	114.34
	From 01.4.1999 to 31.3.2005	118.41	194.83	47.19	360.43
	Sub-Total	164.59	236.49	73.69	474.77
2.	DPS on Above	58.72	87.20	32.02	177.94
3.	Loan				
	Principal	138.46	94.64	134.36	367.46
	Interest	60.31	41.05	58.43	159.79
	Sub-total	198.77	135.69	192.79	527.25
4.	Outstanding as on 31.3.2005 vide OERC Order dtd. 01.12.2008 (1+2+3)	422.08	459.38	298.50	1179.96
5.	Downward revision of BST in 2007-08 adjusted against securitized dues	88.31	3.32	11.07	102.7
6.	Payment by DISCOMs over and above the current BST from 2006-07 to 2009-10	43.23	147.72	25.08	216.03
(i)	2006-07	36.83	41.36	-	78.19
(ii)	2007-08	4.40	41.36	9.53	55.29
(iii)	2008-09	-	65.00	5.86	70.86
(iv)	2009-10	2.00	-	9.69	11.69
7.	Sub-Total (5 +6)	131.54	151.04	36.15	318.73
8.	Balance (4-7)	290.54	308.34	262.35	861.23

- 32.4 As revealed from the above table there has been a steady mounting of dues by DISCOMs by way of past liabilities and their inability to pay the securitized amount. The total amount in default is Rs.861.23 crore. Obviously, the DISCOMs need to step up their collection of arrears and consider other sources of income other than distribution of electricity, such as fibre optic, data and video transmission/telecom

over their network and such other areas, advertisement on poles, real estate development, etc.

33. **Failure to mobilize counterpart funding in respect of APDRP Scheme1**

33.1 The APDRP Scheme was announced by the Ministry of power, Govt. of India in its office memorandum 11th June, 2003. This programme envisaged funding of distribution projects by GoI in phases. Under the scheme the release of GoI funds should be matched with the counterpart funding by Financial Institutions and own resources which DISCOMs was to arrange. The fund from the GoI was available only through the Govt. of Orissa.

33.2 DISCOMs in their submission have stated that Govt. of Orissa delayed the release of APDRP funds to them as received from GoI contrary to the provisions of the said Scheme treating 50% of the amount as grant and 50% as loan. Govt. of India also revised the APDRP Scheme to cover only the District Head Quarters and Town as against the original plan to cover circles. As regards release of matching counterpart funding by REC, DISCOMs could not provide security to the extent of 130% of the sanctioned amount since all the receivables of DISCOMs are escrowed to GRIDCO. DISCOMs, however, could manage some counterpart funding by providing security in shape of rebate receivable from GRIDCO on prompt payment of full BST and security deposit.

33.3 Govt. of Orissa in its reply have submitted that DISCOM did not take any concrete steps for arranging counterpart funding on their own and they were depending on either GRIDICO or Govt. for hypothecation of assets. DISCOMs thus failed to take advantage of the incentive offered by the Central Govt. to strengthen distribution system.

33.4 The Commission in this regard is of the opinion that State of Orissa lost an opportunity to avail the APDRP funds funded by Govt. of India. The Scheme envisaged matching fund by FIs and own resources also. DISCOMs should have been, therefore, proactive in arranging the matching fund in order to avail much needed fund for upgradation of the fragile network. DISCOMs should have generated sufficient cash through reduction of AT & C losses to garner internal resources to fund and to upgrade the ageing network since there is enough potential to generate revenue through reduction of commercial losses.

34. **Non-infusion of capital**

- 34.1 DISCOMs in this regard have stated that due to non-revision of retail tariff, increase of BST, the cumulative gap between cost and revenue has increased substantially resulting in eroded net-worth to negative net-worth. The DISCOMs are, therefore, constrained in attracting capital from the market. Moreover hypothecation of DISCOMs assets to GRIDCO stands in the way of availing loans from FIs.
- 34.2 Govt. of Orissa and GRIDCO in their rejoinder have stated that in the absence of sufficient internal accruals owing to poor performance there has not been the required CAPEX and other system improvements. DISCOMs could resort to raising funds either by way of further issue of share capital or by way of borrowing from Banks and FIs.
- 34.3 Govt. in Energy Department Resolution No.963 dated 03.02.2007 constituted a Task Force under the Chairmanship of Shri Vivek Pattanayak, I.A.S.(Retd.) and the said Committee, among other things, have recommended as under:-

“Reliance Energy and its Group should make infusion of funds for the purpose of long term capital improvement of the utility over a period of three years at the rate of Rs.50 crores per each year aggregating an amount of Rs.150 crores. This is however subject to the expectations of a satisfactory tariff setting, restructuring and rescheduling of liabilities and establishment of special police stations for assisting DISCOMs in reducing revenue loss through pilferage and theft of power. There should be mutual cooperation among both the promoting investors, namely, Reliance Group and GRIDCO on a continuous basis.”

- 34.4 The Reliance managed three distribution companies have not yet been able to infuse capital for distribution up gradation because of their poor balance sheet and secondly they are not able to mortgage their assets to the financial institutions for obtaining loan as these assets have been hypothecated to GRIDCO.
- 34.5 In the meantime State Govt. have decided to invest Rs.2400 crore in the four distribution companies out of which Rs.1200 crore would be provided by the State Govt. and the remaining Rs.1200 crore will be provided by the four distribution companies. Out of Rs.1200 crore to be provided by the State Govt. Rs.468 crore would be given to CESU and the balance Rs.732 crore would be given to three Reliance Managed distribution companies i.e. WESCO – Rs.234 crore, NESCO – Rs.252 crore & SOUTHCO – Rs.246 crore. The three distribution companies would also provided the same amount as their counter part funding during the period 2010-11 to 2013-14 as per the broad break up given below:-

(Rs. in crore)

	WESCO	NESCO	SOUTHCO	TOTAL
1. State Govt. contribution of which	234.00	252.00	246.00	732.00
(a) Finance Commission Grant with 0% interest	97.50	105.00	102.50	305.00
(b) State Share to Finance Commission Grant as loan with 0% interest	32.50	35.00	34.17	101.67
(c) Loan to GRIDCO for counterpart funding to Finance Commission grant with 4% interest	32.50	35.00	34.17	101.67
(d) State's own contribution with 4% interest	71.50	77.00	75.17	223.67
2. DISCOMs contribution of which	234.00	252.00	246.00	732.00
(a) Counterpart DISCOMs share for Finance Commission Grant	32.50	35.00	34.17	101.67
(b) DISCOM's own contribution	201.50	217.00	211.83	629.83
TOTAL CAPEX	468.00	504.00	492.00	1464.00

34.6 Since State Govt. has already committed to provide Rs.732.00 crore towards Capex programme, it is necessary for the three Reliance managed distribution companies to arrange their counterpart funding for upgradation and renovation of the distribution network in the State for improvement in the quality of supply and to reduce the distribution loss. Regarding the difficulties faced by the distribution companies to obtain loan from financial institutions GRIDCO has already been directed in the Business Plan order dated 20.3.2010 that it should take steps to allow WESCO, NESCO & SOUTHCO to create first charge for the immovable asset as security to REC/PFC on the assets added after 31.3.2001 which works out to Rs.413.23 crore up to 31.3.2008 excluding assets created by World Bank loan. The Commission in the said Business Plan order dated 20.3.2010 have also directed the State Govt. to allow distribution companies to pledge the asset created for Rs.254.84 crore out of the World Bank loan, to the financial institutions such as REC and PFC to avail loan for capital works. This exercise should be carried out by GRIDCO, distribution companies and the State Govt. on or before 31.7.2011.

35. **Failure to take up full scale energy auditing**

35.1 DISCOMs have submitted that since the receivable of DISCOMs are escrowed to GRIDCO, they have not been able to get sufficient funds for undertaking such activity. Govt. of Orissa and GRIDCO have objected to such stand taken by the DISCOMs and there has been failure on the part of DISCOMs to undertake full scale energy audit. DISCOMs have not been able to segregate losses for LT category and HT category separately.

35.2 Energy audit is one of the most important requirement for energy conservation and for achieving energy efficiency. It provides the means to identify the areas of leakage, waste or inefficient use and thereby helping in identifying measures suitable for reduction of T&D losses. Energy auditing thus help in effective management of energy consumption, significant cost and energy savings, lower maintenance costs and extended equipment life. The energy Conservation Act, 2001 defines energy audit as the verification monitoring and analysis of use of energy including submission of a technical report containing recommendations for improving energy efficiency with cost benefit analysis an action plan to reduce energy consumption. Energy auditing is therefore an important activity and requires the following:

- review and upgrading of procedure for energy accounting.
- review of technical efficiency of system equipments in sub-transmission and distribution system.
- analysis of the techniques for measuring the energy received, energy billed and the corresponding revenue collection.
- review of performance of equipment, meters, distribution transformers, etc.
- segregation of technical and non-technical losses and
- establishment of norms for checking the consumption of various categories of consumers and overall energy balance in the circles.

35.3 The Commission is of view that energy auditing is an important activity of the licensee required for overall energy conservation and entailing efficiency in operations. DISCOMs have to chalk out a programme of action to asses 11 KV line losses, distribution transformer losses, LT network losses and energy losses in loose jump connections, service mains and energy meters. The contention of the DISCOMs that all of their receivables are escrowed should not deter them from improving billing and collection. Escrow relaxations can be allowed depending in cash flow for such activity. DISCOMs, therefore, must take sound steps on this front and should undertake this important activity.

36. **Failure to introduce spot billing in entire areas of DISCOMs**

36.1 DISCOMs in their submission have submitted that at present out of 43 numbers of Divisions in the distribution are of WESCO, NESCO and SOUTHCO, only 35 numbers of Divisions have been covered under spot billing. DISCOMs have further

submitted that they have sought approval for such expenses from the Commission. Govt. of Orissa and GRIDCO has attributed failure of DISCOMs to their inefficiency.

36.2 Spot billing activity is an important step towards billing efficiency whereby it is ensured that all consumers are metered and billed. It also serves the purpose of reaching out consumers at their premises and reduces complaint on receipt of bills. The Commission has therefore been insisting on coverage of hundred percent consumers through spot billing. Spot billing also ensures capturing accurate data through hand held devices and updating the consumer data base.

36.3 The performance of DISCOMs towards billing efficiency has not been as desired. A table below shows the billing efficiency of three DISCOMs:

Billing efficiency (%) (Audited)	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
NESCO	56.65	55.56	49.00	58.62	56.34	60.60	62.92	66.78	68.83	65.43	67.48
WESCO	55.83	56.80	53.56	61.71	60.98	63.62	62.20	66.78	68.83	65.43	67.48
SOUTHCO	58.16	57.48	59.53	60.86	57.55	59.50	58.93	56.61	54.51	52.22	51.97

As revealed from the above table the billing efficiency of the DISCOMs is dismally low and through spot billing this is bound to increase. Therefore DISCOMs must cover the entire area of their operation through spot billing to achieve 100% billing.

37. Failure to recruit adequate manpower

37.1 DISCOMs in their submission have said that recruitment is a continuous process and is being carried out on a regular basis. In 2005-06 DISCOMs recruited approximately 1800 number of field staff.

Sl. No.	WESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
	Recruitment							
a.	Technical	338	57	346	102	552	38	49
b.	Non Technical	51	47	7	33	17	19	145
c.	Outsource	400	412	420	450	450	460	460
d.	Contractual	71	71	71	71			

Sl. No.	NESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
	Recruitment							
a.	Technical	549	82	232	117	580	42	17
b.	Non Technical	30	4	3	5	12	13	171
c.	Outsource					597	538	576
d.	Contractual	28	32	4	3	3	15	-

Sl. No.	SOUTHCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 as on Sep.'2010
	Recruitment							
a.	Technical	540	30	2	302	271	6	53
b.	Non Technical	57	13	2	7	24	10	228
c.	Outsource (Watch & Ward)		288	270	362	157	161	136
d.	Out Source (Others)		131	131	134	134	143	73
e.	Contractual	1	0	0	0	0	2	3

37.2 It is revealed from the above tables that the licensees have not engaged adequate numbers of personnel to boost the efforts to increase collection and billing efficiency. With the growing number of consumer base the licensees are required to properly assess the man power requirement in order to cater to the growing demands of the business and the consumers

37.3 In this regard an analysis of no. of employees whether direct or outsourced Vrs. consumers over the years is carried out which reflects the moving of ratio. A table of such analysis is given below:

WESCO	As on 31.3.99	As on 31.3.05	As on 31.3.06	As on 31.3.07	As on 31.3.08	As on 31.3.09	As on 31.3.10
No. of Employees	5562	5083	4654	4982	4848	5100	4946
No. of Consumers	295415	4132327	443900	476856	491532	528210	578436
Employee per 1000 consumers	18.83	1.23	10.48	10.45	9.86	9.66	8.55

NESCO	As on 31.3.99	As on 31.3.05	As on 31.3.06	As on 31.3.07	As on 31.3.08	As on 31.3.09	As on 31.3.10
No. of Employees	4599	4201	4134	4123	3994	4306	4187
No. of Consumers	251703	466537	494201	516311	578241	607678	695060
Employee per 1000 consumers	18.27	9.00	8.37	7.99	6.91	7.09	6.02

SOUTHCO	As on 31.3.99	As on 31.3.05	As on 31.3.06	As on 31.3.07	As on 31.3.08	As on 31.3.09	As on 31.3.10
No. of Employees	4674	4432	3600	3743	3791	3835	5235
No. of Consumers	322912	461965	474076	498155	529478	563450	622543
Employee per 1000 consumers	14.47	9.59	7.59	7.51	7.16	6.81	8.41

From the above table it is revealed that the ratio of employees Vrs. the addition of consumers has declined. In order to maintain the system and serve the ever

increasing consumer base there is a need for adequate deployment of technically qualified manpower who can also be sourced from various service providers.

38. Failure to comply with Commission's orders dated 25.10.05, 03.10.05 and 30.9.05

38.1 The Commission in its order dated 30.9.05 raised the following issues to be answered:

- *The exact role, function and tenure of Chief Executive Officer of three Discoms. Are they Directors in the respective board? Why their designation was changed from MD to CEO?*
- *The role of Central Procurement Group and procedure for procurement of materials.*
- *Implementation of energy audit and spot billing.*
- *Induction of manpower as against the vacant posts for the proper management of Discoms.*
- *Details about the procurement/installation of old and new meters.*
- *Investment approval from the Commission.*
- *Reasons for non-implementation of APDRP scheme.*
- *Distcos' support for establishment of Special Courts and police stations.*
- *R&M works are not being taken up for lines and sub stations although Commission has permitted requisite sums under this head while finalizing ARR of Distcos.*
- *Establishment of transparent process for procurement of materials through competitive bidding with due approval of the Distco Boards.*
- *Strengthening the Central Services office for coordinating the activities of the three Distcos.*
- *Non infusion of capital by the majority share holders after privatization of distribution business.*

38.2 The Commission heard the respondents on 07.10.05 and framed following issues:

- (a) *The discharge of obligations by the Distribution Companies to GRIDCO with regard to power procurement, loan covenants and payment of Rs.400 crores NTPC bonds has not been dealt with by REL or Distribution Companies in their reply to the queries made in the order dt.30.09.05.. REL counsel Mr. Bhatt and Distribution Companies Counsel Mr. S.K. Mohanty submitted that they would take instructions in this regard and come up with requisite proposals.*
- (b) *The Commission raked up the question of the appointment of CEOs by the Distribution Companies. It was pointed out to REL that as per Section 269 of the Companies Act, each of the Distribution Companies should appoint a Managing Director or Whole-time Director or a Manager for day-to-day management of the Distribution Companies under the supervision of the respective Boards. Secondly, the Memorandum and Articles of Association of the distribution companies under Clause 29(A)(1) provides that a Director of the Company has*

to be in charge of the day-to-day management. It may be stated as to whether these two conditions are satisfied by appointment of CEOs. In reply, Mr. Bhatt clarified that they have appointed Managers and CEOs in compliance with the provisions of the Company Law and Articles of Association. It was pointed out to him by the Commission that the CEOs and the Managers of the Company are two distinct persons. The Manager of a particular business company also happens to be a CEO of another distribution company. It was not clear as to how the responsibilities between the CEO and the Manager are shared so that the functioning of the company is not affected by this dual arrangement. The functional division of responsibilities between the Manager & the CEO should be placed before the Commission. Mr. Bhatt stated that he would furnish requisite reply in this respect.

It was further pointed out by the Commission that from 1.4.1999 till 25.6.04 one of the Directors of the Distribution Companies was appointed as Managing Director of the particular Company. This arrangement conformed to both the requirements of the Companies Law as well the Articles of Association. It was not clear why the present arrangement was made in preference to the previous one. Mr. Bhatta, and Mr. Mohanty, stated that they would furnish the reply clarifying the position.

- (c) It appears from the submission of the Distribution Companies that in the 37th Board meeting of the three Distribution Companies held on 19.02.04, proposal was mooted by there was a proposal by GRIDCO for infusion of capital into the Distcos through issue of equity share. This resolution was deferred till finalization of the Business Plan. As the Business Plan was finalized on 28.02.05, the plan of action of the majority shareholders for infusion of additional share capital needs to be stated in response to GRIDCO's proposal.*
- (d) It was pointed out by the Distribution Companies that energy audit and spot billing are not done in full scale because of paucity of manpower. This was recorded in the last performance review meeting of Distribution Companies, copies thereof endorsed to the functionaries of the REL and Distcos. The Counsels of both the REL and Distribution Companies stated that they would file a plan of action, if time is allowed. The plan of action must indicate the requirement of manpower and men in position for better appraisal of the matter.*
- (e) Regarding procurement of materials it was not clear about the role of Central Services Office & CPG and the process of evaluation. The entire process of procurement right from preparation of specification, tendering stages to placement of order need to be filed with the Commission specifying the financial powers of various functionaries of the Company. Regarding the issue raised by the petitioner for procurement of new meters at a cost of Rs.1100 per meter, the placement of order has to be kept in abeyance and all relevant papers are to be submitted to the Commission for scrutiny and clearance.*
- (f) Investment proposals above Rs.5 crore for a particular financial year have to come to the Commission for approval. This has not been done so far.*
- (g) The year wise expenditure on operation & maintenance against the permitted amount in the annual revenue requirement should be placed for information of the Commission. Posts lying vacant to be filled up and the plan of action for filling these posts need to be filed before the Commission.*

38.3 The Commission again heard the respondents on 25.10.05 for replies made on the issues raised in the order dated 30.9.05 and 07.10.05. The Commission after hearing the respondents raised the following queries.

The Commission considers that the above issues are vital for disposal of this matter, and allows M/s. REL and Distcos another chance to file their proper written replies to the queries already made as per orders dtd.30.09.05 and 07.10.05.

Within the time permitted, the respondent Nos.1 to 4 are directed to :-

(vi) resolve the issue of Rs.400 crore NTPC Bond to the satisfactory of the Commission

(vii) resolve the issue of appointment of CEOs and manpower of DISTCOs in compliance with provisions of the Company Law and Memorandum of Articles of Association

(viii) come up with concrete plan with definite time frame for addressing balance issues/queries raised in the Commission's order dt.30.09.2005 and 07.10.2005.

39. As regards the compliance of the issues raised in the orders dated 30.9.05, 3.10.05 and 25.10.05, most of the issues are covered in the order dated 27.1.06. Therefore, the Commission would like to address the issues summarized in its order dtd. 27.01.06 by amalgamating all the issues of orders dated 30.9.05, 3.10.05 and 25.10.05. These are

- i) **Failure in timely procurement of materials for different works.**
- ii) **Failure to attend to maintenance of lines, up gradation of transformers, power supply for LI load.**
- iii) **Failure to procure materials in a transparent manner.**
- iv) **Restricting power supply through load shedding to reduce the input energy.**

39.1 DISCOMs in their reply regarding reliable supply system have relied upon certain presentation, quotations from a magazine and prominent persons.

The Commission has laid particular emphasis on the repair and maintenance activity by the DISCOMs in their areas of operations. Upkeep of lines, replacements and upgradation of transformers, placing of circuit breakers (33KV and 11KV), isolators, earthing switches power and central cables, earthing arrangements, reactive compensation, auxiliary supply transformers and DC supply arrangement are some of the important operation and maintenance activities to be taken up by DISCOMs in order to maintain the lines, transformer and sub-stations at optimum level.

The data regarding standards of performance including various parameters in respective of WESCO, NESCO and SOUTHCO is as under.

Sl. No	WESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
	Standard of Performance							
a.	No. of Dist Transformers	12069	13395	13815	16101	16907	18565	19475
b.	No. of Dist Transformer metered	11631	12558	12558	12558	12558	12558	12558
c.	No. of Dist Transformer failed	2107	1664	2530	2597	2937	2977	2182
d.	Rate of Transformer failure (%)	17%	12%	18%	16%	17%	16%	11%
e.	No. of Dist Transformer Upgraded					452	170	93
f.	No. of interruptions	90850	93622	92459	91647	95325	86091	44852
g.	Duration of Interruptions	26313	27313	21396	21095	22150	19641	10322
h.	No. of Consumers	438972	452523	465947	499291	535477	569148	598252
i.	No. of Consumers metered	426226	443838	459587	479065	513899	549845	577680
j.	%age of working meters	95%	98%	98%	95%	97%	98%	92%
k.	Replacement of defective meters	50893	17178	4624	1992	8227	22114	31361

Sl. No	NESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
1	Standard of Performance							
a.	No. of Dist Transformers	11571	14097	15303	17472	18148	22647	25709
b.	No. of Dist Transformer metered	11362	11625	11625	11625	101	372	569
c.	No. of Dist Transformer failed	1691	1986	1821	2360	1931	1687	1528
d.	Rate of Transformer failure (%)	15%	14%	12%	14%	11%	7%	6%
e.	No. of Dist Transformer Upgraded	53	37	68	26	247	258	64
f.	No. of new substations constructed under SI (11/0.4KV)	478	274	411	119	161	269	156
g.	No. of interruptions							
	(i) 33KV feeders from Grid S/s	7554	16416	13736	12265	9358	12631	8332
	(ii) 11KV Feeders including tripping due to 33KV	33664	32862	35658	38113	37128	35453	26682
h.	Duration of Interruptions (Hrs)							
	(i) 33KV feeders from Grid S/s	3222	3057	2968	2719	1792	1572	1053
	(ii) 11KV Feeders including tripping due to 33KV	16851	16138	15110	12447	8829	10771	8042
i.	No. of Consumers	466537	494988	516308	546210	578226	607677	640930
j.	No. of Consumers metered	431579	435237	459621	491982	526374	557832	595016
k.	%age of working meters	77%	76%	78%	72%	71%	72%	75%

Sl. No	SOUTHCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 as on Sep.'2010
	Standard of Performance							
a	No. of Dist Transformers	8993	9642	10163	10906	12351	14694	15336
b	No. of Dist Transformer metered	8993	8993	8993	9236	9236	9236	9236
c	No. of Dist Transformer failed	747	811	801	1094	1473	1677	770
d	Rate of Transformer failure (%)	8.31	8.41	7.88	10.03	11.93	11.41	5.02
e	No. of Dist Transformer Upgraded							
f	No. of new substations constructed		649	521	743	1445	2343	642
g	No. of interruptions	182376	127229	124968	122395	132318	170247	101664
h	Duration of Interruptions	3652199	3638611	3264223	2729369	3064358	4105762	7394028
i	No. of Consumers	461958	474075	497049	529610	563187	623154	659819
j	No. of Consumers Working metered	424974	452020	460911	487495	522942	569027	592225
k	%age of working meters	95%	97%	94%	93%	94%	92%	91%
l	Replacement of defective meters	23800	24213	12572	16535	13954	20925	12781

39.2 The major findings from the above tables are as follows:

- Distribution Transformers (DTR) in all the DISCOMs are yet to be fully metered. Though there has been addition of Distribution Transformers into the system, the metering of these transformers have not been adequately done. Infact the metering of Distribution Transformers have stagnated over the years.
- Distribution Transformers Failure - There has been no appreciable reduction in the rate of transformer failure.
- Interruptions - Though there has been reduction in the number of interruptions but there has been considerable increase in the duration of interruption especially in case of SOUTHCO.
- Consumer Metering - The consumer metering is an important task in order to do efficient billing and collection activities. Due to increasing consumer base metering has also increased, how ever, the percentage of working meters has gone down and in case of NESCO only about 75 % of the consumers have working meters. Also the replacement defective meters have also been below par in case of WESCO and SOUTHCO.

39.3 The Commission has also been addressing the track of R&M spending vis-a-vis approval in its successive tariff orders. The Commission at para 428 and 429 have observed the following regarding the R&M spending by DISCOMs.

428. The Commission now has the audited figures in respect of WESCO, NESCO and SOUTHCO upto 2008-09 and for CESU upto 2007-08. The approved and audited figures are updated and given in the table below.

Table - 61

(Rs. in crore)

R&M Expenses	WESCO		NESCO		SOUTHCO		CESU	
	Approved	Audited	Approved	Audited	Approved	Audited	Approved	Audited
Years								
99-00	14.43	15.9	14.22	16.19	12.63	13.39	19.05	24.01
00-01	14.43	10.25	14.22	11.02	12.63	7.31	19.57	19.92
01-02	13.62	10.12	16.32	7.02	15.57	9.29	23.43	15.6
02-03	15.33	8.04	14.62	5.65	16.82	6.43	22.11	25.04
03-04	16.89	16.27	17.59	8.84	16.38	9.93	24.12	21.22
04-05	17.28	12.85	17.66	11.13	13.25	8.43	31.95	20.27
05-06	21.3	9.61	22.63	11.21	18.55	6.07	33.67	12.26
06-07	24.25	12.44	24.48	12.88	17.35	5.54	41.31	22.09
07-08	23.82	12.37	24.43	13	18.38	5.5	43.64	25.11
08-09	25.66	17.90	25.87	20.86	19.08	7.79	41.87	34.79
09-10 (*Audited figures based on cash flow till Jan.09)	27.01	21.87*	27.88	22.46*	20.73	11.76	40.46	25.91*
09-10**		18.01		22.79		11.59		N.A

**The figures represent the data available from Audit Accounts. Audit accounts of CESU not available for 2009-10

429. The Commission observes that in recent years DISCOMs have improved their spending on R&M activities and expects that such trend should continue in the coming years. However, there remains yet much to be done about spending in R&M activities in order to maintain the existing fragile network.. The DISCOMs are heavily dependent upon the escrow relaxation in order to spend on the R&M activities. Commission is aware that timely and efficient R&M activities are essential to the optimum utilisation of the distribution network. The Commission is not averse towards allocation of higher amounts on R&M activities but the DISCOMs have to exhibit sincerity of purpose by undertaking adequate R&M activities and increased revenue collection out of current as well as arrears in order to enable Commission to allow more money by way of ESCROW relaxation. Non relaxation of ESCROW is not the problem; the real problem is inadequate revenue collection efforts. If sufficient revenue is collected there will be no difficulty in allowing withdrawal from ESCROW account after meeting the BST, salary and other important item of expenditure.

39.4 In view of the above the Commission is of opinion much greater efforts are required on R&M activity of the DISCOMs. DISCOMs need to maintain the system at a healthy level in order to ensure quality supply to the consumers. This entails generation of enough cash in order to enable GRIDCO to relax the requisite amount for R&M work in accordance to the approval in the ARR.

40. **Failure to achieve the target in T&D and AT&C loss reduction as fixed by the Commission**

40.1 DISCOMs in their reply have given hosts of the reasons for non-achievement of AT&C loss reduction targets on account of uncontrollable factors such as non-maturing of industrial loads and natural calamities inadequate tariff, lack of support from State administration specially functioning of special police station and unpaid dues by various Government Departments.

Govt. of Orissa and GRIDCO have submitted that it is failure on the part of DISCOMs to adhere to the AT&C loss reduction targets fixed by the Commission due to their inefficiency.

	2001-02 (Based on 10 months Actual)	2002-03	2003-04		2004-05		2005-06		2006-07		2007-08		2008-09		2009-10		
DIST. LOSS (%)		Approved in ARR	Actual	Approved in ARR	Actual (Aud)												
NESCO	46.98	41.4	41.4	43.7	43.7	38.0	39.4	35.0	37.1	32.0	33.2	29.0	31.2	25.5	34.6	23.0	32.5
WESCO	41.08	38.3	38.3	39.0	39.0	34.0	36.4	31.0	37.8	28.0	36.4	25.0	36.1	25.0	33.6	22.5	34.7
SOUTHCO	40.89	39.1	39.1	42.4	42.5	39.0	40.5	36.0	41.1	33.0	43.4	30.0	45.5	30.4	47.8	27.9	48.0
AT&C Loss (%)																	
NESCO	54.9	52.2	52.2	50.4	51.8	43.0	42.1	39.6	43.2	36.1	40.7	33.3	35.9	29.2	39.5	24.5	35.7
WESCO	49.9	47.3	47.3	46.2	46.4	40.6	41.7	36.5	41.7	32.3	40.0	28.0	40.7	27.5	37.6	24.0	35.7
SOUTHCO	49.8	49.8	49.3	51.6	49.3	45.7	40.2	41.8	43.9	37.7	46.6	34.2	48.7	34.6	50.8	29.4	50.2

40.2 The table above reveals that DISCOMs need to have a properly thought out action plan from the reduction of AT&C losses and demonstrate the steps being taken in the matter.

The difference in the target set by the Commission for overall AT&C loss and achievement has been quit wide ranging between 10 to 15 %. The performance of licensee in the LT level is more glaring where the target set by the Commission has been short by 22 % for FY 2010-11.

40.3 DISCOMs in their reply have attributed variations between actual performance and targets towards AT&C loss reduction, mainly on account of the uncontrollable facts such as non-maturing of industrial loads and natural calamities. Commission in this regard analysed the actual industrial consumption from their audited accounts. A table below shows the growth of industrial consumption over the years.

WESCO	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Total Consumption	1500.83	1628.89	1595.78	2070.25	2307.71	2577.25	2605.27	2972.37	3434.61	4238.25	4089.90
Industrial Consumption	729.581	780.673	785.24	1168.065	1441.26	1766.37	1712.35	1995.01	2355.15	3084.62	2675.93
NESCO											
Total Consumption	1278.90	1357.48	1128.31	1404.97	1490.60	1809.18	2144.21	2670.18	3203.78	2973.71	3175.14
Industrial Consumption	764.81	834.16	563.94	787.77	850.86	1109.21	1356.32	1778.72	2229.09	1922.67	1963.49
SOUTHCO											
Total Consumption	833.39	875.43	906.03	946.94	924.83	959.92	1003.16	1034.25	1077.59	1136.21	1187.82
Industrial Consumption	216.2	217.74	228.16	249.26	241.41	212.56	277.56	295.88	318.38	348.74	328.56

40.4 As can be seen from the above table there has been appreciable growth of Industrial consumption in case of WESCO and NESCO. In case of WESCO the growth in Industrial consumption was from 729.58 MU in 1999-00 to 1766.37 in 2005-06 and stands at 2675.93 in 2009-10. Similarly in case of NESCO the Industrial consumption during FY 1999-00 was 764.81 and it grew to 1356.32 in FY 2005-06 and stands at 1963.49 during FY 2009-10. The industrial consumption in SOUTHCO area has not shown appreciable growth. However the ratio of HT and EHT consumption by 2009-10 is 73.62% in WESCO, 69.08% in NESCO and 37.39% in SOUTHCO.

40.5 Despite the substantial consumption by industries and commercial establishment the per unit realization in case of these DISCOMs has been low. The table below shows such performance:

	Average Tariff (Approved)		Collection per unit (p/u)	
	2009-10	2010-11	2009-10	2010-11 (upto 9/2010)
NESCO	265.15	320.58	189.11	208.84
WESCO	265.15	320.58	201.73	212.37
SOUTHCO	265.15	320.58	144.98	155.13

40.6 In view of the above, the contention of the WESCO and NESCO that industrial growth has not matured is rather weak. The Commission has been regularly monitoring the performance of the licensees towards various parameters including AT&C loss reduction but the Licensees need to put in efforts to improve their performance and not invent new reasons or justifications for their poor performance.

41. **Preventing theft of Energy**

41.1 Even though number of Energy Police Stations have been sanctioned, the Licensees need to operationalise them by pursuing the matter with the Police. Efforts must be persistent to yield the desired results. Advice was given while making performance

review for 2009-10 in May 2010 to fix monthly target for detection of energy theft but no serious efforts have been made :

Sl. No.	WESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
	Police Station							
a.	Sanctioned	1				8	9	9
b.	Operationalised				1	0	0	0
c.	No. of FIR lodged				5	74	104	44
d.	No. of cases forwarded to court				5	51	94	2

41.2 The above table reveals that out of nine sanctioned Energy Police Station (EPS) for the WESCO area only one has been operationalised as of now. WESCO is to do much on this account so as to operationalize rest of the eight EPS in the area of their operation. In absence of operationalization and effective functioning of energy police stations together with lack of initiative to take anti theft measures particularly in respect of high end consumers are seriously affecting the revenue.

Sl. No.	NESCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (up to Dec.'10)
	Police Station							
a.	Sanctioned	1	-	-	-	4	5	5
b.	Operationalised	1	-	-	-	-	2	
c.	No. of FIR lodged	-	-	7	21	39	57	70
d.	No. of cases forwarded to court	-	-	7	21	39	40	21

41.3 In NESCO area out of the five sanctioned Energy Police Stations, only three have been operationalised. Though there has been increase in the number of FIR lodged and number of cases forwarded to the court, this has not translated into reduction of theft and AT&C losses.

Sl. No.	SOUTHCO	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 up to Sep.'2010
	Police Station							
a.	Sanctioned	1				8	9	9
b.	Operationalised (As on Dec-2010)			1	1	1	1	7
c.	No. of FIR lodged (At energy Police Station)			7	8	12	35	92
	No. of FIR lodged (Other Police Station)	256	103	183	50	33	58	37
d.	No. of cases forwarded to court	22	14	11	3	0	0	0

41.4 As revealed from above table that out of nine numbers of sanctioned EPS, six have been operationalised. Though numbers of EPS operationalised in SOUTHCO area is better than other areas, the number of FIRs and cases being forwarded to court was appreciably declined as in FY 2008-09 and 2009-10 no case has been forwarded to the court. The functioning of EPS in SOUTHCO has also not resulted in reduction of AT&C losses and power theft.

41.5 Of the 23 police stations sanctioned for the three Reliance managed distribution companies, ten Nos. have already been operationalised (WESCO - one, NESCO - three & SOUTHCO - six) Govt. in the meantime have also decided that a senior level IPS officer in the office of D.G. Police will monitor the functioning of the energy police stations. The State Govt. have also decided to post a Nodal Officer in the rank of an Additional S.P. in the range Head Quarters to oversee the day to day functioning of the energy police stations. The Commission expects the State Govt. to see that with the arrangement proposed to oversee functioning of the energy police stations, they really become effective as already advised earlier. The State govt. should adopt the West Bengal Model where a very senior police officer at the level of IG works with the West Bengal State Electricity Distribution Company Limited and is responsible for theft prevention, detection, prosecution and liaison with the police. We would, therefore, consider having one senior Officer working with the Energy Department and being responsible for theft prevention and detection in all the four DISCOMs. He could supervise and monitor the working of all the Energy Police Stations and ensure their effective functioning. As an officer of the State's Police Administration, he could liaise easily with the police and act as a bridge between the Electricity Utility and the police. The initiative has to be taken by the distribution companies to workout an effective way to prevent theft of electricity. Their function and initiatives cannot be substituted by the State Govt. only.

42. **Non-redressal of consumer grievances**

42.1 DISCOMs in their submission have stated that they have set up Grievance Redressal Forum, issued regular advertisement in print and electronic media, prompt attendance of consumer grievances and fully functional Ombudsman.

The Commission has been monitoring the working of GRFs and Ombudsman through regular inspection and interactive session with the members. The progress of cases and disposal over the years of GRFs is given below:

Implementation of orders of GRF by Licensee as submitted by GRFs

Name of Licensee	Year	Opening balance of cases	No. of cases registered	No. of cases disposed	No. of orders passed in favour of consumers	No. of cases implemented by the licensees	No. of cases pending
NESCO	2004-05	0	2360	2358	2201	Implemented	0
	2005-06	2	1241	1240	1197	Implemented	0
	2006-07	3	641	489	471	Implemented	0
	2007-08	155	576	707	686	Implemented	0
	2008-09	24	571	579	625		0
	2009-10	16	650	649	584	204	118
SOUTHCO	2004-05	0	45	30	29	25	4
	2005-06	0	397	134	127	100	27
	2006-07	1	204	361	346	323	23
	2007-08	2	499	514	497	480	17
	2008-09	9	908	557	543	541	2
	2009-10	7	264	701	680	410	270
WESCO	2004-05	37	67	90	36	3	12
	2005-06	14	221	172	118		22
	2006-07	63	252	218	179		29
	2007-08	97	258	269	241		82
	2008-09	86	1045	1063	964		142
	2009-10	68	1615	1446	1339	784	303

Disposal of Consumer Complaints by Ombudsman						
Name of Licensee	Name of GRF	Year	Opening balance of cases	No. of cases registered	No. of cases disposed	No. of cases pending
SOUTHCO	Ombudsman	2004-05	0	1	0	1
		2005-06	1	15	15	1
		2006-07	1	27	26	2
		2007-08	2	28	30	0
		2008-09	0	9	9	0
		2009-10	0	6	5	1
		Total	4	86	85	5
NESCO	Ombudsman	2004-05	0	0	0	0
		2005-06	0	18	16	2
		2006-07	2	27	23	6
		2007-08	6	18	23	1
		2008-09	1	21	19	3
		2009-10	3	28	27	4
		Total	12	112	108	16
WESCO	Ombudsman	2004-05	0	0	0	0
		2005-06	0	10	8	2
		2006-07	2	10	9	3
		2007-08	3	11	12	2
		2008-09	2	24	24	2
		2009-10	2	29	27	4
		Total	9	84	80	13

42.2 It is observed that mechanism of GRF institutions in the DISCOMs has evolved but yet there is much to be done by them to instill confidence of consumers regarding efficiency of such institution through prompt and just disposal of cases. It is the licensee who should take initiative to see that their Grievance Redressal Forums functions effectively and prompt follow up action is taken to implement the orders of GRF/Ombudsman. There seems to be inordinate delay in complying with such orders and in most of the cases steps are being taken only after petition is filed under Section 142 by the aggrieved consumer.

Govt.'s response in the event of cancellation of license:

43. The Commission in its order dtd. 22.8.2009 wanted to know from GRIDCO & Govt. of Orissa regarding plan of action in case license of REL is suspended or revoked and the alternatives to ensure continuous and steady supply of power to the consumers in such a situation. The Commission also asked whether Govt. is prepared to increase capital by way of additional equity in cash and not by any conversion of debt into equity thereby obligating REL to bring in any equal amount of equity into the DISCOMs for system improvement and management. Govt. of Orissa have submitted that action regarding suspension and revocation licence may be taken by the Commission purely based on the merit of the case under the provision of Electricity Act, 2003. Govt. of Orissa have further informed that they are not averse to infusion of additional equity in DISCOMs through GRIDCO provided similar commitment from REL is available.

Comments and Directions of the Commission

44. The Hon'ble APTEL vide its order dtd. 13th Dec. 2006 observed while setting aside the order dt.27.01.2006 of the Orissa Electricity Regulatory Commission that if OERC proposes to continue or initiate fresh action under Section 24 of the Act, then it shall strictly follow the procedure under Section 24 of the Electricity Act, 2003 and the relevant statutory provisions. The Hon'ble Supreme Court of India however, in its order of Jan 5, 2009 in Civil appeal No.946 and Appeal No.2309 of 2007 held thus :

“Accordingly, the appeal is allowed in-part. The impugned order of the Appellate Tribunal is quashed so far as it annuls the show cause notice issued by the Regulatory Commission under Section 24(1) of the Act. Now, it would be open to the respondents to file their representations/objections before the Regulatory commission, which shall proceed to decide the matter in accordance with law without being influenced by the observations made in the order impugned in these appeals.”

45. The Commission (OERC), therefore, proceeded to call upon the respondents to file their representation, so as to decide the matter in accordance with the law. After a careful perusal of the submissions made by the respondents and the analysis made in the preceding paragraphs it is seen that many of the shortcomings summarized in paras 26 and 27 of the Commission's order of 27.01.2006 continue. Apparently there has been no serious effort on the part of WESCO, NESCO & SOUTHCO to improve their performance, particularly in terms of reduction of distribution as well as AT&C losses, improving consumer services, taking up timely maintenance of the distribution network and arranging fund for capital investment. Sincere and positive steps are required to be taken by the three distribution companies to convince the majority shareholder REL to start a dialogue with GRIDCO, the other shareholder, on the issue of renewing the shareholders agreement or to resolve the servicing of 400 crore NTPC bond. The Managing Director appointed for WESCO & NESCO should take steps to allow the respective companies to function independently rather than centralize management at the Central Service Office (CSO). Adequate delegation of administrative and financial power to the various levels is essential to enable the field officers to take timely action in managing the Distribution network. Consumer grievances must be attended to and in a timely fashion and comply with the orders of the GRF and Ombudsman without waiting for complaints under Section 142 of the Electricity Act, 2003 before the Commission.
46. There is total lack of serious commitment in the part of 3 Licensees and also the majority shareholders to improve the standard of service and reduce the AT&C loss. Steps need to be taken to utilize the existing Energy Police Stations in a proactive manner with the Govt. and also active steps in the detection of theft by high end consumers. The Energy Police Stations under CESU has taken some positive initiatives. The similar Energy Police Stations functioning under the 3 Reliance distribution companies should also be made to function actively.
47. In case of NTPC bond when GRIDCO has settled the issue with NTPC by making one time payment and the total liabilities discharged in respect of NTPC bond is Rs.603.50 crore including the interest payment by the three distribution companies directly to NTPC for Rs.110.80 crore, WESCO, NESCO & SOUTHCO should take positive steps to settle the issue with GRIDCO limiting to the total payment of Rs.603.50 crore rather than prolonging the issue on both the sides by litigation and counter litigation. An effort is required by both the shareholders to create a conducive

atmosphere rather than allowing things remain where they are at the commencement of the suspension proceedings.

48. In the meantime government have taken proactive steps to approve a Capex programme of Rs.2400 crore out of which the State government would provide Rs.1200 crore and balance Rs.1200 crore would be provided by the four distribution companies as counter part funding. This consists of Rs.468.00 crore by CESU, Rs.246.00 crore by SOUTHCO, Rs.234.00 crore by WESCO and Rs.212.00 crore by NESCO. While in the meantime CESU has taken steps to obtain sanction of Rs.203.00 crore from REC towards its counter part funding, WESCO has proposed Rs.29.17 crore from REC and Rs.20.00 crore from IDBI, NESCO has proposed Rs.24.67 crore from REC and Rs.20.00 crore from IDBI and SOUTHCO has proposed Rs.4.89 crore from REC by now. Since Capex programme is being monitored by a Committee chaired by Secretary, Energy there is a need to allow some more time to WESCO, NESCO & SOUTHCO to ensure counter part funding towards their share for the CAPEX programme already under implementation. The State Govt. have also stipulated that if the distribution companies achieve reduction of AT&C loss of 3% per annum on the average the State's share initially released as loan would be converted to grant.
49. Further, in the meantime the Commission in their Business Plan order dated 20.3.2010 have also stipulated that while GRIDCO should release Rs.403.23 crore of the assets created after 31.3.2000 and upto 31.3.2008 from hypothecation in order to facilitate WESCO, NESCO, & SOUTCO to approach the financial institutions for sanction of loan at the same time the Commission has also directed the 3 REL managed distribution companies to make provision for GRIDCO power bond of Rs.400.00 crore in the Balance Sheet till the matter is decided by the Hon'ble Supreme Court. In the said Business Plan order Commission had also requested the state government to allow the distribution companies to pledge the assets created for 254.83 crore out of World Bank loan with the financial institutions such as REC and PFC to avail loan for capital works.
50. Regarding the dispute of outstanding dues payable by WESCO, NESCO & SOUTHCO to GRIDCO State government have also constituted an Inter Ministerial Committee (IMC) vide their notification No.PPD-TH-14/10/933 dt.06/02/2010 to resolve various issues. The said Notification is reproduced below for ready reference.

*“Government of Orissa
Department of Energy*

NOTIFICATION

No.PPD-TH-14/10/933/ Dated Bhubaneswar the 6/02/2010

Government have been pleased to constitute an Inter Ministerial Committee to resolve the outstanding issues between GRIDCO and M/s. Reliance Energy Ltd. such as Discoms Power Bond/NTPC Bond, payment of outstanding GRIDCO loan, payment of outstanding Government loan etc. and to facilitate the system up-gradation of the Distribution Sector with the following Ministers.

- 1) Hon’ble Minister, Finance & Excise*
- 2) Hon’ble Minister, Industries, Steel & Mines & parliamentary Affairs*
- 3) Hon’ble Minister, Higher Education, Tourism & Culture*
- 4) Hon’ble Minister, Rural Development & Law*
- 5) Hon’ble Minister, Energy*

Government have been further pleased to constitute a Committee with the following Secretaries to assist the Inter Ministerial Committee of the Ministers.

- 1. Principal Secretary to Govt., Finance Deptt.*
- 2. Commissioner-cum-Secretary to Govt., Industries Deptt.*
- 3. Principal Secretary to Govt., Law Deptt.*
- 4. Commissioner-cum-Secretary to Govt., Deptt. of Energy – Convenor*
- 5. C.M.D., GRIDCO*

Order

Ordered that a Notification be published in the next issue of Orissa Gazette.

By order of Governor

-Sd-

Commissioner-cum-Secretary to Govt.”

51. In the meantime out of 34 Energy Police Stations (EPS) sanctioned by the State Government 16 No. of EPS have started functioning out of which six No. of EPS relates to CESU one No. of EPS to WESCO, three No. of EPS to NESCO and six No. of EPS to SOUTHCO. State Government have also informed that the functioning of the EPS would be monitored by a Senior Officer from the office of D.G. of Police. Besides this at the range level, a Police Officer in the rank of Additional S.P. would also supervise and monitor the function of the EPS. It is, therefore, necessary to allow some more time for the distribution companies to take initiatives and utilize the administrative support contemplated to be provided by the State government in ensuring functioning of EPS.

52. A few general observations on the reform process on the distribution segment and its outcome may not be out of place, at this stage. These observations would be neither new nor unknown to the various players in the power sector. Nevertheless they bear repetition in the context.
53. One of the expectations from Reforms was that it would lead to a substantial reduction in T&D losses that were the bane of the erstwhile OSEB. The entire design of the restructuring, was based on the estimated system losses for the base year 1995-96 at 43% which by the seventh year of reform 2002-03 was expected to come down to 20.6%. It was realized during implementation, however, that the base year loss figure was a gross under-estimate and hence the performance targets clearly unachievable. The World Bank's Aide Memoire dated 31 Oct 1998 puts the revised loss estimate for the base year at about 52-53% and that for the succeeding year 1996-97 at about 50%.
54. The commencement and progress of the reforms were clearly uneven from the very beginning. It is the messy progress of the reform programme in the distribution segment that has contributed to the highly inconsistent performance of the DISCOMs in bringing down the losses. The issue of distribution system losses in the power sector was examined by the Kanungo Committee, set up by the Govt. of Orissa, in great detail. The Committee derived estimates for the HT/LT segment which commenced with 67% for 1996-97 and stood at 68% for 2000-01. If we compare these figures with those presented to the Committee by GRIDCO for the total system loss, they commenced at 49.5% for 1996-97 and stood at 43.4% for 2000-01. This really spoke volumes of the Reform period itself, when the relatively optimistic picture presented by GRIDCO was quite belied. Obviously both GRIDCO and the subsequently unbundled and privatized DISCOMs were floundering in controlling technical and commercial losses till as late as the fifth year of the Reform programme.
55. The DISCOMs were privatized with effect from 01.4.99 and by the year 2002-03 the four DISCOMs had plunged into a financial loss of about Rs.1640.00 crore. The reasons are not far to seek. Some of the factors that contributed to the apparent failure of the expected improvements are those of the DISCOMs themselves, whose contribution to their own financial health and human resources position was negligible. Coupled with this, were factors beyond the control of the DISCOMs – the non-maturing of the projected EHT loads as projected in the World Bank's Staff Appraisal Report, the up-valuation of assets, the super-cyclone and negative gaps in

the ARR, all of which compounded the dismal performance of the DISCOMs with losses and liabilities of over Rs.3000.00 crore. With such a financial situation and 'red' splashed all over their balance sheets, access to Financial Institution and Banks for loans and debts for capital works have not been forthcoming easily. The situation was no better or worse in anyone of the DISCOMs. Added to this, is the constant friction and bickering between the Shareholders on every aspect of finance, accounts and management which has had a crippling effect on capital works and system upgradation thereby having a cascading effect on revenues and even routine repair and maintenance.

56. The consumer mix of the DISCOMs has also acted as a determining factor behind the high level of AT&C losses. The LT category of consumers constitutes the dominant category in all the four (4) DISCOMs. It is because of this category that efficiency in billing and collection of charges for energy consumed, continues to be at low levels. It is only in recent years that some improvements can be discerned.
57. The State Govt. needs to play a more pro-active role as a facilitator for the overall health of the sector. Of particular concern is the provision of police back-up by the Govt. to the collection efforts of the DISCOMs. While the legal backing and support are all in position by way of notifications vesting powers with the DISCOMs to check theft of electricity, its effective implementation requires much more from the Government by way of manning the special police stations set up for the purpose and equipping them properly. So also, the Special Courts, which must be dedicated courts dealing with electricity related offences rather than the regular courts also designated as Special Courts.
58. The State Govt. has provided support by issuing appropriate advice to all Heads of Depts. and Govt. agencies to pay their electricity bills in time as adequate budgetary provisions have been made. The DISCOMs however, will need further unequivocal support from the District Administrator and Law Enforcement agencies in establishing a commercial environment for disconnections for non-payment of dues and their routine distribution operations. Perception and attitude of their employees, consumers and the general public and other stakeholders need to change with the assistance of the District Coordination Committee so as to transform the DISCOMs into viable business entities and not to be looked upon as fair game for non-commercial practices including massive theft of electricity. In order to demonstrate,

the Govt.'s commitment to the segment, Govt. must make timely and full payment of the electricity dues to the DISCOMs.

59. What really gives us comfort is the growing confidence in the future. System losses can be surely brought down substantially with the CAPEX programme of Rs.2400 crore currently underway jointly with the four DISCOMs and the State Govt. GRIDCO must find ways and means to enable the DISCOMs to access loans from Banks and FIs. Hon'ble ATE observed in their Order dated 13.12.2006 in Appeal No.75 of 2005 filed by erstwhile Reliance Energy Limited (Now R-Infra) in para 40 and 41 as follows :

“40. We expect not only the Discoms but also the share holders of the Discoms namely the appellant, GRIDCO and others will evolve and arrive at an amicable solution for effective functioning of the three Discoms to serve the consumers at large, which is expected of the appellant. With respect to the matter which is the subject matter of pending Writ Petition, it is for the parties to work out their remedies and it shall not be taken that we have expressed ourselves on merits of the said matter nor are we could have taken up the matter to discuss the said dispute here.

41. Before parting with this appeal we would like to point out that the appellant as well as respondents have taken up the responsibility of serving the consumers and they shall take every effort to see that the privatization in the State of Orissa is not defeated on hyper-technicalities and every effort should be made to continue the distribution of power effectively to the satisfaction of everyone, while avoiding friction and mutual misunderstandings and suspicions. We do expect that the appellant REL and contesting respondents continue to strive for the common purpose of serving consumers and the discussions, now being held in this behalf may be utilized to settle the disputes in the interest of Reform in the State of Orissa.”

60. These observations sum up what needs to be done by a positive attitude of mutual cooperation.
61. All the DISCOMs have started paying 100% of their BSP dues and even a part of the arrears. In turn, GRIDCO has been able to pay its dues to Generators. The focus on technology to check AT&C losses is very encouraging as the DISCOMs have been responding positively to Performance Based Regulation. Similarly, DISCOMs are increasingly resorting to the use of ABC conductors, proper loading and maintenance of transformers, metering of transformers and metering of feeder. Consumers do appreciate the innovations of regular monthly billing by spot billing machines and improved collection by systematic collection drives.

62. Though the initial experience of reform was one of set backs, recent developments seem to be promising. For any such break from the past, patience and forbearance are necessary. Gestation lags and change from age old ways takes coordinated effort from all stakeholders. What is paramount is that we need to strive harder with the end objective of a vibrant and efficient power sector for the overall economic development of the State.
63. Suspension and revocation are an extreme steps such steps are to be taken when there is complete inability to discharge the functions or perform the duties imposed on it and as described more clearly in Section 24(1) of the Act. When there has been some progress for capital investment and administrative support for effective functioning of EPS and the various dispute regarding payments due to GRIDCO by the three distribution companies are under examination by the Inter Ministerial Committee constituted by the state government, it would not be proper and would be premature to suspend the licenses of WESCO, NESCO and SOUTHCO at this stage. This suspension of the licenses at this stage would also give a wrong signal to the financial institutions for sanction of loan for enabling the distribution companies to arrange counter part funding. The Commission, therefore, feels it appropriate and necessary not to suspend the license, at this stage. If the State Govt. is of the opinion that they are better placed to manage the Distribution Companies, they may undertake and commence appropriate action to buy out the stake of R-Infra or come out with a clear plan of action as to whether GRIDCO along with employee trustee as 49% of shareholder would like to take over the management of three distribution companies. Suspension of License, which could also lead to revocation, is an extreme step and a step of the last resort, when all effort in normalizing the situation or achieving the desired results fails despite the very best efforts. A situation similar to CESU resulting from the revocation of CESCO's license should not arise. The Electricity distribution business impacts a large number of consumers in the area of the distribution licensee. Such a license is not merely a bilateral contract but also has far reaching consequences on the myriads of consumers in its area. Any step in this direction must be considered and taken with care and caution.
64. In order to allow another opportunity to WESCO, NESCO & SOUTHCO to arrange fund for capital investment, taking effective steps for energy audit, arresting theft of electricity, improve standard of service to the consumers and to take proactive steps for redressal of consumer grievances and settlement of disputes with GRIDCO with

regard to NTPC bond and other dues, Commission at present, instead of suspending licenses of the three distribution companies, would like to see an environment of effort on all sides to improve performance in various aspects. In view of the aforesaid discussions and analysis the Commission instead of suspending licenses of WESCO, NESCO & SOUTHCO directs demonstrable action towards performance as follows.

- (1) Both the shareholders should work out a remedy for the shareholders agreement and arrive at a mutually satisfactory arrangement for the future of the DISCOMs. Satisfactory steps may be demonstrated on or before **30.9.2011**.
- (2) DISCOMs and GRIDCO should make every effort to settle the issue of servicing Rs.400 crore NTPC bond in a mutually co-operative fashion without waiting for the final judgment of the various courts of law. Satisfactory steps should be demonstrated on or before **30.9.2011**.
- (3) The three distribution companies must have to arrange their counter part funding for the CAPEX programme as decided by the State Govt. and communicated in their letter No.9230/EN dated 21.10.2010.
- (4) The guidelines/procedure outlined by Energy Dept. in their Lr. No. R&R-I-06/2010-9230/En dtd. 21.10.2010 in the matter of procurement materials, third party verifications etc. shall be followed.
- (5) The capital expenditure to be incurred out of the budgetary assistance from the State Govt. and the loan/resource to be arranged by WESCO, NESCO & SOUTHCO would be over and above the approved O&M expenditure for them for the year 2010-11 and O&M expenditure to be approved for the subsequent years. The O&M expenditure shall not be considered towards counter funding by WESCO, NESCO & SOUTHCO.
- (6) Discrimination should not be made between franchisee and non-franchisee area for utilization of fund under O&M as well as capital investment programme keeping in view the terms and conditions agreed to in the agreement with the franchisees.
- (7) In order that the distribution companies ensure full utilization of the amount approved for O&M expenditure, concerted efforts should be made to increase substantially the present level of billing and collection so that enough money is deposited in escrow account for enabling GRIDCO to release the required

fund as per the priority fixed by the Commission in their order dated 12.4.2010 in Case No. 3/2010 read with their order dated dtd. 02.11.2010 in Case No. 34/2010.

- (8) For correct comparison of the improvement achieved over the base line data the distribution companies are to correctly workout the base line data division-wise as a whole and for the specified project area within the division separately with the arrangement of proper ring fencing of the Division/project area. The base line data be preferably vetted by the independent third party. At the end of the project period the improvement achieved for the division as a whole and for the project area specified shall be compared with the base line data thus worked out correctly. The base line data Division wise/specified project area wise be submitted to the Commission by 31.8.11 and the improvement as arrived from the base line data upto 31.3.12 be submitted to the Commission on or before 31.5.12.
- (9) State Govt. in the initial stage is proposing to release fund as loan which can be subsequently converted to grant depending on actual fulfillment of the target of the AT&C loss. Hence in order to reduce the impact on tariff on account of the proposed investment, distribution companies are to closely monitor the actual implementation at the field level. Men and materials should be provided in time through appropriate re-deployment and re-allocation so that in no way there is cost over run and time over run leading to higher impact on tariff. In other words additional liabilities, if any, arising out of cost over run or time over run or failure by the licensee to achieve the performance parameters fixed by the Monitoring Committee/ State Govt. shall not be considered by the Commission for the purpose of their revenue requirement for the relevant years.
- (10) Advance action should be taken for procurement of materials and awarding the contract in a transparent manner for implementation of Capex programme so that the work is taken up in time and the payment is released as soon as fund is passed on by GRIDCO after receiving the same from the State Govt.
- (11) While the investment is expected to improve the quality of supply and reduce the distribution loss, concurrent action should be taken for implementation of various anti-theft measures including strong and regular enforcement activities

through Energy Police Stations and Vigilance Wing, MRT squad of the distribution companies.

- (12) Initially the State govt. is proposing investment of Rs.2400 core for the four distribution companies out of which State Govt. would provide Rs.1200 crore. Therefore, it is necessary for the distribution companies to take all possible measures to ensure that target fixed on different parameters particularly with reference to distribution loss and AT&C loss are achieved by them at any cost so that govt. may consider further investment over and above Rs.2400 crore now decided. This is an opportunity which the distribution companies must avail and create an enabling situation for the State Govt. to extend further support to the distribution companies in their efforts to reduce the AT&C loss and improve the quality of supply. However, for the purpose of truing up, the parameters fixed by the Commission in the Tariff Orders of the respective years shall be taken as the basis but not the target fixed for the purpose of achieving budgetary support from the State Govt.
- (13) The distribution companies are to furnish quarterly progress report on actual implementation of the project in specified area to the Commission by 15th of the month following the end of the quarter i.e. 15th January, 15th April, 15th July and 15th October.
- (14) The estimated cost of the project, the date of commencement of the work, the scheduled date of completion and progress of the work should be displayed in website of distribution companies as well as that of GRIDCO for information of the general public.
- (15) R-Infra the majority shareholder should appoint a full time Managing Director for each of the DISCOMs (WESCO, NESCO and SOUTHCO) from amongst the Directors of the Board who should be responsible for day-to-day management of the DISCOMs. Clear steps in the matter may be reported before 30.9.2011.
- (16) The three DISCOMs (WESCO, NESCO and SOUTHCO) should generate enough cash through improved billing and collection efficiency to pay the outstanding loan and BSP dues to GRIDCO in terms of the Commission's order dt. 01.12.2008.

- (17) Both the shareholders must take step to infuse funds into the DISCOMs either by way of equity or by way of debt so as to ensure satisfactory implementation of both the on-going CAPEX programme or such other capital works as might be required to bring the distribution network into a healthy state. Satisfactory steps need to be demonstrated before 30.9.2011.
- (18) The DISCOMs shall take up full scale energy auditing in order to properly assess losses both technical and commercial in the system and to take necessary remedial measures to plug such losses. DISCOMs should file separately on or before 31.7.2011 a plan of action for energy audit programme in their area of operation with time line of action and completion.
- (19) DISCOMs shall take necessary steps to cover the areas hitherto not covered under the spot billing programme in order to improve billing efficiency. DISCOMs must file separately on or before 31.7.2011 a plan of action for spot billing programme in their operation with time line of action and completion.
- (20) DISCOMs should have adequate man power in order to maintain the system at optimum level and to take efficiently billing and collection activities. DISCOMs should complete the man power assessment and file separately such requirement for approval of the Commission before 30.9.2011.
- (21) DISCOMs are required to maintain lines, upgradation of transformer and power supply as per their annual R&M programs so that consumers have access to quality power.
- (22) DISCOMs should not resort to restricting power supply through load shedding to reduce the input energy. DISCOMs are required to adhere to Order (Protocol) on Power Regulation in the State under Section 23 of the Electricity Act, 2003 notified by the Commission from time to time read with such other Grid management advice of SLDC for implementation of ABT.
- (23) DISCOMs have not been able to achieve the target approved by the Commission in various business plan orders towards Distribution loss and AT&C reduction. The DISCOMs are directed to take up a comprehensive plan for targeted reduction of these losses in view of the bench mark fixed by the Commission. The CAPEX programme for the DISCOMs totaling Rs.2400 crore (for the four DISCOMs) mainly aims at reduction of AT&C losses and the funding impinges on the phase wise AT&C loss reduction programme.

- (24) The GRF institutions which are the internal grievance redressal mechanism of the institution of the DISCOMs should be strengthened by giving them proper financial and infrastructural support and by taking timely action to comply with the orders of GRF and Ombudsman.
65. The Commission would review from time to time (not less than once in a 3 months) the progress made for complying with the stipulations as indicated above in Para 64. These stipulations must show satisfactory progress. At any time if the Commission feels that the distribution companies are not taking effective and adequate steps to reduce the loss and improve the quality of supply the Commission would be at liberty to initiate action either under Section 19 or Section 24 of the Act.
66. This petition is disposed of in terms of the above directions set out in paras 64 and 65.

Sd/-
(B.K. MISRA)
Member

Sd/-
(K.C. BADU)
Member

Sd/-
(B.K. DAS)
Chairperson